



**Carter Center Election Observation Mission
LEGISLATIVE AND SECOND ROUND OF PRESIDENTIAL ELECTIONS**

Preliminary Statement

**Carter Center Congratulates Madagascar on a Calm and Transparent Polling Process;
Encourages Renewed Commitment to National Reconciliation**

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Contact: In Antananarivo, Stéphane Mondon, +261 347 212 613; In Atlanta, Deborah Hakes, +1 404 420 5124

On Dec. 20, Madagascar held legislative elections and the second round of presidential elections. Following a protracted political crisis, these elections offer an opportunity that we are hopeful will reinstate a democratically-elected government, enable Madagascar to rejoin the community of nations, and provide a foundation through which to address the prolonged humanitarian crisis that has continued to escalate within recent years. The culmination of the roadmap in Friday's elections offer an opportunity for the country to move forward and begin to address the suffering of the Malagasy people, 90 percent of whom survive on less than USD \$2 a day.

The Carter Center congratulates the Malagasy people for a peaceful vote, an important achievement on the road to ending the crisis and working toward the important goal of national reconciliation.

These elections are the first in Madagascar's history to be conducted by an independent electoral authority. Electoral Institute for Sustainable Democracy in Africa (EISA) and Carter Center observers reported that voting and counting processes were peaceful, orderly, and in general accordance with Madagascar's legal framework and obligations for democratic elections. Although voter turnout was moderate at only about 50 percent in polling stations observed, the Center commends the CENI-T for their commitment to ensuring that all eligible voters had an opportunity to cast their ballots freely. Carter Center and EISA observers noted a few shortcomings in the process, including inconsistent use of the separate voters list for the presidential and legislative materials, delays in delivery of materials in some areas, and inconsistent inking procedures. However, these shortcomings were not systematic and will not impact the outcome of the elections. Carter Center observers visited a total of 85 polling stations, and reported that the polling process was good or excellent in 82 percent of stations observed.

As the tabulation process continues, The Carter Center offers the following recommendations to Malagasy and international stakeholders:

- All political actors should insist on maintaining a peaceful environment while respecting the constitution and the laws of Madagascar. We urge all political parties and leaders to maintain the current environment of calm as the tabulation process continues, materials are returned, and the results are processed.
- Candidates, leaders, and international actors should work together to advance genuine messages of national reconciliation and respect for the democratic process. Madagascar must leave behind its history of winner-take-all politics, isolation of losers, and extra-constitutional actions that undermine democratic processes.
- The military should continue to play a neutral role in providing security, and avoid playing a role in the political process.

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Statement of Preliminary Findings and Conclusions

The Carter Center did not observe the first round of voting for the presidential elections held on Oct. 25; the Center's election observation is focused on the second round of presidential elections and legislative elections that took place on Dec. 20. The Center's election observation mission in Madagascar is conducted in partnership with the Electoral Institute for Sustainable Democracy in Africa (EISA). Following an invitation from the Independent National Electoral Commission for the Transition (CENI-T), the Center's core team of experts arrived in Madagascar in mid-October, and six long-term observers deployed across the country on Nov. 18, 2013.

The integrated EISA/TCC short-term observation mission around the Dec. 20 polls was co-led by former president of Mauritius Cassam Uteem, executive director of EISA Denis Kadima, and vice-president of the Carter Center's peace programs, Dr. John Stremlau. The EISA/Carter Center team consists of 26 observers from 19 countries who visited 85 polling stations. Carter Center observers continue to observe the aggregation of results in the transmission center (SRMV) and will stay in the country during the post-election period. The Carter Center thanks CENI-T and all Malagasy stakeholders who welcomed the observers from our mission and took the time to meet with them.

The Carter Center observation mission in Madagascar is carried out in accordance with the Declaration of Principles for International Elections Observation and its Code of Conduct which were adopted at the United Nations in 2005 and endorsed by more than 40 election observation organizations. The Center assesses the electoral process based on the national legal framework of Madagascar and its commitment to holding democratic elections as presented in regional and international agreements.

This is a preliminary statement; a final report will be published in the months following the end of the electoral process.

BACKGROUND

Madagascar held the second round of its presidential election along with legislative elections on Dec. 20, 2013. These elections are an important step for Madagascar as the country seeks a return to legitimate democracy and normalized relations with the international community after a 2009 coup d'état plunged the island into a nearly five year long political crisis. Despite the adoption of a negotiated roadmap under the auspices of the Southern African Development Community (SADC), the political impasse caused by the bitter rivalry between the former President, Marc Ravalomanana and the President of the Transition, Andry Rajoelina, continues to cast a long shadow over the political environment in Madagascar. As proof of this lingering dispute, both of the presidential finalists in the second round are closely tied to the main protagonists from the 2009 crisis, with Dr. Jean-Louis Robinson allied to exiled President Ravalomanana and Hery Rajaonarimampianina tied closely to President of the Transition Rajoelina. This alignment raises questions about the independence

of the candidates and suggests that they are simply proxies for a past rivalry that has been brewing for nearly five years - at a time when Madagascar needs to focus on its future.

Nonetheless, the recent elections are an essential step towards ending the current crisis in Madagascar. Originally scheduled for May 8, 2013, the first round of presidential elections were postponed to July 24 and again to Oct. 25, when the first round of the presidential elections finally took place. The second round took place on Dec. 20, coupled with the legislative elections.

The international community provided critical technical and financial support for the election, but Madagascar's government still bore 50 percent of the costs. Moreover, the employees of CENIT should be commended for their efforts to end the crisis and return Madagascar to a path conducive to democracy and development.

LEGAL FRAMEWORK

A strong legal framework is essential for the effective administration of democratic elections. This framework must be consistent with the commitments of the government regarding human rights and simultaneously coherent with its obligations to democratic standards including the obligation that the will of the people shall form the basis of the authority of government.¹ The Carter Center mission has engaged in an objective evaluation of Madagascar's election, determining whether Madagascar has fulfilled its international commitments and obligations to providing genuine democratic elections.

Madagascar's legal framework for elections calls for a single national constituency for the presidential election. The presidential system uses an absolute majority system in the first round, where a candidate must receive more than 50 percent of the vote to win. If no candidate wins the first round, the two candidates with the highest number of votes proceed to a runoff round to determine the winner.

For legislative elections, Madagascar is divided into 119 constituencies, which correspond to the administrative division of the country (119 districts). While 87 districts are single member constituencies, 32 are two-member member constituencies.² Elections in the single seat constituencies are conducted with the first past the post (FPTP) system, while two-member member constituencies use a closed list system of proportional representation. Although parties were able to nominate two candidates in these two-member constituencies, only one candidate for each party appeared on the ballots. In future elections, the ballot design should be reconsidered to ensure that ballots better reflect the electoral system in place.

The regulatory framework for the presidential and legislative elections is based upon a series of commitments: the Constitution of Dec. 11, 2010, the roadmap of Sept. 16, 2011, incorporated into the Malagasy legal system by the Law of Dec.28, 2011, and the laws and regulations of the Republic of Madagascar. In addition, Madagascar has ratified a series of international and regional human and political rights instruments that are relevant to the electoral process. These treaties include the International Covenant on Civil and Political Rights (ICCPR), International Convention on the Elimination of all Forms of Racial Discrimination (CERD), International Convention on Economic Social and Cultural Rights

¹ UDHR, art 21(3); ICCPR, art 25 (b).

² See decree 2013-083.

(ECOSOC), Convention on the Elimination of Discrimination against Women (CEDAW), Convention on the Political Rights of Women (CPRW), Convention on the Rights of the Child (CRC), and the United Nations Convention against Corruption (UNCC).

This framework contains many positive measures in support of electoral transparency. For example, Article 45 of the Election Act prohibits any official inauguration, such as of a building or event, during the election campaign period. This is a positive measure that reinforces an equal playing field for candidates.

However, the Center regrets the lack of a legal framework to regulate campaign finances, and the fact that the attempts of civil society to compel candidates to publicize their assets have been ignored. Greater oversight of campaign expenditure and public disclosure of candidate assets would have provided greater financial transparency on the process while strengthening the confidence of voters in their future leaders.

Additionally, The Carter Center regrets that two decrees - one from April 16 and one from Aug. 6, 2013 - were issued in a way that conflicted with critical legal provisions of the agreed-upon roadmap guiding the transition. In particular, the decrees removed the provision that insisted on the neutrality of the current heads of Malagasy political institutions during the parliamentary and presidential campaigns. In doing so, both decrees directly contradicted Malagasy law.³ Malagasy law could have overridden the decrees and barred heads of institutions from active engagement in the campaign, an important component of maintaining the neutrality of the transitional government. Ultimately, the Special Electoral Court (CES) shared this view, as it struck down the legality of the decrees. However, this decision was announced less than 36 hours before voting began and only 12 hours before the end of the campaign period, essentially rendering the verdict of the court moot. The decision should have been announced much sooner, as virtually the entire campaign period was conducted under the assumption that the decree provided legal cover to heads of institutions that sought to actively campaign - something that has now been demonstrated to be a violation of Malagasy law.

ELECTION ADMINISTRATION

International standards dictate that an independent, professional, transparent, and impartial election authority is fundamental to ensuring that citizens are able to participate in genuine democratic elections.⁴

The Constitution of Fourth Republic of Madagascar provides for an “independent national structure” that is responsible for the conduct of elections.⁵ The Roadmap for Ending the Crisis in Madagascar⁶ established a temporary election administration structure, the National Independent Election Commission. The election commission’s mandate was later domestically established by Organic Law n°2012-004⁷ which expresses the institutional and financial independency of the collegial body, National Independent Election Commission for

³ Law 2011-014 of 28 December 2011

⁴ ICCPR UNHRC General Comment No.25, para. 20.

⁵ Art. 5: “L’organisation et la gestion de toutes les opérations électorales relèvent de la compétence d’une structure nationale indépendante”

⁶ The Roadmap was introduced to the Malagasy legal system by the Organic Law n°2011-014 of December 28, 2011.

⁷ Organic Law n° 2012-004 of Feb. 1, 2012.

the Transition (CENI-T). This is an important step, as it is the first time in Malagasy history that an independent institution was established to administer and regulate the conduct of elections.

CENI-T, a collegial body, is governed by its General Assembly, composed of 24 members. The General Assembly is supported by a secretariat, headed by the executive secretary general. Twenty-one of the 24 General Assembly members represent a broad spectrum of civil society organizations and branches of government. The Carter Center was pleased to note that this spirit of inclusiveness continued down to the lowest levels of election administration.

While the decision-making process is centralized *de facto* at the national level, a large part of the election preparations and election day operations was decentralized by establishing 22 Regional Election Commissions (CER), 119 District Election Commissions (CED) and 1,553 Municipality Election Commissions (CEC).

The Carter Center recognizes the effort that CENI-T officials and polling staff put forth a good faith effort to ensure that Madagascar could re-establish democracy and end its long-standing crisis.

CENI-T and local administration bodies recruited 140,007 polling staff in order to conduct the election in 20,001 polling stations across the island. At the local level, representatives of civil administration (*Chefs du Fokontany*) played a major role in recruiting polling staff. Carter Center long-term observers also reported that due to limited resources, district-level election administration often depended on municipal-level civil administration to conduct the elections. In future elections, CENI-T should re-evaluate its structure and strive to continue to enhance its independence and reduce the need to rely on government elements at the local level.

VOTER EDUCATION

Voter education is an essential part of the electoral cycle that is recognized in international law as an important means of ensuring that an informed electorate is able to effectively exercise their right to vote.⁸ Furthermore, given the highly politicized environment in which these elections are taking place, the secrecy of the ballot is of pivotal importance. Fulfillment of secrecy of the ballot is partially dependent on the extent to which voters understand this right.⁹ These elections also included a number of elements that were not present in past elections, including the introduction of the single ballot paper and new regulation that the voters card was not required to vote, as other forms of identification were accepted.

According to CENI-T, in advance of these elections 32 civil society organizations received materials from the election administration in order to conduct voter education. However, their overall capacity and level of programming and impact is largely unknown. The Project to Support the Electoral Cycle in Madagascar (PACEM), sponsored by the United Nations Development Program (UNDP), is among the more prominent CSOs that conducted voter

⁸ ICCPR, art. 25; UNHRC, General Comment 25, para. 11.

⁹ UN, Human Rights and Elections: A Handbook on the Legal, Technical, and Human Rights Aspects of Elections, para. 6.

education aimed at maximizing voter participation. Carter Center observers observed limited voter education activities in advance of the Dec. 20 elections.

VOTER REGISTRATION

The Right to Universal Suffrage is at the core of democratic elections, a principle that is affirmed in a number of universal and regional documents.¹⁰ The Constitution of Madagascar and other Malagasy legislative acts confirm this right.¹¹

According to the official calendar, voter registration took place between Oct. 1, 2012 and Oct. 9, 2013, prior to the arrival of Carter Center observers. The registration was conducted by election officials, deployed by CENI-T to each of the 1,553 municipalities of Madagascar. This process was largely coordinated with local administration, or *Chefs du Fokontany*. These officials visited households across the country.

Madagascar's electoral law¹² stipulates the procedure for establishing the voters list and ensuring that it is regularly revised. While the voters list is independent of the civil register, identity verification (using a national identity card) is required when registering as a voter.

The registration process concluded with the registration of 7,823,305 eligible citizens on the voters list.

Although The Carter Center did not directly observe the voter registration process, and while accurate demographic data is unavailable in Madagascar, some analysis suggests that the register may not be fully representative of the population of voting age. Madagascar's last census, which was conducted two decades ago—in 1993—indicates that there are roughly 10,500,000 citizens of Madagascar that should be eligible to vote. However, according to official, national-level statistics, more than 3 million adult citizens do not have a national identity card. Furthermore the increase in number of registered voters between presidential elections in 2006 and current process was just 2.7 percent, a modest increase from an already inadequate number in relation to the voting-age population.¹³ In six of the country's 22 regions, the number of registered voters decreased between the elections in 2006 and 2013.

Based on these estimates, a significant number of voters could have been left out of the register. This combined with moderate voter turnout on election day impacts the extent to which the right of universal suffrage was upheld in the Dec. 20 elections. In advance of future elections, a census should be conducted.

¹⁰ African Charter on Human and Peoples' Rights Article 13, ICCPR Article 25, UNHRC ICCPR General Comment No. 25 paragraphs 4, 10, 11, 13.

¹¹ Constitution of Fourth Republic of Madagascar of Dec. 22, 2010.

¹² Organic Law n° 2012-005 of March 22, 2012.

¹³ “Analyse de la liste électorale informatisée de l'Élection Présidentielle du 03 Décembre 2006 et Situation administrative de population Malagasy, base de l'état de droit, de la démocratie et du développement à Madagascar”, Ministère de L'intérieur, June 2009.

For the population that was successfully registered, the official process was not considered complete until correct data was entered and the voter possessed their voter card. However, the distribution of these cards by local electoral administration was partially delayed. While voter cards were not required to vote in Madagascar's 2013 elections,¹⁴ the document has traditionally been compulsory in previous elections. Additionally, the voter card is an important source of information for voters, as it indicates in which polling location the voter is registered. In some areas, Carter Center observers observed voter cards being distributed on election day.

The Carter Center therefore regrets that problems surrounding distribution of voters cards—both in terms of delays and lack of distribution to some voters. At best, this caused confusion among voters as to where they should vote, and at worst the delays combined with a lack of voter education around the regulations for acceptable voter identification at polling stations could have given the impression that they were not registered at all, and were therefore ineligible to participate, negatively impacting turnout.

Reports from international observers indicated that during the first round of presidential elections on Oct. 25, prior to the arrival of Carter Center observers, some problems arose related to inadequacies of the voters list. As a result, CENI-T reviewed the official voters list and discovered that some of the names of registered voters had been omitted from the final copy of the voters list used for voter identification at the polling station. This resulted in the decision to revise the voters list by adding 143,408 citizens, in order to allow all registered voters to participate in the elections. This decision was reached after a robust debate that involved some parties suggesting that voter registration should be completely re-opened to new registrations.

The Carter Center commends CENI-T on the decision to correct flaws in the voter list, but not to reopen voter registration, between the two rounds of elections. However, in general, changing the list of eligible voters between two rounds of the same election is not a good practice.

Madagascar's constitution only allows for voters to be excluded from participation in elections by the exceptional ruling of a court.¹⁵ The Electoral Code further elaborates on this rule by explicitly listing groups of citizens with no right to be included on the voters list.¹⁶ It is regrettable, therefore, that attempts were not made to register and facilitate the enfranchisement of eligible voters in Madagascar's 2,648 hospitals¹⁷ or 41 detention centers.¹⁸

CANDIDATES, PARTIES, AND THE CAMPAIGN ENVIRONMENT

¹⁴ The national identity card is the only identification required for polling, not the voter card.

¹⁵ Constitution of Fourth Republic of Madagascar of Dec. 22, 2010.

¹⁶ Organic Law n° 2012-005 of March 22, 2012: Art. 4.

¹⁷ Only the 2 485 Municipal Health Centers (CSB 1 and 2) have the capacity of accommodating 9940 patients (Ministry of Health). Additionally there other 148 health institutions with residing patients. However, the number of eligible adult patients currently being hospitalized in the public health centers is not available.

¹⁸ The population of those awaiting trial in Madagascar's detention centers is thought to be about 10,000.

Madagascar is committed to several important international obligations in relation to candidates, parties, and the campaign environment including ensuring that every citizen has the right to be elected¹⁹ and freedom of assembly.²⁰

Political pluralism and genuine choice for voters are critical to democracy. Madagascar is obligated due to its international commitments to ensure “a real political pluralism, an ideological variety and a multi-party system that are exercised through functioning of political parties...”²¹ In order to ensure this important ambition, Madagascar has also made a commitment to ensure that “every citizen should have equal legal possibilities to propose him/herself as a candidate in elections.”²²

The Carter Center firmly believes that gender equality is also an important goal for democratic elections. Madagascar has committed to taking “measures to ensure that: a) women participate without any discrimination in all elections; b) women are represented equally at all levels with men in all electoral processes; c) women are equal partners with men at all levels of development and implementation of State policies and development programmes.”²³

Carter Center observers were deployed across the country for the entirety of the campaign period for the second round of presidential elections and legislative elections, which took place from Nov. 28 to Dec. 19.

The Carter Center congratulates the Malagasy people on conducting the campaign period in a peaceful manner. There have been no major violent events, an important achievement. Additionally, there was an impressive level of candidate registration, as 33 presidential candidates were on the ballot during the first round of elections and 2,054 candidates contested the legislative elections for 151 seats.

Freedom of assembly is recognized as an essential part of democratic elections; however, this right may be restricted under circumstances prescribed by law and necessary in a democratic society.²⁴ During the campaign period, candidates were free to organize meetings after fulfilling electoral code conditions requiring notification of administrative authorities. The Center believes that despite this requirement, no candidates reported difficulty with enjoying their freedom of assembly.

The Carter Center applauds CENI-T and the Friedrich Ebert Foundation for organizing three presidential debates between the two second round finalists, Dr. Jean-Louis Robinson and Hery Rajaonarimampianina. The tone of the debates was at times pointed, but were largely conducted in a respectful manner that allowed Malagasy citizens to hear directly from the candidates on live television and radio, as they discussed important issues about Madagascar’s future.

¹⁹ See for example, UDHR, art. 21(1); ICCPR, art. 25(b); AfCHPR, art 13(1); CISCHRFF, art. 29(b).

²⁰ ICCPR, art. 21; AfCHPR, art. 11; CISCHRFF, art. 12(1).

²¹ CIS, Convention on the Standards of Democratic Elections, Electoral Rights and Freedoms in the Commonwealth of Independent States, art. 9 (2).

²² CIS, Convention on the Standards of Democratic Elections, Electoral Rights and Freedoms in the Commonwealth of Independent States, art. 3(4).

²³ AU, Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, art. 9(1); SADC Protocol on Gender and Development, art. 12.

²⁴ ICCPR, art. 21; AfCHPR, art 11; CISCHRFF, art. 12.

In spite of such positive aspects, The Carter Center is concerned about several aspects of the electoral process related to candidates, parties, and the campaign environment. The main findings include that:

- Although the abundance of over 200 political parties is indicative of competition, The Carter Center regrets that most parties have not created robust internal institutions. Political parties play a critical role in democratic societies to connect citizens to government. Few parties in Madagascar have put forward a coherent slate of candidates. Some parties are empty shells, with a membership that does not extend beyond a single candidate. Madagascar's democracy would be better served if parties continue to build their membership. Moreover, parties should devote more effort to constructing platforms and policy statements beyond the personality of their featured candidate.
- The Center strongly believes that more needs to be done in terms of monitoring campaign finance, and being transparent about the source of election finance and campaign spending. This opaqueness and lack of national oversight makes it difficult to assess campaign fairness, as those allied to major national-level parties may enjoy an unfair advantage relative to independent candidates - particularly given the importance of private media in the Madagascar campaign environment.
- Similarly, The Carter Center also is disappointed by the lack of oversight over the code of conduct of candidates and political parties. Electoral rules and regulations exist to ensure fairness and that elections accurately reflect the will of the people. Without oversight and enforcement, there is no way to determine whether the campaign was conducted appropriately.
- The low proportion of female candidates is among the most significant weaknesses of the elections. Even though 46 percent of registered voters are women, only two of the 33 presidential candidates in the first round were women. In the legislative elections, 15 percent of the candidates were women, but only ten percent were ranked at the "head of the list," making it less likely that they will be elected. This does not reflect Madagascar's international commitment to ensure that "women are represented equally at all levels with men in all electoral processes."²⁵
- The Center recommends implementing legal and systematic measures that will ensure accurate representation of women in the democratic life of Madagascar and likewise recommends implementation of the goal of gender equality in terms of representation in public life as stipulated in Article 12 of the SADC Protocol on Gender and Development.²⁶
- Finally, The Carter Center regrets the decision by President of the Transition Rajoelina to replace one-third of Madagascar's regional governors with military personnel between the first and second round of the presidential elections. This act on Nov. 21 created uncertainty about the role of the military within key government posts during Madagascar's first post-coup election.

²⁵ AU, Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, art. 9(1).

²⁶ SADC Protocol on Gender and Development, Art. 12: "States Parties shall endeavor that, by 2015, at least fifty percent of decision-making positions in the public and private sectors are held by women".

Despite these failings, the peacefulness and prevailing calm during the campaign period, along with the high level of candidate registration and competition are laudable.

MEDIA ENVIRONMENT

Carter Center observers assessed that while media diversity is prevalent, the press is far too often tainted by biases and overly opinionated delivery of news. Despite this failing, it is worth noting that local media remained open about pricing for political advertising, creating at least some level of transparency in a critical realm of campaign finance. A limited number of media outlets also conducted voter education.

The ownership of the significant number of media outlets by politicians and their use in the campaign should be regulated to ensure a level playing field for all candidates in the legislative and presidential race.²⁷

CIVIL SOCIETY AND DOMESTIC OBSERVATION

According to the International Covenant on Civil and Political Rights, of which Madagascar is a signatory to, all persons have the right to participate in the public affairs of their country.²⁸ This includes the right of citizens to participate in non-governmental organizations²⁹ as well as the right of citizens to participate in citizen observer organizations, and contribute to voter education efforts.³⁰ Through these means, civil society can actively play an essential role in upholding an electoral process that is accountable and in which all participants can have confidence.

The election process was observed by a large number of domestic observers. The three main groups of civil society organizations deployed an estimated 10,000 mobile and stationary observers throughout Madagascar on Dec. 20, according to accreditation numbers from CENI-T. Carter Center and EISA observers noted that domestic observers were only present at about 40 percent of polling stations observed.

There were also an estimated 800 international observers deployed on Dec. 20, representing various intergovernmental and regional organizations including the African Union (AU), Southern African Development Community (SADC), European Union (EU), and the Indian Ocean Commission (IOC).

ELECTORAL DISPUTE RESOLUTION

Effective, clear, and fair procedures for electoral dispute resolution are an essential part of a well-functioning electoral process. Effective dispute resolution mechanisms are essential to ensure that effective remedies are available for the redress of violations of fundamental rights related to the electoral process.³¹ According to Madagascar's international commitments, everyone has the right to an effective remedy before a competent national tribunal for acts that violate their rights or freedoms, including the right to genuine elections and all associated

²⁷ The Carter Center did not conduct comprehensive quantitative media monitoring. For further information on the role of the press in the elections, please refer to the work of the European Union election observation mission, or Osservatorio di Pavia.

²⁸ ICCPR, art. 25; AU, AfCHPR, art.13.

²⁹ UN, CEDAW, art. 7.

³⁰ EISA, PEMMO, p.19.

³¹ UN, Human Rights and Elections: A Handbook on the Legal, Technical, and Human Rights Aspects of Elections, para. 47.

rights.³² In the instance of a dispute relating to elections, everyone has the right to a public hearing in front of an independent and impartial tribunal.³³ Madagascar's political commitments also suggest that the legal framework for elections should provide effective redress for violations of electoral rights.³⁴

The Carter Center welcomes the adoption of Law 2013-008, which added 10 judges, appointed by the groups that signed the roadmap, to the Special Electoral Court. The inclusiveness of the reconstituted court, which is responsible for adjudicating electoral disputes, is a positive measure that strengthened the confidence of political actors in the mechanism of electoral dispute resolution.

Despite this fact, the Carter Center regrets the disjointedness of the electoral complaints process. The convoluted procedure provided for by Art. 132 of the electoral law allows candidates and parties 10 calendar days after the polls close (in this case on Dec. 20) to file a complaint. This is problematic because the law provides that provisional results are released within 10 days following receipt of the last certified copy of polling station results, which can occur well after the complaint deadline has passed, so political actors will be forced to file complaints before provisional results are announced.³⁵

Moreover, the necessary criteria for voters to lodge complaints of the electoral process are overly restrictive. Voters must be registered and have voted in order to have the right to file a complaint about the process. Even then, their right to file a complaint is limited to the conduct of the electoral campaign in their constituency or in terms of the immediate jurisdiction of the polling station where they are officially registered. This does not provide for adequate exercise of the right to an effective remedy in accordance with international standards.³⁶

The 15-day window provided to the electoral court to process electoral disputes is sufficient. Nonetheless, the ongoing aggregation of election results could benefit from more resources in order to provide more robust verification of results.

VOTING

The quality of voting operations on election day is crucial to determining how closely an election falls in line with its democratic obligations. According to Madagascar's international and regional commitments, all citizens should enjoy the right to universal and equal suffrage,³⁷ and all citizens have the right to vote,³⁸ subject only to reasonable and objective limitations. A core obligation under international law is that elections shall be held by secret ballot,³⁹ which is recognized as a means of ensuring that the will of the people is expressed freely, and that a cast ballot cannot be connected with a voter to avoid intimidation and

³² UN, ICCPR, art. 2; ACHR, art. 25.

³³ UN International Covenant on Civil and Political Rights, art. 14(1); UN, Universal Declaration of Human Rights, art. 10; ECOWAS, Protocol on Democracy and Good Governance.

³⁴ AU, ACDEG, art. 17.

³⁵ In these elections, it is anticipated that CENI-T may release final results by Jan. 7, 2014.

³⁶ See for example, UDHR, art. 8; ICCPR, art. 2(3); AfCHPR, art 7(1).

³⁷ UN, ICCPR, art. 25; ACHR, art. 23; UNm UDHR, art. 21.

³⁸ ICCPR, art. 25; AU, AfCHPR, art. 13; ACHR, art. 23.

³⁹ UN, ICCPR, art. 25; ACHR, art. 23, UN, UDHR, art. 23.

political retribution.⁴⁰ Except in cases where a voter, such as an illiterate or disabled voter, is being lawfully assisted, a voter cannot waive their right to secrecy of the ballot.⁴¹

Malagasy law does not ensure that only a manageable and equitable number of voters are assigned to each polling station. While the CENI-T initially introduced an internal benchmark aim of having fewer than 1,000 voters per polling location, that number later increased to 1,200. However, in spite of their efforts, in some cases more than double this number of voters were assigned to a single polling location. For future elections, The Carter Center recommends that Malagasy electoral law be revised to stipulate a maximum number of voters per polling station.

Due to the increase of the number of voters in some areas, polling stations were added or moved to new locations. The delays of distribution of voter cards that serve as an important element of voter information on the location of their polling station seemed to have caused some confusion of the voters during the election day. In some cases Carter Center observers noted that prospective voters were turned away at polling stations observed due to either not being on the voters list or not having a national identification card.

There were many praiseworthy aspects of the Dec. 20 election. Carter Center and EISA observers visited 85 polling stations and reported that election day proceeded in an atmosphere that was primarily calm and peaceful. There were no reported incidents of election-related violence. The observer teams reported that in most stations observed they had good access to adequately observe polling procedures.

Additionally, though most observer teams noted delays to opening times at polling locations, the delays were minimal, often between five and fifteen minutes, and did not impact the opportunity for citizens to vote. In some areas observed, delays in opening reached one hour. Observers reported that in most cases delays in opening were due to a late start in setting up the polling stations and late arrival of election materials including voting booths and in some areas ballot papers. Opening procedures were generally followed, but observer teams evaluated the opening processes as average, poor, or very poor in 63 percent of stations observed.

Once voting began, voters were able to vote in a relatively efficient manner in most polling locations, with few queues. Observers reported that the polling process was good or excellent in 82 percent of stations observed.

Carter Center and EISA observers reported modest participation, with about 50 percent turnout at polling locations visited. If such figures reflect national turnout, that would be a sharp reduction from the more than 61 percent turnout reported in the Oct. 25 first round presidential vote.

The Carter Center and EISA observer teams also indicated that isolated irregularities cropped up in various polling locations across the country. Some problems were serious, such as the extremely late arrival of presidential ballots in two polling stations, forcing poll staff to

⁴⁰ EISA and Electoral Commission Forum of SADC Countries, Principles for Election Management, Monitoring, and Observation in the SADC Region, p. 24.

⁴¹ EU, Handbook (2nd Ed.), p. 79.

simply hold a legislative election during that time, allowing people to vote for one half of the election but not the other. Others were worrying, including one report of roughly a dozen armed guards inside the polling station. Furthermore, there was considerable confusion about which identification documents were necessary to vote, with officials in some cases accepting voter cards rather than the required national identification cards.

Eighty percent of polling stations observed did not close on time where they followed the procedure to allow all those in line at the time of closing to cast their ballots. Carter Center and EISA observers noted that the closing process was conducted poorly in 60 percent of stations observed.

Generally speaking, however, Carter Center and EISA observers did not report any widespread evidence of intimidation, active campaigning around polling stations, or outright attempts at electoral fraud.

COUNTING

The accurate and fair counting of votes plays an indispensable role in ensuring the electoral process is democratic and reflects the will of the voters. International and regional commitments indicate that votes be counted by an independent and impartial electoral management body whose counting process is public, transparent, and free of corruption.⁴²

Article 106 of Malagasy electoral law stipulates that whenever the number of ballots in the ballot box is greater than the number of people who signed in to vote, the polling staff must randomly withdraw a matching number of ballots from the ballot box and declare them blank and invalid.⁴³ These invalidated ballots are not reported separately, as there is no difference in recording procedures between genuinely blank ballots and those declared blank as a result of this process.

The Carter Center recommends that Madagascar introduce a new electoral procedure to ensure that should this situation arise in the future, that the number of blank and invalid ballots only reflects those ballots that are genuinely blank or invalidated, and reports any discrepancies between the number of signed-in voters and the number of ballots in the ballot box.

In a positive step, CENI-T for the second round of presidential elections and legislative elections introduced a new procedure to record the number of unused ballots as a part of the reconciliation of ballots process.

The Center also urges continued dedication of the return of results forms (PV) by polling staff, and calls for CENI-T to publish provisional results as quickly as possible. Timely announcement of election results is an important aspect of maintaining a peaceful, calm post-electoral climate. Results should be publically available disaggregated to the level of polling station.

⁴² African Charter, art. 17(1); UNHRC General Comment 25, para. 20; UN Convention against Corruption, Art. 18.

⁴³ Le Guide a l'Usage Des Membres du Bureau De Vote, page. 24.

The Carter Center also calls on all candidates and their supporters to abstain from disrupting the ongoing tabulation and respect the process.

The Carter Center has observed 96 elections in 38 countries. The Center conducts election observation in accordance with the Declaration of Principles of International Election Observation and Code of Conduct for International Election Observation adopted at the United Nations in 2005 and revised in 2012. The Center assesses electoral processes based on states' obligations for democratic elections contained in their regional and international commitments and in their domestic legal framework.

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