



To Permanent Representatives of Member and Observer States of the United Nations Human Rights Council

Geneva, 15 September 2015

Re: Addressing the human rights situation in the Democratic Republic of the Congo (DRC) at the 30th session of the Human Rights Council

Your Excellency,

The undersigned non-governmental organizations write to urge your delegation to ensure that the Human Rights Council (“HRC” or “the Council”) continues to monitor the human rights situation in the Democratic Republic of the Congo (DRC).

In the lead up to the 2015 provincial and 2016 presidential elections, the Government of the DRC has sought to clamp down on freedom of expression and to silence dissent. Human rights defenders, journalists, political opponents and other independent or critical voices who have denounced the proposed electoral reform that would allow President Joseph Kabila to *de facto* stay in office beyond the two consecutive terms currently allowed have been subjected to harassment, intimidation, mass arrests, arbitrary detentions, violence, and excessive use of force. Moreover, perpetrators of grave human rights violations committed over the past two decades, some of which may constitute war crimes, have not been held accountable, and a climate of impunity continues to prevail in the country.

The Human Rights Council should reaffirm that respect for human rights and fundamental freedoms is a pre-requisite for peaceful, free and fair elections in a State governed by the rule of law by adopting a resolution during its 30th session that:

- **Calls upon the authorities of the DRC to respect and protect the rights to freedom of expression, association and peaceful assembly and urges them to put an end to all forms of intimidation, harassment, attacks and reprisals against human rights defenders, journalists, political opponents and other independent or critical voices;**
- **Strongly condemns the use of lethal and other excessive force by security forces against peaceful protesters, and urges the Congolese authorities to conduct thorough and independent investigations into the human rights violations committed in order to bring the perpetrators to account;**
- **Calls upon the authorities of the DRC to guarantee the holding of free, fair, transparent, credible and secure electoral processes, in accordance with their regional and international human rights obligations;**
- **Urges the Government of the DRC to fully cooperate with all United Nations human rights bodies and mechanisms, including by extending a standing invitation to all HRC special procedures mandate holders and providing substantive responses to their communications, and by taking all necessary measures to fully implement the recommendations it accepted during the second cycle of its Universal Periodic Review, especially in the fields of justice and security;**

- Pays the utmost attention to the report of the United Nations High Commissioner for Human Rights on the situation of human rights in the Democratic Republic of the Congo and to the study on the impact of technical assistance and capacity-building on the human rights situation in the DRC and, on the basis of their findings and recommendations, formulates concrete recommendations on outstanding issues, with a timeline for implementation; and
- Requests the United Nations High Commissioner for Human Rights to continue monitoring the human rights situation in the DRC and to present a written report at the Council's 33rd session, followed by an interactive dialogue.

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ANNEX: Recent human rights developments in the DRC

Restrictions to freedom of expression, freedoms of association and peaceful assembly

The threats and attacks faced by human rights defenders, journalists and political opponents in the DRC remain of serious concern, particularly in the lead-up to the 2015 provincial and 2016 presidential elections as they signal an unfavorable political and security climate to human rights and the organization of free and democratic elections.

Popular protests broke out from 19-21 January 2015 in Kinshasa and several other large cities against a draft electoral reform that would make it necessary to postpone the 2016 presidential election in which President Joseph Kabila, who has been in office since 2001, is in theory not allowed to run, and would effectively keep him in power potentially for years. These protests were violently suppressed by security forces, which used disproportionate force and fired live bullets into the crowd. At least 42 protestors were killed, dozens more were wounded and more than 300 individuals were detained after mass arrests throughout the country.¹ The Congolese authorities did not open any investigations or prosecute the perpetrators of these violations. Similarly, regarding the mass grave discovered in Maluku in March 2015 and in which more than 400 bodies are buried, the government did not accede to the request to investigate and identify the bodies that MONUSCO, numerous human rights organizations and families of the disappeared formulated.

Among those arbitrarily detained is prominent human rights defender Mr. Christopher Ngoyi Mutamba, who was kidnapped by armed elements of the national guard in Kinshasa and held incommunicado for approximately twenty days by the National Intelligence Agency (ANR) without access to a lawyer. He was charged with “publication of false information,” “incitement to disobey the law and rebellion,” “incitement to racial hatred,” “destruction” and “robbery” before the Kinshasa/Matete Court in a trial that opened on 4 March 2015.² Our organizations fear that he is being prosecuted solely because of his opposition to the electoral reform, as well as for documenting violence that erupted during the mid-January 2015 protests.

In March 2015, the ANR also arrested some 40 civil society activists and journalists who had come to Kinshasa to announce the launch of the “Filimbi” citizen platform which aims at encouraging youth participation in the electoral and democratic processes in the DRC. Most were released in the week that followed their arrest but two of them, Mr. Fred Bahuma (Lutte pour le Changement) and Yves Makwambala (Filimbi), remain in detention. They are accused of “attacks against the internal security of the State” and “attempting to destabilize institutions” because of their efforts aimed at increasing public awareness of the importance of the 2016 elections in the DRC.³ In Goma, in eastern DRC, the authorities later arrested and released at least

¹ FIDH “DRC: 42 already dead in protests against the proposed electoral law” 21 January 2015, www.fidh.org/International-Federation-for-Human-Rights/Africa/democratic-republic-of-congo/16850-drc-42-already-dead-in-protests-against-the-proposed-electoral-law

² FIDH “DRC: A prominent human rights defender unjustly detained and prosecuted”, 6 March 2015, www.fidh.org/International-Federation-for-Human-Rights/Africa/democratic-republic-of-congo/drc-a-prominent-human-rights-defender-unjustly-detained-and

³ FIDH “DRC: Judicial harassment against Filimbi members”, 21 July 2015, www.fidh.org/International-Federation-for-Human-Rights/Africa/democratic-republic-of-congo/16850-drc-42-already-dead-in-protests-against-the-proposed-electoral-law

15 activists from the LUCHA (Lutte pour le Changement) youth movement who were peacefully demonstrating to demand the release of the Filimbi members. Some alleged that they were beaten or tortured through a form of “waterboarding” by intelligence agents and police who arrested them. Four were granted provisional release but face charges of inciting disobedience to public authority.⁴

The arrests of the Filimbi members and of activists who held protests to support them come in the context of a broader crackdown on political party leaders, activists, and others who have peacefully protested attempts to allow President Joseph Kabila to stay in power past his constitutionally mandated two-term limit, which ends in November 2016.

The Congolese Government should immediately and unconditionally release all individuals imprisoned solely for peacefully exercising their rights to freedom of expression and assembly, and drop all charges against them. We also call on the authorities to promptly conduct thorough and independent investigations into allegations of human rights violations committed by security forces in detention, as well as into any excessive use of force by law enforcement officials. Finally, we call upon the Government of the DRC to create the necessary conditions to ensure that the 2016 elections be held in conditions of peace, transparency, credibility and security, and with full respect for fundamental rights and freedoms.

Prevailing impunity for serious human rights violations

Repeated cycles of violence and impunity over the past two decades, particularly in the East of the DRC, have resulted in the deaths of an estimated five million people. National armed forces and numerous non-state armed groups have carried out massacres, summary executions, torture, forced recruitment of children, and pillaging. Sexual and gender-based violence has been widespread and systematic, amounting to war crimes and crimes against humanity.

Despite their extent and their gravity, these crimes remain largely unpunished. The trials that have taken place in the DRC's military courts have faced numerous challenges, including with regard to the quality of investigations, protection of victims and witnesses, respect for the rights of the accused, and ability to prosecute senior level commanders who are most responsible for the crimes.⁵ Several high-level cases have not been resolved due to the inaction of judicial authorities, and to date no reliable vetting mechanism has been established in order to remove individuals suspected of committing serious human rights violations from official positions in the security forces.⁶

Our organizations urge the authorities to adopt the legislative and institutional measures necessary to address ongoing impunity for perpetrators of human rights violations and abuses. Such measures must ensure, among others, that victims' access to justice and reparation, in particular victims of sexual and gender-based crimes, is fully guaranteed, and that victims and witnesses benefit from an effective protection mechanism. The DRC should also promptly adopt legislation establishing specialized mixed chambers within the civilian justice system to try perpetrators of war crimes, crimes against humanity and genocide in conditions of independence, impartiality and effectiveness. Such legislation should incorporate the recommendations already formulated in this regard by human rights organizations to the Parliament. The authorities should also adopt without delay the draft law implementing the Rome Statute of the International Criminal Court (ICC) into Congolese law. These decisive steps in the fight against impunity would increase the capacity of national courts to bring those responsible for the most serious crimes to justice and send a strong message to all parties that serious crimes will not go unpunished.

[Rights/Africa/democratic-republic-of-congo/drc-judicial-harassment-against-filimbi-members](#)

⁴ “Free ‘Filimbi’ Activists: Over 200 Rights Groups Urge Respect for Free Expression, Assembly”, 15 June 2015, www.fidh.org/International-Federation-for-Human-Rights/Africa/democratic-republic-of-congo/free-filimbi-activists-over-200-rights-groups-urge-respect-for-free

⁵ “DRC: No More Delays for Justice”, 1 April 2014, www.fidh.org/IMG/pdf/no_more_delays_for_justice_-_drc_specialized_mixed_chambers-2.pdf

⁶ United Nations, “Report of the United Nations High Commissioner for Human Rights on the human rights situation and the activities of her Office in the Democratic Republic of the Congo”, A/HRC/27/5, 1 September 2014, www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session27/Pages/ListReports.aspx

We deplore that since the mandate of the United Nations Independent Expert was discontinued in 2008, there has been no dedicated monitoring mechanism with which to regularly observe the situation in DRC. Given the critical juncture at which the country stands ahead of the elections, and in light of the remaining challenges to be addressed, it is crucial that the Human Rights Council continues to be seized of the human rights situation in the Democratic Republic of the Congo.

We thank you for attention to these pressing issues.

Sincerely,

International Federation for Human Rights (FIDH)
Association africaine des droits de l'Homme (ASADHO)
Groupe Lotus
Ligue des Électeurs