

COUNTRIES AT THE CROSSROADS



COUNTRIES AT THE CROSSROADS 2011: MADAGASCAR

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INTRODUCTION

In March 2009, after weeks of street protests, Andry Rajoelina took control of Madagascar through a military-backed and unconstitutional seizure of power. The ousting of President Marc Ravalomanana was a large step backwards for the country's already backsliding democratization, embroiling the country in a political crisis that remains unresolved.

Street demonstrations have long been principal drivers of political change in Madagascar. The events of 2009 should thus be considered in historical context. In 1947 Madagascar experienced one of the most significant anti-colonial insurrections in the world. An estimated 100,000 people died in the conflict, and the memory of 1947 still plays a cardinal role in shaping Malagasy political culture. All demonstrations since have been urban. When institutions have failed to provide the forum necessary for the legal contestation of ideas, some people have taken to the streets to bring about change.

In 1991, over 100,000 people staged demonstrations and strikes to force President Didier Ratsiraka to accept a transitional government. This led to the adoption of a new constitution in 1992, and was followed by the election of opposition leader Albert Zafy in multiparty elections in 1993. Ratsiraka was reelected in 1996 after Zafy was impeached.¹

Official results for the December 2001 elections between Ratsiraka and Marc Ravalomanana, a successful businessman and the popular mayor of Antananarivo, indicated that no candidate won an absolute majority and called for a run-off. Ratsiraka had reportedly used the country's weak electoral institutions to manipulate the results in an attempt to retain power. The population demanded a comparison of the official results with those collected at the ballot stations by a

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consortium of domestic observers and by Ravalomanana supporters. Hundreds of thousands of people demonstrated, eventually forcing Ratsiraka out of Antananarivo. The country then reached the point of near-Balkanization when Ratsiraka and his partisans established control in his home province of Toamasina and invited the other provinces to establish independent governments. International mediation failed, and Ravalomanana rode the support of part of the army and the ever-growing street demonstrations, which continued for six months. Ratsiraka finally fled for France, and Ravalomanana became president after the majority of the army moved in his favor and defeated Ratsiraka's troops.²

During his one and a half terms in office, Ravalomanana conducted significant reforms that were beneficial both to the population as a whole and to his personal interests as the owner of the country's most important private company, the Tiko Group. Reforms included a relatively successful fight against corruption, the strengthening of the judiciary and other state institutions, and the extension of political and economic liberties. Ravalomanana was, however, highly criticized for centralizing power, making decisions alone, and eschewing alternative views and critics.³ The result was an ever-centralizing hold on power, a narrowing base of confidants and decision-makers, a growing reputation for secrecy, and a conflation of business and public interests.

With the end of a full election cycle in late 2007 came new challenges to President Ravalomanana from opposition leaders, civil society, and even some international donors with whom he had long enjoyed a strong relationship. Ravalomanana was profoundly challenged for quietly entering into a land deal with the South Korean Daewoo corporation which would have leased 1.3 million hectares (about 18 percent of Madagascar's arable land) and for purchasing "Air Force II" for his use at public expense. The tipping point came on December 13, 2008, when Ravalomanana closed down the private TV station, Viva, owned by the then-mayor of Antananarivo, Andry Rajoelina.⁴ On January 17, 2009, Rajoelina staged a large rally for the naming of the *Place de la Démocratie* in Antananarivo, which was intended to be an affront to the perceived centralizing and increasingly authoritarian tendencies of President Ravalomanana. Rajoelina served as a lightning rod to a largely marginalized, if disparate, opposition and some 30,000 demonstrators. While support for Ravalomanana was weak, street movements supporting Rajoelina quickly dropped to an estimated 3,000 to 5,000 people daily in Antananarivo, largely because Rajoelina had proclaimed himself in charge of the country's affairs, discrediting his democratic aims. On February 7, 2009 Ravalomanana's presidential guard opened fire on unarmed Rajoelina supporters protesting in front of the presidential palace. An estimated 31 people were killed and more than 200 wounded. This significantly undermined Ravalomanana's legitimacy, but did not necessarily buoy Rajoelina's popularity. On March 17, 2009, under significant pressure, Ravalomanana attempted to hand power over to a military leader. This failed and a group of military mutineers installed Rajoelina in power. Within weeks it became clear that public sentiment challenged Ravalomanana's centralization and his legitimacy while condemning the militancy and patrimony of Rajoelina's rule. This fissure has helped to expose significant structural problems in the Malagasy polity ranging from persistent patterns of personal rule that undermine the institution of the presidency, a significant urban-rural rupture, the persistence of historically entrenched families in the political decision-making process, the failures of decentralization, and the massive divide between those engaged in the export-led growth of a vibrant business economy and the nearly 80 percent rural poor.⁵ Today Ravalomanana is in exile in South Africa⁶ and Andry Rajoelina has consolidated his rule as the unelected president of the *Haute Autorité de Transition* (HAT).

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Initially the HAT brought together a broad array of political opposition leaders, but over time many of those networks of power have abandoned Rajoelina, and he has become increasingly isolated. Internationally, most donors, including the EU, the World Bank, the United States, and Norway—but with the notable exception of France—froze their non-humanitarian aid to Madagascar. This is significant, for as of 2008 approximately 70 percent of state revenue came from donor support. The Southern African Development Community (SADC) suspended Madagascar's membership,⁷ and the African Union (AU) imposed sanctions against Rajoelina and 108 of his supporters.⁸

On August 9, 2009, Rajoelina signed a power-sharing agreement with Ravalomanana, Ratsiraka, and Zafy under international mediation. The deal was broken before the ink was dry, and Rajoelina unilaterally named a new cabinet. Significant international mediation efforts by the UN, SADC, the AU, and partnering countries have borne no fruit. On February 4, 2011, SADC mediators proposed a roadmap to elections that left Rajoelina in power with the caveat that he name a multilateral cabinet. The new transitional unity government named by Rajoelina in March 2011 did not receive backing from the three main opponents, former presidents Ravalomanana, Ratsiraka, and Zafy, and received tepid support from an international community. At the time of writing, the SADC Secretariat had significantly modified the roadmap written by its mediators and a “take it or leave it” deal was rejected by the HAT. Rajoelina indicated he wanted to move quickly towards elections but was criticized for not meeting the terms of international mediators. SADC moved to block elections.

Since seizing power in 2009, Rajoelina has done little more than attempt to secure his position in power and those of others in his political and business network. He has governed through significantly reduced international aid resources, amidst quickly eroding popular support. Madagascar is facing the threat of state unravel in which the ability to govern across sectors is diminishing.

Nearly every president in the history of Madagascar, including Rajoelina, has changed the constitution to suit his needs. Rajoelina spearheaded a unilateral constitutional convention and national referendum on November 17, 2010. The polls were run in the tense atmosphere of another failed military coup attempt. The constitution officially passed with 74.19 percent support and a participation rate of 52.61 percent despite a call for boycott from the three opposition movement leaders. The civil society monitors, *Comité National d'Observation des Elections* (CNOE), criticized the polls as the worst they had observed in 20 years.⁹ The Fourth Republic, which entered into force on December 11, 2010, reduces the minimum age for the president from 40 to 35, allowing 36-year-old Rajoelina to run in the next presidential election. In addition, Article 166 allows him to stay in power until the presidential election takes place, but it does not set a deadline for those elections. Constitutional scholars in Madagascar and abroad have criticized the constitution as a document that obfuscates key elements of the balance of powers while giving more power to an already near-imperial presidential office.

ACCOUNTABILITY AND PUBLIC VOICE

The constitution has provided for multiparty elections with universal suffrage since 1992. The 2001 presidential election was initially highly fraudulent, with a clear lack of independence both of the National Electoral Council and the High Constitutional Court. The recount conducted in

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April 2002 yielded results probably much closer to reality than those of the initial tallying, although it is not clear whether Ravalomanana won an absolute majority in the first round.¹⁰

The 2006 presidential election was relatively free from massive fraud, but some electoral violations were reported. The SADC Election Observer Mission considered the elections inconsistent with regionally established electoral norms. The international observer mission of the Electoral Institute for the Sustainability of Democracy in Africa (EISA) noted numerous concerns, including polling practices, opaque voters' rolls, a lack of campaign finance information, the perpetuation of a multi-ballot system, an unusually high number of omissions from voter rolls, and errors in identification cards.¹¹ The CNOE expressed concerns that regional chiefs were withholding distribution of national identification cards in opposition areas to prevent opposition supporters from voting.

There were cases of electoral intimidation in both the 2006 presidential and 2007 legislative elections, including the closing down of opposition headquarters in Tamatave and the arrest of some opposition candidates. Ravalomanana's government prevented Pierrot Rajaonarivelo, Ravalomanana's main challenger in 2006, from returning to Madagascar to run in the election. While Rajaonarivelo claimed that he had committed no crimes, he risked arrest because of accusations by the Ravalomanana government of corruption. Ravalomanana defended the actions, citing possible security concerns if Rajaonarivelo returned.

The multi-ballot system was also highly problematic. Candidates were obliged to pay for and distribute their own ballots, with the possibility of reimbursement if they won at least 10 percent of the votes. This policy, designed to limit sham candidacies, effectively discriminated against candidates with limited financial means. Rajoelina's government changed the electoral code in March 2010 to introduce a single-ballot system. The new electoral code meets every concern expressed by international observers and members of the international community in the lead-up to the 2006 and 2007 elections, but its unilateral imposition and the lack of autonomy of the Independent National Electoral Commission (CENI) it establishes are a continuing area of concern.

The new CENI replaced the National Electoral Council, which was never able to counteract the power of the presidency. The imbalance of power was exacerbated by the High Constitutional Court (HCC), which validated the transfer of full power from Ravalomanana to a military directorate in March 2009, and from that directorate to Rajoelina, even though he was not elected and did not meet the constitutional minimum age for eligibility. The HCC further validated Rajoelina's dissolution of the National Assembly and the Senate, allowing him to rule by decree.

Campaign financing is not regulated, leading to large inequalities between candidates. The dearth of rules makes it unnecessary for candidates to hide the origins of campaign funds. While Ratsiraka belonged to the ruling elite, Ravalomanana largely relied on his own business to finance his political campaigns.

Not a single political party in Madagascar has ever been a democratic instrument able to recruit new leadership, aggregate interests from various segments of society, and translate them into coherent political programs. They have instead operated as tools for political elites to remain in power and secure sufficient legislative representation. Historically the strongest, Ratsiraka's AREMA party relied on his personal networks and control of state resources to place key allies in office, including many members of his own family, at the national, provincial, and local levels. In the 2001 presidential elections, Ravalomanana's I Love Madagascar (TIM) party surprised the entire political class by securing, six months after its creation, the largest share of votes in five out of the six provinces. It hence proved that it was possible for a member of Ravalomanana's

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Merina ethnic group to win nationwide electoral support that cut across social divides. Ravalomanana, unwilling to share power, kept the TIM party under his strict control, silencing alternative voices within the party.

Madagascar is a highly centralized state. The 1998 constitution created six autonomous provinces, a strategy that favors regional allies at the expense of elites in Antananarivo. In 2004, Ravalomanana replaced the provinces with 22 regions controlled by the central government. By law regional chiefs were to be elected, but in practice Ravalomanana appointed them. The 2010 constitution establishes three layers of decentralization—communes, regions, and provinces—with executive and legislative elections at each level. These elections, however, have yet to be organized, and the autonomy of these decentralized authorities from the central government remains to be seen.¹²

Political power is centralized in the executive. From a legal perspective, the power of the presidency in the 1998–2007 constitution is higher than in Iceland, the European country with the most powerful president in a semi-presidential system, and even higher than in Russia.¹³ The 2007 constitutional change increased presidential powers by allowing the president to rule by decree in case of emergency or catastrophe (Art. 100), among other changes. While such a provision existed in the previous constitution, the latter required prior consultation with the presidents of the National Assembly, the Senate, and the HCC (Art. 59). The November 2010 constitution is vague regarding the exact balance of power between the president, legislature, and judiciary. However, given the number of prerogatives attributed to the presidency and the dramatic increase in the presidency's budget while ministry budgets have shrunk, it is likely that presidential powers are even stronger. Article 61 reintroduced the necessity for the president to consult with the presidents of the National Assembly, the Senate, and the HCC before declaring a state of emergency and ruling by decree.¹⁴ In practice, however, this reintroduction has little relevance as Rajoelina dissolved the two parliamentary chambers upon arrival to power, as discussed below.

Ravalomanana's TIM party held an overwhelming majority in the National Assembly after December 2002 which strongly limited the legislature's ability to counteract the power of the president.¹⁵ In 2007 part of the TIM party began steps towards party consolidation and called for a national party conference. President Ravalomanana reacted by using his constitutional authority to dissolve the legislature and call for rapid elections. The 2007 legislative elections purged the TIM party of presidential opposition while increasing the number of seats held by the TIM to near universal control. Some scholarly studies point to a crisis of popular legitimacy of the 2007 elections. When Rajoelina came to power he immediately dissolved the National Assembly and the Senate. In October 2010 these two bodies were replaced by the Transitional Congress and the Transitional Superior Council, respectively. Members of both chambers are unelected, with most chosen from among Rajoelina's supporters. Legislative elections initially planned for March 2011 have been postponed to be held together with presidential elections .

The Malagasy civil service is replete with competent technocrats and is generally stronger than in most African countries. However, political intrusions often prevent them from effectively performing their tasks. In the time following Rajoelina's rise to power, many high-level functionaries were pushed out of office in favor of political appointees, and there was an exodus of mid-level technicians who found their efforts to follow sector or industry standards blocked by political appointees seeking alternate ends. This pattern is particularly prevalent in social sectors such as education and health care, where Ravalomanana-era reforms were cancelled without programmatic alternatives.

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Although there are few legal or practical government impediments to civil society, not many domestic nongovernmental organizations (NGOs) have sufficient capacity and means to influence policymaking. Christian civil society has been relatively influential, but it is largely marginalized in the current crisis. The 1960 law on civil society provides a strong legal framework and allows civil society organizations to register at a reasonable cost. Yet hardly any are registered due to a lack of knowledge of the process and practical difficulty linked to the shifting decentralized state structure. There are few state impediments to civil society funding, but given the freeze on most international aid, this is currently difficult to assess.

Media freedom has a history of being relatively high in Madagascar, with many direct critiques of the government in the press, on the radio, and on TV. There is no distinction between the television station (TVM) and radio station (RNM) owned by Rajoelina and state TV and Radio. Numerous independent media exist but nearly all are affiliated with a political party or politician. Ravalomanana's media outlets dominated until 2009. Ownership of media outlets by political elites obviously limits the latter's impartiality, but the somewhat diverse ownership allows for the diffusion of different opinions and critiques on political and economic issues.¹⁶

Until recently, the government almost never censored, fined, physically repressed, or took legal action against the media. Exceptions include Ravalomanana's occasional confiscation of a print run, his closure of Rajoelina's private Viva TV station in December 2008, and Rajoelina's subsequent shut down of Ravalomanana's MBS radio and television group in 2009. Since summer 2010, Rajoelina has closed down at least 80 private audiovisual stations, most of them private radio stations belonging to members of the opposition that criticized his rule.

In 2008, 92 percent of the population reported never using the internet.¹⁷ Political activism on the internet has grown in recent years with the advent of independent blogs. Censorship is also growing, however, especially under Rajoelina, with many activists complaining that their email is hacked and various websites forced by the government to shut or cut content. Rajoelina plans to centralize the control of internet access under public administration, which would increase the possibility of state censorship.

To sum up, with an unelected ruler, no legislative organ, and a *de facto* deficient High Constitutional Court, which gave legal backing to an unconstitutional transfer of power, Rajoelina's HAT clearly qualifies as a politically closed authoritarian regime, in Diamond's typology – although civil liberties are still much higher than in most such regimes.¹⁸ The recent creation of an unelected and nonconsensual transition parliament, and the legality given to Rajoelina by the fraudulently adopted new constitution, do little more than to improve appearances, until legislative and presidential elections are held.

CIVIL LIBERTIES

Madagascar offers few protections against arbitrary arrest or physical abuse committed by state agents. For instance, in November 2010, 21 opponents to the constitutional referendum were arrested for organizing an unauthorized demonstration the previous day.¹⁹ When abuses do occur, they are rarely investigated, as the executive manipulates the judiciary and the police. State repression, however, remains limited compared to other countries with comparably few safeguards.

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Prisons are overcrowded and largely inadequate. Torture rarely occurs, but families must feed their imprisoned relatives for them to avoid starvation. Prison health facilities are also inadequate and safeguards against detention without trial are largely absent.

Until recently, the government has been relatively effective in protecting its citizens against crime. However, budget cuts in all sectors, including the police force since 2009, coupled with the weakening of state authority, have strongly limited the will and the ability of the police to act. As a result, violence has increased significantly in urban and rural areas. Terrorism has never been a significant problem in Madagascar.

The Malagasy legal code is unwavering in its criminalization of slavery, and it does offer protections for children against forced labor. Madagascar does have a particular form of slavery, however. Poor families sometimes give a child to a wealthy family to serve as a domestic servant until he or she turns 18 so that the child may receive food, housing, and often access to education. For girls of a certain age, this custom sometimes is linked to sexual abuse. Those involved in such practices argue that children who would otherwise have no future gain a chance to have a better life as adults. Human trafficking for sex tourism also occurs, mainly on the coast. Prostitution of underage girls is expanding as a consequence of the increased cost of living. Ravalomanana's administration made some significant efforts to fight human trafficking. It is unclear what Rajoelina's government has done in this domain, but given the government's limited means, it is likely that the situation has deteriorated.²⁰

Tribunals are theoretically open to petitions against the state, but using such opportunities requires means and knowledge that most citizens do not have, especially the majority who live in rural areas. Human rights NGOs are mainly urban-based, and none has the means to effectively help citizens when state authorities have violated their rights.

Gender equity is relatively strong in Madagascar, with a history of women serving in important roles in political cabinets, civil society, and the private sector. The legal framework for equity is strong, and gender-sensitive language is common. In the 2008 Afrobarometer survey, less than 1 percent of respondents considered gender issues and women's rights among the three most urgent problems the government should address.²¹ In rural areas, however, cultural expressions of gender-based discrimination continue. For instance, men often answer for women. While legislation against gender-based social and economic discrimination exists, it is hardly ever enforced.

The Afrobarometer survey found that 32 percent of respondents identify with the Merina ethnic group, to which both Ravalomanana and Rajoelina belong, 19 percent with the Betsileo, and 15 percent with the Betsimisaraka, to which Ratsiraka belongs. The remainder is split between 18 other ethnic groups, none of which represents more than 5 percent of the population. Outside of Imerina—the highlands in the Antananarivo region—identity tends to be fluid. In the late 1800s, the French governor Joseph Gallieni introduced constructed ethnic identities that persist today, yet clan and kinship relations often supersede ethnic identity, particularly in high migration regions in the south of the country.

Historically, Madagascar's political sphere has been divided between Merina and *côtier* (comprising the other ethnic groups), with Betsileo (in neighboring Imerina to the south on the Haut Plateau) commonly swinging between them. Ravalomanana's supporters originally cut across ethnic and regional groups, but his popularity outside of his core, ethnically based constituency clearly waned after 2006. Ratsiraka also ruled by forming alliances with elites from both the Merina and the Betsileo. However in 2002 he made significant efforts to foment ethnic conflict, including reportedly sponsoring attacks against his own Betsimisaraka, in order to blame

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Ravalomanana.²² Today the conflict between Rajoelina and Ravalomanana is viewed by many as a war between two Merina houses. While less than 1 percent of the respondents in the Afrobarometer survey saw ethnic tensions as one of the three most urgent issues the government should address,²³ the potential for a democratic Merina leader in the near future appears challenged.

Legally, protection of ethnic, religious, and sexual minorities is strong in Madagascar. Enforcement of these laws is largely absent, however, especially in rural areas, where three-fourths of the population lives. Protection for disabled people in particular is entirely insufficient. For instance, some provincial asylums for mentally disabled people lack the means and staff necessary to feed and humanely treat their patients.

Freedom of religion is strong in Madagascar. More than 80 percent of the population is Christian (though often religiously syncretic with ancestral beliefs). The four main Christian churches, Roman Catholic (38 percent), Calvinist—Church of Jesus Christ in Madagascar (FJKM, 23 percent), Lutheran—Fiangonana Loterana Malagasy (FLM, 14 percent), and Anglican (2 percent), are grouped under the umbrella organization Malagasy Council of Christian Churches (FFKM), which is unusually politically active. For instance, it took a very active role in the 2001 domestic electoral observation mission. The proportion of Muslims (around 3 percent) is increasing in Mahajanga, Tolagnaro, and elsewhere.²⁴ When conflict arises, mostly between Protestants and Catholics, it is due to lines of political power, not to religion itself. The state largely refrains from placing restrictions on religious practice. Ravalomanana was lay Vice-President of the Protestant FJKM church. In the 2007 revision of the constitution he suppressed from the first article the mention that Madagascar is a secular country. The preamble of the 2007 constitution, like that of the 1998 constitution, mentions the people's resolution to "promote and develop its heritage of a pluralist society respectful of its diversity, amongst others... believes in God Creator."²⁵ Ravalomanana introduced compulsory prayers for his staff at the beginning of the day. This was a clear case of state involvement in civil servants' religious practices, and hence a breach of their religious liberties. This was however limited to the civil service, and hence not a case of state involvement in religious institutions. The Protestant-Catholic divide is strong in Madagascar. In 2008, for example, Ravalomanana was refused communion for the first time by a Catholic Church in opposition to perceived political intolerance. Officially a Catholic, Rajoelina benefited from an allegedly biased mediator — Archbishop Razanakolona — in the 2009 crisis. Moreover, Rajoelina closed down and arrested journalists from Fahazavana Protestant Radio, accusing them of encouraging rebellion. Rajoelina has however not used religion in the way that Ravalomanana did, nor made religion part of his policy process. On the contrary, in the 2010 revision of the constitution, he reintroduced the mention in the first article that Madagascar is a secular state, and removed the reference to God Creator from the preamble.²⁶

Freedom of association and assembly is high in Madagascar, and trade unions are free. They are, however, extremely limited in membership, politically divided, and weak, especially compared to the main business association. There are some cases of government action to prevent mobilization of political or business organizations, but these have remained limited. The Malagasy population regularly demonstrates, sometimes in the hundreds of thousands. Most of the time these events are extremely peaceful, with little violence perpetrated by the state or demonstrators.

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RULE OF LAW

The judiciary is legally independent from the executive but, in practice, direct executive pressure on the judiciary can be significant at the tribunal level. Such pressure is less frequent at higher levels, but the High Constitutional Court has repeatedly ratified rather than adjudicated executive action, even when these actions were clearly unconstitutional. The examples discussed above of the HCC's legalization of Ravalomanana's victory in 2002 and then Rajoelina's victory in 2009 are cases in point. The HCC and the Supreme Court are the only two judicial organs with legal authority over executive action. Given their de facto lack of independence from executive power, the latter's failure to comply with judicial rulings rarely poses a problem.

The composition of the HCC has not changed since the Supreme Court re-established its composition in 2002, correcting for Ratsiraka stacking of justices in his favor before the 2001 elections.²⁷ This lack of turnover, even when governments change, could indicate that judges are not unfairly dismissed, but it may also be a result of judges bending the law in favor of the people in power. Under both the 2007 and the 2010 constitutions, the president appoints three members of the HCC, while the National Assembly, the Senate, and the *Conseil Supérieur de la Magistrature* each elect two. The terms of appointment are somewhat vague.

Judges at the high court level are well trained and have played important roles, including in international judicial proceedings. Training in lower courts is inconsistent. A third of respondents to the 2008 Afrobarometer believed that most or all judges and magistrates were corrupt, which is more than for any other civil servant or elected official, except the police (34 percent).²⁸

Primacy of the rule of law in civil and criminal matters, including presumption of innocence, is granted by law. In practice, however, many problems limit strict application of the law. The HCC usually hears cases in a timely manner and is rarely accused of direct corruption. Its rulings are however often seen as biased in favor of the presidency. Local tribunals are clearly underfunded and understaffed, leading to months of delay before a hearing takes place and, in some cases, individuals detained in the interim. Tribunals require court fees, which directly benefit the magistrates. Although this practice is not locally viewed as corruption, there is a widespread accusation that the amount paid largely influences the decision of the court.

Community rulemaking courts, called *Dina*, which became active under Ratsiraka's rule as a substitute to the highly corrupt justice sector, still play an important role in rural areas. *Dina* are often established and upheld by village chiefs or community elders (*Raymendreny*). Respect of due process may hence vary widely as a function of community norms rather than the law. For example, a *Dina* excommunicated an individual and prohibited all members of the community from providing him with any sort of assistance, eventually leading to his death. Despite the illegality of this ruling, the tribunal legitimized it on the basis of local customary law.²⁹

Lawyers enjoy a fair amount of independence in Madagascar and are rarely threatened or prosecuted. The main problem limiting access to counsel is its prohibitive cost for most of the population. By contrast, the independence of prosecutors is very limited. Prosecutors usually start cases on the executive's demand and are largely perceived as working for the administration. Such practices often pervade business, social, and other sectors.

Even after committing egregious acts, public officials face prosecution only if they belong to the opposition or if they fall out of favor with the president. For example, in 2007, CrTIM, a group within Ravalomanana's TIM party, attempted to reform the party's leadership. Among the group, Deputy Roger Zara and Senator Joseph Yoland faced criminal prosecution over charges of

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corruption, incitation to violence, and traffic of influence in July 2007. Zara was arrested and Yoland fled the country. Both were acquitted in March 2008 for lack of proof.³⁰

Security forces do not operate unchecked, but they do sometimes switch allegiance in times of crisis. On March 8, 2009, a small faction mutinied and helped Rajoelina to overthrow Ravalomanana. Military support to Rajoelina, whose father is a military officer, was secured by sociopolitical networks, with some funding from the private sector and, allegedly, foreign powers. Only two weeks before the overthrow, the UN envoy and then the French ambassador gave safe harbor to Rajoelina, preventing his arrest. With the exception of a few failed military coups, the last military involvement in politics before 2009 occurred during the 2001–2002 crisis. At that time, with the exception of the small faction loyal to Ratsiraka, the army remained neutral until the end of the postelectoral crisis.³¹ While the military played a decisive role in the overthrow of both Ratsiraka and Ravalomanana, neither established a military government. However, both crises, as well as numerous failed coup attempts by small factions of the army, unveiled profound divisions inside the army along political, generational, ethnic, and military corps lines. These divisions increase uncertainty in the event of political crises. For instance, the military leaders central to Ravalomanana's overthrow, General Andre Andriarijaon and General Noël Rakotonandrasana, were not clearly supportive of Rajoelina even one month earlier. Moreover, Rakotonandrasana staged a new coup attempt against Rajoelina in November 2010 and was arrested. The police are also regularly involved in the political process and generally support the individual in power.

Abuse of power for personal gain is common among the police and the army. Police officers often expect to be paid money, for example in return for their assistance to the victim of a crime. There was some improvement under Ravalomanana following the creation in 2004 of BIANCO, the Anti-Corruption Independent Bureau. However, BIANCO mainly targeted functionaries at the lowest level and, because of a lack of funding, almost exclusively in Antananarivo. Accountability of higher officers is extremely low, and none has been pursued in court over corruption.

Accountability of the armed forces for human rights abuses is low. However, after the presidential guard opened fire on a crowd in February 2009, General Raelina, Colonel Ralamboarison, and *Gendarme Principal* Lidy were condemned along with Ravalomanana to life imprisonment with hard labor. The three former individuals are currently imprisoned while Ravalomanana is in exile. Lower officers have for the most part been acquitted for following orders. The trial was criticized for being politically motivated and for failing to follow due process, although evidence of Ravalomanana's direct responsibility was relatively solid.³²

The state does not place barriers on the rights of individuals or groups to own property and problems of confiscation on racial or ethnic grounds are rare. In practice, however, there has been a major challenge to the property rights system since the mid-1990s due to competition between indigenous property rights systems and the growing donor-supported state system of property rights. Although some efforts were made to accommodate the indigenous system, the state's property system has prevailed in most cases, resulting in a net loss for some individuals. The extension of the state property rights system under Ratsiraka, Ravalomanana, and Rajoelina has been fairly even between groups.

The government generally performs well in enforcing contracts. Land seizure is relatively rare. The main exception, particularly under Ravalomanana, was due to combined efforts by donors, international and domestic NGOs, and the government to protect the environment and extend national parks. In the regions concerned, the common good has largely prevailed over

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local land rights; however, a large seizure of agricultural land without compensation did take place.

ANTICORRUPTION AND TRANSPARENCY

Ravalomanana's government initially streamlined regulations to increase transparency and diminish opportunities for corruption, for instance in the customs administration. During his second term, opportunities for corruption increased again, however, to such a point that the EU, the IMF, and the World Bank temporarily delayed their payments to Madagascar, asking for clarification of the government's financial management.³³ These problems worsened dramatically after Rajoelina's takeover.

The state is not significantly involved in the economy directly. Under Ravalomanana, the size of the state further diminished as he attempted to privatize some of the few parastatals, such as the water and electricity company JIRAMA, with donor support. This contraction led to higher levels of transparency. Privatization of JIRAMA, however, failed due to the difficulty of making the company profitable.

Accounting systems are relatively reliable at the national and regional levels, but they vary widely at the commune level. A big challenge is coordination between accounting systems at each level in order to ensure that the funds coming in have not been tampered with. This problem grew in 2009-10, with new royalties coming to the regions from mining companies. The total amounts released by international mining companies were well recorded, but the World Bank raised concerns regarding communal management capacity and accountability. The World Bank moreover said that the very unequal distribution of mining royalties between communes, as provided by the Mining Law (Nr. 2005 021 of October 17, 2005), may raise unrest in mining areas. Although the mining law has been changed by decree to redirect redistribution, even that distribution appears to have been applied with questionable success.

Separation between the public and private interests of officeholders was a big challenge under Ravalomanana. As owner of the biggest Malagasy private enterprise, the Tiko Group, Ravalomanana used benefits and wealth from his private position to gain public office, for instance by financing his political campaign. Although not illegal, this gave him an important advantage in the campaign. His subsequent public position helped his firm grow, diversify, and gain market share at the expense of competing businesses. By 2008, Tiko Group subsidiaries controlled virtually every key sector in Madagascar, including the media and rice (the food staple) distribution. It is for this reason that part of the business sector came to support Rajoelina in 2007 and 2008. However, partly because of the weakness of Madagascar's regulation against conflict of interest, few of Ravalomanana's activities were legally questionable. Moreover, Ravalomanana managed to simultaneously act for the benefit of his firm and of the country by strengthening state institutions, including anticorruption organs, and fighting the entrenched interests of the old and highly corrupt politico-economic class.³⁴

Rajoelina, who also came from the private sector, largely followed Ravalomanana's model in blending private and public interest, and further blurred the line between taxation and rent-seeking. For example, in January 2009, Ravalomanana released an executive order allowing the limited export of rosewood from the rainforest in the northeast. As this forested area included two internationally recognized national parks, the decree violated both Malagasy and international law. Nonetheless, the illicit exploitation of timber increased dramatically under Rajoelina, with

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hundreds of millions of dollars worth of timber sold, primarily to China, generating both private gains for local leaders and significant cash inflow for the public treasury, partly compensating for the international aid cut.³⁵

The 2004 anticorruption law makes it compulsory for high state officers and civil servants to declare their wealth and empowers BIANCO to oversee these declarations and to charge individuals with any illegal or undue gains. According to Decree 2004-983, these wealth declarations are not public, but are accessible to parliamentary or judicial organs.³⁶ BIANCO was relatively effective under Ravalomanana in Antananarivo and other urban areas in enforcing the law for lower-level civil servants. Due to lack of resources, however, it has been much less able to act in rural areas, and enforcement is highly ineffective when it comes to officials from the presidential party.

In 2005, the year after its creation, BIANCO transmitted a total of 89 investigated cases to the judiciary. This number increased to 367 in 2008, and dropped again to 139 in 2009.³⁷ Because of the international aid cut since the 2009 coup, BIANCO's budget has been reduced by half. As a result, the organization has limited its scope, working almost exclusively in Antananarivo, limiting the number of dossier openings and investigations, and targeting only low-level infractions by civil servants. For instance, BIANCO has received a significant number of complaints regarding mining and illicit timber but left these uninvestigated. Complaints against the Rajoelina administration have also been ignored. Public officials have complained that significant political influence hampered BIANCO's work, preventing the opening of particular dossiers. The few NGOs that were previously acting as anticorruption watchdogs have also seen donor support shrink since 2009, preventing them from fulfilling these tasks.

The media regularly report cases of corruption in detail, but such reporting reflects inherent bias in the media because of political ties. Legal protection for whistleblowers is inadequate.

Victims of corruption can theoretically seek redress through the courts, but as discussed above, the latter are subject to corruption and largely inaccessible to the poor. Corruption in education slightly improved under Ravalomanana. Payments to obtain good grades remained standard, but a minimum level of performance was nonetheless required. At the lower level, monitoring of teacher attendance also improved. The regulations passed under Ravalomanana are still in place, but the state's capacity to enforce them has strongly diminished.³⁸

Government transparency is relatively high. Legislation is published in an official journal, and high court rulings, including confirmation of elections and referendum results, are available on the court's website. Executive orders and decrees are available on the government's website and in the official journal.³⁹ The day-to-day operations of the government are opaque, however. Citizens' legal right to information is relatively strong, but the mechanisms to effectively obtain this information are inefficient.

In spite of the absence of legal mechanisms for requesting information, budget transparency increased dramatically under Ravalomanana until 2008. Under Rajoelina, this information is less regularly released, but the 2011 budget is available online.⁴⁰ Expenditure accounting was relatively clear under Ravalomanana, with the exception of some obscure dossiers, including the financing of a Boeing 737-300 specially outfitted for the presidency. Accounting became much more opaque under Rajoelina.⁴¹

Procurement was problematic under Ravalomanana, with increased transparency but little accountability. The president's company was awarded most contracts it bid for. This situation worsened under Rajoelina. The problem is explained both by the weakness of the legal

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procurement framework and by civil servants' entrenched culture of favoring the incumbent and his allies.

Rajoelina has implemented a dramatic array of austerity measures and alternative financing schemes, most notably an acceleration of taxed logging (including in protected forest areas), mining, oil permits, and new ventures with Chinese financiers.⁴² While there is a long history of artisanal mining contributing a small fraction to the country's GDP, the first proceeds from industrial mining were reaped in late 2009. Within 10 years, natural resource extraction is expected to grow from less than 1 percent of GDP to over 30 percent. The nascent infrastructure for state oversight of the sector set up under Ravalomanana has eroded. Today the permit, royalty payment, and taxation processes are virtually free of transparency and accountability to the extent that the international mining watchdog, the Extractive Industries Transparency Initiative (EITI), placed Madagascar on warning for suspension. There are similar concerns with new permits for oil exploration offshore and a potentially enormous (over \$18 billion) tar sands oil extraction points. The illicit logging of rosewood in the fragile rainforests of the northeast, on the other hand, demonstrates an unusual mix of technical capacity to ensure transparency (the Madagascar National Parks service maintains a database of every tree cut, its size and weight, who cut it, who bought each container, and how much was paid) and the diminished capacity of the Ministry of the Environment and Forests and security forces to do anything about it.

Ravalomanana's administration worked in concert with donors for the fair and legal administration of foreign aid. The Madagascar Action Plan, co-written by donors and the government, provided the legal framework for aid distribution between 2007 and 2012. The EU, the IMF, and the World Bank, however, began challenging the transparency of the Ravalomanana government during his second term. In December 2008 the EU and World Bank froze direct budgetary support due to concerns with transparency in financial management.⁴³ With Rajoelina's takeover, direct budgetary support never resumed and the remainder of the more than \$1.2 billion in funding portfolio from the World Bank and EU went into limbo. The distribution of international funds transfers to Madagascar from other sources since 2009 has been very opaque. For instance, in early 2008 the Ravalomanana government began setting up a joint venture with the Chinese company Wuhan Iron and Steel Corporation for the exploitation of the Soalala iron ore mine in northwest Madagascar. When the deal was signed under the Rajoelina government in May 2010, Wuhan paid a \$100 million permit fee to the government.⁴⁴ The bulk of the funds skirted the existing mining fee collection infrastructure and went directly to the president's office where transparent accounting is impossible. If the exploration proves successful the die might be cast for the estimated \$8 billion investment in mining infrastructure that follows.

RECOMMENDATIONS

- Hold general elections in May 2012, in accordance with the UN electoral advisor's assessment. The electoral code forbids the holding of elections between November 30 and April 30 on account of the rainy season. Holding elections before November 30 would not be feasible, as a mediation process and a technical review process, including voter rolls, must first take place.
- Allow unrestricted electoral monitoring and observation, both by domestic civil society and the international community.

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- Ensure strict neutrality of the army in the electoral process. This would mean a role for the military limited entirely to security, independent monitors ensuring that limited role, and safeguards against foreign payments to military leaders.

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