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Universal Periodic Review

Report of the Working Group on the Universal Periodic Review*

Madagascar

Addendum

**Views on conclusions and/or recommendations, voluntary
commitments and replies presented by the State under
review**

* The present document was not edited before being sent to the United Nations translation services.

Introduction

1. In line with United Nations General Assembly resolution 60/251 of 15 March 2006 and Human Rights Council resolution 5/1, Madagascar presented and defended its national report on 15 February 2010 as part of the Universal Periodic Review.
2. During the interactive dialogue, 24 countries took the floor to make 84 recommendations, of which 65 were accepted, 17 were partly accepted and 2 were not accepted by Madagascar.
3. As the report on Madagascar will be adopted during the fourteenth plenary session of the Human Rights Council in Geneva on 10 June 2010, this document provides additional replies to and the definitive position of Madagascar concerning the partly accepted recommendations.
4. The partly accepted recommendations are those made by the delegations of the United States of America, Canada, Norway, the United Kingdom of Great Britain and Northern Ireland, Switzerland, Sweden, Spain, Italy, Argentina, Chile and the Netherlands.
5. The replies to recommendations covering the same subjects have been grouped together.

Additional replies to partly accepted recommendations

A. On resolving the crisis

6. The United States of America, Canada, Norway, the United Kingdom of Great Britain and Northern Ireland, and Switzerland all recommended that talks be resumed and that the Maputo Agreement and Addis Ababa Additional Act be implemented in order to ensure an inclusive and consensual return to constitutional order, followed by free, fair and transparent elections.
7. In reply to those recommendations, Madagascar wishes to provide the following clarifications:
 - (a) Talks resumed at the meeting held in Pretoria from 28 to 30 April 2010. On the joint initiative of France and South Africa, in conjunction with the International Contact Group, the aim of that meeting was to produce a road map for a way out of the crisis to be signed by the two main protagonists, without excluding the other two spheres of influence involved. Another meeting is foreseen to resolve the issues in abeyance;
 - (b) In order to avoid an indefinite political, economic and social stalemate, initiatives to end the crisis have been undertaken nationwide, including:
 - The holding of a national, wide-ranging, consultative workshop on 4 and 5 March 2010 with 99 political parties and 912 associations
 - The establishment and nomination of the members of the Independent National Electoral Commission, which is currently working to prepare for and manage free, fair and transparent elections
 - The official announcement of the election dates by the President of the High Authority of Transition on 12 May 2010: a constitutional referendum will be held on 12 August 2010, parliamentary elections on 3 September 2010 and Presidential elections on 26 November 2010. The President also announced his decision to not stand for election

- The establishment of a neutral government composed of experts
- The establishment of an Advisory Constitutional Council to submit one or more draft constitutions
- The holding of a national dialogue, under the auspices of a coalition of civil society organizations

8. Due to the aforementioned stalemate, despite the national and international initiatives, Madagascar intends to appeal to the people, as the ultimate authority, to decide through free and transparent elections, under the supervision of the Independent National Electoral Commission.

9. In any event, Madagascar reiterates that it is ready and willing to consider any initiatives or proposals that could objectively and effectively resolve the crisis once and for all.

B. Opening an independent inquiry

10. Canada and Switzerland recommended that an independent and impartial inquiry into the misuse of force be opened, under the aegis of the United Nations and the African Union and with the support of international organizations for the protection of human rights.

11. In reply, Madagascar wishes to specify that inquiries have been carried out by the national judicial authorities and charges have been brought against 19 individuals suspected of participating in the killings of 7 February 2009. They were the object of an inquiry conducted by the National Mixed Investigating Committee. The preliminary investigation opened against them had been closed by a judgement of the Indictments Chamber, which referred the case back to the Criminal Court.

12. As the procedure is well under way, opening another independent inquiry involving the United Nations and the African Union, supported by international organizations for the protection of human rights, is no longer justified. Moreover, all related trials will be conducted by an independent judiciary, whose task is to determine the guilt or otherwise of the defendants and victims' rights to reparation.

C. Immediate release of political prisoners

13. Norway recommended the immediate release of all political prisoners.

14. In reply to this recommendation, Madagascar wishes to clarify the procedures:

(a) The independent judiciary reaches a decision by considering first whether criminal charges have been brought against the persons concerned or not. Priority is then given to processing their cases as quickly as possible, which will ensure that they are brought to trial within a reasonable time.

(b) According to the criminal law of Madagascar, the rules of criminal procedure in force must be followed when releasing persons placed in pretrial detention. They may be released as a result of a judicial decision either to:

- Release them on bail
- Discharge or acquit them
- Sentence them to a suspended prison term

- Or sentence them to imprisonment covering the period of time already spent in detention

15. In any case detainees who meet the legal requirements have already been released, including four parliamentarians, two politicians and two journalists.

16. It should be noted that those involved in criminal proceedings had been charged with offences under ordinary law, regardless of the fact that some of them are politicians.

D. Abolition of capital punishment

17. Norway, Sweden, Spain and Italy recommended the abolition of capital punishment.

18. With regard to this recommendation, the conditions for the immediate abolition of capital punishment do not yet exist. A significant proportion of the population and a majority of Members of Parliament believe that the deterrent effect of maintaining the death penalty is still a useful means of combating insecurity.

19. For information, a bill to abolish capital punishment had already been submitted by the Government to Parliament, which did not adopt it for the aforementioned reasons.

20. To overcome this obstacle, the Government intends to organize a preliminary debate, which the executive, legislative and judicial authorities, and civil society will be invited to take part in.

E. Ratification of Optional Protocols

21. Argentina, Spain, Switzerland and Sweden recommended the ratification of the Optional Protocols to the International Covenant on Economic, Social and Cultural Rights and to the International Covenant on Civil and Political Rights.

- With regard to ratifying the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, Madagascar intends to wage a nationwide campaign to garner support for the abolition of the death penalty first prior to ratifying the Optional Protocol as recommended
- Concerning the ratification of the Optional Protocol to the International Covenant on Civil and Political Rights, Madagascar is not yet in a position to comply fully with the provisions of that Protocol

F. Elimination of the caste system and of discrimination against the descendants of slaves

22. Chile recommended that measures be taken to combat the caste system and discrimination against the descendants of slaves.

23. In response to that recommendation, it may be specified that:

- Article 8 of the Constitution prohibits discrimination based on origin; consequently all Malagasy citizens are protected against any discrimination based on being the descendant of a slave.
- Historically, Madagascar is not a destination country for slaves. Therefore, there are no descendants of those who were exported to and exploited on large-scale plantations as in other countries.

- Accordingly, it is physically impossible to identify the descendants of slaves in Madagascar.
- The caste system does exist but does not imply discrimination based on belonging to a particular caste, as evidenced by the fact that many persons are married to someone from a different caste.
- Therefore it would be unnecessary to introduce specific measures to eliminate a form of discrimination that does not exist.
- However, Madagascar intends to implement an economic policy to combat widespread poverty that affects the whole population, regardless of origin or caste.

G. Establishing a mechanism to prevent arbitrary detention (habeas corpus)

24. Spain recommended the establishment of a mechanism to monitor the legality of detention in order to prevent arbitrary detention.

25. The Remand Division, comprised of three judges, monitors the legality of detention in Madagascar and rules on the merits either of the decision to detain a person or of an application for release filed by a person in pretrial detention. This mechanism addresses the concerns raised in the recommendation of Spain.

H. Dissolution of special intervention agencies

26. The Netherlands recommended the dissolution of special intervention agencies, established by the High Authority of Transition, that are responsible for making arrests, detaining suspects and carrying out inquiries and criminal investigations.

27. In Madagascar, only the authorities referred to in the Code of Criminal Procedure are able to investigate and prosecute crimes and offences, namely:

- Criminal investigation officers responsible, during the inquiry, for seeking and gathering evidence, identifying perpetrators, carrying out investigations, making arrests, and bringing suspects before the public prosecutor's office
- The public prosecutor or his deputies, who are responsible, during the proceedings, for assessing the advisability of bringing a case to trial, giving due consideration to the statements taken by the criminal investigation officers

28. The public prosecutor is also responsible for assessing the advisability of committing to pretrial detention a person charged under the summary preliminary proceedings. In a preliminary judicial investigation, that assessment is made by the investigating judge.

29. The investigation of cases related to the crisis has been assigned to the investigating departments specified in the Code of Criminal Procedure, namely the criminal investigation officers from the Criminal Investigation Department of the National Police or the Criminal Investigation Section of the National Gendarmerie.

30. The agency in question is not authorized to take decisions in matters of prosecution or detention. The action of members of the Special Intervention Force starts and ends at the time of arrest, which is conducted in conjunction with criminal investigation officers.

31. Their participation in arrests is requested in high-risk cases, particularly when there is a strong suspicion that the persons to be arrested are in possession of firearms.

32. In any event, the judicial authorities are competent to monitor the legality of all operations related to the investigation of crimes and offences.

33. Any failure to follow procedural rules may lead to the annulment of decisions tainted by illegality.
