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REPUBLIC OF MADAGASCAR
Fatherland-Freedom-Integrity

BILL NO. 27/96
providing for the NGO particular regulation in Madagascar

The PRIME MINISTER, HEAD OF THE GOVERNMENT,

- Considering the Constitution of September 18, 1992;
 - Considering the Constitutional Law no. 95.001 of October 13, 1995 providing for the revision of articles 53, 61, 74, 91, and 94 of the Constitution of September 18, 1992;
- In the Council of the Government,

O R D E R S:

The bill providing for the NGO particular regulation in Madagascar, made up of 43 articles, and whose content follows, will be submitted to the National Assembly by the Minister of Population and Social Rehabilitation, who shall take charge of presenting its rationale and supporting its review:

Art. 1.- This Law defines the Non-Governmental Organization (NGO), the conditions of its formation, operation and dissolution.

TITLE I

GENERAL PROVISIONS

CHAPTER I

DEFINITION

Art. 2.- The NGO in the sense of this Law is an autonomous, private, structured, legally declared and authorized, non-profit grouping of individuals or legal entities, with humanitarian vocation, performing, in a professional and permanent manner, charitable, socio-economic, socio-educational and cultural activities in the form of service performance with a view at sustainable human development, self-promotion of the community, as well as at the protection of the environment.

It performs its activities according to the principle of voluntary help, with impartiality, without discrimination of race, religion, or political adherence.

It has human, material and financial resources for its interventions.

Art. 3.- Any NGO founded on an illicit subject, contrary to laws and to accepted standards of good behavior, or whose activities jeopardize public order and security, or the national unity is null and void.

Art. 4.- The non-existence of the objectives mentioned in article 2 above may be raised, as a matter of course, by any person or group juridically competent and concerned.

Art. 5.- The NGO is a legal entity and undertakes its actions in the sectors of its choice and competencies.

CHAPTER II: **STATEMENT OF EXISTENCE, AUTHORIZATION** **AND PUBLICITY**

Section I: Statement of Existence

Art. 6.- The NGO shall be declared through the care of its incorporators.

The statement shall be submitted in triplicate to the offices of the Department or Region in which it has its Headquarters.

It will make known its appellation, the Headquarters of its offices, and the names, professions and titles of those who, on any account, are in charge of its administration and management.

An acknowledgement of receipt shall be issued accordingly.

Three typed copies of the NGO's Statutes shall be attached to that statement.

Section II: Authorization

Art. 7.- The NGO must be authorized under the following conditions:

- The request for authorization shall be submitted to the offices of the Department or Region where its Headquarters is located.

An acknowledgement of receipt shall be issued to it accordingly.

- The request shall be transferred to the Bipartite Departmental or Regional Committee, made up of Government and NGO representatives, and whose composition and operation shall be fixed by decree.

- This committee shall have a maximum of one month maximum timeframe to review the request and to give a ruling on it.

- The Government Representative in the Department or the Region through an order the decision of the Bipartite Departmental or Regional Committee within a one month maximum timeframe.

Art. 8.- On pain of unacceptability, the dossier of the request for authorization shall include:

- a written request to the Government Representative in the Department or the Region,
- one typed copy of the NGO's Statutes,
- one information sheet indicating the names of the NGO's incorporators and main leaders,
- documentation on the activity program as well as the means at the NGO's disposal,
- the acknowledgement of receipt related to the statement of existence, provided for in article 6 above.

Art. 9.- Withdrawal of authorization shall be declared through an order from the Government Representative in the Department or Region, in compliance with the opinion of the Bipartite Departmental or Regional Committee, the NGO being heard in the following cases:

- when serious irregularities are found in the management of its projects or programs,
- when the NGO's activities do not correspond any more with the goal and objectives defined by its Statutes,
- when the NGO's activities jeopardize public order and security, or the national unity.

Art. 10.- The decision of withdrawal shall be notified to the NGO concerned.

It puts an end, immediately after the notice, to advantages and facilities of any kind which it could have enjoyed and makes it lose its NGO quality.

Section III - Publicity

Art. 11.- A special register shall be kept in the offices of the Department or Region to record the following information, provided by the NGO:

- appellation and Headquarters of the NGO,
- the names, professions and titles of the NGO's managers and directors,
- the date of submission of the statement of existence,
- the date of the order of authorization,
- the NGO's objectives,
- changes which occurred in the NGO's administration and management and modifications of its Statutes,
- modifications or changes relating to the Headquarters, the appellation or the NGO's subject

matter.

The data in this register are opposable to a third party only from the time of their recording.

An order of enforcement shall fix the format of such register which is made available to the public.

Art. 12.- One copy of the order of authorization shall be transferred, through the care of the Government Representative in the Department or Region, to the Ministry in charge of relationship with NGOs and published in the Gazette of the Republic of Madagascar.

CHAPTER III

ORGANIZATION AND OPERATION

Art. 13.- The NGO has:

- a decision and deliberation entity: the General Assembly,
- an orientation and monitoring entity: the Board of Directors,
- an executive entity: the Management Committee or Management,
- a controlling authority: the Audit.

The Statutes and its Policies and Procedures, shall determine the mode of operation of those structures.

Nobody may cumulate the executive and controlling functions allocated to those entities.

The functions within the NGO shall be free of charge.

However, Members may be reimbursed for the expenditures they incurred on the occasion of missions and services performed for the NGO.

Art. 14.- At the exception of a formal waiver by the Bipartite Departmental or Regional Committee, nobody may perform the function of administration, direction or management of an NGO or have the authority to sign for an NGO:

- if s/he has been subjected to a sentence in Madagascar or abroad, either:
 - a) for a common law crime,
 - b) for forgery and use of forgeries in private or business entries,
 - c) for violation of articles 418 through 420 of the Penal Code,
 - d) for theft, fraud or breach of trust,
 - e) for misappropriation of public funds and extortion of money,
 - f) for receiving goods obtained as a result of the violations of the law provided for in

paragraphs d and e, or

g) for an attempt of, or collusion in all the above violations of the law.

- if s/he has been subjected to dismissal from functions by court order,
- if s/he has been declared bankrupt.

Art. 15.- Any NGO may go to court.

It may acquire or dispose of, in return for payment, own and manage:

- the subscriptions of its members or the amount of money through which such subscriptions have been received,
- the premises intended for the NGO's administration and meetings,
- the buildings necessary to the goals contemplated,
- the material and financial assistance from other organizations,
- the donations and devises of furniture and buildings,
- any other licit resource, including the proceedings of its activities.

Art. 16.- The NGO may, within the limits specified by its Statutes and its Policies and Procedures, manage its capital base, use it as a good father for the payment of wages, compensations or incentive payments for the staff working for the subject matter of the grouping, as well as for the settlement of recurrent costs and management-related miscellaneous expenses.

The NGO is authorized to put aside an earmark.

Art. 17.- The NGO shall make a report on activities and finance annually.

A synthesis of this report, whose format shall be fixed by regulation, is sent to the Bipartite Departmental or Regional Committee, to the Government Representative in the Department or Region, and to the Ministry in charge of the relationship with NGOs.

The NGO, at the end of each fiscal year, shall develop a detailed operation plan for the following fiscal year. A copy of this plan shall be sent to the same authorities.

CHAPTER IV

FISCAL AND CUSTOMS PROVISIONS

Art. 18.- Any NGO employee, representative or paid agent performing a remunerated work in Madagascar shall pay income taxes, unless there is a special fiscal covenant.

Art. 19.- An NGO performing non-profit activities shall not be subjected to the professional taxes and the corporate income tax.

Art. 20.- Commodities and equipment imported under a project, which will be directly and exclusively for the benefit of the poor, and whose list shall be determined by decree, upon request from the NGO, and with acceptance by the Ministry in charge, may be partially or totally exempted from customs and excise taxes.

Art. 21.- In all cases, the NGO may enjoy, upon request, all tax and customs incentives provided for by the fiscal and customs legislation in force in Madagascar.

TITLE II

MISCELLANEOUS PROVISIONS

CHAPTER I

NGO REGROUPING

Section I.- The National Council of NGOs

Art. 22.- A National Council of NGOs is created at national level.

Art. 23.- The Council serves as the forum of national consultation for all issues pertaining to NGOs.

Art. 24.- The Council is made up of representatives of the Departmental Councils and Regional Councils.

However, voluntary representatives from NGOs may participate as observers.

Section II.- Regional Councils of NGOs

Art. 25.- A Regional Council of NGOs is created in each Region.

Art. 26.- The Council's mission is to promote cooperation among NGOs, maintain good relationship with government institutions, and defend NGOs' interests among entities concerned.

The council designates its representatives in the National Council of NGOs.

Art. 27.- Art. 24.- The Council is made up of representatives of all NGOs with their Headquarters and/or operation in the administrative area concerned.

The designation of its members is made on individual basis.

Section III.- Departmental Councils of NGOs

Art. 28.- A Departmental Council of NGOs is created in each Department. Its roles are:

- to designate NGO representatives in the Bipartite Departmental Council,
- to designate NGO representatives in the Regional Council,
- to designate NGO representatives in the National council.

Art.29.- The council is made up of Representatives of all NGOs with their Headquarters and/or operation in the Department concerned.

The designation of its members is made on individual basis.

Section IV.- Collectives of NGOs

Art. 30.- Collectives of NGOs may form freely throughout the national territory under an appellation of their own choice,

Their role and objectives shall be defined in compliance with the statutes.

They may, inter alia,

- satisfy all solicitations from their Members: technical support, training, information, seeking for funding, administrative procedures,
- form as an information network for their Members, the public, the Government, private or public international organizations on their members' activities, the funding obtained, projects achieved and those underway,
- facilitate the dialogue among member NGOs on the one hand, among member NGOs and Government Organizations on the other hand,
- work for the coordination and rationalization of member NGOs' activities in view of achieving better efficiency.

Art. 31.- By complying with the provisions of articles 6 through 8 above, they shall enjoy the NGO status.

CHAPTER II

LITIGATION

Art. 32.- After exhausting all ways of amicable resort and disciplinary complaint, litigation stemming from the award and withdrawal of the authorization shall be brought to the administrative Jurisdiction of the NGO's Headquarters.

Art. 33.- Litigation stemming from internal operation shall be referred to the civil court of the NGO's Headquarters.

CHAPTER III

TRANSFORMATION OF ASSOCIATIONS INTO NGOS

Art. 34.- An Association which already pursues the objectives, such as defined in article 2, may change into an NGO by complying with the statutory dispositions or by a decision made in extra-ordinary General Assembly, and by respecting the procedure provided for in articles 6 through 8 above.

In that case, the Association's assets shall be devoted to the new NGO.

CHAPTER IV

DISSOLUTION

Art. 35.- The NGO may be dissolved by:

- the will of at least three-quarters of its Members,
- statutory provision,
- administrative or court ruling.

Art. 36.- In case of voluntary or statutory dissolution, the NGO's assets shall be disposed of, after settlement of liabilities, in compliance with the Statutes or with the decision of dissolution.

Art. 37.- In case of dissolution by a judicial or administrative way, the disposition of the assets shall be ruled by the decision which declared the dissolution.

CHAPTER V
FOREIGN NGOs

Art. 38.- Unless otherwise provided for in international Covenants, no foreign NGO or foreign NGO representative agency may for in Madagascar without prior authorization of the Ministry of Interior and upon favorable advice of the Ministry of foreign Affairs.

Art. 39 .- Regardless of the form under which they may incidentally hide, groupings presenting the characteristics of an NGO, with their Headquarters abroad, or with their Headquarters in Madagascar, managed by one or several foreigners, or made up of either a majority of foreign directors, or at least of one quarter of foreign Members are considered as NGOs.

Art. 40.- Unless otherwise provided for by special covenants, the provisions of this Law apply to foreign NGOs.

CHAPTER VI
TRANSITIONAL PROVISIONS

Art. 41.- While awaiting the formation of NGOs in compliance with this Law, legally formed Associations fulfilling the criteria defined in article 2 above, with at least two years of existence, and established in the departmental or regional area concerned, shall meet in provisional Departmental or Regional Council to designate their representatives who will sit in the Bipartite Departmental or Regional Committee as provided for in article 7 above.

CHAPTER VII
FINAL PROVISIONS

Art. 42.- Any authorization granted in violation of this Law shall be considered as null and void.

Art. 43.- Decrees shall be taken, as needed, for the enforcement of this Law.

Done in Antananarivo on the 7th of August, 1996.

The PRIME MINISTER

HEAD OF THE GOVERNMENT

Norbert RATSIRAHONANA

The VICE-PRIME MINISTER

IN CHARGE OF SOCIAL AFFAIRS

THE MINISTER OF POPULATION
AND SOCIAL REHABILITATION

François de Salles RADESA

Jean Rémi ANDRIAMANJAKA