



Open letter to Mr. José Endundo Bononge, Minister of Environment, Nature Conservation and Tourism of the Democratic Republic of Congo

Concerning the “Ministerial Decree Regulating the Registration of Non-Governmental Organizations and Environmental Associations”

December 18th, 2009

Your Excellency,

We are writing to you motivated by a strong concern over the proposed Ministerial Decree aiming at regulating the registration of non-governmental organizations (NGOs) and environmental associations. The Democratic Republic of Congo has made strong commitments to freedom of expression and freedom of association in the past. The Congolese Constitution adopted in 2006 and the law 004/2001 of 20th July 2001 on the regulatory framework for associations and NGOs both reflect this. Such commitments are also repeated in international legal instruments ratified by the DRC, including the African Charter on Human and Peoples' Rights and the International Covenant on Civil and Political Rights. In particular, the DRC's Constitution includes the following:

Article 23 solidifies individuals' freedom of expression:

“Each person has the right to freedom of expression. This right implies the freedom to express one's opinions and beliefs, through speech, written text and image, subject to compliance with the law, public order and morality.”

Article 37 guarantees freedom of association:

“The State guarantees freedom of association. The Government collaborates with the associations which contribute to social, economic, intellectual, moral and spiritual development of the population and the education of all citizens. This collaboration may take the form of grants. The law establishes the procedures for exercising this freedom.”

Concern over limitation of fundamental rights

As a group of international NGOs engaged in environment-related issues in the DRC, we are deeply concerned that the proposed Ministerial Decree violates these fundamental rights of Congolese citizens. The Decree would establish by law fixed procedures and formalities which NGOs and environmental associations would be obliged to undertake, preconditions they would have to fulfill, as well as rules they would have to follow in a potential partnership with the Ministry of Environment, Nature Conservation and Tourism (MECNT) (Article 1).

Article 22 confers the power to the Minister to withdraw and annul any certificate obtained by an NGO or environmental association, including, inter alia, the following cases:



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- *“If the representative of the organization or association referred to above shall be found guilty of libel, slander or malicious comments against the authority of the ministry, concerning the conduct of environmental policy, which includes aspects that relate to the management of natural resources”* (Article 22, point 3).
- If the organization or association referred to above commits *“any act of interference in the decision-making process concerning the management of the environment or natural resources”*. (Article 22, point 4)

This article raises the following questions: Who would define the difference between constructive criticism and malicious comments? Who would determine what constitutes an act of interference? The proposed article would enable abuse of power and provide a legal basis for banning unwanted organizations and associations. It therefore severely circumvents the fundamental rights to freedom of association and expression of Congolese citizens.

Regarding the justification of such a Decree

Despite considerable effort, we have not been able to find a legal text or any other official rule or regulation which calls for the elaboration of the current Decree. None of the articles in the 2002 Forest Code either provide for or demand the elaboration of the currently proposed Decree. On the contrary, the Forest Code prescribes that *“the Minister includes all concerned actors, public and/or private, across the entire national territory, in the elaboration of a national forest policy”* (Article 5). It also states that *“the accredited associations representing communities and nongovernmental organizations contributing to the achievement of government policy on environmental issues may exercise the rights granted to the plaintiff with regards to acts constituting an offense under the Forest Code and the measures of performance, or achievement, according to international agreements and conventions ratified by the DRC and causing direct harm to the collective interests they aim to defend”* (Article 134).

Moreover, the proposed decree is in our view superfluous since the legal regulations concerning non-profit organizations (e.g. environmental associations and NGOs) are already stipulated in law n° 004/2001 of 20th July 2001.¹

In conclusion

The Congolese constitution recognizes the crucial role of civil society organizations in contributing towards the education of its citizens and to development more broadly. The proposed Decree opens the way for restricting and undermining this important role of NGOs, abolishing constructive critique

¹ Law n°004/2001 among other defines the procedure of obtaining a legal certificate for any non-profit organization (Article 5), specifying the characteristics which the applying non-profit organization must fulfill in order to register legally (Article 36).



and alternative views emerging from civil society - views which represent the often-unheard voices of marginalized communities. The Decree also represents a serious blow to recent attempts at more participatory policies in the DRC. Historical evidence and experiences have time and again confirmed that non-participatory and non-transparent approaches to development and environmental policies not only fail, but often lead to further and intensified conflicts.

We therefore express our deep concern about the proposed Ministerial Decree. The ratification of the Decree in its present form would constitute a serious restriction of the freedom of expression and freedom of association of Congolese citizens, and would thus violate the Constitution of the DRC as well as existing laws. It would also represent a way for MECNT to suspend or stop all undesirable NGO activity on unclear grounds. Furthermore, the proposed Decree is neither demanded by any existing legal document, nor can it be accepted on moral grounds. Finally, it is the opinion of the signatories of this letter that such a Decree, if formalized, will greatly endanger continued international financial and technical support to the ongoing UN REDD / FCPF process in the DRC.

We, the signatories, therefore not only urge you to reconsider the proposed Ministerial Decree, but advise that the “Ministerial Decree Regulating the Registration of Non-Governmental Organization and Environmental Associations” is abandoned altogether.

Yours sincerely,

Lars Løvold
Director
Rainforest Foundation Norway

Simon Counsell
Executive Director
Rainforest Foundation UK

Patrick Alley
Director
Global Witness

Michelle Ndiaye Ntab
Executive Director
Greenpeace Africa

Susanne Breitkopf
Senior Political Advisor
Greenpeace International