

# **The new mandate of MONUSCO must address the crackdown against civil society ahead of key elections in the Democratic Republic of the Congo (DRC)**

Position paper – 11 March 2016 -

On 30 March 2016, the UN Security Council will renew the mandate of the UN Stabilization Mission in the DRC and its intervention brigade. In 2015, the Allied Democratic Forces (ADF), the Democratic Forces for the Liberation of Rwanda (FDLR), and other armed groups have continued to commit atrocities against the civilian population in eastern DRC. This past year was also marked by a severe government crackdown on civil society and political opponents in the lead-up to the elections, scheduled for November 2016. Furthermore, relations between the Government of DRC and MONUSCO have deteriorated significantly in the last few years.



Credit : AFP

Despite these challenges, it is more important than ever that the international community does not abandon the goal of achieving peace in the DRC. Today, the DRC stands at a critical juncture. According to the constitution, President Kabila's term is supposed to end on 19 December 2016. If elections are not held before this date, DRC could face a political and human rights crisis that could surpass the scale of violence seen in neighboring Burundi. The civilian population of the DRC who has suffered so tremendously over the last 20 years of conflict is hoping for a transition that will bring peace and greater respect for human rights. In this respect, FIDH and its member organizations wish to highlight new developments this year and provide recommendations on the renewal of MONUSCO's mandate.

## **I. Context**

### **Human rights violations by Congolese security forces in the pre-electoral context**

FIDH and its member organizations are deeply concerned by the deterioration of the human rights situation in the Democratic Republic of the Congo (DRC), in particular the crackdown on peaceful activists and political opponents ahead of the presidential election scheduled for November 2016. The year 2015 has been marked by an increasingly repressive political climate against human rights defenders, journalists, political opponents and other independent or critical voices who have denounced the proposed electoral reform that would allow a *de facto* extension of President Joseph Kabila's term in office beyond his constitutionally-mandated two terms, ending in December 2016.

In January 2015, thousands of Congolese citizens took to the streets of Kinshasa and larger towns like Goma and Bukavu to protest against the draft electoral reform. Government defense and security forces violently repressed the popular protests, responding with disproportionate force and unjustified use of live ammunition, killing at least 42 protestors, wounding dozens more, and resorting to mass arbitrary arrests and detentions. Among those arbitrarily detained is prominent human rights defender Mr. Christopher Ngoyi Mutamba, who took part in several peaceful protests and documented human rights violations that occurred during these protests. He was kidnapped by armed elements of the national guard, held incommunicado by the National Intelligence Agency (ANR) without access to a lawyer or legal counsel, and had trumped-up charges brought against him. His detention was recognized as arbitrary by the UN Working Group on arbitrary detention, which found that it resulted from the sole exercise of his human rights activities.

In March 2015, the ANR also arrested some 40 civil society activists and journalists who had gathered in Kinshasa to announce the launch of the "Filimbi" citizen platform aiming at encouraging youth participation in the electoral and democratic processes in the DRC. In Goma, in eastern DRC, the authorities later arrested and released at least 15 activists from the LUCHA (Lutte pour le Changement) youth movement who were peacefully demonstrating to demand the release of the Filimbi members. Fred Bahuma (Lutte pour le Changement) and Yves Makwambala (Filimbi), who were arrested during that event, remain in detention.

On 16 February 2016, several opposition platforms and other Congolese civil society organizations called for a "ghost town" day throughout the DRC to demand the holding of elections within the constitutional timeline, respect for the Constitution, and for the principle of democratic change of government. The UN Joint Human Rights Office reported that at least 45 protesters were arbitrarily arrested that day, including six LUCHA activists in Kinshasa who were sentenced to six months in prison for inciting public disorder.

Our organizations are also concerned about the prevailing impunity in the DRC, as evidenced by the acquittal on appeal on 17 September, 2015, of 4 of the 5 accused of the enforced disappearance and murder of two human rights defenders, Floribert Chebaya and Fidèle Bazana, more than 5 years after the facts.

In its latest report documenting human rights violations in relation with the electoral process from 1 January to 30 September 2015, the UN Joint Human Rights Office observed an increase in the number of instances of threats, arbitrary arrests and manipulation of justice, mainly targeting members of political opposition parties, civil society activists and media professionals and perpetrated primarily by members of the Congolese national police (PNC) and the national intelligence agency (ANR). The report also shows that the majority of violations took place in provinces where opposition parties and civil society organizations are prominent, and that in some instances justice has been instrumentalized in order to silence political opponents, human rights defenders and media professionals, and as a result intimidate civil society as a whole, raising the issue of the independence of the judiciary.

Our organizations are deeply concerned that such restrictions to freedoms of expression, peaceful assembly and association, as well as attacks and harassment against those expressing critical opinions against the government and its actions, have created a general atmosphere of

intimidation and indicate a narrowing of the democratic space in the country in the lead up to the presidential election. In this regard, the UN High Commissioner for Human Rights, Mr. Zeid Ra'ad Al-Hussein, reaffirmed the need to guarantee civil and political rights ahead of this key election, stating that "if the upcoming elections are to be credible and peaceful, the authorities must ensure that all citizens, independently of their political opinions, can fully participate in an open and democratic debate, and that civil society activists, media workers and political opponents are able to carry out their activities without fear".

### **Human rights violations by armed groups**

The victory of the Congolese army supported by MONUSCO's Intervention Brigade against the rebel armed group M23 in 2013, gave new hope for the eradication of other armed groups in eastern DRC and a return to peace. However since then, MONUSCO has achieved less success in the neutralization of other armed groups, particularly the FDLR and the ADF.

FIDH and its member organizations are extremely alarmed by continued deadly attacks on the civilian population in the Beni area, which have been attributed to ADF. According to MONUSCO, more than 500 civilians have been killed by the ADF since October 2014. These massacres have been extremely brutal in nature, with victims often being decapitated by machete. Despite the launch of Sukola I operations against the ADF in January 2014, the ADF leadership in Beni territory has remained largely intact and nearly all of the ADF leaders are alive or unaccounted for. According to the UN Group of Experts (GoE) report on the DRC of October 2015, FARDC officers deployed in Sukola I operations against the ADF were involved in the exploitation and sale of timber in Beni territory. Many victims and witnesses of the Beni attacks complained about the inadequate response of the FARDC. In some cases, the attacks occurred within 1 km from an FARDC base and when community members alerted the FARDC of the attacks, they did not take action. The UN experts noted with concern that the ability of the FARDC to respond to threats to civilians may have been limited by its involvement in timber exploitation. Furthermore, according to a report by the United Nations Joint Human Rights Office's report, some FARDC officers were actually implicated in some of the Beni killings. In view of these findings, the Security Council should review the terms of cooperation between MONUSCO forces and the FARDC, including joint operations on the territory of Beni.

At the same time, the UN experts questioned the inability of MONUSCO to protect civilians during these attacks (more than 30 separate incidents in Beni territory). The GoE report recommended that the UN Security Council conduct an independent investigation into why despite having a substantial presence in Beni territory, MONUSCO forces have failed to protect civilians there.

FIDH and its member organizations are also concerned about the FDLR who continue to be active in both North and South Kivu provinces and are responsible for committing human rights abuses against the civilian population. It is clear that the Government of DRC has lacked the political will to neutralize the FDLR. Diplomatic efforts by MONUSCO have also failed to achieve the full disarmament and surrender of the FDLR. In 2015, human rights violations committed by the FDLR increased compared to previous years. According to MONUSCO, among the armed groups, the FDLR committed the most human rights violations in 2015. One explanation for these increased attacks by the FDLR may be that the group has sought retaliation against the civilian population for cooperation with the FARDC in operations against the FDLR.

Although our organizations welcome DRC's recent implementation of the Rome Statute into domestic legislation, we remain concerned by the persisting impunity for perpetrators of international crimes, in particular crimes of sexual and gender-based violence (SGBV). The Minova trial illustrates the shortcomings of the Congolese justice system and the necessary reforms needed to ensure that perpetrators of sexual violence are held accountable and that victims have access to justice. The establishment of mixed chambers within Congolese courts for the investigation and prosecution of perpetrators of crimes under international law would be an important step in that direction. MONUSCO and DRC authorities must also

immediately arrest Sylvestre Mudacumura, Commander of the FDLR, who still remains at large despite an arrest warrant issued by the ICC since 13 July 2012 on nine counts of war crimes.

## **II. The priorities of the new mandate of MONUSCO**

### **A. The protection of civilians under imminent threat:**

#### **Findings:**

- The inability of MONUSCO forces to protect civilians from the attacks by the ADF in Beni territory;
- Continued destabilization of the country by numerous armed groups, including the ADF and the FDLR, who continue to prey upon the civilian population;
- Distrust between the FARDC and MONUSCO forces.

#### **Recommendations:**

Our organizations urge the Security Council:

- To renew the mandate of the Intervention Brigade in view of the continued insecurity in eastern DRC due to violence committed by armed groups and the atrocities they commit against the civilian population;
- To ensure the Intervention Brigade prioritize the neutralization of the ADF and FDLR;
- To ensure that MONUSCO continues its mandate to protect civilians under imminent threat, especially human rights defenders, journalists, and political opponents;
- To work with the Government of the DRC to identify threats to civilians and implement existing prevention and response plans and strengthen civil-military cooperation, including joint planning, to protect civilians from imminent harm;
- To ensure that MONUSCO forces conduct operations, unilaterally, if necessary, in order to protect civilians under threat of physical violence, especially in cases where the Congolese army is either unwilling or unable to protect civilians (i.e. the Beni case);
- To ensure the funding and immediate deployment of MONUSCO Women Protection Advisers throughout the DRC to assist the Government in the fight against impunity for conflict-related sexual violence.

### **B. To strengthen protection of human rights defenders and political opponents:**

#### **Findings:**

- Ongoing arbitrary arrest and illegal detention of human rights defenders, media workers, and political opponents in the pre-electoral context, including Filimbi and Lucha activists as well as Christopher Ngoyi Mutumba, Chairman of the human rights NGO, "Synergy of Congolese Culture and Development" (CSCB) has been detained since January 21, 2015 for participating in peaceful demonstrations against electoral reform that would allow President Kabila to run for a third term.);
- Failure of the Congolese Parliament to adopt a law on the protection of human rights defenders despite various bills introduced for this purpose for several years now;
- Lack of accountability for attacks on human rights defenders (ex. The acquittal of the five defendants accused of the killing of human rights defenders, Floribert Chebaya and Fidèle Bazana)



## **Recommendations:**

Our organizations urge the Security Council to mandate MONUSCO:

- To urge the Government to immediately release all human rights defenders, media workers, and political opponents from prison;
- To protect human rights defenders, journalists and other civilians who are the most vulnerable to attacks by security forces and armed groups;
- To assist the Congolese parliament with passing a law on the protection of human rights defenders.

## **C. To contribute to the respect of human rights and the rule of law through sustainable strategies to fight impunity in the DRC**

### **Findings:**

- Impunity for human rights violations committed by Congolese security forces in the pre-electoral context;
- Sylvestre Mudacumura, the FDLR Commander, remains at large despite an arrest warrant issued against him by the ICC since July 13, 2012 on nine counts of war crimes;
- PPRD's use of youth militia to crackdown on peaceful protesters;
- Continued legality of the death penalty under Congolese criminal law;
- Lack of ratification of key human rights instruments;
- Despite some progress in the prosecution of SGBV and certain international crimes, serious human rights violations remain largely unpunished;
- Lack of access to justice and reparations by victims of the gravest crimes, including SGBV crimes.

## **Recommendations:**

Our organizations urge the Security Council:

- To impose targeted sanctions against individuals responsible for the arbitrary killings of protestors in the pre-electoral context, including senior members of the ANR and PNC;
- To demand the Government of DRC to immediately arrest Sylvestre Mudacumura, the FDLR Commander, who has been wanted by the ICC since 2012 and remains at large;
- To condemn PPRD's use of youth militia to beat and harass protestors and to immediately call for the Government to end this practice;
- To monitor and document human rights violations committed in the pre-electoral context and ensure respect for civil liberties throughout the election process;
- To establish a MONUSCO hotline (similar to 2011) to allow victims of attacks by security forces during the elections to report incidents;
- To urge Congolese authorities to fully implement its international and national legal obligations, in particular the two 2006 laws on sexual violence by ensuring that all reports of sexual violence are investigated and that the perpetrators are arrested and prosecuted;
- To ensure that MONUSCO continues to support military judicial authorities by conducting joint investigations into serious violations of human rights and international humanitarian law and supporting the organization of mobile court hearings in remote areas;
- To encourage Congolese authorities to adopt key human rights instruments, including the Optional Protocol to CEDAW and the African Charter of the Rights and Welfare of the Child;
- To work with Congolese authorities on passing important legislation to promote and protect human rights, including legislation to:
  - Abolish the death penalty
  - Protect human rights defenders

- Establish mixed chambers within the Congolese courts for the investigation and prosecution of perpetrators of crimes under international law;
- Ensure reparations to victims of international crimes, in particular victims of SGBV crimes and to establish a government fund for such purposes.

#### **D. To provide logistical, technical, and security support during the upcoming presidential elections**

##### **Findings:**

- The lack of a national dialogue between President Kabila and opposition parties on the elections;
- The lack of consensus among key stakeholders on the electoral calendar;
- Failures to mobilize necessary funding and security for the holding of the elections;
- Need for technical support to the INEC;
- The fact that the electoral file managed by INEC could potentially consist of 9 million fake voters out of the 32 million registered voters, which runs a risk of electoral fraud and passport fraud (since passports are issued on the basis of voter cards).

##### **Recommendations:**

Our organizations urge the Security Council:

- To ensure that there is a sufficient amount of MONUSCO presence in the western parts of the country, especially in order to monitor the elections and any election-related violence;
- To deploy UN police units to key western cities before the elections, especially Kinshasa and Lubumbashi;
- To strengthen cooperation between MONUSCO and the Congolese security forces to prevent any attack on freedom of peaceful assembly and to prevent the use of excessive use of force in dispersing public demonstrations;
- To provide technical and logistical support to the Congolese authorities in the timely holding of elections, in particular presidential and legislative elections on November 2016;
- To provide technical assistance to the INEC and support the work and efforts of independent civil society in the supervision of the electoral process, including the campaign, "My vote must count";
- To strengthen MONUSCO's electoral division ahead of the elections so that it can provide technical assistance to the INEC;
- To play a mediation role between political stakeholders and the INEC to reach consensus on electoral matters.

#### **E. Participate in and oversee the disarmament, demobilization, reintegration, and repatriation (DDRR) of former combatants**

##### **Findings:**

- Lack of a coherent and strategic DDRR process developed by the government of the DRC;
- Insufficient logistical and financial resources to carry out this process;
- Insufficient support and collaboration in this process from certain countries in the region.

##### **Recommendations:**

Our organizations urge the Security Council to mandate MONUSCO:

- To assist the Congolese Government in the development and implementation of a DDRR program in the DRC to ensure that combatants are demobilized and returned to civilian life;
- To secure and guarantee the credibility of the voluntary disarmament of armed groups;
- To ensure that all joint operations with Congolese security forces against armed groups comply with international human rights law and international humanitarian law, especially the UN Human Rights Due Diligence Policy (HRDDP);
- To mobilize financial resources for the construction of transit sites and training centers for the rehabilitation of demobilized soldiers;
- To assist the Government in the establishment of a vetting mechanisms for the FARDC and PNC so that new recruits can be vetted for their human rights records.

## **F. To support and strengthen the process of security sector reform in the DRC**

### **Findings:**

- The absence of a comprehensive national security sector reform strategy and road map;
- Lack of adequate resources and equipment of Congolese security forces and as well as lack of human rights training;
- The absorption of former members of armed groups into the FARDC and PNC and the corresponding lack of human rights vetting mechanism for new recruitment into the FARDC and PNC;
- Deplorable prison conditions, including poor health conditions, severe overcrowding, lack of sufficient security, and dilapidated infrastructure resulting in deaths of detainees and well as frequent prison escapes.

### **Recommendations:**

Our organizations urge the Security Council to mandate MONUSCO:

- To focus on capacity-building of the FARDC and PNC, particularly in the development of a human rights vetting mechanism;
- To develop with the Congolese government indicators for monitoring and evaluating progress in security sector reform;
- To help improve prison infrastructure, conditions in detention, and security of prisons and to also work with the authorities to ensure that prison officials who assist in the escape of prisoners are arrested and prosecuted;
- To urge the Congolese authorities to grant MONUSCO and other international observers access to detention centers.

## **G. To establish benchmarks on human rights protection and good governance in MONUSCO's exit strategy**

### **Findings:**

- In March 2015, the Security Council emphasized the need for MONUSCO's exit strategy to be gradual and progressive, tied to specific targets to be jointly developed by the Government and the DRC;
- Insecurity in eastern DRC is still high and the civilian population remains vulnerable.

### **Recommendations:**

Our organizations urge the Security Council to mandate MONUSCO:

- To consult with Congolese civil society and DRC authorities to establish measureable indicators for MONUSCO's exit strategy. These indicators can include, *inter alia*:
  - On protection for human rights defenders, journalists, and political opponents:
    - The release of all political prisoners from prison who have been arbitrarily detained during the pre-electoral period
    - The adoption of legislation on the protection of human rights defenders
  - On sexual and gender-based violence (SGBV):
    - DRC's ratification and implementation of international and regional women's rights protection instruments, including the Optional Protocol to CEDAW and the African Charter on the Rights and Welfare of the Child;
    - Full implementation of the two 2006 laws on sexual violence.
  - On the fight against impunity:
    - Arrest of Sylvestre Mudacumura, leader of the FDLR;
    - Increase in women's access to justice, including free legal aid for victims and programs for the protection of victims and witnesses;
    - The establishment of mixed special chambers within the Congolese courts for the investigation and prosecution of perpetrators of crimes under international law;
    - Establishment of a comprehensive policy of reparations to victims of sexual violence by the State.

## Signatories:

- **FIDH**
- **ASADHO – Association africaine des droits de l'Homme**
- **LE – Ligue des Électeurs**
- **GL – Groupe Lotus**

\*\*\*

FIDH is an international human rights NGO federating 178 organizations from close to 120 countries. Since 1922, FIDH has been defending all civil, political, economic, social and cultural rights as set out in the Universal Declaration for Human Rights. FIDH's headquarters are in Paris and the organization has offices in Abidjan, Bamako, Brussels, Conakry, Geneva, The Hague, New-York, Pretoria and Tunis.