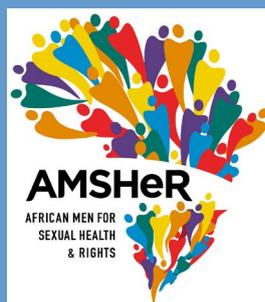


# Madagascar

## Civil Society Engagement Scan in Health Policy and Law



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Resilient nations.*

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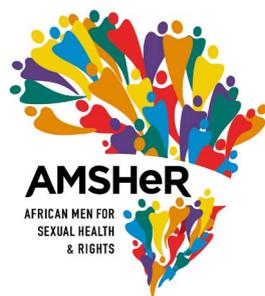
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# Madagascar

## Civil Society Engagement Scan in Health Policy and Law



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Resilient nations.*

# Contents

Foreword	6
Acknowledgements	8
Acronyms	9
Glossary of Terms	10
<b>Introduction</b>	<b>11</b>
<b>Purpose of the Engagement Scan</b>	<b>12</b>
<b>1 Legal Framework</b>	<b>14</b>
Constitution	15
Legislation and Codes	15
Secondary Sources	16
Customary law	16
Regional and International Law	16
<b>2 Key National Institutions and Processes Relevant to Law and Policy Reform</b>	<b>18</b>
Key Institutions and Bodies in the Executive	19
Legal and Policy Reform Relevant to the Executive	29
Key Institutions in the Legislature	31
Legal and Policy Reform Relevant to the Parliament	34
Key Institutions in the Judiciary	37
Judicial Processes	38
Key Administrative Institutions and Processes	39
<b>3 Regional Institutions and Processes</b>	<b>46</b>
Regional Institutions	47
Regional Processes	49

<b>4</b>	<b>International Institutions and Processes</b>	<b>52</b>
	International Institutions	53
	International Processes	54
<b>5</b>	<b>Key Recommendations to Address Gaps in the Legal and Policy Environment</b>	<b>58</b>
	Equality, non-discrimination and dignity	59
	Right to information	59
	Right to Association	60
	Right to Health	60
	Right to Justice and Security of the person	60
<b>6</b>	<b>Potential Opportunities</b>	<b>62</b>
	Equality, non-discrimination and dignity	63
	Right to information	63
	Right to Association	64
	Right to Health	64
	Right to Justice and Security of the person	64
<b>7</b>	<b>Timeline</b>	<b>66</b>
	<b>Appendices</b>	<b>68</b>
	Appendix A: African Commission Shadow Report Template	69
	Appendix B: Guidelines for submitting complaint to the African Commission	71
	Appendix C: Shadow Report Template for International Bodies	72
	Appendix D: Model Complaint Form for International Treaty Bodies	74

# Foreword

Madagascar has a young population, about 32% of its population is between 15-24 years old and projections show that this figure will double by 2025 (EUDEROI). The Malagasy youth participate actively in community based and local level initiatives, however they are not well represented in forums that formulate national policies and decide on programmes that affect their lives. This is attributed to the lack of competence of youth organizations to meaningfully participate and engage in the development space, and further limits their credibility in informing the development interventions, initiating and managing community-based development projects.

In terms of access to health, young Malagasy have the tendency to neglect their own health and have a low rate of attendance at healthcare centers due to several factors such as the quality of services provided, stigma and discrimination, health workers attitudes, availability of providers and negative reception received at these centers. The precariousness financial situation for funding health services and geographic distance is also a barrier to accessing services. Other issues include cultural beliefs, i.e. discussing sexual and reproductive health among young people in Madagascar remains a taboo, subject to limited information, poor dissemination channels. Notwithstanding the perceived high rates of STIs/HIV amongst young people, means of prevention remains unknown to many. Untreated mental health problems amongst adolescents have multiple consequences such as declining academic performance, unemployment, dependence on drugs, risky behavior including crime, self-harm, and even suicide, increase the risk of death, according to the Ministry of Youth and Sports.

Although Madagascar is among the countries where HIV prevalence has so far remained low, at 0.2% among the adult population aged 15-49, according to UNAIDS estimates in 2016, the latest behavioral and biological surveillance surveys carried out in the most-at-risk key populations confirm the concentrated type of epidemic, with prevalence's of 14.8% among MSM, or 1 out of 7 MSM would be HIV-positive in Madagascar, 8.4% among PWID and 5.6% among SW. Young people especially young key populations are part of these vulnerable groups. Despite this lower prevalence rate compared to other neighboring countries in the region, all the factors point towards the same trajectory of the explosion of the epidemic in the absence of any reinforced interventions aimed at behavioral change of the populations and setting scale of treatment of HIV cases.

Reducing stigma and discrimination of key populations in public service delivery and planning for these services is one of the priorities for inclusion in the policy making spaces. The country has committed to the achievements of the Sustainable Development Goals and targets therein. Civil society organisations note that implementation of SDG 3, "Enabling all to live in good health and promote well-being of all at any age" may not be realised. Some services related to young people's basic needs, such as health, education and social protection, remain a challenge. The lack of "young people voices" in Madagascar has resulted to the omission of the needs of young people in major strategic policy documents. The Engagement Scan will therefore serve as a tool that will be used to create awareness, empower young people and augment the voice of young people to meaningful participate and contribute to the broader policy discourse; engagement with policymakers and other

gate keepers on the needs of young people. The Engagement Scan also further provides more information on the different levels of engagement such as international, regional and national level. This tool is a living guide and will be updated regularly based on the changing environment in law and policy reform processes. Young people, in particular young key populations are encouraged to read this document and ensure that they are represented in the various platforms established in the country at all levels.

All the more so, in the texts and legal devices, the national strategic documents, it seems that the cases of the young key populations have not been treated in their specificities, and they have been engulfed in the problems of the general population.

# Acknowledgements

The Ministry of Public Health appreciates and acknowledges the contributions and inputs from the following institutions and individuals who contributed to the completion of this report.

## **Madagascar National Steering Committee:**

We are grateful for the leadership and invaluable support provided by the National Steering Committee members who contributed towards the finalization of the Civil Society Engagement Scan in Health Policy and law specifically RABETOKOTANY Rivosoa (National AIDS Commission), RAKOTOMALALA Aina Tantely (Ministry of Justice), Dr. Tiffana Marie Ange (Ministry de la Jeunesse et des Sports), RANDRIAMILAHATRA Emma (Ministère de la Santé Publique), RAZAFIMANANTSOA Léa (YKP), RAMAROZATOVO Rado, VERONIQUE Nanah (KP), Marie Isabelle (MAD'AIDS), RANDRIAMALALARISON François Xavier (Parliament), RAZAFIMANANTSOA Lobo Hanitriniaina (Parliament), RAVELOSON Clarimond (UNAIDS), Mathieu Rabarinirina (AMSHeR) Deleau Razafimanantsoa and RAMANANTSOA Herilanto (UNDP).

## **Engagement Scan Consultant:**

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## **External Contributors to Supporting Evidence:**

Our sincere gratitude also goes to all the key informants and focus group participants who contributed and shared their experiences on law and policy reform processes in Madagascar. Appreciation also goes to the RSCA UNDP HHD Team for the coordination of this project Mesfin Getahun, Senelisiwe Ntshangase and Ian Mungall.

Lastly, we would like to thank the Netherlands Government Ministry of Foreign Affairs and United Nations Development Programme for the financial support extended towards this project focused on young key populations.

# Acronyms

ACHPR	African Charter on Human and Peoples' Rights
African Commission	African Commission on Human and Peoples' Rights
African Court	African Court on Human and Peoples' Rights
AU	African Union
CSOs	Civil Society Organisations
ES	Engagement Scan
LEA	Legal Environment Assessment
MP	Member of Parliament
NGOs	Non-governmental organisations
NICHR	National Independent Commission for Human Rights
UN	United Nations
UPR	Universal Periodic Review

# Glossary of Terms

**Accession to a treaty:** Accession is the act whereby a country accepts the offer or the opportunity to become a party to a treaty already negotiated and signed by other states. It has the same legal effect as ratification. Accession usually occurs after the treaty has entered into force. The Secretary-General of the United Nations, in his function as depositary, has also accepted accessions to some conventions before their entry into force. The conditions under which accession may occur and the procedure involved depend on the provisions of the treaty. A treaty might provide for the accession of all other states or for a limited and defined number of states. In the absence of such a provision, accession can only occur where the negotiating states were agreed or subsequently agree on it in the case of the state in question.

**Declarations, guidelines and principles:** declarations, guidelines and principles are adopted at the international or regional level and contribute to the understanding, implementation and development of obligations of international and regional law.

**Human rights treaties:** Human rights treaties are referred to as a Convention, Covenant, Charter or Protocol. The core human rights treaties confer legal form on inherent human rights and develop the body of international human rights. The human rights treaties are ratified or acceded to by countries on a voluntary basis; once a country becomes a party to a treaty, it takes on the legal obligation to implement its provisions.

**Optional Protocol:** An optional protocol is a treaty that complements and adds to an existing human rights treaty. For this reason, only countries that have already agreed to be bound by a parent treaty may choose to be parties to optional protocols. Optional Protocols to human rights treaties may either provide for procedures with regard to the treaty or address a substantive area related to the treaty. Optional Protocols to human rights treaties are treaties in their own right, and are open to signature, accession or ratification by countries who are party to the main treaty.

**Ratifying a treaty:** Ratification of a treaty is when a country indicates its consent to be bound to a treaty. The institution of ratification grants states the necessary time-frame to seek the required approval for the treaty on the domestic level and to enact the necessary legislation to give domestic effect to that treaty.

**Signing a treaty:** Signing a treaty indicates the willingness of the signing country to continue the treaty-making process. The signature qualifies the signing country to proceed to ratification, acceptance or approval. It also creates an obligation to refrain, in good faith, from acts that would defeat the object and the purpose of the treaty.

# Introduction

Madagascar, also known as the Malagasy Republic is an independent African state situated in the Indian Ocean. It has 19 tribes: Sihanaka, Merina, Antesaka, Antambahoaka, Antandroy, Antefasy, Antemoro, Tsimihety, Bara, Betsileo, Bezanozano, Betsimisarka, Sakalava, Vezo, Mahafaly, Antankarana, Makoa, Tanala, and Antanosy. The official language of Madagascar is Malagasy and French.

Prior to 1896, Madagascar was under a monarchy regime. From 1896 to 1960, it was a French colony. Madagascar gained independence in 1960 and legal reforms were introduced by the Government in the 1990s. The country experienced political unrest in 2009 when President Marc Ravalomanana was made to resign, and presidential power transferred to Andry Rajoelina. Constitutional governance was restored when Hery Rajaonarimampianina was named President in January 2014 following the 2013 elections.

The HIV prevalence among adults in Madagascar is 0.3% as of 2017. There were 1600 AIDS-related deaths in 2017. However, the HIV prevalence is significantly higher among key populations. According to the UNAIDS latest statistics, HIV prevalence among sex workers is 5.5%; 14.9% among men who have sex with men; and 8.5% among people who inject drugs. There is no information on HIV prevalence among prisoners and transgender persons.

Civil society organisations (CSOs) in Madagascar is weak, primarily due to the limitations placed on civil society by government. The state has ensured that CSOs activism is limited only to the political sphere and not social justice agenda. This is further compounded by the lack of information or absence of transparency in sharing of information. Citizens are also not empowered to participate in the development of national policy and social programmes including the capacity to speak up individually or collectively to demand transparency and accountability.

Associations are defined as the agreement “by which two or more people permanently apply their knowledge or activities, with the aim other than sharing profits” must be registered. Most are registered as CSO. CSOs include informal community-based organizations, development associations working on one or several issues, such as for example health, environment, gender, education, human rights, with only intermittent funding. There are also permanent and professional organizations, which often call themselves non-governmental organisations although they are legally not, with salaried staff, offices, equipment and more regular sources of income, although these represent a small minority of CSOs in Madagascar. Finally, other groups include well-funded business associations providing support to the private sector; and professional associations or guilds bringing together professionals within their professional categories.

Other associations register as non-governmental organisations (NGOs). NGOs often have stronger capacities than CSOs and are effective service providers. But there are few in Madagascar, due to the requirements for registering, such as demonstrating a sustained source of income.<sup>1</sup>

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1 World Bank. Madagascar Governance and Development Effectiveness Review A Political Economy Analysis of Governance in Madagascar (December 2010) available at [http://siteresources.worldbank.org/INTMADAGASCARINFRENCH/Resources/ESW\\_Gouvernance.pdf](http://siteresources.worldbank.org/INTMADAGASCARINFRENCH/Resources/ESW_Gouvernance.pdf)

# Purpose of the Engagement Scan

This Engagement Scan (ES) seeks to address barriers key populations face in accessing health care services, and in particular the extent to which the legal and policy environment complies with relevant human rights obligations as provided in the Constitution and under global and regional human rights treaties. The purpose of the ES is to provide a tool for CSOs working on HIV and sexual and reproductive rights to plan for and strategically engage in and advocate for legal and policy reform and action where gaps and challenges have been identified while at the same providing opportunities for strengthening existing mutually-beneficial partnerships with government and other relevant key actors in the country.

The ES is comprised of two components: a timeline/calendar of events and a supporting document. The supporting document provides a legal and policy background, background on the various institutions relevant to legal and policy reform, particular processes relevant for legal and policy reform and, specific and strategic key opportunities for which CSOs can plan.

The ES is a living document. The timeline/calendar of events should be regularly updated with new information on approaching advocacy opportunities. The supporting document should be reviewed and updated every five years to take into account possible realignment of government ministries, government departments and quasi-government institutions and roles and mandates.

The ES is organized as follows:

**Section 1:** Provides a background on the legal framework in Madagascar, including the laws and the international and regional human rights treaties applicable in Madagascar.

**Section 2:** Outlines the key national institutions and processes relevant when attempting legal or policy reform. This includes the Executive, Legislative, Judiciary and Administrative bodies, and traditional bodies.

**Section 3:** Discusses the various regional institutions and processes that can change law and policy.

**Section 4:** Discusses the relevant international institutions and processes that can change law and policy.

**Section 5:** Covers the key recommendations identified in the Legal Environment Assessment to address the gaps in the legal and policy environment.

**Section 6:** Lists the potential opportunities for advocacy to address some of the key recommendations identified in section 6. It identifies various advocacy strategies for addressing the gaps in the law and policy environment.

**Section 7:** Provides a timeline listing key dates for potential advocacy opportunities. The timelines need to be regularly updated as more information on key dates is available.





**1**

# Legal Framework

In addition to the Constitution, as a civil law country, the relevant sources of law are written in codes. The following are the main relevant laws codes and decrees for HIV-related work:

- Madagascar Constitution 2010
- Law n°2003-044 dated on July 28, 2004 relating to Labor Code
- Law n°2005-040 dated on February 20 relating to fight against Aids and protection of People Living with HIV/Aids' rights.
- Decree n°2006-902 dated on December 19, 2006 relating to fight against HIV and people living with HIV/AIDS's rights
- Law n°2011-22 dated on July 15, 2011relating to Public Health Code
- Code of Civil Procedure
- Criminal Code
- Code of Criminal Procedure

Secondary sources of law include:

- Court Reports
- Case law
- Customary law

In addition, customary law is largely relevant in Madagascar.

### Key Opportunity

Based on Madagascar's ratifications, individual complaints can be made for violations under the International Covenant on Civil and Political Rights to the Human Rights Committee.

In addition, the Committee against Torture can carry out confidential inquiries for violations of the respective conventions.



## Constitution

The Constitution amended in 2010, guarantees several fundamental rights, including the right to free expression, association and assembly; liberty; health; and education.

## Legislation and Codes

As a civil law country, much of the relevant laws in Madagascar are written codes. Relevant legislation includes the above-mentioned laws, ordinance, decrees and orders. In addition,

there are few codes including the Code of Civil Procedure, the Criminal Code and the Code of Criminal Procedure.

## Secondary Sources

*Secondary sources of law, which courts reports and customs, are persuasive.*

## Customary law

Customary law is often not written or codified though some customary law is part of statutes. Local courts are widely in place to administer customary law, especially cases relating to marriage, property, and inheritance.

## Regional and International Law

Madagascar is signatory to many international and regional treaties. The rights in the treaties are justiciable in Madagascar once they have been ratified.

Madagascar has ratified a number of global and regional human rights treaties relevant to HIV

Treaty	Date of ratification/ accession
International Convention on the Elimination of All Forms of Racial Discrimination	07 Feb 1969
International Covenant on Civil and Political Rights	21 Jun 1971
International Covenant on Economic, Social and Cultural Rights	22 Sep 1971
Convention on the Elimination of All Forms of Discrimination against Women	17 Mar 1989
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	13 Dec 2005
Convention on the Rights of the Child	19 Mar 1991
Convention on the Rights of Persons with Disabilities	12 Jun 2015
Optional Protocol of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	21 Sep 2017
Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict	22 Sep 2004
Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography	22 Sep 2004

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	13 May 2015
Optional Protocol to the International Covenant on Civil and Political Rights	21 Jun 1971
Second Optional Protocol to the International Covenant on Civil and Political Rights	21 Sep 2017
African Charter on Human and Peoples' Rights	9 Mar 1992
African Charter on the Rights and Welfare of the Child	30 Mar 2005

Madagascar has signed two relevant global and regional human rights treaties. Signing a treaty obligates the country to adhere to the object and purport of the treaties.

Treaty	Date of signature
International Convention for the Protection of all Persons from Enforced Disappearance	06 Feb 2007
Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa	28 Feb 2004

There are a number of international and regional treaties Madagascar has yet to ratify:

Treaties	Status
Optional Protocol to the International Covenant on Economic, Social and Cultural Rights	Not ratified
Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women	Not ratified
Optional Protocol to the Convention on the Rights of the Child	Not ratified
Optional Protocol to the Convention on the Rights of Persons with Disabilities	Not ratified



## 2

# Key National Institutions and Processes Relevant to Law and Policy Reform

There are a number of key national institutions/offices that are relevant to law and policy reform. These are as follows:

- The President
- Prime Minister
- Council of Ministers
- National Assembly
- Senate
- Parliamentary Portfolio Committees
- Judiciary, including the High Constitutional Court, the Supreme Court, Courts of Appeal, Tribunals, and the High Court of Justice
- Ombudsman
- National Independent Commission for Human Rights
- Rights and HIV Commission
- Traditional Authorities

The key processes that are covered in this section are as follows:

- Drafting and promulgation of policies
- Law reform
- Constitutional reform
- Litigation
- Complaint to Ombudsman
- Complaint to National Independent Commission for Human Rights

## **Key Institutions and Bodies in the Executive**

The relevant institutions for policy and legal reform based in the Executive branch are as follows:

- The President
- The Prime Minister
- The Council of Ministers
- The Council of Government
- The Ministry submitting a bill

## Office of the President

The President wields enormous power in Madagascar. S/He is the Head of State and the Supreme Head of the Armed Forces.

The relevant functions of the President are as follows:

- Negotiate and ratify treaties.
- Make appointments through the Council of Ministers to high offices of the State; s/he may delegate this power to the Prime Minister.
- Appoint the Prime Minister.
- May refer matters directly, if needed, to administrative agencies.
- The right of pardon.
- Promulgate laws passed by the legislature.
- Dissolve the National Assembly.
- Overseeing the States General Policy.



### Contact details

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### How CSOs can engage with the Office of the President

CSOs can approach the Office of the President to discuss issues relating to social justice related initiatives such as HIV and legal reform, especially when draft legislation is being submitted to the Council of Ministers. The CNLS is also attached to the Presidency, some important issues relating to attribution of CNLS might be discussed before the Secretariat- General of the Presidency.

The President is also in charge of the State's General Policy and discussing HIV/AIDS with the President for inclusion of HIV and AIDS in the States General Policy could be helpful.

## Prime Minister

The Prime Minister is appointed by the President and is the Head of the Administration. The Prime Minister is responsible for the following:

- Direct the activity of the Government and shall be responsible for coordinating the activities of the Ministries.
- Assure the execution of laws.
- Assure the execution of judicial decisions.
- Assure the proper functioning of public services and the proper management of public finance.
- Assure public security and maintain order, while respecting fundamental liberties and human rights: for this purpose, he shall have at his disposal all police, security, and defense agencies.
- Appoint civil and military officials as well as other State officials.
- Preside over the Council of Government.
- Propose bills to be submitted to Parliament;
- Exercise regulatory power;
- Create plans for economic and social development as well as land development;
- Negotiate and sign international agreements which are not submitted to ratification.

### Contact details

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<http://www.primature.gov.mg/>



### How CSOs can engage with the Office of the Prime Minister

CSO can approach the Prime Minister to discuss important laws and policy reform as the Prime Minister has the right to initiate a legislation, and propose bills including policies and national development plans. CSOs can also raise issues pertaining to failed implementation of these policies and enforcement of protective legislation by the government or implementors.



## Council of Ministries

The key Ministries for HIV-related advocacy are as follows:

- Ministry of Health and Family Planning
- Ministry of Justice

- Ministry of Civil Service, Labor and Social Laws
- Ministry of Economy, Finance and Budget
- Ministry of Education
- Ministry of Population, Social Protection and Leisure
- Ministry of Scientific Research

## **Ministry of Health and Family Planning**

The functions of the Ministry of Health and Family Planning include the following:

- to implement the framework for the application of general guidelines on health policy;
- to coordinate the implementation of the National Health Policy with all national and international partners through the promotion of the well-being of the population and the health/environment dimension in all plans, programs and development projects;
- to monitor and evaluate health-related programming; and
- to supervise relevant institutes, bodies and public institutions.

The Ministry of Health and Family Planning is responsible for the implementation of the:

- National Health Policy, version 2015-2019
- National Strategic Plan to combat HIV/AIDS 2018-2021
- Law No. 2005 040 of 20 February 2006 on the fight against AIDS and the protection of the rights of people living with HIV/AIDS.
- Decree No. 98-945 of the Code of Medical Ethics, 4 December 1998
- Law No. 2011-002 of 15 July 2011 establishing the Public Health Code
- Draft Law No. 002/2017 of 08/02/2017 provide general rules on the health of Reproduction and family planning
- Decree No. 98-945 of the Code of Medical Ethics, 4 December 1998
- Decree No. 2014-130 of 12 March 2014 Modalities for the implementation of the National policy on the response to HIV and AIDS in the world of work.



### **How CSOs can engage with the Ministry of Health and Family Planning**

- CSOs can approach the Ministry of Health and Family Planning to provide evidence on barriers related to accessing health services by key populations;
- Participate as partners in the various committees established by the Ministry;
- Conduct specific analysis; and present position papers to the Ministry of Health.
- CSOs can also discuss and raise concerns regarding specific gaps in the legal and policy framework including service delivery.

### Contact details:

Website: <http://www.sante.gov.mg>



## Ministry of Justice

The functions of the Ministry of Justice including the following:

- To strengthen the anti-corruption system, including strengthening sanctions for corruption in the judicial system;
- To improve the legal environment to ensure speed and transparent trials by reforming laws to simplify court proceedings and business development;
- To accelerate the processing of pending cases in all jurisdictions;
- To promote respect for human rights and strengthen their protection; and
- To humanize detention conditions

The MOJ is responsible for the implementation amongst other

- Code Criminal Updated as at March 31, 2005
- Code of Civil Procedure
- Domestication of the Human Rights Conventions
- Law No. 2007-038 of 14 January 2008 amending and supplementing certain provisions of the Penal Code on combating trafficking in persons and sex tourism
- Law No. 2008-007 of 25 June 2008 Authorizing the ratification of the Convention on the suppression of the Traffic in persons and the exploitation of the prostitution of others.

### How CSOs can engage with the Ministry of Justice (MoJ)

- CSOs can approach the MoJ with specific concerns relating to gaps in the law or areas that require law reform.
- CSOs can engage the MoJ on relevant legislative and policy reform and policies.
- CSOs can draft shadow Bills and present to the Ministry of its consideration
- CSO can also engage the MoJ on the implementation of the Constitution and human rights enshrined therein.



### Contact details:

Website: <http://www.justice.mg/>



## Ministry of Economy, Finance and Budget

The functions of the Ministry of Economy, Finance and Budget include the following:

- Design and implement the financial, fiscal and budgetary policy of the State;
- With other entities, the management of the economy and control of major economic, financial and monetary balances which include analysis likely to inform the choices and decisions of the Government in budgetary and financial matters;
- Ensure the management, monitoring and evaluation of external aid and contribute to the harmonization of cooperation with donors;
- Supervise financial institutions and public institutions; and
- Contribute to the smooth development of the Malagasy institutional environment in the context of decentralization and the regulation of all economic sectors.

Examples of legislation and policies implemented by this Ministry may include:

- National Development Strategy
- Macro and micro development economic policies
- Law No. 90-030 of 19 December 1990 on the national population policy for the Development Economic and Social



### How CSOs can engage with the Ministry Economy, Finance and Budget

- CSOs can actively participate in the development of national public policies and National Development Strategies to ensure inclusion of communities left behind in economic development
- CSOs can analyse national budget and advocate for resource allocations to strategic social sectors in line with International commitments
- CSOs can disseminate and create awareness on public policies and state budget for effective monitoring of budget commitments
- Monitor implementation of public infrastructure development and engage the ministry in cases where communities are adversely impacted by that development initiative



### Contact details:

Website: <http://www.mefb.gov.mg/>

## Ministry of Civil Service, Labor and Social Laws

The Ministry of Civil Service, Labor and Social Laws is in charge of designing and monitoring the implementation of the government's policy relating to civil service, labor and social laws. The functions of the Ministry of Civil Service, Labor, and Social Laws include the following:

- Develop and implement a civil service reform program to make it more effective;
- Ensure that labor market rules promote competitiveness while protecting the fundamental rights of workers and their social security; and
- Establish an efficient and effective communication strategy with the social partners to maintain a sustainable social peace with a view to productivity and improving working conditions.

Examples of legislation and policies implemented by this Ministry may include:

- Labour Laws Policies and guidelines
- Act No. 2003-044 establishing the Labour Code
- Law No. 2005 040 of 20 February 2006 on the fight against AIDS and the protection of the rights of people living with HIV/AIDS.
- Law No. 2007-022 of August 20, 2007 relating to marriage and marital plans
- Law No. 2007-023 of 20 August 2007 on the rights and protection of children

### How CSOs can engage with the CSLSL

- CSOs can provide evidence on relevant barriers to social services facing key populations;
- Participate as partners in the various committees established by the Ministry;
- Conduct specific analysis; and present position papers to the Ministry.
- CSOs can also discuss and raise concerns regarding specific gaps in Civil Service, Labor and Social Laws and policy framework including the lack of implementation thereof.



### Contact details:

Website: <http://www.mfptls.gov.mg/>



## Ministry of Youth and Sports

The functions of the Ministry of Youth and Sport are in accordance with the National Youth Policy and Legislation.

- to enable young people to cope with the demands and constraints of a modern society that is constantly changing and changing from the traditional centralized system to autonomy or decentralization;
- to encourage young people to take charge of themselves in the development of self-help and mutual assistance;
- to prevent young people from all forms of exploitation and exclusion, against any factor of social deviance and from any activity likely to jeopardize their development and integral development as human beings;
- to empower young people to fully enjoy and exercise their rights and to carry out their duties;
- develop a spirit of altruism and respect for the environment among young people;
- promote a national ethic of behaviour through the development of an attitude of appropriation and globalization of the authenticity of Malagasy moral and cultural values;
- insert and/or engage young people in government outreach and modernization in the fight against HIV/AIDS, endemic diseases, drug control, corruption and poverty;
- to involve young people in the decision-making process, particularly in decisions about them;
- to bring young people towards their independence and social responsibility.

The Ministry of Youth and Sport is responsible for the implementation of

- the National Youth Policy
- Law No. 2015-038 amending and supplementing certain provisions of Act No. 2004-028 of 09 September 2004 on national Youth Policy
- Law n° 2004-028 of 09/09/2004, modified and completed by law n° 2015-038 of 02/03/2016



### How can CSO engage with the Ministry of Youth and Sport

- CSOs and KP led organisations and association can engage with the Ministry of Youth and Sports on relevant barriers facing key populations, especially young key populations on the rights of YKPs;
- Participate as partners in the various committees established by the Ministry of Youth;
- Ensure that MYS policies and programmes are inclusive of the needs of young key populations.

## Ministry of Education

The functions of the Ministry of Education include the following:

- to provide quality education for all Malagasy people and to eliminate illiteracy and poverty;
- to create an efficient basic and preschool education system;
- to improve the secondary education system;
- to implement a strategy to eliminate the illiteracy of adolescents and adults;
- to promote the development of fundamental knowledge, civility and know-how essential to the economic, social and cultural development of Madagascar;
- to disseminate this knowledge by all means to the different layers of the Malagasy population, with a view to solving their practical problem in the direction of progress; and
- to supervise public and private educational institutions within its field of competence, as well as supervising or related bodies whose object is related to education.

Examples of legislation and policies implemented by this Ministry may include:

- National Education Policy
- Law No. 2007-023 of 20 August 2007 on the rights and protection of children

### How CSOs can engage with the Ministry of Education

- CSOs can provide evidence on relevant barriers related to access to education as faced by key populations i.e. the impact of bullying related to gender identity and sexual orientation
- Participate as partners in the various committees established by the Ministry;
- Conduct specific analysis related to access to education and present position papers to the Ministry i.e. access to comprehensive and inclusive sexual education and HIV
- CSOs can also discuss and raise concerns regarding specific gaps in the education system including the lack of implementation.
- Participate in community school-based management structures to advocate for improved education system.
- Monitor school's performance and advocate for quality education.



### Contact details:

Website: <http://www.education.gov.mg/>



## Ministry of Population, Social Protection and Leisure

The Ministry of Population, Social Protection and Leisure is in charge of designing, implementing, piloting and monitoring the General Policy of the State with regard to population, cohesion and social development, promotion of the rights of the people, equity and social protection.

Examples of legislation and policies implemented by this Ministry may include:

- Decree No. 2001-162 of 21 February 2001 Implementing Act No. 97-044 on the rights of persons with disabilities.
- Decree No. 2006 902 of 19 December 2006 implementing Law No. 2005 040 of 20 February 2006 on the fight against AIDS and the protection of the rights of people living with HIV/AIDS



### How can CSOs engage with the MPSPL?

- CSOs can engage with the MPSPL on issues affecting the rights of young key populations
- Participate as partners in the various committees established by the Ministry;
- Advocate for inclusion in the development of social protection programmes



### Contact details:

Website: <http://www.population.gov.mg>

## Ministry of Scientific Research

The functions of the Ministry of Scientific Research include the following:

- Ensure the improvement, the efficiency of university governance and keeping social peace in the academic world;
- Establish a sustainable competitive and quality higher education;
- Prioritize research topics;
- Promote the products of scientific research by creating an entrepreneurial strategy in order to achieve the best results from the research;
- Systematize investment option for research results so that it becomes a real regenerative source of financial resources; and
- Promote professional training.

### How can CSOs engage with the Ministry of Scientific Research?

- CSOs can engage or partner with Universities in conducting specific targeted research on areas relevant to Key populations
- Facilitate the development of a research agenda that can contribute towards policy change and CSO advocacy for reform
- Actively participate in committees and public activities led by the Ministry



### Contact details:

Website: [www.mesupres.gov.mg](http://www.mesupres.gov.mg)



Overall CSOs can approach various ministries to provide relevant evidence on key issues, such as barriers related to accessing health services by key populations; discuss punitive laws that are a barrier to access public services; participate as partners in the various committees established by the different Ministry; conduct specific analysis and contribute to policy debates; and present position papers to the Ministries.

CSOs can also approach the Government structures to discuss and raise concerns regarding specific gaps in the legal and policy framework. This can be done through one-on-one meeting or targeted stakeholders' gathering in a form of roundtable, seminar, breakfast meeting or high-level consultation/dialogue.

## Legal and Policy Reform Relevant to the Executive

The key reform processes relevant to the Executive are the drafting and promulgation of policies and the drafting of Bills.

### Drafting and Promulgation of Policies

Policy making is a central function of the Government, and therefore a key responsibility of any Ministry. Policies are formulated and reviewed within the relevant ministerial department. For instance, the Ministry of Health would be responsible for drafting and reviewing HIV-related policies.

The relevant Ministries may organize a number of consultative meetings with various stakeholders regarding the draft policy. Taking consideration of the information generated during the consultative meetings and any other written submissions, the Ministry finalises the draft policy. However, the extent to which the Ministry seeks external inputs is dependent on the particular policy and Ministry. Further, who the Ministry seeks input from is also determined on a case-by-case basis.

## Chart 1: How a policy is drafted and promulgated

Ministry drafts new or revised policy based on a development challenge or issue



External inputs sought: meetings with stakeholders and written submissions.



External inputs incorporated and new or revised policy finalised



## How CSOs can engage in policy formulation and review

CSOs can engage with the policy formulation/review process:

- Engage with and sensitize Ministerial staff on critical areas of interest that affect citizens or a specific community.
- Provide oral and written submissions to Ministerial staff when they call meetings to discuss specific policies or review of policy.
- Strengthen capacity of the affected community to engage with policy makers
- Request meeting with ministerial staff to provide input on policies or proposed policies.
- Meaningful participation in ministry-organized meetings to provide relevant input.
- Provide an analytical paper or position paper on policy issues for consideration

## Drafting of Bills

An Act of Parliament is a Bill which has been presented in both Houses of Parliament and has been assented to and signed by the President in accordance with the Constitution.

Draft bills or legal amendments can originate within the relevant Ministries. The bill would be prepared both by the relevant technical department and the legal department of the Ministry. Stakeholders may be involved from the beginning of the drafting process. There is usually a select committee responsible for drafting. For critical legislation and when the budget permits, the Ministry would hold consultative workshops prior to the final validation of the draft bill.

The draft bill is then submitted first to the Council of Government and then to the Council of Ministers for approbation. The bill is then introduced in Parliament. The Parliamentary process is discussed in the sections below.



## How CSOs can engage with the process of drafting of Bills

- Engage with and sensitise ministerial staff on the draft bill.
- Engage with relevant ministerial officials to discuss ongoing law reform processes or the potential of drafting new laws.
- Submit position or issue paper to the relevant Ministry drafting the bill to ensure alignment to human rights principles
- Submit shadow Bills or principles to relevant ministries.
- Provide input to Ministry after an initial draft of bill has been drafted.
- Sensitise stakeholder on the Bill and possible implications (positive or negative)

## Key Institutions in the Legislature

Parliament is comprised of two chambers the National Assembly and the Senate. The functions of each are discussed below.

### National Assembly

The National Assembly has 151 members, elected for a five-year term. The National Assembly generally meets in two ordinary sessions every year. The first session begins on the first Tuesday in May and the second, which is devoted principally to the adoption of the budget on the third Tuesday in October. The Prime Minister or one-third of members of National Assembly can call an extraordinary session, which can last up to 12 days. The call shall be made through a decree of the President of the Republic on Council of Ministers.

The relevant functions and powers of the National Assembly are as follows:

- To debate and pass legislation;
- To agree to the ratification of or accession to international agreements which have been negotiated and signed by the Executive;
- Participate in relevant international meetings; and
- To uphold the Constitution and ensure the government acts in accordance with the Constitution and national interest.

### Portfolio Committees

The National Assembly has 31 commissions which focus on particular topical areas. The commissions mandate is undertaking research on bills and oversee all the processes relating to the Bill including preparing for parliamentary debates at plenary sessions.

The National Assembly Commissions as per the last Parliament (2018) are as follows:

<ul style="list-style-type: none"> <li>• Strategic Resources</li> <li>• National Defense</li> <li>• Foreign Affairs</li> <li>• Finance and Budget</li> <li>• Energy and Water</li> <li>• Industry and Development of the Private Sector</li> <li>• Law</li> <li>• Economy and Planning</li> <li>• Interior Affairs and Decentralization</li> <li>• Post, Telecommunication and New Technology</li> <li>• Agriculture and Development of Rural zone</li> <li>• Environment, Ecology and Forest</li> <li>• Transport and Meteorology</li> <li>• Publics Works</li> <li>• Breeding and Animal Protection</li> </ul>	<ul style="list-style-type: none"> <li>• Infrastructure and Equipment</li> <li>• Land use and Land tenure</li> <li>• High Education and Scientific Research</li> <li>• National Education</li> <li>• Technical Education and Vocational training</li> <li>• Public Order</li> <li>• Public health</li> <li>• Trade and Consumption</li> <li>• Fisheries and Fishing Resources</li> <li>• Communication, Information and relations with Institutions</li> <li>• Youth and Sport</li> <li>• Civil service, labor and social laws</li> <li>• Population and social protection</li> <li>• Crafts and tourism</li> <li>• Art, culture and heritage</li> <li>• Gender equality and development</li> </ul>
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The Commissions may change with each government. Each Commission works with the responsible Ministry on legislation reform. i.e. The Public Health Commission is the one in charge of HIV related legislation.

### Visiting the National Assembly

Sessions of National Assembly are public. Identification cards will need to be provided and the public is allowed to visit subject to capacity of the room. Visitors cannot participate in debate.



### Contact details

Assemblée Nationale - Antenimierampirenena  
Palais de Tsimbazaza B.P. 704, 101 Antananarivo  
Email: [sg@assemblee-nationale.mg](mailto:sg@assemblee-nationale.mg)



## How CSOs can engage with the National Assembly

There are a number of ways CSOs can engage with the National Assembly:

- Visit the National Assembly when it is in session to learn more about how it operates.
- Reach out to specific members of the National Assembly seeking them to raise particular issues in the National Assembly through questions to the relevant Government Ministers or through moving motions for discussion of the issue/s by National Assembly.
- CSOs can petition members of the National Assembly on specific legal changes or lobby for specific oversight over the Executive.
- Send written submissions to the relevant Commission on specific bills it is considering.
- Request meetings with the relevant Commission to discuss specific issues and bills.

## The Senate

There are 63 Senators, who are elected to a five-year term. Two-thirds of the Senate shall consist of an equal number of members elected in each electoral district by elected representatives of the territorial entities, and one-third shall consist of members representing economic, social, cultural, and religious groups appointed by the President of the Republic upon nomination by legally constituted organizations and groups. The Senate examines public and private bills and must be consulted by the Government on economic, social, and territorial questions.

The Senate meets during sessions of the National Assembly. It can also meet in special session at the request of the Government. In that case, its agenda shall be limited by the Government. When the National Assembly is not in session, the Senate may only discuss questions upon which the Government has consulted it, to the exclusion of legislative bills.

## Senate Portfolio Committees

The relevant Senate Committees are as follows:

- Finance, economy and plan
- Judicial, civil service, labor and social laws
- Rural development and infrastructure
- Social, cultural and communication
- Defense and security
- Interior, land supply and decentralization
- International relations

The Committees are tasked with providing advice to the Senate when a bill relevant to their topical area is submitted before the Senate or when requested by the President of the Senate.

i.e. the Social, Cultural and Communication Committee is responsible for HIV-related legislation.

### Visiting the Senate

Sessions of the Senate are public.

Identification cards are required for entry and the public can visit subject to capacity of the room.

Visitors cannot participate in Parliamentary debates.



### Contact details:

Palais de Verre Anosikely, Antananarivo. Tel : (261) 34 31 997 26  
Email: [sg@senat.gov.mg](mailto:sg@senat.gov.mg) /  
<http://www.senat.mg>



### How CSOs can Engage with the Senate

- Visit the Senate when it is in session to learn more about how it operates.
- Reach out to specific members of the Senate seeking them to raise particular issues in the National Assembly through questions to the relevant government ministers or through moving motions for discussion of the issue/s by Senate.
- CSOs can petition members of the Senate on specific legal changes or lobby for specific oversight over the Executive.
- Send written submissions to the relevant Committee on specific bills it is considering.
- Request meetings with the relevant Committee to discuss specific issues and bills.

## Legal and Policy Reform Relevant to the Parliament

The key reform processes relevant to the Parliament are as follows:

- Law Reform
- Law Review and
- Enacting New Legislation

For a bill to become a law, it must pass or be approved by the National Assembly and the House of Senate and be assented to by the President.

### **Who can introduce a bill?**

The Prime Minister, the deputies or a Member of Parliament (MP) can introduce a bill in Parliament. A bill introduced by a Minister is an initiative de lois. While a bill introduced by an MP is a proposition de lois. Generally, for bills introduced by the Government, they are drafted within the relevant Ministry and finalized within the government, submitted to the Council of Ministers with the President of the Republic before being submitted to Parliament for consideration.

### **What happens once the bill is introduced in the Parliament?**

The bill first is with the relevant Committee, a specialised group of representatives appointed by Parliament scrutinise the bill and make necessary amendments. The Committee is then submitted before the assembly for a first reading and debate.

The bill is read for the first time in Parliament as the first reading. This serves as an initiation or notification of the proposed bill to the members of the house. The first reading is only a notification of existing bills. After the first reading the National Assembly or Senate can decide that the Committee needs to work more on the bill. Once that is done, the bill is presented as the second reading stage where debate on the proposed bill is facilitated. Members debate and vote on the bill and it is transferred to the other House to follow a similar procedure.

### **Presidential assent**

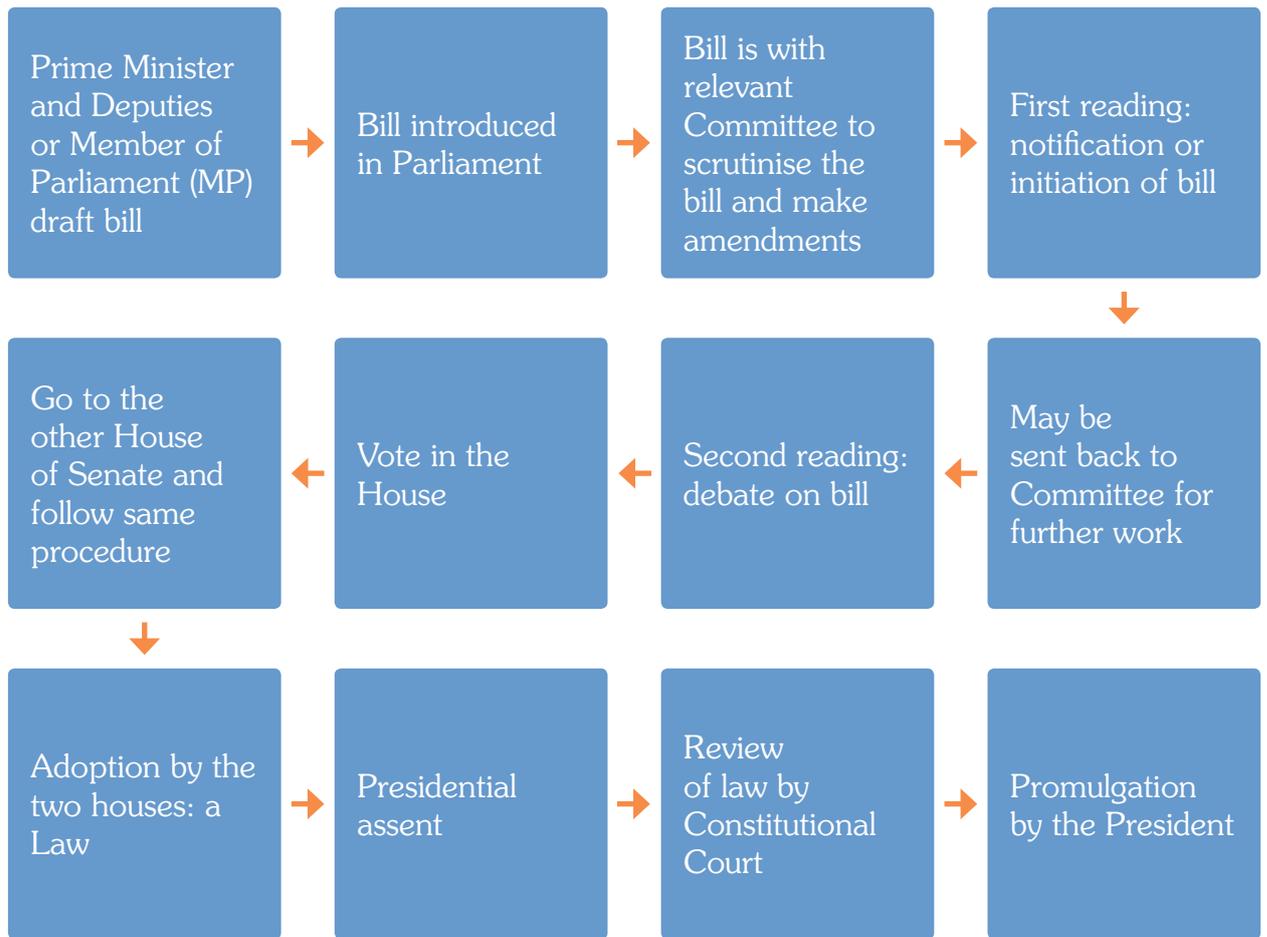
The President has 21 days to promulgate the law or it is returned to the National Assembly for further reconsideration. If the President decides to promulgate the law, it is submitted to the High Constitutional Court for constitutional screening, to ensure that it complies with the provisions of the Constitution. Once the Bill is cleared by the High Constitutional Court, the President then assent into law.

#### **How CSOs can engage in the law reform process**

- Engage with and sensitize Parliamentarians regarding relevant issues.
- CSO can work with a Member of the National Assembly to introduce a proposition de lois.
- Monitor closely the work and sessions of relevant Commissions, especially those that monitor the government ministries that implement laws, policies and programmes that directly affect them.
- Strengthen capacity of MPs or sensitize Portfolio Committee Members on specific or critical issues for consideration when the Bill is being drafted.



## Chart 2: How a Bill becomes a Law



## Constitutional Reform

The President acting in the Council of Ministers or with the National Assembly upon the proposal of one-third of its members can seek to amend the Constitution. The bill or proposal for amending the Constitution needs to be approved by three-fourths (3/4) majority of the members of the National Assembly and the Senate or joint house. The President can then submit the amendment to a referendum. The republican form of the State, territorial integrity, the principle of power separation, autonomy of local authorities, number and period of office of the President shall not be subject to amendment.



### How CSOs can engage with the Constitutional reform process

- Participate in any public hearings by making an oral or written submission.
- Raise awareness among key constituencies regarding any referendum.
- Encourage constituencies to exercise their right to vote

## Key Institutions in the Judiciary

The key institutions in the Judiciary are as follows:<sup>2</sup>

- High Constitutional Court
- Supreme Court
- High Court of Justice
- Other courts

### High Constitutional Court

The High Constitutional Court is responsible for ruling on the constitutionality of treaties, laws, ordinances, and regulations of territorial entities, as well as jurisdictional conflicts among two or more State institutions and between State institutions and the decentralized territorial entities. The High Constitutional Court consists of nine members with a single seven-year term. Three of the members shall be appointed by the President of the Republic acting in the Council of Ministers, two by the National Assembly, two by the Senate, and two by the Superior Council of Magistrates. The President of the Constitutional Court shall be elected by its members. This election shall be announced by the President of the Republic.

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

Ordinances, before their promulgation, and internal regulations of each Assembly, before taking effect, shall be submitted to the High Constitutional Court for a ruling on their constitutionality. The High Constitutional Court may be consulted by public authorities for an advisory opinion on the constitutionality of any decree.

### Council of State

The Council of State may annul actions of the administrative authorities and may rule on various administrative decisions and on contested claims in fiscal matters. It shall be the Court of Appeal for judgments rendered by various administrative bodies and administrative jurisdictions at the first level of appeal. It shall also make final rulings on decisions rendered by the highest jurisdictions at the highest level of appeal. It may be consulted by public authorities for an opinion on legislative or regulatory bills and interpretation of legislation or regulatory provisions. When requested by public authorities, it may study bills and the organization and functioning of public services.

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<sup>2</sup> Sections 118 to 146 of the Constitution.

## The Supreme Court

The Supreme Court has authority to hear appeals from lower courts, including criminal and civil cases.

## The High Court of Justice

The High Court of Justice can hear cases alleging crimes or misdemeanors committed by the President of the Republic, Prime Minister and member of Government, the presidents of Parliaments, members of the Government and President of the High Constitutional Court.

## Judicial Processes

### Litigation

To utilize litigation to engage in legal and policy reform, one needs effective legal representation. The particular detail of how to file litigation and what is needed differs from court to court and is dependent on the type of challenge that is being filed. Thus, consulting a lawyer is necessary for filing litigation.

Generally, to file a legal case, the complainant has to fill in an application with the necessary information's before the clerk. The clerk sends it to the President of the Court, who is in charge of assigning it to a Judge. The applicant might be asked for further documents. Once all the information is received, the clerk forwards the summons.

Any decision of a lower court can be appealed to the Supreme Court. All matters relating to violations of the Constitution have to be filed in the High Constitutional Court. The decision of the Supreme Court and High Constitutional Court is final. The only other legal option is to appeal the decision of the High Constitutional Court or Supreme Court to the African Commission on Human Rights or an international treaty body, such as the Human Rights Committee. However, the decisions of regional or international bodies are not binding on the country.



### How CSOs can engage in litigation

#### Public interest litigation

- CSOs can bring lawsuits as an organization challenging particular laws, policies or practices that impact the issues the organization seeks to address.
- CSOs can also find individuals/members who have been directly impacted by a particular law, policy or practice which they seek to address.

# Key Administrative Institutions and Processes

## Office of the Ombudsman

The Ombudsman of the Republic was established by Order No. 92-012 of 29 April 1992. The Ombudsman is responsible for receiving complaints concerning the functioning of the public administration, local public authorities, public institutions and any organization entrusted with a public service mission.

The Ombudsman can reinforce the government’s obligation to report and investigate citizens’ complaints against the public administration. When investigating a complaint, the Ombudsman cannot be denied access to a file or an administrative document related to the activity or service under investigation. Generally, the Ombudsman can only engage in conciliation and mediation and issue recommendations. However, in the absence of the competent authority, the Ombudsman may initiate disciplinary proceedings against any responsible officer.

## Complaint to the Ombudsman

For the Ombudsman to intervene, s/he must receive a complaint by an individual person. Complaints by a group are not accepted. A complaint can only be filed if the complainant has attempted to solve the issue through working with the relevant administration. If this has failed, the complainant can file a complaint with the Ombudsman. Officers and relatives of an administration cannot file a complaint.

Any complaint should be written and submitted to the Ombudsman’s office. Any complainant can also go to the office and ask for assistance in having his or her complaint written and then s/he would be asked to sign the complaint. The complaint should include all necessary information, including the complainant’s name, the case, and reference number of the case at the concerned administration.

### How to engage with the Ombudsman

- Help a victim of a human rights violation file a complaint with the Ombudsman.
- Engage with the Ombudsman regarding broader human rights violations in Madagascar.



### Contact détails:

Médiateur de la République ; 33 Rue Docteur Villette  
+ 261 202 22 25 76 / +261 341 35 15 95 ; [mediaturemadagascar@yahoo.com](mailto:mediaturemadagascar@yahoo.com)



## National Independent Commission for Human Rights

The National Independent Commission for Human Rights (NICHR) is a specialized body for the promotion and protection of human rights. The NICHR is an apolitical, independent body with legal personality, administrative and financial autonomy. The NICHR is based in Antananarivo, capital of the Republic of Madagascar.

Its functions are as follows:

- to promote and protect all human rights without exception;
- to provide, in an advisory capacity to the Executive, the Legislative, the Supreme Court and any other competent body, either at the request of the authorities concerned or by using his faculty of self-referral, opinions, recommendations, proposals and reports on any matter relating to the promotion and protection of human rights;
- in accordance with its independence, to advise the Executive on fundamental freedoms and human rights, on the rights of women, children, persons with disabilities, persons elderly and any other vulnerable group;
- prepare reports on the national situation of human rights and fundamental freedoms in general, as well as on more specific issues;
- promote and ensure the harmonization of national laws, regulations and practices with the sub regional, regional and international human rights instruments to which the Malagasy State is a party, and ensure their effective implementation;
- to encourage the ratification of or accession to regional and international human rights instruments and to ensure their implementation;
- to call on the Executive and its branches on situations of human rights violations throughout the country, to propose any initiative to put an end to them and, where appropriate, to express an opinion on the positions and reactions of the authorities concerned;
- to examine the laws and regulations in force as well as the bills and proposals of law and make the appropriate observations with a view to guaranteeing that these texts are in conformity with the fundamental principles of Human Rights; to recommend, if necessary, the adoption of new legislation, the adaptation of the legislation and regulations in force, and if necessary their modification;
- to cooperate with the United Nations and any other United Nations body, sub-regional and regional institutions as well as national institutions of other countries, competent in the fields of the promotion and protection of human rights; Man;
- to contribute to the drafting of the reports that the State must submit to UN bodies and committees, as well as to sub-regional and regional institutions, in application of its treaty obligations and, where appropriate, issue an opinion on this subject in respect for his independence;
- to raise awareness of Human Rights and the fight against all forms of human rights violations by raising public awareness, particularly through information, education and, inter alia, to all media outlets;

- to be involved in the development of programs concerning teaching and research on human rights and to participate in their implementation in school, university, social and professional circles; and
- to receive and examine individual or collective complaints and petitions concerning the violation of human rights and to seek a friendly settlement through conciliation or to transmit them to all competent authorities where appropriate.

The Members of the National Independent Human Rights Commission are representatives from the following Institutions:

- Representative of National Assembly
- Representative of the Senate
- Representative of the Executive
- Law Professor from Public Universities
- Representative of Association Working on Children's Rights
- Representative of Association Working on Women's Rights
- Representative of Association Working for Rights of People with Disabilities
- From the Bar Council
- From the Association of Journalists
- From a Non-Governmental Organisation Working for the Protection of Human Rights:

### **Complaint to the NICHR**

A complaint can be filed either by an individual who is a victim of a human rights violation, a CSO, or by any other interested natural or legal person. The complaint can either be made orally or in writing. The complaint must include the identity of the alleged author and his or her address.

Once a complaint is received, the NICHR will determine whether it is admissible. Complaints are inadmissible if for instance they are based solely on rumors or not within the competency of the NICHR. If the complaint is inadmissible, the NICHR will immediately inform the interested party or parties, giving reasons for its decision. The complaint may be reconsidered if, subsequently, the grounds of inadmissibility no longer exist.

If the complaint is determined to be admissible, the NICHR appoints one of its members to investigate the case and seek solutions to put an end to the violation. During the course of the investigation, the NICHR may hear any person and obtain any information and documents necessary for the assessment of situations falling within its competence. The relevant services concerned must contribute to the facilitation of visits to places of detention and the obtaining of all information, including access to any document useful to the NICHR. The refusal of State agents / services to communicate relevant documents and information to the NICHR is punishable by disciplinary sanctions with the exception of documents covered by confidentiality.

The procedure before the NICHR is confidential. The meetings of the NICHR are not public and the deliberations are held in camera. The NICHR is required to take the necessary measures for the protection of victims and witnesses.

If after investigation, a violation is determined to have occurred, the NICHR can proceed with conciliation, grant the victim a fair and just compensation, or an amicable resolution of the violation within the limits set by law.



### Contact details

Commission Nationale Indépendante des Droits de l'Homme  
Nouvel Immeuble Seimad  
67 Ha Sud-Est  
cnidh.madagascar@gmail.com



### How CSOs can engage with the National Independent Commission Human Rights

- File a complaint with the NICHR.
- Assist communities to file a complaint to NICHR
- Conduct preliminary investigations on Human Rights Violations
- Collaborate with the Commissioners in raising awareness of human rights violations and protection of citizens.
- Collaborate with NICHR in the promotion of International Human Rights Conventions
- Establish relationships with members of the NICHR to discuss human rights violations, practices and legislation in conflict with international human rights protocol

## Rights and HIV Commission

The Rights and HIV Commission was established at the Ministry of Public Health and the Ministry of Justice. Its mission is to create a healthy and secure environment for the legal, cultural, social and economic development of infected and affected persons and their environment.

The particular functions of the Rights and HIV Commission include the following:

- contribute to the development of HIV strategies and policies;
- bring national HIV legislation into line with international instruments ratified by Madagascar;

- centralize periodic reporting on legal aspects of the HIV response and ensure their availability;
- make strategic, legal and technical recommendations for the protection of those infected and affected by HIV;
- identify gaps in respect for human rights as part of the response to HIV;
- provide technical and legal recommendations on all issues of rights and HIV for decision-making;
- Ensure implementation of the HIV Risk Reduction policy and program in accordance with human rights;
- provide technical assistance to the Coordinating Body of the National HIV Response in terms of Risk Reduction;
- identify proposed reforms to the legislation relating to the protection of persons infected and affected by HIV;
- strengthen the partnership with donors in the fight against discrimination and stigmatization of people infected and affected by HIV; and
- contribute to the advocacy and popularization of HIV risk reduction policy.

The Rights and HIV Commission meets in plenary session once every quarter, at the convocation of one of the Presidents. However, if they find it useful because of the urgency, the two co-chairs may call the members for an extraordinary meeting.

As of 2018, the members of the Rights and HIV Commission include representatives from the Ministries and CSOS below. It should be noted that the Commission is yet to be operationalized.

<ul style="list-style-type: none"> <li>• Ministry of Public Health;</li> <li>• Ministry of Justice;</li> <li>• Ministry of Population and Social Affairs; Ministry of the Public Service,</li> <li>• Reform of the Administration, Labor and Social Laws;</li> <li>• Ministry of Posts, Telecommunications and New Technologies;</li> <li>• Ministry of National Education;</li> <li>• Ministry of Higher Education and Scientific Research;</li> <li>• Ministry of Foreign Affairs;</li> </ul>	<ul style="list-style-type: none"> <li>• Ministry of Youth;</li> <li>• Ministry of Public Security;</li> <li>• Ministry of Employment, Technical Education and Vocational Training;</li> <li>• Ministry of the Interior and Decentralization;</li> <li>• Ministry in charge of Culture;</li> <li>• Ministry of Tourism;</li> <li>• Executive Secretariat of the National Committee for the Fight Against AIDS;</li> <li>• Three (3) Representatives from Associations working in the fight against HIV</li> </ul>
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### **How can CSOs engage with the Rights and HIV Commission once it is operational**

- Meet with members of the Commission to raise concerns regarding the law and policies related to HIV/AIDS.
- Provide members of the Commission with information and analysis on gaps in the legal and policy environment.
- Establish strategic partnership with the Commission to discuss pertinent issues related to access to services and quality of service delivery for key populations
- Through the three representatives from associations addressing HIV, provide a draft of proposed bills.
- Participate in public meetings called by the commission





3

## Regional Institutions and Processes

## Regional Institutions

The relevant Regional Institutions are as follows:

- African Commission on Human and Peoples' Rights
- NGO Forum
- Special Mechanisms
- African Court on Human and Peoples' Rights

### Key Opportunity: Obtaining Observer Status

To participate in the activities of the African Commission, civil society organizations need to apply for observer status before the African Commission or work with an organisation that already has observer status.

To apply for observer status, CSOs must provide information on how their objectives and activities aim to promote or protect Charter principles, their human rights work, and their financial resources. CSOs must apply (at no cost) at least three months before a session.

With observer status, CSOs can make a public statement in African Commission public sessions and file complaints with the African Commission.



## African Commission on Human and Peoples' Rights

The African Commission on Human and Peoples' Rights (African Commission) established under the African Charter on Human and Peoples' Rights (ACHPR) consists of eleven experts who serve in their personal capacity. They are nominated by parties to the ACHPR. The African Commission is responsible for monitoring state compliance with the ACHPR, interpreting and applying the rights and obligations outlined under the ACHPR, and promoting and ensuring the rights outlined in the ACHPR.

The African Commission holds its “ordinary sessions” in March or April and in October or November. The sessions usually last 15 days. One of the sessions is held at headquarters in Banjul, The Gambia. The Chairperson may also decide to hold additional “extraordinary sessions” at the request of the African Union (AU) Chairperson or a majority of Commission members.

To participate in the activities of the African Commission, CSOs need to apply for observer status before the African Commission or work with an organisation that already has observer status. Currently, only one CSO in Madagascar has observer **status : Ligue Africaine des Droits de l'Homme et des Peuples** (Madagascar Section).<sup>3</sup>

<sup>3</sup> See: <http://www.achpr.org/states/madagascar/>

## NGO Forum

Prior to ordinary sessions, there is an NGO Forum. The NGO Forum brings together CSOs to share information, meet the Commissioners, and adopt resolutions on issues that will be discussed by the African Commission. These resolutions are then submitted to the African Commission, who can use them when considering the adoption of resolutions by the African Commission.<sup>4</sup> ***The NGO Forum is a critical opportunity and platform for CSOs to raise their issues regionally.***

The NGO Forum is coordinated by the African Centre for Democracy and Human Rights Studies, an NGO based in Banjul, Gambia.

## Special Mechanisms

Under Article 23 of the Rules and Procedures of the African Commission, the African Commission has established special mechanisms for addressing the protection of rights in a number of thematic areas. Some of the mechanisms relevant to HIV include:

- The Committee on the Protection of the Rights of People Living with HIV and Those at Risk, Vulnerable to and Affected by HIV
- The Special Rapporteur on Prisons Conditions of Detention and Policing in Africa
- The Special Rapporteur on the situation of human rights defenders
- The Special Rapporteur on Refugees, Asylum Seekers, Migrants and Internally Displaced Persons
- The Special Rapporteur on Rights of Women
- The Special Rapporteur on Freedom of Expression and Access to Information
- Committee for the Prevention of Torture in Africa
- The Working Group on Economic, Social and Cultural Rights

The special mechanisms can conduct country missions and hold convenings and meetings to promote issues in their mandate and investigate particular rights violations, if agreed to by the country. They can also promulgate resolutions and guidelines on issues within their mandate.<sup>5</sup>



### What Special Mechanisms Can Do

- ✓ Conduct country missions
- ✓ Hold convenings and meetings to promote relevant issues
- ✓ Investigate particular rights violations, if agreed to by the country
- ✓ Issue resolutions and guidelines on relevant issues

4 International Service for Human Rights. NGO Forum (23 Feb 2011) available at <http://www.ishr.ch/news/ngo-forum>.

5 For more information regarding the special mechanisms: <http://www.achpr.org/mechanisms/>.

## **African Court on Human and Peoples' Rights**

The African Court on Human and Peoples' Rights (African Court) is a continental court established by African countries to ensure the protection of human and peoples' rights in Africa. It complements and reinforces the functions of the African Commission.

The African Court was established by Article 1 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights. The Protocol came into force on 25 January 2004. Currently, Madagascar has not ratified the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights nor has it made the declaration recognizing the competence of the African Court to receive cases from NGOs and individuals.

The African Court is composed of eleven judges, who are nationals of Member States of the African Union. The judges are elected, after nomination by their respective States, in their individual capacities, from among African jurists of proven integrity and of recognized practical, judicial or academic competence and experience in the field of human rights. The judges are elected for a six-year term, renewable once.

The African Court has jurisdiction over all cases and disputes submitted to it concerning the interpretation and application of the ACHPR, Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights and any other relevant human rights instrument ratified by the States concerned.

The African Court may receive cases filed by the African Commission of Human and Peoples' Rights, State parties to the Protocol or African Intergovernmental Organizations. NGOs with observer status before the African Commission and individuals can also institute cases directly before the Court as long as the State against which they are complaining has deposited the Article 34(6) declaration recognizing the jurisdiction of the Court to accept cases from individuals and NGOs. Madagascar has not yet ratified the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights nor has it deposited the Article 34(6) declaration.

## **Regional Processes**

The relevant regional processes are as follows:

- Monitoring country compliance with regional treaties and submission of shadow reports
- Communications to the African Commission and the Child Rights Committee of Experts
- Special Mechanisms/Special Rapporteurs

### **Monitoring Country Compliance with Regional Treaties and Submission of Shadow Reports**

Under the ACHPR, all state parties are required to submit periodic activity reports outlining the country's compliance with the rights and obligations guaranteed under the ACHPR. Once a country has submitted their report, the African Commission considers the report at one of the three sessions it holds in the year.

CSOs can submit “shadow reports” providing the African Commission with information regarding the human rights situation in the country. The shadow report is a written document outlining how the country is abiding by or violating the rights guaranteed in the international treaty. A template prepared by the Advocates for Human Rights is available at [http://www.theadvocatesforhumanrights.org/uploads/app\\_p.pdf](http://www.theadvocatesforhumanrights.org/uploads/app_p.pdf).

In a public session, the African Commission considers the country’s report, including discussing issues and asking questions of particular concern and permitting NGOs to make statements from the floor.

The African Commission then issues concluding observation providing recommendations to the country for ensuring compliance with the ACHPR.

## **Communications to the African Commission<sup>6</sup>**

Individuals, CSOs, who have observer status at the African Commission, and other state parties can lodge communications with the African Commission in cases where state action violates the ACHPR.

The following are requirements for submissions of communications. Guidelines on how to file a complaint to the African Commission are provided in Appendix B.

- include the author’s name even if the author wants to remain anonymous;
- include the name(s) of the complainant or complainants, their nationalities, occupation or profession, addresses and signatures. If the communication emanates from an NGO, it should include the address of the institution and the names and signatures of its legal representatives. If the communication is from a State Party, the names and signature of the State representative, together with the national seal would be required.
- the communication must be in writing, and addressed to the Secretary or Chairman of the African Commission;
- should describe the violation of human and/or peoples’ rights that took place, indicate the date, time (if possible), and place where it occurred. It should also identify the State concerned.
- the complainant must have exhausted all available domestic legal remedies or indicate the reasons exhausting domestic legal remedies was not possible;
- the communication must not be written in insulting language directed against the state or the African Union;
- the communication must not be based exclusively on news from the media;
- the communication must be submitted within a reasonable time from the date of exhaustion of domestic remedies; and
- the communication must not deal with a matter which has already been settled by some other international human rights body.

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6 African Commission on Human and Peoples’ Rights. Information Sheet No. 2: Guidelines for the Submission of Communications; African Commission on Human and Peoples’ Rights. Information Sheet No. 3: Communication Procedure.

Communications should be sent to the Secretariat of the Commission which is based in Banjul, The Gambia. Once a communication is received, it is registered under a file number in the Commission's Official Register of Communications kept at the Secretariat of the African Commission. The Secretariat will acknowledge receipt of the author's letter of complaint. If more information is required, the author will be informed accordingly.

As soon as the communication is registered, a summary is made and is distributed to all the commissioners. A letter is written to the complainant acknowledging receipt of the communication. No letter is sent to the State party concerned at this stage. The Secretariat has to wait for a response from at least seven of the eleven members to indicate that they have received the communication and approved seizure. Alternatively, if the Secretariat does not receive minimum number of seven responses, the communication shall be presented to all the commissioners at the Commission's next session.

The African Commission initially determines whether the communication is admissible. Once it is determined that it is, the African Commission considers the merits of the communications, the parties are able to make written or oral presentations to the African Commission. Some States send representatives to the Commission's sessions to refute allegations made against them. CSOs and individuals are also granted audience to make oral presentations before the Commission.

After the session, the African Commission will issue its decision and recommendations.

## Special Mechanisms

CSOs can engage with Special Mechanisms through written communications outlining concerns regarding human rights violations and requesting investigation of such violations, country visits, and potential resolutions or guidelines. Detailed information regarding the contact information and mandate of the Special Mechanisms can be found at <http://www.achpr.org/mechanisms/>.

### How CSOs can engage with Regional Mechanisms and Processes

- Obtain observer status.
- Draft shadow reports. A template for a shadow report is available at [http://www.theadvocatesforhumanrights.org/uploads/app\\_p.pdf](http://www.theadvocatesforhumanrights.org/uploads/app_p.pdf).
- File a communication with the African Commission or the child rights committee of experts.
- Engage with relevant Special Mechanism through writing a letter outlining relevant human rights concerns in country.
- Engage with relevant Ministries to advocate for Madagascar to sign the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights and deposit the Article 34(6) declaration.





4

## International Institutions and Processes

## International Institutions

The relevant international institutions are as follows:

- Treaty bodies
- Special Procedures
- Human Rights Council

### Treaty bodies<sup>7</sup>

The human rights treaty bodies are committees of independent experts that monitor implementation of the core international human rights treaties. There are ten human rights treaty bodies composed of independent experts of recognized competence in human rights, who are nominated and elected for fixed renewable terms of four years by State parties. The treaty bodies relevant to HIV are as follows:

- Human Rights Committee
- Committee on the Elimination of Discrimination Against Women
- Committee on the Rights of the Child
- Committee against Torture
- Committee on Migrant Workers
- Committee on Economic, Social and Cultural Rights
- Committee on the Rights of Persons with Disabilities

### Special Procedures<sup>8</sup>

The special procedures of the Human Rights Council are independent human rights experts with mandates to report and advise on human rights from a thematic or country-specific perspective. As of 30 September 2016, there are 43 thematic and 14 country mandates.

Special procedures undertake country visits; act on individual cases and concerns of a broader, structural nature by sending communications to States and others in which they bring alleged violations or abuses to their attention; conduct thematic studies and convene expert consultations; contribute to the development of international human rights standards; engage in advocacy; raise public awareness; and provide advice for technical cooperation. Their tasks are defined in the resolutions creating or extending their mandates.

Special Procedures relevant to HIV include:

- Special Rapporteur on the rights of persons with disabilities;

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7 United Nations Human Rights Office of the High Commissioner. Monitoring the Core International Human Rights Treaties available at <http://ohchr.org/EN/HRBodies/Pages/TreatyBodies.aspx>.

8 United Nations Human Rights Office of the High Commissioner. Special Procedures of the Human Rights Council available at <http://ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx>.

- Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health;
- Special Rapporteur on the human rights of migrants;
- Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; and
- Special Rapporteur on violence against women, its causes and consequences.



### What Special Procedures Can Do

- ✓ Undertake country visits to assess the human rights situation.
- ✓ Investigate individual complaints of rights violations
- ✓ Conduct thematic studies
- ✓ Convene expert consultations on relevant human rights issues

## Human Rights Council<sup>9</sup>

The Human Rights Council is an inter-governmental body within the United Nations (UN) system responsible for strengthening the promotion and protection of human rights around the globe and for addressing situations of human rights violations and make recommendations on them. It has the ability to discuss all thematic human rights issues and situations that require its attention throughout the year.

The Human Rights Council is made up of 47 UN Member States which are elected by the UN General Assembly.

## International Processes

The relevant processes at the international level are as follows:

- Complaint to treaty body
- Monitoring State compliance with international treaties
- Universal Periodic Review

## Complaint to Treaty Body<sup>10</sup>

A number of the treaty bodies are empowered to hear individual complaints. In particular, the Human Rights Committee can hear complaints of violations of the rights of the ICCPR.

9 United Nations Human Rights Office of the High Commissioner. United Nations Human Rights Council available at <http://ohchr.org/EN/HRBodies/HRC/Pages/HRCIndex.aspx>.

10 United Nations Human Rights Office of the High Commissioner. Human Rights Bodies - Complaints Procedures available at <http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/HRTBPetitions.aspx>.

Individuals, countries and NGOs can file complaints against state parties. The complaint should be in writing and contain the following information:

- Details of the complainants, including name, nationality, date and place of birth, and address;
- The country against whom the allegations is being made;
- The treaty articles being violated;
- Whether domestic remedies have been exhausted and if not, why domestic remedies have not been exhausted;
- Facts of the complaint;
- Complainant's signature; and
- Any corroborating evidence, such as domestic court decisions and evidence confirming the facts alleged.

Information on where complaints should be sent can be found: <http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/IndividualCommunications.aspx#contact>

## **Monitoring State compliance with International Treaties**

Countries submit periodic reports to the relevant treaty bodies on how the rights are being implemented under each international human rights treaty. The periodic reports provide information on the legislative, administrative and other measures the government has undertaken to give effect to provisions of the treaty under review and the progress made and problems encountered in implementing treaty obligations.

In addition to the country report, CSOs can submit “shadow reports” providing the treaty body with information regarding the human rights situation in the country. The shadow report is a written document outlining how the country is abiding by or violating the rights guaranteed in the international treaty. CSOs can also make oral submissions when the country is questioned about its report. A template for a shadow report to an international body prepared by the United States Human Rights Network is available at [https://www.ushrnetwork.org/sites/ushrnetwork.org/files/shadow\\_report\\_template\\_final.pdf](https://www.ushrnetwork.org/sites/ushrnetwork.org/files/shadow_report_template_final.pdf).

In the light of all the information available, the relevant treaty body examines the report in the presence of a State Party's delegation. It outlines a list of questions based on the country's report and shadow reports. Based on this constructive dialogue, the treaty body publishes its concerns and recommendations, referred to as “concluding observations”.

Treaty bodies will generally follow three main stages in the consideration of State reports:

- pre-session working group stage, which is used to prepare for the full session/plenary of the treaty body. Issues for discussion with the reporting State will be identified;
- full session/plenary stage where the State report is reviewed by the treaty body;
- concluding observations stage where the treaty body consider the outcomes of the review.

Although the concluding observations stage is a closed session, the plenary stage is open to CSOs. Some treaty bodies will also interact with CSOs during the pre-session working group stage. Treaty bodies put up information on their websites relating to, inter alia, reports that are due and/or overdue and schedules relating to sitting dates. CSOs should monitor the treaties bodies' websites for such information available here: <https://www.ohchr.org/EN/HRBodies/Pages/TreatyBodies.aspx>.

## **Universal Periodic Review<sup>11</sup>**

The Universal Periodic Review (UPR) is a unique process which involves a review of the human rights records of all UN Member States. The UPR is a State-driven process, under the auspices of the Human Rights Council, which provides the opportunity for each State to declare what actions they have taken to improve the human rights situations in its country and to fulfil its human rights obligations. As one of the main features of the Human Rights Council, the UPR is designed to ensure equal treatment for every country when its human rights situation is assessed.

The UPR is similar to State reporting in that it requires States to submit human rights reports for consideration by the Human Rights Council, and stakeholders have an opportunity to participate. All UN Member States are subject to peer review by fellow States once every four years. Other than the national report, the UPR is also informed by a stakeholder report, based on information provided by CSOs and national human rights institutions, and a report based on information provided by the UN Country Team operating on the ground, human rights treaty monitoring bodies and other UN sources.

CSOs can participate in the national process of developing the government report and also draft their own stakeholder report. While there is no scope for direct participation by CSOs in the Working Group sessions where the interactive dialogue/review takes place, they may make representations to the full Human Rights Council when the outcome of the review is being debated and discussed. They can also lobby other governments to raise in the Working Group issues of concern to them and to make appropriate recommendations for consideration by their own government.

The State under review will indicate which recommendations it accepts, and it is expected to implement these recommendations. The accepted recommendations, like the treaty body recommendations present an opportunity for CSOs to further engage their government. These can be used as reference points and lobby/advocacy tools. It is advisable for CSOs to keep track of the reporting cycles of the Human Rights Council, which countries are being reviewed, the accepted recommendations, etc. This information is available on the website of the UN Office of the High Commissioner for Human Rights: <http://www.ohchr.org/EN/HRBodies/HRC/Pages/Home.aspx>.

## **Special Procedures**

Individuals, state parties, and CSOs can engage with Special Procedures through written communications outlining concerns regarding human rights violations and requesting investigation of such violations and country visits.

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<sup>11</sup> United Nations Human Rights Office of the High Commissioner. Universal Periodic Review available at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx>.



## How CSOs can engage with International Mechanisms and Processes

- Engage with relevant Special Procedure(s) through writing a letter outlining human rights concerns in country and requesting investigation or a country visit.
- Provide input in the national process of developing the government report for the UPR process.
- Draft stakeholder report during UPR process.
- Engage with other governments to raise questions in the Working Group sessions.
- Draft a shadow report
- Use the concluding observations and recommendations of the human rights treaty monitoring bodies and the Human Rights Council to advocate for domestic changes.
- CSOs can file a complaint with the relevant treaty body.
- Monitor implementation of the accepted recommendations.



5

## Key Recommendations to Address Gaps in the Legal and Policy Environment

The Legal Environment Assessment (LEA) has identified some of the following recommendations to address gaps in the legal and policy environment:

## **Equality, non-discrimination and dignity**

1. Review and amend the Code of Public Health to enshrine the principle of non-discrimination by Public Health Professionals in medical or preventive care services and ensure protection of key populations including young key populations when accessing healthcare.
2. Increase awareness and training of health care professionals on universal health care and human rights especially sexual reproductive health rights targeted at Key populations, LGBTIQ, Prisoners and persons who use drugs.
3. Review and amend the provisions of the Penal Code on prostitution;
4. Strengthen access to complaints mechanisms and dispute resolution for human rights violations, stigma and discrimination within the health care system and police stations.
5. Strengthen capacity of key populations associations to conduct awareness raising and sensitization campaigns on human rights, stigma and discrimination and the application of the rights-based approach in public service delivery.

## **Right to information**

1. Implement the National HIV Communication Strategy and strengthen integration of a comprehensive HIV/AIDS/SRHR education curriculum in the school system for increased prevention of new HIV infections amongst adolescents and young key population.
2. Strengthen the role of the media in disseminating accurate information about HIV and AIDS including the promotion and protection of the rights of key populations.
3. Develop information, education and counselling (IEC) materials for mass public dissemination on HIV and AIDS and the rights of citizens. These should include how to prevent HIV infection, testing and counselling, access to ART / Prep services and prevention of mother to child transmission etc.
4. Strengthen public awareness and dissemination of the HIV law especially to health workers, employers, prison setting, key population associations, young key populations and adolescents to ensure access to universal health care and prevention of HIV infections.
5. Increase access to information, counselling and HIV testing in prisons, and create awareness on the rights of inmates.

## Right to Association

1. Promote and support the establishment of key population associations and strengthen activism on the rights of LGBTI, sex workers, persons who use drugs and inmates especially children below the age of 18.
2. Strengthen organisational capacity of KP Associations including young key populations to engage in law and policy reform, increase community voice and collective bargaining on issues that affect Key populations especially young KPs

## Right to Health

1. Provide in law, policy or guidelines for the right to confidentiality with regards to health information and health status including information relating to key populations and strict conditions under which disclosure may take place.
2. Strengthen comprehensive HIV preventive programmes such as information on HIV Prevention, condoms distribution, access to ART, STI treatment, testing and counselling and PMTCT at all levels national, regional and local authority including prisons.
3. Strengthen and increase access to comprehensive harm reduction programmes in targeted areas and health care services for people who use drugs. Such programmes can include syringe exchange and distribution programmes; HIV testing and counselling including access to ART services and provision of treatment and vaccination for hepatitis.
4. Provide in law or policy guidelines for voluntary and or informed consent to HIV testing and counselling especially for pregnant women and young people.
5. Review the regulations, guidelines and procedure on partner notifications to be in line with the UNAIDS and WHO guidelines to include passive and assisted partner notification; contract, provider and dual referral.
6. Advocate for tax exemption of Antiretroviral Drugs and related HIV commodities such as condoms for increased access and availability at all levels including private sector settings.
7. Review and amend Article 2011-002 of 15 July 2011 under the Health Code, which states that "any person engaging in prostitution must be identified and registered" and the institution of "special surveillance measures" which is in violation of UN Declaration on Human Rights and the Constitution on the right to dignity.

## Right to Justice and Security of the person

1. Create awareness amongst key populations on the right to legal assistance, Decree No. 2009-970 of 5 January 2010 legal aid regulation and access to state subsidized Legal Aid and strengthen partnerships between CSOs, legal aid clinics and legal practitioners for the provision of free legal assistance and education
2. Establish and or strengthen complaints, investigation and monitoring systems for human rights violations within law enforcement institutions such as detention centers, prisons

and implement corrective measures in line with Article 332 of the Malagasy Penal Code in the case of rape.

3. Train health service provider, social workers, and law enforcement officers on the rights of Key populations and young people for enhanced promotion and protection of their rights and access to justice and other public services.
4. Develop, reinforce and implement punitive laws, regulations and policies aimed at the protection of minors from sexual harassment, sexual exploitation and abuse at all levels.
5. Establish accountability mechanism or health complaints and arbitration desk/office to monitor human rights violations related to access to health services



6

## Potential Opportunities

Based on the recommendations of the draft LEA outlined in section 5, some potential opportunities are described below.

## Equality, non-discrimination and dignity

### Legal Reform

Work with key MPs to draft a revision of the provisions of the Penal Code on prostitution and article 76 of the Decree on the fight against HIV to bring it in line with the national plan of response in the workplace.

### Engagement with relevant Ministries

Reach out to relevant ministries to discuss the following:

- training of healthcare workers and social workers on issues affecting key populations including sex workers;
- advocate for the application of the rights-based approach in the delivery of public health services;
- establishment of a feedback mechanism for monitoring quality health service delivery and enhance accountability measures i.e. grievance boxes, exit forms, customer service surveys.
- raise awareness on stigma and discrimination and reduce unjustified fears about HIV;
- drafting a revision of the provisions of the Penal Code on prostitution and article 76 of the Decree on the fight against HIV to bring it in line with the national plan of response in the workplace.

## Right to information

### Engagement with relevant Ministries

Reach out to relevant ministries to discuss the following:

- Raise awareness regarding HIV and AIDS and key populations, including strengthening the integration of HIV and AIDS into the curriculum for education; and
- In particular, raise awareness in prisons, including the organization of information sessions, and in the workplace.
- How best to disseminate the law on the fight against HIV the general public and especially the people concerned and the key population, and especially through associations.

## Right to association

### Engagement with relevant Ministries

Reach out to relevant ministries to discuss the following:

- How to raise awareness of key population associations of their rights;
- Strengthen the capacity of associations to represent their members, if necessary, in the event of a violation of their rights, and to participate in the search for an adequate solution; and
- To hold regular Civil Society-Government meetings, at the central level and in the regions to share the shortcomings in the delivery service and find the appropriate solutions.

## Right to Justice and Security of the person

### Legal Reform

Work with key MPs to draft a revision of the legal provisions criminalizing HIV transmission.

### Engagement with relevant Ministries

Engage with the relevant ministries to discuss the following:

- Drafting a revision to the legal provisions criminalizing HIV transmission;
- The possibility of setting up a specialized legal advisory service for key populations across the country.
- Work with the Ministry of Justice in creating awareness amongst key populations on the right to legal assistance, Decree No. 2009-970 of 5 January 2010 legal aid regulation

### Engagement with law associations

- Engage with law associations to discuss a partnership to set up a specialized legal advisory service for key populations across the country.

## Right to health

### Engagement with relevant Ministries

Engage with the relevant Ministries to discuss ensuring confidentiality of a patient's medical records and the updating of the anti-retroviral treatment guidelines in the context of the prevention of mother-to-child transmission and where CSO input can be provided.





**7**

# Timeline

April	African Commission session
First Tuesday of May	Parliament opens
Last Tuesday of September	Parliament opens
October/November	African Commission session

# Appendices

## Appendix A: African Commission Shadow Report Template

African Commission on Human and Peoples' Rights  
[number] Ordinary Session  
[dates of session]  
Report on [issue] in the [name of country]  
Under the African Charter on Human and Peoples' Rights  
in response to  
The [number] Periodic Report of the Government of [country]  
presented at  
The [number of session] Ordinary Session of the Commission [date of session]  
prepared by  
[name of organization]  
[description of organization]  
and  
[name of organization]  
[description of organization]  
[date of submission]

## Executive Summary

1. [Summarize the human rights violations your report addresses and your recommendations for action by the Government of \_\_\_\_\_.
  - a. \_\_\_\_\_'s international, regional, and domestic commitments to human rights include [\_\_\_\_\_].
2. [Identify the relevant treaties that Government has ratified.]
3. [Identify the relevant provisions in Government's Constitution.]
- 4.. [Describe any recent statements by the Government of \_\_\_\_\_ that it will honor its human rights commitments, e.g., the state report, statements during the Universal Periodic Review.]
  - a. The Government of \_\_\_\_\_ has failed to uphold its human rights obligations in the context of [\_\_\_\_\_].
5. [Give an outline of the topics the report will cover. Note: This template has 5 topics, but your report may have more or fewer topics.]

### A. [Topic 1]

6. [Summarize the human rights violations addressed in Topic 1.]
7. [Briefly describe the relevant treaty language and how it relates to Topic 1.]
8. [Summarize the “procedural history” of Topic 1. What, if anything, did Government say on the topic during the last African Commission review, during the last Universal Periodic Review, and during the last reviews by the relevant UN treaty bodies? What were the relevant outcomes of those procedures?]
8. [Describe the Government's current position on the topic, as extracted from the latest state report. If the state report is silent on the topic, look to any recent official pronouncements.]
- 10.[Describe the reality, explaining why the Government's position is inaccurate, incomplete, misleading, or false. Incorporate first-hand accounts and other documentation of human rights conditions on the ground, if relevant.] [Note: This part will likely take multiple paragraphs. It is the most important and most substantive part of the report.]

**Suggested questions for the delegation from the Government of \_\_\_\_\_:**

**Suggested recommendations for the Government of \_\_\_\_\_:**

### B. [Topic 2]

- 11.[Summarize the human rights violations addressed in Topic 2.]
- 12.[Briefly describe the relevant treaty language and how it relates to Topic 2.]
- 13.[Summarize the “procedural history” of Topic 2. What, if anything, did Government say on the topic during the last African Commission review, during the last Universal Periodic Review, and during the last reviews by the relevant UN treaty bodies? What were the relevant outcomes of those procedures?]

14 [Describe the Government’s current position on the topic, as extracted from the latest state report. If the state report is silent on the topic, look to any recent official pronouncements.]

15.[Describe the reality, explaining why the Government’s position is inaccurate, incomplete, misleading, or false. Incorporate first-hand accounts and other documentation of human rights conditions on the ground, if relevant.] [Note: This part will likely take multiple paragraphs. It is the most important and most substantive part of the report.]

**Suggested questions for the delegation from the Government of \_\_\_\_\_:**

**Suggested recommendations for the Government of \_\_\_\_\_:**

III. Conclusion

16.[Restate your main points and your most important recommendations.]

## Appendix B: Guidelines for submitting complaint to the African Commission<sup>12</sup>

- a. Complainant(s) (please indicate whether you are acting on your behalf or on behalf of someone else. Also indicate in your communication whether you are an NGO and whether you wish to remain anonymous).

Name .....

Age .....

Nationality .....

Occupation and/or Profession .....

Address .....

Telephone/Fax no .....

- b. Government accused of the Violation (please make sure it is a State Party to the African charter).
- c. Facts constituting alleged violation (Explain in as much a factual detail as possible what happened, specifying place, time and dates of the violation).
- d. Urgency of the case (Is it a case which could result in loss of life/lives or serious bodily harm if not addressed immediately? State the nature of the case and why you think it deserves immediate action from the Commission).
- e. Provisions of the Charter alleged to have been violated (if you are unsure of the specific articles, please do not mention any).
- f. Names and titles of government authorities who committed the violation (if it is a government institution please give the name of the institution as well as that of the head).
- g. Witness to the violation (include addresses and if possible telephone numbers of witnesses).
- h. Documentary proofs of the violation (attach for example, letters, legal documents, photos, autopsies, tape recordings etc., to show proof of the violation).
- i. Domestic legal remedies pursued (Also indicate for example, the courts you've been to, attach copies of court judgments, writs of habeas corpus etc.
- j. Other international avenues (Please state whether the case has already been decided or is being heard by some other international human rights body; specify this body and indicate the stage at which the case has reached).

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<sup>12</sup> Adapted from African Commission on Human and Peoples Rights. Information sheet No. 2: Guidelines for the Submission of Communications.

## Appendix C: Shadow Report Template for International Bodies

### 1. Title

### 2. Reporting Organization(s):

- Note whether this is an individual or coalition submission.
- List and briefly describe the organization or coalition of organizations and advocates authoring and/or endorsing this submission, including the geographic scope of the organization(s), focus issues, location and mission.
- If the coalition is large, include the full list of organizations and individual signatories as a footnote or annex.

### 3. Introduction and Issue Summary

- Note whether this is an update to a prior submission.
- Briefly summarize (1-2 paragraphs) the human rights issue your submission addresses. Focus on providing updates since your previous submission (if applicable).
- Highlight the following aspects: roles played by federal, state and local government in your issue; legislation that could remedy the human rights situation; relevant data; charts; and stories from victims and survivors.

### 4. Relevant Question in List of Issues

- If issue was included in the List of Issues, note which question in the list your issue pertains to.
- If the language in the question did not sufficiently address the issue, suggest modified language and other suggested questions to be raised during the US review.

### 5. Government Response

- If the relevant government submits its replies on time, reference the government's position in respect to your issue.
- If the relevant government has not submitted its report, reference the government's position based on outside information.
- Explain how the government's position comports with its obligations under the ICCPR, keeping in mind Committee's questions, prior concluding observations, and (if applicable) general comments.

### 6. Recommended Questions

- 2-3 questions the relevant Committee should ask the Government during the review.
- List, in order of priority

## 7. Suggested Recommendations

- 2-3 recommendations the Committee should provide to the Government upon its review
- List, in order of priority
- Recommendations may include changes to law, policy, or practice at the local, state, or federal level.
- Recommendations should include specific policies, laws and even legislation or programs that you want the Committee to include in the concluding observations.

## Appendix D: Model Complaint Form for International Treaty Bodies

For communications under:

- Optional Protocol to the International Covenant on Civil and Political Rights
- Convention against Torture, or
- International Convention on the Elimination of Racial Discrimination

Please indicate which of the above procedures you are invoking: .....

Date: .....

### I. Information on the complainant:

Name: ..... First name(s): .....

Nationality: ..... Date and place of birth: .....

Address for correspondence on this complaint: .....

Submitting the communication:

on his/her own behalf: .....

on behalf of another person: .....

If the complaint is being submitted on behalf of another person:

Please provide the following personal details of that other person

Name: ..... First name(s): .....

Nationality: ..... Date and place of birth: .....

Address or current whereabouts: .....

If you are acting with the knowledge and consent of that person, please provide that person's authorization for you to bring this complaint .....

*Or*

If you are not so authorized, please explain the nature of your relationship with that person: ..... and detail why you consider it appropriate to bring this complaint on his or her behalf: .....

### II. State concerned/Articles violated

Name of the State against which the complaint is directed:

.....

Articles of the Covenant or Convention alleged to have been violated:

.....

### **III. Exhaustion of domestic remedies/ Application to other international procedures**

Steps taken by or on behalf of the alleged victims to obtain redress within the State concerned for the alleged violation – detail which procedures have been pursued, including recourse to the courts and other public authorities, which claims you have made, at which times, and with which outcomes: .....

If you have not exhausted these remedies on the basis that their application would be unduly prolonged, that they would not be effective, that they are not available to you, or for any other reason, please explain your reasons in detail: .....

Have you submitted the same matter for examination under another procedure of international investigation or settlement (e.g. the Inter-American Commission on Human Rights, the European Court of Human Rights, or the African Commission on Human and Peoples' Rights)? .....

If so, detail which procedure(s) have been, or are being, pursued, which claims you have made, at which times, and with which outcomes: .....

### **IV. Facts of the complaint**

Detail, in chronological order, the facts and circumstances of the alleged violations. Include all matters which may be relevant to the assessment and consideration of the particular case. Please explain how you consider that the facts and circumstances described violate your rights.

.....  
.....  
.....

Author's signature: .....

[The blanks under the various sections of this model communication simply indicate where your responses are required. You should take as much space as you need to set out your responses.]

### **V. Checklist of supporting documentation (copies, not originals, to be enclosed with your complaint):**

- Written authorization to act (if you are bringing the complaint on behalf of another person and are not otherwise justifying the absence of specific authorization): .....
- Decisions of domestic courts and authorities on your claim (a copy of the relevant national legislation is also helpful): .....
- Complaints to and decisions by any other procedure of international investigation or settlement: .....

- Any documentation or other corroborating evidence you possess that substantiates your description in Part IV of the facts of your claim and/or your argument that the facts described amount to a violation of your rights: .....
- Please include, if necessary, an indication in a UN language (Arabic, Chinese, English, Spanish, French and Russian) of the contents of the accompanying documentation.
- Your communication should not exceed 50 pages (excluding annexes). In case your application exceeds twenty pages, you must also file a short summary.





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Resilient nations.*

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