

MADAGASCAR: URGENT NEED FOR JUSTICE

HUMAN RIGHTS VIOLATIONS
DURING THE POLITICAL CRISIS

AMNESTY
INTERNATIONAL



Amnesty International is a global movement of 2.2 million people in more than 150 countries and territories who campaign to end grave abuses of human rights. Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards. We are independent of any government, political ideology, economic interest or religion – funded mainly by our membership and public donations.

**AMNESTY
INTERNATIONAL**



Amnesty International Publications

First published in 2010 by
Amnesty International Publications
International Secretariat
Peter Benenson House
1 Easton Street
London WC1X 0DW
United Kingdom
www.amnesty.org

© Amnesty International Publications 2010

Index: AFR 35/001/2010
Original language: English
Printed by Amnesty International,
International Secretariat, United Kingdom

All rights reserved. This publication is copyright, but may be reproduced by any method without fee for advocacy, campaigning and teaching purposes, but not for resale. The copyright holders request that all such use be registered with them for impact assessment purposes. For copying in any other circumstances, or for re-use in other publications, or for translation or adaptation, prior written permission must be obtained from the publishers, and a fee may be payable.

Cover: Members of the security forces trying to disperse demonstrators in Antananarivo, the capital of Madagascar, in December 2009.

© Eitras- Madagascar Tribune

CONTENTS

Introduction	5
Methodology.....	6
Another Political Crisis	7
The Latest in a String of Political Crises.....	7
Waves of Opposition Demonstrations.....	9
Bombings	10
Political Mediation by the International Community.....	10
Human Rights Violations.....	12
excessive Use of Force by the Police and Other Security Forces	12
Violations of the Human Rights of Political activists	17
Violations During Arrests and Detentions	17
Violations of the Rights to a Fair trial	23
The Right to be Brought Before a Judge Without Delay	23
The Right to Defence Denied	24
Harassment and Intimidation of Lawyers.....	24
Attacks on Media Outlets and Journalists	26
Interference in the Functioning of the Judiciary	30
The Commission Nationale Mixte d'Enquête (CNME).....	30
The HAT's Decision to Release Some of Those Detained	31
The Amnesty Issue in the Maputo Political Accords	32

Conclusion.....	34
Recommendations.....	35
Endnotes.....	38

INTRODUCTION

“No one from the courts or the police came to see me in hospital to conduct an investigation. I’m not intending to file a complaint, I believe in God”

A victim interviewed in Antananarivo

This report, covering the period December 2008 to January 2010, focuses on the human rights violations committed since the beginning of the current political crisis in Madagascar. The report does not claim to cover all human rights violations committed in Madagascar during that period but the cases mentioned are representative.

The respect and protection of human rights should not be set aside in the search for a lasting solution to the political crisis that is rocking Madagascar. Those suspected of having committed, ordered or condoned serious human rights violations must be brought to justice in line with the relevant international standards of fair trial and without recourse to the death penalty. The victims of such abuses must be recognized and their rights respected. They must receive adequate, effective and prompt reparation. Finally, the report makes recommendations to the different authorities and bodies involved in seeking a solution to the current political crisis in Madagascar with a view to ensuring that the Malagasy authorities respect, protect and promote human rights at all times.

While noting the international community’s efforts to resolve the current political crisis in Madagascar through the facilitation of the Joint Mediation Team for Madagascar,¹ Amnesty International remains concerned about the limited attention given, in the political negotiations so far, to ongoing human rights violations. Any measure related to the question of amnesties, pardons or other similar measures should be taken in respect of international law which excludes amnesties for serious human rights violations.

Amnesty International does not support or oppose any government or political system. The organization does not take position on the constitutional or otherwise legitimacy of the political authorities in a country, or on claims for international recognition. Amnesty International instead seeks to ensure that any and all governments which exercise *de jure* or *de facto* authority respects and protects human rights on its territory.

METHODOLOGY

An Amnesty International delegation visited Madagascar in June 2009. The delegates conducted investigations into the human rights violations committed during the current political crisis. They collected testimonies from victims and discussed the human rights situation in Madagascar with various actors.

Amnesty International delegates talked to members of the country's civil society organizations, including lawyers, human rights defenders and journalists. They also met with the representatives of international organizations, including United Nations agencies. In addition, they met with members of the High Transitional Authority (*Haute Autorité de la Transition*, HAT); in particular President Rajoelina and his key ministers, members of the political opposition; including members of the *Tiako-i-Madagasikara* (TIM), the political party of former President Marc Ravalomanana. During their various meetings with the HAT authorities, Amnesty International delegates discussed the human rights situation in Madagascar and the action which needed to be taken by the HAT authorities in response to human rights violations committed during the political crisis.²

Amnesty International delegates received specific details of some of the human rights violations committed in Antananarivo since December 2008. They found that there had been serious violations of Malagasy laws as well as international human rights law, both under the government of President Ravalomanana and later under the HAT.

The identity of some of the victims interviewed by Amnesty International delegates has not been disclosed in the report in order to protect their security and privacy.

ANOTHER POLITICAL CRISIS

THE LATEST IN A STRING OF POLITICAL CRISES

The current political crisis is the most significant to hit Madagascar since the outbreak of violence in 2002 as the result of a dispute over the outcome of presidential elections held in December 2001. At that time, Ravalomanana, with sizeable popular support, had contested the election results and claimed victory after the first round before proclaiming himself President of the Malagasy Republic on 22 February 2002. He was subsequently invested as Head of State on 6 May 2002 after a recount, forcing former President Didier Ratsiraka to leave the country. Since then, Ratsiraka has been living in exile in France and only reappeared on the Malagasy political scene in the context of the current political crisis. The numerous human rights violations committed in the context of the 2002 crisis, including political killings, torture and other ill-treatment, and arrests and arbitrary detentions, were denounced by several organizations, including Amnesty International.³

The current political crisis, like that of 2002, has been characterized by acts of violence, political repression and impunity surrounding such violations. Although it was the closure of Viva TV and radio stations that sparked the crisis, the political and social situation was already very tense between Rajoelina, at that time the Mayor of Antananarivo, and the government of Ravalomanana for a variety of reasons.

The Daewoo and Air Force One II affairs also contributed to the deterioration of an already tense political situation in Madagascar. The plan by the South Korean industrial conglomerate, Daewoo, to take out a 99-year lease for over 1.3 million hectares of arable land in Madagascar in order to plant corn to be exported back to South Korea had caused tensions among the Malagasy population when it was unveiled in the media in November 2008.⁴ The announcement of this project created an atmosphere of distrust among the population, who suspected the government of selling off Malagasy land under conditions that lacked transparency. The controversial purchase of a presidential aircraft in November 2008 led to further criticism of Ravalomanana's government. Rajoelina, and other political opposition leaders, criticized this investment and stated in their speeches that the money used to buy the plane could have been used for development projects in the country.

In January 2009, Rajoelina held meetings during which he denounced the Daewoo affair, the purchase of the presidential aircraft and the government's poor management of public affairs and called on the President to stand down. On 4 February 2009 the government replaced Rajoelina, the elected Mayor of Antananarivo, with a "President of Special Delegation" (*Président de Délégation Spéciale*).

The tension culminated with the unlawful killing of opposition demonstrators on 7 February 2009 as Ravalomanana's Presidential Guard sought to protect the Ambohitsorohitra Presidential Palace, leaving at least 31 people dead and many injured.⁵

On 17 March 2009, following popular pressure from Rajoelina and his movement, *Tanora malaGasy Vonona* (TGV), President Ravalomanana signed an order dissolving the government and granting full powers to a military directorate. The order gave the military directorate the mandate to “organize a national conference to discuss and draft possible amendments to the constitution, prepare a review of the electoral code, prepare a law on political parties and organize elections to be held within the next 24 months at the latest”.⁶

That same day, the members of the military directorate in turn passed on the powers that had been granted to them, under the order issued by President Ravalomanana, to Rajoelina. Article 2 of the decree issued by the military directorate states that among other things “the duties and attributions of the President of the Republic shall be exercised by Rajoelina for a maximum period of 24 months”.⁷ For his part, Rajoelina wrote to the High Constitutional Court asking it to determine the validity of the order issued by former President Ravalomanana in which full powers were granted to the military directorate, as well as the decree issued by the military directorate authorizing the “transfer of full powers to Mr Rajoelina”. The High Constitutional Court endorsed both orders and declared that, as a consequence, Rajoelina had the functions of President of the Republic.⁸ On 19 March 2009, Rajoelina, on the basis of these decisions, issued a decree proclaiming a state of emergency throughout Malagasy territory⁹ and at the same time suspended the Senate and the National Assembly.¹⁰

Human rights violations continued after the High Transitional Authority (*Haute Autorité de la Transition*, HAT), headed by Rajoelina came to power on 17 March 2009. Excessive use of force by police and other security forces during demonstrations continued, as well as the arbitrary and unlawful arrest and detention of demonstrators and political opponents, including members of parliament, senators and lawyers. Most of the arrests and searches that took place in homes, offices and warehouses of private companies were carried out by the National Joint Commission of Inquiry (*Commission Nationale Mixte d'Enquête*, CNME),¹¹ a body especially created by the HAT. Some members of the CNME were accused of committing human rights violations during their operations. The CNME's working methods have been denounced by human rights organizations and even by the HAT Minister of Justice.¹²

On 10 April 2009, former President Ravalomanana, already in exile, issued an order repealing his earlier order granting full powers to the military directorate and issued a decree appointing Manandafy Rakotonirina as Prime Minister and Head of Government, adding further confusion to an already complex situation.¹³

The HAT and the government subsequently installed by Rajoelina have not been recognized by the international community, including the African Union (AU), the Southern African Development Community (SADC), the International Organization of the Francophonie (IOF) and the Indian Ocean Commission (IOC) of which Madagascar is a member. Some of these organizations have also officially suspended Madagascar.¹⁴ However, representatives of these organizations are actively involved in searching for a solution to this new political crisis through the Joint Mediation Team for Madagascar.

WAVES OF OPPOSITION DEMONSTRATIONS

The political transition from the government of Ravalomanana to the HAT was characterized by violence, often accompanied by human rights violations. From early January 2009, supporters of Rajoelina organized public demonstrations and meetings across the capital. They regularly assembled at a place called "*Place de la démocratie*" ("Democracy Square") in Ambohitovo in the capital, Antananarivo. The demonstrations later spread throughout the capital and a number of violent incidents were reported. The headquarters of the *Radio Nationale Malgache* (RNM) and the national TV station at Anosy, and the premises used by *Radio Télévision MBS* in Anosipatrana, were looted, ransacked and set on fire.¹⁵ According to many sources, at least 100 people died during this period, including at least 30 who were burned to death in a fire at the Trading Centre in Analakey on 26 January in circumstances that are yet to be clarified.

Over 100 demonstrators were arrested at different times. The violence culminated on 7 February when demonstrators marched on Ambohitsorohitra Presidential Palace. At least 31 people were reportedly shot dead and several others wounded by the Presidential Guard.

The tension among the population as a result of these killings and the removal of Rajoelina as Mayor of the capital inflamed the situation and led supporters of the latter to invade the offices of at least four ministries in the administrative district of Anosy. They were removed the next day, 20 February, by members of the National Operational Joint General Staff (*Etat major mixte opérationnel national*, Emmo/Nat). Some of the demonstrators were wounded and others arrested during the operation. Rajoelina and his group started legal proceedings to remove President Ravalomanana.¹⁶

At the beginning of March 2009, soldiers belonging to the Administrative and Technical Personnel and Services Corps (*Corps des personnels et des services administratifs et techniques*, CAPSAT) mutinied. Partly as a result of the mutiny, the Chief of General Staff of the Malagasy Army, General Edmond Rasolomahandry, resigned on 11 March. A day before around ten people had been injured and at least 30 arrested by the security forces during clashes between supporters of President Ravalomanana and those of Rajoelina. On 17 March, power passed to the HAT and Rajoelina was invested on 21 March 2009.

The demonstrations and violence continued even after the HAT came to power in March 2009. However, this time the supporters of former President Ravalomanana known, as "legalists", were opposing HAT's take-over. They in their turn started to hold gatherings and meetings in different parts of the capital, including at the "*Place de la démocratie*" calling for the return of the deposed President. Their meetings quickly became a regular occurrence. The HAT authorities subsequently banned gatherings at "*Place de la démocratie*", forcing the "legalists" to start meeting inside the compounds of the company Magro.

BOMBINGS

The violence that took place during the different demonstrations organized by the opposition, after the HAT came to power, took a new turn with the introduction of bomb attacks in the capital, Antananarivo. Devices, described by the HAT authorities as “home-made bombs”, exploded or were found in different locations, especially in and around public places. On the night of 17 to 18 July, one person was killed and two others injured when a booby-trapped car they were in exploded. Officers from the security services reportedly defused bombs on several occasions and the HAT authorities denounced the use of such methods as terrorist acts.¹⁷

Numerous figures close to the former government, including a lawyer and former members of parliament, were arrested in the context of these so-called “bomb cases”. The HAT authorities suspected them of being behind such attacks. The homes and offices of some members and associates of former President Ravalomanana’s political party, TIM, were also searched.¹⁸

POLITICAL MEDIATION BY THE INTERNATIONAL COMMUNITY

The international community reacted quickly to the political crisis in Madagascar. Diplomatic missions accredited to Antananarivo, the United Nations, the European Union, the AU, SADC and the IOF, as well as Malagasy Christian churches,¹⁹ became involved in the negotiations to find a solution to the political crisis. Representatives of the four current political movements involved in the crisis in Madagascar; namely those of the three former Presidents, Didier Ratsiraka, Albert Zafy and Marc Ravalomanana, and that of the HAT President, Andry Nirina Rajoelina were the key players. All have been involved in these political negotiations which have been led and facilitated by an international mediation team chaired by former President of Mozambique Joachim Chissano.

The political discussions between the different protagonists resulted in the signing in Maputo in August 2009 of various agreements that were supposed to govern the period of transition towards, and the establishment of a government of national unity in Madagascar.²⁰ Several documents emerged from the Maputo Summit, namely: the Maputo Political Accord; a Charter of Values aimed at promoting a spirit of non-violence, tolerance, forgiveness, reconciliation and mutual respect; a Charter of the Transition; an agreement regarding convictions related to the events of 2002 in Madagascar; an agreement related to the situation of Marc Ravalomanana; and an agreement to nullify any convictions of political, civil and military figures who were convicted under Ravalomanana’s administration. Another summit on the situation in Madagascar was held in Maputo from 25 to 27 August. The aim of this new round of meetings was to facilitate power-sharing between political movements involved in the negotiations. However, the different protagonists failed to reach an agreement, particularly with regard to three key posts during the transition; namely the posts of President of the Republic, Vice-President of the Republic and that of a Prime Minister of consensus.²¹

On 6 October 2009, following a consultative meeting on the situation in Madagascar, a consensus on the key posts during the transition was reached, with the designation of Eugène Mangalaza as Prime Minister. Rajoelina was retained as Transitional President while the other three movements were each given a Deputy Prime Minister post.²² In a note published in Johannesburg on 5 October, the Ravalomanana Movement reiterated its refusal to accept Rajoelina as President of Madagascar during the transition. For his part, the HAT Prime Minister, Monja Raindefo, refused to resign despite the fact that Mangalaza was appointed to the post by the HAT President.²³

Another political agreement that sought to achieve consensus on the implementation of the earlier agreements was signed in November 2009 in Addis Ababa. The new agreement, entitled Additional Act to the Charter of the Transition, resulted in, among other things, the creation of two posts of Co-Presidents of the Transition to serve alongside Andry Rajoelina who was recognized as Transitional President exercising the duties of Head of State.²⁴

On 20 December 2009, Rajoelina issued a new decree appointing Colonel Camille Albert Vital as Prime Minister, replacing Cécile Manoroahanta, who had been appointed Prime Minister on 18 December 2009 to replace Eugène Mangalaza. Rajoelina also announced legislative elections to be organized in March 2010.

HUMAN RIGHTS VIOLATIONS

Numerous human rights violations have occurred during the political crisis. They have been committed by members of former President Ravalomanana's security forces as well as by those belonging to the HAT after the latter came to power in March 2009. The 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.

On 19 March 2009, the HAT authorities adopted a decree that suspended the parliament and senate and declared a state of emergency on the Malagasy territory. The decree did not specify whether any specific law was suspended nor whether Madagascar was intending to derogate from any of its obligations under international human rights treaties to which it is a party.

The African Charter on Human and Peoples' Rights, to which Madagascar is a party, contains no derogation clause. While article 4 of the International Covenant on Civil and Political Rights (ICCPR) provides for the possibility to derogate from certain obligations under the Covenant, it subjects such derogation to very strict limitations. Measures derogating from provisions of this Covenant must be of an exceptional and temporary nature and certain rights may never be suspended under any circumstances. These rights include the right to life and the right to not be subjected to torture or other ill-treatment. Permissible derogations to other provisions of the ICCPR must be limited to the extent strictly required by the exigencies of the situation, must not be discriminatory nor conflict with the state's other international obligations. The state of emergency must be officially proclaimed and the authorities must notify the UN Secretary-General about what rights have been suspended and why.²⁵

EXCESSIVE USE OF FORCE BY THE POLICE AND OTHER SECURITY FORCES

I haven't been able to bring criminal proceedings against the soldiers who fired on me because there would be no point and it could be dangerous for me as well as for members of my family.

A "legalist" demonstrator who was shot during the demonstrations on 20 June 2009

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. As a result, many people have been unlawfully killed and others seriously wounded during the different incidents that have taken place in the capital, Antananarivo. Other people who were not participating in the demonstrations have been the victims of stray bullets fired by members of the security forces when trying to disperse demonstrators. Such acts can constitute a violation of the rights to life and security of the person guaranteed by

international human rights law and enshrined in the Malagasy Constitution.²⁶ Those responsible for such acts have enjoyed impunity and the victims had, most of the time, no access to justice.

At least 31 people, including photojournalist Ando Ratonirina, were killed and several others wounded on 7 February 2009 when members of the Malagasy Presidential Guard opened fire at a crowd of unarmed opposition demonstrators who were marching towards Ambohitsorohitra Presidential Palace. That day a demonstration had been held at *Place du 13 mai* in Antananarivo by opponents of the government of former President Ravalomanana, led by Rajoelina. Rajoelina reportedly told the crowd of demonstrators who had gathered there that Ambohitsorohitra Presidential Palace belonged to Antananarivo City Hall and that the Prime Minister he had just appointed should live there. After the gathering at the *Place du 13 mai*, crowds of demonstrators headed towards the presidential palace, situated on a hill overlooking the centre of the capital.

At that time, a first cordon of men in police uniforms, who carried no visible firearms, was already blocking the different access routes to the presidential palace. A second cordon was made up of several officers in military fatigues who were armed and equipped with anti-riot gear, including helmets, batons, protective clothing, including bullet-proof jackets, and riot shields. A third barrier was located at about 20 metres from the palace railings and was cordoned off with a thin piece of red and white tape tied to some upturned tables that were placed before the entrance of the presidential palace. The tape marked the “red zone” into which the authorities had forbidden the demonstrators to cross. The police at the first barrier had allowed a delegation of demonstrators and journalists to pass through to discuss the possibility of entering the presidential palace with the soldiers at the second barrier. Negotiations were therefore conducted between representatives of the demonstrators and the soldiers posted at the second barrier. The journalists who were covering the event had been excluded from the discussions by the soldiers. The soldiers later advised the journalists who were there to move away from the crowd and not to go beyond the tape which formed the third barrier leading to the area known as the “red zone”. The soldiers at the second barrier also reportedly told the journalists that the Presidential Guard inside the palace were determined to put up fierce resistance.²⁷ Most of the journalists withdrew towards the gardens of the Colbert Hotel opposite the presidential palace.

The small delegation of demonstrators which were negotiating with the soldiers then went back to the crowd waiting for them on the other side of the first barrier, apparently to tell them that the security forces had refused them access to the palace. One of the delegates of the demonstrators then made a sign with his hand which was apparently interpreted by the crowd as a signal to rush to the presidential palace. The demonstrators therefore rushed towards the perimeter, between the two barriers. Immediately, and without warning, members of the Presidential Guard inside the palace started firing live ammunition at the crowd which was advancing towards the “red zone”. According to various witnesses, the shooting lasted at maximum three minutes. When the first burst ended, some of the demonstrators began to go to the aid of the wounded and to drag away the bodies of those who had been killed. Meanwhile, other demonstrators tried to storm the palace by attempting to drive through the railings with a police car which they later set on fire. The Presidential Guard responded to this second assault attempt with another hail of bullets followed by sporadic shots, causing further casualties among the demonstrators. The people who had been killed or injured were then taken to the *Centre Hospitalier Universitaire d'Antananarivo* (Hôpital Joseph Ravoahangy Andrianavalona, HJRA).

During a meeting with Amnesty International delegates in Antananarivo, the HAT authorities announced that several other people had been killed, others were missing and that the list of names inscribed on a stone erected in memory of the victims of 7 February was provisional.²⁸

Amnesty International publicly condemned the excessive use of force by the Malagasy police and security forces and called on the country's authorities to open an independent and impartial investigation into the use of excessive force against the unarmed demonstrators who had been marching towards Ambohitsorohitra Presidential Palace. Despite announcements by the HAT authorities that investigations were opened in this incident, to date, a year after the events, the conclusions of the investigations have not yet been made public.

According to reports from victims and various other sources, the security forces under the authority of the HAT have, on more than one occasion, violated human rights by using excessive force, and particularly firearms, during demonstrations organized by supporters of former President Ravalomanana.²⁹ Throughout the year security forces of the HAT intervened to disperse various, often peaceful, demonstrations of the opposition which resulted in people being killed and wounded. According to the HAT authorities the demonstrators provoked the police to act. In some instances the demonstrations became violent. However, the authorities did not initiate impartial and independent investigations in situations where security forces used firearms against demonstrators, and/or where the intervention of the security forces led to death or serious injury, to determine whether the use of force, including firearms, was in accordance with international human rights standards.

At least 30 people were reported wounded and about ten arrested by the security forces in early April 2009. They were accused by the HAT authorities of setting fire to the national flag and throwing stones at the security forces during demonstrations. On 20 April, renewed clashes between the supporters of former President Ravalomanana and the HAT security forces left at least two people dead from bullet wounds and a number of others injured, as well as vehicles set alight.³⁰

On 23 April, during another clash between the HAT security forces and the "legalists", at least one person was shot dead, another 30 reportedly injured and some 20 demonstrators arrested.³¹ A.N. was one of the people injured during the demonstrations that day. His left leg was fractured by a bullet shot by a member of the HAT security forces. He had come to Anakil, an Antananarivo suburb, to buy parts for a vehicle he was repairing when he was stopped by five soldiers who were travelling in a grey truck. One of the soldiers fired straight at him before the others started searching his tool bag. The soldiers then asked him what he was doing there and whether he was part of the demonstration that was taking place nearby. A.N. denied participating in any "legalist" demonstrations. The soldiers left without him. Passersby picked him up and took him to the *Centre Hospitalier Universitaire d'Antananarivo*.

That same day, a 37-year-old woman was shot in the left leg by a member of the security forces as they were responding to another demonstration led by the "legalists" in Antananarivo. The woman was not taking part in the demonstrations. She told Amnesty International delegates in June what happened to her.

"I was going down the steps towards Ambanidia at about 1.30 pm to pick my son's bag he left at his school when I saw a group of people down there, near the roundabout. I didn't know them. I was quite a long way away from the group on the steps. Suddenly, I felt a pain and collapsed. I couldn't get up. There was a man not far away from me, and I later realized that he had also been shot. I didn't see who fired the shot. Before I was hit, I hadn't heard any shooting. My older sister, B., who had come to get water from a well, saw me on the ground, unconscious. She told me that she went home to get some wood and cloth to make a stretcher so that

she could take me down the steps with the help of three other people. They took me to the hospital (Hôpital Joseph Ravoahangy Andrianavalona, HJRA) in Taxi B [a bus]. I came round as we got to the emergency room. I was taken to theatre for an operation during which the surgeon gave me some supports for my bones. I've been in hospital since 23 April. I don't know when I'll be going home. They're waiting for my bones to mend together. I can walk with crutches."

On 23 April, a 24-year-old man was admitted to hospital after being shot and wounded by bullets fired at him by members of the security forces. The victim told Amnesty International delegates that he did not take part in any demonstration and described what happened to him that day as follows:

"I was coming from the mosque [Khoja Mosque, Ankorondrano] and I was going to go home, it was about 6 pm on Thursday. I was shot at and wounded in the shoulder. The soldiers then went on to hit me in the face and stomach with the butts of their guns. There were no demonstrations going on at that point and I only saw the soldiers once I was wounded. I don't know why they fired. Another person was wounded in the leg and another one was wounded in the neck and died on the spot. I didn't know the other two. People helped me and took me to hospital in a private car. The soldiers left me after they had beaten me. I was with my brother that day and he managed to get away. I did not participate in the demonstrations, I believe in God. No one from the courts or the police came to see me in hospital to conduct an investigation. I'm not intending to file a complaint, I believe in God. I work as a warehouseman; I won't be able to work for at least six months after coming out of hospital, according to the doctors. I am married and have a child and I take care of my mother. They all rely on me. I am the bread winner of my family. I have to stay in hospital for another month or a month and half."

On 24 April, at least two other people, including a bookseller, were shot dead by members of the HAT security forces who were shooting with live ammunition in order to disperse a demonstration organized by the "legalists" in Antananarivo.

On 20 June, at least three "legalists" students who were demonstrating for the return of President Ravalomanana were wounded after being shot by members of the HAT security forces. They included R.D, 18, whose left forearm was fractured by a rubber bullet. The incident took place when he was heading with other "legalists" supporters towards the ESCA car park in Antanimena, Antananarivo to take part in a demonstration. Members of the security forces wearing military fatigues first sprayed them with tear gas before shooting at them with hard rubber bullets. A rubber bullet hit R.D, fracturing a bone in his left arm. He was later taken to the HJRA hospital for treatment. He told Amnesty International delegates in June 2009 that he had not filed a complaint against the HAT security forces because it could be dangerous for him as well as for his family members.

On 26 September, at least eight people were reportedly injured and 17 others arrested when "legalists" supporters who had gathered at Mahamasina Stadium in Antananarivo were dispersed by members of the security forces. A soldier reportedly fired three times at point-blank range at a 48-year-old female demonstrator who was seriously wounded. The HAT authorities later said that the soldier who was responsible was a former member of the Special Intervention Force (*Force d'intervention spéciale*, FIS)³² and that he was drunk. The soldier was not arrested on the spot despite the presence of other soldiers and more senior officers. It was not clear at the end of January 2010 whether the HAT authorities had opened an investigation in this case.

Under international human rights law, Madagascar is obliged to respect and protect every person's right to life at all times. At the same time, the Malagasy authorities have a responsibility to maintain public order in the country and to protect the population from violent crime, especially during this period of social tension. Since December 2008, the Malagasy security forces have been facing demonstrations that have on occasion been violent and followed by acts of looting and vandalism. It also emerged from various meetings with the HAT authorities that the resources of the security forces for dealing with the different demonstrations were limited.

The HAT Minister responsible for the armed forces said that the army and police did not have enough riot control equipment and that the security forces were in urgent need of training in methods of controlling crowds and demonstrators. He also said that riot control was normally the police's domain but that, because of a shortage of police personnel, gendarmes and soldiers are regularly brought in when there are demonstrations. Lastly, he said that, as part of internal controls, those in charge regularly count the ammunition given to each soldier before each operation and that, if a complaint is received from the population his ministry conducts an investigation and refers the matter to the courts.³³ No independent information could be obtained in order to confirm this statement.

The Malagasy authorities must ensure that the police and security forces comply with international standards on the use of force and firearms, especially the UN Code of Conduct for Law Enforcement Officials³⁴ and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.³⁵

The UN Code of Conduct for Law Enforcement Officials stipulates that "Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty".³⁶ The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials requires law enforcement officials to "as far as possible, apply non-violent means before resorting to the use of force and firearms."³⁷ To ensure that any force is a proportionate response to a situation, law enforcement officials should have a range of equipment and techniques to deal with demonstrations in order to decrease the need to use weapons of any kind. In any event, firearms should not be used except to defend people against the imminent threat of death or serious injury, or to prevent a grave threat to life, and only when less extreme means are insufficient. Intentional lethal force should not be used except when strictly unavoidable in order to protect life. Principle 10 states that under these circumstances, law enforcement officials shall give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed.³⁸

Under international standards, any incident where the police have used force or firearms leading to death or serious injury must be promptly reported in detail to the competent administrative or prosecutorial bodies with jurisdiction over the matter. Anyone affected, including the dependants of those who have been killed, must have access to an independent process, including a judicial process. Arbitrary or abusive use of force and firearms by police must be punished as a criminal offence.

These principles are also reflected in the UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions.³⁹ Extrajudicial executions must be treated as criminal offences punishable by appropriate penalties which take into account their seriousness. There must be thorough, prompt and impartial investigation of all

suspected cases of such executions by investigative offices with the necessary authority, powers, resources and expertise. Anyone identified by the investigation as having participated in extrajudicial executions should be brought to justice.

The Malagasy authorities must promptly open full, independent and impartial investigations into the different incidents in which the police and security forces have reportedly used excessive force since at least December 2008. Such investigations should determine the responsibility of all those who have committed unlawful killings or used arbitrary or abuse use of force and firearms. Superior officers should be held responsible if they knew or should have known that their subordinates used force or firearms unlawfully, if they did not take measures in their power to prevent suppress or report it. Those suspected of unlawful killings or other serious human rights violations should be suspended from active duty pending the outcome of the investigations. Clear and specific recommendations should be made to the Malagasy authorities as a result of the investigations in order to prevent further such abuses in the future.

VIOLATIONS OF THE HUMAN RIGHTS OF POLITICAL ACTIVISTS

Members of the Malagasy parliament and senate, lawyers and political opposition leaders were subjected to arbitrary and unlawful arrest and detention, both under the Ravalomanana government and after the HAT took power in March 2009. Some of those arrested were reportedly ill treated during their arrest.

Political opponents were arrested because of their political activities, violating their rights to freedom of expression and association. In many cases the arrests and detentions did not comply with the international standards to which Madagascar is a party, including the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples' Rights (ACHPR).

Some of the arrests and charges brought against opposition politicians are viewed by many as politically motivated and there are concerns about the lack of independence of the judiciary. In some cases there were also concerns about the right to a fair trial, including the right to defence.

VIOLATIONS DURING ARRESTS AND DETENTIONS

Most of the arrests were carried out by members of the HAT security forces, especially members of the CNME, the Tactical Unit (*Cellule Tactique*) and/or the FIS operatives. Some of the arrests and detentions have been arbitrary or unlawful.

The power to arrest or detain an individual or to investigate a case must be exercised by people who are authorized to do so by the law and who exercise such power within the limits determined by national and international law. Under the international human rights law, the authorities who arrest people, keep them in detention or investigate their cases must exercise the power granted to them by the law.

Principle 9 of the United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment ⁴⁰reads:

"The authorities which arrest a person, keep him under detention or investigate the case shall exercise only the powers granted to them under the law and the exercise of these powers shall be subject to recourse to a judicial or other authority".⁴¹

The African Commission on Human and Peoples' Rights principles and guidelines on the right to a fair trial and legal assistance in Africa state that:

"(b) States must ensure that no one shall be subject to arbitrary arrest or detention, and that arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law and by competent officials or persons authorized for that purpose, pursuant to a warrant, on reasonable suspicion or for probable cause. (c) Each State shall establish rules under its national law indicating those officials authorized to order deprivation of liberty, establishing the conditions under which such orders may be given, and stipulating penalties for officials who, without legal justification, refuse to provide information on any detention."⁴²

The Malagasy Code of Criminal Procedure governs matters relating to arrests, detentions and the conduct of investigations in Madagascar. It states that responsibility for determining if an offence has been committed, gathering evidence and searching for the culprits lays with the judicial police (*police judiciaire*) which is supervised by the General Prosecutor (*Procureur Général*) at the Court of Appeal.⁴³ Article 125 of the Malagasy Code of Criminal Procedure lists the following as senior officers of the judicial police: the Attorney General and his deputies, the examining magistrate, judges from the court divisions and officers from the Public Prosecutor's Office. Other judicial police officers are listed in Article 126 of the same law while judicial police agents are listed in Article 127. Members of the CNME, FSI or the Tactical Unit are not specified in law as judicial police officers. They are also not expressly authorized to arrest or detain individuals nor are they allowed to proceed with searches and investigations.

The right not to be subjected to arbitrary or unlawful arrest or detention is enshrined in the ICCPR and the ACHPR, as well as in the Malagasy Constitution.

Article 9(1) of the ICCPR states as follows:

"Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law."

Article 6 of the ACHPR specifies that:

"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."

For its part, Article 13, paragraph 3 of the Malagasy Constitution⁴⁴, states that:

“No one may be prosecuted, arrested, or detained except in cases determined by law, according to the forms prescribed by law.”

In many cases, the detainees were not informed at the time of arrest of the reasons for their arrest or detention nor were they promptly informed of any charges against them. This violated their right to be informed immediately of the reasons for their arrest or detention and to be informed of the charges they were facing in order for them to promptly challenge the legality of their arrest and/or detention.

Article 9.2 of the ICCPR specifies that:

“Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.”

Similarly, Article 14.3(a) of the same instrument states that:

“In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

- (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him”.*

In some other cases detainees did not have access to their family members, their lawyers or a doctor within a reasonable time in violation of international legal standards, including the Standard Minimum Rules for the Treatment of Prisoners.⁴⁵ Others detainees were forced to change their place of detention several times, making it difficult for their relatives and lawyers to have access to them in violation of international human rights standards including the United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.⁴⁶

Furthermore, Malagasy Law No. 97-036 amending and completing the provisions of the Code of Criminal Procedure concerning the defence of parties, preliminary inquiries and pre-trial custody during prosecution or preliminary investigation states that judicial police officers must inform anyone suspected of having committed a crime or offence of his or her right to a lawyer. The latter may be present during any questioning, confrontations with witnesses or searches carried out in the context of the investigation.⁴⁷ The same law prohibits the judicial police from holding a person for more than 48 hours even for the needs of the investigation.⁴⁸ It also specifies that, as soon as the person is taken into custody, members of their family or their lawyer can ask for them to be given a medical examination.⁴⁹ In addition, The Malagasy Criminal Code criminalizes the unlawful arrest and kidnapping of persons. Those found guilty of unlawful arrest or kidnapping can be sentenced to hard labour for life if the arrest or kidnapping lasts more than one month.⁵⁰

There were also allegations of ill treatment and degrading treatment during the arrest, which have not been investigated by the authorities. The right not to be subjected to ill-treatment or to degrading treatment is enshrined in international human rights law including the United Nations Convention Against Torture and other Cruel, Inhuman and Degrading Treatment to which Madagascar is a party⁵¹ and in the Malagasy constitution and legislation. For instance, provisions of the Malagasy Law 2008/008 of 25 June 2008 implementing the UN Convention on Torture prohibits, prevents and punishes acts of torture and other cruel, inhuman and degrading treatment committed in Madagascar.

On 20 February 2009, Jean Théodore Rajivenson, a senior lecturer at the University of Tana and currently a member of the HAT, was arrested at night by members of the security forces of the government of former President Ravalomanana. He was accused of participating in unauthorized opposition demonstrations, endangering the State security and setting fire to the offices of the national radio and television station. He was allegedly ill-treated at the time of his arrest and forced to sit in an uncomfortable position for several hours in the vehicle in which he travelled from the place of his arrest to where he was later detained. He was later held in prison in poor conditions and, despite numerous requests, was only able to receive the visit of a member of his family more than two weeks after he was arrested. Rajivenson told Amnesty International delegates about the circumstances of his arrest and the conditions of detention.

“I was arrested at about 8 pm on Friday, 20 February 2009, in the lane leading to my house in Manjakaray, Tana [Antananarivo]. As I was getting out of my car with my wife, soldiers forced me to lie on the ground while threatening me with a pistol. They ordered me to be careful and not to move. They then threw me on to the back seat of their 4x4 where I was wedged between two soldiers. At about 11 pm, the car stopped somewhere and they waited for nearly two hours. It was only afterwards that I heard the discussions between the prison director and the soldiers. The prison director was asking the soldiers for the relevant custody documents but the soldiers didn't have them. I was later put in prison. Two days later the State Prosecutor had planned to have me brought to court but there was a crowd of students demonstrating near the tribunal and the hearing of my case was cancelled. An interrogation session then took place in Tsiafahy detention centre instead. The prosecutor was there with two other people and I had the assistance of my two lawyers. The charges brought against me by the prosecutor were the following: unauthorized public gathering, endangering the State security, and setting fire to the offices of the national radio and television station. I responded by saying that when all those events took place, I was not in the city and I was in hospital outside Antananarivo. I gave the proof of my absence in the city during that period but this did not stop them from keeping me in detention. During the first two weeks, I was only visited by my lawyers. My family were not allowed to visit. I was released on 19 March 2009 following a decision by the Antananarivo High Court (*Tribunal de Grande Instance d'Antananarivo*). That prison was a place where people go to die as the living conditions inside were harsh. There were between 100 and 130 people crammed into a cell measuring 5 x 12 metres. The food was insufficient, one meal a day consisting of dry cassava bread with no sauce. I was staying in the infirmary of the prison and I saw how people were falling ill every day because of their conditions of detention.”

On 23 April 2009, members of the HAT security forces arrested Senator Lantoniaina Rabenatoandro, together with members of parliament (MP) Mamisoa Rakotomandindraibe, Henri Randrianjatovo and Raymond Rakotolandriny, all members of TIM, the party of former President Ravalomanana and representatives of the Vakinankaratra region. The four were arrested in Ambatoroka by members of the CNME who had been following

them in a truck. The three MPs and the senator were reportedly subjected to inhuman and degrading treatment at the time of their arrest. According to testimonies obtained by Amnesty International, they were, for example, forced to kneel down at the roadside in front of passers by with a placard round their neck saying “H[is] E[xcellency] President Ravalomanana”. They were then said to have been slapped several times before being forced into a vehicle. They were eventually taken in the evening to the CNME headquarters where they were kept in separate cells until 25 April when they were taken to the office of the State prosecutor in Anosy. The HAT authorities declared they had caught them distributing money to demonstrators who had set up roadblocks in several places across the capital, Antananarivo. The HAT authorities said that the arrests had been carried out on grounds of security and public order. The prosecutor later said that they were being prosecuted for endangering State security, disseminating false news, destroying property and unlawfully possessing weapons. The four detainees received visits in prison from representatives of the US, German, French and South African Embassies as well as from the representative of the UN Secretary General in the Malagasy peace negotiations.

On at least two occasions, including on 20 May 2009, the three MPs and the senator asked to be released on bail but their requests were turned down by the magistrate. The four remained in custody at Antanimora central prison in Antananarivo. The HAT authorities stated that they were being prosecuted under articles 89, 91.1 and 318 of the Malagasy Criminal Code,⁵² that criminal procedure has been adhered to and that their ongoing detention was justified in order to put an end to the violence which regularly took place during demonstrations organized by the “legalists”. The Minister of Justice also stated that, under Malagasy law, parliamentarians were only eligible for immunity on grounds of their status when parliament was in session and that, at the time of the arrest of the MPs and senator, parliament was suspended.⁵³ The health condition of the senator deteriorated in detention and the HAT authorities gave assurances that he would be taken under escort to consult a specialist. The three MPs and the senator were released on 18 August 2009 after being given a one-year suspended prison sentence. They immediately filed an appeal against that decision which is still pending.

On 29 April 2009, 70-year-old Manandafy Rakotonirina, who had been appointed Prime Minister on 10 April 2009 by the then exiled former President Ravalomanana, was arrested together with others in his room at the Carlton Hotel in Antananarivo. Those arrested with him included Ihanta Randriamandranto, the leader of the “legalists” women movement,⁵⁴ Victor Raymond Rakotoasimbola, known as “Victor Solo”, Rijasoa Andriamihaja, Elie Nirina Rafanomezantsoa, Jean Marcel Ravelonomenjanahary, Colonel Jacques Arijaona and Colonel Théophile Ramandraibe.

According to reports received by Amnesty International from various sources including one of the victims, a group of some 20 armed soldiers, some of them hooded, had gone to the Carlton Hotel, in Anosy in the centre of Antananarivo, to look for Manandafy. They then began to search the hotel. They had first shown the hotel staff an arrest warrant they had for Manandafy. They found Manandafy in a hotel room together with other people before proceeding to arrest them. The soldiers who carried out these arrests were later identified as belonging to the CNME. The incident took place the day after Manandafy had appointed the members of his “government” on 28 April. Manandafy and the others were reportedly beaten and some partly undressed before being taken to the CNME headquarters and later to Antanimora central prison where they were detained until 30 April. Manandafy was then moved and placed under “house arrest” at a presidential residence in Mantasoa. The residence was later turned into a temporary “annex” of Antananarivo central prison by the HAT authorities, thereby becoming an integral part of the Malagasy prison system.⁵⁵ Ihanta Randriamandranto was

moved to Ambatolampy Prison. Colonels Arijaona and Ramandraibe were also transferred from Antanimora Prison to the military camp known as “Camp Génie” in Manjakandriana. The other people arrested with Manandafy were transferred to Tsiarafy Prison.

The following charges were brought against all of them: unlawful assembly, violence and assault, destruction of public property and unauthorized possession of weapons. Manandafy was in addition charged with impersonation. On several occasions, including on 3 June 2009, their lawyers requested for their release on bail but this was refused. In August 2009, Manandafy Rakotonirina and Ihanta Randriamandranto were released on bail after signing a statement promising not to participate in any further political demonstrations and to comply with the Maputo political accords. On 23 September, an Antananarivo court sentenced Manandafy to a two years suspended sentence. Ihanta was sentenced to a six month suspended sentence while Colonels Jacques Arijaona and Théophile Ramandraibe and the other people arrested with the group were each given a 12-month suspended prison sentence. They all appealed against the decision but the court of appeal decision still pending in January 2010.

Close allies of former President Ravalomanana, including 11 members of parliament, were arrested and some held in custody following a number of bomb attacks in Antananarivo during June and July 2009. The HAT authorities suspected them of having organized or participated in the bombings which they described as terrorist acts. They included “legalists” MPs Raharinaivo Andrianantoandro, spokesperson for the TIM, who was arrested on 7 July 2009,⁵⁶ and Yves Aimé Rakotoarison, former Vice-President of the National Assembly, who was arrested by members of CNME and then held for three days in CNME detention facilities. Yves Aimé Rakotoarison was arrested with at least 30 others. In addition, at least eight other people, including employees of the company TIKO, and a journalist from Radio MBS, were arrested on 24 June 2009.⁵⁷ Some of them, including MP Raharinaivo, were later released on bail.⁵⁸ They were charged with participation in terrorist acts and/or with organization of demonstrations without prior authorization.

The HAT security services continued to arrest other political opponents despite the political accords signed in Maputo on 8 August 2009 which called on the HAT to put an end to any arbitrary or unlawful arrests and detentions of political opponents.

Naike Eliane, 54, who is the senator for the constituency of Morondava (Menabe region) and a member of former President Ravalomanana’s political group, was arrested on 12 September 2009 at about 12.30pm by members of the FIS in her room at Le Nalugaro Hotel in Antananarivo. She alleged she was beaten up and knocked around and forced to get into a vehicle belonging to the FIS. She said her jaws were hurt and she could not eat well for days. One of her lawyers asked the gendarmes who were guarding her to send a doctor to examine her, but they refused to allow her access to a doctor of her choice and had her examined by a doctor chosen by the authorities.

The FIS members who arrested Naike started off by searching the hotel, in the course of which, they smashed in several room doors. They later found her in her room and allegedly beat her before taking her away and removing documents, money and a computer. They first took her to the Investigations Squad (*Brigade des recherches*) in Fiadanana before handing her over to Betongolo Gendarmerie. The prosecutor later ordered her transfer to the women’s prison in Manjakandriana, about 45 km from the capital, Antananarivo. She was subsequently charged with participating in banned demonstrations, damaging public

property, violence and assault, insulting the police and rebellion. She was released on 22 September following several interventions on her behalf, including from France.⁵⁹ At a hearing on 13 October 2009, her trial was adjourned, at the request of her lawyers, until 4 February 2010. Naike Eliane left Madagascar on 23 September 2009.

The Malagasy authorities must launch independent and impartial investigations into the allegations of ill treatment during arrests by members of the security services, including the CNME, the FIS and the HAT's Tactical Unit and those responsible should be brought to justice.

VIOLATIONS OF THE RIGHTS TO A FAIR TRIAL

In some cases, defendants have been denied the right to be brought promptly before a judge or to be tried within a reasonable time. In other cases the defendants were denied the right to defence or their lawyers were harassed and intimidated.

THE RIGHT TO BE BROUGHT BEFORE A JUDGE WITHOUT DELAY

Opposition activists arrested by members of the Malagasy security services were held for several days or even months in cells before being brought before a judge in violation of their right to be brought promptly before a judge and to be tried within a reasonable time. The right to be tried within a reasonable time or to be released is enshrined in international human rights treaties to which Madagascar is a party.⁶⁰

In cases examined by Amnesty International, most of the opposition figures arrested were not brought promptly before a judge and some were then kept in detention, as they were not granted bail, for months pending their trial.

For example, Ralitera Andriamalala Andrianandraina, Director of Security at the High Constitutional Court of Madagascar -and husband of "legalist" woman leader Ihanta Randriamandranto- who was arrested on 27 April 2009 by members of the HAT security forces at his place of work in Ambohidahy, remained in custody and still waiting for his trial more than 9 months after his arrest. He was arrested with four other people and charged with endangering state security, illegal possession of firearms, assassination. He was later detained at Tsiafahy before being transferred to the Antanimora prison where his colleagues arrested with him were already detained. Their detention was prolonged in January 2010 for another six months. The date of his trial is not yet known. Ralitera Andrianandraina's health condition deteriorated in prison and he was admitted in Mid-January 2010 in an Antananarivo hospital where he was under the custody of prison guards.

The Malagasy Code of Criminal Procedure stipulates that the judicial police officers (*officiers de police judiciaire*) are allowed to detain individuals only for a maximum of 48 hours. After that, the person must be either released or brought before the public prosecutor.⁶¹ In many cases, including that of Manandafy and that of the members of parliament, the procedures were not rigorously followed by the Malagasy security forces and the judicial authorities.

THE RIGHT TO DEFENCE DENIED

In some cases, the lawyers of the arrested opposition activists found it difficult to have access to their clients when they were being held by the CNME or other security services making it difficult to adequately defend the interests of their clients. The right to an adequate legal counsel is enshrined in the international legal standards to which Madagascar is a party as well as in its constitution.⁶²

According to reports received by Amnesty International, on several occasions lawyers defending the “legalists” have been prevented from visiting their clients in different detention centres while others have been subjected to harassment, thereby preventing them from ensuring that their clients are properly defended.

In other cases, opposition leaders were tried in their absence and did not have the opportunity to challenge the accusations against them. On 3 June 2009, former President Ravalomanana and his Minister of Finance and Budget, Haja Nirina Razafinjato, were sentenced in their absence by a criminal court in Antananarivo to four years' imprisonment and ordered to jointly pay US\$70 million in damages. They were accused of misappropriation of public funds in the context of the purchase of the presidential aircraft, Air Force One II. The proceedings were not made public and Ravalomanana and Razafinjato were not given an opportunity to defend themselves.

HARASSMENT AND INTIMIDATION OF LAWYERS

Lawyers, especially those who are supporters of the opposition or who defended the interests of members of the TIM or allies of former President Ravalomanana, have been subjected to intimidation and harassment by different HAT security services. On 29 July 2009 the Malagasy Bar Association (*Ordre des avocats de Madagascar*) organized public demonstrations in front of the law courts in Anosy to express its indignation and call on the HAT to put an end to the harassment and intimidation of its members. At a press conference held on 31 July, the president of the association reported that lawyers were being subjected to violations of both their human rights and professional rights, committed by members of various HAT security bodies.

Noro Rabemananjara, a lawyer representing Manandafy Rakotonirina, the Prime Minister appointed by former President Ravalomanana, was taken into custody on 5 August 2009. Her arrest took place after members of the security forces had searched her office. She was accused of having participated in the “bomb cases” after acts of violence involving explosive devices took place in Antananarivo. She was later held in Manjakandriana women's prison in Antananarivo. It was reported that she was transferred to the Antanimora prison in mid January 2010. She was charged with several offenses including that of endangering State security. On at least one occasion, she asked to be released on bail but it was refused by the magistrate. As a consequence of the arrest, her client Manandafy could not be adequately defended. Rabemananjara remained in detention and the date of her trial was not confirmed at the end of January 2010.

Another lawyer has been summoned several times by the State Prosecutor in Antananarivo. The last time she came to his office, the prosecutor asked her to give him the names of the people who had written a newspaper

article criticizing the HAT but she refused to do so. The prosecutor then threatened to prosecute her for obstruction of his investigations and to put her in jail. He later said that he would refer the matter to the Prosecutor General so that the necessary measures could be taken. The lawyer then called the Prosecutor General who told her that the case was closed. Despite this, she continued to feel insecure and feared for her safety and ability to exercise her profession.⁶³

ATTACKS ON MEDIA OUTLETS AND JOURNALISTS

Everyone has the right of freedom of expression. Freedom of the press is an essential element of the right to freedom of expression, which includes the right to seek, receive and impart information and ideas of all kinds. Freedom of expression is enshrined in the Universal Declaration of Human Rights (UDHR) and international legal instruments which Madagascar has ratified, such as the ICCPR and the ACHPR.⁶⁴ It is also guaranteed in the Malagasy Constitution.⁶⁵

Journalists and media outlets were targeted by the Malagasy authorities; both under President Ravalomanana as well as after the HAT came to power in March 2009. The various authorities have taken steps to silence journalists deemed too critical of those in power at the time. In particular, privately owned radio and television stations have been closed down and journalists have been arbitrarily arrested and detained as well as being subjected to threats and intimidation, forcing them to go into hiding or to work in secret.

At the same time there were reports that some journalists and media outlets were inciting people to violence, including encouraging crowds of demonstrators to physically attack certain individuals. International human rights law stipulates that the advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.⁶⁶

Restrictions on freedom of expression are permitted in specific circumstances but they must be provided for by law and only to the extent necessary and proportionate for the protection of the rights and freedoms of other individuals or for the protection of certain public interests, such as national security or public order.

On the night of 13 to 14 December 2008, the Malagasy authorities decided to close down the Viva television channel owned by Rajoelina.⁶⁷ The then authorities accused the TV channel of “disrupting order and endangering public security” by having broadcast in its entirety an interview of former President Didier Ratsiraka in exile in Paris. The interview was conducted in the Malagasy language and was also broadcasted by other media, including TV channels which were not suspended or closed down.⁶⁸ According to interviews conducted by Amnesty International delegates with journalists, lawyers and other observers, the speech in question did not contain any remarks that could have been deemed to constitute an attack on national security or public order. The decision to close down Viva television channel was therefore a violation of freedom of expression and the right to information.

On 26 January 2009, Viva radio station, also owned by Rajoelina, was silenced and its transmitter destroyed after a group of armed men fired shots at the station’s offices and took away its transmitters. In an apparent reprisal for that attack, supporters of Rajoelina in turn attacked, looted and burned the offices of *Radio Nationale Malgache*, RNM, and later those of the Malagasy Broadcasting System (MBS) owned by former president Ravalomanana.⁶⁹

On 7 February 2009, Ando Ratovonirina, a photojournalist working for *Radio Télévision Analamanga* (RTA), was shot dead when Ravalomanana's presidential guards opened fire on the supporters of Rajoelina at Ambohitsorohitra Presidential Palace in Antananarivo. He was covering the demonstration and the march towards the presidential palace. It is not clear whether Ratovonirina was targeted or was the victim of a stray bullet.⁷⁰

In some cases, the Malagasy authorities failed to protect journalists from attacks by non-state actors. On 10 March 2009, Christian Rivo Rakotonirina, editor-in-chief of an online newspaper, was beaten up by supporters of President Ravalomanana at a meeting they had organized at the Mahamasina Stadium in Antananarivo. They had accused him of telephoning Rajoelina. He was later taken to hospital where he spent several days receiving treatment. No investigation was opened by the authorities to identify those responsible.

Privately owned media and media perceived as supporting the opposition were also targeted after the HAT came to power. Based on information available to Amnesty International, attacks against journalists were not investigated despite complaints lodged in some cases.

On 19 March 2009, two days after the HAT came to power; a group of armed men removed the transmitter used by the private TV station, Télé Mada. The HAT authorities also decided to close down Radio Mada. The media outlets were perceived as supporting President Ravalomanana. Radio Mada continued to broadcast in secret until the arrest and detention of Evariste Anselme Ramanantsoavina, who was operating the station clandestinely.

On 19 April 2009, the transmitters used by Radio Fahazavàna⁷¹ and the remainder of the equipment of Télé Mada were removed by members of the HAT security forces, wearing military uniforms. On 24 April, another group of soldiers travelling in two trucks raided the premises of Radio Fahazavàna and took what remained after the incident on 19 April. Radio Fahazavàna filed a complaint for robbery with violence and destruction of property and asked for their property to be immediately returned. Two days earlier, a group of soldiers accompanied by two plainclothes members of an unidentified HAT service, with a search warrant, had proceeded to search the premises of the radio station and removed some documents. The radio started broadcasting again later in April. A complaint lodged by the owner of the radio was yet to be examined by a judge more than eight months later.

On 21 December 2009, the HAT Minister of communication, Nathalie Rabe, suspended for a month two programmes of Radio Fahazavàna. The Minister accused Radio Fahazavàna of not respecting the Malagasy laws and the rights of other people, and breaching security and public order as well as inciting the population to tribal hatred and disobedience. The FJKM church, owner of Radio Fahazavàna, protested against the decision at the High Administrative Court (Conseil d'Etat)⁷² which, according to the FJKM, suspended the Minister's decision.

Many other journalists received death threats by phone or via messages sent to members of their families. They included, for example, Evariste Anselme Ramanantsoavina who said that he regularly received anonymous calls after he was released. He was also threatened by security forces at the time of his arrest.

On 5 May 2009, Evariste Anselme Ramanantsoavina, a journalist working for Radio Mada, was arrested by a group of armed men at his home on the orders of the HAT authorities.⁷³ The group, including soldiers and police with an arrest warrant, burst into his house at about 5am in the morning. They then asked him to go with them and to take all his work materials, including his mobile telephone, his dictaphone and documents. There were eight soldiers and police officers in battle dress and hoods as well as five others in a double cabin 4x4 truck and another group of seven people, including a court official. The leader of the group then told him, "So that no violence is used against you, you must show us where the radio station is". Ramanantsoavina was forced to get into one of the vehicles and directed the members of the security services to the place from where Radio Mada was operating clandestinely in Antananarivo, not far from the presidential palace and from where it was continuing to cover the "legalist" demonstrations.

The security agents then took Ramanantsoavina to the CNME premises in Ambohibao (the former offices of the Independent Anti-Corruption Office (*Bureau indépendant anti-corruption*) where investigators questioned him about the radio station and its activities. Six charges were brought against him, including attacking State security and disseminating false news. He was also accused of having said on the radio that the Prime Minister appointed by Ravalomanana was dead, encouraging the population not to pay their taxes, causing social unrest, calling on people to demonstrate and attack the family of an officer called Bruno and telling people, during his broadcasts, how to make Molotov cocktails. On Monday, 11 May, he went to court in handcuffs, escorted by police and soldiers as well as prison officers. Earlier, a request for bail submitted by his lawyers had been refused. He was sent back to prison for a further nine days before being released on 20 May. He was found guilty of disseminating false news for which he was fined 1 million Ariary (about 385 euro) but was acquitted for other charges and released. He appealed against the court's decision with regard to the latter charge as well as against the fine. In January 2010 he was still waiting for the court of appeal to examine his case.

At least two journalists working for the private TV station, MaTV, also told the Journalists' Association that they were receiving SMS messages containing threats, such as: "We know where you live and where your wife and children are". Such threats forced many journalists to change their phone numbers and others went into hiding to avoid being arrested or harassed.

On 25 June 2009, members of the CNME with a search warrant went to the home of Roland Didier Ravohangiharison, the director of Radio Fahazavàna. Not finding him there, they instead arrested his wife in order to force him to present himself. Informed of the situation, he presented himself at the offices of the CNME on 27 June. He was later arrested after being questioned. He was accused of funding opposition demonstrations. The proceedings against him were later abandoned and he was released.

On 8 January 2010 Didier Ravohangiharison and Lolo Ratsimba, another journalist at Radio Fahazavana, were arrested and detained at Antanimora prison. They were accused by the HAT authorities of being accomplices to a mutiny that took place in December 2009 within a military barracks called *Regiment d'Appui et de Soutien* in Ampahibe. The HAT authorities blamed the two journalists that they were aware of the mutiny in the context of their profession as journalists but did not inform the authorities. According to the journalists, some one called Fahazavana radio station's offices the morning the mutiny took place and informed them of the situation. Lolo Ratsimba, who was at the radio station at the time of the call, at around 5:20 AM, went directly to Ampahibe and met the soldiers who were mutinying and recorded their declarations. He returned to the radio station and broadcasted the information and the declaration of the soldiers who mutinied. Didier Ravohangiharison was arrested as the director of the radio station who allowed the broadcasting of the

soldier's declaration on his radio. The two journalists remained in detention at the end of January 2010 and the date of their trial is not yet known.

INTERFERENCE IN THE FUNCTIONING OF THE JUDICIARY

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. One such institution was the CNME, which was later replaced by the FIS; another such entity was the Tactical Unit.

THE COMMISSION NATIONALE MIXTE D'ENQUETE (CNME)

Most arrests, detentions and searches carried out during the HAT's administration have been conducted by members of the CNME. According to the HAT authorities, the CNME, later replaced by the FIS, was "an operational tool at the disposal of the HAT for the exercise of its judicial power and security over all unlawful acts perpetrated before, during and after the crisis".⁷⁴

Part of the CNME mandate was to: "Put into operation and coordinate the different judicial procedures (investigations, arrests, searches), devise a general policy on investigations, gather, process, use and disseminate public order information to the authorities in the hierarchy by establishing a new procedure for collecting data on acts likely to disturb the peace before, during and after the crisis".⁷⁵ The CNME was also "responsible for conducting judicial, customs and tax investigations throughout the country".⁷⁶

The CNME was composed of representatives of the public prosecutor's office, the army, the gendarmerie, the police, the Ministry of Finance, officers of the judicial police (*officiers de police judiciaire*) and officials from the security services. It was chaired by a representative of the Ministry of Justice with "a judge coordinator" as deputy.⁷⁷

The working methods of the CNME have been denounced on several occasions by victims, members of the opposition and even some members of the HAT. In a letter to the President of the CNME, the HAT Justice Minister described several complaints about acts of violence perpetrated by members of the CNME in the course of investigations or searches of homes or company offices and called for specific measures to be taken to ensure that such behaviour was stopped.⁷⁸ Amnesty International has called on the HAT authorities to disband the CNME and leave the task of investigating criminal offences to the judicial system in place, in particular the police and the prosecutor's office, in order to preserve the independence of the courts in Madagascar and to contribute to the respect and protection of human rights in the country.⁷⁹ The HAT authorities subsequently announced that they have replaced the CNME with by the FIS with the same mandate whose working methods have not differed from those of the CNME.

THE HAT'S DECISION TO RELEASE SOME OF THOSE DETAINED

On 26 March 2009, the President of the HAT, Andry Rajoelina, took the decision to release about 20 people on a list of political and military personalities who had "met the terms of the decision". Among those who benefited from the decision was former Colonel Assolant Coutiti who had been convicted by a Malagasy court for serious offences, some of which amounted to human rights violations, including acts of torture committed during the political crisis of 2002.⁸⁰

According to the HAT authorities, Coutiti was under a special measure and was transferred to the town of Antsiranana (Diego-Suarez). During a meeting with Amnesty International delegates, the HAT Justice Minister said that 28 prisoners had benefited from a "presidential pardon" and that others had been transferred to Diego-Suarez but had not benefited from that measure. According to the Minister that was the case for Assolant Coutiti, Boba Antoine and Nadjimoudine Abdou. However, other people interviewed by Amnesty International said that Coutiti appeared to have freedom of movement. In December 2009 Assolant Coutiti's name appeared on the list of personalities, presented by former president Didier Ratsiraka's political party, to be appointed member of the Malagasy transitional congress.

Amnesty International is concerned that the practice of granting pardons to members of the military convicted of crimes related to the commission of serious human rights violations contributes to a culture of impunity.

THE AMNESTY ISSUE IN THE MAPUTO POLITICAL ACCORDS

The four main political movements in Madagascar⁸¹ met in Maputo under the auspices of the Joint Mediation Team for Madagascar, which is composed of representatives of the AU, SADC, IOF and the UN, in order to find a solution to the current political crisis in the country. As a result of the negotiations, a Charter of the Transition and the Maputo Political Accord, together with other separate agreements, were signed by the different parties on 8 August 2009. An important point in the political discussions was the issue of amnesty to be granted for crimes committed during the current crisis as well as those committed in 2002.

While recognizing the importance of reaching a political solution and national reconciliation in Madagascar, international law prohibits national amnesties, pardons and similar national measures of impunity for war crimes, crimes against humanity, genocide, torture, extrajudicial executions and enforced disappearances. Observance and protection of human rights should be at the core of any solution to the current political crisis and responsible of human rights violations must not benefit from amnesty measures. Amnesty International recommends that the proposed amnesty law clearly reaffirms the principle contained in article 25 of the Charter of the Transition excluding from any amnesty crimes under international law.

Article 25 of the Charter of the Transition, signed on 8 August 2009 in Maputo stipulates that:

*“In order to bring about political and social calm and to foster a process of national reconciliation, the National Council of Reconciliation (Conseil national de réconciliation) shall submit a general amnesty bill to the Transitional Congress. The amnesty law shall scrupulously comply with the rules and general and customary principles of public international law as well as any international treaties or agreements currently in force governing the punishment of war crimes, genocide and crimes against humanity. In complying with those same rules and principles, it shall not cover or permit exoneration from gross violations of human rights and fundamental freedoms protected under the regional and international instruments that are binding on the Republic of Madagascar. It shall not quash convictions for crimes and offences that constitute an attack on the life or physical integrity of an individual”.*⁸²

Article 28 of the same Charter states:

“All offences, breaches and wrongful acts, whatever their nature, objective or definition, committed in the exercise of their duties or responsibilities by any of the people who were in charge of exercising leadership or enforcement duties within the State, as well as those committed by political opposition leaders between 1 January 2002 and the date on which this Charter is signed, shall be covered by the amnesty law. Any judicial or administrative proceedings, decisions and convictions relating to offences or acts of a political nature disguised as ordinary offences shall be null and void”.

Accord No. 2 related to the situation of Marc Ravalomanana⁸³ states that:

*“Leaders of political movements requested that ongoing proceedings against members of the opposition cease and the immediate release of political prisoners affected by the events which took place in 2009. Party leaders promise to implement this accord in accordance with article 15⁸⁴ of the Maputo Political Accord relating to wrongs suffered during the political events of 2002, 2006, 2008 and 2009”.*⁸⁵

Furthermore, Accord No. 3 concerning the quashing of convictions brought against political, civilian and military figures under the Ravalomanana government states that:

*“all administrative sanctions and all court convictions handed down between December 2002 and August 2009 against political, civilian and military figures for offences and acts of a political nature disguised as ordinary offences or for attacking internal State security shall, with immediate effect, be null and void”.*⁸⁶

In light of the obligations of Madagascar under international law,⁸⁷ the above provisions cannot be interpreted as justifying amnesties, pardon or other measures of impunity for crimes under international law.

Principle 24 of the (UN) Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity explicitly states:⁸⁸

“Even when intended to establish conditions conducive to a peace agreement or to foster national reconciliation, amnesty and other measures of clemency shall be kept within the following bounds:

(a) The perpetrators of serious crimes under international law may not benefit from such measures until such time as the State has met the obligations to which principle 19 refers or the perpetrators have been prosecuted before a court with jurisdiction - whether international, internationalized or national - outside the State in question.” The first paragraph of Principle 19 recalls the obligation of states to bring to justice those responsible for such violations: “States shall undertake prompt, thorough, independent and impartial investigations of violations of human rights and international humanitarian law and take appropriate measures in respect of the perpetrators, particularly in the area of criminal justice, by ensuring that those responsible for serious crimes under international law are prosecuted, tried and duly punished.”

Amnesty International calls on the authorities to ensure that any amnesty law implemented pursuant to the Charter of Transition ensures that there is no ambiguity as to the exclusion from the amnesty of crimes under international law.

Furthermore, Amnesty International calls on the Malagasy authorities to enact the necessary legislation that may be required to define crimes under international law as crimes under national law, including extrajudicial executions and enforced disappearances, in accordance with the strictest standards of international law, and to promptly, independently and impartially investigate all reports of serious violations of human rights, with the view of bringing to justice the perpetrators.

CONCLUSION

Amnesty International is concerned that human rights violations continue to be perpetrated in Madagascar as the political crisis persists. Unlawful killings, cruel, inhuman and degrading treatment, the arbitrary arrest and detention of political opponents and demonstrators and incessant attacks on journalists and the media, as well as lawyers have not been effectively investigated. Individuals suspected of being involved in the commission of these violations have not been brought to justice by the Malagasy authorities. The impunity that has surrounded these abuses gives the impression that they have been condoned by the authorities at the highest level.

The HAT authorities should, as a matter of urgency, open independent investigations into the human rights abuses committed since the crisis began in December 2008 and establish specific mechanisms in order to put an end to the impunity that is currently being enjoyed by members of the police and security forces involved in serious human rights violations, especially those of former president Ravalomanana's presidential guard, the CNME, the Tactical Unit and the FIS.

The HAT as the authority in place has a duty to protect individuals from violent crime. They also have a responsibility to respect the human rights of everyone living in Madagascar by complying with international human rights standards. The Malagasy authorities must also ensure that in the future, reports of serious human rights violations are promptly, impartially and independently investigated and perpetrators are brought to justice and victims are provided with reparations.

Members of the international community, including the international mediation team, must ensure that the respect, the promotion and the protection of human rights are an integral part of all negotiations and political agreements that are taking place in the framework of their mediation of the current political crisis in Madagascar. International bodies including the UN (for example through the Office of the High Commissioner for Human Rights) should assist Madagascar in order to strengthen the government's capacity in the promotion, protection and respect of human rights.

RECOMMENDATIONS

To the Haute Autorité de la Transition (HAT)

- Respect and protect human rights within the context of law enforcement operations
 - Publicly declare that the HAT will not tolerate human rights violations and clarify what judicial, administrative and other measures will be taken against those suspected of having been involved in such abuses, including those who have condoned or ordered them;
 - Ensure that prompt, thorough and impartial investigations are carried out into all cases of suspected unlawful killings and other excessive use of force or firearms resulting in death or serious injury, especially those committed during the current political crisis, including the unlawful killings that took place on 7 February 2009. The results of the investigations should identify all the victims, indicate the circumstances in which violations were committed and identify those responsible;
 - Ensure that the findings of the investigations carried out are used to ensure that all perpetrators of unlawful killings and other serious human rights violations, including those with command responsibility, are brought to justice in proceedings which meet international standards of fairness. Ensure that, in cases where there are reasonable grounds to believe that those concerned have been responsible for serious human rights violations, they are suspended from active duty pending independent and impartial investigations;
 - Take urgent and adequate steps to strengthen and improve the system for training the security forces in the use of force and firearms in line with international standards and ensure that guidelines for the use of force and firearms conform to the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. The standards should be reflected in written policies, training manuals and courses and in operational briefings;
 - Establish an effective and transparent accountability mechanism in order to ensure that all members of the police, armed forces and other forces responsible for the maintenance of order and security are effectively obliged to account for their actions, in accordance with international human rights standards, in particular the UN standards concerning the use of force by law enforcement officials, and ensure that they have the necessary equipment to enable them to adequately maintain public order;
 - Immediately and effectively disband the different bodies set up by the HAT to carry out arrests, detentions and the investigation of crimes, including the CNME, the Tactical Unit and the FIS, and leave the task of investigating criminal offences to the existing judicial system, in particular the judicial police and public prosecutor's office;

- Ensure that the National Human Rights Commission (*Commission nationale des droits de l'homme*)⁸⁹ has the necessary mandate, authority and resources to promote and protect human rights in accordance with the UN Principles relating to the status of national institutions (known as “Paris Principles”);

- Take immediate steps to ensure the safety of lawyers, journalists and members of the political opposition in Madagascar
 - Respect and protect the right to freedom of expression, peaceful assembly and association, as required under the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples’ Rights (African Charter), in particular by ensuring that journalist are not subjected to violent attacks, threats and intimidation;
 - Immediately and unconditionally release any person, including members of the political opposition, detained solely for their legitimate exercise of the right to freedom of expression, peaceful assembly and association;
 - Immediately end all arbitrary arrests and detentions by ensuring that anyone detained on suspicion of having committed a recognizable criminal offence, including members of the political opposition, is promptly brought before a judge, tried within a reasonable time or released pending trial, and that during their detention have access to lawyer, family and doctor of their choice;
 - Ensure that all persons are tried in accordance with international standards of fairness, including those proscribed in the ICCPR, the African Charter and the African Commission on Human and Peoples’ Rights Principles and Guidelines on the right to fair trial and legal assistance in Africa;
 - Ensure that lawyers can carry out their functions, including representing members of the political opposition, and protect them from harassment, threats and attacks;
 - Ensure that opposition members are protected from all forms of violent attacks;
 - Open investigations into all threats and attacks against lawyers and journalists so that the alleged perpetrators of such acts can be brought to justice in proceedings that fully respect international fair trial standards.

- Respect the independence of the judiciary
 - Ensure that judges’ and court personnel’s tenure; including appointments, suspension and removal is free of political interference and in compliance with the UN Basic Principles on the Independence of the Judiciary as well as Malagasy laws;

- Refrain from taking decisions that could be perceived as violating the independence of the courts and ensure that the Higher Council of the Judiciary is always involved in any transfer of court personnel around the country.

- Grant reparation to victims of human rights violations
 - Respect the right of all victims of the human rights violations committed during the current political crisis in Madagascar to have access to justice and to receive reparations, including restitution, rehabilitation, compensation and guarantees of non-repetition;
 - Provide urgent medical care for the people who were injured during the different demonstrations and ensure that all of them, without discrimination, have access to the highest standards of health;
 - Put into practice the provisions of Article 15 of the Maputo Political Accord concerning the establishment of a National Solidarity Fund (*Fonds national de solidarité*, FNS) to enable eligible parties and victims to receive compensation for any wrongs suffered during the political events of 2002, 2006, 2008 and 2009 and extend the benefits of that decision to cover violations that took place in other periods.

To the Joint Mediation Team for Madagascar

- Ensure that all investigations opened by the Malagasy authorities in the context of the human rights violations committed during the current political crisis are carried out in an impartial and independent manner in compliance with Malagasy law and the relevant international standards;
- Ensure that the respect and protection of human rights are at the core of all solutions to the current political crisis and that the new amnesty law complies with international standards and does not cover gross human rights violations committed in Madagascar.

ENDNOTES

1 The team is made up of representatives of the African Union (AU), the Southern African Development Community (SADC), the International Organization of La Francophonie (IOF) and the United Nations (UN).

2 Amnesty International delegates met with the President of the HAT, Andry Nirina Rajoelina, the Prime Minister, Monja Roindefo, the Minister of Foreign Affairs, Ny Hasina Andriamanjato, the Minister of Justice and Keeper of the Seals, Christine Razanamahasoa Rakotozafy, and Colonel Noel Rakotonandrasana, Minister for the Armed Forces.

3 Amnesty International, Madagascar: Selective justice, AI index: AFR 35/004 /2002, 11 December 2002.

4 See, among others, Collectif pour la défense des terres malgaches- Affaire Daewoo, 23 December 2008, available at <http://terresmalgaches.info/spip.php?article1>; Chido Makunike, Les leçons à tirer de l'échec de la location des terres malgaches par Daewoo, tribune.com, 20 February 2009, article available at http://www.madagascar-tribune.com/IMG/article_PDF/ Les-lecons-de-l-echec-de-la,11177.pdf (consulted in July 2009)

5 See Amnesty International, Madagascar. Une enquête doit être menée sur les homicides imputés aux forces de sécurité, AI index AFR 35/001/2009, 13 February 2009.

6 Decree 2009/239 of 17 March 2009. The decree was broadcasted on Radio Fahazavana FM 88.6.

7 Order No 2009-002 of 17 March 2009 transferring powers to Andry Rajoelina.

8 High Constitutional Court, n79-HCC/G, 18 March 2009.

9 Decree No 2009-252 proclaiming a state of emergency, 19 March 2009.

10 Presidency of the Haute Autorité de l'Etat, Ordonnance No 2009/003 instituant régime de la Transition vers l'IVème République, promulgated in Antananarivo on 19 March 2009.

11 The CNME was set up under Decree No 2009/282 of 30 March 2009 issued by the President of the HAT.

12 In letter No 178-MJ/SP/09 to the President of the CNME, dated 4 May 2009, the HAT Minister of Justice expressed her concerns about the violence, harassment and threats being used by CNME officials during their investigations and searches.

13 Order No 2009-002 - repealing order No 2009-001 of 17 March 2009 - Tripoli, Libya, 10 April 2009, and Decree No 2009/240 appointing the Prime Minister and Head of Government, Tripoli, Libya, 10 April 2009.

14 The AU and SADC suspended Madagascar from membership in March 2009. The IOF did so at the beginning of April 2009.

15 The buildings housing Radio Nationale Malgache were burned down on 26 January by demonstrators supporting Rajoelina.

16 The request in question was reportedly filed before the High Constitutional Court (HCC) on 2 February 2009.

17 See, among others, L'Express, Antananarivo en alerte, une série de tentatives d'attentats, 20 July 2009, available on the internet at <http://www.lexpressmada.com/index.php?p=display&id=28153>, Courrier International, Bombes en série à Antananarivo, 20 July 2009, available on the internet at <http://www.courrierinternational.com/breve/2009/07/20/bombes-en-serie-a-antananarivo/> (consulted in July 2009).

18 See, among others, le Point, Des poseurs de bombes arrêtés à Madagascar, l'opposition accusée, 24 June 2009, available at: <http://www.lepoint.fr/actualites-monde/2009-06-24/des-poseurs-de-bombe-arretes-a-madagascar-l-opposition-accusee/924/0/355353> (consulted in July 2009)

19 Marc Ravalomanana was also an influential member of the reformed Protestant Church of Madagascar known as Fiangonan'i Jesoa Kristy eto Madagasikara, FJKM.

20 The Maputo Summit took place between 5 and 9 August 2009 in Maputo, the capital of Mozambique, under the aegis of the AU and the chairmanship of the former President of Mozambique, Joaquim Chissano. The consultations were facilitated by the Joint Mediation Team comprising representatives of the UN, AU, SADC and IOF. See also the Maputo communiqué, 9 August 2009.

21 Joint communiqué issued by the AU, SADC, UN and IOF – Maputo II Summit, Maputo, 28 August 2009, available on the United Nations website in Madagascar: http://www.snu.mg/new/sites/snu/article.php?article_id=938&lang=fr

22 Consultative meeting communiqué on the situation in Madagascar, Antananarivo, 6 October 2009.

23 Rajoelina signed the decree appointing Eugene Mangalaza as Prime Minister on 10 October 2009.

24 See communiqué from the meeting of leaders of the Madagascan political movements held at the AU headquarters in Addis-Ababa from 3 to 6 November 2009, available at, among others, http://www.consulmada-th.org/IMG/pdf/09-11-06_ADDIS_ABEBA_AGREEMENT.pdf (Consulted in November 2009)

25 See Article 4 of the ICCPR and General Comment No. 29: States of Emergency (article 4): 31/08/2001. CCPR/C/21/Rev.1/Add.11, General Comment No. 29, 31 August 2001 available at [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/71eba4be3974b4f7c1256ae200517361](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/71eba4be3974b4f7c1256ae200517361) (consulted in January 2010)

26 Article 6.1 of the International Covenant on Civil and Political Rights (ICCPR) states that "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life". Madagascar ratified the ICCPR on 21 June 1971. Article 4 of the African Charter on Human and Peoples (African Charter) rights states that "Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right." Madagascar ratified the African Charter on 9 March 1992.

27 Other sources told the Amnesty International delegates that the soldiers on guard duty reportedly told the journalists, "You should get out of here because there are people inside who are going to shoot", interview with an eyewitness, Antananarivo, June 2009.

28 During an interview with the Amnesty International delegates in June 2009, the President of the HAT, Rajoelina, said that at least 50 people had died in the course of this incident, including 20 whose bodies had not been found. No independent source could confirm these assertions.

29 Demonstrators were wounded or killed as a result of police action during several different demonstrations organized by the supporters of Ravalomanana, in particular, those that took place on 21, 22, 23, 24, 25, 27, 28, 30 and 31 March 2009 and on 2, 20, 23, 24, 25 and 27 April 2009, as well as 20 June 2009.

30 The incident took place when supporters of former President Marc Ravalomanana decided to march toward the seat of the High Constitutional Court

in Ambohidahy and the Palace of Justice in Anosy. See also *l'Express de Madagascar* of 21 April 2009.

31 See *Midi Madagasikara* of 24 April 2009.

32 The HAT authorities replaced the CNME with the FIS but the latter's working methods have differed very little from those of the CNME.

33 Meeting with Rakotonandrasana Noel Girardin HAT Minister responsible for the armed forces on 23 June 2009.

34 Adopted by General Assembly resolution 34/169 of 17 December 1979

35 These principles were adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, in 1990. They can be found at: <http://www2.ohchr.org/english/law/firearms.htm> (consulted in December 2009)

36 Article 3

37 General provisions 4.

38 Principle 10. : "In the circumstances provided for under principle 9, law enforcement officials shall identify themselves as such and give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, unless to do so would unduly place the law enforcement officials at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident".

39 Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, E.S.C. res. 1989/65, annex, 1989 U.N. ESCOR Supp. (No. 1) at 52, U.N. Doc. E/1989/89 (1989).

40 Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, A/RES/43/173, 76th plenary meeting, 9 December 1988 available at <http://www.un.org/documents/ga/res/43/a43r173.htm> (consulted in January 2010)

41 Principle 9 of United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, A/RES/43/173, 1988 available at <http://www.un.org/docuements/ga/res/43/a43r173.htm> (consulted in January 2010)

42 Principle M.1

43 Article 123 of the law of 20 September 1962 establishing the Malagasy Code of Criminal Procedure and various provisions of Law 97-036 amending and completing the provisions of the Code of Criminal Procedure concerning the defence of the parties, preliminary inquiries and pre-trial custody during prosecution or preliminary investigation, adopted by the Malagasy National Assembly on 16 October 1997.

44 Law No. 2007-001 of 27 April 2007.

45 The Standard Minimum Rules for the Treatment of Prisoners, adopted by the First UN Congress on the Prevention of Crimes and the Treatment of Offenders, held at Geneva in 1955, available at: <http://www2.ohchr.org/english/law/treatmentprisoners.htm> (consulted in December 2009)

46 United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, General Assembly, A/RES/43/173, 76th plenary meeting 9 December 1988 available on <http://www.un.org/documents/ga/res/43/a43r173.htm> (consulted in January 2010). Principle 16.1

of the UN Body of principles states: "Promptly after arrest and after each transfer from one place of detention or imprisonment to another, a detained or imprisoned person shall be entitled to notify or to require the competent authority to notify members of his family or other appropriate persons of his choice of his arrest, detention or imprisonment or of the transfer and of the place where he is kept in custody."

47 Articles 53 (new) and 53 Bis (new).

48 Article 136 (new).

49 Article 138 Bis (new), paragraph 2.

50 Article 341 and following of the Malagasy Criminal Code of 17 June 1972 as revised on 30 June 1998.

51 Madagascar ratified this convention on 13 December 2005.

52 Article 89 (Law 84-001 of 12.06.84): "Any conspiracy, the purpose of which is to commit one of the offences referred to in article 87, if followed by an act that has been committed or begun in order to prepare its implementation, shall be punished by deportation. If it has not been followed by an act committed or begun in order to prepare its implementation, the punishment shall not be deportation. There is deemed to be a conspiracy once a decision to take action has been devised and agreed between two or more individuals. If there has been a proposal to conspire to successfully commit one of the offences referred to in article 87 but no agreement has been reached, the person who has made the proposal shall be punished with imprisonment for a period of between one and five years. The guilty party may also be partially or fully deprived of the rights referred to in article 42". Article 91.1 reads: "Any attack, the purpose of which is either to incite civil war by arming or inducing citizens or inhabitants to take up arms against each other or to bring devastation, slaughter and pillage on one or several municipalities, shall be punished by death ". And Article 318.1: "When, as a result of a concerted action, carried out by a group clearly using force, violence or assaults have been committed against individuals or destruction or damage has been caused to property, the instigators and organizers of such action, as well as those who have willingly participated in it, shall be punished, without prejudice to the imposition of any heavier penalties established in law, with imprisonment for a period of between one and five years". [Unofficial translation.]

53 Article 70, paragraph 2, of the Malagasy constitution stipulates that "members of parliament may, for the duration of sessions, only be arrested for a crime or offence with the authorization of the Assembly, except when they have been caught in the act as perpetrator, accomplice or accessory in the commission of a crime or offence" [unofficial translation]; answers supplied by the HAT Minister of Justice to the Inter-Parliamentary Union in letter No 698-AE/SG/DCM/S2/union parlement of 10 June 2009.

54 Ihanta Randriamandranto's husband, Ralitera Andriamalala Andrianandraina, Director of Security at the High Constitutional Court of Madagascar was arrested on 27 April 2009 by members of the HAT security forces at his place of work in Ambohidahy, Antananarivo.

55 On 6 May 2009, the HAT Prime Minister signed an order declaring that the presidential residence of Mantasoa had temporarily become an "annex" of Antananarivo central prison. As a consequence, anyone held there could no longer be considered to be under house arrest but rather in custody.

56 He was released on bail in November 2009 and his case was adjourned until 8 December 2009. See also L'Express de Madagascar of 9 July 2009 for further information on this case, at: <http://www.lexpressmada.com/index.php/index.php?p=display&id=27848> (consulted in July 2009).

57 See L'Express de Madagascar of 25 June 2009, at: http://www.lexpressmada.com/index.php?n_edition=4343 (Consulted in July 2009).

58 They were arrested once again in September 2009 for having encouraged public demonstrations by "legalists" in Antananarivo.

59 Naïke Eliane is a citizen of both France and Madagascar. She was visited in prison by the French Ambassador on 18 September. The French

authorities confirmed that they had sought her release from the HAT authorities. See also the press briefing issued by the French Ministry of Foreign Affairs on 23 September 2009 which is available at: <http://www.ambafrance-uk.org/Point-de-presse-quotidien-du-Porte,15749.html> (Consulted in September 2009).

60 Article 9.3 of the ICCPR: "Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement." , article 7 of the ACHPR : "Every individual shall have the right to have his cause heard. This comprises: (a) the right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force; (b) the right to be presumed innocent until proved guilty by a competent court or tribunal; (c) the right to defence, including the right to be defended by counsel of his choice; (d) the right to be tried within a reasonable time by an impartial court or tribunal. 2. No one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender". See also Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, 2001.

61 Article 136, paragraphs 1 and 2, of the Malagasy Code of Criminal Procedure.

62 Article 14.3 (d) ICCPR: "Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it " ,Article 7.1 (c) ACHPR: "Every individual shall have the right to have his cause heard. This comprises (c). the right to defence including the right to be defended by counsel of his choice"

63 Interviews with the lawyer in June, August and November 2009. She refused to be named in this report for security reasons.

64 Article 19 of the ICCPR and Article 9 of the ACHPR.

65 Articles 10 and 11 of the Constitution of Madagascar.

66 Article 20 (2) of the ICCPR. Article 11 of the ICCPR also states that: "All individuals have the right to information. Information in all its forms shall not be subject to any prior constraints. The law and professional codes of ethics shall determine the conditions of its freedom and responsibility." The Malagasy Constitution enshrines the right to information as well as freedom of opinion and expression while at the same time specifying their limits.

67 Decision No 02108-MPTC of 13 December 2008, taken by the Malagasy Minister of Telecommunications, Bruno Andriantavison, prohibiting the Viva television channel from broadcasting, was notified to the management of the TV channel with immediate effect, regardless of its publication in the Official Gazette.

68 According to local journalists the private TV channels, TV Plus and Ma TV, broadcasted long extracts from the speech and the private daily, Midi Madagasikara, was among the newspapers that published it. The Journalists' Association of Madagascar condemned the closure in an official statement.

69 MBS is a conglomerate owned by former President Ravalomanana and comprises a daily newspaper in French (Le Quotidien), another daily newspaper in Malagasy (Nyvavosy) and Mada Radio and TV, as well as Radio Fahazavàna, for which it has technical responsibility.

70 Two other journalists working for Madagascar Tribune and Malaza were wounded during this incident.

71 Radio Fahazavàna belongs to the reformed Protestant church of Madagascar Fiangonan'i Jesoa Kristy eto Madagasikara, FJKM, of which ousted

President Marc Ravalomanana is an influential member.

72 Amnesty International received an electronic copy of the Minister's letter and the reaction of FJKM.

73 In a meeting with the Amnesty International delegates in June 2009, the HAT Minister of Communication said that Radio Mada had become an itinerant pirate station broadcasting on different frequencies, sometimes 92.6, sometimes 100.2, and that the journalists working for it were passing on hate messages and inciting the population to rebel.

74 Article 1 of Decree No 2009-282 of 30 March 2009 on the creation, organization and functioning of the Commission Nationale Mixte d'Enquête.

75 Article 2 of Decree No 2009-282 of 30 March 2009. [unofficial translation]

76 Article 8 of Decree No 2009-282 of 30 March 2009. [unofficial translation]

77 Article 3 of Decree No 2009-282 of 30 March 2009.

78 Letter No 178-MJ/SP/09 of 4 May 2009 from the HAT Minister of Justice and Keeper of the Seals.

79 Madagascar. Human rights overlooked in resolving the current political crisis, press release, 6 July 2009.

80 See, among others, Amnesty International, Amnesty International Report 2004 - Madagascar, 26 May 2004.

81 Namely, the movement of the current HAT President, Andry Rajoelina, and those of former Presidents Marc Ravalomanana, Didier Ratsiraka and Albert Zafy.

82 See also Article 7 and following of the Maputo Political Accord of 8 August 2009.

83 Accord Numéro 2 de Maputo sur le cas du Président Marc Ravalomanana

84 Article 15 of the Maputo Political Accord: "A National Solidarity Fund (Fond national de solidarité, FNS) shall be put in place in order to compensate eligible parties and victims for wrongs suffered during the political events of 2002, 2006, 2008 and 2009". [Unofficial translation.]

85 Article 2 of Accord No. 2. [Unofficial translation.]

86 Article 1 of Accord No. 3 and article 1 of Accord No. 1. [Unofficial translation.]

87 The preamble of the Rome Statute of the International Criminal Court states that: "Affirming that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and enhancing international cooperation", "Determined to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes, Recalling that it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes". See also the Constitutive Act of the African Union which includes among the principle of the AU the "condemnation and rejection of impunity". See also Principle 4 of the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, which states: "In cases of gross violations of international human rights law and serious violations of international humanitarian law constituting crimes under international law, States have the duty to investigate and, if there is sufficient evidence, the duty to submit to prosecution the person allegedly responsible for the violations and, if found guilty, the duty to punish her or him".

88 UN Doc. E/CN.4/2005/102/Add.1

89 Law 2008-012 of 17 July 2008 set-up and organizes the functioning of the Malagasy National Human Rights Commission



**I WANT
TO HELP**

WHETHER IN A HIGH-PROFILE
CONFLICT OR A FORGOTTEN
CORNER OF THE GLOBE,
AMNESTY INTERNATIONAL
CAMPAIGNS FOR JUSTICE, FREEDOM
AND DIGNITY FOR ALL AND SEEKS TO
GALVANIZE PUBLIC SUPPORT
TO BUILD A BETTER WORLD

WHAT CAN YOU DO?

Activists around the world have shown that it is possible to resist the dangerous forces that are undermining human rights. Be part of this movement. Combat those who peddle fear and hate.

- Join Amnesty International and become part of a worldwide movement campaigning for an end to human rights violations. Help us make a difference.
- Make a donation to support Amnesty International's work.

Together we can make our voices heard.

I am interested in receiving further information on becoming a member of Amnesty International

name

address

country

email

I wish to make a donation to Amnesty International (donations will be taken in UK£, US\$ or €)

amount

please debit my

Visa

Mastercard

number

expiry date

signature

www.amnesty.org

Please return this form to the Amnesty International office in your country.
For Amnesty International offices worldwide: www.amnesty.org/en/worldwide-sites

If there is not an Amnesty International office in your country, please return this form to:
Amnesty International, International Secretariat, Peter Benenson House,
1 Easton Street, London WC1X 0DW, United Kingdom



MADAGASCAR: URGENT NEED FOR JUSTICE

HUMAN RIGHTS VIOLATIONS DURING THE POLITICAL CRISIS

Serious human rights violations were committed in Madagascar throughout 2009, in a climate of political tension that culminated in a coup in March. The security forces repeatedly used excessive force against demonstrators, killing dozens of people and wounding possibly hundreds. They unlawfully arrested and detained members of the opposition, and ill-treated some of them. The authorities denied the rights to freedom of peaceful assembly and expression and held unfair political trials.

These human rights violations took place both under the government of President Marc Ravalomanana, and after he was replaced in March by Andry Nirina Rajoelina. Regardless of when the violations took place, the perpetrators have enjoyed almost total impunity.

This report examines the human rights situation in Madagascar and gives examples of human rights violations committed during this long-running political crisis.

Amnesty International calls on the political leaders of Madagascar to set up an impartial and independent body to investigate cases of human rights violations committed during this period, including by the security forces. It also calls on the international community to ensure that respect and protection of human rights are central to any resolution of the political crisis.

Amnesty International
International Secretariat
Peter Benenson House
1 Easton Street
London WC1X 0DW
United Kingdom

www.amnesty.org

Index: AFR 35/001/2010
February 2010

AMNESTY
INTERNATIONAL

