

ANALYSIS OF MINORITY RIGHTS PROTECTION IN MADAGASCAR

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ABSTRACT

It is well known that Madagascar remains a developing country, and the south of the country is experiencing unprecedented extreme poverty due to unfavorable climatic conditions that make it very difficult to acquire and develop means of subsistence (agriculture or livestock). The Antandroy minority in the extreme south of the country remains the main victim, and this should be of particular concern to anyone concerned about the rights of minorities. The aim of this work is to contribute to the promotion and protection of minority rights in Madagascar, and it has involved, on the one hand, the use of legal documentary research and, on the other, the illustration of this in relation to the Antandroy minority. The research shows that minority rights, essentially the right to cultural diversity and the right to interculturality, are severely limited in favor of the Antandroy populations, generally due to the frequent climatic migrations of the Antandroy populations, but also and above all due to discrimination between migrants and natives of the host regions. There is an urgent need to devise a social protection policy that emphasizes the fight against climatic disasters and the creation of a united and resilient people.

Keyword – Promotion, protection, minority rights, inequalities

INTRODUCTION

The issue of minority rights is one of the most hotly debated concerns in the world, and one which the United Nations Organization has always worked to address. It is well known that developing countries, such as the Republic of Madagascar, are often those most marked by major inequalities between the population groups that make them up. There are three fundamental reasons why we have chosen to focus on the protection of minority rights in Madagascar. The first is that the majority of Madagascar's population lives in poverty [1-3], and as a result, national minorities are not only confronted with socio-economic precariousness, but also find themselves neglected in relation to the national majority [4-5]. The second reason is that there is little research in the legal sciences in Madagascar that takes an in-depth interest in the issue of minority rights. And finally, the third reason stems from a personal attachment to the promotion and realization of minority rights as a tool for national development.

It is for this reason that the present article is of interest in analyzing the promotion and protection of minority rights in Madagascar. This can be seen as a testimony to the expansion of positive law towards the Malagasy reality in a process of preserving human rights for all. This raises the question of the promotion and protection of minority rights in Madagascar.

More specifically, to what extent are the rights of minorities protected in the face of recurring environmental problems and socio-economic disruptions on the national territory? In other words, to what extent is Malagasy positive law concerned with the issue of minorities, with a view to improving their enjoyment of human rights? So it makes sense to begin the analysis with the promotion and protection of minority rights, before moving on to the Madagascar context.

RESEARCH METHOD

The methodology used is legal documentary research [6-9]. It enabled us to analyze the concept of minority The data studied include international, regional and national legal texts on the protection of minority rights, such as the

Framework Convention for the Protection of National Minorities of February 8, 1991, the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities of December 18, 1992, the Convention on the Protection and Promotion of the Diversity of Cultural Expressions of October 20, 2005, the African Charter on Human and Peoples' Rights of June 27, 1981 and the Constitution of the Fourth Republic of Madagascar of December 11, 2010. The research is also carried out with reference to a real-life illustration of the enjoyment of minority rights in Malagasy daily life.

RESULTS AND DISCUSSION

1. Promotion and protection of minority rights

To get the full picture of minority rights, it is best to begin by examining the concept of the minority. Only then does it become necessary to take a closer look at the enshrinement of minority rights.

1.1 The minority concept

It is through the concept of minority that any reader can grasp the reasons that have led the international community to militate for the promotion and protection of minority rights. It is worth explaining the concept of minority according to the jurists Francesco Capotorti (1925-2002) and Jules Deschênes (1923-2000), before turning later to the attempts by international bodies to define it.

1.1.1 The concept of minority according to jurists Francesco Capotorti and Jules Deschênes

The notion of minority does not have a universal definition that would be binding on all states. This is due to the diversity of situations in which States can officially recognize a minority on their territories. Moreover, States seem rather reluctant to let international law take precedence over domestic law by imposing a definition that would be globally binding on them despite differences in national realities. Nevertheless, several authors have provided definitions that can serve as a starting point for international public law. The best-known and most widely cited is that proposed by the former Special Rapporteur of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities, Italian jurist Francesco Capotorti [10-11].

According to Capotorti, the minority is « a group numerically inferior to the rest of the population of a state, in a non-dominant position, whose members – being nationals of the state – possess ethnic, religious or linguistic characteristics differing from the rest of the population and show, if only implicitly, a sense of solidarity directed towards preserving their culture, traditions, religion or language » [12].

This definition highlights five characteristic elements of a minority: the tiny percentage of inhabitants left to the discretion of the State; the non-dominant position; being a national of a State; the uniqueness of ethnic, religious or linguistic characteristics in relation to the rest of the population of the State of residence; the desire to protect the identity of belief and language, as well as habits and customs.

The jurist Capotorti argues that a minority is made up of nationals, i.e. people who hold the nationality of the state of residence. Based on Capotorti's definition, the Antandroy people of Madagascar's far south have the status of a minority, since they have always been Malagasy citizens, in addition to meeting the other criteria.

For Quebec jurist Jules Deschênes, the minority is « un groupe de citoyens d'un État, en minorité numérique et en position non dominante dans cet État, dotés de caractéristiques ethniques, religieuses ou linguistiques différentes de celle de la majorité de la population, solidaires les uns des autres, animés, fût-ce implicitement, d'une volonté collective de survie et visant à l'égalité en fait et en droit avec la majorité. » (a group of citizens of a state, in a numerical minority and in a non-dominant position in that state, endowed with ethnic, religious or linguistic characteristics different from those of the majority of the population, in solidarity with one another, animated, even if implicitly, by a collective will to survive and striving for equality in fact and in law with the majority. [Our translation]) [13-14].

Deschênes corroborates the theory of his counterpart Capotorti, stating that a minority is made up of citizens, i.e. people with the nationality of the state of residence. This means that, according to both Capotorti's and Deschênes'

definitions, the Antandroy constitute a national minority. The question then arises as to the status of the attempted definition by international bodies.

1.1.2 International attempts to define minorities

The United Nations (UN) and the European Union (EU) have repeatedly endeavored to define the notion of minority at international level, with a view to universalizing the use and recognition of this concept. The greatest difficulty is that it remains impossible to conceive of a universal definition of the minority that can come close to the reality of all States. It is therefore necessary to establish one, despite the fact that it could unquestionably deviate from the reality of certain States.

From the point of view of international law, a binding definition of minority is essential to prevent the concept from being treated and governed unilaterally at the whim of individual states. As a result, initial efforts in this area have been doomed to failure. These include the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, adopted by the United Nations General Assembly in Resolution 47/135 of December 18, 1992, and the Framework Convention for the Protection of National Minorities, drawn up by the Council of Europe's Ad Hoc Committee for the Protection of National Minorities (CAHMIN) and adopted by the Council of Europe's Committee of Ministers on November 10, 1994.

Neither of these texts provides an explicit definition of the notion of minority. They do, however, contain a series of provisions designed to protect the rights and duties of minorities in accordance with human dignity and the universality of human rights, without any form of individual or collective discrimination.

It should be pointed out, however, that the European preparatory draft of the Framework Convention for the Protection of National Minorities, submitted on February 8, 1991 by the Venice Commission to the Council of Europe, adopted Francesco Capotorti's definition with a slight reformulation. Article 2, paragraph 1, states that « aux fins de la présente convention, le terme « minorité » désigne un groupe numériquement inférieur au reste de la population d'un État, dont les membres, qui ont la nationalité de cet État, possèdent des caractéristiques ethniques, religieuses ou linguistiques différentes de celles du reste de la population et sont animés de la volonté de préserver leur culture, leurs traditions, leur religion ou leur langue.» (for the purposes of this Convention, the term "minority" means a group numerically inferior to the rest of the population of a State, whose members, having the nationality of that State, possess ethnic, religious or linguistic characteristics different from those of the rest of the population and are motivated by the desire to preserve their culture, traditions, religion or language. [Our translation]).

In this context, a minority can be made up of citizens, or even foreigners with the nationality of the state of residence, who represent a small percentage of the total population. They are characterized by ethnic, cultural, religious or linguistic specificities that are both unique and identity-building, as well as by a clear desire to preserve them.

This definition was provided as a reference for international experts in the drafting of the Framework Convention for the Protection of National Minorities, which was finally adopted three years later, on November 10, 1994. Minority was explicitly defined in this preparatory draft, but was not formally included in the convention itself, due to the reluctance of States to accept a universal definition despite contradictory State realities.

Even though this definition was drawn up primarily in the light of European evidence, it is easily adapted to the African reality, and particularly that of the Antandroy populations of the extreme south of the Republic of Madagascar. Drawing inspiration from it, the Antandroy constitute a minority since they are citizens representing only 3.5% of the Malagasy population according to the third General Census of Population and Housing of 2018 and remain well known with a unique cultural identity on the national territory. What's more, they never hesitate to migrate to other regions and generally to the north of the country with the aim of obtaining the necessary pecuniary means to preserve it. It now makes sense to examine the rights of minorities.

1.2 International and regional recognition of minority rights

The enshrinement of minority rights in Madagascar is undoubtedly inspired by international and regional aspirations in this area. This is due to the fact that Madagascar is a member of the United Nations and the African Union. That's

why it's interesting to look at the protection of minority rights at international level, before moving on to the regional level.

1.2.1 International protection of minority rights

The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, adopted on December 18, 1992 by the United Nations General Assembly in resolution 47/135, is the international reference instrument for all member states, including the Republic of Madagascar. Its aim is to promote and protect the rights of minorities. The ultimate ambition of the United Nations during this period was to devise an instrument binding on States, but in the end they settled for a declaration.

Article 1, paragraph 1, of the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities states that « les États protègent l'existence et l'identité nationale ou ethnique, culturelle, religieuse ou linguistique des minorités, sur leurs territoires respectifs, et favorisent l'instauration des conditions propres à promouvoir cette identité. » (States shall protect the existence and the national or ethnic, cultural, religious or linguistic identity of minorities within their respective territories, and shall encourage the creation of conditions conducive to the promotion of such identity. [Our translation]). Article 1 further clarifies the preservation of this identity by providing as follows « les États adoptent les mesures législatives ou autres qui sont nécessaires pour parvenir à ces fins » (States shall adopt such legislative or other measures as may be necessary to achieve these ends [Our translation]). In the context of Madagascar, the government must take all necessary steps to protect the cultural identity of all population groups on its territory, in particular the Antandroy populations in the extreme south of Madagascar.

Article 4, paragraph 1, underlines the importance of the enjoyment of human rights by all minorities. It states that « les États prennent, le cas échéant, des mesures pour que les personnes appartenant à des minorités puissent exercer intégralement et effectivement tous les droits de l'homme et toutes les libertés fondamentales, sans aucune discrimination et dans des conditions de pleine égalité devant la loi. » (States shall take measures, where necessary, to ensure that persons belonging to minorities can fully and effectively exercise all human rights and fundamental freedoms without any discrimination and in full equality before the law [Our translation]).

The analysis of this declaration raises a great deal of consideration for the realities experienced by minorities. It is a tool for recalling and insisting on human rights, and for paying greater attention to national minorities in a process designed to better protect their rights. In this sense, if a State is to do its utmost in this area, it must unquestionably take this declaration into consideration. In this case, it is implicitly binding on all states governed by the rule of law. The absence of a legal obligation on states to respect this declaration is therefore not a real obstacle to the protection of minority rights at international level. What you need to know about protecting minority rights at regional level?.

1.2.2 Regional protection of minority rights

The African Charter on Human and Peoples' Rights, which was adopted on June 27, 1981 and came into force on October 21, 1996, remains the regional instrument for the protection of minority rights for all member countries of the African Union that have ratified it, including the Republic of Madagascar since its ratification on March 09, 1992.

The explicit absence of the term "minority" in this 1981 African Charter does not mean, however, that this category of people is not amply protected by law. The term "people" can have three meanings in African reality, as Mutoy Mubiala has explained. The first refers to the African population in relation to the population of Europe or other parts of the world. The second refers to the population of one African state in relation to others, and the third refers to certain human groups within a single state (Mutoy, Fall & Yusuf 2005). It is this latter meaning that is used in the interpretation of the Charter to guarantee the protection of the rights of national minorities.

This interpretation of the term "people" as a national minority is explicitly reflected in the Universal Declaration of the Rights of Peoples, adopted in Algiers on July 4, 1976, which states in article 19 that « lorsqu'un peuple constitue une minorité au sein d'un État [...] » (when a people constitutes a minority within a state [...] [Our translation]). Within the meaning of Article 19, there can be no doubt that the term "people" can refer to a minority. This meaning should be used in interpreting the African Charter with a view to preserving minority rights.

Furthermore, the 2003 report of the African Commission on Human and Peoples' Rights' Working Group of Experts on Populations clearly states that « du moment que la Charte africaine reconnaît les droits collectifs, appelés « droits des peuples », ces droits devraient être applicables aux catégories des populations au sein des États nations » (since the African Charter recognizes collective rights, referred to as "peoples' rights", these rights should be applicable to categories of populations within nation states [Our translation]). This would mean that the rights formally recognized for any population of the Republic of Madagascar also apply to the different categories of populations, and in this case to the national minority(ies).

It is in this context that the term "people", used in the 1981 African Charter, can be unambiguously interpreted as a national minority. In this respect, article 22, paragraph 1 of the 1981 Charter states that « tous les peuples ont droit à leur développement économique, social et culturel, dans le respect strict de leur liberté et de leur identité, et à la jouissance égale du patrimoine commun de l'humanité » (all peoples have the right to their economic, social and cultural development, with full respect for their freedom and identity, and to the equal enjoyment of the common heritage of mankind (Our translation)). Paragraph 2 of this article 22 further specifies that « les États ont le devoir, séparément ou en coopération, d'assurer l'exercice du droit au développement » (States have a duty, individually or in cooperation, to ensure the realization of the right to development [Our translation]).

As a result, the Malagasy State has a duty to take all necessary steps to implement socio-economic development for the benefit of the Antandroy minority, with exclusive respect for their cultural identity. Article 24 of the 1981 African Charter also adds that « tous les peuples ont droit à un environnement satisfaisant et global, propice à leur développement » (all peoples have the right to a satisfactory and comprehensive environment, conducive to their development [Our translation]). In other words, the right to development for the Antandroy minority must not be enjoyed at the expense of the right to a healthy environment recognized for every individual, by virtue of the very principle of the indivisibility of human rights.

From these two legal provisions alone (articles 22 and 24 of the 1981 African Charter), it is more than sufficient to deduce that minority rights are amply and bindingly protected in Madagascar, just as they are in any other African Union country. It would now be wise to take a closer look at the protection of minority rights under Malagasy positive law.

2. Promotion and protection of minority rights in Madagascar

The legal reference for the promotion and protection of minority rights at the national level is the Constitution of the Fourth Republic of Madagascar of December 11, 2010, which states in Article 7 that « Les droits individuels et les libertés fondamentales sont garantis par la Constitution [...] » (Individual rights and fundamental freedoms are guaranteed by the Constitution [...] [Our translation]). This would mean that the Malagasy state is committed to the promotion and protection of individual rights and fundamental freedoms for everyone present on its territory, regardless of whether or not they belong to a national minority. It is in this context that the Constitution of Madagascar of December 11, 2010 implicitly guarantees the promotion and protection of minority rights. In addition, there are the national obligations to promote and protect minority rights (the right to cultural diversity and the right to interculturality) contained in the Convention on the Protection and Promotion of the Diversity of Cultural Expressions of August 20, 2005, which entered into force on March 18, 2007 and was ratified by Madagascar on December 11, 2006.

2.1 Madagascar's ratification of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions of October 20, 2005

The Convention on the Protection and Promotion of the Diversity of Cultural Expressions of October 20, 2005 is a binding international instrument that responds to cultural conflicts in several United Nations member countries, including the Republic of Madagascar. The large Indian Ocean island is subdivided into 18 cultural groups, or karazabe, whose origins lie in African, Arab and Asian migrations [16]. Madagascar's ratification of this convention on September 11, 2006 is more than necessary for the implementation of cultural diversity and interculturality.

2.1.1 Establishing the principle of cultural diversity in Madagascar

The Convention on the Protection and Promotion of the Diversity of Cultural Expressions was adopted on October 20, 2005, at the 33rd session of the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO) in Paris. Madagascar, like any other country in the world, has a culturally diverse population. Article 4 defines cultural diversity as « la multiplicité des formes par lesquelles les cultures des groupes et des sociétés trouvent leur expression. Ces expressions se transmettent au sein des groupes et des sociétés et entre eux » (the multiplicity of ways in which the cultures of groups and societies find expression. These expressions are transmitted within and between groups and societies [Our translation]).

In other words, cultural diversity highlights the different Malagasy cultural lifestyles that have been passed down from one generation to the next. The principle of cultural diversity can also be explained by the acceptance and valorization of each cultural identity present on the national territory. According to UNESCO Director-General Audrey Azoulay, cultural diversity is fundamental to national development [16].

In her statement on World Day for Cultural Diversity on May 21, 2018, She emphasizes that cultural diversity « is just as essential for the cultural world as it is for the living world. In the midst of crises, from the coronavirus disease (COVID-19) pandemic to wars and conflict, we can recognize more than ever both the importance and the urgency of defending cultural diversity and tangible and intangible heritage. Indeed, culture is our most powerful ally for crisis management and recovery. It is a means by which each and every one of us can cultivate and enrich our inner life; it allows us to come together, to remember the past and to think about the future. It allows us to understand that our differences provide the opportunity to celebrate the richness of the human mind, to expand our horizons and to achieve unity in diversity» [16].

Such an ideology, which allows cultural diversity to be accepted, valued and exploited as a tool for development, is also corroborated by Article 2 of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions of October 20, 2005, as follows « la culture étant un des ressorts fondamentaux du développement, les aspects culturels du développement sont aussi importants que ses aspects économiques, et les individus et les peuples ont le droit fondamental d'y participer et d'en jouir » (culture being one of the fundamental mainsprings of development, the cultural aspects of development are as important as its economic aspects, and individuals and peoples have the fundamental right to participate in and enjoy them [Our translation]).

It is important to point out that the protection of cultural diversity is also part of the protection of fundamental rights and freedoms. It is in this sense that the same Article 2 stipulates that « la diversité culturelle ne peut être protégée et promue que si les droits de l'homme et les libertés fondamentales telles que la liberté d'expression, d'information et de communication, ainsi que la possibilité pour les individus de choisir les expressions culturelles, sont garantis » (cultural diversity can only be protected and promoted if human rights and fundamental freedoms such as freedom of expression, information and communication, as well as the possibility for individuals to choose cultural expressions, are guaranteed [Our translation]). It is up to the Malagasy government to take into consideration respect for the values and specificities of each of the 18 cultural groups [15] in all its public interventions. It should initiate the necessary cultural policies and measures in this area.

Article 4 of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions of October 20, 2005 defines cultural policies and measures as all those which « politiques et mesures relatives à la culture, à un niveau local, national, régional ou international, qu'elles soient centrées sur la culture en tant que telle, ou destinées à avoir un effet direct sur les expressions culturelles des individus, groupes ou sociétés, y compris sur la création, la production, la diffusion et la distribution d'activités, de biens et de services culturels et sur l'accès à ceux-ci. » (policies and measures relating to culture, at local, national, regional or international level, whether focused on culture as such, or intended to have a direct effect on the cultural expressions of individuals, groups or societies, including on the creation, production, dissemination and distribution of, and access to, cultural activities, goods and services [Our translation]).

Cultural identity is preserved as a right for the benefit of the cultural groups present on national territory, and as a duty for the public authorities to take the necessary measures to protect it. Article 20 of the same convention stipulates that « Les Parties reconnaissent qu'elles doivent remplir de bonne foi leurs obligations en vertu de la présente Convention » (The Parties recognize that they must fulfill in good faith their obligations under this Convention [Our translation]). The next step is to analyze interculturality.

2.1.2 The national consecration of interculturality

Article 4 of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions of October 20, 2005 states that the term interculturality « renvoie à l'existence et à l'interaction équitable de diverses cultures ainsi qu'à la possibilité de générer des expressions culturelles partagées par le dialogue et le respect mutuel » (refers to the existence and equitable interaction of diverse cultures and the possibility of generating shared cultural expressions through dialogue and mutual respect [Our translation]). It is through the realization of interculturality that a state's diverse cultural groups can live together in peace and harmony.

Interculturality enables cultural diversity to be valued and preserved. This principle of interculturality certainly goes beyond respect for cultural diversity as discussed above, by fictitiously creating a kind of mixed culture in which each population group recognizes itself through its own habits and customs. This way of perceiving interculturality corroborates philosopher Immanuel Kant's proposition: « Act so as to treat humanity, whether in your own person or in that of another, at all times also as an end, and not only as a means » [17-18].

Immanuel Kant insists on treating, considering, understanding and respecting others as oneself. An analysis of Kant's vision can help to give greater importance to interculturality. Interculturality is central to the Convention on the Protection and Promotion of the Diversity of Cultural Expressions of October 20, 2005, as Article 1 clearly states that States Parties shall « stimuler l'interculturalité afin de développer l'interaction culturelle dans l'esprit de bâtir des passerelles entre les peuples (stimulate interculturality to develop cultural interaction in the spirit of building bridges between peoples [Our translation]) ».

Analysis of the principle of interculturality shows that it is indeed an ideal to be achieved, since differences between cultural groups are and always will be an integral part of the realities of life. However, it is still necessary to draw up a convention to guide all states in their quest for this ideal. The realization of interculturality in Madagascar, as in any other country, translates into harmonious exchanges and interactions between the various cultural groups.

It's an approach based on tolerance, acceptance and respect for differences between the Antandroy minority cultural group, which is the most migrant in the country, and other cultural groups in regions of immigration. Now we need to look at the rights of minorities in various categories of vulnerable people.

2.2 Minority rights for various categories of vulnerable persons

In any population, there is always a category of vulnerable people, including women and children, particularly in developing countries such as the Republic of Madagascar. This vulnerability is characterized by their disadvantaged position in society, whether physically, religiously or culturally. The same applies to all national minorities. So, when we talk about enshrining the rights of minorities, we inevitably come back to the question of the vulnerability of their women and children.

2.2.1 The vulnerability of minority women

The Convention on the Protection and Promotion of the Diversity of Cultural Expressions of August 20, 2005 pays greater attention to women, stipulating in Article 7 that States Parties must assist social groups in the following ways « à créer, produire, diffuser et distribuer leurs propres expressions culturelles et à y avoir accès, en tenant dûment compte des conditions et besoins particuliers des femmes [...] » (to create, produce, disseminate, distribute and have access to their own cultural expressions, with due regard to the particular conditions and needs of women [...]) [Our translation]).

Indeed, women are often very vulnerable when it comes to expressing their cultural identities. This vulnerability can be explained differently depending on the national minority in question. In the context of Antandroy migrants as Madagascar's national minority, the celebration of their cultural identity, i.e. their habits and customs, requires substantial financial resources that are not generally available to them. Most employers prefer to hire male migrants rather than women.

This choice is made on the one hand because of the physical strength of the men, and on the other, because of the morality or culture of the work involved. As a result, young Antandroy men are able to acquire more means of

subsistence, enabling them to express and protect their cultural identity. As for Antandroy women, they unfortunately find themselves condemned to dependence on men.

In response, the Convention on the Elimination of All Forms of Discrimination against Women of December 18, 1979 gave greater attention to women, regardless of whether or not they belonged to a minority group. It took ten years for the Republic of Madagascar to ratify the Convention on March 19, 1989. This text aims to establish equal enjoyment of rights between men and women, and as a result, the convention takes into account the real circumstances that characterize the vulnerability of each.

Article 1 of the Convention on the Elimination of All Forms of Discrimination against Women of December 18, 1979, defines discrimination against women as follows « toute distinction, exclusion ou restriction fondée sur le sexe qui a pour effet ou pour but de compromettre ou de détruire la reconnaissance, la jouissance ou l'exercice par les femmes, quel que soit leur état matrimonial, sur la base de l'égalité de l'homme et de la femme, des droits de l'homme et des libertés fondamentales dans les domaines politique, économique, social, culturel et civil ou dans tout autre domaine » (Any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. [Our translation]).

Article 2 of this convention of December 18, 1979 stipulates that the States Parties must « inscrire dans leur Constitution nationale ou toute autre disposition législative appropriée le principe de l'égalité des hommes et des femmes, si ce n'est déjà fait, et assurer par voie de législation ou par d'autres moyens appropriés l'application effective dudit principe » (embody the principle of the equality of men and women in their national constitutions or other appropriate legislation, if not yet incorporated therein, and ensure through law and other appropriate means the practical realization of this principle [Our translation]).

The Malagasy government therefore has a legal obligation to ensure that all its actions are part of a process aimed at establishing and maintaining equal enjoyment of fundamental rights and freedoms between men and women in the various categories of vulnerable people, including women. In terms of international law, this protection stems from the legal commitments made following ratification of the 1979 Women's Convention and the 2005 Convention on Cultural Diversity. The question then arises: what about the rights of minority children?.

2.2.2 The vulnerability of minority children

Children are certainly the most vulnerable members of society, due to their limited physical and mental capacities compared to adults. This situation, unfavorable for their well-being, often makes them victims of a violation of their fundamental rights and freedoms. According to Madagascar's third General Census of Population and Housing in 2018, Androy remains the region of Madagascar with the most children aged 5-17, representing 38.5% of the regional population.

The vulnerability of children, and Antandroy children in particular, is characterized by their fragility, which condemns them, for example, to the effects of global warming, which more often than not leads to famine, known in the local language as "kéré". Many Antandroy children do not benefit from good family or cultural support due to the permanent migration of their parents. They grow up in the immigration regions, and gradually learn more about the cultural identity of the immigration region of residence than about their own native cultural identity. These children become incapable of properly expressing their own Antandroy cultural identity by virtue of the right to cultural diversity and interculturality.

It's not surprising that, despite the existence of instruments for the protection and defense of human rights, such as the 1948 Universal Declaration of Human Rights, the 1966 International Covenant on Civil and Political Rights and the 1966 International Covenant on Social, Economic and Cultural Rights, it was necessary to adopt an instrument that was more concerned with the extreme vulnerability of children.

This led to the Convention on the Rights of the Child, adopted by the United Nations General Assembly on November 20, 1989, the thirtieth anniversary of the adoption of the Declaration of the Rights of the Child. It was not until three years later that Madagascar ratified the Convention, on March 19, 1991.

Article 1 of the 1989 Convention on the Rights of the Child states that a child shall be considered to be « tout être humain âgé de moins de dix-huit ans, sauf si la majorité est atteinte plus tôt en vertu de la législation qui lui est applicable » (any human being under the age of eighteen, unless, under the law applicable to that person, majority is attained earlier [Our translation]). Article 2 requires States Parties to « garantir à tout enfant relevant de leur juridiction, sans distinction aucune, indépendamment de toute considération de race, de couleur, de sexe, de langue, de religion, d'opinion politique ou autre de l'enfant ou de ses parents ou représentants légaux, de leur origine nationale, ethnique ou sociale, de leur situation de fortune, de leur incapacité, de leur naissance ou de toute autre situation » (ensure to every child within their jurisdiction, without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status [Our translation]).

As a result, children's fundamental rights and freedoms must not be subject to any form of discrimination. By implementing the provisions of the 1989 Convention on the Rights of the Child, children can be better protected, whether or not they belong to a national minority. The public authorities have a duty to initiate the necessary policies and measures to achieve equality of opportunity, success and enjoyment of fundamental rights and freedoms between children of the various cultural groups in Madagascar, by virtue of the legal obligation arising from the ratification of this Convention under international law.

CONCLUSIONS

The African Charter on Human and Peoples' Rights of June 27, 1981, which came into force on October 21, 1986, remains the reference instrument for the preservation of minority rights in African countries, including the Republic of Madagascar since its ratification on March 09, 1992. In the context of the Antandroy national minority in the extreme south of Madagascar, these rights essentially concern the right to cultural diversity and the right to interculturality, which are limited due to their frequent climatic migration. Yet these two rights are amply protected by the Convention on the Protection and Promotion of the Diversity of Cultural Expressions of August 20, 2005, which came into force on March 18, 2007 and was duly ratified by Madagascar on October 11, 2006.

Unfortunately, to date, these rights have been severely limited by frequent climatic disasters. It should be stressed that they are still severely limited for the various categories of vulnerable Antandroy people, in particular women, children, and even subsidiarily the elderly. It is therefore urgent for the competent authorities to devise the measures and public policies needed to fulfill their legal obligations to preserve minority rights in practice, following Madagascar's ratification of the 1981 African Charter and the 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions.

REFERENCES

- [1] Fayad, D. (2023). Food Insecurity and Climate Shocks in Madagascar: Republic of Madagascar. Selected Issues Papers, 2023(037).
- [2] Rousseau, S., Steinke, J., Vincent, M., Andriatseho, H., & Pontarollo, J. (2023). Strong seasonality in diets and alarming levels of food insecurity and child malnutrition in south-eastern Madagascar. *Frontiers in Sustainable Food Systems*, 7, 1126053.
- [3] Narvaez, L., & Eberle, C. (2022). Technical Report: Southern Madagascar food insecurity.
- [4] Minten, B., & Barrett, C. B. (2008). Agricultural technology, productivity, and poverty in Madagascar. *World Development*, 36(5), 797-822.
- [5] Cogneau, D., & Robilliard, A. S. (2007). Growth, distribution and poverty in Madagascar: Learning from a microsimulation model in a general equilibrium framework. *Microsimulation as a tool for the evaluation of public policies: methods and applications*, 73-110.
- [6] Tight, M. (2019). Documentary research in the social sciences. *Documentary Research in the Social Sciences*, 1-232.
- [7] Ahmed, J. U. (2010). Documentary research method: New dimensions. *Indus Journal of Management & Social Sciences*, 4(1), 1-14.
- [8] Mogalakwe, M. (2009). The documentary research method—using documentary sources in social research. *Eastern Africa Social Science Research Review*, 25(1), 43-58.

- [9] Mogalakwe, M. (2006). The use of documentary research methods in social research. *African Sociological Review/Revue Africaine De Sociologie*, 10(1), 221-230.
- [10] Shaw, M. N. (1990). The definition of minorities in international law. In *Israel Yearbook on Human Rights*, Volume 20 (1990) (pp. 13-43). Brill Nijhoff.
- [11] Shaw, M. (2011). The definition of minorities in international law. In *The Progression of International Law* (pp. 45-72). Brill Nijhoff.
- [12] Capotorti, F. (1977). The international protection of persons belonging to ethnic, religious and linguistic minorities since 1919. UN Economic and Social Council.
- [13] Deschênes, J. (1986). Qu'est-ce qu'une minorité?. *Les Cahiers de droit*, 27(1), 255-291.
- [14] Henrard, K. (2001). The interrelationship between individual human rights, minority rights and the right to self-determination and its importance for the adequate protection of linguistic minorities. *The Global Review of Ethnopolitics*, 1(1), 41-61.
- [15] Urban, B., & Ratsimanetrimanana, F. A. (2015). Culture and entrepreneurial intentions of Madagascan ethnic groups. *Journal of Entrepreneurship in Emerging Economies*, 7(2), 86-114.
- [16] Azoulay, A. (2022). Message from Ms Audrey Azoulay, Director-General of UNESCO, on the occasion of World Day for Cultural Diversity for Dialogue and Development, 21 May 2022.
- [17] Kant, I. (1785). *Groundwork of the metaphysics of morals*.(1785).
- [18] Kant, I. (1964). *Groundwork of the metaphysics of morals*: translated by hj paton. Harper & Row.

