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**Draft Legislation for the Creation of a
National Environmental Endowment Fund
in Madagascar**

Egide Cantin

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**Prepared by the Environmental and Natural Resources Policy and Training (EPAT) Project
Winrock International Environmental Alliance (WIEA)
Arlington, Virginia USA**

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Executive Summary

This document reviews the current status of Madagascar's legal and regulatory framework regarding the establishment of an endowment fund. The analysis was completed in accordance with Conditions 4 and 6 in the agreement between the Government of the United States and the Government of the Democratic Republic of Madagascar (GDRM) regarding their joint project on Knowledge and Effective Policies for Environmental Management (KEPEM).

The document analyzes options and describes the choices made after the analysis of these options was completed. This started the process leading to the establishment of a National Environmental Endowment Fund (NEEF). Each option was analyzed for its effect on the NEEF's organizational, administrative, and structural framework.

The preferred strategy for the establishment of the NEEF is to draft a law describing each aspect required for the establishment of this kind of institution (i.e., a nonprofit organization) in Madagascar. This appears necessary because the Malagasy partners do not fully understand the operating mechanisms of such an innovative organization. No similar institution currently exists in the country.

The first draft was developed by synthesizing legal provisions for endowment funds and nonprofit associations in 20 countries in Europe, North and South America, and Africa. The draft was disseminated among the principal parties to explain the operational mechanisms, rules, differences of these organizations, and to obtain their reactions. Reaction was obtained and reviewed, and a second draft was developed. This draft was forwarded to Malagasy legal experts to revise and adapt to Malagasy law.

To date, the most controversial aspects of the proposed law are: the purpose of the endowment fund, powers, designation of board members, conflicts of interests, and mechanisms of control.

The legal text presented in this report represents a second draft reflecting months of review, analysis, and discussions with leaders, government representatives, international and local organizations, Nongovernmental Organizations (NGOs), and donors. This draft was submitted to the Malagasy Republic to be reviewed for purposes of achieving a legal framework compatible with Malagasy rule of law, in order to have a legislative agreement to set up this foundation. Therefore, the draft is subject to modification or amendment.

A comparable version of this report has been produced in French, which contains the draft law in both French and Malagasy. The structure of the draft law in English differs slightly from the French version, but both reflect the same intent.

Introduction

At the request of the U.S. Agency for International Development (USAID) in Madagascar, the Environmental and Natural Resources Policy and Training (EPAT) Project provided the services of an expert on the establishment of endowment funds that can be used to support environmental initiatives. The creation of such an endowment is a key part of USAID/Madagascar's project, Knowledge and Effective Policies for Environmental Management (KEPEM).

Between late 1993 and early 1994, this expert worked in Madagascar to:

- a. Review the legal and regulatory framework governing the establishment and operations of endowment funds in Madagascar and recommend changes to be implemented under the program conditionality for the second funding tranche associated with the agreement between USAID and the GDRM that established KEPEM;
- b. Seek broad-based opinion on the role, structure, and function of a NEEF from officials in the GDRM, international and national NGOs, donors, the private sector, and local communities;
- c. Help select a fiduciary agent and negotiate the terms of interest and management of the NEEF's assets;
- d. Advise on legal, fiscal, and administrative procedures for establishing and operating the NEEF, including an effective and accountable secretariat;
- e. Advise on the process of selecting a balanced, effective board of directors; and
- f. Advise on the development of a charter for the NEEF, including criteria for grant eligibility, selection, and monitoring.

This report addresses several of these tasks and provides draft legislation relevant to the creation of a NEEF in Madagascar. A similar French-language version of this report has also been completed, which contains the draft legislation in both French and Malagasy.

Background

The purpose of USAID/Madagascar's KEPEM Project is to develop a policy and institutional framework of incentives and revenue generation to encourage sustainable management of the country's rich natural resources. One component of the project involves the establishment of a NEEF that would ensure a continuous source of financial support for local initiatives designed to conserve and protect Madagascar's natural and environmental resources. Under the terms of the agreement between USAID and the GDRM, the latter agreed to capitalize the Fund. In order to do so, however, it is first necessary to provide the legal structure for such a Fund. Thus, as a condition precedent to the release of the KEPEM Project's second funding tranche, the GDRM is required to approve appropriate legislation that will provide legal authority for the Fund's existence and operations. Specifically, the relevant conditions require:

1. A memorandum on legal matters confirming that the GDRM will promulgate a new or revised law covering NGOs. This law's purpose is to clarify and simplify the right to establish such organizations and to acknowledge the legal status of NGOs, including their right to receive grants and donations and to collect fees for services.
2. Documented confirmation that the GDRM has authorized, by means of legislation, agreement, or any other legal mechanism, the establishment of a NEEF that will support local initiatives for improved management of natural resources and operate in accordance with the agreement between USAID and the GDRM.

Once established, the NEEF will guarantee permanent access to financial resources to support activities designed to ensure the effective long-term management of the country's natural resources. Through the legislation mentioned above, the fund will be protected from changes in national policies as well as from changes in administrative and donor priorities. Under Malagasy management, the NEEF will serve to strengthen the development of a national philosophy in the field of natural resources management. The Fund, which will be established as an NGO under Malagasy law governing such organizations, will seek to: a) increase the participation of NGOs in sustainable environmental management; b) establish innovative partnerships between NGOs, the private sector, and government agencies; and c) develop a permanent source of financing to which other donors interested in environmental management can participate.

To help the NEEF become fully operational and to assist the GDRM as it considers a new approach to environmental management in the country, USAID/Madagascar procured the services of an endowment expert to work with the Government to define the Fund's organization and management structure and to establish the Fund's charter and privileges.

Possible Options

The reader should keep in mind that the legal framework in which the Fund will be incorporated is based on the French model. Such a framework deals only narrowly with associations. Equally important, the French model divides the regulatory framework that could apply to associations into four levels: the law, the implementation decree, the bylaws, and internal rules. Such a model differs from that found in the United States and several European countries, where laws include: a) what is generally found in the equivalent French bylaws and b) a minimal definition of internal operational rules.

Reliance on the four levels makes the present exercise particularly perilous. It is necessary to ensure a legal structure that provides adequate guarantees of integrity in which no conflicts of interest exist when individuals and/or organizations exercise their responsibilities.

Several approaches can be used to create such a legal structure that is necessary to allow the effective operation of a NEEF. Consequently, five options were examined, including:

1. Establishment of the Fund through decree;
2. A major change in the Associations Act (60-133), which would safeguard the Fund's administration and management by including the Fund's operating bylaws in this Act;
3. A minor change in the Associations Act (60-133) and legal recognition of a model of bylaws governing associations;
4. Establishment of the Fund under the existing Associations Act (60-133) and governing the administration and management with bylaws and regulations; and
5. A separate law for the Endowment Fund based on a special regime authorized under the Associations Act (60-133).

Each option has its advantages and disadvantages, and these are discussed below.

Establishment Through Decree

The creation of a foundation through decree seldom occurs. When foundations are created through decree, they are commonly created through non-for-profit corporation law. A general consensus is that the corporate structure is more flexible and adaptable to most foundations than is a trust.

1. Advantages

- a. Creation by a legislative body gives an institution a highly visible seal of approval.
- b. A legislative body can exempt an institution from requirements that apply to regular organizations.
- c. A legislative body can give direct tax exemptions on income.

2. Disadvantages

- a. Lobbying a legislative body is a time-consuming process, and legislators may have a vision of the institution's structure and mission that differs from that of the initial advocates. A common result is an outcome dependent on bargaining and compromise that will not allow the foundation to achieve its mission adequately.
- b. A legislature can impose requirements not applicable to other organizations.
- c. If the need subsequently arises to amend the decree, further legislative involvement will be required.

Major Changes in the Associations Act

1. Advantages

- a. Major changes in Madagascar's existing Associations Act would help to secure the NEEF's administration and management through the inclusion of the bylaws in the Act.
- b. The Fund's board of directors would have considerable flexibility to amend the elements included in the request for establishment and the articles of the internal regulation of the organization.
- c. Through this approach, bylaws are minimal and generally include the following items:
 - names of the applicants,
 - head office,
 - names of temporary board members,
 - mission or purpose of the organization,

- other specific provisions, and
- a declaration under oath.

Similarly, the approach allows organizations to establish their internal operating rules.

- d. Criteria that govern nonprofit organizations are enriched, which will allow these organizations to reach the same level of professionalism and responsibility as companies.
- e. Board members are subject to the rules and terms of functioning, code of behavior, power and duties of each decision-making body, and responsibilities.
- f. By submitting the request for approval, the board members initiate the organization's appropriation process by participating in the definition of a foundation's purpose or mission.
- g. Changing the Associations Act in order to include the NEEF will help to support the process already initiated by the Malagasy Council for Development and the Environment for revising this act.

2. Disadvantages

- a. The process for changing the Associations Act might be long if a consensus is required from all concerned associations.

Minor Changes in the Associations Act

Minor modifications can be made to adjust to the current context of associations development with clarifications to some articles that could lead to different interpretations and could be restrictive or liberal.

In addition to minor modifications of the existing Act, the legislature could impose standard bylaws on all nonprofit corporations that might restrict what the Fund could do.

1. Advantages

- a. Minor modifications to the Associations Act could be achieved relatively quickly.
- b. Legislative agreement to the standard bylaws governing nonprofit corporations could be reached simultaneously with approval of the modifications. One can also determine an approval process that could be a few months longer than for the Act.

- c. In both cases a and b, designated representatives of corporations and associations and of the authorities would analyze and amend a proposed text of the standard bylaws, which would be approved at the end of the allocated process.
- d. The option of an approved act and standard bylaws allows greater flexibility as compared to the previous option. This flexibility is measured in terms of duration and amendment procedure. To this end, a modification to the standard bylaws in future years is always more accessible than a modification to a law and will reflect more adequately changes in corporations.

2. Disadvantage

- a. The rules established by standard bylaws through legislative action are not as well protected from fluctuations in political power as when they are included in a law because they are easier to amend. If this option is selected, the most stringent administrative rules will always be an important political challenge, and one can foresee some laxness in the enforcement of these clauses.

Establishment Under the Existing Associations Act

This option, which is not recommended, refers to the current practice of establishing and operating a corporation or association. The existing Act needs some clarification, and the issues of administration and management of organizations are deficient for the intended purposes of the Fund.

1. Advantage

- a. This option allows for the quickest action because it does not require any legislative action.

2. Disadvantages

- a. Due to the novel nature of the NEEF and its purpose, the Associations Act does not provide sufficient administrative and management provisions for protecting the Fund's finances.
- b. The process of incorporating items into a foundation's bylaws risks conflicts of interest. This results because those subject to the bylaws will also be the ones determining what the bylaws will be.
- c. In a lawsuit, one cannot claim omissions in bylaws, whether intentional or not.

- d. Members of a board of directors can agree to stringent standards when the organization is established but can change them when empowered to do so.
- e. One should consider that the funds entrusted to the board members' management are totally external. The board members have no personal financial stake in the organization, which may discourage appropriate oversight.

Separate Law for the Endowment Fund

1. Advantages

- a. The legal text can be customized according to the needs of the NEEF without having to consider the needs or concerns of other organizations that might be affected by generic changes in the Associations Act.
- b. The Endowment Fund will operate independent of other organizations; it does not need other organizations or associations to agree in order to begin its operations.
- c. The new operating regulations, agreed under any option described above, will be a testing ground for initiating those to be included in the Associations Act.

2. Disadvantages

- a. A separate law will have no positive influence on other associations, which will consider themselves as distinct and not similar.
- b. The development of a legal text specific to the proposed Endowment Fund might take considerable time because there are few legal references to the subject and no relevant precedents in Madagascar.

Selected Options

Considering these advantages and disadvantages, two options (2 and 5) were selected for more detailed analysis during the consultant's stay in Madagascar.

The Endowment Fund should not be established under the current Associations Act because it does not provide sufficient legal protection to guarantee that the Fund's considerable assets will be secure. Consequently, major attention was devoted to the last option and the development of a separate law that would establish the NEEF and that would provide appropriate legal authority and protection for its operation. The structure of the draft law includes principles taken from the Malagasy law on financial institutions and those generally approved for nonprofit organizations in other parts of the world.

In parallel with the development of a specific law for the establishment of the NEEF, a draft law regarding associations was also developed. This draft was shared with all organizations interested in amending the Associations Act.

In this respect, this secondary effort complements work on the draft legislation for the Endowment Fund. The Fund will finance NGOs in order to achieve its goals. This explains the importance of a major reform in the Associations Act.

Introduction to the Draft Law for the NEEF

The draft law that follows is the outcome of considerable discussion and negotiation with a wide range of potentially interested individuals in Madagascar. Once the general outline of the draft was completed, a Malagasy law firm provided assistance in framing the text. Some parts of the draft law reflect the results of intense negotiations between the law firm and the consultant, and do not necessarily represent the independent views of either.

The GDRM is in the process of considering the merits of adopting this type of legislation. The reader should bear in mind that the text is still subject to alteration and amendment by various parties.

Law Draft #: Concerning the Creation of a Foundation

The National Assembly has adopted,
The President of the Republic promulgates
The following Law:

Chapter I: General Provisions

Article 1 :

As part of the Knowledge and Effective Policies for Environment Management (KEPEM) Project and the implementation of the National Environmental Action Plan (NEAP), a foundation is created and named TANY MEVA, hereafter referred to as the Foundation, which will be governed according to the provisions of this law.

Article 2 :

The Foundation is a private and not-for-profit institution; i.e., it does not share profit among the members.

It is a legal entity recognized to be of public usefulness by a decree adopted by the Government.

Article 3 :

The purpose of the Foundation is to assist sustainable efforts already made or that will have to be made for strengthening environmental management and, more specifically, the management of natural resources in Madagascar.

As part of this mission, the Foundation can intervene to:

- contribute to financing and/or provide any other support to organizations and local communities that work for the conservation of natural resources in Madagascar;
- support specific short, middle- and long-term projects directly related to its purpose;

- organize and/or participate in the organization of fund-raising campaigns for its own benefit or the benefit of the aforesaid organizations and local communities;
- promote, organize, and coordinate all educational, philanthropic, or welfare activities or tasks linked to the conservation of natural resources.

Article 4 :

The Foundation is exempted from any tax or duty on generated revenues, as well as customs and fees for change of ownership and any other tax related to its activities as long as it uses its revenues exclusively for the pursuit of its own goals.

The Foundation can implement its activities on all the territory of the Malagasy Republic and, if necessary, promote these activities overseas.

Article 5 :

The Foundation carries out its mission without any form of discrimination, including that based on race, color, sex, language, religion, political or other opinion, national or social origin, fortune, birth, or any other factors.

Article 6 :

The Foundation is prohibited from interfering directly or indirectly in the functioning of the institutions of the Malagasy Republic.

More specifically, the Foundation will not, directly or with the help of an external party, support the adoption of any law or rule favoring an individual, organization, or political party, or intervene in any way in the organization and implementation of an election campaign to support a candidate or a party seeking a position of public representation.

Article 7 :

The Foundation will not contribute to or help in the financing of:

- illegal or immoral activities,
- projects considered harmful to the environment,
- projects that endanger community health,
- military-like and/or weaponry projects,

- projects that promote political or religious beliefs, or
- projects conducted by illegally established businesses.

Article 8 :

The Foundation will not engage in speculative investments or high-risk financial transactions in order to seek excessive revenues.

Article 9 :

The Foundation will not provide financing and/or a loan or a collateral for a loan to its board members, high-ranking officials of the Foundation, individuals or organizations considered linked to these board members and officials, or to employees or individuals mandated by the Foundation to invest its assets.

The following are considered linked parties:

close family members (parents, spouses, brothers and sisters, and children [whether legitimate, natural, or adopted; as well as spouses and children of these]), and all businesses, associations and/or legal entities or any of the individuals mentioned in the first paragraph of Article 9 for any participation.

Article 10 :

The Foundation is vested with full legal capability from the day this law is published in the official gazette of the Malagasy Republic.

The law will be published in the gazette for three consecutive months following promulgation by the appropriate entity according to constitutional criteria.

The Foundation is vested with the authority to perform all acts directly or indirectly linked to its goals, including, but not limited to:

- receiving loans;
- issuing, selling, or leasing securities, or using them as collateral;
- encumbering as securities all or part of its assets to warrant its commitments;
- investing its funds the way it considers most appropriate;
- purchasing, renting, exchanging, and alienating tangible and real assets;

- lending to any legal entity that maintains business relations with the Foundation, except for what is provided for in Article 9 above;
- taking any security deemed necessary to guarantee the payment of its debt;
- building, owning, maintaining, improving, and using on properties it owns or uses all facilities that promote its interests and contribute or help in any way to the building, improvement, or maintenance of such facilities;
- paying in cash or any other form for services related to the selling or placement of the Foundation's assets;
- making an agreement with any organization pursuing objectives compatible with the Foundation's for sharing common risks and profits, as well as mutual cooperation or any other similar end;
- making arrangements or agreements with any public authority in order to promote the Foundation's objectives;
- requesting and receiving donations, endowments, and subsidies from individuals or entities, or national or foreign government organizations;
- acquiring, using, or transacting to use with third parties of invention patents or rights over these patents, copyrights, formulas, licenses, concessions, and interests of the same nature; and
- acquiring, creating, and managing any work or business related to the Foundation's objectives.

Article 11 :

From the day the decree recognizing the character of public utility is published in the official gazette, the Foundation is entitled to all other advantages, and specifically fiscal advantages that are not specified in this law, but are recognized by the law and the rules governing organizations of public utility and particularly to public service organizations active in the field of assistance and education.

Article 12 :

The Foundation's headquarters are based in Antananarivo, but regional representations can be established as needed for the Foundation's activities upon decision by the Board of Directors.

Chapter II: Structure and Operation of the Foundation

Article 13 :

To carry out its mission, the Foundation has two entities:

- Board of Directors and
- Executive Secretariat

Board of Directors

Article 14 :

The Board of Directors is the Foundation's administrative body.

In addition to responsibilities usually related to such an entity, the Board of Directors is responsible for establishing the Foundation's objectives, for directing the Foundation's interventions to implement these objectives, and for giving the necessary instructions for implementation.

Article 15 :

As a managing body, the mission of the Board of Directors is to:

- define the programs for priority interventions of the Foundation;
- approve criteria for selecting projects the Foundation might finance;
- with these criteria, approve action and financing programs submitted by the Executive Secretariat or any eligible organization requesting financing from the Foundation;
- define the overall investment policy for the Foundation's assets and approve the investment criteria proposed by the Executive Secretariat;
- mandate all specific studies or local or external assistance required for implementing projects financed by the Foundation;
- determine the rules of contracting for the projects financed by the Foundation; and
- decide and open on behalf of the Foundation any postal or banking, deposit, or checking account; or advance on title account.

Article 16 :

Acting as the Foundation's administrative body, the Board of Directors is vested with all the necessary authority to administer itself.

In addition to the cases listed below, the Board of Directors can delegate all or part of its powers to the Executive Secretary, to the Project Manager, Investment Manager, or any individual or organization selected by the Board.

The Board of Directors is the only body authorized to:

- approve the bylaws (internal regulations) of the Foundation;
- prepare on behalf of the Foundation the employment contract for the Executive Secretary;
- authorize, upon proposal by the Executive Secretary, the recruitment and dismissal of the Project Manager and Investment Manager;
- approve the organizational chart and the personnel regulations proposed by the Executive Secretary;
- approve any guarantee and downstream action, as well as any mortgage over the Foundation's assets;
- approve the Foundation's budget submitted by the Executive Secretary;
- decide the establishment of regional representations; and
- approve the establishment, merger, and dissolution of subsidiaries.

Article 17 :

While carrying out its mission, the Board of Directors will ensure that the Foundation does not depart from its objectives and does not participate in actions or operations that are forbidden according to this law or that could harm the interests of the Foundation. Specifically:

1. The Board must not give away the assets of the Foundation.

The Board will allocate the revenues from investments exclusively to enhance the Foundation's activities.

No part of the Foundation's assets or revenues generated by its investments can be given away directly or indirectly to the Board members, officials, or employees.

2. The Board will secure the entire capital and, if necessary, will take all corrective steps needed to rectify the situation.
3. The Board will not invest more than 2.5% of the amount of the initial fund in the same enterprise.
4. The Board or its representatives will in no case commit the Foundation's resources for a duration of more than three years. This period is renewable.
5. The Board cannot allocate to administrative expenses more than 20% of the revenue generated by the investments.

These expenses include studies, conferences, advertisements, and establishment of regional branches, which can be decided upon by the Board for the promotion of the Foundation's activities.

6. The annual authorized expenses will not exceed the amount of annual revenues from investments, minus inflation.

The revenues brought by inflation will be kept as a reserve to be reallocated to the capital in order to preserve all the assets.

In case the expenses of any given fiscal year exceed the revenues that can be used according to the first subsection of this paragraph, the deficit will be charged in the budget of the following fiscal year.

Article 18 :

The Board of Directors shall include seven members. The first Board members are nominated according to Article 19.

Article 19 :

The first Board members are to be designated by a Selection Committee, which is established according to the agreement between the GDRM and the Government of the United States of America.

This Committee shall include five members designated as follows:

- one by the GDRM;
- one by USAID;

- one by associations officially registered and working in the fields of development and environment;
- one by associations officially registered and working in the field of social development; and
- one by professional groups, organizations, or associations in the private sector.

Article 20 :

Each Board member position will represent one of the following disciplines: Law, Economics, Management, Administration, Finance, Sociology, Community Development, and Environment.

Article 21 :

An individual cannot be nominated Board member if he or she:

1. is the spouse, parent, second-degree relative of another Board member, or employee of another Board member or of the Foundation;
2. implements such activity that competes with one of the Foundation's activities, has a position of Board member, or is an official in a similar organization;
3. was sentenced in Madagascar or abroad for:
 - a) a common law violation;
 - b) forgery or use of forgery in private or trade accounting;
 - c) a violation of articles 177 to 179, or 418 to 420 of the Penal Code;
 - d) theft, swindling, or breach of trust;
 - e) embezzlement of public funds or extortion of funds;
 - f) receiving items obtained by violations d) or e); or
 - g) attempting to commit or participate in any violations above;
4. was sentenced to prison for intentional violation;

5. was prohibited by sentence or other official act from serving as manager or board member of a society or organization; or
6. was dismissed from a position of ministerial officer, following a court decision.

Article 22 :

The Board members will serve in their capacity as individuals and not as representatives of public or private organizations to which they might belong.

Article 23 :

The mandate of the Board members is for three years, renewable once.

However, Board members are renewed at the rate of one third each year. Board members to be replaced after the first and second year are to be determined by a draw.

Any exiting Board member is to be replaced by an individual who belongs to the same discipline and fulfills all the required conditions for being a Board member.

Exiting Board members can be proposed and nominated for a second term.

Article 24 :

New members of the Board are proposed by a Nominating Committee that includes three individuals designated by the Board of Directors from among its members.

The Nominating Committee is responsible for recruiting prospective candidates for the Board of Directors and for establishing the list of candidates.

Article 25 :

A Board member's position can be terminated following:

- his or her resignation,
- dismissal after evidence was found during the mandate for one of the reasons in Article 21,
- the violation of the provisions of Article 36 and/or Article 60,
- ~~bankruptcy~~,

- documented serious illness that prevents the Board member from fulfilling his or her duties, or
- absence from three consecutive Board meetings.

Vacancies are addressed under the same conditions as renewal.

The new Board members appointed under these conditions carry on the mandate of their predecessors for the remainder of the term.

Article 26 :

The resignation of a Board member is subject to advance written notification of 90 days and shall be submitted to the Board of Directors.

At the end of this period, the Board member stops performing his or her duties and can be held accountable towards the Foundation and third parties only for acts performed during the mandate.

Article 27 :

The meetings of the Board of Directors shall take place at the headquarters or any other location indicated in the notification.

The first annual meeting shall take place within 45 days after the closing of the financial statements.

Article 28 :

The Board of Directors elects among its members a President, Vice President who is acting when the President is absent from a meeting, and Treasurer.

If both the President and the Vice President are absent from a meeting, the attending members will designate a chairman for the meeting.

Article 29 :

The Executive Secretary acts as Secretary of the Board of Directors.

He or she attends the meetings and has the right to participate in the debates and discussion but does not have the right to vote.

Article 30 :

The Board of Directors meets as often as required by the circumstances, but at least twice per year, upon written notification sent by the President or Vice President, or notification by the Executive Secretary upon request by three Board members.

The notification shall be sent by registered mail at least 15 days before the date of the meeting.

During this time, all Board members may come to the Foundation's headquarters to become acquainted with any document related to the issues on the agenda.

Article 31 :

Any Board member can agree in writing to meet without the notification mentioned in Article 30 above.

His or her presence at the meeting without written notice is the equivalent to accepting the meeting except if the member attends the meeting to assert that the meeting is not valid and to oppose it.

Article 32 :

In an emergency, the President or the Vice President can contact the Board members by any available means.

Decisions signed by all the Board members authorized to vote on any issue have the same value as if they were adopted during a regular Board meeting.

Article 33 :

Decisions of the Board of Directors are taken during the Board meeting.

The Board meeting is valid if at least one half of the Board members attend the meeting.

Decisions are taken upon the absolute majority of the attending members.

In the case of a draw, the President's vote prevails.

Article 34 :

The Board of Directors deals only with issues listed in the agenda.

In case of an extraordinary meeting, a member cannot add other proposals to the issues listed in the agenda and written in the notification.

Article 35 :

The Board can establish within itself special committees duly mandated in order to perform specific studies or actions.

Once these special committees receive their mandate, they can meet as many times as necessary and in any location until the completion of their mandate, which will be stated in a report to the Board. Decisions taken by committees duly mandated by the Board of Directors are committing the Foundation within the scope of the mandate.

A Board member cannot serve on more than one committee.

Article 36 :

Any Board member who has a personal interest in an issue submitted to the Board of Directors and who has any link with the applicant shall inform the Board and abstain from participating in the discussion and the vote, subject to dismissal for noncompliance. If the President has a personal interest in a matter before the Board, he or she will be recused and replaced by the Vice President.

Article 37 :

Board members who, while performing their duties, have damaged the Foundation, voluntarily or out of serious negligence, are obligated to provide for compensation.

Article 38 :

The position of Board member is without compensation.

Any Board member is entitled to the refund of any expense and disbursement incurred during or for legal action, proceedings, or procedure engaged against him; or for acts or facts accomplished while performing required duties and within the normal limits of his or her responsibilities.

Each Board member is entitled, upon approval of the Board, to the refund of all other reasonable expenses incurred while performing duties, except for expenses due to a serious or intentional mistake.

Board members are entitled to an allowance for attending meetings, not to exceed 30,000 Malagasy francs per meeting.

Article 39 :

All Foundation Board members, in the exercise of their fiduciary duty, are guardians of the Foundation's assets.

The Treasurer is responsible for overseeing the administration of Foundation assets and the maintenance of a precise and complete account of revenues and disbursements in the Foundation's ledger. This responsibility includes the oversight of all financial transactions (withdrawals and deposits) to be presented by the Executive Secretary in a written monthly report.

The Treasurer shall render an account to the Board of Directors for all Foundation transactions and for the financial position of the Foundation at any regular Board meeting or at the Board's request.

Executive Secretariat

Article 40 :

The Executive Secretariat is the entity that prepares and implements the decisions of the Board of Directors.

Article 41 :

The Executive Secretary is in charge of the Executive Secretariat and is responsible for the daily management of the Foundation.

Executive Secretary

Article 42 :

The Board of Directors recruits an Executive Secretary after a competition open to the public, based upon his or her professional experience and proven capability in economics and management.

The Executive Secretary is linked to the Foundation by a contract.

Article 43 :

Besides some special authority that can be delegated to him or her by the Board of Directors, the Executive Secretary is responsible for the current management and administration of the Foundation.

He or she is vested with the necessary authority to implement the mission; specifically, the Executive Secretary:

- recruits and dismisses all the agents and employees of the Foundation but needs the Board's approval to hire or dismiss the Project Manager and Investment Manager;
- is directly accountable for the management of the cash flow;

- manages the Foundation's tangible and real assets, and is responsible for all financial transactions, receipts, and titles;
- prepares the budget and the annual action program of the Foundation, which will be submitted to the Board for approval at its first annual meeting;
- prepares the financial accounts and the end-of-fiscal-year statement and all other accounting documents related to his or her management;
- represents the Foundation in court as plaintiff, as well as defendant;
- develops and submits to the Board of Directors for approval:
 - . selection criteria for projects to be financed by the Foundation,
 - . selection criteria for action programs and financing criteria for the selected projects,
 - . investment criteria for the Foundation's goods and values following the major guidelines listed in Article 47;
- supervises the implementation and monitoring of selected projects; and
- develops and proposes actions to implement the projects.

The Executive Secretary supervises the Project Manager, who manages the project portfolios and the Investment Manager, who is in charge of investing the Foundation's goods and values.

The Executive Secretary shall receive a copy of all reports prepared by the Project Manager and the Investment Manager. The Executive Secretary prepares a report of general activities that includes the results of the activities of the Project Manager and the Investment Manager.

The Executive Secretary is always informed by the managers of all aspects of their activities and hardships encountered in carrying out their duties.

Project Manager

Article 44 :

The Executive Secretary recruits the Project Manager and the Investment Manager upon approval by the Board of Directors and based on its own expertise and capabilities as identified for the concerned task.

The project and investment managers are recruited through a competition open to the public.

The managers are linked to the Foundation by contract.

Their dismissal is subject to the Board's approval.

Article 45 :

The Project Manager's specific mission is to:

- **promote the Foundation's activities and make them widely known to the public by all useful means;**
- **allocate funding based upon suggestions and recommendations by an independent committee upon approval by the Executive Secretary**

(This five-person, independent committee charged with analyzing requests, should include high-level representatives of various fields of activities related to the environment. The chairman of this committee will be a member from the Board of Directors especially designated to preside over the committee.); and

- **prepare a quarterly and annual report on the status of the portfolio, the funding, and results of financed projects**

(The Project Manager officially submits these reports to the Executive Secretary for reporting and provides a copy to the Board of Directors for information.).

Every three years, the Project Manager will submit for bid an independent evaluation of the Foundation's portfolio by specialized firms, with special consideration to the costs and results of the projects. The Board of Directors must approve the selection.

Investment Manager

Article 46 :

The Investment Manager's mission is to manage the investment portfolio of the Foundation's goods and values. The Investment Manager could be an individual or an organization.

Article 47 :

In addition to specific guidelines that the Board of Directors can give the Investment Manager, he or she and the Board will abide by the following investments guidelines:

1. Every investment should tend to increase the financial capacity of the Foundation to reach its goals.

Thus, the Board should surround itself with useful advice and take all necessary precautions to preserve the capital and ensure that the Foundation will receive maximum yield without undue risk to its assets.

2. In the event there is a decrease in the investment's revenue or depreciation of assets, the Board shall take all necessary steps to correct the situation and justify all its actions.
3. Any investment in a commercial and/or an industrial project should be based upon financial projections over five years, prepared and certified by an independent accounting firm.

In any case, and according to the provisions in Article 17, the Foundation cannot invest more than 2.5% of the amount of the initial allocation in the same enterprise.

Article 48 :

The Investment Manager will prepare a quarterly report on the actual yield of each investment and a annual synthesis report of the yields.

This annual report will state the actual yields of each project in which investments were made. The report will be controlled by the audit firm contracted to audit the Foundation's management.

These reports will be submitted to the Executive Secretary for reporting and to the Board for information.

Every three years, the Project Manager shall submit for bid an independent evaluation by specialized firms of the Foundation's portfolio, with special consideration to the level of risk, yields, and discounted value of the assets. The Board of Directors must approve the selection.

Chapter III: The Foundation's Financial and Accounting Organization

Article 49 :

The Foundation's fiscal year begins January 1 and ends December 31, except for the first year, which begins the date the Foundation is created and ends December 31.

Article 50 :

The Executive Secretary manages the Foundation's budget and follows the guidelines of the Board of Directors.

This management follows the 1987 Malagasy General Accounting Code.

Article 51 :

The Executive Secretary will prepare a provisional income account over three years, an annual provisional income account, and an annual provisional cash flow account, which will be submitted to the Board of Directors for approval.

Article 52 :

The Foundation's resources come from:

- public and private endowments,
- funds from external aid,
- revenues from investments,
- revenue from appreciation of tangible and real assets,
- revenues from services provided by the Foundation,
- exceptional and various income,
- subsidies, and
- donations and legacies.

Article 53 :

Endowments are defined as current and future goods, rights and resources, irrevocably given to the Foundation for the accomplishment of its mission, including the revenue generated by their use.

Article 54 :

At the time of its creation, the Foundation will receive an endowment in Malagasy francs, equivalent to U.S. \$12 million, as starting capital.

This endowment, given by the GDRM and in accordance with the agreement between the GDRM and the Government of the United States under Convention # 687-0113-G-SS-2003-00 under the KEPEM Project, will be allocated in two equal installments:

- the first on October 31, 1994;
- the second on April 30, 1995.

Article 55 :

The Board of Directors may accept donations and/or subsidies from any government, individual, or public or private entity if the objectives of these donations and subsidies are compatible with the Foundation's goals. Acceptance of the donations should not incur expenses other than acquisition fees. The Board is forbidden to accept donated tangible or real assets that could bear future obligations.

Giving a donation or a subsidy does not entitle the donor to interfere in or control the Foundation's management.

Article 56 :

Any new contribution to the initial endowment will be deposited in a separate account and then integrated with the initial endowment if the donation agreement between the parties does not specify any special allocation.

Article 57 :

The Foundation's assets may remain in the same form in which they were received.

Article 58 :

Any income from an asset unused during a specific year will be allocated to the endowment to which it belongs to be reinvested for the specific purpose agreed upon by the parties.

If there is no specific provision, the income will be incorporated into the capital.

Article 59 :

Independently from controls and internal evaluations that the Board of Directors or the Executive Secretary may request at their discretion, the Board is accountable before a Control Committee, which shall include five members designated by the following bodies:

- one by the ministry in charge of finance;
- one by the ministry in charge of the environment;
- one by associations known as working in the field of development and environment;
- one by associations known as working in the field of welfare; and
- one by professional groups, organizations, and associations from the private sector.

The Control Committee's mandate is to ensure that the Board of Directors implements the recommendations of the external auditing firms.

Article 60 :

The Control Committee will designate an auditing firm that follows internationally accepted audit standards to audit the Foundation's administrative and financial management at the end of each fiscal year.

Audit firms in which a director or management staff member, or any party linked to a director or management staff member, has a vested interest in the Foundation cannot be selected.

Any Board member concerned by these provisions who fails to inform the Board of Directors will be dismissed immediately.

Article 61 :

The auditing firm shall have access to all the Foundation's documents and is entitled to request and receive from any Board member, management staff, or employee of the Foundation any books, documents, information, and explanations deemed necessary for the completion of its mission.

Article 62 :

Any director, management representative, or employee who refuses to abide by the obligations provided for in the previous article can be fined 500,000 to 5 million Malagasy francs. This amount is subject to change due to fluctuating valuation rates.

Article 63 :

The audit report will:

- list all documents and information the report is based upon;
- mention if all the ledgers, accountings, and documentary evidence were held according to standards and were not altered in any way;
- mention if the performance statement reflects faithfully the precise and current status of the Foundation's operations; and
- include the audit firm's opinion on the internal control system that is in place, recommendations for improvement if necessary, and recommendations on the management by the Board of Directors.

Article 64 :

If the audit report recommends that any Board member, including the President, be dismissed for evidence of bad management and if, consequently, the Board of Directors lacks the required quorum, the Control Committee will nominate a temporary president from among the remaining Board members; if no one is left on the Board, the Committee will designate the temporary president directly. The temporary president's mandate will be to prepare elections for a new Board and to supervise the Foundation until the new Board is in place.

Article 65 :

Within one month after being in his or her position, the temporary president will propose to the Control Committee the names of nine individuals to serve on the new Selection Committee, as follows:

- three from associations known as working in the field of development and environment;
- three from associations known as working in the field of welfare; and
- three from professional groups, organizations, and associations in the private sector.

Within 15 days of receiving the list of nine individuals, the Control Committee will designate five from the list who will serve on the new Selection Committee.

Article 66 :

Within 45 days of its creation, the new Selection Committee, according to the conditions listed in Article 22 of this law, will designate the members of the new Board of Directors.

Chapter IV: The Foundation's Books

Article 67 :

The Executive Secretary will maintain:

- 1. A book on the Foundation's Board members and management staff that will include:**
 - a copy of the Foundation's constitutive document and internal rules; and
 - names, addresses, and occupations of all Board members and management staff, with the dates they started and ended their positions.

- 2. A record of mortgages, which will list all mortgages and charges affecting the Foundation's assets and the goods concerned by these mortgages and charges, the amount of the debt, the object of the security, and the names of the mortgage and the right holders.**

This book and record are available to any concerned individual at the Foundation's headquarters during normal working hours.

- 3. An operations book that will include the Foundation's revenues and expenses, financial transactions, and debts and obligations.**

- 4. A record of meeting minutes, with all minutes of the meetings of the Board of Directors initialed on each page by the Executive Secretary and signed by the Chairman of the Board and the Executive Secretary.**

Article 68 :

These books and records are considered as evidence, unless recorded facts are registered as false in any action, suit, or procedure engaged against the Foundation, or one of its Board members, or management staff or employee.

Article 69 :

If the Executive Secretary, out of negligence or omission, does not keep the books and records required above, he or she can be fined from 1 to 5 million Malagasy francs, without prejudice to compensation for any damage resulting for the Foundation or a third party.

Chapter V: Subsidiary Corporations, Mergers, and Dissolution

Article 70 :

In the event a donation exceeds one billion Malagasy francs, the donor and the Foundation's Board of Directors may agree to create a subsidiary corporation with a mandate to reach a specific objective within the Foundation's mission. This amount can be updated periodically by the Board.

Article 71 :

The subsidiary corporation shall be a legally autonomous entity, with its own headquarters and administration and management structures.

The amount allocated from the donation is the subsidiary corporation's starting capital.

Article 72 :

The subsidiary corporation is a legal entity. It has full legal capability from the date its creation act is published in the official gazette and duly signed by the donor and the President of the Board of Directors.

Article 73 :

Any change in the subsidiary corporation's objectives should be unanimously agreed upon by all the members of the Foundation's Board of Directors.

Such a change cannot give to the subsidiary corporation objectives that differ from the Foundation's own objectives.

Article 74 :

The provisions of this law are applicable to all the subsidiary corporations, with the exceptions of Articles 75 to 77.

Article 75 :

The first board members of a subsidiary corporation are nominated by a three-member committee designated by the Foundation's Board of Directors and the donor.

Article 76 :

The Board of Directors of a subsidiary corporation shall have at least three but not more than five members. The exact number is determined by the subsidiary corporation's bylaws.

Article 77 :

Any decision of the subsidiary corporation's Board of Directors for merger or dissolution of the enterprise should be approved by the Foundation's Board of Directors.

Article 78 :

Without prejudice to this last article concerning the subsidiary corporation, merger or dissolution will follow the rules below.

Article 79 :

Merger, by absorption or creation of a new entity, is authorized only with an enterprise that has the same goals.

Article 80 :

The merger project should be the result of an agreement mentioning the terms and conditions of the merger, the way the merger will be carried out, the legal name of the new entity to be created, and all other issues to be considered by the Board of Directors in making its decision.

Article 81 :

The merger project will be adopted by the Board of Directors of the Foundation or the subsidiary corporation according to the case, by a majority of two-thirds of the members attending the Board's meeting.

The meeting can be held if one-half the members of the Board are in attendance.

Article 82 :

The merger act adopted in accordance with the rules by the competent entities of each enterprise is published in the official gazette of the Malagasy Republic.

After this publication and merger by absorption or through creation of a new legal entity, the Foundation or the subsidiary corporation is dissolved.

The absorbing enterprise or the new entity comes before the Foundation or the subsidiary corporation in its rights and obligations and under the same terms and conditions.

Article 83 :

Besides the case provided for in the previous article, the Board of Directors may decide to dissolve the Foundation or the subsidiary corporation when the enterprise cannot operate without jeopardizing the Foundation's or the subsidiary corporation's interests or when it becomes impossible or difficult to realize the objectives because of existing laws or because of new laws or regulations.

The decision to dissolve designates also the liquidator and delineates his or her powers.

Article 84 :

If a subsidiary corporation is dissolved, the existing assets are transferred to the Foundation after all debts have been paid.

The Foundation's Board of Directors should allocate these assets to similar activities.

Article 85 :

In the event the Foundation is dissolved, the existing assets and resources, after all debts have been paid, should be allocated to the creation of a new Foundation with a similar mandate and similar goals to those that were determined when this Foundation was created.

In the event that a new foundation is not formed, Board members or management staff members of the Foundation or subsidiary corporation who are members of organizations with a vested interest or who individually have a vested interest cannot be beneficiaries of the dissolution of the Foundation. The designation of beneficiaries is made by the President of the lower judiciary court at the location of the headquarters, upon proposal of the liquidator.

Chapter VI: Last Provisions

Article 86 :

No provision of this law can result in the Foundation or a subsidiary corporation eluding the provisions of any other law applicable in the same matter. These provisions are applicable in any matter that is not against the provisions of this law.

Article 87 :

The civil courts are competent to settle disputes opposing the Foundation or a subsidiary corporation to its Board members or third party.

Appendix A: Individuals Contacted

Government Agencies

Dert Andriamitovo, in charge of Associations, Ministry of Interior

Eliette Rasendrasirofo, Prime Minister's Office, Counsellor to the Prime Minister

Naina Randriamananjara, Prime Minister's Office, Counsellor for Social Affairs

Yolande Pasea, Chief, Service for Europe, Ministry for Foreign Affairs

Roger Rakotondrazaka, Director of Customs, Ministry of Finance and Budget

Hanitra E. Rajaonah, Inspector for Taxes, Ministry of Finance and Budget

Laurent Rasolofonirina, Department of Public Debt, Ministry of Finance and Budget

Guy Razafindralambo, Chairman of the Board, National Environment Office

Levy J. Rakotoarison, in charge of Legislation, Environmental Policy, National Environment Office

Solohery Rakotova, in charge of Monitoring/Evaluation, Data Bank, Planning, National Environment Office

Jean Angelin Randrianarison, Chief, Administrative and Finance Department, National Environment Office

Victoire Rasakotoniaina Andriatahima, Judge, in charge of Studies and Legislation Service, Ministry of Justice

William Marolahy, Secretary of State, Secretariat of State for Population

Ahmad, Director, Service of Social Development, Secretariat of State for Population

Joëline Rasoanirina, Chief, NGO Coordination Service, Secretariat of State for Population

Soïofo Razafinoato, Consultant, NGO Coordination Service, Secretariat of State for Population

Donor Agencies

Dieudonné Randriamanapisoa, Operations Officer, Resident Mission, World Bank

George Carner, Mission Director, USAID/Madagascar

William Hammink, Chief, Program Development and Evaluation Office, USAID/Madagascar

Spike Millington, Coordinator, KEPEM Project, USAID/Madagascar

Lisa Gaylord, Coordinator, SAVEM Project, USAID/Madagascar

Frank Martin, Chief Economist, Program Development and Evaluation, USAID/Madagascar

Tamara Fillinger, Regional Legal Advisor, USAID/Kenya

Josoa Razafindretsa, Lawyer, Program Development and Evaluation, USAID/Madagascar

International NGOs

Paul Segal, Director, World Wildlife Fund, Madagascar

Lalao Andrianifahanana, External Relations, World Wildlife Fund, Madagascar

Henri Rabesahala, Administrative and Finance Director, World Wildlife Fund, Madagascar

Hans Seybold, Permanent Representative, Friedrich Ebert Foundation, Madagascar

Mamy H. Rakotoarizaka, National Representative, Friedrich Ebert Foundation, Madagascar

Patrick S. Daniels, Technical Coordinator, Conservation International, Madagascar

Serge Rajaobelina, Program Officer, Conservation International, Madagascar

Marianne Guerin-McManus, Legal Advisor and Conservation Economics, Conservation International, Madagascar

Myriam Thinault-Razafindratsima, Representative, Association française des volontaires du progrès

Eric Delorme, Representative, Handicap International, Madagascar

John B. Ross, President, The Debt-for-Development Coalition, Washington, D.C.

Tina Hofman, Legal Advisor, The Debt-for-Development Coalition, Washington, D.C.

M.J. Eugene Gibson, Attorney-at-Law, Washington, D.C.

Malagasy Associations (with French acronyms)

Koto Rubemananjara, General Director, National Association for Environmental Action (ANAE)

Charles Ranaivoson, former President, Malagasy Council for Development and Environment (COMODE)

Violette Rabakoarivelo, President, Malagasy Council for Development and Environment (COMODE)

Jean Gabriel Razafimahoro, Executive Director, Malagasy Council for Development and Environment (COMODE)

Solonirina Ratrimoarisana, Administrative and Finance Director, National Association for Protected Areas Management (ANGAP)

Roy Hagen, Natural Resources Advisor, Chief of Party, National Association for Protected Areas Management (ANGAP)

Peter Robinson, Administrative Advisor, National Association for Protected Areas Management (ANGAP)

George Shafenberger, Chief of Party, Grant Management Unit, SAVEM Project

Private Firms

Pierre Ranjeva, President, SOMAGI/JURECO Consulting

Louis Rajaonera, General Director, JURECO Consulting

Pascaline Rabearisoa, Legal Auditor, RINDRA Certified Accounting Firm

Oliva Randrianonimandiby, General Director, MPANAZAVA Consulting

Madeleine Ramaholimihaso, Certified Accountant, Ramaholimihaso Consulting

Mamy Rakotoarivelo, Manager, Ramaholimihaso Consulting