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Committee on Economic, Social and Cultural Rights Forty-third session

Summary record (partial)* of the 39th meeting

Held at the Palais Wilson, Geneva, on Monday, 9 November 2009, at 10 a.m.

Chairperson: Mr. Marchán Romero

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* No summary record was prepared for the rest of the meeting.

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The discussion covered in the summary record began at 10.30 a.m.

Consideration of reports:

(a) Reports submitted by States parties in accordance with articles 16 and 17 of the Covenant (continued)

Second periodic report of Madagascar (E/C.12/MDG/2; E/C.12/MDG/Q/2 and Add.1; HRI/CORE/1/Add.31/Rev.1)

1. **The Chairperson** said that while the Committee was aware of recent events and the political situation in Madagascar, its main concern was the extent of the implementation of Madagascar's commitments under the Covenant. He invited the head of delegation to introduce her country's second periodic report (E/C.12/MDG/2).
2. **Ms. Razanamahaso** (Madagascar) said that, in 2003, her Government had established an inter-ministerial Committee responsible for drafting human rights reports in order to remedy delays in the submission of reports under international human rights instruments. Since that time, 15 such reports had been submitted, of which three had already been considered by the relevant committees. The fact that Madagascar had also signed the Optional Protocol indicated its desire to strengthen implementation of the Covenant.
3. The fact that economic, social and cultural rights were enshrined in the national Constitution had influenced domestic legislation, which was based on the principles of non-discrimination and gender equality. The principle of equal pay for equal work was incorporated in the Labour Code, for example, and in September 2003 the Supreme Court had overturned a decision of the Appeal Court that had discriminated against an applicant because of her age and sex. Although the Labour Code also set out the means whereby workers could exercise and realize trade union rights, trade union culture was not yet highly developed, as workers feared reprisals and dismissal.
4. Equality between men and women had been improved through family law reforms. The age of majority was now 18 years both for men and women, and spouses now had equal rights in administering community property.
5. With regard to violence against women and child abuse, the applicable sentences for violence against women, including pregnant women, had been strengthened. Trafficking in persons and sex tourism had been criminalized and were subject to severe penalties. Since 2001, a further 63 child rights protection networks had been established in cooperation with the United Nations Children's Fund (UNICEF) in order to detect cases of violence, abuse and ill-treatment of children. A criminal evaluation unit had been established within the national police force to collect information on child trafficking and exploitation and bring cases before the competent authorities. In addition, sexual harassment had been criminalized.
6. Madagascar had adopted a strategy to combat harmful customs that were incompatible with the Covenant. It had commissioned a study on the origin and scope of such customs and their effect on women and twin children in two areas of the country and had held community discussions involving religious leaders, traditional chiefs and local authorities in pursuance of the study's recommendations. A roadmap had been drawn up to prohibit "moletry", whereby girls under 18 were subjected to forced early marriages.
7. Funds had been set up in all public health centres to cover the medical costs of the poorest members of the population. Parasite elimination, vaccination and vitamin supplementation campaigns to improve maternal and child health were conducted twice yearly in partnership with the World Health Organization, UNICEF, the United Nations

Population Fund and the World Bank. Child mortality rates had fallen by 73 per cent from 1992 to 2003.

8. In the field of education, primary school enrolment had doubled as a result of the Education for All programme. There was no significant difference in school attendance as between girls and boys. Measures to reduce costs to parents had been taken to encourage parents to send their children to school.

9. National cultural policy was based on the promotion and protection of cultural diversity, with a view to fostering a culture of tolerance and strengthen national unity.

10. Human rights education was included in the curriculum at all levels of the education system. Training was also given to members of the judiciary, police officers, prison staff and civil society organizations in various parts of the country.

11. Madagascar had created non-judicial complaint mechanisms through the National Human Rights Council, which had been established in accordance with the Paris Principles based on the recommendation of the Human Rights Committee in 2007 and which was competent to investigate individual or collective violations of all human rights. In addition, five local “legal clinics” had been established to help poor people to defend their rights; those clinics were responsible for resolving community-based disputes through conciliation and also ensured that knowledge of human rights was disseminated at the local level. More such clinics were planned.

12. Madagascar lacked the resources needed to fully realize the rights provided for in the Covenant and relied on the support of the international community in order to do so. Under article 22 of the Covenant, Madagascar would like financial and technical support from the international community, including from the United Nations system. It also wished to strengthen cooperation with the European Union, the African Development Bank, the United States Agency for International Development and other partners. Poverty could be tackled and the standard of living of the rural population improved through assistance for the development of a national farm policy, which would increase production and contribute to achieving food security. Higher levels of international cooperation for development would improve Madagascar’s ability to realize the rights enshrined in the Covenant.

13. **The Chairperson** invited questions from the Committee on articles 1–5 of the Covenant.

14. **Mr. Kerdoun**, noting the existence of the Poverty Reduction Strategy Paper, which had spanned the period 2003–2006 and succeeded the Economic Policy Framework Paper, asked whether the current poverty level had been measured and whether the State party could provide any figures in that respect. He asked to what extent the Poverty Reduction Strategy Paper had been successful, whether statistics could be provided on the reduction in poverty and what economic, cultural, political and environmental resources were available in the combat against poverty. He enquired whether the State party offered incentives to international partners to help achieve rapid and sustained poverty reduction, or if they should help simply for philanthropic reasons.

15. With reference to the State party’s written reply to the list of issues (E/C.12/MDG/Q/2/Add.1), and particularly question 4, he asked who was responsible for conducting the studies to evaluate the impact of investment negotiations and agreements on the enjoyment of economic, social and cultural rights. Consideration of the State’s interests would be assured if the Government was responsible, but if the impact studies were conducted by the company itself, he asked how they were checked to ensure that the State’s interests were being respected, since the company’s assessment was bound to be influenced by its own interests.

16. **Mr. Pillay** asked whether it was realistic for the State party to rely on international assistance for the realization of economic, social and cultural rights, since the country was being shunned by the international community, including the Southern African Development Community, the African Union and the International Organization of La Francophonie, the Maputo agreements had been left in abeyance and all forecasts by institutions such as the World Bank and the International Monetary Fund suggested that the State party was heading for a severe recession and a financial crisis in 2010 as a result of the political impasse. Noting that, in its written reply to question 1 of the list of issues, Madagascar had acknowledged that the Covenant was directly applicable in domestic legislation but that there was not yet any case law on the matter and members of the judiciary were to be trained in order to remedy the situation, he asked whether the general public were aware of their rights under the Covenant and whether there was a system in place to help citizens assert their rights in the courts. Acknowledging that the National Human Rights Council complied with the Paris Principles, he requested details about cases that had been submitted to that Council with respect to economic, social and cultural rights and the decisions taken. Recalling that a report by the World Bank had stated that the two most corrupt institutions in the State party were the Parliament and the judiciary, he asked what measures were being taken to address the prevailing climate of corruption and impunity, including details of cases brought before the High Council against Corruption and any subsequent prosecutions.

17. **Mr. Zhan Daode** asked for details of a specific case to illustrate the welcome legislative provision mentioned in paragraph 124 of the State party's report, under which civil servants who committed a violation of civil rights would be stripped of their own civil rights. He urged the State party to provide examples in its next periodic report to illustrate the specific effects of measures taken by the Government in order to facilitate the Committee members' task.

18. **Mr. Atangana**, noting that the State party, in its written reply to question 1 of the list of issues on the directly applicable and justiciable nature of the Covenant, had specified that no case law existed, drew attention to a reference in the written reply to question 6 of the list of issues to a case in which a judgement based on a discriminatory collective agreement had been quashed by the Supreme Court. He asked why that case had had to be brought before the Supreme Court for it to rule that international instruments were directly applicable, given that the Constitution was clear on the matter. He requested details of measures being taken to increase awareness of economic, social and cultural rights among the general public and of the results achieved.

19. **Mr. Kedzia**, noting the State party's comment that there was no case law expressly referring to the application of the Covenant, asked whether any case law existed in relation to other international human rights treaties or to the African Charter on Human and Peoples' Rights and whether the Government had already undertaken to develop technical cooperation with the Office of the United Nations High Commissioner for Human Rights in that area. Noting the State party's intention to provide training for the judiciary, as stated in paragraph 3 of its written replies, he requested an explanation of what was meant by the comment in paragraph 14 of the written replies that the Government was giving priority to action to stem the frequent violations of international instruments and that raising awareness of economic, social and cultural rights would "come at a later stage". He requested further examples of case law related to economic, social and cultural rights, in addition to that provided in paragraph 19 of the written replies. Noting that the written reply to question 4 of the list of issues was rather limited, since it focused only on the environment and the creation of employment, he asked for further details of how guarantees had been provided for other rights, such as the right to just and favourable conditions of work and the right to participate in trade union activities.

20. Commenting that it was remarkable that Madagascar had never invited any thematic special procedures and that it was not among the 65 countries that had extended an open invitation to them, given the problems that it was facing and given that many other countries found such cooperation very useful, and noting that the possibility of inviting the Special Rapporteur on the right to food had been discussed recently, he asked whether there were any plans to invite that Special Rapporteur or other thematic special procedures in the near future. He further asked whether the State party had requested or was planning to request accreditation of its National Human Rights Council by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, noting that the Council's predecessor body had been classified in category C, or "Non-compliant with the Paris Principles".

21. **Mr. Abdel-Moneim**, recalling the State party's reservation to article 13, paragraph 2, of the Covenant, relating to primary education, in which it had also noted that it undertook to implement that provision at the earliest possible date, asked whether the reservation remained necessary given the improvement in national economic growth and the general view that reservations should be kept to a minimum.

22. **Mr. Tirado Mejía** asked what specific measures were being taken to combat discrimination against descendants of slaves, which continued despite the fact that slavery had been abolished in the State party in 1896. He noted that legislation on nationality, which seemed to be outdated and unclear, led to problems for children born to a Malagasy mother and foreign father as well as for other sectors of the population, including the Muslim community. He further noted that the nationality legislation was based on *jus sanguinis* only and did not recognize *jus soli*, meaning that communities that had been present in the State party for a long time were unable to obtain citizenship. He asked the State party to confirm reports that 5 per cent of the 2 million Muslims were unable to obtain citizenship, and to provide more details about its citizenship legislation. The Committee would be recommending that the Government should modernize that legislation, which appeared to be arbitrary and in contravention of the Covenant.

23. On the issue of discrimination against women, he asked what measures the State party planned to take to remedy the situation with regard to the right to inheritance, given that although legislation treated men and women equally in that respect, in practice, especially in certain communities, women were being deprived of their right to inherit real estate and were given their inheritance in another form. While noting that men and women were punished equally for adultery by between three months and one year in prison, he recommended that the State party should decriminalize adultery, especially given the immense problems with prisons in the State party.

24. **Ms. Bonoan-Dandan** asked whether the State party would agree that a civics course, as mentioned in the State party's written reply to question 5 on human rights education, was not specifically a human rights course. With reference to paragraph 14 of the written replies, she said that focusing on one set of rights and leaving another set until a later stage did not respect the indivisible and interrelated nature of human rights. Given that violations of civil and political rights were almost always associated with violations of economic, social and cultural rights, she asked how the State party linked the two sets of rights, pointing out that the one could not be fully realized unless awareness was raised about the other. She wondered how the training course for members of the judiciary mentioned in the report could be conducted effectively with such a lopsided view of what human rights were all about. She remarked that the written reply to question 8 was insufficient, since it referred only to poverty reduction, rather than measures to eliminate discrimination against slave descendants. She requested a direct answer to that question.

25. Turning to article 3 of the Covenant, she wished to know how the National Gender and Development Action Plan would be implemented, given that the State party did not

have a framework law on gender equality. She asked how the traditional leaders had reacted to the awareness-raising campaigns on women's inheritance rights and other aspects of gender equality.

26. **Mr. Sadi** commended Madagascar on having become one of the first signatories of the Optional Protocol to the Covenant, and asked when the State party intended to ratify that Protocol. He wondered whether there were any particular obstacles to the application of the Covenant in Madagascar. Paragraph 3 of the written replies to the Committee's list of issues stated that the Government intended to train members of the judiciary in the enforcement of the Covenant by the courts. The mere intention to train the judiciary was insufficient, and he wished to know what specific plans were in place to ensure that training was actually carried out. Information on other training for the judiciary focused on torture, arbitrary detention and violence against women and children. He asked what specific measures were being taken to broaden training to include the rights enshrined in the Covenant.

27. He enquired how the independence of the National Human Rights Council could be guaranteed when the membership of that body included members of the Executive. He also wished to know what measures were taken to protect the many ethnic, racial and religious minorities resident in Madagascar, and what action had been taken to eliminate discrimination against them. The Committee had been informed that people of Pakistani and Indian origin faced more discrimination than others in Madagascar, and he would therefore appreciate information on whether any specific protection measures were in place for those groups. The fact that there was no domestic legislation prohibiting discrimination against women should be rectified.

28. **Ms. Brás Gomes** asked how international financial assistance had been applied, in the light of the concern reportedly expressed by donors that funds were not being used to improve the living conditions of the most vulnerable members of the population. She asked what constraints were faced when allocating assistance funds. She also wished to know whether any measures had been taken or strategies put in place to improve public service performance. The Madagascar Action Plan did not contain specific targets for achieving key development goals, despite it being the basis for the Malagasy poverty reduction strategy. She therefore wondered whether the Government intended to revise the Action Plan, and to introduce more targeted indicators to improve the allocation and use of international assistance.

29. Regarding the agribusiness deal agreed between Madagascar and Daewoo Logistics, she said that the Committee was increasingly concerned about land grabbing, which violated the domestic obligation regarding the right to food, as well as constituting a violation of the extraterritorial obligations of the other contractual partner. She wished to know whether the cancellation of that contract had been finalized and all aspects of its cancellation addressed. She also wished to know whether Act 2007-036 had been revised to prevent the transfer of large portions of land to foreign investors and promote the acquisition of land titles for Malagasy farmers. She wondered whether a public debate had been held on investment in agriculture. A survey conducted by UNICEF in 2008 on maternal and child health care had shown that women were rarely given the responsibility of taking decisions when children were hospitalized or when family resources were used for basic health care and social services. That situation was particularly disturbing, since women should be empowered to make family decisions. She asked what the Government planned to do to rectify the situation.

30. **Mr. Schrijver**, noting that over 70 per cent of the population of Madagascar lived below the poverty line, enquired what specific obstacles existed to the realization of the rights enshrined in the Covenant. He asked what type of international assistance the Government had sought specifically for the realization of Covenant rights. He wondered

whether the State party was considering ratifying the Optional Protocol to the Covenant and, if so, what resultant amendments to domestic legislation would be required, and what impact the entry into force of the Optional Protocol would have on the enjoyment of Covenant rights in Madagascar.

31. **Ms. Barahona Riera** (Country Rapporteur) asked what measures were being taken to improve the warning system for natural disasters and civil defence for the population, since cyclones and other natural disasters increased the vulnerability of the population, and women and children in particular, to violations of human rights. She wished to know what progress had been made in preparing for natural disasters. She also enquired how transparency in the use of international aid for relief following natural disasters was guaranteed, and whether there was any proof that those funds had not been subject to embezzlement or corruption. While the Madagascar Action Plan for 2007–2011 was a comprehensive one, she asked how it could be implemented effectively in a climate of political instability.

32. Turning to the issue of food security, she asked what progress had been made in the Government's attempts to double food production for subsistence, and to implement the green revolution policy. What had been done to ensure that the promotion of food production and the green revolution did not interfere with land inheritance rights? She wondered whether the contract granting Daewoo access to over 1 million hectares of land had been revoked under the green revolution policy. She wished to know whether the State party intended to amend its legislation to include legal standards for non-discrimination and gender equality, and whether any other measures, such as the establishment of a gender coordination committee or department, were being considered.

The meeting was suspended at 12 p.m. and resumed at 12.20 p.m.

33. **Mr. Rakotoniaina** (Madagascar) explained that, since Madagascar's commitments under the Covenant were binding and could be subject to gradual application, they would not be suspended during times of political instability. Article 22 of the Covenant called upon the international community to assist countries in the application of certain Covenant rights. Madagascar was dependent on several types of assistance to be able to fulfil a number of its obligations under the Covenant, including assistance from United Nations organizations in the application of Covenant rights pertaining to their sphere of activity, such as the International Labour Organization, which provided support in respect of labour rights, protection for workers and migrants. Similar targeted assistance was provided by the United Nations Educational, Scientific and Cultural Organization, UNICEF, the United Nations Development Programme and other agencies. Strengthened financial assistance could facilitate the broader application of Covenant rights, since aid for development would increase the effectiveness of the fight against poverty. Poverty constituted a major obstacle to the enjoyment of the rights enshrined in the Covenant, in particular the rights to health care and education.

34. Responding to questions on the lack of legislation prohibiting gender-based discrimination, he pointed out that Madagascar was party to nearly all international treaties enshrining the right to non-discrimination, and pursuant to the Malagasy Constitution international law took precedence over national law. All international treaties to which Madagascar was party could therefore be applied directly by the courts. The National Gender and Development Action Plan had been implemented by decree, which formed the legal basis for the execution of the Plan. The Plan had been assessed and certain results had been noted. One positive result had been the amendment of the minimum age for marriage, which had been increased from 14 years for women and 17 years for men, to 18 years for women and men alike. The Plan had also enabled the role of women in the family to be reviewed to ensure that women and men had equal responsibilities in the household and in the community.

35. In response to questions on the direct applicability and justiciability of economic, social and cultural rights, he said that the Constitution guaranteed direct applicability where the provisions of the Covenant were clear, but other provisions might require amendments to legislation and thus could not be directly applied. For example, provisions involving criminal law or statutory changes could not be subject to direct applicability, such as raising the minimum age for marriage, of employment or of recruitment into the national service.

36. He acknowledged that there was a lack of jurisprudence relating to the provisions of the Covenant, which was because the Covenant had not yet been sufficiently disseminated among the general public and the judiciary.

37. The State party had decided to give priority to certain issues, rather than attempt to assimilate the provisions of the Covenant as a whole, in order to address the problem of the high number of acts of torture, arbitrary arrest and violence against women and girls prevalent in some parts of the country.

38. As for raising awareness on human rights, a team was already in place to deliver a training programme to members of the judiciary and civil society. In addition, the Government was considering issuing a circular to all judges to remind them that human rights in general could be invoked before the courts, including the rights provided for in the Covenant.

39. Turning to the concerns raised on the environmental impact of mining and exploration activities by multinational companies in Madagascar, he reported that negotiations with Daewoo for a contract for large-scale land acquisition had ended and no contract had been concluded. In any event, the State party had at its disposal an environmental charter which was invoked whenever a major project was mooted to guard against any potential negative effect on the lives of the population. As for the contract with QIT Madagascar Minerals, he clarified that the National Environment Office had conducted an environmental impact study prior to the contract being signed, and regular follow-up studies were carried out.

40. In order to respond swiftly and effectively to natural disasters, a special body had been set up to work in cooperation with local partners to manage and reduce disaster risk and implement measures to prevent human rights violations occurring as a result of natural disasters.

41. With respect to the new National Human Rights Council, he confirmed that an act had been passed in 2008 establishing the Council in conformity with the Paris Principles. Due to the political situation, the Council was not yet operational, with the appointment of its members currently held in abeyance. The Council would comprise members not only from the Executive but also from civil society, the Bar Association, the National Union of Journalists and other bodies, meaning that the Executive would not be in a position to overly influence Council decisions.

42. **Mr. Andriamaholy** (Madagascar) said that combating corruption was a Government priority and a set of measures had been implemented to address the problem. As corruption was closely linked to poverty, one measure had been to increase the salaries of public officials in key State sectors to ensure that they enjoyed a decent standard of living. In addition, the Government had taken steps to tackle money laundering and prevent the illegal drain of the country's financial resources. It had also introduced regulations obliging all senior State officials to disclose their assets and requiring banks to disclose information on the accounts of public officials in order to closely monitor any suspicious movement of funds.

43. As for non-discrimination, he said that the principle of gender equality was recognized under Madagascar's Constitution and, accordingly, all parliamentary legislation was checked to ensure compliance with the principle.

44. **Mr. Randrianandrasana** (Madagascar), responding to questions on human rights education, said that the Government had revised school curricula to include civics and ethics. In addition, the Ministry of Education had initiated a multifaceted project to promote and protect human rights through the curricula of primary and secondary schools, vocational training establishments and teacher-training institutions. There were plans to extend the project to current teaching staff, journalists, NGOs and other individuals or bodies involved more generally in human rights. An awareness-raising campaign for the general public had been launched and key legislation had been translated into simple, everyday Malagasy to make it more readily accessible to the public at large. The Ministry of Education had also established an innovative body, the so-called "Office for Civics Education for the Masses", to provide education on citizenship and promoting human rights.

45. **Mr. Andriamaholy** (Madagascar) said that the poverty rate had fallen from 85 per cent in 2002 to 68.5 per cent in 2009 and significant progress had been made in the areas of health, education and children's rights.

46. **Mr. Rakotoniaina** (Madagascar), responding to the concern voiced on the nationality of children from mixed-nationality marriages, said that Madagascar had just ratified the Convention on the Nationality of Married Women and a draft bill had already been prepared on repealing all discriminatory provisions, especially those with regard to the automatic granting of nationality to a child born of a mixed-nationality marriage. As soon as the new Parliament was established, the adoption of anti-discriminatory legislation on nationality would be passed.

47. On the concern expressed regarding the protection of the rights of ethnic minorities in Madagascar, he said that the State party was made up of several ethnic groups and its Constitution recognized equal rights and protection for all individuals under its jurisdiction, regardless of ethnic origin. The question raised might have been topical a few decades previously, when certain racist or discriminatory behaviour had been directed against its Pakistani and Indian communities, particularly involving acts of looting, but such behaviour had long since ceased.

The meeting rose at 1 p.m.