

**INTERNATIONAL
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ON CIVIL AND
POLITICAL RIGHTS**



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Held at Headquarters, New York,
on Monday, 17 July 1978, at 10.30 a.m.

Chairman: Mr. MAVROMMATIS

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The meeting was called to order at 10.45 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT: INITIAL REPORTS OF STATES PARTIES DUE IN 1977 (continued)

Madagascar (CCPR/C/1/Add.14)

1. At the invitation of the Chairman, Mr. Raharijaona (Madagascar) took a place at the Committee table.
2. Mr. RAHARIJAONA (Madagascar), introducing the initial report of Madagascar (CCPR/C/1/Add.14), said that, in keeping with the country's long legal tradition, Malagasy legislation for the promotion of civil and political rights had always been based on a desire to reconcile the interests of the community, represented by the socialist State that was now being constructed, with the rights of the individual. The legislators had long been inspired by the country's legal tradition, its fund of ancestral wisdom and the tenets of Christianity. Well before the conquest of the country by the Western Powers in 1896, a number of codes had provided protection of the individual and a minimum guarantee of his civil rights.
3. Between 1896 and the country's attainment of independence in 1960, French law had profoundly influenced Malagasy legislation, especially in the fields of criminal law, criminal procedure and civil law, and, with the necessary modifications, it had been retained after 1960. Legislation of a liberal, democratic and bourgeois nature enacted from 1960 to 1972 was to a large extent still in force.
4. The new régime that had come to power in 1975 had enacted a new Constitution on 31 December of that year with an eye to the construction of a socialist State. It had also adopted, and had submitted to popular ratification, the Charter of the Malagasy Socialist Revolution, which guaranteed individual rights, especially freedom of religion and expression.
5. Madagascar also had a long tradition of respect for the judiciary. Emphasis had always been placed on the judge's training and his moral and intellectual qualities as well as on the need to protect him from pressure from the executive branch or the people. Malagasy legislation had also been inspired by the tradition of respect for women, who had long enjoyed equal rights with men, and for the child, who was given full legal protection.
6. The promotion of civil and political rights had been hampered by a number of factors. One difficulty encountered was the lack of judicial facilities, a common problem in developing countries. Much remained to be done, for example, to increase the number of judges and to improve the conditions under which persons were detained. Furthermore, as in many other countries, there had been a sharp

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(Mr. Raharijaona, Madagascar)

rise in crime, particularly acts of violence, over the past 10 years. That had necessitated the adoption of measures restricting the enjoyment of civil rights. In that respect, the rights of the community had to take precedence over the rights of the individual. An additional factor had been the worsening of the economic situation as a result of the world economic crisis. It had been necessary to enact certain economic measures which, while restricting individual freedom, protected the economic order, the construction of the socialist State and the country's natural resources.

7. Certain restrictive measures had also been required in the political field. Prior to the promulgation of the new Constitution, Madagascar had been shaken by political disturbances necessitating the enactment of restrictive measures; such measures were specifically permitted under article 4 of the Covenant in time of public emergency. A state of national necessity had accordingly been proclaimed in 1972 and had remained in force until 1975. While the new Constitution of 1975 had in principle annulled all extraordinary legislation derogating from the provisions of the Covenant, certain provisions had been retained in the normal legislation.

8. In addition to the foregoing general clarifications, he also wished to provide certain additional information and to refer to legislation enacted since the preparation of his country's report. The Constitution had been the main source of inspiration for the enactment of new legislation and the promotion of civil and political rights. The preamble of the Constitution upheld the dignity of the human being and respect for human freedom. Some of the provisions of the Constitution also reflected the exceptional period covering the beginning of socialist construction. For example, under article 13 of the Constitution, fundamental freedoms and individual rights were guaranteed within the framework of the Charter of the Socialist Revolution. Under article 14, fundamental rights and freedoms were an expression of democratic socialist principles. All citizens were protected from exploitation, but no fundamental right or freedom could be invoked by a citizen who had not fulfilled his duty to the community and no right could be invoked which impeded the construction of the socialist order.

9. Various other provisions of the Constitution upheld the civil and political rights of the individual. Article 37 protected the family, women and children and recognized the right of every citizen to found a family. Article 38 provided that every citizen had the right to settle and the right to freedom of movement anywhere in the national territory. Influenced by the Christian church, the Malagasy legislator had strongly reaffirmed in article 39 of the Constitution the freedom of conscience and religion and the neutrality of the State in relation to all beliefs. In general, the Constitution was based on a concern both for the construction of the socialist State, which required certain constraints, and for the protection of fundamental freedoms.

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(Mr. Raharijaona, Madagascar)

10. Turning to more recent legislative provisions, he drew attention to an ordinance of June 1977 which provided for the suspension of publication of newspapers and periodicals guilty of disturbing public order, of undermining national unity or of offences against public morality. Furthermore, in order to combat the rise in crime, it had been necessary over the past two years to establish special courts. Under an ordinance of May 1976, six special economic courts had been established, one in each of the six provinces, with jurisdiction over various economic offences. Each consisted of a professional magistrate and three citizens elected by the community. Appeal could be made only to the court of cassation. However, all individual rights of defence were guaranteed under the Code of Penal Procedure. Under an ordinance of 30 September 1977, also aimed at controlling the crime wave, special criminal courts had been established to combat the recrudescence of banditry. They were courts of both first and last resort, the only appeal being to the court of cassation, and consisted of a professional magistrate assisted by six assessors elected by the community. The penalties imposed were those provided for in the Penal Code. The jurisdiction of the special criminal courts covered cases of murder and other acts of violence, offences against the national heritage, theft, and offences against public morality, including alcoholism and drug addiction.

11. Finally, with regard to freedom of movement, two restrictive ordinances had been enacted as an exceptional measure. Under the first, which dated from July 1960 but was still in force, administrative measures could be adopted to restrict the movement of persons regarded as a threat to public order. Under the other, which was designed to combat the crime wave, any individual who was known to engage in acts of banditry could be confined to a certain area through the adoption of an administrative measure. He pointed out, however, that those two ordinances were exceptional and that resort to them was very rare. Indeed, no case had yet been brought under the ordinance of 1960.

12. Mr. MORA ROJAS said that the report of Madagascar raised many questions. Foot-note 1 stated that aliens who were not excluded from the application of articles 12 and 39 of the Constitution were covered by those provisions; it would be interesting to know under what circumstances aliens could be excluded. Article 12 of the Constitution prohibited discrimination based, inter alia, on race and origin. He wondered if there was any provision that prohibited discrimination based on political views. He did not quite grasp the meaning of the word "neutrality" in article 39 of the Constitution, which stated that freedom of conscience and of religion was guaranteed by the neutrality of the State. Noting the statement that compliance with the requirements of article 2, paragraph 3, of the Covenant was amply ensured, he wondered what other measures there were aside from those cited.

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(Mr. Mora Rojas)

13. Referring to article 4, paragraphs 4 and 5, of Ordinance No. 60-048, reproduced on page 3 of the report, he asked whether it was possible for an express decision dismissing a claim to be made after an appeal against dismissal by failure of the competent authority to pronounce itself on the claim within a period of four months. If that was possible, he wondered under what conditions such a situation could arise. Article 186 of the Penal Code referred to cases in which "a public official ... without a good and sufficient reason used violence". He wondered what was considered "a good and sufficient reason". Article 3 of the Covenant established the principle of equality between men and women. It would be interesting to know whether there were specific provisions that gave men and women equal rights in civil and political matters and in respect of parental authority and access to employment opportunities. The Committee would welcome statistics concerning the number of women who really had access to public office and to education, particularly at the higher levels. Moreover, he wondered how article 94 of Act No. 63-022 (p. 30 of the report) and articles 53 and 54 of Ordinance No. 62-089 (p. 32) could be reconciled with the principle of equality laid down in article 3 of the Covenant. In view of the fact that article 24 of the Constitution (p. 4) provided that the State was to promote the practice by every citizen of an activity in keeping with his qualifications, he wondered whether women had access to a full range of education and were able to obtain qualifications on a par with those of men. The Committee wanted to know not only what the law of a country was but also how that law was applied in practice.

14. With regard to the measures derogating from obligations under the Covenant in time of the "public emergency" referred to in article 4 of the Covenant, he felt that the Committee should know more about the limitations on the rights of citizens. It was not clear from foot-note 4 whether the death penalty was prescribed for attempted murder as well as for murder. Noting that the sentence could not be carried out until pardon had been refused, he wondered how long it normally took for a decision on the request for pardon to be taken.

15. The measures for the protection of children were very interesting. He wondered whether there were any plans to shift the emphasis in courts dealing with minors from punishment to guidance. If that was already implied by the provisions of Ordinance No. 62-038, the apparent contradiction between article 45 of the Ordinance and the provisions mentioned further on in the report should be clarified. On the one hand, mention was made of hard labour and, on the other, of guidance and rehabilitation.

16. The prime purpose of article 7 of the Covenant, which prohibited torture or cruel, inhuman or degrading treatment, was to protect individuals against the State. The report provided information on the protection of individuals against actions committed by other individuals but did not make it clear what the

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(Mr. Mora Rojas)

situation was with regard to the State. Such information would be welcome. The provisions relating to hard labour raised several questions. It appeared that under Malagasy law there was a possibility of hard labour being used by private entities for work of public interest. The Committee was interested in having statistics in that respect and in hearing how the system of hard labour applied, particularly in cases where the legislation called for prison labour on hire.

17. Turning to article 53 of the Code of Penal Procedure, he said that the Committee needed to know what was the action prescribed in article 273, which was mentioned in article 53. Referring to page 23 of the report, he noted that under the heading "Right to be informed of the actus reus" it was not clear whether article 217 was a constitutional provision or part of the Penal Code. Referring to article 19 of Ordinance No. 62-041 (p. 26), he wondered whether loss of civil and family rights was always total or whether it could be temporary. The Committee would like to know whether propaganda for war was permitted and how article 20 of the Constitution operated. He also would welcome further explanation of article 2 of the Malagasy Press Charter, quoted in foot-note 12. He would like further clarification of the last paragraph under subheading (c) (Freedom of assembly) on page 28 of the report which noted that certain private assemblies could be deemed to be public. Referring to subheading (d) (Freedom of association), he said that the Committee would like to know what exactly the provisions of chapter III of Ordinance No. 60-133 concerning foreign associations were.

18. Finally, referring to articles 53 and 54 of Ordinance No. 62-089 concerning marriage (p. 32), he asked whether women could dispute decisions of their husbands; he would also like to know what was the scope of the custom referred to in article 55.

19. Mr. KOULISHEV said he had been pleased to hear the frank admission by the representative of Madagascar of the difficulties that his country had encountered in guaranteeing the rights and freedoms laid down in the Covenant. Those difficulties were common to many developing countries.

20. He would be interested in having more information concerning how the provisions of the Covenant were applied in Madagascar, whether directly or through domestic legislation as was the case in most countries. He would also welcome information concerning the remedies available to persons whose rights and freedoms had been violated. Referring to Ordinance No. 60-048 (p. 3 of the report), he would like to know what were the functions and competence of the Administrative Court referred to. He was pleased to learn that men and women were traditionally recognized as equal in Madagascar and associated himself with the questions raised by the previous speaker in that connexion.

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(Mr. Koulishev)

21. He wondered what was meant by the words "aggravating circumstances" mentioned in foot-note 4 as causing certain thefts to warrant the death penalty. Concerning article 7 of the Covenant, which, inter alia, prohibited torture, he wondered whether article 303 of the Penal Code, quoted on page 8 of the report, covered torture by State agencies and whether there was a provision in the Constitution which would cover such cases. The term "forced or compulsory labour" appearing in article 2 of Ordinance No. 75-013-0/DM (p. 9) required clarification. He wondered whether the possibility of hiring out prison labour to private companies for the execution of work that was in the national interest did not raise difficulties. Was that possibility much used and, if so, under what circumstances? Referring to the list of penal institutions under the control of the Prison Administration, he asked what the purpose of those various categories of institutions was.

22. Noting that article 20 of the Covenant prohibited propaganda for war, he asked whether such propaganda was specifically prohibited in Madagascar.

23. Finally, concerning the protection of the family, he wondered what was the system of property rights in marriage and under what circumstances divorce was possible.

24. Mr. HANGA said that, as had happened in the case of other reports, it was not clear whether Madagascar had chosen to implement the Covenant mainly through a passive approach or through positive measures of law and jurisprudence.

25. A highly positive element was the commitment of the Government of Madagascar to secure equality of all citizens by guaranteeing the unity of the social order and the socialist legal system through elimination of the economic and social barriers which limited equality among citizens and obstructed the development of the human person and the effective participation of all workers in political, economic and social organization. Members of the Committee had often stressed the importance of economic and social factors for civil and political rights; unless they had an economic and social basis, the civil and political rights set out in the Covenant were practically meaningless.

26. In connexion with guarantees of effective justice in the event of violation of the provisions of the Covenant, as laid down in particular in article 2, paragraph 3, he asked whether persons whose rights and freedoms had been violated were entitled to bring suit as a remedy.

27. He wondered whether the "state of national necessity" under Ordinance No. 75-001, mentioned on page 5 of the report, was in keeping with the conditions laid down in article 4, paragraph 1, of the Covenant.

28. He would also like to know how the lives of Malagasy citizens were protected by the Penal Code and what penalties were prescribed for crimes against life.

29. He noted that Ordinance No. 75-013-0/DM establishing the Labour Code (p. 9 of the report) prohibited forced labour, subject to certain exceptions. One such exception was work or service exacted from any person as a consequence of a

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(Mr. Hanga)

conviction in a court of law, provided that the said work or service was carried out under the supervision and control of a public authority and in furtherance of a project in the public interest. He asked what convictions could lead to forced labour and whether they might be in penal or civil cases.

30. He noted that, under article 70 of Decree No. 59-121 concerning the general organization of prison services in Madagascar (p. 12), prison labour could be used on State account, hired out or used in prison camps. However, no prisoner could be employed in the service or for the personal convenience of any individual, whether a public official or a private person. In the case of a public official, such use of a prisoner's services led to both civil and penal liability. He wondered why the liability of a private person in the same situation was only civil, not penal.

31. With respect to article 9, paragraph 4, of the Covenant, he wished to know what courts in Madagascar were entrusted with ruling on the legality of detention.

32. Article 335 of the Code of Penal Procedure (p. 15), providing that any person having knowledge of a wrongful detention could bring it to the attention of the authorities, was particularly noteworthy.

33. In connexion with article 10, paragraphs 2 and 3, of the Covenant, he wished to know whether juvenile offenders were treated separately from adults under the penal system of Madagascar, especially with regard to imprisonment.

34. He wished to know what procedures were established under the law of Madagascar for declaring a law unconstitutional and for establishing special courts.

35. He asked whether it was possible to obtain compensation when a conviction was annulled and, if so, within what limits.

36. He noted that, although article 15 of the Covenant was not treated specifically in the report of Madagascar, its content was dealt with on page 2 in connexion with the Constitution of Madagascar.

37. He noted that, under article 28 of the Constitution (p. 26), freedom of expression, of the press and of assembly was guaranteed to citizens when exercised in conformity with the objectives of the Revolution. It would be useful to know in that regard what the principles of the Revolution were.

38. In connexion with article 20 of the Covenant, he asked whether Malagasy law specifically prohibited war propaganda and, if so, how. He noted that article 37 of the Constitution (p. 29) provided that every citizen had the right to transmit his personal property by succession. He requested clarification as to where the law of Madagascar, a socialist State, drew the line between private property and personal property.

39. He noted that Malagasy law provided for equality between husband and wife. However, Ordinance No. 62-089 concerning marriage (p. 32) provided that the husband

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was the head of the family (art. 53) and that the spouses were bound to live together, the place of residence being determined by the husband (art. 54). He asked whether such provisions were compatible with equality of the spouses. He also wished to know how the question of children born out of wedlock was regulated under the law of Madagascar.

40. He requested further clarification on the position of women with regard to the right to vote and to participate in public affairs.

41. He noted that article 6 of the Constitution (p. 35), providing that "The law is the expression of the people's will", embodied one of the enduring legal values of civilization.

42. The CHAIRMAN informed the Committee that a final draft of its report had been distributed and asked members to study it with a view to its adoption.

43. Mr. TARNOPOLSKY said that the report of Madagascar, although it had been prepared prior to the establishment of guidelines by the Committee, was remarkably complete. He also appreciated the straightforward manner in which the representative of Madagascar had presented the difficulties his country had encountered in applying the Covenant.

44. He would appreciate further information regarding the Constitution and laws of Madagascar: the procedures for the Constitution's adoption and amendment and its relationship to the codes, ordinances and decrees mentioned in the report. He also wondered whether the ordinances referred to were acts of the legislature or of the executive.

45. In connexion with article 4 of the Covenant, he asked whether the state of national necessity mentioned on page 5 of the report, as well as the various provisions connected with it, were still in force.

46. With reference to article 6 of the Covenant, he noted that foot-note 4 on page 6 of the report indicated that the death penalty was prescribed for certain offences against State security, such as "treason, incitement to civil war, incitement to looting, etc." He would appreciate clarification as to the range of crimes to which the death penalty could be applied. If it was true, as the foot-note indicated, that there had been no executions in Madagascar since 1958, he found that highly commendable.

47. With regard to the question of torture and cruel, inhuman or degrading treatment and punishment, he noted that the prohibition mentioned in the report appeared to extend only to individuals, not to public officials. He asked whether article 117 of the Penal Code, mentioned on page 14 of the report, was the main provision under Malagasy law against such abuses. If so, he wondered why the damages it imposed were so low.

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(Mr. Tarnopolsky)

48. In connexion with article 8 of the Covenant, he noted that Decree No. 59-121 (p. 11 of the report) contained a reference to persons "sentenced for a political crime or serious political offence". He would appreciate clarification as to what would constitute a political crime or serious political offence under the law of Madagascar.

49. He noted that article 334 of the Code of Penal Procedure, mentioned on page 15, provided that "Detention pending trial may in no case be extended beyond a period equal to the maximum penalty of deprivation of liberty applicable." That provision would seem to permit extremely long periods of detention - even longer than the period of 20 months mentioned on page 25 of the report. He would appreciate clarification on that point.

50. He asked how Malagasy courts interpreted and applied article 28 of the Constitution (p. 26) providing that freedom of expression, of the press and of assembly was guaranteed when exercised in conformity with the objectives of the Revolution.

51. With regard to restrictions of rights and freedoms for reasons of national security, he wondered whether a mere expression of opinion, e.g. questioning the validity of creating a socialist State, would automatically be treated as a threat to the State. If so, such a provision would seem to be more restrictive than those provided for under articles 19 and 21 of the Covenant.

52. He noted that article 40 of the Constitution (p. 35) made mention of "legal requirements" for the right to vote and to be elected. He wished to know what those requirements were. Similarly, he noted that article 1 of the Organic Act, as amended, of 6 June 1959 (p. 35) provided that persons had to be "in possession of their civil and political rights" in order to vote and be elected. He asked what persons were not in possession of those rights. He also wondered whether the provisions in question affected the status of women.

53. Referring to article 6 of the Constitution (p. 35), he observed that article 26 of the Covenant called for more than the mere affirmation that "The law is the expression of the people's will."

54. In connexion with article 27 of the Covenant, concerning treatment of minorities, he asked whether minorities existed in Madagascar and, if so, what provision had been made to safeguard their rights.

The meeting rose at 1 p.m.