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HUMAN RIGHTS COMMITTEE

Fourth session

SUMMARY RECORD OF THE 87th MEETING

Held at Headquarters, New York,
on Wednesday, 19 July 1978, at 10.30 a.m.

Chairman: Mr. MAVROMMATIS

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The meeting was called to order at 10.55 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) (continued)

1. At the invitation of the Chairman, Mr. Raharijaona (Madagascar) took a place at the Committee table.

2. Mr. RAHARIJAONA (Madagascar) said he wished to reply to a number of questions asked at the 83rd meeting which could be answered with the materials on hand at the Permanent Mission of Madagascar. Other questions had been referred to his Government, which would submit a written reply to the Committee at a later date. In response to the wishes expressed by a number of members, he had made available copies of the Constitution and the Charter of the Malagasy Socialist Revolution.

3. In order to understand the relationship between the various legal documents mentioned in his Government's report (CCPR/C/1/Add.14), it was necessary to bear in mind the recent political history of the country. The Constitution of 1959 had been replaced in 1975 when the people had approved in a referendum the Charter of the Malagasy Socialist Revolution and the Constitution which was to be its application in order to build a new society and establish the reign of justice and social equality. Thus, the Charter and the Constitution had entered into force simultaneously and were inextricably linked. The Charter was a solemn declaration of principles, a body of general rules defining the objectives of the revolution, while the Constitution was the legal embodiment of those principles. The Charter in itself did not lay down legal rules in the strict sense of the term but reflected the desire of the people for a new régime, outlined the basic characteristics of that régime and served as a guide for all future legislation.

4. The Charter and the Constitution together constituted the fundamental law of the Malagasy State. They were followed in the legal hierarchy by the Acts adopted by the People's National Assembly elected by direct universal suffrage. Article 72 of the 1975 Constitution specified the areas in which the People's National Assembly had the power to legislate, which included the rules relating to civil rights, fundamental guarantees of the freedoms, rights, obligations and duties of citizens, the organization of the judiciary and the establishment of courts. All matters not expressly within the sphere of the National Assembly were the prerogative of the Executive branch. The administrative regulations of the Executive branch took the form of decrees issued by the Council of Ministers or orders issued by individual ministries by delegation of authority. Ordinances were orders issued by the Executive in the form of laws and having the same force as acts adopted by the legislature. They could be issued only when the People's National Assembly expressly delegated its power to the Executive for a specific

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purpose and for a limited time. The ordinance did not constitute a new form of law; it was known in a number of developed countries and in Madagascar had also existed under the 1959 Constitution. The codes referred to in his country's report were not a separate category of law but merely compilations of existing law. Every code had been promulgated in an act adopted by the legislature or in an ordinance issued by the Executive.

5. The constitutionality of the laws was determined by the High Constitutional Court which comprised seven judges appointed by the President of the Republic. If a litigant in a suit before any court challenged the constitutionality of a law, the court in question was obliged to suspend proceedings until the High Constitutional Court had rendered a decision in the matter.

6. In reply to questions concerning the application of the provisions of the Covenant in Madagascar, he said that article 72 of the 1975 Constitution provided that treaties and conventions which entailed modifications of domestic law or related to the status of individuals must be ratified by the national legislature. The Covenant had been signed on behalf of the Malagasy Government on 17 September 1969 and ratified by the legislature on 21 June 1971. Strictly speaking, ratification by the legislature should be sufficient to incorporate the provisions of the Covenant into national law. In practice, however, the provisions of international instruments were incorporated into Malagasy law either by enacting their provisions in new legislation or amending existing domestic law so as to bring it into line with the provisions of the international instruments to which Madagascar was a party. Thus, the incorporation of the provisions of the Covenant into national law was a gradual and ongoing process. In addition, the judges who applied domestic laws had received a thorough legal training and were fully cognizant of the international instruments which were binding on them in the manner of natural law. Even though judges might not be able to invoke the provisions of international instruments in judicial practice, judicial decisions in Madagascar were strongly influenced by the spirit and the letter of the Covenant.

7. As to the question whether the people in Madagascar were sufficiently aware of the existence of the Covenant, he indicated that the text of the Covenant had been published in the Journal Officiel in the French and Malagasy languages. All texts published in the Journal Officiel were automatically analysed in the major newspapers published in the Malagasy language by the Department of Information. In addition, a summary of the Covenant's provisions had been broadcast by radio in the Malagasy language. Despite such efforts, however, public awareness of both domestic law and international instruments continued to be relatively limited. The publicizing of international law was a general problem to which the Committee would do well to devote some attention in its deliberations. The efforts of the specialized agencies and the United Nations to that end were important but in many developing countries they were still inadequate. It was therefore necessary to step up efforts to assist Governments both materially and intellectually to increase awareness among their populations of legal instruments adopted under the auspices of the United Nations.

8. One member has asked under what circumstances aliens might be deprived of the exercise of fundamental rights. As indicated in the report (CCPR/C/1/Add.14, p. 1),

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article 20 of Ordinance No. 62-041 stipulated that aliens in Madagascar enjoyed the same rights as nationals with the exception of those rights which were expressly denied them by law. At present, aliens were barred from certain professions with a view to promoting the employment of Malagasy nationals. Aliens were not entitled to vote. They were barred from employment in the civil service and from serving in the governing bodies of corporations unless there was a bilateral corporation agreement with their country or some other diplomatic agreement providing for reciprocity. An ordinance of 1962 expressly provided that the status and legal capacity of aliens was determined by their own law, which could be invoked before a Malagasy court.

9. As to the meaning of the expression "neutrality of the State" in the matter of religion (CCPR/C/1/Add.14, p. 2), he indicated that the State did not interfere in the internal affairs of religious organizations whether Christian or non-Christian. It recognized the existence of the various religious communities and allowed them to conduct their activities, decide on their internal organization and settle any conflicts which might exist within church organizations, subject to the traditional requirements of public order. The Government strictly applied the established principle of the separation of Church and State, which was confirmed in an ordinance of 1962 governing the status of religious denominations in Madagascar.

10. With regard to the organization of the courts in Madagascar, he had already referred to the highest court, namely the High Constitutional Court. Immediately below that court came the Supreme Court, which through the cassation procedure monitored the decisions of the court of appeal and other tribunals. The Supreme Court had an Administrative Chamber and an Audit Chamber. The Administrative Chamber was the body which heard requests for the cassation of administrative decisions and served as the court of first resort for all suits brought against the Administration by individuals. The number of judges was sufficient to ensure that the same judge did not hear a suit in first and last resort. As to the surprise which had been expressed at the small number of judgements rendered by the Administrative Chamber of the Supreme Court, given the fact that it was the only administrative court in the country, he expressed interest in comparing Madagascar's experience and record in that area with those of other developing countries. In his view, the progress that had been made in the human rights field in Madagascar was attested to by the fact that individuals did not hesitate to bring suit in the Administrative Chamber; as citizens became more aware of their rights, the number of suits would increase.

11. The courts of appeal comprised the next level of the judicial system. At the present time there was only one court of appeal in existence but there were plans for the establishment of others with a view to decentralizing the administration of justice. Other courts included the courts of first instance, which had jurisdiction for civil, criminal and commercial cases, and the criminal courts, which were presided over by professional judges assisted by associate judges chosen each year by lot from a list of candidates.

12. Lastly, there were the special courts. He had referred to the reasons for the establishment of special courts in his introductory statement at the 83rd meeting

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and he was aware of the apprehension generally felt by legal specialists at the existence of such courts. Whenever there was a radical change of political régime in a country, however peaceful the transition might be, there was always resistance to change. Particularly when a country opted for socialism, a minority of privileged individuals actively or passively resisted the implementation of laws aimed at establishing the new social order. Nationalizations also gave rise to resistance on the part of owners and, in some cases, even workers and managers. A change of régime often led to a decrease in social pressure, which resulted in a recrudescence of certain types of crime. The crime wave which Madagascar was experiencing was certainly ephemeral, and many developing countries had experienced similar occurrences. Nevertheless, it had been necessary to take exceptional measures to deal with the situation. Special courts had been established to deal with economic offences such as infractions of currency transfer regulations and special criminal courts had been established to deal with acts of violence. His Government would provide more detailed information concerning the organization and functioning of the special courts in its written submission. The two chief characteristics of procedure in the special courts were that the only appeal possible was to the Cassation Chamber of the Supreme Court and decisions were rendered by professional judges assisted by lay associate judges. All the safeguards established in the Covenant, particularly those relating to the rights of defence, were fully applicable to the proceedings of the special courts established in Madagascar. The very mention of "people's justice" in socialist countries struck fear into the hearts of legal specialists with traditional training, since they assumed that it meant a justice rendered in the marketplace to the cheers of the mob. The situation in Madagascar, however, could not be more different. The judgements of the special courts were monitored by a higher court and the rights of the defence were scrupulously respected.

13. One of the best safeguards of the rights of the defendant was the excellent training received by judges and lawyers in Madagascar which stressed the independence of the judiciary. Despite the difficulties encountered by many developing countries in providing adequate legal training for the members of the judiciary, judges in Madagascar had always been required to obtain university degrees in law and pass a rigorous professional examination. Exceptions were made only in the case of individuals who had long practical experience with the law which prepared them adequately for service in the judiciary. Judges enjoyed a special status which guaranteed their independence, even if their judgements were displeasing to the Executive branch. They held tenure for life and strong provisions existed to punish contempt of court. Lawyers in Madagascar were required to attend a three-year course of study and pass an examination. Moreover, they were subject to the discipline of their order, the Ordre des Avocats, which had produced many distinguished leaders and defenders of freedom.

14. In reply to questions raised regarding the accessibility of justice to people seeking defence of their rights, he noted that everyone in Madagascar was entitled

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to institute legal proceedings, orally or in writing. The assistance of a lawyer was not necessary, although everyone had access to lawyers. A system of legal aid was available for persons with limited means. A person whose rights had been violated could either bring a third party civil action in proceedings instituted by the State Counsel General or oblige the latter to bring charges by filing a complaint. The law expressly provided that anyone suffering a violation of his person could bring action to put an end to such a violation; thus, a person whose civil or political rights were being violated had ready access to justice.

15. A question had been raised regarding the "good and sufficient reason" mentioned in article 186 of the Penal Code as justifying the use of violence (CCPR/C/1/Add.14, p. 4). This provision meant that violence could be used only as expressly authorized by the Penal Code, which applied equally to all citizens, whether private individuals or public officials. It provided that violence could be used in self-defence or on the orders of a legitimate authority, the latter assuming both civil and penal liability for the issue of such an order, and in no other circumstances.

16. With respect to the questions raised regarding guarantees against torture and cruel, inhuman or degrading treatment and punishment, he observed that the provisions prohibiting such abuses in his country applied equally to individuals and public officials. Officers of the peace found guilty of such offences incurred both administrative and penal sanctions. Close surveillance of police services was exercised by the State Counsel General and by the judicial authorities in general in order to prevent any such abuses. Investigations of abuses had in the past been conducted at the initiative of judges.

17. Questions had been raised regarding equality between the sexes. Strict equality between men and women was assured by Malagasy law. However, in many developing countries it was necessary to distinguish between law in the abstract and its application to reality. With respect to access to certain professions, equality was provided for by law wherever possible, but there were professions in which certain constraints limited access by women, e.g. the physical constraints of occupations involving posting to remote areas. Constraints of that type explained the fact that only 10 to 20 per cent of State inspectors in Madagascar were women. There were also certain cases of de facto inequality in the private sector, due to the general problem of education of women. A survey conducted in 1972 had shown that some 71 per cent of women in Madagascar were illiterate. At that time, girls had constituted approximately 46 per cent of the pupils in primary schools, 42 per cent of the students in secondary schools and only 31 per cent of the students in institutions of higher education. A vast programme was being undertaken to improve the status of women, a programme with which the United Nations was closely concerned. In public services in general, women accounted for less than 20 per cent of over-all staff, some 24 per cent of executive staff and some 3 per cent of the higher managerial positions. They were somewhat more strongly represented in the teaching and legal professions.

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18. It had been asked whether the "state of national necessity" referred to in the report (CCPR/C/1/Add.14, p. 5) was still in force. It had been brought to an end by the Constitution of 1975. Of the exceptional measures in force from 1972 to 1975, only a few had remained part of the law, the most important of which was the power to suspend publication of newspapers and periodicals which disturbed public order, national unity or moral standards.

19. In reply to the questions raised regarding the death penalty, he observed that it applied only to extremely serious crimes, such as premeditated murder, parricide, poisoning, murder with aggravating circumstances and violent armed robbery. Murder per se was punishable by forced labour for life. He attributed the fact that there had been no executions since 1958 to the values of his country's civilization and to the efforts of judges to suit the punishment to the crime. Although there were no strict rules with regard to the time that could elapse between a death sentence and a request for pardon, such a request could be submitted very rapidly and had in fact taken as little as 48 hours.

20. In reply to questions raised regarding treatment of juvenile offenders, he observed that Malagasy legislation had gone through certain changes. A law enacted in 1960 had provided that all juvenile offenders would be given educational assistance. However, it had been realized that, unfortunately, there were cases of true delinquency which called for penal sanctions. Consequently, judges had been empowered to impose a variety of sanctions, ranging from a mere reprimand to confinement in an institution, taking into account the interests of society and the moral and physical health of the juvenile. Where penal sanctions were applied to juveniles, extenuating circumstances were automatically deemed to exist.

21. In reply to the question raised regarding compulsory labour for prisoners in fokonolona projects, he explained that the fokonolona, an old Malagasy tradition, was a voluntary agreement entered into by the members of a village for the construction of some community facility, such as a dam.

22. It had also been asked why the use of prison labour could be hired out under article 69 of Decree No. 59-121 (CCPR/C/1/Add.14, p. 12). That provision should be seen in the light of the fact that, although penal sentences involved a special category of forced labour, all prisoners in Madagascar could be called upon to provide work. The provision which had been questioned was a survival of a time when manpower had been insufficient for working vast State agricultural concessions, leading to use of prison labour. Under the socialist system, however, the practice was being reformed and was sure to disappear.

23. Various questions had been raised concerning the reference to persons "sentenced for a political crime or serious political offence" in article 68 of Decree No. 59-121 (CCPR/C/1/Add.14, p. 11). That provision did not refer to persons whose sole offence had been to speak against the Government. It applied only to certain acts dealt with in the Penal Code, e.g. violations of the security of the State or of press regulations. If a journalist truly violated Penal Code provisions, he was liable to prosecution and imprisonment. However, persons detained for political offences were not treated like other prisoners, e.g. they did not wear a uniform, were not subject to forced labour and were detained in separate quarters.

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24. The question which had arisen with respect to imprisonment for debt appeared to be the result of a misunderstanding. He explained that the French expression "contrainte par corps" used in article 68 of Decree No. 59-121 (p. 10, French version of the report) did not in fact refer to persons "imprisoned for debt", as the English translation suggested (p. 11, English version). As used in Madagascar, it meant simply that persons sentenced to pay a fine could, in lieu of payment, serve out a prison term. However, there was a maximum limit to such imprisonment and it was not permissible for civil debts.

25. In reply to the question raised regarding the matter of detention pending trial under article 335 of the Code of Penal Procedure (CCPR/C/1/Add.14, p. 15), he explained that detention pending trial was a purely exceptional measure, for an accused person was presumed innocent. The provision in question had been drafted in response to the problem posed by cases of unreasonably long detention pending trial resulting from the slow operation of the judicial system. The intention had been to provide a minimum of protection by establishing that detention pending trial could in no case exceed the maximum penalty of deprivation of liberty applicable. The provision ensured, for instance, that a person accused of an offence for which three months' imprisonment was the maximum sentence could not be detained longer than three months. In summary proceedings arising from simple offences that did not call for extensive investigation, persons detained pending trial could be assured that, if the proceedings did not speedily lead to a conclusion, they would be released. The maximum limit of 20 months' detention had been set for cases entrusted to an examining judge, for it could happen in complex cases that the investigation might last as long as 20 months. However, a detainee could, at any stage of the proceedings, request that he be released pending trial and if refused, that request could be appealed.

26. He indicated that his Government would provide a description of the organization of penitentiary establishments in Madagascar in written form.

27. An explanation had been requested of article 273 of the Code of Penal Procedure, mentioned on page 21 of the report. That article provided that the examining judge would establish the identity of the defendant, state the accusation and inform him that he did not have to make any statement and was entitled to counsel. With respect to the defendant's right to communicate with his counsel, the Code of Penal Procedure established clearly that the defendant had a right to counsel, could consult with him at any time and was not obliged to make any statement.

28. It had been asked why, under article 265 of the Code of Penal Procedure (CCPR/C/1/Add.14, p. 23), it was possible to hear a witness without the presence of the defendant. He pointed out that there was a difference between judicial inquiry procedure and trial procedure. In trial procedure, the presence of the defendant was always necessary. However, in the interests of truth, it was possible during the investigation to hear witnesses without the presence of the defendant. The defendant, however, was then told of the statements of the witness and allowed to contest them or, through his counsel, to ask that he be allowed to confront the witness in question.

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29. Under article 217 of the Code of Penal Procedure (CCPR/C/1/Add.14, p. 23), a person who was suspected of having participated in a criminal act was not permitted to make a statement under oath. Otherwise, a witness could subsequently be charged with the act in respect of which he had given testimony. A defendant had ample prerogatives to ensure his defence, and could not, of course, be required to take the oath.

30. With regard to the holding of hearings in camera (CCPR/C/1/Add.14, p. 24), he pointed out that Malagasy law generally guaranteed hearings in public. Only in exceptional cases - such as those involving minors, morals or barbarous acts that might offend public morality - would the judge order that the trial be held in camera.

31. Turning to the question of deprivation of rights, he drew attention to article 19 of Ordinance No. 62-041 (CCPR/C/1/Add.14, p. 26), under which no Malagasy national or alien could be deprived of the exercise of his civil and family rights save by the decision of a court under the conditions prescribed by the law. Deprivation of civil and political rights, one of the punishments that could be imposed under the Penal Code following conviction for a serious offence, could be pronounced only by a court and by virtue of a law. It entailed deprivation of a broad range of civil and political rights, including the right to hold public office, vote, bear witness and practise certain professions. In the case of less serious offences, too, the convicted person could be deprived of certain of his civil and political rights. The law also provided that, at least once a year, persons deprived of such rights might be able to have them reinstated. The concept of mort civile (permanent deprivation of civil rights) did not exist in Malagasy law.

32. With regard to the exact nature and scope of the fundamental freedoms embodied in the Constitution, he acknowledged that that question was perhaps central to the whole discussion, and was common to a number of developing countries that were seeking a new path of political, economic and social development. The United Nations must take note of the peculiar nature of the legal problems faced by developing countries, particularly in respect of democratic institutions. In various fields, it had demonstrated an ability to comprehend the nature of the problems encountered by newly independent States. There were many examples - as in the case of trade relations - where the principles of equality and freedom were in fact sources of inequality. In the negotiations on the law of the sea, new concepts had been introduced, especially by the developing countries. Furthermore, in referring to the new international economic order, developing countries had drawn attention to the specific character of their problems and constraints, and to concepts such as the right of nationalization and the right to sovereignty over natural resources. Thus, an effort of comprehension was needed in the search for a new international legal order. While he was not suggesting that the provisions of the International Covenants on Human Rights should be re-examined, he emphasized that the greatest consideration should be given to the efforts of the developing countries to tackle their specific problems and their willingness to find specific solutions.

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33. He emphasized the importance of article 16 of the Constitution, under which abuse of constitutional or legal freedoms entailed the deprivation of rights and freedoms, and under which individual rights and freedoms were limited by law and the requirements of a state of national necessity. He also drew attention to article 15, under which every citizen was guaranteed the exercise of the rights and freedoms recognized by the Constitution and the law, provided he acted within the spirit of the Charter of the Malagasy Socialist Revolution and fought for the victory of a socialist society; and to article 28, whereby the freedom of expression, the press and assembly was guaranteed to citizens when exercised in accordance with the objectives of the Revolution and with the interests of the workers and the community, and with a view to strengthening the new democracy for the establishment of a socialist State. Those provisions might be interpreted as running counter to the liberal, democratic tradition inherited by many developing countries. The Malagasy legislator had sought to break with the liberal tradition after the initial period of independence, from 1960 to 1972. While that tradition had been responsible for great progress in human rights, it had also given rise to inequalities, particularly in the political field. Freedom could be regarded as oppressive when applied to a society in which there were basic material, intellectual and cultural inequalities; retention of the full range of fundamental freedoms would constitute an obstacle to the country's evolution.

34. As outlined in the Charter of the Malagasy Socialist Revolution, democratic bourgeois society benefited only the small privileged minority; it was virtually impossible for the unprivileged masses to attain real power. The only alternative to liberal democracy and communist dictatorship was the path of socialism, which had been chosen by many developing countries. It was a difficult path, but each country of the third world was entitled to make its own choice.

35. He also pointed out that the various restrictions of fundamental freedoms enunciated in the Constitution were themselves clearly limited by law. They had a declarative rather than a normative value. The solemn provisions of the Constitution would be the subject of further legislative provisions governing their application, in which the preoccupations of the authors of the International Covenants would certainly be respected.

36. Deprivation of the rights or freedoms embodied in the Constitution was incurred only in case of abuse of freedom. That was a very important concept if the socialist system was to be properly understood. It was a question of the abuse of rights rather than the normal exercise of rights and freedoms. Under a Malagasy law dating from 1962, any act which exceeded the normal exercise of the right concerned was not protected under the law and could entail the responsibility of its author.

37. The kind of debate in which the Committee was currently engaged should enable the countries of the third world, especially those which had opted for socialism, not only to respect the letter and spirit of the Covenant, but also to face realistically the imperatives of their economic development.

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38. Finally, replying to questions concerning the distribution of prerogatives between husband and wife, he agreed that that was a problem faced by many countries. Full equality was certainly the ideal; however, conjugal life required a certain discipline and organization. Thus, in Madagascar it had been found necessary to give a preponderance of prerogatives to the husband, in order to impart unity and direction to the household. There was a logical sharing of tasks. The wife was closely associated with the decisions taken by the husband, and in the case of choice of domicile, the wife was legally entitled to request a separate domicile if she so wished. As to the conditions under which she could leave the domicile, he recalled an old Malagasy custom which had been maintained in the law whereby the wife was entitled, in the event of serious discord, to return to her own family. A period was then allowed to enable the husband to reflect and repent, after which he was required to proceed, accompanied by elders from among his own family, to the wife in order to give proof of repentance and to invite the wife to return to the conjugal home. Refusal to return gave the husband grounds for divorce. That custom reflected the importance of the role of the wife in Madagascar.

39. Sir Vincent EVANS complimented the representative of Madagascar on his replies to questions from members of the Committee, giving them a much better understanding of the situation not only in Madagascar but also in many other developing countries. He accordingly requested that the text of the statement by the representative of Madagascar should be reproduced in extenso in the summary record.

40. Mr. OPSAHL supported that request.

41. The CHAIRMAN gave his assurance that efforts would be made to reflect the statement as fully as possible in the summary record.

The meeting rose at 12.50 p.m.