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PNI for Human rights & Sustainable development

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MADAGASCAR

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PARTNERSHIP NETWORK INTERNATIONAL (PNI)

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**THE IMPACT OF LEGAL DICHOTOMY OF ENVIRONMENTAL LAW
ON HUMAN RIGHTS AND BASIC LOCAL COMMUNITIES *FOKOLONONA*
OF MADAGASCAR**

INTRODUCTION

1. PARTNERSHIP NETWORK INTERNATIONAL (PNI), submitted written comments on Madagascar for consideration by the Working Group on the Universal Periodic Review (UPR) at its 34th session (11 November 2019).

2. PARTNERSHIP NETWORK INTERNATIONAL (PNI) is an international NGO based in Geneva, Switzerland. It was founded in 2014 to promote human rights and sustainable development through capacity building, project sponsorship, and international advocacy to transmit to the United Nations (UN) the concerns of the United Nations. more vulnerable.

PARTNERSHIP NETWORK INTERNATIONAL (PNI) is active in some fifteen countries and has been actively involved with a nearly constant presence at the UN multilateral forum Geneva. PNI has written a conceptual contribution on the Sustainable Development Goals in relation with three partners (Africa: North-West-South) of PNI whose work is done in Madagascar (South Africa) with the grassroots communities *Fokolonona* and the network TAFO MIHAAVO.

The collaboration between PARTNERSHIP NETWORK INTERNATIONAL (PNI) and the GEF UNDP GSP of Madagascar began during the Expert Consultation "Expert Consultation on Children's Rights and the Environment" organized by the OHCHR and the Special Rapporteur Mr. John Knox in Geneva. 22-23 June 2017 to finalize the report submitted to the Human Rights Council.

3. On the occasion of the third cycle of the UPR of Madagascar in November 2019, PNI submits a report focusing inter alia on the application of environmental law and the reform of land law in Madagascar. This report takes into account data from various sources, including information collected by partner organizations working in the field.

We remind you here the joint-written contribution of 14-15 March-Antananarivo presented by PARTNERSHIP NETWORK INTERNATIONAL in collaboration with TAFO MIHAAVO and an large COALITION composed of networks, platforms, order, unions, federations, sections of INGOs and NGOs, Malagasy Associations followed by a press conference attended by many representatives of the coalition.

4. This present report highlights the main concerns related to the issues directly related to the FNI field partners in their work for the protection and promotion of human rights in Madagascar. It notes the remaining shortcomings in **the progressive realization of the right to sustainable development and an adequate standard of living, including the right of peoples to their places and way of life in respect of their dignity and their development in the life of the country, in the context of national security.** Special attention is given to the local *Fokolonona* communities.

The real pursuit of food security and Sustainable development in Madagascar requires redefining the form of environmental law in Madagascar and putting it into actual practice.

I. MALAGASY LAW: A SITUATION OF LEGAL DICHOTOMY

5. Madagascar is a magnificent multiethnic island of about 25 million inhabitants and endowed with immense natural wealth. Madagascar is one of the 4 least developed countries in the world. Madagascar faces many challenges in the promotion and protection of human rights. Extreme poverty, hunger and diarrheal diseases, the return of the plague, cholera, ... remain major challenges for Madagascar. The social, food and health security of the country remains extremely precarious. According to the Institut Pasteur, nearly 1 in 2 children under 5 suffer from chronic malnutrition in Madagascar.

6. The environmental potential, important for humanity, is even more important for the very survival of the inhabitants of the place. The environmental policy Madagascar has had since 1990 an Environmental Action Plan / EAP aimed at slowing the "spiral of environmental destruction".

7. In Madagascar, two legal systems coexist: the virtual one, corresponding to the state environmental law in its current form of French inspiration; the other real, corresponding to environmental law as it is created and applied by individuals. The underdevelopment context isolates each of these two systems creating a situation of legal dichotomy.

8. Malagasy state environmental law, in its present form, creates a freedom of action for the benefit of individuals (individuals or communities) that the state can only respect. To cope with the inapplicability of the provisions, the populations, of themselves adapted to the situation by establishing their own regulation in the form of a traditional Malagasy technique: the Dina. Rights are then protected from third parties by community solidarity (fokonolona, fokontany, even municipality).

9. The *dina* constitute, among other things, a spontaneous response of the villages to the Central Government's inability to guarantee their security and the self-regulating nature of the dina is not contradicted by the State, which intervenes afterwards to validate these conventions. For example, Law No. 2001-004 of 25 October 2001 provides general regulations for dina in matters of public security.

II. EXPLOITATION OF RENEWABLE NATURAL RESOURCES (RNR)

10. In order to ensure the highest degree of compliance by individuals with the application of its regulatory network, the State negotiated and concluded with them a contract known as the "Gelose Law". This made it possible to avoid the useless and impossible use of the penal sanction as a guarantee of the effectiveness of the state regulation. The formalization of the Gelose contract is done by the delivery of contractual and technical documents and *dina*, in particular by the head of region and a representative of the Ministry of Environment, Water and Forests.

11. The Gelose Law aims to create a favorable environment through a participatory and integrated process of all structures and entities involved in the transfer of management of renewable natural resources. The terms of the contract apply all the better that their implementation between the members of the village community is via the *dina* (Article 49 of the Gelose law).

III. RESPECT FOR HUMAN RIGHTS IN THE ADMINISTRATION OF THE ENVIRONMENT

12. Based on an act of will, regulation via the contract suffers in essence from an essential weakness: people sometimes do not conclude a contract with the State. In doing so, they maintain their own rules of conduct, most often contrary to the general interest, which, moreover, are likely to nullify the positive effects of contracts where they exist.

13. Moreover, faced with the proven uselessness of official *dina*, especially in the fight against the theft of cattle, the unofficial *dina*, that is to say, those adopted outside legal frameworks, are multiplying. Conducting abusive behavior, self-regulation of individuals can contradict the human rights to which Madagascar adheres and harm the interests of other individuals not subject to the rule of collective conduct. For example, the double punishment for one and the same offense (the sanction of the *dina* being added to that of the court), the violation of the right of defense, the public lynching, the death penalty, the principle of the personality of the sentences by extending the sanction to the members of the family and close relatives ...

IV. RIGHT TO DEVELOPMENT AND ENVIRONMENTAL ISSUES

14. **The challenges surrounding the exploitation of Renewable Natural Resources (RNR)** are numerous. The collective and individual interests of the actors are fundamentally divergent. Each group of actors has its logic of behavior and its own rationality. Among the actors we find first and foremost rural communities, whose living conditions are increasingly precarious and whose concern is to better serve their communities in ensuring the sustainability of community governance; the State and its concern to preserve the national heritage and to ensure the entry of financial revenues; International Organizations whose objective is to advance conservation and development projects centered around biodiversity as well as economic operators (logging, farming, fishing, industry, tourism, finance, etc.)

15. PARTNERSHIP NETWORK INTERNATIONAL (PNI) remains deeply concerned by the **deterioration of the human rights situation in Madagascar**, and more particularly in the *Fokonolona* communities. This is characterized by titles of land, forests, lakes, islands ... sold to companies or individuals, or foreign states, expropriations of ancestral territories by armed force and bulldozers or obtained by the pressure exerted on *fokonolona's* communities. State actors, government officials, representatives of the private sector are cited among the authors.

16. Indeed, and in particular, the *Fokonolona* of Sakatia Island (Nosy Be), Andranobe Antsirabe, Tsiafajavona, Ankilimalinika commune, Tsianisiha, Andranomandevy district Ambanja, Maromiandra Ambanja, *Fokonolona* around farihin Alaotra of Ambatondrazaka District *Fokonolona* Anjoja, Andaboy-Toliara 1, Belalanda, Antetetzambato CR Antsakoamanondro are largely victims of land grabbing violations of their ancestral lands and resources. It is in disregard of their rights, their activities and their mode of communitarian governance (in agreement with the contracts of the Gelose law) that rural populations representing 1,250,000 people here are expropriated from their ancestral lands.

17. In this chapter of exploration and exploitation of the lands, forests, lakes, islands, basements ..., we deplore the increase of the insecurity, the cases of intimidation, of attempted corruption, of violence, Arrests and death threats against local leaders, populations, women and children, fishermen, farmers,

foresters, environmental protectors of endangered species (turtle, lemurs) frogs ...), defenders of human rights and the environment.

18. We also wish to draw the attention of the Human Rights Council to the reason for the organization of a training session followed by a workshop given by the organization PARTNERSHIP NETWORK INTERNATIONAL (PNI) in Antananarivo on September 10th and 11th, 2018. This event followed the expropriation of the *Fokonolona* community in early September 2018 on Sakatia Island (Nosy Be).

It has been co-organized and funded by PARTNERSHIP NETWORK INTERNATIONAL (PNI), Malagasy organizations TAFO MIHAAVO network (that brings together some 534 associations from 22 regions of Madagascar representing 1,250,000 people from Malagasy local communities), RAVINTSARA NGO, SIF (30 organizations represented) and GEF SGP UNDP Madagascar, the Federal Ministry for the Environment, nature conservation and nuclear safety based on decision the German Bundestag and the ICCA Consortium and, with the participation of representatives of the Ministry of the Environment of Madagascar, This training followed by a workshop led to the drafting of an "**urgent appeal for the recognition of the rights of *Fokonolona***" dated of September 11, 2018. This document was written and signed by the representatives of the 15 most emblematic *Fokonolona* communities with dissemination through the media.

19. Finally, to put an end to this upsurge of cases of repeated violations of human rights in Madagascar, including the land grabbing and natural resources of the *Fokonolona* communities, it is necessary to ensure the protection of people, of the goods, places and lifestyles of the population of Madagascar constituted in community of base, the durability of the community governance and the sustainable development of *fokonolona* Malagasy.

Moreover, it seems essential to us:

- to support local communities as does the GEF SGP UNDP. It is a means of protecting a safe, clean, healthy and sustainable environment that is essential for the realization of human rights and sustainable development while improving the livelihoods of a predominantly rural and developing country.

- that measures be taken quickly and efficiently, in order to restore full confidence in the institutions.

20. PARTNERSHIP NETWORK INTERNATIONAL (PNI) recommends the following:

20.1 Recognize the legal personality of the Fokonolona, as expressed in the preamble of the Malagasy Constitution and Article 152, and ensure that the land is legally registered in their name in terms of land.

20.2 Immediate action on the part of the Government of Madagascar, that the lands of the Fokonolona communities be restored and the damages repaired;

20.3 Prevent land grabbing by public consultation with the Malagasy people and the local community before contracts are awarded to investors;

20.4 Promoting transparent and equitable land governance: application without exclusion of the right to inheritance, prior recognition of the right of enjoyment of land or unreduced land rights of the Malagasy people on the lands of their ancestors;

20.5 Continue the implementation of land reform and revise the laws relating to land management of large industrial, mining, oil, quarry, coastal, agricultural, tourist ...;

20.6 Take concrete steps to fight corruption, including strengthening the judicial system that protects the human rights of the people and safeguards the environment

20.7 Intensify the fight against poverty in collaboration with UNDP and aim to ensure that in the areas of intervention and in particular vulnerable populations access to food security, income and employment opportunities, improve their resilience capacities, and contribute to inclusive and equitable growth for sustainable development.