



## **Constitution of the Republic of Madagascar :Adopted on 19 Aug 1992**

### **PREAMBLE**

The sovereign Malagasy people, profoundly attached to their cultural and spiritual values, especially to the basis of national unity; affirming their belief in God the Creator; faithful to their international commitments; adopting the International Charter of Human Rights, the African Charter of Human Rights, the Convention on Children's Rights, and considering these to be an integral part of their law; convinced that the growth of their personality and identity is basic to their harmonious development, the essential conditions of which are recognized to be:

- respect for and protection of fundamental liberties, individual and collective;
  - separation and balance of powers to be exercised through democratic procedures;
  - openness in the conduct of public affairs as a guarantee of citizen participation in the exercise of power and efficient effective supervision;
  - the establishment of a State in which the people and the public officials are subject to the same legal norms under the supervision of an independent judiciary;
  - protection of national unity through the implementation of a policy of balanced development in all areas;
  - dedication to peace and fraternity;
  - struggle against injustice, inequality, and discrimination in all its forms; and
  - the application of effective decentralization;
- declares:

### ***Title I General Principles***

#### **Article 1 [People, State, Democracy]**

- (1) The Malagasy people shall constitute a Nation organized as a sovereign, secular State.
- (2) This State shall be a Republic, unique and indivisible, and shall be named "Republic of Madagascar."
- (3) Democracy shall be the basis of the Republic. Its sovereignty shall be exercised within the territorial limits recognized by international law.

#### **Article 2 [Territorial Entities, Autonomie]**

- (1) The Republic of Madagascar shall be organized in decentralized territorial entities whose autonomy shall be guaranteed by the Constitution.
- (2) These territorial entities shall cooperate with the State developing the national community.

#### **Article 3 [National Territory]**

The national territory shall be inalienable.

#### **Article 4 [Motto, Emblem, Anthem, Seals, Coat of Arms, Language]**

- (1) The Republic of Madagascar shall have for its Motto: "Homeland - Revolution - Liberty".
- (2) Its national emblem shall be a tri-colored flag, white, red, and green, consisting of three rectangular bands of equal dimensions. Starting on the edge closest to the flagpole, the first band shall be vertical and white; the other two shall be horizontal, the upper one red and the lower green.
- (3) The national anthem shall be: "Oh, Dear Homeland".
- (4) The State Seals and Coat of Arms shall be defined by law.
- (5) Malagasy shall be the national language.

#### **Article 5 [Capital]**

The Capital of the Republic shall be Antananarivo.

#### **Article 6 [Sovereignty, Representation, Electoral Rights]**

- (1) Sovereignty shall belong to the people, who shall exercise it through their representatives elected by direct or indirect universal suffrage or through a referendum. No faction or individual may usurp the exercise of sovereignty.
- (2) All citizens, of both sexes, who possess civil and political rights shall be electors under conditions determined by law.
- (3) Electoral status may be removed only by judicial decision.

#### **Article 7 [Rule of Law]**

Law shall be the expression of popular will. The law shall be the same for all in protection, in obligation, or in punishment.

#### **Article 8 [Citizen Equality, No Discrimination]**

- (1) Citizens shall be equal under the law, enjoying the same fundamental liberties protected by law.
- (2) The State shall prohibit all discrimination based on sex, education, wealth, origin, race, religion, or opinion.

### *Title II Liberties, Rights, Duties*

#### *Section I Civil and Political Rights and Duties*

#### **Article 9 [Rule of Law]**

The exercise and protection of individual rights and fundamental liberties shall be organized by law.

#### **Article 10 [Expression, Association, Assembly, Move, Religion]**

Freedom of opinion and expression, communication, press, association, assembly, travel, conscience, and religion shall be guaranteed to all and may be limited only in respect of the rights and liberties of others and of the necessity to safeguard public order.

#### **Article 11 [Information]**

- (1) Information in all forms shall be subject to no prior restraint.

(2) Conditions of freedom of information and its responsibility shall be determined by law and by codes of professional ethics.

**Article 12 [Leave, Travel, Settle]**

(1) Everyone shall have the right to leave the territory and to return under conditions established by law.

(2) Everyone shall have the right to travel and to settle freely within the territory of the Republic while respecting the rights of others and the limits of the law.

**Article 13 [Liberty, Home, Communication, Nulla Poena Sine Lege, Legal Recourse, Counsel]**

(1) Everyone shall be assured of protection of his person, his residence, and his correspondence.

(2) No search may take place except under law on the written order of the competent judicial authority, except in cases of flagrante delicto.

(3) No one may be prosecuted, arrested, or detained except in cases determined by law, according to the forms prescribed by law.

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

(5) No one may be punished twice for the same deed.

(6) The law shall assure everyone access to justice; lack of resources will not be no obstacle.

(7) The State shall guarantee full, inviolable rights of defense in all jurisdictions and all stages of procedure, including the preliminary investigation, Judicial police, and court.

**Article 14 [Association, Political Parties]**

(1) Citizens may organize freely without prior authorization in associations and political parties; however, associations or political parties which preach totalitarianism or segregation of an ethnic, tribal, or religious nature are forbidden.

(2) The law shall establish conditions for the creation and functioning of associations and political parties.

**Article 15 [Eligibility, Electoral Rights]**

Every citizen shall have the right to be a candidate in the elections provided for in this Constitution, without discrimination based on membership in a political party, under conditions established by law.

**Article 16 [Duty to Respect the Laws]**

Within the limits of the democratic liberties recognized by this Constitution, everyone shall have the duty to respect the Constitution, institutions, laws, and regulations of the Republic.

***Section II Economic, Social and Cultural Rights and Duties***

**Article 17 [Personal Integrity, Dignity, Development]**

The State shall organize the exercise of rights which guarantee to the individual personal integrity and dignity, and complete physical, intellectual, and moral development.

**Article 18 [National Service]**

National service shall be an honorable duty. It shall not affect employment or political rights.

### **Article 19 [Health, No Abortion]**

The State shall recognize every individual's right protection of his health, starting from conception.

### **Article 20 [Family, Inheritance]**

The family, the natural basis of society, shall be protected by the State. Everyone shall have the right to form a family and to bequeath personal goods through inheritance.

### **Article 21 [Protection of Family, Mother, Child]**

The State shall protect the well-being of the family, the mother and child, by legislation and by appropriate social institutions.

### **Article 22 [Promotion of Development]**

The State shall attempt, as its means permit, to assure the intellectual development of every individual, limited only by each person's ability.

### **Article 23 [Education, Training, Parents' Responsibility]**

- (1) Every child shall have the right to education and training, with the responsibility of the parents, and respecting their freedom of choice.
- (2) Every adolescent shall be entitled to professional training.

### **Article 24 [Public Education]**

The State shall organize public education, free and accessible to all. Primary education shall be compulsory for all.

### **Article 25 [Private Education]**

- (1) The State shall recognize the right to private education and shall guarantee freedom of education subject to conditions of health, morality, and capacity established by the law.
- (2) Private educational establishments shall have the benefit of the same fiscal regime, with conditions established by law.

### **Article 26 [Culture, Science]**

- (1) Everyone shall have the right to participate in the cultural life of the community, in scientific progress, and the resulting benefits.
- (2) The State shall assure the promotion and protection of the natural cultural heritage, as well as artistic and literary production.

### **Article 27 [Work, Public Employment]**

- (1) Work and professional training shall be a right and a duty for every citizen.
- (2) Access to public institutions shall be open to every citizen with no conditions other than those of ability and aptitude.

### **Article 28 [Workers' Equality]**

No one may suffer injury in his employment because of sex, age, religion, opinion, origin, or political conviction.

### **Article 29 [Remuneration]**

Every citizen shall have the right, based on the quality and product of his work, to fair remuneration to assure him and his family a living appropriate to human dignity.

### **Article 30 [Handicapped]**

Through social agencies, the State shall attempt to provide for the needs of every citizen who, by reason of age or physical or mental handicap, is unable to work.

### **Article 31 [Union]**

- (1) The State shall recognize the right of every worker to defend his interests through union activity and especially freedom to form a union.
- (2) However, membership in a union shall be voluntary.

### **Article 32 [Workers' Participation]**

Every worker shall have the right to participate, through his representatives, in determining the rules and conditions of employment.

### **Article 33 [Strike]**

The right to strike shall be recognized and exercised under conditions established by law.

### **Article 34 [Private Property]**

The State shall guarantee the right to private property. No one can be deprived of property except for public use and with the condition of fair, prior compensation.

### **Article 35 [Minority Rights]**

- (1) The Fokonolona may take appropriate measures to prevent destruction of their environment, loss of their land, seizure of herds of cattle, or loss of their ceremonial heritage, unless these measures jeopardize the common interest or public order.
- (2) The coverage and terms of these provisions shall be determined by law.

### **Article 36 [Taxation]**

Every citizen's share in public expenditures must be progressive and calculated on his ability to pay.

### **Article 37 [Enterprise]**

The State shall guarantee free enterprise within the limits of respect for the common good, public order, and the environment.

### **Article 38 [Capital, Investment]**

The State shall guarantee the security of capital and investment.

### **Article 39 [Environment]**

Everyone shall have the duty to respect the environment; the State shall assure its protection.

### **Article 40 [State Neutrality, Ombudsmen]**

(1) The State shall guarantee the political neutrality of the administration, the Armed Forces, justice, the police, education, and training.

(2) The State shall be committed to instituting an independent agency responsible for the promotion and protection of human rights.

## ***Title III Structure of the State***

### **Article 41 [Powers]**

The structure of the State shall include:

- the executive power, consisting of the President of the Republic and the Government;
- the legislative power, formed by the National Assembly and the Senate;
- the judicial power, exercised by the Administrative and Financial Constitutional Court, the Supreme Court, Courts of Appeal, Tribunals, and the High Court of Justice.

### **Article 42 [Remuneration]**

The law shall determine the amount, the conditions, and the method of payment of the salaries to individuals elected to fulfill the duties or carry out the functions provided for in this Constitution.

### **Article 43 [No Corruption]**

(1) No one called to carry out an office under this Constitution may accept presents or remuneration, except for his official salary, from any person or corporation domestic or foreign, under penalty of dismissal.

(2) The application of these provisions shall be determined by law.

## ***Title IV Executive***

### ***Section I President of the Republic***

### **Article 44 [Presidential Office]**

The President of the Republic shall be the Head of State. As "Ray aman-dreny" he shall assure respect for the Constitution. He is responsible for the regular functioning of public powers; he shall be responsible for national independence and territorial integrity and shall assure protection of, and respect for, national sovereignty within national territory and abroad; he shall be the symbol of national unity.

#### **Article 45 [Election, Term, Re-election]**

The President of the Republic shall be elected by universal direct suffrage for a five-year term. He may be re-elected for one additional term.

#### **Article 46 [Eligibility, Resignation, Candidacy]**

(1) All candidates for the office of President of the Republic must possess all civil and political rights and must be at least 40 years old at the time the candidacy is declared.

(2) To become a candidate, the President then in office must resign one day before the beginning of the electoral campaign.

(3) Other conditions for candidacy shall be established by law.

#### **Article 47 [Second Ballot]**

(1) The election for President of the Republic shall take place, upon convocation of the Government, no less than thirty days and no more than sixty days before the expiration of the term of the President of the Republic then in office.

(2) The election shall be by a majority of the votes on the first ballot. If this is not obtained, the President of the Republic shall be elected on the second ballot by plurality of one of the two candidates having received the greatest number of votes on the first ballot.

#### **Article 48 [Oath]**

Before assuming office, the President of the Republic shall swear the following oath before the Nation and in the presence of the National Assembly, the Senate, and the Constitutional Court, specially convened:

#### **Article 49 [Incompatibilities]**

The office of President of the Republic shall be incompatible with any other elective public office, any other professional activity, and any activity within a political party or group of political parties.

#### **Article 50 [Permanent Incapacity]**

The permanent incapacity of the President of the Republic may be declared by the Constitutional Court following a resolution adopted by not less than two-thirds of the deputies in the National Assembly; for violation of the Constitution; and for any other cause duly stated and proved resulting in his permanent incapacity to exercise his duties.

#### **Article 51 [Temporary Incapacity]**

(1) The temporary incapacity of the President of the Republic may be declared by the Constitutional Court following a resolution adopted by at least a two-thirds majority of the deputies in the National Assembly.

(2) Removal of temporary incapacity shall be decided by the Constitutional Court. Temporary incapacity may not exceed a period of three months, after which permanent incapacity must be declared by the Constitutional Court.

## **Article 52 [Replacement]**

- (1) In case of vacancy, permanent incapacity or temporary incapacity, the duties of the President of the Republic shall be temporarily exercised by the President of the Senate.
- (2) In case of vacancy or permanent incapacity, the election of the new President shall take place within the period provided for in Article 47.

## **Article 53 [Appointment of Prime Minister and Ministers]**

- (1) The President of the Republic shall appoint the Prime Minister under the conditions established in Article 90.
- (2) Following the appointment of the Prime Minister, he shall appoint the other members of the Government, and may terminate their duties.

## **Article 54 [President and Government]**

- (1) The President shall preside over the Council of Ministers.
- (2) He shall sign ordinances of the Council of Ministers in the cases and conditions provided for by this Constitution
- (3) He shall sign the decrees debated in the Council of Ministers.

## **Article 55 [Head of Military]**

- (1) The President shall be the Supreme Head of the Armed Forces; he shall preside over the Superior Council of National Defense whose organization and duties shall be established by law. He shall declare defense policy in the Superior Council of National Defense, within general State policy.
- (2) He shall decide upon the commitment of armed forces and resources in foreign interventions, after consulting the Superior Council of National Defense, the Council of Ministers, and the Parliament.
- (3) He shall appoint military officials to represent the Malagasy State in international agencies.

## **Article 56 [Competences]**

- (1) The President of the Republic shall accredit and recall ambassadors and envoys extraordinary of the Republic of Madagascar to foreign States and international organizations.
- (2) He shall receive credentials and requests for recall from States and international organizations recognized by the Republic of Madagascar.
- (3) He shall negotiate and ratify treaties. He shall be informed of all negotiations leading to the conclusion of an international agreement which is not submitted for ratification.
- (4) He shall make appointments through the Council of Ministers to high offices of the State; he may delegate this power to the Prime Minister.
- (5) He may refer matters directly, if needed, to administrative agencies.
- (6) He shall have the right of pardon.
- (7) He shall confer the decorations of the Republic of Madagascar.

## **Article 57 [Promulgation of Laws, Request for Reconsideration]**

- (1) The President of the Republic shall promulgate laws within two weeks following transmittal to him of laws adopted by the National Assembly. This period may be reduced to five days in an emergency declared by the National Assembly.

- (2) He may, before the expiration of this period, ask the National Assembly to reconsider the law or certain articles of the law.
- (3) In the absence of promulgation within the period provided, the President of the Senate may substitute for the President of the Republic.

#### **Article 58 [Dissolution of Parliament]**

The President of the Republic may dissolve the National Assembly at the request of the Council of Ministers under the terms of Article 95.

#### **Article 59 [State of Emergency, Martial Law]**

- (1) The President of the Republic, meeting with the Council of Ministers, with the agreement of the Presidents of the National Assembly, the Senate, and the Constitutional Court, may proclaim a state of emergency or martial law for the defense of the Republic, for public order, or for State security, as circumstances require.
- (2) The proclamation of a state of emergency shall confer special powers on the President of the Republic; their extent and duration shall be specified by law.

#### **Article 60 [Countersignature]**

Acts of the President of the Republic shall be countersigned by the Prime Minister and the Ministers responsible for executing them.

### *Section II Government*

#### **Article 61 [Tasks, Head of Government, Nomination]**

- (1) The Government shall consist of the Prime Minister and other Ministers.
- (2) The Government shall determine and carry out State policy.
- (3) The Government shall have at its disposal the administration and the armed force.
- (4) The Government shall be responsible to the National Assembly under conditions provided for in Title V.
- (5) The Prime Minister shall be the Head of the Government. He shall be appointed by the President of the Republic under conditions established by Article 90.
- (6) Other members of the Government shall be appointed by the President of the Republic following nomination by the Prime Minister.

#### **Article 62 [Ministerial Incompatibilities]**

The duties of a member of the Government shall be incompatible with the exercise of any other elective public office, professional representation, public employment, or any other paid professional activity.

#### **Article 63 [Prime Minister's Competences]**

- (1) The Prime Minister shall direct the activity of the Government and shall be responsible for coordinating the activities of the Ministries.
- (2) He may initiate laws.
- (3) He shall assure the execution of laws.
- (4) He shall assure the execution of judicial decisions.

- (5) He shall have at his disposal administrative agencies and shall assure the proper functioning of public services and the proper management of public finance.
- (6) He shall assure public security and maintain order, while respecting fundamental liberties and human rights: for this purpose, he shall have at his disposal all police, security, and defense agencies.
- (7) He shall preside over the Interministry Committee of Defense, which is responsible for establishing defense policy; he shall have at his disposal the Secretariat of defense. The organization and duties of these agencies shall be determined by law.
- (8) He shall be the Head of the Administration; he shall appoint civil and military officials as well as other State officials.
- (9) He shall preside over the Council of Government.
- (10) He shall assure development
- (11) He may delegate certain powers to Government members with the option to subdelegate.

#### **Article 64 [Council of Government Competences]**

In the Council of Government, the Prime Minister may:

- determine State policy and execute it;
- propose bills to be submitted to Parliament;
- exercise regulatory power;
- create plans for economic and social development as well as land development;
- negotiate and sign international agreements which are not submitted to ratification; and
- exercise other duties for which Government consultation is required under this Constitution and individual laws.

#### **Article 65 [Countersignature]**

Actions of the Prime Minister shall be countersigned, when appropriate, by the Ministers responsible for executing them.

### *Title V Legislature*

#### *Section I National Assembly*

#### **Article 66 [Title, Election, Term]**

- (1) The members of the National Assembly shall have the title of Deputies of Madagascar.
- (2) They shall be elected by direct universal suffrage for four-year terms.

#### **Article 67 [Parliamentary Incompatibilities, No Directed Votes]**

- (1) The office of deputy shall be incompatible with the exercise of any other public employment, except education, and with any other elective public office.
- (2) A deputy who is appointed member of the Government shall automatically resign the office of deputy.
- (3) All directed votes shall be null and void.

#### **Article 68 [Law on Election]**

The law shall establish the number of members of the National Assembly, the distribution of seats throughout the national territory, as well as electoral districts and voting procedures. The law shall

also establish conditions of eligibility, regulation of ineligibility and dismissal, as well as conditions for the election of persons replacing deputies in case of vacancy, until the next Assembly election.

#### **Article 69 [Indemnity, Immunity, Control]**

(1) No deputy may be prosecuted, investigated, arrested, detained, or judged for opinions and votes cast by him in the exercise of his duties.

(2) For the duration of legislative sessions, no deputy may be prosecuted or arrested in a criminal or correctional matter, without the authorization of the bureau of the Assembly, except in case of flagrante delicto.

(3) Outside of legislative sessions, no deputy may be arrested without the authorization of the bureau of the Assembly, except in case of flagrante delicto, authorized prosecution, or final conviction.

(4) Anyone may bring to the attention of the National Assembly the acts or omissions of a deputy. The permanent bureau must furnish a prompt response.

#### **Article 70 [President and Bureau of the Assembly]**

The President of the National Assembly and members of the bureau shall be elected at the beginning of the first session for the duration of the legislature. However, they may be replaced when necessary by a vote of two-thirds of the deputies.

#### **Article 71 [Sessions]**

The National Assembly shall meet officially in two ordinary sessions per year. The length of each session may not be less than sixty days nor more than ninety days. The first session shall begin on the first Tuesday in May, and the second, devoted principally to the adoption of the budget, on the last Tuesday in September.

#### **Article 72 [Extraordinary Sessions]**

(1) The National Assembly shall meet in extraordinary session with an established agenda, upon the initiative of the President of the Republic and the order of the Council of Ministers, or called by the President of the Council of Ministers at the request of one-third of its members.

(2) The duration of the session may not exceed twelve days. However, closure may be declared as soon as the National Assembly has covered the agenda for which it has been convened.

#### **Article 73 [Publicity]**

(1) Sessions of the National Assembly shall be public. A record shall be kept and publicized under conditions provided for by law.

(2) The National Assembly may meet in closed session at the request of the Government or of one-fourth of its members.

#### **Article 74 [First Session]**

The new National Assembly shall meet officially in a special session on the second Tuesday following the proclamation of election results, to constitute its bureau and to choose the new Prime Minister. The session shall end after the installation or the naming of the new Prime Minister.

## **Article 75 [Procedural Rules]**

The procedural rules of the National Assembly shall be established as general principles by law, and in specific terms by internal regulation.

## ***Section II Senate***

### **Article 76 [Title, Term]**

Members of the Senate shall have the title of Senator of Madagascar. Their term of office shall be four years.

### **Article 77 [Election, Appointment, Nomination, Incompatibility]**

(1) Two-thirds of the Senate shall consist of an equal number of members elected in each electoral district by elected representatives of the territorial entities, and one-third shall consist of members representing economic, social, cultural, and religious groups appointed by the President of the Republic upon nomination by legally constituted organizations and groups.

(2) The office of Senator shall be incompatible with that of deputy.

### **Article 78 [Re-election]**

One-half of the Senate, in both categories, shall be eligible for re-election every two years. Its procedural rules, compensation, and means of designating its members shall be established by law.

### **Article 79 [Competences]**

The Senate shall examine public and private bills; it must be consulted by the Government on economic, social, and territorial questions.

### **Article 80 [Sessions]**

(1) The Senate shall meet during sessions of the National Assembly.

(2) It may also meet in special session at the request of the Government. In that case, its agenda shall be limited by the Government.

(3) When the National Assembly is not in session, the Senate may only discuss questions upon which the Government has consulted it, to the exclusion of legislative bills.

### **Article 81 [Applicable Provisions]**

The provisions of Articles 68, 69, 70, 71, 73, and 75 shall be applicable to the Senate.

## **Section III Legislative Function, Relations With Government**

### **Article 82 [Legislation]**

(1) Laws shall be voted by Parliament under conditions established by this section. Parliament shall consist of the National Assembly and the Senate.

(2) In addition to matters referred to the Parliament by other articles of the Constitution:

I) The law shall establish rules concerning:

- civil rights and fundamental guarantees granted to individuals and groups for the exercise of rights and liberties;
- nationality and citizenship;
- obligations imposed by national defense upon citizens and their property;
- organization of the family, the State, and the status of persons, the regulation of marriage, inheritance and gifts, and the drafting and codification of customs regarding citizenship;
- the creation of new jurisdictions, the organization of administrative and financial agencies and the rules of procedure applicable to them, civil and commercial rules of procedure, the status of magistrates, and the guarantees of their independence;
- the determination of crimes and misdemeanors, as well as the applicable penalties, criminal procedure, and amnesty;
- judicial regulation of property and the conditions under which property may be subject to expropriation or requisition for public use or transfer of property to the State;
- the creation of categories of public establishments;
- election procedures in the territorial entities, the jurisdiction and resources of these entities, and their relation to the State;
- property transfers from the public sector to the private sector; and
- regulation of currency.

II) The law shall establish the fundamental principles of the following:

- the organization of national defense and the use of the Armed Forces or police forces by civil authorities, the status of the armed forces, and their neutrality;
- the status of civil servants and public agents;
- the status of teachers and researchers in higher education;
- the status of the national police;
- the status of correctional officers;
- the judicial regulation of civil and commercial obligations;
- the juridical framework of relations between employers and employees, trade union rights, and the right to strike;
- professional training;
- the organization of professions; and
- protection of the environment.

III) The law shall determine the basis, rate, and methods of collection for assessments of all types. The budget shall establish the amount and nature of State resources and obligations for budgetary balance; this shall be discussed and voted upon under the conditions provided for in Article 88.

IV) The law shall determine the policies and goals of State action in economic, social and environmental areas.

V) War may only be declared by Parliament.

VI) A state of national emergency may be declared by the President of the Republic in accordance with Article 59; extension beyond two weeks may only be authorized by Parliament.

VII) The law shall establish limitations to individual and public liberties during emergencies.

VIII) Ratification or approval of alliances or commercial treaties, treaties or agreements regarding international organization which commit State finances, which deal with the status of persons, peace treaties, treaties which involve the ceding exchange or acquisition of territory must be authorized by law. Prior to any ratification, treaties shall be submitted by the President of the Republic to the Constitutional Court. In case of non-conformity with the Constitution, ratification may take place only after Constitutional revision.

### **Article 83 [Regulations]**

(1) Matters not within the jurisdiction of the law shall be regulatory matters. Regulations may be modified by decree with the consent of the Constitutional Court.

(2) Regulations which take effect after the adoption of this Constitution may be modified by decree only after the Constitutional Court declares that they are regulatory in nature by virtue of the preceding paragraph.

### **Article 84 [Initiative, Statement of Government, Acceptability]**

(1) The power to introduce legislation shall be vested concurrently in the President of the Republic and the deputies.

(2) Government bills and amendments formulated by deputies shall be made known to the Government, which shall respond within a period of thirty days.

(3) At the expiration of this period, Parliament shall proceed to examine the bills or amendments for adoption.

(4) Bills or amendments shall not be acceptable if their adoption would entail reduction in public assets or the increasing of State debts except in regard to appropriation bills.

(5) In the course of the legislative procedure, if a bill or amendment does not appear to be a legal matter, the Government shall declare it unacceptable. In case of disagreement between the Government and the National Assembly or the Senate, the Constitutional Court, at the request of either assembly, shall rule within one week.

### **Article 85 [Priority of Governmental Bills]**

The agenda of the assemblies shall give priority, in the order that the Government has established, to the discussion of bills and amendments presented by the Prime Minister.

### **Article 86 [Examination, Disagreement, Joint Commission]**

(1) Each Government or private bill shall be examined first by the Assembly to which it has been presented and then shall be sent to the other Assembly.

(2) Discussion shall take place successively in each Assembly until a single text is adopted.

(3) When, following a disagreement between the two Assemblies, a Government or private bill has not been adopted after two readings in each Assembly, or if, after one reading by each of the Assemblies, the Government has declared an emergency, the Prime Minister has the option to create a joint commission responsible for creating a text on the provisions under discussion. The text

prepared by the joint commission may be submitted by the Government for the approval of the two Assemblies. No amendment will be acceptable without the agreement of the Government.

(4) If the commission does not succeed in adopting a joint text, or if the text is not adopted under conditions provided for in the preceding article, the Government may ask the National Assembly for a final ruling.

### **Article 87 [Required Vote]**

The Government, responsible under the conditions provided for in Article 91, may require that each of the Assemblies vote on all or part of the provisions under discussion:

- in extraordinary session, provided these texts have been presented within forty-eight hours of the opening of the session;
- in the last eight days of each of the ordinary sessions.

### **Article 88 [Appropriations Bill]**

- (1) Parliament shall examine the appropriations bill during its second ordinary session.
- (2) Under the authority of the Prime Minister, as Head of the Government, the Minister responsible for the budget shall prepare the appropriations bill, which shall be enacted in the Council of Government. Parliament shall have a period of at least sixty days to examine it.
- (3) The National Assembly shall have a period of thirty days from the presentation of the bill for the first reading. In the absence of a decision within this period, the bill shall be considered adopted and sent to the Senate.
- (4) Under the same conditions, the Senate shall have a period of two weeks for the first reading and each Assembly shall have five days for each of the following readings.
- (5) In the absence of a decision by an Assembly in a given period, the bill before it shall be considered adopted.
- (6) If the Parliament has not adopted the appropriations bill before the end of the second session, the provisions of the bill may be put into effect by ordinance, including one or more of the amendments adopted by the two Assemblies.
- (7) Any amendment to the appropriations bill which entails an increase in spending or a decrease in public resources must be accompanied by a bill to increase revenue or an equivalent savings.
- (8) Conditions for the adoption of an appropriations bill shall be provided by law.
- (9) If the appropriations bill for a fiscal year has not been presented in time to be promulgated before the beginning of that fiscal year, the Government shall ask Parliament for authorization to collect taxes and create credits by decree for services which have been voted.

### **Article 89 [Presidential Messages]**

The President of the Republic shall communicate with the Parliament by messages which shall not give rise to debate.

### **Article 90 [Designation of Prime Minister, General Program]**

- (1) At the beginning of each legislature, or in case of resignation of the Government or vacancy in the office of Prime Minister for any other reason, the National Assembly, by a majority of its members, shall designate a Prime Minister from among its members or elsewhere within a period of seven days from the opening of the special session or from the date of the vacancy.
- (2) Within two weeks of his election, the Prime Minister shall present his general program of action to the National Assembly.
- (3) Election shall be by secret ballot by a majority of the members of the National Assembly. This vote is personal and shall not be delegated. The President shall appoint the Prime Minister elected

by the National Assembly. If the appointment does not take place within ten days, the election by the National Assembly shall take effect immediately.

(4) In the event of rejection, the designated Prime Minister shall have a maximum of seven days to present a new program which shall be adopted under the preceding conditions.

(5) In the event of another rejection, or in case the National Assembly has not elected a Prime Minister for whatever reason within thirty days from the opening of the special session or the vacancy in the office of Prime Minister, the President of the Republic shall appoint a new Prime Minister. In this case, no motion of censure may be voted upon before the presentation of the annual report provided for in Article 92.

### **Article 91 [General Program of Action, Vote of Confidence]**

(1) The general program of action, once adopted, may not be reopened by the National Assembly.

(2) However, in the course of implementation, if the Government deems necessary fundamental modifications of the program, the Prime Minister shall submit these modifications to the National Assembly.

(3) After deliberation by the Government, the Prime Minister may commit his Government by requesting a vote of confidence.

(4) This vote shall not take place earlier than forty-eight hours after presentation of the question of confidence. If two-thirds of the members of the National Assembly so vote, the Government shall present its resignation to the President of the Republic.

(5) A new Prime Minister shall be chosen by the National Assembly to form a new Government under the conditions provided for in Article 90.

### **Article 92 [Annual Report of Government]**

In the first ordinary session, the Government shall present to the National Assembly an annual report on the implementation of its program.

### **Article 93 [Interpellations]**

(1) The National Assembly shall be informed of governmental action by means of oral questions, written questions, summonses, and commissions of inquiry.

(2) During ordinary sessions, one meeting a month shall be reserved for questions put to the Government by members of Parliament and for the Government's responses.

### **Article 94 [Motion of Censure]**

(1) The National Assembly may raise the issue of Governmental responsibility by a Motion of Censure.

(2) Such a motion is only admissible if it is signed by at least one-fifth of the members of the National Assembly. A vote shall not take place earlier than forty-eight hours after presentation of the motion.

(3) The motion shall be adopted if it is voted by a majority of the members of the National Assembly.

(4) If the motion is adopted, the Government shall present its resignation to the President of the Republic. The President shall proceed with the selection of a new Prime Minister under conditions provided for in Article 90.

## **Article 95 [Ministerial Crises, Dissolution of Parliament]**

(1) Within a period of eighteen months, if two ministerial crises occur following a vote of no confidence or censure, the Council of Ministers may rule on the dissolution of the National Assembly.

(2) Dissolution shall be pronounced, in accordance with this decision, by the President of the Republic.

## **Article 96 [Delegation of Powers to President, Enabling Law]**

(1) Parliament, by majority vote in each Assembly, may delegate its legislative power to the President of the Republic, acting in the Council of Ministers, for a limited period and for a specific purpose

(2) Delegation of power shall authorize the President of the Republic to take, by ordinance in the Council of Ministers, general measures of law. They shall take effect upon publication but shall elapse if a ratification bill is not presented to the National Assembly before the date set by the enabling law.

## *Title VI Judiciary*

### *Section I General Provisions*

## **Article 97 [Courts]**

In the Republic of Madagascar, justice shall be rendered in conformity with the Constitution and the law in the name of the Malagasy people, by the Administrative and Financial Constitutional Court, the Supreme Court, Courts of Appeal, Tribunals, and the High Court of Justice.

## **Article 98 [Independence]**

The judicial power shall be independent of the executive and legislative powers. The Administrative and Financial Constitutional Court and the Supreme Court shall assure this independence.

## **Article 99 [Personal Independence]**

(1) Magistrates, judges, and assessors shall be independent in all their judicial activities and shall be answerable only to the Constitution and the law.

(2) To this end, with the exception of cases provided for by law and disciplinary power, they may not be hindered in any way in the exercise of their duties; they may not be called to account for decisions they render or in which they participate.

## **Article 100 [Protection of Magistrates]**

Bench magistrates shall not be transferable; they shall occupy the post appropriate to their rank; they may not be reassigned, without their consent, except in case of necessity duly declared by the Superior Council of the Bench.

## **Article 101 [Public Prosecutor's Magistrates]**

Magistrates in the Public Prosecutor's office shall be organized by rank; however, in their conclusions or indictments, they shall act according to their own convictions and in conformity with the law. They shall supervise the judicial police, which shall be at their disposal.

## **Article 102 [Magistratorial Incompatibilities]**

The duties of magistrate shall be incompatible with any activity within a political party, public office, or any other remunerated professional activity.

## **Article 103 [General Inspection of Justice]**

(1) The office of General Inspection of Justice, consisting of representatives from Parliament, the Government, and the magistrates, shall be responsible for supervising the regulation of magistrates, as well as the actions of judicial personnel.

(2) This office shall be connected to the Supreme Court.

(3) The President of the Republic, the Parliament, the Government, heads of court, legally constituted associations, and any individual may refer matters to the office of General Inspection of Justice.

(4) Rules regarding the organization, functions, and duties of the office of General Inspection of Justice shall be established.

## **Article 104 [National Council of Justice]**

(1) The National Council of Justice, a consultative body consisting of the First President of the Supreme Court (as President), the General Prosecutor of the Supreme Court, the heads of the Courts of Appeal, representatives of the executive and legislative power, the Administrative and Financial Constitutional Court, the Superior Council of Magistrates, and auxiliaries, may make recommendations to improve the general functioning of justice. To this end, they may propose to the Government legislation or regulatory measures dealing with the organization and duties of judges, magistrates, and auxiliaries.

(2) Rules regarding the organization and duties of the National Council of Justice shall be established by law.

## ***Section II Administrative and Financial Constitutional Court***

### **Article 105 [Constitution]**

(1) The Administrative and Financial Constitutional Court is a State institution consisting of:

- the Constitutional Court;
- the Council of State; and
- the Audit Office.

(2) The President of the Constitutional Court shall be the First President of the Administrative and Financial Constitutional Court.

### **Article 106 [Competences of the Constitutional Court]**

(1) The Constitutional Court shall be responsible for ruling on the constitutionality of treaties, laws, ordinances, and regulations, as well as jurisdictional conflicts among two or more State institutions and between State institutions and the decentralized territorial entities.

(2) It shall decide contested elections.

### **Article 107 [Constitution of the Constitutional Court]**

(1) The Constitutional Court shall consist of nine members with a single six-year term.

(2) Three of the members shall be appointed by the President of the Republic acting in the Council

of Ministers, two by the National Assembly, one by the Senate, and three by the Superior Council of Magistrates.  
(3) The President of the Constitutional Court shall be elected by its members. This election shall be announced by the President of the Republic.

#### **Article 108 [Constitutional Court Incompatibilities]**

The duties of a member of the Constitutional Court shall be incompatible with those of member of the Government, or Parliament, or any elective public office, or any remunerated professional activity, as well as party or union membership.

#### **Article 109 [Competences of the Constitutional Court]**

- (1) The Constitutional Court shall supervise referenda and the elections of the President of the Republic, Deputies, and Senators.
- (2) It shall announce the results of said referenda and elections.

#### **Article 110 [Regular Ruling on Constitutionality of Laws]**

- (1) Before promulgation, laws shall be submitted by the President of the Republic to the Constitutional Court for a ruling on their constitutionality.
- (2) A provision ruled unconstitutional by the Constitutional Court shall not be promulgated. In this case, the President of the Republic may decide to promulgate all other provisions of the law, to submit the entire law for reconsideration by Parliament, or not to promulgate the law.

#### **Article 111 [Regular Ruling on Constitutionality of Ordinances and Internal Regulations]**

Ordinances, before their promulgation, and internal regulations of each Assembly, before taking effect, shall be submitted to the Constitutional Court for a ruling on their constitutionality.

#### **Article 112 [Advisory Opinion on the Constitutionality of Decrees]**

The Constitutional Court may be consulted by public authorities for an advisory opinion on the constitutionality of any decree.

#### **Article 113 [Ruling Pending Court Judgment]**

In any jurisdiction, if one party raises an objection of unconstitutionality, that jurisdiction shall declare a delay of one month to refer the matter to the Constitutional Court, which must rule within one month.

#### **Article 114 [Council of State]**

- (1) The Council of State may annul actions of the administrative authorities and may rule on various administrative decisions and on contested claims in fiscal matters. It shall be the Court of Appeal for judgments rendered by various administrative bodies and administrative jurisdictions at the first level of appeal. It shall also make final rulings on decisions rendered by the highest jurisdictions at the highest level of appeal.
- (2) It may be consulted by public authorities for an opinion on:
  - legislative or regulatory bills; and
  - interpretation of legislation or regulatory provisions.

(3) When requested by public authorities, it may study bills and the organization and functioning of public services.

#### **Article 115 [Audit Office]**

(1) The Audit Office shall:

- examine the accounts of public accountants;
- supervise the implementation of appropriations laws and the budgets of entities and public bodies; and
- supervise the accounts and management of public enterprises.

(2) It shall rule on appeals of judgments rendered by administrative bodies.

(3) It shall assist the Parliament and the Government in supervising the implementation of appropriations laws.

#### **Article 116 [Organizational Law]**

Rules regarding the organization, functioning, and duties of the Administrative and Financial Constitutional Court shall be established by law.

### ***Section III Supreme Court***

#### **Article 117 [Responsibilities]**

The Supreme Court shall be the State institution responsible for:

- assuring the regular functioning of the judiciary;
- administering rules applicable to magistrates and to actions of judicial personnel; and
- ruling on judicial appeals.

#### **Article 118 [Constitution]**

(1) The First President and the General Prosecutor shall be the heads of the Supreme Court. The First President shall be elected by the Superior Council of Prosecutors and the General Assembly of the Supreme Court. This election shall be declared by the President of the Republic. His term shall be for three years and he may be re-elected once.

(2) The General Prosecutor of the Supreme Court shall be appointed by the President of the Republic acting in the Council of Ministers, from a list nominated by the Superior Council of Prosecutors. His term shall be for three years and he may be re-elected once.

#### **Article 119 [Organizational Law]**

Rules regarding the organization, functioning, and duties of the Supreme Court shall be established by law.

#### **Article 120 [Annual Report]**

The Supreme Court shall address an annual report of its activities to the President of the Republic, the Prime Minister, and the Presidents of the National Assembly, the Senate, and the Constitutional Court. This report shall be made public.

## **Section IV High Court of Justice**

### **Article 121 [Responsibilities]**

- (1) The President of the Republic, the presidents of all the State institutions, members of the Government and of the Administrative and Financial Constitutional Court and Supreme Court shall be legally responsible for acts committed in the exercise of their duties which were crimes or misdemeanors at the time that they were committed.
- (2) They may be judged by the High Court of Justice.
- (3) They may be indicted by the National Assembly by secret ballot of the majority of its members.

### **Article 122 [Full Jurisdiction]**

The High Court of Justice shall have full jurisdiction.

### **Article 123 [Constitution]**

- (1) The High Court of Justice shall consist of nine members, namely:
  - the First President of the Supreme Court (as President);
  - three Presidents of the Chambers of the Supreme Court;
  - the First President of the Court of Appeals designated by the First President of the Supreme Court;
  - two Deputies and two alternates elected by the National Assembly; and
  - two Senators and two alternates elected by the Senate.
- (2) Five alternate prosecutors shall be designated by the General Assembly of the Supreme Court or the First Presidents or President of Chambers of Courts of Appeal.
- (3) The Public Prosecutor's Office shall be represented by General Prosecutors of the Supreme Court assisted by one or several other prosecutors.
- (4) The Head Clerk of the Supreme Court shall be Clerk of the High Court; in case of disability of the Head Clerk, he shall be replaced by the most senior Chamber Clerk.

### **Article 124 [Organizational Law]**

The organization and procedure of the High Court of Justice shall be established by law.

## ***Title VII Territorial Entities***

### **Article 125 [Tasks]**

The decentralized territorial entities, endowed with legal identity and financial autonomy, shall constitute the institutional framework for citizen participation in the management of public affairs and shall guarantee the expression of their diversity and individuality.

### **Article 126 [Creation]**

- (1) The creation of territorial entities must meet criteria of geographical, economic, social, and

cultural homogeneity.

(2) The name, number, and limits of territorial entities shall be determined by law.

### **Article 127 [Assemblies]**

Territorial entities shall be freely administered by Assemblies which shall deliberate on matters devolving to their jurisdiction by this Constitution and by law. These deliberations shall take effect upon publication. However, they may not conflict with constitutional, legislative, or regulatory provisions.

### **Article 128 [Local Elections]**

(1) Members of the Assemblies shall be elected by direct universal suffrage for a four-year term.

(2) These Assemblies shall include, in part, representatives of legally constituted economic, social, and cultural bodies within the jurisdiction of the territorial entity. These representatives shall also be elected by direct universal suffrage.

(3) The methods of election to the Assemblies of territorial entities shall be established by law.

### **Article 129 [Executive Bureau]**

(1) The implementation of decisions made in the Assemblies shall be assured by an executive bureau directed by an official elected by direct universal suffrage for a four-year term; he may be re-elected once. The executive bureau shall consist of the leaders of the public services created and financed by the territorial entity or put at its disposal by the State. These members shall be appointed by the elected leader.

(2) The executive bureau shall be answerable to the elected Assembly.

### **Article 130 [High Official, Control, Public Order]**

(1) The State shall be represented in the territorial entities by a high official whose appointment shall be established by law. The State representative shall be responsible for assuring adherence to legislative and regulatory provisions. He shall refer to the appropriate judicial authority any deliberations, actions, or agreements deemed illegal.

(2) The State representative shall be responsible for public order and administration under conditions established by law. He shall be the representative of all Ministries and shall supervise State services in the territorial entities.

### **Article 131 [Shared Competences]**

The State shall be committed to the establishment of the following:

- distribution of jurisdictions between the territorial entities and the State;
- distribution of revenue between the territorial entities and the State; and
- distribution of public services between the territorial entities and the State.

### **Article 132 [Local Tasks]**

(1) The territorial entities shall assure, with the cooperation of the State, public safety, the administration and management of territorial, economic, social, sanitary, cultural, and scientific development, as well as protection of the environment and improvement in the standard of living.

(2) The distribution of jurisdictions, considering national and local interests, shall be determined by law.

### **Article 133 [Local Finances]**

- (1) The distribution of resources, based on jurisdictions granted to the territorial entities, shall be determined by law.
- (2) The territorial entities shall establish and manage the budget, its functioning, and its investment, in harmony with national planning.

### **Article 134 [Local Resources]**

The resources of territorial entities shall consist of:

- the proceeds of taxes voted by the Assemblies of the territorial entities and levied for their budgets; the law shall establish the nature and maximum rate of these taxes, taking into account expenses assumed by the territorial entities and national expenses;
- their share in the proceeds of taxes levied for the State budget. This pro rata share shall be determined by law according to a percentage which takes into account the expenses assumed individually and collectively by the territorial entities and the level of their own resources, in order to assure fair and equal treatment of the territorial entities and a balanced economic and social development among all territorial entities. The utilization of its share shall be freely determined by each territorial collectivity;
- the proceeds of endowments granted by the State to the territorial entities, as a whole or in part, to meet expenses resulting from the transfer of jurisdictions, or to compensate territorial entities for expenses resulting from particular programs or projects mandated by the State and implemented by the territorial entities;
- the proceeds of loans contracted by the territorial entities in the national or foreign market, with the agreement of national monetary authorities, with or without guaranty by the State;
- the proceeds of foreign aid obtained through the national monetary authorities and the ministerial department responsible for foreign relations;
- the proceeds of gifts; and
- revenue from territorial land.

### **Article 135 [Local Funds, Public Treasury]**

Funds of territorial entities whose use falls within their jurisdiction shall be deposited in the public treasury under conditions provided for by law.

### **Article 136 [New Local Entities]**

Regional and local administrative districts and structures may be created by decree in the Council of Ministers.

### **Article 137 [Organizational Laws]**

Rules regarding the organization, functioning, and duties of territorial entities shall be established by law.

## ***Title VIII Amending the Constitution***

### **Article 138 [Initiative]**

The initiative to amend the Constitution shall be vested either with the President of the Republic acting in the Council of Ministers or with the National Assembly upon the proposal of one-third of its members.

### **Article 139 [Majority]**

The bill or proposal for amendment shall be adopted only by a three-fourths majority of the members of the National Assembly and the Senate.

### **Article 140 [Facultative Referendum]**

The President of the Republic acting in the Council of Ministers may submit the amendment to a referendum.

### **Article 141 [Obligatory Referendum]**

The Preamble and Titles I, II, III, and VII may be amended only by means of referendum.

### **Article 142 [Republic]**

The republican form of the State shall not be subject to amendment.

## ***Title IX Temporary and Miscellaneous Provisions***

### **Article 143 [1991 Constitution]**

Until the institutions provided for in this Constitution are established, those provided for by the Convention of 31 Oct 1991 shall continue in effect, with the exception of the provisions which follow.

### **Article 144 [First Presidential Elections]**

- (1) Presidential elections must take place not later than sixty days from the date of the official proclamation by the High Court of Justice of the results of the national referendum adopting this Constitution.
- (2) The elected President shall immediately exercise the duties devolving on the President of the Republic by the terms of the Convention of 31 Oct 1991 and those provided for in this Constitution. Before taking office, he shall swear the oath provided for in Article 48 before the nation and the transitional High Constitutional Court.

### **Article 145 [First Legislative Elections, Transitional Offices]**

- (1) Legislative elections must take place not later than two months after the proclamation of the results of the Presidential elections.
- (2) The High Authority of the State and the Council on Economic Recovery shall terminate their duties upon the election of the bureau of the National Assembly.
- (3) Upon the appointment of the new Prime Minister, the transitional Prime Minister shall present to the President of the Republic the resignation of the Government; this Government shall continue to be responsible for current business until the installation of the new Government.
- (4) The National Assembly shall exercise full legislative power until the installation of the Senate.

### **Article 146 [Transitional Courts]**

Until the institutions of the Third Republic are installed, the present High Constitutional Court and Supreme Court shall continue to exercise their duties in conformity with the legislation in effect.

### **Article 147 [Old Laws]**

With the exception of future modifications, legislation in effect in the Republic shall remain applicable in all provisions which do not conflict with those of this Constitution.

### **Article 148 [Transition to Local Entities]**

(1) Legislative provisions regarding territorial entities provided for in this Constitution must be implemented not later than eighteen months from the date of its promulgation. A commission will be created for this purpose.

(2) Until the installation of the territorial entities provided for in this Constitution, the Special Delegations and Local Security Committees will continue to exercise their present duties.

### **Article 149 [Date of Effect]**

This law will take effect upon promulgation by the transitional Prime Minister and will be published in the Official Journal of the Republic. It will be executed as the Constitution of the Republic of Madagascar.