



NEW YORK
CITY BAR

JOHN S. KIERNAN
PRESIDENT
Phone: (212) 382-6700
Fax: (212) 768-8116
jkiernan@nycbar.org

January 27, 2017

Via E-mail
H.E. Joseph Kabila
President of the Democratic Republic of the Congo
C/o The Embassy of the Democratic Republic of the Congo
1100 Connecticut Ave NW #725, Washington, DC 20036
E-mail: ambassade@ambardcusa.org

Your Excellency:

I write on behalf of the New York City Bar Association (the Association) to express support for the historic peace deal¹ agreed upon by the government and opposition parties. We urge you to publicly endorse the agreement, abide by its terms under which you are to leave power by the end of 2017, and not seek a constitutional amendment to stand for a third term. We also ask that your government stop the harassment, arrest and killing of opposition protestors, lift the unjustified ban on protests and allow use of social media. These requested actions are necessary for the Democratic Republic of the Congo (DRC) to comply with its Constitution, international law and the African Charter of Human and Peoples' Rights (the ACHPR).

The Association is an independent non-governmental organization with more than 24,000 members in over 50 countries. Founded in 1870, the Association has a long history of dedication to human rights, notably through its Committee on International Human Rights, that investigates and reports on human rights conditions around the world, and the Committee on African Affairs that closely monitors and responds to legal developments in Africa. In addition, the Association's Cyrus R. Vance Center for International Justice advances global justice by engaging lawyers across borders to support civil society and promote diversity and ethics in the legal profession.

The Constitution of the DRC² in Title III, Chapter 1, Article 70 states: "The President of the Republic is elected...for a term of five years which is renewable only once." Your second term ended on December 20, 2016.³

¹ *Historic deal reached by Church—Kabila leaves by end of 2017*, AFRICANEWS, December 31, 2017, available at <http://www.africanews.com/2016/12/23/live-dr-congo-kabila-s-new-cabinet-teargas-gunfire-and-diaspora-protests/>

² CONSTITUTION OF THE DEMOCRATIC REPUBLIC OF THE CONGO, 2005 (rev. 2011), Title III, available at https://www.constituteproject.org/constitution/Democratic_Republic_of_the_Congo_2011?lang=en

³ William Clowes, *DR Congo: Can anyone stop Joseph Kabila?* AFRICAN ARGUMENTS, July 21, 2016, available at <http://africanarguments.org/2016/07/21/dr-congo-can-anyone-stop-joseph-kabila/>

The country's ruling coalition and only part of the opposition agreed to postpone the vote for your successor to April 2018. However, the agreement was boycotted by the main opposition coalition, which said it violated the constitution. The country's Catholic Church also rejected the agreement. Critics of the agreement said that you were trying to cling to power.⁴

There was an upsurge in violence in the last few months⁵, and opposition leaders warned that the DRC faced civil war if Your Excellency did not relinquish your grip on power and step down when your mandate ended. The African Union sought to facilitate dialogue in the process initiated by the Catholic Church.⁶ Moreover, Western states repeatedly urged Your Excellency to stick to the election calendar or prepare to surrender power.⁷ Your government and an energized opposition braced for a showdown on the date that you were supposed to officially step down, i.e. December 19, 2016.⁸ In the troubled Eastern Congo, a massive campaign dubbed "Bye Bye Kabila" gained momentum ever since November 20. A survey showed that 75 per cent of the people interviewed across the DRC wanted you to step down when your mandate expired, and in a hypothetical election, only 7.8 percent would vote for you.⁹

As you know, members of the UN Security Council made a weekend visit November 11-13 during which they called on Congolese political actors to adopt a consensual and inclusive electoral calendar and asked that the ban on public demonstrations be lifted.¹⁰ And in a statement by the President of the Security Council, the 15-member body urged all stakeholders in the DRC to ensure that polls were free and fair.¹¹ The Council also urged the Government to ensure an environment conducive to elections, which would include freedom of opinion, expression, and assembly and equitable access to media.¹²

⁴ Ruth Maclean and John Burke, *Democratic Republic of the Congo 'faces civil war' if president fails to quit*, THE GUARDIAN, November 10, 2016, available at <https://www.theguardian.com/world/2016/nov/10/democratic-republic-of-the-congo-faces-civil-war-if-president-fails-to-quit>

⁵ *Catholic Church leads reconciliation talks in deadlocked DRC*, GMA NEWS ONLINE, December 10, 2016, available at <http://www.gmanetwork.com/news/story/591954/news/world/catholic-church-leads-reconciliation-talks-in-deadlocked-drc>.

⁶ Press Statement, Peace and Security Council of the African Union (Dec. 22, 2016), available at <http://www.peaceau.org/uploads/psc645com-drc-22-12-2016.pdf>; Press Release, European Union-African Union, EU-African Union relations joint communiqué of the AU Peace and Security Council and the EU Political and Security Committee (Oct. 25, 2016), available at <http://www.consilium.europa.eu/en/press/press-releases/2016/10/25-9th-annual-joint-consultative-meeting-au-psc-eu-psc/>.

⁷ *Supra* note 4.

⁸ Gaaki Kigambo, *Congo-Kinshasa: DR Congo President Kabila's Stay in Power Could Trigger Violence*, THE EAST AFRICAN (Nairobi), December 13, 2016, available at <http://allafrica.com/stories/201612140217.html>.

⁹ *Id.*

¹⁰ *In DR Congo, UN Security Council delegation calls for consensual, inclusive electoral calendar*, UN NEWS CENTRE, November 13, 2016, available at <http://www.un.org/apps/news/story.asp?NewsID=55548#.WHe6j2UleCQ>.

¹¹ *DR Congo: Security Council urges all stakeholders to ensure upcoming polls are free and fair*, UN NEWS CENTRE, December 6, 2016, available at <https://www.un.org/apps/news/story.asp?NewsID=55723>.

¹² Meetings Coverage, Security Council, Security Council Presidential Statement Expresses Concern over Destabilization, Risk Ahead of Democratic Republic of Congo Elections, December 5, 2016, available at <https://www.un.org/press/en/2016/sc12610.doc.htm>.

Freedoms of opinion, expression and assembly were denied in September when political demonstrations turned violent, according to a UN report. The report stated that 53 protestors were killed, including seven women and two children, at least 48 by State agents. The fragile legal framework and the lack of judicial independence contributed to widespread impunity.¹³ Opponents of the government took to the streets to protest the national electoral commission's failure to announce a timetable for the presidential election.¹⁴ The main opposition said it would not plan a mass march against your presidency when your mandate expired on December 19 so as not to give the government an "opportunity to fire on the population."¹⁵ However, it was reported that security forces killed at least 26 demonstrators, firing live rounds, and arrested scores more amid growing protests against your holding on to power.¹⁶ Former UN Secretary-General, Ban Ki-moon said that the reported killing of protestors was deplorable.

The UN report further documented the harassment, arbitrary arrest and detention of protestors as well as local and international journalists, and the destruction and looting of the premises of eight political parties.¹⁷ An "unjustified ban" on protests was imposed in September after a series of large demonstrations were brutally suppressed by security forces, reportedly leaving many people dead or injured.¹⁸ And social media was blocked prior to the date that your mandate expired,¹⁹ which the UN High Commissioner of Human Rights condemned as "a continuing ban on demonstrations by civil society and the opposition." In addition, the government took a tough line on the media, jamming the radio signals of Radio France International and UN-funded Radio Okapi.²⁰

The rights to freedom of expression, peaceful assembly, association and information are fundamental rights guaranteed by the DRC Constitution in Title II, Articles 22, 23, 24 and 25.²¹ Article 22 states that "All persons have the right to freedom of thought...both in public and private." Article 23 ensures the right to freedom of expression, and Article 24 states that "All persons have the right to information. The freedom of the press, the freedom of information and broadcasting..... by radio and television, written press or any other means of communication are guaranteed." Article 25 guarantees the freedom of peaceful meetings.

¹³ *DR Congo security forces used 'excessive force' against protestors, UN probe finds*, UN NEWS CENTRE, October 21, 2016, available at [://www.un.org/apps/news/story.asp?NewsID=55365#WFaxM1Mrlud](http://www.un.org/apps/news/story.asp?NewsID=55365#WFaxM1Mrlud).

¹⁴ David McKenzie, Radina Gigova and Joe Sterling, *Human Rights Watch: 44 dead in D.R. Congo political protests*, CNN, September 21, 2016, available at <http://www.cnn.com/2016/09/21/africa/congo-unrest-protests/>.

¹⁵ Aaron Ross, *Congo opposition says not planning mass protest at end of Kabila term*, REUTERS, December 17, 2016, available at <http://www.reuters.com/article/us-congo-politics-idUSKBN1460MG>

¹⁶ *More than two dozen people killed in DRC protests*, ALJAZEERA, December 21, 2016, available at <http://www.aljazeera.com/news/2016/12/dozen-people-killed-drc-protests-161221044309647.html>.

¹⁷ See *supra* note 13.

¹⁸ Office of the United Nations High Commissioner for Human Rights, *DRC: UN rights experts urge end to "unjustified ban" on protests*, November 3, 2016, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20823&LangID=E>

¹⁹ *UN alarmed as Kabila elongates tenure, shuts down Internet in DR Congo*, PUNCH, December 17, 2016, available at <http://punchng.com/internet-shutdown-dr-congo-kabila-elongates-tenure-alarms-un/>

²⁰ Kenny Katombe, *Congo cabinet resigns as part of deal for Kabila to stay*, REUTERS, November 18, 2016, available at <http://www.reuters.com/article/us-congo-politics-idUSKBN13914P>.

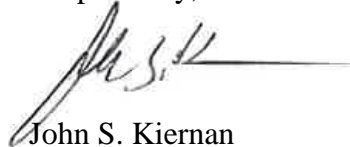
²¹ CONSTITUTION OF THE DEMOCRATIC REPUBLIC OF THE CONGO, 2005 (rev. 2011), Title II Human Rights, Fundamental Liberties and the Duties of the Citizen and the State, available at https://www.constituteproject.org/constitution/Democratic_Republic_of_the_Congo_2011?lang=en.

The derogation of these rights violates the DRC's obligations under the International Covenant on Civil and Political Rights (ICCPR) that the DRC acceded to in 1976.²² Article 18 requires State Parties to allow everyone the right to freedom of thought, Article 19(2) requires State Parties to recognize a universal right to freedom of expression, and Article 21 protects the right to peaceful assembly.

Likewise, the DRC is obligated to abide by the requirements of the African Charter on Human and Peoples' Rights (the ACHPR) that the DRC ratified in 1987.²³ Article 9 of Part 1, Chapter 1 states that "Every individual shall have the right to express...his opinions," and Article 10 requires that every individual shall have the right to free association. Article 11 obliges State Parties to ensure that "Every individual shall have the right to assemble freely with others."

Because a peace deal has now been agreed upon between your government and opposition parties, we respectfully urge you to adhere to this agreement by leaving office by the end of 2017 and supporting free and fair elections by that date, without seeking to amend the constitution to run for a third term. We also request that you publicly endorse the peace agreement. In addition, we request that your government adhere to its obligations under international law and the Constitution to allow everyone the right to freedom of expression and association, to stop the harassment, arrest and killing of opposition protestors, to lift the ban on protests, and to allow social media and broadcasters to operate freely. Such actions are critical to advancing peace and democracy.

Respectfully,



John S. Kiernan
President, New York City Bar Association

Cc:

Hon. Felix Tshishekedi
Prime Minister of the DRC
E-mail: cabinet@primature.cd.

Hon. Alexis Tambwe Mwamba
Minister of Justice and Human Rights
E-mail: minjustch@gmail.com.

Hon. M. Evariste Boshab
Minister of Interior and Security of the DRC
E-mail: ngomamundulu@gmail.com.

Mr. Corneille Nangaa
President of the Independent National Electoral Commission (CENI):
C/o The Embassy of the Democratic Republic of the Congo
E-mail: ambassade@ambardcusa.org

²² *Claiming Human Rights in the Democratic Republic of the Congo*, CLAIMING HUMAN RIGHTS: GUIDE TO INTERNATIONAL PROCEDURES AVAILABLE IN CASES OF HUMAN RIGHTS VIOLATIONS IN AFRICA (Joint Project of the National Commissions for UNESCO of France and Germany), available at <http://www.claiminghumanrights.org/drcongo.html>.

²³ *Id.*

H. E. Ambassador Francois Nkuna Balumuene
DRC Ambassador to the United States
E-mail: ambassade@ambardcusa.org

Honorable Commissioner Zeid Ra'ad Al Hussein
UN High Commissioner for Human Rights
Fax: 011-41-22-928-9010

Honorable Dr. Nkosazana Dlamini Zuma
Chairperson of the African Union Commission
Fax: (251) 11 551 78 44
E-mail: chairperson@africa-union.org

Honorable Kayitesi Zainabo Sylvie
Chairperson of the African Commission on Human and People's Rights
E-mail: achpr@achpr.org.