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Article 13. Participation of society

1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as:

- (a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes;
- (b) Ensuring that the public has effective access to information;
- (c) Undertaking public information activities that contribute to non-tolerance of corruption, as well as public education programmes, including school and university curricula;
- (d) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. That freedom may be subject to such restrictions as shall only be such as are provided for

CIVIL SOCIETY REPORT

on the Implementation of
Chapter II (Prevention) & Chapter V (Asset Recovery) of the

UNITED NATIONS CONVENTION AGAINST CORRUPTION

IN MADAGASCAR

by Transparency International - Initiative Madagascar

Acknowledgements

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The findings in this report are those of the authors but do not necessarily reflect the views of the UNCAC Coalition and the donors who made this report possible.

Every effort has been made to verify the accuracy of the information contained in this report. All information has been determined to be correct as of July 22, 2021.

This report was written by Camille Razalison, Legal Consultant for Transparency International - Madagascar Initiative, under the supervision of Dr. Ketakandriana Rafitoson, Executive Director of TI-MG. The report was reviewed by Danella Newman and Denyse Degiorgio (UNCAC Coalition). The English translation of the original French report was also conducted by the UNCAC Coalition.

Transparency International - Madagascar Initiative (TI-MG)

Lot II U 86 rdc Cité Planton, Ampahibe,

Antananarivo 101, Madagascar

www.transparency.mg

<https://www.facebook.com/transparencymadagascar/>

<https://www.youtube.com/channel/UCbyE8Dk8Tw-sEONFIWP97wA/featured>

Transparency International - Initiative Madagascar (TI-MG) is an association under Malagasy law governed by Ordinance No. 60-133 of October 3, 1960. It is the national chapter of Transparency International (TI), the leading global coalition against corruption. TI-MG was founded in 2000 and implements projects and actions to reduce corruption throughout Madagascar.

Table of Contents

<i>List of abbreviations</i>	1
<i>List of people consulted</i>	3
I. Introduction	4
II. Executive Summary	6
III. Assessment of Review Process for Madagascar	11
IV. Assessment of Implementation of UNCAC Provisions	14
<i>Chapter II - Preventive Measures</i>	14
Art. 5 – Preventive anti-corruption policies and practices	14
Art. 6 – Preventive anti-corruption body or bodies	16
Art. 7 - Public Sector	19
Art. 8 - Codes of conduct for public officials	22
Art. 9 – Public procurement and management of public finances.....	25
Art. 10 - Public reporting	28
Art. 11 - Measures relating to the judiciary and prosecution services	30
Art. 12 - Private sector	32
Art. 13 - Participation of society	33
Art. 14 – Measures to prevent money-laundering	34
<i>Chapter V - Asset Recovery</i>	37
Art. 52 - Prevention and detection of transfers of proceeds of crime	37
Art. 53 - Measures for the direct recovery of property	38
Art. 54 - Mechanisms for recovery of property through international cooperation in confiscation.....	39
Art. 55 - International cooperation for purposes of confiscation	40
Art. 57 - Return and disposal of assets	41
Statistics	42
<i>Chapter III – Criminalization and law enforcement</i>	45
Art. 15 - Bribery of national public officials	45
Art. 16 - Bribery of foreign public officials and officials of public international organizations	47
Art. 17 - Embezzlement, misappropriation or other diversion of property by a public official	47
Art. 20 - Illicit enrichment.....	47
Art. 23 - Laundering of proceeds of crime.....	49
Art. 26 - Liability of legal persons	50
Art. 32 and 33 - Protection of witnesses, experts and victims as well as of reporting persons	51
Art. 35 - Compensation for damage	51
V. Recent developments	53
VI. Recommendations	55
VII. Annexes	57

List of abbreviations

While the abbreviations are provided in both French and English in the following table, they are used in their original French version throughout the report for institutions and laws and in their English version for names of international institutions or initiatives.

Abbreviation	French	English
ARAI	Agence pour le Recouvrement des Avoirs Illicites	Agency for the Recovery of Illicit Assets
AML/CFT	Anti-Money Laundering and Countering the Financing of Terrorism	
ANAF	Agence Nationale Antifraude	National Anti-Fraud Agency
BIANCO	Bureau Indépendant Anticorruption	Independent Anti-Corruption Bureau
CPM	Code Pénal Malgache	Malagasy Criminal Code
CPCM	Code de Procédure Civile Malgache	Malagasy Code of Civil Procedure
CPPM	Code de Procédure Pénale Malgache	Malagasy Code of Criminal Procedure
CSI	Comité de Sauvegarde de l'Intégrité	Committee for the Safeguarding of Integrity
CSO	Civil Society Organization	
DCN PAC	Direction de Coordination Nationale des PAC	National Coordination Directorate of the Anti-Corruption Units (PACs)
ENMG	Ecole Nationale de la Magistrature et des Greffes	National School for Magistrates and Clerks
FATF	Financial Action Task Force	
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit (German Development Organization)	
HCJ	Haute Cour de Justice	High Court of Justice
INCHR	Independent National Commission on Human Rights	
JORM	Journal Officiel de la République de Madagascar	Official Journal of the Republic of Madagascar
JOS	Journal Officiel Spécial de la République de Madagascar	Special Official Gazette of the Republic of Madagascar
LLCC	Loi sur la lutte contre la corruption ou Loi n° 2016-020 du 22 août 2016	Law on the fight against corruption or Law n° 2016-020 of 22 August 2016
LLBCFT	Loi sur la lutte contre le blanchiment de capitaux et de financement du terrorisme ou Loi n°2018-043 du 13 février 2019	Law on the fight against money laundering and terrorist financing or Law n°2018-043 of February 13, 2019
PAC	Pôle Anticorruption	Anti-Corruption Unit
PEM	Plan Émergence de Madagascar	Madagascar Emergence Plan
PGE	Programme Général de l'Etat	General State Program
PPE	Personne Politiquement Exposée	Politically Exposed Person
SAC	Système Anti-Corruption	Anti-Corruption System
SAMIFIN	Service de renseignement financier	Financial Intelligence Unit

SNI	Système National d'Intégrité	National Integrity System
UNCAC	United Nations Convention against Corruption	
UNODC	United Nations Office on Drugs and Crime	
UNDP	United Nations Development Program	

List of people consulted (in chronological order of interviews)

Name	Function/Entity	Date(s) of the interview(s)
Brice LEJAMBLE	Executive Secretary/CSI	11/12/20 and 16/12/20
Tsiry RAZAFIMANDIMBY	Technical Advisor/CSI	11/12/20 and 16/12/20
Lalaina RAHARINAIVO	CM/CSI	11/12/20 and 16/12/20
Eric ANDRIAMIARAMANANA	DES/CSI	11/12/20 and 16/12/20
Lalaina RAKOTOARISON	Director of Strategy/CSI	11/12/20 and 16/12/20
Harimahefa RATIARISOA	National Coordinator/PAC	23/12/20
Boto Tsara Dia LAMINA	General Manager / SAMIFIN	19/01/21
Tsimihpa ANDRIAMAZAVARIVO	Coordinator/NGO Tolotsoa	01/04/2021 and 08/05/2021
Hery RASON	Executive Director/NGO Ivory	01/04/2021 and 08/05/2021
Faraniaina RAMAROSON	Executive Director/NGO Hitsy and LCC Coordinator	08/05/2021
Laza Eric Donat ANDRIANIRINA	Director General of BIANCO	12/05/21

I. Introduction

The Republic of Madagascar signed the United Nations Convention against Corruption (UNCAC) on December 10, 2003 and ratified it on September 22, 2004.¹

The objective of this report is to assess the implementation in law and practice of selected articles in Chapters II (Preventive Measures), III (Criminalization, Law Enforcement) and V (Asset Recovery) of the UN Convention against Corruption in Madagascar. It is a contribution to the UNCAC implementation review process. After an initial review under the first cycle 2010-2015, in which a review of implementation of Articles 15-42 of Chapter III and Articles 44-50 of Chapter IV of the UNCAC was produced, Madagascar was selected by the UNCAC Implementation Review Group for the second review cycle 2015-2024 to cover Chapter II on Preventive Measures and Chapter V on Asset Recovery of the UNCAC. The government of Madagascar does not have a definite date for the completion of this second review as of May 2021, and no date is scheduled at this time for the country visit.²

This study is an independent, parallel report that complements the work of the government team. It aims to assess the legal framework in place in Madagascar with respect to the implementation of the UNCAC, as well as to examine the implementation and enforcement of the Convention in the context of the Malagasy legal system.

Scope

The UNCAC articles of particular focus in this report are divided into three UNCAC chapters, as follows:

- **Chapter II (Preventive measures):** preventive anti-corruption policies and practices (Article 5), preventive anti-corruption bodies (Article 6), public sector (Article 7), codes of conduct for public officials (Article 8), public procurement and management of public finances (Article 9), public reporting (Article 10), measures relating to the judiciary and prosecution services (Article 11), private sector (Article 12), participation of society (Article 13), and measures to prevent money-laundering (Article 14);

- **Chapter V (Asset recovery):** prevention and detection of transfers of proceeds of crime (article 52), measures for direct recovery of property (article 53), mechanisms for recovery of property through international cooperation in confiscation (article 54), international cooperation for purposes of confiscation (article 55), and return and disposal of assets (article 57).

- **Chapter III (Criminalization, Law Enforcement)** of the first review cycle: bribery of national public officials (Article 15), bribery of foreign public officials and officials of public international organizations (Article 16), embezzlement, misappropriation or other diversion of property by a public official (Article 17), illicit enrichment (Article 20), laundering of proceeds of crime (Article 23), liability of legal persons (Article 26), protection of witnesses,

¹ Regarding the internal ratification procedure by Madagascar: Law no. 2004-017 of August 19, 2004 authorizing the ratification of the United Nations Convention against Corruption in Madagascar (JORM n°2926 of September 6, 2004 page 3130); Decree n°2004-802 of August 19, 2004 ratifying the United Nations Convention against Corruption (JORM n°2926 of September 6, 2004 page 3160).

²<https://www.unodc.org/unodc/en/corruption/countryprofile/countryprofile.html#?CountryProfileDetails=%2F%2Fcorruption%2Fcountry-profile%2Fprofiles%2Fmdg.html>.

experts and victims (Article 32), protection of reporting persons (Article 33), and compensation for damage (Article 35).

Structure

Section 2 of this report consists of an executive summary providing a synthesis of findings, conclusions and recommendations regarding the review process, the availability of information, and the implementation and enforcement of selected UNCAC articles. Section 3 describes the conduct of the review process in Madagascar and also discusses access to information. Section 4 provides an analysis of the domestic implementation and enforcement of the Convention, including key issues related to the legal framework and the enforcement system, with examples of good and bad practices. Section 5 describes recent developments and Section 6 sets out recommendations for priority areas of action.

Methodology

This report was prepared by Transparency International - Madagascar Initiative (TI-MG) with technical and financial support from the UNCAC Coalition, a global network of more than 350 civil society organizations (CSOs) in over 100 countries committed to promoting the ratification, implementation and monitoring of the UNCAC. The organization sought to obtain information from reports prepared by national authorities and to engage in dialogue with representatives of the Anti-Corruption System (SAC) and civil society in Madagascar, namely the Committee for the Safeguard of Integrity (CSI), the National Coordination Directorate of the Anti-Corruption Units (PAC), the Financial Intelligence Unit (SAMIFIN), and the Independent Anti-Corruption Bureau (BIANCO). In addition, the group referred to several studies and expert reports from both civil society and SAC members in Madagascar.

This report was prepared following the guidelines and report template developed by Transparency International for use by CSOs. These tools reflect the checklist proposed by the United Nations Office on Drugs and Crime (UNODC) in a simplified form and invite CSOs to provide a relatively brief analysis compared to the detailed self-assessment provided by the government. The report template contains a series of questions regarding the review process and under the section on implementation in law and practice of the provisions of the convention, asks for examples of good practices and areas for improvement, relating to Chapters II, III and V of the UNCAC.

II. Executive Summary

Madagascar was one of the first signatories to the UNCAC and, since its ratification in 2004, the legal framework for combating corruption as well as money laundering and the financing of terrorism (ML/FT) has evolved significantly. This report notes encouraging prospects in Malagasy law in terms of the framework for the implementation of the UNCAC in terms of innovative legislative reforms and the establishment of preventive and repressive bodies for the offenses covered by the UNCAC, notably through the establishment of BIANCO, SAMIFIN and the PAC.

However, efforts remain necessary, particularly with regard to the implementation of PACs in the remaining provinces of Madagascar, in addition to those already operational in Antananarivo and Mahajanga. The recent reform of the legislative framework on PACs without consultation with anti-corruption stakeholders and civil society may also be an impediment to their effective participation in this process. At the institutional level, the Agency for the Recovery of Illicit Assets (ARAI) remains the only SAC entity not yet established. In charge of recovering illicit assets and ensuring their conservation and management before the decision to confiscate is made, the establishment of the ARAI seems to be a government priority, although it is not yet fully operational. As for the draft law on access to public information, it is not yet on the agenda of the Council of Ministers for adoption by the two parliamentary chambers.

Furthermore, the political will apparently displayed by the government in the fight against corruption must be strengthened and followed by concrete action in order to capitalize on the positive gains initiated by Madagascar's ratification of the UNCAC. A strong political will on the part of the government is important in the fight against corruption, money laundering and the financing of terrorism. In his presentation of the General State Policy which will govern the objectives of his mandate, the President of the Republic of Madagascar spoke of a zero-tolerance policy in the fight against corruption, but in practice, obstacles from the National Assembly, dominated by the presidential majority, of the indictment before the High Court of Justice (HCJ) of high-level state officials, as well as the proliferation of corruption and embezzlement scandals that regularly make the front pages of the country's daily newspapers, give the impression of a two-tiered justice system. Moreover, the interviews conducted for this study suggest that this feeling is shared by SAC actors. Also, the parliamentary proposal to revise the law on the PAC, adopted by the National Assembly without prior consultation with the actors of the PAC and aiming to restrict the competence of the PAC in matters of economic and financial offenses, to remove the provisions on the confiscation of illicit assets before conviction or to reduce the mandate of the National Coordinator and the magistrates of the PAC,³ is not reassuring to observers.

The conclusion of this study shows that Madagascar has not yet implemented all of the articles of the UNCAC, leading TI-MG to make recommendations to remove the various obstacles to the implementation of the Convention:

³ Communiqué of the SAC members (CSI, BIANCO, SAMIFIN, PAC) on the CAP law reform of July 05, 2020. In addition, <https://www.google.com/amp/s/amp.rfi.fr/fr/afrique/20200823-madagascar-soci%25C3%25A9t%25C3%25A9-civile-conflit-d-int%25C3%25A9r%25C3%25A9ts-march%25C3%25A9-public-mat%25C3%25A9riel-info>, accessed 29 January 2021.

1. Adopt a law that provides sufficient material and physical protection for witnesses and whistleblowers;
2. Pass the Access to Public Information Act;
3. Adopt in the Council of Ministers a decree for the creation and operation of the ARAI;
4. Update the codes of conduct and ethics of public officials as well as their specific statutes in order to exonerate corruption and money laundering offenses from the immunities and privileges they enjoy;
5. Provide for maximum campaign spending thresholds and require disclosure of the identity of actual contributors.

Description of Process

A first report on Madagascar's implementation of Articles 15-42 of Chapter III and Articles 44-50 of Chapter IV of the UNCAC was produced in 2016, the assessment of which was implemented by Nigeria and Nicaragua.⁴ Following this, Madagascar was selected by the UNCAC Implementation Review Group for a second review cycle 2015-2024 covering Chapter II on preventive measures and Chapter V on asset recovery. To this end, the country has established a group of government experts to review the national legislative and regulatory framework in relation to the UNCAC articles.

As part of the review mechanism, representatives from two countries, Djibouti and the United Republic of Tanzania, are expected to visit the country to prepare a national assessment report on Madagascar's implementation of the UNCAC. It should be noted that civil society, while willing to play a consultative role in the evaluation, has not yet been explicitly consulted as part of this evaluation. According to the BIANCO Director General in an interview with the TI-MG team, the confidential nature of the evaluation process would restrict its full participation in the consultations organized for this report. He referred to the confidential nature of the data related to this process and argued that the "information and answers provided by the Malagasy government experts agreed upon from the official consultation"⁵ would be for the sole use of UNODC.

Availability of Information

Even if access to legislative and regulatory texts is facilitated by the internet and the effort to digitize the Malagasy public administration, in particular through the legislative information portal (CNLEGIS), the availability of administrative decisions, circulars and directives as well as contracts binding public persons is more than limited. The adoption of a legislative text regulating access to public information, promised by the Malagasy government for 2020 but not yet effective, is widely expected to strengthen governance and transparency with regards to public action. Statistics and data on cases of corruption and money laundering as well as annual figures on convictions are also available, either in the annual reports of SAC entities or on their respective websites.⁶ An effort is being made at the level of the Antananarivo PAC to regularly publish certain uncontested rulings of this court, while recognizing that the construction of a constant and uniform jurisprudence requires the operationalization of all

⁴ <https://www.unodc.org/unodc/en/corruption/country-profile/countryprofile.html#?CountryProfileDetails=%2Funodc%2Fcorruption%2Fcountry-profile%2Fprofiles%2Fmdg.html>, accessed January 28, 2021.

⁵ Electronic exchange with Mr. Laza Eric Andrianirina, the Director General of BIANCO, on December 22, 2020.

⁶ PAC: <https://www.dcn-pac.mg>; CSI: <http://www.csi.gov.mg>; BIANCO: <https://bianco-mg.org>; SAMIFIN: <https://www.samifin.gov.mg>.

PACs in Madagascar. However, BIANCO's position that data on the evaluation process is confidential in nature has made it difficult to research the status of the second cycle review in Madagascar due to the lack of information.

Implementation in Law and in Practice

TABLE 1: Implementation and enforcement summary

UNCAC Articles	Status of implementation in law	Status of implementation and enforcement in practice
Art. 5 - Preventive anti-corruption policies and practices	Partially implemented	moderate
Art. 6 – Preventive anti-corruption body or bodies	Partially implemented	good
Art. 7 – Public sector	Partially implemented	moderate
Art. 8 - Codes of conduct, conflicts of interest and asset declarations	Partially implemented	moderate
Art. 9 - Public procurement	Partially implemented	moderate
Art. 10 - Access to information	Not implemented	poor
Art. 11 - Measures relating to the judiciary and prosecution services	Fully implemented	moderate
Art. 12 - Private sector	Fully implemented	moderate
Art. 13 - Participation of society	Fully implemented	moderate
Art. 14 - Measures to prevent money-laundering	Fully implemented	moderate
Art. 15 - Bribery of national public officials	Fully implemented	moderate
Art. 16 – Bribery of foreign public officials	Partially implemented	moderate
Art. 17 - Embezzlement, misappropriation or other diversion of property by a public official	Fully implemented	moderate
Art. 20 - Illicit enrichment	Fully implemented	moderate
Art. 23 – Laundering of proceeds of crime	Fully implemented	moderate
Art. 26 - Liability of legal persons	Fully implemented	good
Art. 32, 33 - Protection of witnesses, experts and victims as well as of reporting persons	Partially implemented	moderate
Art. 35 - Compensation for damage	Fully implemented	good

Art. 52 - Prevention and detection of transfers of proceeds of crime	Fully implemented	moderate
Art. 53 - Measures for the direct recovery of property	Partially implemented	moderate
Art. 54 - Mechanisms for recovery of property through international cooperation in confiscation	Fully implemented	poor
Art. 55 - International cooperation for purposes of confiscation	Fully implemented	poor
Art. 57 - Return and disposal of assets	Partially implemented	poor

TABLE 2: Performance of selected key institutions⁷

Name of institution	Performance in relation to responsibilities covered by the report	Brief comment on performance (e.g., inadequate resources, lack of independence, strong expertise)
Independent Anti-Corruption Bureau	moderate	Lack of resources, leadership issues, perceived inability to act.
Financial Intelligence Service	moderate	Expertise to be strengthened, scattered impact.
Integrity Safeguarding Committee	moderate	Delay in the implementation of the ARAI, perception of inefficiency in the face of attempts to challenge the achievements of the SAC.
Anti-Corruption Unit	moderate	Insufficient resources, delayed implementation of CAP in other provinces, existence challenged.
Public Procurement Regulatory Authority	poor	Failure to monitor public procurement, especially during Covid-19.
Commission for the Control of the Financing of Political Life	poor	Insufficient resources, lack of legal tools to sanction, delays in delivering expected reports.
National Anti-Fraud Agency	No opinion, but generally poor	Conditions of implementation unclear, uncertain of its actual place in the SAC.

⁷ Based on a survey of three NGOs active in the fight against corruption and good governance in Madagascar as of May 8, 2021.

Recommendations for Priority Actions

- Finalize the operationalization of PACs in the other provincial capitals;
- Establish the Agency for the Recovery of Illicit Assets (ARAI);
- Pass the Access to Public Information Act;
- Establish systems to alleviate the need to obtain prosecutorial authorizations for bribery and ML/FT offenses;
- Allow the annual publication of the activity reports of the HCJ and the Special Court on rosewood;
- Aim for a more efficient use of the asset declarations received, by strengthening efforts to digitize the declarations and thus allow the involvement of SAMIFIN or other SAC entities besides BIANCO in this process;⁸
- Cap election and referendum campaign expenses;
- Strengthen the digitalization of the administration;
- Protect whistleblowers, reporting persons and witnesses of corruption through effective mechanisms;
- Conclude bilateral mutual legal assistance agreements to specify the legal conditions for the return to foreign states of property confiscated in connection with corruption and money-laundering offenses;
- Amend the Law on Corporate Transparency to regulate the use of beneficial owner registers.

⁸ This project is included in BIANCO's 2019 Annual Activity Report (page 23), <https://bianco-mg.org/rapport-et-statistiques/>, accessed March 23, 2021.

III. Assessment of Review Process for Madagascar

TABLE 1: Transparency of the government and CSO participation in the UNCAC review process

Did the government disclose information about the country's focal point?	no	The Director General of BIANCO confirmed in an interview that he is the country's focal point for the evaluation process. This information was cross-checked with other members of the SAC, ⁹ but no official government documents could be found to this effect or made available to the research team.
Was review schedule published somewhere/publicly known?	no	
Was civil society consulted in the preparation of the self-assessment checklist?	yes	For the second examination cycle 2015-2024, only one of the experts, a magistrate by training, comes from civil society as a representative of a non-governmental organization working in the fight against corruption. ¹⁰ In an interview with TI-MG, the BIANCO Director General said that targeted civil society organizations will be consulted as part of the evaluation process, but that they will be chosen according to "certain criteria" that remain unknown.
Was the self-assessment checklist published online or provided to civil society?	no	
Did the government agree to a country visit?	yes	No definite date for the visit has been published due to the current health crisis.
Was a country visit undertaken?	not yet	
Was civil society invited to provide input to the official reviewers?	no	
Was the private sector invited to present its contributions to the official reviewers?	no	
Has the government committed to publishing the full country report?	no	The report for the 2015-2024 review cycle is not yet available. The report for the first cycle, 2010-2015,

⁹ Telephone interview with SAC member dated May 07, 2021.

¹⁰ https://www.unodc.org/documents/treaties/UNCAC/IRG-Experts/English/SecondCycle/Madagascar_E.pdf.

		is available on the UNODC website. ¹¹ According to the Director General of BIANCO, the official report resulting from the current evaluation process will be published but “on selected channels” and at “the appropriate time.” ¹²
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Access to Information

The right to information without prior restraint is guaranteed by Article 11 of the Constitution, except in cases where public morality and order are violated. Madagascar does not yet have a law regulating access to public information. However, Article 6 of Decree no. 2003-1158 of September 17, 2003 on the Code of Ethics of the Administration and Good Conduct of State Agents states that all administrations are required to make public the necessary information on acts and procedures falling within their competence, as well as that which allows for an assessment of their management, in order to allow citizens to be fully and adequately informed and for the evaluation of their actions. Articles 24 and 25 of this decree thus set out the obligation of public information that any government official has with respect to any citizen. However, the provisions of Article 15 of Law no. 2003-011 of September 3, 2011 on the General Statute for Civil Servants require the civil servant to maintain professional discretion in his professional activities and formally prohibit any communication of documents or service documents to third parties.

Beyond these restrictions, however, there are ways of making public information accessible, in particular through the digitized dissemination of legislative and regulatory texts via government websites such as “CNLEGIS,”¹³ which is a reference for legislative and regulatory texts published in the Official Journal of the Republic of Madagascar (JORM). This site is used by the Directorate of the National LEGIS Center, or National Center of Information and Legislative and Legal Documentation, at the General Secretariat of the Prime Minister's Office. However, delays in updating published laws and regulatory texts as well as the limited access of the public to an internet connection that can allow for more in-depth research illustrate the limitations of this tool at a citizen level.

In addition, as part of the “Promotion of Access to Information” project, the CSI initiated the drafting of a bill to regulate access to public information in the interest of transparency in administrative and governmental action, in order to combat corruption. Since 2006 however, this draft law has not been adopted by the Council of Ministers or even placed on the agenda of the two parliamentary chambers. As a result of this situation, a National Charter on Access to Information and Knowledge Sharing was adopted in 2013,¹⁴ under the supervision of the CSI and proposed on a voluntary basis to the relevant public administrations. Since 2019, the Minister of Communication has committed to “complete the process of drafting the bill [on access to public information] until its adoption by Parliament in its first session of 2020.”¹⁵ In

¹¹https://www.unodc.org/documents/treaties/UNCAC/CountryVisitFinalReports/2016_10_17_Madagascar_Final_Report_FR.pdf, accessed March 13, 2021.

¹² Physical interview with the DG of BIANCO on May 12, 2021.

¹³ Legislative Information Portal, <http://www.cnlegis.gov.mg/>, accessed 13/03/2021.

¹⁴ “Technical Workshop on Access to Information,” CSI, May 2014 <http://www.csi.gov.mg/08-et-09-mai-2014-atelier-technique-sur-lacces-a-linformation/>, accessed January 26, 2021.

¹⁵ CSI, Annual Report 2019, page 19, <http://www.csi.gov.mg/rapport-annuel-csi-2019/>, accessed March 23, 2021.

September 2020, a draft bill was presented by the Ministry of Communication and Culture, but no timetable on its adoption before Parliament has been published to date.

Within the framework of this study, it was noted that legal and regulatory texts are often accessible online, but that there are difficulties in accessing more specific and technical administrative texts, such as decrees, circulars, notes and ministerial directives, which nevertheless reflect concrete administrative decision-making power on a daily basis. Statistics on judicial cases that have been tried at the level of the PAC are also available in the quarterly reports issued by this jurisdiction and on its website.¹⁶ However, it was not possible to inquire at the BIANCO level about the status of the UNCAC review in Madagascar due to the confidential nature of the data on the ongoing process, which would have advanced this study further. This obstacle made the preparation of this parallel report difficult in light of the role of BIANCO leadership as the focal point for the review in Madagascar, and much information is therefore missing. Nonetheless, the teams of other SAC members, namely CSI, SAMIFIN, and the National Coordination of PACs, provided essential information for the preparation of this report.

¹⁶ For the year 2020: <https://www.dcn-pac.mg/statistiques/c>, accessed March 13, 2021.

IV. Assessment of Implementation of UNCAC Provisions

This section deals with the main issues related to the transposition into national law and the application and enforcement of various UNCAC provisions in practice.

Chapter II - Preventive Measures

Chapter II of the UNCAC addresses measures and mechanisms to prevent and combat corruption effectively, to enable enhanced international cooperation and technical assistance and to promote integrity, accountability and proper management of public affairs and public property. Thus, the State Party must adopt and pursue coordinated and effective measures to prevent corruption by promoting the participation of civil society and reflecting the principles of the rule of law, good governance, transparency and accountability. Since preventive policies, measures and bodies are often more effective when accompanied by public information and civil society participation, Chapter II includes provisions to this effect. In addition, it includes provisions on the achievement of specific transparency objectives in the public sector, as well as measures concerning judges and prosecutors, and preventive measures in the private sector. Finally, this chapter also deals with the prevention of money laundering.

With specific reference to Chapter II of the UNCAC, the following articles were commented on and analyzed:

Art. 5 – Preventive anti-corruption policies and practices

Articles 6 to 9 of Law no. 2016-020 of August 22, 2016 on the fight against corruption establish an administrative obligation to put in place internal and sectoral anti-corruption policies, as well as related procedures at the level of ministries and administration in general. Administrative officials within these administrations may be held accountable for failure to comply with this obligation. The law even provides for a period of six months from the date they take office for these officials to implement anti-corruption measures.

In addition to the UNCAC, Madagascar is also a signatory to several conventions and protocols, including the Southern African Development Community (SADC) Protocol on Combating Corruption¹⁷ and the African Union Convention on Preventing and Combating Corruption,¹⁸ which provide follow-up measures on their implementation. The last monitoring mission on the implementation of the African Union Convention on Preventing and Combating Corruption was held in November 2019.¹⁹

Good practices

¹⁷ Decree n° 2007776 of July 30, 2007 ratifying the accession to the SADC Protocol against corruption (J.O. n° 3 136 of 24/09/07, pages 5606 to 5610).

¹⁸ Decree n° 2004803 of August 19, 2004 ratifying the African Union Convention on the Prevention and Fight against Corruption (J.O. n° 2926 of 06/09/04, page 3195).

¹⁹ "Evaluation Mission on the Implementation of the African Union Convention on Preventing and Combating Corruption in Madagascar," BIANCO, November 2018 <https://bianco-mg.org/mission-devaluation-de-la-mise-en-oeuvre-de-la-convention-de-lunion-africaine-sur-la-prevention-et-la-lutte-contre-la-corruption-a-madagascar/>, accessed March 14, 2021.

The National Anti-Corruption Strategy (SNLCC) has been implemented for the period 2015-2025. A mid-term evaluation mission of the SNLCC in order to harmonize it with the General State Policy (PGE) and the Madagascar Emergence Plan (PEM), which is supposed to be the reference framework for the new strategy, was conducted by the Committee for the Safeguarding of Integrity (CSI) in 2020. However, the delay in finalizing the revised version of the PEM, which is supposed to constitute a “socio-economic development guideline” for the years 2019-2023,²⁰ and which was announced by the government in December 2020, could pose problems in aligning this assessment with the revised PEM. During the drafting of the SNLCC in August 2015, it was noted that an inclusive approach to civil society was adopted in the various phases of designing the strategy (regional and national workshops, consultation of strategic actors), although the time allocated to these consultations was more than limited, effectively limiting civil society's contributions.

A draft sectoral anti-corruption policy for the justice sector is also underway, but many specific professional sectors do not yet have sectoral policies in place.

Article 7 of the Law on the fight against corruption (LLCC) states that CSOs have a duty to support, assist and contribute to the prevention of corruption and the education of the population. This call has been widely heard in view of the awareness of young people in the struggle for a more honest and transparent society. This is reflected in their interventions in the framework of citizen education; support for the promotion of the anonymous denunciation system I-TOROKA between the Independent Anti-Corruption Bureau (BIANCO) and the German development organization GIZ; citizen proposals to the government; appeals regarding proven cases of corruption in several sectors and bad practices; and cooperation with entities of the National Integrity System (SNI) through partnership agreements.

Deficiencies

The legal texts relating to the application of the UNCAC are fragmented. Instead of being contained in a single document that would make them much more accessible to citizens, cases of corruption and money laundering are covered by the Criminal Code but also by the LLCC or other legal texts, which makes them difficult to interpret.

Furthermore, since policies and strategy documents are not explicitly transcribed into laws and regulations, it is still difficult to see implementation efforts in practice, even though according to Article 41 of the LLCC, the CSI ensures monitoring of the anti-corruption system. In practice, there is no provision in the law that sets out the conditions for the implementation of measures for the periodic evaluation of anti-corruption policies.

In July 2020, CSOs widely criticized the reform of the CAP law which removed pre-conviction confiscation of illicit assets and restricted the jurisdiction of the court to economic and financial offenses. It was passed in the National Assembly without consultation from SAC members and CSOs.²¹ In July 2021, the version of the law amended by the Senate was adopted on second reading by the National Assembly. This amended law “stipulates that economic and financial offenses related to corruption and similar acts as well as money laundering and terrorist financing fall under the jurisdiction of the PAC [...] simple economic offenses [being]

²⁰ Madagascar Tribune “Le Plan Emergence Madagascar se fait attendre” <https://www.madagascar-tribune.com/Le-Plan-emergence-Madagascar-se-fait-attendre.html>, February 2021, accessed July 3, 2021.

²¹ “Anti-Corruption Pole, Committee to Safeguard Integrity Rejects Reform” <http://www.midi-madagasikara.mg/politique/2021/01/29/pole-anti-corruption-le-comite-pour-la-sauvegarde-de-lintegrite-rejette-la-reforme/>, accessed March 14, 2021.

under the jurisdiction of the ordinary courts.”²² Moreover, the reform of the CAP law provides, among others, the restriction of confiscation of illicit assets only related to offenses of money laundering and financing of terrorism and that provided for by Ordinance No. 2019-015 of July 15, 2019 on the recovery of illicit assets.

Art. 6 – Preventive anti-corruption body or bodies

Articles 42 to 44 of Law No. 2016-020 of August 22, 2016 on the fight against corruption stipulate that BIANCO is the body in charge of, among other things, providing advice for the prevention of corruption to any public or private person. BIANCO's independence is guaranteed by Article 42 including security of tenure of its officers, availability of sufficient resources and autonomy in its operations. According to Article 3 of Decree No. 2020-013 of January 15, 2020 on the restructuring of BIANCO, it is responsible for leading the implementation of the national anti-corruption strategy, including the enforcement of anti-corruption legislation, the prevention of corruption in the functioning of public and private sector systems, and public education on the evils of corruption and awareness-raising among the population to fight corruption. All BIANCO staff are required to make a declaration of assets in accordance with legal and regulatory provisions (Article 62 of Decree No. 2020-013).

SAMIFIN, on its end, ensures collection and analysis as well as the utilization and transmission of any information related to any organized crime linked to ML/FT for the purpose of criminal prosecution before the competent jurisdiction. It also issues specific directives with a view to ML/FT vigilance and prevention for institutions subject to suspicious transaction reporting obligations (Article 23 of Law No. 2018-043 of February 19, 2019 on the fight against money laundering and terrorist financing). According to exchanges with SAMIFIN's General Manager, a staff values charter is available within the organization, but it is not publicly available.²³

As for the CSI, its mission is to ensure the coordination, monitoring and evaluation of the SAC, including BIANCO and SAMIFIN as well as ARAI.

Good Practices

BIANCO and SAMIFIN are already operational with real efforts in the reduction of corruption and money laundering due to their preventive and investigative powers.

BIANCO, given its obligation under Article 3.3 of Decree No. 2020-013 to educate the public and raise awareness on the fight against corruption, has been able to implement several projects in this regard. These include the presence of an anti-corruption element in the school curriculum, and the creation of more than 18 Honesty and Integrity Networks (RHI) in the university environment in 2019, involving thousands of young students in order to achieve the goal of a “corruption-free generation.” At the institutional level, efforts have been made to operationalize internal anti-corruption structures and mechanisms for preventing acts of corruption at the level of ministerial departments (7 in 2019) and technical services attached to the state (402 in 2019) and decentralized and autonomous territorial authorities such as communes and regions.²⁴ Given its obligation to report on its activities, BIANCO regularly publishes on its website an annual report on its actions on the fight against corruption.²⁵

²² “CAP bill, National Assembly follows Senate's lead,” accessed 5 July 2021.

²³ E-mail exchanged with Mr. Lamina Boto Tsara Dia, DG of SAMIFIN dated January 19, 2021.

²⁴ BIANCO, Annual Report 2019, Pages 7 et seq. <https://bianco-mg.org/rapport-et-statistiques/>, accessed 14 March 2021.

²⁵ *Ibid.*

In 2019, SAMIFIN implemented training and awareness-raising activities in several regions of Madagascar for professionals involved in the AML/CFT chain, including reporting institutions, prosecuting and investigating authorities.²⁶ SAMIFIN also publishes an annual report on its activities.²⁷

Deficiencies

In Axis no. 3, the Madagascar Emergence Plan (PEM) sets out the “fight against corruption with [a] zero tolerance [policy]” as one of the priorities of the current government.²⁸ In this sense, the Anti-Corruption Units (PAC), according to the provisions of Law no. 2016-021 of August 22, 2016 on anti-corruption units, contribute to adapting the repressive system for the fight against corruption as well as money laundering and terrorism financing. The PAC has jurisdiction over the prosecution, investigation and trial of these offenses. The legislative reforms that came with the establishment of the PAC, such as new laws on the fight against corruption and money laundering and the financing of terrorism, the law on international cooperation in criminal matters, and the ruling on the recovery of illicit assets, put in place a solid legislative framework to effectively fight corruption.

However, inconsistencies arise, first, in terms of legislation where it has been noted at times that neither BIANCO nor SAMIFIN nor indeed other members of the SAC have been consulted on draft amendments to legislative and/or regulatory provisions that concern them, with reference to the much-criticized revision of Law No. 2016-021 on PAC, that was initiated at the level of the National Assembly in order to reduce the substantive competencies of this jurisdiction with respect to financial and economic offenses. In July 2021, the version of this law amended by the Senate was adopted on second reading by the National Assembly, which “provides that economic and financial offenses related to corruption and similar acts, as well as money laundering and financing of terrorism, fall under the jurisdiction of the PAC [...] simple economic offenses [should now fall] under the jurisdiction of ordinary courts.”²⁹ The Senate has thus apparently also maintained the provision on pre-conviction confiscation of ill-gotten assets, particularly in the context of ordinance no. 2019-015 of July 15, 2019 on the recovery of illicit assets, and Law no. 2018-043 of February 13, 2019 on the fight against money laundering and terrorist financing. Moreover, with respect to their independence as required by the UNCAC, BIANCO and SAMIFIN are attached to the Presidency of the Republic, which raises concerns about their room for maneuver, but it has often been indicated that this attachment is merely administrative and does not affect their independence. It should be noted that the Directors General of BIANCO and SAMIFIN are appointed by the President of the Republic from a list of three persons submitted by an ad hoc recruitment committee set up for this purpose by the CSI.

In addition, the sharing of powers between the PAC and other courts responsible for trying certain public figures for offenses committed throughout their term may appear to be a hindrance to the effective prosecution of corruption and related offenses. Indeed, the question has arisen about cases of corruption involving ministers under the jurisdiction of the

²⁶ SAMIFIN, Annual Report 2019, pages 20ff (<https://online.fliphtml5.com/rnkp/vryf/#p=1>, accessed March 14, 2021).

²⁷ SAMIFIN activity reports: <https://www.samifin.gov.mg/?q=node/650> accessed on 14/03/21.

²⁸ The EMP guideline: http://www.presidence.gov.mg/presidence/66-la-ligne-directrice-de-la-pge.html&ved=2ahUKEwj6-oTPiMbVhXioXEKHQPADUEQFjAAegQIARAC&usq=AOvVaw2_P6YhL5IsT6XT-Bkpgyr, accessed March 22, 2021.

²⁹ “CAP bill, National Assembly follows Senate's lead,” accessed 5 July 2021.

HCJ and other public figures whose prosecution and trial are the responsibility of the PAC. The complex procedure, requiring an indictment by the National Assembly by an absolute majority vote of its members (Article 113 of the Constitution),³⁰ makes it difficult to prosecute these public figures without real political will on the part of the deputies, who to date have not yet voted for any indictment.³¹

In the case of a former finance minister, Jean Claude Razafindravonona,³² prosecuted and remanded in custody for alleged misappropriation of funds amounting to 500 million ariary (around 110,500 EUR) to be used for the rehabilitation of a public building of the Malagasy Ministry of Posts, the High Constitutional Court decided that because of his status as a minister, the proceedings against him before the PAC would be unconstitutional, as the defendant could only be tried before the HCJ.³³ In addition, a scandal involving the illicit export of gold at the beginning of the year led the Malagasy government to create a national anti-fraud agency (ANAF) by decree in January 2021,³⁴ whose remit remains rather vague at this stage. The minutes of the council of ministers state that this agency will be attached to the presidency of the Republic and “will be responsible for monitoring any possible fraud and prosecuting the perpetrators.” This body is not provided for in the LLCC, and it is not clear where it would fit into the SNI and SAC. The ANAF is thus an addition to the already numerous internal monitoring bodies active in the administration, particularly in the area of public financial control.

This situation is also found at the level of the courts, between the PAC, the HCJ and the Special Chain of Control for the fight against the trafficking of rosewood and ebony, or the Special Criminal Courts for cattle theft, where a single case may lead to several courts being seized, further slowing down the work of justice. However, the establishment of the ANAF could also facilitate the work of certain investigative bodies, in the context of authenticating supporting documents.³⁵

Although Law no. 2016-021 of August 22, 2016, Article 31 on the PAC recognizes the financial independence of this entity, and article 11 of the UNCAC also relates to state accountability to strengthen the independence of the judiciary at the financial level, it seems that the means implemented to achieve the objective of “zero tolerance” towards corruption are well below expectations.³⁶ It should also be noted that in the proposed law amending Law No. 2016-021

³⁰ Constitution of the Fourth Republic of Madagascar, <http://www.mef.gov.mg/dgcf/textespdf/constitution/CONSTITUTIONIV.pdf>, accessed March 14, 2021.

³¹ “Special Impeachment Commission, presentation of the report on the investigations carried out today,” The Gazette of the Big Island, December 2020, <http://www.lagazette-dgi.com/?p=37726>, accessed on March 14, 2021.

³² “Jean Razafindravonona, the former Minister of Finance transferred to Antanimora” <http://www.midi-madagasikara.mg/politique/2018/04/05/jean-razafindravonona-lancien-ministre-des-finances-transfere-a-antanimora/>, accessed on March 14, 2021.

³³ <http://www.hcc.gov.mg/decisions/d2/decision-n02-hcc-d2-du-23-aout-2018-concernant-une-requete-en-exception-dinconstitutionnalite>, accessed March 14, 2021.

³⁴ Council of Ministers of January 06, 2021, <http://www.presidence.gov.mg/actualites/conseil-des-ministres/1129-tatitry-ny-filankevity-ny-minisitra-natao-tao-amin-ny-lapam-panjakana-iavoloha-alarobia-06-janoary-2021.html>.

³⁵ Physical interview with the DG of BIANCO on May 12, 2021. It is not confirmed at this stage that this duty would fall within the remit of the ANAF.

³⁶ According to the CAP Annual Report July 2019-June 2020, “insufficient funds allocated for the DCN/PAC and in-year blockages in the use of certain budget line items” are limitations to achieving DCN and CAP goals, p.58.

of August 22, 2016 on the PAC, adopted by the Senate and the National Assembly,³⁷ BIANCO and SAMIFIN represented respectively by their Directors and having voting rights before, are now only observers in the current scheme within the Monitoring and Evaluation Committee of the PAC. They are now replaced by the First President and the Attorney General of the Supreme Court. The PAC Monitoring and Evaluation Committee can thus, through this new law, dismiss the National Coordinator of the PAC before the end of his or her mandate - a mandate that has also been reduced under this new law on the PAC from 4 years, renewable once, to 3 years, renewable once, in case of serious misconduct duly noted by the said Committee. The new law does not explicitly mention which kind of conduct on behalf of the National Coordinator could be considered as a serious offense, thus leaving it to the Committee to assess the latter.

Specifically with regard to the administration of BIANCO personnel, Decree No. 2020-013 of January 15, 2013, which is supposed to implement the restructuring of this institution, was declared unconstitutional by the HCC in some of its provisions and in the texts adopted for its application. One provision for example, states that “for a better match between training and employment in order to optimize their proven skills and to enhance their qualifications, the BIANCO staff are given the option of applying for two different positions at most.” For the HCC, this provision constitutes a major source of discrimination in relation to external applications.³⁸

Art. 7 - Public Sector

The Malagasy Constitution provides that access to public service is open to all citizens without any conditions other than those of ability and aptitude, but also recognizes that recruitment may be subject to geographical quotas as provided by law (Article 27). Entry into the civil service may be by competitive examination, by title and by integration, the last two forms not requiring an entrance examination (Article 18 of Law No. 2003-011 of September 3, 2011 on the General Statute for Civil Servants).³⁹ As regards administrative competitions, they must respond to a particular and prior need for human resources within the public administration according to the availability of budgetary positions (Article 2 of Decree No. 2005-500 of July 19, 2005⁴⁰ governing the general principles relating to the organization of administrative competitions). The anonymization of candidates' written copies (Article 8 of Decree no. 2005-500) and the double correction system are mandatory in any administrative competition (Articles 8 and 9 of Decree no. 2005-500).

With regard to the conditions for candidacy and election to public office, they are regulated, in addition to the Constitution, by Law No. 2018-009 of May 11, 2018 for the election of the President of the Republic and by Law No. 2018-010 of May 11, 2018 on the election of deputies to the National Assembly, as well as by Law No. 2015-007 of March 3, 2015 setting the rules for the functioning of the Senate. These legislative provisions require the absence of

³⁷ <https://assemblee-nationale.mg/depot-de-texte/>, accessed July 16, 2021.

³⁸ <http://www.hcc.gov.mg/d3/decision-n03-hcc-d3-du-17-fevrier-2021-relative-a-une-saisine-du-haut-conseil-pour-la-defense-de-la-democratie-et-de-letat-de-droit-aux-fins-de-controle-de-constitutionnalite-du-decret/>, accessed April 30, 2021.

³⁹ http://www.mef.gov.mg/dgcf/textespdf/FONCTION%2520PUBLIQUE/TEXTE%2520STATUT/LOI_2003011_FONCTIONNAIRE.pdf, accessed March 14, 2021.

⁴⁰ Decree no. 2005-500 of July 19, 2005 governing the general principles relating to the organization of administrative competitions JORM No. 2990 Of September 19, 2005, page 4926.
<http://www.dgfag.mg/wpcontent/uploads/2019/06/DECRET-2005-500.pdf>, accessed March 14, 2021.

criminal conviction of the candidate to participate in these elections, the payment of all of his tax obligations as well as the filing of a declaration of assets before the election. Holding multiple offices is prohibited.

Article 57 of Law No. 2018-008 of May 11, 2018 on the system for elections and referendums indicates the transparency of campaign financing sources and the use of funds allocated to them as fundamental principles that must govern an election campaign in Madagascar. Candidates must therefore keep a campaign account and file a declaration of probity, undertaking to respect the rules relating to transparency, the fight against money laundering and corruption (Article 64 of Law No. 2018-008).

The candidate's campaign account must be filed with the Commission for the control of the financing of political life (CCFVP) within three months of the date of the official proclamation of the final results (Article 83 of Law No. 2018-008). The aforementioned Commission will carry out a legality check on these accounts, after which it will produce a public report on the accounting status of each candidate and, if there are any, situations of irregularity (Article 88 of Law No. 2018-008). If cases of money laundering or any other financial offence are found, the Commission may refer the matter to the competent criminal court. It should also be noted that Malagasy law prohibits legal entities under foreign law and any foreign state from participating directly or indirectly in the financing of electoral campaigns in Madagascar (Article 74 of Law No. 2018-008).

Good Practices

It is possible for the ministerial department or training institution concerned to call on specialized technical assistance such as that provided by BIANCO within the framework of a partnership agreement (Article 11 of Decree No. 2005-500). These partnership agreements are signed between the administrative entity that organizes the competition/examination, and BIANCO in order to ensure the security and reliability of the recruitment of government employees and for the purpose of transparent administration. BIANCO is involved in the verification of corresponding registration numbers with the identity of candidates, while ensuring the anonymization of marks. Surveillance cameras may also be installed throughout the process, from the securing subjects to recording marks and counting copy sheets.⁴¹ Regarding examinations for entry into administrative schools (ENMG, the National School of Magistracy and Clerks, ENAP, the National School of Penitentiary Administration, and ENAM, the National School of Administration of Madagascar), BIANCO's 2019 annual report indicates that the financing of the security of these examinations is carried out through grants from the Cooperation and Cultural Action Service of the French Embassy (SCAC).⁴² It should be noted that since 2018, no ENMG competitions have been held. In March 2021, an order of the Minister of Justice was adopted to organize competitive examinations for the recruitment of high magistrates, that were supposed to be held in June 2021.⁴³ This competition was postponed to August 2021.⁴⁴

⁴¹ <https://bianco-mg.org?s=Concours>, accessed March 14, 2021.

⁴² BIANCO, Annual Report 2019, pages 33ff <https://bianco-mg.org/rapport-et-statistiques/>, accessed March 14, 2021.

⁴³ Order no. 8038/2021 of March 18, 2021 opening direct entrance examinations to the ENMG for the recruitment of 80 student magistrates, <https://www.enmg.org.mg/article/20/devenir-magistrat>, accessed April 30, 2021.

⁴⁴ <https://enmg.org.mg/article/164/actus-concours-magistrats-a-lenmg>, accessed July 16, 2021.

The process of recruiting government employees seems to be subject to a legal framework that is provided for both statutory employees and those benefiting from a special or autonomous system, as well as those who are not supervised. Partnerships between the organizations in charge of competitive examinations and BIANCO are frequent, and even mandatory, to ensure integrity in recruitment processes. The existence of anonymous online complaint systems implemented with BIANCO, such as I-TOROKA, allow for the initiation of investigations with a view to repressing alleged acts of corruption before the PAC. In addition, the central role of the administrative jurisdiction constituted by the Administrative Courts and the Council of State in the protection of the constitutional principle of equal access to public employment are all mechanisms that allow for fairer control in this regard.⁴⁵

Certain public officials holding senior positions in the administration, listed in article 2 of the LCCA, including judges, directors of ministries, persons exercising the functions of economic and judicial police officers, and corporate officers employed in public establishments and companies with public participation, are subject to the obligation to declare their assets within three months of their appointment or assumption of their duties. In addition, according to articles 40 and 41 of the Constitution, the President of the Republic, the members of the government, the members of the National Assembly and the Senate, the High Constitutional Court, the magistrates composing the Supreme Court, the Courts of Appeal as well as the HCJ are subject to the same obligation of filing a declaration of assets before the HCC.

Since August 2019, the Government has implemented a tool for managing the number of public servants called AUGURE (Unique Application for the Uniform Management of State Human Resources) to produce a unique database of State personnel in order to know the real workforce and with due regard for the progressive digitization of administrative management and remuneration.⁴⁶

Deficiencies

Access to the civil service, although highly regulated by law, presents many challenges. The organization and conduct of administrative competitions, although highly supervised and despite partnerships with BIANCO, are often contested.

Following an administrative competition organized for the recruitment of student magistrates and clerks at the Malagasy National School of Magistrates and Clerks (ENMG)⁴⁷ in February 2018, suspicions of corruption were raised and the Independent National Commission on Human Rights (INCHR) even indicated that it would have received complaints of corruption and influence peddling in this regard. BIANCO and the Magistrates' Union called for the cancellation of the competition and an investigation was launched. Once the competition was cancelled, the Minister of Justice at the time, Rasolo Elise Alexandrine, had the examination

⁴⁵Andry Herizo Rakotozafy, "Les défis d'une modernisation de la fonction publique à Madagascar à l'aune de l'expérience française" Master Administration et finances publiques, University of Strasbourg and Ecole Nationale d'Administration, June 2017, https://www.ena.fr/content/download/52470/822765/version/1/file/M%25C3%25A9moire_Herizo_RAKOTOZAFY.pdf, accessed March 14, 2021.

⁴⁶ Decree no. 2019-446 of 07 August 2019 institutionalizing and implementing AUGURE (JORM no. 3928 of 17/02/2020 page 1316).

⁴⁷ "Madagascar, rebondissement dans le scandale du concours de la magistrature," RFI, March 2018 <https://www.rfi.fr/fr/afrique/20180311-madagascar-scandale-concours-ecole-nationale-magistrature-greffes-copies-brulees>, accessed January 26, 2021.

papers burned, even though they constituted material evidence and were sealed by BIANCO.⁴⁸ The investigation is ongoing, but it is highly likely that, given her status as minister and the fact that the events took place in the context of her duties, the HCJ will be seized.

The fairness of the remuneration of public servants is affirmed by law, but there may be differences in treatment and remuneration between different public servants, depending on whether they are included in the general statute of civil servants and non-civil servants, or whether they have a special statute or autonomous status, such as magistrates and the military.⁴⁹ The existence of multiple special statutes and autonomous statutes in relation to the general statute of civil servants, which is the common law, makes it difficult to standardize the remuneration of public servants and their transparency vis-à-vis external observers and citizens. Moreover, for a long time and under the justification of structural adjustment programs, it would seem that the issue of de-indexing or adjustment civil servants' salaries has led to a contraction in the salaries of certain categories of public servants,⁵⁰ making them vulnerable to acts of corruption.

Art. 8 - Codes of conduct for public officials

Risks of corruption, money laundering and terrorism financing can intervene in and dangerously influence the outcome of an election and, as a result, access to an elective public mandate. It is therefore in the interest of democracy, good governance and equal opportunities for candidates to a public elective mandate that a legislative reform of the financing of elections and political parties exists.

Articles 13 to 15 of Law No. 2003-011 of September 3, 2011 set out the statutory obligations of civil servants, punctuality, attendance, full employment, honesty and neutrality. They are also bound by an obligation of professional discretion. Decree no.2003-1158 specifies the rules of ethics and good conduct for all civil servants. Codes of conduct and ethics are provided for by decree for civil servants under special or autonomous system such as magistrates, for example.

A professional secrecy obligation for civil servants is also provided for by Article 15 of Decree no. 2003-1158 and an obligation of professional discretion is applicable to them, prohibiting any communication of service documents to third parties (Article 15 of Law no. 2003-011). Articles 32 to 36 of Decree no. 2003-1158 prohibit conflicts of interest by public officials.

A public official in a position of high responsibility is subject to an obligation to declare his assets. This obligation also extends to the assets of the spouse and minors. The list of personalities subject to the declaration of assets and economic interests is provided for in Articles 40 and 41 of the Constitution as well as in Article 2 of Law no. 2016-020. This declaration must be made within 3 months of appointment or assumption of office, and renewed every 2 years in the event of a change in administrative position or a significant

⁴⁸ “Les copies du concours suspectes de corruption, brûlées avant-hier,” Midi Madagasikara, <http://www.midi-madagasikara.mg/a-la-une/2018/03/10/les-copies-du-concours-suspecte-de-corruption-brulees-avant-hier/>, accessed March 14, 2021.

⁴⁹ For an in-depth study on the treatment of public officials, see TI-MG's study report on “Transparency of Public Officials' Compensation in Madagascar,” June 2017, https://www.transparency.mg/assets/uploads/download_manager/trap.pdf, accessed March 14, 2021.

⁵⁰ Mireille RAZAFINDRAKOTO, François ROUBAUD, “Vingt ans de réforme de la fonction publique à Madagascar,” 2001, <https://www.cairn.info/revue-autrepart-2001-4-page-43.htm#no5>, accessed March 14, 2021.

change in assets. This obligation remains in effect for 2 years after the termination of the official's functions. Failure to declare assets is punishable by a prison sentence of between 6 months and 5 years.

Good Practices

The organizations in charge of collecting the declarations of assets, BIANCO and the HCC, regularly publish the list of people who have filed declarations,⁵¹ even if some of them have not yet done so, despite it being a legal obligation.

With regard to taking necessary action against public officials, the example of the alleged involvement of a former Director General of the Treasury can be cited as an illustration. Businesswoman Claudine Razaimamonjy was close to the former government and misappropriated public funds, participating in corrupt acts under the guise of fictitious public contracts.⁵²

The case of Claudine Razaimamonjy, a wealthy businesswoman⁵³ active in the restoration and building sector and close to former President Hery Rajaonarimampianina, had been in the news since 2016, when a report by the General State Inspectorate revealed that more than 400 million ariary or 98,400 EUR from a special subsidy granted by the Minister of the Interior had been embezzled by the minister and Razaimamonjy during the rehabilitation of a public building.⁵⁴ This case is important because it involves members of the party in power, gravitating around the current president, and mixes political affairs with the granting of fictitious public contracts. It is also undoubtedly one of the first cases for BIANCO, and later for the PAC, in which the defendants belong to the ruling party. Claudine Razaimamonjy was involved in "fictitious contracts" for the renovation or construction of public buildings in several cities in Madagascar. A first conviction against her came in August 2019 before the Ordinary Criminal Chamber of the Second Degree Jurisdiction of the PAC of Antananarivo, for 7 years of hard labor. Then, on December 10, 2019, she was sentenced to 10 years of hard labor by the same PAC Criminal Court, for complicity in abuse of office and embezzlement of public funds for a second case related to the misuse of an exceptional subsidy in the rural commune of Ambohimahasina in the district of Ambalavao.⁵⁵ Nevertheless, several cases concerning her are still pending before the PAC, some of them involving former ministers who enjoy the privilege of judgement before the HCJ for offenses committed during their term of office, and whose hearing requires the consent of the National Assembly.

Deficiencies

As of December 2020, of the 151 deputies elected since July 2019, 34 individuals subject to the legal obligation of filing asset declarations have not yet done so, even though Article 2 of

⁵¹ <http://www.hcc.gov.mg/autres/declaration-de-heritage/>, accessed March 23, 2021.

⁵² <https://lexpress.mg/19/12/2020/affaire-claudine-razaimamonjy-le-proces-renvoye-en-2021/>, accessed March 14, 2021.

⁵³ "Madagascar, l'affaire Claudine continue de défrayer la chronique," Le Monde https://www.lemonde.fr/afrique/article/2019/12/25/a-madagascar-l-affaire-claudine-continue-a-defrayer-la-chronique_6024036_3212.html, accessed January 29, 2021.

⁵⁴ "Embezzlement of 145 million Ariary in Mahasoabe, new trial against Claudine Razaimamonjy yesterday" Midi Madagasikara, <http://www.midi-madagasikara.mg/politique/2019/08/22/detournement-de-145-millions-ar-a-mahasoabe-nouveau-proces-contre-claudine-razaimamonjy-hier/>.

⁵⁵ "Embezzlement of public funds, Razaimamonjy gets 10 years of hard labor" L'Express de Madagascar, <https://lexpress.mg/11/12/2019/detournement-de-deniers-publics-razaimamonjy-ecope-de-dix-ans-de-travaux-forces/>, accessed January 29, 2021.

the LLCC requires it within 3 months of taking office, or facing criminal conviction as a consequence.⁵⁶ However, no convictions for the failure to declare assets have been made at the level of the PAC between July 2019 and June 2020.⁵⁷ In addition, given the principle of confidentiality of these declarations, they are not accessible to the public and their processing and access are exclusively limited to the competencies of BIANCO, in the context of legal proceedings under the authority of the First President of the Supreme Court and the Attorney General of the Supreme Court, and the administrative authority empowered to process personal data (Article 4 of the LLCC). Thus, apart from this legal prohibition, the fact that the Malagasy Commission on Information Technology and Civil Liberties (CMIL), which is the administrative authority in charge of regulating the processing of personal data, has not yet been set up, as well as this complexity of access, make it technically difficult to publish the declarations of assets filed.

The prosecution of corruption related offenses is greatly limited by the immunities and privileges that certain public authorities enjoy by virtue of their office. For example, the HCJ is the only court competent to judge offenses committed by ministers in the course of their duties, and this indictment cannot be made without a prior indictment by an absolute majority of the deputies (article 39 of the organic law no. 2014-043 of January 9, 2015 on the HCJ). This situation creates a disparity of treatment between “normal” defendants, i.e., those without privileges, and those who do. Moreover, deputies have an unfortunate tendency to protect personalities who are brought before them for indictment, either because they lack the legal capacity to debate cases that are often complex, or simply out of a concern for corporatism and self-interest. Many cases involving ministers are thus left to the goodwill of the deputies.⁵⁸ In addition, the concept of authorization to prosecute that exists in most large public service organizations, which prevents prosecution until the higher authority has given its approval, further reduces the possibilities of sanctioning offenders.

The repressive system in the fight against corruption is thus limited by the immunities that certain elected officials enjoy in the performance of their mandate. This is the case with parliamentary immunity, for example, which constitutes a privileged status that derogates from ordinary law, whereby any criminal proceedings against a member of parliament during a session cannot take place without the lifting of this immunity by the National Assembly, except in the case of *flagrante delicto* (‘being caught red-handed’), as stated in Article 73 of the Constitution. In some cases, elected officials have invoked parliamentary immunity for criminal cases that concerned them before their term of office, and in one specific case, a candidate for deputy was elected while in preventive detention for the illegal sale of public property.⁵⁹ The High Constitutional Court confirmed in a 2011 opinion that this immunity would only be relative outside parliamentary sessions, and that criminal proceedings could be brought even outside parliamentary sessions, but that it was the arrest that would require

⁵⁶ “Déclaration de patrimoine, 34 députés défaillants,” Midi Madagasikara, December 2020, <http://www.midi-madagasikara.mg/politique/2020/12/04/declaration-de-patrimoine-34-deputes-defaillants/>, accessed March 14, 2021.

⁵⁷ <https://www.dcn-pac.mg/rapport-d-activites>, accessed March 14, 2021.

⁵⁸ “Indictment before the High Court of Justice,” Malagasy National Assembly, <https://assemblee-nationale.mg/mise-en-accusation-devant-le-haute-cour-de-justice/>, accessed January 29, 2021.

⁵⁹ “Judicial cases: no parliamentary immunity for Rasolomampionona and Raveloson” <http://www.midi-madagasikara.mg/politique/2020/01/23/affaires-judiciaires-pas-dimmunité-parlementaire-pour-rasolomampionona-et-raveloson/>, accessed March 22, 2021.

authorization from the Assembly Bureau.⁶⁰ In a decision taken in 2020, it also ruled that the protection afforded to parliamentarians “does not cover criminal offences and does not cancel out criminal sanctions prior to the election of a deputy.”⁶¹ In addition, at the level of public officials, disparate statutory rules mean that some officials have privileges for criminal prosecution in the course of their duties. These authorizations from the supervisory authority or hierarchical superior are thus required before any prosecution, and often restrict the work of justice. These facts place citizens in a situation of inequity before the repressive law.

Although codes of conduct are in place at the level of the general statutory framework for state officials as well as in the various special statutes and autonomous statutes to ensure that professional practice is conducted with integrity and transparency, between July 2019 and June 2020, individuals from the public sector still represented more than 34% of defendants brought before the PAC.⁶²

Art. 9 – Public procurement and management of public finances

The principles of free access to public procurement, equal treatment of candidates and transparency to ensure the efficiency of public procurement and the proper use of public funds are among the general principles governing public procurement according to Article 5 of Law No. 2016-055 of January 16, 2017 on the Public Procurement Code. It is required of the persons responsible for public procurement within each administration to establish procurement plans, to respect the obligations of advertising and competitive bidding and to choose the most economically advantageous offer or proposal with the bidding committee, as well as the acceptance committee and the public purchasing group (Article 7 of Law no. 2016-055).

General public procurement notices are published each year before the relevant budget year containing the overall list of public contracts that the relevant administration intends to award by tender (Article 32 of Law No. 2016-055). These notices are published in a specialized newspaper issued by the Public Procurement Regulatory Authority (ARMP) and in at least one national or international newspaper for (international) open tenders. These notices may be advertised electronically.

The conditions for implementing the procedures applicable to the award of public contracts are provided for by Decree No. 2019-1310 of July 3, 2019. Thresholds for the number of public contracts are established; exceeding this makes prior monitoring and more restrictive procedures for an open call for tenders mandatory. Otherwise, and depending on the nature of the contracts, selection of candidates by restricted invitation to tender or by mutual agreement may be implemented.

⁶⁰ Opinion no. 01-HCC/AV of July 15, 2011 on the interpretation of the provisions of Article 73 of the Constitution relating to parliamentary immunity: <http://www.hcc.gov.mg/avis/avis-n01-hccav-du-15-juillet-2011-portant-interpretation-des-dispositions-de-l'article-73-de-la-constitution-relatives-a-l'immunit-parlementaire/>, accessed March 22, 2021.

⁶¹ Ruling No. 01-HCC/AR of February 10, 2020, concerning the declaration of vacancy of deputies' seats: <http://www.hcc.gov.mg/arrets/arret-n01-hcc-ar-du-10-fevrier-2020-concernant-le-constat-de-vacance-de-sieges-de-deputes/>, accessed March 22, 2021.

⁶² Direction de coordination nationale des PAC et PAC d'Antananarivo, Rapport annuel Juillet 2019-Juin 2020, p.35. <https://www.dcn-pac.mg/rapport-d-activites/lire/rapport-annuel-juillet-2019-juin-2020.htm>, accessed March 14, 2021.

There are remedies provided for the award of public contracts, either with the contracting authority or before the administrative court. The candidate who has been irregularly eliminated benefits from recourse for compensation by action in damages after the contract has been signed.

The National Procurement Commission ensures the exercise of a priori and a posteriori checks on public contracts according to the thresholds established by law (Articles 2 and 12 of Order No. 20442-2019 of September 17, 2019). ARMP is in charge of promoting the transparency of the Malagasy public procurement system and handles appeals related to the awarding of public contracts (Article 13 of Law no. 2016-055).

The personnel belonging to the public procurement bodies shall refrain from any conflict of interest and shall produce a declaration of interests, as well as a commitment to respect the Code of Ethics in the framework of their work (Decree no. 2006-343 of May 30, 2006 establishing the Code of Ethics for public procurement).

Law No. 2004-007 of July 26, 2004 on finance laws specifies the importance of the principle of fairness in the presentation of all State resources and expenses (Article 42) and also provides for the content of the finance law as well as the procedures for drafting and voting on finance laws by Parliament (Articles 43 and following of Law No. 2004-007). Monitoring the regularity and compliance with the legislative and regulatory provisions of any public expenditure commitment is ensured by the Financial Control body (Law no. 2016-009 of August 22, 2016). The Court of Auditors also exercises jurisdictional control over the execution of the Finance Laws. Public accounts are kept in accordance with the provisions of the Public Sector Accounting Plan or PCOP, which refers to international accounting standards for the public sector (IPSAS, etc.) (Decree No. 2005-210 of April 26, 2005 on the 2006 PCOP).

Good Practices

Since budgetary matters are usually in the hands of the executive branch, and their adoption depends on the parliamentary chambers, citizens' access to information on draft finance laws is sometimes difficult. Given this context, since 2015, a citizens' budget on the current finance laws has been put online by the Ministry of Finance in order to explain the finance laws in a simplified manner. In addition, the finance laws of the current fiscal year are generally published online for citizens, on a government website specifically assigned to budget transparency as well as budget execution review reports and end of year reports.⁶³ During the Covid-19 period, a digital platform has been deployed by the Ministry of Finance on its website to track Covid-19 expenditure statements made by all public bodies,⁶⁴ including public contracts that have been awarded. The initiative is commendable even if the legibility of published data requires improvement.

In order to address the problems of financing actions carried out as part of the exceptional response to the Covid-19 pandemic and the implementation of the Multisectoral Emergency Plan (PMDU), Decree no. 2020-725 of July 1 2020 was adopted by the Government.⁶⁵ It establishes a response fund that is supposed to bring together dedicated financial resources, including budget allocations, subsidies from public bodies, donations and cash assistance, including donations intended to finance the contingency plan for the response to Covid-19;

⁶³ <http://www.dgfag.mg/transparence/web/article/budget-des-citoyens-lfi-2021-vf>, accessed March 14, 2021.

⁶⁴ <http://www.mef.gov.mg/reportingcovid>, accessed March 14, 2021.

⁶⁵ Executive Order No. 2020-725 of July 1, 2020, establishing the Covid-19 pandemic response fund. http://www.cnlegis.gov.mg/page_find_direct_mots/3, accessed April 30, 2021.

support from Technical and Financial Partners in accordance with financing agreements, and donations allocated by foundations, associations and companies from the private sector. In addition, this decree was intended to implement a good governance strategy through the establishment of a regulatory, normative system and an institutional mechanism; efficiency through the definition of clear management procedures, and transparency through the establishment of a reporting and evaluation mechanism, as well as the setting up of clear information systems.

However, results remain mixed in view of the criticisms voiced by civil society, particularly with regard to the lack of “immediate implementation [of the decree], specifically the establishment of the monitoring and evaluation unit and the publication of the activity and financial report, transparency on the use of funds related to Covid-19 before the adoption of the decree” as well as the strengthening of vigilance of whistleblowers,⁶⁶ but also on the involvement of civil society in the control mechanism of the fund through the monitoring and evaluation unit of the Multisectoral Emergency Plan. However, it is important to note that the Ministry of the Economy and Finance has set up a reporting platform to make financial information related to the management of the Covid-19 response fund accessible.⁶⁷

Deficiencies

Generally, finance laws are only available after they have been passed, which reduces public debate. Moreover, if they are passed by ordinance of the President of the Republic, parliamentary debates may be even more limited. Indeed, this was the case in 2019 and 2020 for the initial finance laws, because the lower parliamentary chamber could not preside due to the mandate of former deputies having expired before the adoption schedule, and because the two chambers had not reached an agreement by the end of the debates.⁶⁸

The awarding of public contracts remains one of the riskiest operations in terms of corruption because of the amounts involved and the proximity between public and private sectors in their awarding. Particular situations such as the coronavirus pandemic in 2020 have accentuated exceptional modes of public procurement such as those agreed by mutual agreement, without respect for fair competition and budget transparency. In addition, these exceptional procurement methods can lead to situations of conflict of interest between the contractor and the public officials in charge of awarding the contract.

The exceptional situation related to the Covid-19 pandemic has thus brought to light cases of favoritism in the awarding of public contracts in view of the urgency and in order to efficiently meet exceptional logistical needs. In the midst of the health crisis, the so-called “flat screen” affair at the operational command center fighting against Covid-19⁶⁹ arose when an invoice was published on social networks for the purchase of flat screens, laptops and cameras totaling a sum of 216 million Ariary, or more than 50,000 EUR, by the current Minister of the

⁶⁶ "Enforcing transparency and good governance before citizen trust is irreparably broken, Transparency International - Madagascar Initiative, August 2020 <https://www.transparency.mg/confiance-citoyenne>, accessed 30 April 2021.

⁶⁷ <http://www.mef.gov.mg/reportingcovid>, accessed April 30, 2021.

⁶⁸ <http://www.hcc.gov.mg/d3/decision-n18-hcc-d3-du-21-decembre-2019-concernant-lordonnance-n2019-016-portant-loi-de-finances-pour-2020/>, accessed 14 March 21.

⁶⁹ “Madagascar, Civil Society Denounces Conflict of Interest in Public IT Equipment Contract,” August 2020, <https://www.amp.rfi.fr/fr/afrique/20200823-madagascar-soci%25C3%25A9t%25C3%25A9-civile-conflit-d-int%25C3%25A9r%25C3%25A9ts-march%25C3%25A9-public-mat%25C3%25A9riel-info>, accessed January 29, 2021.

Interior from the company TED, supplier of these materials whose commercial director is the wife of the same minister. In a daily newspaper in the capital, the minister claimed that it was the United Nations Development Program (UNDP) that had donated the equipment to the Covid-19 command center and thus procured it, the minister having only received it.⁷⁰ However, civil society representatives said that the UNDP, when contacted, denied the minister's claims, as its involvement was limited to financial disbursement and the choice of supplier was made by the ministry. Following this, the matter was referred to BIANCO and the conflict-of-interest case was referred to the HCJ: the only court competent to rule on offenses committed by a minister in office. This case is still pending and the minister has not been overly concerned by the issue. Given that an indictment before the HCJ requires the vote of an absolute majority of the deputies, it is likely that the case will not move forward without strong political will on the part of the legislative branch, a large majority of whom belong to the presidential camp.

Art. 10 - Public reporting

The right to information without prior constraint is guaranteed by Article 11 of the Constitution, except in cases where public morality and order are violated. Madagascar does not yet have a law regulating access to public information. However, the provisions of the Code of Ethics of the Administration and Good Conduct of State Agents provided for by Decree no. 2003-1158 of 17 December 2003, impose some restrictions on the right to information of citizens, in particular the obligation of professional secrecy to which public agents are bound, as well as the obligation of loyalty to the organizations to which they belong (articles 24 and 25). This implies that they must not “harm the image of the public service” and “never denigrate the administration or organization to which they belong.”

However, Article 6 of Decree No. 2003-1158 states that every administration is required to make public the necessary information on the acts and procedures falling within its competence, as well as that which allows its management to be assessed, so that citizens can be informed in the fullest and most adequate manner possible, and so that its actions can be evaluated.

Good Practices

With regard to corruption offenses, measures to protect whistleblowers and informants, including their anonymization, are provided for in the LLCC (Articles 56 et seq.), but it is difficult to measure the extent of denunciations coming from the administration itself. Moreover, even though a national charter on access to information and knowledge sharing has been implemented by the CSI since 2013, its adoption by the civil service and public bodies is on a voluntary basis.

The adoption in 2014 of Law No. 2014-026 of 5 November 2014 laying down the general principles relating to the digitization of administrative procedures⁷¹ also recognizes a right of

⁷⁰ According to the minister, “it was this partner who bought the equipment himself wherever he wanted,” “Madagascar, la société civile dénonce un conflit d'intérêts dans un marché public de matériel informatique,” Aout 2020, <https://www.amp.rfi.fr/fr/afrique/20200823-madagascar-soci%25C3%25A9t%25C3%25A9-civile-conflit-d-int%25C3%25A9r%25C3%25AAts-march%25C3%25A9-public-mat%25C3%25A9riel-info>, accessed 29 January 2021.

⁷¹ <http://www.cnlegis.gov.mg/droit> <http://www.hcc.gov.mg/d3/decision-n-30-hccd3-du-03-decembre-2014-concernant-la-loi-n2014-026-fixant-les-principes-generaux-relatifs-a-la-dematerialisation-des-procedures-administratives/>, accessed March 14, 2021.

access to digitized administrative procedures for users by stating in Article 5 that, “the use of the information system [...] as well as the functionalities associated with it are open to any user through an access device provided for this purpose.”

Madagascar's international commitment to the UNCAC has not yet been honored due to the absence of a law on citizen access to public information to increase transparency in the administration. However, the Ministry of Communication and Culture showed willingness⁷² to adopt it. On August 31, 2020, it organized a public restitution of the key features of this text and passed them on to the government on September 3, 2020. The text had already been amended by the Ministry in May 2020 after receiving remarks and suggestions from the Prime Minister's Office, and was soon to go back to the Council of Ministers, before being put on the agenda of the parliamentary session. However, the said parliamentary session ended without the bill having been transmitted to Parliament.⁷³

Deficiencies

Limitations in the Code of Ethics for Public Administration and the lack of witness protection programs and related funding mechanisms may restrict the emergence of whistleblowers in the public administration. In addition, the lack of an independent entity in charge of reviewing access to public information, which is supposed to be provided for in the draft law on citizen access to public information, makes it difficult for the public to take ownership of administrative procedures and decision-making processes at the level of the state and its branches. For the time being, and in the absence of parliamentary adoption of the draft law on citizen access to public information, access to public information is quite difficult, particularly access to administrative decisions and contracts concluded by public persons without a specific legal framework.

Violations of freedom of information have been decried by professional associations of journalists in Madagascar, particularly during the periods of emergency⁷⁴ in the midst of the Covid-19 health crisis, which began in March 2020 and was lifted in October of the same year, with a state of emergency being resumed in April 2021 and regularly renewed since. This was the case for a journalist close to the opposition, and editor of the newspaper ‘Valisoa,’ who was imprisoned in April 2020 for inciting hatred by publishing critical comments online about the government's management of this crisis.⁷⁵ She was finally “released” by the President of the Republic in an official statement on May 3, 2020, although requests for provisional freedom previously submitted by her lawyers had been rejected by the courts. The Ministry of Communication also recalled that “the abusive exercise of this freedom [of expression and

⁷² CSI, Annual Report 2019, page 19 <http://www.csi.gov.mg/rapport-annuel-csi-2019/>, accessed 15 March 2021.

⁷³ Televised intervention of the Minister of Communication and Culture, TVM, 2 May 2021.

⁷⁴ <http://www.presidence.gov.mg/actualites/755-decret-n-2020-359-du-21-mars-2020-proclamant-l-etat-d-urgence-sanitaire-sur-tout-le-territoire-de-la-republique.html>.

⁷⁵ https://www.google.com/url?sa=t&source=web&rct=j&url=https://www.amnesty.org/download/Documents/AFR3521172020FRENCH.pdf&ved=2ahUKEwjPypHk4rHvAhUXi1wKHemsBssQFjAEegQICRAC&usg=AOvVaw2bSEzOT8_TlcZ9qFHMN4RX&cshid=1615793646773, accessed March 15, 2021 and https://www.lemonde.fr/afrique/article/2020/04/16/coronavirus-a-madagascar-une-journaliste-en-prison-pour-avoir-critique-la-gestion-de-l-epidemie_6036761_3212.html, accessed March 15, 2021.

information] [...] by not taking into account either the imperatives of the situation of exception, or the regulations in force can in no way be construed as freedom of the press.”⁷⁶

On April 22, 2021, an inter-ministerial decision implementing Article 24 of Order No. 10001/2021 of April 6, 2021, as amended by Order No. 10477 of April 19, 2021, issued by the Prime Minister, enacting the general measures taken during the period of extension of the state of public health emergency, was taken by the Ministry of the Interior and Decentralization, the Ministry of Public Security, the Ministry of Communication and Culture and the Secretariat of State in charge of the National Gendarmerie. It specifies in its articles 3 and 4 that “All public events and radio and audiovisual productions likely to disturb public order and security and harm national unity broadcast in the Analamanga, Atsinanana, SAVA, Boeny and Sofia regions are and remain prohibited for the duration of the health emergency. These broadcasts concern those involving live telephone interventions and political debates.”

Nine programs, the most popular in terms of ratings, are particularly targeted “without this list being exhaustive.”⁷⁷ Following an outcry from civil society through press releases denouncing violations of fundamental freedoms, but also after the submission of letters of commitment (of unknown content) from six of the nine targeted channels, the ministries concerned revised their decision on April 26, 2021, by reauthorizing the broadcasting of the programs that were specifically prohibited. Despite this apparent reversal, this second decision is more destructive of liberty than the first: Article 3 further in fact restricts freedoms seeing as, “Whatever their medium...radio and audiovisual broadcasts containing interventions likely to disturb public order and security (incitement to hatred, incitement to racial hatred, disinformation), harm national unity, or incite civil disobedience... are and remain prohibited for the entire duration of the state of health emergency.” This time, all media are targeted, and the restriction applies (for lack of precision) to the entire national territory.

Art. 11 - Measures relating to the judiciary and prosecution services

In the Malagasy judicial system, judges are independent, irremovable and subject only to the Constitution and the law (Articles 109 and 110 of the Constitution). On the other hand, the magistrates of the Public Prosecutor's Office are subject to hierarchical subordination (Article 110 of the Constitution).

The code of conduct and ethics of magistrates provides for several obligations including those of their independence, impartiality, integrity and transparency in their functions (Articles 11 and following Decree no. 2005-710 of October 25, 2005). They are required to make a declaration of assets and interests (Article 2 Law no. 2016-020 of August 22, 2016).

Moreover, the secrecy of information limits the disclosure of information to the public in an ongoing judicial procedure (Articles 353 to 355 of the Malagasy Code of Criminal Procedure).

Good Practices

Since its creation in August 1996, the ENMG or National School of Magistrates and Clerks of Madagascar has trained more than 647 administrative, financial and judicial magistrate

⁷⁶ <https://www.voaafrique.com/amp/journ%C3%A9e-presse-madagascar-le-pr%C3%A9sident-va-lib%C3%A9rer-tous-les-journalistes-en-prison/5404027.html>, accessed March 15, 2021.

⁷⁷ These programs are: Aoka Hazava (Viva radio), Anao ny fitenenana (Free Fm), Tambatra miara-manonja tena izy (multi-radios), Miara-manonja (multi-radios), Kapotandroka (IBC), L'invité du jour (Real TV), Ça me dit (RTA), Don-dresaka (TV Plus) and Rivotra (RDJ).

students.⁷⁸ In March 2018, the organization of the entrance exam to this school was tainted by suspicions of corruption and the exam was eventually cancelled. The Minister of Justice at the time even had exam sheets burned, despite the fact that they were supposed to serve as “elements of investigation.”⁷⁹ The investigation into this case was finalized by BIANCO, and the former supervisor general of the school was the only one to be referred to the prosecutor's office of the PAC in March 2019. The former minister of justice, also involved in this case, should be answerable to the HCJ if the indictment is recognized by an absolute majority of deputies. A restructuring of the ENMG was implemented by the Ministry of Justice in 2020 through the adoption of Decree No. 2020-208 of February 26, 2020 on the reorganization of the ENMG including, in particular, the reduction of the members of the board of directors within this school, and the creation of online and continuous training for magistrates.

The creation of the PAC in charge of the prosecution, investigation and trial of corruption and money laundering offenses since 2016, a continuation of the work of the former Economic and Anti-Corruption Criminal Chain, constitutes a significant advance in the repression of these types of offenses subject to specialized magistrates. The recruitment of CAP magistrates differs from other jurisdictions in that they are appointed by the Superior Council of the Judiciary (CSM) from a list of three candidates per position proposed by the Recruitment Committee, which composed of members of the CSM and the CAP Monitoring and Evaluation Committee or CSE (Article 40 Law No. 2016-021 of August 22, 2016 on the CAP.)⁸⁰ Although in the former law on PACs, the CSE was a joint committee composed of the Minister of Justice, the President of the CSI, the Director General of BIANCO, SAMIFIN and a representative of civil society in charge of the fight against corruption, the bill amending law no. 2016-021 of August 22, 2016 on PACs, adopted by the Senate and the National Assembly in the second reading⁸¹ in June 2020 changed this composition.

In fact, BIANCO and SAMIFIN, previously represented by their respective directors and had voting rights, are now only observers in the current CAP Monitoring and Evaluation Committee. They are now replaced by the First President and Attorney General of the Supreme Court. The PAC Monitoring and Evaluation Committee can thus, through this new law, dismiss the National Coordinator of the PAC before the end of his or her mandate, a mandate that has also been reduced under this new law on the PAC from 4 years, renewable once, to 3 years, renewable once, in case of serious misconduct duly noted by the said Committee. The new law does not explicitly mention which kind of conduct on behalf of the National Coordinator could be considered as a serious offense, thus leaving it to the Committee to assess the latter.

Deficiencies

According to a former Minister of Justice, himself a magistrate, “corruption is gangrenous in Madagascar's justice system from the [point of the] entrance exam [up] to the ENMG”⁸² and this observation is shared by an increasingly worrying proportion of the population (in January

⁷⁸ <https://www.enmg.org.mg/>, accessed March 15, 2021.

⁷⁹ “ENMG, la fabrique à magistrats est grippée” Revue Politika, February 2021 <https://politika.mg/16771/>, accessed March 15, 2021.

⁸⁰ <http://www.csi.gov.mg/loi-n2016-020-sur-la-lutte-contre-la-corruption/>, accessed March 15, 2021.

⁸¹ <http://www.csi.gov.mg/lexpress-de-madagascar-proposition-de-loi-sur-les-pac-lassemblee-nationale-emboite-le-pas-au-senat/> accessed July 16, 2021

⁸² “ENMG, la fabrique à magistrats est grippée” Revue Politika, February 2021 <https://politika.mg/16771/>, accessed March 15, 2021.

2014, a survey indicated that more than 57% of the population confirmed that “at least some of them [judges] practice corruption”).⁸³ In view of the scandals involving recruitment competitions, the credibility of the judiciary is often questioned, despite the disciplinary and ethical rules applying to the various bodies involved in its exercise. The exercise of the profession of judge is subject to strong external pressure, particularly political pressure, in contradiction with the constitutional principle of independence of the judiciary. Further, the material and financial means made available to judges are often modest in relation to the extent of the results expected from them.

Moreover, the sanctions imposed by disciplinary authorities, such as the Superior Council of the Magistracy (CSM) on magistrates at the expense of criminal sanctions, as well as the need for authorization to prosecute, confer an almost “untouchable” status on judges. In an interview with a specialized political newspaper, the former Secretary General of the Ministry of Justice, himself a magistrate, indicated in February 2021 that “this year [...] there have been about thirty translations of magistrates before the disciplinary council. Ten magistrates have been suspended in addition to sanctions and even criminal prosecutions.”⁸⁴

Art. 12 - Private sector

Malagasy law requires traders to register information on the constitution and changes in capital as well as the identification of shareholders at the level of the Trade and Companies Register (Art. 5.2 of the Malagasy Commercial Code or CCM). This information is supposed to be available to the public (Art. 5.3 of the CCM) in addition to the fact that it must be inserted in a publication of a local daily paper. Law no. 2018- 043 of February 13, 2019 on the fight against money laundering and terrorist financing orders the State to take measures to facilitate access to information on beneficial owners and control of legal structures by financial institutions and designated non-financial businesses and professions (Article 12).

Furthermore, provisions sanctioning conflicts of interest between private interests and the public interest of a public official are provided for in Article 182 of the Malagasy Penal Code.

The accounts of private companies must be certified by an auditor above a certain threshold of capital, number of employees or turnover for Limited Liability Companies (SARL), and this is mandatory, regardless of the conditions for Public Limited Companies (Article 25 Decree 2005-151 of April 22, 2005 amending Decree 2004-453 of April 6, 2004 setting the conditions for the application of Law 2003-036 of January 30, 2004 on commercial companies). The financial statements of Malagasy companies must be filed annually with the tax authorities. An obligation to keep regular accounts is required of those liable for Value Added Tax or VAT (Article 06.01.25 Code Général des Impôts or CGI 2020.)⁸⁵

Good Practices

⁸³ Laetitia Razafimamonjy, Mireille Razafindrakoto, Désiré Razafindrazaka, François Roubaud, and Jean Michel Wachsberger “Gouvernance, corruption et confiance à l’égard des institutions à Madagascar, expériences, perception et attentes de la population,” January 2014.
<http://dial.ird.fr/content/download/79051/602334/version/1/file/Gouvernance%2Bcorruption%2Bet%2Bconfiance%2B%25C3%25A0%2BMadagascar%2B-%2BAfro%2B2013%2B-%2Bjanv%2B2014.pdf>, accessed March 15, 2021.

⁸⁴ Interview with Harilaza Imbiki, SG of the Ministry of Justice, Politika magazine, February 2021,
<https://politika.mg/16769/>, accessed March 15, 2021.

⁸⁵ <http://www.impots.mg/fr/138-n-code-general-des-impots-suivant-lfr-2020>, accessed March 16, 2021.

Certifying integrity at the level of private companies is in sight at the CSI to improve good governance,⁸⁶ and to encourage companies thus certified to prevent corruption, highlighting them for their ethical and responsible approaches towards entrepreneurship.

Currently, official copies from the commercial and company registers can be obtained from court clerks and the Economic Development Board of Madagascar (EDBM),⁸⁷ but these registers do not generally contain the identity of the beneficial owners of shareholders in companies. Public access to the registers of beneficial ownership in commercial companies is thus still unavailable in Madagascar without a specific legislative framework in this area. However, verification of the beneficial ownership of real estate properties is possible for any individual through acquisition of certificates of legal status, available at land services offices.⁸⁸

Deficiencies

The effective clamping down on conflicts of interest between the private and public sectors provided for in Article 182 of the CPM and Article 31 of Law no. 2016-020 on the fight against corruption still raises questions. Indeed, less than 0.9%⁸⁹ of the cases handled by the Antananarivo PAC concern conflicts of interest.

Art. 13 - Participation of society

The active participation of citizens and citizen groups such as CSOs or NGOs in contributing to and supporting the prevention and fight against corruption is encouraged (Article 7 of Law No. 2016-020 of August 22, 2016 on the fight against corruption). School education programs on the fight against corruption should be taught both in primary and secondary schools (Article 8 of Law no. 2016-020). Madagascar does not yet have a law allowing and/or regulating access to public information.

A witness in a corruption case may not reveal the identity of the informant to BIANCO - the latter must ensure the protection of whistleblowers according to Article 56 of Law no. 2016-020 - when the informant is not called as a witness in these proceedings (Article 58 Law no. 2016-020). Malagasy law also sanctions abusive denunciation (Article 373.1 of the Malagasy Penal Code) and recognizes the possibility to testify anonymously (Article 385.6 of the Malagasy Code of Criminal Procedure) under certain conditions.

Good Practices

In recent years, it has been noted that civil society action has intensified in the fight against corruption, particularly with regard to good governance and the rule of law, transparency and budget monitoring, the fight against trafficking in endemic species and the overexploitation of natural resources. CSOs are very active in advocacy efforts, but also as proactive whistleblowers on corruption. Article 4 of Law no. 2016-021 of August 22, 2016 on PAC recognizes the possibility of referral to specialized jurisdiction in matters of corruption by denunciation or complaint by an association or organization active in the fight against corruption. In October 2020, the collective of CSOs active in the framework of good

⁸⁶ An option the ISC intends to develop according to its 2019 Annual Report, p.51.

<http://www.csi.gov.mg/rapport-annuel-csi-2019/>, accessed March 15, 2021.

⁸⁷ <https://edbm.mg/>, accessed March 16, 2021.

⁸⁸ <http://www.midi-madagasikara.mg/economie/2020/05/19/services-fonciers-des-guichets-electroniques-pour-la-delivrance-de-csi-et-de-plans/>, accessed March 16, 2021.

⁸⁹ Direction de coordination nationale des PAC et PAC d'Antananarivo, Rapport annuel Juillet 2019-Juin 2020, p.33. <https://www.dcn-pac.mg/rapport-d-activites>, accessed March 14, 2021.

governance and the rule of law, initiated citizen involvement to obtain from the government the means to allow for transparency in the management of funds allocated to the fight against Covid-19, particularly by calling for this in a joint press release.⁹⁰

As early as 2018, a bill on the protection of human rights defenders was drafted by the Ministry of Justice of Madagascar, supported by the Office of the High Commissioner for Human Rights, and submitted to an initial consultation with civil society. Subsequently, civil society and the High Council for the Defense of Democracy and the Rule of Law (HCDDDED) both organized successive workshops aimed at revising and adopting the draft law in accordance with international standards. The workshop co-organized by ISHR and Transparency International Madagascar⁹¹ in March 2021 aimed to allow civil society to review and improve the draft law suggested by the Ministry of Justice and HCDDDED. This approach allowed for several amendments to be made to the initial draft, including the addition of a definition of whistleblower in the Malagasy legal corpus, the right of access to information, specific protection for defenders working in environmental protection and protection for defenders against online defamation or harassment. It was indicated that the “draft law on the recognition and protection of human rights defenders” was submitted to the Ministry of Justice by the HCDDDED on Monday April 19, 2021, and that it would be up to the said Ministry to present the document to the Government for subsequent adoption before the two Malagasy parliamentary chambers.⁹²

Deficiencies

Madagascar does not yet have a mechanism for the physical and material protection of witnesses and whistleblowers, whose actions would promote the fight against corruption. In September 2017, a whistleblower active in environmental causes was remanded in Mananjary prison for questioning the mining permits of a Sino-Malagasy gold mining company active in southeastern Madagascar. He was arrested for allegedly “posing as a local official” during a meeting in his village, charges that local people and human rights groups refute. He was convicted and his suspended sentence of two years' imprisonment was confirmed in the court of appeal before his legal team took the case to the Supreme Court of Madagascar, a procedure which is still pending.⁹³

In terms of CSO relations, some CSO actors claim that there is a “leadership war” that could undermine their objectives.⁹⁴ However, this claim could not be confirmed by concrete cases during the writing of this report. Furthermore, the lack of a legal framework regulating access to public information makes it difficult to empower citizens in the fight against corruption.

Art. 14 – Measures to prevent money-laundering

Madagascar has adopted a law against money laundering and terrorist financing in accordance with the FATF recommendations (Law no. 2018- 043 of February 13, 2019 on the fight against money laundering and terrorist financing). This law is innovative in that it adopts

⁹⁰ <https://www.transparency.mg/societecivile>, accessed March 14, 2021.

⁹¹ <https://www.ishr.ch/news/madagascar-vers-une-meilleure-protection-des-defenseurs-des-droits-humains>, accessed April 30, 2021.

⁹² On the HCDDDED Facebook page: <https://www.facebook.com/155863451598757/posts/1129398570911902/>, accessed April 30, 2021.

⁹³ <https://fr.mongabay.com/2018/07/tribunal-malgache-confirme-condamnation-dun-activiste-ecologiste/>, accessed March 14, 2021.

⁹⁴ Interview with ISC member, December 14, 2021, at ISC headquarters.

a risk-based approach (FATF Recommendation 1) in the fight against money laundering. For example, the provisions relating to the concept of PEPs or Politically Exposed Persons, domestic or foreign, who are required to undergo enhanced due diligence measures by the financial institutions and establishments subject to the law, are important. These measures also extend to their family members and persons closely associated with them (Article 16-b).

The Financial Intelligence Unit or SAMIFIN is the entity in charge of receiving and analyzing the declarations required from the institutions subject to the law and, if money laundering and/or terrorist financing offenses are detected, transmitting them after investigation to the competent court for judicial investigation (article 24). Also, SAMIFIN may cooperate within the framework of its powers with any national and international authority, as well as any governmental or non-governmental body. At the international level, cooperation between SAMIFIN and its foreign counterparts is based on the principle of reciprocity and it has concluded partnership agreements with more than 18 financial investigation agencies in other countries, including France, Mauritius and the United Arab Emirates.⁹⁵

As far as partnerships with reporting institutions are concerned, including banks, SAMIFIN is in constant contact with them, notably through the exchange platform known as 'Gateway.' In addition, a secure digital platform has been in place since March 2020 for SAMIFIN to exchange information with specialized public administrations, in particular the National Gendarmerie, the National Police, BIANCO, the tax and customs services and the Public Treasury.⁹⁶ Failure of the institutions subject to the law to collaborate with SAMIFIN may result in convictions for administrative misconduct, that may go as far as suspension or withdrawal of their authorization (Article 42 of Law no. 2018- 043 of February 13, 2019 on the fight against money laundering and terrorist financing), in addition to the penalties applicable to money laundering and terrorist financing, if they have contributed to it.

Malagasy law provides for the obligation to declare or communicate physical cross-border transportation of cash, bearer negotiable instruments exceeding a regulatory threshold of USD 7,500 to date (Article II-1 of Circular No. 755/2018-MFB of August 30, 2018 relating to currency allocations).

Reporting institutions must keep and make available to SAMIFIN the documents and information relating to the particular supervision of certain operations and customers for a period of at least 5 years after the termination of their business relations (Articles 16 and 17 of the LBCFT).

Good Practices

The new ML/FT law enshrines the risk-based approach promoted by the FATF, despite the lifting of restrictions on the maximum cash payment limit. The LLBCFT establishes the importance of risk assessment, both at the national level and within reporting entities. It also recognizes the notion of PEPs, domestic or foreign, for whom increased vigilance is required.

Article 5 of the LLBCFT provides for the leading role of the State in implementing the identification and assessment of ML/FT risks with a view to a risk-based approach to align prevention measures with the identified risks. This is in line with FATF Recommendation 1 and Madagascar has been implementing a national risk assessment process with World Bank technical assistance since 2017. A workshop to finalize the assessment was held in April 2019,

⁹⁵ SAMIFIN, 2019 Annual Report, <https://online.fliphtml5.com/rnkp/vryf/#p=1>, accessed March 14, 2021.

⁹⁶ *Ibid.*

following which dissemination of the results was planned for 2020. The National AML/CFT Strategy is supposed to be based on the results of this assessment.⁹⁷

Deficiencies

Madagascar has been a member of the Eastern and Southern Africa Anti-Money Laundering Group (ESSAMLG) since 2016, responding to the need to integrate regional dynamics and the cohesion of AML/CFT policies in the Eastern and Southern African region. As part of the ESSAMLG, a mutual technical compliance assessment of the national AML/CFT framework was implemented with the World Bank, through which Madagascar's level of compliance was assessed as low.⁹⁸ As a result, Madagascar was placed on a technical assistance program in October 2019 and reassessed. According to SAMIFIN's annual activity report, the lack of progress could result in a decision to place Madagascar on the gray list, an FATF classification of jurisdictions posing a significant risk to the international financial system.⁹⁹

The low level of banking among the Malagasy, around 5.7% in 2014,¹⁰⁰ while more than 67.7% of suspicious transaction reports transmitted to SAMIFIN come from banks, limits the perception of an effective fight against money laundering in Madagascar, given the fact that an entire segment of the informal sector is outside the control framework in terms of ML/FT. In addition, the framework for supervising the fight against ML/FT at the level of other reporting entities under the LLBCFT does not seem to be effective, or is even absent. The regulatory framework for AML/CFT also requires the adoption of an implementing decree for the LFBCL and the operationalization of the Agency for the Recovery of Illicit Assets (ARAI). The ARAI, as the entity in charge of enforcing decisions to freeze, seize, or confiscate illicit assets and their recovery, is not yet operational, although its mission is important as the last link in the chain of the fight against corruption.

On June 23, 2021, a press release from the Prime Minister's Office reported the adoption by the Government Council of a decree on the creation, composition, organization and functioning of ARAI, but to date no official publication of the decree is available on the government's website for the publication of laws and regulatory decisions (CNLEGIS).¹⁰¹

⁹⁷ SAMIFIN, Annual Report 2019, <https://online.fliphtml5.com/rnkp/vryf/#p=1>, accessed March 14, 2021.

⁹⁸ *Ibid.*

⁹⁹ *Ibid.*

¹⁰⁰ <https://www.afd.fr/fr/carte-des-projets/developper-la-banque-distance-madagascar>, accessed January 27, 2021.

¹⁰¹ <http://www.midi-madagasikara.mg/politique/2021/06/25/primature-deux-nouveaux-directeurs-de-cabinet/>
<https://assemblee-nationale.mg/depot-de-texte/>, accessed July 16, 2021.

Chapter V - Asset Recovery

With specific reference to Chapter V of the UNCAC, the following articles were commented on and analyzed:

Art. 52 - Prevention and detection of transfers of proceeds of crime

As part of the identification of the beneficial owner, Malagasy law requires reporting institutions to obtain information by any means on the identity of the true client and for whom he is acting. After verification, if there is any doubt as to the identity of the true beneficial owner, the business relationship must be terminated without prejudice to their obligation to report their suspicions to SAMIFIN (Article 15 LLBCFT). The LFBCL also stipulates that Politically Exposed Persons (PEPs), whether national or foreign, must be the subject of reinforced vigilance by the reporting institutions, measures that also extend to their family members and to persons closely associated with them (Article 16-b LFBCL). The institutions subject to the law must therefore report to SAMIFIN as soon as money laundering or terrorist financing is suspected (Article 27 LLBCFT).

Any serious negligence or willful act on the part of persons subject to these declarations leads to several sanctions ranging from written warnings to the placing under supervision or suspension of activity or even the withdrawal of their business licenses and the prohibition of continuing to practice the business profession concerned (Article 42 LLBCFT). As a legal entity, such persons may also be subject to financial penalties in the form of fines at a rate equal to five times the fines specified for natural persons. Natural persons subject to the law who do not comply with the obligations to report suspicions may be sentenced to between one to five years' imprisonment and given a fine of between one and ten million Ariary, or to one of these penalties only (Article 43 LLBCFT).

In addition to the special attention that the law orders the reporting institutions to pay to vigilantly verify the operations and bank accounts attached to PEPs as well as to high-risk clients, the LLBCFT prohibits operations on fictitious or anonymous accounts, to set up fictitious banks or to maintain relations with them, and requires the reporting institutions to implement special surveillance for particularly complex and unusual transactions (Article 16 LLBCFT). The Malagasy law also establishes an obligation for banks to keep documents relating to the identity of their customers, including their commercial correspondence, for at least 5 years after the account is closed (Art. 17 LLBCFT).

With regard to the declaration of assets and interests by public figures who are obliged to do so, SAMIFIN is not competent to receive them directly, given that, apart from the High Constitutional Court, BIANCO is the only institution authorized by Malagasy law to receive, have access to and communicate such declarations, and this under the authority of the First President of the Supreme Court, the Attorney General of the Supreme Court and the authority authorized to process personal data in Madagascar (Article 4 of the Law on the Protection of Personal Data). The same situation applies to the persons subject to the declaration of assets before the HCC according to the provisions of articles 40 and 41 of the Constitution, which are the President of the Republic, the Prime Minister, the members of the Government, the deputies and senators, as well as the members of the HCC, for which BIANCO receives a copy of the declarations, as SAMIFIN is not involved according to the Malagasy law.

The regulatory framework of the ML/FT is also linked to the adoption of the decree on the dynamic management of asset declarations and the decree implementing the LLBCFT as well as the operationalization of the ARAI.

Good Practices

The number of files concerning suspicious transaction reports transmitted by SAMIFIN to the Antananarivo PAC prosecutor's office increased by more than 57% during its second year of operation. These reports mainly came from banks.¹⁰² The decriminalization of money laundering offenses could allow for a more efficient repression of these offenses,¹⁰³ as hearings could be held outside of criminal court sessions. In addition, the declaration of assets filed with the HCC and BIANCO should contain a list and estimate of all the assets at the disposal of the declarant, including assets that are located abroad and which thus escape Malagasy jurisdiction.¹⁰⁴

Deficiencies

The abolition of the prohibition on cash payments in excess of 10 million Ariary (i.e., more than 2,200 EUR) for individuals, and 50 million Ariary (i.e., more than 11,000 EUR) in the former LLBCFT law, may be detrimental to the gains made in terms of the difficulty for public authorities to monitor this type of payment.

Art. 53 - Measures for the direct recovery of property

The official representatives of foreign States - like any person having their own legal personality - may bring a civil action before the Malagasy courts by proving their interest in acting on a matter (article 1 CPCM). They can obtain compensation for the damage suffered, the amount of which is determined by the court. However, in the absence of an agreement with Madagascar and only before the civil court, the requesting State may be required to provide a bond in the event of a conviction in order to ensure the payment of costs and damages resulting from the organization of the trial (article 12 CPCM).

The LLBCFT specifies that resources, funds or property, as well as instruments confiscated in the context of legal proceedings in Madagascar belong to the Malagasy State. However, it is possible for these assets to be encumbered up to the value of the real rights lawfully constituted for the benefit of third parties (Article 62 LLBCFT) which seems to allow for restitution in value and not in kind to the foreign State. Furthermore, Article 82 of Law No. 2017-007 of January 29, 2018 on international cooperation in criminal matters specifies that the Malagasy State enjoys the power of disposal over property confiscated on its territory, even for judicial confiscation proceedings following the request of a foreign State, unless there is an agreement to that effect between the two States (Article 82 of Law No. 2017-007).

Good Practices

By adopting a law on international cooperation in criminal matters, Madagascar has thus implemented an innovative review of the legislative framework in view of the previous law of

¹⁰² <https://www.dcn-pac.mg/rapport-d-activites/lire/rapport-annuel-juillet-2019-juin-2020.htm> page 32, accessed March 20, 2021.

¹⁰³ Interview with the Director General of SAMIFIN online on January 19, 2021.

¹⁰⁴ Article 4 of Decree No. 2004-983 repealing and replacing Decree No. 2002-1127 of September 30, 2002 instituting an obligation to declare the assets of certain categories of senior officials.

10 March 1927 governing relations of international judicial cooperation between France and Madagascar becoming obsolete.

Deficiencies

In the absence of a specific bilateral judicial agreement between Madagascar and the claiming State, a foreign State's claim to a legitimate property right over property acquired in the context of a corruption or money laundering offence under the UNCAC is still difficult. The concept of legitimate property rights of foreign legal persons is still unclear in Malagasy substantive law. Malagasy law also does not specify whether the UNCAC, adopted by Madagascar and the requesting state, would constitute an exception to the absolute power of disposition over confiscated property that the Malagasy state would hold following a confiscation request made by a foreign state in light of the provisions of Article 82 of Law No. 2017-007 of January 29, 2018 on international cooperation in criminal matters.

Furthermore, the non-operational ARAI, which should enforce court decisions on the freezing, seizure or confiscation of illicit assets as well as their recovery, particularly from legal entities, limits the efficient repression of the latter when they are involved in acts of corruption and ML/FT.

Art. 54 - Mechanisms for recovery of property through international cooperation in confiscation

A confiscation order issued by a foreign court may be enforced on Malagasy territory according to the provisions of Articles 78 and following of Law No. 2017-007. Confiscation pronounced by the competent Malagasy court upon request for foreign judicial assistance is also possible according to article 80 of the same law, provided that the confiscation concerns property constituting the proceeds or instruments of an offence and located on Malagasy territory, or consists of an obligation to pay a sum of money corresponding to the value of this property.

Moreover, flight or the legal impossibility of prosecuting the alleged perpetrator, except for the statute of limitations, does not prevent the competent Malagasy court of justice from ruling on the fate of illicit assets resulting from misappropriation of public property and funds, corruption offenses, money laundering and financing of terrorism (Article 2 Ordinance No. 2019-015 of July 15, 2019 on the recovery of illicit assets).

It is possible for a competent foreign judicial authority to request mutual legal assistance before the competent Malagasy court for the seizure and/or freezing with a view to the subsequent confiscation of assets that have been used or were intended to commit the offence, which is the subject of the request for mutual assistance (Article 77 of Law no. 2017-007).

In terms of cooperation, SAMIFIN is authorized to share information with its foreign counterparts subject to the principle of reciprocity (Article 26 LLBCFT).

Good Practices

Law No. 2017-007 of January 29, 2018 on international cooperation in criminal matters and Ordinance No. 2019-015 of July 15, 2019 on the recovery of illicit assets, are all tools available for the implementation of procedures to govern international cooperation in confiscation matters. Malagasy law allows for both the direct enforcement of a confiscation order issued

abroad, as well as the jurisdiction of Malagasy courts in the event of a request for such an order in Madagascar, thus meeting the mandatory requirements of Article 45 of the UNCAC.

Deficiencies

Malagasy law does not yet explicitly recognize the foreign state's claimed legitimate ownership of property acquired through offenses connected to that foreign state, unless the foreign state agrees with the Malagasy state. Even if confiscation is possible, the direct restitution of such confiscated property, even at the request of the foreign state, does not seem to be permitted under Malagasy law, or at least not without an agreement between the two states. The notion of agreement in this sense does not seem to refer to the UNCAC, but to bilateral agreements.

The recovery of illicit assets requires the operationalization of the ARAI, which is still not effective to date. On June 23, 2021, a press release from the Prime Minister's Office reported the adoption by the Government Council of a decree on the creation, composition, organization and operation of the ARAI, but to date, no official publication of the decree is available on the government's website for the publication of laws and regulatory decisions (CNLEGIS).¹⁰⁵ In addition, the reform of the law on PAC, already adopted in second reading before the National Assembly and the Senate, provides among others, the restriction of the possibility of confiscation of illicit assets only for offenses of money laundering and financing of terrorism and that provided by Ordinance No. 2019-015 of July 15, 2019 on the recovery of illicit assets.

Art. 55 - International cooperation for purposes of confiscation

Although it is possible to request the enforcement of a confiscation order issued abroad before the Malagasy courts, this must be done in accordance with certain conditions. Thus, the Malagasy court must verify that the foreign decision is enforceable in Madagascar, and that it is linked to the facts on which it is based. Furthermore, the Malagasy court called upon may not refuse to grant the request, unless the execution of the request could undermine Madagascar's sovereignty, its security, public order or even other essential common interests of the country (Articles 44 and 81 of Law No. 2017-007). Grounds for refusal also include the fact that the foreign decision was taken by a non-competent authority, that the offence is not criminalized by either foreign or Malagasy law, or that it is not a political offence under Malagasy law – ML/FT acts are not considered political offences.

Good Practices

Since the adoption of Ordinance No. 2019-015 of July 15, 2019 on the recovery of illicit assets, Madagascar has the legal framework for the establishment of an illicit asset recovery agency (ARAI). Madagascar, through SAMIFIN, is also a member of several international financial intelligence organizations such as the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) and its institutional and legal framework draws on the FATF Recommendations. The country is not yet a member of the Egmont Group,¹⁰⁶ a network for sharing confidential information between financial intelligence units.

Deficiencies

¹⁰⁵ <http://www.midi-madagasikara.mg/politique/2021/06/25/primature-deux-nouveaux-directeurs-de-cabinet/>
<https://assemblee-nationale.mg/depot-de-texte/>, accessed July 16, 2021

¹⁰⁶ <https://egmontgroup.org/en/content/east-and-southern-africa-region>, accessed March 23, 2021.

The effective establishment and operation of the ARAI is subject to the adoption of decrees by the Council of Ministers, for which no timetable has yet been set. In addition, the reform of the law on PACs, which has already passed its second reading in the National Assembly and the Senate in June 2021,¹⁰⁷ provides for, among other provisions, the restriction of the possibility of confiscating illicit assets for the offenses of money laundering and terrorist financing and that provided for by Ordinance No. 2019-015 of July 15, 2019 on the recovery of illicit assets. This reform could contradict Article 55 of the UNCAC.

Art. 57 - Return and disposal of assets

Unless there is an agreement with the foreign State, the Malagasy State has the power of disposal over property confiscated on its territory at the request of foreign authorities and therefore has the option of not returning such assets. In the case of a bilateral agreement, however, the Malagasy State may deduct reasonable expenses incurred for investigations, prosecutions or judicial proceedings leading to the return or disposal of confiscated assets from the value of the assets (Article 82 of Law No. 2017-007).

Good Practices

The principle of restitution of confiscated assets or their value when they originate from or are linked to acts of corruption or ML/FT is recognized by Madagascar. Also, the adoption of Ordinance No. 2019-015 of July 15, 2019 on the recovery of illicit assets, which allowed for the future establishment of the ARAI, could lead to a more efficient recovery of illicit assets located on the territory of Madagascar and, later, their restitution - if the political will to pass the law is there.

Deficiencies

In the absence of a bilateral judicial agreement between Madagascar and the claiming state, a foreign state's claim and Madagascar's restitution of a legitimate property right to assets acquired in the context of a corruption or money laundering offence under the UNCAC is still proving to be difficult. However, given that both Law No. 2017-007 of January 29, 2018 on international cooperation in criminal matters and Ordinance No. 2019-015 of July 15, 2019 on the recovery of illicit assets constitute a very recent legislative framework, it has thus been difficult to ascertain their application at the level of local jurisprudence, especially in relation to the restitution of confiscated assets of foreign origin, particularly in the event of a claim by a foreign state.

In addition, the aforementioned reform of the CAP law¹⁰⁸ providing for, among other provisions, the restriction of the possibility of confiscation of illicit assets to only the offenses of money laundering and financing of terrorism, could contradict Article 57 of the UNCAC.

¹⁰⁷ <http://www.csi.gov.mg/lexpress-de-madagascar-proposition-de-loi-sur-les-pac-lassemblee-nationale-emboite-le-pas-au-senat/>, accessed July 16, 2021.

¹⁰⁸ *Ibid.*

Statistics

Money Laundering

Reporting/Intelligence Phase	Year: 2017 ¹⁰⁹	Year: 2018 ¹¹⁰	Year: 2019 ¹¹¹
Number of Suspicious Transaction Reports (STRs) filed by each category of obliged entity: <ul style="list-style-type: none"> - Banks and financial institutions - Non-financial businesses and professions (NFBPs) 	151 received	187 received	164 received
Number of postponement orders adopted on reported transactions	Not available	Not available	Not available
Number of money laundering investigations carried out independently by law enforcement agencies	129 processed	161 processed	205 processed
Number of confidential information reports or CIDs ¹¹² reported to SAMIFIN (including those based on cash transaction reports or CTRs)	353 of which 209 from banks	447 of which 247 from banks	436 of which 267 from banks
Number of STRs sent to law enforcement and on which further analysis was made	107 DOS transmitted to the Public Prosecutor's Office	59 reports sent to the Public Prosecutor's Office	80 reports transmitted to the Public Prosecutor's Office
Number of SAMIFIN employees dedicated full-time (or full-time equivalent) to money laundering	38	48	44

Investigation phase	Year: 2017	Year: 2018	Year: 2019
Number of cases initiated by law enforcement agencies on the basis of STRs and reports sent by SAMIFIN	94 of which 9 were tried in 2017 ¹¹³	20 ¹¹⁴	64

¹⁰⁹ SAMIFIN's 2017 statistics do not distinguish the source of STR by who is subject to it.

¹¹⁰ SAMIFIN's 2018 statistics do not distinguish the source of STR by who is subject to it.

¹¹¹ SAMIFIN's 2019 statistics do not distinguish the source of STR by who is subject to it.

¹¹² CIDs include STR, CIF or Additional Financial Information, CIC or Confidential Information Communications, CTR or Cash Transaction Report, SAMIFIN, <https://www.samifin.gov.mg/?q=node/541>, accessed March 23, 2021.

¹¹³ The information relates to the Antananarivo jurisdiction alone, the only one that provided feedback on the basis of processed STR, SAMIFIN Report 2017 P.26, id.

¹¹⁴ Of which 7 at the level of the Antananarivo PAC and 13 for the other jurisdictions, SAMIFIN Report 2018 p.27, id.

Number of full-time (or full-time equivalent) law enforcement officers dedicated to money laundering	Not available	Not available	Not available
Number of cases brought to prosecution: originating from STRs, CTRs and independent law enforcement investigations	71 ¹¹⁵	6 for the 7 files at the level of PAC Antananarivo ¹¹⁶	64

Judicial phase	Year: 2017	Year: 2018	Year: 2019
Number of staff dedicated full-time (or full-time equivalent) to investigating money laundering staff in the judiciary	Not available	43 ¹¹⁷	48 ¹¹⁸
Number of persons/legal entities convicted for money laundering offences	Not available	8% of offences judged ¹¹⁹	3% ¹²⁰
Number of convictions for laundering proceeds of crimes committed abroad	Not available	Not available	Not available
Number of convictions for crimes other than money laundering originating from STRs	Not available	Not available	Not available
Number of sentences by type for money laundering offenses	Not available	Not available	Not available
Number of unsuspended custodial sentences by length (as principal offense, as predicate offense)	Not available	Not available	Not available

Asset Recovery

Judicial phase	Year: 2017	Year 2018	Year: 2019
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¹¹⁵ 23 cases were closed without action, SAMIFIN Report 2017, p.26, id.

¹¹⁶ 1 case dismissed, no data for cases prosecuted in other jurisdictions, SAMIFIN Report 2018, p.27, id.

¹¹⁷ As of June 15, 2018, CAP National Coordination Directorate and Antananarivo CAP, Annual Report, July 2018-June 2019, p.9 <https://www.dcn-pac.mg/rapport-d-activites>, accessed March 22, 2021.

¹¹⁸ As of June 2020, CAP National Coordination Directorate and Antananarivo CAP, Annual Report July 2019-June 2020, p.6 <https://www.dcn-pac.mg/rapport-d-activites>, accessed March 22, 2021.

¹¹⁹ Before the first level of CAP jurisdiction, and 2% on appeal, CAP National Coordination Directorate and Antananarivo CAP, Annual Report July 2019-June 2020, p.42 AND 47 <https://www.dcn-pac.mg/rapport-d-activites>, accessed March 22, 2021.

¹²⁰ Of cases before the first level of court, Annual Report July 2018-June 2019, p.41 <https://www.dcn-pac.mg/rapport-d-activites>, accessed 22 March 2021.

Number of freezing procedures (based on a court order)	Not available	223 ¹²¹	62 ¹²²
Number of confiscation procedures	Not available	Not available	Not available
Number of requests received for freezing orders from another country	Not available	Not available	Not available
Value of frozen assets	Not available	Not available	Not available
Number of requests for confiscation orders from another country	Not available	Not available	Not available
Value of confiscated assets	Not available	Not available	Not available
Amounts recovered from assets	Not available	Not available	Not available
Amounts returned	Not available	Not available	Not available

¹²¹ Including 220 confirmation judgments for the period June 2018 to June 2019, Annual Report July 2018-June 2019, p.37 <https://www.dcn-pac.mg/rapport-d-activites>, accessed March 22, 2021.

¹²² 62 requests for confirmation of seizure or freezing of assets, 48 of which were confirmed, Annual Report July 2019-June 2020, p.42 <https://www.dcn-pac.mg/rapport-d-activites>, accessed March 22, 2021.

Chapter III – Criminalization and law enforcement

Chapter III of the UNCAC first review cycle deals with criminalization, either in acts that must be criminalized, which States Parties are obliged to establish as criminal offences, or in offenses that States must consider establishing. In addition, Chapter III also deals with law enforcement and jurisdiction.

The comprehensive review report on Madagascar's implementation of articles 15 to 42 of Chapter III of the UNCAC for the 2010-2015 review cycle¹²³ highlights several recommendations with respect to the articles under review, including: explicitly including as an offence the granting of an undue advantage (articles 15 and 16 of the UNCAC); considering the criminalization of passive transnational bribery (article 16 of the UNCAC); clarifying that investigations into the misappropriation of assets should be the responsibility of BIANCO (article 17 of the UNCAC); removing any possibility of treaty derogation from the principle of dual criminality in order to enhance legal certainty with respect to money laundering (Article 23 of UNCAC); considering the institution of criminal liability of legal persons for corruption offenses (Article 26 of UNCAC); and also initiating and funding a witness protection program and considering entering into agreements to provide witnesses with a new residence abroad (Article 32 of UNCAC).

With specific reference to Chapter III of the UNCAC, the following articles were commented on and analyzed:

Art. 15 - Bribery of national public officials

Articles 21 and 22 of Law no. 2016-020 of August 22, 2016 on the fight against corruption or LLCC and 177 and 177.1 of the Malagasy Penal Code (CPM) sanction corruption offenses - active and passive - covered by the UNCAC. The definition of national public official is provided in Article 1 of the CCA.

Good Practices

The offense of bribery, both passive and active, provided for in the UNCAC is covered by articles 177, 177.1 and 177.2 of the CPM and includes a broad definition of what is meant by public official. The notion of public official provided for in Article 1 of the UNCAC is very broad and extends to both temporary and permanent personnel, whether paid or unpaid, who hold a legislative, executive, administrative or judicial office - appointed or elected - perform a public function, including in a public body, provide a public service or hold public authority or command public or military forces.

Since 2018, the operationalization of the Antananarivo PAC has led to greater clamping down on corruption offenses. Between July 2019 and June 2020, of the 139 cases tried before the correctional chamber of the Antananarivo PAC's first-degree jurisdiction, 10.5% of the offenses tried concern corruption, either passively or actively, with fraud (18.6%) and the offense of forgery (16%) coming in first and second place respectively.

Deficiencies

¹²³<https://www.unodc.org/unodc/en/corruption/countryprofile/countryprofile.html#?CountryProfileDetails=%2Funodc%2Fcorruption%2Fcountry-profile%2Fprofiles%2Fmdg.html>.

Corruption offenses, both passive and active, have increasingly been tackled during the period June 2019-June 2020 compared to the first year of the establishment of the Antananarivo PAC in June 2018, at a rate of 12.8%.¹²⁴ The crackdown on corruption seems to be hampered by the difficulty of providing evidence of a corrupt deal without extensive investigative and surveillance measures. According to a former BIANCO director in August 2016, a magistrate by profession, “without formal evidence, [one] could never win in court.”¹²⁵

The need for authorization to prosecute before investigations against certain categories of public officials may also restrict the repression of this offence. The case of the illicit export of 73.5 kg of gold to South Africa has raised many questions about suspected corruption against Malagasy public officials. Indeed, on December 31, 2020, passengers from Madagascar were arrested by South African customs authorities in possession of a shipment of gold weighing more than 73.5kg worth 3.6 million euros. The plane, leaving Ivato International Airport (Antananarivo), made a stopover in Toliara, a city in southern Madagascar, for fuel before leaving for Johannesburg, with the cargo to be delivered later to Dubai. The Malagasy government has requested the extradition of the three people arrested in South Africa, even though there is no judicial agreement between the two countries - both countries are, however, parties to the UNCAC - and the return of the cargo, and several people have been arrested in Madagascar and investigated by the Antananarivo PAC, which is handling the case. The official account of the various authorities claims lack of knowledge on the case, especially since the export of gold had been suspended since October 2020.

Malagasy customs, much criticized for their laxity on this issue, indicate the fact that they were not called upon “for the usual formalities at departure if it should necessarily be 24 hours in advance for a joint control.”¹²⁶ However, a journalist from France 24 (Gaëlle Borgia, Pulitzer Prize 2020), had access to documents contradicting this official version of the authorities: “nine documents that show that this famous private flight of December 31, 2020 carrying the gold bars to Johannesburg has indeed received the green light from the airport authorities. We have obtained the general declaration which mentions the names of the passengers, the pilots and the final destination. This document was typed, stamped and signed by the customs supervisor. We also obtained the invoices that mention the control and travel expenses of the airport authorities. So each invoice was respectively stamped and signed by the customs, the air and border police, the border health center and even by the gendarmerie. The flight therefore took off legally and this is confirmed by two confidential investigation reports to which we had access. These damning documents are proof that the official accounts of the Malagasy government and the customs authorities[...]do not hold water[...]and the standard

¹²⁴ Direction de coordination nationale des PAC et PAC d'Antananarivo, Rapport annuel Juillet 2019-Juin 2020, p.35. <https://www.dcn-pac.mg/rapport-d-activites>, accessed March 14, 2021.

¹²⁵ “Corruption, the question of evidence paralyzes justice,” L'Express de Madagascar, August 2016 <https://lexpress.mg/16/08/2016/corruption-la-question-des-preuves-paralyse-la-justice/>, accessed March 14, 2021.

¹²⁶ Communication of January 5, 2021 on the Facebook page of the Malagasy Directorate General of Customs or DGD “Seizure of 73.5 kg of gold from Madagascar at the airport O.R. Tambo Johannesburg - South Africa on December 31, 2020” (information unavailable on the official website of the DGD at the time of research on January 31, 2021).

formalities were not carried out.¹²⁷ Legal proceedings in the South African and Malagasy courts are still underway.

Art. 16 - Bribery of foreign public officials and officials of public international organizations

Best practices

Article 23 of the LLCC and Article 177.2 of the CPM only condemn active bribery with respect to foreign public officials and officials of public international organizations; passive bribery is not sanctioned. The definition of a foreign public official is provided in Article 1 of the LACC.

Deficiencies

Passive bribery by foreign public officials and officials of public international organizations is not provided for under Malagasy law, whereas active bribery is punishable.

The reports published at the level of the Antananarivo PAC do not allow for the identification of incrimination rates specific to active bribery of international public officials, whose rate is thus aggregated in the statistics concerning corruption offenses in general.

Art. 17 - Embezzlement, misappropriation or other diversion of property by a public official

Articles 11 to 13 of the LCC/169 in addition to 170 of the CPM provide for criminal sanctions for the misappropriation of funds by public officials, including de facto agents.

Best practices

The repression of offenses of misappropriation of public funds has seen a particular increase in the period June 2019-June 2020 compared to the first year of the establishment of the Antananarivo PAC, at a rate of 8.6%.¹²⁸

Deficiencies

The benefit of the authorization to prosecute required before prosecuting certain categories of public officials may also restrict the enforcement of this offence.

Art. 20 - Illicit enrichment

Articles 33 of the LCC and 183.1 of the CPM punish illicit enrichment as the intentional act of substantial increase in the assets of a public official that cannot be reasonably justified in relation to legitimate income. Failure to declare assets for public officials who are required to do so is sanctioned by articles 34 of the CCA and 183.2 of the CPM. Articles 40 and 41 of the Constitution provide for the obligation to file a declaration of assets with the HCC, with the obligation imposed on the President of the Republic and the Government, the members of the National Assembly and the Senate, the High Constitutional Court, the magistrates composing the Supreme Court, the Courts of Appeal and the HCJ. Copies of these declarations are to be filed with BIANCO. For the rest of those subject to the obligation to declare their assets to BIANCO, as provided for in Article 2 of the LCCL, they include magistrates of all levels,

¹²⁷ "Lingots d'or à Madagascar: des documents exclusifs France 24 contredisent la version officielle," France 24, February 2021, <https://www.france24.com/fr/%C3%A9missions/journal-de-l-afrique/20210203-affaire-des-lingots-d-or-%C3%A0-madagascar-les-documents-france-24-contredisent-la-version-officielle>.

¹²⁸ Direction de coordination nationale des PAC et PAC d'Antananarivo, Rapport annuel Juillet 2019-Juin 2020, p.35. <https://www.dcn-pac.mg/rapport-d-activites>, accessed March 14, 2021.

regardless of their rank and function, provincial chiefs, provincial commissioners, regional prefects, district chiefs and mayors.

Good Practices

The legislative framework for the repressive measures to prevent illicit enrichment is set out in Articles 33 of the LCCA and 183.1 of the CPM, and in Article 42 of the Constitution, which states that “functions in the service of state institutions may not constitute a source of illicit enrichment or a means of serving private interests.” The repression of illicit enrichment is linked to the obligatory declaration of assets of public officials. According to BIANCO, more than 13,000 declarations received in 2017 and 2018 have been computerized for online processing as part of dynamic management of asset declarations. In 2019, 7,112 asset declarations were received by BIANCO.¹²⁹ At the level of the HCC, the list of people who have filed their asset declarations is regularly published on their website.¹³⁰ As for BIANCO, according to Article 62 of Decree No. 2020-013 of January 15, 2013 restructuring BIANCO,¹³¹ all of its personnel are also subject to the asset declarations. The failure to declare assets or the incomplete, inaccurate or false production by a subject person after 2 months following a reminder by BIANCO, are punishable by a prison sentence of between 6 months and 5 years and a fine of between 50 and 200 million Ariary (Article 183.2 LLCC).

Deficiencies

Asset declarations must be filed within three months of the start of employment by public officials subject to it, and renewal every two years in the event of a change in administrative position and a consequent change in assets (Article 2 of the LLCC). In December 2020, 34 out of the 151 members of the National Assembly had not yet filed their asset declarations with the HCC, while the announcing of the official results of the last legislative election was held on July 2, 2019. According to Article 50 paragraph 3 of Decree No. 2020-013 of January 15, 2013 on the restructuring of BIANCO, BIANCO is in charge of initiating and implementing sanction procedures for failure or false declaration by persons subject to this legal obligation. However, in view of the statistics of the cases transmitted to the courts from January to June 2020 by BIANCO, no offenses related to the failure to declare assets by the persons subject to the law have been identified.¹³² In 2019, 4 cases related to failure to declare assets were transmitted to the competent courts. In 2018, this figure was 18. With regard to illicit enrichment, only one case was looked into by BIANCO in 2018, compared to 3 in 2019 and none in 2020.¹³³

In 2020, SAMIFIN found only one case¹³⁴ of illicit enrichment among more than 199 offenses detected through the analysis of suspicious transaction reports submitted to the body.

¹²⁹ BIANCO, Annual Report 2019, pages 23 <https://bianco-mg.org/rapport-et-statistiques/>, accessed 14 March 2021.

¹³⁰ <http://www.hcc.gov.mg/autres/declaration-de-heritage/&ved=2ahUKEwiZ3ISczLvAhWCUMAKHX3cCH8QFjAAegQIBhAC&usq=AOvVaw3zID3YcjyfdgWdohHQqile>, accessed March 20, 2021.

¹³¹ <https://bianco-mg.org/wp-content/uploads/2020/02/D%25C3%25A9cret-n%25C2%25B02020-013-du-15-janvier-2020-portant-restructuration-du-Bureau-Ind%25C3%25A9pendant-Anti-corruption-BIANCO.pdf>.

¹³² BIANCO, “Processing Grievances in the 1st and 2nd Quarter of 2020” <https://bianco-mg.org/declaration-de-patrimoine/>, accessed March 20, 2021.

¹³³ <https://bianco-mg.org/statistiques-investigation/>, accessed March 20, 2021.

¹³⁴ SAMIFIN, “Statistics 2020 from January 1 to December 31, 2020,” publication date: January 2021, p.7. https://www.samifin.gov.mg/sites/default/files/fichier_pdf/stat_2020_public_vf.pdf, accessed March 20, 2021.

On the other hand, at the level of the PAC, there were no breaches involving illicit enrichment for the period between July 2019 and June 2020.¹³⁵ Between June 2018 and June 2019, 1.2% of the offenses handled at the level of this jurisdiction involved illicit enrichment.¹³⁶ In addition to the fact that the absence of an activity report at the HCJ makes it impossible to determine the number of cases involving illicit enrichment for those brought before the court, the failure of the prosecution services can sometimes make the investigation of alleged perpetrators of illicit enrichment complex. For example, in February 2020, the president of the Madagascar soccer federation and former head of a flagship of the Malagasy economy, the national social security company (CNAPS), was able to flee the country despite the fact that he was under investigation by BIANCO for alleged illicit enrichment and embezzlement of funds amounting to more than “25 million euros.”¹³⁷ The facts relate to “work started in 2010 for the construction of a five-star hotel in the heart of [the] leisure center and sports complex in Vontovorona, without the regulatory bidding procedure being respected.”¹³⁸

Art. 23 - Laundering of proceeds of crime

The provisions of Law no. 2018- 043 of February 13, 2019 on the fight against money laundering and terrorist financing sanction the activities described by Article 23 of the UNCAC. The offence of money laundering applies under Malagasy law, even if the original offence was committed abroad.

Good practices

The financial stakes involved in the incrimination of ML/FT are high because, according to SAMIFIN, more than 579 billion MGA, or more than 153 million USD, would be at stake in the files disseminated by this organization in 2019.¹³⁹ In addition, the files concerning suspicious transaction reports passed on by SAMIFIN to the Antananarivo PAC prosecutor's office have increased by more than 57% during its second year of operation, and come mainly from banks.¹⁴⁰ The decriminalization of money laundering offenses could allow for more efficient repression of these offenses,¹⁴¹ as hearings could be held outside of criminal court sessions. In addition, asset declarations filed with the HCC and BIANCO should contain a list and estimate of all the assets at the disposal of the declarant, including assets that are located abroad and which thus escape Malagasy jurisdiction.¹⁴²

Deficiencies

¹³⁵ <https://www.dcn-pac.mg/rapport-d-activites/lire/rapport-annuel-juillet-2019-juin-2020.htm>, accessed March 20, 2021.

¹³⁶ <https://www.dcn-pac.mg/rapport-d-activites/lire/rapport-d-activites-juin-2018-juin-2019.htm>, accessed March 20, 2021.

¹³⁷ <https://www.google.com/amp/s/amp.rfi.fr/fr/afrique/20200227-raoul-rabekoto-patron-foot-madagascar-cavale>, accessed March 20, 2021.

¹³⁸ <https://www.jeuneafrique.com/1076451/societe/traque-par-la-justice-et-en-exil-le-patron-du-football-malgache-est-toujours-en-poste/>, accessed March 20, 2021.

<https://www.madagascar-tribune.com/Blanchiment-d-argent-plus-de-579-milliards-d-ariary-en-2019.html>, accessed March 20, 2021.

¹⁴⁰ <https://www.dcn-pac.mg/rapport-d-activites/lire/rapport-annuel-juillet-2019-juin-2020.htm> page 32, accessed March 20, 2021.

¹⁴¹ Interview with the Director General of SAMIFIN online on January 19, 2021.

¹⁴² Article 4 of Decree No. 2004-983 repealing and replacing Decree No. 2002-1127 of September 30, 2002 instituting an obligation to declare the assets of certain categories of senior officials.

Law no. 2018-043 of February 13, 2019 on the fight against money laundering and terrorist financing has abolished the absolute prohibition of cash payments above the threshold of 10 million Ariary or 2,200 EUR for individuals, and 50 million Ariary or 11,100 EUR for legal entities. In its explanatory memorandum, Law no. 2018-043 states that this prohibition would be replaced by an obligation of vigilance on the part of establishments and individuals subject to reporting suspicious transactions to SAMIFIN, and also to facilitate the flow of capital. This initiative, even if justified by a risk-based approach in accordance with FATF recommendation no. 1, could evade many suspicious transactions from the control circuit of the institutions, especially since the rate of banking in Madagascar is still low, around 5.7% in 2014.¹⁴³

Mbola Rajaonah, a businessman in maritime transit and adviser to former President Hery Rajaonarimampianina, was arrested and investigated by the criminal police brigade in 2019 and brought before the PAC for bounced checks, money laundering and customs fraud. He was acquitted by the Antananarivo PAC on the insufficient funds charge but is awaiting trial on the other two charges.¹⁴⁴

Art. 26 - Liability of legal persons

The provisions of the LLBCFT, the LLCC, and the CPM punish legal persons who have contributed to the offenses provided for in the UNCAC: corruption (Articles 21, 22, 23, and 24 LLCC), misappropriation of property (Article 13 LCC), illicit enrichment (Article 33 LLCC), money laundering, and terrorist financing (Articles 41 and 51 LLBCFT). These sanctions include the temporary suspension of all social and commercial activities, fines and the publication of court decisions concerning them.

Good practices

This article constitutes a significant advance in the repression of acts of corruption, as legal persons having participated in acts of corruption or ML/FT can now be sentenced in the form of suspension of their activities and/or fines.

Since Malagasy law punishes legal persons as much as natural persons in matters of corruption and ML, the Antananarivo PAC has had the opportunity to try legal persons who participated in corruption offenses. For the period July 2019-June 2020, out of the 490 persons judged before the correctional chamber of the 1st degree jurisdiction of the PAC, 31 are legal persons of which 13 were convicted,¹⁴⁵ and more than 62% of the sentences given are fines with an additional penalty of publication of the court decisions concerning them. Article 21 of Law No. 2016-055 of January 16, 2017 on the Public Procurement Code also stipulates that persons with final criminal convictions for crimes or misdemeanors are not eligible to bid on public contracts.

Deficiencies

The non-operational ARAI, which should enforce court decisions on the freezing, seizure or confiscation of illicit assets, as well as their recovery, particularly from legal entities, limits the

¹⁴³ Agence Française du Développement, “Developing remote banking in Madagascar” <https://www.afd.fr/fr/carte-des-projets/developper-la-banque-distance-madagascar> accessed March 21, 2021.

¹⁴⁴ “Mbola Rajaonah trial, acquittal on issuance of bad check,” July 2019, <https://lexpress.mg/31/07/2019/proces-de-mbola-rajaonah-acquittement-sur-lemission-de-cheque-sans-provision/>.

¹⁴⁵ Direction de coordination nationale des PAC et PAC d'Antananarivo, Rapport annuel Juillet 2019-Juin 2020, p.35. <https://www.dcn-pac.mg/rapport-d-activites>, accessed March 14, 2021.

efficient repression of the latter when they are involved in acts of corruption and ML/FT. On June 23, 2021, a press release from the Prime Minister's Office reported on the adoption by the Government Council of a decree on the creation, composition, organization and operation of ARAI, but to date no official publication of the decree is available on the government's website for the publication of laws and regulatory decisions (CNLEGIS).¹⁴⁶

Art. 32 and 33 - Protection of witnesses, experts and victims as well as of reporting persons

Articles 385.6-358.8 of the CPM provide for the possibility of anonymous testimony and punish revealing the identity of an anonymous witness for the offenses provided for by the LLCC (Article 36 LLCC and 375 CPM). In addition, the CPM and the LLCC punish reprisals against witnesses, whistleblowers, experts and public officials in charge of the application of the LLCC (Article 36 LLCC and Article 374 CPM), who may file a complaint in this regard if they believe that they are victims.

Good Practices

With the support of the United Nations Development Program (UNDP) and the German Cooperation in Madagascar, BIANCO set up a secure digital platform for anonymous denunciation called “i-toroka”¹⁴⁷ in 2019. In early 2021, a lychee producer was the subject of complaints for slanderous and abusive denunciation and was placed under judicial supervision when he wanted to denounce a cartel with the aim of closing off the Malagasy lychee market to France, and referred the matter to the country's Competition Council.¹⁴⁸

Deficiencies

Madagascar has not yet established a witness protection program and related funding mechanisms, even though articles 385.1 and 385.2 of the Malagasy Code of Criminal Procedure provide for witness support measures before the hearing, including the possibility of testifying by closed-circuit video or any other means that allows witnesses to remain anonymous. It appears that no protective measures are provided for after the hearing.

Art. 35 - Compensation for damage

Good practices

Malagasy law allows the victim of a criminal offence to sue for damages (Articles 182, 183, 192 and 193 CPPM).

Deficiencies

However, a limitation provided for by the CPCM may restrict the actions of a foreign person before the civil court in the event of a claim for damages. Indeed, a financial guarantee is required from the non-resident foreigner before the examination of the merits of the case, in

¹⁴⁶ <http://www.midi-madagasikara.mg/politique/2021/06/25/primature-deux-nouveaux-directeurs-de-cabinet/> accessed July 16, 2021.

¹⁴⁷ <https://bianco-mg.org/doleance/>, accessed March 20, 2021.

¹⁴⁸ “This monopoly prevents me from working”: in Madagascar, a scent of scandal floats over the lychees by Laurence Caramel, Le Monde, December 2020 and updated on January 13, 2021, https://www.lemonde.fr/economie/article/2020/12/22/ce-monopole-m-empeche-de-travailler-a-madagascar-un-parfum-de-scandale-flotte-sur-les-litchis_6064161_3234.html, accessed on March 21, 2021.

case of conviction to ensure the payment of costs and damages resulting from the organization of the trial (article 12 CPCM).

Since the comprehensive review report on Madagascar's implementation of Articles 15 to 42 of Chapter III of the UNCAC over the 2010-2015 review cycle, the adoption of Law no. 2016-020 of August 22, 2016 on the fight against corruption as well as Law n°2018-043 of February 13, 2019 on the fight against money laundering and the financing of terrorism have made several notable advances in relation to the recommendations raised in this report. Indeed, the qualification of offenses of passive or active corruption has been extended, compared to the former drafting of the CPM (Articles 22 et seq. of the LLCC) in addition to the introduction of criminal sanctions against any legal person involved in corruption and ML/FT offenses. BIANCO has been given an important role in being able to conduct investigations on the basis of complaints and denunciations, also on its own initiative (Article 44 of the LACC). However, some recommendations have not yet been implemented, or if they have been, in a timid manner, such as the criminalization of passive transnational corruption and the implementation of material and financial measures for the protection of witnesses and whistleblowers.

V. Recent developments

Setting up of other PACs in other provinces and the proposed PAC reform legislation

The PACs are intended to be set up in the provincial capitals of Madagascar in order to be closer to the people who are subject to the law. The one in Antananarivo is already fully operational, and in 2020, the PAC in Mahajanga was also set up. Recruitment of magistrates for the PAC of Fianarantsoa is underway. However, the proposed reform of the PAC law, adopted by the National Assembly in 2020, is perceived by SAC members as an attack on institutional achievements in the fight against corruption and as “emptying the PAC of its substance”¹⁴⁹ without challenging the right of legislative initiative by the parliament.

In 2020, a bill introduced by Deputy Idealsone caused a strong reaction among members of the SAC and civil society. The bill seeks to restrict the jurisdiction of the PAC in relation to economic and financial offences, to abolish pre-conviction confiscation of illicit assets and to reduce the term of office of the magistrates who make up this court. Moreover, although “sold” as a parliamentary initiative, the method of preparing this proposal without prior consultation with the SAC and CSOs - as was previously the case with the adoption of anti-corruption laws - was perceived as being driven by the executive. This led to strong distrust of the government as a means of limiting the PAC's room for maneuver.

In July 2021, the version of this law amended by the Senate was adopted on second reading by the National Assembly, which “provides that economic and financial offenses related to acts of corruption and the like, as well as money laundering and financing of terrorism, fall within the jurisdiction of the PACs [...] simple economic offenses [should now fall] within the jurisdiction of the ordinary courts.”¹⁵⁰ The Senate has thus, it seems, also maintained the provision on pre-conviction confiscation of ill-gotten assets in particular under Ordinance No. 2019-015 of July 15, 2019 on the recovery of illicit assets and Law No. 2018-043 of February 13, 2019 on the fight against money laundering and terrorist financing. It will then be presented before the HCC for constitutionality review, and finally before the President of the Republic for promulgation.

Towards the setting up of the ARAI

ARAI is the only member organization of the Malagasy SAC which has not yet been established. Its competences include the recovery of assets in the framework of embezzlement of public goods and funds or to ensure the conservation and management of these assets before the decision of confiscation. A communiqué issued by the Council of Ministers of the Presidency of the Republic dated January 6, 2021, refers to the imminent establishment of the ARAI.¹⁵¹

The effective establishment of the ARAI will facilitate the recovery of illicit assets, enforce decisions on freezing, seizure or confiscation, allow for the registration of assets within the Central Registry, freezing and confiscation as well as to ensure the conservation and

¹⁴⁹ “Anti-Corruption Unit, CSI rejects reform” <http://www.midi-madagasikara.mg/politique/2021/01/29/pole-anti-corruption-le-comite-pour-la-sauvegarde-de-lintegrite-rejette-la-reforme/>, accessed January 29, 2021.

¹⁵⁰ “CAP bill, National Assembly follows Senate's lead,” accessed 5 July 2021.

¹⁵¹ Council of Ministers of January 6, 2021, <http://www.presidence.gov.mg/actualites/conseil-des-ministres/1129-tatitry-ny-filankevity-ny-minisitry-natao-tao-amin-ny-lapam-panjakana-ivavoloha-alarobia-06-janary-2021.html>, accessed January 29, 2021.

management of seized property and the recording of the value of the alienated property before the confiscation decision.

On June 23, 2021, a press release from the Prime Minister's Office reported on the adoption of a decree on the creation, composition, organization and operation of ARAI by the Government Council, but to date no official publication on the decree is available on the government's website for the publication of laws and regulatory decisions (CNLEGIS).¹⁵²

Towards the adoption of the bill on access to public information

The current Government, through its Minister of Communication, has already made it a point to adopt the bill on access to public information. On August 31, 2020, the Ministry organized a public consultation of the key features of this text, transmitted to the government on September 3, 2020. It remains to be adopted by the Council of Ministers and included in the agenda of the two parliamentary chambers for examination and vote, but the schedule for this remains unpublished at present.

Towards a stronger involvement of civil society

CSOs play an essential role in the fight against corruption, and it is in this sense that the LLCC recognizes their duty to support and contribute to the education of the population. The awakening of young people's consciousness in the fight for a more honest and transparent society is encouraging. The involvement of CSOs in the framework of citizen education is illustrated by the effective implementation of the anonymous reporting system, I-TOROKA, between BIANCO and the German Cooperation GIZ, citizens' various proposals to the government, continuous enquiries on proven cases of corruption and bad practices in several sectors, and civil society cooperation with NIS entities through partnership agreements.

Towards the adoption and implementation of anti-corruption and money laundering governance policies

The updated version of the National Good Governance Policy, a reference document for public policies on good governance, was developed by the CSI and publicly presented in November 2020. In addition, as provided for in Article 6 of the LLCC, the establishment of sectoral anti-corruption and governance policies is an obligation for the administration, and priority areas have been identified for the development of these policies. These are the justice, security, civil service, public finance, natural resources, decentralization and land tenure, health, education and private sector sectors for the establishment of these policies. In terms of the fight against ML/FT, SAMIFIN, with the support of donors, has implemented a national ML/FT risk assessment process, which is currently being finalized.¹⁵³

¹⁵² <http://www.midi-madagasikara.mg/politique/2021/06/25/primature-deux-nouveaux-directeurs-de-cabinet/>, accessed July 16, 2021.

¹⁵³ Press Release, "Madagascar Finalizes Money Laundering and Terrorist Financing Risk Assessment Process," https://www.samifin.gov.mg/sites/default/files/fichier_pdf/communiqu_e_enr.pdf, accessed March 22, 2021.

VI. Recommendations

The following recommendations are made with reference to the broader areas and themes covered by the UNCAC articles:

- **Disparity of texts:** Provide a single guide reproducing the various texts on the fight against corruption, money laundering and the financing of terrorism to allow citizens to have a better grasp on existing texts.
- **Specialized jurisdictions:** Clarify the competencies of the PAC vis-à-vis the HCJ and specialized jurisdictions. Revise the constitutional and legislative provisions relating to the HCJ, specialized jurisdictions such as the PAC or the Special Chain against the traffic of rosewood and ebony, in order to harmonize the effective repression of corruption and related offenses and leaving no room for impunity.
- **Fight against corruption in the public administration:** Implement awareness-raising and preventive programs on corruption within the public administration, especially in those structures perceived as the most corrupt (the judiciary, security forces, land services, etc.).
- **Access to information:** Adopt the law on access to public information during the next parliamentary session, ensuring that the text complies with international standards in this area.
- **Protection of witnesses and whistleblowers:** Adopt a law that would allow for the establishment of sufficient material and physical protection for witnesses and whistleblowers as soon as possible; establish the right to whistleblowing in the public and private sector as a fundamental right.
- **Campaign and political party financing:** Implement maximum thresholds for campaign spending; require effective publication of the list of contributors; adopt a law for an ethical approach to political party financing.
- **Promoting ethics and integrity in private companies:** In order to comply with the provisions of article 12 of the UNCAC, Malagasy domestic law must implement a physical system, ideally computerized, allowing transparency on information concerning the identity of shareholders involved in the creation and management of companies and exercising effective control over their decision-making bodies.
- **Immunities and privileges:** Update the codes of conduct and ethics of public officials as well as their respective statutes: general, particular or autonomous in order to exonerate corruption offences and similar offences from the immunities and privileges they enjoy, as well as from any authorization to prosecute, or even to repeal them if necessary.
- **Transnational Passive Bribery:** Adopt an amendment to Article 177.2 of the CPM to allow for the punishment of passive bribery of international public officials.
- **Registers of beneficial owners:** The law on corporate transparency needs to be updated to allow for the establishment of registers of beneficial owners. Adopt a

legislative or regulatory provision making it mandatory for companies to maintain registers of beneficial owners in commercial and company registers, regulating their access by public authorities or any interested person with a legitimate interest.

- **Recovery of assets confiscated by a foreign state:** Implement the application of the UNCAC on the concept of legitimate ownership of the foreign state and its right to claim for property acquired through the carrying out of UNCAC offences and thereby attached to that foreign state.
- **Asset declarations:** An asset declaration filed with the HCC and BIANCO must contain a list and estimate of all the assets at the disposal of the declarant, including assets that are located abroad and which thus escape Malagasy jurisdiction.
- **Reporting of suspicious transactions in terms of ML/FT:** Increase awareness among reporting entities of suspicious transactions in terms of ML/FT, especially for small structures that do not have specific compliance skills. Madagascar's very low level of banking activity also makes it essential to involve other reporting professions: real estate, consulting and representation, vehicle dealers, etc.
- **Transparency in public procurement:** Make information available online in data formats that facilitate analysis and subsequent use, using a standardized, structured, and easily reusable open data format, such as the Open Market Data Standard.
- **Strengthening the SAC:** The state should ensure that the member institutions of the SAC are provided with the necessary resources to carry out their respective missions. In addition, SAC institutions must remain united and ensure good mutual collaboration in order to produce better results in the fight against corruption.
- **Recovery of Illicit Assets:** Adopt in the Council of Ministers a decree for the creation of the ARAI and thus implement the practical modalities for the functioning of this Agency.

VII. Annexes

Main texts and documents used

Main texts:

- Constitution of the Fourth Republic of Madagascar
<http://www.mef.gov.mg/dgcf/textespdf/constitution/CONSTITUTIONIV.pdf>
- Ordinance No. 2019-015 of July 15, 2019 on the recovery of illicit assets
- General Tax Code of Madagascar according to the Rectifying Finance Law 2020
<http://www.impots.mg/fr/138-n-code-general-des-impots-suivant-lfr-2020>
- Law n°2018-043 of February 13, 2019 on the fight against money laundering and terrorism financing (JOS n°3876 of March 28, 2019 page 1358)
- Law No. 2017-027 of January 29, 2018 on international cooperation in criminal matters (JORM No. 3854 of December 03, 2018 page 6844)
- Law n° 2016-021 of August 22, 2016 on anti-corruption poles (JORM n°3718 of November 10, 2016 page 7084)
- Law No. 2016-020 of 22 August 2016 on the fight against corruption (JORM No. 3711 of 12 October 2016 page 5838)
- Law No. 2015-056 of February 03, 2016 establishing the special chain to fight against the trafficking of rosewood/or ebony and repressing offenses related to rosewood/or ebony (JORM No. 3674 of March 07, 2016 page 1636)
- Law n° 2004-017 of August 19, 2004 authorizing the ratification of the United Nations Convention against Corruption (UNCAC) by Madagascar (JORM n°2926 of September 6, 2004 page 3130)
- Law No. 2003-011 of September 3, 2003 on the general status of civil servants (JORM No. 2858 of September 15, 2003 page 2933)
http://www.mef.gov.mg/dgcf/textespdf/FONCTION%2520PUBLIQUE/TEXTE%2520STATUT/LOI_2003011_FONCTIONNAIRE.pdf
- Decree No. 2020-013 of January 15, 2020 restructuring the BIANCO (JORM No. 3711 of October 12, 2016 page 5838)
- Decree no. 2016-034 of January 20, 2016 amending certain provisions of Decree no. 2006-207 of March 21, 2006 creating the CSI (JORM no. 3029 of May 15, 2006 page 2791)
- Decree No. 2015-1036 of August 25, 2015 (JORM No. 3698 of August 01, 2016 page 4458) repealing Decree No. 2007-510 of June 4, 2007 on the creation, organization and operation of the financial intelligence service known as SAMIFIN
- Decree n°2005-500 of July 19, 2005 governing the general principles relating to the organization of administrative competitions
<http://www.dgfag.mg/wpcontent/uploads/2019/06/DECRET-2005-500.pdf>
- Decree n°2004-802 of August 19, 2004 on the ratification of the UNCAC by Madagascar (JORM n°2926 of September 6, 2004 page 3160)

Sectoral texts:

- Law No. 2020-011 of July 22, 2020 on the Banking Law: Articles 121 et seq. on anti-money laundering and anti-terrorist financing measures, Articles 233 et seq. on anti-corruption and influence peddling measures

<http://www.hcc.gov.mg/decisions/d3/decision-n12-hcc-d3-du-31-aout-2020-concernant-la-loi-n2020-011-sur-la-loi-bancaire/>);

- Law No. 2020-005 on Insurance: Chapter 7 on Anti-Money Laundering and Financing of Terrorism, Articles 413-414 on Corruption and Influence Peddling
<http://www.hcc.gov.mg/decisions/d3/decision-n14-hcc-d3-du-31-aout-2020-relative-a-la-loi-n2020-005-sur-les-assurances/>);
- Law n°2016-055 on the Public Procurement Code (JORM n°3739 of March 06, 2017 page 1266);
- Law n°2018-008 of May 11, 2018 on the general regime of elections and referendums: articles 64 and following on the financing of the electoral campaign (JORM n°3814 of May 16, 2018 page 2071);
- Articles 40 and 41 of the Constitution: obligation to declare assets to the HCC of the members of the Institutions of the Republic, i.e. the President of the Republic and the Government, the National Assembly (Article 19 Organic Law N°2014-034 of February 09, 2015 amending certain provisions of Ordinance 2014-001 establishing the rules relating to the functioning of the National Assembly JORM n°3609 of March 16, 2015 page 1162), the Senate (Article 20 Law N° 2015-007 setting the rules relating to the functioning of the Senate as well as the modalities for the election and appointment of Senators of Madagascar amended by Law N°2019-006 of May 28, 2018 JORM N°3907 of August 19, 2019 page 5185);

Public policies and strategies:

- Plan Emergence Madagascar (PEM) 2019-2023
- General State Policy (PGE) presented by the Christian Ntsay Government before the National Assembly on August 16, 2019 <https://assemblee-nationale.mg/presentation-du-programme-de-mise-en-oeuvre-de-la-politique-generale-de-letat-par-le-premier-ministre/>
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- National Anti-Corruption Strategy 2020-2025 (NACS):
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Sectoral policy:

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Activity reports and/or studies:

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- National School of Magistrates and Registrars or ENMG <https://enmg.org.mg/>
- Ministry of Finance and Budget Madagascar: <http://www.mef.gov.mg>
- CAP: <https://www.dcn-pac.mg>
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