

## DR Congo: The EU and its member states must stop their “wait and see” approach and act now in a preventive and united manner

**C**ontrary to the rhetoric currently used by several diplomats and EU policy and decision-makers, 7 months before the presidential elections in the Democratic Republic of Congo (DRC) the situation is far from improving: no positive signs which could lead one to believe that fair, transparent and credible elections in December 2018 would actually occur are in sight.

Indeed no “*mesures de décrispation*” as provided for in the New Year’s Eve agreement of 31 December 2016 in terms of respect for fundamental freedoms and civil and political rights, including the release of political prisoners and the reopening of civic and media space, has been implemented. On the contrary, political meetings and public demonstrations are still [banned](#) and opponents, activists, journalists and dissident voices continue to face brutal repression through intimidation, harassment and unlawful detention. Moreover, recent developments such as the controversial [nomination](#) of three judges at the Constitutional Court, as well as declarations from senior Congolese officials presuming that Joseph Kabila would be running for a third-term and the [adoption](#) of the law on the distribution of seats raise serious questions about the reliability of the preparation of the electoral process. The actual will of the ruling power to organise fair, credible and transparent elections is anything but obvious.

As EU member states are due to discuss the situation in the DRC at the Foreign Affairs Council of the European Union (EU) on 28 May 2018, the European network for Central Africa (EurAc) wishes to express to EU ministers its deep concern about a human rights, security and humanitarian crisis that shows no signs of abating mainly due to the political situation.

The EU and its member states must put an end to the current positive rhetoric praising the positive steps taken by the government in the past months and realise the situation is dire and truly worrying: the implementation of the “*mesures de décrispation*” agreed upon in the 2016 New Year’s Eve Agreement has not been done; the brutal repression of dissent continues; repressive and punitive measures, such as controversial ongoing legal reforms or the closing of the Schengen house in Kinshasa, are taken by the regime affecting directly the population and its most fundamental rights and freedoms. These are signs that the regime has no real will to put an end to the political crisis.

Therefore, the EU must stop its ‘wait and see’ approach and act now in a preventive and united manner in order to avoid a worsening large-scale human rights, security and humanitarian crisis in the country and the region.

### Total absence of implementation of the “*mesures de décrispation*” agreed upon in the 2016 New Year’s Eve Agreement

#### a. Violent repression of dissent continues

Overall, according to the [UN Joint Human Rights Office \(UNJHRO\)](#), the total number of violations in relation to the restrictions of democratic space documented during first three months of 2018 (260 violations) corresponds to the total number of violations documented in 2015, as well as an increase of 46% compared to the first quarter of 2017 (177 violations). Members of civil society organisations are most targeted and as of now, 86 political prisoners are still unlawfully detained, according to the UN.

On 24 April, Mathieu Kanga, a pro-democracy activists in [Kisangani](#), was arrested and immediately sentenced to a six month prison term for organising a peaceful protest to denounce the growing insecurity in the city. Moreover Carbon

Beni, the network coordinator of the youth movement Filimbi, has been [arbitrarily detained](#) without charge since December 2017 together with 3 others Filimbi activists, Grâce Tshunza, Cédric Kalonji and Mino Bompomi, while his health is rapidly deteriorating.

Moreover, no solution has been found for “special cases” (“*cas emblématiques*”) like opposition leaders Moïse Katumbi, who is still in exile and Muyambo Kyassa jailed since 2015 for political motivations.

#### **b. Ban on public demonstrations still into force**

On 20 March 2018, the Congolese minister of human rights Marie-Ange Mushobekwa [announced](#) at the Human Rights Council in Geneva that the much [criticized](#) general ban on public demonstrations was lifted. This seemed to constitute a major step forward in the implementation of the New Year’s Agreement’s “*mesures de décrispation*”, and came after the [brutal crackdown](#) on protest marches in December, January and February. However, contrary to Minister Mushobekwa’s announcement the ban was never lifted. Local authorities [publicly contradicted](#) the minister by declaring that they would not authorise demonstrations. On 28 March, one week after the minister’s announcement in Geneva, peaceful protests by pro-democracy movement Lucha were [dispersed](#) in Beni and Goma with police using excessive force, wounding at least five people and arresting eleven protesters. On 27 April and 1 May, similar peaceful demonstrations by Lucha were dispersed in [Lubumbashi](#) and [Goma](#) and many activists were arbitrarily detained.

On 8 May, the UN Secretary General [called](#) for an end to the ban on public demonstrations which is in place since October 2016, but to no effect. The Congolese president has refused to promulgate a [new law on public demonstrations](#), approved by both houses of the Congolese parliament in 2015, and recently sent it back to the parliament for revision in violation of DRC Constitution provisions relating to law enactment processes. This raises fears that the severe restrictions and repression of public demonstrations will be maintained and consolidated in a new, revised version of the law as suggested in the recommendations sent back to Parliament by the President.

Even though the opposition party UDPS was allowed to organise a [public meeting](#) in Kinshasa on 24 April, it is a clear exception as other opposition parties, even other UDPS sections across the country, are still not allowed to organise public meetings and demonstrations. Recent examples are the [banning](#) of a meeting by the UDPS section in Uvira on 7 May; the arrest of 28 militants of the political platform supporting the opposition leader Moïse Katumbi called ‘*Ensemble pour le changement*’ in [Lubumbashi](#) in April and the ban of one of their public demonstration in [Bunia](#) on 19 May.

Finally, the joint commission of inquiry, set up by the government in February 2018, collected information on and acknowledged most of the violations committed by the security forces during the demonstrations in December 2017 and January 2018. The commission of inquiry, which includes representatives of the Congolese government and local human rights organisations, released its first conclusions on 10 March making a series of recommendations to the government, the parliament and the judiciary. However, after two months, most of these recommendations have not been implemented. Many of the civil society organisations who took part in this process finally decided to step out.

## **No concrete steps to organise fair, transparent and credible elections in December 2018**

#### **a. No explicit mention from Joseph Kabila that he will not run for a third term**

In December 2016, opposition parties and the ruling coalition agreed to a one-year transition period. Joseph Kabila would remain president in a transitional government led by the opposition, on the condition that the repression of opposition and human rights activists would stop (through the so-called “*mesures de décrispation*”) and that Joseph Kabila would step down in December 2017. This agreement has been violated again and again, and the new electoral calendar published on 5 November 2017 scheduled presidential, parliamentary and provincial elections for 23 December 2018. This is two years after the end of the second and final presidential mandate of Joseph Kabila, allowing

a new extension of Kabila's mandate, this time without consultation with the opposition and civil society. Since then, Joseph Kabila continues to give no indication that he will step down either democratically or peacefully in December 2018.

Worse still, recently, senior government and ruling party officials as the General Secretary of the ruling party PPRD Emmanuel Shadary made [public statements](#) presuming a possible third-term for Joseph Kabila, singing his praises as ruler. Additionally, [more and more posters](#) are appearing in Kinshasa and in other towns across the country presenting Joseph Kabila as the strong man who can save the country, as a premise of electoral campaign for the president. These signs raise concerns about the political will of Joseph Kabila to organise credible and consensual elections in 2018.

#### **b. Designation of 3 new judges at the Constitutional Court**

Three new judges of the Constitutional Court have been [appointed](#) recently to replace the two judges who left the Court on 8 and 9 April another one who died. The regime took this opportunity to appoint close collaborators to these positions, such as François Bokona Wipa Bonzali, member of the Parliament from the ruling party PPRD and Norbert Nkulu, a close ally of the President and one of the advocates for Joseph Kabila during the electoral disputes at the Constitutional Court in 2006 and 2011. As the Constitutional Court will play a central role in the coming weeks and months in the context of electoral disputes, the potential lack of neutrality of its members is very worrying.

#### **c. Concerns over the recently adopted law on the distribution of seats**

Some [observers](#) raised concerns over the new law on the distribution of seats, recently adopted by the parliament and promulgated by the President on 8 May. The law is based on controversial statistics taken from the electoral register which remain highly contested, including by the opposition and civil society. Indeed, the electoral statistics of the register used in the new law were supposed to be audited by the Organisation Internationale de la Francophonie (OIF) before the adoption of the law but this did not happen. Moreover figures present in the law are [different](#) from those publicly announced by the National Electoral Commission (CENI) on 6 May 2018. This seriously undermines the credibility of the current electoral process and opens the way for electoral disputes and contestation.

## **Repressive and punitive measures of the Congolese government affect its own population and civil society**

#### **a. Repressive and controversial laws against local and international CSOs and human rights defenders**

In their current forms, these Bills (on the regulation of Non-Governmental Organisations (NGO), Human Rights Defenders (HRD) and Counter-terrorism) announced in the Congolese National Assembly pose an unprecedented threat to the independent work of civil society in Congo. Indeed, they are unconstitutional and in conflict with regional and international human rights standards. In addition, they are in clear conflict with the spirit of the "*mesures de décrispation*" agreed upon in the New Year's Eve Agreement, which enjoys broad popular support.

The proposed NGO law will put significant restrictions on the freedom of association and violate international human rights law. The imposed limitations on the right to freedom of association are not in accordance with the principle of legality, are not proportionate or necessary in a democratic society, and do not have a legitimate public purpose. For instance, Article 30bis forbids international NGOs to conduct 'political activities', but it is unclear how the law defines such activities. These restrictions and sanctions are in violation of international human rights law, as well as the African Guidelines on Freedom of Association, in particular Articles 25, 26, 27, 28 and 58.

The HRD Bill ostensibly aims to supplement gaps in existing legislation concerning the definition, activities, rights and obligations of human rights defenders and organisations active in the DRC. Several provisions of this law go against

international standard of human rights protection and promotion, especially against the [United Nations Declaration on Human Rights Defenders](#) and the [Factsheet N°29](#) published by the OHCHR. It aims to centralise control over who can be accredited as a HRD what activities may be carried out and how such organisations and individuals may be granted support. It gives a very restrictive definition of who is considered an HRD through a list of conditions such as age, diploma, 'morality' or membership of a registered NGOs (Article 7). Individuals or organisations active in 'political life' or civil society are not eligible for accreditation. There will be a ban on 'illegal material, logistical and financial support' to human rights activists. Although the proposal does not clarify what aid would be considered 'illegal', it is likely to target foreign funding. Finally, under no circumstances can HRDs endanger 'public order' as stated in the bill.

The Counter-terrorism Bill is providing a vague definition of terrorism and will enable police and prosecutors to wiretap any individuals under investigations and seize or freeze property of suspicious individuals without courts' decisions and supervision.

#### **b. Closure of Schengen House as an impediment to the freedom of movement of the Congolese people**

In reaction to Belgium's decision to partially suspend its bilateral direct aid through the DRC government and reorientate it to NGOs, civil society and humanitarian assistance, the Congolese authorities have decided in February to [close the Schengen House](#), the consular representation, common to 17 EU countries and Norway, managed by Belgium in Kinshasa, delivering visas to Europe for Congolese citizens. This retaliation measure taken by the Congolese government affects primarily the Congolese citizens and their freedom of movement.

#### **c. The boycott of the donor conference in Geneva**

The humanitarian situation in the DRC has deteriorated dramatically over the past year. The DRC now sits alongside Iraq, Syria and Yemen where the UN has activated a system-wide Level 3 response. This is activated only in the most complex and challenging humanitarian emergencies, when the highest level of mobilisation is required. That is the reason why the United Nations and the EU organised an important donor conference on 13 April in Geneva to address the immense funding gap for this country, which resulted in \$528 million in pledges. However, the Congolese government decided to boycott the conference, showing utter contempt for the suffering of its own population. Moreover the [statements](#), on this occasion, of the Minister of Foreign Affairs, She Okitundu, regarding the ban of NGOs who will benefit from Belgian funding, appears shocking and inappropriate in the view of the critical humanitarian situation in the country.

## **Recommendations: What role for the EU to avoid worsening large-scale human rights, security & humanitarian crisis in the DR Congo**

### **On the political and diplomatic level**

- We urge the EU and its member states to continue to condition funding for elections **upon the realisation by the Congolese government of the following concrete measures** to restore confidence and demonstrate political will to organise free, fair, peaceful and credible elections. These conditions are in line with the 31 December 2016 Agreement which enjoys broad popular support.
  - Full **transparency on management of the electoral process by CENI** must be made;
  - All **prisoners of conscience** must be immediately and unconditionally **released**;
  - The **ban on peaceful public demonstrations** must be lifted and unlawful **intimidation, arrest and detention** of political opponents, human rights defenders, journalists and members of civil society must end;

- As a joint team of international electoral experts is about to be established to support the electoral process and the work of the CENI, the EU **must make sure this joint team of experts is not only an observation entity but has an effective and active mandate to technically advise CENI, including by helping this electoral entity to build national confidence in the electoral process, and effectively support the organisation of the elections;**
- The EU must **denounce in the strongest terms the possibility for President Kabila to run for a third term and urge the president to issue a public statement saying that he will not stand as a candidate in the next elections,** as required by the constitution. The EU must also express its support to the New Year's Eve Agreement's understanding that **the Congolese Constitution must not be changed,** and that the articles enshrining the principle of democratic alternation, such as the authorised number and duration of presidential terms or the presidential voting method (Articles 70 and 220), are fully respected. **No referendum** must be allowed to proceed with any such constitutional changes.

#### On the level of protection of fundamental freedoms and human rights

- We call upon the European Union to **extend EU targeted sanctions** (travel ban and asset freeze) **to new individuals,** key senior security forces officers, political figures and influential officials, closer to the inner circle of President Kabila, **responsible for serious human rights violations** taking place across the country, including the recent killings and acts of violence during the 31 December 2017, 21 January and 25 February 2018 protests, and/or for hindering the democratic process and obstructing a consensual and peaceful solution to the crisis;
- The EU must **employ additional means of exerting pressure** and trigger the mechanisms for a **stronger political dialogue as laid out in Article 8 of the Cotonou Agreement** with a view to **start consultations laid out in Article 96** of the same agreement;
- We urge the EU to continue to demand that the government fully respects the requirements set out in the Cotonou Agreement as well as in the New Year's Eve Agreement, proceeds with **the immediate and unconditional release of all prisoners of conscience, notably the 4 Filimbi activists who have been held in Kinshasa since December 30, 2017, as well as dropping all charges** still held against them;
- We urge the EU to continue to call on Congolese authorities for an **independent investigation on the violent repression of the demonstrations of 25 February, as well as of [September](#) and [December](#) 2016;** and **the implementation of the recommendations made in the report of the Congolese Commission of inquiry** regarding the brutal repression of the demonstrations of 21 January 2018 and 31 December 2017.
- In line with [June 2017 Council Conclusions](#) on the protection of civic space in third countries, we call on the European Union and its member states, including through their missions in Kinshasa, to urge Congolese authorities to **fully respect legislative due process and bring the proposed amendments on the law on NGOs and the new laws on terrorism and the protection of human rights defenders in alignment with international and regional human rights law.**

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