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Election Watch | Madagascar

July - September 2012

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 entirely 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.

The Electoral Institute for the Sustainability of Democracy in Africa presents [a brief overview](#) of Madagascar's electoral system on their website.

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 quarterly basis in order to track progress towards or divergence from the SADC standard.

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 Ordinance 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; • CENIT and the Interior Ministry reaffirmed the "Memorandum of Understanding," in July focusing on the technical and logistical infrastructure of election security, to ensure free and fair elections in which all may take part.	☐ Yes ☒ No
2.1.2 Freedom of association	• Article 37 of the Constitution guarantees the freedom of association; • 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; • In July of this year, Rajoelina led a massive demonstration against exiled Ravalomanana, strongly promoting his party and the indefinite exile of the former leader.	☐ Yes ☒ No
2.1.3 Political tolerance	• The authorities consistently oppose demonstrations that express opinions that are contrary to those of the state; • In July of this year, Rajoelina led a massive demonstration against exiled Ravalomanana, strongly promoting his party and the indefinite exile of the former leader.	☐ 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; • The Road Map stipulates that the election calendar will be drafted by CENI, with assistance from the UN (see article 10(g)); • On 26 September, transitional President Andry Rajoelina announced that official general election date has been set for 8 May, 2013, with a second round set for 3 July 2013.	☒ 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; • The government retains a monopoly on nationwide broadcasting. Moreover, there have been continued reports of censorship and harassment of the media sector; • On 22 July, FreeFM, an opposition radio station based in Antananarivo was taken off the air by the Rajoelina regime by broadcasting reports by mutinying soldier that explained the “dissolution of the current state institutions. That same day, FreeFM director Lalatianna Rakotondrazafy wrote, “For the safety of its employees and its equipment, FreeFM has decided to suspend its broadcasts.”	☐ 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; • Former leader Marc Ravalomanana remains stranded in South Africa, still unable to return to Madagascar. He was asked by Madagascar officials on 7 September not to leave South Africa, and was stripped of his passport; • On 18 August, Rajoelina said that, while meeting in the Seychelles, he made an attempt to reach out to Ravalomanana to broker a deal in which neither would run for office. His attempts were unsuccessful.	☒ Yes ☐ No
2.1.7 Independence of the Judiciary and impartiality of the electoral institutions	• 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; • The judiciary has been subject to intimidation and executive influence by the Rajoelina government.	☐ Yes ☒ No
2.1.8 Voter education	• Under article 10(e) of the Road Map, CENI has been tasked with voter education; • With the literacy rate at 64.5%, newspapers are geared toward the French speaking elite, restricting voter self-education. It is estimated that less than 1% of the population has access to the internet;	☐ Yes ☒ No

	• On 7 August it was reported that South African prosecutors were launching an investigation into the actions of Ravalomanana for crimes against humanity. Despite the importance of these allegations, many civilians remain unaware of political on-goings as they are disconnected from media and journalistic outlets.	
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); • Currently N/A until elections take place in 2013.	☒ Yes ☐ No
2.1.10 Challenge of the election results as provided for in the law of the land	• 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 Court 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; • Currently N/A until results of the elections are released in 2013.	☒ 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 voter 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); • On 18 August in the Seychelles during an SADC meeting, a proposal was discussed to bring to an end the standoff between Rajoelina and Ravalomanana by disavowing either of them as candidates for the upcoming elections. While this ...	☒ Yes ☐ No

	may curb tensions, it also revokes the rights of the people who prefer to have either man in office.	
Impediments to standing	• Under the 2010 Constitution, a presidential candidate must be a Malagasy citizen of over 35 years of age Any presidential candidate, moreover, must have lived in Madagascar for at least six months before depositing his or her candidacy; • New legislation banning convicted criminals from running for elected offices could prevent exiled former president Mar Ravalomanana from seeking another term; • In August, Rajoelina emphasized several times that Ravalomanana should be denied access to Madagascar "at all costs," denying him the right to run for office; • On 7 July, it was reported that new draft legislation now stipulates that candidates must be present as official residents of Madagascar for the six months prior to the elections, and must have paid, "all taxes of any kind," for the previous three years. As Ravalomanana has been in exile for several years, this will present complications for his potential run for president in the upcoming elections.	☒ Yes ☐ No
Boundary delimitations	• Senatorial elections are held by province. Each of the six provinces elects ten Senators; • National Assembly elections are held by district. There are 160 members, elected by 116 one or two member districts.	☒ 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; • On 8 August it was announced that the EU would donate 54 million Euros to Madagascar, but that it would solely be distributed to NGOs and UN agencies, as they still refuse to recognize the government and does not trust them to appropriately and legally utilize the funds; • Electoral Commission Chief Beatrice Atallah warned on 2 August that the political climate and the need for financial funding could derail the timeline set forward to hold elections on 8 May, 2013.	☒ 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	• 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; • In a statement released on 31 August by Lova Rakotomalala, a Global Voices editor, said, "People don't know the difference between the police and muggers...I don't want to be overly pessimistic, but things are as bad as they could ever be"; • On 25 July, Seychelles President James Michel stated, "A return to stability in Madagascar is crucial... [in a nation where millions] are sinking into extreme poverty," adding that the country could be facing a, "social catastrophe."	☐ 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; • Freedom House ranks the Madagascar press as "Not Free"; • Two unnamed journalists from FreeFM, an opposition radio station, took refuge in the South African embassy in Antananarivo on 7 September following persistent harassment; • On 22 July, FreeFM, an opposition radio station based in Antananarivo was taken off the air by the Rajoelina regime by broadcasting reports by mutinying soldier that explained the "dissolution of the current state institutions. That same day, FreeFM director Lalatianna Rakotondrazafy wrote, "For the safety of its employees and its equipment, FreeFM has decided to suspend its broadcasts."	☐ 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); • More than 100 people (including security officers) were killed on 3 September over zebu theft. Many civilians took matters into their own hands and became violent, indicative of growing political unrest and dissatisfaction with the regime; • On 4 September, the National Reconciliation Commission was launched to tackle political and local unrest amongst the people; • On 8 August it was announced that the European Union would donate 54million Euros to Madagascar, its first grant since 2009 after the country was cut off from aid programs following the 2009 coup. 22 million Euros are to go to health, 22million to education, and 10 million to civil society programs. ...	☒ Yes ☐ No

	These funds will be handled by NGOs and UN agencies, rather than by the government, which is still banned from receiving aid; • On 31 July, Lova Rakotomalala, editor of Global Voices, said, "People don't trust the political leadership - both the opposition and those in power. The level of mistrust is not coming from nowhere. Four previous attempts at reconciliation have failed." He went on to express that insecurity and poor living standards have resulted in multiple strikes over June and July.	
Role of Security Sector	• Ravalomanana's military supporters gathered in the capital, and chanted threats of boycotting elections if Ravalomanana were to be denied candidacy; • Armed forces have now been mobilized in the capital to curb violence related to farming issues, a symptom of growing political instability; • On the morning of 22 July, mutinying soldiers clashed with others at the base of the 1st Intervention Regiment (RFI) near Antananarivo airport at Ivato. The mutiny was soon quashed and the nearby airport closed; • On 25 July it was revealed that the soldiers who staged a mutiny on the 22 July near the Ivato airport, which resulted in three casualties, were paid \$4.40-\$6.60 to revolt, a significant sum considering 81% of the population subsists on less than \$1.25 per day.	☐ Yes ☒ No

Below is a selection of reports by various civil society organisations. 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