

## TRANSITIONAL CHARTER

### *PREAMBLE*

CONSIDERING that the current deterioration in the political situation threatens national unity and solidarity and endangers peace and security, social and economic development, and the stability of Madagascar;

CONVINCED of the need to exit from the political crisis, to re-establish social peace, to guarantee the security of people and property, to relaunch the economy and to restart the Administration by negotiation and consensus;

RECOGNISING that the cyclical crises which have afflicted Madagascar since 1972, have hindered the development of the country and that it is important to establish a lasting foundation for a stable democratic republic, united in its diversity and respectful of Human Rights and fundamental liberties;

COMMITTED to ensuring that all Malagasy citizens thrive by adopting a new Constitution with a view to establishing the Fourth Republic of Madagascar;

REAFFIRMING the wish of the political leaders to restore respect for the sociocultural values of the Malagasy People, in particular their “fihavavana” (kinship);

DETERMINED to implement the process of national reconciliation to assuage the individual and collective wounds that History has inflicted;

UNDERTAKING to respect the principles of the separation and balance of powers, exercised by means of democratic processes and with respect for the rule of law;

The following parties:

- the Andry RAJOELINA party;
- the Marc RAVALOMANANA party;
- the Didier RATSIRAKA party;
- the Albert ZAFY party;

Under the auspices of

- the African Union (l’Union Africaine, UA);

- the South African Development Community (la Communauté pour le Développement de l'Afrique Australe, SADC) ;
- the United Nations (UN); and the
- International Organisation of La Francophonie (l'Organisation Internationale de la Francophonie, OIF) ;

In the name of the Malagasy People,

AGREE:

### **Chapter I – The Transitional Principles**

#### **Article 1**

The political parties shall work towards a neutral, inclusive, peaceful and consensual transition, with a view to organising regular, fair, transparent, equitable and credible elections, and establishing stable democratic institutions.

#### **Article 2**

The purpose of the Transition is to:

- ensure the continuity of the State and respect its national and international commitments;
- re-establish order and security;
- initiate the “truth and reconciliation” process;
- design and set up state structures which genuinely satisfy the aspirations of the diverse components of the Malagasy People and guarantee the equitable distribution of wealth and economic, social, cultural and human development while respecting their diversity and unity;
- organise elections and consult the population (referendum on the constitution and presidential and legislative elections) before establishing a new constitutional act and setting up republican and democratic institutions.

## **Chapter II – Transitional Organs and Institutions**

### **Article 3**

Upon signature of the present Charter, institutions to manage the State during the period of transition shall be established. This should be done no later than fifteen months from the date of signature of the present Charter. The transitional institutions shall be dissolved as and when the institutions planned in the new constitution are established.

The transitional institutions and organs shall be guarantors of the normal functioning of the State. They consist of:

#### **3.1 An executive organ including:**

- The Transitional President, who shall carry out the functions of Head of State;
- The Transitional Vice-President;
- The Transitional Government of National Unity, led by a Prime Minister, Head of Government, and three Deputy-Prime Ministers in charge of ministerial portfolios, and including all the political tendencies of Madagascar;

#### **3.2 A two-chamber legislative organ including:**

- the Transitional Superior Council (le Conseil Supérieur de la Transition, CST) ;
- the Transitional Congress (le Congrès de la Transition, CT) ;

#### **3.3 An organ responsible for national reconciliation : The National Reconciliation Committee (le Conseil nationale de réconciliation, CNR) ;**

### 3.4 Two consultative organs :

- The Economic and Social Committee (le Conseil Économique et Social, CES) ;
- The Committee for Reflection on Defence and National Security (le Comité de réflexion sur la Défense et la sécurité nationale, CRDSN).

### 3.5 A judicial organ: the Transitional High Court (la Haute Cour de la Transition, HCT);

### 3.6 An organ for the organisation and supervision of elections: the Independent National Electoral Commission (Commission électorale nationale indépendante, CENI).

The following institutions shall be replaced by the Transitional organs in accordance with the present charter:

- The Presidency of the Republic;
- The National Assembly;
- The Senate;
- The Constitutional High Court.

#### *A. The Transitional President*

#### Article 4

The President of the Transition shall:

- Be the symbol of national independence and territorial integrity;
- Ensure national solidarity and the strict application of the present Charter;
- Ensure the proper functioning of the provisional institutions of the Republic. He shall ensure the continuity of the State and respect for the international commitments made by the Republic of Madagascar;
- Chair the Council of Ministers;
- Appoint the Prime Minister, Head of the Transitional Government of National Unity, under the conditions determined in Article 10 of the

present Charter and dismiss him in agreement with the party concerned;

- Appoint and dismiss, on the Prime Minister's proposal, members of the Government;
- Appoint senior civilian and military employees, as well as those of organs relating to the State and the Council of Ministers;
- Monitor the implementation of general state policy during the Transition and the activities of the various State structures. For this purpose he may use the organs of inspection and control of the different State services;
- Be the Supreme Commander of the Armed Forces. For this purpose he shall appoint the senior leaders of the Army, the Gendarmerie and the National Police Force. He shall be in charge of the State General Inspectorate, the Army General Inspectorate, the Gendarmerie General Inspectorate and the Police General Inspectorate;
- Be the guarantor of independence and of justice and exercise the right of pardon in the Superior Council and the Magistracy;
- Proclaim a state of emergency, of national need or of martial law should circumstances require this for the defence of the Republic, public order or the security of the State, according to the conditions and procedures foreseen by law;
- Adopt the orders and decrees debated in the Council of Ministers;
- Promulgate laws and orders;
- Accredit and recall ambassadors and special envoys of the Republic of Madagascar to other states and international organisations. He shall receive the letters of introduction and of recall of State representatives and international organisations recognised by the Republic of Madagascar;
- Chair official ceremonies; and
- Confer State decorations.

## Article 5

If the Transitional Presidency is vacant, the Vice-President shall act in interim until a new President is nominated from the same party.

### *B. The Transitional Government of National Unity*

## Article 6

The Transitional Government of National Unity shall consist of a consensus Prime Minister, three Deputy Prime Ministers representing the political parties and 28 Ministers representing the political movements of Madagascar.

## Article 7

The Prime Minister, Head of the Transitional Government of National Unity, shall:

- Chair the Government Council;
- Define and direct State policy. He shall provide regular updates on major policy to the Transitional President;
- Without prejudicing the competences devolved to the Transitional President, as defined in Article 4 above, appoint State civilian and military employees to the Government Council. He shall have regulatory powers. Within this framework, he shall ensure the implementation of laws and orders;
- Lead Government business and be responsible for coordinating the activities of different ministerial departments;
- Adopt draft laws and orders presented for debate in the Council of Ministers. Draft laws shall be submitted to the Office of the Transitional Congress.
- Be in charge of the Administration;
- Appoint senior civilian and military employees, as well as those in organisations relevant to the State, to the Government Council, except for those foreseen in Article 4 of the present Charter;

- Delegate some of his powers to members of the Government, with faculties of sub-delegation, in particular to Deputy Prime Ministers;
- Monitor the implementation of judicial decisions;
- Have access to State monitoring organs, without prejudice to the provisions of Article 4 above;
- Guarantee the maintenance of order and public security, while respecting fundamental liberties and Human Rights. To this end he shall be the Head of all forces of security and public order;
- Negotiate treaties and international agreements in accordance with the principles agreed in the Council of Ministers;
- Summon electors for the referendum on adoption of the new constitution, as well as for presidential and legislative elections.

Competences other than those specifically devolved to the Transitional Presidency, the Transitional Superior Council and the Transitional Congress are under the jurisdiction of the Prime Minister, Head of Government.

## Article 8

All measures for ensuring the continuity of public services at the level of the State and of local communities shall be approved by the Government Council.

### *C. The legislative organ*

## Article 9

The Transitional Superior Council, the High Chamber of the legislative organ, shall have **65 members**.

It shall elect the members of the Permanent Office and Committee Presidents.

## Article 10

The Transitional Superior Council shall decide its own organisation, functioning and internal regulations. In general, decisions shall be taken by consensus.

## Article 11

If the post of CST President is vacant, the functions of the President will be carried out by the Deputy Presidents until a new President is elected in accordance with Article 14.

## Article 12

The Transitional Congress shall be the Lower Chamber of the Transition. It shall have **258 members**.

The members shall be appointed by decree of the Transitional President.

The Transitional Congress shall elect a maximum of six Vice-Presidents from among its members.

The Permanent Office of the Transitional Congress shall consist of the President and the Deputy Presidents. It shall be assisted by a General Secretariat.

The organisation and functioning of the Transitional Congress shall be determined by an internal regulation adopted by its members.

## Article 13

The legislative function, the countervailing power of the Executive, shall be exercised jointly by the two chambers. Proposals for laws are shared between the Government, the Transitional Superior Council and the Transitional Congress.

The two chambers shall:

- Vote on organic laws, finance laws and ordinary laws;
- Ratify orders. These acquire legislative force when the law of ratification is published in the Official Journal;
- Authorise the ratification of international agreements and treaties;
- Supervise and monitor government activity.

In case of disagreement between the two chambers the law project or proposal shall be definitively adopted in a joint meeting of the two chambers.

#### Article 14

The Presidents of the two chambers shall advise the Transitional President before any announcement of a state of emergency, state of national need or martial law, should circumstances require this for the defence of the Republic, public order or the security of the State.

#### Article 15

Both the Prime Minister and members of the Transitional Congress may propose legislation.

#### Article 16

The President of the Transitional Congress and its members shall be authorised to use the monitoring and inspection organs of the different State services.

### *D. The National Reconciliation Committee (CNR)*

#### Article 17

The CNR shall be responsible for designing and implementing the process of national reconciliation based on the concept of “truth and reconciliation”, for organising regional conferences and the national conference, and for

revising and, when appropriate, preparing and legal texts and basic regulations on the refounding of the Republic.

The CNR shall consist of **9 members** including a President designated by the present Charter. For the other eight members the political parties shall each designate two members.

### Article 18

To this end, a “Truth and Reconciliation” Commission, a National Commission responsible for redrafting the Constitution and an organising committee for regional conferences and the national conference shall be set up.

The “Truth and Reconciliation” Commission shall review all the events which have affected political, economic and social life in Madagascar.

It shall study all questions relating to reparations, compensation and possible reconstitution of careers during the period under consideration.

The organisation and functioning of the CNR shall be determined by an internal regulation adopted by its members.

### *E. The Economic and Social Committee (CES)*

#### Article 19

The Economic and Social Committee shall be a consultative organ consisting of **72 members**.

#### Article 20

Members of the CES proposed by civil society and by the parties shall be appointed by decree of the Transitional President.

The CES shall be directed by a Permanent Office consisting of a President and a Vice-President assisted by a General Secretariat. All other aspects of its organisation shall be determined by internal regulations developed by its members.

## Article 21

The Economic and Social Council shall be responsible for making recommendations to the Government on economic and social policy and for establishing an equitable regional balance.

It shall be compulsorily consulted on draft finance laws.

## *F. The Committee for Reflection on Defence and National Security (CRDSN)*

### Article 22

A consultative organ on questions of defence and national security shall be established, the Committee for Reflection on Defence and National Security (CRDSN). The CRDSN shall be responsible for leading a debate on questions of defence and national security, in particular on ways and means of reinforcing cohesion and discipline within the army and security forces, in order to build a republican army at the service of the nation.

It shall consist of **8 members** designated by the political parties (2 representatives per party).

## *G. The Transitional High Court (HCT)*

### Article 23

The Transitional High Court shall ensure that the provisions of the present Charter are respected. It shall legislate on any contentious matters relating to referendum processes and the presidential and legislative elections or any other national election. It shall regulate any conflicts of competences between two or more State institutions or between the State and one or several local communities. It shall monitor respect for human rights and fundamental liberties as well as the implementation of international agreements which are binding on Madagascar.

The HCT shall consist of **11 members** with confirmed judicial experience and appointed according to the following rules of allocation:

- One member designated by the Transitional President;
- One member designated by the Transitional Superior Council;
- One member designated by the Transitional Congress;
- One member designated by the National Reconciliation Committee;
- Three members designated by the Magistracy Superior Council;
- Four members designated by the political parties (one representative per party).

The President of the Transitional High Court shall be elected by his peers.

The Transitional High Court shall legislate on whether laws and orders conform to the provisions in the present Charter. It shall also ensure the compatibility of this legislation as well as that enacted by the competent organs of decentralised authorities with the international treaties in force, particularly those designed to guarantee Human Rights and fundamental liberties.

To this end, the Transitional High Court may be used by the Transitional President, the Prime Minister or one third of the members of the Transitional Congress or the Transitional Superior Council.

#### *H. The Independent National Electoral Commission (CENI)*

##### Article 24

A National Independent Electoral Commission (CENI) shall be established. It shall be responsible for organising and supervising all electoral operations. It shall also be responsible for awareness-raising and education of the population relating to elections. It shall be composed of experienced, credible and competent individuals, of substantial integrity. CENI shall be established by the national conference.

### **Chapter III: Amnesty measures and annulment of charges**

- **General principles governing the amnesty**

#### **Article 25**

The National Reconciliation Committee shall propose a general amnesty law for adoption by the Transitional Congress, with the aim of political and social appeasement and support for the national reconciliation process. The amnesty law shall scrupulously respect the regulations, general principles and traditions of international law, as well as the current treaties or international agreements designed to suppress war crimes, acts of genocide and crimes against humanity. With respect to the same regulations and principles, the amnesty law shall neither apply to nor exonerate grave violations of Human Rights and of fundamental liberties, which are protected by regional and international instruments by which the Republic of Madagascar is bound. Nor shall it exonerate crimes and offences involving attacks on people's lives or physical integrity.

#### **Article 26**

The amnesty law shall be based on strict respect of the principle of presumption of innocence. It shall definitively end judicial proceedings of any kind in all jurisdictions and courts. It shall bring to an end any public action. It shall annul any judgements and administrative sanctions of any kind whether definitively pronounced or not.

- **Preparing and voting on the amnesty law**

#### **Article 27**

A law project on the amnesty shall be developed by the political parties following the negotiations at the Carlton Hotel in Antananarivo and annexed to the present agreement. It shall be given priority in the agendas of the two chambers (CST and CT) for ratification during the first sessions.

- **Objective and coverage of the amnesty law**

### Article 28

The amnesty law shall cover any violation, negligence or error, whatever its nature, objective or classification, committed during the exercise of their functions and duties by any person in a position of management or working for the State, as well as by opposition politicians, between January 1, 2002, and the date of signature of the present agreement.

Any administrative or legal proceedings, decisions, or judgements, relating to offences or events of a political nature presented as offences in common law, shall be null and void.

### Article 29

Any person eligible for amnesty shall be released without delay, and shall retrieve his civil and political rights without further formalities.

### Article 30

The amnesty law shall enter into force following its promulgation and publication in the official journal of Madagascar.

### Article 31

Any person who was a victim of the political events between 2002 and the date of signature of the present agreement and suffered damages of any kind, shall be entitled to compensation and/or damages by the State, according to terms and conditions determined by the CNR.

### **Chapter IV – Status of former Heads of State**

#### **Article 32**

A special statute shall be developed which will accord the former Heads of State, including the Head of State of the Transition, the status due to their former rank, preserve their dignity and guarantee their security.

Former Heads of State shall be appointed senators for life.

### **Chapter V – Organisation of elections**

#### **Article 33**

The presidential and legislative elections shall be organised no later than fifteen months from the date of signature of the Transitional Charter, following an independent evaluation of Madagascar's capacity to organise the elections. This evaluation shall be carried out by national and international experts from the UA, SADC, OIF, the UN and the European Union.

#### **Article 34**

During the period of transition, and throughout the electoral process, Madagascar shall benefit from the political, diplomatic, technical and financial support of the international community. National and international observers shall observe the elections in situ.

### **Chapter VI – Drafting the new constitution**

#### **Article 35**

The Republic of Madagascar shall be provided with a new Constitution.

In addition, the Constitutional project shall include the following provisions:

- The President of the Republic shall be elected by universal direct suffrage for a five year mandate which may be renewed once;
- Any change to the Constitution affecting the organisation or functioning of public powers or the form of the State must be ratified by referendum.

A Constitutional project submitted to a referendum shall include the recommendations of the national conference organised by the National Reconciliation Committee.

### **Chapter VII – International monitoring**

#### **Article 36**

The international community, witness and guarantor of the commitments made within the framework of the Transitional Charter, shall be called upon to witness the transition process, including the organisation of elections.

#### **Article 37**

Should any party which is signatory to the commitments made under the terms of the present Charter, fail to observe them, the Joint Mediation Team for Madagascar shall be called upon to assist.

### **Chapter VIII – A peaceful climate during the period of transition**

#### **Article 38**

The parties shall maintain a climate of peace, serenity and confidence during the period of transition in order to ensure its success.

## **Chapter IX- General and temporary provisions**

### **Article 39**

Functions within transitional institutions and organs may not be combined.

### **Article 40**

To implement the present Charter, the signatory parties agree on the following procedures:

- Upon its signature, all of the organs and institutions foreseen in the present Charter shall be established within **thirty** days;
- The different political parties which are signatory to the present Charter shall designate the members of all the planned institutions and organs within **thirty** days.

### **Article 41**

The procedures for implementing and applying the present Charter shall be determined, by adopted laws or orders, or failing this, by decree.

### **Article 42**

The present Transitional Charter shall constitute the constitutional law of the transition.

### **Article 43**

All of the constitutional provisions, including laws and regulations, as well as those resulting from other legislation which do not contradict the present Charter shall remain in force and shall automatically apply.

## **Chapter X – Signatories and entry into force of the Transitional Charter**

#### Article 44

The political parties shall be invited to sign the Transitional Charter.

Other parties or entities may sign it later. They shall benefit from its entitlements and be bound by its obligations.

#### Article 45

The present Transitional Charter shall enter into force from the date of signing, and in accordance with the provisions of Article 4 of Order 62-041 of September 19, 1962, shall be publicised by all possible means, in particular by radio and television broadcasts and bill boards, in addition to its entry in the Official Journal of the Republic of Madagascar.

The ratification order of the present Charter shall be signed and published at the same time, under the same conditions.

#### Article 46

The representatives of all the living forces of the Malagasy People (religious faiths, trade unions, the armed and security forces, businesses and organisations representing civil society) shall be invited to adhere to the present Transitional Charter.

Maputo, August 9, 2009

Signatures