

Brussels, November 30, 2023  
*Statement*

## **DRC National Law: Challenges and Opportunities**

In Africa and worldwide, an increasing number of countries are developing laws for the protection of human rights defenders (HRDs) and their right to defend human rights. We welcome such developments as an important first step in recognising the positive role HRDs play in promoting human rights, democratic values and social justice. Such public policies equally help to underpin an enabling environment for the right to defend human rights, especially in countries and regions where HRDs are frequently targeted because of their work.

*Law No.23/927 on the protection and responsibility of human rights defenders in the Democratic Republic of the Congo*, adopted on 15 June 2023, recognises the challenging context in which HRDs operate in the country. It states, in its foreword, that it is therefore "necessary to have a law to protect them". It further adds that measures are needed to "guarantee defenders of human rights and fundamental freedoms an environment conducive to the exercise of their activities without fear of violence, threats, reprisals, discrimination, arbitrary arrest and detention, and other persecution by State or non-State actors". We welcome both the State's acknowledgment of the DRC's difficult environment for HRDs and its willingness to develop concrete steps to make this environment one in which the right to defend human rights can be freely enjoyed and exercised.

We are pleased to see that several principles in line with the UN Declaration on HRDs<sup>1</sup> have been considered to develop the law.

First, the law includes a broad definition of HRDs in its **Article 2.4(a)**, defining an HRD as "anyone, individually or in association with others, who works for the protection and promotion of human rights," and recognizes the specific protection needs of women human rights defenders (WHRDs) (**Article 6**). The fact that protection extends beyond HRDs to their collaborators and family members as well (**Article 14**) is also positive.

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<sup>1</sup>(1998). *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*. General Assembly.  
<https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-right-and-responsibility-individuals-groups-and>

It is noteworthy that the law envisions the possibility for HRDs to obtain funding from national and international donors (**Article 5**), and that it assigns the state the responsibility to fight impunity (**Article 15**) while also placing the responsibility for HRD protection on political and administrative authorities (**Article 16**).

However, the law's definition of "protection", which is referred to as "a set of concrete measures that enable people or groups of people to benefit from the rights and assistance provided for by the Constitution, international conventions, laws, and regulations", is not comprehensive enough (**Article 2.6**). While the law mentions how protection measures should "allow people or groups of people to benefit from the rights and assistance provided in the Constitution, international conventions, laws and regulations", **it does not refer to the specific needs and requirements of HRDs in the country due to their work. It also does not specify that these measures should be tailored to the needs, context, and specific situation of each HRD** or organisation to enable them to exercise their work in an environment conducive to the exercise of the right to defend human rights.

**Furthermore, in light of the challenging context in which HRDs operate in the country, the law contains several provisions that present a significant risk to them**, provisions that heavily restrict the law's scope and facilitate the criminalisation of HRDs. We are extremely concerned about these provisions and call for the reconsideration of the following elements:

- **HRDs' obligation to register and report.** While a protection policy should focus on the rights of HRDs and the obligations of duty-bearers, this law contains more articles related to the "obligations" of HRDs than to their "rights". We are particularly concerned by the requirement for all HRDs to register administratively (**Article 7**) and to report their activities annually (**Article 11**). Other provisions strengthen the restrictive nature of these articles, creating a significant risk for HRDs and an unreasonable condition to their protection.

The right to defend human rights can be exercised in many ways, including through spontaneous mobilisation or in response to specific events. However, mandatory registration defeats this. Furthermore, it poses a significant risk for HRDs in the DRC: a register compiling the names, addresses and other personal details of HRDs could be used by ill-intentioned state and non-state actors to physically or morally harm HRDs.

Another concern pertaining to this obligation to register is of a more practical nature, as HRDs in rural areas or more marginalised defenders might not have

access to registration points, thus preventing them from complying with the law and exercising their human rights work lawfully.

We also believe that the obligation for HRDs to report back annually on their activities to the government (**Article 11**) creates additional risks for HRDs. In addition to being burdensome and time-consuming for HRDs, this requirement appears to be neither justified nor necessary to ensure their safety. Rather, it seems to be a way for State authorities to monitor and control HRDs: depending on the level of detail of such reports, they could be used to create records or “black lists” of individuals or organisations that engage in the defence of specific rights or promote activities that could be interpreted as challenging accepted socio-cultural norms and traditions, or even economic or private interests of state and non-state actors.

- **Ambiguity that could lead to misinterpretation. Article 8** could be misinterpreted and used to accuse HRDs who are highly critical of the government, police, armed forces, or other state institutions of undermining national sovereignty. Similarly, HRDs promoting the rights of ethnic minorities could be accused of working against national unity or the territorial integrity of the state.

A similar ambiguity can be found in **Article 9, mentioning that HRDs are “bound by the respect of good morals”**. The subjectivity of the term “good morals” opens the door to bias and arbitrary interpretations, potentially enabling authorities to illegitimately justify infringements on the right to defend human rights. Such provisions could be used against HRDs working on issues that might still be socially controversial but still protected by human rights laws, such as sexual and reproductive rights, women rights, LGBTQIA+ (or SOGIESC) rights, the rights of people on the move, etc.

- **Lack of a preventative approach to the protection of HRDs.** We are concerned by the absence of preventative measures in **Chapter III on the “Obligations and Responsibility of the State”** with respect to the protection of HRDs and their right to defend human rights. This chapter exclusively focuses on State obligations in scenarios where incidents have already occurred, but does not mention measures that aim to prevent such incidents. **Article 18 insufficiently establishes specific obligations and responsibilities** of public institutions responsible for the protection of HRDs. A lack of clarity on who is responsible for HRD protection, as

well as when and through which actions, can lead to widespread confusion regarding the specific obligations and responsibilities of each state institution. Such clarity is essential for the effective implementation, accountability and follow-up of the obligations of duty-bearers to uphold the right to defend human rights for everyone.

- **Insufficient measures for a protection mechanism.** We are equally concerned by the fact that **Chapter IV** on the **protection mechanism for HRDs** does not include sufficient measures and details to guide the creation of an effective protection mechanism. It includes only two articles to develop it, focusing solely on the prevention of persecution of HRDs for their opinions or reports, and the prohibition of searching their houses or offices without a proper judicial warrant. We call for the development of a regulation clearly defining the composition, functions, obligations, and accountability of such a mechanism. Without clarity on these elements, the provisions of the law pertaining to this protection mechanism will most likely fail to accomplish their goal.
- **Lack of both clarity and objectivity surrounding penal provisions.** A major source of concern is **Chapter VI on Penal Provisions**. The significant space occupied by this chapter once again highlights the overly reactive approach of Law 23/027, disregarding the many benefits of a more preventative approach. While we recognise that various penalties are established for those who violate the rights of HRDs, we are troubled by **Articles 26, 27 and 28, which excessively focus on penalties for HRDs**.
- Apart from the fact that such punitive measures are unfit for a law aimed at the protection of HRDs, the provisions lack both clarity and objectivity, and could therefore unjustly be used to stifle HRDs and hinder the exercise of the right to defend human rights. The concepts of "defamation" or "slander" can be used in a biased and self-serving manner to harm HRDs or impede their work. Furthermore, the fines specified as penalties seem disproportionate and excessive. It is unlikely that HRDs could ever afford to pay such amounts, while habitual perpetrators of attacks on HRDs, who generally have more financial resources and at times political backing, would not find the specified sums a significant deterrent. At the same time, we cannot fail to mention that **Article 22**, which foresees life-sentences to perpetrators who kill an HRD, could be deemed excessively stringent from a human rights standpoint.

**In sum**, while some provisions of Law 23/027 can be seen as positive advances, such as the broad definition of HRD and the explicit recognition of the need for measures to ensure HRDs have an environment conducive to their work, **we believe that significant modifications are needed for this Law to truly guarantee that “defenders of human rights and fundamental freedoms have an environment conducive to the exercise of their activities without fear of violence, threats, reprisals, discrimination, arbitrary arrest and detention, and other persecution by state or non-state actors” (Memorandum).**