

# MADAGASCAR ADOPTS A LAW ON THE PROTECTION OF PERSONAL DATA

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## 1. INTRODUCTION

On 9 January 2015, the Republic of Madagascar promulgated the Law No. 2014-038 on the Protection of Personal Data. Since 2008, The French Association of Personal Data Protection Authorities (AFAPDP) has supported the Ministry of Justice of Madagascar in favor of this law. It therefore welcomes this step forward for to the protection of personal data in Madagascar.

## 2. PRESENTATION OF THE LAW

The adoption of a legal framework for the protection of personal data is a project carried out by the Ministry of Justice of Madagascar for several years, which had to be delayed because of the political instability of recent years. However, the ministry organized a national consultation of ministerial departments, civil society, and the National Human Rights Council of Madagascar and established extensive cooperation with AFAPDP and his its members. The joint efforts of the Ministry and its partners led to the adoption of the law of 9 January 2015.

This law marks the beginning of the establishment of a protective legal framework for the citizens and it defines the responsibilities of firms operating in Madagascar. The law recognizes the correlations between technologies and development, and wants to provide a favorable legal environment for business and the establishment of national and foreign firms engaged in processing personal data.

The law also highlights the correlations between technologies and risks for citizens' freedom and provides safeguards to protect the individuals whose data are collected and processed (see Chapter IV of the law).

The law takes up the four pillars of the protection of personal data:

1. The fundamental principles (Chapter II)
2. The rights of individuals (Chapter IV)
3. The independent authority (Chapter V): The Malagasy Commission on Computing and Liberties (CMIL)
4. The penalty system (Chapters V and VII)

The AFAPDP sends its congratulations to Madagascar for the adoption of this law and especially to the General Director for Judicial Affairs, Studies and Reforms at the Ministry of Justice, who has supported the project since the beginning. AFAPDP will remain available to cooperate and share its expertise in the implementation of

this law and in particular the installation of the authority for the protection of personal data.

## 3. OVERVIEW ON THE LAW FOR THE PROTECTION OF PERSONAL DATA IN MADAGASCAR

- Chapter I: General Provisions (Purpose of the Act and Automated Individual Decisions)
- Chapter II: Scope and definitions
- Chapter III: Basic Principles including those for the processing of sensitive data, processing of data relating to offenses and convictions, transfers of data abroad, data collected by electronic certification service providers,
- Chapter IV: Rights of persons (opposition, access and direct or indirect modification in the case of public security treatments, information)
- Chapter V: Independent administrative authority- Pre-processing formalities- Control
  - Section 1: Malagasy Commission on Computing and Liberties (Independent administrative authority, composed of 9 elected or appointed members, president and vice-presidents elected by the commission, criteria of independence and internal organization, regulatory power and sanction)
  - Section 2: Pre-processing formalities (declaration or register, regulatory act where applicable, simplified declarations and exemptions, notices and authorizations)
  - Section 3: Control over the implementation of treatments
- Chapter VI: Delegate for the protection of personal data
- Chapter VII: Sanctions pronounced by the CMIL (5% of the maximum turnover, appeal before the Council of State)
- Chapter VIII: Financial Provisions (CMIL Budget)
- Chapter IX: Transitional and Final Provisions

## 4. MALAGASY CYBERCRIMINALITY-RELATED LAWS

- Law # 2014-038 on the Protection of Personal Data
- Law # 2014-006 on the fight against cybercrime of 19 June 2014