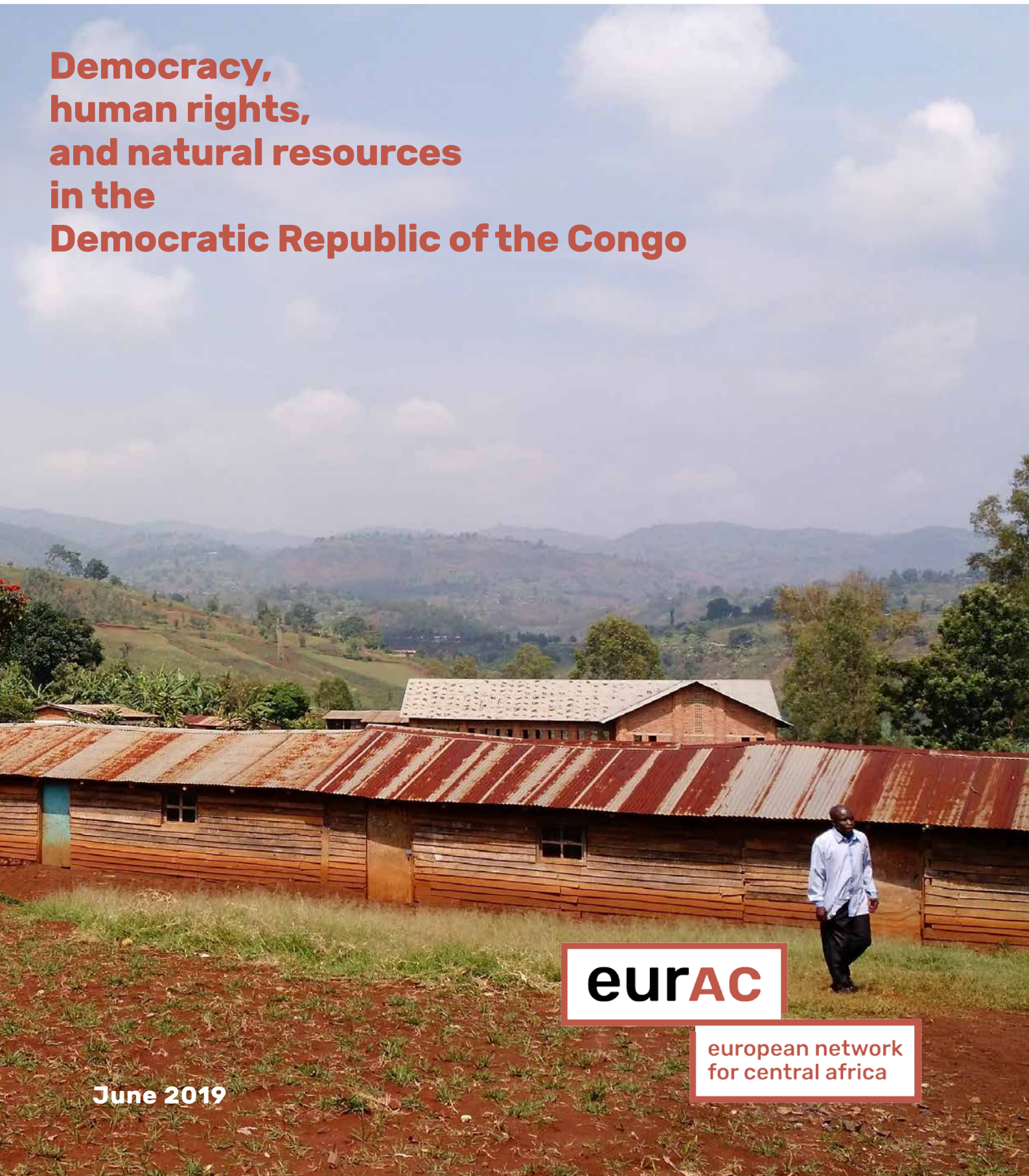


# MEMORANDUM 2019

## EU LEGISLATURE 2019 – 2024

**Democracy,  
human rights,  
and natural resources  
in the  
Democratic Republic of the Congo**



**eurAC**

european network  
for central africa

**June 2019**



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- The information in this document was gathered up to 27 May 2019. Consequently, any major event happening after this date will not be featured. We advise that you make use of the contents accordingly.
- The analysis and recommendations in this memorandum were elaborated by EurAc's secretariat with the approval and collaboration of its membership. However, the position of individual member organisations on specific points may differ from the position of the network.

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## List of abbreviations

<b>3TG</b>	Tin, tungsten, tantalum and gold
<b>ANR</b>	<i>Agence nationale de renseignements</i> , National Intelligence Agency
<b>AU</b>	African Union
<b>BSP</b>	Better Sourcing Programme
<b>CAHRA</b>	Conflict-Affected and High-Risk Areas
<b>CENCO</b>	<i>Conférence épiscopale nationale du Congo</i> , National Episcopal Conference of the Congo
<b>CENI</b>	<i>Commission électorale nationale indépendante</i> , Independent National Electoral Commission
<b>CSO</b>	Civil Society Organisation
<b>DEVCO</b>	Directorate General for International Cooperation and Development
<b>DRC</b>	Democratic Republic of the Congo
<b>EAC</b>	East African Community
<b>EEAS</b>	European External Actions Service
<b>EU</b>	European Union
<b>EUTF</b>	EU Emergency Trust Fund
<b>FARDC</b>	<i>Forces armées de la RDC</i> , Armed Forces of the DRC
<b>FCC</b>	<i>Front commun pour le Congo</i> , Common Front for Congo
<b>HRD</b>	Human Rights Defender
<b>ICLGR</b>	International Conference of the Great Lakes Region
<b>ITSCI</b>	International Tin Research Institute Tin Supply Chain initiative
<b>MEP</b>	Member of the European Parliament
<b>OECD</b>	Organisation for Economic Cooperation and Development
<b>SDGs</b>	Sustainable Development Goals
<b>UDPS</b>	<i>Union pour la démocratie et le progrès social</i> , Union for Democracy and Social Progress (UDPS)
<b>UN</b>	United Nations
<b>UNJHRO</b>	United Nations Joint Human Rights Office
<b>ZEA</b>	<i>Zone d'exploitation artisanale</i> , Artisanal Exploitation Zone

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## The European Union and the Great Lakes region

The Great Lakes region, namely Burundi, Rwanda and the Democratic Republic of the Congo (DRC), has experienced recurrent internal and regional conflicts and an instability marked by humanitarian crises and generalised poverty for many decades. These interlinked conflicts emanate from post-colonial challenges to state- and nation-building and from the high levels of interdependence in security matters affecting each country separately, while also impacting on the stability and development of the entire region. These conflicts are dynamic and complex but they share common issues related to the **exploitation of ethnic tensions, centralisation of power**, to the **shrinking of civic and political space**, to **state repression** and to the incessant **violations of human rights and fundamental freedoms**.

This is coupled with **rampant corruption** and an increasing degree of structural violence often directed towards political opponents, human rights defenders and civil society actors. The degradation in political governance also benefits from and contributes to the unfair **exploitation of the region's natural resources**, as powerful state and non-state actors scramble over land and the mineral wealth of the region.

On the political level, each of these three countries in the Great Lakes region is struggling with **a crisis of institutional governance**, as leaders often wield excessively centralised power, refusing to respect the democratic principle of political alternation. To this crisis of governance is

added a crisis of democratic principles: the civic space is locked down and attacks upon fundamental freedoms and human rights are persistent. Citizens' political participation in the region is severely hampered by the violent and systematic repression of dissenting voices by state forces, which feeds into a larger trend of rampant impunity for crimes and human rights violations, in countries where the legal system and security services are seriously dysfunctional, often corrupt, and lack independence.

These governance issues may degenerate into large scale **security crisis** where frustrations, armed groups and ethnic identities are often manipulated and fuelled by the different regimes. This has dramatic humanitarian consequences that cause a great deal of suffering to the people in the region, often leading to important movements of population within the countries and the region. In turn, such dynamics may lead to a vicious cycle of insecurity resulting in inter-community tensions and violence as well as increased armed groups activities.

Finally, the region is dealing with a crisis of regional governance embodied by the failure of different initiatives carried out by regional actors - such as the East African Community (EAC) in Burundi since the 2015 crisis and by the African Union (AU) in 2016 in the DRC - seeking to mediate between opposed parties.

Given its substantial investment in the development of the region (e.g. the 11<sup>th</sup> European Development Fund 2014-2020

provides to €432 million for Burundi, €620 million to the DRC and €460 million to Rwanda), the **EU remains one of the most influential international diplomatic actors in the region** as well as largest development donor in the region. However, EU Foreign Policy in the region has shown various signs of weakness and there is a fear that the EU's political interest and attention for the Great Lakes region may decrease in the coming years.

As a matter of fact, we have been able to observe for several years now a **shift in priorities of EU Foreign Policy** at the global level in favour of the fight against terrorism and migration management, **at the expense of peace, development and the protection and promotion of human rights and fundamental freedoms**. This global trend could impact countries in the Great Lakes region. The adoption of the EU

Emergency Trust Fund for Africa (EUTF for Africa), in November 2015, is the most emblematic example of this worrying drift. The EUTF was developed to address the root causes of irregular migration and displaced persons; it is funded through the European Development Fund. This implies that development aid is not put at the service of African countries' development plans, but of the short-term objectives of the European Union's migration policy. This is contrary to the Lisbon Treaty and the Paris Declaration on Aid Effectiveness.<sup>1</sup>

With regard to its relations with the African continent, **EU diplomacy has been increasingly geared towards strengthening the ties with the African Union** in order to foster a strategic partnership, as illustrated by the name change from the "4th Africa-EU

1. [Working Document on ECA Special Report 32/2018 \(Discharge 2018\): European Union Emergency Trust Fund for Africa: Flexible but lacking focus](#), European Parliament, Committee on Budgetary Control, 24 April 2019.



2. [Questions and answers: New ACP-EU Partnership after 2020](#), European Commission Fact Sheet, 3 May 2019.

European Commission Fact Sheet, 3 May 2019.

3. As per the [Commission's website](#) consulted on 9 May 2019, priorities area for the Africa-EU Partnership from 2018 onwards are: Investing in people – education, science, technology and skills development ; Strengthening Resilience, Peace, Security and Governance; Migration and mobility and Mobilising Investments for African structural sustainable transformation. Previous priorities listed in the Africa- EU Road Map 2014-2017 were Peace and security; Democracy, good governance and human rights; Human development; Sustainable and inclusive development and growth and continental integration; Global and emerging issues.

4. [State of the Union, Strengthening the EU's partnership with Africa: A new Africa-Europe Alliance for Sustainable Investment and Jobs](#), European Commission, September 2018.

5. [Private-finance blending for development: risks and opportunities](#), Oxfam International, February 2017.

6. [Accaparement Made in Belgium, le financement de Feronia par la coopération belge](#), CNCD 11.11.11, March 2019.

Summit” into the “5th AU-EU Summit” in November 2017. While this position makes sense regarding the principle of subsidiarity, this increasing focus on the AU and the emphasis on African ownership in matters of peace and security on the continent does not necessarily bode well for the near future of the Great Lakes region. In fact, the AU, of which the three countries in question are State Parties, has never communicated nor demonstrated a strong and credible willingness to tackle the different crises in the DRC or Burundi. On the contrary, the AU has sometimes shown indifference or even complacency *vis-à-vis* the regimes’ abuses of power. The EU’s new partnership with the AU could serve as an excuse to prevent the EU from adopting strong positions in the future regarding these regimes.

Additionally, **2018 marked the beginning of the negotiations of the Post-Cotonou agreement**, an agreement that had human rights and governance at the heart of its dispositions. Unfortunately, the strategic priorities for the Post-Cotonou period are fully in line with the outcome of the AU-EU Summit held in November 2017,<sup>2</sup> which is worrying considering that democracy and human rights disappear from the list of priorities while “migrations and mobility” appeared as a new ones.<sup>3</sup> More recently, the launch of the Africa-Europe Alliance for Sustainable Investment and Jobs<sup>4</sup> perfectly illustrates this trend to prioritise support to the private sector, investments, trade and the exploitation of natural resources above the protection of human rights and good governance. While investments and jobs creation are

key to development, it should be done in a complementary way not prevent the EU to foster human rights and good governance. These latter principles are neither properly nor concretely included in the framework of the new partnership, even though they address key needs of the African people.

The **new trend of private involvement in the development sector** also raises concerns. The European Commission is indeed increasingly pushing for ‘innovative’ modalities of development finance, known as ‘blending’, a promise to raise the funds necessary to financing the achievement of the Sustainable Development Goals (SDGs). Although blending mechanisms may vary,<sup>5</sup> the mechanism consists at its core in using public funds for development aid to leverage loans from private financial institutions to be destined to public or private entities in partner countries. This is accompanied by an increased emphasis on the role of the private sector in African development, as the Commission sees this sector as key to the development of African economies. However, with regards to the Great Lakes region, the involvement of the private sector and of European investors and financial institutions have often been at the roots of grave violations of local citizens’ rights, while countering the achievement of development objectives more broadly and of the SDGs more specifically.<sup>6</sup>

On **the exploitation of natural resources**, which is of great interest both for the EU and the countries of the Great Lakes region, the EU is also walking an ambiguous path. On the one hand, the EU is being



pro-active in defending and promoting the rights of people to benefit from their countries' natural resources for instance through the adoption in 2017 of a binding regulation on the responsible supply of minerals from conflicted affected and high-risk areas.<sup>7</sup> The regulation compels EU importers of tin, tantalum, tungsten and gold (3TG) to carry out due diligence to assess the risk of human rights abuse and financing of illegal armed groups along their production chains. Yet the EU goes **back and forth between an 'economics first' and a 'right-based approach'**. While the binding regulation on the responsible supply of 3TG is an important step towards the creation of a responsible mining sector in the DRC and in the region, its approach still focusses too much on the upstream of the production chain than on the responsibilities of EU importers. The regulation also risks marginalising artisanal miners together with a number of other flaws that call into question its effectiveness.

Dynamics within the EU Council also illustrate this ambivalence between economic interest and human rights promotion and protection as some EU member states seem to put their bilateral business interests before the common EU policy for the protection of the human rights and fundamental freedoms of the people of the Great Lakes region.<sup>8</sup> This is a dangerous path and contradictory to the Lisbon Treaty (Art. 208-1), compelling the EU and its member states to ensure coherence between their economic policies and development policy objectives.

In this context, **the new EU legislature (2019 - 2024) following the recent European elections of 2019 is a great opportunity to instil new European dynamics towards the Great Lakes region**, one in which newly elected Members of the European Parliament (MEPs) should play a crucial role. This report aims to provide newly elected MEPs with an overview of the current situation and the challenges faced in the DRC and to equip them with specific and actionable recommendations to rememorate the EU institutions to its fundamental values and engagements to promote and strengthen human rights, peace, development and inclusive political participation in the country.

7. [Regulation \(EU\) 2017/821 of the European Parliament and of the Council of 17 May 2017.](#)

8. [RDC: Répression des chrétiens: la société civile s'en prend à la France, La Libre Afrique, 3 January 2018.](#)

## The Great Lakes in numbers

### Population

**81.34 million**

(The World Bank, 2017)

**Density**  
(people per sq. km of land area)

**35.9**

(The World Bank, 2017)

### GDP

**37.64 billion USD**

(The World Bank, 2017)

### Growth of GDP

**+3.7%**

(The World Bank, 2017)

### Human Development Index

**0.457 - 176<sup>th</sup>/189**

(UNDP, 2018)

### Gender Inequality Index

**0.652 - 152<sup>th</sup>/189**

(UNDP, 2018)

**Poverty headcount ratio at \$1.90 a day (2011 PPP) (% of population)**

**76.6%**

(The World Bank, 2012)

### World Press Freedom Index

**154<sup>th</sup> / 180**

(RSF 2019)

### Democracy Index

**165<sup>th</sup> / 167**

(Economist Intelligence Unit 2018)

### Corruption Perception Index

**161<sup>th</sup> / 180**

(Transparency International, 2018)

## Rwanda

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**12.20 million**

(The World Bank, 2017)

**494.9**

(World Bank, 2017)

**9.135 billion USD**

(The World Bank, 2017)

**+6.1%**

(The World Bank, 2017)

**0.524 - 158<sup>th</sup>/189**

(UNDP, 2018)

**0.381 - 85<sup>th</sup>/189**

(UNDP, 2018)

**55.5%**

(The World Bank, 2016)

**155<sup>th</sup> / 180**

(RSF 2019)

**128<sup>th</sup> / 167**

(Economist Intelligence Unit 2018)

**48<sup>th</sup> /180**

(Transparency International, 2018)

## Burundi

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**10.86 million**

(The World Bank, 2017)

**423.1**

(The World Bank, 2017)

**3.17 billion USD**

(The World Bank, 2017)

**+0.5%**

(The World Bank, 2017)

**0.417 - 185<sup>th</sup>/189**

(UNDP, 2018)

**0.471 - 114<sup>th</sup>/189**

(UNDP, 2018)

**71.8%**

(The World Bank, 2013)

**159<sup>th</sup> / 180**

(RSF 2019)

**153<sup>th</sup> / 167**

(Economist Intelligence Unit 2018)

**170<sup>th</sup> /180**

(Transparency International, 2018)



## Democracy, human rights, and natural resources in the Democratic Republic of the Congo

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Photo © Frederic Triest



The situation in the DR Congo is marked by decades of violence, with the presence of numerous armed groups (especially in the Eastern part of the country), poor governance, rampant impunity and corruption, fuelled by its highly coveted natural resources. As a result of almost sixty years of instability, the human rights situation in the DRC is worrisome<sup>9</sup> and the establishment of rule of law and state authorities remains a challenge in the country.

### Between hope and resignation: the difficult case of the Congolese “democracy”

The DRC entered a new phase of its history on 30 December 2018, when presidential, national and provincial legislative elections eventually took place in the country. After a two-year delay, with former President Joseph Kabila’s second term having come to an end in December 2016, the Congolese people finally elected a new President from the opposition. This was their first peaceful transition of power between two living presidents.

However, this historical step is the result of a tumultuous electoral process marred by numerous human rights violations and a continuously shrinking civic and political space. Indeed, the electoral process was characterised by the regime’s repeated intimidations, threats, judicial harassments, unlawful arrests, detentions and torture targeting key players of the citizens’ movements, human rights defenders, journalists, members and sympathisers of opposition parties.<sup>10</sup> In

response to the ambiguity (until the very last moment) regarding Joseph Kabila’s intention to run for a third mandate, many Congolese people, especially through the call of the Catholic Church and pro-democracy movements, called for an inclusive, transparent and peaceful electoral process through the organisation of heavily repressed demonstration. This large mobilisation was the response to the chaotic and controversial voters’ registration process, the contested use of the voting machines and the lack of independence of the Independent National Electoral Commission (CENI). As for example, from 2016 up to the end of 2018, the UN Joint Human Rights Office (UNJHRO), documented 3,531 violations relating to the restriction of the democratic space.<sup>11</sup>

In this context, three main candidates eventually competed for the presidential elections of December 2018: Felix Tshisekedi from the historical opposition political party, the Union for Democracy and Social Progress (UDPS), Ramazani Shadary on behalf of incumbent President Kabila and its political platform the Common Front for Congo (FCC) and Martin Fayulu for the “Lamuka” coalition supported by opposition leaders Moïse Katumbi and Jean Pierre Bemba, who were barred from participating in the elections.

In January 2019, Felix Tshisekedi was unexpectedly proclaimed victorious by the CENI with 38,7% of the votes. However, **the proclamation of the presidential and legislative results was characterised by an utter lack of transparency and credibility.**

9. [DR Congo new presidency and Universal Periodic Review: urging the EU and its member states to issue strong recommendations on the human rights situation in the country](#), EurAc, 25 March 2019.

10. [DR Congo: The EU and its member states must stop their “wait and see” approach and act now in a preventive and united manner](#), EurAc, 25 May 2018.

11. [Note du BCNUDH sur les principales tendances des violations des droits de l’homme au cours de l’année 2018](#), 30 January 2019.



12. [Déclaration de la CENCO à l'issue de sa mission d'observation électorale](#), 10 January 2019.

13. [Congo voting data reveal huge fraud in poll to replace Kabila](#), Financial Times, 15 January 2019.

14. [RDC : l'Union européenne se résout à reconnaître l'élection de Félix Tshisekedi](#), Le Monde, 22 January 2019.

15. [RDC : libération de 700 prisonniers, dont deux « politiques » connus](#), La Libre Afrique, 14 March 2019.

16. [Réouverture de la « Maison Schengen » en RDC](#), BBC, 7 March 2019.

17. [RDC : Kinshasa exige la levée des sanctions de l'UE avant la réouverture de la Maison Schengen](#), Actualité.cd, 13 September 2018.

18. [RDC : Tshisekedi en guerre contre les élus qui « manipulent » les milices](#), La Libre Afrique, 17 April 2019.

19. [Tshisekedi promet de « déboulonner le système dictatorial de Kabila »](#), VOA, 5 April 2019.

20. [Installation du Sénat en RDC : les dessous du revirement de Félix Tshisekedi](#), Jeune Afrique, 29 March 2019.

21. [RDC : un spécialiste des renseignements conseil-ler sécurité de Félix Tshisekedi](#), RFI, 3 February 2019.

22. [DR Congo: Investigate Ex-Intelligence Officials](#), Human Rights Watch, 22 March 2019 and [Carbone Beni : « J'ai été enlevé en décembre 2016 et j'ai passé presque trois semaines sous le contrôle direct de Kibelisa »](#), Actualité.cd, 11 April 2019.

To this date, results by polling stations have never been provided, contrary to dispositions in the electoral law. Electoral observation missions, especially those conducted under the aegis of the Episcopal Conference of the Democratic Republic of the Congo (CENCO),<sup>12</sup> have questioned the official results. Many national observers as well as some actors of the opposition contested the results and international media presented evidence suggesting that the results announced by the CENI had being rigged and manipulated in favour of Felix Tshisekedi at the expenses of the actual winner Martin Fayulu.<sup>13</sup> However, no major popular contestation against the CENI presidential results has taken place in the country, and revendications to reveal the truth of the ballot were few and far between.

In the same vein, after contradictory reactions and a period of hesitation, international and regional actors, including the EU, finally recognised Felix Tshisekedi as the new President of the DRC.<sup>14</sup>

### **“Debunking the dictatorial system”: opportunities and challenges of the newly elected President**

Shortly after his election, **President Felix Tshisekedi showed signs of openness and an intention to change the political climate**. In fact, he announced the release of 700 prisoners of conscience in March 2019,<sup>15</sup> the re-opening of the European Schengen House in Kinshasa<sup>16</sup> (closed early in 2018, its reopening

having been subjected to the lifting of EU sanctions on the former regime)<sup>17</sup> as well as various public declarations against corruption, collusion between political elites and armed groups<sup>18</sup> and a will to “debunk the dictatorial system” of the DRC.<sup>19</sup> Moïse Katumbi, one of the main figures of the opposition, returning to the DRC after 3 years in exile, is another sign of openness and political appeasement.

Still, **Felix Tshisekedi lacks political leeway**. Political institutions in the country, from the provincial to the national level, are still largely dominated by Joseph Kabila's FCC. The FCC also has an absolute majority both at the National Assembly and Senate. In practice, the President is currently being held hostage by Joseph Kabila and his political allies. This was made clear during the elections of Senate members when, after receiving word of irregularities and corruption, the new President tried to suspend the election of senators. President Tshisekedi eventually had to yield to pressures from the FCC and other political forces, and to go on with the senatorial appointments.<sup>20</sup> Finally, it took 4 months of rough negotiations between both men to find an agreement on the new Prime Minister, who comes also from the FCC.

Additionally, Tshisekedi's good intentions and signs of openness are mitigated by **alarming appointments, especially at key security positions**. The appointment of François Beya Kasonga<sup>21</sup> as Special Advisor to the Head of State in charge of security matter and of Roger Kibelisa<sup>22</sup> as his assistant raised serious concerns.

Both men have been involved in human rights violations. Roger Kibelisa is under EU targeted sanctions because of his direct involvement in the intimidation campaign carried out by the National Intelligence Agency (ANR) towards opposition members, including arbitrary arrests and detention. In fact, almost **all the officials appointed by Joseph Kabila who have been involved in political and security repression for decades are still well positioned at all levels of the security apparatus**. This situation, combined with a judicial system that is completely unable to prosecute and condemn human rights perpetrators, casts a shadow over the alleged good-will of the new President regarding the protection and promotion of human rights and democracy.

### Fighting corruption is key in the DRC context

The election of Felix Tshisekedi has raised great hopes and expectations, but his mandate is already facing worrisome challenges especially regarding economic governance, the fight against corruption and impunity. Joseph Kabila's stranglehold on the country's political, security and economic power, makes Tshisekedi's task strenuous.

**The fight against corruption, misuse of government funds, money laundering, and fraud must be properly addressed** and those responsible prosecuted in order to foster development, peace and stability, and to impulse real change regarding governance in the DRC. The

causal links between democratic failure, impunity and financial stakes in the DRC are well documented. The last election of senators, where officials from the former regime, some of them being under EU or US sanctions, were allegedly pointed out to pay up to 500,000 USD to be elected and then benefit from immunity, is one of the most illustrative examples.<sup>23</sup> Recent investigations<sup>24</sup> have also extensively shown how the procurement process for the voting machines, as well as biometric voters registration, was marked by irregularities leading to embezzlement and substantial delay in the electoral process.

### The European Union's positions and interventions regarding human rights and democracy

Since the beginning of the political crisis in 2015, numerous statements from the EU High Representative for Foreign Affairs<sup>25</sup> and Council's declarations<sup>26</sup> as well as European Parliament's resolutions<sup>27</sup> addressed the situation in the DRC.

The European Parliament took strong and welcome resolutions between 2015 and 2017, especially when calling on the Council to adopt targeted sanctions against Congolese individuals and officials responsible for human rights violations and/or obstruction to the democratic process.<sup>28</sup> Yet in 2018, only one specific resolution<sup>29</sup> on the political and human rights situation in the country was adopted (in reaction to the repression of the protests organised by the Catholic church) and MEPs seemed to have adopted

23. [RDC : 500 000 dollars, le prix d'un siège au Sénat](#), la Libre Afrique, 16 February 2019.

24. [Delays and Red flags, Election in DR Congo](#), The Sentry, September 2018.

25. For instance: [Déclaration de la haute représentante, au nom de l'Union européenne, sur les relations avec la République démocratique du Congo à la veille des élections](#), 28 December 2018.

26. For instance: [Déclaration de l'UE sur la situation en République démocratique du Congo](#), 12 December 2016.

27. For instance: [European Parliament resolution of 14 June 2017 on the situation in the Democratic Republic of the Congo](#).

28. [European Parliament resolution of 1 December 2016 on the situation in the Democratic Republic of the Congo](#).

29. [European Parliament resolution of 18 January 2018 on the Democratic Republic of the Congo](#).

an unfortunate “wait and see” approach during a crucial time of electoral process for the DRC.

At the political level, the EU and its member states have taken positive steps when adopting **targeted sanctions** (asset freeze and travel ban) against 7 officials in 2016<sup>30</sup> and 9 additional in 2017,<sup>31</sup> and by renewing them in due time. This, combined with the pressure from the streets and regional dynamics, has certainly impacted the progress of the elections especially the fact that Joseph Kabila did not run for a third mandate.

The **support from the EU and its members states to civil society organisations** (CSOs) in their work of electoral observation and outreach was also significant.<sup>32</sup>

The attention paid by the EU to the DRC is crucial and needs to be strengthened in view of the new developments in the country. The election of a president from the opposition is a welcome step but must not lead observers to neglect the conditions of his election, the former regime’s grip on the security and political apparatus as well as the important challenges faced by the DRC. **The EU must play a crucial role to support the newly elected President in his presumed efforts for change but should not be satisfied by mere rhetoric.** EU representatives should require tangible results while avoiding positions that risk increasing political polarisation, allowing the new regime to manoeuvre independently from the former political elites.

The fight against corruption and impunity is key and must be prioritised by the EU in its relationship with the DRC but also with regards to EU private actors in the DRC. **Strong support to local CSOs, human rights defenders and the population must also be a European top priority:** pressure and increased demands for accountability by Congolese citizens, as illustrated in the last years, is essential to remind the Congolese authorities at all levels of their responsibilities.

The EU must also remain consistent regarding already adopted sanctions. Maintaining current targeted sanctions and adopting new ones towards former and current officials responsible for human rights violations will be key to support Felix Tshisekedi and to allow him to cast off the yoke of the former regime, while increasing its popular legitimacy. On the other hand, it is absolutely crucial that **direct budgetary support to Congolese institutions is linked to an ex-ante strengthened and constructive political dialogue, to encourage concrete progresses in terms of respect of human rights and governance** and the prior definition of a clear roadmap for change to be presented by the Congolese government. Such a roadmap should include clear benchmarks to be achieved. These benchmarks must include the observance of the election calendar, especially regarding the holding of credible local elections. It should also include much needed institutional reforms, for instance of the CENI and justice system, which are crucial to restore trust between the population and its governing bodies and

30. [Democratic Republic of the Congo \(DRC\): EU adopts sanctions against 7 individuals responsible for violence](#), Council of the EU, 12 December 2016.

31. [COUNCIL IMPLEMENTING DECISION \(CFSP\) 2017/905 of 29 May 2017 implementing Decision 2010/788/CFSP concerning restrictive measures against the Democratic Republic of the Congo](#), Official Journal of the EU, 29 May 2017.

32. [Projet de renforcement de l’observation citoyenne des élections Congo \(PROCEC II\)](#), European Commission’s website, consulted on 6 May 2019.

to reduce the stranglehold on the system put in place by Joseph Kabila and former elites. The implementation of the necessary **reforms regarding the management of natural resources**, including of those already adopted through the mining code approved in 2018, should ensure that the DRC has access to adequate financial means to implement necessary reforms. The EU must stay cautious and should not initiate too promptly direct unconditional support, especially budget support as doing so may fuel risks of continuing the pattern of misappropriation's exhibited by the former and current elites, and may not conduct to necessary governance reform - especially in view of the next electoral period in 2023.

## Recommendations

**In view of the context described above, EurAc calls on the European Parliament to urge:**

- The Council of the EU and the EEAS to trigger a stronger political dialogue with the current Congolese authorities as laid out in Article 8 of the Cotonou Agreement, especially through the achievement of various benchmarks to discuss the possibility of relaunching any direct budgetary support. The respect of the electoral calendar especially the organisation of credible local election, the reforms of the CENI, the Constitutional Court and judicial system, as well as the opening of civic, political and media space and the end of criminalisation<sup>33</sup> and physical
- harassment of political opponent, human rights defenders and pro-democracy activist should be included as tangible indicators.
- The Council of the EU and EU member states to maintain and extend targeted sanctions against key senior officers in the security forces, political figures and influential officials responsible of human rights violations and corruption especially against those closer to the inner circle of President Kabila. The future possible adoption of an **EU Human Rights and Corruption global sanctions regime** will help in that sense. The recent European Parliament resolution<sup>34</sup> on this topic is a first welcome first step, but the European Parliament needs to go further regarding the corruption aspect of any new sanction regime. In any case, to be effective, targeted sanctions must be decided upon in a coordinated manner with other international bodies, and should not be limited to executors, but also include high level officials.
- The European Commission, especially DG DEVCO, to strongly support CSOs and human rights defenders (HRDs), working on the protection and promotion of human rights, civic education and outreach as well as independent media, including a gendered approach.
- The European Commission, especially DG DEVCO, to adopt community-driven and other alternative approaches to justice support.
- The EEAS and most specifically the EU Delegation to the DRC and EU member states' diplomatic missions to

33. [The criminalisation of la Lucha movement in DRC, Criminalisation Series #3](#), Protection International, July 2018.

34. [European Parliament resolution of 14 March 2019 on a European human rights violations sanctions regime](#).



effectively implement the European Guidelines on HRDs<sup>35</sup> on the ground, enhancing its practical support to and protection of Congolese human rights defenders (for instance maintaining suitable contacts with HRDs or attending and observing, where appropriate, trials of HDRs) and overall promote and encourage respect for the right to defend human rights.

- EU member states to investigate and prosecute EU companies and individuals who, whether directly or indirectly or financing, contribute to acts of corruption, money laundering or fraud.
- To develop strict and detailed European guidelines for European companies and investors who are working or investing in the DRC, in accordance with the Organisation for Economic Cooperation and Development (OECD)<sup>36</sup> Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the UN Guiding Principles on Business and Human Rights.<sup>37</sup>

35. [Ensuring Protection – European Union Guidelines on Human Rights Defenders](#), EEAS, 2008.

36. [Convention on Combating Bribery of Foreign Public Officials in International Business Transactions](#), Organisation for Economic Cooperation and Development (OECD), 21 November 1997.

37. [Guiding Principles on Business and Human Rights](#), OHCHR, 2011.

38. [Letter from the Chair of the Security Council Committee established pursuant to resolution 1533 \(2004\) concerning the Democratic Republic of the Congo addressed to the President of the Security Council \(S/2010/596\)](#), United Nations Group of Experts on the DRC, 15 November 2010.

## The responsible sourcing of minerals from the DRC

The DRC is endowed with an incredible wealth in natural resources, and particularly in minerals. It is the first world producer of cobalt ore and one of the main diamond producers. The country is a major exporter of minerals that are crucial to the development and production of technological devices, such as the 3TG.

Despite its significant wealth, the country has only marginally benefitted from the export of minerals as the mining sector has been marred by **a lack of transparency, corruption and dubious business practices**. Moreover, as much of the extractive activities in the DRC are conducted by small-scale, artisanal miners, it is difficult to quantify the impact of mining on both state coffers and local livelihoods.

The exploitation of mineral wealth in the DRC has been linked to the financing of armed groups and to the violation of human rights, particularly in the Eastern provinces of the countries such as South and North Kivu, Ituri and Maniema. Armed groups activity around mining sites has overall declined, and the implementation of traceability and certification mechanisms may have played a role in such reduction,<sup>38</sup> but important questions remain related to the links between the financing of armed actors and illegal mineral trade remain, especially with regards to the gold sector.

The 3TG are amongst the minerals that have been the most significantly linked



to armed conflicts and human rights violations. These ores are extracted mostly in the Eastern part of the DRC and, besides a few exceptions, they are mostly extracted by small-scale artisanal miners. **Artisanal mining also represents a crucial source of income for people in the DRC**, especially in the Eastern provinces. About one million persons in the DRC are involved in artisanal mining, with about 90% of mineral export being of artisanal origin.<sup>39</sup>

Compared to large-scale industrial mining, artisanal mining is proved to have a wider and more significant impact on the larger economy, providing local jobs and creating a series of ancillary economic activities that provide livelihood to about 10 million of Congolese citizens. Its embeddedness in local communities and the direct involvement of economic actors near mining sites make for an economic impact that may be significantly larger than the one achieved by industrial actors in the sector.<sup>40</sup>

Cobalt is another crucial mineral for technology, and it is a key component of batteries in cell phones, computers and electric vehicles for which the DRC holds 60% of global reserves.<sup>41</sup> Contrary to 3TG exploitation in the East, cobalt exploitation (mostly concentrated in the provinces of Haut-Katanga and Lualaba) is mostly carried out by industrial actors, although there also exists a significant component of artisanal mining. While cobalt production has seen less interference from armed groups, the presence of the Congolese armed forces (FARDC) is still important.

Furthermore, issues of pollution, working conditions and of conflicts between artisanal and industrial actors are rampant.

Despite its important economic role, the artisanal mining sector is also marred by a series of deficiencies and obstacles that both the Congolese state and its development partners (often the buyers of ores from the DRC) have been trying to address, namely:

### ■ Interference of armed groups

Interference of armed groups in artisanal mining sites in the DRC has gathered significant media and policy attention. Non-state and state-armed groups (including the Congolese armed forces), both national and international, have been active of mining sites through the extortion of illegal taxation and control of road and access points. However, armed groups activity on mining sites has significantly decreased, and financing from mining sites currently represents only one amongst various sources of finance for armed actors.<sup>42</sup> Moreover, the presence of armed groups seems limited to mining sites where initiatives promoting responsible mining are ongoing – although it appears unclear whether those initiatives played a significant role in such dynamics.<sup>43</sup> While their presence is still significant, it is at times less concentrated on mining sites *per se* and more on access roads, and around gold extraction sites.<sup>44</sup> Where cobalt extraction is significant, the main source of interference seems to be the FARDC.<sup>45</sup>

39. [Democratic Republic of Congo, Growth with governance in the mineral sector](#), report no. 43402, The World Bank, May 2008.

40. [African Artisanal Mining from the Inside Out: Access, norms and power in Congo's gold sector](#), Sara Geenen, 2016.

41. [The Emerging Cobalt Challenge. Competition, concentration and compliance. Understanding the cobalt supply chain and how to respond](#), RCS Global, 2016.

42. [Mapping artisanal mining areas and mineral supply chains in Eastern DR Congo Impact of armed interference & responsible sourcing](#), International Peace Information Service (IPIS), April 2019.

43. [Assessing the impact of Due Diligence programmes in Eastern DRC: A baseline Study](#), International Peace Information Service (IPIS), April 2019.

44. [Mapping artisanal mining areas and mineral supply chains in Eastern DR Congo Impact of armed interference & responsible sourcing](#), International Peace Information Service (IPIS), April 2019.

45. [Powering Down Corruption. Tackling Transparency and Human Rights Risks from Congo's Cobalt Mines to Global Supply Chains](#), Annie Callaway (Enough project), October 2018.

46. Sud-Kivu : l'ONU veut une enquête sur des gradés congolais accusés de trafic d'or, CERN/CENCO, 12 January 2017.

47. [Letter from the Chair of the Security Council Committee established pursuant to resolution 1533 \(2004\) concerning the Democratic Republic of the Congo addressed to the President of the Security Council \(S/2010/596\)](#), United Nations Group of Experts on the DRC, 15 November 2010.

48. [List of artisanal mining cooperatives](#), Ministère des mines de la République démocratique du Congo, consulted in 2019.

49. [African Artisanal Mining from the Inside Out: Access, norms and power in Congo's gold sector](#), Sara Geenen, 2016.

50. [Same old Story: A background on natural resources in the Democratic Republic of the Congo](#), Global Witness, June 2004.

51. [Time to Recharge: Corporate action and inaction to tackle abuses in the cobalt supply chain](#), Amnesty International, 15 November 2017.

52. [Powering Down Corruption. Tackling Transparency and Human Rights Risks from Congo's Cobalt Mines to Global Supply Chains](#), Annie Callaway (Enough project), October 2018.

## ■ Illegal taxation and smuggling

Illegal taxation is mostly carried out by non-state armed group and by the FARDC. While armed groups have been playing a role in the illegal taxation and smuggling of minerals, Congolese state officials have also long been implicated in the extortion of illegal taxes.<sup>46</sup> From Eastern DRC, gold is easily smuggled to neighbouring Uganda and Burundi while the 3T are more often smuggled and exported through Rwanda.<sup>47</sup> Illegal taxation and smuggling represent a significant loss of revenues for Congolese state coffers.

## ■ Weak organisation and lack of formalisation

Cooperatives represent an opportunity for artisanal miners to organise, negotiate better prices with buyers, strengthen their capacity and share the costs of their activities. The DRC currently counts 264 registered artisanal mining cooperatives<sup>48</sup> but the number may be higher as some cooperatives are still waiting to be registered. However, the possible benefits of cooperatives have been outweighed by the influence of powerful actors, often public authorities or middlemen whose operations do not respect the democratic principles of cooperative decision-making. These cooperatives rather act as private companies operated in a top-down fashion.<sup>49</sup> Moreover, access to artisanal mining sites, acknowledged and recognised in Congolese law as artisanal mining areas (ZEA) is only allowed to cooperatives, which has turned the creation of

cooperatives in a shortcut for accessing mineral resources.

## ■ Child labour and human rights abuse

The issue of child labour has often caught media attention as children have been commonly employed on mining sites in the DRC, both in the sector of 3TG<sup>50</sup> and in the cobalt sector.<sup>51</sup> It is important to bear in mind that the participation of children in the artisanal mining economy is often the result of poverty in the family of origin and in the lack of alternative educational and vocational opportunities for children.

## ■ Conflicts between artisanal and industrial exploitation

While the 3TG sector in the DRC is dominated by artisanal mining, the picture is reversed for cobalt mining, which is mostly carried out by industrial exploitations. Nonetheless, an important part of the workforce in the supply chain is artisanal. Especially in the provinces of Haut-Katanga and Lualaba, artisanal mining and industrial mining appear often linked, as a number of miners also works on industrial sites while industrial actors have been known to purchase products from artisanal mining and labelling them as industrial.<sup>52</sup> Moreover, as ZEAs in the areas are difficult to find artisanal miners often access industrial sites illegally, while private actors often identify non-authorised artisanal mining sites with an aim to annex them to their concessions. This is often at the roots of local conflicts between these two categories of actors.

### ■ Pollution and environmental issues

Environmental issues are rarely discussed in the context of mining, but it is important to keep in mind that both artisanal and industrial mining can have important negative impact on the environment and on human health. For example, CSOs in Katanga and Haut-Lualaba have been denouncing the important environmental impact of mining, particularly evident through the chemical pollution of water streams and agricultural areas.<sup>53</sup>

In order to address these problems, the Congolese government, neighbouring countries and international organisations have adopted a series of measures to promote transparency and traceability in mineral trade from the DRC. This includes initiatives such as the regional certification mechanism put in place by the International Conference of the Great Lakes Region (ICGLR) and other initiatives related to traceability such as the International Tin Research Institute's Tin Supply Chain Initiative (iTSCi) and the Better Sourcing Programme (BSP). However, traceability schemes (and in particular iTSCi) have long been criticised for the lack of transparency in their operations on the ground (i.e. through the sale of certificates or the labelling of minerals from non-transparent sites) and for being financed mostly by upstream actors throughout a value chain that is global in nature, with the costs mostly falling on the shoulders of artisanal miners and small economic actors. Finally, the DRC government approved in 2018 a new mining code that integrates transparency

requirements, and which includes a series of fiscal provisions that should ensure that the benefits or mineral exploitation are more equitably divided between economic actors.

### ■ EU interventions in the mineral sectors

In order to address the problems linked to the exploitation of minerals from conflict-affected and high-risk areas, in 2017 the EU approved the regulation 2017/821 on the responsible supply of minerals from conflict-affected and high-risk areas. The regulation sets out due diligence obligations for Union importers of 3TG and is aligned to the OECD's Guidelines for responsible supply chains of minerals.<sup>54</sup>

The regulation will come into force in 2021 and is the result of a political compromise following the trialogue between the Council, the Commission and the European Parliament. The trialogue resulted in a series of weaknesses that both EurAc and other international NGOs have highlighted, namely:

- **The presence of volume thresholds for imports under which the regulation does not apply (which could increase the risk of money laundering, especially with regards to the gold);**
- **The focus on the upstream and the neglect of the downstream; the presence of a global whitelist of responsible smelters and refiners;**

53. [Les dessous du boom du cobalt](#), Pain pour le Pro-chain and Action de Carême, March 2019.

54. [Guidelines for responsible supply chains of minerals \(third edition\)](#), OECD, 2016.

- **A list (although indicative and non-exhaustive) of conflict-affected and high-risk areas – which could favour embargoing certain countries at the expenses of others.**<sup>55</sup>

In order to facilitate the success of the regulation, and to strengthen the mining sector in producing countries, the EU has also approved a package of ‘accompanying measures’ dedicated to supporting artisanal and small-scale mining.<sup>56</sup>

The current phase of **implementation of the regulation has also been marked by faults that may weaken its efficiency.**

In particular, the delegated regulation 2019/429<sup>57</sup> presents major shortcomings regarding the way in which recognised industry schemes, which are supposed to facilitate importers’ compliance with the regulation, will be scrutinised and monitored by the Commission. There is a risk that, once they have joined industry schemes, companies might be considered in compliance with their due diligence obligations under the regulation even though they may conduct poor due diligence assessments – also given that industry schemes in the past have routinely failed to check on their members practices.<sup>58</sup> The Commission also failed to point out the exact steps and the regularity with which industry schemes internal control mechanisms will be assessed.<sup>59</sup> Another significant issue with the regulation concerns the publicity regime of data on EU importers subject to the regulation will be handled. Customs agencies in EU member states have been reticent to publish the names

of the companies subject to the regulation and the volumes of minerals they import, suggesting that the Union Customs Code and trade confidentiality keep them from divulging the data. It is apparent that if it is not possible to know what companies are subject to the regulation and how much they import, it will be impossible for civil society groups to monitor companies’ behaviour and to raise concerns to the Commission, as provided in the regulation.<sup>60</sup> The revision of the regulation, which is scheduled in 2023, will provide an opportunity to address such challenges.

### Other relevant issues

The wealth of the Congolese natural resources is not limited to the mining sector. In fact, the DRC is also home of the Congo basin, the second largest rainforest in the world composed by several UNESCO protected areas such as Virunga or Salonga. The Congolese rainforest represents a crucial site for carbon sequestration and is home to an incredible biodiversity.<sup>61</sup> Conservation efforts of the DRC forests should be a priority of international initiatives for conservation. In particular, the Virunga is rich in oil and natural gas, and has been the site of oil explorations by European companies. **It is crucial that the fragile ecosystems of the Congolese rainforest not be endangered by extractive activities. The presence of these natural resources must contribute to the economic development of the region and the welfare of the population, who should not suffer from the negative**

55. [European Regulation on the responsible sourcing of minerals: The EU is \(once again\) about to weaken the upcoming Regulation](#), EurAc, 10 November 2016.

56. [Accompanying Measures to the EU Regulation on Responsible Mineral Sourcing. Towards an improved governance of the artisanal mining sector in the DRC](#), EurAc, March 2017.

57. [Commission delegated Regulation 2019/429](#), European Commission, 11 January 2019.

58. [Alignment assessment of industry programmes with the OECD minerals guidance](#), OECD, 17 April 2019.

59. See also [Ensuring the proper implementation of the EU Regulation on the responsible sourcing of minerals from conflict-affected and high-risk areas](#) (Joint Policy Note), 25 March 2019.

60. Ibidem

61. [L'exploitation du pétrole dans le Parc des Virunga : menace ou opportunité de développement ? Les enjeux du déclassement](#), CJP Belgique, 18 December 2018.

**impact of their exploitation.** The issue of land, and particularly of customary land rights, is linked not only to the forest but also to the extractive sector. In fact, most citizens in the DRC live off agricultural activities, but the legal and policy frameworks render land tenure insecure.<sup>62</sup> The government is currently engaged in discussions on a new land law. The EU should make sure that the DRC government disposes of the means necessary to implement the new land law and to protect the land rights of those operating under customary arrangements.

- Appoint a Parliamentary Commission on the revision of the regulation and propose amendments that remediate to the weaknesses of the text as it stands, particularly with regards to the CAHRA list, the global list of smelters and refiners, the publicity of import data and the role of industry schemes.

## Recommendations

**Given the situation described above, EurAc calls on the European Parliament to:**

- Ensure that EU member states publish the list of national importers subject to the regulation, including volumes of minerals imported.
- Urge the European Commission to put in place regular and iterative checks on the practices and standards of recognised industry schemes.
- Urge the European Commission and the EEAS to ensure that the accompanying measures to the EU regulation go beyond an una-tantum intervention, but that they are rather seen as a continuous and structural support to the artisanal mining sector in the DRC.

<sup>62</sup>. [Land, Development and Conflict in Great Lakes region. For a renewed engagement by the EU and Switzerland in land governance in Rwanda, Burundi and the DRC](#), EurAc, December 2017.



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