



POSITION NOTE

AMENDMENT AND SUPPRESSION OF SOME PROVISIONS OF
THE LAW 003/2007 OF 27 AUGUST 2007 CONCERNING
NATIONAL PARKS

PLATEFORME
GABON
MA TERRE, MON DROIT

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Position Note

Following the final report endorsing the Council of Ministers of 27 February 2017 and 10 March 2017 on the adoption, on one hand of a draft order amending and abolishing some provisions of the National Parks Act, and on the other hand, of a draft decree creating and organizing the National Agency for the Preservation of Nature (NAPN), the Platform *Gabon Ma Terre Mon Droit* (GMTMD) intends to deliver its understanding of this dual initiative which should radically modify Governance of the forest / environment sector and more broadly of natural resources in Gabon. Given the direct and indirect implications of this approach at the local, national and international levels, Gabonese Civil Society Organizations (CSOs) are very concerned. As a result of the procedure, they have serious reservations about the respect due to Parliament, the rule of law and democratic principles.

The GMTMD Platform wishes to point out that the amendment of this law has been referred to by the current running team of the “Agence Nationale des Parcs Nationaux” (ANPN) since October 2009 without any political, administrative, financial or technical necessity of such an idea could be established. It should also be noted that since October 2009 there has been a clear confusion over the technical and administrative supervision of the “Agence Nationale des Parcs Nationaux” (ANPN). Although the provisions of Act No. 003/2007 of 27 August 2007 relating to national parks clearly refer to an attachment to the Ministry in charge of national parks¹, the management team has consistently availed itself of a link with the Presidency of the Republic. Although the National “Conseil National des Parcs Nationaux” (CNPN, ancestor of the ANPN) was indeed attached to the Presidency of the Republic, the same is not true for the ANPN. From its inception, this public institution was attached to the government for efficiency reasons. In short, for more than seven (7) years, all the management actions of the ANPN have been taken in flagrant breach of the dedicated law since they refer to the Presidency of the Republic and not to the supervising ministry².

1 Article 28 of Law 003/2007 of 27 August 2007 on national parks

2 A study commissioned in June 2010 by the ANPN concluded that, in the absence of a ministry in charge of national parks, supervision by the Ministry in charge of Forests was required, since it manages the other protected areas. Decree No. 0132 / PR of April 29, 2014 determining the tutorship of the ANPN was taken to permanently link the ANPN to the Ministry of Forests. Nothing was done there: the current management team continues to claim unduly from the Presidency of the Republic, as if to engage in the trading of influence or exonerate from any control.



I. General observations

The process of amending the law 003/2007 turns out to be brutal, untimely and undemocratic. Not only it wanted to be exclusive, it also tends to reduce Parliament to record chambers. If an ordinance has the legal force of law, it is hardly conceivable that its adoption should not be based on time constraints. What was the urgency of amending the National Parks Act? CSOs questioned whether it was not possible to await parliamentary re-entry to submit legislation resulting from a multi-stakeholder process.

Besides, CSOs also note that even before the Parliament's ratification of the Ordinance, an implementing decree has already been adopted by the Ministers' Council. CSOs are wondering what would become the ANPN if the Parliament change or reject this order. Are we to understand that for the government, Parliament has no choice but to adopt the said ordinance as it stands? At the moment when we are talking about institutional reforms and the deepening of democracy, such initiatives seem anachronistic and counterproductive.

At first sight, this reform corresponds to a logic peculiar to its initiators: in the absence of an explanatory memorandum, no one identifies the objectives. Unless its initiators intend to mask it to better surprise decision-makers and the national community, this reform remains incomprehensible: it extends the missions of the ANPN to the whole of the national territory without saying more about the management of the related sectors (Wood, agriculture, mining, petroleum, regional planning, land, urban planning, infrastructure, etc.). CSOs question whether the ANPN, as required by the current reform, will intervene in these different sectors with a casting vote, that is to say, the ability to oppose any project. Since the peripheral zones are not delimited and are subject to an ecological type definition, is there not a risk for the whole country to be regulated as a peripheral zone? In which case would the ANPN become the sole regent of heavy investments and extractive activities in Gabon? On the basis of what legitimacy can it be given such power?

On the analysis, the GMTMD Platform considers that the initiators of this process intend to resume in Gabon the models of Costa Rica or Panama. In other words, if this reform were to succeed, national parks would become the essential element of all the economic and social development of Gabon. It is therefore a total change of direction and economic model that this law calls for. We would like to point out that tourism is the first economic activity in Costa Rica. Is this the model that Gabon wants? Is our country willing to sacrifice the exploitation of its natural resources? We also note that, in addition to protected areas, Panama derives most of its revenues from the operation of its canal and *off-shore banking*, that is, from the tertiary sector. Is this the way that Gabon wants?



In addition, CSOs note with surprise that the current reform is transforming the current ANPN while retaining the rest of the institutional framework, including the High Council of National Parks and the Scientific Committee. However, the establishment of these entities is expected since 2008. Is it not a question of a sleight of hand or a maneuver to legitimize a controversial initiative?

For the credibility of this initiative, CSOs require clarification on a few points:

- 1. Why should the mandate of the ANPN be extended?**
- 2. How to explain the mandate of the new ANPN to ordinary mortals?**
- 3. Can the new ANPN adapt to the rest of the institutional framework provided for in Law 003/2007?**
- 4. What would be the distribution of roles with other pre-existing entities (Directorates-General for Wildlife and Protected Areas, Forests, Environment and Nature Protection, Climate Council, ANUTTC, ANGTI, GOC / SNH, SEM ...)?**
- 5. Are we not going straight to an institutionalization of the conflict of competences and thus a complete paralysis of all the actors?**
- 6. What guarantees of efficiency offer such an expanded and catch-all mandate?**
- 7. What guarantees of transparency with such a concentration of powers?**
- 8. Does the ANPN have the technical, human and material skills to carry out such a vast mission?**

The GMTMD Platform believes these are critical issues, as governance is central to the effectiveness and efficiency of public policies, particularly environmental initiatives. This clarification is all the more necessary since the right to information and the participation of the actors in the decision-making process are two constituent elements of environmental democracy as enshrined in Principle 10 of Article 2 of the Convention on Biological Diversity (CBD) signed in Rio de Janeiro in 1992³.

In addition, the GMTMD Platform is convinced that for the viability of the "National Agency for the Preservation of Nature" a few details are also necessary:

- 1. Why does the ordinance introduce the notion of "nature protection" when the decree creates an entity responsible for "preserving nature"?**
- 2. Does nature preservation not undermine the protection of nature?**
- 3. What are the objectives of a national park?**

³ «The best way to deal with environmental issues is to ensure the participation of all concerned citizens by making information available to the citizen»



4. What resources are needed to manage a national park?
5. What is the status of national parks in a territorial administration context?
6. What management arrangements are feasible for national parks?
7. What is the status of national park staff assigned to monitoring and protection missions?
8. What legal and fiscal status for effective management of national parks?
9. Can the necessary derogations for the proper management of national parks be extended to all activities related to the preservation or protection of nature?
10. Do we not run the risk of generalizing special schemes and tax exemptions?
11. What specific and specific skills did the NANP demonstrate so far?
12. What has been the ANPN's record since its creation?

These questions are all the more important since, created a few weeks before the Johannesburg Land Summit in 2002, Gabon's national parks immediately attracted the interest of the international community. Since then, they have benefited from multiple and varied supports which, although not always sufficient, have allowed an initial structuring. CSOs note, for example, that the development of the current legal and institutional framework has been strongly supported by the European Development Fund (EDF)⁴.

II. The need for ANPN's record since its inception

The motivations for this reform are unknown to CSOs. Notwithstanding the rumors and confidences gathered here and there, there is nothing to filter out the underlying reasons for a change of this magnitude. However, CSOs note that the ANPN, created in August 2007 and set up in January 2008, had during its first 21 months of existence known two executive secretaries, namely René Hilaire Adiahéno (January to August 2008) and Jules-Marius Ogoebandja (August 2008 to October 2009). Since October 2009 and the appointment of Lee White, the ANPN has never again changed manager. The current team is undoubtedly the one that has had all the time to carry out an in-depth structuring of the entity. Rather than avoiding this issue, it would benefit from taking stock of its management.

Has the institutional mechanism under the current law been fully put in place? If so, what are the benefits? If not, why? Has the law 003/2007 been supplemented by regulatory provisions (decrees, orders ...)? If so, on what specific aspects? If not why? Has this law

⁴ Through the Sectoral Program for the Development of Protected Areas (SPDPA)



been fully tested and confronted with reality on the ground? If so, what are the results? If not, why? Why amend a law that has never really been enforced?

These questions are all the more worthy of the answers that Act 003/2007 on national parks is intended as a tool for implementing a public policy recorded in validated documents⁵ both by international cooperation (European Union and World Bank in particular)⁶ Than by the government and the current ANPN leadership team⁷.

In order to motivate an extension of the ANPN's mandate, it would therefore be worth considering the publication of a monitoring / evaluation report on the implementation of the 15-year Conservation Program (2005/2020). This exercise would provide all relevant stakeholders (sectoral administrations, CSOs, research centers, local communities, tourism operators, donors, parliamentarians and the general public) with tools for a better understanding of this initiative. Clearly, **an evaluation exercise is prior to any attempt to amend the Law 003/2007.**

Has the management system envisaged by Law 003/2007 been enforced? Does the ANPN, as provided for by Law 003/2007, have statutes and an organizational chart compatible with its mission? Is there a High Council of National Parks? If not why? Is the Scientific Committee on National Parks operational? If not why? What about the sustainable funding mechanism? CSOs recall that under the debt conversion agreement, the French Development Agency (AFD) had declared its intention to support the creation of a foundation dedicated to the financing of national parks. What happened to this initiative? Why did it not succeed? Do conservatives and eco-labels have legal status? If so, where is it recorded? If not why? CSOs would like to know by what legal provisions do they carry out police missions? We also question the legal value of acts emanating from staffs whose existence is not enshrined in a specific text or which do not belong to the body of Waters and Forests.

As expected, were the boundaries of national parks definitively materialized five years after the enactment of the law? Why does the draft Order repeat this requirement? Was it not possible to be respected between 2007 and 2012? What is the situation of the villages located in or on the periphery of the national parks? Has the knowledge of the environment and the resource been improved? If so, is it possible to have access to the database set up for this purpose? If not why? What about ecotourism? What has become of the promise of 100,000 tourists per year? What are the links between the populations and the national park

⁵ Conservation Program and National Parks Master Plan (2005-2020)

⁶ This has resulted in their support for PSVAP and GEF-Parcs

⁷ See <http://www.parcsgabon.org/l-anpn/programme-de-conservation> (current site of the National Parks Agency)



management? What is the effectiveness of international funding? What are the results of research on forest carbon?

For CSOs, the answers to these questions would make it possible to know whether the ANPN had so far complied with its mandate and whether the objectives assigned to it had been achieved. Beyond that, the answers to these questions must make it possible to envisage corrective measures or even to legitimate or not any extension of the mandate. From the point of view of the CSOs, not to submit to it would be to avoid any responsibility or to want to carry out a passage in force in an area where scientific rigor must be in order.

III. Conclusion

Given the available information, this reform is not justified. Worse still, it tends to exempt the ANPN from any accountability, particularly on relations with people living near national parks, legal and institutional aspects, Staff management and financial matters. To this end, CSOs would be very interested in the conclusions of the mission of the Court of Auditors recently deployed at the ANPN.

Moreover, this reform is dangerous in that it induces a concentration of powers in the same place and runs counter to the necessary quest for transparency in the management of natural resources.

Legal and institutional uncertainty is worrying for any potential investor. It would therefore be worthwhile to ensure stability for partners at this level.

Ultimately, CSOs consider it is difficult to support the extension of the ANPN mandate without an assessment of its years of existence. They do not want to promote legal uncertainty. If this reform were to succeed, it would be a confirmation that the laws and institutions are, in our country, cosmetic objects or rather instruments in the service of personal ambitions. This is why CSOs formally oppose it and reserve the right to appeal to the State Council and the Ombudsman of the Republic for the annulment of the current proceedings.

In any case, Civil Society Organizations in general, and the *Gabon Ma Terre Mon Droit (GMTMD) Platform* in particular, remain willing to participate in any public debate on this issue. They are open to any consultation aimed at evaluating the implementation of Law 003/2007.



It is, indeed, essential that the holders of public authority learn to be accountable, to motivate their initiatives and to act in the public interest and not for purely selfish and careerist ends.

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