



**The Constitution**

**Of**

**The Republic of Madagascar**

# REPUBLIC OF MADAGASCAR CONSTITUTION

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## PREAMBLE

Resolved to promote and develop its heritage of a pluralist society and respectful of the diversity, the richness, and the dynamism of its ethical-spiritual and socio-cultural values, among others the “fihavanana” and the beliefs in God the Creator;

Aware, in the name of humanism, of the necessity to reconcile Man as much with his creator and his kin as with nature and its environment, as well as of the exceptional importance of the richness and the plant **[végétales]**, animal and mineral resources unique **[à fortes spécificités]** to it, which nature has endowed Madagascar with and that is important to preserve for future generations;

Taking into consideration its geo-political situation in the region and its committed participation among the nations and adopting as its own:

- The International Charter of the Rights of Man,
- The African Charter of the Rights of Man and of People,
  - The Conventions concerning the Rights of the Woman and of the Child which are all considered an integral part of its positive law.

Considering that the development of each and everyone’s personality and identity proves to be the operating factor of an integrated, harmonious and durable development of which the required modalities are recognized as being:

- the efficient and equitable management of natural resources for the needs of the development of the human being,
- the fight against injustice, inequalities and discrimination in all its forms,
- the separation and the equilibrium of the powers exercised through democratic procedures,
- the founding **[instauration]** of a State of law according to which the governing and the governed are subject to the same juridical norms under the supervision of an independent justice,
- the respect and protection of the fundamental freedoms, collective as well as individual,
- the preservation of peace and the practice of solidarity in tangible signs of the national unity in the execution of a policy of development balanced on all grounds,
- the proceedings of transparency in the conduct of public affairs,
- the application of the system of autonomy to assure the effectiveness of decentralization.

Declares:

## TITLE I GENERAL PRINCIPLES

### ARTICLE ONE.

The Malagasy People constitutes a Nation organized as a sovereign and secular State, founded on a system of autonomous provinces of which the competences and principles of government are defined

and guaranteed by the Constitution.

This State is a Republic, single and indivisible. It bears the name of “Republic of Madagascar.”

Democracy constitutes the foundation of the Republic. Its sovereignty is exercised within the territorial limits recognized by international law. None has any right to affect the territorial integrity of the Republic

**ARTICLE 2.**

The autonomous provinces, each one of them adopting its own statutory law, are: Antananarivo, Antsiranana, Fianarantsoa, Mahajanga, Toamasina and Toliara.

**ARTICLE 3.**

The national territory is inalienable.

**ARTICLE 4.**

The Republic of Madagascar has for a motto “Tanindrazana—Fahafahana—Fandrosoana”.

Its national emblem is the tri-colored flag, white, red, green, composed of three rectangular bands of equal dimensions, the first band, vertical, of the color white, next to the flagpole, the two other bands horizontal, the upper one red and the lower, green.

The national hymn is “Ry Tanindrazanay malala o”

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

Malagasy is the national language.

**ARTICLE 5.**

The Capital of the Republic of Madagascar is Antananarivo.

**ARTICLE 6.**

The sovereignty belongs to the people, origin of any power, who exercise it through their representatives elected by direct or indirect universal suffrage or through a referendum. No fraction of the people, nor any one individual can attribute to itself **[attribuer]** the exercise of sovereignty.

All nationals of both sexes, enjoying their civil and political rights, are electors under the conditions determined by law.

The status **[qualité]** of elector can only be lost by a decision of justice becoming definitive.

**ARTICLE 7.**

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

**ARTICLE 8.**

Nationals are equal under the law and enjoy the same fundamental liberties protected by the law without discrimination based on sex, level of education **[instruction]**, wealth, origin, race, religious belief or opinion.

## TITLE II FREEDOMS, RIGHTS AND DUTIES OF CITIZENS

### Sub-title One Civil and Political Rights and Duties

#### **ARTICLE 9.**

The exercise and the protection of individual rights and of fundamental freedoms are organized by the law.

#### **ARTICLE 10.**

The freedoms of opinion and of expression, of communication, of [the] press, of association, of assembly, of movement [**circulation**], of conscience and of religion are guaranteed to all and can be limited only with respect to the freedoms and rights of others and by the imperative to safeguard the public order.

#### **ARTICLE 11.**

Every individual has the right to information.

Information in all its forms is not subject to any prior constraint.

The law and the professional code of ethics [**déontologie**] determines the conditions of its freedom of and its responsibility.

#### **ARTICLE 12.**

Every Malagasy national [**ressortissant**] has the right to leave the national territory and to return under conditions established by the law.

Every individual has the right to move [**circuler**] and to settle freely in the entire territory of the Republic, with respect for the rights of others and of the prescriptions of the law.

#### **ARTICLE 13.**

Every individual is assured of the inviolability of his person, of his residence and of the secrecy of his correspondence.

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

No one may be prosecuted, arrested or detained, except in cases determined by law and according to the forms that it has proscribed.

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

No one may be punished twice for the same act.

The law assures to all the right to justice and the insufficiency of resources cannot be an obstacle to it.

The State guarantees the fullness and inviolability of rights of defense before all the jurisdictions and at all stages of procedure including the preliminary investigation, at the level of the judicial police or the public prosecutor's office

**[parquet].**

**ARTICLE 14.**

Citizens organize themselves freely without prior authorization in associations or political parties; however associations or political parties which threaten the unity of the Nation and those which advocate totalitarianism or segregationism of an ethnic, tribal or confessional character are prohibited.

The law determines the conditions of creation and of functioning of the associations and of the political parties.

**ARTICLE 15.**

Every citizen has the right, without any discrimination based on membership or not in a political party or on the obligation to be involved with a political party, to be a candidate in the elections specified by this Constitution, under reserve of the conditions established by law.

**ARTICLE 16.**

In the exercise of the rights and freedoms recognized by this Constitution, every individual has the duty to respect the Constitution, the Institutions, the laws and regulations of the Republic.

## **Sub-title II Economic, Social and Cultural Rights and Duties**

**ARTICLE 17.**

The State organizes the exercise of the rights which guarantee to the individual the integrity and dignity of his person, [and] full physical, intellectual and moral development **[épanouissement]**.

**ARTICLE 18.**

The legal National Service is a duty of honor. Its accomplishment does not affect the employment status of a citizen, nor the exercise of his political rights.

**ARTICLE 19.**

The State recognizes to each individual the right to the protection of his health, starting from conception.

**ARTICLE 20.**

The family, the natural and fundamental element of the society is protected by the State. Every individual has the right to start a family and to transmit his personal possessions through inheritance.

**ARTICLE 21.**

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

**ARTICLE 22.**

The State strives to take the measures necessary with a view to assure the intellectual development of every individual without other limitations than the aptitudes of each.

**ARTICLE 23.**

Every child has the right to instruction and to education at the responsibility of the parents with respect to their freedom of choice.

Every adolescent has the right to professional training [*formation professionnelle*].

**ARTICLE 24.**

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

**ARTICLE 25.**

The State recognizes the right to private education and guarantees the freedom to teach, subject to conditions of hygiene, of morality and of capacity established by the law.

The establishments of private education benefit from the same fiscal regime under the conditions established by law.

**ARTICLE 26.**

Every individual has the right to participate in the cultural life of the community, to scientific progress and to the benefits which result from it.

The State assures the promotion and protection of the national, cultural patrimony as well as of scientific, literary and artistic production.

**ARTICLE 27.**

Work and professional training are a right and a duty for every citizen.

Access to the public functions is open to every citizen without other conditions than those of capacity and of aptitude. However, recruiting for the public institutions may be affected by quotas by autonomous provinces for a period whose duration and modalities will be determined by the law.

**ARTICLE 28.**

No one may be discriminated against [*léser*] in his work or in his employment because of sex, of age, of religion, of opinions, of origins, of adherence to a union or of political convictions.

**ARTICLE 29.**

Every citizen has the right according to the quality and the product of his work to a just remuneration to assure him, as well as his family, an existence conforming to human dignity.

**ARTICLE 30.**

The State strives to provide for the needs of every citizen who, by reason of his age or his physical or mental inaptitude, finds himself unable to work, notably through the institution of organisms of social character.

**ARTICLE 31.**

The State recognizes the right of every worker to defend his interests through union activity and in particular through the freedom to form a union. Adherence to a union is free.

**ARTICLE 32.**

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

**ARTICLE 33.**

The right to strike is recognized and is exercised under the conditions established by the law.

**ARTICLE 34.**

The State guarantees the right of individual property; no one can be deprived of it except for cause of public utility and under reserve of a just and prior indemnification.

**ARTICLE 35.**

The Fokonolona can take the appropriate measures tending to oppose acts susceptible to destroy their environment, dispossess them of their land, claim the traditional spaces allocated to their herds of cattle or claim their ceremonial heritage, unless these measures may undermine the general interest or public order.

The extent [*portée*] and modalities of these provisions are determined by the law.

**ARTICLE 36.**

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

**ARTICLE 37.**

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

**ARTICLE 38.**

The State guarantees the security of capital and of investments.

**ARTICLE 39.**

Everyone has the duty to respect the environment.

The State, with the participation of the autonomous provinces, assures the protection, the conservation and the improvement [*valorisation*] of the environment through appropriate means.

**ARTICLE 40.**

The State guarantees the political neutrality of the administration, of the armed forces, of justice, of teaching and education.

The State assures, through the institution of specialized organisms, the promotion and the protection of the rights of man.

**TITLE III  
ORGANIZATION OF THE STATE**



**ARTICLE 41.**

The institutions of the State are:

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

The three functions of the State—executive function, legislative function, jurisdictional function—are exercised by these institutions and the distinct organs.

The Supreme Court, the Courts of Appeal and the jurisdictions connected to these as well as the High Court of Justice participate in the jurisdictional function.

**ARTICLE 42.**

The law determines the amount, the conditions, and the modalities of attribution of the indemnification allotted to individuals [*personalités*] named to exercise a mandate, to accomplish the function or to effect the missions within the Institutions specified by this Constitution.

**ARTICLE 43.**

The functions at the service of the institutions of the State may neither constitute a way of enriching oneself nor [be] a means to serve private interests.

With the exception of his rights and on pain of forfeiture, no individual mentioned in the above Article 42, may accept from either a physical or a moral person, foreign or national, any emoluments or remunerations of a kind that would prevent the normal accomplishment of his mission.

The law determines the modalities of application of these provisions especially for what concerns the determination of the rights, the emoluments and the remunerations as well as the procedure of forfeiture [*déchéance*].

## **Sub-title I**

### **The Executive Function**

#### **Chapter 1**

#### **The President of the Republic**

**ARTICLE 44.**

The President of the Republic is the Head of State.

In this capacity, he sees to the respect of the Constitution.

He is the guarantor of the indivisibility of the Republic. He is the guarantor, by his arbitration, of the regular functioning of the public powers, of the national independence and of the territorial integrity. He sees to the safeguarding and to the respect for national sovereignty, domestically as well as abroad. He is the guarantor of the national Unity.

The President of the Republic assures these missions within the framework of the powers that are

conferred on him by this Constitution.

**ARTICLE 45.**

The President of the Republic is elected by direct universal suffrage for a mandate of five years; he is reeligible twice.

**ARTICLE 46.**

Every candidate for the functions of the President of the Republic must be of the Malagasy nationality, possess his civil and political rights, and be at least forty years of age at the date of closing of the deposit of the candidatures.

It is forbidden, for any individual exercising a mandate or fulfilling functions within the Institutions and [being] a candidate to the presidential election, to make use of means or prerogatives obtained by the framework of his functions, with the purpose of electoral propaganda.

An organic law will determine the other conditions and modalities of presentation of the candidature.

**ARTICLE 47.**

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

In the case specified by Articles 51 and 113 of this Constitution, these time periods will start running after the establishment of the vacancy by the High Constitutional Court.

The election takes place, in the first round, with an absolute majority of the suffrage expressed. If this is not achieved, the President of the Republic is elected in a second round by a majority of the suffrage expressed, between the two candidates who received the most votes [*suffrages*] in the first round. The second round takes place at most thirty days after the official proclamation of the results of the first round.

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

The President in exercise remains in [his] function until the investiture of his successor according to the conditions specified in Article 48.

**ARTICLE 48.**

Before entering into his functions, the President of the Republic takes the following oath before the Nation, in a solemn session of the High Constitutional Court, and in the presence of the Government, the National Assembly, the Senate and the Supreme Court, the members of the governorships and of the Provincial Councils of the autonomous provinces specially convened to that end:

**“Eto anatrehan'Andriamanitra Andriananahary sy ny Firenenaary ny Vahoaka, mianiana aho fa hanatanteraka an-tsakany sy an-davany ary amim-pahamarinana ny andraikitra lehibe maha Filohan'ny Fanjakana Malagasy ahy. Mianiana aho fa hampiasa ny fahefana natolotra ahy ary hanokana ny heriko rehetra hiarovana sy hanamafisana ny firaisam-pirenena sy ny zon'olombelona. Mianiana aho fa hanaja sy hitandriana toy ny anakandriamaso ny Lalampanorenana sy ny lalam-panjakana, hikatsaka hatrany ny soa ho an'ny Vahoaka malagasy tsy ankanavaka.”**

**ARTICLE 49.**

The functions of the President of the Republic are incompatible with [those of] any public elective function, any other professional activity and any activity within a political party or a political organization.

**ARTICLE 50.**

A temporary incapacity [*empêchement*] of the President of the Republic may be declared by the High Constitutional Court, seized by the Parliament enacting by a separate vote of a majority of two-thirds of the members of each of the Assemblies for reason of physical or mental incapacity to exercise his functions, [and this] duly established.

**ARTICLE 51.**

The lifting of a temporary incapacity is decided by the High Constitutional Court.

The temporary incapacity may not exceed a period of six months, at the end of which the High Constitutional Court, seized by the Parliament according to the conditions of Article 50, may decide on the transformation of the temporary incapacity to a definitive incapacity.

**ARTICLE 52.**

In the event of a vacancy of the Presidency of the Republic following a resignation, a death, a definitive incapacity according to the conditions specified by Article 51 paragraph 2 or of forfeiture pronounced in application of Article 113, the election of a new President is initiated, according to the provisions of Articles 46 and 47, above.

The vacancy is established by the High Constitutional Court.

Upon establishment of the vacancy of the Presidency of the Republic, the functions of Chief of State are provisionally exercised, until the President elect takes office, or until the temporary incapacity is lifted, by the President of the Senate or, in case of vacancy of office or of the incapacity of the President of the Senate established by the High Constitutional Court, by the Government collegially.

During the period running from the establishment of the vacancy until the investiture of the new President or the lifting of the temporary incapacity, Articles 91, 94, 95 and 140 to 143 of the Constitution are not applicable.

**ARTICLE 53.**

The President of the Republic appoints the Prime Minister.

He terminates his functions for any determinant reason.

Upon proposal of the Prime Minister, he appoints the other members of the Government and terminates their functions.

**ARTICLE 54.**

The President of the Republic presides over the Council of Ministers.

He signs the ordinances taken in the Council of Ministers in the cases and conditions specified by this Constitution.

He signs the decrees deliberated in the Council of Ministers.

He appoints, in the Council of Ministers, to the high offices of the State whose register is determined by decree taken in the Council of Ministers[;] he may delegate this power to the Prime Minister.

He may, for any important question of a national character, decide in the Council of Ministers, to have recourse directly to the expression of the will of the people by way of referendum.

He determines and draws up **[arrête]**, in the Council of the Ministers, the general policy of the State.

**ARTICLE 55.**

The President of the Republic is the Supreme Chief of the Armed Forces, of which he guarantees the unity. As such, he presides over the Superior Council of the National Defense of which the organization and the attributions are determined by decree taken in the Council of Ministers. He draws up the concept of defense in the Superior Council of National Defense.

He decides on the commitment of military forces and means for foreign interventions, after consultation [with] the Superior Council of National Defense, the Council of Ministers and the Parliament.

He appoints military attaches **[militaires]** to represent the State before international organisms.

**ARTICLE 56.**

The President of the Republic accredits and recalls the Ambassadors and the envoys extraordinary of the Republic of Madagascar to other States and International Organizations.

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

He negotiates and ratifies treaties. He is informed of all negotiation tending toward the conclusion of an international agreement not submitted for ratification.

He exercises the right of pardon.

He confers the decorations of the Republic of Madagascar.

The organs of control of the Administration are at his disposition.

**ARTICLE 57.**

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

Before the expiration of this time limit, the President of the Republic may demand the Parliament for a new deliberation of the law or of certain of its articles. This new deliberation may not be refused.

**ARTICLE 58.**

The President of the Republic may pronounce the dissolution of the National Assembly according to conditions specified by Article 95 below.

In this case, an election of new Deputies is initiated, according to conditions that will be determined by an organic law.

A new dissolution may not intervene within the year that follows this election.

**ARTICLE 59.**

When the Institutions of the Republic, the independence of the Nation, its unity or the integrity of its territory are threatened and when the regular functioning of the public powers is compromised, the President of the Republic may proclaim, on the whole or part of the national territory, the situation of exception, more precisely, the situation of urgency, the state of necessity or martial law. The decision is taken by the President of the Republic, in the Council of Ministers, and after consultation with the Presidents of the National Assembly, Senate and the High Constitutional Court.

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

Upon the proclamation of one of the above situations of exception, the President of the Republic may legislate by way of ordinances for matters that fall within the domain of the law.

**ARTICLE 60.**

The acts of the President of the Republic, except for the cases specified by Article 53, paragraphs 1 and 2, 56 paragraphs 4 and 5, 57, 77, 89, 95, 119, 121 to 123 are countersigned by the Prime Minister and, if need be, the concerned Ministers

## **Chapter 2**

### **The Government**

**ARTICLE 61.**

The Government is composed of the Prime Minister and of the Ministers.  
It carries out the general policy of the State.

It is responsible before the National Assembly according to the conditions specified by Articles 91 and 94 below.

The Administration and the Armed Forces are at the disposition of the Government.

**ARTICLE 62.**

The functions of member of the Government are incompatible with the exercise of any elected public mandate, of any function of professional representation, any public employment or any other remunerated professional activity.

**ARTICLE 63.**

The Prime Minister, Head of the Government, carries out the general policy of the State, he directs the action of the Government and is responsible for coordinating the activities of the ministerial departments.

He has the initiative of law.

He draws up the bills of laws to be submitted to the deliberation of the Council of Ministers and to be presented to the Bureau of a parliamentary Assembly.

He assures the execution of the laws.

He exercises the regulatory power with reservation for the provisions of Article 54, paragraph 3.

He sees to the execution of the decisions of justice.

He negotiates and signs the international agreements not submitted to ratification.

He seizes, if need be, the organs of administrative control and assures the proper functioning of public services and the proper management of the finances of public collectivities and public organisms of the State.

He assures the public security and the maintenance of order while respecting the fundamental freedoms and the rights of man; to this end, he has at his disposal all forces in charge of the police, for the maintenance of order, the internal security and the defense.

He presides over the Interministerial Committee of Defense which is charged with carrying out the general policy of defense; he has at his disposal the Secretariat General of the Defense. He determines by decree the organization and attributions of these organisms.

He replaces the President of the Republic, in case of absence, at the presidency of the Superior Council of the National Defense.

He is the Head of the Administration.

With reservation for the provisions of Article 54, paragraph 4, he appoints to civil and military offices as well as to those of organs relevant to the State.

He may delegate certain of his powers to the members of the Government with the authority [*faculté*] of subdelegation.

He strives to promote the balanced development of all the autonomous provinces.

He may, upon express delegation of the President of the Republic and for a determined agenda, preside over the Council of Ministers.

**ARTICLE 64.**

The Prime Minister presides over the Council of the Government.

In the Council of the Government:

— he determines the program of carrying out of the general policy of the State and draws up the measures to be taken to assure its execution;

— he implements the national programs of economic and social development as well as that of the development of the territory, previously elaborated jointly with the authorities of the autonomous provinces.

He exercises the other attributions for which the consultation of the Government is obligatory according to this Constitution and the particular laws.

**ARTICLE 65.**

The acts of the Prime Minister are countersigned, if need be, by the Ministers charged with their execution.

## **Sub-title 2**

### **The Legislative Function**

#### **Chapter 1**

#### **The National Assembly**

##### **ARTICLE 66.**

The members of the National Assembly bear the title of Deputies of Madagascar.

They are elected for five years by direct universal suffrage.

For the districts that involve only one seat to fill, the election is carried out by an uninominal majority ballot in one round.

For the districts which involve several seats to fill, the election is carried out by a ballot with a list of proportional representation.

The modalities of application of these ballots are specified by an organic law.

##### **ARTICLE 67.**

The mandate of Deputy is incompatible with the exercise of all other elected, public mandate and all public office except teaching.

A Deputy appointed as a member of the Government is relieved [*démissionnaire*] of the office of his mandate.

The Deputies exercise their mandate according to their conscience and with respect for the rules of ethics determined by the forms specified in the following Article 75.

The right of vote of the Deputies is personal.

The vote takes place by public ballot and by raised hand except for questions affecting personally the members of the National Assembly.

##### **ARTICLE 68.**

An organic law determines the conditions of eligibility, the regime of incompatibility and of forfeiture as well as the conditions and modalities of replacement of the Deputies, in case of vacancy, until the National Assembly is renewed.

A decree taken in the Council of Ministers determines the number of members of the National Assembly, the distribution of seats over the whole national territory as well as the division in electoral districts.

##### **ARTICLE 69.**

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

No Deputy may, during legislative sessions, be prosecuted or arrested, in a criminal or correctional matter, without the authorization of the Assembly, except in the case of flagrante delicto.

No Deputy may, outside of sessions, be arrested without the authorization of the Bureau of the Assembly,

except in the case of flagrante delicto, authorized prosecutions or definitive condemnation. Any individual may seize by writing, the permanent Bureau of the National Assembly, [on] the question of the deficiencies or actions of a Deputy. The Bureau which is seized in this manner must furnish a detailed **[circonstanciée]** response within a time period of six months.

**ARTICLE 70.**

The President of the National Assembly and the members of the Bureau are elected at the beginning of the first session for the duration of the legislature. However, on serious grounds, they may be dismissed from their respective functions of members of the bureau by a vote of two-thirds of the Deputies.

**ARTICLE 71.**

The National Assembly meets by right in two ordinary sessions per year. The duration of each session may neither be less than sixty days nor more than ninety days.

The first session begins the first Tuesday of May and the second, devoted principally to the adoption of the law of finance, the last Tuesday in September.

**ARTICLE 72.**

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

The duration of the session cannot exceed twelve days. However, a decree of cloture intervenes as soon as the National Assembly has exhausted **[épuisé]** the agenda for which it had been convoked.

Only the President of the Republic may take the initiative to convoke a new extraordinary session before the expiration of a time period of one month following the cloture.

**ARTICLE 73.**

Sessions of the National Assembly are public. A record is kept of which the publication **[publicité]** is assured under conditions specified by law.

The National Assembly sits in closed session at the demand of the Government or of one-fourth of its members. A record of the debates is kept.

**ARTICLE 74.**

The new National Assembly meets by right in special session the second Tuesday which follows the proclamation of the results of the election to proceed to the constitution of its Bureau. The session is closed upon exhaustion of its agenda.

**ARTICLE 75.**

The rules relating to the functioning of the National Assembly are determined in their general principles, by an organic law and, in their modalities by its internal regulations. The internal regulations are published in the Official Journal of the Republic.

## **Chapter 2**

### **The Senate**

**ARTICLE 76.**



The members of Senate carry the title of Senators of Madagascar. Their mandate is of six years.

**ARTICLE 77.**

Two-thirds of the Senate consists of an equal number of members elected in each autonomous province and one-third [consists] of members appointed by the President of the Republic in regard of their particular competences in judicial, economic, social or cultural matters.

**ARTICLE 78.**

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

**ARTICLE 79.**

The Senate is consulted by the Government to give an advice on economic and social questions and on [questions of] territorial organization.

**ARTICLE 80.**

The Senate meets by right during the sessions of the National Assembly.

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

When the National Assembly is not sitting, the Senate may discuss only those questions [for] which the Government has seized it for advice, to the exclusion of all legislative bills.

**ARTICLE 81.**

The provisions of Articles 67 to 75 are applicable to the Senate.

**Chapter 3**

**The Legislative Function and Relations between the Government and Parliament**

**ARTICLE 82.**

The organic laws and the ordinary laws are voted by Parliament according to conditions established by the present chapter.

**ARTICLE 82.1.**

Beside the questions that are referred to it by other articles of the Constitution, [the following] are relevant to an organic law:

1. the rules concerning the election of the President of the Republic;
2. the modalities of [the] ballot concerning the election of the Deputies, the conditions of eligibility, the regime of incompatibility and forfeiture, the rules of replacement in case of vacancy, the organization and functioning of the National Assembly;
3. the composition of the Senate, the rules concerning the election and designation of its members, the rules of replacement in case of vacancy, the organization and the functioning of this assembly;

4. the organization, the functioning and the attributions of control of the Supreme Court;
5. the statute of the magistrates;
6. the organization, the functioning and the attributions of the Superior Council of the Magistrature, of the General Inspection of Justice and of the National Council of Justice;
7. the organization, the functioning and the procedure to follow before the High Court of Justice;
8. the organization, the functioning, the seizing and the procedure to follow before the High Constitutional Court;
9. the Electoral Code;
10. the general provisions concerning the laws of finance;
11. the situations of exception;
12. the organization, the functioning and the attributions of the Interprovincial Conference.

**ARTICLE 82.2.**

The organic laws are voted and modified according to the following conditions:

1. The bill or the proposal is submitted to the deliberation and to the vote by the first seized assembly only at the expiration of a time period of fifteen days after it has been filed;
2. the procedures specified in Articles 85 to 87 are applicable. However, an organic law may only be adopted by the absolute majority of the members composing each assembly; without an agreement between the two assemblies after two readings, the National Assembly states definitively by a majority of two-thirds of the members that compose it;

If the National Assembly has not adopted the bill of the organic law before the closing of the session, the provisions of said bill may be put into effect by way of ordinance, including in it, if need be, one or more amendments adopted by an assembly;

3. the organic laws concerning the Senate and the Interprovincial Conference must be voted in the same terms by the two assemblies.

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

**ARTICLE 82.3.**

Beside the questions that have been referred to it by other articles of the Constitution,

- I. The law determines the rules concerning:

- the civic rights and the fundamental guarantees granted to individuals and to groups for the exercise of the rights and of the liberties;
- international relations;
- nationality and the passport;

- the Central Bank and the regime for issuing the currency;
- the circulation of persons;
- the rules of civil and commercial procedure;
- the rules of administrative and financial procedure;
- the creation of new orders of jurisdiction and their respective competences as well as their organization and the rules of procedure applicable to them;
- the organization of the family, the state and the capacity of persons, the matrimonial regimes, inheritance and gifts;
- the determination of crimes and misdemeanors as well as the penalties which are applicable to them, the penal procedure, amnesty;
- the rules concerning conflicts of law and of competences;
- The juridical regime of property and real rights, and the conditions in which possessions may be the object of expropriation or requisition for reason of public necessity or of transfer of property to the State;
- the creation of categories of public establishments;
- the strategic resources.

II. The law establishes the fundamental principles:

- of the organization of the national defense and the utilization of Armed Forces or Police Forces **[Forces de l'ordre]** by the civil authorities.
- of the general status of civil and military functionaries and the public agents of the State and of [their] individual status;
- the juridical framework for the relationships between employers and employees, for the right to create trade-unions and the right to strike;
- the transfer of business properties or organisms of the public sector to the private sector and inversely;
- of the organization or the functioning of the different sectors of juridical, economic, social or cultural activity;
- of the protection of the environment.

III. Within the framework of the organic law applicable in the matter, the law of finance:

- specifies the basis, the rate and the modalities of recovery of the impositions of all nature collected for the profit of the budget of the State;
- takes into consideration the proportion of public receipts that are due to the State and the autonomous provinces as well as the nature and the maximum rates of the duties and taxes collected directly for the profit of the budget of the autonomous provinces [that is] determined in the Interprovincial Conference;
- determines the resources and the charges of the State as well as the financial balance that results from it.

The law specifies the conditions for borrowing and decides on the possible creation of reserve funds.

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

V. The declaration of war may be authorized only by Parliament.

VI. The situation of exception is decreed by the President of the Republic, according to the above Article 59; its extension beyond fifteen days may be authorized by the Parliament.

VII. The law determines the limitations of public and individual freedoms during the situations of exception.

VIII. The ratification or approval of treaties of alliance, treaties of commerce, treaties or agreements relating to international organization, of those which bind the finances of the State, of those which modify the provisions of legislative nature, of those which concern the state of persons, of treaties of peace, of those which entail modification of territory, must be authorized by the law.

Prior to any ratification, the treaties are submitted by the President of the Republic to the control of constitutionality of the High Constitutional Court. In case of non-conformity to the Constitution, ratification may take place only after revision of it.

The treaties or agreements regularly ratified or approved have, upon their publication, an authority superior to those of the laws, with reservation, for each agreement or treaty, of its application by the other party.

IX. The law specifies the particular statutes of the Capital of the Republic, of the State palaces and other buildings falling within the domain of the State, the harbors and the networks of expansion, the airports as well as the regime of the marine and strategic resources.

#### **ARTICLE 83.**

With reservation for the competences devolved to the provincial authorities, the matters other than those which are the domain of the law have a regulatory character. The texts of legislative form intervening in these matters may be modified by decree taken after consultation with the High Constitutional Court.

Those texts which would intervene after this Constitution comes into force may be modified by decree only if the High Constitutional Court has declared that they are of a regulatory character in accordance with the preceding paragraph.

#### **ARTICLE 84.**

The initiative of law belongs concurrently to the Prime Minister and to the Parliamentaries.

The bills of law are deliberated in the Council of Ministers and are presented to the Bureau of one or the other assembly, except for the bills of law determining the resources and the charges of the State which are first presented to the Bureau of the National Assembly.

The bills of law and amendments presented by the Parliamentaries are brought to the attention of the Government which has at its disposal to express its opinion a period of thirty days for the bills and fifteen days for the amendments.

At the expiration of this time period, the assembly before which the bills or the amendments have been presented, proceeds to examine these with the view to their adoption.

The bills or amendments are not receivable when their adoption will consequently result in either the diminution of public resources or the increase in the charges of the State except in matters of the law of finance.

If in the course of a legislative procedure, a bill or amendment does not appear to fall within the domain of the law, the Government may oppose the receivability. In the event of conflict between the Government and the National Assembly or the Senate, the High Constitutional Court, at the demand of the Prime Minister or of the President of either parliamentary Assembly, decides in a time period of eight days.

**ARTICLE 85.**

The agenda of the Assemblies entails, by priority and in the order set by Government, the discussion of the drafts of laws presented to the Bureau of the National Assembly or [to] that of the Senate by the Prime Minister.

**ARTICLE 86.**

All bills or proposals of law are examined first by the Assembly before which it has been filed and then is sent to the other Assembly.

Discussion takes place successively in each Assembly until a single text is adopted.

When following from a disagreement between the two Assemblies, a bill or a proposal of law has not been adopted after two readings by each Assembly or if the Government has declared urgency, after a single reading by each of them, the Prime Minister has the faculty to cause **[provoquer]** the meeting of a mixed parity commission charged to propose a text on the provisions remaining under discussion. The text elaborated by the mixed commission can be presented by the Government for approval to the two Assemblies. No amendment is receivable except with the agreement of the Government.

If the commission does not succeed in adopting a single, joint text or if the text is not adopted according to the conditions specified in the preceding article, the National Assembly states definitively by an absolute majority of the members who compose it.

**ARTICLE 87.**

The Government, by engaging its responsibility according to the conditions specified in Article 91 below, may demand **[exiger]** that each Assembly decide [on it] by a single vote on all or part of the provisions of the texts under discussion:

— in extraordinary sessions, provided these texts have been presented within forty-eight hours of the opening of the session;

— within the last eight days of each of the ordinary sessions.

**ARTICLE 88.**

Parliament examines the bill of the law of finance during its second ordinary session.

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

Parliament has a maximum time period of sixty days to examine it.

The National Assembly has a maximum of thirty days from the time the bill has been filed, to examine it in

[the] first reading. Lacking a decision in this period, it is considered to have been adopted and the bill is transmitted to the Senate.

According to the same conditions, [the Senate] has a time period of fifteen days, for a first reading, counting from the transmission of the bill, and each Assembly has a time period of five days for each of the following readings.

Lacking a decision by an Assembly after the time period assigned, it is considered to have issued a favorable vote on the text brought before it.

If the Parliament has not adopted the bill of the law of finance before the cloture of the second session, the provisions of the bill may be put into effect by means of an ordinance including within it one or several amendments adopted by the two Assemblies.

Every amendment to the bill of the budget which entails an increase in spending or a reduction of the public resources must be accompanied by a bill to increase revenue or an equivalent economy.

If the bill of the law of finance for a fiscal year *[d'un exercice]* has not been filed in time to be promulgated before the beginning of that fiscal year, the Prime Minister demands of the Parliament the authorization to collect the taxes and to open by decree the credits relating to the services voted upon.

The conditions of the adoption of the bill of the law of finance are specified by an organic law.

**ARTICLE 89.**

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

**ARTICLE 90.**

Within thirty days of his appointment, the Prime Minister presents his program of implementation of the general policy of the State to the National Assembly which may put forward suggestions.

If, in the course of its execution, the Government feels that fundamental modifications of this program prove to be necessary, the Prime Minister submits said modifications to the National Assembly which may put forward suggestions.

**ARTICLE 91.**

The Prime Minister, after deliberation in the Council of Ministers, may commit the responsibility of his Government by raising the question of confidence.

The vote may only take place forty-eight hours after the filing of the question. If it is placed in minority by an absolute majority of the members composing the National Assembly, the Government remits its resignation to the President of the Republic.

The President of the Republic appoints a Prime Minister, according to Article 53.

**ARTICLE 92.**

In the first ordinary session, the Government presents to the National Assembly an annual report on the execution of its program.

The presentation will be followed by a debate.

**ARTICLE 93.**

The Parliament's means of information regarding government action are: the oral question, the written question, the interpellation and the commission of inquiry.

During [*pendant la durée*] an ordinary session, one sitting per month is reserved by priority to questions of members of Parliament and to the responses of the Government.

**ARTICLE 94.**

The National Assembly can call into question the responsibility of the Government by a vote on a motion of censure. Such a motion is receivable only if it is signed by half of the members that compose the National Assembly. A vote may take place forty-eight hours only after the submission of the motion.

The motion is adopted only if two-thirds of the members that compose the National Assembly vote for it.

If the motion is adopted, the Government remits its resignation to the President of the Republic; he will proceed with the selection of a Prime Minister under the conditions provided by Article 53 above.

**ARTICLE 95.**

The President of the Republic may dissolve the National Assembly for determinant causes.

**ARTICLE 96.**

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

The delegation of power authorizes the President of the Republic to take, by ordinance in the Council of Ministers, general measures falling within the domain of the law. They enter into force on their publication but become lapsed if the bill of the law of ratification is not presented before the National Assembly prior to the date established by the enabling law.

### **Sub-title 3**

## **The Jurisdictional Function**

### **Chapter 1**

## **General Principles**

**ARTICLE 97.**

Justice is rendered in conformity with the Constitution and the law, in the name of the Malagasy people, by the Supreme Court, the Courts of Appeal, the jurisdictions which are attached to them as well as the High Court of Justice.

**ARTICLE 98.**

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

For this purpose, he is assisted by a Superior Council of the Magistrature of which he is the president. The Minister charged with Justice is the vice-president of it.

**ARTICLE 98.1.**

The magistrate is appointed to the office corresponding to his rank or dismissed from his function by a decree of the President of the Republic taken according to the conditions determined by an organic law.

**ARTICLE 99.**

The sitting magistrates, the judges, and the assessors are independent in their jurisdictional activities and are answerable only to the Constitution and to the law.

As such, with the exception of cases specified by the law and under reserve of the disciplinary power, they may not be hindered in any way for acts committed in the exercise of their functions.

**ARTICLE 100.**

Sitting magistrates are irremovable; they occupy the post of which they are titular by reason of their rank; they may not be reassigned without their consent, except in case of necessity duly declared by the Superior Council of the Magistracy.

**ARTICLE 101.**

The magistrates of the public ministry are subject to the hierarchical subordination; however, in their conclusions or oral requisitions, they act according to their own convictions and in conformity with the law.

They have at their disposal the judicial police of which they direct and supervise the activities.

**ARTICLE 102.**

The exercise of the functions of magistrate within the Courts and Tribunals is incompatible with any activity within a party or political organization, the exercise of any elective public mandate or of any other remunerated professional activity.

**ARTICLE 103.**

Three organs, designed to contribute, each in its domain, to assure a good functioning of Justice, are created.

— A Superior Council of the Magistrature, organ of safekeeping and of sanction, charged with, among other things to watch that the provisions concerning the statute of the Magistrature are respected;

— A General Inspection of Justice, organ of investigation charged with, among other things to control the respect of the rules of ethics by the magistrates and the personnel of Justice;

— A National Council of Justice, organ of study [*réflexion*] and proposal meant to make recommendations for a better administration of Justice, among other things, for what concerns the measures of legislative or regulatory order concerning the jurisdictions, the magistrates and the auxiliaries of Justice.

**ARTICLE 104.**

Rules regarding the organization, the composition, the functioning and the attributions of the Superior Council of the Magistrature, the General Inspection of Justice and of the National Council of Justice are determined by an organic law.



## Chapter 2 The Supreme Court

### **ARTICLE 105.**

The Supreme Court is charged to watch over the regular functioning of the jurisdictions of the judicial, administrative and financial order.

It comprises:

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

### **ARTICLE 106.**

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

They are respectively appointed in the Council of Ministers upon proposal of the Minister charged with Justice after consultation with the Superior Council of the Magistrature.

#### **ARTICLE 106.1.**

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

Each Vice-President is chosen among the magistrates in office in the Supreme Court, the most senior at the highest level of the judicial, administrative or financial order concerned.

#### **ARTICLE 106.2.**

The General Public Prosecutor's department of the Supreme Court comprises:

- a general public prosecutor's department of the Court of Cassation;
- a general Commissariate of the Law for the Council of State;
- a general Commissariate of the Public Treasury for the Court of the Accounts.

The Procurator General of the Supreme Court is seconded by the three heads of these organisms.

The chief of the general public prosecutor's department of the Court of Cassation, of the General Commissary of the Law or of the General Commissary of the Public Treasury is chosen among the magistrates in office in the Supreme Court, the most senior at the highest level of the judicial, administrative or financial order concerned.

### **ARTICLE 107.**

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

### **ARTICLE 108.**

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

Beyond the competences that are recognized to it by the particular laws, it decides on the petitions in cassation formulated against the decisions rendered in the last resort by those jurisdictions.

**ARTICLE 109.**

The Council of State controls the regularity of the actions of the Administration and sees to the application of the laws by the jurisdictions of the administrative order.

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

— has knowledge of the control of legality and conventionality of the actions of general bearing taken by the authorities of the autonomous provinces;

— judges the petitions [*recours*] for annulment of the actions of the administrative or provincial authorities, the petitions of full jurisdiction for the prejudicial deeds caused by activities of the Administration, the contentious claims in fiscal matter;

— gives a verdict in appeal or in cassation on the decisions rendered by the administrative jurisdictions in exercise in the autonomous provinces;

It is the judge of certain electoral contentious matters;

It may be consulted by the Prime Minister and by the governors of the autonomous provinces to give its advice on the legislative, regulatory and conventional bills or on the interpretation of a legislative, regulatory or conventional provision.

It may initiate, upon demand of the Prime Minister, studies about texts of laws, about the organization, the functioning and the missions of the public services.

**ARTICLE 110.**

The Court of the Accounts:

— judges the accounts of the public accountants:

— controls the execution of the laws of finance as well as the budgets of the autonomous provinces and public organizations;

— controls the accounts and the management of public enterprises;

— settles, in appeal the judgements rendered in financial matters by the jurisdictions or the administrative organizations of jurisdictional character;

— assists the Parliament and the Government in the control of the execution of the laws of finance;

— may assist the Provincial Council in controlling the execution of the budget of its autonomous province.

**ARTICLE 111.**

The other regulations concerning the organization, the composition, the functioning and the prerogatives of the Supreme Court and the three courts that compose it, those concerning the appointment of their members as well as those concerning the procedure applicable before them are determined by an

organic law.

**ARTICLE 112.**

The Supreme Court addresses an annual report of its activities to the President of the Republic and to the Prime Minister, to the Presidents of the National Assembly and the Senate and to the Minister charged with Justice. This report must be published in the official journal within the year that follows the closing of the judicial year concerned.

### **Chapter 3**

#### **The High Court of Justice**

**ARTICLE 113.**

The President of the Republic is accountable for acts accomplished in the exercise or on the occasion of the exercise of his functions deciding only in case of high treason or severe and repeated violation of the Constitution.

He may be impeached only by the two parliamentary Assemblies deciding by a separate vote, by public ballot and a majority of two-thirds of the members composing each assembly.

He is justiciable by the High Court of Justice and may incur forfeiture.

If forfeiture is pronounced, the High Constitutional Court establishes the vacancy of the Presidency of the Republic; the election of a new President will be initiated within the conditions of Article 47 above. The President struck with forfeiture [*frappé de déchéance*] is no longer eligible to any elective public function.

**ARTICLE 114.**

The Presidents of the parliamentary Assemblies, the Prime Minister, the other members of the Government and the President of the High Constitutional Court are penally responsible, before the High Court of Justice, for the acts performed in the exercise of their functions and qualified as crimes or misdemeanors at the time when they have been committed.

They may be impeached by the two parliamentary Assemblies deciding by a separate vote, by public ballot, by the absolute majority of the members composing each assembly.

**ARTICLE 114.1.**

They are justiciable by the jurisdictions of common law for the infractions committed outside of the exercise of their functions.

In this case and when there is misdemeanor, the competent correctional jurisdiction is presided by the President of the Tribunal or by a vice-president if he is incapacitated.

Any claim issued against the individuals mentioned in Article 114 above is examined by a commission of three magistrates of the Court of Cassation designated by the First President of the said Court.

This commission, after [gathering] information, orders either the filing of the procedure, or its transmission to the Procurator General of the Court of Cassation with the purpose to seize the competent jurisdiction.

The provisions of the above three paragraphs are equally applicable to the Parliamentaries and the members of the High Constitutional Court.

**ARTICLE 115.**

The High Court of Justice enjoys the plenitude of jurisdiction.

**ARTICLE 116.**

The High Court of Justice is composed of nine members:

— The First President of the Supreme Court, President, substituted by right, in case of incapacity, by the President of the Court of Cassation;

— two presidents of the Chamber of the Court of Cassation, and two substitutes, designated by the general assembly of the said Court;

— two first presidents of the Courts of Appeal, and two substitutes, designated by the First President of the Supreme Court;

— two titular Deputies and two substitute Deputies, elected by the National Assembly;

— two titular Senators and two substitute Senators, elected by the Senate.

The public Ministry is represented by the Procurator General of the Supreme Court assisted by one or several members of his general public prosecutor's department. In case of incapacity of the Procurator General, he is substituted [*remplacer*] by the chief clerk of the Court of Cassation.

**ARTICLE 117.**

The organization and the procedure to be followed before the High Court of Justice are determined by an organic law.

**Sub-title IV  
The High Constitutional Court**

**ARTICLE 118.**

In addition to the questions that are referred to it by other articles of the Constitution, the High Constitutional Court, within conditions determined by an organic law:

— decides on the conformity to the Constitution of the treaties, the laws, the ordinances, the Interprovincial Conventions, and the autonomous regulations decreed [*édictés*] by the Central Power.

— rules on the conflicts of competence between two or more Institutions of the State or between the State and one or more autonomous provinces or between two or more autonomous provinces;

— decides on the conformity to the Constitution and to the organic laws, of the statutory laws and the laws adopted by the autonomous provinces;

— decides on the contentious matters of the operations of referendum, the election of the President of the Republic and the elections of the Deputies and the Senators.

**ARTICLE 119.**

The High Constitutional Court is composed of nine members whose mandate lasts seven years.

Three of the members are appointed by the President of the Republic, two are designated by the National

Assembly, two by the Senate, two are elected by the Superior Council of the Magistrature.

The President of the High Constitutional Court is appointed by decree of the President of the Republic.

The designation of the other members is established by decree of the President of the Republic.

**ARTICLE 120.**

The functions of [a] member of the High Constitutional Court are incompatible with those of [a] member of the Government, of the Parliament, of the Government of an autonomous province, with any elective mandate, any other remunerated professional activity as well as any activity within a parti or a political organization or within a trade-union.

**ARTICLE 121.**

Before their promulgation, the organic laws and the ordinances are submitted by the President of the Republic to the High Constitutional Court which decides on their conformity with the Constitution. A provision judged unconstitutional may not be promulgated. In this case, the President of the Republic may decide, either to promulgate the other provisions of the law or the ordinance, or to submit the whole text to a new deliberation of the Parliament or of the Council of Ministers, depending on the case, or not to proceed with the promulgation.

The internal regulations of each assembly are subject to the control of constitutionality, before their coming into effect. A provision judged unconstitutional may not be applied.

For the same purpose, the ordinary laws may be referred to the High Constitutional Court before their promulgation by any Head of Institution or a quarter of the members composing one of the parliamentary Assemblies.

In the above mentioned case, the seizing of the High Constitutional Court suspends the time frame of promulgation of the laws.

**ARTICLE 122.**

The Head of an Institution or a quarter of the members composing one of the parliamentary Assemblies or the organs of the autonomous provinces may defer to the High Constitutional Court, for the control of constitutionality, any text of legislative or regulatory nature [*valeur*] as well as any matter within its competence.

If a party raises the exception of unconstitutionality before any jurisdiction, this jurisdiction stays judgement and grants this party a period of one month to seize the High Constitutional Court which must decide within a time period of one month.

Likewise, before any jurisdiction, if a party maintains that a provision of a legislative or regulatory text affects [*porter atteinte*] its fundamental rights as recognized by the Constitution, that jurisdiction stays judgement according to the same conditions as in the above paragraph.

A provision which is declared unconstitutional ceases by right to be in effect. The decision of the High Constitutional Court is published in the official journal.

**ARTICLE 123.**

The High Constitutional Court may be consulted by any Head of [an] Institution and any organ of the autonomous provinces to give its advice on the constitutionality of any bill of an Act or about the interpretation of a provision of this Constitution.

**ARTICLE 124.**

The High Constitutional Court renders judgements [*arrêts*] in contentious electoral matters and in what concerns direct popular consultation. In the other matters falling within its competence, except for the case provided by Article 123, the High Constitutional Court renders decisions.

The judgments and decisions of the High Constitutional Court are motivated; they are not susceptible to any recourse. They are imposed on all the public powers as well as the administrative and jurisdictional authorities.

**ARTICLE 125.**

The rules concerning the organization, the functioning and the attributions of the High Constitutional Court as well as the procedure to be followed [before it] are determined by an organic law.

## **TITLE IV THE AUTONOMOUS PROVINCES**

### **Sub-title One The Organization**

#### **Chapter I General Provisions**

**ARTICLE 126.**

The autonomous provinces are public collectivities endowed with juridical personality as well as with administrative and financial autonomy.

They possess a patrimony consisting of a public domain and a private domain which will be delimited by an organic law.

Vacant lands or [lands] lacking an owner belong to the private domain of the autonomous provinces or of the State.

The autonomous provinces, organized in decentralized territorial collectivities are composed of the regions and of the communes which are each endowed with a deliberating organ and an executive organ.

The denomination and the delimitation of each decentralized territorial collectivity may be modified by a decree in the Council of Ministers after consultation of the organs of the concerned autonomous provinces, on the basis of criteria of viability in the geographical, economical and socio-cultural plan.

**ARTICLE 127.**

With reservation of the provisions of this Constitution, each autonomous province democratically and freely manages its own affairs within the framework of its statutory law, adopted by the Provincial Council and conforming to the rules determined by an organic law.

The statutory law is published in the official journal of the Republic after the declaration of its conformity to the Constitution by the High Constitutional Court.

**ARTICLE 128.**

The circulation of persons, goods, services and capital [*des capitaux*] is free between all the autonomous provinces and within each province.

**ARTICLE 129.**

Any secession or attempt at secession by one or several autonomous provinces is forbidden.

The perpetrators of such acts affecting the territorial integrity and the national unity and qualified as crimes against the Nation, are liable to the maximum penalty specified by the Penal Code.

Any act or any measure of a nature affecting the unity of the Republic or endangering the integrity of the national territory, taken by an authority of an autonomous province, is null by right. The nullity is established by the Council of State.

**ARTICLE 129.1.**

If an organ of an autonomous province acts either in violation of the Constitution or of the law, or in a manner that affects the general interest or the interest of one or several autonomous provinces, the President of the Republic may, after a summons [*mise en demeure*] by the Government to put an end to such acts has been ignored, takes all the necessary measures to correct the situation. He may also dismiss from their functions the individuals at fault, after consultation with a mixed commission of Deputies and Senators.

The modalities of application of the present article will be determined by an organic law.

**ARTICLE 129.2.**

The President of the Republic may, by decree taken in the Council of Ministers, pronounce the dissolution of a Provincial Council for a determinant cause.

**Chapter 2**  
**The Structures**

**ARTICLE 130.**

Within the autonomous provinces, the executive, legislative and jurisdictional functions are exercised by distinct organs.

**ARTICLE 131.**

The executive function is exercised by a Council of Government composed of a Governor and of General Commissaries.

The Governor is elected by the Provincial Council from among or outside of its members, for a mandate of five years, renewable.

He is the Head of the autonomous province.

In that capacity, he assures the functions devolved to the Head of the Executive by the statutory law of the province.

The Governor appoints the General Commissaries and terminates their functions.

The number of General Commissaries is limited to a maximum of twelve.

The Governor is the Head of the Administration in his province.

**ARTICLE 131.1.**

The conditions relating to the designations and the mandates of the members of the Governorship, their attributions, the functioning of the Governorship as well as the relationship between the Governorship and the Provincial Council are determined by the statutory law.

**ARTICLE 131.2.**

The State is represented before the autonomous provinces by a high functionary, called the General Delegate of the Government, charged to oversee that the provincial authorities respect the distribution of the competences between the State and the autonomous provinces as well as all legislative and regulatory provisions; to this purpose, he refers *[d'èfère]* to the competent jurisdictions the texts that have legislative or regulatory nature *[valeur]* as well as all acts or conventions of the provincial organs within its competence *[ressort]* that he deems to be illegal.

The modalities of appointment and the attributions of this high functionary are determined by the law.

**ARTICLE 132.**

The legislative function is exercised by the Provincial Council according to the provisions of this Constitution and of the statutory law.

The members elected by direct universal suffrage of the Provincial Council enjoy a five year renewable mandate.

The Deputies whose voice is consultative and the Senators whose voice is deliberative are members of the Provincial Council by right.

**ARTICLE 132.1.**

The composition, the organization and the functioning of the Provincial Council as well as the mode and the conditions of election or appointment of its members are determined by a statutory law.

**ARTICLE 133.**

The jurisdictional function is exercised by the Courts of Appeal and the tribunals or other jurisdictions of the judicial, administrative and financial order.

All the magistrates of the Republic are subject to the same statute.

**ARTICLE 134.**

A consultative organism, called the Economic and Social Council is created alongside the Council of the Governorship.

**ARTICLE 134.1.**

The Economic and Social Council, seized by the Governor, gives its opinion about bills or proposals of texts and about any problem of economic, social or environmental character submitted to it.

**ARTICLE 134.2.**

The competence, the modalities of designation of its members and the functioning of the Economic and



Social Council are determined by the Provincial Council within the conditions specified by the statutory law.

## **Sub-title II** **The Competences**

### **ARTICLE 135.**

The matters attached to the exercise of national sovereignty fall **[relèvent]** exclusively within the competence of the State, namely:

- nationality;
- international relations;
- justice;
- the national defense;
- internal security;
- the strategic resources;
- the currency, the finances and customs;
- the transfer of business property of the public sector to the private sector and inversely;
- the guarantee of fundamental rights and liberties.

### **ARTICLE 135.1.**

The matters that interest the provinces specifically fall within the competence of the autonomous provinces, namely:

- the administration of the local collectivities;
- the organization of the offices and administrative organisms of provincial character;
- the urban and rural police;
- fairs and markets;
- the public services of provincial interest;
- the allocations for education and the provincial grants.

### **ARTICLE 135.2.**

The law of the State is superior to **[prime]** the law of the autonomous provinces.

As for the other domains not specified in Article 135 and 135.1, the autonomous provinces have the power to legislate as long as and as much as the State does not make use of its right to legislate.

However, the State intervenes, when the necessity arises to:

- rule on a question unresolved by the autonomous provinces;

- avoid that the law of an autonomous province affects the interests of another autonomous province;
- assure the protection of the juridical or economic unity and the homogeneity of the standard of living beyond the limits of an autonomous province.

**ARTICLE 135.3.**

The distribution of competences between the State and the autonomous provinces stemming from Articles 135, 135.1 and 135.2 above may be modified by an organic law after debate **[concertation]** within the framework of the Interprovincial Conference.

**ARTICLE 135.4.**

The autonomous provinces assure with the assistance **[concours]** of the central power, the public security, the civil defense, the administration and development of the territory, the economic development and the improvement of the quality of life **[cadre de vie]**.

In these domains, the law determines the distribution of competences, taking into consideration [both] the national interests and the local interests.

### **Sub-title III**

#### **The Resources**

**ARTICLE 136.**

The province enjoys financial autonomy.

It draws up and manages its budget freely, according to principles applicable in matters of the management of the public finances.

**ARTICLE 137.**

The law of finance of the State specifies yearly the proportion of the receipts of the State [which] have to revert to the autonomous provinces according to provisions of Article 82.3.III.

Special measures will be taken in favor of the development of the less advanced areas, including the construction of a special fund of solidarity for those same areas.

**ARTICLE 138.**

The resources of an autonomous province consist also [of]:

— the product of duties and taxes voted by its Provincial Council and collected directly to the profit of the budget of the province; the law determines the nature and the maximum rate of these duties and taxes taking duly [into consideration] the charges assumed by the provinces and the global fiscal charge imposed by the Nation;

— the fraction which reverts to it by right on the product of the duties and taxes collected to the profit of the budget of the State, that is owed to them by right; this fraction which is collected automatically at the time of levy is determined by law according to a percentage that takes into consideration the charges assumed by the autonomous provinces both globally and individually, the level of their own resources, their own ability to contribute, so as to establish a just distribution between the autonomous provinces and assure an economic and social development well balanced between all the autonomous provinces within the whole national territory;

— the product of the subsidies appropriated or not, granted by the budget of the State to the entirety of the autonomous provinces or to each of them, to take into consideration their specific situation, or to compensate those autonomous provinces, for the charges stemming from programs or projects mandated by the State and executed by the autonomous provinces;

— the product of the loans contracted by the province, either on the domestic market, or outside of it, after the agreement of the monetary and financial national authorities, with or without warranty of the State;

— the product of external aid [that is] not reimbursable and the product of gifts to the autonomous province;

— the revenues from their patrimony.

#### **Sub-title IV**

#### **The Cooperation Between the Central Power and the Autonomous Provinces**

##### ***ARTICLE 139.***

With respect for “Fihavanana”, with a view to examine the questions of common interest between the Central Power and one or all autonomous provinces, between two or more autonomous provinces, the President of the Republic may convene an Interprovincial Conference in which participate notably the Prime Minister, the members of the Government, the Governors, [and] the members of the interested Councils of the Governorships. The Presidents of the Parliament and of the Provincial Councils of the autonomous provinces or their representatives assist the Conference by right.

The Prime Minister may, upon express delegation by the President of the Republic, preside over an Interprovincial Conference.

### **TITLE V REVISION OF THE CONSTITUTION**

##### ***ARTICLE 140.***

The initiative of the revision of the Constitution belongs either to the President of the Republic who decides in the Council of Ministers, or to the parliamentary Assemblies deciding by a separate vote of the absolute majority of the members composing each assembly.

No project or proposal of revision may have the object of affecting the integrity of the national territory.

##### ***ARTICLE 141.***

The project or proposal of revision is adopted only by a majority of three-quarters of the members of the National Assembly and the Senate.

##### ***ARTICLE 142.***

The President of the Republic, in the Council of Ministers, may decide to submit the revision of the Constitution to a referendum.

##### ***ARTICLE 143.***

The republican form of the State may not be the object of revision.

## **TITLE VI MISCELLANEOUS AND TRANSITORY PROVISIONS**

### **ARTICLE 144.**

The current President of the Republic exercises the functions devolved to the President of the Republic by the present revised Constitution, until the end of his mandate.

### **ARTICLE 145.**

The current National Assembly exercises the legislative function until the new Deputies take office.

The new National Assembly will solely exercise the legislative function until the establishment of the Senate.

### **ARTICLE 146.**

The current constitutional jurisdiction exercises the powers **[attributions]** devolved by the revised Constitution to the new High Constitutional Court until the establishment of the latter.

If the complement **[effectif]** of the current constitutional jurisdiction does not allow for the valid functioning [of it], it may be complemented by decree taken in the Council of Ministers.

### **ARTICLE 147.**

The current Supreme Court, with its judicial, administrative and financial components, and according to the legislation in force, exercises the powers **[attributions]** devolved by the revised Constitution to the new Supreme Court, until the establishment of the latter.

However, the complement of the current Formation of Control may be complemented by decree of the President of the Republic.

### **ARTICLE 148.**

The Decentralized Territorial Collectivities currently existing continue to function according to the legislation in force, until the establishment of the autonomous provinces and their structures **[démembrements]**.

### **ARTICLE 149.**

The President of the Republic is enabled to take by decree in the Council of Ministers, all necessary measures to the initial establishment of the autonomous provinces and their organs; these measures concern the organization of the elections of the members of the Provincial Councils and the Governors, the determination of their provisional attributions as well as the organization and the granting of the first means of functioning.

### **ARTICLE 150.**

Within twelve months of the establishment of the organs of the autonomous provinces, an Interprovincial Conference will meet, according to Article 139 above, with a view to, among other things, the allocation of the human, material and financial resources and the charges between the State and the autonomous

provinces.

The modalities of application of the above paragraph will be determined by decree of the President of the Republic taken in the Council of Ministers.

**ARTICLE 151.**

The President of the Republic is enabled to legislate by way of ordinance in the Council of Ministers, for the adoption of the different organic laws necessary to establish the Institutions.

The Institutions specified by the present revised Constitution will be established, under the responsibility of the Government, within a time frame of thirty months beginning from when the said organic laws enter into effect.

**ARTICLE 152.**

With reservation for the modifications to intervene, the legislation in force in the Republic remains applicable in all its provisions that are not contrary to those of the present revised Constitution.