



THE OBSERVATORY
for the Protection of
Human Rights Defenders



**ALLIANCE POUR
L'UNIVERSALITÉ DES
DROITS FONDAMENTAUX**



Human Rights Defenders on the Front Line

Shrinking space for civil society and frustrated hopes for the protection of defenders in the Democratic Republic of Congo



A supporter of Democratic Republic of Congo's citizen movement LUCHA (Fight For Change - Lutte Pour Le Changement) gestures as he speaks in a loud hailer during a demonstration at the Virunga Market in Goma, North Kivu, on December 21, 2018, after the Independent National Election Commission (CENI) postponed the elections until December 30. DR Congo's troubled journey to elect a successor to the incumbent president hit a fresh snag on December 20, 2018 three days before voting, as electoral supervisors ordered a week-long postponement after a fire destroyed polling equipment. - 21/12/2018 - © PATRICK MEINHARDT / AFP



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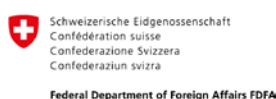


Human Rights Defenders on the Front Line

Shrinking space for civil society and frustrated hopes for the protection of defenders in the Democratic Republic of Congo



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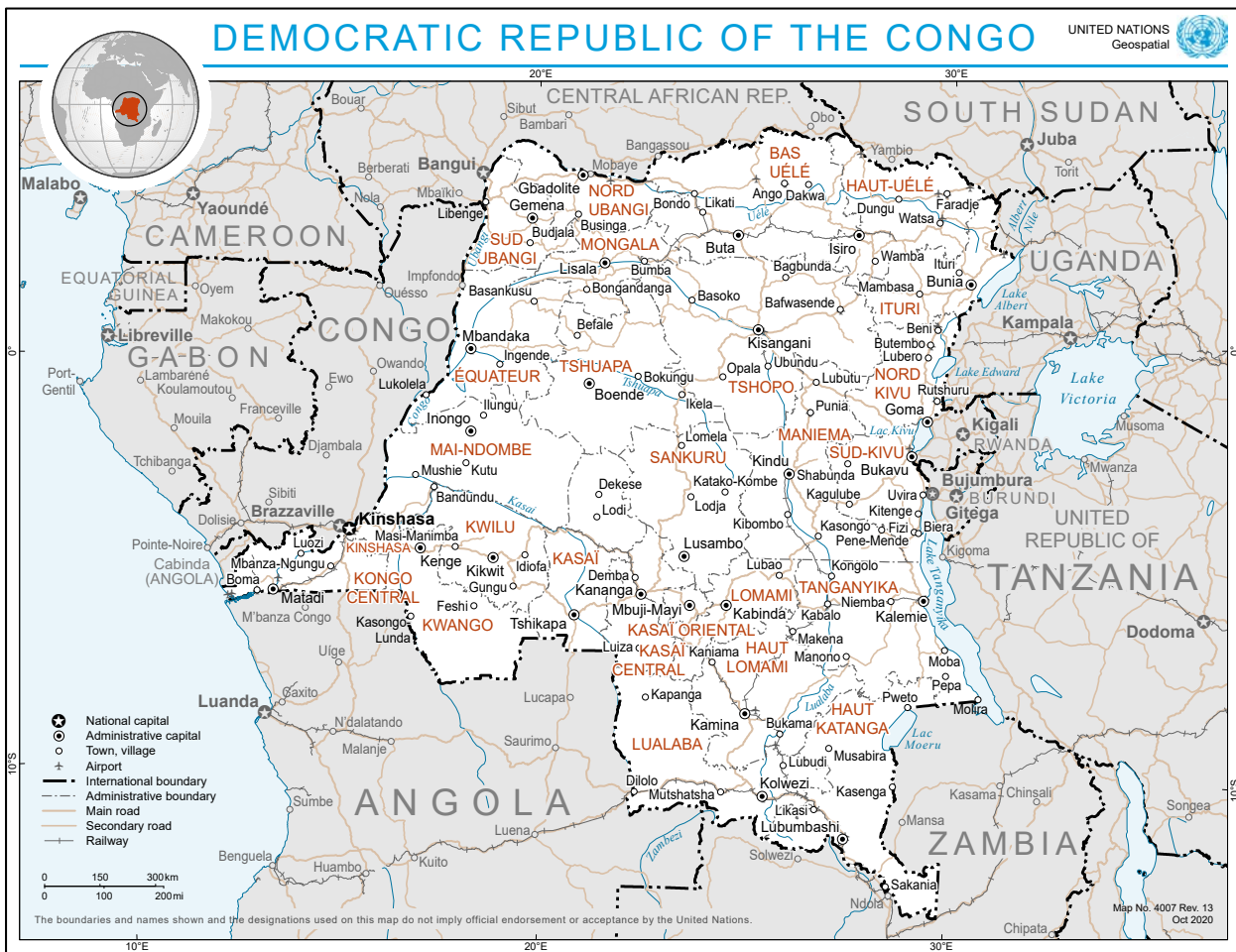
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Democratic Republic of the Congo profile Map: Map no 4007 - Rev. 13 October 2020 © UNITED NATIONS

List of acronyms

- ACAT** - *Action des chrétiens pour l'abolition de la torture* (Action by Christians for the Abolition of Torture)
- ACHPR** - African Commission on Human and Peoples' Rights
- ADF-NALU** - Allied Democratic Forces - National Army for the Liberation of Uganda
- AEDH** - *Agir ensemble pour les droits humains* (Act Together for Human Rights)
- ANR** - National Intelligence Agency
- ASADHO** - *Association africaine des droits de l'Homme* (African Association for the Defence of Human Rights)
- AUDF** - *Alliance pour l'universalité des droits fondamentaux* (Alliance for the Universality of Fundamental Rights)
- CENI** - Independent National Electoral Commission
- CNDH** - National Human Rights Commission
- DEMIAP** - *Détection militaire des activités anti-patrie* (Military Detection of Anti-Patriotic Activities)
- DRC** - Democratic Republic of Congo
- EAC** - East African Community
- EACOP** - East African Crude Oil Pipeline
- ECPM** - *Ensemble contre la peine de mort* (Together Against the Death Penalty)
- FARDC** - Armed Forces of the Democratic Republic of Congo
- FDLR** - Democratic Forces for the Liberation of Rwanda
- FIACAT** - International Federation of ACATs
- FIDH** - International Federation for Human Rights
- FONAREV** - *Fonds national de réparation des victimes de violences sexuelles liées aux conflits et des victimes des crimes contre la paix et la sécurité de l'humanité* (National Fund for Reparation for Victims of Conflict-Related Sexual Violence and Crimes against the Peace and Security of Humanity)
- HRD** - Human rights defender
- ICCPR** - International Covenant on Civil and Political Rights
- JED** - *Journaliste en danger* (Journalist in Danger)
- LGBTQIA+** - Lesbian, gay, bisexual, trans, queer, intersex, asexual and others
- LUCHA** - *Lutte pour le changement* (Fight for Change)
- M23** - 23 March Movement
- MONUSCO** - United Nations Organisation Stabilisation Mission in the Democratic Republic of Congo
- NGO** - Non-governmental organisation
- Observatory** - Observatory for the Protection of Human Rights Defenders
- OCHA** - United Nations Office for the Coordination of Humanitarian Affairs
- OMCT** - World Organisation Against Torture
- PIR** - Rapid intervention police
- RFI** - *Radio France internationale*
- RSF** - Reporters Without Borders
- SADC** - Southern African Development Community
- SGBV** - Sexual and gender-based violence
- UDHR** - Universal Declaration of Human Rights
- UDPS** - Union for Democracy and Social Progress
- UN** - United Nations
- UNJHRO** - United Nations Joint Human Rights Office in DRC
- VSV** - *Voix des sans-voix* (Voice of the Voiceless)

Executive summary

President Félix-Antoine Tshisekedi began his second term at the head of the Congolese state in January 2024 against a worrying backdrop of the resurgence of the March 23 Movement (M23) in North Kivu and the continuing activities of other armed groups and militias in the east of the country. The armed conflict between the M23 and the Armed Forces of DRC (FARDC) and their supporters from *Wazalendo* (“patriots” in Swahili) groups and the Democratic Forces for the Liberation of Rwanda (FDLR), as well as the political stalemate between DRC and Rwanda over this conflict, have led to further tightening of existing restrictions on civic space. During the last elections in 2023, opposition groups and civil society were muzzled. Many of the hopes for greater protection of human rights that were placed in the president when he was first elected in 2019 have now been shattered. Indeed, numerous promises made at the start of his first term in office have remained unfulfilled. By compiling documents, conducting research and interviewing approximately 15 actors from Congolese and international civil society, the Observatory for the Protection of Human Rights Defenders (a joint programme of the International Federation for Human Rights – FIDH and the World Organisation Against Torture – OMCT), Groupe Lotus, the *Ligue des électeurs*, the *Association africaine des droits de l’Homme* (ASADHO) and the *Alliance pour l’Universalité des Droits Fondamentaux* (AUDF) have prepared an assessment and analysis of the situation of human rights defenders (HRDs) and civic space in Democratic Republic of Congo (DRC) between 2019 and 2024, with a view to making recommendations for the remainder of President Tshisekedi’s term of office.

This report reviews the state of fundamental freedoms and restrictions on civic space (1), with a focus on freedom of peaceful assembly and demonstration (1-a), freedom of expression and freedom of the press (1-b), and the constant climate of threats against human rights defenders, which hinders the defence of human rights (1-c). It then looks at the fragile legal and institutional framework, which is inadequate to meet the crucial challenges of protecting human rights defenders (2). The recently adopted law on the protection and responsibility of human rights defenders lacks any effective application (2-a), while other laws, such as that on digital technology, hinder fundamental freedoms and the defence of human rights (2-b). The decision to lift the moratorium on the death penalty carries additional risks for defenders (2-c), and the “accelerated” withdrawal of the United Nations Organisation Stabilisation Mission in Democratic Republic of Congo (MONUSCO) will have repercussions for their security, as the situation in the east deteriorates (2-d). Finally, the report highlights the shortcomings of the judicial system in DRC (3): the Congolese justice system is beset by numerous failings (3-a), fostering a climate of widespread impunity for serious crimes committed against human rights defenders (3-b).

The signatory organisations make recommendations to the Congolese national authorities, the international community and companies operating in DRC, in order to urgently guarantee the protection and security of all human rights defenders, representatives of civil society organisations, in particular those defending human rights, as well as members of citizens’ movements and journalists, and to encourage the opening up of civic space, which is severely restricted.

Introduction

In this report, the signatory organisations provide a detailed assessment and analysis of the situation of human rights defenders and civic space in Democratic Republic of Congo, in the first year of the second term of office of President Félix-Antoine Tshisekedi, who has been in office since January 2019 and was re-elected in December 2023.

Background

The election of Félix-Antoine Tshisekedi at the end of 2018 raised high hopes that the situation of the Congolese people in general, and human rights defenders in particular, would improve after decades under the Kabila regime. This optimism was intensified by a number of promises and announcements on human rights made by the newly elected president, in a bid to break with the regime of his predecessor, Joseph Kabila.¹

Some of President Tshisekedi's promises have been fulfilled, in particular the announced release of political prisoners. A total of 703 prisoners were pardoned in 2019.² For example, Colonel Eddy Kapend and others arrested in connection with the assassination of former President Laurent Désiré Kabila were released after 20 years of arbitrary detention. In addition, the process of restitution of their seized properties and their professional reintegration was initiated, in accordance with the decision of the African Commission on Human and Peoples' Rights (ACHPR) in *Interights, ASADHO and Maître O. Disu v. Democratic Republic of Congo* (274/03 - 282/03).³

However, other promises have not been kept, such as the end of incommunicado detention, an illegal practice that increases the risk of torture. Although Félix Tshisekedi ordered the closure of all places of detention outside the control of the judicial authorities,⁴ informal detention sites continue to exist.⁵ In these undisclosed places, detainees are deprived of the possibility of communicating with their families and their lawyers. In the context of the armed conflicts in the east of the country, people have been arrested and transferred to the cells of the *Détection militaire des activités anti-patrie* (Military Detection of Anti-Patriotic Activities - DEMIAP), the National Intelligence Agency (ANR) and the *Conseil national de sécurité* (National Security Council - CNS), and then to the Ndolo military prison, without being tried within a reasonable timeframe. The case of the 111 people arbitrarily arrested in connection with the murder of Simba Ngezayo is emblematic of these practices.⁶

All the actors interviewed for this report agree that the hopes placed in Félix-Antoine Tshisekedi for the protection of human rights defenders were frustrated during his first term, that promises were

¹ Since taking office, Félix Tshisekedi has sought to break with the past and has made strong commitments to fight inequality, corruption, tax evasion, insecurity and armed groups; and to free prisoners of conscience, promote development and modernise the political system.

² VOA Afrique, "Tshisekedi libère les prisonniers politiques" (Tshisekedi releases political prisoners), 21 March 2019: <https://www.voafrique.com/a/tshisekedi-fait-gr%C3%A2ce-%C3%A0-des-prisonniers-politiques/4841698.html>; BBC News, "Félix Tshisekedi grâce 700 prisonniers politiques" (Félix Tshisekedi pardons 700 political prisoners), 14 March 2019: <https://www.bbc.com/afrique/region-47565294>

³ African Commission on Human and Peoples' Rights, *Interights, ASADHO and Maître O. Disu c. Democratic Republic of Congo* (Communication 274/03 - 282/03), October-November 2013: <https://achpr.au.int/sites/default/files/files/2023-03/achpr54decis-274-282-03-drc2013fre.pdf>

⁴ Mediacongo.net, "Félix Tshisekedi promet la libération, 'dans les prochains jours' de tous les prisonniers politiques, et la fermeture des cachots de l'ANR" (Félix Tshisekedi promises the release of all political prisoners "in the coming days", and the closure of the ANR cells), 26 February 2019, <https://www.mediacongo.net/article-actualite-48175-felix-tshisekedi-promet-la-liberation-dans-les-prochains-jours-de-tous-les-prisonniers-politiques-et-la-fermeture-des-cachots-de-l-anr.html>

⁵ OMCT, AUDF, "La torture en République Démocratique du Congo : Un secret de polichinelle ?" (Torture in DR Congo: An open secret), April 2019, https://www.omct.org/site-resources/legacy/rapport_alternatif_cat_rdc_2019_fr1_2020-12-11-171336.pdf

⁶ Litigators' Group SOS-Torture, OMCT, "République démocratique du Congo : 111 personnes détenues arbitrairement" (Democratic Republic of Congo: 111 people arbitrarily detained), 15 March 2021, <https://www.omct.org/fr/ressources/declarations/r%C3%A9publique-d%C3%A9mocratique-du-congo-111-personnes-d%C3%A9tenues-arbitrairement-et-en-d%C3%A9pit-des-garanties-juridiques-fondamentales>

not kept, and that repressive practices inherited from the authoritarian regime of former president Joseph Kabila have resurfaced. At the start of his second term in office, the situation in the country is deeply worrying.

There are around 100 armed groups and local militias active on Congolese territory, mainly in the provinces of Ituri, North Kivu and South Kivu, serving the interests of DRC, Rwanda and Uganda, particularly in the armed conflict between the M23 and the FARDC. A recent report by the UN Group of Experts on DRC denounced Uganda's "active support" for the M23, as well as increased support from Rwanda.⁷ According to several sources, the FARDC is accused of collaborating with the FDLR.⁸ Several military actors are present in the east of the country to respond to the activity of armed groups. Contingents from neighbouring armies, such as the Ugandan armed forces, are conducting joint military operations with the FARDC, in particular in Ituri against the Allied Democratic Forces (ADF) rebel group, and the Burundian army in South Kivu against armed groups in this area, in particular Red-Tabara. MONUSCO forces are also present, as are those of the Southern African Development Community (SADC), which succeeded those of the East African Community (EAC).

While a state of siege has been in force in the provinces of Ituri and North Kivu since 2021, although it is being gradually lifted, under military administration instances of violence are increasing and the protection of civilians is not guaranteed. The handing over of local power to military governors, and of judicial power to the military justice system, raises well-founded fears for the governance of civil and democratic life in these provinces, which are experiencing serious human rights violations and a worrying humanitarian situation.

Conflict-related sexual and gender-based violence (SGBV) is common, particularly in camps for displaced persons in the east of the country. In February 2024, the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) in DRC reported that there were almost 7.1 million internally displaced people in the country, mainly in the three eastern regions,⁹ making it one of the biggest internal displacement crises in the world. Amid this security chaos, the Congolese authorities have called for an accelerated withdrawal of MONUSCO troops by the end of 2024, while SADC troops are gradually being deployed in North Kivu alongside the FARDC to combat the M23 in particular.

In addition, inter-community conflicts in the Mai-Ndombe and Tshopo provinces have led to several deaths since 2022. Hate speech throughout the country, including in the context of the conflict with the M23 in the east, carries serious risks of violence, threatening social cohesion and peaceful coexistence in the country.¹⁰

In the run-up to the general elections in December 2023, the authorities showed no hesitation in stifling all dissenting voices, from political opponents to journalists and civil society organisations, particularly the leaders of citizens' movements. On 20 January 2024, Félix-Antoine Tshisekedi was sworn in for a second and final term as permitted by Article 70 of the Constitution, with the official results giving him and his Union for Democracy and Social Progress (UDPS) party a landslide victory following a process marred by irregularities and violence. The Independent National Electoral Commission (CENI) had, however, annulled the results of two constituencies and disqualified 82 candidates in the national and local elections, and civil society organisations made allegations of fraud. It took more than five months after this re-election for the government to finally be announced, at the end of May 2024, under the leadership of the country's first woman prime minister, Judith Suminwa Tuluka.¹¹ Since then, the situation with regard to stability, democratic governance and human rights in the country has

⁷ Final report of the Group of Experts on the Democratic Republic of the Congo, S/2024/432, 8 July 2024, <https://reliefweb.int/report-democratic-republic-congo/final-report-group-experts-democratic-republic-congo-s2024432-enarruzh>

⁸ MONUSCO, Report of the Secretary-General, S/2024/482, 20 June 2024, <https://documents.un.org/doc/undoc/gen/n24/163/40/pdf/n2416340.pdf?token=caBOeGBX7zioTeU2gD&fe=true>

⁹ See https://reliefweb-int.translate.google/report/democratic-republic-congo/democratic-republic-congo-internally-displaced-persons-and-returnees-february-2024?_x_tr_sl=en&_x_tr_tl=fr&_x_tr_hl=fr&_x_tr_pto=rq

¹⁰ FIDH, statement, "Elections in the Democratic Republic of the Congo: despite the violence, transparency and calm must prevail", 6 December 2023, <https://www.fidh.org/en/region/Africa/democratic-republic-of-congo/elections-in-the-democratic-republic-of-the-congo-despite-the>

¹¹ Jeune Afrique, "En RDC, le nouveau gouvernement enfin dévoilé : les entrants et les sortants" (In DRC, the new government is finally revealed: who's in and who's out), 29 May 2024, <https://www.jeuneafrique.com/1572460/politique/en-rdc-le-nouveau-gouvernement-enfin-devoile-les-entrants-et-les-sortants/>

been grim: while an “attempted coup d’état” was foiled on 19 May 2024,¹² the authorities announced their decision to lift the moratorium on the death penalty, the minister of justice is seeking to punish homosexuality without awaiting the enactment of legislation,¹³ and the situation in the east remains deadlocked and conflicts persist.

Over the last four years, since Félix-Antoine Tshisekedi took power, despite being relatively weak and having little presence throughout the country, the state has used force and repression against journalists, human rights defenders, representatives of citizens’ movements and any voices that criticise its governance of the country, and in particular its management of the security crisis in the east.¹⁴ The freedoms of peaceful assembly, demonstration, expression and the press are under severe pressure. Security forces regularly use disproportionate force against peaceful demonstrators, causing many deaths and serious injuries. The justice system is manipulated by the political authorities, and impunity, particularly for the most serious crimes, persists, leading to endless cycles of violence. As a result, civic space is greatly reduced.

Methodology

The decision by the signatory organisations to examine the deteriorating situation of human rights defenders, and that of civic space, which seems increasingly at risk since President Tshisekedi began his second term at the end of December 2023, builds on a number of previous publications: a roadmap on human rights addressed by FIDH to the then newly elected President Félix-Antoine Tshisekedi in 2019;¹⁵ a report released by OMCT in the same year on the challenges and limits of measures taken by the state in relation to torture;¹⁶ an evaluation of the implementation of the priorities identified by FIDH published in 2022;¹⁷ and an assessment by OMCT and AUDF of human rights violations in the country since 2019.¹⁸ Most of the hopes placed in Félix-Antoine Tshisekedi regarding respect for human rights and protection of human rights defenders have been unfulfilled. This is demonstrated by the signatory organisations on the basis of a documentary review, including the Observatory’s urgent appeals published between 2019 and June 2024 on the situation of human rights defenders in DRC, research drawing on several sources cited in this report, and a series of interviews conducted between April and June 2024 with various Congolese and international civil society actors working in the country. People interviewed for this report include leaders of citizens’ movements; defenders of civil and political rights, land and the environment, and women’s rights; as well as lawyers. The actors interviewed by the authors of the report are based in DRC, in the capital or in the provinces (including in the eastern regions under siege), or in exile for security reasons. The signatory organisations, Groupe Lotus and ASADHO (members of FIDH in DRC and of OMCT’s SOS-Torture Network), *Ligue des électeurs* (FIDH member in DRC) and the *Alliance pour l’Universalité des Droits Fondamentaux* – AUDF (member of OMCT’s SOS-Torture Network), also took part in these interviews and contributed to the drafting of this report with field documentation.

¹² Jeune Afrique, “RDC : ce que l’on sait de la ‘tentative de coup d’État’ déjouée à Kinshasa” (DRC: what we know about the foiled ‘coup attempt’ in Kinshasa), 19 May 2024, <https://www.jeuneafrique.com/1569641/politique/rdc-ce-que-lon-sait-de-la-tentative-de-coup-detat-dejouee-a-kinshasa/>

¹³ See <https://76crimesfr.com/2024/06/16/rd-congo-le-ministre-de-la-justice-veut-reprimer-lhomosexualite-sans-attendre-la-promulgation-dune-loi/>

¹⁴ FIDH, statement, “Elections in the Democratic Republic of the Congo: despite the violence, transparency and calm must prevail”, 6 December 2023, <https://www.fidh.org/en/region/Africa/democratic-republic-of-congo/elections-in-the-democratic-republic-of-the-congo-despite-the>

¹⁵ FIDH, report, “Democratic Republic of Congo: Five priorities for a State that respects human rights”, March 2019, https://www.fidh.org/IMG/pdf/fidh_drc_five_priorities_for_a_state_that_respects_human_rights_march2019.pdf

¹⁶ OMCT, AUDF, “La torture en République Démocratique du Congo: Un secret de polichinelle?” (Torture in DRC: An open secret), April 2019, https://www.omct.org/site-resources/legacy/rapport_alternatif_cat_rdc_2019_fr1_2020-12-11-171336.pdf

¹⁷ FIDH, Report, “Democratic Republic of Congo. Hopes and concerns three years after the submission of a Roadmap by our organisations: What progress has been made on the five priorities addressed to President Félix-Antoine Tshisekedi?”, June 2022, https://www.fidh.org/IMG/pdf/drc_note.pdf

¹⁸ OMCT, AUDF, “La torture en République Démocratique du Congo : Un mal systémique ?” (Torture in the Democratic Republic of Congo: A systemic ill?), Alternative report for the UPR, April 2024, <https://www.omct.org/site-resources/legacy/Rapport-conjoint-EPU-RDC-OMCTAUDF.pdf>

1. Fundamental freedoms flouted, civic space restricted

Although constitutionally recognised, the freedoms of peaceful assembly, demonstration, expression and the press are severely curtailed in practice. In the name of public security, including in the context of the armed conflicts in the east of the country, the authorities attack the most fundamental freedoms, resulting in a serious restriction of civic space, or its severe limitation in the provinces under siege, in North Kivu and Ituri. Human rights defenders are under pressure in a climate of constant threats, intimidation and violence, forcing many of them to abandon their human rights activities and/or go into exile.

(1.1) Attacks on freedom of peaceful assembly and demonstration

The freedoms of peaceful assembly and demonstration are guaranteed by Articles 25 and 26 respectively of the Constitution of Democratic Republic of Congo,¹⁹ adopted in 2006. These rights are also recognised by Article 21 of the International Covenant on Civil and Political Rights (ICCPR) and by Article 11 of the African Charter on Human and Peoples' Rights, international human rights instruments which have been ratified by DRC and which, under Article 215 of the Constitution, are directly applicable on national territory. However, the effective application of these freedoms remains problematic. The Congolese authorities often resort to severe restrictions to limit them, citing security and public order grounds, in particular the war in the east. Security forces frequently use force to disperse demonstrations, leading in some cases to serious injury or even death of demonstrators, as well as arbitrary arrests and extended detention. Although, under Article 26 of the Constitution, demonstrations must be declared in advance, in practice the authorities continue to insist on prior authorisation for all demonstrations, most often on the pretext of the security situation.²⁰ Permission to demonstrate is often refused without any clear justification, and organisers of peaceful gatherings are sometimes harassed or intimidated in an attempt to dissuade them.

On 20 May 2023, ahead of the December elections, the security forces brutally dispersed a demonstration in Kinshasa involving several opposition leaders and aimed at denouncing the rising cost of living through their campaign "*Tolembi pasi*" ("We have had enough suffering" in Lingala),²¹ the opacity of the electoral process and the persistent lack of security in the east of the country. Videos circulated on social networks show police officers and a plain-clothed man beating demonstrators, including a minor, with batons. **Bienvenu Matumo**, an activist and member of *Lutte pour le changement* (LUCHA), says he was punched by a police officer while taking part in the demonstration.²² Dozens of demonstrators were arrested. This crackdown was widely condemned by civil society organisations, local diplomatic representatives and even the former minister for human rights, Albert-Fabrice Puela.²³

On 30 August 2023, Congolese security forces shot dead 57 people and wounded dozens of others during preparations for a rally in the town of Goma. A mystic/religious sect called *Foi naturelle judaïque et messianique vers les nations* (Natural Judaic and Messianic Faith Towards the Nations), known as "*Wazalendo*", had planned a demonstration calling on MONUSCO and the regional force of the East

¹⁹ Article 25 of the DRC Constitution states: "Freedom of peaceful and unarmed assembly is guaranteed subject to respect for the law, public order and public morality". Article 26 states: "Freedom of demonstration is guaranteed. Any demonstration on the public highway or in the open air requires the organisers to inform the competent administrative authority in writing. No one may be forced to take part in a demonstration. The law lays down the implementing measures."

²⁰ Amnesty International, "DRC: Legal analysis of DRC legislation on the right to freedom of peaceful assembly", 12 October 2018, <https://www.amnesty.org/en/documents/afr62/9190/2018/en/>

²¹ Launched in March 2023, "*Tolembi Pasi*" is a movement working for social justice and democracy in DRC.

²² Human Rights Watch, "DR Congo: Peaceful Protests Violently Repressed", 29 May 2023, <https://www.hrw.org/news/2023/05/29/dr-congo-peaceful-protests-violently-repressed>

²³ RFI, "RDC : polémique autour de la gestion de la manifestation du 20 mai" (DRC: controversy surrounding the management of the 20 May demonstration), 21 May 2023, <https://www.rfi.fr/fr/afrique/20230521-rdc-pol%C3%A9mique-autour-de-la-gestion-de-la-manifestation-du-20-mai>

African Community to leave the country. The authorities had banned the demonstration in this town in North Kivu, which is under a state of siege.²⁴

The appointed military authorities appear to be using the state of siege, introduced by Order No. 21/016 of 3 May 2021 “on measures to implement the state of siege in part of the territory of DRC”,²⁵ which has been in force since 6 May 2021, to brutally repress all fundamental freedoms in the provinces of North Kivu and Ituri, restricting or limiting in practice all space for civil society to work. Citizens’ movements, which reject the official discourse of the authorities on the war in the east and are often critical of the effectiveness of the state of siege in protecting civilians, are particularly targeted by these bans on demonstrations and the repression of peaceful marches. The Congolese security services are increasingly cracking down on peaceful activists in a manner reminiscent of the authoritarian regimes of the past, which Tshisekedi, then in opposition, repeatedly denounced. In Kinshasa, the *Force du Progrès*, a militia linked to the UDPS, President Tshisekedi’s party, and acting under the orders of the government authorities, threatens and intimidates those seeking to gather to criticise the actions of the current government, effectively preventing the free exercise of freedom of association and peaceful assembly.



On 3 February 2024, seven young members of citizens’ movements, including **Fred Bauma**, Executive Director of the *Institut congolais de recherche sur la politique, la gouvernance et la violence - Ebuteli*,²⁶ and **Bienvenu Matumo** from LUCHA, were arrested during a peaceful citizens’ rally in front of the Palais du peuple in Kinshasa, commemorating the 600-day occupation of the town of Bunagana, in North Kivu, by the M23. The defenders were arrested by plain-clothed individuals without being informed of the reasons for their arrest. They were then taken to ANR premises where they were detained, in blatant violation of Congolese criminal procedure. During their detention, the defenders were subjected to cruel, inhuman and degrading treatment, and were denied access to their families and lawyers.²⁷ While other members of the citizens’ movement – LUCHA activists **Chrispin Tshiya** and **Jean-Paul Mualaba**, as well as a photographer and a driver – arrested with them were released on 4 February, almost 48 hours after their arrest, Bienvenu Matumo and Fred Bauma were finally released on 5 February 2024, after three days of incommunicado detention. According to the ACHPR, these arbitrary arrests and detentions constitute “serious violations of the rights to freedom of assembly and demonstration”.²⁸ During this wave of arrests, several other activists who appeared on a list of “wanted persons” went into hiding and some, including the national coordinator and spokesperson of the *Filimbi* citizens’ movement, **Mino Bopomi** and **Palmer Kabeya**, were forced to flee the country out of concern for their safety and to avoid arbitrary detention.²⁹

On 17 April 2024, a dozen citizens’ movement activists were arrested in Goma while peacefully demonstrating against the growing insecurity in the town, which is almost entirely encircled by M23 rebels and where the *Wazalendo* militia terrorise the population.³⁰

²⁴ Human Rights Watch, “DR Congo: Deadly Crackdown in Goma”, 31 August 2023: <https://www.hrw.org/news/2023/08/31/dr-congo-deadly-crackdown-goma>

²⁵ Available at: <https://fr.scribd.com/document/518611163/Ordonnance-portant-mesures-d-application-e-tat-de-sie-ge-Nord-Kivu-et-Ituri>

²⁶ Ebuteli, “Indignation suite à la détention arbitraire de Fred Bauma, directeur exécutif d’Ebuteli, et aux accusations diffamatoires portées contre lui” (Outrage at the arbitrary detention of Fred Bauma, Executive Director of Ebuteli, and the defamatory charges against him), 7 February 2024, <https://www.ebuteli.org/publications/notes/communiqué-de-presse-indignation-suite-a-la-detention-arbitraire-de-fred-bauma-directeur-exécutif-d-ebuteli-et-aux-accusations-diffamatoires-portees-contre-lui>

²⁷ Statement of Fred Bauma, 7 February 2024, <https://x.com/fredbauma90/status/1755265131490021853>

²⁸ ACHPR, “Communiqué de presse sur la situation des droits à la liberté de réunion et de manifestation en République Démocratique du Congo et en République du Sénégal” (Press release on the situation of the rights to freedom of assembly and demonstration in the Democratic Republic of Congo and the Republic of Senegal), 6 February 2024, <https://achpr.au.int/fr/news/communiqué-de-presse/2024-02-06/communiqué-de-presse-sur-la-situation-des-droits-la-liberte-de>

²⁹ Interview with Mino Bopomi and Palmer Kabeya, on 16 April 2024.

³⁰ Jeune Afrique, “En RDC, vague d’arrestations à Goma avant une manifestation contre l’insécurité” (In DRC, a wave of arrests in Goma ahead of a demonstration against insecurity), 18 April 2024, <https://www.jeuneafrique.com/1559617/politique/en-rdc-vague-d-arrestations-a-goma-avant-une-manifestation-contre-linsecurite/>

ASADHO, a member organisation of FIDH in DRC and of OMCT's SOS-Torture Network, reported numerous other arbitrary arrests in the context of peaceful demonstrations held since January 2024.³¹ On 4 March 2024, activists from Goma who were marching to demand tax and welfare relief were arbitrarily arrested by the police. The head of the *Filimbi* network, **Christopher Muyisa**, was also arrested. On 20 May 2024, several youth members of citizens' movements, including **Gauthier Kasongo, Joël Ituka, Tony Ndjoli, Chadrack Mukweyi, André Okoka, Didier Bomba**, and **Eric Kabongo** were arrested for organising a peaceful march in Kinshasa against the high cost of living. On 22 May 2024, several citizens' movements in Goma organised a peaceful march to denounce the shortage of drinking water in the town. The demonstration was severely repressed and four young people, Mr **Mulagizi, Héritier Nyamwami, Thanks Walaya** and **David Ishara Habamungu**, were arrested and handed over to the police. AUDF also reported the arrest by police officers, on 7 June 2024 of 12 activists from citizen's movements during a demonstration in connection with the "*Tolembi Pasi*" campaign at pont Ngaby. **Kimpunga Deba Yves, Ngoy Kabeya Daniel, Dekani Kanyinda, Héritier, Erick Kabongo, Joël Ituka, Destin Ikami, Mèchack Kambale, Don Konde, Didieu Amapatshuala, Marie Floxine** and **Bosaka Chadrack** were then detained at the Kalamu Communal House. These cases illustrate the clear restriction of civic space by the national authorities, which makes any demand for democracy difficult if not impossible.

(1.2) Restrictions on freedom of expression and of the press

Freedom of expression is guaranteed by Article 23 of the 2006 Constitution of Democratic Republic of Congo,³² as well as Article 19 of the 1948 Universal Declaration of Human Rights (UDHR), Article 19 of the ICCPR and Article 9 of the African Charter on Human and Peoples' Rights, ratified by DRC. Article 24 of the Constitution guarantees the right to information. The adoption by the National Assembly on 4 April 2023 of Ordinance-Law No. 23/009 of 13 March 2023, "laying down the conditions for the exercise of freedom of the press, information broadcast by radio and television, print media or any other means of communication in Democratic Republic of Congo",³³ which replaces the 1996 law – adopted under the authoritarian regime of Marshal Mobutu and deemed obsolete and repressive of press freedom – seemed to represent a significant step forward in improving the overall working environment and enhancing the safety of media professionals. In practice, however, the application of this ordinance remains widely hampered. DRC ranks 123rd (out of 180 countries) in Reporters Without Borders' (RSF) press freedom index.³⁴ Journalists and the media regularly face intimidation, threats and violence from the authorities and armed groups. There are frequent reports of censorship, media closures and arrests of journalists. Defamation laws, charges of "propagation of false rumours" (under Articles 199 bis and 199 ter of the Congolese Penal Code, Book II, which refer to the propagation of "fake" news or "false" information likely to disturb "public peace"), and other regulations are at times used to stifle critical voices, particularly in the pre-electoral period, while access to information remains limited. Although the Congolese media landscape is diverse, with a multitude of radio stations, newspapers and television channels, the pressure exerted on independent media hinders their ability to operate freely and without fear of reprisals.

The Congolese authorities routinely target artists, journalists and members of the political opposition, either directly or online on social networks. For example, on 10 February 2023 in Kinshasa, agents of the intelligence services arrested Junior Nkole, a satirical comedian, in connection with a video sketch posted a year earlier – in which he denounced the ethnic bias of recruiters – which the government

³¹ ASADHO, "RDC : l'ASADHO demande au Président Tshisekedi d'ouvrir l'espace civique" (DRC: ASADHO calls on President Tshisekedi to open up civic space), 28 May 2024, <https://laprosperite.top/index.php/categories/la-prosperite/nation/rdc-lasadho-demande-au-president-tshisekedi-douvrir-l'espace-civique>

³² Article 23 of the Constitution of Democratic Republic of Congo states: "Everyone has the right to freedom of expression. This right implies the freedom to express one's opinions or beliefs, in particular through speech, writing and images, subject to respect for the law, public order and morality."

³³ Available at: https://www.radiookapi.net/sites/default/files/2023-05/nouvelle_loi_sur_la_presse.pdf

³⁴ See: <https://rsf.org/fr/pays-r%C3%A9publique-d%C3%A9mocratique-du-congo>

considered insulting to the president.³⁵ He was detained for a month before being released without charge and was subjected to acts of violence in detention.

Religious leaders are also targeted because of the positions they take. In July 2023, Cardinal Fridolin Ambongo Besugu, Archbishop of Kinshasa, and the Congo Episcopal Conference condemned the assassination of political opponent Chérubin Okende,³⁶ saying that his death had occurred in “unclear circumstances” and that nations cannot “be built on assassinations and murders”.³⁷ At Easter Mass in March 2024, the cardinal criticised the Congolese justice system, the ineffectiveness of the FARDC in the fight against the M23 and Rwandan interference in the eastern provinces. On 27 April 2024, the public prosecutor at the Kinshasa Court of Cassation ordered the opening of a preliminary judicial investigation against him, accusing him of seditious comments constituting “false rumours, inciting the population to revolt and to attack human lives” and “of such a nature as to discourage the soldiers of the Republic’s armed forces”.³⁸

During the pre-electoral and electoral periods, government repression also obstructed media coverage of political opposition and journalists were subjected to threats, targeted attacks and assaults when covering political events or civil society demonstrations criticising the government. In July 2023, the non-governmental organisation (NGO) *Journaliste en danger* (JED), which defends press freedom, reported that a dozen print journalists, community radio journalists and camera operators had been victims of acts of intolerance and physical violence by political party activists.³⁹ The same NGO recorded more than 500 attacks on the press between 2019 and 2023: 85 cases in 2019, 116 cases in 2020, 110 cases in 2021, 124 in 2022, and 88 cases in 2023. These figures include five journalists killed, among whom Héritier Magayane (journalist with the Congolese national radio and television station in Rutshuru, North Kivu), who was stabbed to death by unidentified assailants on 8 August 2021; Barthélemy Kabana Bandu (journalist with the community radio station in Kitshanga, North Kivu), who was killed on 9 May 2021; Joël Mumbere (journalist at *Babombi* Community Radio in Biakato, Ituri), killed on 14 August 2021 by unidentified plain-clothed men; and Bwira Bwalite (Director of *Bakumbole* Community Radio in Kalembe), killed on 16 June 2020.⁴⁰



Stanis Bujakera Tshiamala is a Congolese journalist, deputy director of the media outlet *Actualité.cd* and correspondent for *Jeune Afrique* and Reuters, and is one of the Congolese journalists with the biggest following on social networks in DRC. He was at the centre of a controversial court case following his detention for publishing an article implicating the military intelligence services in the death of an opposition member of parliament, a case that made the limitations on press freedom in the country particularly visible.

The accusations made by the Congolese authorities against Mr Bujakera related to an article he had shared on social networks. The article, published by RFI and *Jeune Afrique*, accused the Congolese military intelligence services of ordering the assassination of Chérubin Okende Senga, MP and spokesperson for the opposition party Ensemble pour la République. The article revealed a confidential memo attributed to the ANR supporting this accusation, the authenticity

³⁵ Human Rights Watch, “Satire in Congo is No Laughing Matter”, 23 February 2023, <https://www.hrw.org/news/2023/02/27/satire-congo-no-laughing-matter>

³⁶ Chérubin Okende, MP and spokesperson for the opposition party *Ensemble pour la République*, led by Moïse Katumbi, was found dead at the wheel of his vehicle in Kinshasa on 13 July 2023. Although his body was riddled with bullets, the public prosecutor at the Court of Cassation ruled that he had committed suicide, basing his decision on a notebook that supposedly belonged to the victim, in which he described himself as “burnt out”. This “official” version contradicted the theory of a political assassination, which had spread from the moment the first images of Chérubin Okende’s lifeless body appeared.

³⁷ Vatican News, “RDC: une messe en la mémoire de Chérubin Okende” (DRC: Mass in memory of Chérubin Okende), 21 July 2023, <https://www.vaticannews.va/fr/afrique/news/2023-07/rdc-une-messe-en-la-memoire-de-cherubin-okende.html>

³⁸ RFI, “RDC: le cardinal Fridolin Ambongo sous le coup d’une enquête judiciaire” (DRC: judicial investigation into Cardinal Fridolin Ambongo), 28 April 2024, <https://www.rfi.fr/fr/afrique/20240428-rdc-le-cardinal-fridolin-ambongo-sous-le-coup-d-une-enqu%C3%AAt-e-judiciaire>

³⁹ Radio Okapi, “RDC: l’ONG JED s’inquiète de la multiplication d’actes de violence contre les journalistes” (DRC: the NGO JED expresses concern at the increase in acts of violence against journalists), 1 August 2023, <https://www.radiookapi.net/2023/08/01/actualite/societe/rdc-long-jed-sinquiete-de-la-multiplication-dactes-de-violence-contre>

⁴⁰ JED, “Les pages sombres de la liberté de la presse en RDC. Rapport annuel 2023” (The dark days of press freedom in DRC. Annual report 2023), 2 November 2023, <https://jed-afrique.org/wp-content/uploads/2024/05/Rapport-2023-FINAL-1.pdf>

of which was disputed by the courts. Mr Bujakera was accused of having fabricated and circulated the memo. However, he has denied that he was behind the article and the circulation of the memo.⁴¹

Stanis Bujakera was arrested on 8 September 2023 at Kinshasa-Ndjili international airport and detained by the Kinshasa criminal police. He was remanded in custody at Makala prison on 14 September, where he was held for six months in difficult conditions. He was charged with “forgery”, “forgery of documents”, “use of forgeries”, “propagation of false rumours” and “transmission of an erroneous message”. Following his detention, the court repeatedly refused him bail pending trial.

On 18 March 2024, he was found guilty on all counts and sentenced to six months’ imprisonment and a fine of one million Congolese francs (approximately 368 EUR). As the sentence had already been served during his remand in custody, he was released on 19 March 2024.

After his release, in an interview with *Jeune Afrique*, he said that as soon as he was arrested, he was brought before the “Okende commission”, which was investigating Okende’s murder, and pressured to reveal his sources, in particular his contacts within the institutions, which he refused to do. In the same interview, Mr Bujakera spoke about his conditions of detention, describing them as inhuman:⁴² “I’ve just come out of hell. What’s happening in that prison is appalling and inhuman, and the authorities need to do something about it immediately.” The Makala prison in which he was held has a capacity of 1,500 people, but more than 14,400 prisoners are held there.

The arrest and conviction of Bujakera Tshiamala drew strong reactions from the media, journalists, diplomatic missions and organisations defending the press such as RSF. The latter carried out an investigation⁴³ and demonstrated that “the accusations made against this journalist are totally lacking in substance”, asserting that he was neither the author nor the person who obtained the confidential memo. RSF also stated that several sources in the security services had confirmed the authenticity of the memo, “even though the investigation cannot establish the veracity of its content”.⁴⁴ The organisation stated that “the proceedings against the journalist were based on spurious accusations”.

Despite his ordeal, Bujakera Tshiamala said he would continue to fight for “independent journalism that fears nothing”⁴⁵ and an independent judiciary, urging Congolese journalists “not to give in to any pressure”.

Jean-Claude Katende, national president of ASADHO, was summoned to the office of the public prosecutor at the Kinshasa Gombe High Court on 4 March 2024, in connection with a tweet⁴⁶ he posted on 29 February 2024 concerning his doubts about the circumstances surrounding the death of Chérubin Okende. He left the prosecutor’s office free, but the summons constitutes intimidation and a serious impediment to his freedom of expression.



In addition, in certain regions of the country, particularly in the east, the widespread climate of insecurity exacerbates the difficulties for journalists trying to cover the conflicts and human rights violations. In the provinces of North Kivu and Ituri, for example, where there is a state of siege and

⁴¹ Human Rights Watch, “DR Congo: Free Prominent Journalist, Drop Charges”, 2 February 2024, <https://www.hrw.org/news/2024/02/02/dr-congo-free-prominent-journalist-drop-charges>

⁴² Jeune Afrique, “Stanis Bujakera Tshiamala : ‘En me condamnant, ils ont tenté de faire peur à tous les journalistes’” (Stanis Bujakera Tshiamala: “By convicting me, they were trying to scare off all journalists”), 21 March 2024, <https://www.jeuneafrique.com/1550205/politique/stanis-bujakera-tshiamala-en-me-condamnant-ils-ont-tente-de-faire-peur-a-tous-les-journalistes/>

⁴³ RSF, “RDC : Stanis Bujakera bientôt libre après six mois d'emprisonnement” (DRC: Stanis Bujakera soon to be free after six months in prison), <https://rsf.org/fr/rdc-stanis-bujakera-bient%C3%B4t-libre-apr%C3%A8s-six-mois-d-emprisonnement>

⁴⁴ Jeune Afrique, “Pourquoi le dossier d'accusation contre Stanis Bujakera Tshiamala ne tient pas” (Why the case against Stanis Bujakera Tshiamala is flawed), 27 November 2023, <https://www.jeuneafrique.com/1508426/politique/pourquoi-le-dossier-daccusation-contre-stanis-bujakera-tshiamala-ne-tient-pas/>

⁴⁵ RSF, “Stanis Bujakera Tshiamala: J’ai quitté la prison grâce à vos efforts” (Stanis Bujakera Tshiamala: “I got out of prison thanks to your work”), <https://rsf.org/fr/stanis-bujakera-tshiamala-j-ai-quitt%C3%A9-la-prison-gr%C3%A2ce-%C3%A0-vos-efforts>

⁴⁶ Available at: <https://x.com/JeanClaudekat2/status/1763257871255368171>

armed activity, it is very complicated for local journalists and human rights defenders to document violations and to get the information back to the capital or to people who can put it to good use. Those who manage do so with great effort, sometimes putting their safety and physical integrity at risk. Press freedom is severely curtailed as a result. But the deteriorating security situation and the war in the east also have consequences for journalists throughout the country, who are accused of belonging to one or other of the parties to the conflict depending on the violations or facts they report. The government often labels journalists critical of its strategy in the war in the east as “supporters of Rwanda”, or denounces their supposed “alliance with the M23” or with Corneille Nangaa and the Alliance Fleuve Congo, his political-military coalition created in 2023 in support of the M23.

(1.3) Defence of rights hampered by a constant climate of threats against human rights defenders

Between June 2023 and April 2024, the United Nations Joint Human Rights Office in DRC (UNJHRO) documented cases of intimidation, threats of physical violence, attacks and acts of reprisal against 387 human rights defenders and 67 journalists, perpetrated by both state agents and armed groups throughout the country. In a press release issued on 19 June 2024, Mary Lawlor, the United Nations (UN) Special Rapporteur on the situation of human rights defenders, stated that “Attacks, intimidation and killings of human rights defenders continue on a daily basis in the Democratic Republic of Congo, despite repeated calls for authorities to step up efforts to investigate human rights violations in the country and arrest and bring perpetrators to justice”.⁴⁷

Murders of human rights defenders

The Just Future coalition’s alternative report for DRC’s 2024 Universal Periodic Review⁴⁸ (UPR) mentions a number of rights defenders and members of citizens’ movements murdered in recent years. They include: **Obadi Muhindo**, LUCHA activist killed during a peaceful demonstration on 23 November 2019 in Beni, North Kivu; **Freddy Marcus Kambale**, also a LUCHA activist killed during a peaceful demonstration in Beni on 21 May 2020, whose case had been documented by the Observatory;⁴⁹ **Patrick Shako**, president of civil society in Djugu, Ituri, missing since 22 May 2020; **Cabral Yombo**, president of civil society in Hombo, who died on 31 October 2021 in Bukavu, North Kivu, following an attack and acts of torture; **Mumbere Ushindi Katsuva**, LUCHA activist killed during a peaceful demonstration in Beni on 24 January 2022; **Muhindo Samson**, president of civil society in the Mbuli *groupement* (grouping) in Lubero territory in North Kivu, killed on 16 November 2022 in Kavali; **Kiranga Ntibabaza**, president of civil society in Rugarama/Buzanza in Rutshuru territory in North Kivu, murdered on 15 May 2023; and **Obedi Karafulu**, a land rights defender killed on 19 July 2023 in Bishusha in North Kivu.

Arbitrary arrests and detentions

Arbitrary arrests and detentions of human rights defenders, which escalated during the pre-electoral period and have continued since Félix-Antoine Tshisekedi began his second term of office, are indicative of the increasing restriction of civic space in DRC, particularly for defenders who are members of citizens’ movements. **Serge Mikindo Wasso**, **Claude Lwaboshi Buhazi** and **Faustin Ombeni Tulinabo**, members of the citizens’ movement Jicho La Raiya in Masisi, in the south of North Kivu province, were detained for more than 19 months after organising a peaceful sit-in in front of the



⁴⁷ Mary Lawlor, “Democratic Republic of Congo: Targeting human rights defenders must stop, UN expert says”, 19 June 2024, <https://www.ohchr.org/en/press-releases/2024/06/democratic-republic-congo-targeting-human-rights-defenders-must-stop-un>

⁴⁸ Just Future, “Alternative report from the coalition of 120 Congolese Civil Society Organizations on the implementation of the 2019 recommendations for the Democratic Republic of Congo of the Universal Periodic Review (UPR)”, March 2024, <https://wipc.org/wp-content/uploads/2024/07/UNIVERSAL-PERIODIC-REVIEW-ALTERNATIVE-REPORT.pdf>

⁴⁹ Observatory, urgent appeal, “Meurtre du militant de la LUCHA Freddy Kambale” (Murder of LUCHA activist Freddy Kambale), 26 May 2020, <https://www.fidh.org/fr/themes/defenseurs-des-droits-humains/rdc-meurtre-du-militant-de-la-lucha-freddy-kambale>

Kirotshe general referral hospital to denounce the mismanagement of the Kirotshe health zone central office and the collection of an illegal tax by the CONTRAMAD company involved in the renovation of roads in Masisi territory. They were eventually acquitted on 30 September 2022.⁵⁰ **Mwamisyo Ndungo King**, a member of LUCHA, was arrested on 2 August 2022, in connection with his criticism of the ineffectiveness of the state of siege in protecting civilians in North Kivu. He was charged with “insulting the army” and “insulting public authorities” under Article 87 of the military criminal code, and sentenced at first instance on 9 December 2022, and then on appeal, to five years’ imprisonment by the Goma Garrison Military Court.⁵¹ Many civil society actors continue to fight for his release.

On 17 May 2024, **Gloria Sengha**, founder of the citizens’ movement *Vigilance Citoyenne* (VICI) and *Dynamique “Tolembi Pasi”*, was arrested at around 5 p.m. by hooded men in police uniform on the terrace of Cercle Bimwala, near the Saint Eloi parish in the Bon Marché neighbourhood, in the municipality of Barumbu, north of Kinshasa. The arrest took place at the end of a meeting of *Dynamique “Tolembi Pasi”* as part of its campaign to raise awareness of the high cost of living among young people seeking to promote social and economic rights and citizen control in the country. Robert Bunda, the IT specialist on Gloria Sengha’s team, and Chadrack Tshadio, a friend of Robert Bunda who had simply helped to find the meeting venue but is not a member of *Dynamique*, were also arrested. Gloria Sengha, Robert Bunda and Chadrack Tshadio were forcibly and brutally taken away without a warrant in two Jeeps to an unknown destination.



The following day, 18 May 2024, their families learned that they had been taken to the premises of the Rapid Intervention Police (PIR) Legion Unit near Kimpwanza, in the municipality of Kasavubu, where Gloria Sengha, Robert Bunda and Chadrack Tshadio were questioned. During the interrogation, PIR officers tried to force them to make false confessions by stating that Gloria Sengha was working with people seeking to destabilise the government. Gloria Sengha was pushed around and Robert Bunda was slapped and punched by the officers. On the day of their arrest, Gloria Sengha was transferred from the PIR to the ANR premises next to the offices of the Prime Minister, in the commune of Gombe in Kinshasa, without her family being informed.

On 20 May 2024, Chadrack Tshadio was released, while Robert Bunda was transferred to the ANR, without his family being informed.

On 30 May 2024, almost two weeks after the arrest, Gloria Sengha’s mother was informed that her daughter had been transferred to the ANR. It was when she visited her on 3 June 2024 that she learned of Robert Bunda’s transfer to the ANR. However, Robert Bunda’s mother was not allowed to see her son until he was released.

At the end of June 2024, Gloria Sengha and Robert Bunda were still arbitrarily detained on ANR premises without having been brought before a judge or formally informed of the charges against them. Despite a lawyer’s letter to the ANR’s Director General requesting a consultation, they were denied access to legal assistance.

In addition, Gloria Sengha’s state of health deteriorated considerably while she was in detention. After visiting her at the ANR premises, her mother reported multiple infections, itching and swelling on her daughter’s body, and that she was unable to walk. On 13 June 2024, Gloria Sengha began a hunger strike to demand her release.⁵² Gloria Sengha and Robert Bunda were finally released on 4 July 2024.

⁵⁰ Observatory, urgent appeal, “RDC : libération de trois membres du mouvement citoyen Jicho La Raiya” (DRC: Release of three members of the Jicho La Raiya citizens’ movement), 10 October 2022, <https://www.fidh.org/fr/themes/defenseurs-des-droits-humains/rdc-liberation-de-trois-membres-du-mouvement-citoyen-jicho-la-raiya>

⁵¹ Front Line Defenders, “Human rights defender and LUCHA member Mwamisyo Ndungo King charged”, 6 April 2022, <https://www.frontlinedefenders.org/en/case/human-rights-defender-and-lucha-member-mwamisyo-ndungo-king-charged>

⁵² Observatory, urgent appeal, “RDC : Détention arbitraire de l’activiste Gloria Sengha et de son collègue Robert Bunda” (DRC: Arbitrary detention of activist Gloria Sengha and her colleague Robert Bunda), 21 June 2024, <https://www.fidh.org/fr/themes/defenseurs-des-droits-humains/rdc-detention-arbitraire-de-l-activiste-gloria-sengha-et-de-son>

This practice of abduction of activists followed by their transfer to ANR premises seems to be a pattern, as illustrated in other parts of this report. According to Article 3 of Decree-Law No. 003/2003 of 11 January 2003 on the creation and organisation of the ANR, this public service with administrative and financial autonomy, directly supervised by the Presidency of the Republic, is responsible for internal and external intelligence and is in charge of “the surveillance of individuals or groups of individuals, of Congolese or foreign nationality, likely to engage in activities that could undermine state security”. ANR agents have very broad powers of prosecution, exposing human rights defenders to the risk of detention, since they may fall into this category by denouncing policies or criticizing governance. Fred Bauma, the executive director of Ebuteli, a Congolese research institute, considers that “the ANR and other intelligence services are playing an increasingly important role in this repression, which is reminiscent of the years of [Joseph] Kabila’s presidency”.⁵³ In February 2019, on taking power, President Tshisekedi had ordered “the closure of all ANR cells, and that people should no longer be held just because of their political opinion”.⁵⁴ His promise remains unfulfilled.



Other threats

Threats against rights defenders are many and varied: intimidation; anonymous phone calls; offers of political co-optation, bribery or jobs to divert defenders from their activities in defence of rights; death threats; pressure on family members; and alleging that defenders have ties to the political opposition or armed rebel groups. Such threats are perpetrated by state actors, members of armed groups or militias, or in connection with the activities of companies. For example, **Dismas Kitenge**, president of Groupe Lotus in Kisangani, a member organisation of FIDH in Tshopo province and of OMCT’s SOS-Torture Network, was subjected to several violent intrusions by unidentified men at his home in March 2023⁵⁵ and January 2024,⁵⁶ as well as threats and acts of intimidation, in relation to his fight against impunity for crimes committed in Kisangani. He had previously received anonymous death threats in September 2020.⁵⁷

In the eastern provinces, the *Wazalendo* – a group of irregular combatants made up of armed groups allied to the official FARDC military and opposed to the M23 in North Kivu (see above) – are behind many threats against human rights defenders, including physical attacks, as well as against the civilian population of the province as a whole. Other armed groups are also responsible for attacks on human rights defenders. For example, in February 2024, the UN Special Rapporteur on the situation of human rights defenders, Mary Lawlor, sent an official communication to the Congolese authorities concerning allegations of attempted murder and death threats against **Zawadi Maulizo** and **Shakurani Ethienne**, members of the Uvira and Fizi section of LUCHA, between November 2023 and January 2024 in the village of Natulonge, in the territory of Fizi, in South Kivu. The perpetrators of the attacks are alleged to be members of the Twigwaneho and Gumino armed groups.⁵⁸

Defenders of land and the environment, victims of specific attacks

- ⁵³ Human Rights Watch, “DR Congo: Prominent Activist Abducted”, 23 May 2024, <https://www.hrw.org/news/2024/05/23/dr-congo-prominent-activist-abducted>
- ⁵⁴ Jeune Afrique, “RDC : Félix Tshisekedi promet la libération prochaine de ‘tous les prisonniers politiques’” (DRC: Félix Tshisekedi promises the imminent release of ‘all political prisoners’), 26 February 2019, <https://www.jeuneafrique.com/741859/politique/rdc-felix-tshisekedi-promet-la-liberation-prochaine-de-tous-les-prisonniers-politiques/>
- ⁵⁵ Observatory, urgent appeal, “DRC: Break-in at Dismas Kitenge’s home, threats and intimidation”, 5 April 2023, <https://www.fidh.org/en/issues/human-rights-defenders/cod-001-0423-obs-019-attacks-threats>
- ⁵⁶ Observatory, urgent appeal, “RDC: Intrusion au domicile de Dismas Kitenge, attaques et actes d’intimidation” (DRC: Break-in at Dismas Kitenge’s home, threats and intimidation), 25 January 2024, <https://www.fidh.org/fr/themes/defenseurs-des-droits-humains/rdc-attaques-et-intimidations-contre-le-president-du-groupe-lotus>
- ⁵⁷ Observatory, urgent appeal, “RDC: Menaces de mort à l’encontre de M. Dismas Kitenge, président du Groupe Lotus” (Death threats against Mr Dismas Kitenge, President of Groupe Lotus), 23 September 2020, <https://www.fidh.org/fr/themes/defenseurs-des-droits-humains/rdc-menaces-de-mort-a-l-encontre-de-m-dismas-kitenge-president-du>
- ⁵⁸ Mandats de la Rapporteuse spéciale sur la situation des défenseurs des droits de l’homme et du Rapporteur spécial sur les exécutions extrajudiciaires, sommaires ou arbitraires (Mandates of the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on extrajudicial, summary or arbitrary executions), AL COD 2/2024, 5 February 2024, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=28761>

Defenders of land and the environment, particularly those who denounce the negative impacts of the oil industry or who work on the issue of rare minerals, face specific threats and attacks from actors, often non-state actors, with interests in these activities.⁵⁹ **Justin Kavunja** and **Eric Tonde**, members of the *Centre de recherche et de documentation sur les violations des droits humains et sur la problématique de conflit à l'Est* (Centre for Research and Documentation on Human Rights Violations and Conflict in East DRC – CRDVDHPD East DRC) and founders of the informal movement *Non aux Minerais du Sang* (No to Blood Minerals), received death threats from members of the M23 armed group in January and February 2024, in Masisi territory, North Kivu. In March 2024, Justin Kavunja's father was reportedly abducted and then murdered by the same armed group.⁶⁰ The United Nations Group of Experts on DRC emphasised that armed groups “continued to finance their activities through the illegal mining of tin (cassiterite), tantalum (coltan) and tungsten (wolframite)”.⁶¹ They therefore have a vested interest in ensuring that the violations linked to the exploitation of these minerals are not exposed by NGOs and human rights defenders.

To silence criticism, particularly of the damage caused to the environment and the failure to comply with project specifications, several people interviewed by the Observatory for this report said that companies often bribe activists or use local authorities and the justice system, which are notorious for corruption, to put pressure on them. In South Kivu, Primera Gold, a joint venture between the governments of DRC and the United Arab Emirates, has gained a virtual monopoly on strategic minerals. Former activists with a strong commitment to the natural resources sector have reportedly since been given senior positions within the company in exchange for their silence. In Kongo-Central, defenders who have the courage to denounce the pollution caused by the project of the Franco-British oil giant Perenco have been threatened and intimidated. Despite the voices raised to denounce the impact of the oil industry, in 2022 DRC auctioned off the rights to exploit three gas blocks and 27 oil blocks. Perenco issued an expression of interest for two oil blocks, Nganzi and Yema II, in the Kongo-Central region. It has also been reported that TotalEnergies is interested in certain oil fields in the Virunga National Park around Lake Albert. In addition to the specific risk inherent in the development of a project in an area that is home to the last remaining mountain gorillas, there may be plans to link it to the East African Crude Oil Pipeline (EACOP) project in Uganda and Tanzania, the human rights impact of which has been widely documented by FIDH and other international NGOs.⁶² **Pascal Mirindi**, member of LUCHA and leading Congolese youth campaigner for the climate, notably through Extinction Rebellion in Goma, has constantly denounced the environmental and human impact of extractive companies (deforestation, pollution, hindering the farming and fishing activities of local communities, loss of natural heritage, including the plants required to make medicines, etc.).⁶³ In his view, the mining of fossil fuels falls far short of providing the economic stability claimed by the government, and the activists who oppose it are subject to pressure, threats and arrests, which are set to increase with the publication of the successful bids for the gas and oil blocks and the start of these new operations.⁶⁴

The difficult situation of defenders of the rights of women and LGBTQIA+ individuals

⁵⁹ DefendDefenders (East and Horn of Africa Human Rights Defenders Project), ‘The state of environmental human rights defenders in Tanzania, Uganda and the Democratic Republic of Congo’, October 2023, pp. 32-39, <https://defenddefenders.org/wp-content/uploads/2023/11/The-State-of-Environmental-Human-Rights-Defenders-in-Tz-Ug-and-DRC-Final-Report-.pdf>

⁶⁰ Mandats de la Rapporteuse spéciale sur la situation des défenseurs des droits de l'homme; du Rapporteur spécial chargé d'examiner la question des obligations relatives aux droits de l'homme se rapportant aux moyens de bénéficier d'un environnement sûr, propre, sain et durable et de la Rapporteuse spéciale sur la promotion et la protection du droit à la liberté d'opinion et d'expression (Mandates of the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression), AL COD 3/2024, 27 March 2024, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=28879>

⁶¹ United Nations, Final report of the Group of Experts on the Democratic Republic of the Congo, 2019, <https://reliefweb.int/report/democratic-republic-congo/final-report-group-experts-democratic-republic-congo-s2019469>

⁶² FIDH, press release, ‘Oxfam and FIDH respond to new disclosures by Total in East Africa, urge caution’, 17 March 2021, <https://www.fidh.org/en/region/Africa/uganda/oxfam-and-fidh-respond-to-new-disclosures-by-total-in-east-africa>; and FIDH, report, ‘Oil in East Africa: Communities at risk’, September 2020, <https://www.fidh.org/en/region/Africa/uganda/companies-must-take-action-to-respect-rights-of-communities-at-risk>

⁶³ Interview with Pascal Mirindi, on 23 April 2024.

⁶⁴ The successful bids for these gas and oil blocks were to be made public from the end of May 2024.

In DRC, women involved in defending rights are threatened, intimidated and physically attacked because of their activism, but also because of their gender in a society that is still highly patriarchal. Many of these threats are gender-specific, such as threats of rape, sexual assaults or forced removal of clothing, in a context of conflict in the east, where various armed groups have no hesitation in attacking civilians. There were also numerous reports of violence during the 2023 electoral period, for example in Kananga, in Kasai-Central, where a woman human rights defender, president of an NGO and observer of the electoral process, was attacked during the vote, accused of using her smartphone to “scramble the results and change votes”.⁶⁵ Women are also targeted with discouraging rhetoric aimed at persuading them to stop their human rights activities, suggesting that they should “be careful”, that “their protection is not guaranteed”, and that harm could come to their families.

However, despite these repeated attacks, more and more women are getting involved, particularly in the fight against sexual and gender-based violence, in the governance of certain citizens’ movements – such as *Filimbi* – or at the head of local civil society coordinating bodies (for example, lawyer **Néné Bintu** was elected president of the South Kivu civil society coordinating body in April 2024).

The National Movement of Survivors of Sexual Violence in the DRC was created in 2017, after several victims of SGBV, coming from different regions of the DRC, participated in an international meeting of survivors organized by the Denis Mukwege Foundation. If the network only had five members in two provinces at its beginnings, today it has 25, spread across 10 provinces of the country; and small amounts of funding contributed to its development. Members increase awareness activities to help overcome the social and family stigmatization of survivors of sexual violence, by holding group therapy meetings, or even a solidarity fund to finance each other’s activities. Their advocacy activities - national and international - on the importance of reparation for survivors put them in danger on a daily basis because politicians or the military are sometimes cited in the testimonies on which they rely. Some defenders had to be moved or relocated for their safety. Others received offers to enter politics, including government positions; but they, for the most part, preferred to continue their fight from civil society, for fear of losing their freedom of speech. Freedom of speech that some even go so far as to exercise within the National Fund for Reparations for Victims of Sexual Violence Related to Conflicts and Other Crimes Against the Peace and Security of Humanity (FONAREV), created in 2022. Defenders have been waiting for twenty long years for compensation, for themselves and for other survivors of sexual violence, and they continue to fight so that the dedicated fund can finally be used to compensate survivors. Indeed, despite its launch more than two years ago, FONAREV has not yet compensated any survivor and is currently working on a study to identify the number of survivors and their names.

She has been waiting 20 years to receive reparation for herself and other survivors of sexual violence, and she continues to fight so that the dedicated fund can at last be used to compensate survivors. Despite its launch more than two years ago, the FONAREV has yet to compensate a single survivor, and is said to be currently working on a study to identify the number of survivors and their names.

Although few cases of threats or attacks against defenders of the rights of lesbian, gay, trans, queer, intersex, asexual and other people (LGBTQIA+) were reported by those interviewed by the Observatory, it would appear that this category of actors continues to be stigmatised – particularly on social networks – in a society that remains very patriarchal. Although homosexuality is not officially criminalised in the country, homosexuals can be prosecuted for public indecency and, in June 2024, the new Minister of Justice, Constant Mutamba (a former MP), and the public prosecutor at the Court

⁶⁵ TV5 Monde, “Violences contre les femmes en RDC: ‘C’est encore le corps de la femme qui a été utilisé à des fins politiques’” (Violence against women in DRC: “Once again, women’s bodies have been used for political ends), 26 December 2023, <https://information.tv5monde.com/afrique/violences-contre-les-femmes-en-rdc-cest-encore-le-corps-de-la-femme-qui-ete-utilise-des#:~:text=En%20R%C3%A9publique%20d%C3%A9mocratique%20du%20Congo,de%20division%20pendant%20la%20campagne>

of Cassation expressed their willingness to prosecute those who engage in homosexual acts despite the absence of a law in this area.⁶⁶

During the pre-electoral period, Dr **Denis Mukwege**, winner of the Nobel Peace Prize in 2018 for his work with survivors of rape in the east of DRC, and himself a candidate in the presidential election, spoke of the importance of taking gender into account in developing public policies in DRC.⁶⁷ In response, President Tshisekedi stigmatised these remarks, accusing Dr Mukwege of wanting to legalise homosexuality in DRC.⁶⁸



2. A fragile legal and institutional framework that does not address the key challenges in protecting human rights defenders

Given this dismal situation for the rights of human rights defenders, the authorities' legislative, institutional and governance response is insufficient and does not provide adequate protection. Despite the adoption of the law on the protection of human rights defenders, the Congolese authorities have failed to respond to the key challenges in protecting human rights defenders and to questions about its effective application. Other pieces of legislation, such as the Digital Code, tend to foster repression and hinder defenders' freedom of expression. The lifting of the moratorium on the death penalty also has a negative impact on human rights defenders who, fearing for their lives, are likely to increasingly censor themselves and abandon their human rights activities. Finally, in this deleterious context for the respect of fundamental freedoms and of growing insecurity, particularly in the east, the accelerated departure of MONUSCO risks creating a vacuum for the protection of civilians and human rights defenders.

(2.1) The law on the protection of human rights defenders: what application in practice?

On 15 June 2023, the government of DRC promulgated Law No. 23/027 on the protection and responsibility of human rights defenders in Democratic Republic of Congo,⁶⁹ following its adoption by the Congolese Parliament. DRC thus became the first country in Central Africa, and the fifth country on the African continent, after Côte d'Ivoire, Burkina Faso, Mali and Niger, to adopt such a law, after years of advocacy and work in this area by civil society.

The adoption of this law was welcomed by national and international civil society, in that it represents a real step forward in recognising the essential and specific role of human rights defenders and guarantees them a number of fundamental rights. The law adopts a broad definition of the concept of "defender"⁷⁰ and recognises the specific protection needs of women defenders⁷¹ and the families of

⁶⁶ RFI, "RDC : les autorités et la justice durcissent le ton contre l'homosexualité" (DRC: the authorities and the justice system toughen their stance against homosexuality), 21 June 2024, <https://www.rfi.fr/fr/afrique/20240621-rdc-les-autorit%C3%A9s-et-la-justice-durcissent-le-ton-contre-l-homosexualit%C3%A9>

⁶⁷ On 2 October 2023, on announcing his candidacy for the presidential election, Denis Mukwege made the following statement: "To strengthen national cohesion, we need to create the conditions for an inclusive society, in which the rights to integrity and dignity of every citizen are guaranteed, where every citizen feels at home in the Congo. And we must introduce the notion of gender into this inclusion process. It will also be vital to ensure equal opportunities for all, so that less well-off areas can benefit from the support of wealthier areas."

⁶⁸ Félix-Antoine Tshisekedi on 7 October 2023 stated: "I'm warning our population about foreign candidates. I have spoken of our ambition to become economically independent. Foreigners don't like that. Those foreigners will manufacture candidates, and those candidates will come and talk to you. Be careful! Don't be afraid, you are strong. You will recognise these candidates by their language. They will bring you concepts from elsewhere. We've already heard about the notion of gender. In the Congo, we don't have a problem with sexual orientation."

⁶⁹ See <https://agir-ensemble-droits-humains.org/wp-content/uploads/2024/04/LOI-DDH-N%C2%B0-23.027-DU-15-JUIN-2023.pdf>

⁷⁰ Article 2(4) of Law No. 23/027 on the protection and responsibility of human rights defenders in the Democratic Republic of Congo of 15 June 2023, available at: <https://audf-rdc.org/wp-content/uploads/2023/10/Loi-relative-a-la-protection-et-responsabilite-du-DDH-.pdf>

⁷¹ *Ibid.* Article 6

defenders.⁷² Defenders are guaranteed the rights to freedom of association, assembly and access to information,⁷³ as well as the possibility of obtaining funding from international bodies.⁷⁴ The law also places certain positive obligations on the state to protect defenders, such as physical protection⁷⁵ and protection against reprisals.⁷⁶

However, this law raises a number of concerns. Firstly, it contains provisions that are contrary to the protection of human rights and to the spirit of the 1998 United Nations Declaration on Human Rights Defenders, which restrict its scope of application. Article 2(4), which gives a broad definition of defenders, also restricts the application of the law to “legally established” organisations, excluding spontaneous or unregistered movements, such as citizens’ movements, from protection, despite the fact that they are often the most vulnerable to attacks on their rights. Defenders who are not part of these legally established associations are obliged to register with the National Human Rights Commission (CNDH) in order to qualify for the protection measures introduced by the law.⁷⁷ This condition has the effect of drastically limiting the scope of application of the law in that it excludes from protection all defenders who do not have access to the CNDH registration desk, particularly in rural areas of the country, as well as all persons who do not consider themselves to be defenders but who nevertheless fall within the definition and may need specific protection measures. It also raises the question of the use that will be made of the personal data registered with the CNDH and opens the way to files being kept on defenders. In addition, as the CNDH has the power to withdraw defender status, there is a risk that “undesirable” defenders could have their protection withdrawn at any time.

The law also imposes a number of duties on defenders. It requires them to submit an annual report to the CNDH on their activities.⁷⁸ This obligation creates a significant administrative burden, which could dissuade defenders from registering, and also raises the question of how this information will be used by the state. In addition, the law specifies in several places that human rights defenders must respect “good morals” or “the public interest”. It is feared that these generic and vague terms could be interpreted in such a way as to discredit human rights defenders working for certain rights, and prevent them from benefiting from the protection to which they are entitled. Finally, Articles 26, 27 and 28 of the law on defenders specifically criminalise defenders who commit certain acts in the course of their activities, by providing for prison sentences and fines, contrary to international standards.

The greatest challenge to the effectiveness of the law on the protection of human rights defenders lies in its implementation and its appropriation by human rights defenders throughout the country. There are concerns about the risks of restriction of civic space in the decree defining the means of exercise of the activities of human rights defenders,⁷⁹ to be debated by the Council of Ministers in accordance with Article 3(3) of the law.⁸⁰ Many of the provisions and mechanisms contained in the law remain unclear at this stage, including the role to be played by the CNDH, the operation of the mechanism for registering organisations and defenders, as well as the mechanisms for judicial protection, support in the fight against impunity, and psycho-social and medical support. The question of funding for these mechanisms and measures also remains to be clarified. Furthermore, the failure to put in place a monitoring mechanism capable of ensuring effective protection for defenders has been strongly criticised.⁸¹

Lastly, this law is still very little known by defenders in the field, particularly in isolated or marginalised areas, who have not received any training on their rights and are therefore unable to avail themselves of it. Although in principle the primary responsibility for promoting and disseminating this instrument

⁷² *Ibid.* Article 14

⁷³ *Ibid.* Article 3

⁷⁴ *Ibid.* Article 5

⁷⁵ *Ibid.* Article 18

⁷⁶ *Ibid.* Articles 17 and 21

⁷⁷ *Ibid.* Article 7.3

⁷⁸ *Ibid.* Article 11

⁷⁹ AUDF, *La loi DDH* (The HRD Law), October 2023, <https://audf-rdc.org/wp-content/uploads/2023/10/Loi-DDH-et-Penitentiaire.pdf>

⁸⁰ OMCT, AUDF, *La torture en République Démocratique du Congo : Un mal systémique ?*, Alternative report for the UPR, April 2024, <https://www.omct.org/site-resources/legacy/Rapport-conjoint-EPU-RDC-OMCTAUDF.pdf>

⁸¹ Chapter 4 of Law No. 23/027 provides for a “Mechanism for the Protection of Human Rights Defenders”, but neither of the two articles contained in this chapter deals with such a mechanism and no details are given as to its composition, powers or implementation.

lies with the Congolese state, this dissemination work is currently being carried out by civil society, in order to make up for the state's shortcomings and make defenders aware of their rights. In addition to defenders, it is also vital that DRC's judicial authorities are properly trained on the legal implications of this new instrument.

(2.2) The Digital Code: a new instrument for repressing freedom of expression leading to self-censorship

On 13 March 2023, DRC adopted its first Digital Code by Ordinance-Law No. 23/010,⁸² adopted by the government at the initiative of the Minister for Digital Affairs, Désiré Cashmir Eberande Kolongele. The draft law setting out the Digital Code was approved by the government in October 2022, then deemed valid by the National Assembly in December 2022. According to the government, this Code represents a step forward for the country in that it fills gaps and a legal vacuum and regulates the digital sphere,⁸³ combating misinformation and the dissemination of erroneous content. However, the draft law was the subject of much debate in the National Assembly and among the general public prior to its adoption, particularly because of the issues that it raises for the respect for fundamental freedoms.

The Digital Code contains a number of provisions that are problematic and potentially dangerous for human rights defenders and civil society actors. It criminalises certain offences committed in the digital sphere, imposing prison sentences and fines. Article 360, for example, provides for a sentence of between one and six months' imprisonment and a fine of between 500,000 and one million Congolese francs (approximately 165 to 330 euros) for disseminating false information. For civil society, there is a serious risk that these provisions will be exploited, by interpreting them in a way that would allow the authorities to stifle independent journalists and human rights defenders. Journalist Stanis Bujakera was detained for six months and prosecuted under this particular provision.⁸⁴ Furthermore, the law means that administrators of discussion groups on the WhatsApp social network can now be held responsible and prosecuted for comments published by other people in the groups. There is therefore a real danger that certain civil society or opposition party discussion groups could be infiltrated by people attached to the authorities, who could make controversial statements in order to have their administrators arrested. The same applies to other social networks with public posts: the author of the publication can be held responsible for remarks made in the comments section.

Congolese civil society is concerned about the treatment that will be given to whistleblowers, and some are even denouncing a law "tailor-made to target whistleblowers".⁸⁵ The Digital Code was adopted following revelations in a number of cases in recent years, which were disseminated in particular through the digital space. This new regulation restricts the possibility for whistleblowers to speak out and publicly denounce violations or scandals, especially when the authorities in power are responsible.

This risk of exploitation of the law's provisions leads journalists and human rights defenders to censor themselves and thereby deprive the public of information for fear of reprisals, which has a harmful effect on freedom of expression and press freedom in the country. The Digital Code thus restricts the space for defenders and civil society actors in general, and constitutes a serious setback for fundamental freedoms. "Through this law, the authorities impose uniform thinking".⁸⁶

⁸² See https://africadataprotection.org/lois/04042023%20ORDONNANCE%20LOI%2023-010%20DU%2013%20MARS%20PORTANT%20CODE%20DU%20NUMERIQUE_.pdf

⁸³ According to the brochure presenting Ordinance-Law No. 23/010 of 13 March 2023 on the Digital Code: "The Digital Code represents a qualitative leap forward in our country's regulatory framework, since it takes account of notions not previously covered by law, such as e-commerce, electronic signature, regulation of digital platforms, protection of personal data, cybersecurity and the fight against cybercrime, among many others". Available at: <https://numerique-cd.s3.us-west-2.amazonaws.com/DEPLIANT-CODE-NUMERIQUE.pdf>

⁸⁴ See p. 11 for more details on his case.

⁸⁵ Interview with Mino Bopomi, National Coordinator of the *Filimbi* citizens' movement, on 16 April 2024.

⁸⁶ Interview with Palmer Kabeya, National Spokesperson of the *Filimbi* citizens' movement, on 16 April 2024.

Other provisions of Congolese law are also misused to repress defenders, such as Article 74 of the Penal Code, which punishes “harmful allegations” with up to one year’s imprisonment. Under Article 76 of the same Code, “slandering accusations” against a judicial authority or a public official are punishable by up to five years’ imprisonment. Many human rights defenders and whistleblowers who criticise the authorities are regularly prosecuted under these criminal provisions, even though they are merely carrying out their legitimate activities in defence of human rights and exercising their right to freedom of expression.

(2.3) **The lifting of the moratorium on the death penalty, a threat to human rights defenders and civic space**

On 5 February 2024, the *Conseil supérieur de la défense* (Supreme Defence Council) asked the supreme commander of the FARDC and the President of the Republic to lift the moratorium on executions of death row prisoners, which had been in place since 2003. On 13 March 2024, the then Minister of Justice, Rose Mutombo Kiese, formalised the lifting of the moratorium with Circular Note No. 002/MME/CAB/ME/MIN/J&GS/2024 of 13 March 2024, in which the Minister asked the competent judicial authorities to carry out the effective implementation of the death penalty, while there were more than 800 death row prisoners being held in the country’s prisons.⁸⁷ With this move, the Congolese authorities are particularly targeting criminals and “traitors to the homeland,” a vague term that can include anyone who opposes the government’s strategy in the war in the east, or anyone who criticises the state of siege. This decision contravenes Articles 16 and 61 of the Constitution of Democratic Republic of Congo, which provide that under no circumstances, even when a state of siege has been declared, may the right to life, in particular, be infringed. It also violates Article 3 of the Universal Declaration of Human Rights, Article 6 of the ICCPR, and Article 4 of the African Charter on Human and Peoples’ Rights, which guarantee the right to life. This decision is especially worrying in the light of the situation of the justice system described below, and in particular its lack of independence.

In 2022, OMCT had warned of the fragility of a moratorium as a means of abolishing the death penalty and the risk of a reversal. Many death-row prisoners who had benefited from the moratorium, and then from a presidential pardon, reported that they had faced an unfair trial, as well as acts of torture and ill-treatment during their detention. One of the problems with a moratorium is that it obscures the fact that those sentenced to death are deprived of their human dignity and the very meaning of life.⁸⁸ The adoption of a moratorium should therefore only be one step in the way to the final decision to ban capital punishment.

Beyond the clear setback to human rights that this decision represents, and the fact that prisoners once again face execution in DRC, the lifting of the moratorium on the death penalty creates “psychological pressure”.⁸⁹ It has had a significant dissuasive effect on civil society, freedom of expression and the work of human rights defenders in general. Several people interviewed for this report told us that, particularly in the eastern regions under siege, human rights defenders no longer dared to act freely and criticise the lifting of the moratorium, for fear of being considered “traitors to the homeland”, of being accused of “undermining state security”, of being equated with the M23 rebels or of supporting the activities of Rwanda, which could lead to a death sentence. A division also seems to have emerged within civil society, and sometimes even within local human rights organisations, between those who defend the lifting of the moratorium and those who maintain an abolitionist stance. Lawyers defending human rights have already been threatened for their abolitionist positions (see in particular the case of **CD**⁹⁰ below).

⁸⁷ ECPM, infographic, <https://www.ecpm.org/app/uploads/2023/12/Infographics-DRC-death-penalty-2023.pdf>

⁸⁸ OMCT, “A moratorium on the death penalty is just a stepping stone: conversations with former death row inmates in DRC”, 10 October 2022, <https://www.omct.org/en/resources/blog/a-moratorium-on-the-death-penalty-is-just-a-stepping-stone-conversations-with-former-death-row-inmates-in-the-drc>

⁸⁹ Interview with Mino Bopomi, National Coordinator of the *Filimbi* citizens’ movement, on 16 April 2024.

⁹⁰ For security reasons, the identity of this person has been made anonymous.

For example, **AB**,⁹¹ a Congolese lawyer, has suffered judicial reprisals because of his work defending victims of human rights violations and his commitment to the fight against the death penalty. In response to the many risks facing him, AB was able to leave DRC temporarily, but his colleagues are currently suffering harassment and intimidation from the Congolese authorities, and as a result are having to maintain a low profile.

Thus, the decision to lift the moratorium on the death penalty is contributing to the gradual closure of civic space in the country, and poses significant risks for human rights defenders, some of whom are already under threat and at risk due to their abolitionist stance. The signatory organisations to this report are strongly opposed to the death penalty in all circumstances.

(2.4) The “accelerated” withdrawal of MONUSCO and its impact on the security of human rights defenders

Addressing the United Nations General Assembly on 20 September 2023, President Tshisekedi deplored that “peacekeeping missions deployed for 25 years... have failed to cope with the rebellions and armed conflicts”, and called for an “accelerated” withdrawal of MONUSCO from the beginning of December 2023 rather than the beginning of December 2024, as initially negotiated.⁹² This withdrawal, which began several years ago, has just been concluded in the province of South Kivu.⁹³

Given that the security conditions are not in place and that the state of siege, declared in Ituri and North Kivu in May 2021, remains in force, MONUSCO’s withdrawal without strengthening local protection, justice and defence actors raises fears of a serious breakdown in security, particularly in view of the proliferation of weapons circulating on the ground, whether in the hands of the FARDC, the *Wazalendo*, the M23 rebels or other local militias and armed groups. Such a security vacuum would increase the risks for the protection of civilians, who are already vulnerable, especially as the Congolese security forces, criticised for their lack of effectiveness, training and resources, may find it difficult to contain the violence of the armed groups and protect civilians.

Although fragile and sometimes incomplete, the MONUSCO system, through its contingents deployed in the field and its civilian units, in particular Civil Affairs and UNJHRO, provides protection measures for civilians (in areas affected by conflict) but also specifically for human rights defenders. MONUSCO’s departure, without consultation of the relevant actors for the transition, particularly within civil society, could therefore pose a risk to the protection of civilians and human rights defenders. In addition, it is important to be able to continue to provide UNJHRO with sufficient and adequate resources, including financial resources, to pursue this protection work and ensure a successful transition. Without MONUSCO’s logistical resources, particularly in certain provinces that are difficult to access, it is harder for UNJHRO to carry out its mandate to monitor and report on violations, including with regard to human rights defenders and the civilian population. Such a withdrawal also entails a specific security risk for human rights organisations, particularly in terms of protection against reprisals that they may suffer in connection with their past collaboration with the Mission in the fight against impunity and cases of violations brought before the Congolese courts, in particular through the protection system offered by UNJHRO. The withdrawal of MONUSCO could also pose an additional risk to the security of human rights defenders in the context of mining and local conflicts.

The transition called for by the Head of State should therefore be gradual and accompanied by measures to prevent any further deterioration in the security and humanitarian situation in the east of DRC;⁹⁴ it

⁹¹ For security reasons, the identity of this person has been made anonymous. For the same reasons, certain details of the threats and attacks against this person are not mentioned. Interview conducted on 6 June 2024.

⁹² Al-Jazeera, “DR Congo President Tshisekedi seeks withdrawal of UN peacekeepers this year”, 21 September 2023, <https://www.aljazeera.com/news/2023/9/21/dr-congo-president-says-un-peacekeepers-to-begin-withdrawal-this-year#:~:text=%E2%80%9CIt%20is%20to%20be%20deployed,UN%20General%20Assembly%20on%20Wednesday>.

⁹³ See <https://news.un.org/fr/story/2024/05/1145241>

⁹⁴ See, for example, Kahombo (B.), Hengelela (J.), Mabwilo (J-R.), “Le retrait programmé de la MONUSCO de la République démocratique du Congo : enjeux et perspectives” (MONUSCO’s scheduled withdrawal from the Democratic Republic of Congo: issues and prospects), ASSN, June 2024, <https://www.africansecuritynetwork.org/assn/wp-content/uploads/2024/06/Le-retrait-programme-de-la-MONUSCO-de-la-Republique-Democratique-du-Congo-Enjeux-et-perspectives-ASSN-JUST-FUTURE.pdf>

should also place the protection of civilians and human rights at the centre.⁹⁵ Civil society organisations should be consulted and strengthened in their capacity for action at local level, so that they can better document and report on human rights violations that may occur once MONUSCO has fully withdrawn.

3. An ineffective judicial system: a source of widespread impunity

The authorities' ineffective response to the security situation in the east and to the challenges of protecting human rights defenders contributes to the climate of widespread impunity that reigns in DRC, where the most serious crimes committed against human rights defenders go unpunished, and families are abandoned in their efforts to seek truth and reparation. The Congolese justice system is beset by numerous failings, and the lawyers representing human rights defenders are sometimes themselves threatened, arrested and prosecuted.

(3.1) A “sick justice system” and lawyers under threat

Questioned at a press conference on 22 February 2024 about the legal situation of journalist Stanis Bujakera, President Tshisekedi himself declared that the Congolese justice system was “sick”.⁹⁶ Those interviewed for this report underlined a number of failings within the system, including : deeply rooted corruption; widespread impunity and lack of proper investigation, prosecution and punishment of crimes, particularly those committed by influential individuals or members of the government; blatant lack of independence from political power ; lack of financial and material resources meaning that infrastructure is often inadequate, and there is a shortage of qualified staff and ongoing training for judges and other actors in the justice system; and judicial procedures that are often hampered by administrative malfunctions, delays and/or poor case management.

In conducting the research for this report, we received several allegations of threats against lawyers, particularly lawyers who are human rights defenders. Lawyers are often unfairly associated with the people they defend, and are sometimes threatened, arrested or harassed as a result of their legitimate activities in representing their clients' interests.

The Honorary President of the North Kivu Bar Association, Joseph Sanane Chiko, was arrested by the intelligence services on 3 March 2023 in Goma in connection with his work as a lawyer, for having refuted the accusations made against his client, the MP Mwangachuchu Hiz. He was isolated and then transferred on 13 March 2023 to the premises of DEMIAP, the military intelligence service, in Kinshasa – a service known for its appalling conditions of detention – in a clear attempt to criminalise the statements he had made in the course of his work as a lawyer, acts that are not punishable under Congolese criminal law.⁹⁷ Joseph Sanane Chiko was finally released on 14 May 2023.

Banzu Misongo Effren, a lawyer at the North Kivu Bar, was also arrested by military intelligence in the town of Goma on 23 February 2023. The following day, he was transferred to DEMIAP in Kinshasa, where he was held until his death on 8 June 2023, following a rapid deterioration in his health. Although

⁹⁵ FIDH, statement, “Protecting civilians and human rights, the main concern as MONUSCO withdraws from DRC”, 13 December 2023, <https://www.fidh.org/en/region/Africa/democratic-republic-of-congo/protecting-civilians-and-human-rights-the-main-concern-as-monusco>

⁹⁶ Jeune Afrique, “En RDC, Félix Tshisekedi ‘met le nez’ dans le dossier Stanis Bujakera Tshiamala” (In DRC, Félix Tshisekedi “gets involved” in the Stanis Bujakera Tshiamala case), 23 February 2024, <https://www.jeuneafrique.com/1540326/politique/en-rdc-felix-tshisekedi-met-le-nez-dans-le-dossier-stanis-bujakera-tshiamala/>

⁹⁷ International Observatory for Lawyers in Danger (OIAD), “RÉPUBLIQUE DÉMOCRATIQUE DU CONGO: L’Observatoire exige la libération immédiate du Bâtonnier Honoraire du Barreau du Nord Kivu, Joseph Sanane Chiko, arbitrairement détenu à Goma et récemment transféré à Kinshasa” (DRC: The Observatory demands the immediate release of Joseph Sanane Chiko, Honorary President of the North Kivu Bar Association, arbitrarily detained in Goma and recently transferred to Kinshasa), 20 March 2023, <https://protect-lawyers.org/item/joseph-sanane-chiko-2/>

the official charges against the lawyer have never been made public, it would appear that they relate to his activities as a lawyer for clients convicted of belonging to the armed group Allied Democratic Forces - National Army for the Liberation of Uganda (ADF-NALU).⁹⁸

Several women lawyers from Groupe Lotus in Kisangani, who have represented women victims of SGBV before the courts, have received threats from within their profession, from judges/prosecutors and members of the Bar, telling them to “be careful” because their “protection is not guaranteed”.⁹⁹

In addition, some Bar Presidents reportedly try to intimidate lawyers deemed to be too close to human rights organisations, or who represent human rights defenders, by threatening to disbar them. For example, during the investigation into the murder of political opposition figure Chérubin Okende, the family’s lawyer was threatened with disbarment. Another example is the case of **Firmin Yangambi**, former President of the Kisangani Bar Association for the province of Tshopo and President of the NGO Paix sur terre, which supports victims of the war. He was arrested in 2009 and sentenced to death in 2010 for “illegal possession of weapons of war and attempting to organise an insurrectionary movement” against former President Joseph Kabila.¹⁰⁰ He spent 10 years in prison before being granted a presidential pardon in 2019, following the election of Félix-Antoine Tshisekedi. However, on several occasions since this election, the Kisangani Bar Association has reportedly threatened to disbar Firmin Yangambi because of his activities in defence of human rights, in particular against the lifting of the moratorium on the death penalty, forcing him to remain silent and hindering his activities.

CD¹⁰¹ is a Congolese lawyer in the east of DRC who supports human rights defenders, in particular by visiting prisons. As a result of his advocacy work on the prison situation, he has been threatened and obstructed in his work as a lawyer by the intelligence services and the army. During a hearing where he was accompanying a human rights defender, he was threatened that he himself would be arrested by the court and that he would be “put to the test to see who would match his energy to provide him with assistance”. Finally, he faced attacks and legal proceedings because of his stance against the lifting of the moratorium on the death penalty. He was able to temporarily leave DRC in 2024, but his family continues to receive regular intimidation.¹⁰²

Finally, the national Bar Association does not seem to want a confrontation with the Government, and does not intervene to demand that the ANR respect the terms of the Constitution, which provides that any person may be defended by counsel of his or her choice. Lawyers sometimes refrain from requesting certain files of people detained on the premises of the ANR, which reports directly to the Government, knowing that the ANR will likely ignore such requests.. The ANR does not reply to any letters from lawyers, either to request files or just to meet with a client. The ANR’s stance, along with the National Bar’s reluctance, undermine the right to a proper defence.

⁹⁸ OIAD, “République démocratique du Congo: L’Observatoire condamne la mort en prison de l’avocat Banzu Misongo Effrem et appelle les autorités congolaises à mener une enquête approfondie” (DRC: The Observatory condemns the death in prison of lawyer Banzu Misongo Effrem and calls on the Congolese authorities to carry out a thorough investigation), 20 June 2023, <https://protect-lawyers.org/item/banzu-misongo-effremel-4/>

⁹⁹ Interview with Dismas Kitenge, president of Groupe Lotus, on 7 May 2024.

¹⁰⁰ Observatory, urgent appeal, “Condamnation de M. Firmin Yangambi, avocat membre du Conseil de l’ordre du Barreau de Kisangani et président de l’ONG d’appui aux victimes de la guerre ‘Paix sur terre’” (Sentencing of Firmin Yangambi, lawyer, member of the Kisangani Bar Council and President of the NGO “Paix sur terre”, which supports victims of the war), 5 March 2010, <https://www.fidh.org/fr/regions/afrique/rdc/Condamnation-de-M-Firmin-Yangambi>

¹⁰¹ For security reasons, the identity of this person has been made anonymous. For the same reasons, certain details of the threats and attacks against this person are not mentioned.

¹⁰² Interview conducted on 6 June 2024.

(3.2) Impunity for the most serious crimes committed against human rights defenders

While the fight against impunity was the number one priority of FIDH's human rights roadmap for President Tshisekedi in 2019,¹⁰³ at the end of his first term in office, little progress had been made in tackling the most serious crimes committed against human rights defenders.

As explained above, human rights defenders, who are often targeted for their work in exposing human rights abuses and violations, are subjected to threats, harassment, physical attacks and sometimes murder. These crimes generally go unpunished because of a flawed justice system characterised by corruption, lengthy proceedings and political influence. The absence of dissuasive sanctions reinforces the climate of fear and repression, dissuading human rights defenders from pursuing their human rights activities, and failing the victims' families in their legitimate search for truth, justice and reparation. This persistent impunity undermines the confidence of citizens in state institutions and hinders progress towards the rule of law in DRC.

Many crimes committed against human rights defenders or journalists reporting on human rights violations have gone unpunished to date, such as the murder of human rights defender **Pascal Kabungulu** on 31 July 2005 in Bukavu;¹⁰⁴ the murders of two journalists from the UN radio station Okapi in Bukavu, **Serge Maheshe** on 13 June 2007 and **Didace Namujimbo** on 21 November 2008;¹⁰⁵ and the murder of Archbishop **Christophe Munzehirwa**, also in Bukavu, on 29 October 1996.

As a recent example, 49 members of the Kamuina Nsapu militia were sentenced to death, and army colonel Jean de Dieu Mambweni was sentenced to 10 years' imprisonment on 29 January 2022 in the trial for the murder of two UN experts, **Michael Sharp** and **Zaida Catalan**, while they were investigating widespread human rights violations in the Kasai region in 2017. The military prosecutor's office appealed against the verdict, which the signatories of this report considered insufficient, given that the role of the defence and security forces and politicians in the case had not been established, that principles of criminal procedure and fair trial had not been respected, and of course because of their abolitionist position on the death penalty. More than six years after the start of the proceedings, the Military High Court has made little progress in the appeal of the accused. The judicial authorities have still not managed to establish the whole truth about the murders of the two experts, nor about the fate of their Congolese interpreter, **Betu Tshintela**, and the three motorbike drivers who accompanied them and who are still missing.

Furthermore, in relation to the crimes committed in the Kasais in 2017, which our organisations have documented,¹⁰⁶ the suspension in June 2024 of the long-awaited trial of several senior officials accused of crimes against humanity by the Military Court in Tshikapa is disappointing for the victims and for the fight against impunity. At issue is the rank of some of the defendants, who can only be tried by military judges of the same or higher rank. The case was therefore referred to the Military High Court in Kinshasa, pending trial.¹⁰⁷

Well-known human rights defenders, **Floribert Chebeya**, Executive Director of the association *Voix des sans-voix* (VSV), and his driver **Fidèle Bazana**, also an active member of VSV, were murdered on 1 June 2010 on the outskirts of Kinshasa. While Floribert Chebeya's body was found the day after the murder, Fidèle Bazana's body has never been found. Fourteen years after the disappearance and death of the two activists, although one trial has taken place and others are still pending, the results are largely unsatisfactory. Since the events, two appeal trials have been held, resulting in the conviction of three police officers, one of whom was granted

¹⁰³ FIDH, "Democratic Republic of Congo: 5 priorities for a state that respects human rights", March 2019, https://www.fidh.org/IMG/pdf/fidh_drc_human-rights-roadmap_march2019.pdf

¹⁰⁴ Observatory, urgent appeal, "Assassinat de Pascal Kabungulu" (Murder of Pascal Kabungulu), 5 August 2005, <https://www.fidh.org/fr/regions/afrique/rdc/Assassinat-de-Pascal-Kabungulu>

¹⁰⁵ Observatory, urgent appeal, "Assassinat de Didace Namujimbo" (Murder of Didace Namujimbo), 24 November 2008, <https://www.fidh.org/fr/regions/afrique/rdc/Assassinat-COD-010-1108-OBS-197>

¹⁰⁶ See <https://www.fidh.org/en/region/Africa/democratic-republic-of-congo/slaughter-in-kasai-crimes-against-humanity-perpetrated-to-create>

¹⁰⁷ See https://trialinternational.org/wp-content/uploads/2024/06/CP_kamonia_FR.pdf

a reduced sentence, and the acquittal of four others.¹⁰⁸ This decision contributes to trivialising these crimes and does not respect the right to justice of the bereaved families.

In addition, the main instigator of this double murder remains unpunished. Although an initial complaint was lodged with the High Military Court in 2010, followed by a second in 2020,¹⁰⁹ General John Numbi Banza Tambo – former right-hand man to the former President of DRC, Joseph Kabila, and Inspector General of the Congolese National Police – is still at large. Following an investigation carried out by RFI in 2021, new evidence was released about the double murder.¹¹⁰ These revelations led to the reopening of the case the same year. The trial is still pending, but no date has yet been set.¹¹¹ This is despite the fact that the other alleged perpetrators of the assassination, including General Zelwa Katanga aka Djadjidja¹¹² and other police officers, are currently remanded in custody.¹¹³ The reason for this delay is thought to be the absence of General John Numbi from Congolese territory, as the High Military Court wants to try all the accused at the same time.

In parallel, the President of the Republic, Félix-Antoine Tshisekedi Tshilombo, received a request from the lawyers for the civil parties in March 2022, calling for the dismissal of General John Numbi from the Congolese armed forces. His dismissal is a prerequisite for the High Military Court to be able to try him, should he be apprehended. Given the rank of John Numbi, who is a four-star general, and the absence of a military judge of equivalent or higher rank, the High Military Court is currently unable to try him.¹¹⁴

The Observatory has therefore continued to call on the Congolese authorities to separate the proceedings against the soldiers and police officers charged in this case, so that those already remanded in custody can be tried in the absence of General Numbi on Congolese territory. A second trial must be opened so that the families can pursue their search for justice and truth.¹¹⁵

In addition to the need to hold regular trials in order to combat impunity, for several years the victims' lawyers have also been calling for an investigation to be opened with the aim of locating the remains of Fidèle Bazana's body, which have still not been found.

The promises made by Félix-Antoine Tshisekedi at the time of his first inauguration as head of state have so far remained unfulfilled. The slowness of the investigations and trials reveals the malfunctioning of the criminal justice system, which does not satisfy either the families' right to justice or their right to the truth. This case, which has been pending for many years, contributes to the climate of impunity that reigns in Democratic Republic of Congo.¹¹⁶

¹⁰⁸ Observatory, press release, "Verdict en appel dans l'affaire Chebeya, une banalisation du crime d'État" (Appeal verdict in the Chebeya case: trivialisation of a state crime), 24 September 2015, <https://www.fidh.org/fr/regions/afrique/rdc/verdict-en-appel-dans-l-affaire-chebeya-une-banalisation-du-crime-d> and "DRC: Verdict issued in the Chebeya-Bazana case", 24 May 2022, <https://www.fidh.org/fr/regions/afrique/rdc/rdc-verdict-dans-l-affaire-chebeya-bazana>

¹⁰⁹ Following the further arrests and revelations made in the case, a second complaint was filed in October 2020 by lawyers for the civil parties.

¹¹⁰ S. Rolley, E. Ndikumana K. Wa Kamanda, "RDC : ceux qui ont tué les défenseurs des droits humains Floribert Chebeya et Fidèle Bazana" (DRC: Those who killed human rights defenders Floribert Chebeya and Fidèle Bazana), RFI, 8 February 2021, <https://www.rfi.fr/fr/afrique/20210208-rdc-ceux-qui-ont-tu%C3%A9-floribert-chebeya-et-fid%C3%A8le-bazana>

¹¹¹ Observatory, press release, "République démocratique du Congo : 14 ans après les faits, une justice qui se fait toujours attendre dans l'affaire Chebeya/Bazana" (Democratic Republic of Congo: 14 years on, justice remains elusive in the Chebeya/Bazana case), 31 May 2024, <https://www.fidh.org/fr/regions/afrique/rdc/republique-democratique-du-congo-14-ans-apres-les-faits-une-justice>

¹¹² The general is accused of having handed over a plot of his private land on the heights of Mitendi, in the suburbs of Kinshasa, to bury the body of Fidèle Bazana.

¹¹³ Observatory, statement, "DRC: Ongoing trial for the perpetrators of Floribert Chebeya's murder and Fidèle Bazana's disappearance", 7 December 2021, <https://www.fidh.org/en/region/Africa/democratic-republic-of-congo/drc-ongoing-trial-for-the-perpetrators-of-floribert-chebeya-s-murder>

¹¹⁴ Observatory, "DRC: Verdict issued in the Chebeya-Bazana case", 24 May 2022, <https://www.fidh.org/en/region/Africa/democratic-republic-of-congo/drc-verdict-issued-in-chebeya-bazana-case>

¹¹⁵ Observatory, press release, "République démocratique du Congo : 14 ans après les faits, une justice qui se fait toujours attendre dans l'affaire Chebeya/Bazana" (Democratic Republic of Congo: 14 years on, justice remains elusive in the Chebeya/Bazana case), 31 May 2024, <https://www.fidh.org/fr/regions/afrique/rdc/republique-democratique-du-congo-14-ans-apres-les-faits-une-justice>

¹¹⁶ Interview with **Peter Ngomo**, counsel for the civil parties, and **Guylain Bazana**, on 22 and 27 May 2024.

Moreover, the ANR with its power to question and detain, which facilitates human rights abuses against defenders, benefits from impunity with regard to the abuses perpetrated by its agents. Article 25 of Decree-Law No. 003/2003 of 11 January 2003 on the creation and organisation of the ANR, prevents legal proceedings against ANR agents. The need to obtain the prior opinion of the Director General before questioning or prosecuting an ANR agent, without mentioning whether the procedure is one of assent or advisory opinion, poses a problem of independence in the investigation of complaints. This provision is all the more questionable as these agents are the subject of serious accusations regarding conditions of arrest and detention, particularly of human rights defenders.¹¹⁷

Furthermore, very few defenders dare to lodge a complaint after being threatened, arrested or tortured. When they are released, relief and fear of possible reprisals often prevail over the search for truth, justice and reparation, in a context of a failing justice system that lacks independence. According to **Jean-Claude Katende**, lawyer at the Lubumbashi Bar, National President of ASADHO, Vice-President of FIDH and member of OMCT's SOS-Torture Network, interviewed for this report, "the efforts of the government and the justice system to genuinely combat impunity are very weak."¹¹⁸

Conclusion

In 2024, the situation of human rights defenders and civic space in Democratic Republic of Congo remains critical. Human rights defenders continue to face serious threats, intimidation and targeted violence. These violations of their fundamental rights are often perpetrated in a climate of impunity, exacerbated by a fragile legal and institutional framework and a flagrant lack of independence of the justice system. Women human rights defenders are particularly vulnerable, often suffering gender-based violence in addition to the risks faced by their male counterparts. Land and environmental rights defenders are also at high risk, in a context of renewed oil and gas drilling, from large international companies to serve economic interests. The shrinking of civic space is also a cause for concern. Restrictions on freedom of demonstration and expression, as well as freedom of the press, severely limit the ability of citizens and civil society organisations to denounce human rights violations and widespread corruption, to participate in public debate and to hold the government to account. This worrying trend is illustrated by the disproportionate force often used by the security forces against peaceful demonstrators, which is most acute in the eastern provinces under a state of siege, at the hands of both the military authorities and various armed groups. Political exploitation of the security situation in the east is used to justify all the restrictions on rights and freedoms at national level, including in the courts, where public order offences are regularly invoked. Furthermore, combined with a highly dysfunctional judicial system, the reinstatement of the death penalty opens the way to arbitrary executions in the name of state security, including of defenders who dare to criticise the government's decisions in the war in the east.

It is crucial that the government of DRC take urgent and concrete measures to improve the protection of human rights defenders and guarantee an open and free civic space. This includes reforming restrictive laws, rigorously applying international human rights standards and combating impunity. The international community, and especially the system established by the African Union, must also step up support, in particular through protection mechanisms and diplomatic "pressure" to ensure that the Congolese government respects its obligations to protect human rights defenders and, more broadly, to respect fundamental freedoms.

¹¹⁷ OMCT, AUDF, "La torture en République Démocratique du Congo : Un secret de polichinelle? (Torture in DRC: An open secret)", April 2019, https://www.omct.org/site-resources/legacy/rapport_alternatif_cat_rdc_2019_fr1_2020-12-11-171336.pdf

¹¹⁸ Interview with Jean-Claude Katende, on 7 May 2024.

Recommendations

The Observatory for the Protection of Human Rights Defenders and the signatory organisations make the following recommendations to the national authorities of Democratic Republic of Congo, to the international community and to companies operating in the country:

To the national authorities:

- Ensure in all circumstances the protection and physical and psychological integrity of all human rights defenders in DRC, with particular focus on the situation of women defenders, land and environmental rights defenders and those fighting against mining, as well as defenders of the rights of LGBTQIA+ people;
- Immediately and unconditionally release all human rights defenders arbitrarily arrested and detained, and ensure that the charges against them are dropped;
- Identify and close all places of secret detention, including the ANR and DEMIAP cells, in accordance with the commitments made by President Félix-Antoine Tshisekedi when he came to power in 2019;
- Put an end to all threats, intimidation and acts of harassment, including judicial harassment, against human rights defenders, citizens' movement activists and journalists;
- Send clear and public messages to the defence and security forces regarding the obligation to use proportionate force in the management of demonstrations;
- Ensure the effective implementation of laws and other texts guaranteeing the opening up of civic space, the protection of human rights defenders and journalists, freedom of the press and of peaceful assembly and demonstration;
- Promote dissemination and awareness-raising activities around Law 23/027 of 15 June 2023 on the protection of human rights defenders, particularly in the provinces, and ensure that it is revised so as not to further restrict the work of Congolese civil society actors and civic space;
- Investigate all cases of killings of human rights defenders independently, impartially, transparently and effectively, in accordance with international standards, including the Minnesota Protocol, and bring those responsible to justice;
- Offer training and awareness-raising programmes to the security forces and judicial authorities so that they apply and enforce laws concerning the protection of human rights defenders and the preservation of civic space;
- Strengthen the independence of the CNDH so that it can play its proper role as an interface between human rights defenders and public institutions, in particular by allocating it sufficient budgetary resources and its own adequate premises;
- Reverse the decision to lift the moratorium on the death penalty in order to comply with Article 61 of the Constitution, which states that under no circumstances, even when a state of siege has been declared, may the right to life be violated; ratify the Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty, and support the efforts of the ACHPR to adopt a protocol to the African Charter on the Abolition of the Death Penalty; abolish the death penalty definitively;
- Support a responsible withdrawal of MONUSCO, with the protection of civilians as an absolute priority, particularly in the eastern provinces;
- Undertake the necessary reforms to guarantee the effectiveness, impartiality and independence of the judicial system at all levels;
- Downgrade General John Numbi to allow him to be tried by the High Military Court upon his arrest; sever the proceedings against the military and police officers charged with the murder of Floribert Chebeya and Fidèle Bazana, so that those already remanded in custody can be tried in the

absence of General Numbi on Congolese territory; and open a second trial so that the families can pursue their search for justice and truth;

- Proceed urgently with compensation and reparation for survivors of sexual violence in DRC through FONAREV, ensuring that civil society is involved in its activities and that it acts transparently;
- Promote positive narratives about the work of human rights defenders in the media and society at large; publicly recognise and celebrate their contributions, fostering a culture that respects and values their crucial role in defending human rights;
- Make operational the frameworks for consultation established between human rights defenders and the authorities, such as the liaison entity;
- Collaborate fully with the ACHPR and all United Nations bodies, in particular UNJHRO, the team of two international human rights experts mandated by Human Rights Council Resolution 54/34 of 12 October 2023, the United Nations Special Rapporteur on the situation of human rights defenders, and the United Nations Special Rapporteur on the right to development, as well as the United Nations Special Rapporteur on the right of peaceful assembly and of association, in particular by issuing a standing invitation to the United Nations special procedures, by following up outstanding requests for visits without delay, and by responding to communications addressed to them; and
- Respect the United Nations Guiding Principles on Business and Human Rights,¹¹⁹ adopted by the Human Rights Council in its resolution 17/4 of 16 June 2011.

To the international community:

- Strengthen support for Congolese civil society in its crucial role of defending human rights and civil liberties, and consider its protection a priority;
- Encourage public statements by international leaders and organisations condemning attacks on human rights defenders and promoting respect for their work;
- Engage proactively to ensure that elements relating to human rights and the protection of human rights defenders are integrated into all initiatives on DRC taken in multilateral fora, including the UN Security Council, the UN Human Rights Council and the Universal Periodic Review; increase funding at European and international level for the protection of human rights defenders in DRC;
- Empower citizen movements, local human rights organisations and human rights defenders. This support can include security training, legal support and organisational strengthening to improve their resilience and effectiveness;
- Engage in political dialogue with the Congolese government to advocate for the protection of human rights defenders and journalists – and in particular women human rights defenders, defenders of the rights of LGBTQIA+ people and land and environmental rights defenders; and raise emblematic individual cases such as that of Mwamisyo Ndungo King of LUCHA, and Mino Bopomi and Palmer Kabeya of Filimbi – both of whom have been forced into exile – in order to draw attention to the shrinking of civil society space;
- Engage proactively to ensure that the Rwandan and Ugandan governments do not contribute to the violation of the rights of human rights defenders and journalists in DRC;
- Stress to the Congolese government the need to review the application of certain articles of the new national law on the protection of human rights defenders;
- Urge the Congolese government to reconsider the lifting of the moratorium on the death penalty and to abolish the death penalty definitively;
- Ensure the proper functioning of UNJHRO during the period of MONUSCO's withdrawal and after its full departure;

¹¹⁹ See https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf

- Encourage a more gradual withdrawal of MONUSCO, and that its activities are transferred to other entities in a sustainable manner, in particular as regards the protection of the security of defenders and the strengthening of their capacities;
- Ensure the renewal of the mandate of the team of two international human rights experts mandated by Human Rights Council Resolution 54/34 of 12 October 2023;
- Pursue the negotiation of a legally binding instrument to regulate, within the framework of international human rights law, the activities of transnational corporations and other business enterprises at the level of the United Nations; and
- Continue the ongoing process to implement the ACHPR Resolution on Business and Human Rights in Africa (ACHPR/Res. 550), adopted in March 2023.

To companies operating in DRC, in the context of land rights and environmental rights:

- Demonstrate due diligence by identifying risks related to their activities in DRC and those of their subsidiaries and business partners, and adopt appropriate preventive and corrective plans and measures; recognise in this respect that the context requires risks relating to human rights defenders to be addressed and prioritised;
- Adopt a stakeholder engagement plan, work with communities and human rights defenders, and take all necessary measures to ensure that communities, journalists and human rights defenders can document, protest against and inform on the impacts and risks of the company's activities, subsidiaries and value chain;
- Adopt a zero-tolerance policy against reprisals so that those affected by development projects have the right to be heard and to associate, demonstrate and express themselves without fear of reprisals;
- Establish an internal grievance mechanism that meets the criteria and requirements of the UN Guiding Principles on Business and Human Rights; and
- Use or increase their leverage with relevant actors to ensure that national and local authorities protect human rights defenders.

Establishing the facts

Investigative and trial observation missions – Through activities ranging from sending trial observers to organising international investigative missions, FIDH has developed rigorous and impartial procedures to establish facts and responsibility.

Experts sent to the field give their time to FIDH on a voluntary basis.

FIDH has conducted more than 1,500 missions in over 100 countries in the past 25 years. These activities reinforce FIDH's alert and advocacy campaigns.

Supporting civil society

Training and exchanges – FIDH organises numerous activities in partnership with its member organisations, in the countries in which they are based. The core aim is to strengthen the influence and capacity of human rights activists to boost changes at the local level.

Mobilising the international community

Permanent lobbying before intergovernmental bodies – FIDH supports its member organisations and local partners in their efforts before intergovernmental organisations. FIDH alerts international bodies to violations of human rights and refers individual cases to them.

FIDH also takes part in the development of international legal instruments.

Informing and reporting

Mobilising public opinion – FIDH informs and mobilises public opinion. Press releases, press conferences, open letters to authorities, mission reports, urgent appeals, petitions, campaigns, website... FIDH makes full use of all means of communication to raise awareness of human rights violations.

17 passage de la Main-d'Or - 75011 Paris - France

TÉL. : + 33 1 43 55 25 18 / www.fidh.org

Created in 1985, the World Organisation Against Torture (OMCT) works for, with and through an international coalition of over 200 non-governmental organisations - the SOS -Torture Network - fighting torture, summary executions, enforced disappearances, arbitrary detentions, and all other cruel, inhuman and degrading treatment or punishment in the world and fighting for the protection of human rights defenders.

Assisting and supporting victims

OMCT supports victims of torture to obtain justice and reparation, including rehabilitation. This support takes the form of legal, medical and social emergency assistance, submitting complaints to regional and international human rights mechanisms and urgent interventions. OMCT pays particular attention to certain categories of victims, such as women and children.

Preventing torture and fighting against impunity

Together with its local partners, OMCT advocates for the effective implementation, on the ground, of international standards against torture. OMCT is also working for the optimal use of international human rights mechanisms, in particular the United Nations Committee Against Torture, so that it can become more effective.

Protecting human rights defenders

Often those who defend human rights and fight against torture are threatened. That is why OMCT places their protection at the heart of its mission, through alerts, activities of prevention, advocacy and awareness-raising as well as direct support.

Accompanying and strengthening organisations in the field

OMCT provides its members with the tools and services that enable them to carry out their work and strengthen their capacity and effectiveness in the fight against torture. OMCT presence in Tunisia is part of its commitment to supporting civil society in the process of transition to the rule of law and respect for the absolute prohibition of torture.

8 rue du Vieux-Billard - PO Box 21 - CH-1211 Geneva 8 - Switzerland

TEL: +41 22 809 49 39 / www.omct.org



THE OBSERVATORY

Activities of the Observatory

The Observatory is an action programme based on the belief that strengthened cooperation and solidarity among human rights defenders and their organisations will contribute to break the isolation they are faced with. It is also based on the absolute necessity to establish a systematic response from NGOs and the international community to the repression of which defenders are victims.

With this aim, the Observatory seeks to establish:

- > A mechanism of systematic alert of the international community on cases of harassment and repression of defenders of human rights and fundamental freedoms, particularly when they require urgent intervention;
- > The observation of judicial proceedings, and whenever necessary, direct legal assistance;
- > International missions of investigation and solidarity;
- > A personalised assistance as concrete as possible, including material support, with the aim of ensuring the security of the defenders victims of serious violations;
- > The preparation, publication and world-wide dissemination of reports on violations of the rights and freedoms of individuals or organisations working for human rights around the world;
- > Sustained action with the United Nations and more particularly the Special Rapporteur on Human Rights Defenders, and when necessary with geographic and thematic Special Rapporteurs and Working Groups;
- > Sustained lobbying with various regional and international intergovernmental institutions, especially the Organisation of American States (OAS), the African Union (AU), the European Union (EU), the Organisation for Security and Co-operation in Europe (OSCE), the Council of Europe, the International Organisation of the Francophonie (OIF), the Commonwealth, the League of Arab States, the Association of Southeast Asian Nations (ASEAN) and the International Labour Organisation (ILO).

The Observatory's activities are based on consultation and co-operation with national, regional, and international non-governmental organisations.

With efficiency as its primary objective, the Observatory has adopted flexible criteria to examine the admissibility of cases that are communicated to it, based on the "operational definition" of human rights defenders adopted by FIDH and OMCT: "Each person victim or at risk of being the victim of reprisals, harassment or violations, due to his or her commitment, exercised individually or in association with others, in conformity with international instruments of protection of human rights, to the promotion and realisation of the rights recognised by the Universal Declaration of Human Rights and guaranteed by the different international instruments".

To ensure its activities of alert and mobilisation, the Observatory has established a system of communication devoted to defenders in danger.

This system, called Emergency Line, can be reached through:

E-MAIL: alert@observatoryfordefenders.org

FIDH TEL: + 33 1 43 55 25 18

OMCT TEL: + 41 22 809 49 39



ASADHO

AFRICAN ASSOCIATION FOR THE DEFENCE OF HUMAN RIGHTS

Created in 1991, ASADHO has several objectives: to defend, promote and safeguard individual and collective rights and freedoms; to promote respect for the rule of law and the independence of the judiciary, with a view to consolidating the rule of law as the basis of a democratic society; and to contribute to raising awareness of human rights.

ASADHO

Immeuble Katalay, Avenue de la Paix n° 12
Kinshasa / Gombe, Local 1, 1er niveau
République démocratique du Congo

Tél. : (00243) 99 703 29 84

Site web : www.asadho-rdc.org

Blog.asadho-rdc.org



LEAGUE OF ELECTORS

Founded in 1990, the Ligue des Électeurs aims to support democratic development, in particular by defending human rights and promoting an electoral culture. The League carries out training activities for members of civil society associations as leaders of the democratic movement; public awareness activities on human rights; international electoral assessment and observation missions.

Ligue des Électeurs (LE)

Avenue Nyangwe 275,
commune de Lingwala,
Kinshasa, RDC

Tél : +243812436711

E-mail : laliguedeselecteurs17@gmail.com



LOTUS GROUP

The LOTUS Group is a non-governmental organisation based in Kisangani. The LOTUS Group denounces human rights violations, alerts public opinion and investigates the practices of the authorities in order to force those in power to respect the rule of law. It supports those who suffer discrimination and oppression because of their membership of a social, national or religious group, or because of their political opinions. It informs, teaches and promotes the values of human rights and democratic principles in order to promote them in the DRC.

Groupe LOTUS (GL)

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Kisangani, RDC

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Fax : +873762014330

E-mails : groupelotusrdc@yahoo.fr / dismaskitenge@yahoo.fr

Site web : www.groupelotusrdc.org

Blogs : blog.lotusrdc.org / lotusrdc.unblog.fr



The Alliance Universelle pour les Droits Fondamentaux (AUDF)

The Alliance Universelle pour les Droits Fondamentaux (AUDF) is an NGO founded in Kinshasa in 2007 and granted legal personality in 2012. The AUDF's work focuses on human rights education, the promotion and protection of economic, social, and cultural rights, as well as legal assistance to victims of human rights violations, human rights defenders, and victims of torture. Its motto is: "All human rights within everyone's reach."

Alliance pour l'Universalité des Droits Fondamentaux (AUDF)

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