

# INSTITUT DE RECHERCHE EN DROITS HUMAINS (IRDH)

1044, avenue Kambove, Lubumbashi – Email : info@tcct.co.za –Téléphone 00243 85 110 34 09 – 00243 85 819 59 96

www.irdh.co.za ; info@tcct.co.za; @tcct\_officiel; @tshiswaka5

*Bulletin électronique numéro 048 du 23 Février 2017 / Information et éducation aux droits humains*

*Editeur responsable : Maître Tshiswaka Masoka Hubert*

## *DRC Crisis briefing in South Africa:*

*Chance and challenges of implementing CENCO agreement, after the death of Tshisekedi.*

### **1. INTRODUCTION.**

The Lubumbashi based Research Institute on human rights (*Institut de recherche en droits humains, IRDH*) and The Congolese Leaders' Forum (COLEF) held a briefing on the DRC crisis, on Thursday 23<sup>rd</sup> February 2017, at the '54 Bath Hotel', Rosebank, Johannesburg.

The objective of the event was to '**Call for an international solidarity with the DRC people**' who are seeking a **peaceful and democratic transfer of power in their** country. South Africa based non-governmental organisations were requested to lobby their administration, SADC and AU organs to help the DRC to overcome the crisis surrounding the implementation of the 31st December 2016 Agreement.

Remembering the Sun City Peace Accord, IRDH and COLEF expect SA Medias and Think tanks like the '**Thabo Mbeki Foundation**', '**Afrika Leadership Development Institute**', '**Africa Institute of South Africa**' and the '**Institute for Security Studies**' to put the DRC crisis on their agendas and convince civil society leaders such **President Mbeki** to play a key role in it.

### **2. CAUSES OF THE DRC CRISIS**

The main cause of the current crisis in the DRC is the President Kabila's will to exercise power outside the constitutional framework. He failed to organize elections in due time, therefore, the Government becomes violent against its own organs and people.

Violence against State's organs starts, firstly, with the violation of the Constitution, by exercising power behind his second and last term (Dec 2016).

Secondly, overseeing State's bodies are neutralized. They are no longer effective. Senators elected in 2006 have expired mandates since 2012, National Assembly members' mandates expired last 16 February 2017. They all work to keep their power, without asking questions.

Thirdly, the use of military, police and other security forces against ordinary people. Examples include the massacre of Mwanza Lomba occurred in December 2016, the killings of peaceful protesters in December 2016, 19 September 2016, January 2015 and November 2011.

Fourthly, the misusing of the judiciary against political opponents, Youth, Medias houses, journalists, pro-democracy movements and human rights defenders. The the most discussed was

the case of a political motivated condemnation of the former Governor of Katanga, Katumbi Chapwe Moise, denounced by the very same Judge who pronounced the verdict.

### **3. SOLUTION TO THE CRISIS: IMPLEMENTATION OF THE 31<sup>ST</sup> DECEMBER 2016 AGREEMENT**

The 31<sup>st</sup> December 2016 Agreement is a 20 pages document of six chapters summarizing the following points:

- i. Signatories are representatives of two political groups: (i) Kabila led *Majorité Présidentielle*, part of Opposition and civil society organisations parties to Kodjo led 18<sup>th</sup> October 2016 Agreement Vs (ii) Tshisekedi led *Rassemblement, Front pour le Respect de la Constitution* supporting Jean-Pierre Bemba and another civil society group which did not sign the 18<sup>th</sup> Oct dialogue conclusion.
- ii. The mediation was led by consensus, by the DRC Episcopal conference (CENCO) ;
- iii. The main objective is to solve the political unrest generated by the interruption of a regular and continued electoral process, through inclusive talk in harmony with the Constitution, UNSC Resolution 2277, Addis-Abeba Agreement framework and other pertinent instruments;
- iv. The specific objective is to manage pre-electoral period and organise elections at all levels: Presidential, national legislatives and provincials within 12 months.
- v. The Agreement enter into force from the day it is signed, the 31<sup>st</sup> December 2016.

### **4. KEY POINTS OF THE AGREEMENT.**

#### **For the ruling party and allied.**

- i. Parties recognize that provincial MPs and senators mandates have expired since 2012 and these of national MPs expired in Feb 2017. Despite this fact, all will remain in place until new legislators are elected, according to this agreement.
- ii. Despite his second and last constitutional term, President Kabila will remain in office until new elections are held within 12 months.

#### **In exchange, for the opposition:**

- iii. No revision or change of the Constitution.
- iv. According to art. 222 al 3 of Constitution, parties agree to put in place an Institution supporting the democracy which supervises the implementation of the Agreement: « *Conseil National de Suivi de l'Accord et du processus électoral (CNSA)* ».

While waiting for the legislative Act organizing the institution, CNSA will function according to the agreement. It comprises 28 members appointed by stakeholders. It has two organs: a Plenary and a Bureau led by one President, three Vice-Presidents, one Rapporteur and one Treasury.

CNSA, the overseeing organ that guaranties the agreement's implementation is led by the President of '*Conseil des Sages du Rassemblement*', the leader of opposition political gathering.

(VI.2.2, alinea 3 : « *Le CNSA sera présidé par le président du Conseil des Sages du Rassemblement* »).

- v. The Premier Minister post, Head of the Government is allocated to the Rassemblement. The priority of the Government is to organize credible, transparent and peaceful election within 12 months.

III.3.1. second para : « *Le Gouvernement de la République est dirigé par le Premier Ministre présenté par l'Opposition politique non signataire de l'Accord du 18 octobre 2016/Rassemblement et nommé par le Président de la République conformément à l'article 78 de la Constitution* ».

- vi. The Government has to take measures to ease the political tension in the country. This includes to stop the judiciary harassment against the former Katanga Governor, Mr Katumbi Chapwe Moïse (Presidential candidate), the release of political prisoners such J-C Muyambo.

Chapitre V, V.1., para 5 : « *Dans l'intérêt supérieur de la Nation, les parties prenantes chargent la CENCO de poursuivre ses bons offices auprès de toutes les autorités concernées pour le suivi et la résolution effective des cas emblématiques restants, à savoir : Monsieur Moïse KATUMBI CHAPWE et Jean-Claude MUYAMBO afin qu'ils recouvrent leur liberté. Ainsi, les parties prenantes demandent à la Commission de Hauts magistrats de se dessaisir de ces cas qu'elles déclarent confiés à la CENCO* ».

- vii. Minister's decision to double register political parties Mouvement de Libération du Congo Libéral (MLC/L) and Mouvement Social pour le Renouveau (MSR) should be postponed;

#### **For the Electoral Commission**

- viii. Voters' list should be completely reviewed;
- ix. Presidential, national and provincial legislatures elections should take place before December 2017;
- x. Locals, municipals and urban's elections should be organized in 2018.
- xi. Government should mobilize enough financial resources to hold these elections and follow up the case of sanctions against Congolese official;
- xii. Civil society has to put in place a platform to monitor security challenges, human rights and other fundamental rights abuses during electoral period;
- xiii. International community should provide the Electoral commission for logistics, financial and technical support.
- xiv. The Agreement and resolutions from the overseeing organ 'CNSA' should be implemented in good faith.
- xv. The Agreement enter into force on 31st of December 2016.

### **5. CHANCES OF IMPLEMENTING THE AGREEMENT**

The only chance to implement the Agreement is based on the people, Churches and the International community's support and the pressure on politicians to respect it.

Thanks to Catholic bishops and the international community members who worked hard to get the agreement signed on 31st December 2016 which decreased the tension across the country. NGOs are aware that people were organized to march to the presidential palace to chase Kabila.

In short, the credibility of Bishops and the support of the international community have legitimated Kabila's power before the Congolese people, behind his constitutional term. Therefore, refusing to implement this Agreement will undermine Kabila's power.

#### **6. MAIN CHALLENGE: TSHISEKEDI DEATH AND HIS REPLACEMENT.**

Tshisekedi was considered as an incorruptible opposition leader capable to say NO. He did say it to Mobutu Sese, to Laurent Kabila and Joseph Kabila. Few politicians can say NO to corruption. Unfortunately he died a month after the Agreement has been signed (1 Feb 2017).

Tshisekedi was the President of CNSA in his capacity as leader of the Rassemblement and UDPS (his own party). Since his death, Tshisekedi is not yet replaced at CNSA, as there is not yet a President of Rassemblement. At this moment, opposition groups are fighting among themselves to get the position.

For IRDH, there is a risk to see a political vacuum, if his political organisations disappear as this happened with Mobutu's party –MPR– when he died, after his 32 years reign, and in other countries such as Angola (after death of Jonas Savimbi), South Sudan (after death of John Garang).

#### **7. SECOND CHALLENGE: KABILA WILLING TO EXERCISE POWER OUT OF CONSTITUTIONAL FRAMEWORK.**

Kabila strategies to undermine opposition by fuelling internal war impact directly the implementation of the 31st December agreement. First example, the agreement says the opposition will provide one name for the Premier Minister. But he asks for three names, knowingly that politicians will beg him to be nominated. Second example, his political group is interfering in the designation of Tshisekedi successor at CNSA, by misleading public opinion with false interpretation of the point VI.2.2, para 3 of the Agreement.

This reading is in line with the failure to organize elections for MPs, Presidency, Senators and Governors of provinces, and the attempt to change the Constitution in 2014 and the electoral law in January 2015.

#### **8. CONCLUSION / CALL FOR INTERNATIONAL SOLIDARITY**

Remembering the Sun City Agreement, IRDH and COLEF call up on international civil society organisations based in South Africa to help DRC people to overcome the crisis by implementing the 31st December 2016 Agreement.

Especially Congolese NGOs expect Think Tanks, especially the Thabo Mbeki Foundation to convince the President Mbeki to play a key role in the search for a 'Thought Leader' in the DRC.

The last ask is to the SA Medias and civil society organizations to back on relay Congolese plea for a peaceful and democratic power transfer in the DRC.