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the Elimination
of all Forms of
Racial Discrimination**

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Sixty-fifth session

SUMMARY RECORD OF THE 1645th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 3 August 2004, at 10 a.m.

Chairman: Mr. YUTZIS

CONTENTS

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY
STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (continued)

Tenth to eighteenth periodic reports of Madagascar (continued)

ORGANIZATIONAL AND OTHER MATTERS (continued)

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The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (continued)

Tenth to eighteenth periodic reports of Madagascar (continued) (CERD/C/476/Add.1; HRI/CORE/1/Add.31/Rev.1)

1. At the invitation of the Chairman, the members of the delegation of Madagascar resumed their places at the Committee table.

2. Mr. RAKOTONIAINA (Madagascar), introducing his delegation's replies to Committee members' questions, said that his Government would endeavour to initiate the changes the Committee had proposed in order to improve implementation of the Convention. Requests for additional information would be either answered in writing or addressed in the following periodic report if they could not be answered at the current meeting.

3. Mr. ANDRIANIRAINY (Madagascar) said that several measures had been taken to improve women's rights in his country. Reforms had resulted in equal inheritance rights for women, equal pay for equal work and equal ownership of property under the marriage contract. A family code was currently being prepared. A national gender and development action plan had been launched to ensure that women were involved in development projects and that gender mainstreaming took place at all levels of government. The plan comprised five programmes aimed at improving women's economic independence, sexual health, access to education and training, and awareness of their legal rights, and establishing projects for women. The majority of teachers, health workers and magistrates were currently women, and women had joined the police and the army and become pilots, thus taking up jobs that had previously been unavailable to them. Girls outnumbered boys in school, and fewer girls than boys repeated the academic year or dropped out of school. Girls received education in household management, family planning, and family and civic duties, and women in rural areas were encouraged to set up businesses.

4. Mr. MAROLAHY (Madagascar) outlined the measures that had been taken to ensure realization of the rights of the child in Madagascar. They included a campaign to increase birth registration, efforts to put a stop to paedophilia and child prostitution, and a national plan to eradicate the worst forms of child labour. A law making procuring a criminal offence had been promulgated, and a workshop at the national level had examined the reform of current legislation on the protection of minors. Homes for abused children had been set up with assistance from several NGOs, and food had been supplied to many children. An informal education project had been established to help children who no longer attended school, and the need to support disadvantaged children had been recognized. A mass vaccination campaign had been undertaken, and improvements had been made in the system for dealing with childhood illnesses. A centre for street children had been opened in Antananarivo, and a programme run with United Nations support provided street children with literacy classes, vocational training, and the means to return to school or to work.

5. The regional imbalance in access to health care was due to a lack of technical and financial resources and was in no way related to ethnicity issues. The campaign against HIV/AIDS, headed by the President, had focused on the issue at the national, regional and local levels.
6. Ms. HARIVÉLO RAMAROLAHY (Madagascar) said that the former Ministry of Secondary and Basic Education had been restructured in 2004 and was currently known as the Ministry of National Education and Scientific Research. That had led to increased budgetary requirements for the period 2004-2006 of 15.5 per cent for primary education and 3 per cent for secondary schools.
7. In the area of the promotion of cultural identity, publishing and reprinting books in the Malagasy language was not the only measure that had been taken. Other initiatives had included cultural exchanges for young people, staging of musical and artistic events, exhibitions and shows, and radio and television broadcasts of traditional stories and folklore. While there were many different forms of pronunciation and intonation in the Malagasy language, it was understood by the entire population, thus providing an excellent illustration of unity in diversity.
8. Mr. RAKOTONIAINA (Madagascar) explained that fihavanana was a traditional moral value system recognized throughout the country, the main tenets of which were tolerance, social interaction, mutual respect and solidarity. Particularly in times of strife, it had encouraged solidarity and social cohesion among the population, regardless of religion, gender, political views or any other beliefs. Fihavanana had often been a fundamental factor in averting tribal and ethnic confrontation.
9. Associations based on ethnicity were not prohibited and were in fact numerous throughout the country. The decision to ban the association cited in the periodic report had been overturned.
10. The information on the prison population given in the report had been incorrect. According to official statistics, in 2003 there had been a total of 18,901 prisoners. Of that number, 6,429 had been convicted and sentenced, and 12,472 had been remanded in custody. The figures for 2004 were 6,398 convicted prisoners and 12,988 prisoners in custody. In an attempt to reduce the number of people awaiting trial, the Antananarivo Court of Appeal was currently holding sessions throughout the year, and reform of the criminal system to reduce the maximum period of custody was under consideration.
11. The perpetrators of human rights violations during the 2001 crisis had been tried. The victims of those abuses had been given the opportunity to seek compensation through the courts.
12. Ms. RASENDRA ARIVONY (Madagascar) said that membership of the National Human Rights Commission, which had been set up in 1996, included high-profile human rights activists, and representatives of NGOs, human rights associations and the Government. The aim of the Commission was to raise awareness of citizens' rights and duties by ensuring that human rights education was widespread. Its functions were to advise on policy, and provide

information and training, human rights education and advice. The Commission heard and investigated complaints from individuals and groups. While it had no decision-making powers, the Commission could advise complainants, encourage conciliation between the parties in a dispute and make recommendations regarding procedure.

13. The Ombudsman's Office had been set up in 1992, and was charged with defending the rights of individuals who had a dispute with an institution. Both the National Human Rights Commission and the Ombudsman's Office would take the Committee's recommendations into account.

14. Mr. RAKOTONIAINA (Madagascar) pointed out that the National Human Rights Commission and the Ombudsman's Office had not sought to replace the traditional legal structures existing in Madagascar. They were independent institutions with their own budgets, but did not have the power to investigate violations of human rights. Some confusion might have been caused among Committee members by the use of the French terms "instruction", referring to the investigation conducted by the judiciary, and "enquête", which alluded to a police investigation. Those terms had been used since the legal system in Madagascar was based on the French system.

15. Ms. MOHAJY (Madagascar) said that her country had signed the Convention relating to the Status of Refugees in 1967 but had yet to ratify it. Given the country's level of economic development, it could not take in unlimited numbers of refugees. It did, however, host a small refugee population with financial assistance from UNDP. In paragraph 36 of the report (CERD/C/476/Add.1), the phrase "African origin" should read "foreign origin"; Madagascar was itself an African State and a member of the African Union.

16. Her country had participated in the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (Durban, 2001). However, the difficult economic and political situation in the country since the crisis of 2001 and 2002 had prevented her Government from implementing the recommendations contained in the Durban Declaration and Programme of Action, although Madagascar had observed the United Nations Year of Dialogue among Civilizations and the World Day for Cultural Diversity for Dialogue and Development. It also hosted an annual festival celebrating the culture of the Indian Ocean islands.

17. Ms. FIDA CYRILLE (Madagascar) said that the term "foreign communities" in paragraph 44 of the report referred to groups of non-nationals living in Madagascar, not naturalized Malagasy citizens, who enjoyed the same rights as other Malagasies without distinction as to race, sex, property, education, religious belief or conviction. In that connection, she noted that a number of Malagasy citizens of Indian and Pakistani origin had been elected to Parliament.

18. Mr. DAVID (Madagascar) said that seasonal workers of the Betsileo ethnic group, one of the largest in Madagascar, were employed harvesting rice and cotton for periods of two to three months. In exchange for their labour, they received a daily wage, meals and various other

benefits in kind. Their terms of employment were agreed through collective bargaining before they left their villages. The arrangement, which was informal and long-established, was the result not of racial discrimination but of the difficult economic conditions in the workers' home region, where the land was poor and employment opportunities few.

19. Mr. RANAZADRASARA (Madagascar) said that it was the National Institute of Statistics that determined policy and methodology with respect to the collection of statistical data. It had not provided data disaggregated by ethnicity since the 1975 census. Given the high rate of intermarriage and the large number of persons of mixed race, it would be difficult to establish a correlation between ethnicity and economic and social indicators. At the same time, the compilation of data disaggregated by race might actually incite division. The population of Fianarantsoa consisted of Betsileo and several other ethnic groups. The statistical data provided on Fianarantsoa were thus indicative of the low level of development in the province as a whole, not of disadvantages affecting one particular ethnic group. The terms "urban" and "rural" referred to the place of residence of the populations in question, although the definition of urban and rural areas had changed over time.

20. Mr. RAKOTONIAINA (Madagascar) said that the term "Merina" (report, para. 48) referred to one of the 18 ethnic groups in Madagascar. The Merina had originally lived on the country's high plateaux. During the colonial period, the colonial Powers had sought to create divisions between the inhabitants of the high plateaux and the coastal regions. The term "Merina" had been used erroneously to refer to all plateau-dwellers, irrespective of their ethnicity. That had given the impression of a country riven by ethnic tensions between the coastal-dwellers, on the one hand, and the Merina, on the other, whereas the reality was very different. In that connection, he noted that the delegation included representatives of several different ethnic groups.

21. Mr. RABETAFIKA (Madagascar) said that, while torture was not a separate offence in Malagasy law, prosecutions could be brought under the laws on causing bodily harm. In addition, in order to prevent abuses by law enforcement officials, Act No. 97-036 stipulated that any person subject to criminal proceedings must be assisted by legal counsel or a person of his or her choosing from the beginning of the investigation. Nevertheless, his Government recognized that lacunae remained to be filled. It further agreed that the laws on nationality needed to be revised in order to address the situation of children born of mixed marriages. However, it would consider it problematic, in the light of the high unemployment in Madagascar, to lift the restrictions on the employment of non-citizens in the civil service. Recruitment of non-citizens would also run counter to the Government's efforts to break down barriers between the administration and the people, since their ability to discharge their duties as civil servants would be hampered by language difficulties and cultural differences.

22. The acts of vandalism to which the report referred had not involved violence against the Indian and Pakistani victims. Those acts were attributable to the offenders' frustration at the gross economic inequalities in Madagascar and to the victims' inability to integrate into Malagasy society.

23. Lastly, the “National capacity-building in the field of human rights” project had had a positive impact. The training provided under the project, together with the adoption of Act No. 97-036 on the rights of the defence, had raised awareness among law enforcement officials of the importance of respecting human rights in the course of investigations, and very few cases of abuse had been reported.

24. Mr. RAKOTONIAINA (Madagascar), referring to the difference between civil and criminal human rights cases, said that under Malagasy law it was possible for victims of human rights violations to associate themselves with criminal proceedings brought by the State. In the event that criminal sanctions were imposed, the victim would be awarded damages. Public action by the State and civil action by the victim fell under the same jurisdiction. Criminal courts had competence to consider human rights violations since, owing to a lack of financial resources, Madagascar did not yet have any civil courts specializing in such violations.

25. The Supreme Court had issued a decision stating that the National Judge was responsible for the implementation of international instruments ratified by the State party; their provisions could be enforced directly under Malagasy law without modification.

26. Mr. SHAHI commended the emphasis that Madagascar’s periodic report placed on poverty-alleviation geared to the improved enjoyment of human rights. He wondered why, despite the fact that it was a State party to several international human rights instruments, Madagascar had not ratified the United Nations Convention on the Prevention and Punishment of the Crime of Genocide, particularly since the Government had shown concern at the dangerous effects of racist propaganda. In its next periodic report, the State party should include further information on the competence of the Office of the Ombudsman and National Human Rights Commission vis-à-vis implementation of the Convention, since such bodies should have the authority to investigate complaints, take decisions and award compensation. It was stated in the report that few cases of racial discrimination were brought before the courts since the offences involved were not defined. He wished to know whether measures could be taken to define those offences, facilitate complaints and reach decisions on relevant cases.

27. The Committee had received information that the Malagasy Government had proposed the establishment of an international entente, composed of representatives of minority groups, following which an association of ethnic and religious minorities would be set up to hear grievances and give effect to the rights of minorities. The Committee had also been informed that the Government wished to draft an international convention recognizing the rights of minorities, and to hold periodic world conferences on minority rights, including the rights to self-determination and property ownership. Such a plan was ambitious and would have widespread effects on minorities across the world. In that regard, he wished to know why all aliens in Madagascar were required to make a payment of US\$ 500,000 in order to purchase real estate. The election of minority representatives to the Malagasy Parliament was commendable, since the empowerment of minority groups was the most effective antidote to discrimination.

28. Mr. LINDGREN ALVES observed that the changes in the State party report requested by the Committee should be made as soon as possible, before it was made available to the public in Madagascar. He requested that the reference to Africans being different from the native Malagasy population should be deleted from the report. He understood the delegation's concern regarding the possible negative effects of presenting data broken down by ethnic group. He expressed concern at the fact that violence against the Indo-Pakistani population was not considered to be discrimination.

29. Mr. THORNBERRY enquired whether only the Malagasy national identity was promoted in the national education system or whether other cultures were also taught. Regarding conflict avoidance, he had been interested to hear about the application of fihavanana, since much could be learned from traditional wisdom adapted to a country's culture and context. The Committee considered it important that such examples of cultural diversity were supported by international human rights standards.

30. The Government should note that, under international law, members of minority groups did not cease to be so simply because they had the nationality of a particular country; the notion of minorities was one of culture rather than nationality. Further information on the position of minority groups in Malagasy society should be provided in the State party's next periodic report. It was important that the rights of such groups should be recognized when they were claimed in accordance with international law.

31. The Government should consider whether the categories of "economic" and "ethnic" discrimination were conceptually appropriate. The Committee was concerned about information in the State party's most recent periodic report to the United Nations Committee on the Rights of the Child relating to descent-based discrimination in regions that were traditionally known for bondage and slavery. Further information on persisting customs that still affected the descendants of slaves would be welcome.

32. Mr. de GOUTTES said that one of the Committee's main concerns was the fact that economic discrimination existed in Madagascar owing to extreme poverty among certain social groups. Research should be carried out on the basis of socio-economic discrimination indicators. The State party's next report should contain information on precise measures taken in the areas of improving the socio-economic aspects of social services, medical care, combating HIV/AIDS, education, aid for rural communities, and cooperation with NGOs and humanitarian groups. He agreed with Mr. Thornberry that it would be interesting for the Committee to receive further information on the application of fihavanana.

33. Mr. RAKOTONIAINA (Madagascar) said that the information requested would be included in the State party's next report to the Committee.

34. Ms. MOHAJY (Madagascar), replying to Mr. Shahi's question on genocide, said that Madagascar, as a member of the African Union, had marked the second anniversary of the end of

the genocide in Rwanda. Although her Government was planning the establishment of a national commission for the prevention of genocide in order to avert grave human rights violations of the kind that had taken place in Rwanda, it was considered more appropriate to first establish a mechanism to combat discrimination, intolerance, racism, tyranny and dehumanizing propaganda, which threatened the rights and dignity of ethnic groups.

35. Mr. AMIR (Country Rapporteur) said that although there had been no dialogue between the State party and the Committee for the past 20 years, the delegation had managed to answer all of the Committee's questions. Further information was still required concerning minority rights, but Madagascar attached great importance to national reconciliation. Legislative measures were being taken to guarantee a minimum standard of rights protection to all citizens, in an attempt to increase the sense of national unity. The Government must deal with the issue of discrimination against descendants of former slaves through legislative and judicial mechanisms. Measures must also be taken to ensure that all the various ethnic groups had equal access to schooling, university education and employment. He noted with satisfaction the assistance provided by international donors to support the State party in its endeavours to achieve national reconstruction and reconciliation.

36. He thanked the delegation for its comprehensive replies to the Committee's questions and expressed his hope that the resumption of dialogue was a sign of the State party's willingness to engage in a process of cooperation with international institutions. The Government's efforts to bring about national reconciliation were commendable. In that connection, he noted the far-reaching decision-making powers of the State party's autonomous provinces in economic, cultural and social matters, which facilitated regional participation in policy-making.

37. The challenges posed by the recent political crisis were particularly daunting in a country with an average per capita income of US\$ 300. Experience had shown that limited resources and discrimination were often closely linked and, given the country's difficult circumstances, the Government's efforts were all the more praiseworthy.

38. The CHAIRMAN thanked the rapporteur for his closing remarks. He expressed the Committee's gratitude to the Malagasy delegation and Government for their efforts to fulfil the State party's reporting obligations. The periodic report contained useful information that had served, and would continue to serve, as a basis for constructive dialogue.

39. Mr. RAKOTONIAINA (Madagascar) thanked the Committee for the fruitful dialogue in which his delegation had engaged. Its recommendations would prove a useful tool for further implementation of the Convention. The preparation of the periodic report demonstrated his Government's commitment to honouring its obligations under the international human rights instruments to which it was a party. He also thanked UNDP and the European Union for assisting the State authorities during the drafting process. The preparation of reports to other treaty bodies was currently under way.

40. The delegation of Madagascar withdrew.

The meeting was suspended at 12.25 p.m. and resumed at 12.35 p.m.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2) (continued)Debate on the prevention of genocide

41. The CHAIRMAN drew the Committee's attention to a proposal by Mr. Shaki to hold a thematic debate on the prevention of genocide. He invited Mr. Shaki to introduce the topic and asked members to comment on the proposal.

42. Mr. SHAKI said that, while the question of the prevention of genocide had long been on the international agenda, the quest for effective measures had gained momentum with the international conference against genocide held in Stockholm in January 2004. The international community had been greatly troubled by the genocide in the former Yugoslavia and Rwanda. In his address to the Stockholm International Forum, the Secretary-General had acknowledged his own failure to take action in the case of Rwanda and had pointed out that, while the international community had had the capacity to prevent those events, it had lacked the will.

43. The Secretary-General had stressed the need to take action and subsequently appointed a Special Adviser on the Prevention of Genocide. While the establishment of such a post was a positive step, the adviser's capacity for action beyond reporting to the Security Council was, unfortunately, limited. Similarly, the Committee's early warning and urgent action procedures were insufficient. According to a recent report, the threat of genocide existed in some 12 countries.

44. The Carnegie Foundation's recommendation to establish a rapid reaction force that could be deployed within 72 hours in cases of emergency had, thus far, not been given the Security Council's approval. Regrettably, the Committee had failed to take note of that recommendation. The United States had stated its willingness to allocate US\$ 17 million to the training of national contingents for peace enforcement duties under the mandate of the Security Council. However, the decision to take action ultimately lay with the Council.

45. The world was passing through a crisis, and racism and xenophobia were among the symptoms of that crisis. While treaty bodies expended considerable effort in trying to address such problems, he had limited confidence in the international community's resolve to take action. The consideration of measures to prevent genocide fell within the Committee's mandate and he encouraged its members to discuss methods for the detection of impending acts of genocide, and also possible recommendations to the Security Council. Such a debate was of vital importance, as the right to life was the basis for the enjoyment of all other rights.

46. Mr. ABOUL-NASR said that he considered a lengthy discussion on the prevention of genocide neither advisable nor useful. The definition of the crime of genocide was contained in a variety of relevant international treaties. Similarly, he saw no need to discuss appropriate responses to acts of genocide, since the Charter of the United Nations provided clear guidelines on lawful action in such cases; responsibility for taking action lay with the Security Council.

47. Mr. KJAERUM, supported by Mr. Amir and Mr. de Gouttes, agreed that there was no need for the Committee to discuss the definition of genocide. Genocide was the most terrible of human rights violations and the most extreme form of racial discrimination and intolerance. At present, the Committee was ill-prepared for addressing the severe human rights violations that could lead to genocide but a debate on preventive action was necessary.

48. He proposed a dual approach to the issue. On the one hand, it would be useful to establish whether the Committee was in a position to recommend new procedures for action to the Security Council. At the same time, early methods of detecting the threat of genocide during the consideration of country reports should be discussed. In that connection, it would be useful to consider means of impressing upon Governments the need to counteract such trends.

49. Mr. AMIR said the elimination of policies that provided fertile ground for genocide was a central concern. Genocide mostly occurred in the context of armed conflicts. Establishing effective mechanisms for both conflict prevention and the protection of civilian populations in the context of war was, therefore, crucial to the prevention of genocide. He stressed the need to call on all States that had ratified international human rights instruments to establish such mechanisms.

50. Mr. de GOUTTES said the Committee should focus on evaluating effective preventive measures on a case-by-case basis, similar to the retrospective analysis of the country reports in the aftermath of the tragedies in the former Yugoslavia and Rwanda. The Committee had then found that, while signs of impending genocide had indeed been present, they had not been sufficiently heeded. Reviving the early warning and urgent action procedures to improve detection of signs of impending genocide was therefore an important element in preventing such tragedies. He called on the Committee to address the situation in Darfur in the context of the thematic debate.

51. The CHAIRMAN proposed structuring the debate around three major topics: a retrospective assessment of the Committee's decisions and recommendations in connection with the former Yugoslavia; re-examination of the criteria concerning early warning and urgent action mechanisms; and consideration of specific urgent cases, such as Darfur.

The meeting rose at 1 p.m.