



Election Watch | Madagascar Baseline

MEASURING MADAGASCAR'S ELECTORAL ENVIRONMENT ACCORDING TO THE SADC GUIDELINES GOVERNING DEMOCRATIC ELECTIONS

On the 17th of August 2004, the Southern African Development Community (SADC) leaders adopted the "[SADC Principles and Guidelines Governing Democratic Elections](#)." As a member of SADC, Madagascar was a signatory to these benchmark principles, and therefore it is fitting that Madagascar's performance in relation to the future elections be measured against these principles and guidelines.

Idasa notes that Madagascar is currently suspended from SADC. Our position is that this does not minimise the effectiveness of the Election Watch as a tool to measure progress towards a more democratic dispensation in the country.

Electoral Institute for the Sustainability of Democracy in Africa's brief [overview](#) of Madagascar's electoral system.

The Election Watch is designed to aid civil society groups in Madagascar in holding governmental institutions accountable and ensuring a free and fair election.

The Election Watch is based on the SADC principles and guidelines for conducting elections. It holds countries to the standards that they originated and agreed to abide by as members of the regional community.

It will be released on a monthly basis in order to track progress towards or divergence from the SADC standard.

This is a baseline study, based on the 2010 Constitution and the SADC-facilitated Road Map that was signed on 17 September 2011.

SADC principles for conducting democratic elections:

	Divergence/Obstructive Legislation	Compliant
2.1.1 Full participation of citizens in the political process	• Universal suffrage is guaranteed under articles 6 and 45 of the Constitution. • Article 2 of Ordonnance no2010-003 (the Electoral Code), any Malagasy citizen aged 18 and over, residing inside or outside the territory, is allowed to vote. • Under article 3 of the Electoral Code, those who have been convicted of a crime or misdemeanour, those who have been institutionalised due to mental conditions, and those who have had their eligibility removed in accordance with the law, are ineligible to vote. • The President is elected for a five-year term, and can be re-elected once. • If one candidate does not win an absolute majority in the first round of elections, then a second round is held between the two candidates with the highest number of votes after the first round. The candidate with an absolute majority after this round is elected President. • Article 2 of the Road Map states that the process of transition should be neutral, inclusive and consensual, and will lead to credible, transparent and free elections.	☒ Yes ☐ No
2.1.2 Freedom of association	• Article 37 of the Constitution guarantees the freedom of association, however states that legislation will determine the conditions for the exercise of this freedom. • Article 42 of the Electoral Code states that if election meetings risk disrupting public order, then an agent of the State may intervene and suspend and/or disperse the meeting. • The Office of the High Commissioner for Human Rights noted in its 2009 report to the Human Rights Council that while the Constitution guarantees freedom of assembly, it requires prior information be provided to the competent administrative authority before a demonstration takes place. In practice, the authorities interpret this provision as a requirement of prior authorisation and consistently oppose demonstrations that express opinions contrary to those of the state.	☐ Yes ☒ No

2.1.3 Political tolerance	• There remain deep divides between political parties and leaders in Madagascar. Ousted President Ravalomanana was forced to flee the country and lives in exile. Ravalomanana's return to Madagascar was a major sticking point in the Road Map negotiations, although the 17 September draft, signed by all but one of the main political parties, allows for his return. Nevertheless, he was sentenced in absentia on 28 August 2011 to life imprisonment and hard labour for his alleged involvement in the unlawful killings of some of President Rajoelina's supporters (see 2.1.7). • The security forces are resistant to Ravalomanana's return, stating, "[we] firmly oppose the immediate return of former president Marc Ravalomanana, to preserve public order and security. The forces of order express their determination to take all measures necessary to put this declaration into effect." • The one party that did not sign the Road Map is led by former President Didier Ratsiraka, who ruled Madagascar from 1975 to 1993 and from 1997 to 2002. He is also living in exile.	☐ Yes ☒ No
2.1.4 Regular intervals for elections as provided by the respective National Constitutions	• The President's term is for five years, and he or she can only be re-elected once, which means that, constitutionally, there should be an election at least every five years. • Practice and principle are at odds with one another in the Malagasy political arena. President Rajoelina ousted the democratically-elected President Ravalomanana in a coup d'état in 2009, and has been promising elections ever since – these were to be held in March 2010, but have been pushed back on numerous occasions. Currently, the elections are scheduled for March 2012. • The Road Map stipulates that the election calendar will be drafted by CENI, with assistance from the UN (see article 10(g)).	☐ Yes ☒ No
2.1.5 Equal opportunity for all political parties to access the state media	• Article 48 of the Electoral Code states that there must be equitable distribution of air time (both paid and free) on the Radio Nationale and on the Télévision Nationale and their regional antennas between the various political parties, candidates and lists of candidates. • While this law exists, the government retains a monopoly on nationwide broadcasting. Moreover, there have been innumerable reports of censorship and harassment of the media sector by the police and army, and various pro-oppositions radio and television stations have been shut down.	☐ Yes ☒ No

2.1.6 Equal opportunity to exercise the right to vote and be voted for	• Article 6 of the Constitution states that suffrage is universal. • Article 8 of the Constitution guarantees that all Malagasy citizens are equal in the eyes of the law, and enjoy the same fundamental freedoms, without discrimination based on sex. • A foreign woman who marries a Malagasy man may only acquire Malagasy citizenship if she expressly requests to, or if she divests herself of her nationality of birth. There is no such provision if the situation is reversed (i.e. a foreign man marrying a Malagasy woman). Malagasy citizenship is a pre-requisite to vote. • Article 6 of the Road Map stipulates that the transitional government must be formulated with due regard paid to gender representation. • Nevertheless, and despite making up more than half of the Malagasy population, women comprise only 6.3% of local councillors, 4% of mayors, 8.7% of members of the National Assembly, and 13% of the cabinet.	☒ Yes ☐ No
2.1.7 Independence of the Judiciary and impartiality of the electoral institutions	• The HAT authorities have regularly interfered in the functioning of the judiciary in Madagascar. For example, they ordered the release of detainees already condemned for serious human rights violations and set up institutions to carry out arrests and conduct investigations in lieu of the police and office of the prosecutor. • On 28 August 2011, former President Ravalomanana and eight other people were sentenced to life imprisonment and hard labour for their alleged involvement in the unlawful killings on 7 February 2009 in Antananarivo of supporters of Mr Rajoelina. The trial was criticized by members of the Malagasy Bar Association as being politically-motivated. • With regards to the impartiality of CENI, article 127 stipulated that the body is administratively and financially autonomous. Under article 20 of the Loi no2011-008, anyone who is a member of the government, the cabinet, or any other organ associated with the government, is not eligible to be a member of CENI.	☐ Yes ☒ No
2.1.8 Voter education	• Under article 10(e) of the Road Map, CENI has been tasked with voter education. • Education surrounding the new Constitution was approached imaginatively: a cartoonist was contracted to illustrate the constitutional reforms through a cartoon strip that displayed images that would resonate with the Malagasy people.	☒ Yes ☐ No

2.1.9 Acceptance and respect of the election results by political parties proclaimed to have been free and fair by the competent National Electoral Authorities in accordance with the law of the land	• The Electoral Code clearly sets out the law for the proper channels through which to contest election results (see 2.1.10). • Nevertheless, there are fears of further delays, violent protests and arbitrary detentions occurring in the run-up to the March 2012 elections, and some analysts note that even if a President is elected by democratic means, Madagascar's propensity to overthrow democratically-elected leaders may resurface.	☐ Yes ☐ No
2.1.10 Challenge of the election results as provided for in the law of the land	• In theory, the acceptance or rejection of election results in Madagascar is governed by ss. 130-137 of the Electoral Code. These provisions state that the sole arbiter of contestations regarding presidential election results is the Haut Cour Constitutionnelle (the High Constitutional Court). Any voter, candidate or observer may inform the High Constitutional Court of any irregularities in the voting they suspect, within ten days of the polls closing.	☒ Yes ☐ No

Assessment of electoral processes:

	Divergence/Obstructive Legislation	Compliant
Voter registration	• The Electoral Code removes the responsibility for the registration of voters and the compilation of vote lists from the Ministry of the Interior, and places the responsibility with CENI. Under articles 157 and 158, however, the Ministry of the Interior remains responsible for preparing for the elections (including voter registration) until CENI is operational. • According to article 26 of the Electoral Code, the voter list must be revised annually. Any objections to these lists are then processed and addressed, and the final roll is proclaimed on 15 April. This list remains in effect until 15 April of the subsequent year.	☒ Yes ☐ No
Freedom of choice	• Malagasy voters are allowed to choose their preferred candidate by means of a secret ballot (article 94, Electoral Code). • Anyone with political or functional authority (civil or military), or any of the candidates for the election, who have been found by CENI to have used their power to influence the choice of the voters may be disqualified (article 133, Electoral Code).	☒ Yes ☐ No
Impediments to standing	• Under the 2010 Constitution, a presidential candidate must be a Malagasy citizen of over 35 years of age (the previous Constitution set the age limit at 40 years of age; Mr Rajoelina, the incumbent, is 37 years old). Any presidential candidate, moreover, must have lived in Madagascar for at least six months before depositing his or her candidacy. Depending on when ousted President Ravalomanana is able to return to Madagascar, this stipulation may impede his ability to run for re-election.	☒ Yes ☐ No

Boundary delimitations	• It is not clear from the Electoral Code or the new Constitution what the boundary delimitations will be for the upcoming elections. This is problematic, because increased deference, or a lack of direction, may lead to gerrymandering by those in positions of power. Presumably, it will be CENI that draws up the official boundaries, but as the body is not yet operational, the issue of boundary delimitations could become contentious.	☐ Yes ☒ No
Use of public resources and political party financing	• Article 46 of the Constitution prohibits any candidates who serve a public mandate, or anyone who assists the candidate, from using public funds to finance their campaign. This will lead to the candidacy being invalidated by the Supreme Court. • According to article 142 of the Electoral Code, anyone who is convicted of embezzlement of public funds for the purpose of electoral propaganda will face criminal sanctions. • The use of public goods, namely of vehicles, for propaganda purposes is prohibited under article 46 of the Electoral Code. • Article 132 of the Electoral Code stipulates that the use of public property for the purposes of election propaganda voids any votes obtained by the candidate in question, in the localities where the offence was discovered.	☒ Yes ☐ No
Code of conduct	• Article 10(c) of the Road Map provides for the promotion and adherence to a Code of Ethics and Conduct of Malagasy elections by all political parties. The Code itself, however, has not been articulated, so it remains to be seen what it will contain.	☒ Yes ☐ No

Assessment of electoral environment:

	Divergence/Obstructive Legislation	Compliant
Freedom from intimidation, fear and violence	• There have been innumerable reports of citizens, opposition leaders and party members, journalists, and so forth, being intimidated, threatened, beaten, and arrested arbitrarily. In particular, the Malagasy security forces have been implicated in human rights violations. • According to article 81 of the Electoral Code, no member of the army may, "without authorization," be placed in or close to a polling station. • According to Amnesty International, during the different demonstrations held by opposition supporters, both before and after the HAT came to power, the security forces regularly resorted to the use of unnecessary and excessive force.	☐ Yes ☒ No

Media freedom and access to information	• The 2010 Constitution is silent on the media, and no code of ethics exists for the media. • There are approximately 250 radio stations and 39 television stations in Madagascar, but the government retains a monopoly on nationwide broadcasting. Widespread poverty and illiteracy severely limit the propagation of TV, print media, and the internet, making radio the most important medium in the country. • Incidents of censorship, harassment and intimidation throughout the media sector have been widespread. • According to Freedom House's 2011 report on Freedom of the Press, the breakdown of democracy in Madagascar has meant that the laws protecting the freedom of the press have been routinely ignored or selectively applied. This has been compounded by increased corruption of the judiciary and a lack of any independent media regulatory bodies. • On May 15 2010, government soldiers violently broke up a live radio broadcast at Fréquence Plus in Antananarivo. Opposition politicians participating in the broadcast were assaulted and three members of the editorial staff suffered serious injuries, as well as the soldiers destroying a great deal of property. • A church-owned station that supported ousted President Ravalomanana was closed on a variety of charges, including "non-respect for journalistic ethics resulting in a threat to state security and incitement of violence and rebellion". Ten employees of the station, six of whom were journalists, were arrested and imprisoned for nearly five months before being conditionally released to await trial.	☐ Yes ☒ No
Role of civil society	• Under article 13 of the Road Map, Malagasy civil society is invited to participate in the elections under observer status, and are called upon to bring to the appropriate authorities any transgressions from the Code d'Éthique et de Bonne Conduite Électorale (the Code of Ethics and of the Good Conduct of Elections).	☒ Yes ☐ No
Role of the security sector	• In June 2011, the Malagasy security forces (army, national gendarmerie and national police) stated that they, "firmly oppose the immediate return of former president Marc Ravalomanana, to preserve public order and security. The forces of order express their determination to take all measures necessary to put this declaration into effect." • According to Amnesty International, the security forces have been implicated in abuses have included, violations of the right to life, security and freedom of the person, arbitrary and unlawful arrests and detentions, violations of the right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment and violations of the right to freedom of expression, including freedom of the press, as well as excessive use of force by various security forces during public demonstrations.	☐ Yes ☒ No

The list of sources is neither comprehensive nor exhaustive.

Reports by various civil society organisations and the UN

[Amnesty International World Report 2011](#)

[Amnesty International Report – Madagascar: An Urgent Need for Justice](#)

[IFES Election Guide: Madagascar](#)

[Mo Ibrahim Foundation](#)

[UNHCR RefWorld](#)

[GenderLinks](#)

Government Sources

[Independent Electoral Commission of Madagascar \(CENI\)](#)

[Loi no2011-08 fixant l'organisation, le fonctionnement et les attributions de la Commission Electorale Nationale Indépendante](#)

[Ordonnance No2010-003 portant loi organique relative au Code électoral](#)

[Feuille de Route pour la Sortie de Crise à Madagascar, Engagements des Acteurs Politiques Malagaches \[Road Map\]](#)

[Ordonnance No1960-064 portant code de la nationalité malgache](#)

Media reports

[BBC](#)

[Madagate](#)

[Mail & Guardian](#)