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Public Statement

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Madagascar: Former Prime Minister's trial must respect international standards of fairness

Amnesty International is concerned that the trial of Tantely Andrianaivo, ex-Prime Minister of Madagascar, due to be held on 22 December 2003 in Antananarivo, may be unfair.

Amnesty International is concerned that the principle of equality of arms, an essential criterion in a fair hearing, may not be respected. Its requirements include the right to adequate time and facilities to prepare a defence, including disclosure by the prosecution of material information.

On 13 December (last Saturday), Tantely Andrianaivo's relatives were notified of the trial date. His defence lawyers have since tried to consult his case file at the prosecution authorities' office, but have been unable to obtain it. They were told that the file was with the President of the Appeal Court, who is apparently not available. They do not know when they will be able to consult the file, nor if they will be able to photocopy them to study it outside office hours. This is undermining the ability of the defence to adequately prepare for the trial.

Tantely Andrianaivo has been detained for more than a year, on seven charges including embezzlement, "endangering the State" and "usurping his function," relating to activities during the 2002 Madagascar political crisis.

On 5 December, he was transferred to the Soavinandriana hospital in Antananarivo, suffering a "general deterioration" of his health and physical exhaustion, apparently due to poor prison conditions. Although the authorities have said he risks the death penalty, charges against him carry a maximum penalty of life imprisonment "in a fortress", according to Article 87 of the Madagascar Penal Code.

Judicial proceedings against him have been marred by irregularities, which include:

After his "arrest" in May 2002, he was held under house arrest for almost five months without charge. He was only allowed to communicate with lawyers on one occasion, 5 July. His lawyers were able to visit him a second time on 7 or 8 October, when foreign lawyers interested in his case visited Madagascar in October 2002. His case was finally handed over to the prosecuting authorities in Antananarivo on 21 October. As it was claimed he was being questioned as a witness, only one of his lawyers was allowed to attend the interrogation. His hearing lasted nine hours. However, following the interrogation he was charged as a suspect and transferred to the Antanimora prison in the capital the same day.

On January 2003, he was transferred to a prison 50 km outside the capital, without his family or lawyers being notified. By doing so, access to him by his family or lawyers was rendered more difficult as they

had to travel 100 km back and forth in order to visit him. In practice in Madagascar, pre-trial detainees as well as many convicted detainees are fed by their visiting families. The authorities said the transfer was for his own security and to alleviate overcrowding in the Antanimora prison. He was transferred back to the capital two months later.

While Amnesty International recognizes the right of every State to try people suspected of criminal offences, it stresses that every person has a right to a fair trial, according to international standards, and to the presumption of innocence.

"Everyone in Madagascar, including the government and all the people who have suffered abuses during the 2002 political crisis, would benefit if Tantely Andrianaivo was tried in a fair and transparent way," the organization said.

Background

Tantely Andrianaivo is the highest-ranking member of the former government to be judged in a Malagasy court on charges relating to offences during the 2002 political crisis.

Judicial proceedings against Tantely Andrianaivo have raised complex procedural questions, relating to the exact end date of his mandate as Prime Minister during the 2002 political crisis and to which jurisdiction should try him. To date, some procedural points are still not entirely resolved.

In 2002, a major political crisis, marred by unrest and human rights abuses, was sparked in Madagascar after disputed presidential elections between outgoing President Ratsiraka and Marc Ravalomanana. After the latter was declared President and his government assumed control over the whole country, several hundred people were arrested on suspicion of committing offences, including human rights abuses, during the crisis.

Amnesty International, in a December 2002 report, stressed that there should be no impunity for human rights abusers. However the organization raised concerns at unfair judicial proceedings against those arrested, who included prisoners of conscience. The organization also expressed concern that despite human rights abuses being committed on both sides, only the people associated with the former regime were being brought to justice. The Madagascar government has yet to provide information on any investigations held on abuses committed by his supporters.