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增进和保护所有人权—公民权利、政治权利、  
经济、社会和文化权利，包括发展权

当代形式奴役问题包括其原因和后果问题特别报告员  
古尔纳拉·沙希尼扬的报告

增编

对马达加斯加的访问 (2012 年 12 月 10 日至 19 日)\*

概要

当代形式奴役问题包括其原因和后果问题特别报告员于 2012 年 12 月 10 日至 19 日正式访问了马达加斯加。本报告载有关于旨在打击家庭奴役、质役婚姻和最恶劣形式的童工的现行立法、体制机制、方案和政策的信息。她提请注意主要的挑战，并提出建议，以消除立法方面的缺陷、加强执法和体制能力以及加强解决有关问题和为当代形式奴役的受害人提供有效补救的措施。

\* 本报告的内容提要以所有正式语文分发。报告本身载于内容提要的附件，仅以提交语文和法文分发。

## Annex

[English and French only]

### **Report by the Special Rapporteur on contemporary forms of slavery, including its causes and consequences on her mission to Madagascar (10 – 19 December 2012)**

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## I. Introduction

1. In accordance with the mandate described by the Human Rights Council in its resolution 6/14, and at the invitation of the Government of Madagascar, the Special Rapporteur on contemporary forms of slavery, its causes and consequences, Gulnara Shahinian, conducted an official mission to Madagascar from 10 to 19 December 2012. The main objective of the mission was to examine, in a spirit of cooperation, the programmes implemented by the Government to eradicate domestic servitude, servile marriages and the worst forms of child labour. To that end, the Special Rapporteur sought to obtain information on the issues of contemporary forms of slavery in the country, to review legislation relating to contemporary forms of slavery and to address the causes and consequences of this practice. During her mission, the Special Rapporteur had extensive consultations with senior government representatives, law enforcement agencies, civil society organizations and the United Nations country team.

2. The Special Rapporteur obtained the views of victims of contemporary forms of slavery from Antananarivo, Antsirabe, Ambositra, Fianarantsoa, Ihosy and Sakaraha through consultations, personal interviews and open discussion forums.

3. The Special Rapporteur takes this opportunity to thank the Government of Madagascar for its invitation and for its assistance and cooperation prior to and during her mission. She greatly appreciated the contributions made by the victims of contemporary forms of slavery who shared their stories with her, the numerous civil society organizations and the cooperation of the United Nations country team in Madagascar.

4. The Special Rapporteur shared her preliminary findings with the Government at the conclusion of her visit. She highly valued the cooperation of the Government, and underscores her desire and intention to continue her dialogue with it.

## II. Background

5. Since the beginning of 2009, the political crisis in Madagascar has led to a decline in economic growth, which has been exacerbated by the negative impact of the global financial crisis. Social protection mechanisms have been weakened, and the risk of children and women being exposed to violence and exploitation has increased as they try to meet their survival needs.

6. According to the human development index of the United Nations Development Programme (UNDP), 76.5 per cent of the population lives below the poverty line, while 56.5 per cent (more than 11 million people) are considered to be extremely poor. Only 30 per cent of people live in urban areas, while 70 per cent live in rural areas. Rural communities are often isolated and remote, cut off by poor road networks that leave many with no access to basic health care. Chronic malnutrition currently stands at 52 per cent. Some 50 per cent of all children under the age of 5 years suffer from growth retardation.

## III. History of slavery

7. Most Malagasy are descendants of Indonesian and African settlers. There are 18 main tribes in Madagascar, some of which have their own caste system. The Special Rapporteur mainly met with those from the Merina (which mainly inhabit Antananarivo and the surrounding highlands) and Bara tribes (based in the south), which both have a caste system. The Merina ruled Madagascar before French colonization and were the main

group to benefit during French colonial rule. Ethnic tensions persist, largely due to the fact that the Merina consider themselves the descendants of kings and rulers, and consequently of higher social status than the other ethnic groups.

8. There are four main castes within the Merina tribe. First there are the Andriana, who consider themselves nobles and the descendants of royalty. The second, the Hova or “free people”, are commoners whose role is to serve in the army and be businessmen and farmers. The third caste is the Mainty, who occupied the highland long before the importing of Masombika; unlike the Andevo, they lived freely and benefited from some royal advantages. Most of the Mainty served in the Merina army. The fourth caste is the Andevo, who are the descendants of slaves and mainly work for the other two castes. The Andevo were composed mainly of people brought by the Andriana from South and Eastern Africa (who were called Masombika referring to Mozambique country), and people from other regions of Madagascar taken to Antananarivo as prisoners after a military expedition.

9. The nobles and commoners are generally light-skinned, whereas those in the latter two castes are dark-skinned. Many of them served and were sold in Antananarivo until French colonization, when slavery was abolished.

10. The Masombika are former slaves who have no ancestral land. Many of them live on the western coast of Madagascar.

11. Discrimination against the slave caste continues to exist, especially in marriages, where those in the first two castes are not allowed to marry someone from the slave caste. The Andevo live in slums located in the low villages, below the villages on the hill where the nobles and commoners settled. In the rural areas, the Andevo work the employer’s land (someone from a higher caste), tend livestock and sometimes act as guards.

12. The Andevo and the Masombika do not have the same access to schooling and jobs as those from the light-skinned castes. Consequently, most Andevo and Mosambika are illiterate and are more vulnerable to working in exploitative employment. In towns, they are mainly hawkers or employed in cleaning streets or hospitals. The overwhelming majority of professionals (such as lawyers and doctors) are either Andriana or Hova. Some from the lower caste who are able to obtain an education and some degree of economic security do not want to be associated with their communities. In some protestant churches, those considered of lower caste are seated separately from the higher caste.

13. The Special Rapporteur noted that, although poverty and extreme poverty affect the majority of Malagasy, those in the lowest castes have the additional burden of being discriminated against, and they are the most vulnerable to poverty and slavery-like practices.

14. Although mixed couples from different castes are on the increase, such marriages are not supported and still face exclusion from their families, while their children are regarded as unclean.

## IV. Legal framework

### A. International legal framework

15. Madagascar has ratified six of the nine core international human rights treaties.<sup>1</sup>

16. Madagascar is a signatory to the Slavery Convention and the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery. It has not, however, ratified these conventions.

17. In 2005, Madagascar ratified the United Nations Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

18. Madagascar is a party to a number of conventions of the International Labour Organization (ILO) relevant to the prevention and/or the elimination of contemporary forms of slavery, including the Forced Labour Convention, 1930 (No. 29), the Abolition of Forced Labour Convention, 1957 (No. 105), the Minimum Age Convention, 1973 (No. 138) and the Worst Forms of Child Labour Convention, 1999 (No. 182). Madagascar has not yet ratified the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) or the Domestic Workers Convention, 2011 (No. 189).

### B. Regional agreements

19. Madagascar is a State party to the African Charter on Human and Peoples' Rights and the African Charter on the Rights and Welfare of the Child. Both regional agreements prohibit slavery-like practices.

### C. National legal framework

#### 1. Constitution

20. The Constitution of Madagascar guarantees the right to equality and freedom from torture and cruel and inhuman treatment. Everybody has the right to free compulsory primary education.

#### 2. Legislation

##### (a) Labour Code (Law No. 2003-044)

21. Article 4 of the Labour Code prohibits the use of forced labour, while article 262 provides sanctions against those who are, inter alia, found using forced labour and involved in illegal immigration operations of Malagasy workers outside the territory.

22. Article 100 sets the minimum age of employment at 15 years.

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<sup>1</sup> The International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Rights of the Child.

23. Article 101 states that children who are permitted to work may do so for a maximum of eight hours a day and 40 hours a week, with a daily rest of 12 consecutive hours. Night work and overtime are prohibited.

24. Article 102 states that children under the age of 15 may not be employed in any enterprise, even as apprentices, without the permission of the labour inspector, provided that the work is not harmful to the child's health and normal development.

25. Article 103 states that a child must be assigned to a suitable job. Where necessary, a labour inspector may require the examination of children by a licensed physician "to ensure that the work they perform is not beyond their strength".

26. Articles 112 to 114 require that the child's workplace be kept clean and meet necessary hygiene and safety standards, and ensure physical, mental and social comfort.

27. Article 261 provides for sanctions against any person who violates the rules protecting children with a fine or up to three years of imprisonment.

**(b) Decree No. 2007 – 563 relating to child labour**

28. Article 2 states that children over 15 years may be hired to perform light work. The article defines light work as work that does not exceed their strength, is not dangerous, and is not likely to harm their health or their physical, mental, spiritual, moral or social development.

29. Article 3 establishes that children of 14 and 15 years of age may be exceptionally authorized by the labour inspector to perform light work, on the condition that they have completed their compulsory schooling and after the labour inspector has carried out a preliminary investigation of their working conditions. Article 4 expressly forbids the employment of children after 6 p.m.

30. Article 5 requires that, in all cases of child recruitment, the employer must produce a list of names; a medical certificate from a licensed physician or medical business issued at the employer's expense; all administrative documents proving the age of the child; and written consent signed by the parents or a guardian. These documents must be forwarded to the relevant labour inspector within eight days of recruitment.

31. Article 6 requires employers to keep a special register listing all relevant information about the employed child's full name, type of employment, wages, hours of work, health, education and the parents' situation.

32. Article 7 expressly prohibits all forms of violence of all nature against employed children.

33. Article 10 endeavours to comply with ILO Convention No. 182, while article 22 expressly forbids children from working in mines or quarries. Article 8, however, contradicts these articles, as it allows for children to work in mines and quarries.

34. Article 15 prohibits all forms of forced or compulsory labour, including the use of children as a guarantee to pay the debt of the family.

35. Article 16 prohibits the employment of children as domestic servants.

36. Article 18 prohibits the employment of children for the operation of machinery or moving mechanisms that could cause an accident.

37. Articles 19 to 21 prohibit children from working in places where there may be harmful dust or explosive, poisonous, flammable or toxic substances.

38. Law No. 2008 – 011 states that education is compulsory from the age of 6, and that

basic education should be provided for a period of 10 years.

39. Law No. 2007 – 038 prohibits all forms of human trafficking of children and adults, although prescribes punishment for sex trafficking only.

40. Law No. 2008 – 008 prohibits the detention of a person in any place other than those provided for by relevant laws.

41. Law No. 2007 – 022 sets the legal age for marriage at 18. Before that age, without prejudice to criminal offences regarding acts of indecency, the President of the Court of First Instance may, for serious reasons, authorize a marriage at the request of a parent or the child's guardian and with their consent. Consent must be given to the President of the Court of First Instance and be established by the judiciary decision authorizing the marriage.

## **V. Issues of concern**

### **A. Child slavery in mining and quarrying**

#### **1. Background**

42. The Special Rapporteur received information according to which children often worked in situations of debt bondage, whereby the parents had a debt with an employer and verbally agree that the child work to pay off the debt. In Antsirabe, children are paid an average of \$0.75 a day. Children are unable to leave their workplace, regardless of any violence, until the debt has been paid.

43. Rising poverty has had an impact on families, for example, when fathers leave their families because they are unable to provide for their needs. There is therefore an increase in the number of households headed by a single mother. Women are left to take care of the children, who in turn are forced to work.

#### **2. Informal artisanal mining**

44. The work carried out by children in the mining and quarrying sector, by its very nature and the conditions in which it is performed, qualifies as a contemporary form of slavery owing to the debt bondage, forced labour and economic exploitation of the child, in particular in the case of unaccompanied children working in artisanal mining and quarries. For instance, employers wield total physical and psychological power and control over the children, who are completely dependent on their employer for their basic needs, unable to leave their place of work owing to fear of reprisals against themselves or their families, and work in physically and socially isolated and remote areas where they are not able to report abuse or have access to justice.

45. Children who work in mines generally come from poor rural families who do not have land to cultivate and cannot send their children to school. Children tend to work alongside their families; consequently, few children receive an income for their work. In some cases, however, children are employed by a third party that "takes care" of them and receives their salary.

46. Three categories of people work in informal mines. Firstly, there are the independent miners, who rush to an informal artisanal mine to seek precious stones to sell. Secondly, there are buyers (from China, India, the Russian Federation, Sri Lanka and Thailand) who buy food and equipment for people to mine solely for them. Thirdly, there are those who use large diggers and employ people to sift the sand.

47. Buyers and collectors pay a fee to obtain a license from the Ministry of Mining.

When the licensee sells for the first time, 1.4 per cent of the proceeds go to government authorities, 60 per cent to the commune, 10 per cent to the province and 30 per cent to the region, while royalties are paid to the Government in Antananarivo. Although the licensees, who are Malagasy, are not buyers, they are responsible for the artisanal mines. Foreigners often use Malagasy to acquire licenses. Malagasy are normally the collectors of precious stones, which they sell to foreigners.

48. In general, children work from five to ten hours a day, depending on their tasks and what they are mining. They tend to work as part of a production chain; their specific task depends on their age and sex. Children take care of the transportation of either blocks of stone (boys) or water (girls); crushing; and sieving (irrespective of sex). From the age of 14, children are allowed to dig holes and tunnels. In general, children under the age of 18 do not work in the tunnels. The tools used are outdated, so work requires much physical effort. Children start working with their parents as of age of 5. Unaccompanied children start working from the age of 12.

49. The country has experienced veritable mining “rushes”, whereby people flock to an area and start to mine informally in the hope of finding gold or semi-precious stones, such as sapphires and tourmaline (one gram of gold can be sold for \$27 to \$32; one gram of sapphire is bought for \$455 and can be sold for as much as \$1,365). Informal artisanal mines do not usually use chemicals.

50. While in Sakaraha, the Special Rapporteur received information showing that children helped to dig mining holes that were 1 metre in circumference and 15 metres deep, with adjacent tunnels that were 1.5 metres in height and 7 metres deep. Alternatively, they could also dig holes that were 1 metre in circumference and 50 metres deep; for this type of hole, however, the children had to carry plastic sacks filled with air to depths below 15 metres in order to be able to breathe. Boys as young as 10 went down the holes to collect earth. The earth was then sifted at a nearby river. Men, women and children worked to sift the earth.

51. The Special Rapporteur was informed that, although it was easy to find precious stones in Sakaraha, it was now becoming more difficult, as on average only one stone is found a month. This situation generates tension among the informal communities living in the areas surrounding the mines that depend on mining to earn money. There is an increased sense of insecurity when precious stones become rarer.

### **3. Impact on children in mining**

52. Working in the mining sector puts the health of children at serious risk. They are exposed to a number of dangers, including lung disease, parasitic diarrhoea, malaria and the risk of accident when handling tools or stones. The physical effort involved in carrying heavy loads and working in a dusty environment, sometimes underground, make the children more likely to develop respiratory problems.

53. Children, especially unaccompanied ones, are also exposed to physical and sexual violence. The Special Rapporteur received reports that girls working in or around the mines were sometimes raped.

54. Sapphire mining has also resulted in deaths, given that the holes are unstable and have been known to collapse.

55. The artisanal mining of gold contaminates the water supply, which is used for rice paddy irrigation. Alluvial soil muddies the fields, making rice farming impossible. Farmers are no longer able to farm their land; as a result of the gold rush, new informal communities develop on these sites.



56. Children's income varies according to the area and the nature of the work. In auriferous areas, a worker can earn at least \$4.5 a day. In the case of sapphire mining, they can earn up to \$6, although those who sell their products are themselves often exploited by buyers as a result of their inexperience. In the crystal, quartz and tourmaline mining sectors, children's income may be as low as \$0.23 to \$1.6 a day. Children who work with their family may be given a toy or clothing as a means of payment for their work.

**(a) Stone quarries**

57. Children (mostly boys) work in quarries on the outskirts of the major towns in Madagascar. Their work involves breaking stones into smaller blocks or gravel and carrying baskets filled with stones or bricks. The age at which children begin to work depends on the quality and hardness of the local stone, usually varying between 3 and 7 years. Most children work in family groups. The number of working hours depends on the age of the child and on whether the child attends school. Children who do not attend school work an average of 47 hours a week.

58. Given that families and working groups are paid according to the amount of work performed, it is almost impossible to calculate children's income. Infants are usually brought on site so they can stay close to their mothers while they work. As a result, even children who do not work in the quarry may still be exposed to the hazardous conditions of the site.

59. In Ambohimahitsy, work in mines starts at 5 a.m. and earnings are measured by can of stones; most workers earn approximately \$4.50 a day. Payment is made every Saturday.

**(b) Impact of quarry work on children**

60. Children do not receive basic equipment, such as gloves to protect their hands or goggles to protect their eyes from stone chips. Conditions are unsanitary, hygiene is poor, and safe drinking water is rarely available nearby. The risks for children working in quarrying include lung and eye irritation due to the dust; deteriorating vision; hearing problems caused by the high acoustic levels; skin infections, often due to untreated injuries; deformation of the spine as a result of transporting heavy loads; stunted growth; falling on uneven ground; poor quality tools, which may cause accidents; anxiety due to the fear of landslides; and finger injury.

**(c) Impact on the right to education**

61. The mandatory age for school attendance is from 6 to 16. According to more recent information from Syndicat des professionnels diplômés en travail social (SPDTS), a non-governmental organization working with victims and their families in Antananarivo, the school dropout rate has been rising as more children leave school to work.

62. Children who work and attend school struggle in their schoolwork owing to fatigue and lack of time. In addition, they rarely have anybody at home to help them with their schoolwork.

63. Birth registration is not carried out systematically. It is often not considered necessary for many parents living in remote and isolated areas, and is not construed as a child's fundamental right. Nonetheless, children cannot officially sit school exams in Madagascar without a birth certificate.

64. The main constraints affecting the education system include the lack of school materials and equipment; unmotivated teachers; unequal classes and schools (too many

or too few children proportionally in a class); teachers required to give multi-grade classes without appropriate training; parents' lack of faith in the education system; the limited effectiveness of vocational and technical training; the inability of parents to pay for school supplies; inadequate curricula; absenteeism, and the remoteness and lack of schools; the prohibitive costs of running private schools; the prospect of work (especially mining), seen as a means of earning money quickly; insufficient and poor infrastructure of schooling; and, since late 2012, the increasing insecurity in the southern part of Madagascar.

#### 4. Response

##### (a) Government programmes

65. The national plan of action to combat child labour in Madagascar (2004-2019) was designed to combat the worst forms of child labour in the rural sector, mining industries, manufacturing, domestic work, commerce and catering. It focuses on raising awareness, improving legislation, improving the situation of families at risk and access to quality education.

66. With the support of the United Nations Children's Fund (UNICEF), the Ministry of Education established the Education for All Plan (2008-2015), which sets out a comprehensive map to improve the quality of, and access to, basic education. It includes strategy development at the national level, such as curriculum and textbook development, in-service teacher training and school construction.

67. In Sakaraha, the organization Trano Aro Zo, which is funded by the Ministry of Justice, raises awareness about the hazards faced by children working in mines by means of radio announcements and talking to the *fokontany* (local chief). It also helps women to settle domestic violence disputes (informally or in courts), or to obtain identification cards. It also works closely with the *lonaka* (tribal elders).

##### (b) Other programmes

68. Akamasoa is a quarry run by a catholic priest who helps to provide parents with work and ensures that their children go to school. Children are not allowed to work in the quarry. The priest has built houses; families pay \$4.5 for the first six months, after which they own the house. The parents pay \$5 a month for their children to attend school. Payment must be regular, but never exceeds \$5. Most of the workers are women.

#### 5. Gaps

69. The Ministry of Civil Services and Labour is responsible for enforcing child labour laws and policies in the formal sector, but not in the informal sector. The enforcement of laws is, however, severely restricted by the lack of financial and human resources. The Ministry only has 90 labour inspectors, most of whom are located in Antananarivo and none of whom is specialized in child labour inspections.

70. Although current labour law forbids children working in mines, the Mining Code does not actually feature this prohibition or any relevant sanctions.

71. The Special Rapporteur received information according to which the police were regarded as corrupt and ineffective in conducting investigations because they lacked necessary resources to investigate and to arrest criminals, which resulted in no prosecutions.

72. While noting that child labour is restricted by law, the Special Rapporteur is

concerned that child slavery remains widespread in Madagascar and that children are employed in the agricultural and mining industries, as well as for domestic service in rural and urban areas. She is deeply concerned that there are no functioning government programmes, policies and plans in place to address child slavery effectively.

73. In addition, given that all decisions are made in Antananarivo, the towns outside the capital receive very little or no resources to ensure access to education and health services.

74. Although the law states that primary education is free, all school materials still have to be bought. School enrolment for primary school costs \$5 a year, and \$9 a year in secondary school. The Special Rapporteur also received information that reflected a lack of trust in the education system owing to the shortage in highly trained teachers and the corruption associated with exams, leading to the widespread perception that only the wealthy pass exams. There is also a lack of employment opportunities after school, which leads families to believe that there is no need to invest in education given that it does not improve the lives of children or their families.

## **B. Domestic servitude**

### **1. Malagasy domestic workers**

75. Women employed as domestic workers perform their jobs mainly in the house, whereas the men work as gardeners and guards. Many families prefer to employ children, whom they believe are cheaper and easier to control.

### **2. Child domestic workers in Madagascar**

76. The exploitation of children in domestic work can amount to domestic servitude. The Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery specifically called on States parties to the Convention to abolish “any institution or practice whereby a child or young person under the age of 18 years is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour”.

77. Child domestic workers are common in Madagascar, particularly in urban areas. The children, who come from rural areas, may find employment as domestic workers in a number of different ways. Employment is mainly found through their families or informal networks, such as people who know each other in the child’s village. In some cases, brokers are paid by employers. Recruitment agencies operate in Antananarivo for employers who have no contacts in the rural areas. In other cases, children leave home and seek employment themselves. The first employer of a child domestic worker tends to be a family member or a family member of somebody in the village. SPDTS informed the Special Rapporteur that 32 per cent of children who run away from home become economically active work as domestic workers.

78. The root cause of child domestic labour is poverty. The current political crises has also been accompanied by an increase in crime and poverty, as many economic sectors, such as the textile industry, have slumped. Greater unemployment also contributes to social insecurity. Families are so poor that they send their children away to work in the hope that they will be taken care of and perhaps obtain an education.

79. The act of *famadihana* (return of the dead), which involves the re-embalming of ancestral corpses and practiced in the southern region of the highlands, is an important ritual that shows the belonging of the Malagasy to their community. The high cost of the ritual and its regular practice, however, mean that children are often sent out to work in

order to earn more money to pay for the ceremony.

80. In places like Ambositra, children are encouraged to become domestic workers. The fact that those returning from the city to visit their family always look financially better off perpetuates the myth that child domestic labour is good, well-paid work. For lack of alternatives, many girls make becoming a domestic worker their ambition.

81. The turnover of child domestic workers is high in Madagascar. Girls as young as 10 years of age live and work in slavery-like conditions. On average, they stay for two years, but tend not to stay more than three or four years with their employers, who prefer to replace older domestic workers with younger ones, who are easier to control, more obedient and less familiar of their surroundings, therefore more dependent on their employers. As the children grow, they become increasingly acquainted with their environment and more independent, so employers lose their influence over them. Older girls are also more likely to bring home strangers (particularly men), who might take advantage of the situation to have sexual relations with them and/or steal from the family. For this reason, girls are often sent back to their village or family when they reach sexual maturity. Sometimes, young girls are abandoned or refuse to be exploited, but cannot afford the journey home. Such girls try to find another job, but may end up in dangerous situations, such as prostitution. Some families prefer to have boys, as they can do more work and do not risk pregnancy.

82. Contracts tend to be verbal or based on an arrangement between the employer and the child's parents, the employer and the worker, or the employer and an intermediary. Child domestic workers can thus find themselves in a situation of vulnerability and at risk of exploitation.

83. While professional domestic workers can earn between \$36 and \$68 a month, non-professional workers only earn \$4.5 to \$14 a month. In Antsirabe, the Special Rapporteur met with child workers who reported that they earned as little as \$0.20 a month, equivalent to the price of a loaf of bread.

84. Child domestic workers do not themselves usually receive a salary, which is paid to their parents. In cases where children have been recruited through an intermediary, the children receive little or even none at all for their work, given that the employers pay the intermediary. Most parents of domestic workers in Ambositra receive a salary twice a month. In other regions, parents receive a salary every six months, or even on a yearly basis. There have been cases where employers have refused to pay the worker's salary as a form of punishment.

85. Although some children may be fortunate enough to be given their own bedroom, clothes and food, a considerable number of child domestic workers sleep in the kitchen or the living room, sometimes on the floor with only a cover. Some are only provided with leftovers from the family's meals. Sometimes, they are denied food as a form of punishment.

86. Child domestic workers may be required to up to 15 hours a day. They prepare breakfast, take the children to school, do the housework and shopping, collect the children from school at lunch time and in the evening, prepare lunch and the evening meal for the family, and do the washing up in the evening. They also fetch water, do the laundry and care for children during the night.

87. Child domestic workers are dependent on and must submit to their employers, because they are far away from their village and family.

88. The Special Rapporteur received information that child domestic workers are often abused and beaten, deprived of food and rest, and sometimes raped, sexually abused and subject to sexual harassment from their employers or other members of the host family. They may also have their movement restricted as a form of punishment.

### **3. Malagasy migrant domestic workers**

89. Malagasy women are reportedly employed as domestic workers abroad, particularly in the Middle East. These countries include Lebanon, which the Special Rapporteur visited in 2011. Some Malagasy workers have reportedly started to go to South and East Asia.

90. Agencies recruit domestic workers from Antananarivo and from remote cities in the region of the East (such as Tamatave), the North (such as Sambava or Diego-Suarez) and the South (such as Tuléar).

91. Some domestic workers come from rural areas and are illiterate or poorly educated, making them vulnerable to deception and abuse at the hands of recruitment agencies and employers. Most workers return to Madagascar before the end of their contract owing to the mistreatment endured in their place of work, such as physical, sexual or economic exploitation. Some also report harsh working conditions, confinement to the home, confiscation of travel documents and the withholding of salaries. The majority of victims are women, although men also suffer from abuse. Women who return with children often face further victimization and exclusion from their communities, particularly if they have already been married.

92. Reports received by the Special Rapporteur indicated that emigration for work purposes had risen, and was due in particular to increased poverty and a decline in the rule of law. Some domestic workers are as young as 14 years of age.

### **4. Responses**

#### **(a) Child domestic workers**

93. The Special Rapporteur was informed that, when caught, persons responsible for making children work as domestic workers are required to pay the children's school fees.

94. While in Antsirabe, the Special Rapporteur was informed that a hotline was available to report cases of child abuse.

95. The regional offices of the Ministry of Population and Social Affairs in Antsirabe and Ambositra conduct awareness-raising campaigns and workshops to combat the worst forms of child labour. They also work with civil society organizations to provide vocational training for children and economic alternatives for families.

96. Since 2010, SPDTS has conducted awareness-raising campaigns to reduce the number of girls recruited from Antananarivo.

97. SOS Children's Villages runs programmes to help former child domestic workers to receive literacy and vocational training. Children whom they deem to be at great risk sometimes stay at the organization's centre. The organization also aims at providing families with support.

98. Vozama and Le Petit Eden are non-governmental organizations that provide children with free education, thereby preventing them from having to work as domestic workers.

99. A centre for socioeconomic promotion in Ambositra, Rakingaskara, provides young boys with vocational training in carpentry. The centre is sponsored by the Ministry of Population and Social Affairs.

#### **(b) Malagasy domestic workers abroad**

100. Owing to the large number of cases reported of abuse of domestic workers, the Government of Madagascar decided to prolong the ban it introduced in November 2009 on sending domestic workers to Lebanon. In implementing the ban, the Government

intercepted groups of women planning to leave the country illegally to search for employment as domestic workers abroad. On 22 April 2011, the authorities reportedly intercepted a group of 20 Malagasy domestic workers who were planning to go to the Middle East via East Africa.

101. With the support of UNICEF, the Ministry of Foreign Affairs, the Ministry of Labour and Public Service and the Ministry of Population and Social Affairs created an interministerial committee in December 2009 to address the situation in Lebanon and to establish a safe migration programme, including a new contract template, pre-departure preparation for women, and rules and regulations for recruitment agencies.

102. In 2010, the Government repatriated 606 Malagasy victims of domestic servitude from Lebanon. Upon their return, the victims received medical care at public hospitals and psychological support from workers from a local non-governmental organization.

103. In 2011, the Consulate of Madagascar in Lebanon and the Embassy of Madagascar in Paris began to identify workers to be repatriated to Madagascar, establishing a termination date with their employers and negotiating with the Government of Lebanon with regard to workers in detention because of their illegal status. Officials from the Ministry of Foreign Affairs, the Ministry of Labour and Public Service and the Ministry of Population and Social Affairs, and the air and border police coordinated their efforts for the repatriation in March 2011 of 85 domestic workers.

## **5. Gaps**

### **(a) Child domestic workers**

104. There is little effective implementation of legislation regarding child domestic workers.

105. Although there is a hotline to report abuses, there is no information about its usage and reports concerning child domestic workers.

106. Children are not often able to commence school when they are 6 years old and thus risk losing the opportunity to benefit from primary schooling. Literacy classes and vocational training are rarely available to these children.

107. No centres are available for child domestic workers to seek shelter, rehabilitation or vocational skills.

### **(b) Malagasy domestic workers abroad**

108. It is not clear how licences are issued to recruitment agencies, how they are monitored and what sanctions are in place to prevent them from exploiting Malagasy domestic workers abroad. Agencies reportedly have strong ties with government institutions.

109. The Special Rapporteur received information according to which civil servants are, in some cases, involved in sending domestic workers abroad.

110. The government ban on sending workers to Lebanon and the suspension of employment agencies have failed to address the problem. Reportedly, many agencies continue to send workers directly to Lebanon, while unofficial networks now send Malagasy migrant workers through other countries to circumvent the ban. Malagasy officials have also reportedly assisted unlicensed recruitment agencies in obtaining fraudulent travel or identification documents, including for underage persons. It is reported that the Ministry of Labour and Public Service has close ties with recruitment agencies, which hamper the oversight and monitoring of the agencies' practices.

111. There is no coherent or coordinated government policy for addressing the issue of migrant domestic workers.

112. The trafficking law prohibits all forms of human trafficking, but only prescribes punishment for sex trafficking; it is therefore inadequate for addressing the issue of exploitation of Malagasy domestic workers abroad.

113. According to the Government, no investigations or prosecution of trafficking or forced labour offenders were currently under way.

114. Although the Government has monitored the conditions of workers abroad, such monitoring appears to be rare and inadequate.

115. In addition, it should be noted that families will never bring a case against intermediaries or recruitment agencies, as there is a general fear and lack of knowledge about legislation and law enforcement agencies.

116. It is unclear how many people the police have sanctioned as a result of forged identity documents for underage girls working abroad and how many people they have caught leaving to work in countries where a ban is in force.

117. The government process of identifying and registering victims for repatriation is not clearly defined and may have left some vulnerable victims with their employers. In addition, it is not clear how victims who needed additional counselling, legal services and medical care were identified, and what type of follow-up is in place to ensure their reintegration into society, especially those who have returned with children.

118. There have been no additional repatriations since 2011.

119. The Government of Madagascar has not engaged with the Government of Lebanon regarding the protection of and legal remedies for exploited workers.

120. The Special Rapporteur received allegations that the Consulate of Madagascar in Beirut is ineffective in addressing the needs of Malagasy victims of domestic servitude, and in fact often encourages victims to return to their employment agencies and does not advocate for victim protection or investigations into allegations of abuse. It is therefore not adequately placed to deal with the issue of Malagasy domestic workers, who are often not registered at the Consulate.

121. Repatriated workers do not have systematic access to medical and psychiatric care. The Government only provides medical and psychiatric care on a case-by-case basis at only one public hospital, in Befelatanana. No other hospital provides such services free of charge. The Government reportedly did not encourage victims to assist in the investigation and prosecution of their exploiters.

122. Recruitment agencies do not issue standard contracts. Even when there is a contract, it is not clear how it will be enforced. Normally, Malagasy domestic workers are required to sign another contract upon arrival in the country of destination. The contract is often not in a language that the worker understands.

123. There are very few social and financial programmes that assist Malagasy domestic workers who have been victims of servitude, especially those who return with children. Those with children feel ashamed and face stigma in the community.

## **C. Servile marriage**

### **1. Forced marriage**

124. The practice of forced marriage is still common in some regions of Madagascar.

125. Under the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, all forms of forced marriage are defined as practices similar to slavery, which reduce a spouse to a person over whom any or all of the powers attaching to the right of ownership are exercised. International law has further reiterated and reinforced the provisions of the Convention that prohibit forced and early marriage.

126. Victims of servile marriage are often unable to escape because their families and/or the community in which they live do not support them, whether for economic reasons or for traditional and cultural beliefs.

127. Madagascar has one of the highest child marriage prevalence rates in the world. Although the legal age for marriage without parental consent is 18 years, on average one out of two girls is married before her eighteenth birthday. Prevalence of child marriage is highest in Toliara region (69 per cent), followed by Mahajanga region (59 per cent), Antsiranana region (58 per cent), Fianarantsoa region (50 per cent), Toamasina region (41 per cent) and Antananarivo region (35 per cent).

128. Child marriage, often regarded by families as a way to protect minors or as a survival strategy, is more common among girls who are lesser educated, poor and living in rural areas. Girls from the poorest 20 per cent of households are twice as likely to be married before the age of 18 than girls from the wealthiest 20 per cent. In 2009, women aged from 20 to 24 years and living in rural areas were approximately 1.5 times more likely to be married before their eighteenth birthday than their urban counterparts. This urban-rural divide has remained at roughly the same level since 2004. According to United Nations statistics, one in every two youths is in an early marriage.<sup>2</sup>

**(a) Arranged marriages (*Valifofo*)**

129. In places like Ihorombe, in the Bara community, when a girl reaches the age of 10, she is separated from other family members and can receive male visitors without need for approval from her male relatives. Indeed, her father and brothers no longer have any contact with her.

130. In the Bara community, when a girl is born, she is betrothed and the parents receive 10 oxen (oxen are a sign of wealth and prestige). Parents try to marry off their daughters to a man with many cattle. The man can take the girl from the age of 7 years or ask her parents to raise her until she is 12, at which time she will be taken to the husband's home.

131. Betrothed children accept marriage as they do not want to be excluded from the family (such exclusion would otherwise result in the girl being left destitute). Only the children of male offspring are allowed to marry in order to ensure that the wealth (oxen) stays within the family. Those betrothed are usually of the same age and start to live together from the age of 13 years.

132. In some cases, an elderly man, although already married, may become betrothed to an infant and marry her when she turns 10. A girl in these circumstances is usually pregnant by the time she is 12, and the man may die while she is still a teenager. It is difficult for the widowed girl to remarry; she is often cast out by the first wife from her husband's home, and is not entitled to any of her late husband's possessions.

133. Girls are forbidden to marry anyone from the slave caste. The Special Rapporteur

<sup>2</sup> See United Nations Population Fund, *Child Marriage Profiles: Madagascar*, available from [www.unfpa.org/webdav/site/global/shared/factsheets/Child%20marriage%20country%20profile%20Madagascar-1.pdf](http://www.unfpa.org/webdav/site/global/shared/factsheets/Child%20marriage%20country%20profile%20Madagascar-1.pdf).



spoke with a woman who had been ostracized by her family and faced stigma in the community because she had married someone from the slave caste. The pressure put on her husband by her own family was so great that he eventually left the household, leaving her to raise the children on her own. Her family was now trying to force her to marry a man from the same caste in the Bara community.

**(b) Sale of wives**

134. Parents sell young women into marriage. Some are short term and involve foreigners, and often for significant sums of money, leaving the women vulnerable to servile marriages. Parents are sometimes bribed with money to agree to their daughter's union, without her consent. The "groom", a broker, then forces the girl into the sex trade.

**(c) *Moletry***

135. *Moletry* is the conclusion of an engagement contract obliging an underage girl to behave irreproachably throughout the probationary one-year term of the marriage contract on pain of losing the agreed dowry (a maximum of three oxen and/or money).

136. *Moletry* is mainly practiced in the Tsimihety tribe in Majunga province, although other tribes are now beginning to implement it. Girls are married off at a younger age because the parents are interested in the oxen that they receive as a dowry. Poverty is thought to be one of the main reasons for this practice. In fact, contracts of this type are difficult to refuse as parents can be offered as much as \$1,000 (as well as the oxen).

137. The parents of a boy (usually around 15 years of age) look for a spouse for their son (chosen girls may be as young as 12), then the parents of both children organize the wedding. The parents hold a written agreement for one year that they may prolong. If a child is born after the first year and the marriage contract has expired, the girl – or, if she is very young, her mother – will be responsible for raising the child. If the girl has been unfaithful or the marriage does not last the full year, the dowry is returned, without any stigma for either side.

138. The wife must stay the contracted year, even in the case of domestic violence; in this case, the girl's parents receive more money or jewels to appease them. The Special Rapporteur was informed that, even when civil society organizations had tried to intervene to support the girl, they had been prevented by the parents of both spouses.

139. In certain cases, the boy's parents give money and promise to deliver the oxen at a later time. Disputes may arise if the boy's parents do not honour their promise to deliver the oxen at the mutually agreed time.

140. Girls may marry another suitor after their first marriage (the number of oxen decreases with each new marriage, whether or not she has had any children by a previous one).

**(d) Girl markets (*Tsenan'ampela*)**

141. Girl markets exist in the region of Fianarantsoa. Girls start to go to the markets, at the age of 13, where they try to attract cattle owners and negotiate a price for a "marriage", which can last for a night or the duration of the market (from Friday to Monday), after which they are paid (up to \$4 a night). After the market, the girls return home.

142. Girl markets involve both marriage and prostitution, providing an opportunity for girls to meet a potential husband, or at the least, to earn some money. Every week in Ambalavao there is an ox market where rich owners and buyers from the surrounding regions meet. Following the tradition, young men from the region see the ox market day

also as an opportunity to find a companion. Parents persuade their young daughters to go to the market to find a husband. Girls and young women from small villages mostly go in a group to the market. Once the market is over, some follow the men to their village, stay with them and serve as their wives, while others work as prostitutes for a few days, then return to their families. In either outcome, the daughter's parents receive money or oxen in return for her "services".

143. Given the poverty and pressures borne by the family, girls have no choice but to accept. Once the girl has been married off, her family then considers her to be financially independent and expect her to provide for herself, including for her education. Girls and young women are not stigmatized for being pregnant, even if there is no official or social recognition of the father.

144. Although such markets are located mainly in the Bara community, men from other tribes have been known to visit them. According to recent reports, French and Indian men now frequent girl markets in Ivohibe. It is believed, however, that the markets in Ivohibe are solely for prostitution. Bara community members therefore now claim that their tradition has been corrupted.

**(e) Impact**

145. Child marriage has a particularly heavy impact on girls and young women. Married girls are usually unable to refuse sex or insist on condom use. Child brides are often exposed to such serious health risks as premature pregnancy, domestic violence, sexually transmitted infections and, increasingly, HIV/AIDS. Both boys and girls who marry early often endure forced separation and isolation from family and friends.

146. Furthermore, given that the reproductive system of young girls is not always fully developed, numerous pregnancies can compromise their reproductive health.

147. In the Barra community, inter-marriage between cousins is common, making congenital disabilities and illnesses frequent.

**(f) Consequences of refusing marriage**

148. The Special Rapporteur was informed that, in some cases, refusal to marry was met with threats of reprisal or banishment from the family home.

**2. Government response**

149. To change attitudes and combat cultural practices and stereotypes, dialogues have been held at the local, regional and national levels in order to involve all stakeholders and to raise the awareness of the population at large. The Ministry of Justice, with UNDP support, scheduled local, regional and national discussions about *moletry* in order to encourage all local leaders to participate actively in this dialogue and to pledge voluntarily to raise the awareness of the entire population of the damaging effects of forced marriage and teenage pregnancy. At the close of the debate, traditional chiefs, religious leaders and local authorities pledged to combat the practice of forced and/or early marriage that often characterized *moletry*.

150. The Ministry of Justice, with support from UNDP, commissioned two studies in 2007 to identify the origin, contents and consequences of *moletry*, which often deprives women of the fundamental right to choose their future spouse.

151. In Ihosy, Trano Aro Zo works with local communities to raise awareness of the dangers of early marriage, and the importance of birth certificates, girls' education and identification cards for women.

152. In Mampikony, civil society organizations provide advice on reproductive health, awareness-raising about the dangers of early marriage and vocational training for girls.

### 3. Gaps

153. Although the age for child marriage has been raised to 18 years, it is still permitted with the consent of the parents. In some situations, it is the parent who forces the daughter into a servile marriage; the law is therefore used to justify forced marriages.

154. The Special Rapporteur was informed that no information was available about whether anyone had been prosecuted for forced early marriage and what the Government was doing to monitor and sanction cases of it.

155. In the case of girls and women selling their “services” in the market, there is lack of awareness about contraceptives and sexually transmitted diseases.

156. Even when girls attend school, they are often withdrawn so that they can marry. Communities believe that women are a means to secure wealth.

157. The current awareness-raising programmes, which include posters and booklets, are not very effective because of the high rate of illiteracy. Their reach is also limited to towns, and does not extend to the rural areas.

158. Civil society organizations focus not on ending harmful traditional practices that lead to servile marriages but rather on ensuring that those who marry are of legal age and that the girls’ parents receive the dowry promised. Parents and local communities are reluctant to go against such traditional practices or to be seen as an obstacle. The only legal prosecution in the case of *moletry* is when the dowry has not been handed over (not if the girl is underage).

159. Most births take place at home, given that the \$2 fee charged for hospital delivery is too expensive. Access to health clinics is also difficult, as they are rare and not accessible to people living in rural areas. Traditional birth attendants are also not very well trained. Home births are more risky for young girls and can result in vaginal fistula, which in turn may lead to the girl being rejected. Surgery to repair vaginal fistula, introduced in 2011 in Tulear, is still offered in only a few places.

160. Birth certificates are issued in hospitals within 10 days of delivery. Both parents must have identification documents; if the mother does not, no birth certificate is issued.

## VI. Conclusions and recommendations

**161. The fight against poverty is at the heart of the fight against slavery in Madagascar. Human rights cannot thrive in an environment of extreme poverty, which makes the Malagasy more vulnerable to living in conditions of contemporary forms of slavery. Parents are desperately poor, have few alternatives for employment and are unable to send their children to school. Children suffer from chronic hunger, which affects their physical and mental development.**

**162. The lack of political stability and of robust action and commitment by the authorities to tackle extreme poverty has left large sections of society in a state of complete abandon and despair. Little investment has been made in such basic services as health care and education, many of which have been closed down owing to lack of funds.**

**163. Elections are crucial in ensuring an environment in which human rights can prosper. The international community needs to remain engaged and to continue to fund projects that promote human rights.**

164. The issue of caste discrimination should be addressed openly, not as a taboo; in this way, issues relating to vulnerability to poverty and slavery-like practices may also be dealt with in a comprehensive manner. The Government, civil society organizations and the international community must work with local communities to eradicate the stigma that the descendants of slaves experience, by means of programmes, technical expertise and the funding of projects to combat caste discrimination.

165. The Government should strengthen awareness-raising campaigns on slavery-like practices, in particular by targeting vulnerable communities where children are most at risk.

166. The Government is heavily centralized. Consequently, laws, policies and financial resources do not trickle down to communities. Malagasy legislation is not enforced at the local level, while customary law has preferential consideration, even by local government officials. In many cases, the ministries in the capital are unaware of the harmful traditional practices in the regions, particularly in rural areas. Coordination should be effective at all levels of intervention; at the community level, within the local administration and at the national level, with clear leadership from the Prime Minister.

167. The Special Rapporteur repeatedly heard that, although law enforcement agencies were aware of the law, the political situation prevented them from properly implementing it. Judges are ineffective in the face of corruption, which leads to the impunity of perpetrators of slavery-like practices. There is a general lack of trust in law enforcement officers and the judicial system. The authorities must ensure that existing national legislation is implemented and monitored, with a particular focus on fighting impunity and holding those responsible to account.

168. Local authorities are the most up to date on slavery-like practices, and have an important role to play in prevention, protection and rehabilitation. They should draft local laws (*dina*) that prohibit and penalize the recruitment of citizens for slavery-like practices.

169. The Government should reinforce the legal framework to combat the worst forms of child labour, and take all the legal and policy measures necessary to eradicate them. It should establish a strong monitoring mechanism that includes the *fokontany*, the police, the judiciary and civil society organizations to identify children at risk or who are victims of servitude. In order to harmonize the measures taken to prevent children from servitude or hazardous work, a referral system should be established at the local level to streamline all different interventions. Child protection networks must be strengthened, and involve the stakeholders necessary to ensure that children have access to basic social and health care.

170. Education has proved to be an effective deterrent to child slavery-like practices. The Government should develop strategies and partnerships to keep children at risk in the education system by ensuring free education and literacy programmes for children. Free vocational training, backed up with employment opportunities, is also crucial in providing teenagers and adults with viable economic alternatives to slavery-like practices.

171. The Government should also fully comply with the international conventions on slavery and the Trafficking in Persons Protocol, and ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

## A. Mines and quarries

172. The Special Rapporteur recommends that Madagascar establish and implement regulations to ensure that the business sector complies with international and domestic standards in corporate social responsibility, in accordance with the Guiding Principles on Business and Human Rights, which outline the duty of States to protect against human rights abuses by businesses; corporate responsibility to respect human rights; and the need for more effective access to remedies when violations occur. In doing so, she encourages Madagascar to focus on the protection of the rights of the child and to investigate and provide remedies in reported cases of child slavery in supply chains.

## B. Malagasy domestic workers abroad

173. The Ministry of Labour should be more diligent in ensuring that Malagasy migrant domestic workers are aware of their rights and are of legal age.

174. The Special Rapporteur recommends that the Government of Madagascar:

(a) Adopt a comprehensive plan of action to address domestic servitude, and ensure the allocation of sufficient human and financial resources for its effective implementation, including the collection of disaggregated data;

(b) Ensure that the judiciary, prosecutors, and law enforcement and social workers and other relevant professionals receive specialized training in combating child and adult domestic servitude;

(c) Establish a partnership with recipient countries and bilateral agreements, and set up a mechanism responsible for proper identification and issuance of work permits to migrant workers, maintaining and updating a database on all migrant workers, and monitoring the work and living conditions of workers;

(d) Ensure that Malagasy migrant domestic workers are adequately informed by recruitment agencies about their rights and what to expect when they arrive in destination countries prior to their departure;

(e) Strengthen the legal framework of Malagasy domestic workers and ensure that it is adequately applied, with no room for corruption;

(f) Stop issuing licenses to recruitment agencies, ensure that all placement agencies operating in Madagascar are legally established and comply with all relevant laws prevailing in both Madagascar and recipient countries, take stock of the situation and review what needs to be in place in the country, and consider how best to work with recipient countries in order to provide better protection for Malagasy migrant domestic workers.

## C. Servile marriage

175. With regard to servile marriage, the Special Rapporteur recommends that the Government of Madagascar:

(a) Develop a specific law to prohibit harmful traditional practices, such as *moletry* and girl markets;

(b) Take steps to ensure equal access of girls and young women to all levels of education, to retain girls in school and to implement re-entry policies so that girls and young women return to school after pregnancy. The Government should also take measures to increase the enrolment of girls at all levels, and introduce incentives for parents to send girls to school;

(c) Take measures to improve women's access to health care, especially emergency obstetric care and health-related services and information in rural areas. The Government should improve the availability of sexual and reproductive health services, including family planning, with the aim of preventing early pregnancies and clandestine abortions;

(d) Hold discussions at the community level, in particular with the *fokontany*, and take other steps to reduce the incidence of and ultimately eliminate forced marriages and *moletry*. The Government should enforce the obligation to register all marriages in order to monitor their compliance with domestic law and the conventions that it has ratified;

(e) Strengthen all measures to address harmful practices, including by working with traditional leaders and community-based organizations to raise awareness of the harmful effects of these practices, and pursue investigation and prosecution of persons responsible for violations of children's rights through such practises;

(f) Take effective and innovative measures to strengthen the understanding of the equality of women and men, and work with the media in order to promote a more positive, non-stereotypical image of women.

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