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with the Economic and Social Council***

The following document is being circulated in accordance with paragraph 1 (i) of resolution 4/6 of the Conference of the States Parties to the United Nations Convention against Corruption and rule 17, paragraph 3 (b), of the rules of procedure for the Conference.

* The present document is processed in the form in which it was received.





23.11.2021

**Madagascar: Civil Society Report
by Transparency International Initiative Madagascar (TI-MG)
An input to the UNCAC Implementation Review Mechanism:
Fifth year of review of UNCAC chapters II and V**

-Executive Summary-

This is the executive summary of a civil society shadow report from August 2021 that reviews Madagascar's implementation and enforcement of selected articles of the UN Convention against Corruption (UNCAC) Chapters II (Preventive measures) and V (Asset recovery). The report was supported by the UNCAC Coalition and is intended as a contribution to the UNCAC peer review process of Madagascar covering those two chapters. The full report is available on the UNCAC Coalition's website.¹

The UNCAC articles and topics that receive attention in this report are: preventive anti-corruption policies and practices (Article 5), preventive anti-corruption bodies (Article 6), public sector (Article 7), codes of conduct for public officials (Article 8), public procurement and management of public finances (Article 9), public reporting (Article 10), measures relating to the judiciary and prosecution services (Article 11), private sector (Article 12), participation of society (Article 13), and measures to prevent money-laundering (Article 14) under Chapter II, and prevention and detection of transfers of proceeds of crime (article 52), measures for direct recovery of property (article 53), mechanisms for recovery of property through international cooperation in confiscation (article 54), international cooperation for purposes of confiscation (article 55), and return and disposal of assets (article 57) under Chapter V.

While Madagascar has built momentum around anti-corruption initiatives for the implementation of articles of Chapter II and Chapter V of the UNCAC, several challenges remain. There is a need for concrete legal action to capitalize on the positive gains initiated by Madagascar's ratification of the UNCAC, and increased political will to advance efforts.

Assessment of the review process

Has the government disclosed information about the country focal point?	No	This information was not published, but the Director General of the Independent Anti-Corruption Bureau (BIANCO) confirmed in an interview that he is the country's focal point for the evaluation process.
Was the review schedule published somewhere?	No	

¹ <https://uncaccoalition.org/new-civil-society-report-on-madagascar-momentum-built-on-anti-corruption-initiatives-requires-concrete-legal-action-and-increased-political-will-to-advance-efforts/>.

Was civil society consulted in the preparation of the self-assessment checklist?	Yes	For the second review cycle 2015-2024, only one of the experts, a magistrate by training, comes from civil society as a representative of a non-governmental organization working in the fight against corruption. ² In an interview with TI-MG, the BIANCO Director General said that targeted civil society organizations will be consulted as part of the evaluation process, but that they will be chosen according to “certain criteria” which remain unknown.
Was the self-assessment checklist published online or made available to civil society?	No	
Did the government agree to a visit to the country?	Yes	No definite date for the visit has been published due to the current health crisis.
Was a country visit undertaken?	Not yet	
Was civil society invited to provide input to the official reviewers?	No	
Was the private sector invited to provide input to official examiners?	No	
Has the government committed to publishing the full country report?	No	The report for the 2015-2024 review cycle is not yet available. The report for the first cycle, 2010-2015, is available on the UNODC website. ³ According to the Director General of BIANCO, the official report resulting from the current evaluation process will be published but “on selected channels” and at “the appropriate time.”

Main findings and Recommendations (R)

Anti-corruption policies

Madagascar has implemented a National Anti-Corruption Strategy (SNLCC) for the period 2015-2025 with consideration for civil society voices throughout various phases of its design. However, sectoral anti-corruption policies for different professions are necessary, and the fragmented nature of Malagasy legal texts relating to the UNCAC render its interpretation and implementation a patchwork of efforts rather than a cohesive approach.

R: Provide a single guide reproducing the various texts on the fight against corruption, money-laundering and the financing of terrorism, to allow citizens to have a better grasp on existing texts.

² https://www.unodc.org/documents/treaties/UNCAC/IRG-Experts/English/SecondCycle/Madagascar_E.pdf.

³ https://www.unodc.org/documents/treaties/UNCAC/CountryVisitFinalReports/2016_10_17_Madagascar_Final_Report_FR.pdf.

Anti-corruption bodies

The fight against corruption is primarily run by the Independent Anti-Corruption Bureau (BIANCO) and the Financial Intelligence Unit (SAMIFIN). These bodies possess preventive and investigative powers, but are attached to the Presidency of the Republic, which has raised concerns about their room for manoeuvre.

R: Ensure that the member institutions of the Anti-Corruption System (SAC) are provided with the necessary resources to carry out their respective missions. In addition, SAC institutions must remain united and ensure good mutual collaboration in order to produce better results in the fight against corruption.

Codes of conduct, conflicts of interest and asset declarations

Public officials holding senior positions in the administration, including judges, directors of ministries, and police officials employed in public institutions are subject to the obligation to declare their assets within 3 months of their appointment or assumption of duties. However, immunities enjoyed by certain elected officials in the performance of their mandate have limited the effectiveness of the fight against corruption in Madagascar. Although codes of conduct are in place for state officials to ensure that professional practice is conducted with integrity and transparency, between July 2019 and June 2020, public sector employees still represented over 34% of the defendants tried before the Ant-Corruption Unit (PAC).⁴

R: Implement awareness-raising and preventive programs on corruption within the public administration, especially in those structures perceived as the most corrupt (the judiciary, security forces, land services, etc.).

Public procurement

The finance laws of the current fiscal year, as well as budget execution review reports and end of year reports, are published online for citizens, on a government website specifically assigned to budget transparency.⁵ During the Covid-19 period, a digital platform was deployed by the Ministry of Finance to track Covid-19 expenditure statements made by all public bodies,⁶ including awarded public contracts. The initiative is commendable, even if the legibility of published data needs improvement.

R: Make information available online in data formats that facilitate analysis and subsequent use, using a standardized, structured, and easily reusable open data format, such as the Open Contracting Data Standard.

Participation of society

In recent years, civil society action has intensified its efforts in the fight against corruption, particularly with regard to good governance and the rule of law, transparency and budget monitoring, the fight against trafficking in endemic species and the overexploitation of natural resources. CSOs are very active in advocacy efforts, but are also proactive whistle-blowers on corruption.

R: Adopt a law that would allow for the establishment of sufficient material and physical protection for witnesses and whistle-blowers as soon as possible; establish the right to whistleblowing in the public and private sector as a fundamental right.

⁴ <https://www.dcn-pac.mg/uploads/rapport/bbf0845e8c617d1960dd5085f43b43a2.pdf>.

⁵ <http://www.dgfag.mg/transparence/web/article/budget-des-citoyens-lfi-2021-vf>.

⁶ <http://www.mef.gov.mg/reportingcovid>.

Access to information

Madagascar's international commitment to the UNCAC has not yet been honoured due to the absence of a law on citizen access to public information, in order to increase transparency in public administration. Limitations in the code of ethics for public administration and the lack of witness protection programs and related funding mechanisms may restrict the emergence of whistle-blowers in public administration. Violations of freedom of information have been decried by professional associations of journalists in Madagascar, particularly during the Covid-19 crisis.

R: Adopt the law on access to public information during the next parliamentary session, ensuring that the text complies with international standards in this area.

Anti-money-laundering

The offense of money-laundering applies under Malagasy law, even if the original offense was committed abroad. A new law against money-laundering and terrorist financing (ML/FT) was adopted in February 2019, in accordance with FATF recommendations. However, the low level of access to banking services among the Malagasy hinders the effectiveness of the fight against money-laundering, since an entire segment of the informal sector escapes the ML/FT monitoring framework.

R: Increase awareness among reporting entities of suspicious transactions in terms of ML/FT, especially for small structures that do not have specific compliance skills. Madagascar's low level of banking activity also makes it essential to involve other reporting professions (real estate, consulting and representation, vehicle dealers, etc.).

Measures for the direct recovery of property

Resources, funds or property, as well as instruments confiscated in the context of legal proceedings in Madagascar belong to the Malagasy State. The Malagasy State enjoys the power of disposal over property confiscated on its territory, even for judicial confiscation proceedings following the request of a foreign State, unless there is an agreement to that effect between the two States. In the absence of a specific bilateral judicial agreement between Madagascar and the claiming State, a foreign State's claim to a legitimate property right over property acquired in the context of corruption or money-laundering offences under the UNCAC is still difficult.

R: Implement the application of the UNCAC on the concept of legitimate ownership of the foreign state and its right to claim for property acquired through the carrying out of UNCAC offences and thereby attached to that foreign state.