

Madagascar

Selective Justice

Introduction

The December 2001 presidential elections in Madagascar provoked a major political crisis between the incumbent President, Didier Ratsiraka and his main rival, Marc Ravalomanana. The official results of the election's first round gave no candidate an absolute majority, but these were challenged by Marc Ravalomanana who claimed he had won the election outright. On 22 February 2002, Marc Ravalomanana declared himself President after weeks of demonstrations in the capital, Antananarivo, in support of his claim. Didier Ratsiraka left the capital for Toamasina, an important port in the east of the country.

This led to increasing tension and violence between the supporters of the two candidates. Marc Ravalomanana's supporters erected barricades in the capital to "protect themselves" against possible action by the security forces or rival supporters. Didier Ratsiraka's supporters blocked roads linking the provincial ports to the capital in order to isolate the inland capital. This period was marked by increasing confusion, disrespect for the rule of law and a breakdown of security. Parts of the army and the security forces became divided in favour of one or other candidate. However, some army generals tried to remain neutral condemning both the economic blockade of the capital and Marc Ravalomanana's "self-declaration" as President.

Marc Ravalomanana was installed as President on 6 May 2002 after the votes had been recounted. He then sent troops to recapture four provinces where the governors had declared themselves "independent" from the Antananarivo government. Marc Ravalomanana called upon reservists and other recent recruits to boost his troops, known as the "pacifying army". This army regained control of the provinces after some fighting with supporters and the security forces which had remained loyal to Ratsiraka. Hundreds of people were arrested by Marc Ravalomanana's troops during and after the re-taking of the provinces. They remain held awaiting trial for crimes or offences allegedly committed during the political crisis.

This report presents Amnesty International's main concern and recommendations relating to impunity for human rights abuses committed in the context of the political crisis. It does not provide a complete overview of Amnesty International's concerns in Madagascar. Amnesty International is independent from any government, political group or religious belief. Amnesty International does not support or oppose any government or political system, nor does it support or oppose the views of the victims whose rights it seeks to protect. The organization is concerned solely with the impartial protection of human rights.

Once his troops arrived in the provinces, Marc Ravalomanana stated that a commission of inquiry would be established to investigate crimes or offences committed by the former government during the crisis and that his government would fight against the culture of impunity which had been pervasive before he came to power. However, no commission of inquiry has been set up and the government decided that those suspected of committing crimes or offences during the crisis will be tried by ordinary courts.

Amnesty International welcomes the government's stated willingness to fight against impunity. The organization is calling upon the Malagasy government to take concrete steps towards this commitment by investigating all human rights abuses and violations – past and present - committed in Madagascar, including cases of killings and torture, and to bring the suspected perpetrators to justice. Amnesty International is reiterating that it is essential there is no impunity for the perpetrators of human rights violations and abuses, not only so that justice can be done for the victims of these abuses, but also to avoid giving the perpetrators of such actions the impression that they are above the law. The organization believes there is a direct link between impunity and the fact that human rights abuses continue to be committed.

Amnesty International is concerned that almost all the current judicial proceedings are dealing with alleged crimes or offences committed by the former government. The organization urges that all alleged crimes or offences must be investigated, including those involving supporters of the new government. It is essential that all perpetrators of serious human rights abuse be brought to justice regardless of their political affiliation. If national reconciliation is to be possible, it is imperative that justice is not selective. Hundreds of people have been arrested in connection with the political crisis, most, if not all, of these being politicians, members of the security forces or civilians who are seen or appear to be seen as having supported former President Didier Ratsiraka during the political crisis. Recent reports suggested that some 90 people were arrested in Brickaville in the east, during October 2002, and approximately 120 people in Mahajanga in the west. Between June and August, some 200 people were arrested in the context of the new government's military activities in the coastal provinces and were transferred to detention centres in Antananarivo. The total number of people arrested is somewhere between 400 and 500. They have mostly been accused of participating in the "economic" barricades aimed against the capital, or forming "militias" in support of the former President. The pending charges are variously "threatening internal state security", "abuse of power", "insurrection", "destruction of public goods", "aggravated assault" or "criminal conspiracy"

Amnesty International is also concerned that the arrests have often been carried out in an arbitrary manner. Some of those arrested are prisoners of conscience¹, arrested solely for expressing their opinions in a non-violent manner or for making statements which were interpreted as critical of the current authorities. In recent months political opponents of the Didier Ratsiraka's AREMA party have also been arrested and interrogated on the pretext of corruption investigations. The organization fears that arresting and detaining numerous

¹ Amnesty International considers that any person detained for their political beliefs or because of their ethnic origin, sex, colour, language, national or social origin, economic status, birth or other status, and who have not used or advocated violence, are prisoners of conscience.

political opponents at the time when the new government is seeking to assert its authority in the country, may not only silence the new government's political opponents but also anyone who simply does not share the views of those in power. AREMA party representatives state the new government is using the pattern of arrests and detentions as a tactic to restrict and weaken the political opposition in preparation for legislative elections due on 15 December 2002. Others claim that the judicial proceedings pending against Ratsiraka supporters are designed to influence public opinion by showing them as responsible for the crisis prior to the next elections.

Amnesty International is not stating that all those awaiting trial or all those who have already been tried are innocent. However, it is vital that a distinction is made between those who are suspected of having committed crimes or offences and those who have been arbitrarily arrested. The organization is calling upon the Malagasy authorities to respect the basic human rights of all prisoners, including those accused of human rights abuses, at the time of their arrest, while in detention and during their trial and appeal. It is essential that all those suspected of having committed human rights abuses are brought to trial before fair, independent and impartial courts which are prepared to punish the abuses, regardless of the perpetrator. It is only by respecting human rights principles that the government can ensure the perpetrators of human rights abuse are brought to justice and the victims of these abuses gain redress.

General Background

Didier Ratsiraka, incumbent President and registered candidate for the December 2001 election, came to power in 1975. He was re-elected three times in succession after electoral processes which were generally considered to be unfair and so remained in power until 1991. During this period, numerous human rights violations were committed in Madagascar including repression of political opponents, long-term arbitrary detentions and alleged political killings. The activities of a popular political protest movement in 1991 resulted in a new constitution being adopted by referendum in 1992; it included human rights guarantees and increased powers for the National Assembly. Albert Zafy won the presidential elections in November 1991. He remained in power until 1996 when the National Assembly removed him from office. Didier Ratsiraka presented himself as a candidate in the November 1996 presidential elections and was re-elected. Amendments to the 1992 constitution increased presidential power at the expense of the National Assembly and accelerated the process of decentralising power to the provinces.

Presidential elections in December 2001 provoked a major political crisis in the country. Marc Ravalomanana, the capital's mayor and the incumbent President's main rival, contested the official results of the first round claiming that the electoral system had been tainted by fraud and that he would refuse a second round. Tens of thousands of Marc Ravalomanana supporters demonstrated in the streets of the capital. Although the strikes were generally

peaceful, there were sporadic outbreaks of violence in the capital, where Ravalomanana supporters erected "protective" barricades, and in the rest of the country between the supporters and security forces of each of the two candidates.

Once Marc Ravalomanana declared himself President on 22 February 2002, Didier Ratsiraka declared a state of emergency (*état de nécessité*) in the capital. This was not respected: Marc Ravalomanana's supporters installed ministers he had named into government offices without any reaction from the army or the security forces. So, Didier Ratsiraka set up a rival government in Toamasina, which he called his "capital", with members of his government and the security forces who had remained loyal together with the support of some regional governors. Ratsiraka supporters erected barricades on the main routes between the capital and the provinces to stop merchandise reaching the ports and people from travelling freely. Strategic bridges were destroyed. In the province of Fianarantsoa there were violent clashes between two army factions when Marc Ravalomanana's supporters tried to replace a pro-Ratsiraka governor with their "President". Several people, civilians and members of the security forces from both sides, died in unclear circumstances. Dozens of people, predominantly Marc Ravalomanana supporters from the provinces, were also arrested, tortured or killed during this period. Fearing for their lives, many fled from the provinces and sought temporary refuge in the capital, Antananarivo.

After the Supreme Court annulled the first results, the Constitutional High Court of Madagascar recounted the votes and declared Marc Ravalomanana the winner on 29 April. Ratsiraka contested their decision for being "biased" arguing many members of the Constitutional High Court were sympathetic to Marc Ravalomanana. Then the governors of Antsiranana, Mahajanga, Toliara and Toamasina provinces declared their own "independence" from Marc Ravalomanana's government. On 6 May, Marc Ravalomanana was installed as President. In June, he took the decision to send the armed forces to regain control of the four provinces, to dismantle the barricades around the capital and to install his own "Special Delegation Presidents" in the place of the governors. This phase is called the period of "pacification". The confrontation – a period marked by an increase in violence and in human rights abuses - ended with localised fighting in Antsiranana and Mahajanga between the army, loyal to Marc Ravalomanana, and the armed forces and supporters of Didier Ratsiraka. Dozens of people including civilians were killed or injured in this fighting. However, in most cases Marc Ravalomanana's armed forces dismantled the barricades without much resistance from Ratsiraka supporters who often fled once the army's arrival was announced. On 7 July Didier Ratsiraka left Madagascar and sought refuge in France. Marc Ravalomanana's troops entered the final province of Toamasina on 9 July.

Amnesty International's concerns

Cases of human rights abused and violated during the political crisis

On a visit to Madagascar between 14 and 28 August, Amnesty International was able to meet victims of human rights violations and to obtain information about numerous human rights abuses which were committed during the crisis by Didier Ratsiraka supporters and security forces remaining loyal to him and also by those close to Marc Ravalomanana. Most were illegal killings and cases of torture. This document is not an exhaustive account of all abuses reported during the crisis period. The cases publicised below are however representative of the most serious human rights abuses and violations which were committed during the crisis.

Political killings

During the night of 2 March 2002, supporters of Didier Ratsiraka dressed in military uniforms, entered the home of Lalason Rajaobelina, a trader and member of the TIM² association, living on the island of Nosy-Be, Antsiranana province. They beat him and his wife with gun butts until he fainted. When he regained consciousness he found himself in the back of his car, being driven by the same men who had attacked him, together with Olivier Ratsimba, another member of TIM and branch manager of a bank who appeared unconscious. The car stopped and the men in military uniform threw Olivier Ratsimba, Lalason Rajaobelina and finally the car over the edge of a cliff. They kicked the men to ensure their bodies fell down the cliff and could not be seen from the road. Lalason Rajaobelina survived, but Olivier Ratsimba was killed. According to Amnesty International's information, an inquiry has been opened.

There are reports that on 16 April 2002 General Raymond Andrinaivo was killed by gun shots fired by three unidentified masked armed men, while he was receiving treatment in Fianarantsoa hospital, 400 kilometres from Antananarivo. The General had apparently been injured during a confrontation with other soldiers when he was defending the governor of Fianarantsoa against Marc Ravalomanana's supporters and security forces who wanted to install their own "governor" in the official building. It appears he was extrajudicially executed. According to information available to Amnesty International, there has been no inquiry into his death.

² *Tiako I Madasikara*, I love Madagascar, political support group for Marc Ravalomanana which is now his political party.

Evidence of torture and ill-treatment

Amnesty International received dozens of reports that people suspected of supporting Marc Ravalomanana in the provinces were tortured by either Didier Ratsiraka's security forces or his supporters. Those suspected of supporting Didier Ratsiraka were also victims of torture and ill-treatment by Marc Ravalomanana supporters, especially at the time of their arrest.

On 19 April 2002 Jonathon Odilon Vénor, aka "Veve", Vice-President of the *Leader Fanilo* political party in the town of Sambava and member of KMSB³, was arrested in the same town in Antsiranana province by five armed supporters of Ratsiraka including two soldiers. He was beaten on the head with gun butts, then forced to get into a car and burned with cigarettes. He was taken to the VIP lounge at the local airport where the same men stabbed him. Veve was cut on his right leg below the knee; the knife was put into the wound several times before being withdrawn. Veve was then taken to the home of a local elected official where other men dressed in military uniforms beat him to the point of unconsciousness. They then transported him to the "Ambolomadinika Military Camp" in Sambava where soldiers again hit him on the head with gun butts. While pouring alcohol onto his wounds, they asked him "where he hid his weapons" and then locked him in a tiny cell half-naked. The next day, Veve was taken with another old man who was imprisoned with him back to the airport where the soldiers forced them to dance while being threatened with weapons. Veve was transferred by plane to the "Pardes Gendarmerie Camp" in Antsiranana, the main town in the province of the same name. He could be examined there by a doctor from the local military hospital who ordered his evacuation to Antananarivo. Veve was suffering from headaches, memory loss and from the wound in his leg. Amnesty International has learned that he died on 15 October 2002. Veve had lodged a complaint against his attackers. Reports suggest that an inquiry is underway.

On 9 April 2002, Gaby Roland Rajaonarivelo, Yves Ralison and Philippe Rakotomavo were arrested by the bodyguards of Jacques Sylla, who had been nominated Prime Minister by Marc Ravalomanana, on the terrace of Hotel Colbert in central Antananarivo. An arrest warrant had reportedly been issued against them because of allegations that they were planning to assassinate Jacques Sylla. The three men were taken into the offices of Marc Ravalomanana in Ambohitsorohitra by the bodyguards. The next day, Gaby Roland Rajaonarivelo was found dead at the DGIDIE⁴ with injuries to his head, stomach and feet. The two others were taken to hospital. Philippe Rakotomavo is currently in detention in Tsiafahy, a detention centre for criminals situated 40 kilometres from Antananarivo. Gaby Roland Rajaonarivelo was buried without an autopsy despite visible wounds to his head and stomach. An inquiry was opened on the orders of the Antananarivo Court Prosecutor, who has received, to date, only the security forces' version of events that Gaby Roland Rajaonarivelo had to be subdued by the security forces after he tried to escape. Amnesty International is concerned that the inquiry is being carried out by the police without any guarantee of independence or

³ *Komity Miaro ny Safidim-Bahoaka*, Defence Committee for Citizens Voting, which campaigned for a recount of votes following Marc Ravalomanana's request.

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impartiality, that no member of the security forces has been suspended while the inquiry is underway and that no witness from the security forces seems to have been heard. According to reports, the inquiry is still open.

On 23 June, vehicles returning from the capital were stopped on the route towards Ambilobe (Antsiranana province) by Ratsiraka soldiers and supporters. At least 73 people, most of whom were travelling traders from the province of Antananarivo, were forced out of their vehicles with threats, beaten up and tied together using rope. Ratsiraka's soldiers and supporters then took them by lorry to the "Second RFI camp"⁵ in the town of Antsiranana. During the night of 23 to 24 June, these 73 people were kicked, hit with gun butts and their bodies burned with cigarettes. They were denied access to food and water and any jewellery, money and some of their clothes were stolen. Several dozen soldiers at the camp tortured or ill-treated these travelling traders. The next day, the 73 people were taken to the Governor of Antsiranana's Palace and attached to the entrance gate of the building. Ratsiraka's soldiers and supporters continued to beat them, sometimes using a block of cement. That evening they were taken back to the military camp and the following day they were released, after some paid money for the purpose. The 73 people were told they had been taken as hostages to thwart the advance of Marc Ravalomanana's troops towards the town of Antsiranana.

Reports suggest that between June and August 2002 dozens of people were tortured or ill-treated at the time of their arrest by Marc Ravalomanana's "reservist" or "pacifying" soldiers in the provinces of Mahajanga, Antsiranana, Toliara at Toamasina. Others were reportedly tortured when they were transferred to detention centres in Antananarivo. The methods of torture and ill-treatment used include being stabbed, hit with gun butts in the face and on the body, kicked and verbally or physically humiliated. One report states that someone was allegedly forced to drink his urine. There are several reports concerning personal effects being stolen and "pacifying" soldiers pillaging and burning homes.

On 14 June Venance Raharimanana, a 63-year old researcher and instructor, was arrested by "reservists" in Mahajanga while on his way home. He was forced out of his car and a rope was used to tie his feet to his head. He was taken to the local airport and transferred to Antananarivo by plane. When he arrived at Ivato, Antananarivo's airport, he was forced into a vehicle occupied by soldiers who hit him with gun butts and kicked him while hurling insults at him. They then put a firearm in his mouth and twisted it until Mr Raharimanana's teeth fell out. He was then held incommunicado. It was not until the next day that his family managed to find out where he was, despite their repeated efforts to find him. He was in a small cell at the "Fiadanana Gendarmerie" covered in blood and no longer able to open his mouth. On 17 June his house in Mahajanga was pillaged and burned, apparently by reservists; the homes of his two daughters were also raided. Despite various efforts, the authorities have still not agreed to register his torture complaint.

Four employees of SIRAMA, the state sugar company, were arrested on 27 June on Nosy-Be by some twenty soldiers, apparently because they were accused of providing logistical help to the local administration which remained loyal to the ex-President during the political crisis.

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When they were arrested, they were beaten and ill-treated by soldiers who stole their personal belongings. They were held in a cell at the Nosy-Be police Commissariat until 1 July when they were transferred by plane to the capital Antananarivo. During the plane transfer they were again severely beaten. On 13 July, they were placed in detention at the *Brigade Spéciale de Betongolo*, Special Betongolo Brigade, in Antananarivo where they were interrogated and then on 17 July charged by the Antananarivo Court. Immediately afterwards they were placed in pre-trial detention at the *Maison de Force de Tsiafahy*, Tsiafahy detention centre.

President Marc Ravalomanana and Minister of Defence Jules Mamizara called upon the army not to commit abuses during their “pacification” operations in the provinces. When the Malagasy authorities met with representatives of Amnesty International they did acknowledge that reservists had committed “some mistakes” and that they would take measures to ensure that arrests in the provinces are carried out lawfully. On 28 September Jules Mamizara stated that 700 reservists who had committed abuses during military operations had been punished. However, Amnesty International has not been able to obtain any detailed information about these punishments. It is not known if the alleged perpetrators of acts of torture or ill-treatment have been suspended from their posts or if they have been brought to trial.

In accordance with international law, all allegations and reports of torture must be the subject of an independent and impartial inquiry and the alleged perpetrators must be brought to justice. Victims of torture must obtain redress and receive appropriate medical assistance. According to information available to Amnesty International, no allegation of torture of those arrested following the political crisis has been investigated.

Irregularities at time of arrest

Throughout the crisis Amnesty International received many reports that people opposed to Didier Ratsiraka had been arbitrarily arrested, especially in the provinces. Veve (see above) was held at the Pardes Camp in Antsiranana with 19 other people. All were suspected of supporting Marc Ravalomanana and most had been arrested in April by members of Didier Ratsiraka’s security forces and his supporters. They were arrested without warrant, tortured or ill-treated and taken to Pardes Gendarmerie Camp in Antsiranana without being informed of the reasons for their arrest. They were held without charge for several weeks before their case was transferred to the courts in their home area. Regular judicial proceedings were not followed in any of these cases⁶.

After Marc Ravalomanana’s army regained control of the provinces dozens of people were arrested without warrant and without any preliminary investigation by soldiers who had no training in arrest procedures. The case of Venance Raharimanana and the four SIRAMA employees is typical of the way such arrests were carried out. There are reports that the

⁶ See Amnesty International Urgent Action (UA 155/02): **Fear for safety/Medical concern, probable prisoner of conscience: Ali Sarety.**

KMMR⁷ played a role in the Mahajanga arrests. These reports allege that KMMR members told the army to arrest certain people. It seems these people were then arbitrarily arrested without any preliminary investigation purely to settle personal scores.

In accordance with Malagasy law, criminal investigation officers have the right to arrest people in connection with the investigations they are pursuing. Public order officials from the Gendarmerie, the police and security forces can arrest people suspected of committing crimes or offences but they must hand them over to a criminal investigation officer without undue delay.

The criminal investigation officers can only retain someone in custody for 48 hours, the legal period of *garde-à-vue*⁸, police custody. People held in *garde-à-vue* can have access to a medical examination at the request of the criminal investigation officer in charge of the inquiry⁹

Amnesty International deplores the fact that Malagasy legal standards regulating arrest procedures have not been respected.

Irregularities concerning detainees' contact with the outside world

Access to adequate medical assistance

Many people held after the crisis, including those who were injured as a result of torture or ill-treatment, have not had access to adequate medical assistance and care. Further obstacles to appropriate medical treatment for the detainees are their conditions of detention, the lack of adequate hygiene and nutrition standards, and the overcrowding in prisons. This situation requires urgent attention.

Amnesty International is aware of the death in custody of at least one person arrested during the political crisis. The death was probably a result of his conditions of detention. Bernardin Tsano, a SIRAMA employee from Nosy-Be, was arrested with others at the end of June. He was transferred to Tsiafahy on 17 July. On 22 July he died from an asthma attack brought on by the dust and damp conditions, but mostly by the overcrowding in his cell. His body was returned to his family. There has been no inquiry into his death, and the authorities have taken no steps to reduce overcrowding or improve hygiene standards in Tsiafahy. According to the prison authorities, a doctor comes to Tsiafahy to examine the detainees twice a week and recommends hospitalisation if required. The decision about whether to hospitalise a detainee is taken by the chief guard at the prison. If there is a medical emergency, the chief guard calls the central prison authorities in Antananarivo to send a doctor. Because of the

⁷ *Komity Mpanohana ny filatsahan' Atoa Marc Ravalomanana ho Filoha*, Marc Ravalomanana Support Committee, composed mainly of Marc Ravalomanana supporters and members of the TIM Association.

⁸ Code of Penal Procedure, Article 136 (Law No 97-036 of 30 October 1997) A criminal investigation officer cannot hold anyone at his disposal for the requirements of preliminary investigation for longer than 48 hours.

⁹ Article 138 (a) (Law No 97-036 of 30 October 1997).

distance between Tsiafahy and the capital, it could take a doctor between 30 minutes and one hour to reach the prison. There is no medical equipment or supplies at Tsiafahy and no infirmary where sick people can be separated from other detainees. One detainee stated that the only person able to give him advice was a fellow detainee who was a doctor.

Venance Raharimanana (already mentioned above) was transferred to hospital once his family had traced him. He was diagnosed as having an injury to his skull with the incumbent risk of loss of consciousness. Despite his state of health, his case was handed over to the prosecuting authorities in Antananarivo which charged him with “spreading false news” and “inciting crimes and offences” and he was placed under a committal order in Antanimora, the central prison in Antananarivo. He was held despite the prison doctor’s concerns for his state of health. The prison doctor and a lawyer wrote to the Antananarivo Court to request Venance Raharimanana’s hospitalisation because of the lack of adequate medical facilities at the prison. There was no response to their demands. Amnesty International was told by the chief guard of Antanimora that for security reasons it is the Court alone which can permit the transfer of a detainee to hospital. The Procurator of the Lower Court in Antananarivo told Amnesty International representatives that orders had been given to the prison authorities to transfer sick prisoners to hospital but this had not been possible because they lacked the personnel to ensure the prisoners did not escape. Amnesty International deeply regrets that Venance Raharimanana did not get access to adequate medical care despite many attempts to make the authorities aware of his seriously worrying state of health.

Access to family

The families of numerous people held in pre-trial custody following the political crisis were denied access to detention centres while the alleged crimes were being investigated. Other detainees, like Venance Raharimanana, were not able to tell their families where they were held. Their families had to contact the competent court to seek permission to be able to visit them. Normally, people in pre-trial custody are allowed such visits twice a week. These visits are essential not only to provide moral support to the detainees, but also because the family can bring food to supplement the meagre rations provided in prison. At least 20 detainees confirmed they were denied access to their family during July and August. When they asked why they were refused the right to communicate, the families were told it was for “political” or “security” reasons. Recent reports suggest that the right to communicate is now respected, apparently because the investigations are near to conclusion.

A Supreme Court of Madagascar decision of 2 July 2002 has made detainees’ access to their families more difficult. Supreme Court Decision 70 “removed responsibility for the above mentioned offences from the normally competent jurisdictions and placed it with the sole jurisdiction of Antananarivo”. The offences referred to by the Supreme Court were those “resulting from the economic barricades, and offences connected to attacks on state security and public and private possessions, and attacks on the physical integrity or restrictions on the individual freedom of others”. According to Article 31 of Madagascar’s Code of Penal Procedure: “Representatives of the prosecuting authorities in the place the crime was

committed, the place where one of those suspected of having committed the crime resides, or the place of arrest of one of these people even when the arrest was carried out for another reason, are also competent to effect and proceed with a prosecution”.

Some 200 people arrested in the provinces and accused of crimes or offences committed in the provinces have been transferred to Antananarivo to be tried. Travelling to the capital and finding accommodation, without any guarantee that they would be able to talk with the detainees, has caused the families financial and practical difficulties. Given that the majority of the detainees are men who provide the family’s regular income, many families have not been able to travel to Antananarivo.

Right to the assistance of a lawyer

Most of the detainees currently held awaiting trial have been able to receive visits from their lawyers in prison. Malagasy law stipulates that all charged prisoners have the right to the assistance of a lawyer. Law 97/036 which modifies and completes Code of Penal Procedure provisions concerning defence for suspects and charged individuals, stipulates that when someone suspected of having committed a crime or offence attends the first hearing, the criminal investigation officer must inform them of their right to choose their defence from among the lawyers of the Malagasy Bar or that they may choose any other person to defend them. The law also states that the chosen defence can attend any interrogation, cross-examination and searches carried out in the context of the investigation.

However, some people have been refused the right to legal assistance. Tantely Andrianarivo, Prime Minister of the previous Didier Ratsiraka government, was placed under “house arrest” on 27 May 2002 when security forces loyal to Marc Ravalomanana stormed and captured his home. Two people guarding his home were killed during the attack. He was held under house arrest for almost five months without charge even though the Malagasy press reported that he was suspected by the new authorities of embezzling public funds. He was only allowed to communicate with his lawyers on one occasion, 5 July. His lawyers were able to visit him a second time on 7 or 8 October, when some foreign lawyers interested in his case visited Madagascar in October 2002. Amnesty International believes Tantely Andrianarivo was arbitrarily detained throughout this period when he was held without access to lawyer and without being charged with any offence from the penal code. His case was finally handed over to the prosecuting authorities in Antananarivo on 21 October. His hearing lasted nine hours. According to information available to Amnesty International, only one of his lawyers could attend the interrogation because it was claimed he was being questioned as a witness. However, following the interrogation he was charged with “usurping his function” “embezzling public funds” “harbouring criminals” and “threatening state security”. He was transferred to Antanimora prison that same day.

Other people suspected of committing crimes or offences during the crisis have been denied access to legal assistance during their interrogation by the police or a magistrate. Having a lawyer present during police interrogation is an important deterrent to the risks of torture or ill-treatment. It is during interrogation by the prosecutor or the examining magistrate that

charges can be brought against the suspect. It is crucial that a lawyer is present at that moment.

On 9 July General Jean-Paul Bory, Secretary of the National Gendarmerie who was nominated “Minister of Defence” by Didier Ratsiraka in March after General Marcel Ranjeva resigned the same post in Didier Ratsiraka’s government, was arrested. On 25 July his case was passed to the Antananarivo prosecution authorities. The Prosecutor who interrogated him reportedly told him that he did not need a lawyer because he was only being interrogated as a witness. However, as the interrogation unfolded, he realised he was being questioned as a suspect. It was not until he sought the right for legal assistance that his lawyer was able to enter the room. He was charged with “rebellion” and placed under a committal order at Antanimora prison. It seems the same tactic has been used against other people in order to prevent them having access to the services of a lawyer during interrogation.

Conditions of detention

For decades human rights organisations and bodies both local and international have criticised the inhuman conditions of detention in Madagascar. According to information received by Amnesty International, a government program, led by the Ministry of Justice to improve conditions of detention, was put in place a few years ago. However, conditions of detention remain seriously below the minimum standards necessary to ensure the physical and psychological well-being of the detainees.

Those arrested following the crisis have been held in custody awaiting trial in overcrowded prisons which contravene the minimum standards for detention. Most of the officials from Didier Ratsiraka’s government and the members of the security forces who remained loyal to him are held in Antananarivo, in Antanimora prison, or at the Tsiafahy detention centre. Amnesty International’s main concerns in these centres are overcrowding and the disregard for standards of hygiene and nutrition. When Amnesty International representatives visited Antanimora prison 2,300 people were held there in a prison with capacity for 800. Around 65% of the detainees were held in pre-trial custody. Each area of the prison is equipped with a basic shower and toilet, but each area contained between 60 and 300 detainees. The prisoners are entitled to a meal of manioc or maize twice a day. These rations are complemented by charities and by families who bring food when they visit the prison.

Reports suggest that in the Tsiafahy detention centre – a place normally reserved for “serious criminals” – 620 people were held at the end of August even though the prison can only accommodate 200. The standards of hygiene and nutrition are below the minimum standards necessary to ensure respect for human dignity. Detainees are held together in cells which are far too small: information received from detainees states that one of the two rooms in Zone 1 is 12 metres long, 5 metres wide and 5 metres high. This room is expected to accommodate 50 detainees, but in August it held 120. There is only one toilet in each room, no running water and no electricity. The water given to detainees is rationed. Two concrete shelves in each room serve as beds where the detainees sleep one piled on top of another. There is no permanent infirmary or medical facilities at Tsiafahy.

The Malagasy authorities have acknowledged that the arrests following the political crisis have increased the prison population and they told Amnesty International representatives that improving the conditions of detention was one of their priorities. Amnesty International has received no information which would suggest that the detainees have been tortured or ill-treated by the prison guards. However, the organization believes that the conditions of detention could constitute cruel, inhuman and degrading treatment. Conditions of detention at Tsiafahy are such that they put the life of detainees at risk.

Amnesty International also deplores the fact that in contravention of international standards those detained awaiting trial are not separated from those already found guilty and sentenced.

Presumption of innocence

According to Madagascar's laws, all persons have the right to be presumed innocent and to be treated as such until they may be tried and found guilty. International standards stipulate that guilt can only be established if the trial meets prescribed standards of fairness. Under Malagasy law and in conformity with the right to be presumed innocent, detention of those awaiting trial is an exceptional measure¹⁰. Yet all those charged with penal offences relating to the political crisis remain held awaiting trial. The only people freed are those who have been acquitted or were released after being given the benefit of doubt during the trial, or those who have had their charges dismissed.

According to Law 97/036, the person facing charges can seek bail at any moment. However, many detainees have stated they would not make that request because they think it would be refused "as a result of the prevailing political climate" Others have had their request for bail refused. Amnesty International believes that the systematic refusal to grant bail has further eroded the right of those held in relation to the political crisis to be presumed innocent.

Arbitrary arrests and violations of the fundamental right to freedom of expression

People have been arbitrarily arrested and charged in the context of this crisis simply for expressing opinions or transmitting information which is seen as critical of the new government. Amnesty International has also received information that other people have been arrested as a result of false allegations made against them.

Nestor Rasolofonjatovo, journalist with FMA (*Feo Mazava Atsinanana*, Clear Voice of the East) radio in Toamasina which apparently benefited from some financial support from Pierrot Rajaonarivelo, one of Didier Ratsiraka's AREMA party leaders, was arrested and placed in pre-trial detention on 7 August after being charged with "spreading false news" and "incitement to tribal hatred". The accusations referred to two pieces of information the journalist had broadcast. One, dating back to the period when Didier Ratsiraka declared he

¹⁰ Code of Penal Procedure, Article 333: Pre-trial detention is an exceptional measure.

had established his government in Toamasina, spoke of *Zatovo*¹¹, a group of young people in Toamasina who had apparently been paid by the pro-Ratsiraka authorities during the crisis and who were terrorising the local population and committing acts of violence. This extract apparently lasted one and a half minutes and reportedly gave information about a *Zatovo* meeting in Toamasina. The other piece spoke of the new President and was reportedly interpreted as a criticism of Marc Ravalomanana. After a week in pre-trial custody in Toamasina, Nestor Rasolofonjatovo was granted bail. On 10 September 2002 the Toamasina court acquitted him.

Venance Raharimanana (see earlier references to his case) was first questioned by the examining magistrate about false allegations that he had reportedly been a pro-Ratsiraka “militia” leader in Mahajanga during the crisis. After the interrogation he was eventually charged with “spreading false news” and “inciting crimes and offences”. The charges were based on the allegation that he reportedly stated on the local Mahajanga television channel *Feon’ ny Boina* that Mahajanga province was “independent” which was taken as proof of his support for the barricades erected against the capital. Amnesty International believes Venance Raharimanana was arrested solely for expressing his non-violent opinion and that he has been detained and tried in violation of his fundamental right to freedom of expression and opinion.

Arrest of political opponents

Many people including political opponents were arbitrarily detained when Didier Ratsiraka was in power as well as in the provinces under his control during the recent crisis. Since the Marc Ravalomanana government has been in power, this practice seems to be continuing. Most of those arrested following the political crisis are people associated with the former government. Members of AREMA have also been arrested and interrogated even though they had no clear link with the alleged offences relating to the period of political crisis. According to official statements, these people were arrested in connection with investigations about corruption¹². Amnesty International is not opposed to judicial proceedings against those suspected of corruption. However, the organization is urging that all judicial proceedings conform to international standards of fairness. Amnesty International is concerned by the almost systematic arrest of people associated with the former government just as Marc Ravalomanana’s government is seeking to assert its authority in the country.

On 1 October Elire Rabemananjara, an AREMA party member was arrested, handed over to the prosecuting authorities and questioned about alleged embezzlement of funds when he was the former Head of Cabinet to Pierre Rajaonarivelo, former Vice-Prime Minister under Didier Ratsiraka. On 3 October Roland Ratsiraka, nephew of Didier Ratsiraka and mayor of Toamasina, was arrested and taken to the court in Antananarivo. His interrogation focused on

¹¹ “Youth of Toamasina at the ready”

¹² Madagascar is considered to be of the most corrupt countries according to the non-governmental organization Transparency International’s classification (*Corruption Perception Index 2002*, *Transparency International*).

suspicions of his corrupt activities, but he has since been questioned about his activities in Toamasina during the crisis. He has been released, but it is not known whether he has in fact been charged with any criminal offence.

Pierrot Rajaonarivelo, national secretary of AREMA and possible candidate in future parliamentary elections is currently in France. There are allegations that he may be subject to an order to return to Madagascar to present himself to face charges of corruption or alleged criminal offences linked to the political crisis. Members of AREMA believe that if such an order exists, it is simply a government tactic to stop Pierrot Rajaonarivelo returning to Madagascar to participate in the parliamentary elections.

Crimes punishable by death

According to information received by Amnesty International at least ten people have been charged with “threatening state security” as defined by Article 91, paragraph 3 of the Malagasy Penal Code which carries a prison sentence. Amnesty International is concerned that crimes connected to inciting civil war and arming civilians are punishable by death as stipulated in paragraph 1 of the same article of the Penal Code. Crimes relating to “treason” and “destruction of public goods” are also punishable by death according to articles of the Malagasy Penal Code.

No-one sentenced to death has been executed in Madagascar since independence; their sentences have been commuted to life imprisonment. The Constitution gives the President the right to grant clemency. Amnesty International is nevertheless concerned that some of those detained since the political crisis face accusations for crimes which carry the death penalty. The organization is opposed to the death penalty in all cases on the basis that it constitutes the most cruel inhuman and degrading punishment and violates the right to life.

Unfair Trials

The right to defend oneself

Anyone accused of a criminal offence has the right to defend themselves against those accusations. A fundamental aspect of this right to defence is the right of the accused to summons witnesses. Those arrested at the end of the crisis are mostly suspected of crimes or offences committed in the provinces of Mahajanga, Toamasina, Antsiranana and Toliara. Some 200 people are waiting to be tried in Antananarivo following Supreme Court decision 70 (see section on access to family). This presents further obstacles for the lawyers preparing to defend the accused, for example, distance from the capital, lack of good communications and the additional costs. The same logistical obstacles could prevent an accused person from summoning potential defence witnesses.

Amnesty International is concerned by reports that lawyers defending the accused are in a difficult situation and feel intimidated and harassed. Even if there is no direct threat against

the lawyers, they are apparently seen as “pro-Ratsiraka” and have received scornful remarks from some colleagues. They have also had difficulties when trying to consult their clients’ files at court; for example they are often made to wait, and some have only been allowed to take notes from the file on the spot.

Amnesty International fears that the current political climate in Madagascar could also affect the right to defence and dissuade potential defence witnesses from coming to testify.

The right to a fair trial

According to reports some 50 people have already been tried for offences which come under the jurisdiction of a minor offences court. Those found guilty have appealed. Those charged with more serious crimes, in particular leading figures in the former government, are still awaiting trial. There is still no definite date set for their trial but it is reported that they will take place before the next parliamentary elections.

Amnesty International representatives observed the trial of Venance Raharimanana on 23 August. He was given a suspended two-year prison sentence. The main concerns of the organization with regard to this trial are as follows:

- Venance Raharimanana was not informed of the date of his trial until two days before;
- He was clearly suffering from wounds caused by torture and he was unable to walk into the trial chamber without help. However, his torture has not been investigated nor was it raised during the trial;
- He had to respond before the court about his “activities in Mahajanga between March and June 2002” and “inciting state security crimes and offences “even though he was charged with “spreading false news” and “inciting crimes and offences”.

The only “proof” provided by the prosecution was a video-cassette which reportedly showed the accused declaring that Mahajanga province was “independent”. The existence of this video cassette was not revealed before the trial. The prosecution used a 30-second extract from the video cassette which showed the accused reading something. The source of this video cassette was not revealed and the entire recording was never played despite statements by the accused and his lawyer that the extracts used had been taken out of context. The accused explained he had read a letter written to him and he had used it in a television debate and at the time of the debate had himself warned against the dangers of secession in the provinces. The television debate was about the declaration of “independence for the provinces” made by pro-Ratsiraka governors during the political crisis. Neither the prosecution nor the defence summoned witnesses.

The trial was summary. The judge asked three questions of the accused, the prosecution asked three questions and the defence addressed the court. After posing a final question to the accused, the judge passed his verdict from the bench.

The conduct of Venance Raharimanana's trial raises serious doubts about the independence and impartiality of the justice system in Madagascar and calls into question respect for the principle that all are equal before the law.

The independence of the judicial system

Under Ratsiraka's presidency, there were reports that magistrates were intimidated to force them to favour those in power, and that their lack of resources and difficult working conditions reportedly led to corrupt practices. Generally speaking the judicial system was not seen as impartial while Ratsiraka was in power. Amnesty International representatives raised this point when they met members of the new government. One of the new government's proposed solutions to alleviate this problem was the Supreme Court Decision (see preceding sections) which gives the Lower Court of Antananarivo jurisdiction over offences relating to the 2002 crisis, because of allegations that the provincial courts were favourable to the former government. However, Amnesty International believes that it would be far more important to introduce reforms which would guarantee the independence, impartiality and efficiency of the magistrates. This would considerably reinforce the independence of the judicial system and the legal profession. The government could guarantee judicial independence by nominating magistrates in accordance with clear criteria which conform to international standards.

According to recent information, now that the new government has nominated several magistrates, provincial courts have reportedly regained their competence to try some offences connected to the crisis. However, Amnesty International is concerned by reports that some magistrates nominated by the new government to the highest posts within the Procuracy, in particular the procurators themselves, reportedly participated in Marc Ravalomanana's first investiture on 22 February. Marc Ravalomanana declared himself President before a crowd of more than 100,000 people in Antananarivo. This raises questions about their independence, their impartiality and their objectivity and also about the fundamental principles connected to the separation of powers. While their participation in the first investiture does not in itself diminish the qualities of those magistrates, it could be interpreted as compromising their actual independence. Some of those magistrates now have responsibility for judicial proceedings against members of the former government. Amnesty International is urging the government to demonstrate that judicial independence is guaranteed not only in Malagasy laws and the country's constitution, but also in practice.

International standards

By ratifying the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples' Rights (African Charter), Madagascar has undertaken to respect international standards regulating fair trials, and notably to guarantee the rights of any accused person at every stage of the procedure, from the time of arrest, while in detention, throughout the trial and appeal up to final judgement. These include the right not to be

subjected to torture or to cruel, inhuman or degrading treatment, the right to liberty, the right not to be arrested or detained arbitrarily and the right to be presumed innocent.

According to Article 5 of the African Charter:

“Every individual shall have the right to the respect for dignity inherent in a human being All forms of exploitation and degradation of man particularly.... torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.”

The African Commission on Human and Peoples’ Rights stated that to detain an individual without allowing them access to their family and refusing to inform their family of their detention and their place of detention constitutes inhuman treatment of the detainee and the family concerned and that it constitutes a violation of Article 5 of the African Charter.

According to Article 6 of the African Charter:

“Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.”

The international treaties mentioned above guarantee the right of all individuals to be presumed innocent and to be treated as such unless they are convicted according to law in the course of proceedings which meet at least the minimum prescribed requirements of fairness. The right to be presumed innocent applies not only to the treatment in court and the evaluation of the evidence, but also to the treatment before trial.

It also means that the prosecution has to prove the accused person’s guilt. If there is a reasonable doubt, the accused must not be found guilty. According to the Human Rights Committee, which oversees the application of the ICCPR: “[b]y reason of the presumption of innocence, the burden of proof of the charge is on the prosecution and the accused has the benefit of the doubt.”

According to Article 7.1 of the African Charter:

“Every individual shall have the right to have his case heard .This comprises:

- *the right to an appeal to competent national organs against acts violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force;*
- *the right to be presumed innocent until proved guilty by a competent court or tribunal;*
- *the right to defence, including the right to be defended by counsel of his choice;*
- *the right to be tried within a reasonable time by an impartial court or tribunal.”*

According to the African Commission, all these provisions are mutually dependent and when the right to be heard is violated, that can lead to other violations, for example detentions which become arbitrary. Moreover the Commission has reiterated that the right to a fair trial implies the establishment of certain objective criteria in order to guarantee a fair trial for all,

such as the right to equality before the law, the right to self defence and to be assisted by a lawyer, and an undertaking by the courts and tribunals to conform to international standards. The right to a fair trial is essential to the protection of all rights and fundamental freedoms.

The African Commission's resolution on the right to a fair trial stated that this includes among others the right to be informed of the reasons for arrest, at the moment of arrest and in a language the individual understands as well as the right to be informed of any charges. Once charges are drawn up against an individual, that person has the right to sufficient time and the necessary means to prepare their defence and the right to communicate confidentially with a lawyer of their choosing.

Article 14(3) of the ICCPR and Article 7(1) of the African Charter stipulate that judicial proceedings must be started and concluded within a reasonable time. This implies that while respecting the right of the accused to have sufficient time and the necessary means to prepare their defence, the procedure must start and the final judgement must be reached after exhausting appeal possibilities without excessive delays. This right binds the authorities to ensure that all procedures, from the pre-trial phase right through the appeals, are completed within a reasonable period. Any individual accused of a criminal offence and placed in pre-trial custody has the right to have their case given priority and to have proceedings conducted with particular expedition.

Amnesty International's Recommendations

Recommendations to the Government of Madagascar

Amnesty International recognises the right of each society to bring the perpetrators of crimes or offences, in particular those who violate human rights, to justice. Amnesty International reiterates that the fight against impunity for human rights abuses and violations is indispensable. The organization acknowledges that the new government came to power in difficult circumstances and is conscious of the obstacles it may face when dealing with the political crisis. However, Amnesty International believes that through its commitment to national legislation and international law, the Malagasy authorities have undertaken to respect and protect the human rights of all citizens. Amnesty International calls upon the government of Madagascar to implement all of the recommendations detailed above.

Furthermore, Amnesty International urges the government of Madagascar to respect and protect the principles enshrined in the following international standards:

- Universal Declaration of Human Rights;
- Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment;
- Standard Minimum Rules for the Treatment of Prisoners;

- Basic Principles on the Role of Lawyers;
- Guidelines on the Role of Prosecutors;
- Basic Principles on the Independence of the Judiciary;
- Code of Conduct for Law Enforcement Officials.

Fighting impunity

- The government of Madagascar must open independent and impartial inquiries into all reports and allegations of serious human rights abuses, such as killings and torture. The government could create a commission of inquiry with a mandate not only to look into crimes and offences allegedly committed by the former government during the crisis, but also to investigate crimes and offences allegedly committed by supporters of the new government.
- The results of the inquiry and the methods used in carrying out the investigation should be made public.
- The potential perpetrators should be tried in accordance with international standards of fairness and without recourse to the death penalty.
- Anyone who has been subjected to torture or ill-treatment has the right to receive adequate medical treatment and redress.
- A system must be set up to protect the victims, their families and the potential witnesses of human rights abuse. Many people will not agree to testify unless their protection is guaranteed.

Preventing torture

- All detainees must be examined by a doctor as soon as possible after their arrest. An independent and impartial inquiry must be made into any allegation of torture in custody.
- Public instructions must be issued to all members of the security forces that acts of torture or ill-treatment will not be tolerated and those suspected of carrying out such acts will be brought to trial.
- Anyone suspected of committing acts of torture must be suspended from duty while awaiting the results of an independent and impartial inquiry.
- The government must ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment without delay.

Preventing arbitrary arrests and detentions:

- In every case the government must respect the fundamental human rights to freedom of opinion, expression and association enshrined in Madagascar's Constitution and in international law. No one should be detained or imprisoned for non-violently expressing their opinions or for exercising their right to freedom of expression or association.
- Anyone suspected of committing a crime or offence in the context of the political crisis and currently in detention must be charged with an offence listed in the penal code and tried in accordance with international standards of fairness, or released.
- The government must take steps to prevent arbitrary arrests by ensuring that any arrest follows preliminary investigations which provide a clear basis for the arrest. All arrests must respect international standards of fairness.
- Measures must be taken to ensure that all members of the security forces who carry out arrests receive training about human rights which are guaranteed in international law including the right not to be arbitrarily or illegally arrested and the right to be presumed innocent.
- Anyone arrested must be immediately informed of the reasons for their arrest or detention and of the right to be assisted by a lawyer.
- The government must ensure that any detainee has the right to challenge the lawfulness of their detention at any moment while detained. If there is insufficient evidence against a person, they should be provisionally released while the investigation is completed or until charges are dropped.

Guaranteeing fair trials

- Every detainee has the right to adequate and regular medical assistance. The Malagasy authorities must guarantee any detainee is transferred to hospital if their state of health requires specific treatment.
- Every detainee has the right to contact with their family. Detainees' families must have regular and unrestrained access to their relative at any moment while in detention, including at the time of investigation.
- Measures must be taken to ensure the accused has the right to access the services of a lawyer at every stage of judicial proceedings, including the interrogation phase.
- Every person detained must be informed without delay of any charges against them and of the facts behind the accusations.
- Those defending people suspected of committing crimes and offences during the political crisis must be allowed to carry out their professional duties without intimidation and without being identified with their clients' alleged crimes.

- Steps must be taken to ensure that Supreme Court Decision 70 does not violate the right of detainees to have access to their families and their right to defence, including their right to summons witnesses.
- Everyone is equal before the law. Anyone who is brought to justice for alleged criminal offences must be tried by an impartial and independent court and have a fair trial.

Improving conditions of detention

- Urgent steps must be taken to provide prisons with adequate medical and other material facilities. When the government incarcerates someone, it makes an undertaking to care for that person. In particular the Tsiafahy detention centre where conditions are extremely dangerous must be provided with an infirmary, competent medical staff and satisfactory facilities. In order to improve standards of hygiene, food and medical assistance, the reforms of conditions in all of Madagascar's prisons must be implemented.
- Those detained awaiting trial must be separated from those who have been found guilty and convicted.

Death penalty

- The government must ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.
- Amnesty International calls upon Madagascar's courts to not hand down death sentences and upon the President to commute any death sentences which may be passed.
- Particular attention must be paid to the fate of those accused of crimes which carry the death penalty, to ensure that they have access to a lawyer at every stage of proceedings, that they have sufficient time to prepare their defence and to prepare their appeal or petition for reprieve if they were to be sentenced to death.

Recommendations to the International Community

Amnesty International urges the international community to:

- Support and facilitate the work of doctors, hospitals and non-governmental organizations in Madagascar trying to provide medical and psychological help to victims of torture and their families;
- Assist the Malagasy prison service to improve conditions of detention and to guarantee that all detainees have access at all times to necessary medical care;

- Work with Madagascar's judicial system with a view to improving the competence, independence and impartiality of magistrates;
- Ensure that those accused of serious human rights abuses in Madagascar, for example torture and killings, are brought to trial or extradited, in line with the principle of universal competence. Some alleged perpetrators of serious human rights abuse have fled to other countries. Judicial proceedings for alleged perpetrators of human rights violations must be fair and must not impose the death penalty or cruel, inhuman or degrading punishments.
- Use its influence on the Malagasy authorities and the country's security forces to ensure that they respect international standards of human rights and that they implement the recommendations made above.