

# briefing

## Democratic Republic of Congo

*Urgent Human Rights Cases in Government-Controlled Areas*

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## **Urgent Human Rights Cases in Government-Controlled Areas of the Democratic Republic of Congo (DRC)**

### **I. Introduction**

The international community is currently expending billions of dollars in the Democratic Republic of Congo (DRC) with the ultimate goal of ensuring the development of stability, an end to impunity and the establishment of the rule of law. To this end, it has assembled the largest mission in the history of the United Nations (UN), which is mandated to both keep peace and to enforce it wherever and whenever such action is deemed necessary.

Included in the UN Mission in the DRC (MONUC) are agencies or divisions designed to assist the current Congolese government in the development of a political culture where democratic principles are upheld and human rights are respected. The Human Rights Division (HRD) of MONUC is mandated “to put an end to impunity and to ensure that those responsible for serious violations of human rights and international humanitarian law are brought to justice.” It is also tasked with assisting the government of Congo “in the promotion and protection of human rights” and with facilitating “the protection of individuals under imminent threat of physical violence, such as witnesses, victims and human rights defenders”. In addition, one of the tasks of MONUC’s Rule of Law Division is “to address issues relative to the security and protection of the individual against impunity”, ensuring that the people of Congo finally have access to the justice that has so long eluded them.

Unfortunately, events in government-controlled areas increasingly provide worrying indications that the government of Joseph Kabila is not altogether willing to commit to these principles. Instead, while the Congolese government benefits from an unusual degree of international support, the harassment of members of civil society, journalists and political opponents, the manipulation of the judicial system, and extra-judicial execution regularly occur in the areas under its’ control.

### **2. Immediate Concerns**

The following urgent cases are symptomatic of the continuing harassment of human rights defenders and other members of civil society in government controlled areas.

## ***2.1. Harassment of Political Opponents and the Judiciary***

On 30 of April 2007, Marie Therese Nlandu, a prominent human rights defender, former presidential candidate and a civilian, was acquitted by a military tribunal, along with nine others of an array of charges, including creating an insurrectionary movement and organising the torching of Kinshasa's Supreme Court. The charges were effectively designed to engineer a trial before a military tribunal – the only judicial arena capable of passing the death sentence.

Unfortunately, the ramifications of this case continue. It would appear that soon after Me Nlandu left the country to rejoin her London-based family, the government of the DRC began to severely harass her associates and any deemed sympathetic to her case.

### ***2.1.1. Harassment of Nlandu Associates***

Shortly after Me. Nlandu's return to London, Christian Solidarity Worldwide (CSW) received credible reports of threats against Maître Marcel Mutombo Mukendi, the head of Me Nlandu's legal defence team, and Charles Kianza, Me. Nlandu's press attaché and a former detainee. Both confirmed that they had suffered consistent, severe harassment since Me. Nlandu's departure, expressing profound fears for their lives and requesting urgent intervention by the international community on their behalf.

### ***2.1.2. Harassment of Nlandu Judges***

Major Mbokolo Wawa, president of the military tribunal of the Kinshasa/Gombe garrison that acquitted Me Nlandu, was removed from his position soon thereafter. The Major is reported to have experienced death threats ever since his decision to release Me. Nlandu in April. Subsequently, on 8 January 2008, Major Mbokolo Wawa and his assistant, Captain Kawende, were illegally detained. The men were reportedly taken into custody at 7pm; however, according to DRC law arrests can only take place between 6am and 6pm. The Major had recently been ordered to report for work in Uvira, an area close to the Rwanda border where no military court exists. He delayed his journey as he feared for his life. As a result, Major Mbokolo Wawa was charged for "refusing to go to Uvira". The judge and his assistant were due to be brought before a military court in Kinshasa/Gombe. However, sources now report that a trial is already underway in complete secrecy, raising doubts that the two men will receive a fair trial.

## ***2.2. Abuse of the Judicial System***

On 14 May 2006 evangelical church leader Fernando Kutino was arrested by Congolese Special Service Police, along with his colleagues, Pastor Timothée Bompere and Junior

Nganda, after an appearance on television and a radio station owned by his church. In the broadcast the Pastor is reported to have criticized undue foreign influence on the DRC's transitional government. In response on 22 May, armed assailants destroyed and looted the station's equipment and forced it off air. Once arrested, the three men were initially charged with 'incitement to hatred', yet when they appeared in front of a military tribunal on 31 May, the charges had been changed to the illegal possession of firearms, criminal conspiracy and attempted murder. All three are civilians; however, the new charges were formulated to bring the case under military jurisdiction, with the prosecution alleging that arms had been discovered at Pastor Kutino's church at the time of his arrest and attempting to implicate him in an alleged plot to remove President Kabila from power. The trial was summary, lasting for only nine sittings despite the complexity and gravity of the charges. One of the men, Junior Nganda, alleges that his testimony used during the trial was obtained under torture. In addition, another pastor that the three men were accused of attempting to murder, refused to implicate Pastor Kutino or his associates. Nevertheless on 16 June 2006 Pastor Kutino was sentenced to 20 years imprisonment. He is currently reported to be held in poor conditions that are affecting his health, yet he is refused access to timely and adequate medical treatment. Pastor Kutino is also reported to be experiencing regular harassment by the authorities in his cell. His case was reopened on 12 December 2007, apparently in response to international pressure. However, he complains that the new trial is being hampered by official obstructions and delays.

### **3. Conclusion and Recommendations**

These cases are but three examples of a catalogue of continuing human rights violations in government-controlled areas. In relation to these areas, the HRD's summarised key concerns are: "violations of the right to life, liberty and physical integrity by members of the Congolese security forces, in particular the army or FARDC; continuing repression of the right to freedom of expression and association by the media, members of opposition political parties, trades unionists and human rights organizations; Continuing impunity for serious violations of human rights ... " and the absence of the rule of law, particularly "in the face of increasing acts of criminality by members of the armed forces".

It vital for the development of a human rights culture, democratic practices and the rule of law that the government of Congo is made accountable for abuses committed in areas under its' control. If the harassment of political opponents, manipulation of the judicial system and other such abuses are allowed to continue in the nation's capital, seemingly with little or no challenge from key members of the international community with the power to

influence the government, there would appear to be little hope of ending impunity or of effectively stopping the egregious violations that are occurring further afield. As things stand, once the international community withdraws from the DRC, impunity perpetrated by government is likely to continue, and the best opportunity to secure a stable and democratic future for a beleaguered people will have been tragically lost.

Clearly, the Congolese government continues to face severe problems in establishing its control over the entire nation, and there are areas where the most appalling violations of the rights of Congolese citizens are being committed by non-governmental forces. However, these should not obscure the need for the elected government to begin the process of adopting principles that will ensure a just society for the Congolese people. The international community must actively assist it in the development of a respect for human rights, an upholding of the rule of law, and an ending impunity on the part of the Congolese government by immediately challenging instances of flagrant abuse. The Kabila government must be made aware that the manipulation of the judicial system and other abuses of power are unacceptable under the new democratic dispensation, and an international community which has assigned such a vast array of resources towards ensuring the DRC's future - and therefore has a significant stake in this - must no longer tolerate the continuing disregard for human rights and the rule of law by a government it is working hard to uphold.

CSW therefore urges that, in accordance with its mandate for the protection of Human Rights Defenders and its commitments under Article 96 of the Cotonou Agreement, the European Union (EU) (which, particularly through Belgium, has close and historical ties to the government of Congo) takes action to ensure the safety of members of Me Nlandu's defence team and co-accused who continue to face insecurity. CSW also calls on the EU, through its Delegation in Congo, to use its good offices to communicate to the Congolese authorities that the harassment and intimidation of human rights defenders, members of the press, journalists, trade unionists and those exercising their democratic prerogative to hold dissenting views should cease immediately, and that as a sign of good faith the government ought to begin by immediately releasing all who have been detained without merit, and ensure a free and fair re-trial for Pastor Kutino. It is also vital that the Congolese regime is made aware of the necessity to urgently improve prison conditions in the country, where it is reported that inmates die on a weekly basis, ensuring that those held on remand for excessive periods of time are immediately released on bail.