



# International Covenant on Civil and Political Rights

Distr.: General  
22 August 2017  
English  
Original: French

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## Human Rights Committee

### Concluding observations on the fourth periodic report of Madagascar\*

1. The Committee considered the fourth periodic report of Madagascar (CCPR/C/MDG/4) at its 3384th and 3385th meetings (see CCPR/C/SR.3384 and 3385), held on 10 and 11 July 2017. At its 3406th meeting, held on 25 July 2017, the Committee adopted the following concluding observations.

#### A. Introduction

2. The Committee welcomes the submission of the fourth periodic report of Madagascar, albeit four years late, and the information presented therein. It expresses appreciation for the opportunity to renew its constructive dialogue with the State party's high-level delegation on the measures taken during the reporting period to implement the provisions of the Covenant. The Committee is grateful to the State party for its written replies (CCPR/C/MDG/Q/4/Add.1) to the list of issues (CCPR/C/MDG/Q/4), which were supplemented by the oral responses provided by the delegation, and for the supplementary information provided to it in writing.

#### B. Positive aspects

3. The Committee welcomes the restoration of republican law in the State party and the adoption of the Constitution of the Fourth Republic by referendum on 17 November 2010. It also welcomes the following legislative and institutional measures taken by the State party:

(a) Act No. 2011-014 of 28 December 2011 on the Incorporation of the Road Map into Domestic Legislation;

(b) Act No. 2014-007 of 22 July 2014 on the Creation of the Independent National Human Rights Commission;

(c) Act No. 2014-035 of 9 January 2015 on the Abolition of the Death Penalty and Act No. 2016-053 of 16 December 2016 authorizing the ratification of the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty;

(d) Act No. 2014-040 of 20 January 2015 on Combating Trafficking in Persons;

(e) Act No. 2015-020 of 8 October 2015 on the Establishment of the Independent National Electoral Commission;

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\* Adopted by the Committee at its 120th session (3-28 July 2017).



(f) Act No. 2016-17 of 22 August 2016, amending and supplementing parts of the Code of Criminal Procedure.

4. The Committee welcomes the ratification of, or accession to, the following international instruments by the State party:

(a) The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, in 2015;

(b) The Convention on the Rights of Persons with Disabilities, in 2015.

## C. Principal areas of concern and recommendations

### **Applicability of the Covenant and implementation of the Views of the Committee**

5. The Committee notes that article 137 of the Constitution of Madagascar establishes the primacy of international treaties over domestic law and that the Covenant may be directly invoked by the courts. However, it regrets that the Covenant has rarely been invoked or applied by the courts. The Committee also remains concerned that there is as yet no mechanism responsible for implementation of the Committee's Views under the Optional Protocol (art. 2).

**6. The State party should: (a) take steps to raise awareness among judges, lawyers, prosecutors and other law enforcement personnel about the provisions of the Covenant, so that these can be taken into account before and by the national courts; and (b) consider establishing a specific mechanism to give full effect to the Committee's Views.**

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

7. The Committee notes that the Independent National Human Rights Commission has been in operation since the swearing in of its members on 13 October 2016 and that it has already conducted investigations into cases involving human rights violations. However, it notes with regret that it has not yet been allocated an independent budget. The Committee is also concerned that the High Council for the Defence of Democracy and the Rule of Law, whose mission is to ensure respect for ethical governance, democracy and the rule of law and to monitor the promotion and protection of human rights, is not yet operational, which has also delayed the establishment of the High Court of Justice (art 2).

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

### **State of emergency**

9. The Committee reiterates its concern that Act No. 91-011 of 11 July 1991 remains in force and that it neither explicitly prohibits derogations from articles 6, 7, 8 (1), 8 (2), 11, 15, 16 and 18 of the Covenant nor defines guarantees relating to the implementation of derogations from other articles of the Covenant (art. 4).

**10. The State party should bring its legislation into line with article 4 of the Covenant, including by defining guarantees relating to the implementation of derogations not prohibited by the Covenant.**

### Combating corruption

11. The Committee welcomes the legislative measures taken by the State party to combat corruption and commends the efforts made in recent years to recruit new judges and police officers. However, it notes with concern that corruption remains fairly widespread within the political community, the judiciary and the police authorities in the territory of the State party. The Committee is concerned that this phenomenon may: (a) undermine the process of national reconciliation; (b) perpetuate the lack of trust in the State party's institutions among the citizens of Madagascar; and (c) foster impunity for some perpetrators of human rights violations (arts. 2, 14, 25 and 26).

12. **The State party should: (a) ensure strict respect for the principle of separation of powers and redouble its efforts to combat corruption and related impunity; (b) accelerate the process of establishing the High Court of Justice so as to effectively guarantee the independence and impartiality of the judiciary; (c) continue its efforts to recruit and train new judges and police officers, based on the criteria of maximum transparency, professionalism and honesty; (d) ensure that public oversight mechanisms, including the Independent Anti-corruption Office, are functional and effective; and (e) guarantee that all cases of corruption are investigated and lead to the adoption of disciplinary measures and, where necessary, adequate judicial sanctions.**

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

13. The Committee takes note of Act No. 2012-007 of 3 May 2012 introducing an amnesty for the purposes of national reconciliation, but regrets the lack of information and data available on: (a) impartial proceedings conducted against perpetrators of acts of torture, enforced disappearances and extrajudicial and summary executions — deeds that cannot be the subject of an amnesty — committed between 2009 and 2013; and (b) cases where amnesty has been granted pursuant to Act No. 2012-007. It is also concerned that the Malagasy Reconciliation Council and the National Reparations and Compensation Fund, both key institutions in the national reconciliation process, are not yet operational, which constitutes an obstacle to the effective implementation of the process (arts. 2, 6 and 7).

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

### Anti-discrimination framework

15. The Committee remains concerned about the lack of a comprehensive anti-discrimination law that clearly defines and prohibits direct and indirect discrimination and lists prohibited grounds of discrimination. In that regard, it is particularly concerned about the situation of: (a) persons living with HIV/AIDS; and (b) lesbian, gay, bisexual, transgender and intersex persons, who are subjected to stigmatization and discrimination (arts. 2, 3 and 26).

16. **The State party should: (a) adopt comprehensive legislation to combat racism and discrimination that includes a definition of direct and indirect discrimination, including on grounds of sexual orientation and gender identity; (b) ensure that all victims of discrimination have access to effective remedies; and (c) take all necessary interim measures, pending the adoption of comprehensive legislation, to combat and prevent stigmatization and discrimination aimed at persons living with HIV/AIDS and lesbian, gay, bisexual, transgender and intersex persons.**

### Equal pay for men and women and representation of women in public and political life

17. The Committee takes note of the information that equal pay for men and women is guaranteed in the Malagasy civil service. However, it remains concerned at reports of

significant wage gaps in the private sector. It is also concerned to note that, despite the progress achieved, women are still underrepresented in both elected political posts and positions of responsibility in the public and private sectors (arts. 2, 3, 25 and 26).

**18. The State party should: (a) continue to implement measures to ensure better representation of women in public affairs by adopting, where required, temporary special measures to give full effect to the provisions of the Covenant; (b) raise the awareness of political parties of the need to achieve gender parity and encourage women to stand for election to political posts; (c) take steps to increase the number of women in positions of responsibility, including in the private sector; and (d) take all necessary measures to correct the differences between men's and women's pay, particularly in the private sector.**

#### **Discrimination and practices harmful to women**

19. The Committee notes the 2016 reform of the Nationality Code, which now allows women to transmit their nationality automatically to their children. However, it remains concerned that women are still not able to transmit their nationality to a foreign or stateless spouse or to their adoptive children. It is also concerned at the continued existence of: (a) discrimination affecting rural women in the area of property and land administration; and (b) discrimination in matters of inheritance. It is also concerned about the persistence of traditional practices harmful to women and, in particular, by (a) reports of forced and early marriage; and (b) the continued practice of polygamy. The Committee takes note of the progress made in combating the belief, particularly widespread in the Mananjary region, that twins bring bad luck but remains concerned about the situation of women who are ostracized when they decide to raise their twins (arts. 2, 3, 7, 23, 24 and 26).

**20. The State party should: (a) continue to implement measures to expedite the revision of all relevant legislation so as to ensure strict equality between men and women, including in the areas of nationality, access to property and inheritance; (b) continue its efforts to combat the practices of forced and early marriage and polygamy; and (c) step up its awareness campaigns aimed at the general public and traditional leaders to change traditional attitudes towards women, particularly the mothers of twins.**

#### **Voluntary terminations of pregnancy and women's sexual health**

21. The Committee remains concerned by article 317 of the Malagasy Criminal Code, which criminalizes the voluntary termination of pregnancy for both the mother and the medical personnel concerned, without exception. It is concerned that the legislation leads to pregnant women seeking clandestine abortions provided by non-health professionals, in conditions that put their lives and health at risk. While noting the significant efforts undertaken by the State party in the area of family planning and training for health workers, the Committee remains concerned about the persistently high rate of early pregnancies and maternal mortality, especially among young women, the lack of access to sexual and reproductive health services in rural areas and the lack of information on contraception (arts. 2, 3, 6, 7, 17 and 26).

**22. The State party should: (a) review its legislation with a view to ending the total ban on abortion, which encourages women to resort to unsafe abortions, putting their lives and health at risk; (b) pending such revision, ensure that no proceedings are brought against women who resort to abortion or health professionals who provide abortions; (c) improve access for women and girls to sexual health care and services; (d) improve access to contraceptives throughout the country; and (e) continue its efforts to organize education and awareness-raising programmes on the importance of contraception and of sexual and reproductive health rights.**

#### **Violence against women**

23. The Committee takes note of Act No. 2000-21 of 28 November 2000, which establishes domestic and sexual violence as criminal offences, but remains concerned about: (a) the prevalence of the phenomenon throughout the State party and its broad acceptance

in society; (b) the low rate of reporting of such violence by victims, owing particularly to a lack of trust in the judiciary and social pressure; (c) article 332, which establishes rape as a crime, but does not provide for marital rape; (d) the lack of data on investigations conducted, prosecutions brought or compensation awarded to victims under Act No. 2000-21; and (e) the small number of legal clinics (support centres) available to help victims of violence, especially in rural areas (arts. 3, 6, 7 and 26).

**24. The State party should: (a) as a priority, draft legislation defining and establishing as crimes all acts of violence against women, notably domestic violence, marital rape and sexual abuse; (b) encourage the reporting of all violence by victims, inter alia by launching public awareness campaigns and ensuring that all police and judicial personnel receive adequate training to help them deal with cases of gender-based violence; (c) ensure that cases of violence are thoroughly investigated and the perpetrators are prosecuted; (d) improve the system for the collection and use by the police and the National Gendarmerie of data on gender-based violence; and (e) expand the availability of shelters and care arrangements for victims.**

#### **Mob justice**

25. The Committee expresses its concern at the growing lack of trust in the State and its justice system, which has led to cases of mob justice and the lynching of persons suspected of offences. It is also concerned about reports of a high rate of discontinuance of criminal cases against persons who have participated in such mob justice (arts. 2, 6 and 7).

**26. The State party should: (a) take concrete steps to restore the trust of its citizens in its judicial institutions; (b) conduct investigations into, and prosecute all alleged perpetrators of, mob justice or lynchings and, if they are found guilty, sentence them appropriately; and (c) continue to implement the measures it is taking and conduct awareness-raising campaigns on the illegality of summary and mob justice and the criminal liability of perpetrators.**

#### **Summary and extrajudicial executions committed by the security forces**

27. The Committee expresses its concern at the reports of summary and extrajudicial executions committed by the security forces, inter alia in the context of operations to secure regions where *dahalo* cattle raiders operate. It remains concerned about: (a) allegations of indiscriminate attacks by security forces against groups presumed to be *dahalo* cattle raiders; (b) allegations that, during Operation Tandroka in 2012, the security forces indiscriminately killed a large number of people, including civilians; and (c) reprisals carried out by the security forces following cases of mob justice, as reflected in the events at Antsakabary (art. 6).

**28. The State party should: (a) systematically undertake prompt, impartial and effective investigations to identify the alleged perpetrators of summary and extrajudicial executions, prosecute them and, if they are found guilty, sentence them appropriately; and (b) ensure that the families of the victims receive appropriate compensation.**

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

29. The Committee is concerned that Malagasy law still does not provide for penalties for ill-treatment or for the non-applicability of statutory limitations to torture. It notes with regret that neither the Criminal Code nor the Criminal Procedure Code reflect the provisions of the Anti-Torture Act, No. 2008-008. The Committee is also concerned by allegations that persons are subjected to acts of torture and inhuman or degrading treatment during arrest and police custody. In this connection, it remains concerned by the lack of data on investigations, prosecutions and convictions in cases of torture and ill-treatment (arts. 7, 10 and 14).

**30. The State party should: (a) amend Act No. 2008-008 as soon as possible to include penalties for ill-treatment, the non-applicability of statutory limitations to torture and the inadmissibility of confessions obtained under coercion or torture as evidence before the courts; (b) make the amendments needed to ensure that the**

provisions of Act No. 2008-008 are reflected in the Criminal Code and the Criminal Procedure Code; (c) ensure that alleged cases of torture and ill-treatment committed by the police or security forces are thoroughly investigated and that the alleged perpetrators are prosecuted and, if found guilty, are sentenced appropriately; (d) ensure that victims are properly compensated and offered rehabilitation services; and (e) establish an independent mechanism to investigate complaints of acts of torture or ill-treatment committed by members of the police or security forces.

#### **Corporal punishment**

31. The Committee takes note of Act No. 2007-023 of 20 August 2007 on the Rights and Protection of the Child. However, it notes with regret that corporal punishment is not yet formally prohibited in schools (arts. 7 and 24).

32. **The State party should take practical steps, including through legislative measures, to put an end to corporal punishment in all settings. It should encourage non-violent forms of discipline as alternatives to corporal punishment, and should conduct public information campaigns to raise awareness about its harmful effects.**

#### **Police custody and fundamental legal safeguards**

33. The Committee remains concerned about: (a) the fact that police custody can be extended up to 12 days on the basis of criteria that are insufficiently defined by law; and (b) reports that persons in custody sometimes experience difficulty in accessing legal services. The Committee is further concerned about reports, confirmed by the delegation, that complainants can contribute to the operating costs of the investigative police in order to speed up an investigation, which undermines equal access to public services (arts. 9, 14 and 26).

34. **The State party should: (a) review its legislation to ensure that decisions to extend police custody are made on the basis of clearly established criteria in line with the Committee's general comment No. 35 (2014) on liberty and security of the person; (b) ensure that all persons in custody have access to a lawyer, including by expanding legal aid services; and (c) ensure that the principle of equality is upheld by allocating to the Ministry of Public Security the necessary budget to fully discharge its functions.**

#### **Pretrial detention**

35. The Committee remains concerned that, despite the amendment of the Criminal Procedure Code in 2016, the length of pretrial detention remains excessive and unwarranted for many individuals (arts. 7 and 9).

36. **The State party should: (a) take the necessary steps to ensure that pretrial detention is subject to reasonable time frames; (b) take steps to identify cases of unlawful detention, thereby addressing the situation of persons wrongfully held in pretrial detention; and (c) ensure that victims of wrongful pretrial detention are duly compensated.**

#### **Prison conditions**

37. The Committee welcomes the efforts made to open places of detention but remains concerned by: (a) the alarming rate of prison overcrowding caused in particular by the large number of pretrial detainees; (b) unhygienic conditions and difficulty in accessing medical care; (c) the alarming rate of malnutrition among inmates, which has led to a number of deaths; and (d) the lack of separation between adults and minors and between pretrial detainees and convicted offenders (arts. 6, 7 and 10).

38. **The State party should: (a) redouble its efforts to improve the living conditions and treatment of detainees, including access to food and medical care; (b) continue to implement measures to address the problem of prison overcrowding in keeping with the Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules); (c) ensure that individuals do not remain in pretrial detention for longer than the**

statutory periods, and adopt an effective policy of imposing non-custodial sentences; and (d) take the necessary steps to separate detainees by age and by custodial regime.

#### Human trafficking

39. The Committee notes the State party's considerable efforts in this domain but remains concerned about: (a) the prevalence of trafficking, especially of women and children, including for the purpose of economic and sexual exploitation; and (b) reports that Malagasy migrant workers are subjected to exploitation, in particular in northern Africa and the Middle East (arts. 7, 8 and 24).

40. **The State party should: (a) strictly enforce the provisions of the Anti-Trafficking Act, No. 2014-040, of 20 January 2015; (b) allocate to the National Anti-Trafficking Office the necessary budget to allow it to fulfil its mandate, and strengthen monitoring mechanisms; (c) ensure that suspected cases of trafficking in persons are thoroughly investigated and that those held to be responsible are prosecuted and, if found guilty, are sentenced appropriately; and (d) ensure that Malagasy migrant workers are properly informed of their rights, and step up the oversight of placement agencies to ensure that no Malagasy workers are exploited while abroad.**

#### Child labour

41. The Committee welcomes the adoption of a law on the worst forms of child labour and of the National Action Plan against Child Labour but remains concerned about reports that children are engaged in domestic work, agricultural work, mining and quarrying and are subjected to commercial sexual exploitation (arts. 7, 8 and 24).

42. **The State party should ensure that: (a) the law prohibits and defines child labour; (b) sufficient resources are allocated to the implementation of the National Action Plan against Child Labour; (c) labour inspectors receive relevant training and have the necessary resources to carry out their monitoring activities countrywide; (d) suspected cases of child labour are thoroughly investigated and that those held to be responsible are prosecuted and, if found guilty, are sentenced appropriately; and (e) child victims are provided with rehabilitation measures.**

#### Refugees and asylum seekers

43. While noting that there have been very few refugees and asylum seekers in Madagascar, the Committee finds it nonetheless regrettable that the State party has yet to adopt a coherent legal framework on the determination of refugee status or to take any steps to establish an office for refugees and stateless persons (art. 13).

44. **The State party should: (a) amend Decree No. 94-652 of 11 October 1994 on the application of the Immigration Organization and Control Act No. 62-006 of 6 June 1962 with a view to ensuring that asylum seekers have access to a fair and satisfactory procedure for the determination of their status as refugees; and (b) consider ratifying the Protocol relating to the Status of Refugees.**

#### Administration of justice and traditional justice (*dina*)

45. The Committee remains concerned at: (a) reports that the political authorities frequently intervene in judicial issues; (b) the fact that, although the elected members of the High Council of the Judiciary constitute the majority of the Council, the President and the Minister of Justice also hold the offices of President and Vice-president of the Council, which could be seen as a violation of its independence; and (c) the small number of cases processed by the High Council. The Committee is further concerned at: (a) the considerable delays in the administration of justice; (b) the limited coverage of judicial services across the State party; and (c) the high cost of proceedings, which forces a large number of people to turn to traditional justice systems. In this connection, the Committee is concerned about reports that *dina* courts consider cases outside their jurisdiction, which is limited to civil matters (art. 14).

46. **The State party should: (a) ensure that the judiciary is independent from all political interference and continue its efforts to implement an accessible and effective justice system; (b) allocate additional human and financial resources to the judicial system, including to ensure broader coverage and effective, good quality legal assistance; and (c) ensure that *dina* courts consider only civil cases, and pursue its efforts to prevent the implementation of *dina* decisions that breach provisions of the Covenant.**

#### **Birth registration and the right to recognition as a person before the law**

47. Despite the significant efforts made by the State party, the Committee remains concerned at reports that a considerable number of children are still not registered, especially in some rural areas. It is also concerned that, owing to the restrictive effect of the rules on nationality, persons and children born in Madagascar remain stateless (arts. 7, 13, 16 and 24).

48. **The State party should: (a) continue to take steps to expedite the registration of children who remain unregistered; (b) continue to run campaigns to raise awareness of birth registration among the general public and families; and (c) ensure that its laws and regulations on nationality address all problems of statelessness.**

#### **Freedom of expression**

49. The Committee is concerned by reports that journalists, political opponents and human rights defenders are subjected to intimidation, harassment and ill-treatment as a direct consequence of their activities. It is also concerned by: (a) allegations that opposition media have had their frequencies jammed and their power supplies cut; (b) the fact that the Communication Code of 2016 provides for disproportionate fines for defamation, insult and affront to public decency, potentially leading to self-censorship on the part of journalists; and (c) the fact that the Cybercrime Act, No. 2014-006, provides for non-suspended prison sentences for online insult or defamation against State officials (arts. 7 and 19).

50. **The State party should: (a) take the necessary steps to ensure that journalists, political opponents and human rights defenders are protected against threats and intimidation and to allow them the necessary latitude to carry out their activities; (b) investigate, prosecute and convict perpetrators of acts of harassment, threats and intimidation against journalists, political opponents and human rights defenders; and (c) review its legislation on the press and media to bring it fully into line with article 19 of the Covenant.**

#### **Freedom of assembly and freedom of association**

51. The Committee is concerned by reports of breaches of freedom of association and freedom of assembly in the State party in the form of: (a) the denial of permits for public protests by trade unions and non-governmental organizations; and (b) restrictions on joining trade unions. In addition, the Committee is concerned at reports that political opponents are systematically denied the right to public protest, even when exercised peacefully (arts. 21 and 22).

52. **The State party should take all necessary steps to ensure that all individuals and political parties fully enjoy the right to peaceful assembly and freedom of association in practice and to ensure that all restrictions on the exercise of these rights comply with the strict conditions laid down in the Covenant.**

#### **Participation in elections**

53. The Committee is concerned about the delays in and obstacles to the implementation of the national reconciliation process, which is crucial if all political actors are to take part in the forthcoming elections and accept their outcome. The Committee remains concerned by: (a) the current electoral map, which does not guarantee equality among districts; (b) reports that the Independent National Electoral Commission lacks independence; (c) the fact that the current complaints procedure sets overly short submission deadlines; and (d)



the low participation rate, especially of women and persons with disabilities, in the electoral process (arts. 3, 25 and 26).

54. **The State party is encouraged to: (a) do everything in its power to speed up the national reconciliation process before the next electoral deadlines; (b) take all necessary steps to ensure that free and fair elections are held; (c) strengthen the independence of the Independent National Electoral Commission and ensure universal access to complaints procedures and effective remedies in the event of contested election results; and (d) promote and ensure the participation of all citizens in the electoral process, including women and persons with disabilities.**

#### **D. Dissemination and follow-up**

55. The State party should widely disseminate the Covenant, its fourth periodic report, the written replies to the Committee's list of issues and the present concluding observations with a view to raising awareness of the rights enshrined in the Covenant among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the country, and the general public. The State party should ensure that the report, the written replies and the present concluding observations are translated into its official languages.

56. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party is requested to provide, within one year of the adoption of the present concluding observations, information on the implementation of the recommendations made by the Committee in paragraphs 8 (Independent National Human Rights Commission and the High Council for the Defence of Democracy and the Rule of Law), 14 (investigations of human rights violations committed between 2009 and 2013 and the process of national reconciliation) and 30 (the prohibition of torture and ill-treatment).

57. The Committee requests the State party to submit its next periodic report by 28 July 2021 and to include in that report specific up-to-date information on the implementation of the recommendations made in the present concluding observations and of the Covenant as a whole. The Committee also requests the State party, in preparing the report, to broadly consult civil society and non-governmental organizations operating in the country. In accordance with General Assembly resolution 68/268, the word limit for the report is 21,200 words. The Committee also invites the State party to agree, by 28 July 2018, to use its simplified reporting procedure, whereby the Committee transmits a list of issues to the State party prior to the submission of its report. The State party's response to the list of issues will constitute the next periodic report to be submitted under article 40 of the Covenant.