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1999 Country Reports on Human Rights Practices

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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 accepted widely 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 approved narrowly in a March 1998 constitutional referendum. While observers from the International Foundation for Election Systems concluded that the referendum generally was free and fair, it 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 1998 generally were 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, still were pending at year's end. The judiciary is subject to executive influence.

The State Secretary of the Ministry of Interior for Public Security and the national police, which are under the State Secretary, are responsible for law and order in urban areas. The Ministry of Armed Forces oversees the army, the air force, the 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, the military force has stabilized at about 22,000 troops, including the gendarmerie. There also are local traditional laws called dina that are enforced by village-level law enforcement groups, particularly in areas where the Government's presence is weak. There continued to be occasional reports that police, gendarmes, and dina authorities committed human rights abuses.

Madagascar is a very poor country. The economy relies heavily on agriculture. Agricultural exports, led by shrimp, grew 4.3 percent with vanilla, coffee, cloves, and pepper all registering increases. Textiles were another major export. 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 14.7 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 \$266. Inflation rose from 4.8 percent in 1997 to 7 percent in 1998. Unemployment and underemployment, especially among youth, remained high, although there was significant job growth in the capital during the year. The Government made progress on economic reform, including privatization.

The Government generally respected citizens' human rights in several areas; however, a number of problems remained. Prison conditions were harsh and life threatening. In some prisons, women experienced physical abuse, including rape. Lengthy pretrial detention remained a major problem, and suspects often were held for periods that exceeded the maximum sentence for the alleged offenses. The Government continued a major effort to reduce the number of preventive detainees. Dina authorities imposed summary justice--including several executions--in rural areas where the Government's presence was weak, although, overall, government efforts to bring dina authorities under closer regulation and scrutiny continued to show results. There virtually was no political violence during the year. Women continued to face some societal discrimination. Some prisoners were used as forced labor. There were reports of trafficking in women and girls.

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.

Village dina authorities continued to mete out summary justice, and there were several cases of dina executions in the southeast.

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.

In February four policemen were convicted of raping a woman at a police station in

November 1998, and sentenced to fines and prison terms of 1 to 1½ years.

Village dina authorities continued to mete out summary judgment. 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 go for days without food. Prison cells average less than 1 square yard 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 treated rarely or inadequately, 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 children who sometimes are 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 appeals process, but bail is rarely granted in the case of violent crimes.

Of a prison population of approximately 19,200, 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 years' 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 exonerated ultimately in court. The Ministry of Justice continued a program to reduce excessive pretrial detention through case reviews and expedited judgments. Over 500 detainees have been tried and an indeterminate number of others freed.

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 revised 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 decentralized courts also provided for in the Constitution awaits the creation of the Senate, which depends on the as-yet-unscheduled elections of autonomous provincial councils.

The judiciary remained under the control of the Ministry of Justice. Salaries of magistrates were raised to improve their performance, but reports of corruption in the judiciary persist. Although efforts are underway to address the problem, a large backlog of cases remained, which contributed 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 village institutions to protect property and public order is codified in the Constitution as well as in earlier laws. Civil disputes within and between villages sometimes are addressed by local traditional laws called dina. Dina also are established in some urban areas. In practice, dina deal with criminal cases because of the isolation of many rural areas and the ineffectiveness of the police and the judiciary outside major urban centers. Punishments based on dina were at times severe, including several cases of executions (see Section 1.a.).

Decisions based on dina are not subject to codified safeguards for the accused, but in some instances they may be challenged at the appeals court level. Some cases also have 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 authorities 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, and government authorities generally respect these prohibitions in practice. 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. Opposition politicians rarely are given access to state-run media; while they do have access to private media, these do not provide the nationwide coverage of state media. In addition, journalists practice self-censorship.

On December 28, 1998, Christian Chadeaux, editor in chief of L'Express de Madagascar, and Harry Rahajason, a reporter with L'Express, were sentenced to 3-month prison terms for defamation. On March 26, the Court of Appeals acquitted both journalists.

Academic freedom is respected.

b. Freedom of Peaceful Assembly and Association

The Constitution provides for freedom of assembly, and the Government generally respects this right in practice; however, local authorities sometimes deny requests by political opposition groups to assemble or march in specified locations.

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

c. Freedom of Religion

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

Religious groups must register and obtain authorization from the Ministry of Interior. In January 1998, an organization widely perceived to be affiliated with the Reverend Sun Myung Moon was refused registration, apparently due to concerns about its use of mind-control practices.

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 U.N. Refugee Convention Relating to the Status of Refugees and its 1967 Protocol; however, the Government cooperates closely with the U.N. High Commissioner for Refugees in processing the small number of refugees or asylum seekers. There were no reports of the forced expulsion of persons 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 1998, the National Assembly's 150 members were elected to 5-year terms. In November communal elections were held in which the President's party, AREMA, won 40 percent of the mayoral races. The elections were peaceful and well-organized; however, there were numerous reports of fraud. In December the High Constitutional Court recognized serious irregularities and reordered elections in five communes.

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 was not established pending the creation of autonomous provinces. In September 1998, the Prime Minister pledged publicly that all of the institutions called for in the Constitution would be created by March 2000. 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.

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 1998 includes 4 women. Women make up less than 7 percent of National Assembly deputies (10 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.

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 have outlined the rights of women and children and focused public attention on the potential for human rights violations under 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.

The law neither prohibits nor condones prostitution. The law prohibits incitement of minors to debauchery. The Government criticizes sexual tourism; however, while it attempts to investigate allegations of exploitation, a lack of resources hampers effective action.

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. According to one government official, women own 30 percent of formal sector companies and 53 percent of informal sector companies. However, discrimination against women in rural areas remains a problem. A number of NGO's focus on the civic education of women and girls to ensure that rights and legal protections are understood fully 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 increased the spending levels of the Ministries of Health and Education despite continued 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. Although figures vary depending upon the source, approximately 65 percent of primary-school-aged children apparently are enrolled in school. However, only 29 percent of working children go to school: rural children drop out to help on family farms, and urban children work as

domestics (see Section 6.d.).

There is no societal pattern of abuse of children, although child labor continues to be a pervasive problem (see Section 6.d.), and children sometimes 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 persons with disabilities. The National Assembly passed a law to define the rights of the disabled in February 1998, 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 has 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 often are factors in hiring practices.

An Indo-Pakistani community has resided in the country 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 mistrusted widely. 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 of which are affiliated formally 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 this has not been a significant deterrent to legal strikes in practice.

Short and generally nondisruptive strikes took place over fiscal and administrative issues in some cities.

The International Labor Organization (ILO) 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, safe-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; however, the Government's enforcement of labor laws and regulations is hampered by lack of staff and financial resources. Approximately 35 inspectors from the Ministry of Labor visit industrial work sites with some regularity, but most often only those located near the capital.

There are many 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. 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. Nevertheless, child labor continues to be a pervasive problem: nearly one in three children aged 7 to 14 works. 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. While approximately 65 percent of primary-school-aged children apparently are enrolled, only 29 percent of working children attend school (see Section 5).

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 Government sets the minimum wage of approximately \$25 (FMG 139,860) per month for the nonagricultural private sector. This wage does not provide a decent standard of 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 42½ 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 worksite sanitation. Ministry of Civil Service, Labor, and Social Laws officials monitor labor conditions; however, they usually are 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 on occupational health hazards or accident trends. There is no explicit right for workers to leave dangerous workplaces without jeopardizing their employment.

f. Trafficking in Persons

The law prohibits trafficking; however, there were reports that women and girls were trafficked to the nearby islands of Reunion and Mauritius for prostitution. No arrests or convictions have been made in connection with the trafficking. While the Government expresses concern, it lacks the resources to address this issue effectively.

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