

Distr.
GENERALCERD/C/149/Add.19
22 October 1986ENGLISH
Original: FRENCHINTERNATIONAL
CONVENTION
ON THE ELIMINATION
OF ALL FORMS OF
RACIAL DISCRIMINATIONCOMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATIONCONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 9 OF THE CONVENTIONNinth periodic reports of States parties due in 1986Addendum

MADAGASCAR */

[2 October 1986]

CONTENTS

	<u>Paragraphs</u>
PART I - GENERAL	1-7
PART II - INFORMATION IN RELATION TO ARTICLES 2 TO 7	8-62
Article 2	8-15
Article 3	16-22
Article 4	23-29
Articles 5 and 6	30-42
Article 7	43-62

*/ For previous reports submitted by the Government of Madagascar and the summary records of the meetings of the Committee at which the reports were considered, see:

- Initial report - CERD/C/R.3/Add.16, Add.44, Add.58 and Add.59 (CERD/C/SR.43, SR.56, SR.68, SR.95 and SR.143);
- Second periodic report - CERD/C/R.30/Add.26 and Add.38 (CERD/C/SR.143);
- Third periodic report - CERD/C/R.70/Add.2 (CERD/C/SR.189);
- Fourth periodic report - CERD/C/R.90/Add.11 (CERD/C/SR.286);
- Fifth periodic report - CERD/C/20/Add.5 (CERD/C/SR.389);
- Sixth periodic report - CERD/C/66/Add.21 (CERD/C/SR.518);
- Seventh periodic report - CERD/C/91/Add.29 (CERD/C/SR.611-SR.612);
- Eighth periodic report - CERD/C/118/Add.10 (CERD/C/SR.713-SR.714).

PART I - GENERAL

A. Historical background

1. Our country's population, although consisting of nationals from 18 ethnic groups and aliens, forms a legally cohesive whole. Moreover, since antisegregationism has always been a basic principle of Malagasy governmental policy, no legal proceedings in this regard have ever been brought before our courts. These facts, are proof, should any be needed, that the problem of racial discrimination does not exist in Madagascar.
2. Malagasy law also embodies the principles set forth in the International Convention and in the other complementary human rights conventions.
3. Accordingly, the following comments, particularly those contained in part II of this report, are being made solely by way of a reminder and in order to meet our obligations under the Convention.

B. Application of the Convention

4. Can the provisions of the Convention be invoked before, and directly enforced by, the courts, other tribunals or administrative authorities or must they be implemented by way of internal laws or administrative regulations in order to be enforced by the authorities concerned?
5. Under article 72 (6) of the Constitution of 31 December 1975, international treaties or agreements can be ratified or approved only by statute. They take effect only after being ratified or approved and, before ratification, they are submitted to the Constitutional High Court for a review of their constitutionality.
6. The first Constitution of the Malagasy Republic, dated 2 April 1959, was similarly worded. Ratification of each of the above-mentioned conventions was authorized by statute. Since their provisions had been found to be in conformity with the Constitution by the appropriate organ, namely the former Higher Council of Institutions or the Constitutional High Court, these conventions are now an integral part of the internal legal order.
7. Article 116 of title XI of the Constitution of 1975, headed "Transitional and final provisions", stipulates as follows: "Subject to subsequent amendments, the legislation in force in the Republic remains applicable in all its provisions which are not inconsistent with those of the present Constitution". Since the promulgation of the above, no legislation has been passed that would have the effect of imposing restrictive interpretations or new reservations in respect of the provisions of the Convention. On the contrary, Ordinance No. 82-019 of 11 August 1982, concerning the powers of the Supreme Court in regard to the general supervision of the administration of justice, which was ratified by Act No. 82-037 of 7 December 1982, has been promulgated and the general provisions of article 11 thereof permit direct application of this type of convention. This will be discussed further in part II of this report.

PART II - INFORMATION IN RELATION TO ARTICLES 2 TO 7

Article 2

8. Article 12 of the Constitution (title II: "Fundamental rights and obligations") stipulates as follows:

"The State shall ensure the equality of all citizens by:

guaranteeing the unity of the social order and of the socialist legal system, as well as the unity of the economic order in respect of laws and regulations;

undertaking to remove the economic and social obstacles that promote inequalities among citizens, impede the development of the human person and prevent the effective participation of all workers in the management of political, economic and social affairs;

proscribing all forms of discrimination based on race, origin, religious belief, education, wealth or sex."

9. National unity is defined in the following terms:

"As long as crying injustices persist, as long as Malagasys are not considered as equal, as long as flagrant inequalities exist between regions, between town and country and between social classes and individuals, there cannot be true national unity, which is a prerequisite for our national liberation and independence."

10. The phrase "endanger national unity" may be interpreted as meaning more specifically acts that aggravate tribalism and foment ethnic division. Anyone guilty of such acts is liable to deprivation of his rights and freedoms.

11. In addition to embodying the fundamental principles of human rights in the Constitution of 1975, the Malagasy legislature has prescribed penalties for the violation of those principles in the field of positive law. The penalty for any form of discrimination is illustrated by article 115 of the Penal Code. It should be noted that this article relating to the offence of encroachment on individual freedom or civil rights, which was abrogated by Ordinance No. 62-013 of 10 August 1962, was reinstated by Act No. 82-013 of 11 June 1982, in which it was reformulated in a more precise, broader and more effective manner in the light of the comments of the Human Rights Committee. This article reads as follows:

"Anyone who, because of a person's origin, colour, sex, family situation, or actual or presumed membership or non-membership of a particular ethnic group, nation, race or religion, knowingly denies that person the enjoyment of a right to which that person is entitled shall be liable to imprisonment for a period of one month to one year and/or a fine of 50,000 to 250,000 francs.

The above penalties shall be doubled if the offences are committed by a public official or by a citizen in charge of a public ministry in the exercise of, or in connection with, his functions.

In the cases referred to in the two preceding paragraphs, if the perpetrator of the offence proves that he acted on the order of his superiors in matters falling within their competence and in which he had to comply with their orders as his superiors, only the superiors who issued the order shall be liable to the corresponding penalties.

This article shall not apply to the distinctions, exclusions, restrictions or preferences laid down by the laws or regulations distinguishing between Malagasy nationals and non-nationals."

12. Furthermore, the general provisions of article 11 of Ordinance No. 82-019 of 11 August 1982, to which reference has already been made, permit the direct application of these principles by stipulating that:

"In addition to the provisions contained in article 5 of Act No. 61-013 of 19 July 1961, a violation of the general precepts of justice, particularly the principles of equity that must necessarily be observed in the legal text invoked as an objective justification of the contested decision ... shall constitute grounds for appeal in the interest of the law."

13. It has been inquired whether the State also ensures the equality of aliens residing in Madagascar. Article 6 of the Constitution stipulates that "the law is the same for all, whether it protects, imposes obligations or punishes".

14. It should be noted that articles 19 and 20 of Ordinance No. 62-041 of 19 September 1962, concerning the general provisions of domestic law and private international law, stipulate that:

A Malagasy national or an alien shall not be prevented from exercising his civil or family rights except by a court order and in the circumstances defined by law;

An alien in Madagascar shall enjoy the same rights as Malagasy citizens, with the exception of those which are expressly denied him by law;

The exercise of a right may, however, be subject to reciprocity;

Subject to the provisions of diplomatic treaties or agreements on co-operation, an alien shall enjoy neither the right to elect and be elected to political or administrative assemblies, nor the right to hold public or judicial office or to belong to a body managing a public service;

Status and capacity shall remain subject to the national law of the persons concerned.

15. Aliens may be granted Malagasy nationality under certain conditions specified in the Malagasy Nationality Code.

Article 3

16. First of all, at the national level, it should be noted that, since there is no problem of racial discrimination in Madagascar, all the inhabitants of the territory, whether nationals or aliens, are living together peacefully.

17. Furthermore, in the sphere of education, for example, emphasis is placed on the dissemination of the principle of non-discrimination.

18. At the external level, as a token of its solidarity with the international community in the struggle against racial discrimination and apartheid and its determination to respect and promote human rights, Madagascar has acceded to the International Covenants on Human Rights and the international conventions on the elimination of racial discrimination and of the crime of apartheid.

19. With a view to the promotion of African unity and in conformity with the aims of OAU, Madagascar has consistently upheld the just causes and legitimate struggles of all oppressed peoples endeavouring to break free from the colonial and neo-colonial yoke and from imperialist and racist domination and alienation.

20. In international forums, the Malagasy delegation has always voted in favour of resolutions denouncing and condemning the South African régime's policy of apartheid and calling upon the international community to cease all co-operation with that régime and to apply mandatory economic sanctions.

21. Madagascar naturally does not maintain any bilateral relations with South Africa.

22. In this respect, public consciousness-raising campaigns are conducted by the audio-visual media and also through radio and television broadcasts.

Article 4

23. Long before the promulgation of Act No. 82-013 of 11 June 1982, amending article 115 of the Penal Code to which reference has already been made, Ordinance No. 74-014 of 21 March 1974, concerning the Malagasy Press Charter, had already made provision for positive measures to eliminate all incitement to racial discrimination.

24. Article 60 of the Ordinance defines the punishable offences of defamation and insult as follows: Defamation is any allegation or imputation of an act which casts a slur upon the person or undermines respect for the person or the body to which the act is imputed. Insult is any offensive expression, term of contempt or invective not involving the imputation of any act.

25. The direct publication or reproduction of any such allegation or imputation is punishable, even if it is done in a manner expressing doubt or directed against a person or body not expressly named, but able to be identified by the terms of the statements, slogans, threats, handwritten or printed matter, placards or posters that have been called into question.

26. Article 63 stipulates that defamation of a group of persons belonging by origin to a particular race, nation or religion shall be punished by imprisonment for a period of one month to one year and a fine of 3,000 to 5 million Malagasy francs when such defamation is intended to incite hatred among citizens or inhabitants.

27. With regard to procedure, defamation of private persons shall be prosecuted only on the complaint of the person defamed or insulted or of his heirs, spouse or residuary legatees in the case of defamation or insult to the memory of a deceased person.

28. On the other hand, proceedings may be instituted ex officio by the public prosecutor when defamation of or insult to a group of persons belonging to a particular race, nation or religion is intended to incite hatred among citizens or inhabitants. In such cases, proceedings may also be instituted on the complaint of the injured party.

29. The following observations may be made on these provisions:

The legislation distinguishes between defamation of private persons and defamation of a group of persons belonging to a particular race, nation or religion. To emphasize the gravity of the latter offence, it is made punishable by a fine of 3,000 to 5 million Malagasy francs and imprisonment for a period of one month to one year, whereas defamation of a private person is punishable by a fine of 30,000 to 1 million Malagasy francs;

In all cases the legislation is careful to specify "citizens or inhabitants", that is to say nationals or non-nationals domiciled in Madagascar;

Proceedings may be instituted ex officio by the public prosecutor in the case of defamation or insult to a group of persons belonging to a particular race, nation or religion.

Articles 5 and 6

30. As a State party to the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, Madagascar has already submitted reports on the application of these instruments to the organs responsible for their consideration.

Guarantee of justice

31. In keeping with article 63 of the Constitution, which stipulates that the law is the same for all, whether it protects, imposes obligations or punishes, Madagascar's general policy in regard to justice, which has been or is being applied, can be broadly defined as follows:

Revolutionary justice must be made more familiar to the ordinary man. It must simplify its procedures and reduce the unduly large number of its organs, which were originally designed as instruments to serve the privileged;

The texts concerning legal assistance are designed to facilitate action by the ordinary man and to enable a poor citizen to defend his rights with the same prospects for success as his richer adversary;

The system is also being simplified and made more democratic in an attempt to speed it up and reduce its cost;

Decentralization is one means of attaining these aims, since it makes justice less slow, less unwieldy, less expensive, simpler and more easily comprehensible to the ordinary man.

32. In application of the above principles, the following ordinances have been promulgated:

Ordinance No. 76-014 of 17 May 1976 amending various provisions of Ordinance No. 60-107 of 27 September 1960 concerning the reform of the legal system and the Code of Civil Procedure and the establishment of a court of appeal in each provincial administrative centre;

Ordinance No. 82-019 of 11 August 1982 concerning the powers of the Supreme Court in regard to the general supervision of the administration of justice.

Political rights - by way of reminder

33. Under article 40 of the Constitution, "Every citizen fulfilling the legal requirements has the right to vote and to be elected".

34. Article 1 of Organic Law No. 3 of 6 June 1959, regulating the exercise of the right to vote, was repealed and superseded by Ordinance No. 72-027 of 18 September 1972 as follows:

"All Malagasy citizens, without distinction of sex, aged 18 years and over on the polling day, shall be entitled to vote provided that they are not disqualified by the provisions of article 3 of Organic Law No. 3 of 6 June 1959.

All Malagasy citizens, without distinction of sex, aged 21 years and over on the closing date for the nomination of candidates, and duly included on the electoral list, have the right to be elected.

The rules governing the electoral rights of women who have acquired Malagasy nationality by marriage are laid down in the Malagasy Nationality Code."

35. It should be noted that the Constitutional High Court supervises the proper conduct of voting and elections.

36. The rules governing the electoral rights of naturalized aliens are laid down in articles 37, 38 and 39 of the said Code.

37. Articles 24, 26, 37, 38, 39 and 42 of the Constitution further stipulate that:

The State shall promote the exercise by each citizen of an activity in conformity with his qualifications in the economic, administrative, social and cultural fields;

Access to public office, posts and employment shall be open to every citizen, subject only to the requirements of capacity and aptitude;

The State protects the family and recognizes the right of every citizen to form a family and to transfer personal property by inheritance;

Every citizen is entitled to freedom of movement within the national territory, under the conditions prescribed by law;

Freedom of conscience and religion shall be guaranteed by the neutrality of the State in regard to all beliefs. Religions shall be organized and freely practised in conformity with the law;

All citizens shall enjoy the same social dignity;

Every citizen shall be assured of the inviolability of his person and domicile and of the confidentiality of his correspondence;

No search shall be carried out except in pursuance of the law and by written order of the competent judicial authority;

No one shall be prosecuted, arrested or detained except in the circumstances and the manner defined by law;

No one shall be punished except in pursuance of a law promulgated and published prior to the commission of the punishable act;

No one shall be punished twice for the same offence;

The law guarantees the right of all to receive justice, as well as the rights of the defence.

38. It should also be noted that:

Act No. 61-007 of 5 August 1961 authorized the ratification of the Discrimination (Employment and Education) Convention (No. 111), 1958.

Act No. 62-021 of 6 July 1962 authorized the ratification of the Equality of Treatment (Accident Compensation) Convention (No. 19), 1925.

39. In the field of employment, the principle of the equality of all workers is fundamental; the law guarantees the same social rights to all workers without distinction. Under article 1 of Ordinance No. 75-019/DM of 17 May 1975, promulgating the Malagasy Labour Code: "For the purposes of this Ordinance, the expression 'worker' means any person, irrespective of sex or nationality, who has undertaken to place his gainful activity, in return for remuneration, under the direction and control of another person, whether an individual or a body corporate and whether public or private".

40. However, the professional activities of aliens are regulated. For example, the employment of foreign workers is subject to authorization by the minister responsible for labour (article 20 (3) of the Labour Code). These provisions apply to all foreign workers, regardless of race, origin or nationality, whenever they hold a contract of employment concluded in Madagascar.

41. According to the annual report published by the Department of Employment and Labour, the number of foreign workers holding a work permit was broken down as follows in 1984:

Locally recruited workers	657
Expatriates	307
Total	964

Their distribution by nationality was as follows:

French	553
Comorians	74
Chinese	96
Indians	56
Pakistanis	30
Stateless	37
Other	118

42. Expatriate workers normally occupy higher-ranking posts and enjoy better working conditions and remuneration than Malagasy nationals (social benefits, various allowances, housing, longer annual leave, transfer of salary to country of origin, etc.).

Article 7

(a) Education and teaching

43. Article 41 of the Constitution stipulates that:

"Every citizen has the right to education. The State shall ensure the exercise of this right through the organization of basic education.

It shall organize and supervise education. It shall ensure that all have equal access to instruction, vocational training and culture, with no limitation other than individual aptitude.

The State and local authorities shall co-operate in the education and instruction of children."

44. In the struggle to build a socialist State, teaching and education play an essential role, since they permit the training of citizens brought up according to the new principles of socialism and endowed with the physical, intellectual and moral capacities and the knowledge and know-how needed for the effective furtherance of progress in Madagascar.

45. In application of these principles, the following legislation has been promulgated:

Ordinance No. 76-023 of 2 July 1976 concerning basic (primary) education;

Ordinance No. 76-043 of 27 December 1976 establishing the University of Madagascar;

Act No. 78-040 of 17 July 1978 containing the general regulations concerning the system of education and training; this Act is currently being amended with a view to adapting it to the present social and economic situation.

46. Articles 1, 2 and 3 of Ordinance No. 76-023 of 2 July 1976 contain the following provisions concerning the right to education and its purposes:

"Article 1. The Democratic Republic of Madagascar reaffirms the right of every Malagasy citizen to physical, intellectual, moral and social education.

Article 2. The main concern of basic education is to develop the capacity of man and to provide the young with sufficient knowledge and skills to enable them to play an effective role in the socialist social structures and productive forces.

Article 3. Education shall seek to promote national unity and friendship among all peoples by proscribing all discrimination based on race, origin, religious belief, wealth ... or sex."

47. The training of teachers at all levels reflects the fundamental principles derived from the aims assigned to the new system of education and training, and is designed to enable teachers to theorize on the basis of actual experience, to analyse the social and cultural phenomena observed in the regions where they teach, and to draw lessons from the experience of other socialist countries in the construction of socialism. This training prepares them to transmit knowledge on the basis of concrete examples.

48. With regard to higher education, each of the six faritany (provinces) of the island has a regional university centre (RUC), the establishment of which necessitated a very substantial investment on the part of the nation. Such decentralization also symbolizes the Malagasy State's determination to ensure the harmonious, fair and balanced development of the various strata of the Malagasy population.

49. In the case of primary education, the minimum target of setting up a school in each basic administrative unit or fokontany has been virtually achieved. The policy is to make schools more accessible to children of school age.

50. It should be emphasized that 30 per cent of the national budget is allocated to education.

(b) Culture

51. The basic principles of cultural policy in Madagascar are defined as follows:

"Independence, the recovery of national resources, the retrieval of the attributes of sovereignty and autonomous economic development can be meaningful only in so far as we affirm our Malagasy personality and culture, of which language and history are the essential components."

52. From 1960 to 1975, culture was grouped with other fields, under first one ministry then another, its sphere of action being limited to the "traditional arts", until the establishment of the new Ministry of Revolutionary Culture and Art in 1976, which constituted an affirmation of the role of culture in development, as can be seen from various projects and achievements such as:

The establishment of cultural infrastructure: libraries, a house of culture in each provincial administrative centre, and workshops for the manufacture of tools;

The training of managerial and executive staff;

The grouping of creative and other artists in professional associations;

The promotion, preservation and safeguarding of the cultural heritage;

The codification of measures for the protection of copyright;

The opening of a new National Library at Antananarivo;

The gradual opening of public libraries with the participation of decentralized local authorities, even in areas very remote from urban centres;

The dynamic participation of young people in poetry, singing and recitation competitions organized by the Ministry on various patriotic or social themes, in the Malagasy or foreign languages;

The success achieved by permanent or mobile exhibitions on the Malagasy national struggle, crafts, books, etc.;

The success achieved by companies of foreign artistes performing in Madagascar and by Malagasy artistes touring abroad.

53. This summary of Madagascar's experience in the cultural sphere testifies to its adherence to the principles of the Cultural Charter for Africa adopted by the 13th Conference of OAU Heads of State and Government in July 1976 and ratified by Madagascar in November of that year.

54. In the same context, the plan of action for co-operation in the fields of education and culture among non-aligned countries emphasizes that education and culture play an essential role in the promotion of world peace and of the struggle against imperialism, colonialism, neo-colonialism, apartheid, racism and all forms of alien aggression, occupation, domination, intervention and hegemony.

55. In order to encourage international and intercultural understanding, tolerance and friendship among nations and racial and ethnic groups, Madagascar is contributing in a positive manner to the promotion of regional cultural co-operation. Together with 12 other African countries, it is a member of the Zanzibar-based Centre for Research into East African Oral Traditions and National Languages.

(c) Information

56. The indispensable complement of training (education) is information. The strength of a revolution lies in the adherence of the masses. Information, whether it be written, oral or audio-visual, must therefore help in the achievement of the fundamental aims of the revolution. It is a primary instrument for the education of the people, the organization of the masses and the dissemination of ideas and, as such, must stimulate the population's dynamism and sense of civic responsibility, publicize and apply the laws and directives of the Government, and encourage the people to apply the measures taken by the authorities in the interests of the masses.

57. The action and policy of the Malagasy Government concerning information are guided by the following principles:

"Information activities must not be undertaken in a haphazard manner ...

This applies to:

The anti-imperialist and anti-neo-colonialist struggle;

The struggle against all forms of inequality, not only among Malagasys but also among regions;

The stimulation of a sense of patriotism ...".

58. Information, as an instrument of education, must:

Encourage and stimulate critical analysis of the unequal distribution of national income;

Continually explain to all oppressed persons in all regions that they must join hands to confront the common enemy - those who exploit the sweat of their brows - instead of allowing the struggle against social inequalities to be eclipsed by sterile ethnic quarrels;

Constantly monitor and ensure the safeguarding of national unity.

59. In regard to logistics, the Government has established a network of medium-wave relay stations to improve reception of Radio Madagascar in all regions and has set up a television broadcasting station in each provincial administrative centre.

60. In short, the problem of racial discrimination does not exist in Madagascar. However, in order to meet its obligations under the Convention and to preclude the occurrence of a non-existent or potential evil, our country has already taken, and is continuing to take, the necessary measures to that end.

61. This is only to be expected in the light of Madagascar's long historic struggle for the liberation of the Malagasy people. That struggle was motivated by a steadfast determination to eliminate all the forms of discrimination suffered by the Malagasys during the colonial era, since differences of race and origin formed the basis for their socio-economic exploitation under foreign domination.

62. Through its accession to the International Convention on the Elimination of All Forms of Racial Discrimination, Madagascar intends to make its contribution to the establishment of a society enjoying equal rights and obligations not only at the domestic level but also in the context of international relations.
