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Madagascar - Constitution

excerpts



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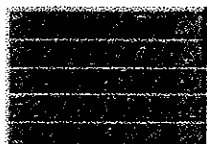


Preamble

The sovereign Malagasy people⁽¹⁾, profoundly attached to their cultural and spiritual values, especially to the basis of national unity; affirming their belief in God the Creator; faithful to their international commitments; adopting the International Charter of Human Rights, the African Charter of Human Rights, the Convention on Children's Rights, and considering these to be an integral part of their law; convinced that the growth of their personality and identity is basic to their harmonious development, the essential conditions of which are recognized to be:

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

declares:



Title I General Principles

Article 1 [People, State, Democracy]

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

Article 2 [Territorial Entities, Autonomie]

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

Article 3 [National Territory]

The national territory shall be inalienable.

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

- (1) The Republic of Madagascar shall have for its Motto⁽²⁾: "Homeland - Revolution - Liberty".
- (2) Its national emblem shall be a tri-colored flag, white, red, and green, consisting of three rectangular bands of equal dimensions. Starting on the edge closest to the flagpole, the first band shall be vertical and white; the other two shall be horizontal, the upper one red and the lower green.

- (3) The national anthem shall be: "Oh, Dear Homeland".
- (4) The State Seals and Coat of Arms shall be defined by law.
- (5) Malagasy shall be the national language.

Article 5 [Capital]

The Capital of the Republic shall be Antananarivo.

Article 6 [Sovereignty, Representation, Electoral Rights]

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

Article 7 [Rule of Law]

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

Article 8 [Citizen Equality, No Discrimination]

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

Title II Liberties, Rights, Duties**Section I Civil and Political Rights and Duties****Article 9 [Rule of Law]**

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

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

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

Article 11 [Information]

- (1) Information in all forms shall be subject to no prior restraint.
- (2) Conditions of freedom of information and its responsibility shall be determined by law and by codes of professional ethics.

Article 12 [Leave, Travel, Settle]

- (1) Everyone shall have the right to leave the territory and to return under conditions established by law.
- (2) Everyone shall have the right to travel and to settle freely within the territory of the Republic while respecting the rights of others and the limits of the law.

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

- (1) Everyone shall be assured of protection of his person, his residence, and his correspondence.
- (2) No search may take place except under law on the written order of the competent judicial authority, except in cases of *flagrante delicto*.
- (3) No one may be prosecuted, arrested, or detained except in cases determined by law, according to the forms prescribed by law.
- (4) No one may be punished except by virtue of a law promulgated and published

prior to the commission of the act to be punished.

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

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

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

Article 14 [Association, Political Parties]

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

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

Article 15 [Eligibility, Electoral Rights]

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

Article 16 [Duty to Respect the Laws]

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

Section II Economic, Social and Cultural Rights and Duties

Article 17 [Personal Integrity, Dignity, Development]

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

Article 18 [National Service]

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

Article 19 [Health, No Abortion]

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

Article 20 [Family, Inheritance]

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

Article 21 [Protection of Family, Mother, Child]

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

Article 22 [Promotion of Development]

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

Article 23 [Education, Training, Parents' Responsibility]

(1) Every child shall have the right to education and training, with the responsibility of the parents, and respecting their freedom of choice.

(2) Every adolescent shall be entitled to professional training.

Article 24 [Public Education]

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

education shall be compulsory for all.

Article 25 [Private Education]

(1) The State shall recognize the right to private education and shall guarantee freedom of education subject to conditions of health, morality, and capacity established by the law.

(2) Private educational establishments shall have the benefit of the same fiscal regime, with conditions established by law.

Article 26 [Culture, Science]

(1) Everyone shall have the right to participate in the cultural life of the community, in scientific progress, and the resulting benefits.

(2) The State shall assure the promotion and protection of the natural cultural heritage, as well as artistic and literary production.

Article 27 [Work, Public Employment]

(1) Work and professional training shall be a right and a duty for every citizen.

(2) Access to public institutions shall be open to every citizen with no conditions other than those of ability and aptitude.

Article 28 [Workers' Equality]

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

Article 29 [Remuneration]

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

Article 30 [Handicapped]

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

Article 31 [Union]

(1) The State shall recognize the right of every worker to defend his interests through union activity and especially freedom to form a union.

(2) However, membership in a union shall be voluntary.

Article 32 [Workers' Participation]

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

Article 33 [Strike]

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

Article 34 [Private Property]

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

Article 35 [Minority Rights]

(1) The Fokonolona may take appropriate measures to prevent destruction of their environment, loss of their land, seizure of herds of cattle, or loss of their ceremonial heritage, unless these measures jeopardize the common interest or public order.

(2) The coverage and terms of these provisions shall be determined by law.

Article 36 [Taxation]

Every citizen's share in public expenditures must be progressive and calculated on

his ability to pay.

Article 37 [Enterprise]

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

Article 38 [Capital, Investment]

The State shall guarantee the security of capital and investment.

Article 39 [Environment]

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

Article 40 [State Neutrality, Ombudsmen]

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

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

Title III Structure of the State

Article 41 [Powers]

The structure of the State shall include:

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

Article 42 [Remuneration]

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

Article 43 [No Corruption]

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

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

Title IV Executive

Section I President of the Republic

Article 44 [Presidential Office]

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

Article 45 [Election, Term, Re-election]

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

Article 46 [Eligibility, Resignation, Candidacy]

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