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MADAGASCAR

2024

# COMMON AFRICAN POSITION ON ASSET RECOVERY

# IMPLEMENTATION IN MADAGASCAR

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## CAPAR Implementation in 2024

A pilot CSO assessment of the implementation of the Common African Position on Asset Recovery in 2024

Author: Kanto Maeva RAMAMONJISOA, CAPAR Project Coordinator and Legal Assistant (TI-MG), Ariela Andrianina RANDRIANIRINA, Business Integrity Intern (TI-MG)

Reviewers: Mialisoa RANDRIAMAMPIANINA, Executive Director (TI-MG) Hasiniaina M. RANDRIANJA-ARIVONY, Head of Programs (TI-MG)  
Dr Ketakandriana RAFITOSON, Senior staff advisor (TI-MG)

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Methodology initially developed by CiFAR – Civil Forum for Asset Recovery and reviewed and revised by CiFAR, Transparency International and all piloting civil society organisations.

Every effort has been made to verify the accuracy of the information contained in this report. All information was believed to be correct as of 2024. Nevertheless, Transparency International-Initiative Madagascar cannot accept responsibility for the consequences of its use for other purposes or in other contexts.

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# TABLE OF CONTENTS

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<b>Methodology .....</b>	<b>5</b>	<b>Pillar 3: Management of Recovered Assets .....</b>	<b>34</b>
<b>Summary.....</b>	<b>7</b>	Overview .....	34
<b>Pillar 1: Detection and Identification of Assets..</b>	<b>10</b>	4.3.1 Creating and maintaining an agreed framework for management of recovered assets .....	35
Overview .....	10	4.3.2 Enhancing or creating institutional, legal or policy frameworks .....	37
4.1.1. Strengthening domestic and regional systems .....	11	4.3.3 Implementing strategies to enhance transparency in the management of recovered assets .....	41
4.1.3 Strengthening and enhancing existing bodies and institutions .....	17		
4.1.4 Encouraging and advocating for transparency	22		
		<b>Pillar 4: Cooperation and Partnerships .....</b>	<b>43</b>
<b>Pillar 2: Recovery and Return of Assets.....</b>	<b>26</b>	Overview .....	43
Overview .....	26	4.4.1 Prioritizing cooperation and partnerships through advocacy and engagement.....	45
4.2.1 Prioritizing the recovery of African assets.....	27	4.4.2 Enhancing coherence and cooperation between domestic, regional and global systems, frameworks and institutions .....	46
4.2.2 Strengthening legal and financial institutions to aid the process of asset recovery .....	31		

# ABBREVIATIONS

List of abbreviations and acronyms

<b>Abbreviation</b>	<b>French meaning</b>	<b>English meaning</b>
AML-CFT	Lutte contre le blanchiment de capitaux et le financement du terrorisme	Anti-money laundering and Counter-financing of terrorism
ARAI	Agence de Recouvrement des Avoirs Illicites	Agency for the Recovery of Illicit Assets
ARIN-SA	Réseau inter-agences de recouvrement des avoirs pour l'Afrique de l'Ouest	Asset Recovery Inter-Agency Network for Southern Africa
BIANCO	Bureau Indépendant Anti-Corruption	Anti-corruption office
CAPAR	Position africaine commune sur le recouvrement des avoirs	Common African Position on Asset Recovery
CSI	Comité de Sauvegarde pour l'Intégrité	Integrity Safeguard Committee
DGI	Direction Générale des Impôts	General Tax Department
EDD	Devoir de vigilance	Enhanced Due Diligence
ESAAMLG	Groupe anti-blanchiment de l'Afrique Orientale et Australe	Africa Anti-Money Laundering Group
HCC	Haute Cour Constitutionnelle	High Constitutional Court
MACC	Convention Multilatérale d'Assistance Administrative Mutuelle en matière Fiscale	Mutual Administrative assistance in tax matters
MoU	Memorandum d'entente	Memorandum of Understanding
PAC	Pôle Anti-Corruption	Anti-corruption unit
PEP	Personne politiquement exposée	Politically Exposed Persons
SAMIFIN	Service de Renseignement Financier	Financial Intelligence Unit
SNLCC	Stratégie Nationale de Lutte contre la corruption	National Anti-Corruption Strategy
TWIX	Commerce d'échange d'informations sur la faune sauvage	Trade in Wildlife Information exchange

# METHODOLOGY

This report is a civil society organisation (CSO) assessment of the extent to which the recommendations of the Common African Position on Asset Recovery (CAPAR) have been implemented in the country. This was undertaken through the piloting of an assessment tool carried out between November 2023 and March 2024. This tool was subject to revision through a research meeting in April 2024.

This tool is a way to assess government implementation of CAPAR commitments and as a basis to advocate for reform. It contains four different fields:

- **Recommendation:** The recommendations are derived from the four pillars of CAPAR. These recommendations have been carefully selected based on their appropriateness and measurability in assessing a country's asset recovery framework. They each correspond to a recommendation set out in the CAPAR and can therefore be directly linked to a commitment made by an African Union Member State
- **Indicator:** The indicators used in the assessment are derived from the sub-components of the CAPAR recommendations. These indicators address three key aspects: the existence or presence of certain elements, the specific provisions or elements included, and the extent or coverage of those provisions in the national asset recovery frameworks.
- **Ratings:** The ratings provided for each indicator are categorized into three levels: No, Somewhat, and Yes. By evaluating and measuring the options of "No/Somewhat/Yes," it becomes possible to assess the effectiveness of a country's asset recovery framework. These ratings help identify areas where improvements can be made.
- **Justification for the rating:** Alongside assigning a rating to each indicator, the rating is substantiated by information to support the assigned rating. The information offers credible evidence and reasoning that supports the given rating. The basis for the information provided ranged from credible sources and public information, to consultations with experts and government officials.

	Yes
	Somewhat
	No

The report is laid out across several sections:

- The summary provides an overall explanation of the results of this assessment and a summary graph showing overall progress in implementing the CAPAR.
- It is followed by the individual assessment of each Pillar and indicators within that Pillar.
- Each of the four Pillars includes a summary of the results of that pillar, with a graph indicating scores by Pillar. Each indicator is then included with the findings of that indicator and a justification of how that finding was reached.

CSOs are essential for the implementation of CAPAR through providing oversight on the in-country implementation of CAPAR and providing recommendations for reform. This includes by:

- **Raising Awareness and Promoting Recommendations:** engaging with the public and stakeholders via the media, in meetings, and in forums to increase awareness about CAPAR and its recommendations.
- **Assessing Government Commitment Implementation:** evaluating the level of commitment implementation by governments, pinpointing gaps and offering inputs for improvement.
- **Advocating for Reforms:** championing necessary reforms in asset recovery legislation, institutions, and practices to align with CAPAR recommendations.

# SUMMARY

The Common African Position on Asset Recovery (CAPAR) is a political commitment by African governments adopted in February 2020 in the framework of the African Union to promote effective and efficient asset recovery. Moreover, it is used in the aim of facilitating the identification, repatriation and effective management of assets. The first objective of this tool is to ensure better accountability and transparency in asset recovery processes. The study assesses Madagascar's progress in the CAPAR implementation, and shows that most responses revolved around "SOMEWHAT". This trend shows that the initiatives and legal provisions are there, but their implementation remains a challenge. This raises questions about the effectiveness of the legal framework, and the efforts required to guarantee this effectiveness.

In the detection and identification of assets, the process begins with the assets' declaration by public officials, which is both a constitutional and legal obligation. With a view to reducing areas of complicity in illicit financial flows and the sending of African assets to foreign jurisdictions, Madagascar has a legal framework governing this fight against illicit financial flows. The law No. 2018-043 of February 13, 2019, on the fight against money laundering and terrorist financing covers everything relating to the duty of vigilance of financial institutions towards their customers, and the reporting of suspicious transactions to the competent authorities. The law also covers the obligation to identify and monitor high-risk customers and politically exposed persons. SAMIFIN, the Malagasy financial intelligence unit has detected 3,340 billion ariary of illicit financial flows, 35.6% of which came from tax fraud and 30% came from a free remittance. Free remittance is when money is sent abroad for imports but never returns. In fact, there is no repatriation of currency or goods.<sup>1</sup>

Regarding the asset recovery and restitution, Madagascar has an asset recovery strategy embedded in the National Anti-Corruption Strategy (Stratégie Nationale de Lutte Contre la Corruption –SNLCC in French)<sup>2</sup> and the Five-Year Strategy for the Recovery of Illicit Assets. The main objective of the SNLCC is to reduce opportunities for corruption. This objective is aimed at establishing preventive mechanisms through the implementation of a priori control systems, to protect financial resources. The Five-Year Strategy for the Recovery of Illicit Assets is based on four strategic objectives: (i) guaranteeing the effectiveness of the basis for the recovery of illicit assets; (ii) increasing the effectiveness of the recovery of illicit assets; (iii) strengthening international cooperation in the field of the recovery of illicit assets; and (iv) increasing the commitment of the State and ensuring inclusiveness in the recovery of illicit assets.<sup>3</sup>

The implementation of this five-year strategy for the recovery of illicit assets is the main mission of the Agency for the Recovery of Illicit Assets (Agence de Recouvrement des Avoirs Illicites-ARAI in French). This is the fifth entity in Madagascar's anti-corruption system, established by Decree No. 2021-960 on September 29, 2021, which outlines the creation, composition, organization, and operation of the ARAI. In this sense, ARAI is an institutional mechanism, resulting from the Law n°2016-020 of August 22, 2016, working in the prevention and the fight against corruption. More specifically, the aim is to attack assets illicitly acquired by corrupters and the corrupted. It is also about to ensure that the decisions of the competent court, known as the Anti-Corruption Unit (Pôle Anti-

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<sup>1</sup> Source: « SAMIFIN - 3,340 billion ariary in illicit financial flows detected in 2023 » February 9<sup>th</sup>, 2024 <https://2424.mg/samifin-3-340-milliards-dariary-de-flux-financier-illicite-detectes-en-2023/>

<sup>2</sup> The National Anticorruption Strategy is available on : <https://www.csi.gov.mg/wp-content/uploads/2015/10/SNLCC-BOOKLET-A5.pdf>

<sup>3</sup> As the Five-Year Strategy for the Recovery of Illicit Assets is not yet available to the public, the information relating to this was obtained during the individual interview with Aimé RASOLOHARIMANANA, ARAI's General Director on 17<sup>th</sup> January 2024. Some information are also available on the ARAI's website : <https://arai.mg/>

Corruption - PAC), which is responsible for prosecuting and punishing cases of corruption and related offences, are effective. Finally, the aim is to force criminals to return what has been wrongfully taken and to deprive them of these resources.<sup>4</sup> In Madagascar, the main objective of asset recovery is to make crime unprofitable and to prevent criminals from enjoying illegally acquired assets. This action therefore is part of the fight against money laundering and illicit financial flows by guaranteeing the recovery of all criminal assets for the benefit of the Malagasy State. All assets recovered are held in a central register which contains information required to facilitate the management and traceability of seized, frozen and confiscated assets. The central register may be consulted only by the judicial authorities, the judicial police and specialized public administrations for the purpose of tracking the fate of assets until their restitution or disposal and distribution of the price.

In terms of collaboration and partnerships, it seems necessary to talk about the regional and national levels. On the one hand, at the global and regional level, the ability to obtain information abroad is still informal. SAMIFIN does not use traditional mutual legal assistance, as this process is overly complex and time-consuming, particularly in the context of real-time information acquisition.

This procedure involves a long chain of collaboration between the PAC first, then the Ministry of Justice and finally the Ministry of Foreign Affairs, which will request information from foreign counterparts. Furthermore, SAMIFIN has signed more than 30 Memorandum of Understandings with counterparts Financial Intelligence Units, which facilitate the exchange of information between countries. Nonetheless, countries with which Madagascar has not yet concluded a Memorandum of Understanding (MoU) are not required to transmit information to the country. The main objective is to use the data for legal proceedings.<sup>5</sup> Moreover, Madagascar is a member of the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG), Trade in Wildlife Information Exchange (TWIX), Interpol, Globe Network, Asset Recovery Inter-Agency Network for Southern Africa (ARIN-SA). The process to join the Egmont Group is in progress. If SAMIFIN is not yet a member of the EGMONT group, its capacity in terms of exchange of information with the Financial Intelligence Unit, its effectiveness in tracking clandestine financial flows getting out of the country, are still limited. On the other hand, at the national level, the involvement of civil society is an ongoing process.

SAMIFIN, as a financial intelligence service, will establish a Convention with some chosen CSOs to allow a reciprocal exchange of information. The sorting of information about a particular case is based on the relevance of information and documents provided by CSOs and media. ARAI plans to set up a commission to evaluate the result of the five-year strategy, of which CSOs will be part.<sup>6</sup> Finally, CSOs played a role in lobbying for the State's responsiveness; the denunciation of cases of corruption by any citizen is highly important. However, whistleblowing remains problematic due to the lack of a law or mechanism to protect whistleblowers. Therefore, the adoption of such a law and the establishment of related mechanisms remains a priority for Madagascar.<sup>7</sup>

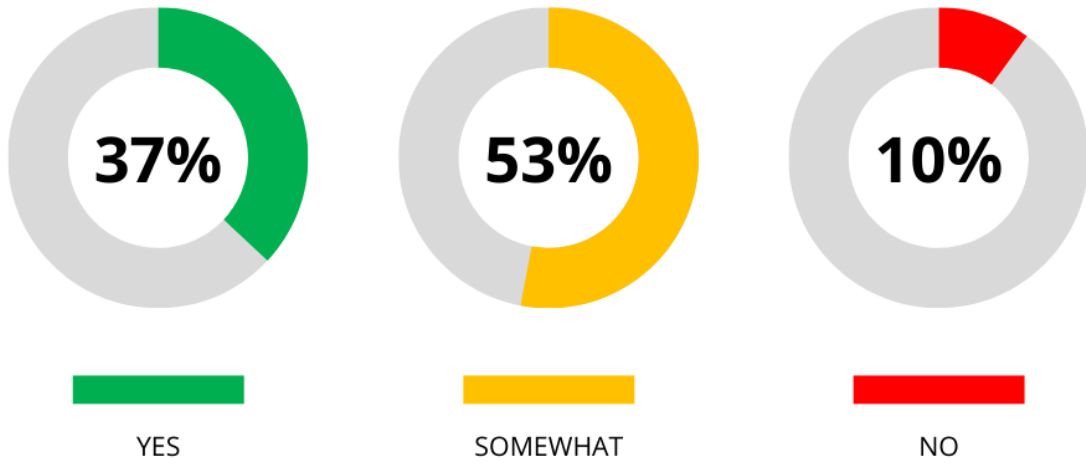
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<sup>4</sup> ARAI's missions are set out on its website: <https://arai.mg/>

<sup>5</sup> Information on collaboration at regional level was obtained from an individual interview with M. Mamitiana RAJAONARISON, SAMIFIN's General Director on 15<sup>th</sup> July 2024

<sup>6</sup> Information on collaboration at national level was obtained during individual interviews with M.Aimé RASOLOHARIMANANA, General Director of ARAI's General Director, and M. Emilson RABEMANANJARA, SAMIFIN's Technical Advisor

<sup>7</sup> Article by the NGO Malina, the investigative journalism serving the fight against corruption, dated 30 April 2022 and entitled "Protect whistleblowers!" where TI-MG calls for the protection of whistleblowers. <https://www.malina.mg/fr/lanceur-dalerte/>



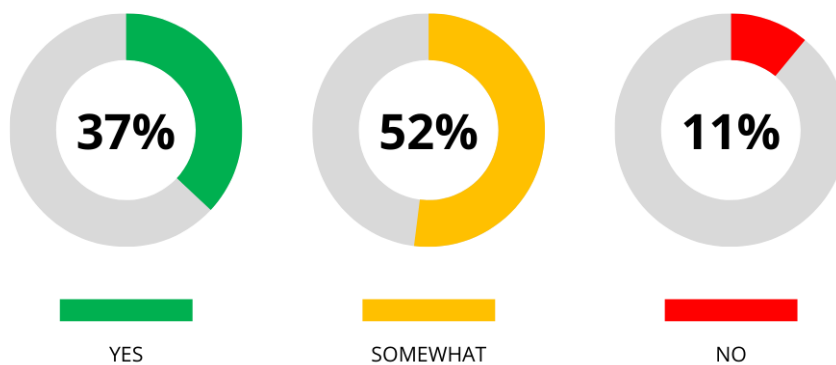
Overall scores: Madagascar

# PILLAR 1: DETECTION AND IDENTIFICATION OF ASSETS

## OVERVIEW

In Madagascar, the financial declaration for public officials is made through the declaration of assets and economic interests. This financial declaration is both a constitutional and legal obligation. The system addresses the declaration of assets, liabilities, and economic interests. The Malagasy Constitution sets out a clear constitutional obligation for the heads of institutions subject to the obligation to register their assets. The High Constitutional Court (HCC) is designated as the competent authority to receive these asset declarations, to combat illicit enrichment and conflicts of interest. Additionally, anti-corruption laws require asset declarations to promote transparency in public functions, ensure the integrity of public servants, and strengthen public trust in institutions. However, Malagasy laws do not address the remuneration of public officials by category, with the relevant decree dating back to 1960.

Despite the legal requirement for Malagasy financial institutions to exercise due diligence on their customers to combat money laundering and terrorist financing, this process is not yet fully implemented. The FATF's mutual evaluation report noted shortcomings in the exercise of this duty, particularly the lack of an obligation on financial institutions to update and ensure the relevance of documents, data and information collected as part of the customer due diligence process. There is also no obligation to verify information relating to beneficial owners under a legal arrangement. Finally, there is no guidance on the additional measures to be taken by financial institutions in the event of higher risks for legal entities.<sup>8</sup>



*Pillar 1 results*

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<sup>8</sup> Madagascar is rated Partially Compliant by FTAF Report 2023. Anti-money laundering and Counter-terrorist financing measures, Madagascar 9th Enhanced Follow Up Report and Technical Compliance Re-Rating, March 2023, p.20 <https://www.fatf-gafi.org/content/dam/fatf-gafi/fsrb-fur/Madagascar-ESAAMLG-Follow-Up-Report-2023.pdf.coredownload.inline.pdf>

## 4.1.1. STRENGTHENING DOMESTIC AND REGIONAL SYSTEMS

### A) Enhancing existing laws and making new laws, where there is deficiency, to allow for the transparency and accessibility of records of assets of public officials

#### Indicator i) Is there a law requiring public officials to record their assets publicly?

	A law exists clearly requiring public officials to publicly record their assets. The law applies to all public officials or at least all those in decision making or other positions of authority.
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#### Justification for the rating

In Madagascar, the asset declaration is a constitutional and legal obligation and there is a specific legal framework regarding the obligation of public officials to declare their assets.

Firstly, the Malagasy Constitution, in its Title III, talks about the general organization of the State. It clearly describes the allowances for those holding public mandates or positions within state institutions and the interdiction to accept payments from other persons or entities, to avoid decay.

According to Article 41 (Title III) of the Constitution, all individuals with a mandate to serve in public office or carry out missions in public institutions must submit a declaration of assets to the HCC. Those required to declare their assets to the HCC include the President of the Republic, the Prime Minister, the Ministers, State Secretaries, Members of Parliament, Senators, and members of the HCC.

The Anti-Corruption Law No. 2016-020, dated August 22, 2016, outlines in article 2 the various public officials who are required to declare their assets and economic interests on a period basis. However, article 44 of the Anti-corruption Law specifies that the Anti-corruption office (Bureau Indépendant Anti-Corruption-BIANCO in French) receives a copy of the assets declaration of persons subjected to the Constitution. BIANCO also oversees collecting, using, and keeping those asset declarations. Moreover, the various public officials listed in this law must file their declaration with BIANCO.

Additionally, Decree No. 2004-983, repealing and replacing Decree No. 2002-1127 of September 30, 2002, which instituted the obligation of asset declaration for certain categories of high-ranking personalities and senior officials, specifies the purpose of the periodic asset declaration in Article 1. This obligation aims to promote transparency in the exercise of public functions, ensure the integrity of state servants, and strengthen public trust in institutions.

#### ii) Does the law require regular updates to these asset records?

	Periodic updates are required by law, but with longer intervals or irregular or limited occasions or only require updates at specific intervals, e.g. changes in position.
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#### Justification for the rating

The current legislation in Madagascar includes regular disclosures of assets by public officials.

**Asset Declaration Process:** Under the anti-corruption Law n°2016-020 of August 22, 2016, article 2 requires that asset declarations must be submitted within three months of appointment or before assuming a mandate. In the event of a change in administrative position or a significant change in assets, such declarations must be renewed every two years. However, the personalities subjected to the declaration of assets in the BIANCO, are planned in the Decree No. 2004-983, dated October 12, 2004, amending certain provisions of Decree No. 2002-1127, dated September 30, 2002, in its article 3, obliged to renew the declaration of assets every year.

**Upon Termination of Functions:** After leaving office, the obligation to declare assets applies to any public official or public figure for a period of two years. However, there are challenges regarding the renewal of asset declarations for heads of institutions, as there are no clear provisions mandating annual renewal.

### iii) Is information on the record of assets of public officials easily accessible?

	Information is accessible to select institutions or individuals, but not available to the general public or available but not in a form that is easily accessible to the general public.
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#### Justification for the rating

In Madagascar, the information about the asset declaration is limited to the BIANCO. Nonetheless, only the total number of asset declarations received each year is accessible to the public and is made available on BIANCO's website.<sup>9</sup> This public disclosure includes information about the various categories of individuals subject to asset declaration.

In accordance with Article 3 of Law No. 2016-020 of August 22, 2016, on the fight against corruption, the BIANCO is authorized to collect, verify, monitor, archive, and secure information related to asset and economic interest declarations. Article 4 specifies that statistics relating to the management of the asset declarations are available and communicated to the public.

To guarantee the confidentiality of the assets declaration and the provisions governing the processing of personal data, the access and communication of the declarations are restricted to BIANCO, within the framework of legal proceedings, under the authority of the First President of the Supreme Court and the Attorney General of the Supreme Court and the authority empowered to process personal data.<sup>10</sup>

Therefore, the information on the public officials' assets in Madagascar is confidential and only a happy few have access to it.

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<sup>9</sup> Annual Report of BIANCO (2021) available on <https://bianco-mg.org/wp-content/uploads/2022/09/RAPPORT-ANNUUEL-2021.pdf>

<sup>10</sup> Malagasy responses to the questionnaire on good practices and challenges in setting up financial disclosure systems for appropriate public officials. 17th session of the open-ended intergovernmental working group on asset recovery (Vienna, September 4-8, 2023)

## C) Encouraging and domestically enforcing transparency and accountability of financial institutions and the financial services sector to address and curb areas of complicity in illicit financial flows and the illicit consignment of African assets to foreign jurisdictions

### i) Is there a legal requirement for financial institutions to conduct comprehensive Customer Due Diligence (CDD) on their customers?

There are laws in place that require financial institutions to conduct CDD on their customers.

#### Justification for the rating

Madagascar has specific legislation about the obligation to conduct Customer Due Diligence: **Law No. 2018-043 of February 13, 2019, on anti-money laundering (AML) and Counter-financing of terrorism (CFT) – AML/CFT** (Article 12, paragraphs 1 and 5, Article 13, paragraph 1, Article 14, Article 15 and Article 16).

In Madagascar, financial institutions are required to exercise vigilance towards their clients to ensure transparency and traceability in economic relationships. Consequently, financial institutions are responsible for overseeing, regulating, and controlling clients/establishments at the time of authorization for an account opening. For this reason, anonymous accounts and fictitious names are not allowed.<sup>11</sup>

Moreover, the duty of vigilance must be exercised towards occasional customers and beneficial owners. This means that financial institutions are required to take the necessary steps to identify them.

Finally, article 16 defines specific measures for transactions that are carried out with unusually complex or unjustified conditions. It also concerns situations that have no economic justification or lawful object. So, it is necessary to exercise due diligence in accordance with internal policy directives or those issued by any control and supervisory structures, to the origin and destination of the funds.

#### **Law No. 2020-011 of July 2, 2020, on Banking Law** (Article 121)

The credit institution is undertaken to comply with the legal provisions relating to the fight against money laundering and terrorist financing. The credit institution must adopt appropriate risk-based due diligence measures, tailored to the specific profile, activities and nature of transactions of each customer.

#### **United Nations Convention against Corruption** (Article 52)

The Convention imposes on the States parties, including financial institutions, the obligation to verify the identity of clients and to take reasonable measures to determine their identity. This procedure aims to detect suspicious transactions and report them to the competent authorities. It is noteworthy that Madagascar is a signatory to this Convention, making these dispositions applicable to the country.

<sup>11</sup> FATF, "International Standards on Combating Money Laundering, Terrorist Financing and Proliferation" Recommendations Updated March 2022

## ii) Is there a legal requirement for financial institutions to maintain up-to-date customer information through Know Your Customer (KYC) procedures?

Laws exist requiring financial institutions to maintain up-to-date customer information through KYC procedures however they are not fully implemented or enforced.

### Justification for the rating

The AML/CFT law (No. 2018-043 of 13 February 2019) states that banks must keep customer information up to date (Article 13) Reporting institutions must collect, update and analyse customer information throughout the business relationship. This process is to assess money laundering and terrorist financing risks.

### The implementation of this disclosure:

The AML/CFT actors at BFM (Corporate and Microfinance Bank) are required to take reasonable measures by following the established procedural manual to determine the identity of the client and their activities.<sup>12</sup>

The AML/CFT units and the corresponding AML department ensure knowledge of the client and assess the sensitivity to money laundering risk. Client identification is a prerequisite for entering into a partnership. So, they verify the complete identity of the client, their activity, and the volume involved. They are responsible for updating information about the clients they hold, reporting suspicious transactions to the central management, and providing any additional information requested by the central management.

According to the FATF standards, of which Madagascar is a signatory, financial institutions are required to ensure that documents, data, and information obtained during the exercise of due diligence remain up-to-date and relevant (continuous due diligence).<sup>13</sup>

### The lack of implementation of this disclosure:

However, Madagascar is rated Partially Compliant by FTAI Report 2023. The FTAI Evaluation report revealed deficiencies by the facts that<sup>14</sup> :

- Financial institutions are not required to ensure that documents, data or information collected under the Customer Due Diligence (CDD) process is kept up-to-date and relevant, by undertaking reviews of existing records, particularly for higher risk categories of customers;
- There are no obligations to verify the Beneficial Owner information in case of legal arrangements;
- There are no identification and verification of the beneficiaries of life insurance policies;
- There are no guidance on what additional measures to be undertaken by financial institution in cases of higher risks situations for legal person/arrangements;
- There is no provision for simplified measures where such cases have been identified and there are no provision that allows financial institutions to omit Customer Due Diligence and file a STR where they believe that the CDD process would tip off the customer.

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<sup>12</sup> Banky Foiben'i Madagasikara, Legal Department Report, "Anti-money laundering and combating the financing of terrorism (AML/CFT) policy", May 2019

[https://www.banky-foibe.mg/admin/wp-content/uploads/2019/06/POLITIQUE\\_BFM\\_LAB-FT-1.pdf](https://www.banky-foibe.mg/admin/wp-content/uploads/2019/06/POLITIQUE_BFM_LAB-FT-1.pdf)

<sup>13</sup> FATF, "International Standards on Combating Money Laundering, Terrorist Financing and Proliferation" Recommendations Updated March 2022

<sup>14</sup> Anti-money laundering and Counter-terrorist financing measures, Madagascar 9th Enhanced Follow Up Report and Technical Compliance Re-Rating, March 2023, p.20

### iii) Are financial institutions legally required to report suspicious transactions to the appropriate authorities within a specified timeframe?

There are legal obligations for financial institutions to provide STRs however they are not enforced or do not have a specified timeframe.

#### Justification for the rating

Financial institutions are required to report suspicious transactions to the competent authorities, as mentioned by the **AML/CFT Law No. 2018-043 of February 13, 2019**.

According to Article 9, paragraph 4: Financial institutions are required to inform the financial intelligence unit, as provided in Article 23, of operations carried out by clients who do not have sufficient information.

Moreover, Article 13 states that financial institutions must notify the financial intelligence unit about the operations conducted by clients with insufficient information.

#### **Law No. 2004-020 of August 19, 2004, on money laundering, detection, confiscation, and international cooperation in the matter of proceeds of crime**

Article 12: Information and documents outlined in Articles 7 to 11 are communicated to the financial intelligence unit.

#### **Law No. 2020-011 of July 2, 2020, on Banking Law**

Article 234: This provision specifies that any person who is aware of an act of corruption or an influence-peddling must inform the BIANCO. This measure is applied when the act is committed by:

- The members of the Banking and Financial Supervisory Commission
- The administrative bodies of the credit institute
- Any promoter or any person acting on behalf of the credit institute.
- Any promoter, and any person responsible for ensuring the control, recovery, resolution and liquidation of the CEs

However, there is no specific timeframe for notifying the financial intelligence unit. The reporting process begins as soon as suspicious transactions are identified, and the timing of reporting may vary. Subjective timing considerations are essential as if the reporting delay is too long, the analysis of the case may no longer be relevant.<sup>15</sup>

### iv) Does the legal framework require the financial institution to conduct Enhanced Due Diligence (EDD) on high-risk customers or transactions?

There is a legal framework that provides for financial institutions to conduct EDD on high-risk customers or transactions however it is not comprehensive or has not been enforced.

<sup>15</sup> Interview with M. Emilson RABEMANANJARA, SAMIFIN's Technical Advisor on 26 January 2024

### Justification for the rating

The 2018-043 AML/FCT law of February 13, 2019, defines in its Article 4 a high-risk client as any individual using banking or financial services who lacks sufficient information to trace the origins and the ultimate beneficiaries of their transactions. A high-risk client doesn't cooperate in providing transaction justifications. This category includes occasional customers and those who refuse to comply with the vigilance measures established by the relevant institution. In addition, article 16 discusses the specific monitoring of certain transactions. Subjected institutions are required to implement enhanced vigilance measures concerning their clientele, especially transactions carried out by high-risk clients.

However, the law does not specify the conditions for implementing this duty of vigilance towards high-risk clients.

Finally, Madagascar has been rated as Partially Compliant by the FATF Report 2023, which revealed the following deficiencies:<sup>16</sup>

- Financial Institutions are not required to ensure that documents, data or information collected as part of the Customer Due Diligence (CDD) process are kept up-to-date and relevant, by reviewing existing records, particularly for higher risk categories of customers;
- There are no obligations to verify the Beneficial Owner information in case of legal arrangements;
- There are no identification and verification of the beneficiaries of life insurance policies;
- There is no specific guidance on what additional measures to be undertaken by Financial Institutions in cases of higher risks situations for legal person/arrangements;
- There is no provision for simplified measures where such cases have been identified, and there is no provision to allow FIs to omit Customer Due Diligence where they believe that the CDD process would tip off the customer.

### v) Are financial institutions required by law to identify and monitor Politically Exposed Persons (PEPs)?

There are comprehensive legal requirements for financial institutions to identify and monitor PEPs

### Justification for the rating

AML/CFT Law No. 2018-043 of February 13, 2019, Article 16: "Subjected institutions take reasonable measures to determine if a client or ultimate beneficiary is a Politically Exposed Person (PEP) or a high-risk individual. Subjected institutions must implement enhanced vigilance measures concerning their clientele, especially regarding transactions carried out by PEPs."

Toward the PEPs, the financial institutions must:

- Have appropriate risk management systems in place to determine if the customer or beneficial owner is a politically exposed person;
- Obtain senior management approval to establish or continue a business relationship with an existing customer;
- Take reasonable steps to establish the origin of assets and the source of funds;

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<sup>16</sup> Madagascar is rated Partially Compliant by FATF Report 2023. Anti-money laundering and Counter-terrorist financing measures, Madagascar 9th Enhanced Follow Up Report and Technical Compliance Re-Rating, March 2023, p.20  
<https://www.fatf-gafi.org/content/dam/fatf-gafi/fsrb-fur/Madagascar-ESAAMLG-Follow-Up-Report-2023.pdf.coredownload.inline.pdf>

- Ensure ongoing monitoring of the business relationship.

The obligations applicable to all types of PEPs extend to their family members and persons closely associated with them.

**Directive n°001/SAMIFIN/CAB/DG/22 of June 14, 2022 on the prevention and detection of money laundering and/or terrorist financing and the reporting of suspicious transactions** is designed to improve the implementation of measures for the prevention and detection of money laundering and/or terrorist financing and the offences associated with them. It sets out the obligations of professions subject to the fight against money laundering and terrorist financing, including financial institutions and designated non-financial businesses and professions.

The directive in articles 48 to 50 includes a provision on identifying PEPs. Reporting institutions must have adequate risk management systems to determine whether a potential customer, if he/she is the beneficial owner, is a PEP. Any relationship with a PEP or a beneficial owner with PEP status must be approved in advance by the reporting entity's governing body.

Financial Institutions are required to take all reasonable steps to identify the origin of the assets and funds of any customer considered to be a PEP.

Potential measures to verify a customer's identity include (art. 51):

- Checking identification documents
- Requesting additional paperwork
- Conducting a background check through a reputable third party,
- Requiring an initial deposit to a verified bank account,
- Sending a confirmation letter to the customer's address

### 4.1.3 STRENGTHENING AND ENHANCING EXISTING BODIES AND INSTITUTIONS

#### A) Enhancing the effectiveness of domestic, regional, and global financial institutions, revenue collection authorities, financial intelligence centers (FICs) and units, through reform of laws and mandates as well as advocacy

##### i) Are specific agencies designated to facilitate existing frameworks of cooperation and enable effective detection and identification and tracking of assets across borders?

Agencies are clearly designated and empowered to facilitate networks of cooperation and to enable effective detection and identification and tracking of assets.

#### Justification for the rating

In Madagascar, SAMIFIN as a Financial Intelligence Unit (FIU), oversees facilitating existing cooperation frameworks and effectively detecting, identifying, and monitoring assets beyond borders. The AML/CFT Law No. 2018-043 of February 13, 2019, deals in its Title III, with the role of the FIU in fostering cooperation networks and effective detection and monitoring of assets. SAMIFIN is an administrative-type financial intelligence service that works in collaboration with the government, local authorities, the private sector, and actors in the financial

system to ensure compliance with AML/CFT regulations. This collaboration enhances synergy and international cooperation, contributing to the detection of illicit financial flows.<sup>17</sup>

## ii) Does the FIU have a legal framework or guidelines to facilitate the exchange of reporting of suspicious activity (for spontaneous dissemination and dissemination upon request)?

There is framework or guideline to facilitate the exchange of STRs and is being utilised.

### Justification for the rating

Firstly, SAMIFIN has a five-year plan covering the period 2022 to 2026. It aims to ensure the effectiveness of measures to mitigate the risks and threats associated with illicit financial activities and to detect and suppress financial flows outside the legal circuit. Moreover, the 2022-2026 five-year plan should enable SAMIFIN to comply with international standards and strengthen synergies between national stakeholders as well as international cooperation around financial intelligence.<sup>18</sup>

On the national level, SAMIFIN has a framework to facilitate the exchange of Disclosure of Doubtful (DOD) information. The results of its analyses are communicated to judicial authorities or specialized administrations for appropriate actions. This action aims to facilitate judicial inquiries, criminal prosecutions, or handling by specialized administrations for investigative or enforcement purposes. Additionally, there is an online platform called GATEWAY that allows for the submission of suspicious transaction reports.<sup>19</sup>

On the international front, the Malagasy AML/CFT Law No. 2018-043 of February 13, 2019 allows collaboration with other states through a Memorandum of Understanding (MoU). The MoU facilitates communication and information exchange between countries. This exchange is conducted through a coded system. It is noteworthy that the detection of proceeds of crime is mainly based on informal information exchange and involves direct contact with counterparts through a database. Therefore, there is a reciprocal sharing of information among countries that have signed the MoU.<sup>20</sup> Nonetheless, countries with which Madagascar had not concluded MoU are not obliged to transmit information to the country.

SAMIFIN spontaneously and systematically disseminates information to other entities as a matter of urgency. Foreign requests are also prioritized when suspicious transactions are sent to Madagascar.

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<sup>17</sup> Information about SAMIFIN can be consulted on its website: <https://www.samifin.gov.mg/>

<sup>18</sup> The 2022-2026 five-year plan was reported in *L'Express de Madagascar*: "AML: SAMIFIN changes strategy" on Tuesday 24 May 2022

<https://lexpress.mg/24/05/2022/lutte-contre-le-blanchiment-dargent-samifin-change-de-strategie/#:~:text=Le%20plan%20quinquennal%202022%2D2026,en%20mati%C3%A8re%20de%20renseignement%20financier.>

The strategy is available on this link: [https://drive.google.com/file/d/1Ph9Zt7uG7f8\\_dN4mfOrLbsaOMIVGm-SP/view](https://drive.google.com/file/d/1Ph9Zt7uG7f8_dN4mfOrLbsaOMIVGm-SP/view)

<sup>19</sup> Interview with M. Emilson RABEMANANJARA, SAMIFIN's Technical Advisor on January 26<sup>th</sup>, 2024

<sup>20</sup> Information on the MoU was obtained from an individual interview with Mamitiana Rajaonarison, SAMIFIN's General Director on January 26<sup>th</sup>, 2024

### iii) Does the FIU have capacities (financing, human resources, and systems) to guarantee the exchange of information?

The FIU has limited capacity to guarantee exchange of information.

#### Justification for the rating

SAMIFIN has the following capabilities to ensure information exchange<sup>21</sup>:

**Financial Resources:** SAMIFIN has an average annual budget of 4.01 billion Ariary, with 17.57% coming from External Technical and Financial Partners (PTF). The main donors include PNUD, GIZ, EU, and USAID, providing technical support in SAMIFIN projects. However, SAMIFIN still considers financial resources insufficient, particularly the operating budget allocated by the State.

**Human Resources:** SAMIFIN has a staff of 60, composed of 57.4% men and 42.6% women. SAMIFIN staff and stakeholders receive capacity-building efforts, with experts providing training in AML/CFT.

Despite its capabilities, SAMIFIN faces significant limitations, particularly in resource recruitment. One major challenge is the availability of budgetary positions. Additionally, there is a mismatch between the profiles of candidates and the requirements of the positions during the recruitment process.<sup>22</sup>

**System:** SAMIFIN has acquired the GoAML software, obtained the necessary equipment, and strengthened the security of its building. Moreover, SAMIFIN operates a centralized digital platform where all information must be entered. However, some stakeholders lack digital proficiency or are unwilling to input information. Consequently, SAMIFIN often has to send additional written requests, which prolongs the procedure.

### iv) Are there any significant legal restrictions to responding to mutual legal assistance requests (i.e., banking secrecy; restrictions related to the nature or status of the requesting counterpart, or on the sole grounds of fiscal matters, among others)?

There are no legal restrictions in responding to MLA requests.

#### Justification for the rating

**AML/CFT Law No. 2018-043 of February 13, 2019 states the absence of legal restrictions to mutual legal assistance requests.**

Article 37 specifies that banking or professional confidentiality cannot be invoked, even if a law related to the concerned profession allows it. This decision was made to amend legal and regulatory provisions and eliminating banking secrecy concerning tax authorities as a member of the Global Forum. Furthermore, countries that are

<sup>21</sup> All the information about the financial and human resources are contained in the Annual report 2023 of SAMIFIN, which is available on its website: <https://www.samifin.gov.mg/fr/home-1>

<sup>22</sup> Interview with M. Emilson RABEMANANJARA, SAMIFIN's Technical Advisor on January 26<sup>th</sup> 2024

members of the OECD should review their laws, regulations, and practices governing access to banking information to eliminate obstacles for tax authorities in accessing information.<sup>23</sup>

Article 26 refers to relations with Foreign Counterparts: The FIU can exchange information with foreign counterparts responsible for receiving and processing suspicious activity reports. This is possible if these counterparts are subject to similar confidentiality obligations, regardless of the nature of these services. To facilitate this, the unit can enter into cooperation agreements with these foreign counterparts.

### **v) Is there a mechanism to facilitate the exchange of information between tax authorities and foreign counterparts (i.e., the OECD tax information exchange)?**

Some mechanism exist to facilitate the exchange of information between tax authorities and foreign counterparts.

#### **Justification for the rating**

The facilitation of information exchange with tax authorities and their foreign counterparts is achieved through the end of banking secrecy. This aligns with the OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes. This forum monitors the implementation of standards for tax transparency and information exchange. It brings together 162 member countries and jurisdictions working on an equal footing. Madagascar is a member of this forum.<sup>24</sup>

#### **Bill n°014/2024 of 19 June 2024 authorizing ratification of the multilateral convention on mutual administrative assistance in tax matters (MACC)**

Madagascar recently passed a law ratifying the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (Convention Multilatérale d'Assistance Administrative Mutuelle en matière Fiscale in French). This agreement was signed in 2022 and included Madagascar's membership of the global forum.<sup>25</sup>

The exchange of information between the SAMIFIN and the tax authorities as known as the general tax department (Direction Générale des Impôts-DGI in French) is based on a MoU. SAMIFIN has access to all tax information and taxpayer information.

### **vi) Do the agencies designated to facilitate cooperation and tracking of assets across borders have capacity (financing, human resources, and systems) to guarantee their mandate?**

The agencies mandated to facilitate cooperation and tracking of assets across borders have limited capacity.

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<sup>23</sup> This fact is mentioned in the 10th Anniversary Report of the global forum about "Transparency and exchange of information for tax purposes Multilateral cooperation that changed the world" which is available in this following link: <https://web.archive.org/tax/transparency/documents/rapport-10-ans-forum-mondial.pdf>

<sup>24</sup> OCDE Report in 2021 about the OECD's work on taxation <https://www.oecd.org/fr/fiscalite/centre-de-politique-et-administration-fiscales-brochure.pdf>

<sup>25</sup> Interview of Mamitiana RAJAONARISON, SAMIFIN's General Director on July 15<sup>th</sup>, 2024

### Justification for the rating

**SAMIFIN is the only authorized unit for monitoring cross-border assets. For more details on the required capacities, please refer to answer iii).**

Additionally, Madagascar's accession process to the EGMONT group is ongoing. However, since SAMIFIN is not yet a member, its capacity to exchange information with FIUs and its effectiveness in tracking clandestine financial flows out of the country remain limited.<sup>26</sup>

However, Madagascar is a member of the GlobE network, an association of anti-corruption bodies that relies on informal information exchange. SAMIFIN also collaborates with Russia, utilizing an information exchange tool that several countries already use. Additionally, since ARAI is a member of the ARIN-SA network, SAMIFIN works with it as well.

## **B) Encouraging multi-institutional cooperation and strategies to ensure the effective detection and identification and tracking of African assets across multiple jurisdictions**

**i) Are relevant agencies adequately resourced to facilitate existing frameworks of cooperation and enable effective detection and identification and tracking of assets across borders?**

Relevant agencies have the resources to perform some of these tasks but not all.

### Justification for the rating

SAMIFIN has a Task Force dedicated to ensuring Madagascar's compliance with FATF recommendations. This Task Force comprises six entities, each with specific responsibilities, including policy, coordination, supervision, and preventive measures. All members are required to produce an action plan to clarify their obligations and roles.

In addition, the National Orientation and Coordination Commission on AML/CFT includes members such as the Prime Minister, the Ministry of Justice, the Ministry of Finance, and ARAI. SAMIFIN, as the secretariat, develops strategies for AML/CFT initiatives.<sup>27</sup>

<sup>26</sup> Idem

<sup>27</sup> Interview with Emilson RABEMANANJARA, SAMIFIN's Technical Advisor on January 26<sup>th</sup>, 2024

#### 4.1.4 ENCOURAGING AND ADVOCATING FOR TRANSPARENCY

**A) Simplifying the ability of source and destination countries to identify suspicious activities, wealth and transactions by: a) encouraging transparency and accessibility of information regarding remuneration of public officials in order to empower source and destination countries to easily conduct lifestyle audits of suspected officials**

**i) Is the remuneration of public officials (either specific or in bands) publicly available and accessible?**

	The remuneration of public officials is not available to the public.
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##### **Justification for the rating**

**Decree No 60-239 establishes the remuneration system for government officials in Madagascar starting from July 1, 1960.**

**A study report on aligning the salary scales of civil servants in Madagascar** emphasized the importance for a strong trade union movement in the country. The report advocates for a self-reform of the unions through the Workers Conference of Madagascar in June 2017.<sup>28</sup> The previous decree and report did not specify the salaries received by different public servants based on their categories. The earlier report only mentioned the portion of the state budget allocated to the salaries of civil servants, which accounts for 27.9%, compared to 43.8% for investments.

According to an article in *L'Express de Madagascar* of May 6th, 2022, the minimum salary within the public service is reported to be 309,189 ariary, with plans for an increase to 386,486 ariary.<sup>29</sup>

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<sup>28</sup> The study report is available on: <https://library.fes.de/pdf-files/bueros/madagaskar/15153.pdf>

<sup>29</sup> The article is available on: <https://2424.mg/solde-un-salaire-minimum-de-386-486-ariary-au-sein-de-la-fonction-publique-a-partir-de-ce-mois-de-mai/>

**B) Simplifying the ability of source and destination countries to identify suspicious activities, wealth and transactions by: b) Signing onto global standards for transparency, particularly as an aid to developing taxation and legal systems to assist in responding to globalization and the behaviour of private sector actors and multi- national companies**

i) Is the country a signatory or does it adhere to global standards such as the Extractive Industries Transparency Initiative (EITI), Exchange of Information on Request (EOIR), or Global Reporting Initiative (GRI)?

Proclamations made or expressed intention to sign, but formal signing pending. Or the state is a party to some but not all relevant instruments.

#### Justification for the rating

Madagascar joined the Extractive Industries Transparency Initiative (EITI), in 2008. Within the EITI framework, Madagascar has fully implemented seven out of the fifteen corrective measures prescribed during the first validation. The first validation occurred in 2017, and the second in 2019. The third validation will assess progress in implementing EITI standards in 2023.

Madagascar is a signatory to the Exchange of Information on Request (EOIR). The country joined the EOIR standard in 2010. Moreover, with the aim of implementing EOIR obligations, Madagascar adopted the law on the exchange of information on request in 2010 and designated the General Tax department as the competent authority to respond to requests for information exchange.

**Madagascar is not a signatory of the Global Reporting Initiative (GRI). C) Simplifying the ability of source and destination countries to identify suspicious activities, wealth and transactions by: c) ensuring the creation of domestic beneficial ownership registers or other measures to encourage transparency regarding ownership**

i) Is there a legal framework requiring the disclosure of beneficial ownership information?

A law specifically addressing the disclosure of beneficial ownership information exists and is being implemented.

#### Justification for the rating

Madagascar has a legal framework for disclosing information about beneficial owners:

**AML/CFT Law No. 2018-043 of February 13, 2019 (Articles 9 and 16e)** requires entities to identify beneficial owners and implement necessary measures to verify their identity.

In line with the duty of vigilance, third parties must also inform financial institutions about information related to the client's and beneficial owners' identity.

**Law No. 2020-011 of July 2, 2020, on Banking Law (Article 121)** imposes obligations on credit institutions to identify and retain all information related to beneficial owners and transactions, in accordance with the prevailing provisions.

Since 2016, the EITI decided to adopt new standards regarding the disclosure of the real ownership of extractive industry companies operating in member countries. As a result, every company investing in an EITI member country must disclose the name, nationality, and country of residence of its beneficial owner.<sup>30</sup>

**Order n°15227/2023-MEF on the declaration and publication of the identity of beneficial owners of public contracts (Article 6):**

Per confidentiality protocols, the ARMP website will only publish the identities of beneficial owners of contracts.

**Directive n°001/SAMIFIN/CAB/DG/22 on the prevention and detection of money laundering and/or terrorist financing and the reporting of suspicious transactions (Article 28)**

According to this directive, reporting institutions are required to know their customers.

**Order no. 11689/2024-MEF implementing the provisions of the Tax Procedures Code relating to registers of beneficial owners of legal entities and legal arrangements**

Article 2 of this order sets out a list of legal entities that are required to declare their beneficial owners. These include civil society organizations, commercial companies, cooperatives, economic interest groups, associations, non-governmental organizations, foundations and any other legal entity registered in Madagascar, as well as any other legal structure declared on the national territory. Article 5 specifies the obligation for these legal entities to declare online their beneficial owners to the Directorate General of Taxes. Declarants must attach supporting documents online. A declaration certificate is delivered to the declaring entity to justify the respect of this obligation.

## ii) Are beneficial ownership registers publicly available and accessible?

	Beneficial ownership registers are not accessible to the public.
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### Justification for the rating

The 2024 Finance Law stipulates the identification of beneficial owners through a registry managed by the General Tax Department.

According to the Order no. 11689/2024-MEF implementing the provisions of the Tax Procedures Code relating to registers of beneficial owners of legal entities and legal arrangements, a register of beneficial owners is maintained in electronic format at the Directorate General of Taxes. This register collects, centralizes and retains declarations relating to beneficial owners made by the various legal entities operating in Madagascar. The procedures for accessing the central register of beneficial owners are specified in Articles 9 and 10 of the Order.

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<sup>30</sup> The Report on the conditions of implementation of the Real Property Roadmap in Madagascar EITI Madagascar February 2018 is available on:  
[https://eiti.org/sites/default/files/attachments/2304rapport\\_sur\\_les\\_conditions\\_de\\_mise\\_en\\_oeuvre\\_de\\_la\\_propriete\\_reelle\\_a\\_madagascar.pdf](https://eiti.org/sites/default/files/attachments/2304rapport_sur_les_conditions_de_mise_en_oeuvre_de_la_propriete_reelle_a_madagascar.pdf)

However, the information held in the Central Register of Beneficial Owners is secure and protected by professional secrecy.

The information is accessible free of charge to SAMIFIN and the National Register of Commerce and Companies in line with the terms and conditions set out in a memorandum of understanding. Alternatively, the information is accessible on request to the Director General of Taxes to the following authorities:

- The foreign tax authorities that have entered into an administrative assistance agreement with Madagascar
- The Ministry in charge of tax regulations
- The authorities who have a memorandum of understanding or agreement with the Directorate General of Taxes.

The DGI facilitates, in certain conditions, the access of financial institutions and designated non-financial businesses and professions to financial information on beneficial owners.

# PILLAR 2: RECOVERY AND RETURN OF ASSETS

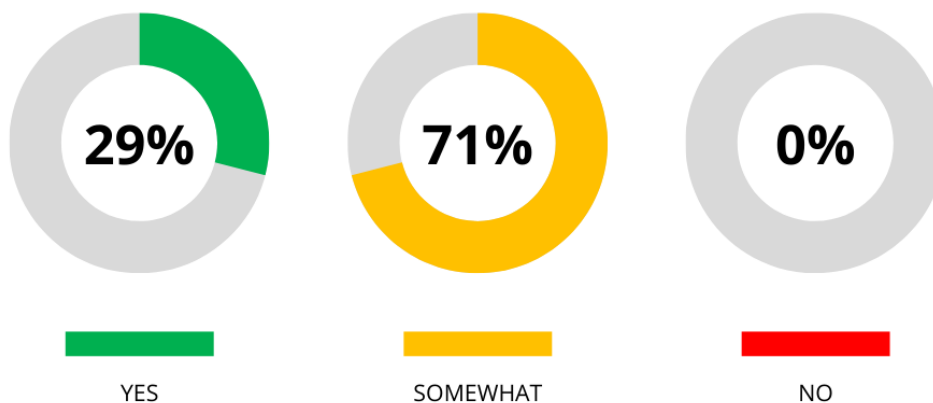
## OVERVIEW

Madagascar has a national anti-corruption strategy whose implementation is ensured by five institutions that are designated by Article 40 of the anticorruption Law No. 2016-020 of 22 August 2016:

- The Integrity Safeguard Committee (Comité pour la Sauvegarde de l'Intégrité - CSI in French), whose main mission lies in the strategy and coordination of the anti-corruption system;
- BIANCO is the entity responsible for education, prevention and investigation relating to corruption cases;
- SAMIFIN is dedicated to tracking down illicit financial flows associated with money laundering, terrorist financing, economic and financial offences and organized crime;
- The Anti-Corruption Unit (Pôle Anti-Corruption-PAC in French) is responsible for prosecuting and punishing cases of corruption and related offences;
- The Agency for the Recovery of Illicit Assets (Agence de Recouvrement des Avoirs Illicites-ARAI in French) is the fifth pillar in the anti-corruption chain, operational since June 2022. The ARAI has a five-year strategy to ensure more effective recovery of illicit assets and to combat the accumulation of criminal assets. The main objective is to strengthen law enforcement by confiscating ill-gotten gains, thereby ensuring an effective and efficient anti-corruption effort in Madagascar.

Madagascar has developed an asset recovery strategy, which is currently being finalized. The ARAI is the national agency in charge of the implementation of this strategy.

The ARAI is facing a challenging deadline, with only two years remaining to contribute to the implementation of the National Anti-Corruption Strategy. However, the delay in receiving freezing and seizing orders is also hindering the delivery of the ARAI mandate, as it must wait for a judgment to be handed down before it can operate.



*Pillar 2 results*

## 4.2.1 PRIORITIZING THE RECOVERY OF AFRICAN ASSETS

### A) Implementing strategies to ensure the simplification of technical and legal processes involved in asset recovery

#### i) Does the country have an asset recovery strategy?

	Pending approval exists or a strategy exists but only covers some of the areas relevant for asset recovery.
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#### Justification for the rating

- Asset recovery is contained in the two following strategies:
- National Anti-Corruption Strategy 2015-2025: aims to reduce the risks and opportunities of corruption. Its objective targets prevention mechanisms through the implementation of priority control mechanisms to protect financial resources. One of the major innovations of this strategy is an improved penal policy, geared towards severe repression and effective asset recovery.<sup>31</sup>
- The five-year strategy for the recovery of illicit assets is built on four strategic objectives: guaranteeing the effectiveness of the foundations for the recovery of illicit assets, reinforcing the effectiveness of the recovery process, ensuring the sustainability of recovery efforts, and enhancing international cooperation and coordination. These objectives aim to create a robust framework for asset recovery, improve operational efficiency, maintain long-term success, and foster collaboration with global partners. The return of assets held in foreign jurisdictions is one of the ARAI's biggest challenges, and is included in their strategy. Although there are not yet any specific examples of successful recovery of assets abroad, steps have already been taken in this area.<sup>32</sup>

Although full recovery of assets held abroad requires mutual legal assistance and cannot be limited to informal cooperation, there is still no specific plan for recovering illicit assets held abroad. Informal cooperation is only helpful for prosecuting a single case and allows for obtaining information held by foreign jurisdictions.

The five-year-strategy is still being amended and is not available to the public yet.<sup>33</sup>


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<sup>31</sup> The National Anticorruption Strategy is available on : <https://www.csi.gov.mg/wp-content/uploads/2015/10/SNLCC-BOOKLET-A5.pdf>

<sup>32</sup> Interview with M. Rado RAJHONSON, interim General Director of ARAI, on 16<sup>th</sup> September 2024

<sup>33</sup> As the Five-Year Strategy for the Recovery of Illicit Assets is not yet available to the public, the information relating to this was obtained during the individual interview with M. Aimé RASOLOHARIMANANA, ARAI's General Director on 17<sup>th</sup> January 2024. Some information are also available on the website of ARAI : <https://arai.mg/>

**ii) Is there an agency designated and/or plan in place for ensuring that the strategy is implemented?**

 Clear plan and designated agency for strategy implementation.

**Justification for the rating**

ARAI is designated to implement this strategy. Indeed, it aligns with the existing anti-corruption structures, which fight against corruption. ARAI was established by decree n°2021-960 of September 29, 2021. ARAI is responsible for recovering illicit assets and property belonging to individuals suspected of having committed offences through the misappropriation of property and public funds, corruption, money laundering and/or the financing of terrorism.

ARAI's action plan for the next five year are set out in The Five-year strategy for the illicit assets.

As Article 27 of Ordinance n°2019-015 of July 05, 2019, relating to the recovery of illicit assets states mentioned, ARAI is in charge of:

- Enforcing decisions to freeze, seize or confiscate illicit assets
- Recovering assets in the event of misappropriation of public property or funds
- Registration of assets covered by the above-mentioned ordinance in the central register of seizures, freezes and confiscations.
- Ensure the safekeeping and management of seized assets, as well as the deposit of the equivalent value of assets disposed of prior to the confiscation decision.

It suits the following plan:<sup>34</sup>

- Preliminary inquiry and Investigation
- Freezing order
- Asset management and conservation
- Final decision and confiscation
- Sale by public auction or transfer of confiscated funds
- Transfer to State fund

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<sup>34</sup> The Procedure for freezing, seizing and confiscating illicit assets was explained during ARAI's training workshop on the recovery of illicit assets of ARAI

**C) Advocating for the advancement of global financial architecture, to gear it to aid the recovery of African assets; D) Advocating for destination countries to remove barriers to asset recovery and return, including by simplifying their legal procedures and preventing abuse of those procedures**

**i) Has the country engaged in advocacy initiatives in the past three years targeting the global financial architecture or destination countries in order to remove barriers to asset recovery and return?**

	There has been engagement in advocacy targeted at the global financial architecture or destination countries to address barriers to asset recovery and return however the engagements have not been extensive.
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**Justification for the rating**

There are indeed some international events in which Madagascar has taken part.

At the 46<sup>th</sup> presentation of the ESAAMLG Task Force, which known as the Africa Anti-Money Laundering Group, Madagascar demonstrated its commitment to the fight against money laundering. Moreover, the ESAAMLG Council and Task Force Plenaries provide an opportunity for the delegates to address pertinent issues that require a concerted and harmonized approach to effectively implement Anti-Money Laundering and Counter Financing of Terrorism and Proliferation (AML/CFT) measures.<sup>35</sup> ESAAMLG has several research initiatives, including the cross-border transportation of cash at regional level. Madagascar is currently chairing this project. It is important to note that cash is the main way used by money launderers. There is also a group that is monitoring the regional risks of terrorist financing, and continues to track the circulation of cash. Madagascar is a member of SADC Twix, a SADC platform for exchanging information on wildlife.

Moreover, Madagascar attended the Conference of the States Parties to the United Nations Convention against Corruption, which took place in Atlanta, in 2023. It supports parties and signatories in their implementation of the Convention and provides policy guidance to UNODC to develop and implement anti-corruption activities.

ARAI is involved in the STAR initiative, which focuses on asset recovery. Madagascar's membership in the STAR initiative offers an opportunity to share experiences and best practices. A meeting in Vienna with foreign and Malagasy authorities provided an opportunity to discuss further steps towards including Madagascar in these international asset recovery institutions. ARAI also works with the Basel Institute on Governance, which cooperates closely with the International Centre for Asset Recovery Training as known as ICAR. A cooperation agreement between the Basel Institute on Governance and ARAI is currently being developed.

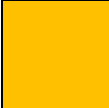
Finally, ARAI is actually the focal point of ARINSA and is also an observer member of ARINWA. Furthermore, ARINWA and ARINSA are considered as an informal network for the exchange of information on asset recovery, confiscation and money laundering.

In fact, ARAI attended the ARINWA and ARINSA General Assembly, in 2022 and 2023.<sup>36</sup>

<sup>35</sup> Interview with M. Emilson RABEMANANJARA, SAMIFIN's Technical Advisor on 26<sup>th</sup> January 2024

<sup>36</sup> Interview with M. Rado RAJHONSON, interim General Director of ARAI, on 16<sup>th</sup> September 2024

## ii) To what extent have these advocacy initiatives been in line with the regional focus prescribed by CAPAR?

 The advocacy initiatives have partially been in line with CAPAR

### Justification for the rating

The previous advocacy initiatives have partially aligned with CAPAR because they include the objective and purpose of effective and efficient recovery of illicit assets. They aim to ensure accountability and transparency in asset recovery processes.

The Conference of the States Parties to the United Nations Convention against Corruption aims to bring together representatives of states that have acceded to the Convention and other relevant stakeholders to review its implementation, discuss emerging challenges and trends, and adopt resolutions on pertinent issues.

In fact, the Convention was established to:

- To improve the capacity of States to implement the Convention;
- To enhance cooperation among States in achieving the objectives of the Convention; and
- To promote and review the implementation of the Convention.<sup>37</sup>

The 46th presentation of the ESAAMLG Task Force, which hosted over 500 delegates from ESAAMLG Member Countries, approved the Mutual Evaluation report of Lesotho and the progress made under the 2nd round of mutual evaluations for many countries including Madagascar. The main objective is to address recommendations for an effective implementation of the Anti-Money Laundering and Counter Financing of Terrorism and Proliferation (AML/CFT) measures.

At the ARINWA and ARINSA General Assemblies, which took place in 2022 and 2023 respectively, ARAI had the opportunity to learn about the experiences of the organization's members in terms of recovering criminal assets. The achievements and progress of other countries help Madagascar in the conduct and implementation of the national anti-corruption strategy and enable it to improve its legal framework and practices in the area of seizure and confiscation of illicit assets.<sup>38</sup>

However, it has been difficult to determine the scope of participation of the country in all these events. This is why we cannot affirm that these advocacy initiatives are totally aligned with CAPAR.

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<sup>37</sup> <https://www.unodc.org/corruption/en/cosp/conference-of-the-states-parties.html>

<sup>38</sup> Annual Report of ARAI (2022 and 2023) is available on: <https://www.arai.mg/publications/rapport-d-activites.html>

## 4.2.2 STRENGTHENING LEGAL AND FINANCIAL INSTITUTIONS TO AID THE PROCESS OF ASSET RECOVERY

### A) Establishing appropriate institutions at a domestic and regional level for the recovery of African assets and strengthening existing domestic or regional institutions for recovery of African assets through enhanced capacity

#### i) Are there agencies in place mandated to pursue the recovery of stolen assets?

	Agency or agencies with clear legal mandates for asset recovery and clear delineation of roles exists.
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#### Justification for the rating

In Madagascar, ARAI is the agency mandated to pursue asset recovery.

According to Ordinance n°2019-015 of 5 July 2019 on the recovery of illicit assets in article 14: "The confiscation decision designates the assets concerned and all the details for their identification, valuation and location [...] The confiscation decision orders the handover of the confiscated assets to the Agency in charge of recovering illicit assets."

It should be noted that the assets seized and the freezing of bank accounts by ARAI come from cases that should be judged by the courts and the anti-corruption unit. One of the major problems of ARAI is the complete blocking of accounts. However, blocking accounts poses a practical problem for banks where the accounts are held.

To overcome this situation, ARAI is proposing the creation of a consignment account for frozen funds. These funds would be transferred to a consignment account until the final judgment of the fund owner. After the judgment, the funds would be transferred to the special treasury account if the owner is found guilty.<sup>39</sup>

#### ii) Do the institutions in place have capacity (financing, human resources, and systems) to guarantee efficient asset recovery?

	Capacity exists in one or two key areas (financing, human resources, and systems) but the lacks capacity in other areas.
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#### Justification for the rating

In order to guarantee efficient asset recovery, ARAI has the following capacity in terms of financing and human resources.<sup>40</sup>

<sup>39</sup> Interview with M. Rado RAJHONSON, interim General Director of ARAI, on 16<sup>th</sup> September 2024

<sup>40</sup> All the information about the capacity is in the annual report 2022 and 2023 of ARAI which are available on: <https://www.arai.mg/publications/rapport-d-activites.html>  
That information was completed during the interview of M. Aimé Rasoloharimanana, ARAI's General Director on 17<sup>th</sup> January 2024

**Funding:** According to article 28 of Ordinance No. 2019-015 relating to the recovery of illicit assets, the State is required to allocate a sufficient budget to the Agency. Therefore, an operating and investment budget is given by the State. The amending finance law has allocated a total budget of 1.489.548.000 ariary to the agency for 2022.

ARAI is also supported by technical and financial partners. Some projects are funded by the European Union (EU). EU program aims to strengthen institutions involved in the fight against economic and financial crime in their digital transformation and the effective implementation of sanctions. Apart from that, UNDP, GIZ and IMF are also considered as technical and financial partners.

**Human resources:** In 2022, the ARAI was composed of 13 agents, including three military agents. ARAI Antananarivo's judicial police officers, along with other actors involved in the fight against corruption such as BIANCO, SAMIFIN, the Ministry of Economy and Finance, and the Ministry of Mines and Strategic Resources, participated in a capacity-building workshop funded by the GIZ Project. This workshop aimed to enhance skills in recovering illicit assets.

Additionally, the ARAI's CEO attended a training session for government experts and focal points organized by the UNODC, which focused on reviewing UNCAC implementation mechanisms.

Overall, ARAI is striving to optimize the use of its available resources.

**System:** ARAI has set up his first territorial branch in Mahajanga, under the legal provisions. In fact, article 3 of the Decree no. 2021-960 of 29 September 2021 created the ARAI, specifies that to ensure the effectiveness of the ARAI across the Malagasy territory, the Agency may establish territorial branches. The branch will also handle enforcement cases in the province of Antsiranana.

To optimise the management of seized assets and ensure their conservation, conservation sites have been created. These sites will encourage seizures to be made before preliminary investigations by BIANCO. In 2023, three sites were set up and made operational including Antananarivo, Toamasina and Mahajanga.

ARAI has a special unit called the Criminal Assets Tracing Unit, which is responsible of the enforcement of seizure and confiscation decisions.<sup>41</sup>

### iii) Is there effective coordination and collaboration among the institutions mandated with anticorruption and asset recovery interventions?

	Institutions work together in certain situations. There are policies or legal requirements regarding collaboration, but they leave room for ambiguity and/or are incomplete. For example, there is a clearing or collaborating platform (multistakeholder engagement platform) but it is informal.
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#### Justification for the rating

According to article 4 of decree No 2021-960 of 29 september 2021 on the creation, composition, organization and functioning of ARAI, the Agency collaborates with the judicial authorities, the judicial police administrative authorities, and institutions involved in the fight against corruption, money laundering and the financing of terrorism.

Therefore, collaboration between the entities responsible for combating corruption is a legal obligation. Within the framework of the National Strategy for the Fight against Corruption, Madagascar has five institutions:

- The CSI oversees strategy and coordination
- BIANCO oversees education, prevention and investigation

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<sup>41</sup> Annual Report of ARAI (2023) is available on: <https://www.arai.mg/publications/rapport-d-activites.html>

- SAMIFIN is in charge of intelligence and investigation
- PAC is in charge of prosecution and repression
- ARAI is in charge of confiscating and preserving illicit assets and is the final link in the chain.

It is important to mention that ARAI ensures the effectiveness of legal judgments rendered by specialized anti-corruption courts, including the PAC, concerning the seizure and confiscation of illicit assets acquired through corruption, related offences, misappropriation of public property and funds, or money laundering and terrorist financing offences.

The communication with all the stakeholders is not yet operational throughout Madagascar and at international level too. Indeed, as the ARAI has only recently been set up, many stakeholders are not yet familiar with his mechanism and are hesitant to initiate freezing, seizure and confiscation measures. The establishment of cooperation bases is still at his initial stage.<sup>42</sup>

The adoption of Law no. 2023.026 of 01 February 2024 amending and supplementing certain provisions of Law 2018.043 on AML/CFT limits SAMIFIN's powers to seize and freeze assets. Article 15 provides for an immediate referral to the Public Prosecutor by SAMIFIN. He can no longer take such precautionary measures. If SAMIFIN wants to freeze an account or seize an asset, he has two possibilities:

- either ask the judicial police officers to open an investigation and seize the asset,
- refer the matter directly to the Public Prosecutor<sup>43</sup>

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<sup>42</sup> Annual Report of ARAI (2023) is available on: <https://www.arai.mg/publications/rapport-d-activites.html>

<sup>43</sup> Idem

# PILLAR 3: MANAGEMENT OF RECOVERED ASSETS

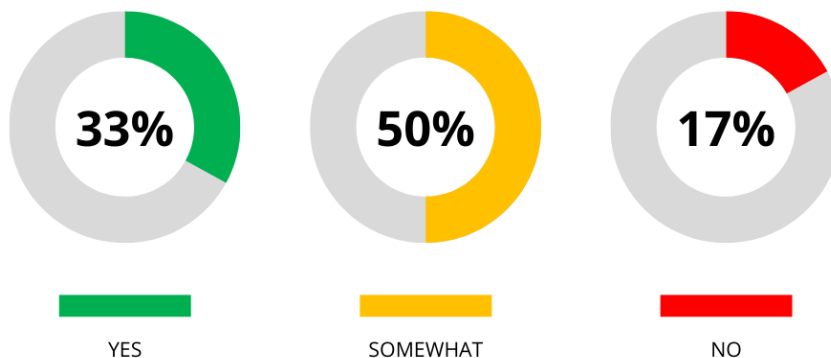
## OVERVIEW

In Madagascar, ARAI oversees the management of recovered assets. The entity is created by Decree No.2021-960 of 29 September 2021 on the creation, composition, organization and functioning of ARAI. According to the previous decree, ARAI contributes to:

- Enforcing decisions of freezing, seizure and confiscation;
- Ensuring the recovery of assets in case of embezzlement of public funds;
- Registration of assets covered by ordinance No. 2019-015 relating to the recovery of illicit assets on the central register of freezing, seizure and confiscation
- Ensuring the conservation and management of assets and the confiscation of the consignment of the corresponding value of the sold assets before the decision to confiscate.

The Malagasy system related to recovered assets makes a difference between seizure and confiscation. Seizure means that the property has not been transferred to the state but is still registered in the owner's name until the final judgment. Confiscation occurs after the final judgment and involves a transfer of ownership to the state. However, the central registry of seizure, freezing and confiscation is still confidential. It is recommended that the accessibility and transparency of the seizure inventory/register to enhance public confidence in the asset recovery process.

According to the Ordinance n°2019-015 of July 5th, 2019, on the recovery of illicit assets (articles 29 and 30), all funds recovered by the agency are deposited into a specific account opened in the name of the agency –ARAI. Also, the finance law authorises the modalities of distribution and allocation of the recovered amount. The allocation of assets recovered after confiscation is decided by the Council of Ministers. Underlining the issue of transparency, the allocation of recovered assets remains a significant concern. These allocations are determined by the Council of Ministers and specified in the finance law.



*Pillar 3 results*

### 4.3.1 CREATING AND MAINTAINING AN AGREED FRAMEWORK FOR MANAGEMENT OF RECOVERED ASSETS

**A) Preserve the value of seized and confiscated assets for the benefit of the source countries, B) Ensure accountability, transparency and boost public confidence in the asset recovery process**

**i) Is there a framework in place for the management of recovered assets?**

	A framework for managing recovered assets exists and covers all kinds of recovery and all forms of asset.
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#### **Justification for the rating**

Madagascar has a legal framework for managing recovered assets exists and covers all kinds of recovery and all forms of assets.

#### **Ordinance No. 2019-015 of 5 July 2019 relating to the recovery of illicit assets**

The purpose of this Ordinance is to establish a legal framework of the recovery of illicit assets. Firstly, title II, Chapter I of the ordinance establishes a framework for the freezing and seizure of assets linked to specified offences. The provisions outline a procedural path from initial seizure to potential release, delineating the roles of various authorities and establishing a registry for seized assets. Secondly, Chapter II outlines the process of confiscating illicit assets as a supplementary penalty to other legal sanctions. The confiscation decision is issued by the competent criminal court, specifying the assets to be confiscated and their disposition, generally to the State via the Illicit Assets Recovery Agency (ARAI).

Specific provisions address the confiscation of misappropriated public funds, requiring monetary restitution. The ordinance also details procedures for challenging confiscation decisions and allows for subsequent confiscation orders with specific conditions.

Chapter III outlines the responsibilities and liabilities of financial institutions and designated non-financial businesses and professions in relation to freezing, seizure, and confiscation orders. The chapter also addresses emergency procedures for seizure, requiring immediate action and reporting.

#### **Decree No. 2021-960 of 29 September 2021 on the creation, composition, organization and functioning of ARAI**

This decree includes a system for tracking assets seized, frozen or confiscated as part of procedures to recover illicit assets in Madagascar. A central register has been set up to centralize all information relating to such assets, from their identification to their eventual alienation. This register can be consulted by the competent authorities. It means that the central register may be consulted by the judicial authorities, the judicial police, and the specialized public administrations for the monitoring of the fate of assets until they are returned. Finally, the decree includes a collaboration with foreign authorities and capacity-building initiatives to improve the effectiveness of the system for recovering illicit assets in Madagascar. Nonetheless, it must be mentioned that the collaboration with foreign authorities must be subjected to prior authorization by the supervisory authorities and controlled by the Minister of Foreign Affairs.

## ii) Does the framework make specific provision for measures to preserve the value of seized and confiscated assets?

Comprehensive provisions for preserving asset value exist and in practice assets can be managed in a way that preserves their value.

### Justification for the rating

The Malagasy legal framework has a comprehensive provision for preserving asset value.

To preserve the value of seized and confiscated assets, Ordinance n°2019-015 relating to the recovery of illicit assets provides two cases in its Article 17, paragraph 3:

- Confiscation without prosecution: Unless time-barred, the escape or the impossibility of legal pursuit doesn't prevent the matter from being referred to the competent court for a ruling on the fate of any property liable to confiscation. Once the illicit nature of the assets has been established, the competent court issues a confiscation order.
- Pre-sale condemnation cases: Confiscated assets that are perishable and likely to depreciate rapidly may be immediately disposed of by order of the Chamber responsible for freezing, seizure and confiscation. Their monetary equivalent will be retained by the Agency until the final decision.<sup>44</sup>

However, the type of asset significantly influences its preservation. For instance, while the provision for perishable assets is sound, preserving the value of intangible assets or real estate might require different strategies.

Moreover, an asset management and conservation policy has been put in place at the Agency level. It aims to optimize the management of these assets by reconciling the two requirements of enhancing or preserving the value of assets and the cost-effectiveness of the approach by controlling costs.

On the one hand, ARAI provides for the transfer of frozen funds and the equivalent value of seized assets sold at auction to a consignment account. This measure will allow it to face the financial charges linked to the conservation and maintenance of the seized assets. On the other hand, ARAI is planning a non-possessory seizure option with a view to reducing the Agency's financial costs in terms of conservation and maintenance of some types of property while preserving their value.<sup>45</sup>

## iii) Does the framework require regular, public and accessible reporting on assets seized and confiscated?

Reporting obligations exist but do not require regular, public or accessible reporting on assets seized or confiscated. Regular means at least once per year.

### Justification for the rating

Decree No. 2021-960 of September 29, 2021 (article 15) talks about the obligation for the General Director of the ARAI to provide periodic reporting about ARAI activities. Article 18 also provides an obligation for the Agency to

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<sup>44</sup> The Procedure for freezing, seizing and confiscating illicit assets was explained during the training workshop on the recovery of illicit assets of ARAI

<sup>45</sup> The report (2023) of ARAI is available on: <https://www.arai.mg/publications/rapport-d-activites.html>

draw up an annual activity report and to make the report available to the public. Nonetheless, the decree does not specify the obligation to indicate on the report, the assets seized and confiscated by the Agency.

In addition, the 2022 ARAI annual report only gives an extract from the central register of seizure, freezing and confiscation (annexed).<sup>46</sup>

The central register contains information required to facilitate the management and traceability of seized, frozen and confiscated assets. The central register may only be consulted by the judicial authorities, the judicial police and specialized public administrations to track the status of assets until their restitution or disposal and distribution of the benefits.

#### iv) Does the country provide regular publicly accessible reports on returned assets?

	Reports are prepared and shared with select institutions i.e Parliament and/or are public but limited in information and/or are published with significant delays.
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#### Justification for the rating

As mentioned before in articles 15 and 18 of the decree n°2021-960 of September 29, 2021, the ARAI should publish a report of its activities every year. Nonetheless, it is not specified that the annual report must contain details about returned assets.

Since its creation, ARAI has published two activities reports.<sup>47</sup> The 2023 report gives statistics on the number of accounts frozen in ariary and in euros. The assets seized consisted mainly of tangible movable property, in particular vehicles and various items of furniture. However, some real estate and a boat are currently under ARAI control. The report also sets out the types of offences covered by the decisions received.

### 4.3.2 ENHANCING OR CREATING INSTITUTIONAL, LEGAL OR POLICY FRAMEWORKS

#### A) Establishing a recovered asset management agency or designation of an existing entity for management of returned assets with clear administrative powers and responsibilities for transparency and accountability

##### i) Is there an institution(s) or agency mandated to manage recovered assets? Or have alternative arrangements been put in place (e.g. asset managers)?

	Designated institution mandated for asset management with a clear mandate exists.
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<sup>46</sup> Illicit Assets Recovery Agency (ARAI) 2022 Report, Period from June 03 to December 31, 2022, published on May 16, 2023 available on ARAI's website <https://www.arai.mg>

<sup>47</sup> The two reports are available on: <https://www.arai.mg/publications/rapport-d-activites.html>

### Justification for the rating

ARAI has been created by Decree No. 2021-960 of 29 September 2021 on the creation, composition, organization and functioning of ARAI.

According to this Decree, ARAI is independent and has operational and management autonomy. This institution is attached to the Presidency of the Republic. Moreover, it is specified that to ensure the effectiveness of the ARAI across the Malagasy territory, the Agency may establish territorial branches to enforce cases in the province of Madagascar.

### ii) Does the designated institution or agency have clear administrative powers?

Clear administrative powers are outlined that establish how the agency should manage recovered assets.

### Justification for the rating

According to Decree No. 2021-960 of September 29, 2021, Article 4, the ARAI is in charge of:

- Enforcing decisions related to freezing, seizure, and confiscation of assets.
- Recovering assets in cases of embezzlement of public funds.
- Registering assets covered by Ordinance No. 2019-015, which pertains to the recovery of illicit assets, in the central register of freezing, seizure, and confiscation.
- Conserving and managing seized assets and handling the consignment of the corresponding value of sold assets before the confiscation decision is made.

According to the Order No. 28150/2022 of 18 October 2022, supplemented by Order No. 23156/2023 of 03 August 2023 which sets out the terms and conditions for the organisation of the ARAI, the entity is composed of:

- General Management
- Directorate in charge of Freezing, Seizure and Confiscation
- Information System Department
- Administrative and Financial Department

To guarantee the effective recovery of illicit assets, ARAI is required to set up branch offices throughout the Malagasy territory. The Directorates and regional offices are placed under the authority of the General Director.

According to the Order n°23156/2023 amending the order no. 28150/2022 organising the ARAI, the entity has planned to create a:

- Person Responsible for Public Contracts: the main objective is to avoid any further delay in the supply of the materials and necessary equipment for its successful operation.
- Communication Officer in the cabinet of the General Director as communication and transparency are essential for a newly created administration.
- Special unit called the Criminal Assets Tracing Unit, with a view to assist in the enforcement of seizure, confiscation orders and in asset investigations.<sup>48</sup>

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<sup>48</sup> The report (2023) of ARAI is available on: <https://www.arai.mg/publications/rapport-d-activites.html>

### iii) Does the designated institution or agency have requirements to ensure transparency and accountability in its actions towards the general public?

The institution(s) or agency(s) have some obligations to report but these are only indirect (e.g. to parliamentary committees) and/or do not specify the form of reporting and/or do not require detailed disclosure of their activities.

#### Justification for the rating

According to article 43 of the Anti-Corruption Law No. 2016-020 of 22 August 2016, the Director General of the BIANCO reports the results of its operations under an annual report and transmits it to the President of the Republic and Parliament. BIANCO reports to the public the actions undertaken to fight corruption.”

Similarly, Decree No. 2021-960 of September 29, 2021, in its article 18, also provides for the obligation of the Agency for the Recovery of Illicit Assets to draw up an annual activity report and to make the report available to the public.

As far as the SAMIFIN is concerned, the Decree n°2015-1036 on the creation, organization and functioning of the financial intelligence Unit in its article 27 also states that SAMIFIN draws up its annual activity report no later than May 15 of the following year. (...) SAMIFIN's annual activity report, which is made public one month after it has been sent to these authorities, provides an overall analysis of the reports received and the application of the Group's general policy on money laundering and the financing of terrorism, as well as presenting related statistics.

Only the decree n° 2006-207 of March 21, 2006, creating the Committee for the Safeguarding of Integrity does not incorporate the requirement to report activities to the public.

Consequently, anti-corruption structures in Madagascar are mandated to annually report the outcomes of their activities in combating corruption. This requirement upholds the principles of transparency and accountability. However, the legal framework does not clearly define the scope and content of these reports.

## B) Creating or establishing, in accordance with domestic laws, a central returned asset account in local and designated foreign currencies

### i) Is there a central account or fund for recovered assets?

Established central account or fund for recovered assets exists and is implemented.

#### Justification for the rating

Yes, there is a central account or fund for recovered assets.

The assets concerned are recorded in a register kept by the chamber responsible for the freezing, seizure and confiscation. The misappropriated funds, are held in a special treasury account (Compte particulier du Trésor-CPT in French).<sup>49</sup>

<sup>49</sup> Interview of M. Aimé RASOLOHARIMANANA, ARAI's General Director on 17<sup>th</sup> January 2024

The purpose of this account is to:

- Receive funds corresponding to illicit assets and proceeds from the sale of illicit assets, in application of final confiscation orders. Ninety percent (90%) of each transfer into the account must be returned to the general budget of the State,
- Cover the costs inherent in preserving and securing the seized assets.

According to the decree No. 2021-960 in articles 29 and 30, funds recovered by the agency are paid into a special Treasury account opened in the name of the Recovery Agency. The procedures for distributing and allocating sums are authorized by the Finance law. The allocation of assets recovered after confiscation, especially real estate property, is decided by the Council of Ministers based on a report presented by the Agency.

## ii) Are records on recovered assets in the central account or fund published and publicly accessible?

	Records not published or accessible.
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### Justification for the rating

According to article 8 of decree No 2021-960 of September 29, 2021, on the creation, composition, organization and functioning of ARAI, the information contained in the central account is confidential.

## C) Codifying or adopting domestic and regional policies on use of returned assets for development, meeting sustainable development goals or implementing any other social investment projects as deemed fit by the Member State

### i) Is there policy on how recovered assets are to be used and who they are to benefit?

	Draft policy only or policy exists but with gaps in how funds should be used and/or who they are to benefit.
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### Justification for the rating

For the management of recovered assets, ARAI must have a structure in each region where the PAC is present. However, there are still many regions where ARAI is not yet present, despite its national competence.

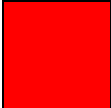
One solution to ARAI's lack of equipment and financial resources is to allocate the recovered assets to public interest purposes. This would also enable seized assets to be kept in good condition instead of remaining in storage sites, where they could deteriorate over time and possibly lose their value in the process. However, legislation says that "no one may use seized property." In order to prevent the deterioration of seized goods, the ARAI proceeds with the sale of these goods by public auction. This is why perishable goods must be sold.

This is a precautionary measure taken before a final decision which is taken by the court. This decision can prevent the deterioration of seized goods stored at the conservation site. ARAI collaborates with the Ministry of National Defence to protect conservation sites.<sup>50</sup>

Under decree No. 2021-960 of September 29, 2021, in article 30, misappropriated funds are held in a special treasury account and the sort of real property is decided by the Council of Ministers.

Nevertheless, there is no clear policy defining the use of these misappropriated funds and assets.

**ii) Does this policy require that returned funds are used for development, meeting sustainable development goals or implementing any other social investment projects?**

 No requirements for specific fund allocation.

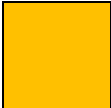
**Justification for the rating**

The legislation doesn't specify the allocation of funds for development, meeting sustainable development goals or implementing any other social investment projects. Nonetheless, misappropriated funds are returned to the State as it is said in article 30 of decree No 2021-960 of September 29, 2021.

### 4.3.3 IMPLEMENTING STRATEGIES TO ENHANCE TRANSPARENCY IN THE MANAGEMENT OF RECOVERED ASSETS

**A) Permitting monitoring the use of recovered assets by interested and relevant stakeholders, at their cost and in accordance with domestic laws**

**i) Is there a framework or provision in the existing policy that provides for the participation/involvement of citizens, media, private sector and CSOs in monitoring the use of recovered assets?**

 Limited inclusion and access to monitoring recovered assets and/or only informal and/or on a case-by-case basis.

**Justification for the rating**

The legislation doesn't specify the participation/involvement of citizens, media, private sector and CSOs in monitoring the use of recovered assets. However, the National Anti-Corruption Strategy 2015-2025 in its strategic objective 3, "Encourage the emergence of strong national leadership expressing political will", specifies that the population subscribes to and understands its role as an active moral supporter of the fight against corruption. The population is regularly updated on the implementation and outcomes of the National Anti-Corruption

<sup>50</sup> Interview with M. Rado RAJHONSON, interim General Director of ARAI, on 16<sup>th</sup> September 2024

Strategy. Additionally, it is crucial to involve civil society, the private sector, and the media in monitoring the allocation of funds for governance and anti-corruption efforts.

# PILLAR 4: COOPERATION AND PARTNERSHIPS

## OVERVIEW

At the national level, in Madagascar, collaboration between the intelligence unit service and civil society organizations (CSOs) on information exchange is still a limited process. Although TI-MG has already signed a Partnership Agreement with SAMIFIN, covering mutual support for both TI-MG and SAMIFIN activities, many other CSOs are not yet collaborating with SAMIFIN. The Convention aims to combat illicit financial flows, money laundering, and economic and financial crimes, with parties committed to exchanging information and sharing expertise. CSOs serve as a lobbying channel to prompt state responsiveness. However, it is important to note that even without a convention, any citizen is free to report cases they are aware of. However, the absence of a legal framework to protect whistleblowers persists as a challenge, given the potential risks of retaliation they may encounter. It is therefore essential to prioritise the adoption of a law to safeguard whistleblowers and the mechanisms to guarantee their protection. It should be noted that this legislative proposal is currently stalled in the National Assembly.<sup>51</sup>

At regional and global levels, Madagascar belongs to an informal network. However, SAMIFIN is in the process of applying for cooperation with the EGMONT Group, a global network aiming to exchange financial information securely to combat money laundering and terrorism financing. The ARAI, as an agency for the recovery of illicit assets, is a member of ARIN-SA. Madagascar has signed the Dar es Salaam Declaration on Strengthening Asset Forfeiture for Development, on the 10<sup>th</sup> anniversary of ARIN-SA. As a signatory country, Madagascar is therefore supposed to bring their national legislation into line with the United Nations Conventions against drug and psychotropic substance trafficking, transnational organised crime and corruption, and implement the recommendations made by the Task Force to combat financial crime.<sup>52</sup>

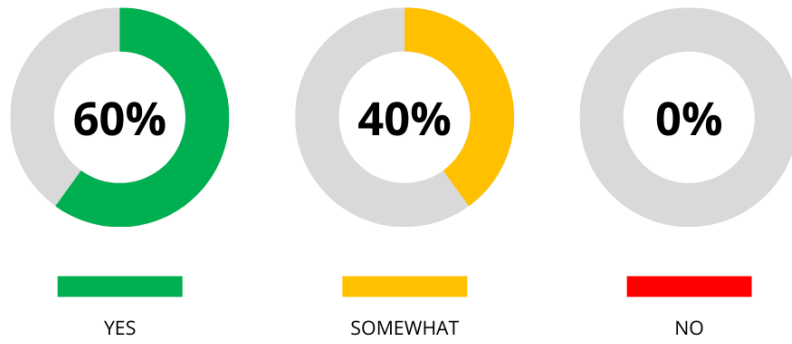
Despite numerous initiatives, the situation of illicit financial flows reflects that some of the measures are not yet effective. In Madagascar, illicit financial flows are estimated at 3,340 billion ariary in 2023, which represents a substantial amount.<sup>53</sup>

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<sup>51</sup> MALINA NGO, 30<sup>th</sup> April 2022, "Protect whistleblowers!" <https://www.malina.mg/fr/lanceur-dalerte/>

<sup>52</sup> PAC website: <https://www.dcn-pac.mg/actualites/lire/anniversaire-de-l-arinsa-ou-asset-recovery-inter-agency-network-of-southern-africa.htm>

<sup>53</sup> Source: « SAMIFIN - 3,340 billion ariary in illicit financial flows detected in 2023 », 2424.mg, 9th February 2024 <https://2424.mg/samifin-3-340-milliards-dariary-de-flux-financier-illicite-detectes-en-2023/>



*Pillar 4 results*

#### 4.4.1 PRIORITIZING COOPERATION AND PARTNERSHIPS THROUGH ADVOCACY AND ENGAGEMENT

##### A) Ensuring greater involvement of civil society and the media in accountability processes, in accordance with domestic laws, and enhanced international coordination and cooperation in this area

###### i) Is there a mechanism or channel for provision of information to CSOs and the media?

There is a mechanism or channel for information sharing but it is selective or limited or irregular.

###### Justification for the rating

First, CSOs aren't liable to the financial intelligence service. It means that the two parties are not bound by a reciprocal obligation to provide information. However, SAMIFIN has already signed a partnership agreement with Transparency International-Initiative Madagascar (TI-MG).<sup>54</sup>

The agreement was signed to fight against illicit financial flows, money laundering, and economic and financial crime. The parties are committed to exchanging information and sharing expertise, as well as providing mutual support for SAMIFIN's activities and TI-MG's investigations. CSOs are considered as a channel for lobbying, to solicit the government's responsiveness.

Secondly, regarding the media, SAMIFIN can take into consideration some elements considered as essential about money laundering, proceeds of crime or others, which come from investigative journalism. Finally, the benefit of enlisting the help of journalists lies in the relevance of the typology of offences. However, the exchange of information is limited by the absence of convention.<sup>55</sup>

###### ii) Is there an accountability mechanism for whistleblowers, citizens, CSOs and the media to raise concerns over misappropriation and other misuse of returned funds?

Accountability mechanisms are in place, but they are limited in scope, the protection they offer to whistleblowers, and the range of possible responses.

###### Justification for the rating

**Firstly, as part of the process, CSOs and media are bound by an obligation of confidentiality, in order to avoid information leaks.**

Citizens or whistleblowers aware of a particular case can share their concerns with SAMIFIN, but the decision to prosecute is entirely decided by the organization. SAMIFIN may also request further information if it is necessary.

<sup>54</sup> Interview with M. Emilson RABEMANANJARA, SAMIFIN's Technical Advisor on 26 January 2024

<sup>55</sup> Idem

Citizens or whistleblowers can also submit a complaint to the SAMIFIN secretariat, and ask for an audience, but the decision to pursue/deal with the complaints is upped to the Operational Division. This procedure is the same for CSOs and media, but without a Convention, SAMIFIN is not compelled to consider all the information/data provided by CSOs.

Madagascar currently lacks adequate protection for whistleblowers. Although Chapter V of Law No. 2016-020 of August 22, 2016, addresses the protection of informants, witnesses, and whistleblowers, these provisions are insufficient to ensure real protection. Articles 56 and 57 of the previous law prohibit revealing the identity and address of a whistleblower during civil or criminal proceedings. However, the law also states that BIANCO is responsible for ensuring the protection of whistleblowers, witnesses, and suspected whistleblowers through existing mechanisms. To address this gap, it is necessary to adopt a law on human rights defenders, including specific protections for whistleblowers. Unfortunately, this law has not yet been passed by the National Assembly.

#### **4.4.2 ENHANCING COHERENCE AND COOPERATION BETWEEN DOMESTIC, REGIONAL AND GLOBAL SYSTEMS, FRAMEWORKS AND INSTITUTIONS**

**A) Encouraging and ensuring institutional, domestic, regional and global cooperation by: a) Ensuring that agencies and government departments are working together towards the goal of efficient and effective asset recovery, through information sharing and combatting corruption**

**i) Are the various asset recovery agencies mandated or able to become a member of/or participate in regional networks, such as ARIN- EA, ARIN-SA, ARIN-WA?**

	Agencies are empowered to and do participate in regional asset recovery networks.
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##### **Justification for the rating**

As an Asset recovery agency, ARAI is a member of the Asset Recovery Inter-Agency Network for Southern Africa (ARIN-SA). On the 10<sup>th</sup> anniversary of ARIN-SA, in Dar es Salaam, Madagascar signed the Dar es Salaam Declaration on Strengthening Asset Forfeiture for Development, through which the country undertook to promote and strengthen regional cooperation against transnational organized crime and illegal financial flows. It was agreed that the signatory countries would:

- Bring their national legislation into line
- Respect the United Nations Conventions ratified by member countries against trafficking in drugs and psychotropic substances, transnational organized crime and corruption
- Put into practice the recommendations made by the Task Force to combat financial crime.<sup>56</sup>

Madagascar recently took part in the ARIN-SA conference in Mauritius, which is aimed at sharing experiences and practices in the recovery of illicit assets. Madagascar has taken the initiative to cooperate with South Africa,

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<sup>56</sup> PAC website: <https://www.dcn-pac.mg/actualites/lire/anniversaire-de-l-arinsa-ou-asset-recovery-inter-agency-network-of-southern-africa.htm>

Angola and the Democratic Republic of Congo to discuss possible collaborations, improvements to the legal framework, and the sharing of techniques and best practices in the recovery of illicit assets.<sup>57</sup>

ARAI is also an observer member of ARIN-WA. Even if Madagascar has not a geographical link with member countries of ARIN-WA, they have almost the same legal problems.<sup>58</sup>

#### **iv) Is there a strategy in place and implemented for coordination between various institutions, bodies and agencies responsible for asset recovery?**

An adopted and implemented coordination strategy exists covering all relevant institutions, agencies and bodies duties and responsibilities.

##### **Justification for the rating**

In Madagascar, ARAI is the only agency mandated for asset recovery. However, ARAI closely collaborates with the PAC, a specialized court with jurisdiction over corruption, money laundering and economic and financial offences.

The plan/strategy begins with a preliminary investigation conducted by judicial police officers and the public prosecutor. Its purpose is to justify the validity of a complaint or denunciation, through investigation and prosecution. The preliminary investigation begins with an arrest, followed by police custody of the person responsible for the embezzlement. This leads to a referral to the Public Prosecutor's Office, followed by a committal order issued by the Public Prosecutor or the examining magistrate.

At the hearing, penalties range from fines and imprisonment as provided for in the Penal Code, to confiscation of embezzled goods and assets. However, Article 59 of Law n°2018-043 of February 13, 2019, on the fight against money laundering and the financing of terrorism provides for cases where prosecution is legally impossible. In such cases, the death of the perpetrator extinguishes public action, while flight or ignorance on the perpetrator's part raises questions about asset management. This raises the question of asset management. This is why the public prosecutor can request the seizure of assets and funds resulting from embezzlement.

In the case of perishable goods, the public prosecutor can request the seizure of assets before conviction. Funds and goods obtained after a seizure are kept by the ARAI. Following a final judgment by the PAC, it is up to ARAI to execute this court decision. On one hand, if the offender is convicted, the State will be the beneficiary of the funds/property. On the other hand, if the offender is acquitted, the misappropriated funds will revert to the entity or owner. This is done to preserve the rights of the State or the interested.

#### **v) Are there policy, and legal frameworks facilitating mutual legal assistance (MLA) in corruption cases published and accessible?**

A comprehensive law or regulation exists and is published, a guide for other interested states in how this works in the country is published and both are easily accessible.

##### **Justification for the rating**

<sup>57</sup> Madagascar's platform at this event is mentioned in the website of ARAI: <https://www.arai.mg>

<sup>58</sup> Interview with M. Rado RAJHONSON, interim General Director of ARAI, on 16<sup>th</sup> September 2024

### **Law n° 2017-027 of 8 December 2017 on international cooperation in criminal matters**

This law is about measures to ensure mutual legal assistance in criminal matters, in which the States request help in gathering evidence for use in criminal cases. Moreover, extradition is about formal procedure in which the State requests the return of a person accused or convicted of a crime to stand trial or serve a sentence in the requesting state.

**United Nations Convention against Corruption specifies mutual legal assistance in its article 46** which is focused on mutual legal assistance (MLA). It outlines the obligation of State Parties to provide the widest measure of legal assistance in investigations, prosecutions, and judicial proceedings related to corruption offences. The article details various forms of assistance, including taking evidence, executing searches and seizures, and providing documents. It emphasizes that assistance should be afforded even in the absence of dual criminality, meaning that the act in question doesn't need to be a crime in both jurisdictions. The article also sets guidelines for the confidentiality of requests and the protection of sensitive information.

### **Law n° 2021-014 authorizing Madagascar to accede to the Protocol on Mutual Assistance in Criminal Matters of the Southern African Development Community (SADC) and its two amendments of 2017 and 2019**

Madagascar signed the Protocol on Mutual Assistance in Criminal Matters of the SADC. The main objective of this Protocol is to establish common rules for the general interest of the Member States for mutual interest with a view to mutual assistance in criminal matters, regarding the compatibility with the national legislation. Moreover, the Protocol complies with individual rights and individual rights and fundamental freedoms for the social well-being, peace and security of the people of Southern Africa.

Regarding the objective and the problem of recovered assets, article 7 of the Protocole talks about the location and identification of persons, assets, property and items. The competent authorities of the requested State must make an effort to ensure the location, and the identity of the persons, assets, property and items mentioned in the request.

Despite having a clear legal framework, Madagascar still faces some challenges in recovering illicit assets held abroad. Mutual legal assistance is the main tool for recovering these assets, but there is no set time limit for responding to or executing a recovery request. Madagascar has not taken advantage of reciprocity, as the Malagasy authorities are slow to respond to requests from foreign authorities. The Ministry of Justice is the central authority for mutual legal assistance, while the Ministry of Foreign Affairs handles cases where the assets are held abroad. Effective cooperation with foreign authorities also depends on the fair and equitable sharing of recovered assets. However, the main obstacle for Madagascar remains the lack of any political sharing of illicit assets held abroad, which results in a significant loss of income for the State.<sup>59</sup>

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<sup>59</sup> Interview with M. Rado RAJHONSON, interim General Director of ARAI, on 16<sup>th</sup> September 2024



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