

DRC: JUSTICE AND FREEDOMS UNDER SIEGE IN NORTH-KIVU AND ITURI

A year after a state of siege was proclaimed in North-Kivu and Ituri provinces in the eastern Democratic Republic of Congo, allowing the military and police to take over all powers from civilian institutions, it has failed in its stated purpose of rapidly improving the security situation. Military authorities have instead used their extraordinary powers to further undermine people's rights with impunity, including freedoms of expression and assembly, and the right to justice.

General Constant Ndima (L) performs the military salute during his inauguration as military governor of North Kivu province, eastern Democratic Republic of Congo on May 10, 2021.
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LIST OF ACRONYMS AND ABBREVIATIONS

ACHPR:	AFRICAN COMMISSION ON HUMAN AND PEOPLE'S RIGHTS
ADF:	ALLIED DEMOCRATIC FORCES (UGANDAN ARMED GROUP BASED IN DRC AND REPORTEDLY AFFILIATED WITH THE ISLAMIC STATE)
CODECO:	COOPERATIVE POUR LE DEVELOPPEMENT DU CONGO (ARMED GROUP)
DRC:	DEMOCRATIC REPUBLIC OF CONGO
EAC:	EAST AFRICAN COMMUNITY
FARDC:	FORCES ARMEES DE LA REPUBLIQUE DEMOCRATIQUE DU CONGO
ICCPR:	INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS
KST:	KIVU SECURITY TRACKER
LUCHA:	LOTTE POUR LE CHANGEMENT (CITIZENS' MOVEMENT)
MONUSCO:	MISSION DE L'ORGANISATION DES NATIONS UNIES POUR LA STABILISATION DU CONGO
MP(S):	MEMBER(S) OF PARLIAMENT
OHCHR:	OFFICE OF THE UN HIGH COMMISSIONER FOR HUMAN RIGHTS
PNC:	POLICE NATIONALE CONGOLAISE
SADC:	SOUTHERN AFRICAN DEVELOPMENT COMMUNITY
UNJHRO:	UN JOINT HUMAN RIGHTS OFFICE IN THE DEMOCRATIC REPUBLIC OF CONGO
UPDF:	UGANDA PEOPLE'S DEFENCE FORCES

1. EXECUTIVE SUMMARY

In May 2021, President Félix Tshisekedi of the Democratic Republic of the Congo (DRC) proclaimed a state of siege in the conflict-stricken eastern North Kivu and Ituri provinces. He ordered the army and police to take over political and administrative powers and granted military justice with the power to prosecute civilians, ostensibly to tackle armed groups more effectively and improve protection of civilians. By mid-April 2022, in a little under 12 months, this exceptional and temporary measure under DRC's Constitution had been extended 22 times. It is in danger of becoming permanent. Yet armed groups' attacks on civilians have more than doubled in 2021 compared to the previous year, according to the UN.

Amnesty International conducted 44 interviews for this briefing remotely by phone with victims and their relatives, judges, prosecutors, lawyers, Congolese human rights defenders, UN officials, journalists, and humanitarian workers in North Kivu, Ituri and Kinshasa. Further information is based on data from the UN and civil society organizations, and analysis of Congolese laws and relevant international standards.

Despite the sweeping powers given to military and police officers by the state of siege order, there has been no improvement in civilian protection. The measure has also led to further violations of people's fundamental freedoms in total disregard of international human rights laws and standards.

The state of siege has led the DRC to violate its obligations under human rights law by restricting the rights to freedom of opinion, expression, and peaceful assembly, as well as the right to justice. These rights are enshrined in several regional and international human rights instruments to which the DRC is a party, including the African Charter on Human and Peoples' Rights (ACHPR) and the International Covenant on Civil and Political Rights (ICCPR).

The government has failed to provide an effective oversight mechanism to prevent or deal with the misuse of the army and police's extraordinary powers under the state of siege, especially given their human rights record.

The military and police authorities have used their powers under the state of siege to crackdown on anyone they deem critical, including members of parliament and human rights activists. They continue to repress peaceful protests and throw activists in jail. The security forces have killed at least two peaceful activists and arbitrarily detained dozens of people on trumped-up charges, including five members of parliament (MPs).

The militarization of the judiciary has further jeopardized access to justice and the right to a fair trial. The availability of courts and legal personnel is limited. The backlog of cases and increasing numbers of people in pretrial detention has led to severe overcrowding in prisons and deteriorating conditions. In March 2022, the powers given to military justice over civilians were reviewed to cover a dozen criminal offenses. A move that still fell short of international standards. The powers granted to military justice over civilians remained unnecessarily broad.

The current state of siege in Ituri and North Kivu has not improved the protection of civilians or the general human rights situation. So far, the only tangible outcome of the state of siege has been the replacement of political and administrative authorities by army and police officers, the suspension of ordinary courts' criminal jurisdiction, as well as restrictions of people's freedoms, which seem unrelated to the state of siege's stated purpose.

Amnesty International recommends that President Tshisekedi immediately revokes all the powers given to military courts over civilians under the state of siege, and that he lifts all illegal, unnecessary, or disproportionate restrictions on civil and political rights in line with international standards, including the criminalization of criticism and the blanket ban on peaceful protests. He must ensure that the state of siege does not become a permanent regime, by setting a clear exit plan.

Amnesty International is further calling on the DRC government to immediately release all persons arbitrarily detained and provide them with access to justice and appropriate remedies. Families of human rights defenders and journalists killed during the state of siege must be provided with

appropriate remedies as well. The government must end the abuse of arrest and detention, and urgently improve detention conditions in accordance with international human rights standards. The government must further ensure that anyone suspected of human rights abuses, including army and police officers, is held accountable. The government should respond positively, and without further delay, to visit requests made by the UN Special Rapporteurs on extrajudicial, summary, or arbitrary executions, human rights defenders and freedom of peaceful assembly and association, and submit all overdue reports to the UN human rights treaty bodies.

The National Human Rights Commission and the National Assembly's human rights committee should independently and impartially monitor and publicly report on the human rights situation in the provinces under the state of siege, including regarding civilian protection, pretrial detention, prison conditions, administration of justice, and protection of civic space. We call on DRC's partners, including the African Union Commission, the Southern African Development Community (SADC), the East African Community (EAC), the European Union (EU), the UN and the USA to speak out publicly against arbitrary arrests and wrongful prosecutions of peaceful activists, excessive restrictions of freedoms of expression, association, and peaceful assembly under the guise of the state of siege. . They should speak out publicly against the power granted to military courts to try civilians in the provinces under the state of siege and urge the DRC authorities to revoke it completely. They should express concern over the excessive use of pretrial detention in DRC, poor prison conditions and lack of respect for defendants' rights before Congolese courts and play a role in upholding the rights of detainees and prisoners by supporting the DRC authorities with financial and technical assistance in these areas. They should support efforts aimed at ensuring accountability and justice for crimes under international law and other human rights violations in eastern DRC, including those committed by state and armed opposition groups under the state of siege in North-Kivu and Ituri.

2. METHODOLOGY

Amnesty International conducted research on the state of siege from August 2021 to April 2022. This briefing is based on 44 interviews, conducted remotely by phone in French and Swahili, with judges, prosecutors, lawyers, Congolese human rights defenders, UN officials, journalists, and humanitarian workers in North Kivu and Ituri provinces. Additional information was gathered and verified through a local Amnesty International partner in Goma in August 2021 and March 2022. It also draws on data about attacks on civilians before and during the state of siege from the Kivu Security Tracker¹ and the UN Joint Human Rights Office, as well as media reports. Names and identifying details of some interviewees were omitted for security reasons.

Amnesty International also analysed national laws, including DRC's Constitution, the May 2021 presidential ordinances proclaiming the state of siege, its enforcement measures, and their March 2022 amendment, in relation to relevant regional and international human rights standards.

The involvement of the Ugandan army in joint military operations in eastern DRC and any assessment of the human rights implications of that falls outside the scope of this briefing.

On 21 April 2022, we wrote to the Minister of Justice, Minister of Human Rights, Minister of Defence, Minister of Information and the Government Spokesperson, President of the High Judicial Council, and Military Governors of North Kivu and Ituri requesting information. On 22 April 2022, we sent a summary of our preliminary findings to the Prime Minister requesting an official government response and details of any steps that the DRC government had taken or intended to take to ensure the state of siege complies with the country's human rights obligations. At the time of publication, we had not received any response.

¹ The Kivu Security Tracker (KST) is a joint security monitoring project of the Congo Research Group, based at New York University's Center on International Cooperation, and Human Rights Watch. Through its large network of Congolese researchers, Congolese and international security actors, and information technology, it maps violence by security forces and armed groups in eastern DRC daily. Find out more information on kivusecurity.org

3. BACKGROUND

“Since [the state of siege] was established, killings, massacres, rapes, robberies, vehicle fires ... have intensified in the areas concerned.”

DRC’s National Assembly Defence and Security Committee.

North Kivu and Ituri are two of five provinces that make up eastern DRC²; a region impacted by armed conflicts since the 1990s. The region is rich in natural resources including gold, coltan, diamonds, cassiterite, tourmaline and timber. It is also fertile, more populated than many other parts of the country, and prone to communal and land disputes. The state’s failure to prevent or adequately address these disputes and manage resources, has resulted in protracted armed conflicts and intercommunal violence, which in turn have caused some of the world’s worst human rights violations and humanitarian crises. Armed groups opposed to governments in neighbouring countries (mainly Rwanda, Burundi and Uganda) have taken advantage of the weakness of the DRC state to make the eastern provinces their rear base. Some of these states have simultaneously fuelled the violence in eastern DRC or waged proxy war there for their own stability or economic interests.³

Over a hundred local armed groups, commonly known as Mayi-Mayi, with various motivations operate in eastern DRC, half in North Kivu alone.⁴ Armed groups from neighbouring Uganda, Rwanda and Burundi have blended into local communities and socio-economic dynamics over the years. The most important in terms of operational capacity are the Allied Democratic Forces - National Army for the Liberation of Uganda (ADF-NALU)⁵ created in the 1990s to fight the Ugandan government, and the Democratic Forces for the Liberation of Rwanda (FDLR)⁶ comprising elements of the former Rwandan army and Rwandan Hutu refugees who oppose the current Rwandan government. These groups regularly attack civilians, engage in the exploitation and illicit trafficking of natural resources, and carry out other illegal economic activities.⁷

The Congolese army and police are responsible for civilian protection but are themselves regularly implicated in serious human rights violations, which generally go unpunished.⁸ The army includes officers from armed groups successively integrated following political agreements.⁹

The DRC has one of the world’s largest, most expensive, and longest UN peacekeeping missions, the UN Mission for the Stabilization of Congo (MONUSCO).¹⁰ MONUSCO’s mandate includes protection of civilians, humanitarian workers and human rights defenders under imminent threat of physical violence and support to the DRC government with stabilization and peace consolidation. Since 2013,

² The three other provinces include South-Kivu, Maniema and Tanganyika. Under the 2006 Constitution, the DRC has 26 provinces.

³ See: Stearns K., Jason, *The War That Doesn't Say Its Name: The Unending Conflict in The Congo*, Princeton University Press, 2022

⁴ Kivu Security Tracker, *The landscape of armed groups in eastern Congo*, February 2021, <https://kivusecurity.nyc3.digitaloceanspaces.com/reports/39/2021%20KST%20report%20EN.pdf>

⁵ See: International Crisis Group, *Eastern Congo: The ADF-NALU's Lost Rebellion*, February 2012, <https://www.crisisgroup.org/africa/central-africa/democratic-republic-congo/eastern-congo-adf-nalu-s-lost-rebellion>

⁶ See: Small Arms Survey, “Down, but Not Out: The FDLR in the Democratic Republic of the Congo”, January 2016, <https://www.files.ethz.ch/isn/195917/SAS-Research-Note-56.pdf>

⁷ See: Laudati, Ann, *Beyond minerals: broadening 'economies of violence' in eastern Democratic Republic of Congo*, in *Review of African Political Economy*, Vol. 40 No. 135 (March 2013), pp. 32-50, <http://www.jstor.org/stable/42003303>. Accessed 11 April 2022.

⁸ See: Amnesty International, *Democratic Republic of Congo: The Time for Justice is Now*, August 2010, <https://www.amnesty.org/en/documents/afr62/007/2011/en/>

⁹ See: Musamba, J., Vogel C., Vlassenroot, K. & al., *It Takes (More Than) Two to Tango: Armed politics, combatant agency and the half-life of DDR programmes in the Congo*, in *Insecure Livelihoods Series* (Governance in Conflict network), February 2022, https://www.gicnetwork.be/wp-content/uploads/2022/03/10_GIC_It-Takes-More-Than-Two-to-Tango_WEB-2.pdf

¹⁰ MONUSCO, which was established in January 2010 (and took over from the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC), 1999-2010), had 17,783 personnel including 12,384 UN Peacekeeping, and an annual budget of USD1.12 billion. See: “Peacekeeping Operations Fact Sheet”, November 2021, https://peacekeeping.un.org/sites/default/files/peacekeeping_missions_factsheet_246_nov2021_en.pdf

MONUSCO has had an offensive combat force, the Intervention Force Brigade (IFB), made-up of African contingents from South Africa, Tanzania, Malawi, and, since 2021, Kenya, mandated with “neutralizing armed groups”.¹¹ However, the IFB and MONUSCO have generally failed to effectively protect civilians due to political and logistical challenges, including engagement rules and poor collaboration with the Congolese authorities.¹²

Armed violence in eastern DRC intensified in recent years, resulting in over 7,380 civilians killed between 2017 and April 2022 according to the KST.¹³ There are over 3.5 million IDPs in North-Kivu and Ituri provinces alone, according to the UN.¹⁴ The epicentre of this violence is the Beni-Irumu region at the intersection of North Kivu and Ituri provinces. The violence has also been accompanied by other human right violations, including mass rape, recurrent attacks on IDP sites, and dozens of villages destroyed or burned down.

Successive government and UN responses to this violence have been primarily military, while Congolese and international organizations continue to stress the importance of a holistic approach including mechanisms addressing needs for truth, justice and reparations, a disarmament and demobilization programme, better management of natural resources, and job creation for youth.¹⁵

Until May 2021, military courts were mandated to try military personnel, police officers, and other persons who commit military offences as defined by the military judicial code,¹⁶ while ordinary criminal courts were responsible for cases against civilians.¹⁷

After assuming power in January 2019, President Tshisekedi pledged to improve the security situation and civilian protection in eastern DRC during his first five-year term. Under his leadership, the Congolese army announced two “ultimate military offensives aimed at completely and totally eradicating armed groups” including the ADF, first in Ituri province in June 2019¹⁸, then in North Kivu’s Beni area in October 2019.¹⁹ But killings of civilians continued, and President Tshisekedi was increasingly criticized by local populations in eastern DRC for failing to improve security. Between March and April 2021, civil society groups organized mass protests for several weeks across North Kivu against killings of civilians.

¹¹ The Force Intervention Brigade was established by Resolution 2098 (2013) of the UN Security Council and has been renewed since: <http://unscr.com/en/resolutions/doc/2098>

¹² See International Crisis Group briefing, “A new approach for the UN to stabilize the DR Congo”, December 2019, <https://www.crisisgroup.org/africa/central-africa/democratic-republic-congo/b148-new-approach-un-stabilise-dr-congo>

¹³ Kivu Security Tracker, *The Landscape of Armed Groups In Eastern Congo: Missed Opportunities, Protracted Insecurity and Self-Fulfilling Prophecies*, February 2021, <https://kivusecurity.nyc3.digitaloceanspaces.com/reports/39/2021%20KST%20report%20EN.pdf>

¹⁴ UNHCR, IDP Fact Sheet, November 2021, <https://www.unhcr.org/uk/statistics/unhcrstats/4bfe87d56/internally-displaced-persons-idp-fact-sheet-democratic-republic-congo.html>. Accessed on 12 April 2022

¹⁵ See for example: Fieldview Solutions, “Non-military strategies for civilian protection in the DRC”, January 2013, <https://reliefweb.int/sites/reliefweb.int/files/resources/Non-military-protection-in-the-DRC.pdf>; International Crisis Group, “A New Approach for the UN to Stabilize the DR Congo”, December 2019, <https://www.crisisgroup.org/africa/central-africa/democratic-republic-congo/b148-new-approach-un-stabilise-dr-congo>; Jenna Russo, “What the DRC teaches us about militarized peacekeeping”, in London School of Economics Blogs, December 2021, <https://blogs.lse.ac.uk/africaatlse/2021/12/07/what-the-drc-teaches-us-about-militarised-peacekeeping-security-congo/>

¹⁶ Law 023/2002 of 18 November 2002

¹⁷ Organic Law No. 13/011-B of 11 April 2013 on the organization, functioning and competences of the courts of law, <https://leganet.cd/Legislation/Droit%20Judiciaire/LOI.13.011.11.04.2013.htm>

¹⁸ Actualité.CD, “L’armée lance l’opération « Zaruba ya Ituri » à Djugu” June 2019, <https://actualite.cd/2019/06/26/rdc-larmee-lance-loperation-zaruba-ya-ituri-djugu-une-dizaine-de-miliciens-deja-tues>

¹⁹ Radio Okapi, “RDC : l’armée lance une « dernière » offensive contre les groupes armés dans l’Est” 31 October 2019, <https://www.radiookapi.net/2019/10/31/actualite/securite/rdc-larmee-lance-une-derniere-offensive-contre-les-groupes-armes-dans>

On 1 May 2021, President Tshisekedi addressed the nation on national radio and television to announce a state of siege in the two provinces, which the government presented as a “radical but necessary measure to neutralize armed groups and ensure protection of civilians once and for all.”²⁰

The state of siege was declared through presidential ordinance No. 21/015 of 3 May 2021, while a second presidential ordinance, No. 21/016 of 3 May 2021, outlined implementation measures. Its stated purpose is to contain the threat posed by armed groups and protect civilians and their property. These presidential orders suspend civilian institutions in the two provinces, replace civil administrative authorities with military and police officers, and transfer criminal jurisdiction over civilians from civil courts to military courts. The ordinances give military governors significant discretionary powers to ensure security and maintain public order. They can ban publications and assemblies, prohibit movement of people or vehicles in certain places or at certain times, prohibit people staying in certain areas or deport people whose presence they consider a hindrance to military operations, and carry out day and night searches in homes without prior court orders.²¹ Such broad and vague restrictions on civil and political rights contravene DRC’s obligations under international law and allow arbitrariness, especially without effective oversight and remedy mechanisms.²² On 6 May 2021, the Constitutional Court declared ordinance 21/016 on enforcement measures of the state of siege to be constitutional, with reservations on articles 4, 5 and 6 regarding the full powers granted to military authorities and the prosecution of civilians by military justice under the state of siege.²³ The reservations of the Constitutional Court relate to the requirement for the military authorities to respect non-derogable rights under Article 61 of the Constitution which provides that even when a state of siege has been declared, certain rights and fundamental principles cannot be derogated from, including the right to life, the prohibition of torture, the principle of legality of offenses and penalties, the right to defence and the right of appeal, and the prohibition of imprisonment for debt.²⁴

In December 2021, Congolese security forces came under increased criticism for their inability to protect civilians, and the Congolese and Ugandan governments announced the launch of “concerted operations” by their armies in the Beni region²⁵, which were extended to Ituri province in February 2022.²⁶

Despite the state of siege, attacks on civilians have continued and increased in North Kivu and Ituri, with the number of civilian casualties more than doubling in a year. At least 1261 civilians were killed in relation to armed conflict in North-Kivu and Ituri between June 2021 and March 2022, including 204 women and 79 children.²⁷ By way of comparison in the previous year, there were 559 civilians killed in North-Kivu and Ituri including 129 women and 25 children between June 2020 and March 2021.²⁸ Most of these incidents were in Beni territory in North Kivu province, and in Irumu, Mambasa and Djugu territories in Ituri province. Even areas that were relatively untouched by armed violence have been attacked several times since May 2021, including Komanda, Kalunguta, Biakato and Mambasa towns in Ituri province, and Vuvuhi and Mabalako in North Kivu, as mapping from KST

²⁰ Statement by government spokesman Patrick Muyaya during a joint press conference with army and police spokespersons in Kinshasa on 4 May 2021, <https://www.youtube.com/watch?v=4gWtp9Jrmwg>

²¹ Article 4 of Presidential Order No. 21/016 of 3 May 2021

²² See sections 5 through to 9 below

²³ Judgment *R. Const 1550, Constitutional Court sitting in matters of review of constitutionality*, 6 May 2021, https://www.droitcongolais.info/files/1a.43.2-CC-arret-du-6-mai-2021_Etat-d-urgence_conformite-des-mesures-d-application.pdf.

²⁴ Article 61 of the Constitution

²⁵ BBC, Why Ugandan troops have entered DR Congo – again, 4 December 2021, <https://www.bbc.com/news/world-africa-59507543>

²⁶ Uganda Ministry of Defence and Veteran Affairs, “Third Offensive Approach Route Against ADF Opens”, 9 February 2022, <http://www.defence.go.ug/home/newsandevents/113.0>

²⁷ Consolidated figures from the reports of the UN Secretary General to the UN Security Council for the period from June 2021 to March 2022: S/2021/807 para. 11-16; S/2021/987 para. 10-15; S/2022/252 para. 11-17

²⁸ Consolidated figures from the reports of the UN Secretary General to the UN Security Council for the period from June 2020 to March 2021: S/2020/919 para. 11-13 and 17-18; S/2020/1150 para. 10-14 and 17-18; S/2021/274 para. 11-16 and 17-20

shows.²⁹ The National Assembly's Defence and Security Committee similarly concluded that, "Overall, the state of siege in the provinces of Ituri and North Kivu has a mixed outcome, as since it was established, killings, massacres, rapes, robberies, vehicle fires ... have intensified in the areas concerned."³⁰

4. ABUSIVE DEROGATIONS FROM CIVIL AND POLITICAL RIGHTS

DRC's Constitution provides³¹ that the President may declare a state of emergency or a state of siege in all or part of the country "when serious circumstances immediately threaten the independence or the integrity of the territory, or they cause the interruption of the regular functioning of the institutions."³² Because of their exceptional nature, the Constitution strictly limits their use, including by requiring prior authorization for an initial 30 days by both chambers of parliament, and, if necessary, its extension for 15 days at a time.³³ The Constitution requires parliament to pass a law detailing enforcement modalities for a state of siege.³⁴ At the time of writing, the parliament has yet to adopt such a law. Resorting to a presidential ordinance, a regulatory act³⁵, to determine the application of the state of siege, goes against Article 85 of the Constitution.³⁶

The Constitution lists non-derogable rights under states of emergency or siege.³⁷ Article 4 of the ICCPR provides that "in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed" states "may take measures derogating from their obligations [...] to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law" and are not discriminatory.³⁸ The UN Human Rights Committee has clarified that derogations must be demonstrably required by the exigencies of the situation reflecting the principle of proportionality.³⁹

Measures taken under the presidential ordinance⁴⁰ do not provide sufficient detail and clarity for people to know what is allowed under the state of siege and what is not. This violates the principle of legality. Though non-derogable rights under article 61 of DRC's constitution are listed in the ordinance, military authorities have too much latitude to interpret and implement other provisions. For example, military authorities have the power to "prohibit the stay in all or part of the province to any person seeking to hinder, in any way whatsoever, the action of the public authority."⁴¹ This is not defined, the duration of the prohibition unspecified and there is no appeal process.

²⁹ Kivu Security Tracker, Crisis Mapping in Eastern Congo, <https://kivusecurity.org/>. Accessed on 21 April 2022

³⁰ National Assembly's Defence and Security Committee, Summary report of the hearings on the assessment of the state of siege, III (3.1) (6), August 2021.

³¹ Essentially Articles 61, 85, 119, 144, 145 and 156 of the Constitution of the DRC of 18 February 2006

³² Article 85 of the Constitution

³³ Articles 119 and 144 of the Constitution

³⁴ Article 85 of the Constitution

³⁵ Article 128 of the Constitution

³⁶ The presidential ordinance proclaiming the state of siege was not submitted to the Constitutional Court for review.

³⁷ Article 11 of the Constitution

³⁸ Article 4(1), International Covenant on Civil and Political Rights.

³⁹ UN Human Rights Committee (HRC), *CCPR General Comment No. 29: Article 4: Derogations during a State of Emergency*, 31 August 2001, CCPR/C/21/Rev.1/Add.11, available at: <https://www.refworld.org/docid/453883fd1f.html> [accessed 2 December 2021], para. 4.

⁴⁰ Ordinance 21/016 of 3 May 2021

⁴¹ Article 4 (7), ordinance 21/016 of 3 May 2021

Criminal jurisdiction for all criminal cases has been transferred from civilian to military courts without details of the necessity and appropriateness of this measure. Article 156 of the Constitution requires specific offences which would be transferred to military courts under state of sieges to be determined, but this has not happened.⁴² As the UN Human Rights Committee has underlined, “when proclaiming a state of emergency with consequences that could entail derogation from any provision of the Covenant, States must act within their constitutional and other provisions of law that govern such proclamation and the exercise of emergency powers.”⁴³

On 18 March 2022, President Tshisekedi signed a new ordinance amending and supplementing ordinance 21/016 of 3 May 2021, which listed 10 criminal offences for which military courts would retain jurisdiction over civilians,⁴⁴ including:

- Murder
- Assassination
- Arbitrary arrest and detention
- Robbery committed using break-in, climbing or false keys
- Robbery committed at night in an inhabited house or its outbuildings
- Armed robbery
- Conspiracy
- Escape from detention
- Breach of state security
- Torture and extortion.”

According to the ordinance, all other criminal offences committed by civilians would be dealt with by civilian courts again. The step, intended at aligning the state of siege measures with the requirement under Article 156(2) of the constitution to specify criminal offences for which military justice would have jurisdiction over civilians under the state of siege, still fell short of international human rights standards. The powers granted to military justice over civilians remained unnecessarily broad.

Furthermore, the ICCPR requires State Parties to notify the UN Secretary General and other state parties of the state of siege, the situation that required it, any provisions of the ICCPR that they have derogated from, and their justification.⁴⁵ At the time of writing, to Amnesty International’s knowledge, the DRC government was yet to submit notification to the UN Secretary General about the ongoing state of siege.

⁴² Article 3 of ordinance 21/015 establishing the state of siege, and article 6 of ordinance 21/016 laying down measures of implementation of the state of siege. Article 156 paragraph 2 of the Constitution: “In time of war or when a state of siege or emergency is declared, the President of the Republic may, by a decision deliberated by the Council of Ministers, suspend in all or part of the Republic and for the duration and the offences he determines, the repressive action of the civilian courts and tribunals in favour of that of the military courts. However, the right of appeal cannot be suspended.”

⁴³ See UN Human Rights Committee, general comment on article 4 of the ICCPR, para. 2, file:///C:/Users/jeanmobert.senga/OneDrive%20-%20OneAmnesty/Downloads/CCPR_C_21_Rev.1_Add.11-EN.pdf

⁴⁴ Presidential Ordinance No. 22/024 of 18 March 2022

⁴⁵ Obligation set out by Article 4 (3) of the ICCPR: “Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.” See: UNHRC, Statement by Nada Al-Nashif, UN Deputy High-Commissioner for Human Rights, 48th session of the HRC, 5 October 2021, <https://www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=27601&LangID=E>

5. DURATION AND LACK OF EFFECTIVE OVERSIGHT MECHANISM

By deciding that a state of siege would be proclaimed for 30 days, and any extension subject to parliamentary authorization every fortnight, the drafters of DRC's Constitution sought to strictly limit their use, in line with their exceptional and temporary nature, under parliament oversight.⁴⁶

This is also in line with international human rights law, which states that measures derogating from the Covenant must be exceptional and temporary.⁴⁷ As the UN Human Rights Committee has underlined, “a fundamental requirement for any measures derogating from the Covenant, as set forth in article 4(1), is that such measures are limited to the extent strictly required by the exigencies of the situation. This requirement relates to the duration, geographical coverage and material scope of the state of emergency and any measures of derogation resorted to because of the emergency.”⁴⁸ Any extension requires a genuine assessment of whether the measures derogating the State's obligations under international law are still justified and appropriate to the situation, so that they end as soon as possible.⁴⁹

As of April 2022, the ongoing state of siege in North-Kivu and Ituri had been extended 22 consecutive times without authorities providing a detailed rationale for continuing to derogate their human rights obligations.

Instead, President Tshisekedi and his government have openly argued that the state of siege could remain in place indefinitely, in disregard of DRC's Constitution and international human rights law. During a press briefing in Goma on 13 June 2021, President Tshisekedi said: “The state of siege has no time limit. We started with a month. However, we will assess it every fortnight, and if the expected outcomes are not achieved, it will be extended.”⁵⁰ He reiterated this stand in his address to the UN General Assembly in September 2021.⁵¹

The Congolese parliament (National Assembly and Senate), where President Tshisekedi has had a large majority since January 2021⁵², have authorized successive extensions of the state of siege as a formality, without meaningful debate especially on the justification of human rights restrictions. MPs who have openly questioned the state of siege, including its legality, relevance, duration, its human rights cost, and the abuse of powers by military authorities, were denied the opportunity to speak during parliamentary sessions, and sometimes arbitrarily arrested or otherwise intimidated.⁵³

⁴⁶ See articles 85, 144 and 145 of the Constitution.

⁴⁷ See UN Human Rights Committee, general comment 29 paras. 2.

⁴⁸ UN Human Rights Committee, general comment 29 para. 4.

⁴⁹ As the UN Human Rights Committee states (general comment 29 para. 1), « the restoration of a state of normalcy where full respect for the Covenant can again be secured must be the predominant objective of a State party derogating from the Covenant.”

⁵⁰ Mediacongo, “L'Etat de siège n'a pas un temps limité” 13 June 2021, https://www.mediacongo.net/article-actualite-88578_l_etat_de_siege_n_a_pas_un_temps_limite_il_sera_chaque_fois_proroge_si_les_resultats_escomptes_ne_sont_pas_atteints_felix_tshisekedi.html. During his address to the 76th UN General Assembly on 21 September, President Tshisekedi re-emphasized that the state of siege would not be lifted until “the circumstances which motivated it disappear”: President Tshisekedi's speech at the 76th UN General Assembly, New York, 21 September 2021, <https://www.youtube.com/watch?v=tkugujiUIQ3w>

⁵¹ Radio Okapi, “Selon Félix Tshisekedi, l'état de siège ne sera levé que quand les circonstances qui l'ont motivé disparaîtront”, 21 September 2021, <https://www.radiookapi.net/2021/09/21/actualite/securite/selon-felix-tshisekedi-letat-de-siege-ne-sera-leve-que-quand-les>

⁵² The “Union Sacrée de la nation”, Félix Tshisekedi's ruling coalition, claims 391 MPs out of the 500 that make up the national assembly. See Radio Okapi, RDC : l'Union sacrée de la nation compte 391 députés nationaux (Bahati Lukwebo), 28 January 2021, <https://www.radiookapi.net/2021/01/28/actualite/politique/rdc-lunion-sacree-de-la-nation-compte-391-deputes-nationaux-bahati>

⁵³ At the time of writing, three provincial MPs were still in detention over their criticism of military authorities in the two provinces, including Hubert Berocan from Bunia, Ituri province, who was sentenced to one year in prison in September 2021, Didier Lukogho from Lubero, North Kivu province, in pretrial detention in Goma since October 2021, and Jean-Paul Ngahangondi from Beni, North Kivu province, in pretrial detention in Goma since February 2022.

At least two national MPs were prevented from speaking during the parliamentary session after calling for in-depth assessment of the state of siege. During a National Assembly plenary session on 6 August 2021, MPs Jean-Baptiste Kasekwa and Gratien Iracan who consistently demanded government accountability for the state of siege were prevented by the Speaker from speaking. “I had just returned from a three-day field visit to Beni territory and had made a motion to report back on the shortcomings of the state of siege from what I had seen or heard. The Speaker categorically and arbitrarily refused to allow me to speak despite my insistence”, Kasekwa told Amnesty International.⁵⁴ He added that all his other parliamentary initiatives to demand accountability for the state of siege had remained unanswered, including an oral question from 10 May 2021, an inquiry from 28 July 2021 and an oral question with a request for a debate from 15 March 2022.⁵⁵ According to MP Gratien Iracan, the Speaker consistently dismissed any debate on the state of siege: “Already at the plenary session of 2 October 2021, the Speaker dismissed our demands for a debate. On 6 October, he prevented me from taking the floor, along my colleague Kasekwa.”⁵⁶

On 27 October 2021, over 50 MPs who had signed a motion of no confidence against the Minister of Defence “following the deterioration of the security situation under the state of siege”⁵⁷ in North Kivu and Ituri accused the National Assembly’s mail service of refusing to register their motion in violation of the internal regulations.⁵⁸ “After reading the contents of the said motion, the mail service agent contacted his hierarchy by phone. He left the document of the motion on the table without having affixed the seal to acknowledge receipt and without addressing us the slightest word.”⁵⁹ In November 2021, in response to MPs’ persistent questions and demands regarding the state of siege, its poor results and its human rights impact, Jean-Marc Kabund-A-Kabund, then Deputy-Speaker and ruling party’s Acting President, insinuated that the state of siege’s critics were “enemies of peace.”⁶⁰

At least five provincial MPs for North-Kivu told Amnesty International they were threatened by military authorities. In a press conference on 16 August 2021, the spokesperson for the Military Governor of North Kivu, General Sylvain Ekenge, accused provincial MPs who criticized the impact of the state of siege of colluding with armed groups, and threatened them with criminal prosecution before military courts.⁶¹ MP Jean-Paul Ngahangondi told Amnesty International, “We are targeted because we have the courage to speak out about the failure of this state of siege, which for many army officers is just another opportunity to steal public money and do business.”⁶² Ngahangondi was eventually arrested and charged with offending the President of the Republic and contempt of the army.⁶³ At least one other provincial MP and one national MP for North-Kivu were arrested and charged with spurious offenses between October 2021 and February 2022 in relation with the state of siege, while at least one provincial MP has been living in hiding since February 2022.⁶⁴ A provincial MP for Ituri who

⁵⁴ Interview by voice call with MP Jean-Bosco Kasekwa, 27 October 2021

⁵⁵ Written records on file with Amnesty International

⁵⁶ Interview by voice call with MP Gratien Iracan, 25 October 2021

⁵⁷ Radio Okapi, “RDC : 51 députés nationaux ont signé la motion de défiance contre le ministre de la défense”, 26 October 2021, <https://www.radiookapi.net/2021/10/26/actualite/politique/rdc-51-deputes-nationaux-signent-la-motion-de-defiance-contre-le>

⁵⁸ Press statement by MPs Jean-Baptiste Kasekwa and Daniel Furaha on the National Assembly’s refusal to register a motion of no confidence, 27 October 2021. On file with Amnesty International.

⁵⁹ Press statement by MPs Jean-Baptiste Kasekwa and Daniel Furaha 27 October 2021 (previously cited)

⁶⁰ Actualité.cd, “Kabund insiste : l’état de siège sera là jusqu’à ce que la situation sécuritaire se stabilise”, 13 November 2021, <https://actualite.cd/2021/11/13/kabund-insiste-letat-de-siege-sera-la-jusqua-ce-que-la-situation-securitaire-se>

⁶¹ SCIFA Radio Television FARDC, “État de Siège : Général de Brigade Sylvain EKENGÉ face à la Presse de BENI sur la Radio Télé FARDC”, 16 August 2021, <https://www.youtube.com/watch?v=0dhjkWbKc4&t=1663s>

⁶² Interview by voice call with provincial MP from North Kivu province Jean-Paul Ngahangondi, 19 August 2021

⁶³ Jean-Paul Ngahangondi was arbitrarily arrested in Goma on 6 February 2022 and charged with offending the President of the Republic and contempt of the army, over his consistent criticism of the state of siege and the military rule. By the time of drafting this briefing, he was still in pretrial detention at the Goma central prison. For details, see 6.1. below.

⁶⁴ For details, see 6.1. below.

spoke to Amnesty International on condition of anonymity due to safety concerns said: “We are completely silenced. If we ask questions about the state of siege regime, we are immediately accused of being against the Head of State, or enemies of peace. Moreover, we are prohibited from leaving the capital of the province without the written authorization of the military governor.”⁶⁵

Following growing pressure from national MPs from North Kivu and Ituri, on 3 August 2021, the Speaker’s Office tasked the National Assembly’s Defence and Security Committee with assessing the state of siege and reporting back to plenary.⁶⁶ Several government and army officials, including the Minister of Defence, the Minister of Interior, the Minister of Justice, two military governors, the Minister of the Budget and the Minister of Finance, participated in closed-door hearings for the evaluation. The commission’s findings were presented and adopted by MPs in plenary behind closed doors on 29 September 2021.⁶⁷ Based on private hearings and without public reporting, this evaluation lacked transparency.

A confidential report dated August 2021 from the Commission, leaked in October, found “a deficit in the definition of objectives, in the breakdown of orders and in the execution chain.”⁶⁸ Following the report, the National Assembly passed a resolution calling on the government to urgently present an exit plan for the state of siege, given its exceptional and temporary nature, before any further extension, to determine the specific offences that military courts could prosecute civilians for in accordance with the constitution, and to release activists arrested for exercising their human rights.⁶⁹ Despite these findings and subsequent National Assembly resolutions, the state of siege has been extended repeatedly with no changes.⁷⁰

From 23 November to 11 December 2021, the government carried out its own assessment of the state of siege. The 15-page confidential assessment report, seen by Amnesty International, acknowledged multiple deficiencies, inconsistencies and challenges relating to the implementation of the state of siege, with summary notes from discussions with different stakeholders.⁷¹

Amnesty International is concerned that authorities have taken no steps towards ensuring the state of siege remains exceptional and temporary in nature, in disregard of relevant international instruments, and the National Assembly resolutions.

⁶⁵ Interview by voice call with an MP for Ituri, 2 February 2022

⁶⁶ More than 100 MPs, including those from North Kivu and Ituri, decided to boycott parliamentary sessions on the extension of the state of siege between August and mid-November 2021 to protest the lack of debate on the state of siege’s relevance and impact. See: Cas Info, “RDC : les députés de l’Ituri et Nord-Kivu s’opposent à la prorogation de l’état de siège” 3 August 2021, <https://cas-info.ca/2021/08/rdc-les-deputes-de-lituri-et-nord-kivu-sopposent-a-la-prorogation-de-letat-de-siege/>. See: Radio Okapi, “Etat de siège : les députés de l’Ituri et du Nord-Kivu « rassurés » de la détermination de Félix Tshisekedi à rétablir la paix” 18 November 2021, <https://www.radiookapi.net/2021/11/18/actualite/politique/etat-de-siege-les-deputes-de-lituri-et-du-nord-kivu-rassures-de-la>

⁶⁷ Radio Okapi, “Etat de siège : le bilan est mitigé malgré les moyens engagés, estiment les députés” 30 September 2021, <https://www.radiookapi.net/2021/09/30/actualite/politique/etat-de-siege-le-bilan-est-mitige-malgre-les-moyens-engages-estiment>

⁶⁸ National Assembly, Defense and Security Commission, “Rapport-synthèse des auditions sur l’évaluation de l’Etat de siège proclamé par l’ordonnance n° 21/015 du 03 mai 2021, sur une partie du territoire de la République démocratique du Congo, tel que prorogé à ce jour”, Kinshasa, August 2021, p. 29

⁶⁹ National Assembly’s Defence and Security Commission, *Rapport-synthèse des auditions sur l’évaluation de l’Etat de siège proclamé par l’ordonnance n° 21/015 du 03 mai 2021* (previously cited) p. 29

⁷⁰ On 17 December 2021, as the MPs were to go on recess for 90 days, the parliament passed a law allowing the President of the Republic to extend the state of siege by means of an ordinance-law every fortnight, without having to seek authorization from parliament, for the period from December 2021 to 15 March 2022.

⁷¹ Ministry of Defence and Veterans, “Rapport de la mission d’évaluation de l’état de siège au Nord-Kivu et en Ituri” (letter No. MDNAC/CAB/3190/2021), 22 December 2021.

6. REPRESSION OF POLITICAL AND HUMAN RIGHTS ACTIVISTS

Military authorities in North Kivu and Ituri have persistently used their powers under the state of siege to suppress any protest and silent critical voices. Anyone who dares question the state of siege, its failure to improve the security situation, and anyone who scrutinize military authorities' governance or their abuse of power, is targeted: ordinary people, human rights activists and journalists, and members of parliament alike. The security forces have killed at least two activists and injured, and arbitrarily arrested and prosecuted dozens of others with impunity.⁷² At least four provincial MPs and one national MP have been arbitrarily arrested and prosecuted simply for exercising their civil and political rights, including speaking out against the deteriorating situation. Others live in constant fear of being arbitrarily prosecuted.

6.1 ATTACKS ON HUMAN RIGHTS ACTIVISTS

Members of civil society organizations have also been targeted by military repression. On 16 August 2021, the Mayor of Butembo in North Kivu accused activists from Fight for Change (LUCHA) of being “accomplices of the ADF” after they called for a two-day *ville morte* (dead city)⁷³ to protest the persisting killings in Beni. He was quoted by media as saying

“we want to know who is behind the government and who is behind the outlaws. We are in a state of siege. When the mayor gives a word of order, you must follow. You know we are at war with the ADF rebels. The population must be behind the government to bludgeon these people.”⁷⁴ On 17 August, several local traders who had kept their shops closed in response to LUCHA's call were summoned by the police on accusations of civil disobedience and rebellion.⁷⁵ This led to public outcry and the mayor ordered the summons to be withdrawn and the arrest of the police officer involved.⁷⁶

⁷² These are cases verified by Amnesty International and, as such, they are not exhaustive or fully representative of the situation.

⁷³ In the DRC, “dead cities” are a kind of civil disobedience consisting of the general blockade of the city, town or village (with the closure of schools and markets, the cessation of main commercial, social activities and public transport) to assert a claim or denunciation.

⁷⁴ Senior Commissioner Polo Ngoma, Police Mayor of the city of Butembo, quoted by the online newspaper La Voix de l'UCG, 16 August 2021, <http://lavoixdelucg.org/?p=7671>

⁷⁵ Actualité.CD, “RDC-Butembo: un OPJ arrêté pour avoir convoqué des commerçants qui ont hésité d'ouvrir leurs boutiques à la suite d'un appel à manifestation contre l'Etat de siège », 18 August 2021, <https://actualite.cd/2021/08/18/rdc-butembo-un-opj-arrete-pour-avoir-convoque-des-commerçants-qui-ont-hesite-douvrir>

⁷⁶ Actualité.CD, “RDC-Butembo: un OPJ arrêté pour avoir convoqué des commerçants qui ont hésité d'ouvrir” 18 August 2021 (previously cited)



LUCHA activist La Fontaine Katsaruhande, 21, whose leg was amputated after he was shot by the police in Beni on 21 September 2021. © Private

On 21 September 2021, 21-year-old LUCHA activist La Fontaine Katsaruhande had his right leg amputated after sustaining a gunshot wound during a peaceful demonstration in Beni town to denounce persistent killings of civilians in North Kivu and Ituri despite the state of siege. He had been shot in the leg by a police officer on 10 September. He told Amnesty International that as they were demonstrating, dozens of policemen arrived in a pick-up and started firing live ammunition in all directions.⁷⁷ “As I ran, I came face to face with a policeman, and before I could say anything he shot and hit me in the leg. I fell down and saw him running after other demonstrators. My comrades managed to take me to the hospital. I spent several days in the emergency room, I had pain everywhere.”⁷⁸ After about 10 days of treatment, the doctor told him that they needed to amputate his leg to stop the infection spreading. “That is how I became a cripple. For having dared to denounce the killings we are facing every day under the noses of the army and MONUSCO.”⁷⁹ He said the military justice had done nothing to identify, arrest and prosecute the police officer who shot him. “Here, the authorities do not care about our lives. I could have died; I do not think they would have cared

⁷⁷ Interview by voice call with La Fontaine Katsaruhande, 14 January 2022

⁷⁸ Interview by voice call with La Fontaine Katsaruhande, 14 January 2022

⁷⁹ Interview by voice call with La Fontaine Katsaruhande, 14 January 2022

more.”⁸⁰ Two eyewitnesses, including an activist who participated in the protest and a bystander, confirmed that La Fontaine Katsaruhande was shot by a police officer. According to La Fontaine Katsaruhande’s lawyer, a complaint against unknown persons for grievous assault was placed in the Beni military prosecutor’s office since 3 October 2021 but no investigation has been carried out.⁸¹

LUCHA and other youth groups called for demonstrations in Beni town on 24 January 2022 to demand peace and denounce the state of siege. Mumbere Ushindi, another LUCHA activist, aged 22, was shot by a police officer during these demonstrations. According to LUCHA, he died of his wounds at the hospital shortly after.⁸² He was the third of their activists killed during a peaceful demonstration to demand peace in Beni since 2019.⁸³ The day Mumbere Ushindi was killed, the Mayor of Beni and the police commander for Beni had made troubling public statements warning the demonstrators. The mayor of Beni said to the media: “We have principles: the dog barks, the caravan cannot pass; we stop the caravan, we kill that dog. Here are the dogs in question that are making noise here in the city. We cannot tolerate such nonsense.”⁸⁴ The Police Commander in Beni town added: “Anyone who is going to leave his house to go into nonsense should first look at the photos of their wife, their brothers, their sisters, their children. As they go out to demonstrate, will they get a chance to see the faces of their brothers and sisters at home again? When they go out saying they are above the law, woe to them, they will no longer see their brothers or their sisters. Their place is somewhere prepared for them; they will no longer in family.”⁸⁵ The authorities did not react to the murder of Mumbere Ushindi, and despite these declarations and the calls for justice from civil society groups including LUCHA,⁸⁶ no action has been taken to date to hold the perpetrators to account, according to Ushindi’s family.⁸⁷

On 31 October 2021, another human rights defender, Cabral Yombo, from the town of Hombo in Walikale territory, North Kivu, died of wounds inflicted by Congolese soldiers, according to his colleagues.⁸⁸ “Three soldiers beat and threw him from the first floor of a building. After falling, he was taken to hospital, but did not survive”, his colleagues told Amnesty International.⁸⁹ The Goma military prosecutor’s office opened an investigation and arrested the three soldiers as well as the chief of the Bakano sector suspected of having ordered their actions.⁹⁰ According to Cabral’s lawyer, the investigation had not progressed further, and the chief of the sector was released on bail in December 2021.⁹¹

⁸⁰ Interview by voice call with La Fontaine Katsaruhande, 14 January 2022

⁸¹ Interview by voice call with La Fontaine’s lawyer Philémon Ndambi, 12 April 2022

⁸² LUCHA RDC, Beni (Nord-Kivu): un autre militant de la LUCHA abattu par les “forces de l’ordre”, 24 January 2022, <http://www.luchacongo.org/beni-nord-kivu-un-autre-militant-de-la-lucha-abattu-par-les-forces-de-lordre/>

⁸³ LUCHA RDC, Beni (Nord-Kivu): un autre militant de la LUCHA abattu, 24 January 2022, <http://www.luchacongo.org/beni-nord-kivu-un-autre-militant-de-la-lucha-abattu-par-les-forces-de-lordre/>

⁸⁴ Statement by the Mayor of Beni, High Commissioner Narcisse Mukeba, 23 January 2022. Audio recording on file with Amnesty International.

⁸⁵ Statement by the Police Commander for Beni, High Commissioner Jean-Sebastien Kahuma Lemba, 23 January 2022. Audio recording on file with Amnesty International.

⁸⁶ Mediacongo, “Beni: la Lucha exige la suspension et les poursuites contre deux autorités de l’Etat de siège” 25 January 2022, https://www.mediacongo.net/article-actualite-99319_beni_la_lucha_exige_la_suspension_et_les_poursuites_en_procedures_de_flagrance_en_public_contre_deux_autorites_de_l_etat_de_siege.html

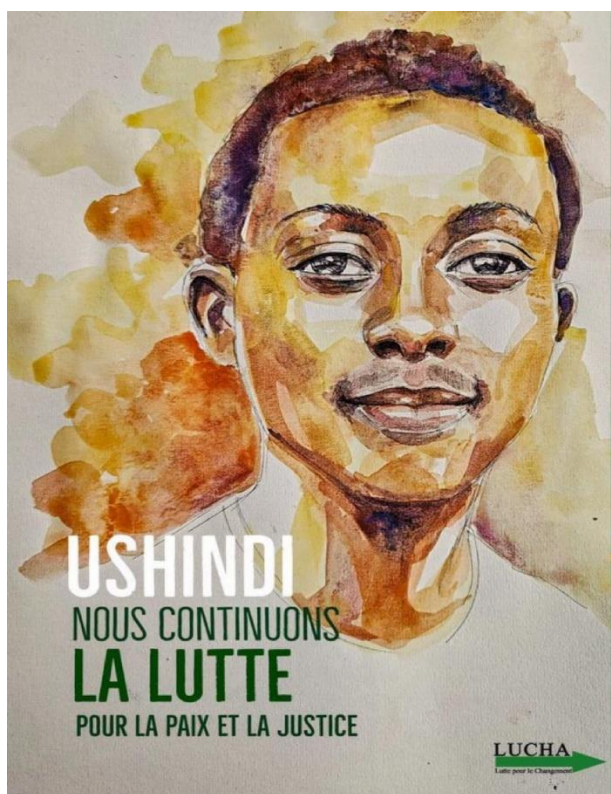
⁸⁷ Interview by voice call with a member of Ushindi’s family, 11 April 2022

⁸⁸ Interview by voice call with Cabral’s colleagues, human rights defenders Nancy Maisha and Vicar Hangi, 26 January 2022.

⁸⁹ Interview by voice call with Cabral’s colleagues, human rights defenders Nancy Maisha and Vicar Hangi, 26 January 2022

⁹⁰ Interview by voice call with Cabral’s colleagues, human rights defenders Nancy Maisha and Vicar Hangi, 26 January 2022

⁹¹ Interview by voice call with Cabral’s lawyer, Jean-Luc Bahati, 12 February 2022



Poster of Mumbere Ushindi, 22, LUCHA activist who died of his wounds shortly after he was shot by the police during a police crackdown on protests in Beni on 11 January 2022. © LUCHA RDC

On 1 April 2022, a military court in Beni sentenced 12 LUCHA activists to one year in prison and 250,000 Congolese Francs⁹² of court fees each for “provocation to disobey the laws”.⁹³ The 12 were part of 13 LUCHA activists arrested in Beni on 11 November 2021 during a peaceful protest against a further extension of the state of siege.⁹⁴ They were in pretrial detention for almost five months. At least three of them fell seriously ill in prison. Their lawyer told Amnesty International: “Imagine spending a year in jail just for holding banners outside a town hall to say that the state of siege has failed and should not be extended without a genuine assessment, with the participation of the people affected!”⁹⁵ Another human rights defender who has visited them several times in prison told Amnesty International: “Many of them fell ill due to lack of clean water and their illness got worse with time for there is no adequate medical care in prison.”⁹⁶ On 6 April 2022, they appealed against their conviction before the Goma Military Court according to one of their lawyers, and were waiting for the appeal trial at the time of writing.⁹⁷ Amnesty International calls for the activists to be immediately and unconditionally released.

⁹² Equivalent to 125 US dollar (1 US dollar is 2,000 Congolese Francs as of 5 April 2022)

⁹³ Amnesty International, “DRC: Conviction of 13 youth activists is a shameful act to suppress dissent”, 1 April 2022, <https://www.amnesty.org/en/latest/news/2022/04/drc-conviction-of-13-youth-activists-is-a-shameful/>

⁹⁴ Radio Okapi, “Beni : 13 militants de la LUCHA arrêtés lors d’une manifestation contre une 12e prorogation de l’état de siège”, 11 November 2021, <https://www.radiookapi.net/2021/11/11/actualite/justice/beni-13-militants-de-la-lucha-arretes-lors-dune-manifestation-contre>. The military court had decided to separate their case from that of the only girl in the group who was hospitalized, but still being prosecuted, at the time of the judgment.

⁹⁵ Interview by voice call with 13 LUCHA lawyer’s Paulin Muliro from Beni, 31 March 2022

⁹⁶ Interview by voice call with human rights activist from Beni, Shabani Loswire, 1 April 2022

⁹⁷ Interview by voice call with LUCHA’s lawyer Paulin Muliro, 6 April 2022



Some of the 13 LUCHA activists during their appearance before the Beni-Butembo garrison military court in Beni on 1 April 2022. The 13 activists arrested during a peaceful protest in the town of Beni on 11 November 2021 and accused of "provocation to disobey the laws" were convicted to one year in prison in April 2022. © Private

6.2 HARASSMENT OF MEMBERS OF PARLIAMENT

"If they are able to muzzle us with no consequence, imagine what it is like for ordinary citizens who elected us so that we could make their voices and their grievances heard."

Alain Siwako, provincial MP for the territory of Beni in North Kivu

On 27 June 2021, military authorities in Ituri province arrested provincial MP Jean-Bosco Assamba and accused him of contempt of the Head of State, after a video of him denouncing persistent insecurity despite President Tshisekedi's promises circulated on social media.⁹⁸ He told Amnesty International that "they used the powers given to them by the state of siege to muzzle and punish me when this is a video from April. Fortunately, the case caused a lot of noise, leading the President to order my release after two days in detention at the military prosecutor's office."⁹⁹ He was released on 29 June 2021 without charge.¹⁰⁰

During a programme broadcast on FARDC FM radio from Beni on 16 August 2021, General Sylvain Ekenge, spokesperson for North Kivu's Military Governor, attacked human rights defenders and MPs who criticized the state of siege and the army and police's inability to restore peace. Accusing them of being "enemies of peace", he threatened them with arrest and military prosecution.¹⁰¹ In a joint

⁹⁸ Video recording available on <https://www.facebook.com/winneronetv/videos/rdc-le-d%C3%A9put%C3%A9-provincial-jean-bosco-assamba-vient-d%C3%AAtre-transf%C3%A9r%C3%A9-%C3%A0-la-prison-de/2398107493654531/> (Accessed on 14 April 2022)

⁹⁹ Interview by voice call with Jean-Bosco Assamba, 27 August 2021

¹⁰⁰ Mediacongo, "Bunia : le député Jean-Bosco Asamba remis en liberté après deux jours de détention", 30 June 2021, https://www.mediacongo.net/article-actualite-89379-liberation-du-depute-provincial-de_l_ituri_jean_bosco_assamba.html

¹⁰¹ SCIFA Radio Television FARDC, Etat de siège, 16 August 2021, <https://www.youtube.com/watch?v=0dhjhjKwKc4>

declaration on 17 August 2021, 20 provincial MPs rejected these accusations and called on military authorities to focus on “the real enemies of peace.”¹⁰²

On 9 September 2021, Ituri Military Court’s sentenced Bunia’s provincial MP, Hubert Bero Pirachel, to one year in prison for “rebellion”¹⁰³ after a seven-hour trial. According to his lawyer, the provincial MP was arrested on 9 September on the orders of a senior provincial police official during an official ceremony to hand over computers to schools in Ituri. He reported that his client had been trying to find out whether the number of computers distributed in Ituri matched the number of computers disbursed by the central government.¹⁰⁴ According to a human rights defender from Beni who monitored the case, “they [the military] took advantage of the powers granted to them under the state of siege to punish him for questioning the opaque management of the province to the detriment of the population, and to warn anyone else who would question their actions.”¹⁰⁵

On 2 October 2021, provincial MP for North-Kivu Didier Kambale Lukogho was arrested by military authorities in Lubero town for addressing the population during a spontaneous public gathering in the village of Kamandi, in his constituency of Lubero territory, North Kivu. He was charged with provocation to disobey laws and has been detained at Goma central prison since then. He told Amnesty International: “I had gone to Kamandi to inquire about the security situation, after my constituents had alerted me about the abuses committed by the naval force [a unit of the Congolese army] and the Virunga Park guards against the civilian population. When I got there, I spoke to people who spontaneously gathered around when they saw me. I told them that I had heard their grievances and was going to share them with the authorities. Nobody can provide a proof that I held a political rally, even though holding a peaceful rally should not be a crime.”¹⁰⁶ He faces three years in prison.

¹⁰² Radio Okapi, “Etat de siège au Nord-Kivu : les députés provinciaux ne sont pas de « cibles » de l’armée (Déclaration)” 18 August 2021, [Etat de siège au Nord-Kivu : les députés provinciaux ne sont pas de « cibles » de l’armée \(Déclaration\) | Radio Okapi](#)

¹⁰³ In this context, a “rebellion” is an attack or resistance with violence or threats towards state authority or law enforcement agents in the exercise of their duties. (See Article 133 of the Decree of 30 June 1940)

¹⁰⁴ Interview by voice call with Hubert Bero’s lawyer, Mr. Nathan Mugisa, 10 September 2021.

¹⁰⁵ Interview by voice call with a human rights defender from Bunia, 10 September 2021.

¹⁰⁶ Amnesty International phone interview with MP Didier Kambale Lukogho, 9 April 2022



Dider Kambale Lukogho and Jean-Paul Ngahangondi, provincial MPs for North-Kivu respectively detained in Goma since October 2021 and February 2022. © Private

On 6 February 2022, provincial MP for North-Kivu Jean-Paul Ngahangondi was arrested and held incommunicado for three days at the National Intelligence Agency (ANR) in Goma. Jean-Paul Ngahangondi had been particularly outspoken in the media and social media calling for an end to the state of siege¹⁰⁷ and continuing human rights violations under it.¹⁰⁸ He was detained incommunicado at the provincial headquarters of the National Intelligence Agency in Goma for three days without access to his lawyer or his family. He was eventually transferred to the military prosecutor's office on 9 February and to Goma prison the next day. He told Amnesty International: "The police officer who came to arrest me said he just came from the provincial security council meeting where the authorities were presented with a letter from citizens' movements announcing a march for Monday 7 February 2022 to launch a "Bye Bye State of Siege" campaign. He told me that they were aware of my statements against the state of siege, and they had information that I was among the politicians behind citizens' movements and pressure groups that are fighting the authorities and the state of siege. During interrogations at the National Intelligence Agency and at the prosecutor's office, they asked me questions about my tweets denouncing the lethargy of the authorities, President Tshisekedi's failure to keep his promises to the population regarding security, and the army's failure to ensure the protection of civilians and their property. The military prosecutor told me I should go and

¹⁰⁷ See for example Paul Ngahangondi twitter at: <https://mobile.twitter.com/paulngahangond2>

¹⁰⁸ See for example Paul Ngahangondi on the government of Beni
<https://twitter.com/PaulNgahangond2/status/1486352888771272707?s=20&t=WKgFxmxdQcXs9mVslu8cGA>

apologize to the governor for criticizing the state of siege and saying that they failed to restore security. As MPs, our role is to speak. Does the state of siege mean that we no longer have freedom of thought, freedom of expression?"¹⁰⁹ While awaiting his trial, Jean-Paul Ngahangondi is detained in the central prison of Goma.

On 8 February 2022, the national MP from Goma, Josué Mufula, was arrested and tried under an accelerated prosecution process by a military court in Goma for his criticism of the state of siege and the North Kivu military authorities. Officially, he was charged with "provocation to disobey the laws and contempt of the army."¹¹⁰ He told Amnesty International: "I am not sure what they are blaming me for exactly, whether it is my criticism towards the current Mayor of Goma who is also a police officer and who has been harassing the population, or my calls for parliament resolutions on the state of siege to be implemented."¹¹¹ Josué Mufula was eventually released on bail after one night in custody, and on 11 February, the Goma military court declared itself incompetent to deal with his case, due to his status as a national MP.¹¹²

Alain Siwako, another provincial MP from Beni territory in North-Kivu told Amnesty International he had been hiding since February 2022 over fears of being arbitrarily arrested and prosecuted by the military authorities. "I have been in hiding for more than two months to escape the state of siege authorities who are hunting for me through instrumentalization of military justice, quite simply because I have denounced the continuing deadly attacks against our populations and the ineffectiveness of state of siege. I know this because the police officer who arrested my colleague Jean-Paul Ngahangondi told him explicitly that he was also looking for me. Jean-Paul managed to inform me before his phone was confiscated. The police went to arrest me at my house several times, but by chance I was already in hiding. I would go and face justice if I had guarantees that this is actually about justice, not political persecution. But there are no such guarantees. The military justice has just become an additional instrument of repression at their hands. There is no justice: their objective is to silence us. Look at my colleagues Didier and Jean-Paul who have been languishing in prison for months: have they been tried? Was there any credible evidence presented that they committed a crime?"¹¹³

7. FAILURE TO INVESTIGATE KILLINGS OF JOURNALISTS

According to Journalistes En Danger (JED), a Congolese organization affiliated with Reporters Without Borders (RSF) and specializing in the protection of journalists, at least three journalists have been killed by unidentified armed men in North Kivu and Ituri since the state of siege was declared in May 2021, while several others are in hiding or fled, fearful for their lives because of their work.¹¹⁴

Barthélémy Kubanabandu Changamuka, aged 23, a journalist for Radio Communautaire Kitshanga in North Kivu, was shot dead by armed men on the night of 9-10 May in Kitshanga, while returning home after hosting a radio show, according to Journalistes En Danger (JED).¹¹⁵ The International Federation of Journalists (IFJ) reported that Héritier Magayane, aged 26, a journalist working locally for Congolese national radio and television broadcast in Rutshuru territory in North Kivu, was killed by

¹⁰⁹ Interview by voice call with MP Jean-Paul Ngahangondi, 9 April 2022

¹¹⁰ Interview by voice call with Josué Mufula's lawyer Elie Katumwa, 10 February 2022

¹¹¹ Interview by voice call with MP Josué Mufula, 10 February 2022

¹¹² Interview by voice call with Josué Mufula's lawyer Elie Katumwa, 11 February 2022

¹¹³ Amnesty International phone interview with MP Alain Siwako, 9 April 2022

¹¹⁴ Radio Okapi, "Meurtre des journalistes dans l'Est de la RDC : JED dénonce l'indifférence du gouvernement", 3 September 2021, <https://www.radiookapi.net/2021/09/04/actualite/societe/meurtres-des-journalistes-dans-lest-de-la-rdc-jed-denonce-lindifference>

¹¹⁵ Journalistes En Danger, "Nord-Kivu : un journaliste assassiné en plein Etat de siège" 10 May 2021, <http://jed-afrique.org/2021/05/10/nord-kivu-un-journaliste-assassine-en-plein-etat-de-siege/>

unidentified people on the night of 7-8 August 2021.¹¹⁶ “His throat was slit by unidentified attackers”, according to their account, which called on DRC authorities to fully investigate the murder and bring perpetrators to justice.¹¹⁷

On the night of 13 August 2021, a group of people armed with knives and machetes attacked the house of Joël Mumbere Musavuli, the director of Babombi community radio, in Mambasa territory, Ituri. He was killed and his wife seriously injured during the attack. According to Journalistes En Danger, Joël Mumbere Musavuli had received threats from Congolese soldiers after denouncing persistent insecurity in Ituri despite the state of siege during a radio show on 26 July 2021.¹¹⁸ His wife, Evelyne Masika Syambithe, who survived the attack, told Amnesty International that those who killed her husband and made a cut on her neck leaving her for dead were youngsters from a local armed group, but that the government did nothing to hold them accountable. “They arrested two men, but they were released without trial two weeks later. Since then, I have not heard of any investigation. I need justice. Those who killed Joël must be prosecuted, and I need compensation so that I can provide for my four children, three of whom were in school but right now I cannot afford their school fees. Because those who attacked us enjoy impunity, I cannot go back to Biakato to harvest our farms. They have threatened to kill me and anyone from my family who would go back there.”¹¹⁹

Despite a commitment from Patrick Muyaya, Minister for Communication, to investigate the killing of Barthélémy Kubanabandu¹²⁰, and the mobilization of national media and journalists, the investigation opened by the authorities has not progressed.¹²¹ Following a working session on 7 September, between the Minister of Communication and Tshivis Tshivuadi, the Secretary General of Journalistes En Danger, the government committed to establishing a “specific mechanism to protect journalists” in general and to end the impunity of perpetrators, including in these three cases.¹²² Yet, according to Tshivis Tshivuadi, as of the end of January 2022, no progress had been made in this regard either.¹²³

¹¹⁶ International Federation of Journalists, DRC: Journalist killed in North Kivu Province, 12 August 2021, <https://www.ifj.org/media-centre/news/detail/category/press-releases/article/drc-journalist-killed-in-north-kivu-province.html>

¹¹⁷ International Federation of Journalists, DRC: Journalist killed in North Kivu Province, 12 August 2021 (previously cited)

¹¹⁸ Journalistes En Danger, “Ituri : JED exprime sa consternation après l’assassinat d’un journaliste très critique contre l’insécurité qui règne dans sa province”, 14 August 2021, <http://jed-afrique.org/2021/08/14/ituri-jed-exprime-sa-profonde-consternation-apres-lassassinat-dun-journaliste-tres-critique-contre-linsecurite-qui-regne-dans-sa-province/>

¹¹⁹ Interview by voice call with Joel Musavavuli’s wife Evelyne Masika, 9 April 2022

¹²⁰ Actualité.CD, “RDC: Patrick Muyaya annonce des enquêtes pour identifier les auteurs de l’assassinat du journaliste Barthélémy Kubanabandu”, 11 May 2021, <https://actualite.cd/2021/05/11/rdc-patrick-muyaya-annonce-des-enquetes-pour-identifier-les-auteurs-de-lassassinat-du>

¹²¹ Radio Okapi, “Meurtre des journalistes dans l’Est de la RDC : JED dénonce l’indifférence du gouvernement”, 3 September 2021, <https://www.radiookapi.net/2021/09/04/actualite/societe/meurtres-des-journalistes-dans-lest-de-la-rdc-jed-denonce-lindifference;> JED’s Secretary General Tshivis Tshivuadi quoted by Actualite.CD on 4 November 2021 ; “Pas le moindre début d’enquête au sujet des journalistes tués pendant l’état de siège”, <https://actualite.cd/2021/11/04/rdc-pas-le-moindre-debut-denquete-au-sujet-des-journalistes-tues-pendant-letat-de-siege>

¹²² Journalistes En Danger, « RDC : vers la mise en place d’un mécanisme national de protection de journalistes pendant la période de l’Etat de siège », 9 septembre 2021, <http://jed-afrique.org/2021/09/09/rdc-vers-la-mise-en-place-dun-mecanisme-national-de-protection-de-journalistes-pendant-la-periode-de-letat-de-siege/>

¹²³ Amnesty International interview by voice call with JED’s Tshivis Tshivuadi, 31 January 2022. The issue of impunity for crimes against journalists, including murders, was not on the agenda of the “états généraux” of the press, held from 25 to 28 January in Kinshasa under the leadership of the Ministry of Communication and Medias.



A Candle for Press Freedom campaign launched by media trade union in North Kivu to show solidarity with killed journalists and demand justice. © Private

8. MILITARIZATION OF COURTS IMPEDING ACCESS TO JUSTICE

The state of siege ushered in great confusion regarding the judiciary. There were two seemingly contradictory ordinances: the first, proclaiming the state of siege (ordinance 21/015) and the second covering the implementation measures (ordinance 21/016). On the one hand, Article 3 of ordinance 21/015 provides that “the action of civilian courts will be replaced by that of military courts”, implying that the civilian courts were completely suspended.¹²⁴ On the other hand, Article 6 of ordinance 21/016 outlining implementation measures of the state of siege provides that “for the entire duration of the state of siege, the criminal jurisdiction of civil courts is vested in the military courts”, which specified that the military would only take over criminal cases.¹²⁵

¹²⁴ Article 3 of ordinance 21/016 of 3 May 2021

¹²⁵ Article 6 of ordinance 21/016 of 3 May 2021



Peaceful activists Serge Mikindo Waso, Claude Lwaboshi Buhazi and Faustin Ombeni Tulinabo from the group Jicho la Raiya (People's Eye, in Swahili). They have been arbitrarily detained in Goma since February 2021. © Amnesty International

After the state of siege came into effect, civilian courts in Ituri and North Kivu immediately stopped working for over two months from 3 May to 8 July 2021. One Goma-based prosecutor told Amnesty International: "We had received the order from the Attorney General at the *Court of Cassation* [Supreme Court] to immediately stop all judicial activity. Due to the lack of clear rules and experience with the state of siege, the Attorney General was afraid of being at odds with the Head of State's decision."¹²⁶ On 7 July 2021, the Ministry of Justice convened a day of reflection on the implementation of the state of siege in the judicial sector. Two days later, in a circular note on 9 July 2021¹²⁷, the Minister of Justice clarified that only criminal cases had moved from civil to military jurisdictions.¹²⁸ Since then, ordinary courts have resumed their activities in non-criminal cases, as have specialized courts, such as children's courts and commercial courts, while military courts continue to handle all criminal cases regardless of the offence or suspected perpetrator, including

¹²⁶ Interview by voice call with C.K., a civil prosecutor stationed in Goma, 11 August 2021.

¹²⁷ Office of the State Minister of Justice and Keeper of the Seals, Circular Note n° 003/CAB/MIN/J&GS/2021 of 9 July 2021, relating to the functioning of the courts and the prosecution offices in the provinces of Ituri and North Kivu.

¹²⁸ Article 6 of Ordinance 21/016 of 3 May 2021 stipulates: "For the entire duration of the State of siege, the criminal jurisdiction of civilian courts is devolved to military courts."

civilians. Furthermore, the March 2022 amendment on the state of siege's application measures provided a list of 10 criminal offences for which military courts retained jurisdiction over civilians, including murder, assassination, and breach of state security.¹²⁹

8.1 CASE STUDY: EXCESSIVE PRETRIAL DETENTION

YOUTH ACTIVISTS SENTENCED TO PRISON AFTER ONE YEAR IN PRETRIAL DETENTION

Claude Lwaboshi Buhazi, Serge Mikindo Waso and Faustin Ombeni Tulinabo were arrested by police on 18 February 2021 in Kirotshe, Masisi territory, and accused of defamatory statements, while preparing to peacefully protest allegations of mismanagement within local health structures. Local authorities had been informed about the protest. The three men were taken to the police cell in Kirotshe, then to Masisi central prison on 20 February, and finally to Goma central prison on 2 March 2021.

Their case was submitted to the tribunal de paix of Goma for prosecution and the first hearing scheduled for 10 May 2021. But the hearing did not take place after civilian courts lost their criminal competence when the state of siege was declared. Since then, the three young men have been held in pretrial detention.

They should not have been arrested or detained in the first place solely for exercising their right to expression and peaceful assembly. On top of that, they have spent over a year in pretrial detention whereas the offence they are being prosecuted for is punishable by eight days to one year in prison.¹³⁰ A human rights defender from Goma who has been advocating for their release told Amnesty International: "They are hostages of the state of siege."¹³¹ On 25 February 2022, they were found guilty and sentenced to two years in prison. Amnesty International calls for the quashing their shameful conviction and for their unconditional release.

8.2 CASE STUDY: PROSECUTION FOR DEFAMATION

ACTIVISTS PUNISHED FOR AN IMAGINARY OFFENCE TOWARDS THE FIRST LADY

Parfait Muhani and Ghislain Muhiwa are LUCHA activists from Goma. They were arbitrarily detained for four months (Parfait)¹³² and for two months and a half (Ghislain)¹³³, on accusations of defamation by the Denise Nyakuru Tshisekedi Foundation – named after President Tshisekedi's wife.¹³⁴ They were accused along with Espoir Ngalukiye, another LUCHA activist who fled Goma before he could be apprehended.

The charges relate to statements from LUCHA's official Twitter and Facebook accounts in June alleging embezzlement of humanitarian aid intended for survivors of the Nyiragongo volcano eruption in May 2021 by the foundation's employees.

Rather than investigating the corruption allegations, military justice arrested the two activists and detained them in pretrial detention for months. They were eventually released on bail on 6 November 2021, restricted from leaving the city of Goma and required to

¹²⁹ See Section 4 above,

¹³⁰ Article 74 of DRC's Criminal Code

¹³¹ Interview by voice call with Goma-based human rights defender Steward Muhindo, 20 August 2021

¹³² Arrested on 6 July and released on bail on 6 November 2021.

¹³³ Arrested on 22 August and released on bail on 6 November 2021.

¹³⁴ Interview by voice call with Parfait Muhani and Ghislain Muhiwa's lawyer, 30 October 2021

report to the military prosecutor's office twice a week. At the time of writing, their trial had not taken place.

They should never have been criminally prosecuted and detained for defamation in the first place.

8.3 LACK OF RESOURCES AND PERSONNEL FOR COURTS

Access to justice remains seriously impacted by the state of siege, as military courts have fewer resources and personnel than civilian courts in the two provinces.

Table 1: Comparison of civilian and military courts, judges and prosecutors as of 15 January 2022¹³⁵

ITURI	Civilian courts	Military courts	Comment
	5	2	There are 41 civilian magistrates (judges and prosecutors) compared to 17 military magistrates (judges and prosecutors), while there are five civilian courts compared to two military courts for Ituri province.
	Civilian judges	Military judges	
	19	5	
	Civilian prosecutors' offices	Military prosecutors' offices	
	5	5	
	Civilian prosecutors	Military prosecutors	
	22	12	
NORTH KIVU	Civilian courts	Military courts	In North-Kivu, there are 69 civilian magistrates (judges and prosecutors) compared to 30 military magistrates (judges and prosecutors), and 11 civilian courts compared to 3 military courts.
	11	3	
	Civilian judges	Military judges ¹³⁶	
	21	6	
	Civilian prosecutors' offices	Military prosecutors' offices ¹³⁷	
	9	6	
	Civilian prosecutors	Military prosecutors ¹³⁸	
	48	24	

For the two provinces, there are 110 civilian magistrates (judges and prosecutors) compared to only 47 military magistrates (judges and prosecutors). Entire territories, such as Irumu and Djugu in Ituri and Lubero and Nyiragongo in North Kivu, do not have a single military court or military prosecution office. Other territories only have a military prosecution office with one magistrate, including Mambasa, Mahagi and Aru in Ituri and Rutshuru, Masisi and Walikale in North Kivu. However, most of these territories have a *tribunal de paix* and a civil prosecutor's office, with one to three magistrates. For example, Mambasa territory in Ituri has nearly one million residents, is 36,000km², and has only one military prosecutor, but six civilian magistrates, including three prosecutors and three judges at

¹³⁵ Table constructed by Amnesty International on 15 January 2022. As requests for information sent to the Ministry of Justice remained unanswered, this table is based on a triangulation carried out by Amnesty International from information collected from civilian and military magistrates, lawyers, local UN representatives, as well as local human rights defenders.

¹³⁶ Goma military Court: 3 judges; Goma garrison tribunal: 2 judges

¹³⁷ Two based in Goma, one in Rutshuru, one in Masisi, one in Wali Ikale, and one in Beni (covering Beni, Butembo and Lubero)

¹³⁸ Auditorat Supérieur ("Senior Auditor"): 7 ; Auditorat de garnison ("Garrison Auditor") of Goma: 8 ; Auditorat de garnison of Beni-Butembo: 4 ; Parquet militaire détaché ("Military Prosecutor's Office") n Rutshuru: 1 ; Parquet militaire détaché in Masisi: 1 ; Parquet militaire détaché in Walikale: 1

the local *tribunal de paix*. While ordinary civilian justice capacity is still insufficient, it surpasses the capacity of military justice locally.

Consequently, in practice, millions of people have no access to justice. In some cases, defendants must be transferred to urban centres with prosecution offices and courts, such as Bunia and Goma. Victims then must choose between finding resources to travel to the location where the accused is or abandoning their quest for justice.

Civilian courts and prosecution services were already underfunded with limited capacity in the two provinces and faced security and logistical challenges. A military prosecutor in Goma told Amnesty International that under the state of siege, cases have piled up further.¹³⁹ “We are doing everything we can, but it is an impossible task. It would take twenty or thirty times as many magistrates to deal with all the criminal cases that arrive in our offices since the start of the state of siege, and to do the rest of the work such as inspection of prisons and judicial police offices.”¹⁴⁰

The government’s own assessment of the state of siege seems to corroborate this¹⁴¹ (see Figure 1 below)

Figure 1: Excerpt of the confidential state of siege assessment report from the Ministry of Defence, December 2021

	<ul style="list-style-type: none"> - toutes); - Mauvaise organisation de la chaîne logistique (centralisation outre des moyens); - Insuffisance du personnel logistique qualifié; - Infrastructures logistiques non adaptées. 	<ul style="list-style-type: none"> - Non-respect des tableaux de dotation; - Recherche d'enrichissement illicite (problème des fournisseurs, détournement). 	<ul style="list-style-type: none"> - Impossibilité d'une planification appropriée; - Démotivation des troupes. 	<ul style="list-style-type: none"> - matériels spécifiques aux opérations en cours; - Accélérer la mise en place de la production militaire nationale; - Appliquer dans le strict respect les TO-TD; - Mettre en place la chaîne d'appui logistique adaptée aux opérations en cours; - Renforcement des capacités du personnel logistique.
6. Justice militaire	<ul style="list-style-type: none"> - Lenteur dans la tenue des audiences foraines; - Surpeuplement des maisons carcérales; - Présence et mélange des détenus dangereux et ordinaires; - Insuffisance des magistrats militaires et du personnel pénitentiaire; - Mauvaises conditions carcérales (Soins de santé, alimentation, loisirs, etc.) 	<ul style="list-style-type: none"> - Inadaptation de la justice militaire au contexte et impératifs opérationnels; - Insuffisance des magistrats militaires; - vétusté, inadaptation des maisons carcérales et non-transfèrement des détenus dangereux dans les prisons sécurisées. 	<ul style="list-style-type: none"> - Nombreux cas d'évasion, des décès, endoctrinement des détenus; - Menaces permanentes d'attaques terroristes. 	<ul style="list-style-type: none"> - Nommer et affecter les nouveaux magistrats militaires; - Allouer les moyens conséquents pour l'organisation des audiences foraines; - Transférer des détenus dangereux dans des prisons de haute sécurité; - Construire des prisons militaires de haute sécurité dans la partie orientale de la République; - Restaurer la cour militaire opérationnelle.
7. Renseignement	<ul style="list-style-type: none"> - Déficit des renseignements stratégiques, opératifs et tactiques; - Inexistence de dispositif de contre-renseignement (Sûreté); - Manque des services d'action 	<ul style="list-style-type: none"> - Insuffisance des ressources financières et des personnels classifiés; - Mauvaise gestion des ressources affectées; - Manque de matériels de reconnaissance et surveillance 	<ul style="list-style-type: none"> - Mauvaise connaissance de l'ennemi et du terrain; - Impact négatif dans la planification et la conduite des opérations. 	<ul style="list-style-type: none"> - Acquérir des moyens techniques adaptés; - Désigner des officiers de renseignement classifiés et allouer des fonds spéciaux de recherche; - Répertoire des ressources

Military justice officials cited in the report pointed out to the government the challenges they have been facing including:

- “Unsuitability of military justice to the context and operational imperatives”
- “Insufficient military magistrates”
- “Delays in holding mobile hearings”

¹³⁹ Interview by voice call with a Goma-based member of the Council of the Bar of North Kivu, 14 August 2021

¹⁴⁰ Interview by voice call with a military prosecutor at the Auditorat supérieur militaire (“Senior Military Auditor”) of Goma, 10 August 2021.

¹⁴¹ Ministry of Defence, Report of the state of siege assessment mission to North Kivu and Ituri. Disclosure and Problem Analysis Sheet. December 2021

- “Overcrowding of prisons”.

They made recommendations to the government, including:

- “Appoint and assign new military magistrates”
- “Allocate substantial resources for the organization of mobile hearings”
- “Build high security military prisons in the eastern part of the Republic”¹⁴²

This situation seriously threatens thousands of people’s right to trial within a reasonable time as enshrined in international law.¹⁴³

The situation has also led to further violations in arrest practices and pretrial detention. A human rights defender from Ituri told Amnesty International that “the army arrest whoever they want and when they want. There is no one to control the lawfulness of their actions. Before there were inspection missions carried out by prosecutors from Bunia at least once a month, but since the state of siege was declared, there has been no control mission whatsoever.”¹⁴⁴

The transfer of all criminal cases to military justice also violates DRC’s international and regional human rights obligations. The African Commission on Human and Peoples’ Rights has stated in its Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa that State parties to the African Charter on Human and Peoples’ Rights must ensure that civilians are not tried before military courts. These courts must be limited to determining “offences of a purely military nature committed by military personnel.”¹⁴⁵ This is also set out in Principle 29 of the UN updated Impunity Principles: “The jurisdiction of military tribunals must be restricted solely to specifically military offences committed by military personnel, to the exclusion of human rights violations, which shall come under the jurisdiction of the ordinary domestic courts or, where appropriate, in the case of serious crimes under international law, of an international or internationalized criminal court.”¹⁴⁶

9. WORSENING PRISON CONDITIONS IN NORTH KIVU AND ITURI

Under the state of siege, prison overcrowding has significantly worsened due to the limited capacity of military justice to deal with the backlog of criminal cases. At Goma central prison – the main North Kivu prison – which has a capacity of 300 inmates, the number of detainees rose from 2,254 on 4 May 2021 to 2,780 on 11 October 2021 and to 3,047 on 31 March 2022¹⁴⁷, resulting in an occupation rate of over 1000%. The proportion of people on pretrial detention – presumed innocent but awaiting trial – in this prison rose from 60% to 80%.¹⁴⁸ Three inmates detained at the men section of the prison between October 2021 and April 2022 described inhuman living conditions. One of them said: “Hundreds of people are crowded day and night in the prison yard, exposed to the sun and the rain. The prison has only a few dozen small beds in a ward with a semblance of cleanliness and

¹⁴² Ministry of Defence, Disclosure and Problem Analysis Sheet. December 2021 (previously cited)

¹⁴³ ICCPR, Article 9: “Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.”

¹⁴⁴ Interview by voice call with a human rights defender from Mahagi, Ituri province, 19 August 2021

¹⁴⁵ African Commission on Human and Peoples’ Rights, *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa*, 2003, Section L, <https://www.achpr.org/legalinstruments/detail?id=38>

¹⁴⁶ UN Commission on Human Rights, *UN updated set of principles for the protection and promotion of human rights through action to combat impunity* (E/CN.4/2005/102/Add.1), February 2005, <https://undocs.org/E/CN.4/2005/102/Add.1>

¹⁴⁷ Official prison figures as of 31 March 2022

¹⁴⁸ Official prison figures as of 31 March 2022

security, which wealthy people can access by paying up to \$1,500 to prison management.”¹⁴⁹ Another inmate added: “I have seen the situation deteriorating every day since I got here. There are more and more water cuts. The recent one lasted two weeks between 23 March 2022 and 6 April 2022, causing toilets in the prison to clog and overflow. Faeces flew into the yard. The smell was unbearable.”¹⁵⁰ Prisoners who fall ill because of unsanitary conditions or bad food are not treated because the prison dispensary does not have equipment or medicines.¹⁵¹

The situation is similar in Ituri. The number of inmates at the Bunia prison, which has a capacity of 220, almost doubled since the state of siege, from 1,068 on 30 April 2021 to 1,998 on 11 October 2021, according to the provincial coordination of civil society which monitors prisons and detention centres in Ituri.¹⁵² Of the 930 new detainees who arrived at Bunia prison during that period, at least 910 were on pretrial detention, often for several months.¹⁵³

10. CONCLUSION AND RECOMMENDATIONS

10.1 CONCLUSION

The current state of siege in Ituri and North Kivu has shown no positive impact in terms of improving the protection of civilians and the general human rights situation.

So far, the only tangible outcome of the state of siege has been the replacement of political and administrative authorities by army and police officers, the suspension of ordinary courts’ criminal jurisdiction¹⁵⁴, as well as unjustified and unnecessary restrictions to people’s freedoms of expression and peaceful assembly, with no evident link with the state of siege’s stated purpose to combat armed groups and protect civilians.

As Amnesty International’s research has shown, access to justice, the right to a fair trial and the right to be detained in humane conditions are jeopardized by the transfer of criminal jurisdiction over civilians from civilian courts to military courts, and the March 2022 amendment limiting military courts’ jurisdiction over civilians to 10 criminal offenses is still far from meeting international standards. In a context of conflict like in eastern DRC, access to justice needs to be strengthened, not weakened; the right to justice needs to be enhanced, not denied. The power granted to military courts to try civilians must be revoked once for all. In addition, measures restricting people’s rights to freedom of expression and freedom of assembly such as blanket bans on peaceful protests are not demonstrably required by the exigencies of the situation in eastern DRC. Individuals trying to monitor or criticize the state of siege and its implementation have also faced threats, harassment, arbitrary arrests and detentions. The human rights of the people in eastern DRC, including their rights to speak out and demonstrate freely and peacefully, must be further upheld and protected, not curtailed.

10.2 RECOMMENDATIONS

To President Félix Tshisekedi:

- Immediately revoke all the powers granted to military courts to try civilians under the state of siege.

¹⁴⁹ Interview by voice call with Goma central prison inmate Jules (name changed), 12 April 2022

¹⁵⁰ Interview by voice call with Goma central prison inmate Georges (name changed), 12 April 2022

¹⁵¹ Interview by voice call with Goma-based human rights activist Steward Muhindo, 12 April 2022

¹⁵² Interview by voice call with civil society Coordinator for Ituri, Dieudonné Lossa, 19 September 2021

¹⁵³ Interview by voice call with civil society Coordinator for Ituri, Dieudonné Lossa, 19 September 2021

¹⁵⁴ Partial suspension since new regulatory act dated March 2022

- Set out a clear exit plan from the state of siege, which must remain an exceptional and temporary regime that meets the requirements of legality, necessity and proportionality as set out by international standards in each of its measures.
- Ensure that any further step to address the armed conflict in eastern DRC is taken and implemented in full accordance with international human rights standards.

To the DRC government:

- Release all people arbitrarily detained in North Kivu and Ituri and take concrete and urgent steps to improve prisons conditions in line with international standards, including in North Kivu and Ituri provinces.
- Promptly, thoroughly, independently, transparently, and effectively investigate all human rights violations and abuses during the state of siege in North Kivu and Ituri, including the murders of human rights activists Cabral Yombo and Mumbere Ushindi, and hold perpetrators accountable.
- Provide all victims of human rights violations and abuses during the state of siege with access to justice and effective remedies, including reparations.
- Strengthen the ordinary justice system, especially in North-Kivu and Ituri, by increasing the number of prosecution offices and courts, the number of prosecutors and judges, and providing them with the necessary financial and logistical resources to pursue their mission.
- Identify, in consultation with affected communities, more appropriate and human rights-centred mechanisms to address violence and its human rights consequences in a comprehensive and sustainable manner.
- Respond positively, and without further delay, to visit requests made by the UN Special Rapporteurs on extrajudicial, summary, or arbitrary executions, human rights defenders and freedom of peaceful assembly and association.
- Submit all overdue reports to the UN human rights treaty bodies, and in particular the report due under the ICCPR.

To the National Assembly and Senate:

- Ensure the state of siege remains an exceptional and temporary regime in line with international law and standards. Ensure that each of its measures derogating from obligations under the ICCPR are demonstrably required by the exigencies of the situation, consistent with DRC's other international obligations and non-discriminatory.
- Reject any new extension of the state of siege unless all measures restricting human rights are assessed, and amended as necessary, to be justified and proportionate to the objective of the state of siege, which would include revoking the competence granted to military courts to try civilians.
- Pass a law outlining the modalities of application of the state of siege as provided for under article 85 of the Constitution which ensures that DRC's human rights obligations under international law are upheld.
- Hold the government to account regarding justice for victims of human rights violations, including those committed by armed groups or government forces under the state of siege.

To the African Commission on Human and Peoples' Rights:

- Urge the DRC government to take concrete steps to comply with the Commission's 2003 Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, including by immediately revoking all the powers granted to military courts to try civilians under the state of siege.

- Urge the DRC government to take concrete steps to improve prison conditions in line with international standards, including the Commission's 2014 Guidelines on the Conditions of Arrest, Police Custody and Pre-trial Detention in Africa.
- Urgently request a country visit to eastern DRC to assess the situation of human rights in the context of the state of siege in North Kivu and Ituri.

To the National Assembly's Human Rights Committee and/or the National Human Rights Commission:

- Independently, impartially, and promptly monitor and publicly report on the human rights situation in the provinces under the state of siege, including regarding civilian protection, pretrial detention, prison conditions, administration of justice, and protection of civic space.

To MONUSCO and the Joint Human Rights Office in the DRC:

- Urge the DRC to lift all wrongful derogations to the human rights enshrined in the ICCPR, including restrictions of freedoms of expression, association and assembly, and any power given to military courts over civilians.
- Urge the DRC to release all persons arbitrary detained in North Kivu and Ituri, including those solely detained for questioning the state of siege or criticizing military authorities
- Carry out a specific detailed investigation about prisons and detention centre conditions in North Kivu and Ituri and the impact of the state of siege, and issue a public report on the same with specific recommendations to the DRC authorities and the UN Security Council

To all ICCPR State Parties:

- Urge the DRC to lift derogations to human rights enshrined in the ICCPR for they were imposed in disregard of Article 4 of the Covenant and related international standards.

To other DRC's regional and international partners, including the African Union Commission, the EU, SADC and the East African Community:

- Speak out publicly against the risk of the state of siege becoming a permanent regime.
- Speak out publicly against the competence granted to military courts to try civilians in the provinces under the state of siege and urge the DRC authorities to revoke it completely.
- Express concern over the excessive use of pretrial detention in DRC, poor prison conditions and lack of respect for defendants' rights before Congolese courts and play a role in upholding the rights of detainees and prisoners by supporting the DRC authorities with financial and technical assistance in these areas.
- Support efforts aimed at ensuring accountability and justice for crimes under international law and other human rights violations in eastern DRC, including those committed by state and armed opposition groups under the state of siege in North-Kivu and Ituri.

11. ANNEXES

11.1 ANNEX 1: REPRODUCTION OF DRC ORDINANCE NO 21/015

Republique Démocratique du Congo



CABINET DU PRÉSIDENT DE LA RÉPUBLIQUE

Directeur du Cabinet
N/Réf.:

Kinshasa, le

ORDONNANCE N°21/015 DU 03 MAI 2021 PORTANT PROCLAMATION DE L'ÉTAT DE SIEGE SUR UNE PARTIE DU TERRITOIRE DE LA REPUBLIQUE DEMOCRATIQUE DU CONGO

Le Président de la République,

Vu la Constitution, telle que modifiée par la Loi n° 11/002 du 20 janvier 2011 portant révision de certains articles de la Constitution de la République Démocratique du Congo du 18 février 2006, spécialement en ses articles 61, 69, 79, 85, 144 et 145 ;

Vu la Loi organique n° 11-012 du 11 août 2011 portant organisation et fonctionnement des Forces Armées, spécialement en ses articles 2 point 14, 5, 7, 9, 12 et 124 ;

Vu la Loi organique n° 11/013 du 11 août 2011 portant organisation et fonctionnement de la Police Nationale Congolaise, spécialement en ses articles 14, 18, 80 et 81 ;

Vu la Loi n° 023/2002 du 18 novembre 2002, telle que modifiée et complétée à ce jour, portant Code Judiciaire militaire, spécialement en ses articles 115, 173, 224, 306, 308 et 316 ;

Vu l'Ordonnance n° 20/016 du 27 mars 2020 portant organisation et fonctionnement du Gouvernement, modalités de collaboration entre le Président de la République et le Gouvernement ainsi qu'entre les membres du Gouvernement, spécialement en ses articles 62, 63 et 64 ;

Vu l'Arrêt sous R. Const. 061/TSR du 30 novembre 2007 de la Cour Suprême de Justice, toutes sections réunies, siégeant en matière d'appréciation de la conformité à la Constitution du Règlement intérieur du Congrès ;

Vu l'Arrêt sous R. Const 1200 du 13 avril 2020 de la Cour constitutionnelle siégeant en matière de contrôle de constitutionnalité ;

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Considérant que la situation qui sévit dans la Province de l'Ituri et dans la Province Nord Kivu est de plus en plus préoccupante de par sa nature et sa gravité et qu'elle constitue, d'une manière immédiate, une menace contre l'intégrité du territoire national affectant ainsi le fonctionnement régulier des institutions ;

Considérant les conséquences néfastes de la crise sécuritaire provoquée par ce cycle récurrent de violence, qui impose la prise de mesures exceptionnelles en vue d'endiguer ces menaces graves et de sécuriser les populations et leurs biens;

Vu la nécessité et l'urgence ;

Après concertation avec le Premier ministre et les Présidents des deux chambres du Parlement ;

Le Conseil Supérieur de la Défense entendu,

ORDONNE

Article 1^{er} :

L'état de siège est proclamé sur toute l'étendue de la Province de l'Ituri et de la Province du Nord Kivu pour une durée de 30 jours à dater du jeudi 06 mai 2021.

Article 2 :

Pour faire face à la situation pendant l'état de siège, les autorités civiles des Gouvernements Provinciaux de l'Ituri et du Nord Kivu, celles des entités territoriales décentralisées et déconcentrées desdites Provinces seront remplacées par les Officiers des Forces Armées de la République Démocratique du Congo et/ou de la Police Nationale Congolaise désignés à cet effet.

Article 3 :

L'action des juridictions civiles sera substituée par celle des juridictions militaires.

Article 4 :

Pendant cette période, en aucun cas, il ne sera dérogé aux droits et principes fondamentaux ci-après :

1. Le droit à la vie ;
2. L'interdiction de la torture et des peines ou traitements cruels, inhumains ou dégradants ;
3. L'interdiction de l'esclavage et de la servitude ;

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ANNEX 2: REPRODUCTION OF DRC ORDINANCE NO. 21/0151/016

République Démocratique du Congo



CABINET DU PRÉSIDENT DE LA RÉPUBLIQUE

Directeur du Cabinet
N/Réf.:

Kinshasa, le

ORDONNANCE N° 21/016 DU 03 MAI 2021 PORTANT MESURES D'APPLICATION DE L'ÉTAT DE SIEGE SUR UNE PARTIE DU TERRITOIRE DE LA REPUBLIQUE DEMOCRATIQUE DU CONGO

Le Président de la République,

Vu la Constitution, telle que modifiée par la Loi n° 11/002 du 20 janvier 2011 portant révision de certains articles de la Constitution de la République Démocratique du Congo du 18 février 2006, spécialement en ses articles 61, 69, 79, 85, 144 et 145 ;

Vu la Loi organique n° 11-012 du 11 août 2011 portant organisation et fonctionnement des Forces Armées, spécialement en ses articles 2 point 14, 5, 7, 9, 12 et 124 ;

Vu la Loi organique n° 11/013 du 11 août 2011 portant organisation et fonctionnement de la Police Nationale congolaise, spécialement en ses articles 14, 18, 80 et 81 ;

Vu la Loi n° 023/2002 du 18 novembre 2002, telle que modifiée et complétée à ce jour, portant Code Judiciaire militaire, spécialement en ses articles 115, 173, 224, 306, 308 et 316 ;

Vu l'Ordonnance n° 20/016 du 27 mars 2020 portant organisation et fonctionnement du Gouvernement, modalités de collaboration entre le Président de la République et le Gouvernement ainsi qu'entre les membres du Gouvernement, spécialement en ses articles 62, 63 et 64 ;

Vu l'Ordonnance n° 21/015 du 03 mai 2021 portant proclamation de l'état de siège sur une partie du territoire de la République Démocratique du Congo ;

Vu l'Arrêt sous R. Const. 061/TSR du 30 novembre 2007 de la Cour Suprême de Justice, toutes sections réunies, siégeant en matière d'appréciation de la conformité à la Constitution du Règlement intérieur du Congrès ;

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Vu l'Arrêt sous R. Const 1200 du 13 avril 2020 de la Cour constitutionnelle siégeant en matière de contrôle de constitutionnalité ;

Considérant que la situation qui sévit dans la Province de l'Ituri et dans la Province du Nord Kivu est de plus en plus préoccupante de par sa nature et sa gravité et qu'elle constitue, d'une manière immédiate, une menace contre l'intégrité du territoire national affectant ainsi le fonctionnement régulier des institutions ;

Considérant les conséquences néfastes de la crise sécuritaire provoquée par ce cycle récurrent de violences qui impose la prise de mesures exceptionnelles en vue d'endiguer ces menaces graves et de sécuriser les populations et leurs biens ;

Vu la nécessité et l'urgence ;

Le Conseil des Ministres entendu,

ORDONNE

Article 1^{er} :

Pendant l'état de siège et, en application des dispositions de l'Ordonnance n° 21/015 du 03 mai 2021, les Gouvernements Provinciaux de l'Ituri et du Nord Kivu sont composés respectivement d'un Gouverneur militaire et d'un Vice-gouverneur policier.

Le Gouverneur, le Vice-gouverneur et les autres autorités des entités territoriales décentralisées et déconcentrées de ces provinces sont nommés et, le cas échéant, relevés de leurs fonctions par ordonnance du Président de la République sur proposition du Gouvernement, le Conseil supérieur de la Défense entendu.

Les Gouvernements provinciaux ainsi que les Assemblées provinciales desdites Provinces tels que définis à l'article 198 de la Constitution sont suspendus et leurs prérogatives sont transférées aux autorités militaires provinciales visées à l'alinéa précédent. Toutefois, les membres des Gouvernements provinciaux et Assemblées provinciales suspendus continuent à jouir de leurs avantages sociaux.

Article 2 :

Les autorités des Provinces appliquent les lois et règlements de la République pour faire face à la situation et assurent le bien-être collectif aux populations de leurs provinces.

Dans l'exercice de leurs fonctions, le Gouverneur relève du Ministre ayant la Défense nationale dans ses attributions.

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Les autorités provinciales disposent de l'administration publique de la province, de la Police Nationale Congolaise et de tous les services nationaux en Province.

Le cabinet du Gouverneur de Province est composé de cinq (5) collaborateurs nommés et, le cas échéant, relevés de leurs fonctions par Arrêté du Gouverneur de Province.

Article 3 :

Les fonctions du Gouverneur, du Vice-Gouverneur et des autres autorités des entités territoriales décentralisées et déconcentrées prennent fin à l'expiration du délai prévu pour l'état de siège, sauf en cas de prorogation conformément à la Constitution.

Toutefois, il peut être mis fin aux fonctions du Gouverneur et Vice-Gouverneur militaires par ordonnance du Président de la République avant la fin de l'état de siège, en cas de nécessité.

Article 4 :

Dans l'accomplissement de leur mission, les autorités provinciales militaires sont investies des prérogatives exorbitantes de la légalité normale, dans la limite du respect de la dignité humaine, du respect de la vie et de la propriété privées. Elles ont notamment, le pouvoir de :

- ❖ Faire des perquisitions de jour et de nuit dans les domiciles ;
- ❖ Éloigner les repris de justice et les individus qui n'ont pas leur domicile dans les lieux soumis à l'état de siège ;
- ❖ Rechercher et ordonner la remise des armes et des munitions ;
- ❖ Interdire les publications et les réunions qu'elles jugent de nature à exciter ou à porter atteinte à l'ordre public ;
- ❖ Interdire la circulation des personnes ou des véhicules dans les lieux et heures qu'elles fixent ;
- ❖ Instituer par décision, des zones de protection ou de sécurité où le séjour des personnes est réglementé ;
- ❖ Interdire le séjour dans tout ou partie de la province à toute personne cherchant à entraver, de quelque manière que ce soit, l'action du pouvoir public ;
- ❖ Interpeller toute personne impliquée dans les troubles de la paix et de l'ordre public et la déférer devant les juridictions militaires compétentes ;
- ❖ Prendre toute décision qu'elles jugent utile dans l'accomplissement de leur mission.

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Article 5 :

Pendant toute la durée de l'état de siège, le Gouverneur militaire a la conduite des opérations. En outre, il a les pleins pouvoirs de gestion, de police et de maintien de l'ordre dans la Province désignée. Il décide sur toutes les questions, sauf celles qui relèvent de la compétence des autorités nationales.

Article 6 :

Pour toute la durée de l'état de siège, la compétence pénale des juridictions civiles est dévolue aux juridictions militaires.

Article 7 :

La présente Ordonnance sera soumise à la Cour constitutionnelle, conformément à l'article 145 de la Constitution.

Article 8 :

Le Vice-Premier Ministre, Ministre de l'intérieur, Sécurité, Décentralisation et Affaires coutumières, le Ministre d'Etat, Ministre de la Justice et Garde des Sceaux ainsi que le Ministre de la Défense Nationale et Anciens Combattants sont chargés, chacun en ce qui le concerne, de l'exécution de la présente Ordonnance qui sort ses effets à la date de sa signature.

Fait à Kinshasa, le 03 mai 2021.

Félix Antoine TSHISEKEDI TSHILOMBO

Jean-Michel SAMA LUKONDE KYENGE
Premier Ministre

POUR COPIE CERTIFIEE CONFORME A L'ORIGINAL
KINSHASA, LE 03 MAI 2021
LE CABINET DU PRESIDENT DE LA REPUBLIQUE

Guylain NYEMBO MBWIZYA

Palais de la nation, Avenue Roi Baudoin, Kinshasa / Gombe. B.P.: 201 Kin I

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