



fidh



Democratic Republic of the Congo: Five priorities for a State that respects human rights

Cover picture : Supporters of the runner up in the Democratic Republic of the Congo's presidential elections, Martin Fayulu, sing and dance ahead of a rally against the presidential results on February 2, 2019 in Kinshasa.»
© John Wessels/AFP

Summary

Introduction.....	4
Priority 1: Fighting against impunity, promoting truth and strengthening justice in order to guarantee national reconciliation and lasting peace	6
Priority 2 : Respect fundamental rights and promote political dialogue	11
Priority 3 : Build an egalitarian society by promoting the rights of women and gender equality	13
Priority 4 : Enact substantial reforms to build the rule of law and democracy.....	15
Priority 5 : Strengthen cooperation with the international community and mechanisms for the protection of human rights	19

Introduction

On 20 January 2019, the Constitutional Court confirmed the election of Felix Tshisekedi as President of the Democratic Republic of the Congo (DRC). The election of the leader of the opposition platform known as *Cap pour le changement* (CACH) marks the first political change in the history of the country, which was led by Joseph Kabila for 18 years, and before him by his father Laurent-Désiré Kabila, who came to power following a region-wide conflict.

The presidential and legislative elections nevertheless enshrined a new political balance: a cohabitation imposed between the new president and a National Assembly dominated by the *Parti du peuple pour la reconstruction et la démocratie* (PPRD), the party of former president Joseph Kabila, and its satellite parties. This unexpected configuration could limit the ability of the new president to manoeuvre and raises concerns about the breadth and nature of reforms that he will be able to implement. These reforms are nevertheless essential to guarantee the rule of law and the independence of institutions; and to ensure greater social justice and promote a restoration of peace and security in regions that are still experiencing conflict.

Félix Tshisekedi is therefore taking office in a difficult context and will have to face significant challenges both at the national and international levels. Internally, since at least 2015, the country has been going through a serious crisis, resulting from Joseph Kabila's attempts to maintain his grip on power beyond his second and final constitutional term. Although Joseph Kabila was supposed to retire in December 2016, his regime postponed elections and systematically used violence to stifle dissent. He did not respect the provisions of the Accord signed on 31 December 2016 with the opposition, which provided for power-sharing measures, an end to the repression, and the organisation of credible elections before the end of 2017.

Security forces, mostly under the control of Joseph Kabila, continued to reduce civic space by committing many human rights violations. They prevented or suppressed demonstrations, most of which were peaceful, by shooting live ammunition at demonstrators. They sought to silence political opponents, human rights and pro-democracy activists as well as independent journalists denouncing the abuses committed by the regime and the lack of transparency in the electoral process. Since 2015, security forces arrested hundreds of people. In certain regions of the country such as Kasaï, authorities and members of security forces contributed to fueling conflicts between communities in an attempt to sow chaos and further delay the elections. Thousands of Congolese citizens paid with their lives for this strategy to retain power.

The electoral campaign was marked by significant tension and human rights violations against opposition and human rights activists. When the elections finally took place on 30 December 2018, they also brought turmoil. Many irregularities and attempts to restrict voting rights were reported, in particular by the two main opposition candidates, Félix Tshisekedi and Martin Fayulu, the leader of the Lamuka coalition. The results of the presidential election were contested by Martin Fayulu and his supporters, who believe that the election was rigged and that he is actually the winner. Martin Fayulu unilaterally proclaimed himself President on 20 January 2019. He did not wish to create a coalition with Félix Tshisekedi's party, and called for "peaceful resistance".

This situation has raised new fears about the potential deterioration of the political situation and the negative consequences this could have on national cohesion. For example, clashes took place in Kikwit and Kisangani during gatherings of the Lamuka coalition that were organised to protest against the results of the presidential election. It is alleged that there were several deaths during the protests. Public statements amounting to hate speech were made, especially against the president's ethnic group, although these were immediately condemned by Martin Fayulu.

But beyond the political, security and human rights crises linked to the electoral process, the new authorities are facing an alarming general situation. In fact, throughout his presidential term, Joseph Kabila perpetuated a governing system based on widespread corruption, kleptocracy, the repression of dissident voices and the control over State institutions, including the judicial system and security forces. This system has reinforced inequality, reduced freedom, aggravated poverty and ensured impunity for the main alleged perpetrators of serious human rights violations, fueling further violence and conflicts.

The alarming situation in the DRC is mainly the result of a lack of political will by the former regime to invest in basic and fundamental public services, engage in an effective fight against insecurity and corruption, respect fundamental rights and freedoms, and ensure that the considerable natural resources of the country, including mining, agricultural and hydroelectric assets, are used to benefit the population. After long years of an authoritarian and predatory regime, and despite the protests against the election results by part of the population and the political opposition, a great deal of hope is being placed in Félix Tshisekedi, and a clean break with the practices of the past is essential.

At the international and regional levels, the former authorities have also been increasingly isolated. Indeed, the main allies of the DRC opposed Joseph Kabila's remaining in power, believing it would be far too dangerous for regional security, which has crystallized tensions. Some allies have taken steps, including by deciding to enforce sanctions against high-ranking officials from the former regime, to protest against the human rights violations and the electoral delays and force the former president to retire, as set forth in the Constitution of the Congo.

Since his inauguration, Félix Tshisekedi has attempted to break with the past and has enacted strong measures to fight inequality, corruption, tax evasion, insecurity and armed groups. He committed to promoting development and modernizing the political system. On March 13, 2019, Félix Tshisekedi also ordered the release of 700 people, including many arbitrarily detained for expressing their political views or participating in peaceful protests. However, to fulfill the very high expectations of the people of the DRC, address the deep problems that afflict the country and promote sustainable development, the new authorities must adopt holistic policies, particularly relating to human rights.

For FIDH and its member organisations in the DRC, the *Ligue des Électeurs* (LE), the *Association africaine pour la défense des droits de l'Homme* (ASADHO), and the *Groupe Lotus* (GL), these human rights policies must be centred around five priorities: 1) Fighting impunity, promoting truth and strengthening justice in order to guarantee national reconciliation and lasting peace; 2) Respect for fundamental rights and freedoms and the promotion of a peaceful political climate; 3) Defending and promoting the rights of women and gender equality; 4) Strengthening the rule of law and democratic institutions; 5) Cooperation with the international and regional community and with human rights protection mechanisms.

Priority 1: Fighting against impunity, promoting truth and strengthening justice in order to guarantee national reconciliation and lasting peace

Since the end of the 1990s, DRC has been the scene of almost permanent conflict with both regional and internal dimensions, which has resulted in the **loss of several million lives among the civilian population** because of armed conflicts, numerous massacres, massive displacement of persons and the many ensuing consequences for the health and lives of the Congolese people. All of the countries in the region have hosted a staggering number of armed groups at one time or another, which have plunged the country, and in particular its eastern regions, into recurring chaos. In turn, the State has responded to the violence of these armed insurrections with the same violence, perpetrated by the Congolese armed forces and many satellite groups (armed militias and other self-defence groups). As recently as 2017, no fewer than 34 armed groups remained active in the Kivu region.

Security forces and the various armed groups operating in the region have been committing many crimes for decades, including international crimes. During the period between 1993 and 2003 alone, the [Mapping Report of the United Nations](#) counted 617 incidents that could constitute war crimes and/or crimes against humanity, indicating that, **“There were tens of thousands of serious crimes and perpetrators, and hundreds of thousands of victims”**. The staggering scale of the crimes committed requires the adoption of a holistic policy of transitional justice, based on the creation of diverse and complementary mechanisms, both judicial and non-judicial, as recommended by the UN Mapping Report.

Prosecuting international crimes and punishing the highest-level perpetrators

The fight against impunity for international crimes is not a new issue in the DRC, and positive efforts have been made in that regard. In April 2004, the Congolese authorities referred the situation in the country to the International Criminal Court (ICC), which authorized it to exercise its jurisdiction over crimes listed in the Rome Statute, committed on the territory of the DRC or by its nationals from 1 July 2002 onwards. The [ICC investigations](#) have focused on alleged war crimes and crimes against humanity committed mainly in the eastern DRC, in the Ituri region and the provinces of North and South Kivu. The investigations led to its two first convictions; (1) in 2014 in the case of [The Prosecutor v. Germain Katanga](#), alleged commander of the *Forces de résistances patriotiques de l'Ituri* (FRPI), for war crimes and crimes against humanity; and (2) in 2012 in the case of [The Prosecutor v. Thomas Lubanga Dyilo](#), former president of the *Union des patriotes congolais/Forces patriotiques pour la libération du Congo* (UPC/FPLC), for war crimes. [Ngudjolo Chui](#), a former colonel of the Congolese armed forces and former commander-in-chief of two armed militias, was acquitted in 2015. A trial is ongoing against [Bosco Ntaganda](#), former leader of the *Forces patriotiques pour la libération du Congo* (FPLC), who is being prosecuted for war crimes and crimes against humanity, including rape and sexual slavery.

Congolese military justice has also held several trials against the perpetrators of international crimes. However, these efforts remain extremely limited and a **situation of almost complete impunity continues to prevail in the DRC**. Many crimes, particularly the most serious, remain unpunished, and investigations, prosecution, sentences and reparations to victims are largely insufficient. The authorities of the DRC have an obligation under international law to prosecute crimes under international law committed in their territory. Authorities must not ignore the countless victims of these crimes, who continue to clamour for justice and reparations. Our organisations believe that, taking into consideration the scope of these crimes, it is important to establish priorities when embarking on criminal prosecutions and to **concentrate efforts on those individuals who bear the greatest responsibility**.

However, such a process poses numerous challenges. Prosecuting “those who bear the greatest responsibility” requires an independent justice system that is able to resist political interference.

Considering the apparently generalised and systematic nature of the crimes, it will also be necessary to conduct complex investigations that require significant human and material resources as well as specific expertise. However, the lack of independence and the limited resources of the Congolese judicial system undermines its ability to deal with international crimes.

In the face of these findings, our organisations recall that, depending on the political choices made by the new authorities, **ad hoc mechanisms may be implemented to strengthen justice. Such is the case with special mixed Chambers**, integrated into national judicial systems, a made up of national and international personnel, mandated to investigate and prosecute the highest-level perpetrators, including perpetrators of sexual and gender-based crimes, according to the recommendations of the UN Mapping Report.

There are also other solutions that can support the truth and ensure that justice is done.

Engaging in a national truth and reconciliation process for the crimes of the past

The scale and the generalised and systematic nature of the crimes committed, particularly against women, children and certain categories of persons for reasons of ethnicity, political beliefs or nationality, also require an investigation into the reasons behind the violence. The persistent and systematic use of sexual and gender-based violence must also be given special attention. Enabling people to speak out about these abuses is also crucial.

Such questions will not be answered through a judicial process alone, whose primary objective is to determine the responsibility of a limited number of alleged perpetrators, without taking into consideration the needs and thirst for truth of the majority of the victims. Therefore, in order to meet the need for truth and justice of the people of the DRC and of the victims' families, and in an attempt to preserve the memory of what happened, the new authorities should reflect on the possibility **of implementing a Truth and Reconciliation Commission (TRC)**. This could be a national transitional justice mechanism charged with establishing the truth about crimes committed in the past and proposing reparation measures and institutional reforms. Such a Commission must shed light on the cycle of violence that led to the perpetration of the most serious human rights violations and enable an understanding of its origins and deep-rooted causes. It should also pay a particular attention to the acts of violence perpetrated against the most affected groups. Any truth and reconciliation mechanism should also be designed and mandated to **restore the ties between the State and its citizens**, in order to promote true reconciliation and national unity and bring an end to repeated cycles of violence.

Judging those responsible for community conflicts and promoting mediation

At the same time as reflections and consultations are held on the implementation of transitional justice mechanisms, certain recent outbreaks of violence must be given urgent attention by the new authorities. Justice, mediation, peacemaking and reparation measures are particularly pressing to alleviate the tensions generated by the crimes committed, including in the Kasai regions between 2016 and 2017, and in the Yumbi region at the end of 2018. These measures should also be aimed at remedying the serious deterioration of ties between certain communities.

In July 2017, **in the Kamonia territory**, in the Kasai region, **our organisations investigated crimes** of unprecedented scale and seriousness in that zone, which led to the deaths of hundreds of victims. We documented extrajudicial executions, mutilations, sexual violence, the pillaging and destruction of property, arrests and arbitrary detentions. The violence was mainly targeting the civilian population and specifically those of the Luba ethnicity, considered to belong to or be supporters of the Kamuina Nsapu militia. The investigations brought to light the central responsibility of members of the Congolese army, police and local authorities, as well as of a militia known as Bana Mura (essentially of Tchokwe and Pende origin), which took part in the violence alongside these forces. According to the information collected, premeditated attacks were organised and were clearly part of a strategy to sow chaos and postpone the elections in these regions, which

were mainly expected to vote for the opposition. Despite the information that the Congolese authorities had, no serious investigations were carried out into these alleged international crimes, which could constitute crimes against humanity. The main alleged perpetrators were not held accountable by the justice system. The victims that we met shared their insatiable desire for truth and justice. There were many victims who shared their fear that violence between these communities could be repeated. They underscored the importance of a reconciliation process. Although the security situation remains fragile in the Kasai region, these measures to investigate and bring to justice those responsible, and to provide reparation and mediation are imperative if tensions are to continue to ease.

Our organisations also investigated recent outbreaks of violence that took place in the Yumbi territory in the province of Mai-Ndombe, where between 16 and 18 December 2018, according to estimates of the United Nations, at least 535 people from the local population were killed during attacks perpetrated in four villages. According to the preliminary results of an investigation conducted by our organisations, many crimes were systematically committed, including murder, mutilation, including sexual mutilation, and the pillaging of property. The United Nations identified more than 50 mass graves, and more than 16,000 people took refuge in Congo-Brazzaville. It is believed that most of the victims belonged to the Banunu community and were targeted by members of the Batende community because of rivalry over ancestral lands. Our information also indicates that the violence was encouraged and supported by State agents and was likely linked to the elections. Although investigations have been launched by national authorities, it is unclear whether they are progressing. As of today, the general elections in Yumbi are scheduled to take place on 31 March 2019, after having been postponed in this area because of the violence that erupted in December. According to testimony gathered by our organisations, people are fearful because of the risk that tensions will escalate and that the attacks will resume if representatives of either of the two communities win the election. Along with these investigative and prosecution measures that are essential to shed light on the crimes committed in these areas, the authorities must take stock of the current state of tensions between the different communities and hold dialogues with the populations on the measures necessary to alleviate the tension.

In recent years, several significant conflicts have therefore resulted from authorities' attempts to pit communities against each other for political and electoral ends. These conflicts have deeply affected the populations. They have had a detrimental impact on the balance and ability to coexist of the communities in question. The victims and affected communities are calling for the end of impunity and for concrete support to rebuild their lives and social fabric. Although all of these crimes cannot be judged in the short term, it is crucial that the new authorities prosecute those who bear the greatest responsibility. Authorities should also push for a mediation process to be implemented and for support mechanisms to urgently be provided to victims.

Providing reparation to victims

Thousands of victims have undergone significant material and moral damages as a result of the terrible violence they experienced. They have the right to reparations. The Congolese State has the obligation to provide reparations to cover all injuries suffered by the victims. This can take several forms: restitution, compensation, rehabilitation, satisfaction and guarantees that violations will not be repeated. **A national reparation plan**, which adopts a comprehensive approach based on the needs of victims and established in consultation with them, should be implemented by the authorities with the support of international partners. Given the scale of the sexual violence committed throughout the territory and the specific nature of its impact on victims, **a specific program of reparation for the victims of sexual violence** should be implemented.

The State must contribute to financing this reparations plan, in accordance with its budgetary capacity, to send a strong political signal and demonstrate its desire to support victims and abide by its legal and moral obligations.

To date, no one has been prosecuted for the serious human rights violations committed in the context of the electoral process and in the conflict-affected areas. Many victims of the crimes

committed before the last election cycle are also waiting for justice and for the implementation of reconciliation and reparation measures. The Congolese authorities cannot evade their obligation and should respond to the feelings of anger and injustice experienced by victims, which over time could lead to a possible repetition of the cycles of violence. Authorities must ensure that no reward or amnesty is given to those who bear the greatest responsibility for the crimes committed, some of whom were promoted or transferred to higher positions within the former regime of Joseph Kabila.

To address the situation, the implementation of **transitional justice mechanisms and a comprehensive reparations plan** must be a priority of the new authorities. Debates and consultations must be held with the population and the victims, in a non-politicized atmosphere, in order to draw the necessary lessons from the failures of the past, in particular the first TRC in the DRC, and to guarantee the effectiveness of the mechanisms implemented. It is crucial that a holistic transitional justice process take place to bring an end to the impunity that has lasted far too long, and has avoided any possibility of rebuilding the rule of law and creating lasting peace in the DRC.

Promoting the establishment of an independent and efficient judicial system

Despite the reforms undertaken since 2006, the Congolese justice system remains dysfunctional and largely under the control of the executive, legislative, administrative and military branches. The capacity of judicial authorities to prosecute the alleged perpetrators of crimes is considerably hampered by the interference of political actors and the military hierarchy. Furthermore, corruption and the lack of financial, material and human resources available to the courts renders any form of judicial protection and justice inaccessible to the vast majority of the population, particularly the poorest. Many human rights violations, including the most serious ones, are therefore not investigated at all. Similarly, when judicial procedures are triggered, the right to a fair trial is often not respected. It is common for prisoners to escape, which also reinforces the sense that the justice system is useless and obsolete. These factors contribute to the generalised impunity that prevails in the DRC. The creation of an efficient, accessible, fair and independent judicial system should be a priority for the new authorities of the DRC, and would contribute to fighting impunity, discouraging people from committing abuses and crimes and re-establishing the rule of law.

The Congolese authorities should:

- Adopt a holistic transitional justice policy, which could for example involve the creation of specialised mixed chambers to prosecute international crimes that are integrated into the Congolese judicial system and a Truth and Reconciliation Commission. This policy and its various judicial and non-judicial mechanisms should aim to analyse and shed light on the crimes and methods used for the perpetration of violence in the past (including when Congolese authorities are found responsible); provide justice to victims; promote reparation measures and institutional reforms; and facilitate national reconciliation.
- As part of this process, conduct independent, impartial, transparent and efficient investigations into the serious violations of human rights and international law committed in the context of the electoral process and in conflict-affected areas, placing a priority on the prosecution of the individuals allegedly bearing the greatest responsibility.
- Implement a vetting process to ensure that “Public officials and employees who are personally responsible for gross violations of human rights, in particular those involved in military, security, police, intelligence and judicial sectors, shall not continue to serve in State institutions”¹ and that such officials do not benefit from amnesty measures or positions within the new institutions of the country.

1. See E/CN.4/2005/102/Add.1, Updated Set of principles for the protection and promotion of human rights through action to combat impunity, principle 36 a), Addendum to the Report of the independent expert to update the Set of principles to combat impunity, Diane Orentlicher.

- Adopt a national reparations plan for the victims of serious human rights violations, including a specific program for victims of sexual violence, centered on the victims' needs, over the short and long-term, and in accordance with the international obligations of the DRC and the recommendations of the UN Mapping Report and the Commission for the Elimination of all Forms of Discrimination Against Women.
- While waiting for the operationalisation of these mechanisms, set up interim mediation and support mechanisms (medical, psychological and social) for the victims and communities affected by recent conflicts, especially in the Kasai, Ituri, North and South Kivu provinces and Yumbi territory, to enable the immediate needs of victims to be met and to alleviate tensions and avoid a resurgence of conflict.
- Undertake the necessary reforms to guarantee the efficiency, impartiality and independence of the judicial system at all levels, including within the highest judicial institutions such as the Constitutional Court and the Court of Cassation.
- In particular, take the necessary measures to guarantee that the poorest victims are exempted from paying legal fees.
- Modify domestic laws so that alleged perpetrators of human rights violations and international crimes, including members of the Congolese army, are tried before civil jurisdictions. Therefore, provide training to judicial officials, according to the recommendations of the UN Human Rights Committee.

Priority 2: Respect fundamental rights and promote political dialogue

Since protests began in 2015, attacks against fundamental rights and freedoms have intensified. While the Congolese people were legitimately demanding that Joseph Kabila to retire and elections be held according to the Constitution, the former regime used violence and authoritarianism to stifle dissent.

Numerous human rights violations were committed. Since 2015, several hundred people have been killed by security forces as a result of the suppression of protests. Dozens of opposition supporters or leaders, pro-democracy activists and demonstrators were arrested and arbitrarily thrown in jail. Some were held in secret locations and were subjected to cruel and inhuman treatment during their detention. Countless acts of harassment, including judicial harassment, were reported. On many occasions, our organisations called for the release of members of the citizen's movements Filimbi and LUCHA. Indeed, some of them had been arbitrarily detained and sentenced due to their peaceful human rights activities. For example, Carbone Beni Wa Beya, in charge of mobilisation and deployment at Filimbi; Mino Bompomi, coordinator of the Kinshasa cell; and Grâce Tshiuza and Cédric Kalonji, members of the Filimbi movement, were unfairly sentenced to one year in prison, and finally released in December 2018.

The right to freedom of association, expression, peaceful assembly, and the freedom of the press and of information were excessively and arbitrarily limited. Journalists were threatened and were the victims of attacks. Some independent media outlets were closed or suspended. Internet access and access to social media networks were regularly blocked, particularly between 31 December 2018 and 19 January 2019, to prevent independent information from being broadcast. This suppression of information, resulting in a shrinking of civic space and multiple human rights violations, served only to just fueled further protests and opposition to the former regime.

Throughout the electoral process, our organisations documented many cases of arbitrary arrest and detention, acts of intimidation and harassment, including judicial harassment, torture and extrajudicial executions targeting opposition supporters, human rights defenders, media professionals and peaceful protesters.

These attacks were part of a deliberate government policy. In fact, since 2015, we have observed a systematic pattern of repression towards individuals expressing their political views or participating in peaceful protests. This phenomenon increased as the elections approached, further exacerbating tensions. The dialogue with the political opposition and civil society was forestalled by the authorities.

The DRC has a long history of political repression and violence that have systematically increased during election cycles since 2006. These authoritarian practices, aimed at suppressing freedoms in order to retain power, have resulted in a crisis of legitimacy of the authorities and continued instability and insecurity. Since his inauguration, Félix Tshisekedi has committed to take measures to ease tensions, announcing for example that political prisoners would soon be released. We applaud Félix Tshisekedi's decision to pardon about 700 prisoners of conscience and other people arbitrarily detained on March 13, 2019, including opposition leaders Franck Diongo and Firmin Yangambi.

These efforts must continue and much remains to be done to improve the dire human rights situation in the country. In the aftermath of the political transition, and as many Congolese are calling for a definitive break with the practices of the former regime, **the new authorities should focus their policies on the respect for fundamental freedoms and human rights, especially civil and political rights**. The authorities should also focus on implementing an open policy based on consultation, and hold inclusive dialogue with the opposition and civil society.

Therefore, the Congolese authorities should:

- Ensure the protection of the physical and psychological integrity of all human rights defenders under all circumstances.
- Immediately and unconditionally release all prisoners of conscience, including political opponents and human rights defenders arbitrarily arrested and detained, and ensure that charges against them are dropped.
- Identify and close all secret detention facilities, including the dungeons of the National Intelligence Agency, in line with Félix Tshisekedi's commitments.
- Fully guarantee the exercise of civil and political rights throughout the country, including the right to freedom of expression, association and peaceful assembly, as well as the right to information.
- End all threats, intimidation and harassment, including judicial harassment, against members of the political opposition, human rights defenders, activists of citizens' movements and journalists.
- Allow arbitrarily closed or suspended independent media organisations to broadcast information freely and guarantee fair access to public media to all political parties and civil society actors.
- Provide clear and public messages to defence and security forces regarding the obligation to use force in a proportionate manner when managing demonstrations.
- Take the necessary measures to calm the political climate and ensure a permanent and ongoing dialogue between the different political parties, in order to guarantee national cohesion.

Priority 3: Build an egalitarian society by promoting the rights of women and gender equality

The country's political transition must allow for **a more egalitarian Congolese society to be built**, and the new authorities should make **the protection and promotion of women's rights and gender equality** one of their priorities.

Women's lack of access to political, economic and administrative responsibilities is a major stumbling block in bringing change to the country. Article 14 of the Constitution enshrines **equal representation of men and women in national, provincial and local institutions** and stipulates that the State shall guarantee the implementation of this equality. A law must be enacted to set the methods for the application of these rights. Such a law (No. 15/013) was adopted on 1 August 2015 and promulgated by the former President of the Republic.

In practice, however, the Congolese State has never ensured the implementation of this constitutional commitment and even less of the law for gender parity within institutions. With regard to the political representation of women, the current Electoral Law has completely ignored this constitutional provision and is therefore absolutely discriminatory. In the 2018 elections, only 50 women were elected as members of Parliament (MPs) out of a total of 485, or only 10.3% of the National Assembly. In South Kivu, only three women out of 44 MPs were elected to the Provincial Assembly (6.8%). This sad reality is similar in all provinces of the country. Constitutional and legislative provisions have not sufficed to guarantee that women have equal access to positions of political responsibility and decision-making.

At the same time and over the entire country, Congolese women and girls have continued to suffer from **many acts of violence and discrimination because of their gender**. Their access to land, financial and natural resources and technology, means of production and credit is generally extremely restricted. Despite equality in the eyes of the law, women and girls are often deprived of all or part of their heritage because of the perpetuation of certain customs, especially in rural environments. Many girls are also the victims of child marriage, which is a vector for sexual violence. Estimates vary, but this phenomenon could affect as many as 40% of underage girls. According to research done by the United Nations Population Fund, 11% of women are married before they turn 15. However, there has been a law prohibiting this practice since 2006 and punishing the perpetrators with prison sentences of between 1 and 12 years and a fine of 100,000 Congolese francs.

Women's access to social, cultural and political life is also more limited than that of men, and they are generally relegated to the private sphere, where they must often assume the responsibility of the family and the household on their own. In the last elections, women represented only 12% of the total number of candidates and only one woman ran as a candidate in the presidential election. The above-mentioned forms of discrimination reduce their decision-making powers and increase their dependence and vulnerability.

Furthermore, the vast majority of women and girls have no access to legal and safe abortion services, as the Criminal Code of the Congo prohibits abortion without any exceptions. Women and girls who wish to have an abortion have no option but to recur to clandestine abortions, which generally take place in unsafe conditions and are performed by untrained practitioners under conditions disastrously lacking in hygiene. This legislation, among the most restrictive in the world, therefore forces Congolese women and girls to put their own health and life in danger, and is contrary to the regional and international commitments made by Congolese State.

These are only a few of the factors that contribute to **keeping women and girls in situations of poverty and marginalisation**.

Violence against women and girls of the Congo is endemic, especially sexual violence. In certain regions of the country (Ituri, Kasai, North and South Kivu, Tanganyika), outbursts of violence or a

resurgence of conflict, mass displacement of the population, the recruitment of girls as soldiers, a breakdown in the rule of law, and a proliferation of weapons since 2017 has accentuated violence against women and girls, in particular sexual violence. Both in zones affected by conflict and in the rest of the country, sexual violence is committed on a grand scale and can be used as a weapon of war, torture or repression. Such violence is often inflicted on victims based on their ethnic, political, clan or religious affiliation. For example, in July 2017 in Kasai, FIDH and its organisations documented cases of sexual and gender-based violence, especially rape and sexual mutilation, committed by members of the Congolese security services and of affiliated militia against victims believed to belong to a rival community. More often than not, victims must face the devastating consequences of this violence on their own and deal with the resulting stigma. In addition, victims very rarely see justice done or reparations provided for the abuses that they suffered.

Gender-based discrimination and violence, which disproportionately affect Congolese women and girls, have a negative impact on society as a whole and perpetuates inequality and poverty. **The Congolese authorities have a responsibility to combat violations of women's and girls' rights and to take action to protect and promote these rights.**

Therefore, the Congolese authorities should:

- Respect all their national, regional and international obligations to protect and promote women's rights, including the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, and guarantee equality in law and in practice for all Congolese citizens.
- Ensure the implementation of the provisions of article 14 of the Constitution providing for the application of gender parity within institutions.
- Fully implement the provisions of the African Commission on Human and Peoples' Rights Guidelines to Combat Sexual Violence and its Consequences in Africa (2017), in particular with regard to the prevention of sexual violence and its consequences and the protection and support of victims of sexual violence, including the decriminalization of abortion in cases of rape, the investigation and prosecution of sexual violence offences, and the right to reparation.
- Implement the recommendations of the United Nations Commission on Human Rights (2017) during its review of the fourth periodic report of the Democratic Republic of the Congo, and take all necessary measures to ensure that: (a) investigations are carried out into all cases of sexual violence and that perpetrators, if found guilty, are appropriately punished, regardless of their function and affiliation; (b) victims are provided with medical, psychological and social support, including by making the compensation fund for victims of sexual violence operational as soon as possible; (c) victims are given access to judicial services; (d) adopt legislation "providing women with appropriate protection against domestic violence, including by criminalizing domestic violence and marital rape".
- Implement the provisions of the Family Code (Act No. 16/008 of 15 July 2016), in particular its article 352 prohibiting child marriage.
- Ensure the effective implementation throughout the country of Act No. 06/018 of 20 July 2006 on sexual violence, including by adopting a specific law on the enforcement of judgments on sexual violence, providing for all administrative and legal costs to be waived for victims.
- Ensure women's and girls' access to sexual and reproductive rights, including access to quality sex education for all, access to legal and safe abortion, and access to contraception, including emergency contraception.
- Ensure women's participation in social, cultural and political life, including in the country's new institutions, in particular by ensuring the full implementation of Act No. 15/013 of 1 August 2015 on the implementation of women's rights and gender equality.

Priority 4: Enact substantial reforms to build the rule of law and democracy

Effective reform of the security sector

Despite the efforts of the international community to promote security sector reform (SSR), Congolese security forces continue to pose a considerable threat to the population. During Joseph Kabila's presidency they were used by the authorities for political purposes, to repress the population and sow chaos. They committed multiple human rights violations, including extrajudicial executions, torture, arbitrary arrests and detentions, sexual violence, looting, and forced displacement of populations.

In its annual report, the United Nations Joint Human Rights Office (UNJHRO) reported that of the more than 6,800 human rights violations recorded in 2018, more than 60% were attributable to state agents, mainly to elements of the Congolese Armed Forces (FARDC) and the Congolese National Police (PNC) alone. In November 2018, the UNJHRO also indicated that almost a quarter of the documented violations in conflict-affected provinces were committed by FARDC soldiers, the "main perpetrators" of the violence.

Serious and repeated abuses committed by members of security forces bring to light the failure of the security sector reform. The crucial need for serious and systemic reform of security forces has therefore remained unchanged for almost two decades. **The establishment of an organized, effective and professional security sector, under effective control** and with adequate resources, would help to combat insecurity, population displacement, sexual violence, recruitment of child soldiers and illegal trade in conflict-related minerals and would also promote economic growth.

So far, the lack of political will on the part of the Congolese authorities at the highest level of the State to support effective security sector reform has had catastrophic consequences on their ability to control the territory. Its impact on populations has been disastrous and has led to severe delays in the development of the country. It is well past the time to reverse this trend and make security sector reform a priority within the mandate of the new authorities.

Therefore, the Congolese authorities should:

- Exclude individuals who are slowing SSR from State institutions.
- Take all necessary measures to enact effective reform, including by requesting technical and financial assistance from international partners and by collaborating with members of civil society.
- Provide training to all security personnel on "human rights, including the rights of women and girls; sexual equality and gender equality; the different forms of sexual violence and their prevention and detection; the consequences of sexual violence; the rights and needs of victims of sexual violence", in accordance with the ACHPR Guidelines on combating sexual violence and its consequences in Africa.

Move towards strengthening democracy by reforming CENI

In the eyes of many Congolese, the Independent National Electoral Commission (CENI) discredited itself during the last electoral process. The politicization of this body and its inability to oversee a fair, transparent and effective electoral process was confirmed during the last elections.

CENI is suspected of having resorted to various manoeuvres to favour the presidential majority of the incumbent, and to deprive voters supposedly in favour of the opposition of their right to vote. Thus, many voters considered the decision to postpone elections in the opposition strongholds of Butembo, Beni and Yumbi as unjustified and politically motivated and saw it as a tactic to prevent the electorate from voting for their candidate. Because of that decision, more than 1.2 million voters

were excluded from the presidential elections. CENI also refused to provide accreditation to election observers before election day. CENI's refusal to give up the use of voting machines, despite all the problems and concerns raised by its use, and its refusal to benefit from MONUSCO's logistical support was also interpreted by many Congolese as a strategy to sabotage the elections and/or enable election fraud. The same thing happened when it was time to ensure the reliability of the voters' registry. CENI did not take the necessary measures to improve its quality and guarantee the credibility of the elections held. For many, these manoeuvres were largely orchestrated or covered up by the President of the Commission, Corneille Nangaa, a crony of President Kabila. These manoeuvres resulted in an increase in challenges and considerable erosion of the trust of the people of the Congo in that institution.

Reforms of the institution undertaken in 2013 by the authorities therefore did not meet the expectations of the people of the Congo, including the opposition and civil society. To the contrary, they were seen as a means for the authorities in place to cement their control over the Commission and their ability to interfere in the institutions of the country. **The best way to guarantee the independence, neutrality and credibility of CENI and thus provide the DRC with a body capable of organising democratic elections would be to undertake a new reform** as suggested below.

The Congolese authorities should:

- Reform CENI to ensure its independence, neutrality and credibility, including by providing for its members to be chosen from among independent experts, including from civil society, and by changing the method for appointing its members.
- Guarantee gender equality in its composition.
- Ensure that CENI has the human, material and financial resources required to fully accomplish its mandate,

Ensure the inclusivity of CNDH (NCHR)

Although it was set up in 2013, the work of the National Human Rights Commission remains largely unknown, particularly among human rights organizations, with which it has very little contact. Since the establishment of the NHRC, concerns have been raised on several occasions, not only about its composition - considered non-inclusive - its real capacity for action (due in particular to insufficient human, financial or material resources, which prevent it from carrying out actions that have any real impact), but also about the lack of transparency or visibility of its actions. It has existed for five years, and while the challenges in the promotion and protection of human rights remain significant in the DRC, it is important to initiate a process to evaluate the actions and impacts of the NHRC since its creation in order to identify ways to improve its functioning. That evaluation must be undertaken with the full participation of all relevant actors, including human rights organisations.

In that regard, the Congolese authorities should:

- Take all necessary measures to ensure that the National Human Rights Commission (NHRC) is compliant with the Paris Principles.
- In particular, carry out an evaluation of its actions, with the involvement of human rights organisations, in order to identify ways to improve its functioning so that it can fully carry out its mandate to protect and promote human rights, in a context of complete independence, neutrality and transparency.

For a legal framework for the protection of freedom and human rights defenders

Law on the protection of human rights defenders

Although the criminalisation and repression of human rights defenders is nothing new in the Democratic Republic of the Congo, our organisations have documented an increase in attacks, threats and intimidation against them since 2015 in the context of political transition. Many human

rights defenders, pro-democracy activists and members of citizen movements have been arbitrarily arrested, tortured at times during detention, harassed by the justice system and sentenced to long prison sentences after unfair trials conducted for manifestly political reasons. Some have been attacked by security forces when they were participating in peaceful demonstrations, and wounded by gunshot, or even killed. This generalised atmosphere of intimidation and repression was intended to silence voices calling for the organisation of free and fair elections and expressing a desire for a democratic handover of power. It is urgent for the Congolese authorities to construct a legislative arsenal that is capable of protecting human rights defenders and sanctioning the perpetrators of violations of their rights.

However, **while a draft law on human rights defenders is currently being examined by the Congolese Parliament**, it contains **worrying provisions** that may further hamper their legitimate and peaceful activities and threaten the recognition of their status. For example, the text includes a very restrictive definition of “human rights defender”, which would have the effect of excluding certain defenders from the scope of the law, particularly the youngest, those who have not received human rights training and those who carry out their activities outside formal and organised structures. Far from strengthening the protection of human rights defenders, the project introduces excessive and discriminatory conditions that violate international human rights instruments, including the United Nations Declaration on Human Rights Defenders. Moreover, during the October 2017 review of the DRC by the Human Rights Committee, its experts indicated that the draft law was “harmful” to the protection of defenders.

Congolese human rights defenders play an essential role in promoting justice, equality, freedom and democracy in the country. Building and strengthening open collaboration with the Congolese human rights defender community would allow the authorities to benefit from crucial support, particularly in the implementation of the Congolese State’s regional and international obligations, and in the establishment of peace, security, and progress towards sustainable development. To do so, the new authorities must commit to creating a non-restrictive and favourable legal environment for their activities and engage in an inclusive dialogue with Congolese defenders on the amendment of the draft law.

The Congolese authorities should:

- Amend the draft law on human rights defenders to bring it into line with regional and international standards for the protection of human rights defenders, including those of the United Nations Declaration on Human Rights Defenders, and Resolution 69 of ACHPR. To this end, conduct broad and inclusive consultations with Congolese human rights defenders and take into consideration their proposals for amendments to the draft law.
- In particular, provide for the most inclusive definition of human rights defenders and remove any legal and/or administrative restrictions that would impede their legitimate and peaceful work, in accordance with the United Nations Declaration on Human Rights Defenders. In consultation with human rights organisations, establish special mechanisms and dedicated resources to protect human rights defenders, in consideration of the fact that they are a category of persons specifically targeted for harassment and repression.

Law on non-profit and public utility organizations

In November 2017, the lower house of Parliament ruled that a draft law on non-profit associations and public utility institutions was admissible. **If adopted as it stands, this bill would seriously undermine the rights to freedom of association and expression** and further restrict civic space. The text introduces new restrictions, particularly in administrative matters, on the registration of NGOs and access to national and international funding. It aims to reduce the number of NGOs that may operate in the country and their capacity to carry out their activities, especially political activities. This new legal framework would considerably limit the actions of civil society organisations, at the same time as segments of civil society want to restore trust with the newly elected authorities and take an active part in the long-awaited transition, reforms and changes.

The Congolese authorities should:

- Abandon the draft law on non-profit and public utility organizations, and ensure that any reform of the current legislative framework is in line with international and regional human rights standards, in particular the Guidelines on Freedom of Association and Assembly in Africa, and the recommendations made to the Congolese State by various United Nations entities.

Priority 5: Strengthen cooperation with the international community and mechanisms for the protection of human rights

The political, security and human rights crisis in DRC has led to increasing tensions in relations between Congolese authorities and the international community. The United States, the European Union and the United Nations Security Council have all enacted sanctions against high-level bureaucrats of the former government and security forces who are responsible for acts of repression, human rights violations and for interfering in the elections. When the European Union renewed its sanctions on 10 December 2018 against 14 high-ranking officials of the Congo responsible for such acts (including the FCC presidential candidate, Emmanuel Ramazani Shadary), the authorities expelled Bart Ouvry, the European Union ambassador in Kinshasa. At the beginning of 2018, the government of the Congo had also closed down the Schengen House, which provided consular services to the citizens of 18 countries of the European Union, in response to a decision by Belgian authorities to suspend all bilateral aid to the Congolese government and reorient that aid towards humanitarian actors within civil society. In January 2018, the European Parliament adopted a resolution condemning the violations that had occurred in the country, especially those perpetrated by Congolese security forces.

As delays in the elections piled up and violence increased, Congolese authorities, with Joseph Kabila in the lead, found themselves more and more isolated both internationally and in the region. Some of the traditional allies of his regime, such as Angola, publicly expressed their concern regarding the political crisis and its repercussions for security in the DRC and the surrounding region. In July 2018, Joseph Kabila cancelled a meeting with the Secretary-General of the United Nations, António Guterres, and the Chairperson of the African Union Commission (AUC), Moussa Faki. He also refused to meet with certain regional and international leaders, including the acting Chair of the African Union (AU), Paul Kagame, as the date for the elections drew near.

The purpose of these manoeuvres was to evade pressure from the regional and international community, who opposed a third mandate for Joseph Kabila (it was felt to be too much of a risk for regional security), and who were calling for the organisation of free and fair elections. As a result, the international community was also broadly excluded from the financing and supervision of the general election. In this context, regional leaders from the African Union and SADC expressed their concern, after the elections held on 30 December 2018, regarding the credibility of the electoral process and the provisional results, and demanded that CENI refrain from proclaiming any final results.

This heightening of the crisis in DRC also contributed to damaging cooperation between Congolese authorities and the United Nations over the course of recent years. In 2008 particularly, Congolese authorities reiterated on several occasions their wish that MONUSCO should make its final departure from the country by no later than 2020. At the same time, in September 2018, Joseph Kabila denounced the interference of certain States in the internal affairs of his country before the General Assembly of the United Nations. The former Congolese authorities had also refused MONUSCO's technical and logistical support in organizing the elections, probably so that they could better control the electoral process. The question of the humanitarian situation in DRC also caused tensions to increase to a fever pitch in April 2018, when Congolese authorities refused to participate in a Conference of Donors organised in Geneva by the United Nations in order to finance humanitarian aid for the people of the Congo. Those in power in the Congo at the time, in a manifest effort to minimise the scope of the crisis, had deemed that the numbers published and the alarm raised by the United Nations were exaggerated.

The policies of the former regime therefore contributed to the deterioration of relations with the international and regional communities. According to our organisations, it is essential for the new authorities to strive to restore and consolidate that cooperation once again. Enhanced support from the international community seems essential to strengthen the authorities' capacities to deal

with the many challenges posed by the crisis in the country. This support is particularly important for matters including, but not limited to, combating insecurity and the proliferation of militias and armed groups, combating impunity for the perpetrators of the most serious crimes, fighting poverty, supporting access to education, economic growth and sustainable development, providing emergency humanitarian assistance to all affected populations, fighting corruption and promoting transparent and equitable management of natural resources.

Positive and strengthened cooperation with regional and international human rights mechanisms and the ratification and implementation of various human rights instruments would also enable the Congolese State to transform its regional and international commitments into concrete progress.

As a priority, the Congolese authorities should:

- Cooperate fully with the African Commission on Human and Peoples' Rights, including by allowing a documentation mission to be conducted in DRC in order to determine the nature and scope of the violation of the rights enshrined in the Charter and the main actors who are responsible, pursuant to Resolution 393 of the ACHPR.
- Fully collaborate with all United Nations entities, especially with a) the Joint Office for Human Rights, in particular by "ensuring the security and freedom of movement of all United Nations personnel over the entirety of its territory and by fully cooperating with observation and verification missions undertaken by personnel of the Joint Office"; and b) the team of two international human rights experts mandated by resolution 38/20 of 6 July 2018 of the Human Rights Commission tasked in particular with the follow-up, evaluation, support and reporting for the DRC's implementation of the recommendations made by the former Team of international experts in its report, especially regarding the fight against impunity and measures to promote reconciliation.
- Advocate for a strengthening of the human rights component of MONUSCO's new mandate and cooperate closely with the Mission's representatives;
- Cooperate fully with the International Criminal Court in the investigations opened since June 2004 on the DRC, adopt a law implementing the Statute of the International Criminal Court and implement the principle of complementarity enshrined in the Statute.
- Cooperate fully with the European Union, and engage in discussions aimed at defining common priorities in the field of human rights, justice and the rule of law, including and supporting civil society and human rights defenders.
- Cooperate fully with humanitarian organisations and guarantee them free access to all areas affected by the violence to assess the needs of the population and provide emergency assistance as soon as possible.
- Ratify and implement the African Charter on Democracy, Elections and Governance and implement its provisions.
- Ratify and implement the African Charter on the Rights and Welfare of the Child.
- Deposit the instrument confirming their declaration under Article 34(6) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights, allowing individuals and NGOs to bring cases before the Court.
- Implement all of the provisions of the ACHPR Guidelines on combatting sexual violence and its consequences in Africa (2017).
- Ratify the Optional protocol to the Convention on the Elimination of All Forms of Discrimination against Women and implement the recommendations adopted by CEDAW in July 2013.
- Implement a national mechanism to prevent torture and other cruel, inhuman or degrading treatment or punishment, pursuant to article 3 of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, to which the State of the Congo is a signatory.

- Adopt a moratorium on executions, as an initial step toward the legal abolition of the death penalty; proceed to the ratification of the second optional protocol to the International Covenant on Civil and Political Rights, with the goal of abolishing the death penalty and supporting the efforts of the African Commission for Human and People's Rights to promote the adoption of a Protocol to the African Charter on the abolition of the death penalty.



ROYAUME DE BELGIQUE
Affaires étrangères,
Commerce extérieur et
Coopération au Développement



AFD
AGENCE FRANÇAISE
DE DÉVELOPPEMENT

This publication was produced with the support of the Federal Public service Foreign Affairs, External Trade and Development Cooperation of the Kingdom of Belgium and the French Development Agency (AFD). The contents of this report are the sole responsibility of FIDH, the Groupe Lotus, the Ligue des Électeurs and the ASADHO and shall under no circumstances be interpreted as reflecting the views of the Ministry or the AFD.



ASADHO

ASADHO

The ASADHO was created in 1991. The objectives it pursues are:

- to defend, promote and safeguard of human rights as well as individual and collective freedoms;
- to promote respect for the law and the independence of the justice system in order to consolidate the Rule of Law, which is the basis of a democratic society;
- contribute to raise awareness on human rights.

ASADHO
Immeuble Katalay
Avenue de la Paix n°12
Kinshasa / Gombe, Local 1, 1^{er} niveau
République démocratique du Congo
Tél. : (00243) 99 703 29 84
Site web : www.asadho-rdc.org
Blog.asadho-rdc.org



LEAGUE OF VOTERS

The purpose of the League of Voters, created in 1990, is to support democratic development, particularly through the defense of human rights and the promotion of the culture of elections. The League carries out training activities for members of civil society associations in their capacity as leaders of the democratic movement; activities to raise popular awareness of human rights; and international electoral assessment and observation missions..

LEAGUE OF VOTERS
Complexe Omnisports Stade des Martyrs, Rez-de-chaussée, Accès 7, Local 7-5
Commune de Kinshasa, Ville de Kinshasa, République démocratique du Congo
Tél : +243815079823 /+243855079823
E-mail : laliguedeselecteurs17@gmail.com



The Lotus Group is a non-governmental organisation based in Kisangani

It reports human rights violations, raises public awareness and investigates the practices of authorities in order to compel governments to respect the rule of law.

It supports those who suffer from discrimination and oppression due to their membership in a social, national or religious group or to their political opinion.

It informs, teaches and promotes human rights values and democratic principles in order to advance them in the DRC.

Lotus Group
25 avenue des Erable,
C/Makiso, Kisangani, République démocratique du Congo
Tél. : +243818990950 / +243998539252 +243819202095 / +243993045384
Fax : +873762014330
E-mails : groupelotusrdc@yahoo.fr / dismaskitenge@yahoo.fr
Site web : www.groupelotusrdc.org
Blogs : blog.lotusrdc.org / lotusrdc.unblog.fr

Keep your eyes open

fidh

Director of publications:

Dimitris Christopoulos

Editor in chief:

Éléonore Morel

Authors :

Justine Duby,
Tchérina Jerolon,
Florent Geel

Coordination :

Justine Duby

Design :

FIDH

Establishing the facts - Investigative and trial observation missions

Supporting civil society - Training and exchange

Mobilising the international community - Advocacy before intergovernmental bodies

Informing and reporting - Mobilising public opinion

For FIDH, transforming societies relies on the work of local actors.

The Worldwide movement for human rights acts at national, regional and international levels in support of its member and partner organisations to address human rights abuses and consolidate democratic processes. Its work is directed at States and those in power, such as armed opposition groups and multinational corporations.

Its primary beneficiaries are national human rights organisations who are members of the Movement, and through them, the victims of human rights violations. FIDH also cooperates with other local partner organisations and actors of change.

fidh

CONTACT US

FIDH

17, passage de la Main d'Or

75011 Paris

Tel: (33-1) 43 55 25 18

www.fidh.org

Twitter: @fidh_en / fidh_fr / fidh_es

Facebook:

<https://www.facebook.com/FIDH.HumanRights/>



FIDH is an international
human rights NGO federating
184 organizations
from 112 countries.

fidh

ABOUT FIDH

FIDH takes action for the protection of victims of human rights violations, for the prevention of violations and to bring perpetrators to justice.

A broad mandate

FIDH works for the respect of all the rights set out in the Universal Declaration of Human Rights: civil and political rights, as well as economic, social and cultural rights.

A universal movement

FIDH was established in 1922, and today unites 184 member organisations in 112 countries around the world. FIDH coordinates and supports their activities and provides them with a voice at the international level.

An independent organisation

Like its member organisations, FIDH is not linked to any party or religion and is independent of all governments.