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COMMITTEE ON ECONOMIC, SOCIAL
AND CULTURAL RIGHTS
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**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLES 16 AND 17 OF THE COVENANT**

Concluding observations of the Committee on Economic, Social and Cultural Rights

MADAGASCAR

1. The Committee considered the second report of Madagascar on the implementation of the Covenant (E/C.12/MDG/2) at its, 39th, 40th and 41st meetings, held on 9 and 10 November 2009 (E/C.12/2009/SR. 39, 40 and 41), and adopted, at its 54th and 55th meetings, held on 18 and 19 November 2009, the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the second report of the State party but regrets the 17 years delay in its submission. The Committee also welcomes the written replies to the list of issues (E./C.12/MDG/Q/2/Add.1), as well as the frank and constructive dialogue with the delegation which included a number of representatives from different ministries.

B. Positive aspects

3. The Committee welcomes the ratification by the State party of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 13 December

2005, the two Optional Protocols to the Convention on the Rights of the Child, on 22 September 2004, as well as the signing, in 2007, of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. It also welcomes the ratification of International Labour Organization (ILO) Conventions No. 98 (1949) concerning the Application of the Principles of the Right to Organise and to Bargain Collectively, No. 105 (1957) concerning the Abolition of Forced Labour, No. 138 (1973) concerning the Minimum Age for Admission to Employment and No. 182 (1999) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour. It further welcomes the ratification by the State Party, in 2008, of the Convention on the Nationality of Married Women.

4. The Committee welcomes the adoption of a new Constitution on 18 September 1992, which incorporates a wide range of human rights, including a number of economic, social and cultural rights. It also welcomes information that international treaties duly ratified, including the Covenant, are considered to be an integral part of national law and can be invoked before the domestic courts. The Committee further welcomes the important legislation enacted by the State party, namely:

- Act No. 2007-022 of 20 April concerning marriage and systems of matrimonial property, which sets the marriage age at 18 for both girls and boys;
- Act No. 2007-023 of 20 August 2007 on the rights and protection of the child which covers child victims of all forms of abuse;
- Act No. 97-044 of 2 February 1998 on the rights of persons with disabilities;
- Act. No. 2005-1040 of 14 October 2006 on the protection of persons affected by HIV/Aids;
- Acts Nos. 94-033 of 13 March 1995 and 2004-004 of 26 July 2004 on free and compulsory primary education.

5. The Committee notes with appreciation the recent adoption of the Madagascar Action Plan 2007-2012 to combat poverty and foster development.

C. Factors and difficulties impeding the implementation of the Covenant

6. The Committee acknowledges that the State party has faced a serious political crisis, which has reduced its ability to fulfil its obligations under the Covenant.

D. Principal subjects of concern and recommendations

7. The Committee regrets that the report of the State party does not contain sufficiently updated information and statistics that would enable it to fully assess how the rights set out in the Covenant are respected in the State party.

The Committee recommends that the State party provide updated information in its next periodic report on the practical application of the Covenant, including through disaggregated data and relevant statistics, regarding the implementation of its laws and the practical results of plans, programmes and strategies carried out in the various fields covered by the Covenant.

8. The Committee is concerned about the lack of implementation of Covenant provisions by domestic courts, despite the fact that international treaties are part of domestic legislation and that several rights enshrined in the Covenant were incorporated into the 1992 Constitution.

The Committee urges the State party to take immediate steps to ensure that Covenant provisions can be invoked by all before the domestic courts and to include in its next periodic report precise updated information on judicial decisions which give effect to rights under the Covenant.

9. The Committee is concerned that human rights education in schools and training for civil servants and members of the judiciary do not integrate economic, social and cultural rights.

Recalling the principles of interdependence and indivisibility of human rights, the Committee recommends that the State party provide education on human rights to students at all levels of education, and human rights training for members of all professions and sectors that have a direct role in the promotion and protection of human rights, including judges, lawyers, civil servants, teachers, law enforcement officers, the police and the military.

10. The Committee is concerned that the State party maintains its reservation to article 13, paragraph 2, of the Covenant, more particularly as it relates to primary education.

The Committee calls upon the State party to consider withdrawing its reservation to article 13 (2) of the Covenant not to further “postpone its application of article 13, paragraph 2, of the Covenant, more particularly in so far as it relates to primary education, since, while the Malagasy Government fully accepts the principles embodied in the said paragraph and undertakes to take the necessary steps to apply them in their entirety at the earliest possible date, the problems of implementation, and particularly the financial implications, are such that full application of the principles in question cannot be guaranteed at this stage.”

11. The Committee remains concerned that corruption and the impunity associated with it persist in the State party, impeding the enjoyment by all of economic, social and cultural rights, despite efforts made by the State party to combat corruption.

The Committee recommends that the State party take concrete measures to effectively combat corruption, in particular to prosecute cases of corruption and punish those who are responsible; to conduct awareness-raising campaigns on the negative effects of corruption; to ensure the transparency of conduct of public authorities, in law and in practice; to enact anti-corruption legislation and train

police and law enforcement officers, prosecutors and judges on the strict application of the legislation. The Committee also recommends that the State party provide in its next periodic report detailed information about progress made, and obstacles encountered, in combating corruption.

12. The Committee is concerned that Law No. 2007-036 of 14 January 2008, relating to investment law which allows land acquisition by foreign investors, including for agricultural purposes, has an adverse impact on the access of peasants and people living in rural areas to cultivable lands, as well as to their natural resources. The Committee is also concerned that such land acquisition leads to a negative impact on the realization by the Malagasy population of the right to food. (art. 1)

The Committee recommends that the State party revise Law No. 2007-037 and facilitate the acquisition of land by peasants and persons living in rural areas, as well as their access to natural resources. It also recommends that the State party carry out a national debate on investment in agriculture and seek, prior to any contracts with foreign companies, the free and informed consent of the persons concerned.

13. The Committee is concerned that discrimination against the descendants of slaves persists, despite the legislation protecting against discrimination. (art. 2)

The Committee urges the State party to take appropriate measures to eliminate discrimination against the descendants of slaves, including by applying the existing legislation against discrimination, to take awareness-raising measures to combat persistent negative attitudes and stereotypes and to include in the next periodic report information on the situation of the descendants of slaves.

14. The Committee is concerned that under the current Nationality Code, children born to a mother of Malagasy nationality and a father of foreign nationality cannot acquire Malagasy nationality. (arts. 3 and 10)

The Committee urges the State party to adopt revised legislation, so as to guarantee Malagasy nationality to children born to a mother of Malagasy nationality and a father of foreign nationality, on an equal footing to children born to a Malagasy father and a mother of foreign origin.

15. The Committee is concerned about the absence of framework legislation on equality between women and men. (art. 3)

In the light of general comment No. 16 (2005) on the equal right of men and women to the enjoyment of all economic, social and cultural rights (art. 3), the Committee recommends that the State party adopt specific legislation on equality between women and men on which strategies and plans could be built.

16. The Committee is concerned that, in practice, women's unequal status in marriage and family matters owing to customary and traditional attitudes remains, despite the adoption of Act No. 2007-022 of April 2007 concerning marriage and systems of matrimonial property, which sets the age of marriage at 18 for girls and boys, and guarantees the same rights and obligations to spouses in the household.

The Committee encourages the State party to implement effective measures, in particular by pursuing the dialogue with traditional chiefs, on strengthening understanding of the equality between women and men, and to enhance a positive and non-stereotypical portrayal of women.

17. The Committee is concerned that, under article 83 of Law No. 68-012 of 4 July 1968 on succession, women are still discriminated against regarding inheritance of immovable property within their families.

The Committee recommends that the State party urgently take comprehensive measures to eliminate practices and stereotypes which discriminate against women and ensure the effective implementation of existing legislation concerning marriage and systems of matrimonial property, as well as the exercise of equal rights among spouses in households. It also recommends that the State party implement legislation which allows women to inherit immovable property on an equal footing with men.

18. The Committee is concerned about the high rate of underemployment in the State party, in particular among the vulnerable population and that it has greatly increased among women. It is further concerned about the precarious working conditions and low wages in the formal and informal sectors. (arts. 6 and 7)

The Committee recommends that the State party develop effective employment strategies focusing on young people and women, as well as legislation and policies aimed at improving the working conditions and wages in the formal and informal sectors.

19. The Committee is concerned that Law No. 2007-037 of 14 January 2008, relating to free zones and enterprises prevents persons working in such zones from enjoying the same rights and protection accorded to other workers by the Labour Code. (art. 7)

The Committee calls on the State party to amend the law relating to free zones and enterprises, in order to apply the Labour Code to persons working in these areas.

20. The Committee is concerned that rural women, informal sector workers and some domestic workers are not covered by any form of social security. (art. 9)

The Committee recommends that the State party consider how to extend the coverage of social security to rural women and informal sector workers and implement social security legislation for all domestic workers. The Committee also

requests the State party to provide comprehensive and precise information on the measures taken, as well as statistics, in its next periodic report.

21. While noting that child labour is prohibited by law, the Committee is concerned that it remains widespread in the State party and that children are employed in agricultural and mining industries, as well as for domestic service in rural and urban areas. The Committee is also concerned that despite various programmes and plans adopted, the practical results remain inadequate. (art. 10)

The Committee recommends that the State party:

- (a) Reinforce the legal framework to combat child labour and adopt all the necessary legal and judicial measures to eradicate this phenomenon;**
- (b) Support and reinforce the role of the family as an essential element for the protection of children and combat against child labour;**
- (c) Take all necessary measures to implement effectively all policies against child labour, including through awareness-raising campaigns for the public on protection of children, strengthen preventive measures, and prosecute and punish those who are responsible.**

22. The Committee notes with concern that, despite being prohibited by law, sexual harassment in the workplace is widespread, in particular in the export processing zones. The Committee is also concerned that many sexual harassment cases remain unreported. (arts. 7 and 10)

The Committee urges the State party: (a) to implement the law prohibiting sexual harassment and to conduct awareness-raising campaigns against sexual harassment in the workplace, including in the export processing zones, and (b) to ensure that victims can lodge complaints without fear of retaliation and that those who are responsible are prosecuted and punished. The Committee also requests that the State party provide information in its next periodic report on the number of complaints and measures taken against those responsible.

23. The Committee is concerned about the prevalence of violence against women, including marital rape, which is not recognized as a criminal offence, and violence against children. It is also concerned that such violence is socially tolerated and goes unreported because of a practice of silence, resulting in victims not lodging complaints against perpetrators. The Committee is further concerned about the lack of information and disaggregated data on domestic violence. (art. 10)

The Committee recommends that the State party combat violence against women and children, by implementing the existing legislation and adopting comprehensive measures to address all forms of domestic violence. The Committee also recommends that the State party ensure victims' access to justice, by encouraging

the reporting of crimes and that perpetrators are prosecuted and punished. The Committee calls upon the State party to ensure that marital rape constitute a criminal offence. It requests the State party to raise public awareness through the media and education programmes on violence against women and children. The Committee also requests that the State party provide information on the impact of such measures, as well as data on the prevalence of various forms of such violence, disaggregated by age groups.

24. The Committee is concerned about the persistence of trafficking in women and children, including sex tourism, in the country, in particular for girls living in poverty in rural and remote areas, despite the adoption of Act. No. 2007-038 of 14 January 2008 amending and supplementing certain provisions of the Criminal Code concerning measures to prevent trafficking in persons and sex tourism, and the Act ratifying the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol), as well as awareness-raising campaigns on sex tourism. The Committee regrets the absence of data relating both to trafficking and prostitution. (art. 10)

The Committee urges the State party to effectively implement the legislation against trafficking, to intensify its efforts to combat trafficking in persons, especially in women and children, in particular for the purposes of sexual exploitation. It also recommends that the State party strengthen its programmes and information campaigns to prevent trafficking, to provide mandatory training for law officials and judges, and to prosecute and punish those responsible. It further recommends that the State party address the root cause of trafficking and exploitation by increasing its efforts to improve education for children and create employment-generating activities, in particular for women in rural and remote areas.

25. The Committee notes with grave concern that, although the State party has adopted a Poverty Reduction Strategy, almost 69 per cent of the population continue to live in poverty, especially women, young people and persons living in rural and remote areas. The Committee is also concerned that about 50 per cent of the population of the State party has no access to clean drinking water and adequate sanitation facilities, especially in rural areas. (art. 11)

The Committee recommends that the State party allocate sufficient funds for the implementation of its poverty strategy and ensure the full integration of economic, social and cultural rights, as recommended by the Committee in its Statement on Poverty and the International Covenant on Economic, Social and Cultural Rights (E/C.12/2001/10). The Committee also urges the State party to take immediate and effective measures to ensure that the population has affordable access to clean drinking water, in line with its general comment No. 15 (2002) on the right to water (arts. 11 and 12 of the Covenant).

26. The Committee is concerned that the State party has no strategy or programme in place to address the problem of homelessness, to examine its extent and to ensure an adequate standard of living for the homeless. (art. 11)

The Committee urges the State party to adopt a strategy or programme to address the problem of homelessness, after examining its extent and causes, so as to ensure an adequate standard of living for the homeless. The Committee also invites the State party to include in its next periodic report disaggregated data by sex, age and rural/urban population on the extent of homelessness in the State party.

27. The Committee is concerned about the precarious situation of many families who were forcibly evicted from their homes without being provided with adequate compensation or offered alternative accommodation. (art. 11)

The Committee urges the State party to take all appropriate measures to ensure that forced evictions take place as a last resort and that persons forcibly evicted from their homes are provided with adequate compensation or offered alternative accommodation, in line with the guidelines adopted by the Committee in its general comment No. 7 (1997) on the right to adequate housing (art. 11 (1) of the Covenant): Forced evictions. The Committee also invites the State party to include in its next periodic report disaggregated data by sex, age and rural or urban population on the number of forced evictions taking place in the State party.

28. The Committee is concerned about substandard conditions of detention in prisons, in particular that prisoners suffer from malnutrition and lack of health care. The Committee remains concerned about the degree of overcrowding of prisons and detention facilities in the State party, while noting explanations given by the State party. (art. 11)

The Committee urges the State party to adopt emergency measures to combat the persistent problem of malnutrition in prisons, including by increasing the resources allocated to food for the prisoners and providing them with access to health care. It also recommends that the State party provide information on the results achieved by the programmes carried out to improve the food in prisons. The Committee also urges the State party to take appropriate measures to reduce and prevent overcrowding in prisons, including by using alternative measures of punishment.

29. The Committee is concerned that life expectancy remains very low in the State party: 58.1 years for women and 56.3 for men. It is also concerned that the maternal mortality rate and infant under-five mortality (93 per cent) remain very high due, inter alia, to lack of access to adequate maternity health-care centres, in particular for pregnant women living in rural and remote areas, and for children who suffer from chronic malnutrition due to the absence of adequate health care and living conditions. The Committee also regrets the lack of precise information on the outcomes of plans carried out by the State party and on the insufficient budget allocations for health care. (art. 12)

The Committee recommends that the State party:

(a) Strengthen its National Health Plan with clear objectives aimed at increasing the life expectancy rate and reducing adverse living conditions;

- (b) Take necessary measures and continue efforts to improve access by women to basic obstetric and neonatal care and to basic health-care centres, in particular in rural and remote areas;**
- (c) Reinforce its National Children's Health Programme to reduce child mortality, including by addressing the adverse living conditions of children and improving access to vaccination for children under five;**
- (d) Increase the resources allocated to health care;**
- (e) Provide information about, and precise data on, progress made in improving the health situation in the State party.**

30. The Committee is concerned about the insufficient access of the population, especially of women and children, to basic family planning and sexual and reproductive health services, especially in remote and rural areas. The Committee is also concerned about the lack of access to sexual and reproductive health education in the school system. The Committee is further concerned that the draft law to modify the 1920 Law on the right to reproductive health has not been adopted.

The Committee recommends that the State party provide: (a) basic services for family planning and sexual and reproductive health to the population, especially for women and children and (b) education on sexual and reproductive health in its school system and approve the draft law modifying the above-mentioned 1920 Law.

31. The Committee is concerned that access to schools remains a problem for children living in rural and remote areas. It is also concerned about the high rate of repetition and dropouts, in particular for girls attending secondary schools. The Committee is further concerned that the status of teachers is less favourable than the status of other public servants in terms of salaries and benefits, and that the budget allocated to education remains insufficient. Furthermore, the Committee is concerned about the situation of children with disabilities in the school system. (art. 13)

The Committee urges the State party to strengthen its various measures and programmes in order to:

- (a) Address the problem of access to schools for children living in rural and remote areas;**
- (b) Take appropriate measures to ensure regular school attendance and reduce the dropout rate of children in particular in secondary schools;**
- (c) Strengthen the capacity of teachers through training and review their status;**

(d) Develop programmes aimed at integrating children with disabilities into formal schooling.

The Committee also recommends that the State party increase its budget for education and seek international assistance to deal with the above-mentioned issues, in particular those related to children with disabilities.

32. The Committee is concerned that school attendance is hampered by the stereotyped attitudes of parents on the lack of relevance of education to everyday life and livelihoods and job opportunities. (art. 13)

The Committee recommends that the State party conduct awareness-raising campaigns for parents on the relevance of education of their children. The Committee also recommends that the State party update its school curricula, so as to include knowledge and skills that will enable students to improve their prospects for earning their livelihood and for job opportunities.

The Committee recommends that the State party ensure the guarantee of freedom of religion, as enshrined in the Constitution of the State party.

33. The Committee is concerned about the systematic exploitation of land and natural resources which affects the standard of living of the Malagasy population and its different ethnic groups, thus preventing them from maintaining their cultural and social links with their natural environment and their ancestral lands. (art. 15)

The Committee recommends that the State party adopt specific measures and appropriate legislation to protect the ancestral lands and cultural identity of different ethnic groups of the State party.

34. The Committee invites the State party to update its core document in accordance with the requirements of the common core document in the harmonized guidelines on reporting.

35. The Committee encourages the State party to consider ratifying the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

36. The Committee encourages the State party to consider ratifying ILO Convention No. 169 (1989) concerning Indigenous and Tribal Peoples in Independent Countries.

37. The Committee encourages the State party to consider inviting the Special Rapporteur on the right to food to conduct a mission to the State party and to consider extending invitations to other Special Rapporteurs dealing with economic, cultural and social rights.

38. The Committee requests the State party to disseminate the present concluding observations widely among all levels of society, particularly among State officials, the judiciary and civil society organizations, and to inform the Committee on the steps taken to implement them in its next periodic report.

39. It invites the State party to continue engaging non-governmental organizations and other members of civil society in the process of discussion at the national level prior to the submission of its next periodic report.

40. The Committee requests the State party to submit its next periodic report, prepared in accordance with the revised reporting guidelines of the Committee adopted in 2008 (E/C.12/2008/2), by 30 June 2014.
