



Republic of Madagascar
Joint Submission to the UN Universal Periodic Review
34th Session of the UPR Working Group

Submitted 28 March 2019

Submission by CIVICUS: World Alliance for Citizen Participation, NGO in General
Consultative Status with ECOSOC

**CIVICUS: World Alliance for Citizen
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1. Introduction

- 1.1 CIVICUS is a global alliance of civil society organisations (CSOs) and activists dedicated to strengthening citizen action and civil society around the world. Founded in 1993, CIVICUS has members in more than 190 countries.
- 1.2 In this document, CIVICUS examines the Government of Madagascar's compliance with its international human rights obligations to create and maintain a safe and enabling environment for civil society. Specifically, we analyse Madagascar's fulfilment of the rights to the freedoms of association, peaceful assembly and expression, and unwarranted restrictions on human rights defenders (HRDs) since its previous UPR examination in November 2014. To this end, we assess Madagascar's implementation of recommendations received during the 2nd UPR cycle relating to these issues and provide a number of follow-up recommendations.
- 1.3 During the 2nd UPR cycle, the Government of Madagascar received 22 recommendations relating to the space for civil society (civic space). Of these recommendations, 21 were supported and 1 was noted. An evaluation of a range of legal sources and human rights documentation addressed in subsequent sections of this submission, demonstrate that the Government of Madagascar has not implemented any of the recommendations relating to civic space. The government has persistently failed to address unwarranted restrictions on civic space since its last UPR examination, and acute implementation gaps were found with regard to the freedom of expression and issues relating to the freedoms of association and peaceful assembly, and the treatment of HRDs.
- 1.4 We are deeply concerned by the complete closure of civic space in Madagascar and the use of state institutions to stifle fundamental freedoms. Since coming to power in 2013 President Hery Rajaonarimampianina's government has used violence to repress peaceful protests and prevented public assemblies organised by civil society and members of the political opposition from taking place. Despite constitutional guarantees, restrictive legislation and policies have been used to curtail freedom of assembly, association and expression. In recent years human rights defenders and journalists have been subjected to pre-trial detention and handed suspended sentences to intimidate them and force them to self-censor.
- 1.5 As a result of these issues, civic space in Madagascar is currently classified as 'obstructed', by the CIVICUS Monitor.¹

¹ CIVICUS Monitor: Madagascar, <https://monitor.civicus.org/country/madagascar/>

2. Harassment, intimidation and attacks against human rights defenders and civil society activists

- 2.1 Under Madagascar's previous UPR examination, the government received 5 recommendations on the protection of HRDs and civil society representatives. The government committed to have regular dialogue with HRDs on an equal footing, to step up efforts to promote a safe environment for journalists, human rights defenders and other civil society actors. It also committed effectively investigate and prosecute crimes and violations against human rights defenders and journalists and bring the perpetrators to justice. All 5 of the recommendations received were accepted and none was noted. However, the government has not implemented any of the recommendations.
- 2.2 Article 12 of the UN Declaration on Human Rights Defenders mandates states to take the necessary measures to ensure the protection of HRDs. The ICCPR further guarantees the freedoms of association, peaceful assembly and expression. In addition, Article 7 of the Malagasy Constitution guarantees the right of all Malagasy. However, in spite of these protections, HRDs and civil society representatives are often subjected to arbitrary arrests, prolonged detentions and judicial persecution.
- 2.3 On 15 May 2018 human rights defender Christopher Manenjika was detained for raising concerns over the involvement of Chinese mining companies in the mining sector in the Rantabe district of Maroantsetra.² On 8 June 2018, he was found guilty of rebellion and insult to public agents and handed a fine of 8 dollars. He is the Communications Officer for the civil society organisation Maroantsetra Lampogno Coalition, a movement that advocates against the illegal exploitation of natural resources in Madagascar. He is also an anticorruption activist and has often raised concerns over corrupt practices in the education and transport sectors in his village of Rantabe in the South of Maroantsetra.³
- 2.4 On 27 September 2017 human rights defender and member of the regional civil society organisation *Observatoire Independent des Droits Economiques Sociaux et Culturels à Madagascar* (OIDECSM) Ravela was arrested and detained initially at the Mananjary police station for his human rights activities. He was transferred to Mananjary prison after a few days and charged with impersonating the leader of the

² "Madagascar, il faut que le prochain gouvernement mette fin aux violations des droits humains d'après AMNESTY International, » Justice Madagascar, <http://justice-madagascar.org/madagascar-il-faut-que-le-prochain-gouvernement-mette-fin-aux-violations-des-droits-humains-dapres-amnesty-international/>, accessed, 23 March 2019.

³ "Madagascar: yet another anti-trafficking activist convicted," Mongabay, <https://news.mongabay.com/2018/06/madagascar-yet-another-anti-trafficking-activist-convicted/>, accessed 13 March 2019.

district after his organisation OIDECSM.⁴ He was arrested after his organisation OIDECSM engaged in a campaign against environmental hazards caused from the mining of gold by a Chinese company. He was found guilty of using the false title “Head of District” during a meeting where he asked the Chinese company to show proof that it had been granted rights to mining. OIDECSM is a civil society organisation that advocates for human rights, equality, social, economic and ecological justice as alternatives to development.

2.5 On 16 September 2016, environmental rights defender Clovis Razafimalala was arrested after a demonstration and charged with rebellion, destruction of public buildings and arson on administrative documents. He was held in pre-trial detention for ten months in the town of Toamasina and found guilty of destruction of public buildings and arson on administrative documents. He was handed a five-year suspended sentence and fined 100000 Ariarys (approximately US \$ 27). He was acquitted of the charge of rebellion.⁵ The pattern of handing suspended sentences to silence activists is common in Madagascar as suspended sentences mean the government can re-arrest them at any time. Clovis is the coordinator of environmental rights group, the Maroantsetra Lampgno Coalition, that engages in advocacy against environmental degradation in Madagascar and campaigns for the protection of Madagascar’s wild life and national parks.

2.6 On 15 September 2016 environmental rights activists Pierre Robson and Tsihoarana Andrianony were arrested and charged with breach of security following widespread protests against the mining activities of Chinese company Jiuxing Mines in Soamahamanina. The two human rights defenders are coordinators of the civil society group VONA – an organisation that advocates for environmental rights. VONA is affiliated to the civil society coalition TANY which also campaigns against the exploitation of natural resources by corporations without the consent of communities concerned. Before their arrests, the members of TANY had sent a letter to the government requesting that the mining activities of Jiuxing Mines be suspended. When they did not receive a response from the government, they coordinated protests in Soamahamanina which were violently repressed by the authorities. Pierre Robson and Tsihoarana were then arrested and transferred to Antanimora where they were detained. On 4 November 2016, they were convicted of coordinating unauthorised protests and sentenced to one year in prison which was suspended.

⁴ “Madagascar: drop charges against environmental activist,” CIVICUS, <https://civicus.org/stageit/index.php/component/tags/tag/144>, accessed 25 March 2019.

⁵ “Madagascar : Amnesty International et la société civile exigent la libération d’un défenseur de l’environnement détenu pour des raisons politiques, selon eux, » Business and Human Rights, <https://www.business-humanrights.org/fr/madagascar-amnesty-international-et-l-société-civile-malgache-exigent-la-libération-immédiate-dun-défenseur-de-lenvironnement-considéré-comme-détenu-pour-des-raisons-politiques>, accessed, 17 March 2019.

3. Freedom of expression, independence of the media and access to information

- 3.1** Under the 2nd UPR cycle, the government of Madagascar received 8 recommendations relating to the freedom of expression, protection of journalists and access to information. Of the recommendations received, 7 were supported and 1 was noted. However, as discussed below, the government has not implemented any of the recommendations.
- 3.2** Article 19 of the ICCPR guarantees the right to the freedoms of expression and opinion. Article 10 of the Constitution of Madagascar also guarantees the right to the freedom of expression. It states that the freedom of opinion and expression, of communication, of the press, of assembly, of circulation and of religion is guaranteed to all. Article 11 of the Constitution states that the freedom of information, whatever the medium is a right and all forms of censorship are prohibited by the law. However, in policy and practice this freedom is restricted by the authorities. The authorities have control over the issuing of broadcasting licenses and have targeted journalists and closed media platforms for violating the Communications Code.
- 3.3** On 14 July 2016, the Senate and National Assembly adopted the restrictive Law on Communications – Loi no 2016-029 portant Code de la Communication Médiatisée. After the law was passed in Parliament, it was approved by the High Constitutional Court on 12 August 2016. In approving the Code which allows the authorities to decide on whether new laws comply with the constitution, the court noted that with the exception of Article 6 (on freedom of information) the Law on Communications was in line with provisions of the Constitution. The Code criminalises defamation, contempt or insults broadcast through the media.
- 3.4** The authorities use the Cyber Crimes Law – Law No 2014-006 on Combating Cyber Crime to target online freedoms. The law was passed on 19 June 2014 despite protests from journalists and media platforms in Madagascar and it was approved by the Constitutional High Court after it made pronouncements to the effect that the law complied with the Constitution. It prescribes harsh penalties of 5 years imprisonment and between 2 million Ariarys (approximately US \$560) and 100 million Ariarys (approximately US \$ 27 904) to those found guilty of using print or electronic media to insult or defame state representatives. Because the provisions of the law do not clearly define what insult and defamation are, the law has been used subjectively to target journalists as insult and defamation are broadly interpreted by the authorities.
- 3.5** In September 2018, the authorities prevented the bi-weekly newspaper *Politika* from publishing the results of a poll it commissioned before the first round of presidential elections that were scheduled for 7 November 2017. The objectives of the poll were to determine the most popular presidential candidate ahead of the elections but the authorities argued that the release of the poll results could disrupt public order. Due

to threats from the authorities the editor of the newspaper removed pages of the paper which contained results of the poll before the paper was published on 26 September 2018. The newspaper also cancelled a news conference that it organised to discuss the results of the poll.

- 3.6** On 5 May 2017, journalist Fernand Cello was arrested in Antananarivo after he broadcast information accusing the government and a mining company – Gondwana for operating an illegal Sapphire mine in Ilakaka in the South-west of Madagascar. Fernand worked for private radio station Radio Jupiter in Ilakaka. He was charged with defamation, inciting hatred and endangering state security.⁶ After his arrest, Radio Jupiter was raided by the military and a transmitter was confiscated. Avimana was charged under the Criminal Code and handed a two-year suspended sentence and fined 720000 Ariarys (approximately US \$ 200).

4. Freedom of peaceful assembly

4.1 During Madagascar’s examination under the 2nd UPR cycle, the government received 4 recommendations on the right to the freedom of peaceful assembly. Of the recommendations received, 4 were accepted and none was noted. However, as evidenced below, the government has not implemented any of these recommendations.

4.2 Article 21 of the ICCPR guarantees the freedom of peaceful assembly. In addition, article 10 of the Constitution of Madagascar guarantees this right. However, in practice the authorities often use excessive force to disperse peaceful protests organised by members of the political opposition and civil society organisations. The authorities have on several occasions announced that all forms of protests and public gatherings are banned for certain periods of time particularly during elections or anniversaries of key moments including independence anniversaries.

4.3 In January 2019, security forces violently repressed peaceful protests organised by supporters of Presidential candidate Marc Ravalomanana after he disputed results of a presidential run-off vote that took place in December 2018. Following the announcement of the run-off results supporters of Marc Ravalomanana gathered in the centre for the city to demonstrate against the results. Police used tear gas to violently disperse the protests. On 21 April 2018, at least 2 people were killed, and more than 16 others injured as peaceful demonstrations organised by members of the

⁶ “Révélations accablantes d’un journaliste : Il est contraint de s’enfuir d’Ilakaka avec ses dossiers d’investigation, » *Midi Madagasikara*, <http://www.midi-madagasikara.mg/a-la-une/2014/12/03/revelations-accablantes-dun-journaliste-il-est-contraint-de-senfuir-dilakaka-avec-ses-dossiers-dinvestigation/>, accessed 13 February.

political opposition in Antananarivo were violently dispersed by security forces. Police used tear gas canisters against thousands of demonstrators who protested against new electoral laws which were voted in Parliament on 3 April 2018 which the protesters argued were designed to exclude opposition political candidates ahead of elections.

4.4 On 9 July 2017 security forces dispersed hundreds of protesters as they converged in the capital Antananarivo to commemorate the 15th anniversary of the political movement Tiako Madagasikara (TIM) in Antananarivo. The protesters had requested authorisation from the authorities to hold the public gathering at the municipal stadium on 8 July 2017 and the request was initially approved by the Prefect of Antananarivo but later rejected on 3 July on the basis that it could disrupt public order. The organisers of the gathering lodged a legal complaint and challenged the decision to reject their request to hold the gathering, arguing that they had submitted the request in line with the requirements of the law. The police in turn challenged the appeal and the imposed a ban on all public gatherings from 7 to 9 July.⁷ As a result of the ban, protests planned by the Movement for Freedom of Expression to commemorate the first anniversary of the adoption of the Law on Communications considered restrictive by the Malagasy press was cancelled to avoid confrontations with the authorities.⁸

4.5 On 22 September 2016, security forces dispersed protests by community members in Soamahamina against the mining activities of Chinese company Jiuxing Mines SARL in their communities. The protesters had been calling on the government to cancel the mining licenses of Jiuxing Mines until the demands of the communities were met. Those involved in the demonstrations condemned the destruction of churches and schools to make way for mining activities. They also stated that they were defending their land, natural resources and livelihoods against the actions of the mining company. Five protesters were arrested and released after they were each handed a one year suspended jail sentence for participating in an unauthorised demonstration.

5. Recommendations to the Government of Madagascar

The authors call on the Government of Madagascar to create and maintain, in law and in practice, an enabling environment for civil society, in accordance with the rights enshrined in the ICCPR, the UN Declaration on Human Rights Defenders and Human Rights Council resolutions 22/6, 27/5 and 27/31.

⁷ "Madagascar: almost if not all environmentalists are under threat," CIVICUS Monitor, <https://monitor.civicus.org/newsfeed/2017/10/13/madagascar-almost-all-environmentalists-under-threat/> accessed 12 March 2018.

⁸ "Restrictions aux libertés de réunion et de manifestation, encore et toujours, » SEFAFI, <https://www.sefafi.mg/main/post/article/150>, accessed 12 March 2019.

At a minimum, the following conditions should be guaranteed: the freedoms of association, peaceful assembly and expression, the right to operate free from unwarranted state interference, the right to communicate and cooperate, the right to seek and secure funding and the state's duty to protect. In the light of this, the following specific recommendations are made:

5.1 Regarding the protection of human rights defenders

- Recognise HRDs and civil society representatives as key players in holding the state accountable and appreciate their contributions towards the development of the social and economic status of Malagasy.
- Ensure that HRDs are able to carry out their legitimate activities without fear or undue hindrance, obstruction or legal and administrative harassment.
- Provide a safe and secure environment in which civil society members and HRDs can carry out their work particularly those working to protect environmental rights and those working to protect the rights of communities.

5.2 Regarding the freedom of expression, independence of the media and access to information

- Amend restrictive provisions of the Law on Communication - Loi no 2016-029 portant Code de la Communication Médiatisée to ensure that the law is in line with constitutional provisions which guarantee freedom of expression.
- Amend restrictive provisions of the Cyber Crimes Law No 2014-006 to ensure it is in line with international human rights standards on freedom of expression and access to information.
- Ensure that journalists and writers may work freely and without fear of retribution for expressing critical opinions or covering topics that the government deems sensitive.

6.4 Regarding the freedom of peaceful assembly

- Adopt best practices on the freedom of peaceful assembly, as put forward by the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association in his 2012 annual report, which calls for procedures in which there

is simple notification of assemblies being held, rather than explicit permission being needed to assemble.

- Carry out independent investigations into the deaths of two protesters killed during the April 2018 protests.
- Provide recourse for judicial review and effective remedy, including compensation, in cases of unlawful denial of the right to the freedom of peaceful assembly by state authorities.

6.5 Regarding access to UN Special Procedures mandate holders

- The Government should extend a standing invitation to all UN Special Procedure mandate holders and prioritise official visits by the: 1) Special Rapporteur on the situation of human rights defenders; 2) Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; 3) Special Rapporteur on the rights to freedom of peaceful assembly and of association; 4) Special Rapporteur on the Independence of Judges and Lawyers; 5) Special Rapporteur on extrajudicial, summary or arbitrary executions; 6) Special Rapporteur on the rights to privacy and; 7) Working Group on Arbitrary Detention.

Annex: Assessment of implementation of civic space recommendations under the 2nd cycle

Recommendation	Recommending state/s	Position	Full list of rights/affected persons	Status of Implementation
<i>Right or area: 5.1. Constitutional & legislative framework</i>				
108.40. Bring national legislation into line with the international instruments it has ratified (Senegal); Source of position: A/HRC/28/13 (para. 108.)	Senegal	Supported	5.1. Constitutional & legislative framework Affected persons: - general	Status of Implementation: Not Implemented Source: 3.3, 3.4
<i>Right or area: 6. Human rights education and training</i>				

Recommendation	Recommending state/s	Position	Full list of rights/affected persons	Status of Implementation
108.49. Increase public awareness of human rights (Sudan); Source of position: A/HRC/28/13 (para. 108.)	Sudan	Supported	6. Human rights education and training Affected persons: - general	Status of Implementation: Not implemented Source: 3.3, 3.4, 4.3
108.119. Conduct a human rights education campaign among the law enforcement officials, to ensure permanent democratic freedoms in political life and in the work of the security forces; not just during electoral periods (Democratic Republic of the Congo); Source of position: A/HRC/28/13 (para. 108.)	Democratic Republic of the Congo	Supported	6. Human rights education and training 14.3. Freedom of opinion and expression 14.4. Right to peaceful assembly 18. Right to participate in public affairs & right to vote Affected persons: - general	Status of Implementation: Not Implemented Source: 4.3, 4.4, 4.5
<i>Right or area: 14.3. Freedom of opinion and expression</i>				
109.6. Take concrete steps to protect and promote freedom of expression and press freedom as outlined in the road map for ending the crisis (Japan); Source of position: A/HRC/28/13/Add.1 /Rev.1	Japan	Supported	14.3. Freedom of opinion and expression Affected persons: - media - general	Status of Implementation: Not Implemented Source: 3.3, 3.4, 3.5, 3.6

Recommendation	Recommending state/s	Position	Full list of rights/affected persons	Status of Implementation
109.9. Remove the restrictions on the capacity of journalists to freely criticize the Government without fearing reprisals by updating the law on communication of 1990, and the Special Commission on Audio-Visual Communication (Canada); Source of position: A/HRC/28/13/Add.1 /Rev.1	Canada	Supported	14.3. Freedom of opinion and expression Affected persons: - media	Status of Implementation: Not Implemented Source: 3.3
109.8. Step up its efforts in order to provide a safe environment for journalists, human rights defenders and other civil society actors (Tunisia); Source of position: A/HRC/28/13/Add.1 /Rev.1	Tunisia	Supported	14.3. Freedom of opinion and expression 14.4. Right to peaceful assembly 36. Human rights defenders Affected persons: - media - human rights defenders	Status of Implementation: Not Implemented Source: 3.3, 3.4, 3.5, 3.6
<i>Right or area: 14.4. Right to peaceful assembly</i>				
109.7. Have a regular dialogue with human rights defenders on an equal footing with them (Switzerland); Source of position: A/HRC/28/13/Add.1 /Rev.1	Switzerland	Supported	14.4. Right to peaceful assembly 36. Human rights defenders Affected persons: - human rights defenders	Status of Implementation: Not Implemented Source: 2.3, 2.4, 2.5
<i>Right or area: 42. Follow-up to UPR</i>				

Recommendation	Recommending state/s	Position	Full list of rights/affected persons	Status of Implementation
<p>108.46. Endeavour to implement the remaining recommendations of the previous and present UPR review (Mozambique);</p> <p>Source of position: A/HRC/28/13 (para. 108.)</p>	Mozambique	Supported	<p>42. Follow-up to UPR</p> <p>Affected persons: - general</p>	<p>Status of Implementation: Not Implemented</p> <p>Source: 2.1, 3.1, 4.1</p>