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**SUMMARY**

**PRESIDENT OF THE REPUBLIC**

15 June 2023 - Act No. 23/027 on the protection and responsibility of the human rights defender in the Democratic Republic of Congo, col. 3.

*Explanatory memorandum, col. 3.*

*Act, col. 5.*

15 June 2023 - Act No. 23/028 determining the fundamental principles relating to the penitentiary system, col. 14.

*Explanatory memorandum, col. 14.*

*Act, col. 16.*

20 June 2023 - Act No. 23/029 authorising the Government, col. 29.

*Explanatory memorandum, col. 29.*

*Act, col. 31.*

**GOVERNMENT**

***Ministry of the Interior, Security, Decentralisation and Customary Affairs***

Circular Note No. CAB/VPM/MININTER SECAC/PKK/034/2023 of 26 June 2023 to the attention of the Secretary General of the Interior, Ladies and Gentlemen Governors of provinces, the Commissioner General of the Congolese National Police, the Permanent Secretary of the National Commission for the Control of Small Arms and Light Weapons and the Reduction of Armed Violence (CNC-ALPC) relating to the issuance of the permit to import and carry weapons in the Democratic Republic of Congo, col. 33

**COURTS AND TRIBUNALS**

**PROCEDURAL ACTS**

***City of Kinshasa***

Notice of the order No. 068 CAB.PRES/TRICOM/MAT/BLG/05/2023 opening a preventive settlement in favour of the company Mwant Jet Sarl, col. 37.

Order No. 068 CAB.PRES/TRICOM/MAT/BLG/05/2023 opening a preventive settlement in favour of the company Mwant Jet Sari, col. 39.

**PRESIDENT OF THE REPUBLIC**

**Act No. 23/027 of 15 June 2023 relating to the protection and responsibility of the human rights defender in the Democratic Republic of Congo**

## **Explanatory memorandum**

Human rights are the result of a historical construction. Rooted in philosophical convictions, often obtained at the end of political battles or social struggles, they are based on values that guide life within a society.

Several articles of Title II of the Constitution of 18 February 2006 as amended and supplemented to date, relate to human rights and the fundamental freedoms of citizens, including civil and political rights, economic, social and cultural rights; which constitutes the expression of the will of the Constituent to oblige the State to ensure the promotion and protection of these rights.

This will is also expressed by the international and regional legal instruments relating to human rights ratified by the Democratic Republic of Congo, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the African Charter on Human and Peoples' Rights, which constitute the expression of the will of the human community to promote and protect human rights.

The defense of these rights is in particular the international obligations of States, which are required to respect them and ensure their effective enjoyment. These international commitments also give rise to the rights and duties of individuals, groups of individuals or organs of society involved in the promotion and defense of human rights.

Resolution 53/144 of the United Nations General Assembly, adopted on 9 December 1998, entitled "United Nations Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms", as well as Resolution 69 (XXXV) of 4 July 2004 of the African Commission on Human and Peoples' Rights on the protection of human rights defenders in Africa, call on Member States of the United Nations and the African Union to take relevant measures to protect defenders of human rights and fundamental freedoms.

These measures guarantee defenders of human rights and fundamental freedoms an environment conducive to the exercise of their activities without fear of acts of violence, threats, reprisals, discrimination, arbitrary arrests and detentions and other persecutions - from the State or non-State actors.

The context in which the human rights defender works in the Democratic Republic of Congo makes it necessary to have an Act on his protection.

Thus, this Act is based on articles 122, point 1 and 203 point 1 of the Constitution of 18 February 2006.

It opts for a broader definition of the expression human rights defender; it can be people from the public or private sector.

It also determines the rights recognised to the human rights defender, his duties, the obligations of the State as well as the mechanism for the protection of human rights defenders.

The protection is aimed at all those who, in one way or another, participate in the promotion, protection and defense of human rights and fundamental freedoms as proclaimed by the Constitution, international Conventions, Laws and Regulations in force in the Democratic Republic of Congo.

This Act is structured around six chapters:

Chapter I: General provisions;

Chapter II: Rights and responsibilities of the human rights defender;

Chapter III: Obligations of the State;

Chapter IV: Mechanisms for the protection of the human rights defender;

Chapter V: Criminal law provisions;

Chapter VI: Repeal and final provisions

Such is the general structure of this Act.

## **Act**

The National Assembly and the Senate adopted;

The President of the Republic promulgates the Act whose content follows:

### **CHAPTER I: GENERAL PROVISIONS**

#### **Section 1: Purpose and scope of application**

##### **Article 1**

This Act establishes the rules relating to the rights, duties and responsibility of the human rights defender and the obligations of the State towards him as well as the mechanisms for the protection of the human rights defender.

It determines the responsibility of the State and the human rights defender.

#### **Section 2: Definitions**

##### **Article 2**

For the purposes of this Act, the following terms shall be understood to mean:

1. Judicial assistance: support for the victim by a lawyer or legal defender with a view to assisting or representing the victim before the courts;
2. Legal aid: support for the victim by a legal expert with a view to providing personalised answers or solutions;
3. Confidentiality: the nature of something that cannot be disclosed and the disclosure of which would cause harm to the victim;
4. Human rights defender:

- a. Any person, individually or in association with others, who works for the protection and promotion of human rights;
  - b. Any identified person or group of persons who acts according to their attributions, profession or physical condition, works for the realisation of human rights and fundamental freedoms;
  - c. Any legally constituted institution or body that works to promote, protect and realise human rights and fundamental freedoms as guaranteed by the Constitution, the laws of the Republic, national, regional and international instruments according to its attributions;
5. Promotion: set of mechanisms put in place by the State to improve the knowledge and practice of human rights;
  6. Protection: set of concrete measures that allow individuals or groups of people to benefit from the rights and remedies provided by the Constitution, international conventions, laws and regulations;
  7. Realise: implement prerogatives by adopting administrative, regulatory and legislative measures in order to give effect to human rights;
  8. Responsibility: all the duties, behaviours expected of the State and the human rights defender as well as the legal consequences attached thereto;
  9. Professional confidentiality: duty of a human rights defender not to share confidential information obtained in the course of his activities.

## **CHAPTER II: RIGHTS AND RESPONSIBILITIES OF THE HUMAN RIGHTS DEFENDER**

### **Section 1: Rights**

#### **Article 3**

The human rights defender freely exercises his activities throughout the national territory in compliance with the Laws and Regulations of the Republic.

As such, he has the right to:

1. form, with other persons, organisations or associations and to join them;
2. participate in peaceful meetings and gatherings, in public or in private;
3. communicate with persons, associations or governmental, non-governmental or intergovernmental organisations that pursue the same goal;
4. freely access information related to human rights and fundamental freedoms and keep it confidential;
5. freely seek, obtain, receive, hold, publish, communicate and disseminate his ideas, information and reports on human rights and fundamental freedoms;
6. conduct an evaluation of human rights and fundamental freedoms;
7. train and raise public awareness on human rights and fundamental freedoms;
8. provide advice, offer legal or other aid, refer victims of human rights violations to the competent judicial authorities.

He may also report human rights violations to the same judicial authorities;

9. visit places of detention, have unhindered access to detainees and observe prison conditions.

An Order of the Minister responsible for Human Rights deliberated in the Council of Ministers shall establish the terms and conditions for exercising the activities of human rights defenders.

#### **Article 4**

The Human Rights Defender freely formulates criticisms and proposals regarding obstacles to the promotion, protection and realisation of human rights and fundamental freedoms, which he addresses to national and international bodies, organisations and institutions.

He makes relevant suggestions to the competent public authority regarding legislative or regulatory changes relating to human rights and fundamental freedoms.

He reports to the competent public authority any aspect of the work of public or private actors that may hinder or prevent, by action or omission, the promotion, protection and realisation of human rights and fundamental freedoms.

#### **Article 5**

The human rights defender may, for the accomplishment of his activities, benefit from training, State subsidies or any other financial, material or technical support, of lawful origin, from any natural or legal person, both national and international.

#### **Article 6**

The vulnerable human rights defender also benefits from specific protection due to his personal situation.

The woman human rights defender benefits from protection against any kind of threat, violence or any form of discrimination related to her gender, in accordance with international and national legal instruments relating to the protection of women's rights.

### **Section 2: Responsibilities**

#### **Article 7**

The human rights defender has the responsibility to respect the Constitution, regional and international conventions as well as the laws and regulations in force.

He exercises his rights and freedoms with full responsibility, neutrality and impartiality, in compliance with the law, public order, good morals and the general interest.

For reasons of responsibility, the human rights defender who exercises outside a legally constituted association, registers free of charge with the National Commission of Human Rights in order to obtain a national identification number.

The National Commission of Human Rights draws up a directory of human rights defenders. However, the human rights defender remains independent of the National Commission of Human Rights in the exercise of his activities.

#### **Article 8**

The human rights defender contributes to the development, the safeguarding of democracy, the preservation and strengthening of national solidarity, as well as the strengthening of the independence, the national sovereignty and the territorial integrity of the State.

**Article 9**

The human rights defender has the duty to respect his peers and to maintain relations with them that promote and strengthen mutual tolerance.

He is bound by respect for moral standards and privacy.

**Article 10**

The human rights defender is bound by professional confidentiality and the respect for confidentiality of sources of information in the interest of victims and witnesses.

**Article 11**

The human rights defender referred to in Article 2 point 4 litera a, of this Act, submits each year a report of his activities to the National Human Rights Commission, with a copy for information to the Minister of Justice and the Minister responsible for Human Rights as well as to the General Secretariat attached to the latter.

However, the sending of the report and the identification do not place the human rights defender under the supervision of the National Human Rights Commission.

**CHAPTER III: OBLIGATIONS AND RESPONSIBILITY OF THE STATE****Article 12**

The State has the obligation to apply and enforce the laws of the Republic and the commitments arising from ratified international and regional legal instruments regarding the protection of human rights defenders.

**Article 13**

The State facilitates the exercise of the activities of the human rights defender and guarantees the confidentiality of his sources of information.

It cannot obstruct his right to responsibly inform the public of any case of violation of human rights.

**Article 14**

The State ensures the protection of the human rights defender, his collaborators and members of his family in the event of risk or danger related to the exercise of his activities.

**Article 15**

The State ensures that violations committed against the human rights defender during the exercise of his activities are punished in accordance with the laws and regulations in force.

**Article 16**

Without prejudice to the powers vested in the Government and the courts and tribunals, the National Human Rights Commission ensures the effective implementation of the rights, duties and obligations defined in this Act.

To this end, it receives each year the annual activity reports of the human rights defender and the associations legally constituted in the Democratic Republic of Congo.

#### **Article 17**

In exercising its sovereign powers, the State encourages its officials and agents to respect and ensure respect for human rights in accordance with the laws and regulations of the Republic.

No one shall suffer reprisals of any form whatsoever, due to the denunciation of the violation of human rights.

#### **Article 18**

The political and administrative authorities ensure the protection of human rights defenders in the exercise of their activities.

### **CHAPTER IV: MECHANISM FOR THE PROTECTION OF THE HUMAN RIGHTS DEFENDER**

#### **Article 19**

Without prejudice to specific laws, the human rights defender may not be prosecuted, investigated, arrested, detained or judged solely because of the opinions expressed or reports published in the exercise of his activities.

#### **Article 20**

No search may be carried out, except in cases of flagrante delicto, at the headquarters or home of the human rights defender without the express authorisation of the Public Prosecutor at the High Court with territorial jurisdiction.

### **CHAPTER V: CRIMINAL LAW PROVISIONS**

#### **Article 21**

Anyone who, by himself or by another, exposes a human rights defender to any form of reprisal or harassment because of his activities, shall be punished with a sentence of three to five years and a fine of 3,000,000 to 5,000,000 Congolese francs or one of these sentences only.

If the reprisals result in acts of violence, the alteration, amputation of a part of the human body or a permanent disability of a human rights defender, the sentence shall be increased to ten years of principal penal servitude.

#### **Article 22**

Anyone who causes the death of a human rights defender because of his activities shall be punished with a sentence of penal servitude for life.

#### **Article 23**

Any State agent who has harmed the physical integrity of a human rights defender in the exercise of his activities shall be punished with a principal penalty of penal servitude of six

months to two years and a fine of 2,000,000 to 7,000,000 Congolese francs, or one of these penalties only.

#### **Article 24**

Any person who violates one of the rights recognised in Articles 3 and 4 of this Act shall be punished with a principal penal servitude sentence of six months to one year and a fine of 1,000,000 to 3,000,000 Congolese francs, or one of these penalties only.

#### **Article 25**

Any State agent or any person acting on behalf of the State, Public Prosecutor, security and intelligence agent, judicial police officer, member of the Armed Forces of the Democratic Republic of Congo or the Congolese National Police who is guilty of the arbitrary arrest, false imprisonment or abduction of a human rights defender because of his activities shall be punished with a principal penal servitude sentence of three to five years and a fine of 5,000,000 to 10,000,000 Congolese francs.

The penalty will be doubled if, during the reprehensible acts listed in the previous article, the human rights defender is subjected to acts of torture or cruel, inhuman or degrading treatment, outside or in a prison environment.

#### **Article 26**

Any human rights defender or member of a legally constituted association who, during or in the exercise of his activities, commits acts of reprisal, vandalism consisting of the destruction of public or private property or any other act contrary to the law, shall be punished with a principal penal servitude of two to five years and a fine ranging from 1,000,000 to 5,000,000 Congolese francs.

#### **Article 27**

Any human rights defender who intentionally violates the duties prescribed to him by the relevant provisions of this Act in the exercise of his activities shall be punished with penal servitude of six months to one year.

Legally constituted associations that are guilty of the same acts shall be punished with a fine of 5,000,000 to 10,000,000 Congolese francs. And if the alleged acts are extremely serious, the judge may order the suspension of activities for a period of 1 to 3 years.

#### **Article 28**

Without prejudice to the provisions of the Congolese Penal Code, any human rights defender who discloses defamatory, insulting or slanderous information shall be punished with penal servitude of six months to two years or a fine of 500,000 to 2,000,000 Congolese francs, or one of these penalties only.

Any human rights defender who is guilty of verbal violence or of harming the moral or physical integrity of an individual or group of individuals shall be punished with the same penalty.

## **CHAPTER VI: REPEAL AND FINAL PROVISIONS**



**Article 29**

All previous provisions contrary to this Act are hereby repealed.

**Article 30**

This Act shall enter into force thirty days after its publication in the Official Journal.

Done in Kinshasa, 15 June 2023.

**Félix-Antoine TSHISEKEDI TSHILOMBO**

Act No. 23/028 of 15 June 2023 determining the fundamental principles relating to the penitentiary regime

Explanatory memorandum

Nowadays, the penitentiary system is governed by regulatory texts, in particular, Ordinance No. 344 of 17 September 1965 on the penitentiary system, judicial organisation orders No. 87-025 of 13 March 1987 establishing the management committees of penitentiary establishments and No. 029 of 28 January 2013 establishing, organising and operating local committees for the management of the budget of central and provincial prisons and detention camps. Furthermore; Act No. 023/2002 of 18 November 2002 on the Military Judicial Code organises, in Title II of its Book IV, a military penitentiary administration, thus establishing a duality of management of the penitentiary administration in the Democratic Republic of Congo, detrimental to the penitentiary system as a whole.