

## **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.**

**T**he upcoming cycle of the Universal Periodic Review (UPR) of the Democratic Republic of the Congo (DRC) will take place in a particular context with the coming to power of a new president, Mr Félix Tshisekedi, from the historical opposition political party, the Union for Democracy and Social Progress (UDPS). However, this change of head of state should not lead states parties to the DRC's UPR to minimise the alarming human rights situation in the country. On the contrary, the European Union and its member states must seize this opportunity to remind the DRC government of the commitments made during its second cycle of the UPR; especially those regarding the organisation of transparent and credible elections, the respect and promotion of press and media freedom as well as the protection of human rights defenders. Many of these recommendations have in the meantime been reiterated by the Human Rights Committee, who reviewed DRC in October 2017<sup>1</sup>.

This transfer of power should also be an opportunity to issue new recommendations and concerns regarding corruption as well as the management of natural resources, which represent a serious threat to the human rights in the country.

This policy brief is not exhaustive but rather points out the more urgent recommendations that the European Network for Central Africa (EurAc) and the CCPR-Centre call on the EU and its members states to issue during the upcoming UPR of the DRC.

### **Participation in public life & electoral process**

During the review of the second cycle of the UPR, the DRC accepted the recommendation for the State to carry out transparent and credible elections by ensuring freedom of peaceful assembly and expression for all citizens, including political party members, candidates and members of the press<sup>2</sup>. The DRC also committed to respecting and promoting its citizens' right to participate in public and political life without discrimination, so that everyone can pursue their activities freely and without fear of intimidation<sup>3</sup>.

The Human Rights Committee reiterated similar recommendations in their Concluding Observations of 2017,<sup>4</sup> adopted after the fourth periodic review of the DRC. The Committee even selected this issue for its follow-up procedure, meaning that the DRC has to provide information on the implementation

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<sup>1</sup> Concluding Observations on the fourth periodic report the Democratic Republic of the Congo, CCPR/C/COD/CO/4

<sup>2</sup> Recommendation 134.132 from the United States of America

<sup>3</sup> Recommendation 133.21 from Germany

<sup>4</sup> Concluding Observations on the fourth periodic report the Democratic Republic of the Congo, CCPR/C/COD/CO/4, 30 November 2017, §§ 42 and 48, available here:

<http://ccprcentre.org/files/documents/G1735269.pdf>.

of these recommendations by November 2019. EurAc and the CCPR-Centre regret that the implementation of these recommendations, to which the DRC responded positively in 2014, is still not effective.

The ongoing electoral process in the DRC has indeed been marked by numerous violations of freedom of expression, of assembly and peaceful demonstrations. The [UN Joint Human Rights Office \(UNJHRO\)](#), documented **552 violations relating to the restriction of the democratic space** just in 2018, which equals an increase of 12% compared to the same period in 2017.

The right to participate in political and public life without discrimination has not been respected either, as several territories (Beni, Butembo and Yumbi) were deprived of their right to vote during the presidential election of December 2018.

Finally, **the proclamation of the presidential and legislative results was also characterised by an utter lack of transparency and credibility**. To this date, the display of results by polling stations, as provided for in the electoral law, has not taken place. Electoral observation missions, especially those conducted under the aegis of the Episcopal Conference of the Democratic Republic of the Congo (CENCO), have questioned the official results proclaimed by the Independent National Electoral Commission (CENI).

### **Recommendations**

In this context, EurAc and the CCPR-Centre call on the European Union and its member states, as part of the DRC's third cycle of the UPR, to issue the following recommendations:

- To **end the repression of dissent and lift the ban on peaceful demonstrations**, including by ordering the security and intelligence forces to respect the rights of freedom of opinion and expression as well as of peaceful assembly and association, to ensure that Congolese people can freely express their opinions, including by demonstrating peacefully, without fear of being arrested, tortured or killed;
- To ensure that the **next elections**, including the upcoming local elections and the legislative elections in Beni, Butembo and Yumbi, are organised in a **transparent, inclusive and credible manner**.
- To respect the constitutional right of every citizen to participate in public affairs;
- To put an end to the intimidation of opponents and candidates in the presidential election and to violations of their human rights, by taking the necessary measures to ensure their effective protection.

### **Shrinking civic and media space**

In the framework of its second UPR, the DRC committed to respecting the recommendations of different European states, specifically to take necessary measures to prevent any threat against human rights defenders and ensure their effective protection<sup>5</sup> through the adoption of a law protecting them<sup>6</sup>. The DRC also committed to uphold its engagement to increase the role of civil society, especially by widening the space for political debate and ensuring the right of human rights defenders, opposition parties and journalists to freely carry out their activities<sup>7</sup>. Finally, the DRC accepted the

<sup>5</sup> Recommendation 134.52 from Spain

<sup>6</sup> Recommendation 134.53 from Sweden

<sup>7</sup> Recommendation 134.135 from Italy

recommendation of taking all necessary steps to ensure freedom of the media and duly address all cases of restrictions on the media<sup>8</sup>.

Moreover, the Human Rights Committee reiterated these recommendations during DRC's fourth periodic review.<sup>9</sup> It was concerned about the closing down of public space in the DRC through suspensions of social media and of television programmes.

EurAc and the CCPR-Centre have observed that none of these recommendations have been implemented by the DRC. On the contrary, the civic and media space has been shrinking since 2014, particularly in the context of the electoral process.

#### a. Repressive laws against local and international NGOs and human rights defenders

In addition to the above-mentioned violent repression and serious violations of freedom of expression, peaceful assembly and demonstration, the civic space risks further closing through a series of drafts of repressive laws against national and international non-governmental organisations (NGOs), as well as human rights defenders (HRD).

For instance, the draft act proposed by the Ministry of Justice to amend the law 004/2001 of 20 July 2001 on NGOs will put significant restrictions on the freedom of association and violate the principles of international human rights law. The imposed limitations on the right of freedom of association are in conflict with the principle of legality, are not contingent or necessary in a democratic society, and do not have a legitimate public purpose. As a matter of fact, Article 30bis forbids international NGOs to conduct 'political activities', but it is unclear as to how the law defines such activities.

The draft act on the protection and responsibilities of human rights defenders 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 draft act transgress the international standards of human rights protection and promotion, especially the [United Nations Declaration on Human Rights Defenders](#). It aims to centralise control over who can be accredited as a human rights defender, 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 a human rights defender through a list of conditions such as age, diploma, 'morality' or membership to a registered NGO (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 human rights defenders endanger 'public order', as stated in the draft act.

In addition, the counter-terrorism bill provides a vague definition of terrorism and will enable police and prosecutors to wiretap any individuals under investigation and seize or freeze property of suspicious individuals without the prior approval or supervision of a court of law.

### **Recommendations**

EurAc and the CCPR-Centre urge the European Union and its member states to issue strong recommendations to the DRC during its next UPR, especially:

<sup>8</sup> Recommendation 134.131 from Slovakia

<sup>9</sup> Concluding Observations on the fourth periodic report the Democratic Republic of the Congo, CCPR/C/COD/CO/4, 30 November 2017, §40, available here: <http://ccprcentre.org/files/documents/G1735269.pdf>.

- To fully respect the legislative procedure and make the necessary amendments to ensure the law on NGOs and the new laws on terrorism and the protection of human rights defenders are aligned with international and regional human rights law.

#### b. Restriction of freedom of press and right to information

Freedom of press and right to information have been severely restricted despite the DRC's commitment in this matter during its last UPR.

Indeed, Internet and SMS services were cut several times by Congolese authorities for reasons of national security (September 2016, August and December 2017, January, February and December 2018). These measures severely restricted the Congolese people's liberty to communicate, and prevented protesters from communicating, documenting and informing the national and international community in real time about what was happening in the country.

*With the cut of Internet and SMS services in 2016, 2017 and 2018, the DRC restricting its people from communicating, documenting, and informing the national and international level, which constitutes a violation of the right to information.*

Moreover, during 2017 and 2018, journalists were heavily targeted, through intimidation, harassment or arbitrary arrest and detention, and often their equipment was confiscated or damaged. It was especially the case for journalists covering protests. For instance, on 21 January 2018 in Kinshasa, the Armed Forces of the DRC (FARDC) officials threatened to kill a Radio Okapi journalist and destroyed his camera while he was covering the protest; many similar cases are reported by the United Nations Joint Human Rights Office (UNJHRO)<sup>10</sup> and the International Federation of Human Rights (FIDH)<sup>11</sup>. Similarly, the organisation *Journalistes en danger* (JED) documented at least 121 cases of violations of freedom of press and right to information during 2018 in the country<sup>12</sup>.

#### Recommendations

EurAc and the CCPR-Centre call on the European Union and its member states to issue the following recommendations towards the DRC during the next UPR:

- To lift all restrictions on the Internet and media, and in particular to stop any form of (partial or total) cutting of Internet and SMS broadcasting during popular mobilisations organised by opposition parties or civil society organisations;
- To abolish the ministerial decree of May 2017 on freedom of the press and all other restrictive measures;
- To ensure that the Superior Council of Audio visual and Communication performs its role impartially and independently;
- To decriminalise press offences and the offence of insulting the head of state;
- To investigate, prosecute and convict individuals responsible for harassment, threats or intimidation against journalists, political opponents and human rights defenders;

<sup>10</sup> [Recours illégal, injustifié et disproportionné à la force lors de la gestion des manifestations publiques en RDC de Janvier 2017 à Janvier 2018](#), UNJHRO, January 2018

<sup>11</sup> [RDC : arrestation, la détention arbitraire et le harcèlement judiciaire de M. Eliezer Ntambwe Mposi](#), FIDH, 6 April 2018

<sup>12</sup> [Etat de la liberté de la presse et d'expression en RDC](#), JED, 2 November 2018

- To ensure the full effectiveness and independence of the Unit for the Protection of Human Rights established on 13 June 2011.

## Women's participation to political life

During its second UPR, the DRC approved a recommendation on electoral law to ensure a rate of 30% of women's participation on electoral lists<sup>13</sup>. To this day, the electoral law has had no constraining effect on the implementation of such a quota. The 4<sup>th</sup> paragraph of Article 13 specifies that the inobservance of this 30% rate does not constitute a motive for inadmissibility of the list submitted by the party. This heavily **hinders women's representation and effective participation to political life in the DRC**. For instance, during the elections of December 2018, female candidates only constituted 11% of all candidates for provincial legislatures, 14% for national legislatures, and there was only one female candidate (4%) for the presidential election.

Again, this issue was also a concern for the Human Rights Committee in 2017, and similar recommendations were adopted.<sup>14</sup>

### Recommendations

EurAc and the CCPR-Centre call on the European Union and its member states to issue the following recommendations towards the DRC during the next UPR:

- To re-examine the N°17/103 2017 electoral law to **ensure inadmissibility for parties or political groups if they do not observe the minimum rate of 30% of female candidates**.
- To effectively apply the N°015/013 law (1st August 2015) on **application modalities of the implementation of women's rights and parity**.

## Sustainable and fair management of natural resources

### a. Customary and indigenous Land rights

A large part of the Congolese population depends on the exploitation of natural resources, either through agriculture or mining, for their daily livelihoods. As a consequence, access to land is crucial for people working in rural areas. However, in the DRC incomplete and archaic legislation puts the rights of citizens holding land under customary law on shaky grounds. Indeed, the recognition of customary law by the central government is still legally ambiguous. Moreover, despite the fact that during its second UPR the DRC committed to paying particular attention to guarantee the access to land and natural resources of indigenous Pygmy people<sup>15</sup>, the latter are still faced with serious obstacles with regards to access to land. In fact, Pygmies are often expelled from their ancestral land, confined to poorly equipped reserves, or see their rights ignored by the state and other Congolese citizens. The DRC government has started a review of the current land law, but it is not clear at this point what will be the place of customary land rights under the new legislation.

<sup>13</sup> Recommendation 134. 137 from Norway

<sup>14</sup> Concluding Observations on the fourth periodic report the Democratic Republic of the Congo, CCPR/C/COD/CO/4, 30 November 2017, §16, available here: <http://ccprcentre.org/files/documents/G1735269.pdf>.

Rights of indigenous peoples were also a concern for the Human Rights Committee, when adopting the Concluding Observations for DRC in 2017.<sup>16</sup>

### **Recommendations**

EurAc and the CCPR-Centre call on the EU and its members states to address the following recommendation to the DRC:

- To recognise the **rights of customary land-holders**, by ensuring that mechanisms for the clear and transparent recognition of their rights is legally in place.
- To recognise **the right of indigenous Pygmy people to access and use land** according to their customary rights, providing adequate compensation when this is not possible;
- To see to it that prior and informed consultations are held with Pygmy communities in order to obtain their free and informed consent prior to the adoption or implementation of any measure that might have a substantial impact on their way of life, access to their traditional lands or their culture.

#### **b. Extractive sector**

During the last UPR, few recommendations were issued by the parties on human rights violations linked to the mining sector. The Human Rights Committee also adopted recommendations regarding child labour in the extractive sector. It recommended to end all forms of exploitation of child labour,<sup>17</sup> which the DRC committed to implement, together with measures contrasting illegal mining.<sup>18</sup> Beyond this very important specific point, it is crucial that the EU and its members states raise larger concerns and new recommendations on the mining sector in the DRC.

Indeed, the DRC is rich in natural resources, but armed conflicts, political turmoil and opaque governance have so far impeded the sustainable and equitable use of the wealth produced by the exploitation of natural resources.

With regards to the extractive sector, the interference of armed groups in mining activities are well known and documented in the DRC. Armed groups have historically concentrated in the Eastern parts of the country, where the extraction of gold, tin, tantalum and tungsten (3TG) represents an important part of economic activities. **Armed groups have been known to exact illegal taxes, set up roadblocks in the proximity of mining sites, and to illegally control access to sites.** The situation is even more aggravated by the participation of state forces, such as the national army and the presidential guard, in the illegal extraction of rent from mining sites. It must also be noted that underaged children are still often employed for work on the mines.

Moreover, many communities in the DRC struggle to enforce their rights to informed, prior consent and compensation when mining deals are struck between government entities and private companies in their communities. Local people have repeatedly been evicted from their land without compensation or have agreed to deals with private actors without being duly consulted and without receiving appropriate compensation and/or reparations for the loss of their livelihoods. The position of artisanal miners is also particularly vulnerable, as they often work in unsecure and precarious

<sup>16</sup> Concluding Observations on the fourth periodic report the Democratic Republic of the Congo, CCPR/C/COD/CO/4, 30 November 2017, §50, available here:

<http://ccprcentre.org/files/documents/G1735269.pdf>.

<sup>17</sup> Concluding Observations on the fourth periodic report the Democratic Republic of the Congo, CCPR/C/COD/CO/4, 30 November 2017, §46, available here:

<http://ccprcentre.org/files/documents/G1735269.pdf>.

<sup>18</sup> Recommendation 134.90 from Australia.

conditions, and their bargaining position vis à vis other economic actors in the sector is often weakened by lack of organisation and formalisation.

Finally, the DRC is also home to the Congo basin, the second largest rainforest in the world, a rich ecosystem including an astonishing diversity of fauna and flora. The Congo basin rainforest contains several international protected areas recognised by the UNESCO as “world heritage site” such as the Virunga and the Salonga National Parks. According to their particular status, it is forbidden to exploit natural resources in these parks. However, they are rich in diamonds, timber and coltan, oil and gas. While a number of investors have eyed extractive opportunities in the Congo Basin rainforest, it is crucial that the DRC maintains the integrity of this vital ecosystem and respect its commitment to the international law.

### **Recommendations**

In 2018, the DRC government approved a **new mining code** which is expected to strengthen the position of local communities and to provide them with larger benefits from the exploitation of minerals. In this framework EurAc and the CCPR-Centre call on the European Union and its members states to issue the following recommendations towards the DRC:

- To effectively implement the new Mining Code and ensure that the mining operations do not negatively impact the human rights of local communities and the environment;
- To ensure access to effective remedies and reparations for victims of human rights abuses committed by mining companies.
- To apply in its integrity the **national sectorial strategy against child labour**, as well as the norms currently in place to prevent child labour in artisanal mining sites;
- To make sure **individuals and government officials responsible for illegal activities on mining sites do not benefit from impunity** and that they are brought to justice and duly processed;
- To implement a **clear and compulsory procedure for the collection of prior and informed consent by local communities before the attribution of mining concessions** involving consultations with all relevant stakeholders.
- To respect its commitment and **safeguard the integrity of the Congo Basin Forest**, by preventing any extractive activity that could undermine the vital ecosystem functions it performs and by safeguarding the fauna, flora and local communities that depend on the Forest for their survival.

### **Fight against corruption**

The issue of corruption and misuse of government funds has not been addressed during the DRC's second cycle of the UPR. However, as mentioned in the [United Nations Convention against Corruption](#) and resolutions of the [United Nations Human Rights Council](#), corruption seriously undermines democratic institutions and values, has negative effects on the enjoyment of human rights and definitely constitutes a major obstacle to the eradication of poverty.

In the DRC, funds dedicated to the electoral process have been misused or tainted by corruption. The so-called “[Lumumba Papers](#)” include leaked bank records from CENI’s account at the *Banque Gabonaise et Française Internationale* (BGF) which reveal unexplained financial transactions that appear to be inconsistent with the commission’s responsibility for the electoral process. For instance, the [papers](#) show that CENI officials withdrew US\$7.5 million in cash over a three-month period in 2016 without giving any explanation for the transactions. An [investigative report](#) published in September 2018 has extensively shown how the procurement process for the voting machines, as well as the

biometric voters registration, has been marked by irregularities leading to potential embezzlement and substantial delay in the electoral process.

### **Recommendations**

Human rights violations will continue in the DRC as long as the fight against corruption and misuse of government funds will not be properly addressed and those responsible prosecuted.

In that sense, EurAc and the CCPR-Centre urge the European Union and its members states to express their deep concerns on the economic governance in the DRC and to issue strong recommendations towards the Congolese government on this matter, such as:

- The **implementation of an effective zero tolerance policy to bribery and corruption** and to ensure the prosecution of those responsible of corruption, misuse of governments funds, money laundering and fraud.
- To ratify the **African Union Convention on Preventing and Combating Corruption** as soon as possible.

### **For more information:**

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