

MADAGASCAR

CCPR A/33/40 (1978)

258. The Committee considered the initial report (CCPR/C/1/Add.14) submitted by Madagascar at its 83rd, 84th and 87th meetings on 17 and 19 July 1978 (CCPR/C/SR.83, 84 and 87).

259. The report was introduced by the representative of the State party who explained the constitutional development in his country, provided certain additional information and referred to legislation enacted since the preparation of his country's report. He stated that the new Constitution of 1975 was based on a concern both for the construction of the socialist State, which required certain constraints, and for the protection of individual rights and fundamental freedoms. 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.

260. The representative pointed out that the promotion of civil and political rights in his country had been hampered by the lack of judicial facilities, the sharp rise in crime and the worsening of the economic situation as a result of the world economic crisis. The last two factors necessitated the adoption of measures restricting the enjoyment of certain rights and freedoms in order to protect society and the economic order. These measures included, according to ordinances issued in 1976 and 1977, the suspension of the publication of newspapers and periodicals guilty of disturbing public order, of undermining national unity or of offences against public morality; the establishment of six special economic courts and special criminal courts aimed at controlling the crime wave. He also referred to two ordinances that had been enacted as exceptional measures to restrict the movement, or fix the residence, of persons regarded as a threat to public order or known to engage in acts of banditry. He pointed out, however, that these two measures had been restored to very rarely.

261. Members of the Committee expressed their appreciation for the straightforward manner in which the representative of Madagascar had explained the difficulties that his country had encountered in guaranteeing the rights and freedoms laid down in the Covenant.

262. Questions were asked on the role of the judicial system in the implementation of the Covenant: Did citizens have access to courts to obtain remedies for alleged wrongs or to seek a declaration that a particular act, law or decree was unconstitutional without having to institute a civil action and claim damages? What remedies were available for individuals claiming that their rights under the Covenant were violated? Could the Covenant be invoked in proceedings before the courts and administrative authorities? How well known was the Covenant in Madagascar?

263. Members of the Committee asked what the relationship of the Constitution was to the codes, ordinances and decrees mentioned in the report, how the existence of competent and impartial judicial authority was ensured, what the reasons for the establishment of the new special economic and criminal courts were and how those courts operated.

264. With reference to article 3 of the Covenant, information was requested on the law providing for equal rights for men and women in respect of access to employment opportunities and to education, particularly at the higher levels. Did women enjoy the right to vote and to participate in public affairs, and were any women currently serving in the National Assembly or Senate?

265. As regards article 4 of the Covenant, members of the Committee asked whether the “state of national necessity” referred to in the report still existed, and, if it did, how long it would continue to be in force. Confirmation was sought that it did not involve any derogations from the Covenant which should be notified under article 4.

266. Referring to article 6 of the Covenant, information was requested on the range of crimes to which the death penalty could be applied and on the meaning of the words “aggravating circumstances” mentioned in the report as causing certain thefts to warrant the death penalty. It was noted with satisfaction that there had been no executions in Madagascar since 1958.

267. Commenting on article 7 of the Covenant, some members noted that the prohibition of torture and cruel, inhuman or degrading treatment and punishment mentioned in the report appeared to extend only to individuals, but not to public officials. They wondered whether there was a provision in the Constitution or in any legislation which would cover cases where agents of the State were involved in such acts. Clarification was requested with regard to the “good and sufficient reason” referred to in the report that justified the use of violence.

268. As regards article 8 of the Covenant, it was noted that a “political crime” or “serious political offence” was not subject to forced labour. Clarification was requested as to the types of convictions which could lead to forced labour, the nature of an offence which constituted a political crime, whether there was any special régime for political offences, and whether there were political prisoners detained without trial for offences, not involving the use of violence. Further information was sought with regard to the system referred to in the report whereby prison labour could be hired out in the public interest to private companies, and on any statistics that might exist in that respect.

269. In connection with article 9 of the Covenant, members noted that the Code of Penal Procedure would seem to permit extremely long periods of detention before trial, even longer than the period of 20 months mentioned in the report. They asked whether people had in fact been detained for periods of up to 20 months, whether the practice of detention pending trial was common in Madagascar and, if it was, what were the reasons for the delays and whether measures were under consideration to ensure that the accused would be brought to trial as speedily as possible. With reference to a list in the report of institutions under the control of the Prison Administration, questions were asked concerning the purpose of those institutions and the categories of prisoners detained therein.

270. Information was requested on the treatment of prisoners in Madagascar in the light of article 10 of the Covenant, and on the size of the prison population. Was serious attention being paid to prison conditions and the rehabilitation of prisoners? Were juvenile offenders separated from adults?

271. Commenting on article 14 of the Covenant, members requested further explanation of the

conditions under which trials might be held in camera and of the restrictions placed, in a recent amendment to the Code of Penal Procedure, on the defendant's right of pre-trial consultation with his counsel. It was observed that the provision of the Code, under which witnesses were heard without the presence of the defendant, appeared to be inconsistent with the Covenant requirement that the defendant must be tried in his presence. Information was requested on the extent to which the guarantees provided for in the Covenant applied to proceedings before the special economic and criminal courts referred to in the report; was it possible to obtain compensation when a conviction was annulled and, if it was, within what limits?

272. Members of the Committee requested information on the restrictions imposed on the exercise of the freedoms provided for in articles 18, 19, 21 and 22 of the Covenant. What was meant by the expression "neutrality of the State" in the matter of religion? Was the press subject to strict Government control? Was it admissible to express dissatisfaction with Government policy in a peaceful manner? How did Malagasy courts interpret and apply article 28 of the Constitution providing that freedom of expression, of the press and of assembly was guaranteed "when exercised in conformity with the objectives of the revolution"? Clarification was sought on the reference in the report to certain private assemblies that could be deemed to be public. As regards the freedom of association, the representative of Madagascar was asked whether the law recognized a collective decision to strike and what were the legal provisions governing strikes.

273. Referring to article 20 of the Covenant, members of the Committee asked whether war propaganda was specifically prohibited in Madagascar.

274. As regards articles 23 and 24 of the Covenant, more information was requested on the law providing for equality between husband and wife and for the protection of children. Questions were asked concerning, in particular, the system of property rights in marriage, the circumstances under which divorce was possible, the regulation of the question of children born out of wedlock, and whether there were any plans to shift the emphasis in courts dealing with minors from punishment to guidance.

275. Under article 25 of the Covenant, clarification was requested concerning the "legal requirements" referred to in the report for the right to vote and to be elected, and on what was meant by persons being "in possession of their civil and political rights", what was the date of the most recent elections to the National Assembly? Had political parties been able to participate freely in those elections?

276. As regards article 27 of the Covenant, the representative was asked whether minorities existed in Madagascar and, if they did, what provision had been made to safeguard their rights.

277. The representative of Madagascar commented on the observations and questions summarized in the preceding paragraphs. He stated that the incorporation of the provisions of the Covenant into national law was a gradual and ongoing process in his country. The judges who applied domestic laws were cognizant of the international instruments which were binding on them in the manner of natural law. Even though they might not be able to invoke the provisions of the Covenant in judicial practice, judicial decisions in Madagascar were strongly influenced by the spirit and letter of that instrument. In that connection, he pointed out that the text of the Covenant had been published in

the Journal Officiel in the French and Malagasy languages and was analysed in the major newspapers published in the Malagasy language by the Department of Information. Despite such efforts, public awareness of both domestic law and international instruments continued to be relatively limited.

278. Replying to questions concerning the organization of the courts in Madagascar, the representative gave a detailed description of the courts and their competence, with particular emphasis on the underlying reasons for the establishment of the special courts referred to in the report, their main characteristics, the fact that their judgements were monitored by a higher court and the fact that the rights of the defence were scrupulously respected. He stated that one of the best safeguards of the rights of the defendant was the excellent training received by judges and lawyers in Madagascar. Judges enjoyed a special status which guaranteed their independence, and held tenure for life. Strong provisions existed to punish contempt of court. Everyone was entitled to institute legal proceedings, orally or in writing, and a system of legal aid was available for persons with limited means. The law expressly provided that a person whose civil or political rights were being violated could bring action to put an end to such violations.

279. The representative explained the relationship between the various legal documents mentioned in his Government's report. The constitutionality of the laws was determined by the High Constitutional Court. 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.

280. Commenting on questions raised regarding equality between the sexes, the representative pointed out that strict equality between men and women was assured by Malagasy law. However, as in many developing countries, de facto inequality existed in certain cases, which limited the enjoyment of some rights by women, due to certain physical constraints and to their lower standard of education. A vast programme was being undertaken to improve the status of women.

281. Replying to questions under article 4 of the Covenant, he informed the Committee that the "state of national necessity" referred to in the report had been brought to an end by the Constitution of 1975. Only a few exceptional measures had remained part of the law, the most important which was the power to suspend publication of newspapers and periodicals which disturbed public order, national unity or moral standards.

282. As regards the death penalty, he pointed out that it applied only to extremely serious crimes, such as premeditated murder, parricide, poisoning, murder with aggravating circumstances and violent armed robbery.

283. Responding to questions raised under article 7 of the Covenant, the representative stated that the provisions prohibiting torture and similar abuses in his country applied equally to individuals and public officials. Officers of the police found guilty of such offences incurred both administrative and penal sanctions. Investigation of abuses had in the past been conducted at the initiative of judges. The "good and sufficient reason" justifying the use of violence meant that violence could be used in self-defence or on the order of a legitimate authority, the latter assuming both civil and penal liability for such an order.

284. In connection with questions put to him under article 8 of the Covenant, the representative stated that the reference in the report to persons “sentenced for a political crime or serious political offence” did not relate to those whose sole offence had been to speak against the Government, but to persons who committed certain acts dealt with in the Penal Code, such as violations of the security of the State or of press regulations. Persons detained for political offences were not subject to forced labour. As to question regarding the hiring-out of prison labour, he pointed out that that provision survived from a time when manpower had been insufficient for working vast State agricultural concessions, leading to the use of prison labour. Under the socialist system, however, the practice was being reformed and was sure to disappear.

285. Responding to questions under article 9 of the Covenant, the representative stated that detention pending trial was a purely exceptional measure, for an accused person was presumed innocent. The provision in question had been drafted with the intention of providing a minimum of protection against unreasonably long detention. The maximum limit of 20 months 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, he could appeal.

286. In reply to a question raised under article 10 of the Covenant, he stated that a law enacted in 1960 provided that all juvenile offenders be given educational assistance. However, there were cases of true delinquency which called for penal sanctions and, therefore, judges had been empowered to impose a variety of sanctions, ranging from a mere reprimand to confinement in an institution, taking into account the interest of society and the moral and physical health of the juvenile.

287. As regards questions raised under article 14 of the Covenant, the representative stated that the judge could order that the trial be held in camera only in exceptional cases, such as those involving minor, morals or barbarous acts that might offend public morality; that the defendant could consult his counsel at any time; that in trial procedure the presence of the defendant was always necessary but that, in the interest of truth, it was possible during the investigation to hear of the witnesses without the presence of the defendant, who was then told of the statements of the witnesses and allowed to contest them or to ask that he be allowed to confront the witness in question. He stated that all the safeguards established in the Covenant, particularly those relating to the rights of defence, were fully applicable to the proceeding of the special courts.

288. Replying to a question raised under article 18 of the Covenant, the representative pointed out that the expression “neutrality of the State” in the matter of religion indicated that the State recognized the existence of the various religious communities, allowed them to conduct their activities, did not interfere in their internal affairs and strictly applied the established principle of the separation of Church and State.

289. As regards questions put to him concerning the restrictions on the freedoms provided for in articles 19, 21, and 22 of the Covenant, the representative referred to article 28 of the Constitution under which freedom of expression, of the press and of assembly was guaranteed to citizens when exercised in accordance with the objectives of the Revolution and the interests of the workers and the community, and with a view to strengthening of the new democracy for the establishment of a

socialist State. He added that the various restrictions of fundamental freedoms enunciated in the Constitution had a declaratory rather than normative value and that they would be the subject of further legislative provisions governing their application, in which the preoccupation of the authors of the Covenant would certainly be respected.

290. Commenting on questions raised under article 23 of the Covenant, the representative pointed out that it had been found necessary in Madagascar to give a preponderance of prerogatives to the husband in order to impart unity and direction to the household; and in that connection, he explained some of the prevailing local customs which reflected the importance of the role of the wife in his country.

291. Finally, with reference to a question raised under article 25 of the Covenant, 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.

292. The representative of Madagascar informed the Committee that unanswered questions had been referred to his Government, which would submit a written reply to the Committee at a later date.

CCPR A/46/40 (1991)

522. The Committee considered the second periodic report of Madagascar (CCPR/C/28/Add.13) at its 1073rd to 1075th meetings on 15 and 16 July 1991 (see CCPR/C/SR.1073-1075).

523. The report was introduced by the representative of the State party, who explained that a major revision of the 1975 constitution, initiated by the Government and political groups, was under way. The report did not reflect this recently initiated process, which would lead to the adoption of a new institutional framework. Instead, the report described the efforts made over a period of more than a decade to comply with the Government's obligations under the Covenant, despite serious economic and political troubles. The Democratic Republic of Madagascar had never adopted the single party system. From the beginning, multi-party and multi-candidate elections at all levels had been the foundation of political life and universal suffrage the only source of legitimacy. The Constitutional High Court had been increasingly active. The judiciary had been strengthened through the reform of the Supreme Court and press censorship had been abolished. In addition, the proposed revisions of the Constitution now being discussed by the Government and opposition no longer referred to socialism and embraced major reforms of institutions such as the Supreme Council of the Revolution, the Military Committee for Development and the Constitutional High Court.

Constitutional and legal framework within which the Covenant is implemented

524. With regard to that issue, members of the Committee wished to receive information on the organizational structure, competence and powers of the decentralized communities and on decisions, if any, taken by the Constitutional High Court or the Supreme Court, in which reference was made to the Covenant. They also asked what follow-up action had been taken as a result of views adopted by the Committee under the Optional Protocol with regard to Madagascar and what measures had been taken to guarantee the independence of the judiciary, especially with regard to the supervisory body established within the Supreme Court. In that connection, additional information was requested regarding the security of tenure of judges and of their emoluments and the independence of the body appointing them. With regard to the Committee's findings under the Optional Protocol, it was pointed out that taking action on such decisions did not simply involve the release of political detainees but might also involve, where appropriate and in the light of the Committee's findings, the award of compensation to the victims of violations. It was also asked what the new economic policies adopted in Madagascar with the encouragement of the International Monetary Fund and the World Bank had had on the implementation of the Covenant.

525. Further information was sought regarding the work undertaken with a view to the amendment of the Constitution, in particular the general pattern of the reforms envisaged. It was asked whether it was intended to include a provision in the new constitutional text similar to article 12 of the present Constitution concerning the safeguarding of the unity of the socialist legal system. Further information was sought regarding the remedies and compensatory arrangements available to people who believed that their rights had been violated. Information was also requested concerning the relationship between the Charter of the Malagasy Socialist Revolution and the Constitution; the ranking of enactments such as laws, orders and regulations in the country's legal system; the position of international treaties generally and of the Covenant in particular under municipal law;

whether the Covenant was directly applicable and could be relied upon in the courts; and more generally, in the light of the powers given to the executive to enact legislation in certain fields, how the separation of powers was ensured in Madagascar. With regard to the organization of the judiciary, additional information was requested regarding the functions and activities of the Constitutional High Court, the Supreme Court and special tribunals and the redefinition of their functions contemplated under the constitutional reform. Questions were also asked concerning the scope of the Supreme Court's supervision of lower courts; the function of the supervisory body established within the Supreme Court; the reasons for the delay in establishing the peoples courts mentioned in articles 83 and 84 of the Constitution; the way in which the participation by citizens in the oversight of justice mentioned in the report had been assured in practice; the powers of lay magistrates; the reasons for the establishment of so many special tribunals and procedures, notably in the case of offences such as the theft of cattle; the specific character and mode of operation of each of these courts and whether there were possibilities of appeal from their decision.

526. With regard to these questions, the representative of the State party explained that decentralized communities were traditional structures which had been embodied in the administrative, legal and institutional system of Madagascar since 1975. These were assemblies of people practising self-government on a voluntary basis, the members being elected by universal suffrage in the case of the lower communities and by limited suffrage in the case of higher assemblies, the structure being pyramidal. Although the Constitution gave them broad powers for the administration or maintenance of order it had not fully defined them and it was therefore proposed to review their structure.

527. With regard to the organization and independence of the judiciary, the representative explained that no decisions of the Constitutional High Court or the Supreme Court had made reference to the Covenant. The independence of the judiciary was expressly enshrined in article 83 of the Constitution and guaranteed by the Supreme court. The Supreme court had recently been reorganized and a supervisory body of professional judges elected by the People's National Assembly had been established. The organization of the judiciary and the separation between the executive and legislative branches was being redefined. The constitutional reform was intended to establish an executive responsible to Parliament. The Constitutional High Court would shortly be abolished. Cases could be referred to it by the President of the Republic, the People's National Assembly and individuals. It could also take up issues on its own initiative when it believed that the Constitution had been violated.

528. The special tribunals had not been established by the Constitution. Some of them went back to colonial times. The theft of cattle was a menace to society and a serious focus of criminal activity, which had on occasion degenerated into tribal and regional wars. In an effort to control the problem, the State had set up special tribunals which unhappily had not been able to bring the banditry to an end. The creation of the special economic tribunal in response to the growth of the black market and corruption had been intended to serve an essentially psychological purpose. The establishment of other organs had not sufficed to resolve major economic and social problems, and it was proposed to abolish them when the judiciary was reorganized. The peripatetic tribunals were not special tribunals. They were intended to provide for the geographical decentralization of the justice system necessitated by the size of the country and the few judges available.

529. With reference to measures taken in response to findings of the Committee under the Optional Protocol, the representative explained that all the persons mentioned had been released and were leading a normal life in Madagascar or had left the country. One of the complainants was continuing to make complaints to the Committee.

530. The commitments given by the Malagasy authorities to the major international financial and monetary institutions had resulted in serious difficulties. Structural adjustment, successive devaluations, external trade problems and a trend towards the increasing pauperization of a good part of the population were factors that weighed heavily on the Government. Poverty had deepened and unemployment had risen, while the main social indicators had fallen and delinquency was on the increase. In spite of these difficulties, all the elections planned had been organized in a multi-party political atmosphere. The Government had also proposed a revision of the Constitution, including a reference to the Universal Declaration of Human Rights and the repeal of article 108 dealing with the socialist form of the State. The combination of the Charter of the Malagasy Socialist Revolution and the Constitution was an outmoded concept and was not embodied in any of the constitutional drafts under consideration. The Charter was an historical document defining a programme and principles whose socialist connotation had emerged from the traditional structures of Malagasy society. The programme resulted in cumbersome and ineffective administration, which everyone wished to see simplified.

Right of self-determination

531. With reference to that issue, members of the Committee wished to know what was meant by “direct administration” in paragraph 62 of the report. Additional information was requested with regard to the Government’s position regarding recent changes in South Africa; the ethnic and community structure of Madagascar; the expected effects of the new policy of decentralization, particularly on the highly centralized system of administration inherited from colonial times; the possible organization of new elections in Madagascar in the near future; and, more generally, the implementation of the right to self-determination in the light of article 12 of the Constitution.

532. In his reply, the representative of the State party explained that the expression “direct administration” designated the colonial administration imposed by France after 1896. The 1975 Constitution had inaugurated decentralization by assigning broader functions to the local communities. The purpose of these measures had been to eliminate the vestiges of colonial administration and of the feudal system by enabling the population to decide its own form of administrative organization. This decentralization had been the subject of sharp criticism and new forms of organization were under consideration. During the 1989 elections, the President of the Republic had been elected by 52 per cent of the votes cast, but the legitimacy of the result had been challenged. The question of the revision of the electoral system was under consideration and new elections would logically be organized later.

533. With regard to relations with South Africa, he emphasized that Madagascar had always defended the rights of the black population of South Africa and had employed all possible means to assist the national liberation movements. In view of recent developments in South Africa, Madagascar had decided, after consultation with the African National Congress, to resume direct relations pending a decision of the Organization of African Unity regarding the re-establishment of

diplomatic relations.

Non-discrimination and equality of the sexes

534. In connection with that issue, members of the Committee wished to receive information on remaining areas of discrimination on the basis of sex, in that particular with regard to the administration of the household, and on specific measures being taken to overcome them; on the extent to which the rights of aliens were restricted as compared with those of citizens; and on the main legislative limitations or prohibitions affecting aliens. It was also inquired whether there were any plans systematically to remove from laws and regulations such outdated provisions as article 4 of the Code of Commerce, which seemed not to be in line with the Covenant; what recourse was open to women in cases of discrimination; and whether there was any limitation in the recruitment of women magistrates.

535. In his reply, the representative of the State party explained that women played a full part in economic, social and political activities and occupied an important place in the life of the nation and that during the past 12 years the Government had made every effort to eliminate discrimination on the basis of sex. There were no restrictions on the recruitment of women magistrates, and in fact there were more female than male magistrates. There were, however, some areas, such as private employment, inheritance rights or the marriageable age of women, in which discrimination still occurred. Another problem was the continuing practice of polygamy and, in some remote villages, of contractual marriages. At the present time, quite a number of women held high posts in the administration, but the situation was different lower down, both in urban and rural areas.

536. Aliens enjoyed all freedoms in Madagascar, including freedom to settle. Their voting rights, however, were limited and they were subject to administrative regulations in some economic areas, such as the purchase of real estate.

State of emergency

537. With regard to that issue, it was inquired what procedures had been adopted for implementing emergency legislation; whether the National People's Assembly had any part to play in the enactment of such legislation; and whether any progress had been made towards stabilizing the security situation in Madagascar.

538. In his reply, the representative of the State party explained that the main reason for the unstable state of the country was the theft of cattle, an endemic activity which was difficult to stop in view of the high prices which thieves were able to obtain and due to the lack of adequate financial resources in the budget for law and order. Originally an inter-village matter, the theft of cattle was now practised on a large-scale basis. No fully successful means of dealing with cattle thieves had yet been devised, and the Government had always been hesitant in calling out the army for that purpose. A state of emergency had never been declared by the Government, but emergency provisions had been applied in some towns and regions following riots, demonstrations or natural disasters.

Right to life

539. With reference to that issue, members of the Committee wished to know how many of the 51 death sentences pronounced between 1977 and 1987 had been carried out; whether the authorities had been successful in putting a stop to extrajudicial executions of criminals in the rural areas; what measures had been taken and results achieved in reducing the rate of infant mortality and protecting maternal and child health; and whether measures had been taken to investigate the loss of life and alleged extrajudicial executions resulting from military activities, in particular during operations in April 1988, to bring those responsible to justice and to prevent any recurrence of such incidents. Further information was also requested regarding the situation of persons who had been sentenced to death.

540. In his reply, referring to the events in 1988, the representative of the State party said that the army had been called upon by the civil authorities to participate in those operations and that there had been no summary executions. The army had been reluctant to participate in the operations, which had resulted in battles between cattle thieves and security forces and which had caused the death of about a dozen police officers since 1975. Furthermore, the army had also, in certain cases, been called upon to separate groups from rival villages that had been fighting one another. Every effort had been made to identify persons responsible for the excesses, and several hundred leaders of decentralized communities who had incurred collective responsibility for such excesses had been brought to trial and given severe prison sentences. There had also been several cases where the Government had been obliged to imprison an entire village the inhabitants of which had acknowledged their responsibility.

541. Since 1956, no death sentence had been carried out in Madagascar, and there was a continuing debate regarding the abolition of the death penalty. Although general measures were being taken to reduce the rate of infant mortality and to protect maternal and child health, no progress had been made due to lack of resources.

Treatment of prisoners and other detainees

542. With regard to that issue, members of the Committee wished to know whether there had been any complaints of torture and/or cruel or inhuman treatment against public officials and, if so, whether those guilty of such offences had been punished; to what extent the United Nations Standard Minimum Rules for the Treatment of Prisoners were complied with and whether they were made known and accessible to prisoners; what measures were being taken to address the problem of prison overcrowding; whether consideration was being given by Madagascar to acceding to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, whether prison overcrowding had ever resulted in the death of prisoners; what remedies were available in cases of torture; and whether the Government had carried out any educational campaigns against torture.

543. In his reply, the representative of the State party emphasized that his Government had received no complaints of torture or cruel or inhuman treatment against public officials and that a hierarchical surveillance structure had been established in prisons with regard to prison guards. Legal action against torture came within the framework of general legal procedures and there was no specific legislation in that respect. No specific educational measures were being taken to make the population more aware of such problems, except for those included in the training of penitentiary and other relevant personnel. Madagascar was, however, facing a serious problem of prison

overcrowding since virtually no prisons had been built since independence, during which time the population had risen from 3 to 12 million. Furthermore, there had been deaths as a result of epidemics and malnutrition, the latter particularly when there had been a shortage of rice for the whole population of the region. An attempt had been made to improve the situation by granting provisional release, moving prisoners to the countryside where they could engage in agricultural work, allowing families to provide food for detainees in addition to that supplied in prison and appointing prison doctors to combat the risk of epidemics.

Liberty and security of the person

544. In connection with that issue, members of the Committee wished to know what the maximum period of pre-trial detention was in law and practice; how quickly after arrest a person's family was informed and how soon after arrest a person could contact a lawyer; whether there were any particular legal actions that could be taken in cases of detention, such as habeas corpus; and whether, in view of the long delays in bringing a person to trial, measures had been taken to reduce the number of those being held in detention pending trial and increasing the number of persons released on bail. In addition, it was asked why the Government had not repealed the ordinances sanctioning failure to fulfil a contractual obligation by imprisonment, which was not in conformity with article 11 of the Covenant. Further information was also requested on the events of May 1990, which had led to the detention of persons who subsequently alleged that they had not had prompt access to their families or lawyer and had been subjected to maltreatment during their detention, and concerning the nature of non-military national service and its relation to the economic and social development of the country.

545. In his reply, the representative of the State party said that the maximum length of pre-trial detention, in law, was six months. In practice, however, such detention was commonly as much as 18 or 20 months due to the lack of magistrates and to other material problems. The person's family was informed as rapidly as possible so that family members could bring food to the detainees and the person could contact a lawyer immediately. Usually, the family arranged for legal assistance, but in other cases the administration ensured that the person had the services of a lawyer. There were no special legal remedies in cases of detention, such as habeas corpus, other than the usual provisions prohibiting arbitrary arrest. Although bail was not a common practice in Madagascar, the provisional release of detainees was practised systematically in view of the overcrowding in the prisons, as well as the length of pre-trial detention.

546. Responding to other questions, the representative said that in May 1990, some 10 armed persons had forced their way into the broadcasting centre and held the personnel there hostage. Emergency measures had been taken following their capture. The persons concerned had had access to lawyers, although discretion had been maintained for a certain period in order to find the persons' accomplices. Legal provisions relating to article 11 of the Covenant were under review and would be repealed or amended as appropriate. The judiciary itself had also recognized that the ordinances in question were irrelevant and inconsistent with the Covenant and the Constitution. The practice of non-military national service dated back to the time of the literacy campaigns in the 1970s and 1980s, for which there had been insufficient teachers. The Government had therefore decided to mobilize young men and women with the necessary level of education and to combine literacy work, for which they received payment, with their military service. Subsequently, the concept of national

service had been extended, as many young people had wanted to undertake tasks other than teaching and had been offered the possibility of being appointed to enterprises or administrative departments as assistants receiving a token salary.

Right to a fair trial

547. With regard to that issue, members of the Committee wished to know whether any progress had been achieved since the submission of the report in respect of measures designed to improve the system of justice described in paragraph 173 of the report. In addition, further information was requested regarding the criteria applicable to the qualifications of the seven members of the Constitutional High Court; on the new system for reviewing judicial decisions; and on the age of criminal responsibility.

548. In his reply, the representative of the State party said that the number of lawyers had risen considerably and that funding for the Ministry of Justice and the judicial administration had been increased. Article 89 of the Constitution, which had often been criticized for the powers that it conferred on the President in regard to the appointments to the Constitutional High Court, had become obsolete and had been replaced by a new provision. Under that provision, membership of that court had been modified so as to ensure that presidential appointees did not constitute a majority. There were a few centres for the re-education of juvenile delinquents. The age of criminal majority was set at 18.

Freedom of movement and expulsion of aliens

549. With reference to that issue, members of the Committee wished to know what obligations had to be satisfied by an alien, pursuant to article 21 of Ordinance No. 62-041 of 19 September 1962, in choosing his residence, and whether there was a possibility of an appeal to the courts against an expulsion order. In addition, members asked whether, in the context of the legal reform process, the bringing of cases to the Committee under the Optional Protocol would no longer be considered as legitimate grounds for the expulsion of an alien or for the punishment of a national.

550. In his reply, the representative of the State party said that aliens enjoyed freedom of movement and freedom to reside in Madagascar, provided that they were not the subject of an expulsion order. They were obliged to declare their residence to the authorities of the locality in which they settled and could lodge complaints or appeals with the administrative division of the Supreme Court in case of denial of rights or expulsion. Appeals against expulsion orders were heard by an ad hoc commission, composed of a magistrate and representatives of the police and the administrative authorities.

551. Referring to the specific case involving a correspondent of a non-governmental organization who had lodged a complaint before the Committee, the representative explained that the expulsion in 1983 had occurred because of that individual's political activities and not for his other actions. As part of the revision of the Constitution that was under way, full freedoms, including the right of assembly and the right to engage in political activities, would be guaranteed under the law. However, the Malagasy State would continue to defend itself against what were deemed to be attempts at destabilization and subversion of the social order.

Right to privacy

552. In connection with that issue, members of the Committee wished to know under which circumstances and by whom telephone-tapping or control of the mail could be authorized; whether there had been any allegations of unlawful interference during the period covered by the report with privacy in general and, in particular, with home and correspondence and, if so, how such complaints had been dealt with.

553. In his reply, the representative of the State party said that strict respect for privacy and the inviolability of correspondence were provided for by the Constitution and that telephone-tapping could only be authorized by an examining magistrate in the course of investigations.

Freedom of opinion and expression; prohibition of propaganda for war and of incitement to national, racial or religious hatred

554. With regard to those issues, members of the Committee requested clarification of the reference in the report to “political prisoners” and of the offences and circumstances relating to their imprisonment, and wished to receive information on current legal guarantees with respect to freedom of the press and on their implementation. They also wished to know how the state monopoly on radio and television affected freedom of expression; how the requirement for the exercise of freedom of expression “in conformity with the objective of the Revolution”, as provided by article 28 of the Constitution, had actually been addressed in law and practice; whether there had been any adverse consequences for those not observing this limitation; what limits were imposed on the enjoyment of freedom of opinion and expression by the need to ensure due respect for the person of the Head of State and state institutions; and whether, notwithstanding the abolition of censorship, there had been any seizures or confiscations of books, newspapers or other publications. In addition, clarification was requested of the apparently large number of prosecutions and convictions for libel and slander.

555. In his reply, the representative of the State party emphasized that there were currently no political prisoners in Madagascar and that, since the ending of the state of emergency, a series of measures had progressively restored freedom of the press. There had in the past been strict control over printed matter imported from abroad, and obscene and pornographic material had systematically been confiscated. In that regard, provisions regarding statutory deposit of publications as well as all forms of press censorship had now been abolished. The state monopoly on radio and television was currently under thorough review and a private company was being set up to produce programmes independently from the State, the principal concern being to make radio and television profitable operations independent of all political interests. Many private radio and television stations were already functioning, and broad access to television by satellite had, in fact, eliminated the last vestiges of state monopoly. Under the new press law, insulting statements concerning the Head of State would no longer be a criminal offence.

Freedom of assembly and association and the right to participate in the conduct of public affairs

556. In connection with those issues, members of the Committee wished to receive information on progress made in efforts aimed at greater trade union freedom; on current efforts to liberalize

political life by introducing a multi-party system; and on the existing political parties. They asked how political parties were formed and registered; what legal requirements related to the right to vote or to be elected; and how the decentralization of communities had promoted the rights under article 25 of the Covenant. They also asked what the term “revolutionary organizations” meant in Malagasy law; whether trade unions and non-governmental organizations were now regarded as such organizations; for what reasons an association could be dissolved and what machinery had been set up to prevent abuses in that regard; what conditions and restrictions were imposed by law on the exercise of the right to strike; whether changes had been made in the ways public officials could exercise the right to form trade unions in order to bring them into line with the ILO Convention concerning Freedom of Association and Protection of the Right to Organize; and why seamen did not enjoy freedom of association. Further information was also requested on the rights of workers who were not members of one of the trade unions belonging to the National Front.

557. In his reply, the representative of the State party stressed that one of the purposes of the promulgation of the 1975 Constitution had been to mobilize the population and encourage it to play a more active role in the conduct of the country’s affairs. That had led to the establishment of decentralized communities and “revolutionary organizations” composed of political and trade union organizations. The planned rationalization of the activities of the seven main political groups that had adopted the Charter of the Malagasy Socialist Revolution had nevertheless not yielded the expected results and, in 1989, the National Front had broken apart. Since then, the law relating to trade union and political bodies had been completely changed and the requirement that trade unions had to be affiliated with a member party of the National Front had been eliminated. The procedures, under the 1975 Constitution, governing the establishment and activities of political parties had also gradually been replaced by less strict requirements. There were now 33 political groups of varying importance. According to a constitutional draft amendment, all Malagasy citizens without distinction were eligible to vote and to be elected, the voting age being 18. The establishment of the decentralized communities had created a virtually permanent electoral process at all levels and had been an incomparable school for civic and political education. A debate was now under way on the redefinition of the powers to be granted to these bodies.

558. Trade unions were powerful forces in Madagascar and, since 1975, dialogue and negotiation had been given priority over confrontation. In addition, the earlier provisions relating to trade union rights had been abolished and the free exercise of the right to strike had been explicitly recognized in the new draft article 23 of the Constitution and guaranteed by legal decisions. In the minds of the lawmakers, the restrictions which might be imposed related to the need to maintain public order and guarantee the security of the State. Many trade unions had resorted to strikes in connection with the current intensive activities, which gave them an opportunity to express their grievances concerning wages and conditions of work. Many Malagasy sailors worked on foreign vessels, and the question of their trade union rights therefore had to be considered at the international level.

Protection of the family and children

559. With regard to that issue, members of the Committee asked what further progress had been achieved, if any, since the submission of the report, in enacting legislation to ensure an equal share of responsibilities, duties and rights between spouses; and, in that regard, whether any of the bills mentioned in paragraph 226 of the report had been enacted. Further information was also requested

on procedures governing filiation and the granting of Malagasy nationality, particularly in the case of children born of unknown parents, and it was asked whether Madagascar intended to ratify the Convention on the Right of the child.

560. In reply to the questions asked, the representative of the State party indicated that there would be no constitutional changes in the law governing the protection of the family and children, which was based on customary specificities and historical facts. The provisions relating to the sharing to community property had been amended by an act of 20 July 1990, which established equality between the spouses. The idea of the husband as head of household was also disappearing in Malagasy law. Madagascar, a country which had a very young population and which therefore attached a great deal of importance to the rights of the child, had signed the Convention on the Rights of the Child and the Convention relating to the Status of Stateless Persons. The criteria used to determine the nationality of a child born of unknown parents might seem arbitrary, but they were based on an old tradition whereby the members of grass-roots communities were chosen by co-option; in such cases, the judge requested the views of the community where the child lived before deciding whether or not to give it Malagasy nationality. Madagascar, a country of transit for many Asian immigrants, could not consider the possibility of giving Malagasy nationality to all children born on its soil.

Rights of persons belonging to minorities

561. With reference to that issue, members of the Committee wished to receive information on minorities that had not yet fully succeeded in taking their place in the Malagasy nation. They also asked what the term “minority” meant in Malagasy law; whether the authorities of that country knew about the “threshold of tolerance” concept; and whether assistance was given to persons in Madagascar who did not speak the official language, particularly in their contacts with the administrative or judicial authorities.

562. In his reply, the representative of the State party stressed that, since Madagascar was a country settled by immigrants, many foreign minorities had been living there for centuries. Those minorities had integrated and had formed the Malagasy nation. The influence of the European, Arab/Muslim, Asian, Chinese, African and Indonesian communities varied from region to region, but it was still strong particularly in the economic field. With the exception of regrettable incidents that had taken place against Indian/Pakistanis and the Comorian minority in 1976, the number of foreigners did not give rise to any real problems in Madagascar, and there was thus no need for the “threshold of tolerance” concept. Any member of a minority who had Malagasy nationality was fully integrated into society. The members of foreign minorities did not take part in the political life of the country, but they had their own schools and freedom to practice their religion and, in some cases, the State gave them subsidies for instruction in their language.

Concluding observations

563. Members of the Committee welcomed the quality of the report, which, although it had been late, was in keeping with the general guidelines concerning the form and contents of reports (CCPR/C/20), and thanked the Government for its observations (CCPR/C/40) on the Committee’s general comment 13 (21) relating to article 14. They also stressed that the dialogue between the

Committee and the Malagasy delegation had been particularly constructive, since the delegation had endeavoured to reply frankly to the questions asked by the members of the Committee without trying to conceal problems. The clemency that had been shown with regard to prison sentences and the various legislative reforms that had already been undertaken were signs of progress in the protection of human rights. It was nevertheless noted that structural readjustment policies had had a considerable impact on the implementation of the rights guaranteed by the Covenant.

564. It was pointed out that the current reform of the Constitution provided a good opportunity to give the Covenant a prominent place in Malagasy law and to provide for effective remedies so that citizens who considered that their rights under the Covenant had been violated could invoke that instrument in the courts. Such a reform had also provided an opportunity to reorganize the judiciary regulations in order fully to guarantee the independence of the judiciary in relation to the other powers, to eliminate courts of special jurisdiction and to bring before the ordinary courts cases which had been referred to them. Some concerns were expressed with regard, for example, to conditions of detention resulting from prison overcrowding; the local authorities' apparent lack of control over thefts of cattle and the resulting desire for retaliation; the duration of pre-trial detention; the exercise of trade union rights; the granting of legislative powers to the executive; the question of political prisoners; and, in general, the implementation of articles 6, 7, 9, 10, 11 and 14 of the Covenant.

565. The representative of the State party assured the members of the Committee that the comments that had been made would be transmitted to the Government and stressed the importance his country attached to the type of technical assistance for training that the United Nations Centre for Human Rights had given it on a number of occasions.

566. In concluding the consideration of the second periodic report of Madagascar, the Chairman thanked the Malagasy delegation for its spirit of cooperation and its frank replies to the questions asked by the members of the Committee. He expressed the hope that all the Committee's comments and suggestions could be transmitted to the competent authorities and, in particular, to the legislative body that was carrying out the reform of the Constitution. In that connection, he stressed that one way of removing any ambiguity about the primacy of the provisions of the Covenant over national laws would be to incorporate the Covenant in national legislation.