

Annex 10: Democratic Republic of the Congo: Draft Bill on the Protection of Human Rights Defenders (2008)

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Preamble

We, as members of the National Assembly,
meeting in plenary session,

- Mindful of the situation and determined to introduce the democratic rule of law founded on respect for human rights, and committed to guaranteeing, with no form of discrimination, the effective exercise and enjoyment of fundamental rights and freedoms for all Congolese citizens
- Reaffirming the elemental principles of the United Nations Charter of 26 June 1945, the Universal Declaration of Human Rights of 10 December 1948, international agreements and other conventions and protocols on human rights
- Likewise reaffirming the provisions of the Declaration on Human Rights Defenders presented by the United Nations Commission on Human Rights in 1998 and adopted by the United Nations General Assembly on 9 December 1998 in its resolution 53/144
- Having regard to the mandate of the Special Representative of the United Nations Secretary General for Human Rights Defenders
- Having regard to the significant number – some 500 – of national and local organisations for the promotion and protection of human rights currently operating in the Democratic Republic of the Congo and the essential role they play in the rule of law and in the establishment of justice
- Whereas human rights defenders are increasingly the target of attacks, death threats, arbitrary imprisonment and exile, and that their rights are held in contempt by those in power in many countries, with total impunity, and in the absence of any legal framework to protect human rights defenders
- Recognising the role played by human rights defenders and the ability of Congolese organisations for the defence of human rights to collaborate with the human rights protection bodies of the United Nations and other competent regional and national institutions on matters related to the promotion of human rights
- Considering the need to establish a national legal framework for the protection of human rights defenders
- Underlining the fact that the primary responsibility and duty to protect the fundamental rights and freedoms of all citizens lies with the State
- Recognising that individuals, groups and associations have the right and the responsibility to encourage respect for human rights and fundamental freedoms, and to disseminate them both nationally and internationally
- Taking inspiration from the guidelines and from the role of the diplomatic missions of the European Union in relation to human rights defenders
- We hereby approve and pass this law.

Section I: General provisions:

ARTICLE 1: This law has been drawn up based on the current Constitution of the Democratic Republic of the Congo, particularly its provisions relating to fundamental freedoms, rights and obligations of its citizens and international legal instruments, in particular the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the African Charter on Human and Peoples' Rights, and the Declaration on Human Rights of 1998.

ARTICLE 2: This law guarantees that the inviolable rights, freedoms and work of Congolese human rights defenders will be safeguarded.

ARTICLE 3: The public authorities shall respect and protect the rights, freedoms and work of human rights defenders.

Section II:

Definition of the role of human rights defenders

ARTICLE 4: The definition of human rights defenders is enshrined in the first article of the 1998 Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, which states that *“Everyone has the right, individually and in association with others, to promote and to strive for the protection and implementation of human rights and fundamental freedoms at national and international level.”*

ARTICLE 5: Human rights defenders are individuals, groups and organs of society which promote and protect universally recognised human rights and fundamental freedoms. They are dedicated to the promotion, protection and practical implementation of economic, social and cultural rights. They also promote and protect the rights of the members of groups such as indigenous communities. This definition does not include individuals or groups who commit acts of violence or who propagate violence.

ARTICLE 6: Although the primary responsibility for the promotion and protection of human rights lies with the state, it is evident that individuals, groups and organs of society make a significant contribution to promoting the cause of human rights. In particular, human rights defenders:

- Make offences public
- Try to ensure that the victims of these offences can exercise their legal rights by providing them with legal, psychological, medical and other assistance
- Fight against the culture of impunity that serves to hide systematic and repeated violations of human rights and fundamental freedoms.

Section III:

Foundations of the mission of human rights defenders:

ARTICLE 7: The mission of human rights defenders is based on the application of the different international legal instruments detailed below:

- Articles 18, 19 and 20 of the Universal Declaration of Human Rights of 10/12/1948 which state that everyone, including human rights defenders, has the right to enjoy freedom of thought, speech, peaceful assembly and association
- Freedom of opinion and speech includes the right to hold opinions without interference, the right to seek and receive information and ideas, and the right to disseminate them through any media regardless of frontiers
- Articles 21 and 22 of the International Covenant on Civil and Political Rights of 1996, which also guarantee the freedom of peaceful assembly and free association for human rights defenders in order to protect their interests
- Article 10 of the African Charter on Human and Peoples’ Rights of 1981 which recognises that every individual shall have the right to freely constitute associations, provided that he abides by the law
- The provisions of the Declaration of 1998 on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.

ARTICLE 8: In the national domain, the mission of human rights defenders is based on the provisions of the current Constitution of the Democratic Republic of the Congo, especially those relating to the individual freedoms in articles 17, 18, 19, 22, 23, 24, 25, 26, 27, 30 and 37.

* *Equally, law No. 004/2001 of 20 July 2001 regarding the freedom to create and join not-for-profit associations in the Democratic Republic of the Congo.*

Section IV:

The rights and protection of human rights defenders

ARTICLE 9: Human rights defenders, like all other people, individually and in association with others, have the right to promote and strive for the protection and implementation of human rights and fundamental freedoms both nationally and internationally.

ARTICLE 10: For the purpose of promoting and protecting human rights and fundamental freedoms, human rights defenders have the right, individually or in association with others, both nationally and internationally:

- To meet or assemble peacefully
- To form, join and participate in non-governmental organisations, associations or groups
- To communicate with non-governmental or intergovernmental organisations.

ARTICLE 11: They also have the right:

- To know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information regarding how those rights and freedoms are made effective in domestic legislative, judicial and administrative systems
- To freely publish, communicate or disseminate to others ideas, information and knowledge on all human rights and fundamental freedoms
- To study, discuss, form and hold opinions on the respect, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to these matters.

ARTICLE 12: Human rights defenders also have the right to develop and discuss new human rights ideas and principles and to advocate their acceptance.

ARTICLE 13: The right to participate effectively, without being exposed to discrimination, in the government of his or her country and in the conduct of public affairs.

This particularly includes the right, individually and in association with others, to submit criticism and proposals intended to improve the way government institutions and agencies involved in public affairs operate, and to draw attention to any aspect of their work that may hinder or impede the promotion, protection and implementation of human rights and fundamental freedoms.

ARTICLE 14: When exercising human rights and fundamental freedoms, including the promotion and protection of human rights, the right, individually and in association with others, to lodge an appeal and be protected in the event of the violation of those rights.

To this end, any human rights defender whose rights or freedoms are allegedly violated has the right, either in person or through legally authorised representation, to submit a complaint and have that complaint promptly reviewed in a public hearing before an independent, impartial and competent judicial or other authority established by law, and to obtain from such an authority a decision, in accordance with the law, providing redress, including any compensation due, where there has been a violation of that person's rights or freedoms, as well as enforcement of any decision and verdict, without undue delay.

ARTICLE 15: To this end, human rights defenders have the right, individually and in association with others, in particular:

- To complain about the policies and actions of individual officials and governmental bodies with regard to violations of human rights and fundamental freedoms, by petition or other appropriate means, to competent domestic judicial, administrative or legislative authorities or any other competent authority provided for by the state legal system, which shall render their decision on the complaint without undue delay
- To attend public hearings, proceedings and trials in order to form an opinion on their compliance with national law and applicable international obligations and commitments
- To offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms.

ARTICLE 16: In accordance with applicable international instruments and procedures, human rights defenders have the right, individually and in association with others, to communicate freely and benefit from unhindered access to international bodies with general or special competence to receive and consider information on matters of human rights and fundamental freedoms.

ARTICLE 17: Human rights defenders have the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms.

In this respect, they have the right to be protected effectively under national law when reacting against or opposing, through peaceful means, activities and acts attributable to the state, including those by omission, that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

ARTICLE 18: Human rights defenders have the right, individually and in association with others, to request, receive and make use of resources, under article 37 of the current Constitution of the Democratic Republic of the Congo, for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means, in accordance with article 3 of the Declaration on Human Rights Defenders of 1998.

ARTICLE 19: In the event of imminent danger that threatens the lives of human rights defenders, they have the right to save their lives and seek the protection of the European Union's accredited diplomatic missions in the Democratic Republic of the Congo or those of other African nations that agree to shelter and protect them. The right to seek exile abroad is recognised in Article 14 of the Universal Declaration of Human Rights of 1948 and Article 33 of the current Constitution of the Democratic Republic of the Congo.

Section V:

Duties and obligations of human rights defenders

ARTICLE 20: In exercising their mission, human rights defenders, like any other citizens, have a duty to respect other people's rights and the laws in force in the Democratic Republic of the Congo.

They also have the obligation, during the exercise of their functions, to respect the provisions of articles 27 to 29 of the African Charter on Human and Peoples' Rights of 1987 concerning citizens' rights.

ARTICLE 21: Human rights defenders must be guided in their mission by their ethical or deontological code.

ARTICLE 22: Human rights defenders shall not participate, by act or by failure to act, in violating human rights and fundamental freedoms, and shall not be punished or harassed for refusing to do so.

ARTICLE 23: In exercising their rights and freedoms and their mission, human rights defenders, individually and in association with others, shall be subject only to such limitations as are in accordance with applicable international obligations and are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and general welfare in a democratic society.

Section VI:

The duties and obligations of the State

ARTICLE 24: The Congolese State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, particularly by adopting such steps as may be necessary to create all the conditions necessary, as well as the legal guarantees required to ensure that all people under its jurisdiction, including human rights defenders, may, whether individually or in association with others, enjoy all those rights and freedoms in practice.

The Congolese State must adopt the legislative, administrative and other measures necessary to ensure that the rights and freedoms of its citizens are guaranteed.

ARTICLE 25: In the event of a complaint or finding that the rights of a human rights defender have been violated, the state shall conduct a prompt and impartial investigation and ensure that an inquiry takes place whenever there are reasonable grounds to believe that any such violation of human rights and fundamental freedoms has occurred in any territory under its jurisdiction.

ARTICLE 26: The state shall take all the necessary measures to ensure that the competent authorities protect human rights defenders, whether acting individually or in association with others, against any violence, threats, retaliation, de facto or de jure discrimination, pressure or any other arbitrary action as a consequence of their legitimate exercise of the rights and freedoms guaranteed by national and international legal instruments.

ARTICLE 27: Deportation of human rights defenders who have fled from persecution when their lives are in danger shall be prevented.

ARTICLE 28: The need to address the issue of impunity by conducting in-depth, independent investigations and putting an end to the violence perpetrated against human rights defenders shall be highlighted.

ARTICLE 29: This law shall go into effect on the date of its enactment.