

Decree of 14 September 1989 amending the law of 13 December 1982 governing NGOs DECREE

REPUBLIQUE D'HAITI

The Military Government

PROSPER AVRIL

Lieutenant-General, Haitian Armed Forces

President

- Having regard to the Proclamation of 17 September 1988 by the Military Government;
- Having regard to the Decree of 20 June 1988 dissolving the Senate and the Chamber of Deputies;
- Having regard to the Decree of 13 March 1989 reinstating the Constitution of 1987;
- Having regard to Articles 8, 53, 56, 78, 136, 246 of the Constitution;
- Having regard to the Law of 23 July 1934 on Foundations as amended by the Law of 19 September 1953;
- Having regard to the Law of 5 March 1947 granting customs exemption to Charity Organizations recognized in Haiti;
- Having regard to the Law of 16 June 1971 establishing the essential bases for the establishment of harmonious relations between the Haitian State and the reformed religions;
- Having regard to the Law of 11 September 1978 on the territorial delimitations of the Geographical Departments, Arrondissements and Municipalities;
- Having regard to the Law of December 6, 1982 defining the Haitian Public Administration;
- Having regard to the Law of 19 September 1982 on regionalization and spatial planning;
- Having regard to the Decree of 22 October 1982 on the Organization and Functioning of the Municipalities of the Republic;
- Having regard to the Decree of 7 July 1989 regulating the management of foreign exchange;
- Having regard to the Decree of 13 December 1982 regulating the establishment and functioning in Haiti of Non-Governmental Development Aid Organizations (NGOs);
- Having regard to the Decree of 10 February 1989 reporting the Decrees of 31 July 1986 and 26 October 1987 on the Office of the Commissioner for National Promotion and Public Administration and creating the Ministry of Planning and External Cooperation;
- Having regard to the Organic Law of 18 October 1983 of the Ministry of Public Works, Transport and Communications;
- Having regard to the Organic Law of 4 November 1983 of the Ministry of Social Affairs;
- Having regard to the Law of 11 November 1983 reorganizing the Ministry of Public Health and Population;
- Having regard to the Decree of 2 December 1988 transferring the powers of the Ministry of Youth and Sports to that of National Education, which becomes the Ministry of National Education, Youth and Sports, and the Decree of 8 May 1989 adapting the organizational structures of the Ministry of National Education, Youth and Sports to the new socio-political realities;
- Having regard to the Organic Law of 12 May 1986 of the Ministry of Information and Coordination;
- Having regard to the Decree of 25 July 1986 reorganizing the administrative structures of the Ministry of the Interior and National Defense to enable it to fulfil its role in the national development process;

- Having regard to the Decree of 13 March 1987 amending the Decree of 31 October 1983 and reorganizing the Ministry of the Economy and Finance;
- Having regard to the Decree of 17 August 1987 reorganizing the Ministry of Foreign Affairs and Worship;
- Having regard to the Decree of 30 September 1987 on the organization and functioning of the Ministry of Agriculture, Natural Resources and Rural Development;
- Having regard to the Decree of 10 February 1989 reporting the Decrees of 31 July 1986 and 26 October 1987 on the Office of the Commissioner for National Promotion and Public Administration and creating the Ministry of Administration and the Public Service

Considering that many private organizations operating on a non-profit basis in the territory of the Republic in areas that are sometimes difficult to access and contribute through their activities to the improvement of the living conditions of local populations.

Considering only the uncontrolled proliferation of Non-Governmental Development Aid Organizations sought by the public authorities.

Considering that the Haitian State for the safeguarding of National Sovereignty, the maintenance of the economic and financial stability of the Nation and the defense of the general interests of the Republic must create a legal and institutional framework capable of encouraging commendable initiatives, having no other purpose than the material and moral well-being of disadvantaged populations.

Considering that to achieve this end, it is important to amend the law of 13 December 1982 governing NGOs and adapt it to the requirements of the economic situation.

On the report of the Ministries of Planning and External Cooperation; Interior and National Defense; Foreign Affairs and Religious Affairs; Information and Coordination; Economy and Finance; Agriculture, Natural Resources and Rural Development; Public Health and Population; Social Affairs; National Education, Youth and Sports; Public Works, Transport and Communications.

And after deliberation in the Council of Ministers:

DECREES

CHAPTER ONE

DEFINITION AND MISSION OF NON-GOVERNMENTAL DEVELOPMENT AID ORGANIZATIONS

Article 1- "Non-Governmental Development Aid Organizations", and hereinafter referred to as NGOs, are all private, non-political, non-profit institutions or organizations pursuing development objectives at national, departmental or municipal level and having the resources to achieve them.

Article 2- Non-Governmental Development Aid Organizations are national and foreign.

A national NGO is the one constituted in Haiti and having its headquarters on the national territory.

A foreign NGO is any subsidiary of an NGO founded abroad and having its registered office outside the territory of Haiti.

Article 3- Non-Governmental Development Aid Organizations shall enjoy the prerogatives and privileges attached to them under the conditions determined by this Decree of the Civil Personality.

Article 4- NGOs may form associations or federations to carry out programs, projects or activities of common interest.

However, associations or federations are required to be recognized in accordance with Article 8 of this Decree.

Article 5- An NGO, association or federation of NGOs may only operate as an executing agency of a foreign government on the national territory by virtue of a special authorization from the Ministry of Planning and External Cooperation. In addition, it may only intervene with cooperatives in any form whatsoever with the express authorization of the National Cooperative Council (CNC).

CHAPTER TWO

STATUS AND RECOGNITION OF NON-GOVERNMENTAL DEVELOPMENT AID ORGANIZATIONS

Article 6- The recognition of the status of Non-Governmental Development Aid Organizations is the joint responsibility of the Ministries of Planning and External Cooperation, Interior and National Defense, Foreign Affairs and Religious Affairs.

This recognition is enshrined in an Official Act signed jointly by the entitled representatives of the above-mentioned bodies, which is published in the form of a communiqué in the Official Gazette of the Republic and the Statutes of the NGO.

Article 7- External Cooperation Agencies or similar, linked to the State after a basic contract or agreement, may under no circumstances be considered as NGOs, as defined by this Decree.

Article 8- With a view to the recognition of their private Development Aid Organizations as NGOs authorized to operate on national territory, the persons in charge must fulfil the following formalities:

Submit a written request for recognition to the Ministry of Planning and External Cooperation.

Submit:

- Three (3) copies of the Organization's Statutes drawn up in the form of an authentic notarial deed in French or Creole;
- A letter of guarantee issued by two recognized NGOs operating in Haiti or by a bilateral or multilateral agency;
- The permit issued by the Municipal Administration of the planned intervention zone;
- Development programs and projects to be carried out in one or more municipalities and localities of the national territory likely to improve the living conditions of the populations of the selected areas.
- Produce in three (3) copies: a guarantee reference not less than FIFTY THOUSAND GOURDS (Gdes 50,000.-) issued by a Bank established in Haiti upon presentation of an authorization issued by the Ministry of Planning and Cooperation (MPCE).
- Indicate the surnames, first names, domicile, residence, nationality and profession of the members of the Executive Board and their functions.
- Complete and sign the commitment form prepared by the MPCE.
- In the case of a foreign NGO, submit in three (3) copies the certificate of recognition issued by the authorities of the country of origin and legalized by a Consulate of the Republic of Haiti.

Article 9- The private organization that has fulfilled the conditions listed in the aforementioned article shall receive a formal receipt attesting to the date and list of documents submitted from the governmental coordinating and supervisory body.

Article 10- The recognition procedure may in no case exceed a period of three (3) months from the date of regular submission of the request; otherwise, formal notification shall be made to the Organization concerned by the central coordinating and supervisory body.

Article 11- The statutes of an organization seeking recognition as an NGO must include the following information:

- The name and headquarters of the Organization
- The goals pursued
- The purpose and nature of the activities it proposes to carry out
- The surname, first name, domicile, residence, nationality of the founding members of the Organization.
- The powers of the directors
- The duration of the organization, the causes and clauses of dissolution.

Article 12- One third of the members of the Executive Board of a foreign NGO established in Haiti must be of Haitian nationality.

CHAPTER THREE

COORDINATION AND SUPERVISION OF NON-GOVERNMENTAL DEVELOPMENT ASSISTANCE ORGANIZATIONS

Article 13- The Ministry of Planning and External Cooperation is the body responsible for the coordination and supervision of NGO activities on the territory of the Republic.

It performs these functions at the national level through the NGO Activities Coordination Unit (UCAONG: *Unité de Coordination des Activités des ONG*) and at the departmental level through the Departmental Council for the Coordination and Supervision of NGO Activities (*Conseil Départemental de Coordination et de Supervision des Activités des ONG*).

Article 14- The Ministries concerned by the activities of NGOs are co-responsible for the supervision of programs and projects being implemented on the national territory by these entities. They shall exercise this function in accordance with this Decree and the provisions of their organic law.

However, each Ministry shall designate an officer to liaise with UCAONG in all matters relating to the application of this Decree and to transmit to the MPCE copies of any reports for the purposes of this Decree.

Article 15- The NGO Activities Coordination Unit is a structure under the MPCE.

It is part of the Central Office of this institution.

The organization and functioning of this Unit is regulated by the Organic Law of the Ministry of Planning and External Cooperation.

Article 16- The NGO Activities Coordination Unit guides and coordinates NGO activities throughout the country.

It also has the following responsibilities:

- A. Examine the statutes submitted by private development aid organizations.
- B. Study the files of programs and projects submitted by these organizations in accordance with the priorities of the National Development Plan and the views of the sectors concerned.
- C. Make useful recommendations, if any, to the Ministry of Planning and External Cooperation.
- D. Determine with the sectors and organization in question the area or areas of intervention.

- E. Ensure coordination between the MPCE, NGOs, Departmental Councils and other relevant Ministries or Public Bodies as well as the Supervision and Evaluation of the Programs and Projects of these organizations.
- F. Analyze franchise applications and any other requests filed by NGOs.
- G. Organize information sessions with NGOs in collaboration with the Departmental Councils and Sectors concerned.
- H. Ensure the necessary steps to solve administrative problems raised by private aid.
- I. Maintain an up-to-date list of NGOs operating in the country.
- J. Present the report on the NGO activities at the end of each financial year.
- K. Prepare reports and statistical tables on private aid for programming and evaluation purposes.
- L. Ensure correspondence relating to private aid.
- M. Maintain central archives relating to NGO activities.

Article 17- A Coordination and Supervision body called the Departmental Council for the Coordination and Supervision of NGO Activities is created in each Department.

The mission of this Council is to:

- Ensure vertical coordination between NGO programs and projects and the Development Plan
- Ensure horizontal coordination between NGOs at the Departmental level
- Supervise the programs and projects in execution in the Department.

Article 18- To fulfil the above-mentioned missions, the Departmental Council for the Coordination and Supervision of NGO Activities has the following powers:

- A. Maintain an up-to-date list of NGOs operating in the Department and their activities.
- B. Inform NGOs of the priorities selected for the National Development Programs and guide them towards projects identified by the populations of the localities concerned.
- C. If necessary, assist NGOs in the formulation of their programs and projects.
- D. Monitor, evaluate and control annually the ongoing programs on a physical and financial basis.
- E. Inform the Ministry of Planning and External Cooperation of the progress of the programmed activities and their effects on the well-being of the target populations through quarterly reports.
- F. Convene the representatives of NGOs established in the Department every six months.
- G. Facilitate the practical solution of the problems they encounter in the execution of their programs.
- H. Perform any other tasks that may lead to the proper coordination of NGOs.
- I. Forward minutes of meetings to the MPCE.

Article 19- The Executive and Technical Secretariat of the Departmental Council for the Coordination and Supervision of NGO Activities is provided by the Departmental Representation of the MPCE.

Article 20- The Departmental Council for the Coordination and Supervision of NGO Activities is composed as follows:

- The Departmental Representative of the Ministry of Planning and Cooperation External.
- The Departmental Representative of the Ministry of the Interior and National Defense.
- The Departmental Representative of the Ministry of Agriculture, Natural Resources and Rural Development.
- The Departmental Representative of the Ministry of Public Health and Population
- The Departmental Representative of the Ministry of Public Works, Transport and Communications.
- The Departmental Representative of the Ministry of National Education, Youth and Sports.
- The Departmental Representative of the Ministry of Social Affairs.
- The President of the County Council, where appropriate or his Representative.

- Seven Representatives nominated by NGOs operating in the Department for a period of two years.

Article 21- The Departmental Council for the Coordination and Supervision of NGO Activities meets twice a year under the chairmanship of the MPCE Representative and upon his convocation.

Special meetings may be convened at the request of five (5) members of the Board, at least two (2) of whom shall be from the public sector.

A quorum shall consist of two thirds of the members of the Board.

Decisions are taken by a majority of the members present and are recorded in minutes.

In the event of a tie, the Chairman of the Board shall have the casting vote.

At meetings, the President of the Council appoints two rapporteurs, one from the public sector and the other from the NGO group, who will sign the minutes of the meetings with the President.

Article 22- Conflicts between NGOs are heard for conciliation purposes by the Executive Secretary of the Council assisted by two (2) representatives of NGOs who are members of the Council and who are not part of the conflict.

CHAPTER FOUR

PREROGATIVES AND OBLIGATIONS OF NON-GOVERNMENTAL DEVELOPMENT AID ORGANIZATIONS

SECTION 1: PREROGATIVES

Article 23- NGOs authorized to operate in Haiti shall enjoy the following benefits:

- Tax exemption for the Organization
- Customs exemption on imports of all goods, donations and equipment necessary for the exclusive achievement of their objectives.
- Customs exemption on the personal belongings of foreigners linked to the Organization and authorized to work in the country.

Article 24- The request for exemption must be addressed to the MPCE by letter, accompanied by lists of goods to be received and any related documents at least two weeks before the arrival of the items at customs. The examination of the application file will be done separately for each NGO, if necessary, in collaboration with the Ministries concerned.

However, if it appears from customs verification that the items received do not correspond to those on the above list, the exemption will be cancelled without prejudice to the penalties provided for by the law governing the matter.

Article 25- NGOs may acquire real estate in Haiti exclusively for the purpose of carrying out their programs and projects in accordance with the formalities provided for by the law governing the matter.

Foreign members of their administrative and technical staff remain subject to the restrictions imposed by the legislation on the ownership of real estate by foreigners.

Article 26- In certain cases, NGOs may obtain partial funding for the execution of their projects from the Public Investment Budget.

These NGOs are then subject to the provisions of the law governing the matter.

Article 27- Upon the final repatriation of foreign members of NGOs, they are authorized to transfer the proceeds of the sale of their movable property and personal effects, subject to payment of customs duties, if any, by the buyers.

SECTION 2: OBLIGATIONS

Article 28- Any NGO, in addition to its statutory obligations, must:

- A. Comply with Haitian laws in force.
- B. Transmit to MPCE via the Departmental Council, each year between May 15 and August 31, the program and investment budget planned for the next fiscal year.
- C. Open an account in a bank established in Haiti and inform the NGO Activities Coordination Unit.
- D. Maintain accounting records
- E. Submit to the MPCE via the Departmental Council for the Coordination and Supervision of NGO Activities, at the end of each fiscal year, no later than November 30, a report on the implementation of Programs and Projects.
- F. Submit to the MPCE
 - a. The organization's consolidated financial statement prepared by a certified accountant
 - b. The list of foreigners working in the organization with their residence permit number
 - c. The list of employees who are subject to tax, with the annual amount payable and the tax identification number (NIF) next to their names.
- G. Submit every three (3) months to the MPCE a copy of the credit notice issued by a bank established in Haiti that certifies the currency deposit.
- H. Cooperate with the populations of the areas in which they work and complete the programs and projects submitted.
- I. Keep the name of the organization painted or affixed in a prominent and easily legible manner outside each office where it operates.
- J. Provide any delegate of the Departmental Council, UCAONG or the Ministries concerned with information, documents or registers to facilitate the monitoring, follow-up and evaluation provided for in this Decree.
- K. Inform the MPCE via the Departmental Council of any changes made within the governing bodies operating on Haitian territory.
- L. Notify the MPCE of any interruption in the execution of activity programs.

CHAPTER FIVE

WITHDRAWAL OF RECOGNITION AND OTHER SANCTIONS

Article 29- In the event of a violation of the Statutes or the provisions of this Decree; unjustified interruption of activities for more than six (6) consecutive months; a delay of one year in the start of programs and projects calculated from the date of publication of the Communiqué granting recognition, except in cases of proven force majeure duly proved; participation in activities of a political or commercial nature and in any other activities incompatible with NGO status; the recognition granted to the offending Organization shall be withdrawn.

Article 30- The withdrawal of recognition shall be carried out by the bodies referred to in Article 6 of this Decree on the basis of a reasoned report from the NGO Activities Coordination Unit.

Notice shall be given by means of a press release published in the Official Gazette of the Republic.

Article 31- The withdrawal of recognition entails the dissolution of the NGO at fault and the liquidation of its assets in accordance with the laws and regulations governing the matter.

Article 32- An NGO that has not submitted its actions program and reports within the time limit set or that has not complied with any other requirements provided for in this Decree shall be required by the Ministry of Planning and External Cooperation to comply with them within a maximum period of fifteen (15) clear days. Otherwise, it will be liable to temporary or permanent suspension according to the report of the UCAONG, after notice duly published in the Moniteur.

Article 33- Any member of the staff of an NGO sentenced to an afflictive and infamous sentence shall no longer be entitled to be a member of any Non-Governmental Organization operating in Haiti in any capacity whatsoever.

CHAPTER SIX TRANSITIONAL ARRANGEMENTS

Article 34- All organizations operating in the field of development as Non-Governmental Development Aid Organizations (NGOs) without being officially recognized as such, must complete the formalities provided for in Article 8 of this Decree within six (6) months.

After this period, they will be banned from operating on the national territory by the Ministry of Interior and National Defense, upon report from the Ministry of Planning and External Cooperation.

Article 35- All donations in kind and in cash to a recognized organization from any Institution, whether it is a Bilateral or Multilateral External Cooperation Agency, will be confiscated by the Haitian State and distributed to Charities.

Article 36- Within a maximum period of three months from the publication of this decree, the Ministry of Planning and External Cooperation shall decide on the establishment of the departmental coordination and control councils provided for in Article 17 above.

CHAPTER SEVEN FINAL PROVISIONS

Article 37- Any change in the name of an NGO must be authorized by a majority vote at the General Assembly. A copy of the minutes of decision duly signed by the members must be attached to the related request submitted to the MPCE.

If the change of name is accompanied by changes in the NGO's aims and objectives, the NGO must make a new request for recognition.

Article 38- The change of name made as indicated above does not affect in any way the obligations of the NGO towards third parties.

CHAPTER EIGHTH REPEAL PROVISIONS

Article 39- This Decree repeals all or any provisions of Laws, Decrees or provisions of Decrees, Law Decrees or provisions of Law Decrees which are contrary to it. It shall be published and implemented, each in its own right, by the Ministries of Planning and External Cooperation; Interior and National Defense; Foreign Affairs and Religious Affairs; Information and Coordination; Economy and Finance;

Agriculture, Natural Resources and Rural Development; Public Health and Population; Social Affairs; National Education, Youth and Sports; Public Works, Transport and Communications.

Given at the National Palace, Port-au-Prince, on September 14, 1989, 186th Year of Independence.

PROSPER AVRIL

Lieutenant-General, Haitian Armed Forces

President

By the President:

The Ministry of Planning and External Cooperation-**Théophile ROCHE**

The Ministry of the Interior and National Defense-**Acédius SAINT-LOUIS Brigadier** General, Haitian Armed Force

The Ministry of Foreign Affairs and Religious Affairs-**Yvon PERRIER**

The Ministry of Information and Coordination-Rose-**Marie NAZON**

The Minister of Economy and Finance-**Léonce F. THELUSMA**

The Minister of Agriculture, Natural Resources and Rural Development-**Frédéric AGENOR, Agr.**

The Minister of Public Health and Population-**Serge PINTHRO**

The Minister of Social Affairs-**Arnault GUERRIER**

The Minister of National Education, Youth and Sports-**Rémy ZAMOR**

The Minister of Public Works, Transport and Communications-**Franck PAULTRE, Ing**

The Minister of Justice-**Augustin Romain CEME**

The Minister of Trade and Industry-**Yvon CESAR**

The Minister of Administration and Civil Service-**For Wilner DESSOURCES, Théophile ROCHE**

REFERENCE "THE MONITOR"