DISMANTLING DISSENT

DRC'S REPRESSION OF EXPRESSION AMIDST ELECTORAL DELAYS

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1. EXECUTIVE SUMMARY

President Joseph Kabila's second, and according to the constitution, last term as president of the DRC ends on 19 December 2016. By September, it is increasingly clear that presidential elections will not be held within constitutional timelines. At the same time, Congolese authorities are increasingly repressing politicians and civil society actors who challenge the notion of the incumbent retaining office after this date.

This report documents how the DRC government is violating rights to freedom of expression, association and peaceful assembly pushing the country into crisis. It shows how state institutions, including the Ministry of Communications, provincial and mayoral administrations, and security agencies, are preventing dissenting voices from organizing and expressing themselves on elections and term limits.

Amnesty International has been monitoring these issues since September 2015. The report is based on 75 interviews conducted in Lubumbashi and Kinshasa in June 2016 with victims of human rights violations, journalists, government officials, politicians, foreign diplomats, and representatives of national and international human rights organizations and the United Nations (UN). Researchers met with the Minister of Justice and Human Rights, the Chief of Staff of the Prime Minister, the Vice-Minister of Defence, and the Inspector General of Police during the research. Amnesty International's findings were presented in writing to the Ministry of Interior and Security, the Ministry of Justice and Human Rights, the Attorney-General and the National Intelligence Service, known by its French acronym ANR, but the organization did not receive a response.

Since August 2014, the DRC government has used the justice system to crack down on voices speaking out against potential electoral delays and President Kabila staying in office after his term expires. The political opposition rejected the idea of a national dialogue announced by President Kabila on 28 November 2015. Preparatory discussions for such a dialogue were underway at the end of August 2016, but the majority of opposition political parties declined to participate having previously rejected the African Union (AU) facilitator Edem Kodjo accusing him of lacking independence.

In May 2016, the Constitutional Court interpreted Article 70 of the Constitution, ruling that the President could remain in office beyond his constitutional term limit until a successor was in place. Political opposition and civil society groups widely rejected this ruling questioning the Constitutional Court's independence. Disagreements between the Presidential Majority, the ruling majority coalition, on the one hand, and the political opposition and civil society groups on the other, about whether the incumbent can stay in office after 19 December has triggered a political crisis.

The government has repressed the freedom of association of youth movements, human rights organizations, and political parties. Youth movements who explicitly call on President Kabila to stand down at the end of his second term, such as Filimbi and *Lutte pour le Changement*, also known by its acronym LUCHA, have been classified as insurrectional groups. Local authorities declared LUCHA "illegal" because they are not registered, though neither DRC's own laws nor international human rights standards on freedom of association put registration as a pre-requisite for enjoying the right. Congolese courts have convicted LUCHA activists for peacefully exercising their rights to freedom of association and peaceful assembly. Government officials have threatened to close human rights organizations who took an explicit stand on the constitutional debate or who criticized government repression, invoking restrictive interpretations of existing laws on NGO registration.

Following splits within the Presidential Majority, the Ministry of Interior has allowed parties that left the ruling coalition to continue operating and, in some cases, register with the same name, logo and identity colours, in violation of DRC's law on party governance. Instead of treating these factions as separate political parties, the

government has permitted the creation of duplicate parties, limiting their ability to function effectively and exercise their right to association.

While provincial and mayoral authorities and police have prevented groups pushing for timely elections and respect for term limits from organizing peaceful assemblies, they have facilitated groups within the Presidential Majority to hold gatherings. Declaring protests unauthorized – though organizers are only required to inform local authorities – contravenes DRC's law on assembly which is in line with international human rights standards. Between October 2015 and January 2016, the authorities of two provinces and one city imposed a blanket ban on assemblies. At least 11 individuals have been convicted and sentenced for having supported or participated in peaceful protest.

The police has prevented Moise Katumbi, the former governor of the mineral rich ex-Katanga province, from addressing gatherings since he left the People's Party for Reconstruction and Democracy (PPRD) and his government post. Unidentified individuals believed to be intelligence agents have intimidated and harassed Moise Katumbi, his staff and family. Coinciding with his announcement that he planned to run as a presidential candidate, the prosecutor opened an investigation against him for alleged recruitment of mercenaries. Charged with threatening state security, Moise Katumbi was allowed to leave the country on 19 May 2016, but was sentenced in absentia on 23 June to three years' imprisonment in a real estate dispute, rendering him ineligible to stand for the presidency.

Military police detained opposition leader Martin Fayulu for half a day in February 2016 while he mobilized for a general strike to call for respect of the Constitution. In May 2016, the police in Kwilu Province then prevented him from holding three political meetings.

As human rights violations related to the electoral context intensify, the working environment for human rights defenders is increasingly hostile. Security agents have arrested and harassed those who took an explicit stand on the constitutional debate or those who denounced human rights violations accusing them of being non-patriotic, working for "foreigners", and betraying their country. Since April 2016, four international researchers have been expelled from the country.

Given this consistent pattern of human rights violations, and a failure to respect its obligations under the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples' Rights, there is urgent need for serious reform to ensure that all Congolese can express themselves freely and peacefully assemble and organize. Open debates and peaceful protest are important alternatives to violence. Closing these spaces further will only escalate political tensions potentially triggering unrest.

The DRC government should release all individuals that are detained for political reasons and stop using the justice system and other state institutions to pursue political goals. The Ministry of Justice should issue a circular to local authorities and security forces instructing them to allow and protect peaceful demonstrations and ensure that all human right defenders can freely carry out their work.

Amnesty International also urges the international community, including DRC's regional partners, the AU and the African Commission on Human and Peoples' Rights (ACHPR), to step up their efforts in encouraging the DRC to undertake these essential reforms. In particular, the ACHPR should publicly press the DRC government to abide by the African Charter on Human and Peoples' Rights to respect individual freedoms and guarantee that the intelligence service operates in accordance with the law and regional and international human rights obligations. The AU, through the Peace and Security Council, should continually monitor the pre-electoral context and take preventive measures, including reinforcing the mandate and operational capacity of AU human rights observers in the DRC.

2. METHODOLOGY

This report focuses on violations of the rights to freedom of expression, association and peaceful assembly within the pre-electoral context in the DRC. It is based on information gathered by Amnesty International from primary and secondary sources.

Amnesty International has closely monitored the human rights situation in the context of pre-electoral debates in the DRC since January 2015. Our documentation of human rights incidents in the context of ongoing political events has informed our overall analysis reflected in this report.

A team conducted field research for this report in Lubumbashi and Kinshasa in June 2016. Amnesty International researchers conducted 75 face-to-face interviews during this visit, including with family members, witnesses, defence lawyers and victims of some of the human rights violations documented in this report, journalists and others working in the media, human rights defenders and civil society actors, detainees, government officials at the local and national level, representatives of national and international human rights organizations, diplomats and the UN both in Kinshasa and Lubumbashi.

Amnesty International also met with the Minister of Justice and Human Rights, Alexis Thambwe Mwamba; the Chief of Staff of the Prime Minister, Sele Yalaghuli; the Vice-Minister of Defence, Rene Sibu Matubuka; and the Inspector General of Police, General Charles Bisengimana.

Additional information was gathered through phone interviews and desk research between September 2015 and June 2016. All interviews were conducted in French.

Some individuals interviewed expressed concern for their safety. All gave consent for their information to be used in this report, but Amnesty International has used some pseudonyms and omitted some identifying details to protect their identity.

This report does not exhaustively document all human rights violations that have taken place in the pre-election context. Instead, it gives an overview of key concerns related to the rights to freedom of expression, assembly and association, linked to the current political context.

Amnesty International shared the findings reflected in this report with relevant government officials responsible for ensuring the DRC government's obligations to uphold these rights. The findings were shared in writing with the Vice-Prime Minister and Minister of Interior and Security, Professor Evariste Boshab; the Minister of Justice and Human Rights, Alexis Thambwe Mwamba; the Attorney General Flory Kabange Numbi; and the General Administrator of the ANR, Kalev Mutond, on 24 August 2016 with a request for an official response, so that this could be included in the report. At the time of writing, the organization had not received a response.

Amnesty International would like to thank all those who provided information for this report.

3. BACKGROUND

According to the DRC's Constitution, presidential elections should take place by the end of December 2016.[1] President Kabila's second term expires on 20 December 2016.[2] The Constitution does not provide for a third consecutive presidential term.[3] By September 2016, less than four months before the end of President Kabila's mandate, the National Independent Electoral Commission (CENI) was yet to announce any concrete plans for the presidential elections, raising concerns within the DRC and among regional and international political actors that the incumbent may remain in office beyond the constitutional term limit.

Political opposition parties and their leaders, the Catholic Church, civil society and a number of foreign governments have been unsuccessful in their calls for President Kabila to "respect the Constitution".[4] Having initially asked President Kabila to step down at the end of his second term, following increased concerns that elections may not be held, the call to respect the constitution broadened to ask the incumbent to hold elections within the constitutional timeframe.

Statements issued by people close to President Kabila have fuelled the perception within the political opposition and civil society that he intends to remain in power beyond term limits.[5] For instance Henri Mova Sakanyi, Secretary General of the PPRD, floated the idea of a constitutional referendum to remove term limits during the party's birthday celebration for President Kabila on 4 June 2016.[6] He further stated: "*The day will come, and it is not very far off anymore, that the sovereign population will decide about its fate. If the*

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[1] Constitution of the Democratic Republic of Congo, modified by law n° 11/002 of 20 January 2011 regarding the revision of certain articles of the Constitution of the Democratic Republic of Congo of 18 February 2006, www.leganet.cd/Legislation/Droit%20Public/Constitution.2011.pdf Article 220 of the Constitution states that "the number and length of the terms of office of the President of the Republic, may not form the object of a Constitutional amendment." Article 70 states "the President of the Republic is elected by direct universal suffrage for a term of five years which is renewable only once. At the end of his term, the President stays in office until the President-Elect effectively assumes his functions." Article 73 states "the ballot for the election of the President of the Republic is convoked by the Independent National Electoral Commission, ninety days before the expiration of the mandate of the president in office."

[2] Declared winner of the 28 November 2011 elections, President Kabila took his presidential oath on 20 December 2011 before the Supreme Court. His terms runs for five years and expires on 19 December 2016.

[3] Article 70 of the DRC Constitution limits the number of terms to two, while Article 220 explicitly states that the number of terms cannot be changed, see footnote 1.

[4] Radio Okapi, « RDC : La CENCO appelle le gouvernement à garantir la tenue des élections dans les délais », 2 July 2014, www.radiookapi.net/actualite/2014/07/02/rdc-la-cenco-appelle-le-gouvernement-garantir-la-tenue-des-elections-dans-les-delais ; Radio Okapi, "RDC: 33 ONG demandent Joseph Kabila de ne pas violer la constitution », 28 August 2015, www.radiookapi.net/2015/08/28/actualite/politique/rdc-33-ong-demandent-joseph-kabila-de-ne-pas-violer-la-constitution?utm_source=feedburner&utm_medium=email&utm_campaign=Feed%3A+radiookapi%2Factu+%28Radiookapi.net%29 ; Radio France International, « Elections en RDC : L'ONU et les Etats-Unis maintiennent la pression », 27 August 2015, www.rfi.fr/afrique/20150827-congo-rdc-onu-etats-unis-pression-kabila-elections-novembre-2016-presidentielle-mon?ns_campaign=reseaux_sociaux&ns_source=twitter&ns_mchannel=social&ns_linkname=editorial&aef_campaign_ref=partage_aef&aef_campaign_date=2015-08-27&dlvrit=1112231 ; Radio Okapi, «Le conclave de Bruxelles exige la tenue de la présidentielle en RDC avant la fin de l'année », 10 June 2016, www.radiookapi.net/2016/06/10/actualite/politique/le-conclave-de-bruxelles-exige-la-tenue-de-la-presidentielle-en-rdc ; Politico.cd, « RDC : Le parlement européen demande au Président Joseph Kabila de démissionner le 20 décembre 2016 », 23 June 2016, www.politico.cd/actualite/la-une/2016/06/23/rdc-le-parlement-europeen-demande-au-president-joseph-kabila-de-demissionner-le-20-decembre-2016.html ; Radio Télévision Belge Francophone, « Le parlement belge presse le Congo de tenir des élections respectant sa Constitution », 20 July 2016, www.rtbf.be/info/belgique/detail_le-parlement-belge-presse-le-congo-de-tenir-des-elections-respectant-sa-constitution?id=9358238

[5] See Amnesty International, *Treated like Criminals: DRC's race to silence dissent in the run up to elections* (Index: AFR 62/2917/2015) for statements by Evariste Boshab, former Secretary General of the PPRD, Claude Mashala, national secretary of the PPRD. Tryphon Kin-Kiey Mulumba, Minister of Relations with the Parliament, created the association *Kabila Desir* and explicitly spoke out in favour of amending the Constitution, see www.rfi.fr/emission/20150813-rdc-tryphon-mulumba-ministrekabila-desir-troisieme-mandat. President of the Parliament Aubert Minaku and ex-Minister of Interior Richard Muyej are cited by Congo Research Group as having affirmed that presidential term limits can be changed by referendum, see Congo Research Group, "Congo : Une Bataille électorale périlleuse. Rapport d'analyse numéro 1 Aout 2016 », p.30. congoresearchgroup.org/new-crg-report-congos-perilous-election-battle/

[6] RFI, "RDC: Polémique après les propos de Henri Mova sur un eventuel referendum", 5 June 2016, www.rfi.fr/afrique/20160605-rdc-polemique-apres-propos-henri-mova-referendum-constitutionnel

sovereign population decides on a referendum, it will do so. The people in Congo-Brazzaville have done so, the Rwandan population has done it, the Burundian population has done it. Do you think we are still here to not do it?"[7]

Lucha tweet of billboard stating 'Tanganika province welcomes and supports a referendum'.

[7] RFI, "Reportage à Kinshasa, dans la manifestation des sympathisants de Joseph Kabila", 4 June 2016, www.rfi.fr/afrique/20160604-reportage-kinshasa-manifestation-sympathisants-joseph-kabila

Lucha tweet of billboard stating; 'For a strong and emergent Congo, this is the men we need. Joseph Kabila Kabange. Continue to govern…

The President of the CENI announced in March 2016 that elections could not be held within the constitutional timeframe due to technical constraints.[8] On 11 May 2016, the Constitutional Court ruled that Article 70 of the Constitution would allow the President to stay in office beyond his constitutional term if elections were not held in time.[9] Article 70 states that "at the end of his mandate, the President stays in function until the newly elected president is installed." The Constitutional Court interpretation was widely rejected as biased by the political opposition and civil society groups, who consider that Article 70 only applies when a new president has already been elected. They consider that Article 75 of the Constitution, which states that the functions of the President should be taken over by the head of the Senate when the presidential seat is vacant, is more applicable.[10]

[8] Radio Okapi, "Corneil Nangaa: Des contraintes techniques ne permettent pas d'organiser les élections dans le delai", 18 March 2016, www.radiookapi.net/2016/03/18/actualite/politique/corneille-nangaa-les-elections-devraient-etre-organisees-au-dela-de
[9] Radio Okapi, "Mandat Présidentiel: Plus de 200 députés ont saisi la cour constitutionnelle", 18 April 2016, www.radiookapi.net/2016/04/18/actualite/politique/mandat-presidentiel-plus-de-200-deputes-ont-saisi-la-cour, and "RDC: Joseph Kabila pourra rester en fonction après 2016 si la présidentielle n'a pas lieu", 11 May 2016, www.radiookapi.net/2016/05/11/actualite/politique/rdc-joseph-kabila-pourra-rester-en-fonctions-apres-2016-si-la
[10] See Congo Research Group, *Congo : Une Bataille électorale périlleuse*. Rapport d'analyse numéro 1, August 2016, congoresearchgroup.org/new-crg-report-congos-perilous-election-battle/

Supporters of President Kabila walk past a political poster during a rally in Kinshasa. © Eduardo Soteras/AFP/Getty Images

The political opposition and civil society groups have interpreted CENI's failure to effectively organize elections as a strategy by the incumbent to assure his continued presidency. One analyst dubbed CENI's lack of leadership over the electoral process as "equivalent of an active boycott" of its own elections.[11] None of the deadlines in CENI's February 2016 electoral calendar had been met by September nor had an updated calendar been issued. The Congo Research Group, a research institute based at the Center on International Cooperation at New York University, highlighted in their August 2016 analysis that the electoral delays are "artificial". Their report shows how government institutions contributed to the delays by failing to disburse sufficient funds to the CENI, and update the voter register.[12]

President Kabila sought to open debate with the opposition by calling for a national and inclusive dialogue to "restart the electoral processes" on 28 November 2015.[13] The AU appointed former Togolese Prime Minister Edem Kodjo as facilitator.[14] However, political opposition parties[15] refused to participate, perceiving the dialogue as a way for the government to delay the elections or to change the Constitution allowing for a third term.[16]

CENI's failure to organize the presidential elections and disagreement on how to proceed once President Kabila's second term expires has plunged the country into a political crisis. On 4 August 2016, during a press conference with President Yoweri Museveni of Uganda, President Kabila announced that an electoral calendar would be published after updates to the voter register were finalised.[17] The CENI previously

[11] Kris Berwouts, "DR Congo's electoral process is at an impasse. Here are 3 scenarios for what comes next", 22 May 2016, http://africanarguments.org/2016/05/22/dr-congos-electoral-process-is-at-an-impasse-here-are-3-scenarios-for-what-comes-next/
[12] Congo Research Group, « Congo : Une Bataille électorale périlleuse. Rapport d'analyse numéro 1 August 2016 », p23, congoresearchgroup.org/new-crg-report-congos-perilous-election-battle/
[13] Radio Okapi, « RDC : Joseph Kabila annonce la convocation du dialogue politique national », 28 November 2015 www.radiookapi.net/2015/11/28/actualite/politique/joseph-kabila-convoque-le-dialogue-politique-national
[14] RFI, « RDC: L'UA et le Togolais Edem Kodjo reprennent la main sur la médiation », 17 January 2016, www.rfi.fr/afrique/20160117-dialogue-rdc-ua-reprend-main-mediation-edem-kodjo-pouvoir-opposition
[15] The term 'political opposition parties' is used in this report in reference to all parties that are not part of the ruling coalition or 'Majorité Presidentielle'.
[16] Jeune Afrique, "RDC : l'opposition refuse le dialogue proposé par Kabila et appelle à de nouvelles manifestations», 30 November 2016, www.jeuneafrique.com/282968/politique/rdc-lopposition-refuse-le-dialogue-propose-par-kabila-et-appelle-a-de-nouvelles-manifestations/
[17] NBS TV live, "Museveni - Kabila Presser", 4 August 2016, www.youtube.com/watch?v=_K4jR_r5q-c&app=desktop at 7:35

indicated that the registration of voters was scheduled to start on 31 July 2016 and would take 16 months ending in November 2017.[18]

For more than seven months, Edem Kodjo was unsuccessful in bringing the different parties together to dialogue. At the request of the opposition, an international support group comprised of representatives of the AU, UN, European Union (EU), the International Organization of the Francophonie (OIF), the Southern African Development Community (SADC), and the International Conference of the Great Lakes Region (ICGLR) was inaugurated by the AU on 4 July 2016.[19] At the time of writing, the dialogue was set to start at the beginning of September. However, the majority of opposition parties refused to participate stating that they found the measures announced by the Minister of Justice to reduce political tension, including the release of 15 pro-democracy activists, insufficient to demonstrate goodwill.[20]

The political crisis is punctuated by mutual accusations by both the political opposition and the ruling coalition that the other is preparing a constitutional coup d'état.[21] Each side draws on different articles of the Constitution to justify their position. The political opposition has relied on Article 64 which states in its first paragraph that "all Congolese have a duty to defeat any individual or group of individuals who […] exercise power in violation of the dispositions of the Constitution." The ruling coalition has relied on the second paragraph of the same article, which states that "every tentative to overthrow the constitutional regime constitutes an offence against the nation and the State", to caution against any attempts of popular uprising.

The question of whether President Kabila will leave office in December 2016 has also caused tensions fragmenting the Presidential Majority. On 16 September 2015, seven senior were expelled politicians from the Presidential Majority after they published an open letter calling on the president to respect the constitution's two-term limit.[22] These senior politicians formed a political grouping referred to as the G7, and have since been advocating for respect of the Constitution. On 29 September 2015, two weeks after the G7 was expelled, Moise Katumbi, governor of the mineral-rich Katanga Province, resigned from the PPRD and his governor post. In his resignation letter published on Twitter, Moise Katumbi condemned "the general decline of individual liberties, […] the arbitrary arrests of pro-democracy activists, banning of films, intimidation, increasingly violent police repression, internet blockages" and the fact that "everything was put in place to not respect the Constitution."[23] On 4 May 2016, Moise Katumbi announced via Twitter that he intended to run for president in the upcoming elections.[24] The G7 platform had called for Moise Katumbi's presidential candidacy at the end of March 2016.[25] Analysts consider that Moise Katumbi could be one of the only politicians able to mobilize votes across the country in a presidential campaign.[26]

At the same time, the DRC's economy is in crisis. In June 2016, the operating costs of government ministries and other public services were cut by 30% to avoid hyperinflation.[27] The Congolese franc has continued to weaken against the US dollar, affecting the purchasing power of people paid in local currency and low income households.[28]

In a statement published on 27 June 2016, the National Episcopal Conference of Congo (CENCO) denounced the political leaders' failure to address the suffering of the population who lack sufficient access to basic services such as water, health, education and electricity and urged them to respect the constitution.

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[18] Radio Okapi, " Corneil Nangaa annonce les élections après la révision du fichier électoral", 5 July 2016, www.radiookapi.net/2016/07/05/actualite/politique/corneille-nangaa-annonce-les-elections-apres-la-revision-du-fichier

[19] Inaugural meeting of the Support Group for the Facilitation of the National Dialogue in the Democratic Republic of Congo, AU press release, 4 July 2016.

[20] A first grace measure was issued on 22 July 2016 which led to the release of six LUCHA activists among others. On 19 August, the Ministry of Justice announced the release of Christopher Ngoyi, Fred Bauma, Yves Makwambala and Jean-Marie Kalonji as a measure to reduce political tension. On 26 August, the release of another five youth activists followed. However a number of political prisoners including Jean-Claude Muyambo, Diomi Ndongala and Huit Mulongo remained behind bars.

[21] Radio France Internationale, « RDC: la majorité accuse l'opposition de fomenter un coup d'Etat institutionnel », 11 June 2016, www.rfi.fr/afrique/20160611-rdc-opposition-bruxelles-conclave-gouvernement-coup-etat-institutionnel ; La Prospérité, «Dialogue en RDC. Samy Badibanga: 'Edem Kodjo fait fausse route !' », 18 April 2016, www.laprosperiteonline.net/affi_article.php?id=9756

[22] For a copy of the letter see Jeune Afrique, "RDC : sept dirigeants de la majorité présidentielle accusent Kabila de « stratégie suicidaire », 15 September 2015, www.jeuneafrique.com/264453/politique/rdc-sept-dirigeants-de-majorite-rappellent-a-lordre-president-kabila-elections/

[23] Tweet by @moise_Katumbi, 29 September 2015, twitter.com/moise_katumbi/status/648918391860895744?ref_src=twsrc%5Etfw

[24] Tweet by @moise_Katumbi, 4 May 2016, twitter.com/moise_katumbi/status/727934704125681664?ref_src=twsrc%5Etfw

[25] Jeune Afrique, "Présidentielle en RDC: Moise Katumbi officiellement désigné candidat commun du G7", 30 March 2016, www.jeuneafrique.com/314247/politique/presidentielle-en-rdc-moise-katumbi-officiellement-designe-candidat-commun-du-g7/

[26] African Arguments, "Congo's Katanga Governor Moise Katumbi leaves ruling party, breaks silence", 30 September 2015, africanarguments.org/2015/09/30/congos-katanga-governor-moise-katumbi-leaves-ruling-party-breaks-silence/ ; Aaron Ross and Bienvenu-Marie Bakumanya, "Millionaire governor gears up for 2016 Congo election bid", Reuters, 11 August 2015, http://uk.reuters.com/article/uk-congodemocratic-politics-idUKKCN0QG1E020150811

[27] Reuters, "Congo PM proposes deep budget cuts, warning of hyperinflation", 17 May 2016, af.reuters.com/article/topNews/idAFKCN0Y80RG?pageNumber=1&virtualBrandChannel=0

[28] Radio Okapi, "La dépréciation du franc Congolais va réduire le pouvoir d'achat des gagnes petits", 20 June 2016, www.radiookapi.net/2016/06/21/actualite/economie/la-depreciation-du-franc-congolais-va-reduire-le-pouvoir-dachat-des

The CENCO called for dialogue to reach consensus for the organization of elections, and called on "*the republican and patriotic responsibility of [their] leaders to accept a change of power as foundation of a democratic life. Acting differently would not only worsen the current crisis but would also go against the will of the sovereign population who have made their choice: it would thus be high treason of the Nation (Cf. Art.220)*".

UN early warning reports have cautioned that continued failure to organize the elections could trigger politically motivated violence similar to that seen in Burundi.[29] Analysts have also warned that the political crisis could provide opportunities for increased armed group activity in eastern DRC.[30] Some have also highlighted the risk of large scale violent protests against the government in the streets of major cities.[31] One expert reported indications that young men are being recruited by the state to infiltrate and disrupt peaceful protests, as happened in September 2015.[32]

A protester holds a placard, reading 'DR Congo says no to a constitutional revision'. © Junior D. Kannah/AFP/Getty Images

[29] Reuters, "UN early warning report sees Burundi scenario in Congo", 17 June 2016, www.reuters.com/article/us-un-risks-idUSKCN0Z31W4
[30] *CRG, Une Bataille électorale périlleuse* p. 40.
[31] Kris Berwouts, *The Rise of the Street: The Population of Kinshasa as an Unpredictable Actor in the Electoral Process*, Africa Policy brief N.16, July 2016, Egmont Institute, p. 6, www.egmontinstitute.be/wp-content/uploads/2016/07/APB16.pdf ; International Crisis Group, *Katanga: Tensions in DRC's Mineral Heartland,* N°239, 3 August 2016, www.crisisgroup.org/africa/central-africa/democratic-republic-congo/katanga-tensions-drcs-mineral-heartland
[32] Kris Berwouts, *Rise of the Street,* p. 2 ; Human Rights Watch, "DR Congo: Officials Linked to Attack on Protesters", 6 October 2015, www.hrw.org/news/2015/10/06/dr-congo-officials-linked-attack-protesters

RELEVANT ARTICLES OF THE 2006 CONSTITUTION	
ARTICLE 64	All Congolese have the duty to oppose any individual or group of individuals who seize power by force or who exercise it in violation of the provisions of this Constitution. Any attempt to overthrow the constitutional regime imprescriptibly constitutes an infraction against the Nation and the State. It is punished in accordance with the law.
ARTICLE 70	The President of the Republic is elected by direct universal suffrage for a mandate of five years renewable a single time. At the end of his mandate, the President of the Republic remains in [his] functions until the effective installation of the newly elected president.
ARTICLE 73	The ballot for the election of the President of the Republic is convoked by the Independent National Electoral Commission, ninety days before the expiration of the mandate of the president in office.
ARTICLE 75	In the case of vacancy as a result of death, of resignation or for any other cause of definitive incapacity, the functions of the President of the Republic, with the exception of those specified in Articles 78, 81 and 82 are provisionally exercised by the President of the Senate.
ARTICLE 76	The vacancy of the Presidency of the Republic is declared by the Constitutional Court referred to [the matter] by the Government. The interim President of the Republic sees to the organization of the election of the new President of the Republic under the conditions and within the time periods specified by the Constitution. In the case of vacancy or when the incapacity is declared definitive by the Constitutional Court, the election of the new President of the Republic takes place, on the convocation of the Independent National Electoral Commission, sixty days at least and ninety days at most, after the occurrence of the vacancy or of the declaration of the definitive character of the incapacity. In the case of force majeure, this time period may be prolonged to one hundred and twenty days at most by the Constitutional Court at the request of the Independent National Electoral Commission. The elected president commences a new mandate.
ARTICLE 214	The peace treaties, the treaties of commerce, the treaties and agreements of concern to the international organizations and to the regulation of international conflicts, those which engage the public finances, those which modify the legislative provisions, those which concern the status of persons, [and] those which involve the exchange and addition of territory, may only be ratified or approved by virtue of a law. No cession, no exchange [or] no addition of territory is valid without the agreement of the Congolese People consulted by way of referendum.
ARTICLE 220	The republican form of the State, the principle of universal suffrage, the representative form of government, the number and the duration of the mandates of the President of the Republic, the independence of the judicial power, [and] political and trade union pluralism, cannot be made the object of any constitutional revision. Any constitutional revision having for its object or for [its] effect the reduction of the rights and freedoms of the person or the reduction [of] the prerogatives of the provinces and the decentralized territorial entities is formally prohibited.

4. STATE TREATING CRITICAL VOICES AS THREATS TO NATIONAL SECURITY

As President Kabila's second term comes to an end, the DRC government has shut down spaces for critical speech, especially where questions around constitutional terms for the president are discussed.

The government has portrayed individuals who criticise their action and policy as troublemakers trying to destabilize the state or plotting against it. Meetings of political opposition parties and civil society organizations have been treated by the government as threats against state security. Government officials have labelled youth movements advocating for respect of the Constitution as insurrectional groups. State security agents have intimidated and harassed human rights defenders and government officials have threatened human rights organizations with closure.

4.1 MEETINGS OF POLITICAL OPPOSITION AND CIVIL SOCIETY TREATED AS THREATS TO SECURITY

The political opposition, youth movements, and significant segments of civil society are opposed to what they see as President Kabila's bid to cling to power. These groups have convened twice outside the DRC to discuss their approach to the political crisis and how to push for elections within constitutional deadlines. In December 2015, the pro-democracy youth movement, Filimbi, organized a meeting on île de Gorée in Dakar, bringing together the political opposition and civil society actors. In June 2016, a political opposition party, the Union for Democracy and Social Progress (UDPS), organized a conclave in Brussels.

The government spokesperson Lambert Mende said in a press interview that they had information indicating that the Dakar meeting on île de Gorée was organized to destabilize Congolese institutions.[33] A National Intelligence Agency (ANR) report analyzing the Dakar meeting, which was leaked to the public, concluded that there was a plot to destabilise the "Nation and the State"[34] and recommended several measures to stop groups opposed to a possible third term for President Kabila.

[33] BBC Afrique, "Tension entre Kinshasa et Dakar", 14 December 2015, www.bbc.com/afrique/region/2015/12/151214_dakar_kinsasha
[34] Agence Nationale de Renseignement, "Note a l'Honorable Leon Kengo wa Dondo, President du Senat. Concerne : Consolidation d'une coalition de déstabilisation de la RDC à partir de Dakar, au Sénégal, sous la supervision de parrains étrangers. », 12 December 2015, Kinshasa, seen by Amnesty International. (Consolidation of a coalition to destabilize the DRC from Dakar, Senegal, under the supervision of foreign sponsors).

The ANR report, for instance, recommended that political parties publicly condemn the Dakar meeting and infiltrate the group to destroy it. The report also suggested that the DRC authorities publicly criticize the role of Senegal and other sponsors in supporting the Dakar meeting, and single out Congolese participants in the media. Additional recommendations included that they would systematically and by all means 'take care' ('*prise en charge systematique*') of the participants on their return to DRC, and a "rigorous application of the law regarding NGOs and other not-for-profit organizations not in conformity with current legislation such as LUCHA and Filimbi".[35]

Almost all the political opposition parties agreed to reject the dialogue called for by President Kabila on 28 November 2015 at their conclave in Brussels in June 2016.[36] They called for the presidential elections to be held in accordance with constitutional deadlines and for dialogue in the spirit of UN Resolution 2277. This resolution renewed MONUSCO's mandate and called on the government to "ensure the successful and timely holding of elections, in particular presidential and legislative elections on November 2016, in accordance with the Constitution, while respecting the African Charter on Democracy, Elections and Governance", and to "engage in an open and inclusive political dialogue over the holding of presidential elections, in accordance with the Constitution".[37]

The day after the Brussels conclave, the ruling coalition's Secretary General, Aubin Minaku, accused the political opposition of wanting to stage a "coup d'état". He said: *"We know that most of them want to have a transitional president. A transition with power sharing would violate the spirit of the rule of law established in the Constitution."*[38]

Accusations by government officials in the media, such as the ones described above, violate the right to peaceful assembly recognized in Article 21 of the ICCPR and Article 11 of the African Charter on Human and Peoples' Rights, both of which the DRC has ratified. The DRC government has an obligation to create an enabling environment in which individuals can express themselves and be part of peaceful gatherings in public or private spaces without this leading to them being portrayed as criminals.

The rights to freedom of expression, association and peaceful assembly are important to protect both ideas that are considered inoffensive and those that are considered shocking or disturbing by the government. Political parties, associations and individuals have the right to call for actions that are unpopular with the government. This includes calling for constitutional change or respect of the constitution.[39]

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[35] On 3 December the Mayor of Goma issued a statement saying that LUCHA had no statutes, internal rules, authorization to function, certificate of registration, membership cards, address or office nor a president or leader and therefore functioned in "total illegality", See section below 'Youth movements classified as insurrectional groups'.

[36] Acte d'engagement des forces politiques et sociales acquises au changement en République Démocratique du Congo réunies en conférence à Genval en Belgique du 08 au 09 juin 2016. See also Radio Okapi, " Le conclave de Bruxelles exige la tenue de la Présidentielle en RDC avant la fin de l'année", 10 June 2016, www.radiookapi.net/2016/06/10/actualite/politique/le-conclave-de-bruxelles-exige-la-tenue-de-la-presidentielle-en-rdc

[37] Resolution 2277, voted unanimously by the UN Security Council, renewed the mandate of the MONUSCO peacekeeping mission until 31 March 2017. The resolution urged the DRC government and the CENI to ensure "an environment conducive to a free, fair, credible, inclusive, transparent, peaceful and timely electoral process". The resolution is available at United Nations, "Security Council authorizes the mandate renewal for the United Nations Organization Stabilization Mission in the Democratic Republic of Congo", 30 March 2016, www.un.org/press/en/2016/sc12307.doc.htm

[38] Radio Okapi, "RDC: Le conclave de Bruxelles, une tentative de coup d'Etat, selon le pouvoir", 10 June 2016, www.radiookapi.net/2016/06/11/actualite/politique/rdc-le-conclave-de-bruxelles-une-tentative-de-coup-detat-selon-le

[39] Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, A/68/299, para.38.

Tweet Floribert Anzuluni of a billboard saying 'The Presidential Majority says no to the institutional coup d'état designed in Goree and completed in Bruxelles'

4.2 YOUTH MOVEMENTS CLASSIFIED AS INSURRECTIONAL GROUPS

Over the past 18 months, police and intelligence agents intimidated, arbitrarily arrested and detained activists of the LUCHA youth movement.[40] At the end of 2015, the government also challenged the legality of LUCHA and other youth movements, arguing that they are not recognized in law and are illegitimate.

After police arrested two LUCHA activists and seven supporters during a peaceful protest against killings in Beni,[41] three LUCHA activists had a meeting with the Mayor of Goma on 3 December 2015 to discuss their peaceful action and advocate for the release of their colleagues. The same day, the Mayor issued a

[40] Amnesty International, *Treated like Criminals*. For details on arbitrary arrest and detentions of youth activists between March 2015 and October 2015 see p.26.
[41] Since 2014, Beni territory in north-eastern DRC has experienced a series of civilian killings, despite a robust presence of the DRC's and the UN's military forces. For example, according to a report by the Congo Research Group published in March 2016, at least 684 people were killed between October 2014 and December 2015.

statement that LUCHA had no statutes, internal rules, authorization to function, certificate of registration, membership cards, address or office nor a president or leader and therefore functioned in "total illegality".[42]

The right to freedom of association extends both to registered and unregistered associations.[43] Registration may be required to create associations with a legal personality, as long as it is done in a timely and non-selective manner[44], but "there is no requirement that the association be registered in order for freedom of association rights to apply."[45]

The Congolese Constitution indicates that the modalities for the exercise of freedom of association will be specified in the law. These modalities vary depending on the type of association.[46]

There is no legal requirement in DRC for all associations to be registered. With the exception of religious associations, other types of associations such as citizen movements are not obliged to operate as NGOs or obtain legal personality.[47] The Congolese legal framework is in line with international human rights law where freedom of association applies to all associations, whether or not they are registered.[48]

Nevertheless, on 14 December 2015, two LUCHA activists and nine supporters were prosecuted for "belonging to a criminal organization named LUCHA, created with the aim of troubling public order and attacking people and property".[49] On 16 February 2016, police arrested six other LUCHA activists as they prepared for a general strike called by the political opposition to demand respect for the Constitution. Amnesty International spoke to the Police Commissioner of Goma at the time of their arrest, and he said that LUCHA did not exist in Goma and that he had arrested criminals. All six were prosecuted for belonging to a criminal organization.

In both cases, the LUCHA activists were acquitted of criminal conspiracy but were convicted of incitement to disobey the authorities and respectively sentenced to two and six months' imprisonment.

On 15 March 2016, LUCHA mobilized people to participate in a silent march for the release of Fred Bauma and Yves Makwambala, arrested on 15 March 2015.[50] Participants marched with their mouths gagged and their hands bound, symbolizing repression of their rights to freedom of expression and association. The authorities arrested 18 of the protesters, even though the organizers had fulfilled all legal requirements to inform the authorities of the action. The Police Commissioner of Goma told the press that he had arrested the protesters because they were disturbing public order, and that LUCHA was not recognized in Goma.[51]

The authorities in Goma have criminalized LUCHA, and violated members' rights to freedom of association and peaceful assembly. The right to peaceful assembly is an individual right that applies to everyone. A peaceful assembly cannot be declared 'illegal' or 'disturbing to public order' solely because the organizers are members of a certain organization or association.

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[42] Mayor of Goma, "communiqué official", 3 December 2015, seen by Amnesty International.
[43] Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, A/HRC/20/27 para.56.
[44] Ibid para. 57
[45] Maina Kiai, The right to freedom of association, Best practices factsheet, November 2014.
[46] For trade unions modalities are detailed in Law n.15/2002 of 16 October 2002 concerning the labour law. The creation, functioning and organization of political parties is regulated by Law n.04/002 of 15 March 2004 regarding the organization and functioning of political parties. Law n.004/2001 of 20 July 2001 regarding the general rules applicable to not-for-profit organizations details how these types of organizations can obtain legal personality and the way they can operate. Within this law a more detailed framework is established for two types of not-for-profit organizations, namely non-governmental organizations and religious associations (association confessionelle).
[47] According to Article 48 of Law n.004/2001 of 20 July 2001, religious associations can only be created under the form of not-for-profit organizations, known in French as an association sans but lucrative or asbl.
[48] Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, A/HRC/20/27 para.56.
[49] Document of the prosecutor seen by Amnesty International, Prosecution's request for court hearing, 14 December 2015, seen by Amnesty International.
[50] Amnesty International, "DRC: Free human rights activists", 19 March 2015, www.amnesty.org/en/latest/news/2015/03/free-human-rights-activists/
[51] RFI, "RDC: Nombreuses arrestations après une nouvelle manifestation de la Lucha", 15 March 2016, www.rfi.fr/afrique/20160315-rdc-lucha-arrestations-autorites-congo

LUCHA activists marching with their mouths gagged and their hands bound, symbolizing repression of their rights to freedom of expression and association. © Private

4.3 CRITICISM OF THE AUTHORITIES DEEMED NON-PATRIOTIC

As political tensions increase, the environment has become increasingly hostile for human rights defenders and human rights organizations. Authorities are targeting human rights organizations by applying administrative measures and restrictive interpretations of existing laws to intimidate, harass and threaten them with closure. Human rights defenders, especially those working on issues related to elections, have been accused of working for foreign agents.

4.3.1 HUMAN RIGHTS ORGANIZATIONS HARASSED AND THREATENED WITH CLOSURE

The leaked ANR report (see above) asserted that the youth movements, LUCHA and Filimbi, were unregistered associations operating illegally. Both the government spokesperson and the Minister of Justice announced investigations against a number of human rights organizations critical of government actions to assess their legal compliance.

On 5 December 2015, Lambert Mende, the government spokesperson, announced that an administrative investigation would be initiated against a coalition of 33 NGOs[52] recently established to defend the Constitution. Lambert Mende stated in the media that the coalition was not registered as a non-governmental organization, and that it was "a fiction created to destabilize the credibility of the country".[53] He further said

[52] In August 2015 a coalition of 33 human rights NGOs was created to advocate for the respect of the Constitution. Human rights lawyer George Kapiamba is coordinator of the coalition.
[53] Radio France International, "RDC: Enquete administrative lance contre collectif 33 ONG, 5 December 2015, www.rfi.fr/afrique/20151205-rdc-enquete-administrative-lancee-contre-collectif-33-ong

that only nine of the 33 NGOs were properly registered and questioned the legitimacy of the coalition because most of their statements were only signed by one person.

The Minister of Justice and Human Rights, Alexis Thambwe Mwamba, announced at a press conference on 21 March 2016 that the Ministry would organize a quarterly interactive dialogue with human rights NGOs. The objective of the dialogue was "to improve the human rights situation in the country and to contradict allegations against the government about their role in Operation Likofi, a mass grave in Maluku and the political arrests of civil society activists".[54] He also announced at the same press conference that certain NGOs could be closed down. The Minister stated that only 20 out of the hundreds of organizations active in Kinshasa were properly registered. He continued:

"I wanted to make it very clear that the majority [of NGOs] operate illegally. It is in their interest to regulate their files if they want to continue to operate. If they do not regulate their situation, we will chase them out if they are foreign [organizations], and we will prevent them from functioning if they are national [organizations]."

Since the Minister made the statement, four employees of international NGOs have been expelled from the DRC. On 7 April 2016 Jason Stearns, Director of the Congo Research Group, was expelled on the grounds that he was undesirable. The government also made reference to a recently published report by the Congo Research Group on killings in Beni territory, North Kivu Province.[55] Following their investigations, the group found that members of the Armed Forces of the Democratic Republic of the Congo (FARDC) had been involved in some of the killings. On 14 July 2016 two Global Witness researchers who were researching practices of logging companies were expelled from the DRC on the basis that "they were inciting a revolt and were in the country without permission."[56] On 3 July 2016, the Congolese immigration services cancelled a three year work permit that they had issued on 10 May 2016 to Ida Sawyer, the Kinshasa-based Senior Researcher for Human Rights Watch. On 8 August 2016, the day before her previous work permit expired, immigration authorities gave her 48 hours to leave the country.[57]

To register as an NGO in the DRC, organizations need to have a legal personality, work on humanitarian issues, and specify in their statute the sector that they work in.[58] To secure legal personality, "the positive advice of the minister in whose domain the activities of the non-profit organisation fall counts as a provisional authorization to function." For organizations not based in Kinshasa, provisional authorization is given by the provincial governor. This provisional authorization is valid for six months. After this period, unless there is an explicit denial or retraction of the authorization, the legal personality is considered granted and the Ministry of Justice must deliver the decision granting the legal personality within a month.[59]

For many small organizations who have less than a handful of paid employees, the procedure for obtaining legal personality is burdensome. The government, and the Minister of Justice and Human Rights in particular, have an obligation to take positive measures to create an enabling environment in which individuals and groups can exercise their right to freedom of association.[60] By ratifying the ICCPR and supporting the UN Declaration on Human Rights Defenders, the DRC has affirmed its commitment to the right of everyone to form, join and participate in NGOs, associations, or groups for the purpose of promoting and protecting human rights and fundamental freedoms.[61] The ACHPR has called on state parties to the African Charter on Human and Peoples' Rights, including DRC, to promote and give full effect to the UN Declaration within their jurisdictions.[62]

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[54] Radio France International, « RDC: de nouvelles mesures pour réguler les ONG et le droit de manifester », 22 March 2016, www.rfi.fr/afrique/20160322-rdc-ong-manifestations-interdiction-ministre-justice-thambwe-mwamba?ns_campaign=reseaux_sociaux&ns_source=twitter&ns_mchannel=social&ns_linkname=editorial&aef_campaign_ref=partage_user&aef_campaign_date=2016-03-22

[55] Congo Research Group, "Press statement regarding the expulsion of Jason Stearns from the DR Congo", 9 April 2016, congoresearchgroup.org/press-statement-regarding-the-expulsion-of-jason-stearns-from-the-dr-congo/

[56] Global Witness, "Global Witness employees expelled from DRC under false allegations", 14 July 2016, www.globalwitness.org/fr/press-releases/global-witness-employees-expelled-drc-under-false-allegations/

[57] Human Rights Watch, "DR Congo: Human Rights researcher barred", 9 August 2016, www.hrw.org/news/2016/08/09/dr-congo-human-rights-watch-researcher-barred

[58] Law n.004/2001 of 20 July 2001, Article 36.

[59] Ibid, Article 5.

[60] Maina Kiai, The right to freedom of association, Best practices factsheet, November 2014.

[61] United Nations declaration on human rights defenders, A/RES/53/144, Article 5.

[62] Resolution on the Protection of Human Rights Defenders in Africa adopted at the African Commission on Human and Peoples' Rights 35th Ordinary Session held from 21st May to 4th June 2004, in Banjul, The Gambia

4.3.2 HUMAN RIGHTS DEFENDERS TARGETED

> **"They think we work for the foreigners. All we want is for the Constitution to be respected."**
>
> Anonymous human rights defender

Human rights defenders often face heightened risks during an electoral period. The former UN Special Rapporteur for Human Rights Defenders, Margaret Sekaggya, stated in her 2009 annual report to the UN Human Rights Council that, in many cases, acts to intimidate defenders start long before the beginning of election campaigns.[63]

Amnesty International interviewed 15 human rights defenders about their working environment. All of them said they had been intimidated by state actors, and in particular the ANR, in one way or another. Amnesty International was told by the human rights defenders that they rarely report these incidents to the police because they do not feel the police would be able or willing to act.

Human rights defenders in DRC told Amnesty International that they feel increasingly vulnerable. One human rights defender said: "We are already taking our precautions, and we know we will not just be able to take the same precautions as in 2006 or 2011. We will need to be prepared for much worse."[64] Human rights defenders who have taken a public position on the issue of the presidential term limit or those who have documented and denounced human rights violations are specifically targeted. They are accused by the government spokesperson or security agents of being non-patriotic, working for "foreigners" and betraying their country.[65]

Several human rights defenders in Lubumbashi have been arrested during their work. On 28 September 2015, a group of civil society organizations issued a press release criticizing a legislative proposal to amend the rules governing referenda in the DRC. They were concerned that the proposal, if successful, would pave the way for a referendum on the presidential term limit. Paul Kikukama Ndjokolo, who has distributed press releases on behalf of civil society organizations for years, was arrested while circulating the press release at a police commissariat.

On 4 May, the Minister of Justice announced an investigation against Moise Katumbi for the alleged recruitment of mercenaries, sparking rumors of his imminent arrest on social media. On 5 May, Moise Katumbi tweeted that his house had been surrounded by security forces. Three human rights defenders drove close to Moise Katumbi's residence to monitor the situation for any human rights violations. One of them explained:

"We observed indeed that there were a lot of police officers in civilian clothes and non-identified vehicles. They [security agents] came and blocked our car, we were parked on the side of the road. One vehicle came in front and another behind. […] They asked us what we were doing there and [said] that we had no authorization to be there. […] They told us they would arrest us if we did not leave."[66]

On 7 May, four human rights defenders were arrested by the ANR when they went to document a search operation at Moise Katumbi's farm, about 30km outside Lubumbashi. The four were detained during the search operation which took about four hours. Three of the four human rights defenders were released when the operation ended, at around 18.00. The fourth human rights defender, Hubert Tshiswaka, was taken to the ANR office in Lubumbashi for questioning. He was released the same evening around 22.30, but they confiscated his phone and his passport.

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[63] Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, A/HRC/13/22, para. 56.
[64] Interview with human rights defender, Kinshasa, 21 June 2016.
[65] Interviews with human rights defenders in Lubumbashi and Kinshasa, June 2016.
[66] Interview with human rights defender, Lubumbashi, 9 June 2016.

Hubert Tshiswaka got his phone back four days later, but at the time of writing the ANR still had his passport. Hubert told Amnesty International that he believes he is under constant surveillance by the ANR and his freedom of movement is restricted. Hubert is required to present himself at the ANR provincial headquarters up to three times a week. Hubert said:

"One day they told me, 'you make too much noise, don't you know that we can silence you forever like we did with your friend?'. They told me that on 1 June, the sixth anniversary of the murder of Floribert and Fidel.[67] The person who was speaking to me knows very well that I was the Country Director of OSISA [Open Society Initiative for Southern Africa] at that time, and that we fought hard for justice in that case."[68]

Hubert Tshiswaka further told Amnesty International that the ANR have accused him on other occasions of conspiring against the nation, or have asked him how a Congolese like him "could work for the foreigners".[69]

Amnesty International has gathered information demonstrating how human rights defenders are being intimidated, harassed and put under severe pressure to stop their activities in Lubumbashi and in Kinshasa. Human rights defenders told Amnesty International researchers how they have received an increasing number of prank calls after issuing press releases or speaking to the media, monitoring public events or trials, or when they represent clients as human rights lawyers. Often the phone calls are anonymous. Justin said: *"they hang up when you pick up the phone, and when you try to call back they don't pick up anymore."*[70] He added: *"they [security services] just do that to make clear that they know who we are and they know what we do."*[71]

Other calls are not anonymous, but aim to identify or locate those targeted.

"They call you one… two…, three times. They try to locate you. [They pretend to be] civil society organizations, but we never heard of them", explained a human rights defender in Lubumbashi. "When they want to arrest [you] they always do like that, they call you and set up a trap."

Another human rights defender in Kinshasa explained:

"I received a call, they wanted me to facilitate a meeting for an unknown civil society organization in Kinkole (far outskirts of Kinshasa). They said to come alone, or with one other person only. I told them to email me the invitation of the event, which never came."[72]

Amnesty International was told that security agents came into the offices of two human rights organizations on several occasions.[73] A human rights defender in Lubumbashi explained:

"I have the impression of being followed or monitored in my movements. Even here in our office, we have people that we do not see too often who come to see us using the pretext that they need a service, but it seems they are just trying to identify and locate us."

He also said that on one occasion, police officers came to the office seeking assistance in a rape case:

"They are police officers, they know what to do. They came under the pretext that there was a… [girl] who had been victim of rape by one of her grandparents and wanted to file a complaint. When we said that we would have to see the victim, they said they would come back, but we never saw them again."

Another staff member of the same organization told Amnesty International about a visit by security agents in civilian clothes:

"They came here with a document that had our contacts in the heading. They said they just spoke to 'Jerome'[74] and that he told them to wait here [for him in our office]. In reality they were there for me. Jerome does not work here anymore, and he does not use the phone line they were pointing at [it is the line of our office]. At the time we were following up on the situation with the G7 […]. They were two and wearing civilian clothes, but when one of them made a movement my colleague saw he had handcuffs. They wanted to pretend they were victims."[75]

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[67] Floribert Chebeya, a leading Congolese human rights activist was asked to present himself in the office of Général John Numbi, Director General of the Police on 1 June 2010 at 5pm, he was found dead the day after. The circumstances of his murder are not yet clear.
[68] Interview with Hubert Tshiswaka, Lubumbashi, 9 June 2016.
[69] Phone interview with Hubert Tshiswaka, Nairobi, 30 June 2016
[70] Interview with human rights defender, Lubumbashi, 10 June 2016.
[71] Interview with human rights defender, Lubumbashi, 10 June 2016.
[72] Interview with human rights defender, Kinshasa, 21 June 2016.
[73] Interviews with human rights defenders in Lubumbashi and Kinshasa, June 2016.
[74] Pseudonym
[75] Interview with human rights defender, Lubumbashi, 9 June 2016.

In March 2016, Joselin[76], a human rights defender in Kinshasa was attacked by two men on a motorbike, just a couple of meters away from his home. *"They told me that if I did not keep quiet, they would make me shut up. When I asked them who they were, they just told me to stop speaking and to not report [the incident]. Since I was alone in front of the two of them, I couldn't do anything. There is a police post at the end of the street, but I could not go and complain there, because that is the post I got kidnapped from in 2013."*[77] Joselin also told Amnesty International that a week before his attack, his son was approached at his school by a stranger who asked him whether 'he was the son of Joselin': *"My son called my wife immediately, and we tried to follow up, he was so scared. It is me who is doing this work, not my family. If there is a problem, they can come to me. But going to traumatize my children in school like that… Things don't work like that!"*

Uniformed men visited the Lubumbashi home of André[78], a human rights defender based in Kinshasa on three separate occasions in 2015. On two occasions, they climbed over the perimeter walls into the compound. The human rights defender told Amnesty International: *"The first time they just walked around in the compound and left. The second time they started banging on the windows at 2.00 in the morning. My wife called the neighbours and when they heard that, they left. The third time, they stayed outside the compound but they started shooting [in the air]. We now have armed police guards, but my family will have to move. My daughter doesn't want to stay there anymore, when they came the second time … they [banged] … on the window of her bedroom and it traumatized her."* André called a trusted police commander who came to the scene by the time it calmed down. He asked the police to provide him with armed guards which were granted to him. He explained that in addition to direct intimidation, these types of harassment are also a way of putting indirect pressure on human rights defenders through their families. *"It also caused me problems with my in-laws. They think I am an irresponsible person. That I am putting the life of my wife and children in danger."*[79]

Another human rights defender told Amnesty International that unidentified men wearing civilian clothes approached his cousin at her workplace: *"They said to her 'tell your brother that he is speaking too much to the media. Why doesn't he just sign some statements instead of speaking out publicly like that? Tell him that he is on the list.' My cousin then came to me crying, 'you take too many risks! What are you doing? We still need you…!'"*[80]

[76] Pseudonym
[77] Interview with human rights defender, Kinshasa, 20 June 2016.
[78] Pseudonym
[79] Interview with human rights defender, Kinshasa, 20 June 2016.
[80] Interview with human rights defender, Kinshasa, 20 June 2016.

5. HARASSMENT OF OPPOSITION PARTIES AND THEIR LEADERS

The DRC government has an obligation to respect, protect, promote and fulfil the right to freedom of association, including for members of opposition political parties.[81] The government has a positive obligation to create an enabling environment where all political parties, including those from the opposition, can operate freely and without any intimidation or harassment. Political opposition leaders have the right to hold opinions and to express them.[82] The parties they represent have the freedom to choose and pursue ideologies, even those that are unpopular with the authorities or the public in general.[83] All political parties, independent of their political opinions, should be entitled to a level playing field, and should not be discriminated against, nor disadvantaged by the State.[84]

When States ratify human rights treaties they subscribe to three levels or types of obligations for every right protected under the treaty. These three obligations are known as the obligations to respect, protect and fulfil:

1. The first obligation is to respect rights, which requires governments to refrain from violating human rights. This is often also called a "negative" obligation, or an obligation not to engage in a particular act or practice.

2. The second obligation, to protect enjoyment of the rights, goes further. The state party must not only refrain from violating an individual's rights itself, but it must also protect an individual from a violation of his or her rights by third parties, be they private individuals, corporations, or other non-state actors. This may well require positive action by the state party, for example, by establishing an appropriate legislative and policy framework and devoting sufficient resources to their effective implementation.

3. Thirdly, a state party must promote or fulfil an individual's rights by taking the required steps to create a necessary and conducive environment within which the relevant rights can be fully realized. This again is a "positive" obligation which may require a state party to take substantial steps, including the allocation of appropriate resources, to satisfy its obligations under the treaty.

For more info see; http://www.ohchr.org/Documents/Publications/FactSheet15rev.1en.pdf

[81] The right to freedom of association is recognized in Article 22 of the International Covenant on Civil and Political Rights and Article 10 of the African Charter on Human and Peoples' Rights, both of which the DRC has ratified.
[82] Within the limits of Article 20 of the ICCPR.
[83] Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, A/68/299, para. 38.
[84] Ibid, para. 39.

Instead the DRC government has taken active measures, documented below, which have limited the ability of opposition political parties and their leaders to freely associate and express themselves. These measures include deploying state agencies, institutions and regulatory frameworks against opposition political parties and leaders pushing for adherence to the constitutional presidential term limits and the organization of presidential elections within constitutional deadlines.

5.1 PARTIES THAT LEFT THE PRESIDENTIAL MAJORITY UNABLE TO EFFECTIVELY ORGANIZE

Questions around whether President Kabila would continue for a third term, and whether elections would be held, also caused divisions within the Presidential Majority. A grouping of politicians within the Presidential Majority calling themselves the G7 parties[85], published letters in February, March and September 2015 opposing attempts to bypass the two term limit.[86] Following their last letter on 14 September 2015 they were expelled from the Presidential Majority.[87] At the time of their expulsion, the G7 parties had four ministers, the Vice-President of the National Assembly and 78 members of parliament (out of the 350 of the Presidential Majority).

The Presidential Majority still retained their majority in Parliament with around 280 seats, but lost their absolute majority, meaning they no longer had the numbers needed to effect constitutional amendments.[88]

The G7's departure from the Presidential Majority created a governance crisis within some opposition political parties. Some politicians affiliated to G7 parties did not support the split and decided to remain within the Presidential Majority without severing ties with their parties. The Presidential Majority's loss of an absolute majority has triggered a political battle for numbers. MPs who are members of G7 parties but who did not support the split have been able to stay in the Presidential Majority and have retained their party member status. For example, on 20 January 2016, politicians from at least five of the G7 parties reaffirmed their parties' allegiance to the Presidential Majority by signing the Charter of the Presidential Majority.[89] This led to the duplication of political parties, both within the Presidential Majority and the G7. Some of these "duplicate" parties within the political majority, for example MSR, have also registered their political party using the same name, logo and symbols of the earlier existing party within the G7.[90]

The co-existence of political parties with the same name and symbols is contrary to DRC's own laws on party governance. Article 7 of the law on the organization and functioning of political parties states that "no political party can adopt the name, logo, symbols or other distinct signs of another political party registered by the competent public authorities."[91] Article 4 also obliges the state to protect political parties and to treat them equally before the law.[92] Evariste Boshab, the Minister of Interior, is responsible for registration of new political parties. He is also the former Secretary General of PPRD and a well-known prominent supporter of President Kabila. Members of the political opposition have accused him of abusing his authority by allowing

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[85] The G7 parties are the Social Movement for Renewal (MSR - Le Mouvement Social pour le Renouveau), the Alliance for the Renewal of the Congo (ARC – l'Alliance pour le Renouveau du Congo), the Christian Democrat Party (PDC – le Parti Démocrate Chrétien), the Future of the Congo (ACO – L'Avenir du Congo), the National Union of Federalists of the Congo (UNAFEC – L'Union Nationale des Fédéralistes du Congo), the National Union of Democratic Federalists of the Congo (UNADEF – L'Union Nationale de Démocrates Fédéralistes), the Alliance of Democrats for Progress/MSDD (ADP/MSDD – L'Alliance des Démocrats pour le Progrès/MSDD (Mouvement de Solidarité pour la Démocratie et Développement))

[86] Afrikarabia, « RDC : la majorité présidentielle implose… et après? », 16 September 2015, afrikarabia.com/wordpress/rdc-la-majorite-presidentielle-implose-et-apres/ ; Radio France International, « RDC: quelles conséquences après l'implosion de la majorité? », 18 September 2015, www.rfi.fr/afrique/20150918-rdc-quelles-consequences-apres-implosion-majorite-g7

[87] For a copy of the letter see: Jeune Afrique, "RDC : sept dirigeants de la majorité présidentielle accusent Kabila de « stratégie suicidaire », 15 September 2015, www.jeuneafrique.com/264453/politique/rdc-sept-dirigeants-de-majorite-rappellent-a-lordre-president-kabila-elections/

[88] To pass certain laws or decisions in Parliament, such as a revision of the Constitution through referendum, a 3/5 majority, or 300 out of 500 votes are needed.

[89] Radio Okapi, "Kinshasa : 27 nouveaux partis politiques adhèrent à la MP", 20 January 2016, www.radiookapi.net/2016/01/20/actualite/politique/kinshasa-27-nouveaux-partis-politiques-adherent-la-mp ; For an overview of the signatories, see Groupe L'Avenir, « Avec l'adhésion des 27 partis politiques et la réaffirmation du soutien de l'ACO, MSR, UNADEF, ARC et PDC », 21 January 2016, groupelavenir.org/avec-ladhesion-des-27-partis-politiques-et-la-reaffirmation-du-soutien-de-laco-msr-unadef-arc-et-pdc/

[90] For example MSR; no 23/CAB/VPM/MININTERSEC/EB/001/2016 on copy; Radio Okapi : « RDC: le MSR fustige l'agrément d'un nouveau parti politique portant sa dénomination », 26 January 2016, www.radiookapi.net/2016/01/26/actualite/politique/rdc-le-msr-fustige-la-creation-dun-nouveau-parti-politique-portant-sa

[91] Law N° 04/002 of 14 March 2004 on the organisation and functioning of political parties states: (Loi N° 04/002 du 15 mars 2004 portant organisation et fonctionnement des partis politiques. Article 7 : *« aucun parti politique ne peut adopter la dénomination, le sigle, les symboles et autres signes distinctifs d'un autre parti politique déjà enregistré par l'autorité publique compétente (…) ».*

[92] Ibid.

duplicate parties, which is not only unlawful, but which also undermines the G7 political parties' ability to associate and have a platform to articulate their political viewpoints.[93]

As a party to the ICCPR and the African Charter on Human and Peoples' Rights, the DRC government has an obligation to respect the right to freedom of association and to create an enabling environment where individuals can exercise their right to freedom of association. The DRC authorities should treat the factions within the G7 parties as separate political parties, requiring them to adopt different names and logos to distinguish them from each other. By allowing – if not encouraging – the creation of duplicate parties, the DRC government has failed to guarantee the right to freedom of association since the duplicated parties have limited possibilities to function effectively and exercise their right to association.

On 5 December 2015, the L'Union Nationale des Fédéralistes du Congo (UNAFEC) offices in Kolwezi were closed by police after violent confrontations between supporters affiliated to UNAFEC/Kyungu (which joined the G7), and supporters affiliated to UNAFEC/Majorité (which remained in the Presidential Majority) who were fighting over ownership of the Kolwezi seat.[94]

UNAFEC's offices in Kinshasa were ransacked on 19 April 2016 by a group of at least 50 people in civilian clothes, accompanied by a few police officers.[95] On the same day in Lubumbashi, UNAFEC's flags and posters of Moïse Katumbi and Gabriel Kyungu wa Kumwanza were pulled down by police. The posters had been put up at UNAFEC's headquarters in Lubumbashi, before a political rally planned for 24 April. UNAFEC/Kyungu supporters mobilized against the police, leading to violent clashes that continued into the following day. 12 people were arrested, and nine were convicted and sentenced to between two and 10 years in prison. The trial against the 12 was rushed, taking place on the night of 21 April, one day after the clashes.[96] Amnesty International is concerned that the trial, which took place barely 24 hours after their arrest, did not leave sufficient time for effective investigations, or for the accused to prepare and mount an effective defence. UNAFEC party leader Gabriel Kyungu wa Kumwanza was also tried and convicted for ordering the robbery of a store, and sentenced to pay restitution of more than 10,000 USD to the store owner.[97] The UNAFEC headquarters in Lubumbashi were sealed off by the police on 21 April and had not been re-opened as of August 2016.[98]

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[93] Radio Okapi, « Dédoublement des partis politiques: Evariste Boshab demande les preuves », 6 May 2016, www.radiookapi.net/2016/05/06/actualite/politique/dedoublement-des-partis-politiques-evariste-boshab-demande-les
[94] Radio Okapi, « Le siège du parti de Kyungu wa Kumwanza scellé à Kolwezi », 7 December 2015, www.radiookapi.net/2015/12/07/actualite/societe/le-siege-du-parti-de-kyungu-wa-kumwanza-scelle-kolwezi
[95] United Nations Joint Human Rights Office (UNJHRO), Violations of human rights and fundamental freedoms linked to the restrictions of the democratic space, April 2016.
[96] Human Rights Watch, "DR Congo: Crackdown on Presidential Aspirant", 9 May 2016, www.hrw.org/news/2016/05/09/dr-congo-crackdown-presidential-aspirant ;
[97] Ibid
[98] Interview with UNAFEC official, Lubumbashi, 15 June 2016.

A man passes the offices of UNAFEC, on 22 May 2016 in Lubumbashi. © JUNIOR/AFP/Getty Images

One week after the UNAFEC/Kyungu clashes, on 26 April the headquarters of another G7 party, L'Union Nationale de Démocrates Fédéralistes (UNADEF) were set on fire by unidentified assailants.[99] Investigations into the arson were ongoing at the time of writing but UNADEF representatives and the police told Amnesty International that the arson could have been caused by infighting between the Presidential Majority and G7 factions of the political party.[100]

The duplication of parties resulted in some candidates affiliated to G7 parties being prevented from standing for public office. In March 2016, indirect elections were held for the posts of governor and vice-governor of 21 provinces created in July 2015.[101] The CENI invalidated 21 out of 97 candidates following a request from the Presidential Majority coalition.[102] The Secretary General of the Presidential Majority, Aubin Minaku, asked the CENI, in a letter dated 23 February, to invalidate 69 candidates.[103] He argued that the Presidential Majority, which included parties that the 69 claimed to be running under, had already presented their candidates, and advised that the 69 could not stand as independents. The letter asked "those from the Presidential Majority, who pretend to have become independent, to prove their departure from the political parties of the Presidential Majority". Olivier Kamitatu, a G7 leader and one of the signatories of the 15 September letter, was one of the candidates barred from running.[104]

[99] Interview with UNADEF official, Lubumbashi, 15 June 2016.
[100] Ibid; Interview with provincial commissioner of police, General Jean-Bosco Galenga, Lubumbashi, 17 June 2016.
[101] At the beginning of 2015 the government decided to prioritize the implementation of *découpage*, an unimplemented change foreseen in the 2006 Constitution, which divides DRC's 11 provinces into 26.
[102] Radio Okapi, « Election des gouverneurs: 21 candidatures déclarées irrecevables », 29 February 2016, www.radiookapi.net/2016/02/29/actualite/politique/election-des-gouverneurs-21-candidatures-declarees-irrecevables
[103] Radio Okapi, « RDC : Aubin Minaku demande le retrait de certaines candidatures aux postes des gouverneurs », 26 February 2016, www.radiookapi.net/2016/02/26/actualite/politique/rdc-aubin-minaku-demande-le-retrait-de-certaines-candidatures-aux
[104] For example Ali Bin Omari Simukinje from UNAFEC ran for Vice-Governor in Tanganyika Province.

5.2 POLITICAL LEADERS ADVOCATING FOR RESPECT OF THE CONSTITUTIONAL TWO-TERM PRESIDENTIAL LIMIT TARGETED

Since their departure from the Presidential Majority, G7 leaders have been specifically targeted by state agents for expressing themselves on presidential term limits. Amnesty International documented several incidents in Haut-Katanga, where three of the G7 parties are headquartered. These parties and their leaders have been prevented from holding public or private meetings on multiple occasions (see also section on freedom of assembly).

It also appears that the government has used state agencies to target opposition politicians after they joined the G7 to harm their business interests, cut their income and harass them. Amnesty International has not analyzed whether there is a legitimate basis to these tax disputes, but opposition politicians raised concerns that these problems only arose after they joined the G7, and were disproportionately applied against those advocating against a third term and for elections.

Gabriel Kyungu wa Kumwanza is the leader of UNAFEC, and one of the senior politicians who signed the G7 letter in September. On 20 September 2015, the Sunday after the G7 letter was published, a significant number of police officers were deployed in the Basilique Sainte Marie area where Gabriel Kyungu wa Kumwanza usually worshipped with his supporters. The church is a short distance away from the UNAFEC party headquarters. Gabriel Kyungu wa Kumwanza had planned to meet his constituents after the church service but was unable to do so, because of the heavy police presence, which Kyungu said was deployed to prevent him from going to the party headquarters. The police commander said their presence was preventive, to maintain public order.[105] The heavy police presence heightened existing tensions, and UNAFEC supporters attacked a police officer in civilian clothes. A MONUSCO monitoring team present at the time had to intervene to rescue the police officer from the supporters.[106] The police deployed heavily again at the church on 15 November 2015 and on 31 January 2016.

On 11 March 2016 the radio and television station *La Voix du Katanga,* owned by Gabriel Kyungu wa Kumwanza, was closed down by the provincial authorities on the basis that they had failed to comply with tax obligations.[107]

Dany Banza, a G7 leader affiliated to the L'Avenir du Congo (ACO) political party told Amnesty International that his business and economic interests had been targeted by the government. Dany Banza owns a transport company which held the transport sub-contracts for a mining company called Metal-Mines in Likasi/Lubumbashi. He reported that 30 of his trucks which were loaded with copper from Metal-Mines were confiscated by the ANR and held for over one month after he signed the G7 letter in September 2015.[108] Around the same time, two human rights organizations, *Le Centre des Droits de l'Homme et du Droit Humanitaire* (CDH) and *Justicia*, also reported that Chinese employees working with Metal-Mines SPRL were arbitrarily arrested by ANR agents.[109] However, the spokesperson of Metal-Mines denied in the media that any employees had been detained.[110]

A G7 member and President of the Mouvement Social pour le Renouveau (MSR), Pierre Lumbi, was implicated in a security incident at his hotel, the Rift Congo in Lubumbashi, which he believes was a set-up intended to lead to his arrest. In the early hours of 24 April 2016, ANR agents searched the Rift Congo Hotel and found a suitcase with weapons in one of the five rooms they specifically identified to search. Staff at the hotel reception claimed that the men who checked into the room the day before did not actually stay at the hotel. The receptionist offered to show the ANR agents surveillance footage which would prove that the suitcase had been left by the men who had rented the room. The MSR Federal Secretary told Amnesty International that *"…the receptionist said, 'it is not us who put the suitcase there, a client checked into the room, if you want we can show you on our surveillance cameras'. From the moment they [ANR agents]*

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[105] Radio Okapi, « Lubumbashi : les policiers ont encerclé l'Eglise que fréquente Kyungu Wa Kumwanza », 20 September 2015, www.radiookapi.net/2015/09/20/actualite/securite/lubumbashi-les-policiers-ont-encercle-leglise-que-frequente-kyungu-wa
[106] Interview with Reuters journalist, Lubumbashi, 14 June 2016.
[107] Interview with Gabriel Kyungu wa Kumwanza, Lubumbashi, 17 June 2016.
[108] Interview with Dany Banza, Lubumbashi, 16 June 2016.
[109] La tempête des tropiques, « Harcèlement et représailles contre les membres du G7 et leurs proches au Katanga dénoncés », 30 September 2015, 7sur7.cd/new/harcelement-et-represailles-contre-les-membres-du-g7-et-leurs-proches-au-katanga-denonces/ ; Actu.cd, « G7: L'Honorable Dany Banza et ses proches, victimes d'intimidations », 30 September 2015, actu.cd/2015/09/30/g7-lhonorable-dany-banza-et-ses-proches-victimes-dintimidations/ .
[110] RD Congo Réalités, « Métal-Mines dément l'arrestation des sujets chinois à Lubumbashi », 19 October 2015, rdcongorealites.mondoblog.org/2015/10/19/metal-mines-dement-larrestation-des-sujets-chinois-a-lubumbashi/

heard that, they [went and] confiscated the hard disks and disconnected the cameras."[111] The ANR agents arrested the receptionist, the person in charge of IT and the surveillance cameras, and Pierre Lumbi's two sons before releasing them the following evening without charge. The MSR Federal Secretary told Amnesty International that he believes the ANR were setting up Pierre Lumbi for arrest. Pierre Lumbi was scheduled to travel to Lubumbashi for a political opposition meeting on 24 April, but decided not to go when he heard the news about the incident in his hotel.[112]

Political opposition leader and Member of Parliament Martin Fayulu started campaigning for adherence to constitutional presidential term limits in early 2014. He co-founded Save the Congo (*Sauvons le Congo*), a coalition of opposition political parties and civil society organizations opposed to a third term for President Kabila. Martin Fayulu was arrested two days before a general strike (known as *ville morte*, or dead city) calling for respect of the Constitution. He explained to Amnesty International how he was mobilizing people in different neighbourhoods in Kinshasa, when the military surprised him at the parking lot at his office when he was leaving for a meeting in Masina.[113] He said:

"There were four or five soldiers and three men in civilian clothes. They asked me to open the car. When I resisted they started beating me, so I opened the car. They took out a box of [leaflets] and said 'you are arrested'. When I said they could not arrest me because I am a member of parliament, they started beating me badly. I knew I could not resist, so they took the keys of my car and I entered in their vehicle."[114]

Fayulu was taken to the military intelligence service offices where they inventoried everything in his car. *"My car is like my second office, I had everything in there: books, newspapers, Congolese flags, my papers, T-shirts of my party, money, and all my notebooks with all my reflections. They took everything. … The person who had taken my phone while we were still in the car plugged it to his laptop and started copying everything that was on there."* Fayulu refused to be interrogated citing his parliamentarian immunity. The soldiers went through his notebooks, reading out names, words and passages and, according to Fayulu, made provocative remarks about them before photocopying the notebooks.[115]

Martin Fayulu was released the same evening without charge. However his car, money and his personal effects have not been returned. His lawyer has filed complaints before the relevant courts, but at the time of writing they were still awaiting the outcome.

On 14 May 2016, Martin Fayulu was prevented from holding a conference in Bandundu-Ville, Kwilu Province. A large contingent of police officers in anti-riot gear surrounded the public space where the meeting was scheduled to take place.[116] Martin Fayulu was eventually allowed to hold his event in Bandundu-Ville the following day, but was then prevented by the police using the same tactics, from holding events on 16 and 18 May in other locations in Kwilu Province.[117] While Fayulu was in the middle of his tour in Bandundu, he received a panicked call from his wife saying that his hotel in Kinshasa, Faden House, had been closed down by the police.[118]

The authorities sealed off the hotel over an alleged tax dispute which according to Martin Fayulu had been going on since 2009.

5.3 PRESIDENTIAL ASPIRANT TARGETED

Many Congolese and analysts saw Moise Katumbi's departure from the PPRD and his resignation as Governor of Katanga as a hugely significant political development. Journalists called his departure "an

[111] Interview with MSR official, Lubumbashi, 15 June 2016.
[112] Ibid.
[113] Masina is a popular neighbourhood in Kinshasa.
[114] Interview with Member of Parliament Martin Fayulu, Kinshasa, 24 June 2016.
[115] Interview with Member of Parliament Martin Fayulu, Kinshasa, 24 June 2016.
[116] For images see Diaspora Katangaise, « Interdit d'accès dans Bandundu, voici la confrontation Martin Fayulu et la police. », 14 May 2016, www.youtube.com/watch?v=a0Z_VTWAsrI
[117] UNJHRO, Violations of human rights and fundamental freedoms linked to the restrictions of the democratic space, May 2016.
[118] Interview with Member of Parliament Martin Fayulu, Kinshasa, 24 June 2016.

earthquake on DRC's political planet".[119] The government spokesperson, however, described it as a "non-event".[120]

Since then, Moise Katumbi and his entourage have been subjected to intimidation, harassment and reprisals. He has been closely monitored, and repeatedly prevented by police from appearing in public or addressing large gatherings. Moise Katumbi's two media outlets have been closed down by the Minister of Communication. Unidentified individuals believed to belong to the security services have harassed and intimidated his staff and family.

On the day Moise Katumbi declared his intention to run for president, the Minister of Justice announced an investigation against him for alleged recruitment of mercenaries. He was charged with threatening state security. On 23 June, he was found guilty of selling a building that did not belong to him and sentenced in absentia to three years' imprisonment, making him ineligible to stand for president.

Moise Katumbi is president of the Tout Puissant Mazembe (TP Mazembe) Football Club, which enjoys massive support in Lubumbashi. On 1 December, police prevented all access to the Kamalondo Stadium, where Moise Katumbi was scheduled to address TP Mazembe players and supporters in advance of the club's departure for the FIFA World Cup taking place in Japan. Violent clashes between the police and club supporters broke out, with the police resorting to teargas to disperse the supporters.[121]

Journalists at the scene were also prevented from documenting the violent clashes. One journalist working for an international media outlet told Amnesty International: "*They [security agents] took all my phones, brutalized me and wanted to arrest me. They took all my material and only gave it back to me two to three hours later."* Another 10 journalists and technicians from *Radio-Television Nyota*[122] were trapped inside the stadium, and were only able to leave after MONUSCO officials intervened on their behalf.

The Lubumbashi mayor said to journalists that he had prohibited the 1 December event on 30 November. Amnesty International saw a copy of the letter which showed that they decided to prohibit the event a few hours before it was scheduled to start.[123]

On 24 April 2016, Moise Katumbi was again prevented from addressing the public, this time during a political opposition rally. The G7 had organized a public demonstration to commemorate the day that DRC adopted multi-party politics. A significant number of police officers were deployed around the Kenya stadium in Lubumbashi, preventing the meeting from taking place.[124] Moise Katumbi tried to access the stadium on foot together with thousands of his supporters but the police fired teargas at them when they arrived near the entrance of the stadium.[125]

On 20 January 2016, the Minister of Communication and Media, Lambert Mende, decreed the closure of *Radio-Television Nyota* and *Television Mapendo* on the basis that they had not complied with their tax obligations.[126] Moise Katumbi owns both media outlets. The company's CEO unsuccessfully asked the Minister for Communication and Media in early March to reopen the two outlets after they remitted all taxes owed.[127] The *Conseil Supérieur de l'Audiovisuel et de la Communication* (CSAC), the authority in charge of regulating media in DRC, also sent a letter to the Minister for Communication and Media on 12 April requesting him to re-open the two media houses as their taxes were fully paid up[128], but at the time of writing both media outlets remained arbitrarily closed.

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[119] Jeune Afrique, « RDC : Moïse Katumbi quitte le PPRD, parti au pouvoir », 29 September 2015, www.jeuneafrique.com/268582/politique/rdc-moise-katumbi-quitte-le-pprd-parti-au-pouvoir/ and Radio France International, « La démission de Katumbi, un «séisme» qui ravit l'opposition à Kabila », 30 September 2015, www.rfi.fr/afrique/20150930-rdc-demission-moise-katumbi-gouverneur-katanga-opposition-kabila-elections-constitu

[120] Radio France International, « La démission de Katumbi, un «séisme» qui ravit l'opposition à Kabila », 30 September 2015, www.rfi.fr/afrique/20150930-rdc-demission-moise-katumbi-gouverneur-katanga-opposition-kabila-elections-constitu

[121] For footage see France 24 Observes, « Politique, football et Moïse Katumbi : un cocktail qui inquiète les autorités congolaises », 2 December 2015, observers.france24.com/fr/20151202-politique-football-moise-katumbi-cocktail-lubumbashi-tp-mazembe-police

[122] This television station, owned by Moise Katumbi, broadcasts all games played by TP Mazembe.

[123] Seen by Amnesty International, dated 1 December.

[124] Le Monde Afrique, « En RDC, la grande marche de Moïse Katumbi trébuche sur la répression policière », 25 April 2016, www.lemonde.fr/afrique/article/2016/04/25/en-rdc-la-grande-marche-de-moise-katumbi-trebuche-sur-la-repression-policiere_4908208_3212.html

[125] Le Monde Afrique, « En RDC, la grande marche de Moïse Katumbi trébuche sur la répression policière », 25 April 2016, www.lemonde.fr/afrique/article/2016/04/25/en-rdc-la-grande-marche-de-moise-katumbi-trebuche-sur-la-repression-policiere_4908208_3212.html

[126] Arrête Ministériel N 001/Cab/Min/Com-Med/2016 du 20 Janvier 2016 portant interdiction de diffusion d'entreprises privées du secteur audiovisuel non en règle.

[127] Nyota TV, letter 'our demand to reopen Nyota TV, Ref. 012/RTN/OUT/016, 4 February 2016. Seen by Amnesty International.

[128] CSAC, letter concerning the reopening of Nyota Television, Ref 0806/CSAC/PRES/SI/MJ/04/2016, 12 April 2016. Seen by Amnesty International.

Moise Katumbi's entourage has also been subjected to intimidation and harassment. Carine Katumbi, Moise's wife, told Amnesty International that several people who were close to her husband had fled the country.[129] On 22 April 2016, the house of Moise Katumbi's former chief of staff, Huit Mulongo, was searched. During the search of the professor's house, agents looked for documents linking him to Moise Katumbi and asked questions about the presidential candidate. When the agents found an old revolver[130], Professor Mulongo was arrested and later prosecuted before a military tribunal for 'illegal possession of a military weapon and munitions'. On 30 August 2016 he was sentenced to three years' imprisonment. Amnesty International believes the prosecution and sentence against the professor are politically motivated and opposes civilian trials before military courts.[131]

George Mawine, former vice-president of the PPRD youth league and a strong supporter of Moise Katumbi, was arrested on 3 June 2016 for driving a car without a number plate.[132] He was kept in incommunicado detention by the ANR for more than one month, before being released without charge on 6 July.[133] On 2 and 3 March 2016, an unidentified man visited the school attended by Moise Katumbi's sons, and attempted to access them.[134] His first attempt, on 2 March, was unsuccessful. According to Carine Katumbi, he inquired about a pupil whose name was unknown to the school, and then claimed to have come for a meeting. He left when the guards told him there was no meeting and asked him to leave.

The man returned the following day, and was able to enter the premises and access the class attended by Moise Katumbi's oldest son, who is nine years old. The man was able to take pictures of the boy who was getting ready for a football class. One of the teachers noticed the unknown man, who was apprehended by the guards and arrested after the school called the police. An investigation was opened and the man placed in detention, but at the time of writing, no charges had been preferred against him.[135] While his intentions remained unclear, Carine Katumbi told Amnesty International that the incident was profoundly intimidating to the family.

Three individuals working at Moïse Katumbi's house as domestic workers told Amnesty International that they had not been able to stay at their homes out of fear of being arrested.[136] Two of them explained that they had not returned home for several days. They said that between 8 and 14 June 2016, their wives had both been visited at their home by four unidentified men in civilian clothes driving a car without a licence plate. The men told the women that they were looking for their husbands because they work for Moise Katumbi. A third domestic worker had not been home since May 2016 for fear of being arrested or detained. He said that while he and his family had not been directly approached, several jeeps without licence plates had been seen by his guard near his house, causing his guard to fear that the premises were under surveillance. One jeep remained in front of the house for several hours, only leaving at 5.00am. The domestic workers were afraid that ANR agents were looking for them, as the ANR are known to use cars without licence plates.

Since Moise Katumbi announced his intention to run in the presidential elections, he has been prosecuted in two different cases, which appear to be politically motivated.

On 4 May 2016, the Minister of Justice announced he had ordered an investigation against Moise Katumbi, on suspicion that he was recruiting mercenaries. On 24 April, demonstrations planned by the G7 to commemorate the advent of multi-party politics in DRC were foiled by the police. On this day, the police arrested four of Moise Katumbi's personal security detail, including one US national. The Minister of Justice indicated that in the course of their investigation, they had uncovered information that Moise Katumbi had hired at least 12 other US nationals, all of whom were ex-military.[137] Moise Katumbi had indeed contracted the services of a private US security company to guarantee his personal security.[138] The US Embassy stated that Darryl Lewis, the arrested US national who was working as Katumbi's security advisor "was not armed

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[129] Interview with Carine Katumbi, Lubumbashi, 16 June 2016.
[130] The weapon owned by Professor Huit Mulongo was identified by the relevant authorities in 2013 and an identification document (seen by Amnesty International) issued in his name. According to arms experts consulted by Amnesty International the revolver is classified as a weapon of self-defence rather than 'a military weapon'.
[131] Amnesty International, *DRC: Civilian's military trial politically motivated: Professor Huit Mulongo* (Index: AFR/62/4332/2016), 30 June 2016.
[132] Interview with the wife of George Mawine and his colleague, Lubumbashi, 17 June 2016.
[133] Phone interview with colleague of George Mawine, Nairobi, 6 July 2016.
[134] Interview with Carine Katumbi, Lubumbashi, 16 June 2016; Interview with the headmaster of the school, Lubumbashi, 17 September 2016.
[135] To date no charges seem to have been brought against the individual.
[136] Interviews with three members of the house staff of Moise Katumbi, Lubumbashi, 16 June 2016.
[137] Radio France International, « RDC: l'opposant Moïse Katumbi accusé d'avoir recours à des «mercenaires» », 4 May 2016, www.rfi.fr/afrique/20160504-rdc-opposant-moise-katumbi-accuse-avoir-recours-mercenaires
[138] After his resignation as governor, Moise Katumbi no longer had security guards provided to him by the state.

and allegations that he was involved in mercenary activity are false".[139] On 8 June 2016, Darryl Lewis was released and sent back to the US.[140]

Between 9 and 13 May, the Prosecutor for Lubumbashi held three hearings which Moise Katumbi attended. Large crowds of supporters accompanied him to each of the hearings. Before the third hearing on 13 May, violence broke out between his supporters and the police, during which they pelted each other with large stones. Each side accused the other of bringing stones and of starting the violence.[141]

During the hearing Moise Katumbi felt unwell and asked for the hearing to be suspended. He was taken to the hospital. On 19 May the Attorney General formally charged Moise Katumbi with threatening state security, even though the prosecutorial hearings had not finished. In the same communication, the Attorney General allowed Moise Katumbi to leave the country for medical treatment.[142] The presidential aspirant left the country the following day and has since been in exile.

On 23 June 2016, Moise Katumbi was convicted in absentia to three years' imprisonment and a 1,000,000 USD fine for allegedly selling a house that did not belong to him. Amnesty International spoke to Katumbi's lawyers the day after the conviction, and they said that Chantal Ramazani, judge and president of the peace tribunal, had been put under pressure to sign the judgement.[143] On 25 July 2016 the judge wrote a letter to the Minister of Justice in which she stated that she was put under pressure [to sign the document] and severely threatened by Kalev Mutond, Head of the ANR, with immediate arrest and 10 years' imprisonment.[144]

Congolese police face supporters of Moise Katumbi as he arrives in front of the court in Lumbubashi on 11 May 2016. © FISTON/AFP/Getty Images

[139] Embassy of the United States in Kinshasa, "U.S. Embassy Concerned about Reported False Accusations of Mercenary Activities", 5 May 2016, kinshasa.usembassy.gov/pr-05052016.html
[140] BBC, « Un garde du corps de Katumbi libéré », 8 June 2016, www.bbc.com/afrique/region/2016/06/160608_rdc_katumbi
[141] Interview with Carine Katumbi, Lubumbashi, 16 June 2016; Interview with provincial commissioner of police, General Jean-Bosco Galenga, 17 June 2016.
[142] Jeune Afrique, « RD Congo : Moïse Katumbi « autorisé à aller se soigner en Afrique du Sud » malgré son inculpation », 20 May 2016, www.jeuneafrique.com/327207/societe/rd-congo-moise-katumbi-autorise-a-aller-se-soigner-afrique-sud-malgre-inculpation/
[143] Interview with two defense lawyers of Moise Katumbi's legal team, Kinshasa, 24 June 2016.
[144] For a copy of the letter, see *Jeune Afrique,* « RD Congo : une juge de Lubumbashi affirme avoir subi des pressions pour faire condamner Katumbi », 27 July 2016, www.jeuneafrique.com/344986/politique/rd-congo-juge-de-lubumbashi-affirme-subi-pressions-faire-condamner-katumbi/

6. RESTRICTIONS ON FREEDOM OF ASSEMBLY

The DRC Constitution guarantees the right to freedom of assembly. Amnesty International previously documented how the offence of 'civil disobedience' has been used to criminalize peaceful assembly.[145] People critical of government policy and action, particularly around the presidential term limit, have also been arbitrarily arrested and held incommunicado, sending a strong message against attempts to assemble.

Since September 2015, at least 11 people have been convicted for supporting or organizing peaceful protests. Political opposition members have been arbitrarily arrested or prevented from holding public assemblies or meetings in private indoor spaces.

Local authorities in several cities and territories have imposed blanket bans on public demonstrations in violation of DRC's obligations under international human rights law. In numerous cases, authorities prohibited planned protests in violation of DRC's Constitution which does not require permission for demonstrations. People organizing demonstrations are only obliged to notify local authorities. In contrast, assemblies organized by the Presidential Majority have largely taken place without any disruption from the authorities.

6.1 PUBLIC GATHERINGS

Between October 2015 and January 2016, the authorities of two provinces and one city prohibited all assemblies. On 9 October 2015, the Mayor of Lubumbashi banned all public political demonstrations until further notice.[146] On 17 December 2015, the Special Commissioner of Tanganyika Province indefinitely prohibited all public demonstrations so the public could "celebrate the end of year in calm". On 19 January 2016, the Special Commissioner of Mai-Ndombe (ex-Bandundu Province) published a circular prohibiting all political assemblies in the province.[147] At the time, Envol, a political opposition party led by Delly Sessanga, was planning to hold a congress at the end of January. The police tore down banners and posters displayed in advance of the Congress.[148] The Special Commissioner argued that his decision to prohibit all public assemblies was "impartial and did not target any political party or personality, but was solely intended to prevent public disorder in the province".[149]

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[145] Jean-Bertrand Ewanga, Vano Kiboko, Jean-Ernest Kyaviro and four LUCHA activists; see Amnesty International, *Treated like Criminals.*
[146] Oral communication followed by communiqué officiel n. 070/2015 seen by Amnesty International.
[147] Radio Okapi, "Mai-Ndombe: L'interdiction des manifestations est impersonnelle, selon le commissaire adjoint", 28 January 2016, www.radiookapi.net/2016/01/28/actualite/societe/mai-ndombe-linterdiction-des-manifestations-publiques-est-impersonnelle
[148] Radio Okapi, "Mai-Ndombe: Le parti de Delly Sessanga interdit d'organiser son congrès", 22 January 2016, www.radiookapi.net/2016/01/22/actualite/politique/maindombe-le-parti-de-delly-sessanga-interdit-dorganiser-son-congres
[149] Radio Okapi, "Mai-Ndombe: L'interdiction des manifestations est impersonnelle, selon le commissaire adjoint", 28 January 2016, www.radiookapi.net/2016/01/28/actualite/societe/mai-ndombe-linterdiction-des-manifestations-publiques-est-impersonnelle

Article 26 of DRC's Constitution guarantees the right to assembly and requires organizers to notify the administrative authorities of all public demonstrations. This system of prior notification is consistent with recommendations made by the Special Rapporteur on the rights to freedom of peaceful assembly and association. It allows authorities to take necessary measures to facilitate and protect demonstrations, while taking measures to ensure public safety and order.[150] However, spontaneous assemblies, exempt from prior notice, should be allowed when an immediate response to a political event might be justified.[151] If organizers fail to notify the authorities, the assembly should not be dispersed and the organizers should not be subjected to criminal or administrative sanctions resulting in fines or imprisonment.[152]

Local authorities have, however, reacted to letters notifying them of assemblies as if they were requests for authorisation, arbitrarily prohibiting planned protests. On 26 May, for example, political opposition parties called for nationwide protests against the Constitutional Court judgment allowing President Kabila to stay in power until a successor is elected.[153] In several locations, the organizers also planned protests against ongoing killings in Beni, North Kivu Province. At least 12 of the planned protests were prohibited by local authorities.[154]

The Mayor of Lubumbashi prohibited the 26 May protest arguing that "the march was not opportune, especially given that the judgment of the Constitutional Court is irrevocable and binding". The Governor of North Kivu Province extended the ban on protests already imposed by the mayors of Beni, Butembo and Goma to the entire province: *"I am extending this measure to the whole of the territory for two reasons: these structures are not legal and the Province of North Kivu is mourning. In our tradition, we don't grieve our dead people by protesting in the street."*[155] The Mayor of Mbuyi-Mayi said: *"Your letter does not include the grounds on which the planned protest is based. The political groupings that signed the letter which we are examining have no legal existence for you to be valid interlocutors…"*[156]

The 26 May opposition protests were prevented or dispersed in at least 16 cities throughout the country.[157] The UNJHRO recorded 101 arrests related to the 26 May protests between 23 and 26 May.

The DRC authorities have contravened their own laws on the right to assembly – which are in line with international human rights standards – to prevent gatherings challenging the incumbent's attempts to stay in office. Their arbitrary actions have caused confusion for organizers who are operating within an established legal framework and those who may want to participate in assemblies. This has a dissuasive and chilling effect on those who want to exercise their constitutionally guaranteed right to peaceful assembly.

The right to freedom of peaceful assembly is enshrined in human rights treaties to which DRC is a party, including the ICCPR and the African Charter on Human and Peoples' Rights. DRC has a positive obligation under international human rights law not only to actively protect peaceful assemblies, but to facilitate the exercise of the right.

International human rights law permits certain restrictions on the right to peaceful assembly, but only if such restrictions are provided by law, and are for the purpose of protecting certain public interests or the rights and freedoms of others, and are demonstrably necessary for that purpose. Any restrictions imposed which do not meet all elements of this three-part test constitute violations of freedom of assembly. According to the Special Rapporteur on the rights to freedoms of peaceful assembly and of association, blanket bans on protests such as the ones in Lubumbashi, Tanganyika and Mai-Ndombe are "intrinsically disproportionate and discriminatory".[158]

Prohibitions of public protests based on security arguments should meet the strict requirements of necessity and proportionality.[159] A hypothetical risk of public disorder is not legitimate grounds for prohibiting a peaceful assembly.[160]

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[150] Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, A/HRC/20/27, para. 28.
[151] Ibid, para. 29.
[152] Ibid, para. 29.
[153] Jeune Afrique, "Presidentielle en RDC: Appel à des marches de protestation le 26 Mai", 15 May 2016, www.jeuneafrique.com/325960/politique/presidentielle-rdc-appel-a-marches-de-protestation-26-mai/
[154] UNJHRO, Violations of human rights and fundamental freedoms linked to the restrictions of the democratic space, May 2016.
[155] Sauti ya Congo, "RDC: Trois provinces interdisent la marche de l'opposition de ce jeudi 26 mai", 25 mai 2016, http://www.sautiyacongo.org/rdc-trois-provinces-interdisent-marche-de-lopposition-de-jeudi-26-mai/
[156] Ibid
[157] UNJHRO, Violations of human rights and fundamental freedoms linked to the restrictions of the democratic space, May 2016.
[158] Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, A/68/299, para.25.
[159] Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, A/HRC/23/39, para 59
[160] OSCE/ODIHR and the Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, para.71.

Moreover, protests cannot be prohibited because of their purpose, unless they "advocate for national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence".[161] As such, the planned protests to express views on the Constitutional Court's ruling were a legitimate exercise of freedom of peaceful assembly and expression. Limits of the right to freedom of assembly, based only on the authorities' own view of the merits of a particular protest, are never acceptable.

Assemblies cannot be prohibited because the platform or group organizing it is not "legally registered". The right to peaceful assembly is an individual right that applies to everyone.

The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association has emphasized that elections should never be seen as a pretext for states to unduly restrict the right to freedom of peaceful assembly. Given the importance of freedom of peaceful assembly and association in the context of elections, the threshold for imposing such restrictions should be higher than usual. Restrictions which comply with international human rights norms and standards should be applied equally whether the peaceful assembly is in favour of, or against, the government and the ruling party.

In the current pre-election context in DRC, restrictions on freedom of assembly have been disproportionately applied to favour the government. Between January and June 2016, the UN Joint Human Rights Office documented the prohibition or repression of at least 81 protests organized by the political opposition or civil society and at least one organized by Presidential Majority supporters. At the same time, at least 70 protests, including 31 organized by the Presidential Majority, took place without incident.[162] The opposition political party, UNADEF, found out the day before their planned mobilization of supporters to welcome Member of Parliament Christian Mwando, that the Mayor of Lubumbashi had prohibited their activity.[163] According to media reports, the mayor judged that the parliamentarian's return home on 17 December for the parliamentary break, the basis for the assembly, did not warrant a public demonstration.[164] Charles Mwando Simba, the President of UNADEF, was prevented from travelling to Kalemie to visit his constituents on 20 January 2016.[165] In contrast, the same authorities allowed assemblies organized by the Presidential Majority twice in the same period. According to the Congolese Press Agency (ACP), a government press agency, the Secretary General of the PPRD, Henry Mova Sakanyi, was welcomed at the same airport by masses of supporters on 18 October 2015.[166] On 18 November 2015, the special commissioners, appointed by President Kabila to temporarily govern the new provinces, were welcomed at the airport and in the city centre by thousands of people.[167]

On 19 December, two days after UNADEF's event was prohibited, a large demonstration in support of the national dialogue proposed by President Kabila was organized by political parties affiliated to the Presidential Majority.[168] Several thousand people took part in the march, which also had a police band.[169] Two national newspapers reported that civil servants were required to participate in the march and businesses forced to close.[170]

Exactly one month later, on 19 January 2016, a demonstration organized by the political opposition was dispersed by police in Lubumbashi. G7 leaders Gabriel Kyungu and Charles Mwando had gathered in the

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[161] See Article 20 of the ICCPR, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, A/HRC/23/39, para 59.
[162] UNJHRO, Violations of human rights and fundamental freedoms linked to the restrictions of the democratic space, January-June 2016.
[163] Radio Okapi, "Lubumbashi: L'Unadef dénonce l'interdiction de sa manifestation par la mairie", 18 December 2015, www.radiookapi.net/2015/12/18/actualite/politique/lubumbashi-lunadef-denonce-linterdiction-de-sa-manifestation-par-la
[164] Radio Okapi, "Lubumbashi: L'Unadef dénonce l'interdiction de sa manifestation par la mairie", 18 December 2015, www.radiookapi.net/2015/12/18/actualite/politique/lubumbashi-lunadef-denonce-linterdiction-de-sa-manifestation-par-la
[165] Radio Okapi, "Lubumbashi: Mwando Nsimba affirme avoir été empêché de se rendre à Kalemie", 20 January, 2016 www.radiookapi.net/2016/01/20/actualite/politique/lubumbashi-mwando-nsimba-affirme-avoir-ete-empeche-de-se-rendre
[166] Agence Congolaise de Presse (ACP), "Arrivée à Lubumbashi du Secrétaire Général du PPRD", 18 October 2016, acpcongo.com/acp/arrivee-a-lubumbashi-du-secretaire-general-du-pprd/
[167] VOA Afrique, "RDC: Arrivée des commissaires chargés d'administrer les nouvelles provinces Katangaises", 18 November 2016, www.voaafrique.com/a/rdc-arrivee-commissaires-charges-administrer-nouvelles-provinces-katangaises/3063894.html ; "Haut Katanga arrivee des com speciaux, 20 November 2015, www.youtube.com/watch?v=ITEnfA3niXs ; Agence Congolaise de Presse (ACP), "Une mobilisation décrétée à Lubumbashi pour accueillir les nouveaux commissaires spéciaux de l'ex Katanga", 17 November 2016, acpcongo.com/acp/une-mobilisation-generale-decretee-a-lubumbashi-pour-accueillir-les-nouveaux-commissaires-speciaux-de-lex-katanga/
[168] Radio Okapi, "Lubumbashi: paralysie des activités suite à une marche de soutien au dialogue", 19 December 2015, www.radiookapi.net/2015/12/19/actualite/politique/lubumbashi-paralysie-des-activites-suite-une-marche-de-soutien-au
[169] For images of the march see "Lubumbashi marche en faveur du dialogue", 21 December 2015, https://www.youtube.com/watch?v=W-GfN_wn_x8 and Nyota TV, "Haut-Katanga: Marche de soutien au dialogue", 19 December 2015, www.youtube.com/watch?v=5hw-u4-QA24
[170] An official communication was sent out to the heads of administration services to announce the march and required everyone to be present. See 7 sur 7, "Les premiers dérives dictatoriales des commissaires spéciaux recensés", 21 December 2015, 7sur7.cd/new/les-premieres-derives-dictatoriales-des-commissaires-speciaux-recenses/ and Le Congolais, "Lubumbashi marche pour soutenir Joseph Kabila", 19 December 2015, www.lecongolais.cd/lubumbashi-marche-pour-soutenir-joseph-kabila/

town centre to pray for democracy in the country.[171] They were responding to a call for Congolese to pray for peace and democracy for two minutes every day at 12 noon made by Moise Katumbi the previous day on his Twitter account.[172] The group was able to pray, but were dispersed by the military police afterwards. A journalist working for *Agence France Presse (AFP)* who was taking pictures of the event was threatened by the police and arrested. He told Amnesty International: *"They brutalised me and asked 'Why did you come here? If you do not obey we are going to shoot you'. They took all my material and also my money and told me to follow them. I was taken to their office for questioning. They told me I was not allowed to take pictures. I explained I was an accredited journalist but I was forced to erase every single picture. They also deleted my audio recordings."*[173]

Several people that Amnesty International interviewed in Lubumbashi expressed concerns that municipal authorities and local administrators respectively obliged market traders and civil servants to participate in demonstrations organized by the Presidential Majority. On 17 November 2015 when the special commissioners arrived in Lubumbashi, the mayor ordered a day of general mobilization. A communication issued by the mayor "invited all civil servants, different mass organizations, and administrators of the market to mobilize their members to come in large numbers to the airport to welcome the new commissioners".[174] A journalist documented how the municipal authorities ordered numerous businesses and the main town market to close, and obliged vendors and shop owners to travel to the airport to welcome the authorities.[175]

Between November 2015 and May 2016, at least 11 people were convicted of participating in or supporting peaceful assemblies organized by the political opposition or groups critical of the ruling coalition. Many others were arrested and then released shortly after. Numerous protests were dispersed.

On 19 January 2016, several events organized across the country by civil society and political opposition parties to commemorate victims of the January 2015[176] protests were prevented by security forces.[177] The UNJHRO documented the arrest and temporary detention of 35 protesters in Kinshasa.[178]

On 16 February 2016, civil society and the political opposition called for a country-wide general strike (known as *ville morte*, or dead city). Political opposition leader, Martin Fayulu, was arrested and briefly detained on 12 February while preparing the action. Nine youth activists were arrested just before the 16 February action started. Victor Tesongo, a Union pour la Nation Congolaise (UNC) youth activist, was arrested on 11 February, just after meeting Marcel Heritier Kapitaine and Bienvenu Matumo, two LUCHA activists, who were arrested some hours later at 5.30am on 12 February.[179] At the same time, six other LUCHA activists were arrested in Goma. They had prepared some pamphlets for the general strike, with messages urging the government to hold the 2016 general elections within constitutional deadlines.[180] The six LUCHA activists in Goma were convicted for inciting civil disobedience and sentenced to two years in prison. The sentence was reduced to six months after appeal. The three youth activists in Kinshasa were sentenced to one year imprisonment for spreading false rumors and inciting civil disobedience.[181] These convictions violate their right to freedom of peaceful assembly and freedom of expression. The six LUCHA activists in Goma were granted a presidential pardon on 22 July 2016, less than one month before the end of their sentence. In a letter addressed to the President on 23 July, the six refused the pardon and said they would not leave the prison unless their colleagues detained in Kinshasa were also released. On 26 July, the six were forced out of prison.[182] On 31 August 2016, Victor Tesongo, Marcel Heritier Kapitaine and Bienvenu Matumo were released from prison, following the inclusion of their names in a list of five prisoners who could benefit from release as a measure to reduce political tensions.[183]

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[171] Nyota TV, « Prière populaire à Lubumbashi à l'appel de Moise Katumbi Chapwe », 19 January 2016, www.youtube.com/watch?v=mTy2mbl0XO0&feature=youtu.be
[172] Moise Katumbi (@moise_katumbi), 18 January 2016 twitter.com/moise_katumbi/status/689149437629886464
[173] Interview with AFP journalist, Lubumbashi, 10 June 2016.
[174] Agence Congolaise de Presse (ACP), "Une mobilisation décrétée à Lubumbashi pour accueillir les nouveaux commissaires spéciaux de l'ex Katanga", 17 November 2016, acpcongo.com/acp/une-mobilisation-generale-decretee-a-lubumbashi-pour-accueillir-les-nouveaux-commissaires-speciaux-de-lex-katanga/
[175] VOA Afrique, "RDC: Arrivée des commissaires chargés d'administrer les nouvelles provinces Katangaises", 18 November 2016, www.voaafrique.com/a/rdc-arrivee-commissaires-charges-administrer-nouvelles-provinces-katangaises/3063894.html
[176] Between 19 and 21 January 2015 widespread demonstrations took place in Kinshasa and in other towns, including Bukavu, Goma and Lubumbashi. Security forces put down the demonstrations with excessive force. At least 36 people were killed during the demonstrations.
[177] UNJHRO, Violations of human rights and fundamental freedoms linked to the restrictions of the democratic space, January 2016.
[178] Ibid.
[179] Amnesty International, *Democratic Republic of Congo: Further information: detained youth must be released: Bienvenu Matumo, Marcel Heritier and Victor Tesongo* (Index: AFR 62/3493/2016).
[180] Amnesty International, *Democratic Republic of Congo: Activists arrested hours before strike* (Index: AFR 62/3462/2016).
[181] Amnesty International, *Democratic Republic of Congo: Further informational: Three activists sentenced to a year in prison* (Index: AFR 62/4231/2016)
[182] Amnesty International, *Democratic Republic of Congo: Further information: Six Lucha activists "Forced" out of prison* (Index: AFR 62/4565/2016)
[183] On 26 August, the Minister of Justice announced the release of five youth activists as another measure to reduce political tension.

6.2 PRIVATE GATHERINGS

Private indoor gatherings have also been prohibited by the authorities. The UNJHRO raised concerns about intimidation by local authorities and defence forces of owners and managers who rent out meeting space, in their January 2016 update.[184] Civil society and political opposition party members told Amnesty International that it had become impossible for them to rent facilities for conferences or other events in Lubumbashi.

On 14 March 2016, a private meeting at a hotel in Lubumbashi between Pierre Lumbi, the President of the MSR, and his party members was forcefully stopped.[185] A party representative who was at the meeting told Amnesty International that about five unarmed men in civilian clothes entered the meeting room[186]: *"They said we did not have the right to meet and prohibited the four journalists present from filming [what happened next]."* One of the journalists was briefly detained and his camera confiscated. The hotel manager told Amnesty International that they received phone calls from unnamed individuals before and at the start of the meeting, ordering them to stop the meeting.[187] He explained that they refused, but were unable to stop ANR agents from entering the hotel and breaking up the meeting by force.

On 27 October 2015, in Likasi, ex-Katanga Province, a dinner organized by Dany Banza, the leader of the G7 party, ACO, and authorized by the city mayor, was prohibited by ANR agents. The mayor was suspended the following day by Evariste Boshab, the Minister of Interior.[188]

[184] UNJHRO, Violations of human rights and fundamental freedoms linked to the restrictions of the democratic space, January 2016.
[185] Interview with MSR Representative, Lubumbashi, 15 June 2016; Interview with hotel management of Hotel Lubumbashi, Lubumbashi, 15 June 2016.
[186] Interview with MSR Representative, Lubumbashi, 15 June 2016.
[187] Interview with hotel management, Lubumbashi, 15 June 2016.
[188] Radio Okapi, "Likasi: le maire de la ville suspend de ses fonctions", 29 October 2015, www.radiookapi.net/2015/10/29/actualite/politique/likasi-le-maire-de-la-ville-suspendu-de-ses-fonctions

7. CONCLUSION

As of September 2016, the absence of concrete plans for the presidential elections makes it unlikely that elections will be held within the constitutionally set timelines. Together with the Constitutional Court ruling which has been interpreted as allowing President Kabila to continue as president past his second term, this has triggered, and fuels, a political and constitutional crisis.

Amnesty International is concerned that this crisis has also resulted in human rights violations, particularly of the rights to freedom of expression, peaceful assembly and association. The political opposition and civil society actors have been specifically targeted by state agents and institutions, for criticizing what they see as action by the executive to hold on to power by any means necessary. State institutions such as the Ministry of Communication, the provincial administration, and security agencies have been used by the government to prevent dissenting voices from organizing and expressing themselves. They have been harassed, and their families and close associates targeted in an attempt to intimidate them into silence. Non-national human rights workers and analysts critical of government policy and action have also been expelled from the DRC. Businesses of key opposition politicians have been targeted, with the intention of disrupting their incomes. While Amnesty International does not condone non-compliance with relevant legislation, the organization is concerned that the specific targeting of opposition politicians is politically motivated to prevent them from being able to fully exercise their rights to freedoms of expression, association and peaceful assembly.

While groups pushing for respect of the constitution have been prevented from organizing peaceful assemblies, groups within the Presidential Majority have not only had their assemblies facilitated, but once again the state infrastructure, such as the provincial and local administration, has been used to facilitate and support these assemblies. Entire business centers have been closed down, and vendors and shop owners reportedly pressurized into attending assemblies.

The DRC government is obliged to respect, protect and fulfil human rights guaranteed in DRC's Constitution and in the various human rights treaties it has ratified, equally and regardless of the political situation. The Government of the DRC should immediately halt all actions that violate the rights to freedom of expression, association and assembly, and allow critical debate and peaceful organizing on term limits and presidential elections. Open debates and peaceful protest are important alternatives to violence and armed force as a means of expression. Closure of these spaces carries a great risk of escalating political tensions which could trigger civil unrest. They should reverse all actions that have contributed to the duplication of political parties, allow peaceful demonstrations across the country, and ensure that all human rights defenders can freely carry out their work.

The international community, including DRC's regional partners, the AU and the ACHPR, should urgently step up their efforts to encourage the DRC to respect freedom of expression, association and peaceful assembly in this critical pre-election period. In particular, the ACHPR should publicly press the DRC government to abide by the African Charter on Human and Peoples' Rights to respect these freedoms and guarantee that the intelligence service operates in accordance with the law and regional and international human rights obligations. The AU, through the Peace and Security Council, should closely scrutinize the pre-electoral context and take preventive measures, including reinforcing the mandate and operational capacity of AU human rights observers in the DRC.

8. RECOMMENDATIONS

TO THE GOVERNMENT OF THE DEMOCRATIC REPUBLIC OF CONGO

FREEDOM OF ASSOCIATION

- Respect the right to freedom of association for all, including youth movements and human rights organizations, independent of whether they are registered or have legal personality;
- Issue an official communication from the Minister of Justice stating that the youth movement LUCHA, and other peaceful youth movements are not criminal entities, and have the right to operate freely in the DRC;
- Respect and protect the right to freedom of association of all political parties;
- Create an enabling environment in which opposition political parties can exercise their right to freedom of association and peaceful assembly without government interference undermining their ability to defend their political views;
- Implement national legislation by revoking ministerial decrees recognizing political parties in violation of Article 4 of the law regarding the organization and registration of political parties and end the coexistence of duplicated parties using the same name, logo and flags;
- Investigate vandalism of the UNAFEC headquarters and offices in Lubumbashi, Kolwezi, Kinshasa and the arson of the UNADEF headquarters in Lubumbashi, and prosecute and punish those suspected to be responsible in line with guarantees of due process.

FREEDOM OF PEACEFUL ASSEMBLY

- Guarantee that security forces do not use excessive force when policing demonstrations and comply fully with the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;
- Stop systematically arbitrarily arresting peaceful protesters and prohibiting protests to dissuade people from taking part in demonstrations as a means of expressing their views, or to otherwise stifle criticism of the authorities;
- Undertake a thorough, impartial, independent and transparent investigation into all cases where security forces are reported to have used excessive force and make public the findings of the investigations, as well as bring to justice anyone suspected to be responsible;
- Publish and disseminate in a form that is readily accessible to the public the rules and regulations on the use of force by all security forces;
- Through the Minister of Justice, send a circular to local authorities and security forces to remind them of the following, and take corrective action where needed:
    - The DRC has an obligation to facilitate assemblies, and any decision to disperse an assembly must be in line with the principles of necessity and proportionality and only for the reasons permitted under international human rights law;
    - Blanket bans on all assemblies violates international obligations the DRC has signed onto, and should be lifted immediately;

- Assemblies should not be prohibited for broadly interpreted security reasons. Assemblies naturally cause a certain level of disturbance to public order and should not be prohibited for that reason;
- Any decision to disperse an assembly should be taken in line with the principles of necessity and proportionality; the order to disperse must be clearly communicated and explained so as to obtain, as far as possible, the understanding and compliance of the demonstrators, and sufficient time given for demonstrators to disperse.

ARBITRARY ARREST AND DETENTION AND UNFAIR TRIAL

- Release all individuals that are detained for political reasons and stop using the justice system and other state institutions to pursue political goals;
- Drop all charges against Fred Bauma, Yves Makwambala and Christopher Ngoyi;
- Revise the military penal code to end the practice of trying civilians before military courts;
- Transfer Huit Mulongo's case to a civilian court for a new trial, in proceedings that meet international standards for fair trial;
- Return the vehicle and personal belongings of Member of Parliament Martin Fayulu.

FREEDOM OF EXPRESSION AND PROTECTION OF HUMAN RIGHTS DEFENDERS

- Ensure that lawyers, youth activists, and political opponents are able to carry out their legitimate activities without fear or threat of reprisal, harassment or arbitrary arrest;
- Human rights defenders and journalists must be able to carry out their work without unwarranted interference, including to record and disseminate information about demonstrations and the actions of both security forces and protesters;
- Adopt national legislation creating a legal framework protecting human rights defenders.

TO THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

- Adopt a country-specific resolution at its 59th Ordinary Session expressing concerns about the deteriorating human rights situation in the pre-electoral context in the DRC and the situation of national and international human rights defenders and activists in the country;
- Urge the Government of the DRC to promote and give full effect to the UN Declaration on Human Rights Defenders within its jurisdiction;
- Call on the Government of the DRC to ensure that no one is criminalized for exercising the rights to freedom of peaceful assembly and of association, nor is subjected to threats, harassment, persecution, intimidation or reprisals.

TO THE AFRICAN COMMISSION SPECIAL RAPPORTEURS ON FREEDOM OF EXPRESSION AND ACCESS TO INFORMATION, ON THE SITUATION OF HUMAN RIGHTS DEFENDERS, AND ON PRISONS AND CONDITIONS OF DETENTION AND POLICING

- Call on the DRC authorities to ensure that no one is criminalized for exercising the rights to freedom of peaceful assembly and of association; nor is subjected to threats, harassment, persecution, intimidation or reprisals;
- Urge the DRC authorities to ensure that human rights defenders and pro-democracy youth activists operate across the country without fear of persecution, intimidation or reprisals.

TO THE CHAIRPERSON OF THE AFRICAN UNION (AU) COMMISSION AND TO THE AU PEACE AND SECURITY COUNCIL

- Publicly express concern about the pattern of violations of the rights to freedom of expression, association, and peaceful assembly of political opponents, human rights defenders and activists;
- Call on the DRC government to ensure that no one is criminalized for exercising the rights to freedom of peaceful assembly and of association, nor is subjected to threats, harassment, persecution, intimidation or reprisals;
- Ensure that human rights experts who are deployed in DRC as part of the AU Action Plan of the Human Rights Strategy for Africa document and report on human rights violations in the pre-election period, including violating the rights to freedom of expression, association and peaceful assembly;
- Ensure that the mandate and resources of the AU human rights experts are enhanced to enable effective monitoring of human rights violations in the pre-election period;
- Continually monitor the pre-election context and attacks on political opponents and activists in DRC, with a view towards taking preventive measures and making recommendations for strengthening safeguards against recurrence of violations and for appropriate accountability measures.

TO THE AU-APPOINTED FACILITATOR, THE UN SPECIAL ENVOY FOR THE GREAT LAKES REGION, UN SPECIAL REPRESENTATIVE FOR THE DRC, THE EUROPEAN UNION MANAGING DIRECTOR FOR AFRICA, THE SPECIAL ENVOY OF THE SECRETARY GENERAL OF THE INTERNATIONAL ORGANIZATION OF THE FRANCOPHONIE (OIF), THE EXECUTIVE SECRETARY OF THE SOUTHERN AFRICAN DEVELOPMENT COMMUNITY (SADC), AND THE REPRESENTATIVE OF THE EXECUTIVE SECRETARY OF THE INTERNATIONAL CONFERENCE OF THE GREAT LAKES REGION (ICGLR)

- Urge the DRC Government to respect, protect and fulfil the rights to freedom of expression, association and peaceful assembly, including of political opponents and pro-democracy activists.

TO THE UNITED NATIONS SPECIAL RAPPORTEUR ON THE PROMOTION AND PROTECTION OF FREEDOM OF OPINION AND EXPRESSION, SPECIAL RAPPORTEUR ON THE RIGHTS TO PEACEFUL ASSEMBLY AND OF ASSOCIATION, AND THE SPECIAL RAPPORTEUR ON HUMAN RIGHTS DEFENDERS

- Call on the DRC authorities to ensure that no one is criminalized for exercising the rights to freedom of peaceful assembly and of association; nor is subjected to threats, harassment, persecution, intimidation or reprisals;
- Request an invitation from the government to undertake a mission to DRC to monitor the human rights situation.

AMNESTY INTERNATIONAL IS A GLOBAL MOVEMENT FOR HUMAN RIGHTS. WHEN INJUSTICE HAPPENS TO ONE PERSON, IT MATTERS TO US ALL.

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DISMANTLING DISSENT

DRC'S REPRESSION OF EXPRESSION AMIDST ELECTORAL DELAYS

By September 2016, it is increasingly clear that presidential elections will not take place in the Democratic Republic of the Congo (DRC) before 19 December 2016, the end of President Kabila's last term according to the Constitution. At the same time, Congolese authorities are increasingly repressing politicians and civil society actors who are organizing and expressing themselves on elections and term limits.

This report is based on research conducted in Kinshasa and Lubumbashi in June 2016. Drawing on interviews with victims of human rights violations, journalists, government officials, politicians, foreign diplomats and representatives of national and international human rights organizations and the United Nations, the report documents how the DRC government is violating rights to freedom of expression, association and peaceful assembly pushing the country into crisis.

Amnesty International urges the DRC government to stop using the justice system and other state institutions to pursue political goals. The authorities should allow and protect peaceful demonstrations and ensure that all human rights defenders can freely carry out their work. The international community, including DRC's regional partners, the African Union and the African Commission on Human and Peoples' Rights, should step up their efforts in encouraging the DRC to undertake these essential reforms.

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