

THE
CARTER CENTER



MADAGASCAR:

NGO Submission to the U.N. Human Rights Committee

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Reporting Organization

A not-for-profit, nongovernmental organization, The Carter Center has helped to improve life for people in more than 80 countries by resolving conflicts; advancing democracy, human rights, and economic opportunity; preventing diseases; and improving mental health care. The Carter Center was founded in 1982 by former U.S. President Jimmy Carter and former First Lady Rosalynn Carter, in partnership with Emory University, to advance peace and health worldwide.

The Carter Center’s Democracy Program works globally to promote democratic elections and governance consistent with human rights. The Center has monitored more than 100 elections in 38 countries since 1989, forging many of the techniques now common in the field. The Democracy Program’s Democratic Election Standards (DES) has developed practical tools, including the Election Obligations and Standards (EOS) database and Assessment Manual which make available common criteria for assessing elections based on public international law.

The Carter Center in Madagascar:

The Carter Center was invited by the National Independent Electoral Commission for the Transition (CENI-T) to observe the 2013 presidential elections in Madagascar. The Carter Center did not observe the first round of voting for the presidential elections held on Oct. 25. Instead, the Center’s election observation was focused on the second round of presidential elections and legislative elections that took place simultaneously on Dec. 20.

The Carter Center deployed an initial core team of experts to Madagascar in October 2013. Meetings were conducted with key stakeholders, including representatives of the government, political parties, candidates, civil society organizations, the judiciary, media, police, and others to

explore the status of electoral preparations. Six Long Term Observers (LTOs) representing six different countries arrived in mid-November. After their arrival, the LTOs were briefed in capital and deployed to the field on Nov. 18 where they assessed the campaign period and electoral preparations in six regions including Toamasina, Fenoarivo, Antsirabe, Fianarantsoa, Toliara, and Antsiranana. The LTO teams provided regular reports on political developments in their respective regions.

The Carter Center partnered with the Electoral Institute for Sustainable Democracy in Africa (EISA) to observe the Dec. 20 polls. The EISA/Carter Center team consisted of 26 observers from 19 countries who visited 85 polling stations. Carter Center teams observed the aggregation of results in the transmission center (SRMV) and remained in Madagascar until the end of December to observe the tabulation process and the immediate post-election period. The Carter Center's core team remained in Antananarivo through January 2014 to continue to observe the post-election period, including the resolution of election-related disputes and the announcement of election results.

Issues and Suggested Questions for the Human Rights Committee

This submission is based on the data collected by The Carter Center's election observation mission to Madagascar, and addresses gaps in the legal framework for elections in Madagascar, as well observed issues related to the implementation of elections during the second round of the 2013 presidential elections. This submission offers questions that the Committee may consider asking of the State Party, and also provides some key recommendations to ensure that various stages of the electoral process are implemented in accordance with Madagascar's obligations under the ICCPR in the future.

Articles 2 and 14: The Right to an Effective Remedy and the Right to a Fair and Public Hearing

The Carter Center applauds the steps taken by Madagascar, as outlined in the State's Report, to give effect to international treaty obligations in national law, including the obligations to provide an effective remedy and the right to a fair and public hearing. In the context of the 2013 electoral process, The Carter Center had the following observations regarding the dispute resolution process.

Effective, clear, and fair procedures for electoral dispute resolution are an essential part of a well-functioning electoral process. Although the intent of the legal framework seems to be to support the timely and effective resolution of disputes, the current timeframe for submission of complaints is too short. Complaints must be submitted within ten days of election day, which means that the window for complaints closes even before results are made public. This means that there is no recourse for appealing results.¹ The Carter Center recommended that Malagasy lawmakers should consider modification of Article 132 of the Electoral Law in order to allow voters, candidates, and parties to submit complaints after provisional results are announced.

¹ The ability to challenge election results should be provided for by Law (SADC, Principles and Guidelines, para 2.1.10).

The criteria regarding who can submit a complaint as well as the scope of violations that are considered worthy of consideration as an official complaint is narrow and restrictive. In order to submit a complaint, two main conditions must be met: the person submitting a complaint must be a registered voter, and they must have participated in the election. Complaints are limited to the polling station where the voter was registered and the subject of the complaint can only be in reference to voting operations or electoral campaigns in that constituency. These regulations are restrictive and infringe upon voters' rights to an effective remedy.

The Carter Center welcomed the adoption of Law 2013-008, which led to a new composition of judges presiding over the Special Elections Court (CES) with the addition of 10 judges. CES members were appointed by political parties that signed the transitional roadmap (except the Zafy Mouvanca which did not appoint a member). It is regrettable that only two of the CES judges were women.

The inclusiveness of the CES selection process is a positive measure that strengthened political actors' confidence in the electoral dispute resolution mechanism, and contributed to the CES's ability to act with neutrality. However, moving forward Madagascar should strive to separate dispute resolution mechanisms from politics and avoid political appointments.

In total 70 complaints were filed in relation to the presidential election, the majority of which were submitted on the last day of the complaint period. A total of 580 complaints were submitted related to the legislative elections. Of these complaints, two significant submissions called for a cancellation of the election results and disputed the preliminary results.

The Carter Center viewed the Jan. 14 decision of the CES to recount votes and compare the voter lists from the first and second round in nine regions, as requested by the Robinson camp. Also, it was commendable that lawyers from both opposing camps were present to witness this action. This transparency was not only an effective means of assessing allegations of electoral fraud made by the Robinson camp, but also in building trust for the dispute resolution mechanism during judicial review of the election result.

Questions for consideration:

- ***How will Madagascar ensure the independence and impartiality of the judiciary, including during electoral processes with regard to election disputes?***
- ***How will electoral dispute resolution processes be strengthened for future elections to better ensure that effective remedies are available for all citizens?***

Article 3: Equality Between Men and Women

As noted by Madagascar in paragraphs 105 and 321-324 of the State Report, much remains to be done to increase the number of women in government and parliament. The Carter Center seconds this finding, drawing on its observations from the 2013 elections.

Gender equality is an important goal of democratic elections. Art. 5 of the Malagasy Constitution provides for gender equality in voter eligibility. Art. 6 of the Constitution mandates equality between men and women and forbids all forms of discriminations based on gender. International

and regional obligations also protect women's rights and ensure their democratic right to participation.² 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 in all electoral processes;
- c) women are equal partners with men at all levels of development and implementation of State policies and development programs."³

According to the latest comparative reports⁴ aimed at monitoring gender equality in SADC countries, Madagascar is situated at the bottom of the list in achieving the objectives of its regional commitments.⁵ The current representation of Malagasy women in decision-making positions is exceptionally low. While in the previous parliamentary mandate 11 percent of parliamentarians were women, only 4.7 percent of the country's mayors are female and only 2.6 percent of *Chefs Fokontany* are women.

The Carter Center regrets that, in spite of Madagascar's national and international obligations regarding gender equality, the meaningful participation of women as candidates in the 2013 elections was low. Just two of the thirty-three candidates in the first round presidential election were women, and none advanced to the runoff elections.⁶ In the legislative elections, female candidates represented only 15 percent of total number of candidates, and only 10 percent of female candidates were ranked at the "head of the list" of candidates, making it distinctly unlikely that they would be elected.

During the presidential and legislative election campaign, civil society organizations reported isolated cases of intimidation towards female candidates and their supporters. In future elections, additional measures should be put in place to ensure the security of female participants of the electoral process.

The Carter 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.⁷ Financial incentives could also be put in place to encourage more women to run in future legislative elections. These could include the allocation of funding specifically for the campaigns of female candidates, to waive candidate fees for women who run for office, or to provide tax incentives to political parties who nominate female candidate. These measures could increase gender parity both in the number of candidates and in the number of people of each gender elected in Madagascar.

² UN, ICCPR, arts. 2 and 3.

³ 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.

⁴ Baromètre du Protocole de la SADC sur le Genre et Développement - Last Barometer (2012) indicates that Madagascar falls short of achieving the Protocol's objectives.

⁵ SADC, Protocol on Gender and Development: <http://www.sadc.int/documents-publications/show/803>

⁶ In the first round of presidential elections, Saraha Georget Rabeharisoa received 4.5 percent of votes while Brigitte Ihantanirina Rabemanantsoa received 1.38 percent.

⁷ SADC, 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".

Women and the Voter Register

Although official voter registration data disaggregated by gender is not available, some civil society groups compiled statistical information related to women's participation in the voter registration process which indicated women likely participated at high levels, with an estimated 46 percent of the final registry being women.⁸

Question for consideration:

- ***What special measures does Madagascar intend to take to better ensure the full participation of women in the electoral process, as well as in government and political life more broadly?***

Articles 19 and 25: Freedom of Opinion and Expression and Access to Information, Right to Participate in Public Affairs

The State Report of Madagascar did not address the issue of campaign finance regulation, an area of significant weakness during the 2013 presidential elections. The findings of the Center are outlined below.

Campaign Finance

Madagascar is obligated to take measures to prevent corruption, particularly in the context of campaign financing.⁹ Campaign finance regulations should enforce a transparent process in which all political parties and candidates are treated equally.

While Article 47 of Madagascar's Electoral Law references regulating campaign finance, the political parties law makes no reference to campaign finance regulation. Regardless of the legal foundation for campaign finance oversight, no scrutiny or regulation of money used in campaigns was conducted during the 2013 Malagasy elections. The lack of campaign finance regulation and oversight was one of the largest shortcomings of the 2013 elections, particularly in the politically charged context in which the 2013 elections were conducted and the spirit of the Roadmap that sought to protect a neutral environment.

The overall absence of transparency in campaigns coupled with the refusal of both presidential candidates to publish the details of their campaign spending contributed to an opacity of the 2013 presidential and legislative campaigns, undermining Madagascar's obligations for democratic elections.¹⁰ With no campaign finance regulations in place, it was difficult for observers, parties, and citizens to assess how much money was spent, or whether financial resources were improperly used to secure an electoral edge. The Center regrets that Madagascar lacks a clear legal framework to regulate campaign finances, and that attempts by civil society organizations to compel candidates to publicize their assets were ignored. Greater oversight of campaign

⁸ Data related to the participation of women in the elections was compiled from a range of meetings with stakeholders including CENI-T, National Women's Council of Madagascar, Focus Development Association, and EISA.

⁹ U.N. Convention Against Corruption, Art. 7, 18 and 37; AU, African Union Convention on Corruption, art. 7.

¹⁰ UNHRC, General Comment No. 25, para. 19; AU, African Charter on Democracy, Elections and Governance, Art 2.

expenditure and public disclosure of candidate assets would have provided greater financial transparency throughout the process while strengthening voter confidence in the electoral process.

Question for consideration:

- ***What measures will Madagascar put in place to ensure better regulation of campaign finance to ensure a more level playing field for all political candidates and access to information for voters?***

Article 25: The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service

As noted in paragraph 328 of the State Report, Madagascar has taken steps to establish a body charged with organizing the elections and publishing the provisional election results. During its observation, The Carter Center noted ways in which this body could be further strengthened going forward.

In addition, The Carter Center would like to draw attention to two areas of concern with regard to Article 25 rights specifically related to the drawing of electoral boundaries and voter registration that were not directly addressed by the State in their submission.

Election Management

An independent and impartial election management body that functions transparently and professionally is recognized as an effective means of ensuring that citizens are able to participate in a genuine democratic process and that other international obligations related to the democratic process can be met.¹¹

The 2013 elections were notably the first to be conducted in Madagascar through an independent body. Previous elections in Madagascar were primarily conducted through the Ministry of Interior. The Constitution of the Fourth Republic of Madagascar provides for an “independent national structure” that is responsible for the conduct of elections,¹² and the Roadmap¹³ established a temporary election administration structure, the National Independent Election Commission (CENI). The election commission’s mandate was later domestically established by Organic Law n°2012-004¹⁴ which expresses the institutional and financial independency of the collegial body, the National Independent Election Commission for the Transition (CENI-T).

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. In its preliminary statement released on Dec. 22, the Carter Center also noted that its long-term observers reported that due to limited resources, district-level election administration often

¹¹ UNHRC, General Comment No. 25, para. 20.

¹² The Constitution of the Fourth Republic of Madagascar, Nov. 22, 2010, Art. 5: “The organization and administration of electoral operations falls under the jurisdiction of an independent national structure”

¹³ The Roadmap was introduced to the Malagasy legal system by the Organic Law n°2011-014, Dec. 28, 2011.

¹⁴ Organic Law n° 2012-004, Feb. 1, 2012.

depended on municipal-level civil administration to conduct the elections. In future elections, CENI-T should re-evaluate its structure, strive to continue to enhance its independence, and reduce the need to rely on government elements at the local level.

Although the CENI-T is authorized to release election results, these results are not binding. Only the Special Electoral Court (CES) has the power to release final certified results. As a result, the decision-making power of CENI-T as the only authority mandated by the Constitution to organize the elections is greatly diminished compared to that of the CES. While the CENI-T's budget allows for a thorough tabulation and results process, the CES has a much more limited financial and technical capacity to perform the same tasks. In future elections, the full authority for the counting, tabulation, and announcement of results should rest with an independent electoral authority.

Boundary Delimitation

To ensure the right of equal suffrage is respected, the delimitation of boundaries should seek to ensure that elected representatives represent reasonably equal numbers of constituencies.¹⁵ Boundary delimitation should be managed by an independent and impartial body representative of the society as a whole to ensure that electoral boundaries do not favor any particular social group or political interest.¹⁶

The current boundary delimitation creates considerable variance between districts, and therefore undermines the principle of equal suffrage. The current system is based on older administrative divisions and results in significant differences in the number of inhabitants represented for different legislators, meaning that the votes of citizens in districts with fewer inhabitants per seat have a greater impact on election results than the vote of a citizen in a larger district. Constituent representation per legislative seat in Madagascar ranges from as low as 5,219 inhabitants per seat in Ampanihy to as high as 143,036 inhabitants per seat in Anjozorobe. While the use of pre-existing administrative divisions as a basis to draw constituencies may have had some financial and logistical advantages, future designs of the electoral system should include a revised boundary delimitation process that creates a more equitable population distribution in Madagascar's parliamentary seats.

Voter Registration

Voter registration is recognized as an important means to ensure the right to vote and should be made available to the broadest pool of citizens possible without obstacles to ensure universal and equal suffrage.¹⁷ The Constitution of Madagascar and other Malagasy legislative acts affirm these human rights.¹⁸ For example, Madagascar's Electoral Law¹⁹ outlines the procedure for establishing the voter list and stipulates that it must be regularly updated. While the voter list is

¹⁵ UNHRC, General Comment No. 25, paragraph 21

¹⁶ EISA and Electoral Commission Forum of SADC Countries, Principles for Election Management, Monitoring, and Observation in the SADC Region, p. 13

¹⁷ U.N., ICCPR, art. 25(b); UNHRC, General Comment No. 25, para. 11; A.U., A.U. Declaration on the Principles Governing Democratic Elections in Africa, art. 1;

¹⁸ The Constitution of the Fourth Republic of Madagascar, Nov. 22, 2010.

¹⁹ Organic Law n° 2012-005, March 15, 2012.

independent of the civil register, identity verification (using a national identity card) is required when registering as a voter.

Voter registration took place between Oct. 1, 2012 and Oct. 9, 2013, which was prior to the arrival of Carter Center observers. The comments included here reflect analysis of the legal framework for voter registration, the impact of the voter registration process observed on election day, and information collected from interviews with political parties, civil society organizations, and international organizations.

Voter registration was conducted by election officials deployed by CENI-T to each of the 1,553 municipalities of Madagascar. Although the Carter Center did not directly observe the registration process, the process included an official display of the voters list, a complaint period for correction of irregularities, and the distribution of voter cards to registered voters. However, in some circumstances the distribution of these cards by local electoral administration (Fokontany) was delayed. While voter cards were not required to vote in Madagascar's 2013 elections,²⁰ the document has traditionally been compulsory in previous elections. This led to many voters believing that voter cards would be required in order to vote. Additionally, although the voter card was not required to vote, it is an important source of information, and indicates the designated polling location for each voter. Voters without voter cards did not have access to information about their polling location. In some areas, Carter Center observers witnessed the distribution of voter cards as late as election day.

Reports from international observers indicated that during the first round of presidential elections on October 25 (prior to the arrival of Carter Center observers) some problems arose related to inadequacies with the voter list. As a result, CENI-T reviewed the official voter list and discovered that some names of properly registered voters were omitted from the final copy used for voter identification at the polling station, an error that caused some voters to be disenfranchised.

This resulted in the decision to revise the voters list between the first and second rounds by reintegrating 143,408 voters that were initially registered but whose names were not added to the list in the first round of presidential 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 supports the CENI-T decision not to open the voter list, opting instead to reinstate the names of previously registered voters. Re-opening the list for the registration of new voters between the first and second rounds of elections would have been challenging, and would have meant that the two parts of the same presidential election were conducted with different electorates.

Only small groups of people should be excluded from voting under Malagasy Electoral Law.²¹ Madagascar's constitution allows for voters to be excluded from participation in elections only by court ruling.²² If these are the only groups of people excluded under established procedures, being based on objective and reasonable criteria, such restrictions are in line with international

²⁰ The national identity card is the only identification required for polling, not the voter card.

²¹ Organic Law n° 2012-005, March 15, 2012, Art. 4.

²² The Constitution of the Fourth Republic of Madagascar, Nov. 22, 2010, Art. 5

standards for democratic elections. Madagascar's laws do not provide for the disenfranchisement of sick or incarcerated citizens. The Carter Center regrets however, that attempts were not made to register and facilitate the enfranchisement of eligible voters in Madagascar's 2,648 hospitals²³ or 41 detention centers.²⁴

Questions for consideration:

- ***How will Madagascar ensure the continued independence and impartiality of the election management body?***
- ***What steps will Madagascar take to ensure greater equality among districts when drawing electoral boundaries?***
- ***What steps will Madagascar take to ensure the accuracy and comprehensiveness of the voters list so that Malagasy citizens are not disenfranchised in the future?***

²³ 2,485 Municipal Health Centers (CSB 1 and 2) have the capacity of accommodating 9,940 patients (source: Ministry of Health). Additionally, there are 148 other health institutions with residing patients. However, the number of eligible adult patients currently being hospitalized in the public health centers is not available.

²⁴ The population of those awaiting trial in Madagascar's detention centers is thought to be about 10,000.

Annex 1: Recommendations of the Carter Center Election Observation Mission to Madagascar (Excerpted from the [Center's Final Report](#))

The Dec. 20, 2013 elections in Madagascar marked a pivotal turning point in Malagasy history, both as an important step toward democracy and as a foundation for renewed growth and development.

Overall, the Center found the process to be orderly, transparent and in accordance with international obligations for democratic elections. The Carter Center urges Madagascar to use the 2013 elections as a foundation on which to foster both democratic development and national reconciliation. These are critical steps to creating a lasting end to the crisis and fully emerging from its ongoing political transition.

The Center commends the Malagasy people for participating in a peaceful and orderly process and for the successful democratic elections of 2013. There is, however, room for improvement. To continue its progress toward democratic governance, the government of Madagascar should make efforts to make campaign finance significantly more transparent, ensure greater representation of women in future elections, empower civil society organizations to educate the Malagasy people on voting procedures, and focus on national reconciliation and cooperation.

Recommendations

For future elections, the Carter Center makes the following recommendations in spirit of mutual respect and support:

To the Government of Madagascar

National Reconciliation. The Government should emphasize messages of national reconciliation and cooperation in order to ease political tensions and ensure that the 2013 elections mark a clear turning point away from the country's history of winner take all politics.

A Permanent and Independent Election Management Body. CENI-T should be transformed into a permanent electoral institution with financial independence. Doing so would reinforce the progress made in the 2013 elections and allow future elections to be conducted with independent management and oversight. Furthermore, the composition of CENI-T should be re-evaluated in order to enhance its independence and reduce the need to rely on government elements to support it at the local level.

Campaign Finance. Campaign finance regulation should be put in place prior to the next election. The law should include limits on campaign spending and a mechanism for transparent publication of all money spent on campaign activities. An enforcement mechanism should also be put in place to sanction those that violate those new campaign finance rules.

Legal Framework for Electoral Dispute Resolution. Legislators should modify Art. 132 of the Electoral Law in order to allow appeals and complaints *after* the release of provisional results by CENI-T. In the article's current wording, the deadline to file a complaint occurs before the release of provisional results by CENI-T, thereby prohibiting any complaints of election results.

In the same spirit, the overly restrictive criteria for filing complaints should be broadened. The criteria for the plaintiff to file a complaint are to: 1) be a registered voter; 2) have participated in the election; 3) to limit complaints to activities in the polling station where the voter is registered 4) to limit the subject of complaints only to the regularity of voting operations. These restrictions damage the Malagasy citizens' right to an effective remedy against improper action, a right that is recognized in international standards for democratic elections.

Authority for Tabulation and Announcement of Results. Further consideration should be given to the process of tabulating and announcing official results. In future elections, the authority for the counting, tabulation, and announcement of results should rest with an independent electoral authority. If this responsibility continues to be divided across two institutions, the division of responsibility should be done in a way that preserves the efficiency and transparency of the tabulation process.

Ballots for two-member constituencies. Although parties were able to nominate two candidates in two-member constituencies, only one candidate for each party appeared on the ballots. This mismatch between the electoral system and ballot design should be rectified in advance of future elections.

Advancing the Participation of Women in Politics. The Carter Center recommends implementing legal and systematic measures that will ensure accurate representation of women in the democratic life of Madagascar and that steps are taken to ensure full implementation of Article 12 of the SADC Protocol on Gender and Development. Specific measures to increase the representation of women in the Malagasy political system should be considered, including financial support for women candidates, tax exemptions, or waiving of candidate fees for women who run for office.

National Census. Madagascar should conduct a comprehensive national census before future elections are held. This will be crucial to determining who is and is not eligible to vote, and to maintaining the integrity of the voter registration process.

Revision of Voter Registration Process. The Carter Center recommends revision of Madagascar's voter registration process to ensure an accurate and complete voter registry in advance of future elections. Voter cards should be distributed to all Malagasy citizens with ample time before elections take place. The electoral management body should ensure that voters are given ample opportunity to be notified of their voting eligibility status *and* given sufficient time to appeal any decisions that would restrict their right to participate.

Boundary Delimitation. While the use of pre-existing administrative divisions as a basis to draw constituencies presents significant advantages, future designs of the electoral system should include a revised boundary delimitation process that creates a more equitable population distribution in Madagascar's parliamentary seats.

Strengthen Counting Procedures. Although no significant irregularities were observed during the counting process, future elections would benefit from a review of the electoral law to strengthen counting procedures to ensure an accurate count and provide stronger guidance to polling staff. The Carter Center recommends that Madagascar introduce a new electoral procedure in order to

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ensure that the number of blank and invalid ballots only reflects those ballots that are genuinely blank or invalidated. A system should also be put in place to allow polling stations to more accurately report any discrepancies between the number of signed-in voters and the number of ballots in the ballot box.

Number and Distribution of Polling Stations. For future elections, The Carter Center recommends that Malagasy Electoral Law be revised to stipulate a maximum number of voters per polling station and put the appropriate framework in place to enforce this threshold. The Center also recommends an appropriate procedure for the effective distribution of voter cards and an alternative method to orient voters to their assigned polling station.