



The Democratic Republic of the Congo (DRC)
Submission to the UN Universal Periodic Review
19th Session of the UPR Working Group

Submitted 16 September 2013

Submission by CIVICUS: World Alliance for Citizen Participation, NGO in General Consultative Status with ECOSOC, and Ligue des Droits de la personne dans la région des Grands Lacs

CIVICUS: World Alliance for Citizen Participation

Ms Charlotte Allan Email: charlotte.allan@civicus.org

Ms Renate Bloem Email: renate.bloem@gmail.com

Web: www.civicus.org

LDGL: Ligue des Droits de la personne dans la région des Grands Lacs

Mr Cyriaque Ndayisenga Email: ndayisency@gmail.com

Mr Epimack Kwokwo Email: ldglse01@gmail.com

1. (A) Introduction

1.1 CIVICUS: World Alliance for Citizen Participation is an international movement with members in more than 100 countries. Established in 1993, CIVICUS nurtures the foundation, growth and protection of citizen action worldwide, especially in areas where participatory democracy and citizens' freedom of association are threatened.

1.2 LDGL: The Ligue des Droits de la personne dans la region des Grands Lacs is a regional human rights umbrella composed of 25 country-based CSOs working in human rights, fundamental freedoms, democracy and development in the Great Lakes region of Burundi, the Democratic Republic of the Congo (DRC) and Rwanda. Created on 30th May 1993, LDGL has been involved in human rights monitoring, human rights education and capacity building for its members and others CSOs partner at the grassroots level. Its mission is to promote and protect human rights and democratic principles in the three countries by using national, regional and international human rights mechanisms.

1.3 In this document, CIVICUS and LDGL outline concerns related to the environment in which civil society and human rights defenders operate in the DRC, and discuss the threats they face in the exercise of the freedoms of expression, association and assembly.

1.4 CIVICUS and LDGL are deep alarmed by the heavy handed measures taken by the Government of the DRC that drastically curb the freedom of speech and assembly, and in particular which make dangerous, expressing dissent in print.

1.5 CIVICUS and LDGL are equally alarmed by the failure of the DRC Government to allow peaceful assembly and at the violence frequently experienced by anti-government protestors at protest marches.

- In section B, CIVICUS and LDGL highlight concerns relating to the lack of the freedoms of expression, association and assembly.
- In section C, CIVICUS and LDGL highlight concerns over detentions, disappearances and attacks against civil society members and human rights defenders.
- In section D, CIVICUS and LDGL highlight concerns over detentions, disappearances and attacks against journalists.
- In section E, CIVICUS and LDGL make recommendations in the areas of concern listed.

2. (B) Concerns regarding legal and practical restrictions on the freedoms of expression, association and assembly

2.1 In 1976, the DRC acceded to the International Covenant on Civil and Political

Rights (ICCPR) which under articles 19, 21 and 22 guarantees the freedom of expression and the right to hold opinions without interference; the right of assembly and the right of association.

- 2.2 Article 23 of the Constitution of the Democratic Republic of the Congo of 2006 guarantees the freedoms of speech and expression. Article 24 of the Constitution guarantees the right to information through the liberty of the press and the freedom of information through newspapers, radio and television. Both articles contain limitations on the basis of law, public decency and good morals. Article 25 permits peaceful meetings without weapons while article 26 guarantees the right to protest so long as the organisers of protests in public spaces or the open air inform the relevant authority in writing first.
- 2.3 However in the DRC, there is a gulf between the legislation in place and the breach of rights experienced in practice. Harassment that ignores the fundamental freedoms is frequently meted out by a variety of sources including the security apparatus and national and local government officials, but also by non-state actors.
- 2.4 While the 1996 Press Law aims to protect the exercise of press freedom, it also limits it through the prohibition on insulting the President. The 2004 Penal Code criminalises public and malicious slander. These laws are often invoked to curb dissent expressed in the media and by opposition political leaders.
- 2.5 Those journalists and members of the media that are charged under the DRC's criminal defamation and insult laws, are mostly targeted in an attempt to silence criticism of the government. For example, in February 2013 journalist Joachim Diana Gikupa was convicted of criminal defamation for a report he published in 2012 claiming that a Chinese company managing a local hospital was selling medication past its expiry date.¹ Despite such convictions, the hundreds of privately owned media outlets in existence still frequently remain critical of the government although many are owned by business men and political figures and are used for propaganda. According to the Ministry of Communications there were 134 television stations, 463 radio stations, and 445 newspapers registered in the DRC, as at August 2012.
- 2.6 The freedoms of speech and expression are hindered by the harassment of journalists and media outlets by the National Intelligence Agency (NIA) and other bodies such as the High Authority on Media (HAM). An additional regulatory body, the High Council for Broadcasting and Communication (CSAC) established in 2009, comprises of members all appointed by the President. In 2012 when the conflict in the Eastern Congo resumed, CSAC² barred all

¹ Radio Okapi, Kinshasa: pas de liberté provisoire pour le journaliste Diana Gikupa détenu au CPRK, 23 February 2013, <http://radiookapi.net/actualite/2013/02/23/kinshasa-pas-de-liberte-provisoire-pour-le-journaliste-diana-gikupa-detenu-au-cprk/> .

² ACP Media Publique, Radio Okapi et RFI sanctionnées par le CSAC, 29 November 2012, http://www.acpcongo.com/index.php?option=com_content&view=article&id=13886:radio-okapi-et-rfi-

broadcasters from airing programs discussing the conflict and suspended several radio stations in apparent attempt to curb media freedoms in the country. Due to its targeting of opposition TV channels and repeated instances of operational bias, Journalistes en Danger (JED), the press freedom organization, called for the CSAC to be dissolved.³

- 2.7 The DRC's radio stations in particular face attack. In May 2013 in North Kivu province, several radio stations were forced to shut down, lay off staff or stop broadcasting certain types of news by the M23 rebel group. The M23 rebel group stopped the transmissions of 3 national radio stations (two state owned) in Goma in December 2012 for 12 days, after it first took control of the city. All local media were given strict instructions not to relay information coming from the government. Also in December 2012, United Nations-sponsored broadcaster Radio Okapi was suspended in Kinshasa by the government for reportedly broadcasting an interview with the leader of the M23 rebel group.
- 2.8 Although, the internet has not been reported as subject to state control of any note, the CSAC law requires bloggers to obtain authorization from the CSAC. This legal provision is an impediment to free speech. Curbs on telecommunications remain a matter of concern. For instance, in December 2011 the government suspended text messaging throughout the country for three weeks "to maintain public order and protect the safety of property and people". This was a result of the escalating violence surrounded the disputed election results from the Presidential and legislative elections held on 28 November 2011.
- 2.9 The freedom of assembly is intermittently respected in the DRC. Organizers of public events must register in advance with local authorities who may then deny authorization within 5 days of the registration. The security services have been known to act violently against unregistered protests. For instance, on 13 August 2013, the police beat protesters in Goma who were protesting the conviction of a Parliamentarian for speaking out on inadequate fair trial procedures.
- 2.10 Following the outcome of the November 2011 elections, dozens of protesters were killed, and many more arrested since the election results were announced in early December 2011. A mass protest organised by a Catholic group in Kinshasa on 16 February 2012 against claims of electoral fraud, including the disappearance of up to 1.6 million ballots, was also met with violence. The protest was declared illegal as the government claimed the organisers had not submitted the necessary paperwork. The police then used batons and tear gas to violently disperse the marchers.

[sanctionnees-par-le-csac&catid=35:nation&Itemid=56](#)

³ Reveil FM, Journaliste En Danger (JED) exige la dissolution du CSAC et en appelle à un état d'urgence pour sauver la liberté de la presse en République démocratique du Congo!, 29 December 2011, <http://reveil-fm.com/index.php/2011/12/29/2039-journaliste-en-danger-jed-exige-la-dissolution-du-csac-et-en-appelle-a-un-etat-durgence-pour-sauver-la-liberte-de-la-presse-en-republique-democratique-du-congo> .

- 2.11 Despite complying with the requirement to inform the authorities in advance, twelve members of the Association for the Defence of the Interests of Bandundu City were also convicted for planning a protest in March 2013 against the poor management of Bandundu's governor.
- 2.12 The freedom of association in the DRC is governed by the Constitution and by Law no. 004-2001 of 20th July 2001 (Law 004/2001 NGOs are categorized as Non-Profit Associations responsible for community development and must obtain approval from "the Minister who has jurisdiction over the specified sector of activities" in which the organization wants to operate. Requirements to obtain government approval remain an impediment to freedom of association.

3. (C) Concerns involving harassment, threats and attacks against civil society activists and human rights defenders

Article 12 of the UN Declaration on Human Rights Defenders mandates all UN member states, including the DRC, to take all necessary measures to ensure protection of human rights defenders.

However, the continued instability in the DRC and the lack of any discernible improvement in the treatment and safety of protestors and members of the media, means that the DRC government's commitment to the Declaration has still not equated to substantive practice. This is particularly the case given the government failure to protect its citizens from rebel movements and when state agents themselves are the perpetrators of violence against civil society members.

(Targeting of government critics, human rights organisations and human rights defenders)

- 3.1 Government critics and human rights defenders are met with harsh treatment all over the DRC. The illegal detention and arbitrary arrests of government critics and human rights defenders are regularly reported without any investigation by security forces and CSOs actors frequently receive anonymous texts and phone calls with threatening messages. Of particular note is the security for human rights defenders in the eastern region. The situation has been deteriorating rapidly due to the presence of the M23 rebel group there which formed when elements of the National Congress for the Defence of the People (CNDP), turned against the DRC government in April 2012. The presence of M23 has resulted in increased paranoia and surveillance by the state of anyone deemed to support M23's cause, or to be critical of the state.
- 3.2 On August 13, 2013, two days after speaking on a radio program in Goma about the M23 rebel group and the conflict in eastern DRC, Member of Parliament Muhindo Nzangi was tried, convicted, and sentenced for

endangering internal state security⁴. He received three years imprisoned after a trial that is widely believed to have failed to comply with international fair trial standards. On 25 October 2012 activist and government critic Dr Denis Mukwege was attacked shortly after returning to his home in Bukavu, South Kivu where he found armed men threatening his children with guns and his security guard shot.

- 3.3 Elsewhere, Eugène Diomi Ndongala, president of the opposition Christian Democrats (Démocratie Chrétienne) and a founding member of the Popular Presidential Majority (Majorité présidentielle populaire), was detained in April 2012 in an apparent attempt to silence his dissent and vocal criticism of the recent elections. He was detained incommunicado by the intelligence services in Kinshasa without due process for one hundred days.
- 3.4 In the run up to the November 2011 elections, opposition politicians and supporters were targeted with violence and harassment by police. Torture, ill-treatment and arbitrary and illegal arrests were commonly used as intimidation tactics against members of the opposition, particularly, the supporters of President Kabila's main challenger, Etienne Tshisekedi of the Union for Democracy and Social Progress (UDPS). Members and perceived members of the UDPS suffered from treatment including being beaten with clubs and tear gassed particularly at marches in September and October 2011.
- 3.5 In June 2010 the prominent human rights activist Floribert Chebeya Bahizire⁵ was murdered after experiencing a pattern of death threats, arrests and intimidation for over 20 years. In June 2011, four national police officers were sentenced to death and one to life in prison for his murder. The case of Pascal Kabungulu who was murdered in July 2005 remains unsolved. He was the Executive secretary of Heritiers de la Justice, a local NGO active in human rights issues in South Kivu, as well as the Vice president of LDGL.
- 3.6 Human rights organisations are still able to operate, but with caution given the pressure they face from powerful state and non-state actors who are very sensitive to criticism of their political or business interests. The creation of fake CSOs has also added to the confusion by confusing the activities of legitimate CSOs and those who are pro-government. This strategy has been used to weaken the voice of active CSOs in DRC.

(Targeting of trade union leaders and members)

- 3.7 Trade unionists are reportedly harassed, arrested and prosecuted in the DRC, and must also compete with a number of state sponsored trade unions that are not independent. Despite all its ratifications of the ILO core conventions,

⁴ Congoflash.com, DRC: the MP Muhindo Nzangi sentenced to 3 years in prison farm, 17 August 2013, <http://www.congoflash.com/en/rdc-le-depute-muhindo-nzangi-condamne-a-3-ans-de-prison-ferme/>

⁵ New York Times, Lifetime of tracking killings ends in own death, 27 June 2010, www.nytimes.com/2010/06/28/world/africa/28congo.html

and also the recognition of the right to form a union under the Constitution of the DRC, the DRC's government failed to respond to various complaints filed with the ILO Committee by a number of DRC union centres in 2012.

- 3.8 In February 2011, unionists Pierre Liandja and Tshétshé Ingulu Ngangeli were targeted for criticising mismanagement in the fiscal department at the Department of Administrative and Property Revenues (DGRAD). Liandja received death threats by text message, while Ingulu Ngangeli was arrested and imprisoned for several months in Kinshasa.
- 3.9 Police also reportedly attacked two trade unionists on 9 March 2012 during a strike in front of the administrative building of the transport and ports trading company, SCTP. On 7 April 2012, Agbayo Vital, Mukulungu Puis, Lino Metikwiza and Yilu Yilu, four trade unionists from the SCTP, were arrested at SCTP's request. They had been demanding the payment of wage arrears and a review of their transport allowances. Metikwiza and Yilu were subsequently imprisoned.

(Attacks on Lesbian Gay Bisexual and Transgender Intersex (LGBTI) Activists)

- 3.10 Although taboo, homosexuality has never been illegal in the DRC, however, there are conflicting reports that in October 2010 a bill criminalising homosexuality was presented to Parliament. Under the bill people who engage in homosexual activity would be sentenced to 3 to 5 years in prison or fined 500,000 Congolese francs. Members of associations that defend the rights of homosexuals could also face prison sentences. The status of the bill at the date of writing is currently unclear.
- 3.11 Groupe Hirondelles Bukavu in South Kivu is the only support service NGO for homosexuals in the country. There have been no attacks on gay activists recorded recently.

4. (D) Concerns involving harassment, threats and attacks against journalists

- 4.1 The DRC has seen a backward slide in the treatment of journalists and the control of the media, particularly since the run-up to the elections in November 2011, and since the M23 rebel group formed and began to attack the eastern provinces. The perpetrators are consequently both the state and the rebel groups. The areas with the highest number of attacks on the press are Bas Congo, North Kivu and Katanga provinces.
- 4.2 Out of the numerous instances of journalist harassment, local TV station director Simplexe Musangu⁶'s was detained for a period in July 2013 in

⁶ IFEX, TV station re-opens but Director still detained in Congo, 20 August 2013, <http://www.ifex.org/tag/Simplexe%20Musangu/>

Katanga province for inciting civil disobedience because his station broadcast a Katanga secessionist group's message when held up at gunpoint.

- 4.3 Guillain Chanjabo, 58, a presenter with youth-based community station Radio Canal Revelation, was found dead⁷ in May 2013 with stab wounds in his head, back, stomach, and legs near Bunia. Journalists Dadou Ekiom, Guy Ngiaba and Pierre Sosthène Kambidi were all in jail at the end of 2012, to which Joachim Diana Gikupa of La Colombe was added in February 2013 on a criminal defamation charge for a report he published on unethical work practices by Chinese companies. On 15 April 2012, the police detained Sebastien Mulumba and Mbuyi Mukadi of Kisangani News in Oriental province for a period and then released them after they published an unfavourable article about a national deputy. The deaths of Didace Namujimbo in November 2008 and Serge Maheshe in June 2007, both journalists for Radio Okapi, remain pending and have received no credible investigation.
- 4.4 In North Kivu, journalists are near continually threatened, and in some instances, their work subject to a read through before publication by M23 intelligence officers. Radio stations have shut down or now heavily edit their content as a result of M23 intimidating them into carrying its propaganda. A number of journalists have fled the region and experience the phenomenon of being persecuted by M23 before arriving in another part of the DRC where they are monitored by the government security services as potential M23 accomplices. An example is Blaise Bahisha who stands accused of spying in Rutshuru and is now in prison in Goma as the government forces and M23 continue to fight for Goma's control.⁸

5. (E) Recommendations to the Government of the DRC

- 5.1 CIVICUS and LDGL call on the Government of the DRC to operate in accordance with the rights enshrined in the ICCPR and the UN Declaration on Human Rights Defenders. At a minimum, the following conditions should be ensured: freedom of association, freedom of expression, the right to operate free from unwarranted state interference, the right to communicate and cooperate, the right to seek and secure funding and the state's duty to protect. In light of this, the following specific recommendations are made.

⁷ Echos Grande Lac, RDC: Un journaliste de la radio canal Révélation Bunia porté disparu, 5 August 2013, <http://www.echos-grandslacs.info/productions/rdc-un-journaliste-de-la-radio-canal-revelation-bunia-porte-disparu> .

⁸ Reveil FM, 29 April 2013, RDC : Le journaliste Blaise Bahisha, accusé d'espionnage à Goma, a été transféré à la prison centrale, alors que la Ministre de la Justice séjourne dans la ville de Goma, <http://reveil-fm.com/index.php/2013/04/29/3523-rdc-le-journaliste-blaise-bahisha-accuse-despionnage-a-goma-a-ete-transfere-a-la-prison-centrale-alors-que-la-ministre-de-la-justice-sejourne-dans-la-ville>.

5.2 Regarding legislative restrictions on the freedoms of expression, association and peaceful assembly, the Government of the DRC should ensure:

- The criminal defamation and insult laws imposing heavy burdens on the press and the freedom of expression in the DRC should be reviewed by the legislature in consultation with the media and civil society groups.
- Enact a law protecting human rights defenders and their work so that they may have a basis from which to claim for legal protection.

5.3 Regarding threats to civil society activists, human rights defenders and journalists

- Detentions of, and threats against protestors, civil society activists, journalists and those broadcasting dissenting opinions, should be publicly condemned by senior government officials. This is to ensure protection by law enforcement agencies and an end to the culture of harassment among law enforcement agencies responsible for many of the detentions, and threats outlined in this submission.
- Impartial and effective investigations into all cases of attack, harassment, intimidation and disappearance of civil society activists, journalists and those broadcasting dissenting opinions, should be conducted and perpetrators should be brought to justice.
- All reported cases of injury to peaceful protestors by security forces should be subjected to mandatory and transparent investigation by an independent commission. Particular attention should be given to the deaths of protestors killed in the run up to, during and after the Presidential elections in November 2011.
- Security forces in charge of crowd control should be equipped with nonlethal weapons and provided with training on humane means of crowd control as well as on the UN Basic Principles on the Use of Force and Firearms.
- New measures should be taken to ensure that law enforcement methods offer adequate protection to all citizens, regardless of political affiliation.
- A self regulating body to monitor journalists and media issues should be established.
- Families of detainees who have been placed in *incommunicado* detention for their opinions or activism should be informed about their whereabouts and state of health while efforts should be made to ensure regular contact and communication.

- Those civil society activists and journalists publishing or broadcasting dissenting opinions, should be unconditionally released and their cases duly reviewed in accordance with international human rights law and constitutional protections.
- The complaints tabled with the ILO Committee by DRC union centres in 2012 should be responded to immediately by the government of the DRC and claims of fictitious unions prohibited.

5.5 Regarding access to UN Special Procedures and Mandate Holders

- The UN Special Envoy for the Great Lakes Region should be given full access to the DRC to enable her to investigate human rights abuses and to implement a framework agreement to enable peace in North and South Kivu.
- A standing invitation should be extended to all UN Special Procedures, in particular, the Special Rapporteur on Human Rights Defenders, the Special Rapporteur on Freedom of Expression, and the Special Rapporteur on Freedom of Peaceful Assembly and Association.