

# BRIEFING PAPER

## Universal Periodic Review

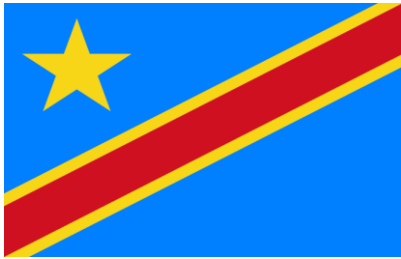
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# THE SITUATION OF HUMAN RIGHTS DEFENDERS IN DEMOCRATIC REPUBLIC OF CONGO

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During its last Universal Periodic Review in 2013, the Democratic Republic of Congo (DRC) accepted 190 recommendations. The government accepted 13 recommendations on human rights defenders and 11 on the right to freedom of association, expression and the press. These recommendations called on the State to ensure that human rights defenders are able to pursue their activities without intimidation; take all necessary measures to prevent threats against defenders and ensure their effective protection; and adopt a national law to promote and protect human rights defenders. However, since its last review,

the government has been severely repressing demonstrations and presented a draft law on human rights defenders that would have the effect of restricting their rights.

#### A. RISKS FACING HUMAN RIGHTS DEFENDERS

- In the DRC, human rights defenders are targeted for exercising their rights to freedom of expression and association, and for challenging or criticising the government. They remain victims of threats and attacks because of their work.<sup>1</sup> Although the right to freedom of press and expression are constitutionally guaranteed, journalists criticising President Kabila and his government face defamation lawsuits, arbitrary arrests or detention.<sup>2</sup>
- In 2017, the Special Rapporteur on human rights defenders of the African Commission raised concerns regarding human rights defenders being subject to violations by unidentified persons or with the acquiescence of the DRC authorities. The objective being to silence or prevent them from exercising their human rights activities within the context of the crisis faced by the country.<sup>3</sup>
- In Eastern DRC, journalists are being killed and threatened. According to Frontline Defenders, the killings, ethnic tensions, on-going violence and the instability in the region have favoured a climate of fear for local defenders.<sup>4</sup>
- According to Freedom House, Congolese authorities killed about 40 protesters who called for the review of legislation which postponed 2016 presidential elections and extended President Joseph Kabila's time in power, despite established term limits.<sup>5</sup>
- In December 2016, while peacefully protesting in the capital for the end of President Kabila's mandate as per the Constitution, 26 people were killed by security forces.<sup>6</sup>
- Defenders spontaneously challenging the authorities can face life threatening situations. Innocent Muhinganya, President of the Nouvelle Dynamique de la Société Civile, became aware of a practice of military agents racketeering civilians to go through an illegally installed roadblock. On

26 June, in an attempt to stop this practice, Muhinganya went to the roadblock to discuss with the military personnel. One of the agents pointed his firearm at him ready to shoot when his colleagues convinced him not to.<sup>7</sup>

- As presidential elections in the country are fast approaching, defenders are on high alert to ensure each citizen's rights are respected. On 3<sup>rd</sup> September 2018, several dozens of activists from the Lucha citizen movement were arrested. They were protesting in front of the electoral commission to demand the withdrawal of voting machines and the cleaning of the electoral register.<sup>8</sup>
- Defenders exposing the illegal work of extractive industries are threatened or killed. Vincent Machozi founded a platform to denounce collusion between the political elite, armed groups and corporate interests in the Ituri and Kivu regions for the illicit exploitation of coltan. On 20 March 2016, not long after returning to the DRC following a decade of exile in the U.S., Machozi was killed; allegedly by State forces.<sup>9</sup>

#### B. OFFICIAL RESTRICTIONS ON THE SPACE FOR HUMAN RIGHTS DEFENDERS

- In 2015 the High Council for Broadcasting and Communication (CSAC) adopted policies ahead of the initially planned election campaign to regulate coverage. One particular policy would allow the CSAC to unilaterally suspend TV or radio broadcast for up to three months.<sup>10</sup>
- In May 2018, the International Center for Not-for-profit Law reported the existence of two draft bills that could present serious threats to civil society space in the DRC. The first one concerns the amendment of the 2001 NGO law. This new draft would, among other things, ban NGO's challenging the government<sup>11</sup> or working on issues seen as undermining 'institutional stability'<sup>12</sup>. The draft particularly targets NGOs working on issues related to corruption and

democracy. The second draft law is a counter-terrorism financing bill<sup>13</sup> also targeting civil society<sup>14</sup>.

- In the DRC, article 26 of the Constitution guarantees the right of assembly. However, conflicting legal provisions still exists. Indeed, Decree-Law No. 196 of 29 January 1999 regulating events and public meetings provides that to enjoy this right, sometimes informing the government is enough, as said in the Constitution, when other times an authorization is needed<sup>15</sup>. While the DRC expressly referred to this decree law as being obsolete<sup>16</sup>, it still restricts this right.
- Freedom of association is guaranteed under article 37 of the Constitution and its application governed by law 004/2001 of 20 July 2001 laying general provisions applicable to non-profit associations and establishments of public utility<sup>17</sup>. The latest doesn't recognize the freedom of association to groups which are not legally registered. Indeed, on 3 December 2016 the Minister of Interior sent a letter to provincial authorities instructing them to prohibit actions undertaken by citizen movements Lucha and Filimbi.<sup>18</sup>

#### C. HUMAN RIGHTS DEFENDERS FACING PARTICULAR RISKS

- For two years now, the people of Mbobero have watched the Republican Guard destroy their villages. Since 2016 in actions to annex 600 hectares, the head of State made homeless 2,500 people, destroyed over 317 homes, without compensation. According to the Nouvelle Dynamique de la Société Civile (NDSCI), seven people, including the president of the NDSCI, the director of a documentary made about the issue and protagonists, have been threatened. Some are currently living in hiding<sup>19</sup>.
- In 2015, 10 defenders were arrested in Goma for protesting against the detention of approximately 40 **pro-democracy activists** in Kinshasa.<sup>20</sup>
- On 29 and 30 December 2017, Frontline Defenders highlighted the arrest of seven human rights defenders affiliated with the pro-democracy and civil society movement Filimbi. In March 2018, Roger Katanga Mwenyemali was released after more than two months in detention. As of September 2018, out of the seven, five remain in detention awaiting verdict in their trial which was supposed to occur ten days after the last hearing on 16 August 2018.<sup>21</sup>

- Nelly Mbangu, prominent **woman human rights defenders** working on women and children's rights in North Kivu, received numerous death threats. In December 2016, Nelly received successive text messages from an unidentified number with death threats. Frontline Defenders believed these threats to be in retaliation for her legitimate human rights work.<sup>22</sup>
- **Journalists and media organisations** are restricted. A French and US journalist were unable to renew their press accreditation in June and August 2016, while a Belgian journalist was expelled from the country in September that same year.<sup>23</sup> Additionally, the government banned Radio France International for ten months. It was allowed to emit again in August 2017.<sup>24</sup>
- In the DRC, **those defending the corrupt exploitation of the land** are often the most at risk. According to Global Witness, in 2017, 12 park rangers lost their lives defending wildlife against poachers and illegal miners.<sup>25</sup>

#### D. THE RESPONSE OF THE STATE

- In May 2017, the senate passed a law supposedly for the protection of human rights defenders. If passed in its current form, the law would severely restrict the rights of defenders and their working environment<sup>26</sup>. Moreover, this draft law is incompatible with the UN Declaration on human rights defenders and the international obligations of DRC. It restricts the exercise of defenders' rights and also imposes unnecessary controls on NGOs receiving financial support, as well as harsh penalties for non-compliance with the obligations in the law.<sup>27</sup>
- On a positive note, at the regional level the Governor of South Kivu adopted in February 2016 an edict<sup>28</sup> on the protection of defenders and journalists in the region. It aims to establish 'a legal framework for the protection of human rights defenders and journalists in order to create a safe climate to allow them to act without hindrance and in complete security'. This is a first important step towards a better legal protection of human rights defenders in the country<sup>29</sup>.
- Alternatively, In July 2018, during its reorganization, the Governor of South Kivu Province, removed the Ministry of justice and human rights in the new Provincial Government<sup>30</sup>.

## RECOMMENDATIONS TO THE GOVERNMENT OF THE DEMOCRATIC REPUBLIC OF CONGO:

- Ensure in all circumstances that all human rights defenders in the DRC are able to carry out their legitimate human rights activities without fear of reprisals and free of all restrictions.
- Adopt a national law for the promotion and protection of human rights defenders in line with the UN Declaration on human rights defenders and other international human rights instruments.
- Refrain from adopting restrictive laws to limit the work of human rights defenders and shrink civil society space in the country.
- Develop, adopt and implement National Action Plans to implement the UN Guiding Principles on Business and Human Rights in order to fully guarantee the protection of human rights defenders working on issues related to extractive industries.
- The State should guarantee the constitutional right of freedom of assembly and sanction the excessive use of force, intimidation and threats against defenders especially during peaceful protests.
- Guarantee the implementation of the edict on the protection of human rights defenders by reinstating the Ministry of justice and human rights in the Provincial Government of South Kivu.
- Provide the national human rights commission with the necessary financial and human resources to ensure that its fully independent and it fulfils its mandate
- Guarantee the right to freedom of expression, and refrain from restricting defenders reporting on the current human rights situation in the country and the upcoming presidential elections.

### ABOUT THIS BRIEFING PAPER

ISHR and SOS Information Juridique Multisectorielle (SOS-IJM) encourage States to consult UPR submissions by local activists and make recommendations to the Democratic Republic of Congo regarding the protection of human rights defenders. This paper is a result of compiling public information and direct contact and experience of SOS-IJM in the protection of defenders. Readers should consult sources cited for additional information.

<sup>1</sup> <https://www.ishr.ch/news/hrc38-democratic-republic-congo-must-protect-its-civic-space>

<sup>2</sup> <https://freedomhouse.org/report/freedom-world/2017/congo-democratic-republic-kinshasa>

<sup>3</sup> <http://www.achpr.org/press/2017/06/d359/>

<sup>4</sup> <https://www.frontlinedefenders.org/en/location/democratic-republic-congo>

<sup>5</sup> <https://freedomhouse.org/article/drc-continues-violent-crackdown-freedom-assembly>

<sup>6</sup> <https://freedomhouse.org/report/freedom-world/2017/congo-democratic-republic-kinshasa>

<sup>7</sup> <http://www.ndsci-rdc.com/2017/06/26/alerte-alerte-le-ddh-ir-innocent-muhiganya-echappe-belle-a-un-assassinat-par-un-militaire-des-fardc/>

<sup>8</sup> <https://www.bbc.com/afrique/region-45395638>

<sup>9</sup> [https://www.business-humanrights.org/en/vincent-machozzi?countries\[\]=3480](https://www.business-humanrights.org/en/vincent-machozzi?countries[]=3480)

<sup>10</sup> <https://freedomhouse.org/report/freedom-press/2016/congo-democratic-republic-kinshasa>

<sup>11</sup> <http://www.rfi.fr/afrique/20180606-rdc-projet-loi-encadrer-ong-inquiete-experts-onu-nyaletsossi-voile>

<sup>12</sup> <https://democracyworks.org.za/policy-brief-16-african-civil-society-under-fire/>

<sup>13</sup> <https://www.digitalcongo.net/article/5acdefbcaa455a0004189155/>

<sup>14</sup> [http://www.icnl.org/research/monitor/congo\\_drc.html](http://www.icnl.org/research/monitor/congo_drc.html)

<sup>15</sup> <https://www.leganet.cd/Legislation/Droit%20Public/Ordre/DL.29.01.1999.htm>

<sup>16</sup> [https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fR1%2fCOD%2f29152&Lang=fr](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fR1%2fCOD%2f29152&Lang=fr)

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<sup>17</sup> <http://www.leganet.cd/Legislation/ASBL/Loi%20n%20004.2001.20.07.2001.pdf>

<sup>18</sup> [https://www.asf.be/wp-content/uploads/2017/11/ASF\\_RDC\\_EtudeDDHPr%C3%A9-%C3%A9lectoral\\_FR\\_201711\\_Spread.pdf](https://www.asf.be/wp-content/uploads/2017/11/ASF_RDC_EtudeDDHPr%C3%A9-%C3%A9lectoral_FR_201711_Spread.pdf)

<sup>19</sup> <http://www.rfi.fr/afrique/20180711-documentaire-rdc-mbobero-expropriations>

<sup>20</sup> <https://freedomhouse.org/article/drc-continues-violent-crackdown-freedom-assembly>

<sup>21</sup> <https://www.frontlinedefenders.org/en/case/arrest-and-detention-seven-human-rights-defenders>

<sup>22</sup> <https://www.frontlinedefenders.org/en/case/nelly-mbangu-receives-death-threats>

<sup>23</sup> <https://www.amnesty.org/en/countries/africa/democratic-republic-of-the-congo/report-democratic-republic-of-the-congo/>

<sup>24</sup> <https://freedomhouse.org/report/freedom-world/2018/congo-democratic-republic-kinshasa>

<sup>25</sup> <https://www.globalwitness.org/en-gb/campaigns/environmental-activists/their-faces-defenders-frontline/#chapter-1/section-1>

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<sup>26</sup> <https://www.frontlinedefenders.org/en/location/democratic-republic-congo>

<sup>27</sup> [https://www.ishr.ch/sites/default/files/documents/ishr-statement-hrc38-item\\_10-enhanced\\_id\\_on\\_drc\\_final.pdf](https://www.ishr.ch/sites/default/files/documents/ishr-statement-hrc38-item_10-enhanced_id_on_drc_final.pdf)

<sup>30</sup> <http://www.laprunellerdc.info/2018/07/11/sud-kivu-les-organisations-de-la-societe-civile-exigent-la-restauration-du-ministere-de-la-justice/>