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U.S. Department of State

Madagascar Country Report on Human Rights Practices for 1998

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MADAGASCAR

Madagascar held its second presidential election under the 1992 Constitution in 1996, following the impeachment of then President Albert Zafy earlier that year. The election was widely accepted as free and fair, and the winner, former Second Republic President Didier Ratsiraka, took office in February 1997. An extensive revision of the 1992 Constitution was narrowly approved in a March constitutional referendum; while International Foundation for Election Systems' observers concluded that the election was generally free and fair, the referendum was marred by significant difficulties in compiling voter lists, distributing electoral cards, and other problems, which led to charges of fraud and manipulation. Although power remains formally divided between the President, his Prime Minister, the Cabinet, and a bicameral legislature (Senate and National Assembly), the revised Constitution significantly strengthened the presidency and weakened the National Assembly. National Assembly elections held in May were generally accepted as free and fair, however, there were a number of credible complaints of electoral fraud. A number of institutions provided for in the revised Constitution, including the Senate, a restructured judiciary, and autonomous provincial governments are scheduled to be established by March 2000. The judiciary is subject to outside influence.

The State Secretary of the Ministry of Interior for Public Security--and, under the State Secretary, the national police--are responsible for law and order in urban areas. The Ministry of Armed Forces oversees the army, air force, navy, and the gendarmerie. The gendarmerie has primary responsibility for security except in major cities, and is assisted in some areas by regular army units in operations against bandit gangs and cattle thieves. After a number of years of decline, military force strength has stabilized at about 22,000 troops, including the gendarmerie. There are also traditional village-level law

enforcement groups, or vigilance committees, known as dina. There continued to be occasional reports that police, gendarmes and dina commit human rights abuses.

Madagascar is a very poor country. The economy relies heavily on agriculture; the growth of agriculture declined from 2.5 percent in 1996 to 1.9 percent in 1997. Traditional exports (vanilla and coffee) continued to decline in value in 1997, but nontraditional exports (shrimp and textiles) grew significantly. The smuggling of vanilla, gold, precious stones, and cattle continued to be major concerns. Overall economic performance improved, but nearly three-fourths of the population of about 14.2 million still live in poverty. Foreign assistance remains a major source of national income. Living standards are low, with the annual per capita gross domestic product estimated at \$257. Inflation fell from 8.3 percent in 1996 to 4.8 percent in 1997. Unemployment and underemployment, especially among youth, remained high, although there was significant job growth in the capital during the year. After 18 months of inaction, the Government made significant progress on its privatization program during the last 3 months of the year.

The human rights situation generally remained unchanged, and problems continue in several areas. In some prisons, women experienced physical abuse, including rape, and some prisoners were used as forced labor. Lengthy pretrial detention remains a major problem, and suspects often were held for periods that exceeded the maximum sentence for the alleged offenses. The Government began a major effort to reduce the number of preventive detainees. Dina imposed summary justice in rural areas where the Government's presence was weak, but government efforts to bring dina under closer regulation and scrutiny began to show results. There was virtually no political violence during the year, and while both the March referendum and the May elections were generally free and fair, both were marred by charges of fraud. Women continued to face some societal discrimination.

During the year, the President declared amnesties for members of the security forces who had killed or injured civilians in several pre-1998 incidents (see Section 1.c.).

RESPECT FOR HUMAN RIGHTS

Section 1 Respect for the Integrity of the Person, Including Freedom From:

a. Political and Other Extrajudicial Killing

There were no reports of political killings by government forces. However, harsh prison conditions and the authorities' failure to provide adequate food and medical treatment contributed to an undetermined number of deaths in custody (see Section 1.c.).

There were no developments in the 1994 beating death of radio journalist Victor Randrianirina, who had reported on alleged sapphire smuggling. The President declared an amnesty for several pre-1998 incidents including 1991-93 incidents in which security forces killed or injured unarmed civilians; a 1992 incident in which soldiers killed 6 pro-Ratsiraka supporters at the national constitutional convention; and the deaths of more than 30 demonstrators who were killed by the presidential guard at Iavoloha Palace in 1991. Reportedly, the President granted the amnesty because he believed that some of military personnel had been unfairly imprisoned and to promote national unity.

Village dina continued to mete out summary justice, but there were no reports of dina executions.

b. Disappearance

There were no reports of politically motivated disappearances.

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The Constitution provides for the inviolability of the person. However, there were occasional reports that police or other security forces mistreated prisoners or detainees. Dina authorities continued to use torture to gain confessions.

Prison conditions remain harsh and life threatening. Prisoners' diets are inadequate, and family members must augment daily rations. Prisoners without relatives nearby sometimes live for days without food. Prison cells average less than 1 square meter of space per inmate. The authorities do not provide adequate medical care. The prison population of approximately 19,200 suffers a range of medical problems that are rarely or inadequately treated, including malnutrition, infections, malaria, and tuberculosis. These conditions have caused an unknown number of deaths. There were instances in which prisoners were used as forced labor (see Section 6.c.).

Women in prisons suffer abuses, as do the children who are sometimes confined with them. Gender segregation is not absolute, and rapes by other prisoners were reported.

The Government permits prison visits by the International Committee of the Red Cross, religious and nongovernmental organizations (NGO's), lawyers, and investigative journalists.

d. Arbitrary Arrest, Detention, or Exile

The Constitution provides for due process for accused persons, but in practice the authorities do not always observe legal safeguards against arbitrary arrest and detention. In particular, excessive investigative detention of suspects results in the denial of due process. However, as the result of international pressure, some long-term detainees were released.

By law a criminal suspect must be charged, bound over, or released within 3 days of arrest. An arrest warrant may be obtained but is not always required. Defendants in ordinary criminal cases have the right to be informed of the charges against them, must be charged formally within the specified time permitted, and must be allowed access to an attorney. Court-appointed counsel is provided for indigent persons accused of crimes that carry a minimum 5-year jail sentence. An attorney or the accused may request bail immediately after arrest, after being formally charged, or during the appeal process, but bail is rarely granted in the case of violent crimes.

Of a prison population of approximately 19,200, 12,650 or about two-thirds of persons held in custody were in pretrial detention. Despite existing legal safeguards, investigative detention often exceeds 1 year, and 3 or 4 year's detention is common, even for crimes for which the maximum penalty may be 2 years or less. The accused may wait years in prison only to be ultimately exonerated in court. The Ministry of Justice continued a program to reduce excessive pretrial detention through case reviews and expedited judgments.

Although the law allows detainees to sue the Government for damages in cases of unlawful detention, no such suits were reported. By law persons accused of subversive activity may be detained incommunicado for 15 days and are subject to indefinite detention if considered necessary by the Government; however, this law was not invoked during the year.

The Government does not use forced exile.

e. Denial of Fair Public Trial

The amended Constitution provides for an autonomous judiciary; however, implementing legislation has not yet been passed, and the High Constitutional Court is subject to the President's influence.

The judiciary has three levels of jurisdiction: local courts for civil and criminal cases carrying limited fines and sentences; the Court of Appeals, which includes a criminal court for cases carrying sentences of 5 years or more; and the Supreme Court. The judiciary also includes courts designed to handle specific kinds of cases such as cattle theft. The High Constitutional Court is an autonomous court that undertakes technical reviews of laws, decrees, and ordinances, and certifies election results. The establishment of a number of courts also provided for in the Constitution awaits the creation of the Senate, which is scheduled to be established by September 1999.

The judiciary remained under the control of the Ministry of Justice. A lack of internal controls and relatively low salaries for magistrates encourage corruption. A large backlog of cases remains (although efforts are underway to address the problem), contributing to excessive investigative detention.

Trials are public, and defendants have the right to an attorney, to be present at the trial, to confront witnesses, and to present evidence. Defendants enjoy a presumption of innocence under the Penal Code.

The right of traditional dina village institutions to protect property and public order is codified in the Constitution as well as earlier laws. Dina adjudicate or arbitrate civil disputes within and between villages. Dina also are established in some urban areas. In practice, dina deal with criminal cases because of the isolation of many rural areas and ineffectiveness of the police and the judiciary outside major centers. Dina punishments were at times severe, but there were no reports of dina executions.

Decisions by dina are not subject to codified safeguards for the accused, but in some instances may be challenged at the appeals court level. Some cases have also been referred to the Office of the Mediator (ombudsman), which investigates and may seek redress from formal judicial authorities. An interministerial committee that includes the Ministries of Justice, Interior, and Armed Forces was established to improve the surveillance of dina and assure their adherence to the law. The Ministry of Justice has moved away from its earlier permissive approach to dina and emphasized their subordination under the formal judicial system.

The Government continued to combat crime and insecurity in isolated rural regions by augmenting the gendarmerie--traditionally responsible for law and order in rural areas--with army units. Military courts are integrated into the civil judicial system and differ only in the kinds of cases tried and in the inclusion of military officers on jury panels. Such courts have jurisdiction over some cases involving national security, including acts allegedly threatening the nation and its political leaders; invasion by foreign forces; and rioting that could lead to the overthrow of the Government. Defendants in military cases, as in civil law, enjoy an appeals process that reexamines points of law rather than the facts of the case. A civilian magistrate, usually joined on the bench by a panel of military officers, presides over military trials.

There were no reports of political prisoners.

f. Arbitrary Interference With Privacy, Family, Home, or Correspondence

The Constitution prohibits such practices, government authorities generally respect these prohibitions, and violations are subject to effective legal sanction.

Section 2 Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

The Constitution provides for freedom of speech and of the press; however, at times the Government pressures the media to curb its coverage of certain events and issues. In addition, journalists practice self-censorship.

Academic freedom is respected.

b. Freedom of Peaceful Assembly and Association

The Constitution provides for these rights, and the Government respects them in practice.

c. Freedom of Religion

The Constitution provides for freedom of religion, and the Government respects this right in practice.

d. Freedom of Movement Within the Country, Foreign Travel, Emigration, and Repatriation

The Constitution provides for these rights, and the Government respects them in practice. However, fear of crime effectively restricts travel to some places, especially at night.

The country does not have a law governing refugees nor has it ratified the 1951 United Nations Refugee Convention Relating to the Status of Refugees and its 1967 Protocol. However, the Government cooperates closely with the UN High Commissioner for Refugees in processing the small number of refugees or asylum seekers. The status of 54 Ethiopian asylum seekers who had been in Madagascar since 1994 was resolved by their resettlement in third countries. There were no reports of forced expulsion of those with recognized or pending claims to refugee status. The issue of provision of first asylum has never arisen.

Section 3 Respect for Political Rights: The Right of Citizens to Change Their Government

Citizens have the right to change their government through direct universal suffrage by secret ballot. Didier Ratsiraka was elected to a 5-year term as President in 1996 in the second presidential election held under the 1992 Constitution. In May the National Assembly's 150 members were elected to 4-year terms. The new National Assembly was seated in July. While no international organization sent observers, this election appeared to be generally free and fair; however there were a number of credible complaints of electoral fraud; however, no investigations of claims of fraud have taken place. As of year's end, at least one complaint by a defeated candidate had been filed for review by the High Constitutional Court.

Under the Constitution, the President has primary responsibility for national defense and foreign policy, while the Prime Minister is the head of government and responsible for domestic policy. The President selects the Prime Minister at will. The Constitution gives the President the right to dissolve the National Assembly for cause. The revised Constitution retains the possibility of censure by a two-thirds majority of the National Assembly and Senate. The Senate had not yet been created by year's end; it is scheduled to be established by September 1999. Under the revised Constitution, two-thirds of the Senate's members are to be elected within the autonomous provinces, and one-third of the members are to be appointed by the President. Local government elections were held in 1995, and under the revised

Constitution, elections for provincial assemblies must be held prior to September 1999.

There are no legal impediments to women's participation in government or politics, but in practice they are underrepresented in both areas. The Government of 31 ministers and state secretaries appointed in July includes 4 women. Women make up 7 percent of National Assembly deputies (11 of 150).

Section 4 Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights

A number of human rights groups operate without government restriction, investigating and publishing their findings on human rights cases. Government officials usually are cooperative and responsive to their views.

The Government is open to visits by international human rights groups and to domestic and international election observers. International organizations sent observers for the March constitutional referendum and the May National Assembly elections.

The Constitution provides for an independent office to promote and protect human rights. In 1994 the National Assembly assigned that role to the Office of the Mediator (ombudsman), which relies on moral suasion to correct abuses. The Office publishes annual reports on its activities and distributes brochures to educate citizens on their rights and responsibilities. Its reports outline the rights of women and children, and focus public attention on the potential for human rights violations by dina.

Section 5 Discrimination Based on Race, Sex, Religion, Disability, Language, or Social Status

The Constitution prohibits all forms of discrimination and outlaws groups that advocate ethnic or religious segregation. No specific government institutions are designated to enforce these antidiscrimination provisions.

Women

Violence against women is not widespread. Police and legal authorities intervene when physical abuse is reported. No law deals specifically with violence against women except rape. Spouses can be tried for nonrape abuses, generally under civil law.

In urban areas where many women manage or own businesses or hold management positions in state industries, there is relatively little societal discrimination against women. However, discrimination against women in rural areas remains a problem. A number of nongovernmental organizations focus on the civic education of women and female children to assure rights and legal protection are fully understood and acted upon as appropriate.

Under a 1990 law, wives have an equal voice in selecting the location of a married couple's residence, and they generally receive an equitable share of common property on divorce. Widows with children inherit half of joint marital property. A tradition known as "the customary third" is occasionally observed in some areas. Under this custom, the wife has a right to only one-third of a couple's joint holdings. However, a widow receives a pension, while a widower does not.

Children

While official expenditures on children's welfare are low, the Government has maintained the spending

levels of the Ministries of Health and Education despite increasing fiscal austerity. These levels are not sufficient to maintain adequate public services under current economic conditions. The Government provides education through the secondary or vocational level, and it is compulsory through the age of 14. However, in practice the percentage of 6- to 10-year-olds attending primary schools is estimated to be about 32 percent, with rural children dropping out to help on family farms and urban children working as domestics.

There is no societal pattern of abuse of children, although child labor continues to be a pervasive problem (see Section 6.d.), and children are imprisoned with adults (see Section 1.c.).

People With Disabilities

There is no systematic discrimination against disabled persons in employment, education, or in the provision of other state services. There is no law mandating access to buildings for people with disabilities. The National Assembly passed a law to define the rights of the disabled in February, but implementing regulations had not been issued by year's end.

National/Racial/Ethnic Minorities

The Malagasy, who are of mixed Malayo-Polynesian, African, and Arab heritage, include 18 distinct groups differing in regional and ancestral affiliation. Although there are some linguistic differences, nearly all speak a dialect of the Malagasy language. None of these groups constitutes a majority of the population. There are significant minorities of Chinese and Indo-Pakistani heritage, as well as a large number of resident French nationals.

A long history of military conquest and political consolidation raised the political and economic status of highland ethnic groups of Asian origin above that of coastal groups of more African ancestry. Centralized administration and economic planning since independence reinforced the concentration of economic and political power in the central highlands, where the capital is located. These policies feed enduring tension between coastal and highland peoples. Ethnicity, caste, and regional solidarity are often factors in hiring practices.

An Indo-Pakistani community has resided in Madagascar since the early part of the century. Traditionally engaged in commerce, this community now numbers about 20,000. Relatively few of these individuals have made successful claims to Malagasy nationality, which is customarily acquired through a native-born Malagasy mother. Indo-Pakistani merchants are widely mistrusted. In past years, their shops have been looted during civil disturbances.

Section 6 Worker Rights

a. The Right of Association

The Constitution and the 1995 Labor Code provide workers in the public and private sectors with the legal right to establish and join labor unions of their choosing without prior authorization. However, essential service workers, including police and military personnel, may not form unions. Unions are required to register with the Government, and registration is routinely granted. About 80 percent of the labor force of 5 million is engaged in agrarian production. Union members account for only about 5 percent of the total labor force.

There are a number of trade union federations, many formerly affiliated with political parties. Neither

public nor private-sector unions have played a major political or economic role in recent years. The Government exercises very limited control over organized labor.

The Labor Code and the Constitution include the right to strike. This right extends to export processing zones (EPZ's). Workers in essential services have a recognized but restricted right to strike, although in practice short strikes took place without reprisal. The Code requires workers to exhaust conciliation, mediation, and arbitration procedures before striking but has not in practice been a significant deterrent to legal strikes.

Short and generally nondisruptive strikes took place over fiscal and administrative issues in many cities. Government workers and university students also called strikes to protest austerity measures.

The International Labor Organization has noted a number of instances in which the Government has failed to bring law and regulation into conformity with existing conventions or otherwise submit texts for ILO review, including those addressing forced labor, freedom of association, guarding of machinery, hygiene in commerce and offices, and weight limits. In most instances, these failures indicated legislative inertia rather than abuses.

Unions freely join and participate in international bodies and may form federations or confederations.

b. The Right to Organize and Bargain Collectively

Both the Labor Code and the Constitution provide for the right to bargain collectively. The Code states that collective bargaining may be undertaken between management and labor on the initiative of either party. However, collective bargaining agreements are rare in practice. The Government is often involved in the bargaining process, in part because of the large percentage of public employees who are union members.

The Labor Code prohibits discrimination by employers against labor organizers, union members, and unions. In the event of antiunion activity, unions or their members may file suit against the employer in civil court. Labor laws apply uniformly throughout the country, including in the EPZ's. However, the Government's enforcement of labor laws and regulations is hampered by lack of staff and financial resources. The 27 Ministry of Labor inspectors visit industrial work sites with some regularity but most often those located near the capital.

There are several EPZ's which are, in practice, firms operating under special import and export rules. Such firms are required to follow all pertinent labor laws and regulations, including minimum wage laws.

c. Prohibition of Forced or Compulsory Labor

The Labor Code explicitly prohibits forced labor, and generally it is not known to occur. However, there were instances of prisoners being illegally "hired out" by prison officials to private enterprise. There also apparently has been systematic use of detainees and prisoners as personal servants by a substantial number of magistrates, judiciary officials, and local government figures. In one particularly egregious case, a minister used a number of prisoners for months to build a private residence. Some prison officials or judicial authorities have engaged in the falsification of records to ensure a supply of unpaid labor for themselves or other government officials. The Government prohibits forced and bonded labor by children and enforces this prohibition effectively.

d. Status of Child Labor Practices and Minimum Age for Employment

The Labor Code defines a child as any person under the age of 18 years. The legal minimum age of employment is 14 years, and work by individuals under the age of 18 is prohibited at sites where there is apparent and imminent danger. The Government enforces child labor laws in the small formal economic sector through inspectors of the Ministry of Civil Service, Labor, and Social Laws. In the large agricultural sector, young children work with parents on family farms at much younger ages. In urban areas, many children work as petty traders, casual transport workers, and beggars.

The law prohibits forced and bonded child labor and the authorities enforce this prohibition effectively (see Section 6.c.).

Education is compulsory to the age of 14. In practice, however, only about 32 percent of children between the ages of 6 and 10--the most likely to attend primary school--do so.

e. Acceptable Conditions of Work

The Labor Code and implementing legislation prescribe working conditions and wages, which are enforced by the Ministry of Civil Service, Labor, and Social Laws. The law makes separate provisions for agricultural and nonagricultural labor.

The minimum wage of \$25 (fmg 139,027) per month for the private sector is set by the Government. This wage does not provide a decent living for a worker and family and must be supplemented by subsistence agriculture, petty trade, support from relatives, or employment of other family members. Minimum wage rates are not always respected, since high unemployment and widespread poverty lead workers to accept wages at lower levels.

The standard legal workweek in nonagricultural and service industries is 40 hours, and 42, hours in agriculture. At least one 24-hour rest period each workweek is mandated. The Labor Code sets rules and standards for worker safety and work site sanitation. Ministry of Civil Service, Labor, and Social Laws officials monitor labor conditions. However, they are usually able to cover only the capital region effectively. If violators do not remedy cited violations within the time allowed, they may be sanctioned legally or assessed administrative penalties. In some sectors, safety equipment is not used due to the expense of protective clothing and other safety devices. There have been no published reports of occupational health hazards or accident trends. There is no explicit right for workers to leave dangerous workplaces without jeopardizing their employment.

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