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# Madagascar's Constitution of 2010

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# Preamble

The sovereign Malagasy People,

Affirming its belief in Andriamanitra Andriananahary,

Resolute to promote and to develop its heritage of society living in harmony and respectful of otherness, of the wealth and of the dynamism of its cultural and spiritual values through the « fanahy maha-olona »,

Convinced of the necessity of the Malagasy society to recover its originality, its authenticity and its Malagasy character, and to inscribe itself in the modernity of the millennium while conserving its traditional fundamental principles and values based on the Malagasy fanahy that includes « ny fitiavana, ny fihavanana, ny fifanajàna, ny fitandroana ny aina », and privileging a framework of life allowing a « living together » without distinction of region, of origin, of ethnicity, of religion, of political opinion, or of gender,

Conscious that it is indispensable to implement a process of national reconciliation,

Convinced that the Fokonolona, organized in Fokontany, constitutes a framework of life, of emancipation, of exchange and of participative dialog of the citizen,

Persuaded of the exceptional importance of the wealth of the fauna, of the flora and of the mining resources of high specificities with which nature has provided Madagascar, and that it is important to preserve it for the future generations,

Declaring that the non-respect for the Constitution or its revision with a view to reinforce the power of those governing to the detriment of the interests of the population are the causes of the cyclical crises,

Considering the geopolitical situation of Madagascar and its voluntarist participation in the dialog of nations, and making its own, notably:

- The International Charter of the Rights of Man;
- The Conventions relative to the rights of the child, to the rights of women, to the protection of the environment, to the social, economical, political, civil and cultural rights,

Considering that the development of the personality and of the identity of all Malagasies is the essential factor of the durable and full development of which the conditions are, notably:

- the preservation of peace, the practice of solidarity and the duty of preserving the national unity in the implementation of a policy of balanced and harmonious development;
- the respect for and protection of the fundamental freedoms and rights;
- The establishment of a State of law by virtue of which those governing and those governed are submitted to the same juridical norms, under the control of an independent Justice;
- the elimination of all forms of injustice, of corruption, of inequality and of discrimination;
- the rational and equitable administration of the natural resources for the needs of the development of the human being;
- the good governance in the conduct of public affairs, thanks to transparency in the administration and the accountability of the depositaries of the public power;
- the separation and the equilibrium of power exercised through democratic procedures;
- the implementation of effective decentralization, through the granting of the largest autonomy to the decentralized collectivities both at the level of

- the competences and level of financial means;
- the preservation of human security.

Declare:

## TITLE I: OF THE FUNDAMENTAL PRINCIPLES

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### Article 1

The Malagasy People constitute a nation organized as a sovereign, unitary, republican and secular State.

This State bears the name of « Republic of Madagascar »

Democracy and the principle of the State of law constitute the foundation of the Republic. Its sovereignty is exercised within the limits of its territory.

No one may infringe the territorial integrity of the Republic.

The national territory is inalienable.

The law determines the modalities and the conditions relative to the sale and to the perpetual lease of terrain to the profit of foreigners.

### Article 2

The State affirms its neutrality concerning the different religions.

The secularism of the Republic is based on the principle of the separation of the affairs of the State and of the religious institutions and of their representatives.

The State and the religious institutions prohibit themselves from any infringement of their respective domains.

No Head of Institution nor any member of the Government may be part of the directing authority of a religious Institution, under penalty of being relieved by the High Constitutional Court or being removed, of office, from their mandate or their function.

### Article 3

The Republic of Madagascar is a State based on a system of Decentralized Territorial Collectivities composed of Communes, of Regions, and of Provinces of which the competences and the principles of administrative and financial autonomy are guaranteed by the Constitution and defined by the Law.

### Article 4

The Republic of Madagascar has as its motto: « Fitiavana – Tanindrazana – Fandrosoana ».

Its national emblem is the tricolor flag of white, red, and green, composed of three rectangular bands of equal dimensions, the first vertical of white color on the side of the pole, the other two horizontal, the superior red and the inferior green.

The national language is Malagasy.

- Official religion
- Separation of church and state
- Type of government envisioned

- Official religion
- Separation of church and state

- Constitutional court powers

- Municipal government
- Subsidiary unit government

- National motto

- National flag

- Official or national languages

- National anthem
- National capital
- Official or national languages

The national anthem is « Ry Tanindrazanay malala ô ! »

The Capital of the Republic of Madagascar is Antananarivo.

The seals of the State and the coat-of-arms of the Republic are specified by the law.

The official languages are Malagasy and French.

## Article 5

- Claim of universal suffrage

Sovereignty belongs to the People, source of all power, who exercise it by their representatives elected by universal direct or indirect suffrage, or by way of referendum. No faction of the People, and no individual may arrogate the exercise of the sovereignty.

The organization and the administration of all the electoral operations arise within the competence of an independent national structure.

The law organizes the modalities of functioning of that structure.

- Restrictions on voting

All nationals of the two sexes enjoying the exercise of their civil and political rights are electors within the conditions determined by the law. The quality of being elector is lost only by a decision of justice becoming definitive.

- General guarantee of equality

## Article 6

The law is the expression of the general will. It is the same for all, whether it protects, it obligates or it punishes.

- Equality regardless of gender
- Equality regardless of creed or belief
- Equality regardless of financial status
- Equality regardless of origin
- Equality regardless of religion

All individuals are equal before the law and enjoy the same fundamental freedoms protected by the law without discrimination founded on gender, the level of instruction, wealth, origin, religious belief or opinion.

The law favors the equal access and the participation of women and men in public employment and to the functions in the domain of the political, economical and social life.

# TITLE II: OF THE FREEDOMS, THE RIGHTS AND THE DUTIES OF THE CITIZENS

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## SUB-TITLE I: OF THE CIVIL AND POLITICAL RIGHTS AND DUTIES

### Article 7

The individual rights and the fundamental freedoms are guaranteed by the Constitution and their exercise is organized by the law.

### Article 8

- Right to life

The right of all persons to life is protected by the Law. No one may be arbitrarily deprived of life. Death is not considered as inflicted in violation of this Article in the cases where it would result from recourse to the force rendered absolutely necessary, in view of assuring the defense of all persons against illegal violence.

- Prohibition of cruel treatment
- Prohibition of torture

No one may be submitted to torture or to cruel, inhuman or degrading penalties or treatments.

In particular, it is prohibited to submit a person without their free consent to a medical or scientific experiment.

- Protection from unjustified restraint

## Article 9

All persons have the right to liberty and may not be subject to arrest or arbitrary detention.

No one may be prosecuted, arrested or detained except in cases determined by the law and accordingly to the forms prescribed by it.

- Protection from false imprisonment

Any individual made a victim of illegal arrest or detention has the right to reparation.

- Freedom of assembly
- Freedom of association
- Freedom of expression
- Freedom of religion
- Freedom of opinion/thought/conscience
- Freedom of press

## Article 10

The freedoms of opinion and of expression, of communication, of the press, of association, of assembly, of circulation, of conscience and of religion are guaranteed to all and may only be limited by the respect for the freedoms and rights of others, and by the imperative of safeguarding the public order, the national dignity and the security of the State.

- Right to information

## Article 11

Any individual has the right to information.

Information under all its forms is not submitted to any prior constraint, except that which infringes the public order and the morality.

The freedom of information, whatever the medium, is a right. The exercise of this right includes duties and responsibilities, and is submitted to certain formalities, conditions, or sanctions specified by the law, which are the measures necessary in a democratic society.

All forms of censorship are prohibited.

The law organizes the exercise of the profession of journalist.

## Article 12

- Freedom of movement

Any resident Malagasy has the right to leave the national territory and to return to it within the conditions established by the law.

All individuals have the right to circulate and to establish themselves freely on all the territory of the Republic within respect for the rights of others and the prescriptions of the law.

- Right to fair trial

## Article 13

- Right to privacy

Any individual is assured of the inviolability of their person, their domicile and of the secrecy of their correspondence.

- Regulation of evidence collection

No search may take place except by virtue of the law and on written order of the competent judicial authority, except in the case of flagrante delicto.

- Protection from ex post facto laws
- Principle of no punishment without law

No one may be punished except by virtue of a law promulgated and published prior to the commission of the punishable act.

- Prohibition of double jeopardy

No one may be punished twice for the same act.

The law assures to all the right that justice will be rendered, and that insufficiency of resources will not be an obstacle.

The State guarantees the plenitude and the inviolability of the rights to defense before all the jurisdictions and at all the stages of the procedure, including that of the preliminary investigation, and at the level of the judicial police or of prosecution.

All moral pressure and/or all physical brutality to apprehend a person or to keep them in detention is prohibited.

All defendants or accused have the right to the presumption of innocence until their guilt has been established by a decision of justice becoming definitive.

Preventive detention is an exception.

## Article 14

Any person has the right to freely constitute associations, under reserve of conforming themselves to the law.

This same right is recognized for the creation of political parties. The conditions of their creation are determined by a law on political parties and their financing.

The associations and the political parties that jeopardize the unity of the Nation and the republican principles, and that advocate totalitarianism or segregation of ethnic, tribal or religious character, are prohibited.

The parties and political organizations participate in the expression of the suffrage.

The Constitution guarantees the right of democratic opposition.

After each legislative election, the political groups of the opposition appoint a head of the opposition. In default of agreement, the head of the political group of the opposition having obtained the greatest number of the suffrage expressed at the moment of the vote is considered as the official head of the opposition.

The status of the opposition and of the parties of the opposition, recognized by this Constitution and giving them notably an institutional framework to express themselves, is determined by the law.

## Article 15

Any citizen has the right to be a candidate to the elections specified by this Constitution, under reserve of the conditions established by the law.

## Article 16

In the exercise of the rights and freedoms recognized by this Constitution, all individuals are held to the duty of respect for the Constitution, the institutions, the laws and the regulations of the Republic.

## SUB-TITLE II: OF THE ECONOMICAL, SOCIAL AND CULTURAL RIGHTS AND DUTIES

## Article 17

The State protects and guarantees the exercise of the rights that assure the individual the integrity and the dignity of their person, and their full physical, intellectual and moral development.

- Right to counsel
- Inalienable rights

- Presumption of innocence in trials

- Freedom of association
- Right to form political parties

- Right to form political parties

- Prohibited political parties

- Eligibility for head of state
- Eligibility for first chamber
- Eligibility for second chamber

- Duty to obey the constitution

- Right to development of personality
- Human dignity

## Article 18

The National Legal Service is a duty of honor. Its accomplishment does not infringe the position of work of the citizen or the exercise of the political rights of the citizen.

## Article 19

The State recognizes and organizes for all individuals the right to the protection of health from their conception through the organization of free public health care, which gratuitousness results from the capacity of the national solidarity.

## Article 20

The family, natural and fundamental element of the society, is protected by the State. All individuals have the right to found a family and to transmit by inheritance their personal assets.

## Article 21

The State assures the protection of the family for its free development as well as that of the mother and the child through a legislation and the appropriate social institutions.

## Article 22

The State engages itself to take the necessary measures in view to assure the intellectual development of every individual, without other limitation than the aptitudes of each one.

## Article 23

Every child has the right to instruction and to education under the responsibility of the parents within respect for their freedom of choice.

The State engages itself to develop professional training.

## Article 24

The State organizes a public education, gratuitous and accessible to all. Primary education is obligatory for all.

## Article 25

The State recognizes the right to private education and guarantees this freedom of education under reserve of the equivalence of the conditions of education in the matters of hygiene, of morality and of the level of training established by the law.

These establishments of private education are submitted to a fiscal regime within the conditions established by the law.

## Article 26

All individuals have the right to participate in the cultural life of the community, in scientific progress and in the well-being resulting from them.

- Right to health care
- Reference to fraternity/solidarity

- Right to found a family
- Right to transfer property

- Rights of children
- State support for children

- Rights of children

- Compulsory education
- Free education

- Right to culture
- Reference to science

- Right to enjoy the benefits of science



- Reference to art

The State, assures, with the participation of the Decentralized Territorial Collectivities, the promotion and the protection of the national cultural patrimony as well as of scientific, literary and artistic production.

- Provisions for intellectual property

The State, with the participation of the Decentralized Territorial Collectivities, guarantees the right of intellectual property.

## Article 27

- Right to work
- Duty to work

Work and professional training are, for all citizens, a right and a duty.

- Civil service recruitment

Access to the public functions is open to all citizens without other conditions than those of capacity and aptitude.

Nevertheless, the recruitment in the public function may be accompanied by contingencies per circumscription for a time period for which the duration and the modalities will be determined by the law.

## Article 28

- Equality regardless of gender
- Equality regardless of creed or belief
- Equality regardless of political party
- Equality regardless of origin
- Equality regardless of religion
- Equality regardless of age

No one may be prejudiced in their work or in their employment for reason of gender, of age, of religion, of opinions, of origins, of belonging to a trade-union or of political convictions.

## Article 29

- Human dignity
- Right to equal pay for work
- Right to reasonable standard of living

Every citizen has the right to a fair remuneration for their work assuring them, as well as their family, an existence in conformity with human dignity.

## Article 30

- State support for the elderly
- State support for the disabled

The State makes an effort to overcome the needs of every citizen who, for reason of their age or their physical or mental incompetence, find themselves in an incapacity to work, notably through the intervention of institutions or organs with a social character.

## Article 31

- Right to join trade unions

The State recognizes the right of every worker to defend their interests through syndical action and in particular through the freedom to form a trade-union. The affiliation to a trade-union is free.

## Article 32

- Right to safe work environment

Every worker has the right to participate, notably by the intermediary of their delegates, to the determination of the rules and of the conditions of work.

## Article 33

- Right to strike

The right to strike is recognized, without it being possible to infringe the continuity of the public service or the fundamental interests of the Nation.

The other conditions for exercising this right are established by the law.

## Article 34

The State guarantees the right to individual property. No one may be deprived of it except by way of expropriation for cause of public utility and subject to a fair and prior indemnification.

The State assures the facility of access to land property through the appropriate juridical and institutional provisions and a transparent administration of the information concerning land.

## Article 35

The State facilitates the access of the citizens to housing through appropriate financing mechanisms.

## Article 36

The participation of each citizen in the public expenditures must be progressive and calculated as a function of their contributive capacity.

## Article 37

The State guarantees the freedom of enterprise within the limit of the respect for the general interest, the public order, morality and the environment.

## Article 38

The State guarantees the security of capital and of investments.

## Article 39

The State guarantees the political neutrality of the Administration, of the Armed Forces, of Justice, of the Police, of Teaching and of Education.

It organizes the Administration to the end of avoiding any act of waste and of diversion of the public funds to personal or political ends.

# TITLE III: OF THE ORGANIZATION OF THE STATE

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## Article 40

The Institutions of the State are:

- the President of the Republic and the Government;
- the National Assembly and the Senate;
- the High Constitutional Court.

The Supreme Court, the Courts of Appeal and the jurisdictions attached to them as well as the High Court of Justice exercise the jurisdictional function.

- Right to own property
- Protection from expropriation

- Right to shelter

- Duty to pay taxes

- Right to establish a business
- Protection of environment
- Right to competitive marketplace

- Establishment of constitutional court

- Right to appeal judicial decisions
- Structure of the courts

## Article 41

The law determines the amount, the conditions and the modalities of the attribution of the indemnities granted to the notable persons called to exercise a public mandate, to accomplish functions or to effect missions within the Institutions specified by this Constitution.

Prior to the accomplishment of the functions or the missions and to the exercise of a mandate, all the notable persons referred to in the preceding paragraph present to the High Constitutional Court a declaration of their patrimony.

With the exception of their rights and under penalty of forfeiture, none of the notable persons referred to in Article 40 may accept from a physical or juridical person, foreign or national, emoluments or compensations within the framework of their functions.

The law establishes the modalities for the application of these provisions, notably in that which concerns the determination of the rights, of the emoluments and of the compensations as well as the procedure of forfeiture.

## Article 42

The functions at the service of the institutions of the State shall not constitute a source of illicit enrichment or a means to serve private interests.

## Article 43

The High Council for the Defense of Democracy and of the State of Law is responsible for observing the respect for the ethic of power, of democracy and of the respect for the State of Law, and to control the promotion and the protection of human rights.

The law establishes the modalities relative to the composition, the organization and the functioning of the High Council.

## SUB-TITLE I: OF THE EXECUTIVE

### Article 44

The executive function is exercised by the President of the Republic and the Government.

## CHAPTER I: Of the President of the Republic

### Article 45

The President of the Republic is the Head of State.

He is elected by universal direct suffrage for a mandate of five years renewable one sole time.

He is the guarantor, by his arbitration, of the regular and continuous functioning of the public powers, of the national independence and of the territorial integrity. He sees to the safeguarding and to the respect for the national sovereignty both in the interior and in the exterior. He is the guarantor of the National Unity.

The President of the Republic assures his missions within the framework of the powers conferred on him by this Constitution.

## Article 46

Any candidate to the functions of President of the Republic must be of Malagasy nationality, enjoy their civil and political rights, be at least thirty-five years old at the date of the closure of the presentation of the candidatures, and reside on the territory of the Republic of Madagascar for at least six months before the day of the deadline established for the presentation of the candidatures.

The President of the Republic in office who stands as a candidate to the Presidential elections resigns from his position sixty days before the date of the Presidential ballot. In this case, the President of the Senate exercises the current Presidential attributions until the investiture of the new President.

In the case that the President of the Senate stands as a candidate himself, the functions of Head of the State are exercised by the Government, jointly.

To use for ends of electoral propaganda, the means or the prerogatives that they have at their disposal because of their functions, is prohibited to all notable persons exercising a public mandate or accomplishing functions within the Institutions and who are candidates to the presidential election. The violation, should that be declared by the High Constitutional Court, constitutes a cause for invalidation of the candidature.

## Article 47

The election of the President of the Republic takes place thirty days at least and sixty days at most before the expiration of the mandate of the President in office.

In the cases specified in Articles 52 and 132 of this Constitution, those time periods run after the declaration of the vacancy by the High Constitutional Court.

The election takes place at the first round with the absolute majority of the suffrage expressed. If this is not obtained, the President of the Republic is elected in the second round by the majority of the suffrage expressed between the two candidates having obtained the greatest number of votes in the first round. The second round takes place thirty days at most after the official proclamation of the results of the first round.

In the case of death of one of the candidates before a round of the ballot, or if another case of force majeure occurs, duly declared by the High Constitutional Court, the election is postponed to a new date within the conditions and according to the modalities that will be specified by an organic law.

The President in office who is a non-candidate to the elections remains in office, until the investiture of his successor within the conditions specified in Article 48.

## Article 48

The official transfer of power is made between the outgoing President and the newly elected President.

Before entering into his function, the President of the Republic, in solemn audience of the High Constitutional Court, before the Nation, and in the presence of the Government, of the National Assembly, of the Senate and of the Supreme Court, takes the following oath:

"Eto anatrehan'Andriamanitra Andriananahary sy ny Firenena ary ny Vahoaka, mianiana aho fa hanantanteraka an - tsakany sy an - davany ary amim -pahamarinana

ny andraikitra lehibe maha - Filohan'ny Firenena Malagasy ahy.

Mianiana aho fa hampiasa ny fahefana natolotra ahy ary hanokana ny heriko rehetra hiarovana sy hanamafisana ny firaisam-pirenena sy ny zon'olombelona.

Mianiana aho fa hanaja sy hitandrina toy ny anakandriamaso ny Lalàmpanorenana sy ny lalàm-panjakana, hikatsaka hatrany ny soa ho an'ny Vahoaka malagasy tsy ankanavaka".

The presidential mandate commences from the day of the taking of the oath.

## Article 49

The functions of President of the Republic are incompatible with any elective public function, any other professional activity, any activity within a political party, a political group, or an association, and the exercise of responsibility within a religious institution.

All violation of the provisions of this Article, declared by the High Constitutional Court, constitutes a reason for definitive impediment of the President of the Republic.

## Article 50

The temporary impediment of the President of the Republic is declared by the High Constitutional Court, referred to the matter by the National Assembly, deciding by a majority of two-thirds of its members, for cause of physical or mental incapacity to exercise his functions, duly established.

In the case of temporary impediment, the President of the Senate provisionally exercises the functions of Head of State.

## Article 51

The High Constitutional Court on referral to the matter by the Parliament decides on the lifting of the temporary impediment.

The temporary impediment may not exceed a time period of three months, after which the High Constitutional Court, on referral to the matter by the Parliament deciding by separate vote of each of the Assemblies and with a majority of two-thirds of its members, may decide on the transformation of the temporary impediment into a permanent impediment.

## Article 52

Following resignation, abandonment of the power in whatever form that may be, death, permanent incapacity or declared forfeiture, the vacancy of the Presidency of the Republic is declared by the High Constitutional Court.

From the declaration of the vacancy of the Presidency, the functions of the Head of State are exercised by the President of the Senate.

In the case of impediment of the President of the Senate declared by the High Constitutional Court, the functions of Head of the State are exercised jointly by the Government.

## Article 53

After the declaration by the High Constitutional Court of the vacancy of the Presidency of the Republic, it proceeds to the election of a new President of the Republic within a time period of 30 days at least and 60 days at most, in accordance with the provisions of Articles 46 and 47 of the Constitution.

During the period running from the declaration of the vacancy to the investiture of the new President of the Republic, or to the lifting of the temporary impediment, application of Articles 60, 100, 103, 162 and 163 of the Constitution may not be made.

## Article 54

The President of the Republic appoints the Prime Minister, presented by the majority party or group of parties in the National Assembly.

He terminates the functions of the Prime Minister, either by the presentation by him of the resignation of the Government, or in the case of grave fault or manifest failure.

## Article 55

The President of the Republic:

- 1°. presides over the Council of Ministers;
- 2°. signs the ordinances taken in the Council of Ministers in the cases and the conditions specified by this Constitution;
- 3°. signs the decrees deliberated in the Council of Ministers;
- 4°. proceeds, in the Council of Ministers, to the appointments to the high offices of the State of which the list is established by decree taken in the Council of Ministers;
- 5°. may, on any important issue of national character, decide in the Council of Ministers, on direct recourse to the expression of the will of the People by way of referendum;
- 6°. determines and orders, in the Council of Ministers, the general policy of the State;
- 7°. controls the implementation of the of the general policy so defined and the action of the government;
- 8°. has at his disposal the organs of control of the Administration.

The President of the Republic may delegate certain of his powers to the Prime Minister.

## Article 56

The President of the Republic is the Supreme Head of the Armed Forces of which he guarantees the unity. As such, he is assisted by a High Council of the National Defense.

The High Council of the National Defense, under the authority of the President of the Republic, has notably as its mission to see to the coordination of the actions entrusted to the Armed Forces to preserve the social peace. Its organization and its attributions are established by the law.

The President of the Republic decides in the Council of Ministers on the engagement of the forces and of the military means for external intervention, after the opinion of the High Council of the National Defense and of the Parliament.

He orders in the Council of Ministers the provision for national defense under all its military, economic, social, cultural, territorial and environmental aspects.

The President of the Republic appoints the military officers called to represent the State before international organs.

## Article 57

The President of the Republic appoints and recalls the ambassadors and the extraordinary envoys of the Republic before other States and the International Organizations.

He receives the letters of credential and of recall of the representatives of the States and of the International Organizations recognized by the Republic of Madagascar.

## Article 58

The President of the Republic exercises the right of pardon.

He confers the decorations and the honors of the Republic.

## Article 59

The President of the Republic promulgates the laws within the three weeks following the transmission by the National Assembly of the definitively adopted law.

Before the expiration of this time period, the President of the Republic may demand of the Parliament a new deliberation of the law or of some of its Articles. This new deliberation may not be refused.

## Article 60

The President of the Republic can, after briefing with the Prime Minister, and after consultation with the Presidents of the Assemblies, pronounce the dissolution of the National Assembly.

The general elections are held sixty days at least and ninety days at most after the pronouncement of the dissolution.

The National Assembly meets of plain right the second Thursday that follows its election. If this meeting takes place outside of the specified period for the ordinary session, a session is opened of right for a duration of fifteen days.

It may not proceed to a new dissolution within the two years that follow these elections.

- Designation of commander in chief
- Advisory bodies to the head of state

- Foreign affairs representative
- Head of state powers
- International organizations

- Head of state powers

- Power to pardon

- Approval of general legislation
- Veto override procedure

- Dismissal of the legislature

## Article 61

When the Institutions of the Republic, the independence of the Nation, its unity or the integrity of its territory are menaced and the regular functioning of the public powers finds itself compromised, the President of the Republic may proclaim on all or on part of the national territory, the situation of exception, to wit the state of urgency, the state of necessity or martial law. The decision is made by the President of the Republic in the Council of Ministers, after the opinion of the Presidents of the National Assembly, of the Senate and of the High Constitutional Court.

The proclamation of the situation of exception confers on the President of the Republic special powers of which the extent and the duration are established by an organic law.

From the proclamation of one of the situations of exception aforesaid, the President of the Republic can legislate by way of ordinance on the matters that arise within the domain of the law.

## Article 62

The acts of the President of the Republic, apart from the cases specified in Articles 54 paragraphs 1 and 2, 58 paragraphs 1 and 2, 59, 81, 60, 94 100, 114, 117 and 119, are countersigned by the Prime Minister and, the case arising, by the concerned Ministers.

## CHAPTER II: Of the Government

### Article 63

The Government is composed of the Prime Minister and of the Ministers.

It implements the general policy of the State.

It is responsible before the National Assembly within the conditions specified in Articles 100 and 103 below.

The Government has the Administration at its disposal.

### Article 64

The functions of member of the Government are incompatible with the exercise of any elective public mandate, of any function of professional representation, of the exercise of any function within religious institutions, of any public employment or of any other paid professional activity.

Any member of the Government, who is a candidate to an elective mandate, must resign from their functions once their candidature has been declared receivable.

### Article 65

The Prime Minister, Head of Government:

- 1°. conducts the general policy of the State;



- Economic plans

2°. has authority over the members of the Government of which he directs the action, and is responsible for the coordination of the activities of the ministerial departments as well as for the implementation of any national program of development;

- Initiation of general legislation

3°. has the initiative of law;

- Powers of cabinet
- Standing committees

4°. orders the bills of laws to be submitted to the deliberation of the Council of Ministers and to be presented to the Bureau of one of the two Assemblies;

5°. assures the execution of the laws;

6°. exercises the regulatory power under reserve of the provisions of Article 55 paragraph 3;

7°. sees to the execution of the decisions of justice;

8°. refers matters, as needed, to the General Inspection of the State and the other organs of control of the Administration and assures the good functioning of the public services, of the good administration of the finances of the public collectivities and of the public organs of the State;

9°. assures the security, the peace and the stability on all the extent of the national territory within respect for the national unity; to this end, he has at his disposal all the forces in charge of the police, of the maintenance of order, of interior security and of defense;

10°. in the case of grave political troubles and before the proclamation of the situation of exception, he may have recourse to the forces of order to restore the social peace after the opinion of the superior authorities of the Police, of the Gendarmerie and of the Army, of the High Council of the National Defense and of the President of the High Constitutional Court;

11°. is the Head of the Administration;

- Selection of active-duty commanders

12°. appoints to the civil and military offices as well as to those of the organs of the State, under reserve of the provisions of Article 55 paragraph 4.

He may delegate certain of his powers to the members of the Government.

He assures the balanced and harmonious development of all the Decentralized Territorial Collectivities.

Without prejudice of the provisions of Article 55, he may, exceptionally, with an express delegation from the President of the Republic and on a determined agenda, preside over the Council of Ministers.

- Advisory bodies to the head of state

## Article 66

The Prime Minister presides over the Council of the Government.

In the Council of the Government:

- 1°. he establishes the program for the implementation of the general policy of the State and orders the measures to be taken to assure execution of it;
- 2°. he exercises the other attributions for which the consultation of the Government is obligatory by virtue of this Constitution and of particular laws;
- 3°. he decides on the measures of implementation of the national programs of economic and social development, as well as on that of the territorial development, in collaboration with the authorities of the Decentralized Territorial Collectivities.

## Article 67

The acts of the Prime Minister are countersigned, as need be, by the Ministers in charge of their execution.

## SUB-TITLE II: OF THE LEGISLATIVE MATTERS

### Article 68

The Parliament is composed of the National Assembly and the Senate. It votes the law. It controls the action of the Government. It evaluates the public policies.

## CHAPTER I: Of the National Assembly

### Article 69

The members of the National Assembly are elected for five years by universal direct suffrage.

The regime of the ballots is determined by an organic law.

The members of the National Assembly bear the title of « Deputy of Madagascar ».

### Article 70

A decree taken in the Council of Ministers establishes the number of members of the National Assembly, the distribution of the seats on the whole of the national territory as well as the divisions of the electoral circumscriptions.

### Article 71

The mandate of Deputy is incompatible with the exercise of any other elective public mandate and of all public employments, except teaching.

The Deputy appointed member of the Government is suspended, of office, from his mandate. He is replaced by his substitute.

The Deputy exercises his mandate following his conscience and within respect for the ethical rules determined in the forms established in Article 79 below.

- Removal of individual legislators

## Article 72

During his mandate, the Deputy may not, under penalty of forfeiture, change political group to affiliate with a new group, other than the one in the name of which he has been elected.

In the case of infraction of the preceding paragraph, the sanction is forfeiture that is declared by the High Constitutional Court.

The Deputy elected without belonging to a party may affiliate with the parliamentary group of his choice within the Assembly.

The forfeiture of a Deputy may also be declared by the High Constitutional Court if he deviates from the line of conduct of his parliamentary group.

The regime of forfeiture and the rules of ethics and of deontology are determined by the law on the political parties and the regulations in the matter of the financing of the political parties.

- Immunity of legislators
- Standing committees

## Article 73

No Deputy may be prosecuted, investigated, arrested, detained or judged for the opinions or the votes emitted by him in the exercise of his functions.

A Deputy may, during the sessions, only be prosecuted and arrested in criminal or correctional matters, with the authorization of the Assembly, except in the case of flagrante delicto.

No Deputy may, out of session, be arrested without the authorization of the Bureau of the Assembly, except in case of flagrante delicto, of authorized prosecutions or of definitive conviction.

Any person justified by an interest may refer in writing the Permanent Bureau of the National Assembly to the matter of accusing a Deputy. The Bureau must give a detailed response within a time period of three months.

- Leader of first chamber
- Standing committees

## Article 74

The President of the National Assembly and the members of the Bureau are elected at the beginning of the first session for the duration of the legislature.

Nevertheless, they can be removed from their respective functions of members of the Bureau for grave reason by a secret vote of two-thirds of the Deputies.

- Budget bills
- Length of legislative sessions

## Article 75

The National Assembly meets of plain right in two ordinary sessions per year. The duration of each session is established at sixty days.

The first session begins on the first Tuesday of May and the second, consecrated principally to the adoption of the law of finance, the third Tuesday of October.

- Extraordinary legislative sessions

## Article 76

The National Assembly meets in extraordinary session, on a determined agenda, by decree of the President of the Republic taken in the Council of Ministers, either by the initiative of the Prime Minister or at the demand of the absolute majority of the members composing the National Assembly.

The duration of the session may not exceed twelve days. Nevertheless, a decree of closure intervenes when the National Assembly has exhausted the agenda for which it was convoked.

## Article 77

The sittings of the National Assembly are public. A record is held and its publication is assured within the conditions specified by the law.

The National Assembly sits in closed session at the demand of one-quarter of its members or of the Government. A record of the ordered decisions is written.

## Article 78

The National Assembly meets of plain right in special session on the second Tuesday that follows the proclamation of the results of its election to proceed to the constitution of its Bureau and to the formation of the commissions.

The opposition has the right to a position of vice-president and presides over at least one of the commissions. The session is closed after exhaustion of the agenda.

## Article 79

The rules relative to the functioning of the National Assembly are established in their general principles by an organic law and in their modalities by its internal regulations. The internal regulations are published in the Journal Officiel of the Republic.

## CHAPTER II: Of the Senate

### Article 80

The members of the Senate bear the title of « Senator of Madagascar ». Their mandate is of five years, except for that which concerns the President of the Senate, in application of Article 46 paragraph 2 of this Constitution.

### Article 81

The Senate represents the Decentralized Territorial Collectivities and the economic and social organizations. It includes, for two-thirds, members elected in equal number for each Province, and for one-third, members appointed by the President of the Republic, in part, by virtue of their particular competence.

### Article 82

The rules of functioning of the Senate, its composition as well as the modalities of election and of designation of its members are established by an organic law.

### Article 83

The Senate is consulted by the Government to give its opinion on economic, and social questions and questions of organization of the Decentralized Territorial Collectivities.

- Public or private sessions
- Publication of deliberations
- Secrecy of legislative votes

- Legislative committees

- Standing committees

- Leader of second chamber
- Term length of second chamber

- Second chamber representation quotas
- Eligibility for second chamber
- Second chamber selection

- Second chamber selection

## Article 84

The Senate meets of plain right in two ordinary sessions per year. The duration of each session is established at sixty days.

The first session begins on the first Tuesday of May and the second, consecrated principally to the adoption of the law of finance, the third Tuesday of October.

It may equally meet in special session by convocation of the Government. Its agenda is then limitatively established by the decree of convocation taken in the Council of Ministers.

When the National Assembly is not sitting, the Senate may only discuss issues referred to it by the Government for its opinion, excluding all legislative bills.

## Article 85

The provisions of Articles 71 to 79 are applicable, by analogy, to the Senate.

## CHAPTER III: Of the Relations Between the Government and the Parliament

## Article 86

The initiative of the laws belongs concurrently to the Prime Minister, the Deputies and the Senators.

The bills of law are deliberated in the Council of Ministers and presented to the Bureau of one of the two Assemblies.

The agenda of the Assemblies includes by priority and on the agenda established by the Government the discussion of the bills of law presented to the Bureau of the National Assembly or to that of the Senate by the Prime Minister.

The proposals of law and amendments presented by the parliamentarians are brought to the cognizance of the Government which is provided with, to formulate its observations, a time period of thirty days for the proposals and fifteen days for the amendments.

At the expiration of this time period, the Assembly before which the proposals or the amendments were presented proceeds to the examination of them with a view to their adoption.

The proposals or amendments are not receivable when their adoption will have as consequence, in the framework of the current budgetary year, either the diminution of the public resources or the aggravation of the charges of the State, except in the matter of the law of finance.

If it appears, in the course of the legislative procedure, that a proposal or an amendment is not of the domain of the law, the Government may oppose the receivability. In the case of disagreement between the Government and the National Assembly or the Senate, the High Constitutional Court, at the demand of the Prime Minister or of the President of one or the other Parliamentary Assembly, decides within a time period of eight days.

Two weeks of sitting of four, at least, are reserved for the examination of the texts and to the debates of which the Government demands the inscription in the agenda.

- Budget bills
- Extraordinary legislative sessions
- Length of legislative sessions

- Eligibility for cabinet
- Immunity of legislators
- Outside professions of legislators
- Removal of individual legislators

- Standing committees

- Initiation of general legislation

- Powers of cabinet

- Budget bills

## Article 87

The organic laws, the laws of finance and the ordinary laws are voted by the Parliament within the conditions established by this Constitution.

## Article 88

In addition to the questions that are directed to it by other Articles of the Constitution, the following arise from an organic law:

- 1°. the rules relative to the election of the President of the Republic;
- 2°. the modalities of the ballot relative to the election of the Deputies, the conditions of eligibility, the regime of incompatibility and of forfeiture, the rules of replacement in the case of vacancy, the organization and the functioning of the National Assembly;
- 3°. the modalities of the ballot relative to the election of the Senators, the conditions of eligibility, the regime of incompatibility and forfeiture and the rules of replacement in the case of vacancy, the organization and the functioning of the Senate;
- 4°. the rules governing the competences, the modalities of the organization and the functioning of the Decentralized Territorial Collectivities, as well as those of the administration of their own affairs;
- 5°. the organization, the composition, the functioning and the attributions of the Supreme Court and of the three Courts composing it, those relative to the appointment of their members as well as those relative to the procedure applicable before them;
- 6°. the status of the Magistrates;
- 7°. the organization, the functioning and the attributions of the Superior Council of the Magistrature;
- 8°. the organization, the functioning, the attributions, the referral and the procedure to follow before the High Court of Justice;
- 9°. the organization, the functioning, the attributions, the referral and the procedure to follow before the High Constitutional Court;
- 10°. the Electoral Code;
- 11°. the general provisions relative to the laws of finance;
- 12°. the general provisions relative to the Public Markets concerning the mining resources;
- 13°. the situations of exception as well as the limitations of the public, individual and collective freedoms during those situations;

- Budget bills
- Organic laws

- Replacement of legislators
- Eligibility for first chamber
- First chamber selection

- Replacement of legislators
- Eligibility for second chamber
- Second chamber selection

- Municipal government
- Subsidiary unit government

- Supreme court selection
- Supreme court powers

- Establishment of judicial council

- Constitutional court powers

- Budget bills

- Emergency provisions

- 14°. the provisions for adjustment destined to favor the equality between the territorial collectivities.

## Article 89

The organic laws are voted and modified within the following conditions:

- 1°. the bill or proposal is submitted to deliberation and to vote of the first Assembly referred to the matter until the expiration of a time period of 15 days after its presentation;
- 2°. the procedures specified in Articles 86, 96 and 98 are applicable. Nevertheless, an organic law may only be adopted by the absolute majority of the members composing each Assembly; without agreement between the two Assemblies after two readings, the National Assembly decides definitively by a majority of two-thirds of the members composing it.

If the National Assembly has not adopted the bill of the organic law before the closure of the session, the provisions of that bill may enter into force by way of ordinance, including, the case arising, one or several amendments adopted by one Assembly.

- 3°. the organic laws relative to the Senate must be voted in the same terms by the two Assemblies.

The organic laws can only be promulgated after declaration of their conformity to the Constitution by the High Constitutional Court.

## Article 90

In the framework of the organic law applicable in the matter, the law of finance:

- 1°. determines the resources and the charges of the State in the conditions and under the reserves specified by an organic law.
- 2°. determines, for a fiscal year, the nature, the amount and the allocation of the resources and of the charges of the State as well as the financial and budgetary equilibrium resulting from it taking into account the constraints of macroeconomic order;
- 3°. determines the proportion of the public receipts that should revert to the State, or to the Decentralized Territorial Collectivities, as well as the nature and the maximum rate of the taxes and assessments collected directly in favor of the budget of those Collectivities, determined in the Council of Ministers.

The organic law determines the modalities of application of the provisions of this Article, as well as the provisions for adjustment destined to favor the equality between the Decentralized Territorial Collectivities.

The law specifies the conditions for loans and decides on the eventual creation of funds.

• Organic laws

• Budget bills

• Municipal government  
• Subsidiary unit government

The law determines:

- the modalities of utilization of the funds of external loans and of parliamentary and jurisdictional control;
- The regime of personal and pecuniary responsibility of the financial authorities who are authors of diversion of the funds of loans as well as that of the disengagement of the responsibility of the State.

## Article 91

The program laws determine the objectives of the action of the State in matters of economic, environmental, social and territorial development.

The provisions of this Article are specified and completed by an organic law.

## Article 92

The Parliament examines the bill of the law of finance in the course of the second ordinary session.

Under the authority of the Prime Minister, Head of Government, the Ministers in charge of Finance and of the Budget prepare the bill of the law of finance.

The Parliament is provided with a maximum time period of sixty days to examine it.

The National Assembly is provided with a maximum time period of thirty days counting from the presentation of the bill to examine it in a first reading. Without having pronounced itself in this time period, it is deemed to have adopted it and the bill is transmitted to the Senate.

In the same conditions, it is provided for the first reading with a time period of fifteen days counting from the transmission of the bill, and each Assembly is provided with a time period of five days for each one of the subsequent readings.

Without having pronounced itself within the given time period an Assembly is deemed to have voted favorably on the text to which it was referred.

If the Parliament has not adopted the bill of the law of finance before the closure of the second session, the provisions of the bill may enter into force by way of ordinance including one or several of the amendments adopted by the two Assemblies.

Any amendment to the bill of the budget causing an increase in the expenditures or a diminution of the public resources must be accompanied by a proposal of augmentation of receipts or of equivalent economies.

If the bill of the law of finance of a fiscal year was not presented in a timely fashion to be adopted before the beginning of that fiscal year, the Prime Minister is authorized to receive the taxes and opens by decree the credits related to the services voted.

An organic law specifies the conditions for the adoption of the bill of the law of finance.

## Article 93

The Court of Accounts assists the Parliament in the control of the action of the Government. It assists the Parliament and the Government in the control of the execution of the laws of finance as well as in the evaluation of the public policies. With its public reports, it contributes to the information of the citizens.

The accounts of the Public Administrations must be regular and sincere, and give a faithful image of the result of their administration, of their patrimony and of their financial situation.



## Article 94

The President of the Republic communicates with the Parliament by a message that does not give rise to any debate.

## Article 95

In addition to the issues that are directed to it by other Articles of the Constitution:

- I. The law establishes the rules concerning:
  - 1°. the civil rights and the fundamental guarantees granted to individuals, associations, political parties and to any other group for the exercise of the rights and the freedoms as well as their duties and obligations;
  - 2°. international relations;
  - 3°. nationality;
  - 4°. the Central Bank and the regime of emission of the currency;
  - 5°. the circulation of persons;
  - 6°. the rules of civil and commercial procedure;
  - 7°. the rules of administrative and financial procedure;
  - 8°. the determination of crimes and misdemeanors as well as the penalties applicable to them, the criminal procedure, amnesty;
  - 9°. the rules relative to the conflicts of the laws and of the competences;
  - 10°. the creation of new orders of jurisdictions and their respective competences as well as their organization and the rules of procedure that are applicable to them;
  - 11°. the organization of the family, the state and the capacity of persons, the matrimonial regimes, inheritance and gifts;
  - 12°. the juridical regime of property, of real rights, of civil and commercial obligations and the conditions in which assets may be subject to expropriation or to requisition for cause of public necessity or for transfers of property to the State;
  - 13°. the creation of categories of public establishments;
  - 14°. the status and the regime of autonomy of the Universities, as well as the status of the teachers of superior education

• Requirements for birthright citizenship

• Central bank

• Right to marry

• Protection from expropriation

• Right to academic freedom

15°. The grand orientations of development of primary and secondary education

16°. the strategic resources;

17°. the organization and the functioning of the Decentralized Territorial Collectivities;

18°. the particular status of the Capital of the Republic, of certain portions of the national territory, of the Palaces of State and other buildings belonging to the domain of the State, of the ports and of their hub and spoke networks, of the airports and the regime of the maritime resources;

19°. the nature and the base of the taxes and assessments of the Decentralized Territorial Collectivities.

20°. the Council of the Malagasy National Order;

21°. urbanism and habitat;

22°. the conditions of ownership of land by foreigners;

23°. the conditions of transference to the State of the lands not valued;

24°. the organization, the functioning and the attributions of the General Inspection of the State and of the other organs of control of the Administration;

## II. The law determines the general principles:

1°. of the organization of the national defense and of the use of the Armed Forces or of the Forces of Order by the civil authorities;

2°. the general status of the civil and military functionaries of the State and of the territorial functionaries;

3°. of the right to work, of the syndical right, of the right to strike and of social welfare;

4°. of the transfer of property of an enterprise or of an organ from the public sector to the private sector and vice versa;

5°. of the organization or of the functioning of the different sectors of juridical, economical, social and cultural activity;

6°. of the protection of the environment.

- Municipal government
- Subsidiary unit government

- Municipal government
- Subsidiary unit government

- Right to join trade unions
- Right to work
- Right to strike

- Protection of environment

- Joint meetings of legislative chambers
- Power to declare/approve war

III. The declaration of war may only be authorized by the Parliament meeting in Congress by the absolute majority of all the members composing it.

## Article 96

Any bill or proposal of law is examined in first reading by the Assembly before which it was presented and then transmitted to the other Assembly.

The discussion takes place successively in each Assembly until the adoption of a unique text.

When following a disagreement between the two Assemblies, a bill or a proposal of law could not be adopted after two readings by each Assembly or if the Government has declared urgency, after a sole reading by each one of them, the Prime Minister has the faculty to initiate the meeting of a mixed joint commission in charge of proposing a text on the provisions still in discussion. The text elaborated by the joint commission may be submitted by the Government for approval to the two Assemblies. No amendment is receivable without the agreement of the Government.

If the commission does not reach the adoption of a common text or if this text is not adopted within the conditions specified in the preceding paragraph, the National Assembly decides definitively by the absolute majority of the members composing it.

- Legislative committees
- Division of labor between chambers

## Article 97

The matters other than those that are of the domain of the law have a regulatory character. The texts of legislative form intervening in these matters may be modified by decree taken after the opinion of the High Constitutional Court.

Those of these texts that would intervene after the entry into force of this Constitution may only be modified by decree if the High Constitutional Court has declared that they have a regulatory character in virtue of the preceding paragraph.

- Constitutional court powers

## Article 98

The Government, by engaging its responsibility within the conditions specified in Article 100 below, may demand of each one of the Assemblies to pronounce themselves by a sole vote on all or on part of the provisions of the texts in discussion:

- at the moment of the extraordinary sessions, provided that these texts have been deposited within forty-eight hours of the opening of the sessions;
- in the last eight days of each one of the ordinary sessions.

## Article 99

Within the thirty days of his appointment, the Prime Minister presents his program for implementing the general policy of the State to the Parliament, which can emit suggestions.

If, in the course of the execution, the Government estimates that fundamental modifications of this program prove necessary, the Prime Minister submits those modifications to the National Assembly, which may emit suggestions.

## Article 100

- Cabinet removal
- Head of government removal
- Head of government replacement

The Prime Minister, after deliberation in the Council of Ministers, may engage the responsibility of his government by posing the question of confidence.

The vote can only take place forty-eight hours after the presentation of the question. If he is defeated by two-thirds of the members composing the National Assembly, the Government remits its resignation to the President of the Republic.

The President of the Republic appoints a Prime Minister in accordance with Article 54.

## Article 101

At the beginning of each first ordinary session, the Government presents to the National Assembly a report on the execution of its program.

The presentation will be followed by a debate on the results of the actions of the Government and the evaluation of the public policies.

## Article 102

The means of information of the Parliament concerning the governmental action are the oral question, the written question, the interpellation, and the commission of inquiry.

One session per fortnight at least, inclusively during the extraordinary sessions specified in Article 76, is reserved for the questions of the members of the Parliament and to the responses of the Government.

Three days of sittings per month are reserved for an agenda ordered by each Assembly on the initiative of the groups of the opposition of the interested Assembly as well as on that of the minority groups.

## Article 103

The National Assembly may place in question the responsibility of the Government by the vote of a motion of censure.

Such a motion is only receivable if it is signed by half of the members composing the National Assembly. The vote can only take place forty-eight hours after the presentation of the motion.

The motion is only adopted if it is voted by two-thirds of the members composing the National Assembly.

If the motion is adopted, the Government remits its resignation to the President of the Republic; it will then proceed to the appointment of a Prime Minister within the conditions specified in Article 54 above.

## Article 104

The Parliament, by a vote of the absolute majority of the members composing each Assembly, may delegate its power to legislate to the President of the Republic during a limited time and for a determined object.

The delegation of power authorizes the President of the Republic to take, by ordinance in the Council of Ministers, measures of general impact on matters arising in the domain of the law.

• Legislative oversight of the executive

• Legislative oversight of the executive

• Legislative committees

• Cabinet removal  
• Head of government removal  
• Head of government replacement

• Head of state decree power

## SUB-TITLE III: OF THE ECONOMIC, SOCIAL AND CULTURAL COUNCIL

### Article 105

The Economic, Social and Cultural Council, referred to the matter by the Government, gives its opinion on the bills of law, of ordinance or of decree as well as on the proposals of laws that are submitted to it.

It is competent to examine the bills and the proposals of law with an economic, social and cultural character with the exclusion of the laws of finance.

It may undertake, on its own initiative, all studies or inquiries related to economic, social and cultural questions. Its reports are transmitted to the President of the Republic.

An organic law establishes the composition, the attributions and the functioning of the Economic, Social and Cultural Council.

## SUB-TITLE IV: OF THE JURISDICTIONAL MATTERS

### CHAPTER I: Of the Fundamental Principles

#### Article 106

In the Republic of Madagascar, justice is rendered, in accordance with the Constitution and the law, in the name of the Malagasy People, by the Supreme Court, the Courts of Appeal and the jurisdictions that are attached to them as well as to the High Court of Justice.

#### Article 107

The President of the Republic is guarantor of the independence of justice.

To this end, he is assisted by a Superior Council of the Magistrature of which he is the President. The Minister in charge of Justice is Vice President of it.

The Superior Council of the Magistrature, organ of safeguarding, of administration of career and of sanction of the Magistrates, is responsible for:

- seeing to, notably, the respect for the law and the provisions of the Statute of the Magistrature;
- controlling the respect for the ethical rules by the Magistrates;
- presenting recommendations on the administration of Justice, notably in that which concerns the measures of legislative or regulatory order relative to the jurisdictions and to the Magistrates.

The members of the Government, the Parliament, the High Council for the Defense of the Democracy and the State of Law, the Heads of Court as well as the associations legally constituted may refer matters to the Superior Council of the Magistrature.

An organic law establishes the rules relative to the organization, the functioning and the attributions of the Council.

• Budget bills

• Structure of the courts

• Establishment of judicial council

• Judicial independence

## Article 108

In their jurisdictional activities, the presiding Magistrates, the judges and assessors are independent and they are only submitted to the Constitution and the law.

As such, except for the cases specified by the law and under reserve of the disciplinary power, they may not in any matter, be interfered with in the exercise of their functions.

## Article 109

The presiding Magistrates are irremovable; they occupy the positions of which they are titular members by virtue of their grade; they may not receive without their consent, any new assignment, except necessity of service duly declared by the Superior Council of the Magistrature.

## Article 110

The Magistrates of the public ministry are submitted to the hierarchical subordination; nevertheless, in their oral pleadings or claims, they act according to their own conviction and in accordance with the law. They are provided with the judicial police of which they can control the activities and the functioning.

The fact of their enjoining to accomplish acts that are manifestly contrary to the law, results in, concerning these solicitors, the sanctions specified by the law.

## Article 111

The exercise of the functions of Magistrate is incompatible with any activity within a political party and the Government, the exercise of any elective public mandate or of any other paid professional activity, with the exception of teaching activities.

Any Magistrate in office is submitted to the obligation of political neutrality.

Any Magistrate exercising an elective public mandate is placed, of office, in a position of detachment from office.

## Article 112

The General Inspection of Justice, composed of representatives of the Parliament, of representatives of the government, of representatives of the High Council for the Defense of the Democracy and the State of Law, and of the representatives of the Magistrature, is in charge of controlling the respect for the ethical rules particular to the Magistrates, as well as the actions of the personnel of justice.

It is attached to the Presidency of the Republic.

The President of the Republic, the Parliament, the Government, the Heads of Court, the legally constituted associations and any person justifying an interest can refer matters to the General Inspection of Justice.

The law establishes the rules relative to the organization, the functioning and the attributions of the General Inspection of Justice.

• Judicial independence

• Establishment of judicial council  
• Supreme/ordinary court judge removal

## Article 113

The National Council of Justice, is a consultative organ composed of the First President of the Supreme Court, President, of the Procurator General of the Supreme Court, of the Heads of Court, of the representatives of the executive power, of the legislative power, of the High Constitutional Court, of the Superior Council of the Magistrature, of the High Council for the Defense of the Democracy and the State of Law, and of the auxiliaries of justice in general. As such, it may propose to the Government measures of legislative or regulatory order relative to the organization and to the functioning of the jurisdictions, to the status of the Magistrates and the status of the auxiliaries of justice.

The law establishes the rules relative to the organization, to the functioning and to the attributions of the National Council of Justice.

## CHAPTER II: Of the High Constitutional Court

### Article 114

The High Constitutional Court is composed of nine members. Their mandate is of seven (7) years non-renewable.

Three of the members are appointed by the President of the Republic, two are elected by the National Assembly, two by the Senate, and two are elected by the Supreme Council of the Magistrature.

The President of the High Constitutional Court is elected by and from among the members of that Court.

This election as well as the appointment of the other members are declared by decree of the President of the Republic.

### Article 115

The functions of member of the High Constitutional Court are incompatible with those of member of the Government, of the Parliament, with any elective public mandate, any other paid professional activity, except for teaching activities, as well as any activity within a political party or a trade-union.

### Article 116

In addition to the issues that are directed to it by other Articles of the Constitution, the High Constitutional Court, within the conditions established by an organic law:

- 1°. decides on the conformity with the Constitution of the treaties, of the laws, of the ordinances, and of the autonomous regulations;
- 2°. rules on the conflicts of competence between two or more Institutions of the State or between the State and one or more Decentralized Territorial Collectivities or between two or more Decentralized Territorial Collectivities;
- 3°. decides on the conformity with the Constitution and with the organic laws, of the deliberations and of the regulatory acts adopted by the Decentralized Territorial Collectivities;

• Establishment of constitutional court

• Constitutional court selection

• Constitutional court term limits  
• Constitutional court term length

• Eligibility for const court judges

• Constitutional court powers

• Constitutional interpretation  
• Legal status of treaties  
• Constitutionality of legislation

• Federal review of subnational legislation  
• Constitutional interpretation

- 4°. decides on the disputes of the operations of referendum, of the election of the President of the Republic and of the elections of the Deputies and Senators;
- 5°. proclaims the official result of the presidential and legislative elections and of the consultations by referendum.

## Article 117

Before their promulgation, the organic laws, the laws and the ordinances are obligatorily submitted by the President of the Republic to the High Constitutional Court which decides on their conformity with the Constitution.

A provision judged unconstitutional may not be promulgated. In this case, the President of the Republic may decide, either to promulgate the other provisions of the law or of the ordinance, or to submit the entire text to a new deliberation of the Parliament or of the Council of Ministers according to the case, or not to proceed with the promulgation.

In the cases specified above, the referral of the High Constitutional Court to the matter suspends the time period for the promulgation of the laws.

The internal regulations of each Assembly are submitted to the control of constitutionality prior to their application. A provision judged unconstitutional may not be applied.

## Article 118

A Head of an Institution or one-quarter of the members composing one of the Parliamentary Assemblies or the organs of the Decentralized Territorial Collectivities or the High Council for the Defense of Democracy and of the State of Law may refer to the Constitutional Court, for control of constitutionality, any text with legislative or regulatory value as well as all matters falling into its competence.

If, before a jurisdiction, a party raises an exception of unconstitutionality, that jurisdiction postpones its decision and refers the matter to the High Constitutional Court which decides within the time period of one month.

In the same way, if before a jurisdiction, a party maintains that a provision of a legislative or regulatory text infringes their fundamental rights recognized by the Constitution, that jurisdiction postpones its decision within the same conditions as in the previous paragraph.

A provision declared unconstitutional ceases of plain right to be in force.

The decision of the High Constitutional Court is published in the Journal Officiel.

## Article 119

The High Constitutional Court can be consulted by any Head of an Institution and any organ of the Decentralized Territorial Collectivities to give its opinion on the constitutionality of any bill of act or on the interpretation of a provision of this Constitution.

## Article 120

In the matter of electoral dispute and of direct popular consultation, the High Constitutional Court renders orders.



In the other matters falling into its competence, except in the case specified in Article 119, it renders decisions.

The orders and decisions of the High Constitutional Court are substantiated; they are not susceptible to any recourse. They impose themselves on all the public powers as well as on the administrative and jurisdictional authorities.

## CHAPTER III: Of the Supreme Court

### Article 121

The Supreme Court sees to the regular functioning of the jurisdictions of the judicial, administrative and financial order.

It includes:

- the Court of Cassation;
- the Council of the State;
- the Court of Accounts.

### Article 122

The First President and the Procurator General of the Supreme Court are the heads of this high jurisdiction.

They are respectively appointed by decree taken in the Council of Ministers in accordance with the proposals of the Superior Council of the Magistrature, preferably from among the oldest within the highest degree of the Magistrates respectively of the judicial, administrative and financial orders.

### Article 123

The First President of the Supreme Court is seconded by three Vice-Presidents, assigned respectively to the presidency of the Court of Cassation, of the Council of the State and of the Court of Accounts.

Each Vice-President is appointed in the Council of Ministers by decree of the President of the Republic in accordance with the proposals of the Superior Council of the Magistrature, preferably from among the oldest within the highest degree of the Magistrates respectively of the judicial, administrative and financial orders.

### Article 124

The Office of General Prosecution of the Supreme Court includes:

- an Office of General Prosecution of the Court of Cassation;
- a General Commissariat of the law for the Council of the State;
- a General Commissariat of the Public Treasury for the Court of Accounts.

The Office of General Prosecution of the Supreme Court is seconded by the three heads of these Offices of General Prosecution.

The head of the Office of General Prosecution of the Court of Cassation, of the General Commissariat of the law and of the General Commissariat of the Public Treasury are appointed in the Council of Ministers in accordance with the proposals of the Superior Council of the Magistrature, preferably from among the oldest Magistrates within the highest degree respectively of the judicial, administrative and financial orders.

• Structure of the courts

• Attorney general  
• Eligibility for supreme court judges  
• Supreme court selection

• Eligibility for supreme court judges  
• Supreme court selection

## Article 125

In addition to the attributions that are devolved to it by the particular laws, the Supreme Court rules on the conflicts of competence between two jurisdictions of different order.

## Article 126

The Court of Cassation sees to the application of the law by the jurisdictions of the judicial order.

In addition to the competences that are recognized to it by particular laws, it decides on the petitions in cassation formed against the decisions rendered in last resort by these jurisdictions.

## Article 127

Without prejudice to special competences specified by the law, the Council of the State controls the regularity of the acts of the Administration and sees to the application of the law by the jurisdictions of the administrative order.

The Council of the State, within the conditions established by an organic law:

- 1°. judges the recourses in annulment of the acts of the central administrative authorities, the recourses of full jurisdiction for the damaging acts caused by the activities of the Administration, and the contentious claims in fiscal matters;
- 2°. takes cognizance, in appeal, of the control of the legality of the acts of the authorities of the Decentralized Territorial Collectivities;
- 3°. decides, in appeal or in cassation, on the decisions rendered by the administrative tribunals or the specialized administrative jurisdictions.

It is the judge of certain electoral disputes.

It can be consulted by the Prime Minister and by the members of the government to give its opinion on the bills of legislative, or regulatory texts or on the interpretation of a legislative, or regulatory provision.

It can proceed, at the demand of the Prime Minister, to studies on the texts of laws, on the organization, on the functioning, and on the missions of the public services.

## Article 128

The Court of Accounts:

- 1°. judges the accounts of the public accountants;
- 2°. controls the execution of the laws of finance and of the budgets of the public organs;
- 3°. controls the accounts and the administration of the public enterprises;

- 4°. decides, in appeal, on the judgments rendered in financial matters by the jurisdictions or the administrative organs of a jurisdictional character;
- 5°. assists the Parliament and the Government in the control of the execution of the laws of finance.

## Article 129

The Supreme Court addresses an annual report of its activities to the President of the Republic, to the Prime Minister, to the Presidents of the two Assemblies and to the Minister responsible for Justice and to the Superior Council of the Magistrature.

This report must be published in the Journal Officiel in the year that follows the closure of the judicial year concerned.

## Article 130

The First President, and the Procurator General of the Courts of Appeal are appointed in the Council of Ministers by decree of the President of the Republic in accordance with the proposals of the Superior Council of the Magistrature, preferably from among the oldest within the highest grade of the Magistrates respectively of the judicial, administrative and financial orders.

## CHAPTER IV: Of the High Court of Justice

### Article 131

The President of the Republic is only responsible for the acts accomplished and connected with the exercise of his functions in the case of high treason, of grave violation of, or of repeated violations of the Constitution, or of breach of his duties manifestly incompatible with the exercise of his mandate.

He may only be impeached by the National Assembly in a public ballot and with a majority of two-thirds of its members.

He is justiciable before the High Court of Justice. The impeachment may end in the forfeiture of his mandate.

### Article 132

If the forfeiture of the President of the Republic is pronounced, the High Constitutional Court declares the vacancy of the Presidency of the Republic; it will then proceed to the election of a new President within the conditions of Article 47 above. The President declared in forfeiture is no longer eligible to any elective public function.

### Article 133

The Presidents of the Parliamentary Assemblies, the Prime Minister, the other members of the Government and the President of the High Constitutional Court are penally responsible, before the High Court of Justice, for the acts accomplished and connected with the exercise of their functions, for acts qualified as crimes or misdemeanors at the time when they were committed.

- Attorney general
- Eligibility for supreme court judges
- Supreme court selection

- Courts for judging public officials

- Head of state removal
- Head of state immunity

- Head of state replacement

- Cabinet removal
- Constitutional court removal
- Head of government removal
- Head of government immunity
- Immunity of legislators
- Removal of individual legislators

They can be impeached by the National Assembly deciding in public ballot by an absolute majority of its members.

The initiative of the prosecution emanates from the Procurator General of the Supreme Court.

## Article 134

The Presidents of the Parliamentary Assemblies, the Prime Minister, the other members of the Government and the President of the High Constitutional Court are judiciable by the jurisdictions of common law for the infractions committed outside of the exercise of their functions.

The initiative of the prosecutions emanates from the Procurator General before the Court of Cassation.

In this case, when there is misdemeanor, the competent correctional jurisdiction is presided over by the President of the tribunal or by a Vice-President if he is prevented.

The provisions of the three preceding paragraphs are equally applicable to the Deputies, to the Senators and to the members of the High Constitutional Court.

## Article 135

The High Court of Justice enjoys the plenitude of jurisdiction.

## Article 136

The High Court of Justice is composed of eleven members of which:

- 1°. the First President of the Supreme Court, President, substituted as of plain right, in the case of impediment, by the President of the Court of Cassation;
- 2°. two Presidents of Chamber of the Court of Cassation, and two substitutes, proposed by the General Assembly of that Court;
- 3°. two first Presidents of Court of Appeal, and two substitutes, proposed by the First President of the Supreme Court;
- 4°. two titular Deputies and two substitute Deputies elected at the beginning of the legislature by the National Assembly;
- 5°. two titular Senators and two substitute Senators, elected at the beginning of the legislature by the Senate;
- 6°. two titular members and two substitute members from the High Council for the Defense of Democracy and the State of law.

The Public Ministry is represented by the Procurator General of the Supreme Court assisted by one or more members of his Office of General Prosecution. In the case of impediment of the Procurator General, he is substituted by the Procurator General of the Court of Cassation.

The head clerk of the Supreme Court is, of right, clerk of the High Court of Justice. He holds the pen. In the case of impediment, he is replaced by the head clerk of the Court of Cassation.

The organization and the procedure to follow before the High Court of Justice are established by an organic law.

## TITLE IV: OF THE INTERNATIONAL TREATIES AND AGREEMENTS

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### Article 137

The President of the Republic negotiates and ratifies the treaties. He is informed of any negotiations tending to the conclusion of an international agreement not submitted to ratification.

The ratification or the approval of the treaties of alliance, of the treaties of commerce, of the treaties or agreements relative to international organization, of those that engage the finances of the State including foreign loans, and of those that modify the provisions of a legislative nature, of those that are relative to the status of persons, of the treaties of peace, and of those that include modifications of the territory, must be authorized by the law.

Before any ratification, the treaties are submitted by the President of the Republic, to the control of constitutionality of the High Constitutional Court. In the case of non-conformity with the Constitution, there may not be ratification until after revision of it.

The treaties or agreements regularly ratified or approved have, from their publication, an authority superior to that of the laws, under reserve, for each agreement or treaty, of its application by the other party.

Any treaty of affiliation of Madagascar to an organization of regional integration must be submitted to a popular consultation by way of referendum.

### Article 138

The Prime Minister negotiates and signs the international agreements not submitted to ratification.

## TITLE V: OF THE TERRITORIAL ORGANIZATION OF THE STATE

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### SUB-TITLE I: OF THE GENERAL PROVISIONS

#### Article 139

The Decentralized Territorial Collectivities, endowed with juridical personality and with administrative and financial autonomy, constitute the institutional framework for the effective participation of the citizens in the administration of public affairs and guarantee the expression of their diversities and of their specificities.

They possess a patrimony including a public domain and a private domain that are delimited by the law.

Lands vacant and without owner are part of the domain of the State.

## Article 140

The Decentralized Territorial Collectivities are provided with a regulatory power.

The State sees to it that the regulation of one Decentralized Territorial Collectivity does not affect the interests of another Decentralized Territorial Collectivity.

The State sees to the harmonious development of all the Decentralized Territorial Collectivities on the basis of national solidarity, of regional potentialities and of the inter-regional equilibrium by provisions of adjustment.

Special measures will be taken in favor of the development of the least advanced zones, including the constitution of a special fund of solidarity.

## Article 141

The Decentralized Territorial Collectivities assure with the participation of the State, notably, public security, civil defense, the administration, the territorial development, the economic development, the preservation of the environment and the amelioration of the framework of life.

In these domains, the law determines the division of the competences in consideration of the national interests and of the local interests.

## Article 142

The Decentralized Territorial Collectivities enjoy financial autonomy.

They prepare and administer their budget according to the principles applicable in the matter of the administration of the public finances.

The budgets of the Decentralized Territorial Collectivities benefit from the resources of diverse natures.

## Article 143

The Decentralized Territorial Collectivities of the Republic are the Communes, the Regions and the Provinces.

The creation and the delimitation of the Decentralized Territorial Collectivities must respond to the criteria of geographic, economic, social and cultural homogeneity. They are decided by the law.

## Article 144

The Decentralized Territorial Collectivities freely administer themselves through assemblies that govern, through their deliberations, the affairs devolved to their competence by this Constitution and by the law.

These deliberations may not be contrary to the constitutional, legislative, and regulatory provisions.

## Article 145

The representation of the State before the Decentralized Territorial Collectivities is governed by the law.

## Article 146

The State engages itself to implement the following measures:

- division of the competences between the State and the Decentralized Territorial Collectivities;
- division of the resources between the State and the Decentralized Territorial Collectivities;
- division of the public services between the State and the Decentralized Territorial Collectivities.

## Article 147

The resources of a Decentralized Territorial Collectivity include notably:

- the product of the taxes and assessments voted by its Council and directly received in favor of the budget of the Decentralized Territorial Collectivity; the law determines the nature and the maximum rate of those taxes and assessments taking duly into account the charges assumed by the Decentralized Territorial Collectivities and the global fiscal charge imposed on the Nation;
- the part that reverts to it by law on the product of the taxes and assessments received in favor of the budget of the State; that part that is automatically deducted at the moment of the collection, is determined by the law according to a percentage that takes into account the charges assumed globally and individually by the Decentralized Territorial Collectivities and to assure a balanced economic and social development between all the Decentralized Territorial Collectivities on the whole of the national territory;
- The product of the subsidies, allocated or non- allocated, consented by the budget of the State to all or each one of the Decentralized Territorial Collectivities to take into account their particular situation, or to compensate, for those Decentralized Territorial Collectivities, for the charges caused by the programs or projects decided by the State and implemented by the Decentralized Territorial Collectivities;
- The product of non-refundable external aid and the product of donations to the Decentralized Territorial Collectivities;
- the revenues from their patrimony;
- the loans of which the conditions of subscription are established by the law.

## SUB-TITLE II: OF THE STRUCTURES

### CHAPTER I: Of the Communes

## Article 148

The Communes constitute the basic Decentralized Territorial Collectivities.

The Communes are urban or rural considering their demographic basis reduced or not to an urbanized agglomeration.

## Article 149

The Communes participate in the economic, social, cultural and environmental development of their territorial resort. Their competences take into account essentially the constitutional and legal principles as well as the principle of proximity, of promotion and of defense of the interests of the inhabitants.

## Article 150

The Communes may constitute themselves in groups for the realization of projects of common development.

## Article 151

In the Communes, the executive and deliberative functions are exercised by distinct organs and elected by universal direct suffrage.

The law establishes the composition, the organization, the attributions and the functioning of the executive and deliberative organs as well as the mode and the conditions for the election of their members.

## Article 152

The Fokonolona, organized in fokontany within the Communes, is the basis of the development and of the environmental and socio-cultural cohesion.

The responsible persons of the fokontany participate in the elaboration of the program of development of their Commune.

## CHAPTER II: Of the Regions

### Article 153

The Regions have an essentially economic and social vocation.

In collaboration with the public and private organs, they direct, make dynamic, coordinate and harmonize the economic and social development of all their territorial resort and assure the planning, the territorial development and the implementation of all the actions of development.

### Article 154

The executive function is exercised by an organ directed by the Head of Region elected by universal suffrage.

The Head of Region is primarily responsible for strategy and implementation of all actions of economic and social development of the region.

He is the Head of the Administration of his Region.

### Article 155

The deliberative function is exercised by the Regional Council, of which members are elected by universal suffrage.

The Deputies and the Senators from different circumscriptions of the Region are members by right of the Regional Council, with deliberative voice.



## Article 156

The composition, the organization, the attributions and the functioning of the executive and deliberative organs as well as the mode and the conditions for the election of their members, are established by the law.

## CHAPTER III: Of the Provinces

### Article 157

The Provinces are Decentralized Territorial Collectivities endowed with juridical personality, and with administrative and financial autonomy.

They assure the coordination and the harmonization of the actions of the development of provincial interest and see to the equitable and harmonious development of the Decentralized Territorial Collectivities in the Province.

The Provinces implement the policy of the development of provincial interest defined and ordered in the Provincial Council.

In collaboration with the public and private organs, they direct, make dynamic, coordinate and harmonize the economic and social development of the whole Province and assure, as such, the planning, the territorial development and the implementation of all the actions of development.

### Article 158

The executive function is exercised by an organ directed by the Head of Province elected by universal suffrage.

The Head of Province is the first person responsible for the strategy and the implementation of all actions of the economic and social development of his Province.

He is the Head of the Administration of the Province.

### Article 159

The deliberative function is exercised by the Provincial Council whose members are elected by universal suffrage.

The Deputies and the Senators from different circumscriptions of the Province are members by right of the Provincial Council, with deliberative voice.

### Article 160

The composition, the organization, the attributions and the functioning of the executive and deliberative organs, as well as the mode and the conditions for the election of their members, are established by the law.

• Subsidiary unit government

• Claim of universal suffrage

• Claim of universal suffrage

## TITLE VI: OF THE REVISION OF THE CONSTITUTION

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• Constitution amendment procedure

### Article 161

No revision of the Constitution may be initiated, except in the case of necessity judged imperious.

• Referenda

### Article 162

The initiative of the revision, in the case of necessity judged imperious, belongs either to the President of the Republic who decides in the Council of Ministers, or to the Parliamentary Assemblies deciding by a separate vote by a majority of two-thirds of the members.

The bill or proposal of revision must be approved by three-fourths of the members of the National Assembly and of the Senate.

The bill or proposal of revision so approved is submitted to referendum.

### Article 163

• Unamendable provisions

The republican form of the State, the principle of the integrity of the national territory, the principle of the separation of the powers, the principle of autonomy of the Decentralized Territorial Collectivities, the duration and the number of the mandate of the President of the Republic, may not be made the object of revision.

The exceptional powers held by the President of the Republic in the exceptional circumstances or circumstances of political trouble do not confer on him the right of recourse to a constitutional revision.

## TITLE VII: TRANSITIONAL AND DIVERSE PROVISIONS

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### Article 164

This Constitution will be adopted by referendum. It will enter into force from its promulgation by the President of the High Authority of the Transition, within the ten days following the proclamation of the definitive results of the referendum by the High Constitutional Court.

### Article 165

The legislation in force remains applicable in all the provisions non-contrary to this Constitution.

The texts with a legislative character relative to the establishment of the institutions and organs, as well as the other laws of application specified by this Constitution will be taken by way of ordinance.

## Article 166

Until the progressive establishment of the institutions specified by this Constitution, the Institutions and the organs specified for the period of the Transition continue to exercise their functions.

The Superior Council of the Transition and the Congress of the Transition cease their functions from the election of the Bureau of the new National Assembly.

While waiting for the establishment of the Senate, the National Assembly has the plenitude of the legislative power.

Until the investiture of the new President of the Republic, the current President of the High Authority of the Transition continues to exercise the functions of Head of the State.

In the case of vacancy of the Presidency, for any cause whatsoever, the functions of Head of State are exercised jointly by the Prime Minister, the President of the Superior Council of the Transition, and by the President of the Congress.

## Article 167

In order to respect the constitutional prescription, the President of the Republic, within a time period of 12 months counting from his investiture, invites the competent Instances to designate the members who will compose the High Court of Justice in order to proceed from the expiration of that time period to the installation of the High Court of Justice. Any party justifying an interest may refer the matter to the competent institutions by demand for sanction in the case of deficiency.

As for that which concerns the President of the Republic, exceptionally, the competent Instance is the High Constitutional Court which will be authorized to take the sanctions that might have been taken by the High Court of Justice if it were installed.

## Article 168

Within the framework of the process of national reconciliation, a Council of the Malagasy Fampihavanana whose composition, attributions, and modalities of functioning are determined by the law, is instituted.

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