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ON CIVIL AND
POLITICAL RIGHTS**



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Fourth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 84th MEETING

Held at Headquarters, New York,
on Monday, 17 July 1978, at 3 p.m.

Chairman: Mr. MAVROMMATIS

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* The summary record of the second part (closed) of the meeting appears as
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session.

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The meeting was called to order at 3.15 p.m.

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

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

1. Mr. LALLAH praised the frankness of the way in which Madagascar was co-operating with the Committee, through both the preparation of a detailed report and the able presentation of the report by its representative at the preceding meeting. It was most instructive for the Committee to learn how Madagascar, a developing African country, was attempting through its laws to give effect to the Covenant. He was confident that future report submitted by Madagascar would reflect the guidelines established by the Committee for the preparation of reports of States parties.
2. He noted that human rights were dealt with in Madagascar within the perspective of the Constitution and of the Press Charter, mentioned on page 27 of the report. He requested that the full text of both documents should be made available to the Committee.
3. With particular reference to article 2, paragraph 3 (b), of the Covenant, he asked how Madagascar ensured the existence of a competent and impartial judicial authority. How were judges appointed, what were their terms of office, how could their appointments be terminated, what kind of security of tenure did they have, and how did the judicial authority maintain its independence and resist administrative influence?
4. He noted that the representative of Madagascar had mentioned when introducing the report that a number of special economic and criminal courts had been established. He wished to know what the reasons were for the establishment of the new courts. Did the previously existing courts lack jurisdiction in the cases dealt with by the new courts? Had some defect in the legal system been discovered or was there a desire to modify the legal system? How were those new courts staffed and how did they operate?
5. He asked how Malagasy citizens gained access to courts to obtain remedies for alleged wrongs. What practical measures had the State taken to bring the courts closer to those under their jurisdiction?
6. Noting references on page 14 of the report to certain provisions of the Penal Code which gave citizens the right to recourse against abuses, he asked whether there were any constitutional provisions dealing with the matter, not so much in terms of assessment of damages as in terms of judicial remedies? Could a citizen seek from the courts a declaration that a particular act, law or decree was unconstitutional without having to institute a civil action and claim damages?
7. With regard to the matter of equality between men and women, he asked whether any women were at present serving in the National Assembly or Senate.

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8. With reference to the discussion of prison services in Madagascar on page 11 of the report, he asked what was meant by the expressions "political crime" and "serious political offence". Were such offences defined by law? Was there any special régime for political prisoners and did political prisoners have the same rights and privileges as offenders under ordinary law? With regard to the discussion of infringements of liberty on page 14, he asked what the expression "civic degradation" meant.

9. With regard to the discussion of detention pending trial on page 20, he asked whether people actually had been detained for periods of up to 20 months and whether the practice of detention pending trial was common. How many people had been detained pending trial and for how long? Were measures under consideration to ensure that the accused would come to trial as speedily as possible? What were the reasons for delays?

10. Turning to the question of trade-union freedom referred to on page 29, he asked how collective action by trade unions was dealt with under the law. Did the law recognize a collective decision to strike and what were the legal provisions governing strikes?

11. Mr. URIBE VARGAS, noting that the representative of Madagascar in introducing his country's report had referred to the state of national necessity which had led to the enactment of extraordinary legislation, asked how long such legislation would continue to be in force. There was a general problem raised by situations in which economic crises or imbalance led to the declaration of a state of emergency and by exceptional circumstances in which States had difficulties applying international norms, in particular those set forth in the Covenant. He wondered whether a state of emergency was inherent and unavoidable in certain systems under the prevailing conditions of economic imbalance. There seemed to be a need for a strict definition of what was "normal" and what was "exceptional" and for laws governing the duration of states of emergency. He was particularly concerned about the legal effects of states of emergency and in particular their impact on a country's ability to give effect to the Covenant.

12. Mr. OPSAHL expressed his appreciation of the fact that the Malagasy report contained actual legal texts which spoke for themselves and were, furthermore, phrased in simple and straightforward language. He noted that Madagascar was a particularly interesting case for the Committee because it was one of the few countries dedicating itself to the establishment of a socialist system which was a Party to the Optional Protocol.

13. The references in Madagascar's report to the legislature did not specify what sort of legislature the country had and it would be useful for the Committee to know how the legislature was organized. He also asked about the role of the judicial system, in particular the legal profession, in the implementation of the Covenant. How was the legal profession organized, how did it function, what was its status, and how independent was it? With regard to the reference on page 18 of the report to article 42 of the Constitution, which stated that the law guaranteed to all persons the right to obtain justice, he asked what measures had been taken to give effect to that provision.

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(Mr. Opsahl)

14. With regard to detention pending trial, he asked what was the relationship between the provisions of the Code of Penal Procedure referred to on page 15 of the report, the Ordinance referred to on page 20 and the discussion on page 25 of the right to be tried without undue delay. In particular, how was such detention handled in practice and what was the general rule for the duration of such detention?

15. With regard to freedom of expression, of the press and of assembly, discussed on pages 26 and 27 of the report, he asked how the limitations on printing and the book trade, as governed by article 2 of the Press Charter, were implemented. Was there a system of prior censorship or were authors responsible subsequent to publication for the contents of their books? He also wondered how compatible such provisions were with the rules laid down in the Covenant.

16. Finally, he asked whether the reference to article 20 of the Constitution on page 27 of the report had omitted mention of provisions which dealt with war propaganda.

17. Mr. TOMUSCHAT commended the frequent references in Madagascar's report to the relevant texts and the openness towards existing problems shown by the representative of Madagascar in his introductory statement.

18. He requested clarification as to whether Madagascar had one or two basic constitutional documents and about the relationship between the Constitution and simple legislative enactments issued by administrative agencies. He wondered whether in Madagascar a litigant could claim that there was inconsistency between a particular legislative enactment and the Constitution, and whether the judge could sustain such an objection.

19. He had understood the representative of Madagascar to say that no right might be invoked against the socialist order; he hoped that did not constitute a general restriction on any of the rights guaranteed under the Covenant. Since the status of the Covenant in the domestic legal order determined its real impact within that order, the Committee needed enlightenment on that point.

20. He asked what kind of remedies existed in cases where one of the rights referred to in the Covenant had been violated or alleged to have been violated, as in the case of a person denied a passport or denied access to public service or in the case of an assembly prohibited by the police. He noted that, according to the table on page 37 of the report, the number of cases dealt with by the Administrative Chamber of the Supreme Court was very low and he wondered whether there existed an administrative court with comprehensive competence to deal with cases such as those he had mentioned.

21. Referring to article 4 of the Covenant and the explanations given on page 5 of the report regarding measures derogating from obligations under the Covenant in time of "public emergency", he asked whether the state of national necessity still existed and whether the notifications required under article 4, paragraph 3, of the Covenant had been submitted.

22. Like previous speakers, he had been struck by the broad range of crimes subject to the death penalty. As to article 7 of the Covenant and the articles of

(Mr. Tomuschat)

the Penal Code regarding the prohibition of torture and of cruel, inhuman or degrading treatment and punishment referred to on pages 8 and 9, he stressed that it was crucial that sanctions should be imposed on those torturing and harassing prisoners and that State agencies should be prohibited from inflicting torture on persons in their custody. Further information on those points was needed.

23. Article 68 of Decree No. 59-121 concerning the general organization of prison services in Madagascar, referred to on page 11, indicated that individuals could be imprisoned for debt. That was prohibited under article 11 of the Covenant, and the Committee would welcome some clarification concerning the practice. Though the right of everyone to liberty of movement was dealt with on pages 16 and 17 of the report, he could find no reference to the right of citizens to leave Madagascar. He wondered whether there was any specific provision or restriction in that connexion and whether article 38 of the Constitution permitted a free flow of traffic to and from the country.

24. The procedure with respect to the expulsion of aliens, referred to on page 17, was commendable. He wondered, however, how many cases there had been of departures from the normal procedure. As to hearings in public and in camera, referred to on page 24, the Committee would welcome further explanation of the conditions under which trials might be held in camera, as well as a statistical breakdown of such cases. Public hearings were one of the basic guarantees available to the accused and convincing reasons were required to justify the holding of hearings in camera. He would also like to know which principles of the Revolution entailed restrictions of the rights referred to in articles 19, 21 and 22 of the Covenant and whether it was considered admissible to express dissatisfaction with government policy in a peaceful manner. Referring to article 25 of the Covenant, he asked when the most recent elections to the National Assembly had been held.

25. Sir Vincent EVANS said that the information contained in the report had been usefully supplemented by the introductory remarks concerning the socio-political context in which the report had been drafted. It was essential that the Committee should have information of that type. While he agreed with the representative of Madagascar that the laws and practices applied by each State in giving effect to the provisions of the Covenant must represent a balance between the needs of the society and the freedom of the individual, he felt that the socio-political situation should be viewed within the framework of the provisions of the Covenant.

26. Madagascar had not availed itself of the right of derogation under article 4, paragraph 3, of the Covenant. He understood that although there were some exceptional provisions currently in force in Madagascar, they were not so exceptional as to be reported under article 4, paragraph 3. He would like to know whether his understanding of that matter was correct.

27. He asked how well known the Covenant was in Madagascar and how much publicity had been given to the fact that Madagascar was a party to it, so that the general public and the legal profession might be aware that the Government had guaranteed certain rights and freedoms set forth in the Covenant. He asked whether the Covenant had become part of domestic law in Madagascar, thereby allowing individuals to invoke its provisions in proceedings before the courts and administrative authorities.

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(Sir Vincent Evans)

28. It had been explained to the Committee that Madagascar had found it necessary to establish special economic and special criminal courts. Article 14 of the Covenant contained a number of provisions concerning the rights of the individual in criminal proceedings, and he wished to know to what extent those guarantees applied to proceedings before the special courts. In particular, he wished to know whether the trials were held in public, in the presence of the accused assisted by counsel, whether the accused was entitled to examine or have examined the witnesses against him, whether he had the right to be presumed innocent until proved guilty and whether he had the free assistance of an interpreter if he could not understand or speak the language used in court. He noted with satisfaction that there had been no executions in Madagascar since 1958 and hoped that good record would be maintained.

29. Reference was made on page 11 of the report to prisoners sentenced for a political crime or serious political offence. He inquired whether there were any such prisoners detained for offences not involving the use of violence; if so, what was the nature of the offences and had anyone been detained on political grounds without trial?

30. He asked what categories of prisoners were detained in the places of preventive detention referred to on page 16 of the report. He would like to know whether they had been tried and convicted and for what reasons they could initially be detained.

31. More information was also required on the treatment of prisoners. Article 10, paragraph 1, of the Covenant stated that "all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person". He would like to know how large the prison population was and whether serious attention was being paid in Madagascar to prison conditions and the rehabilitation of prisoners.

32. The provision in article 67 of the Code of Penal Procedure, referred to on page 22 of the report, that a defendant might always communicate freely with his counsel was fully in accordance with the provisions of article 14, paragraph 3 (b), of the Covenant. He understood, however, that there had been a recent amendment to article 54 of the Code of Penal Procedure which placed some restrictions on the right of pre-trial consultation with counsel in certain circumstances, and requested further information in that respect. The provision of article 265 of the Code of Penal Procedure referred to on page 23 that witnesses were to be heard with the defendant not present appeared to be inconsistent with the requirement of article 14, paragraph 3 (d), of the Covenant that the defendant must be tried in his presence.

33. Article 28 of the Constitution, referred to on page 26, appeared to imply certain ideological restrictions on freedom of expression, of the press and of assembly, which might not be fully compatible with the range of freedoms envisaged in articles 18, 19 and 21 of the Covenant. He considered that those freedoms were among the most important freedoms in a democratic society, and that the articles of the Covenant he had mentioned required that the Government and the social and

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political order in a country should be exposed to questions and criticism and to suggestions for improvement and change. He wondered to what extent the exercise of those freedoms was restricted in Madagascar, and whether people were permitted to criticize the authorities and the social order freely provided they did not advocate the use of violence or resort to violence themselves. He also asked how free the press was in that respect, whether it was subject to strict government control or whether there was some degree of freedom which enabled the press, and through it, the public, to voice opinions on social and political questions of interest to everyone in the country.

34. In the light of article 25, subparagraphs (a) and (b), of the Covenant, he wondered whether political parties had been able to participate freely in the recent elections in Madagascar or whether there had been any restrictions imposed on the rights of certain political parties to take part in the elections and to put forward candidates.

35. Mr. GANJI said that he agreed with previous speakers that States parties to the Covenant were under an obligation to inform other States if they declared a state of emergency.

36. The report submitted by Madagascar, like some of the other reports, highlighted the need for the Committee to establish relations as soon as possible with the specialized agencies and other bodies of the United Nations family concerned with the implementation of the rights set forth in the Covenant. Some of those rights also needed to be more clearly defined. The Committee would benefit greatly from the experience of ILO, for example, in relation to the prohibition of forced labour and other aspects of its work; because information on that subject was not available he felt unable to comment on part 7 of the report (pp. 9-13).

37. With regard to the question of the status of women, he said that although he recognized that the socio-political and cultural structure of a developing country tended to make it very difficult to prevent discrimination against women, he felt that since the Covenant was a legal document there should be some explanation of what measures were being taken in Madagascar to try to remove the discrepancies which subsisted.

38. Mr. RAHARIJAONA (Madagascar) expressed appreciation of the interest shown in the report of Madagascar by members of the Committee and said that he was sure that the dialogue between the Committee and his country would be very fruitful.

The public meeting rose at 5.12 p.m.