

# TREATED LIKE CRIMINALS

DRC'S RACE TO SILENCE DISSENT IN  
THE RUN UP TO ELECTIONS

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“It is instrumentalised justice. We have lost our bearings...”

Wife of a prisoner of conscience, Kinshasa.<sup>1</sup>

## EXECUTIVE SUMMARY

As the Democratic Republic of Congo (DRC)'s presidential election draws closer, calls by politicians from the Presidential Majority and the opposition, religious leaders and activists for President Joseph Kabila to step down in November 2016 when his constitutionally mandated two-terms end have increased. Simultaneously the government's crackdown on those voicing these views has intensified.

President Kabila's plans for 2016 remain unclear. He has neither confirmed his intention to step down nor to stand again. The presidential and legislative elections are the last in a series of six polling days planned before November 2016. Delays in the preparation of the elections have heightened concerns that President Kabila or those close to him may delay elections to allow a *glissement* (a slippage), of the electoral calendar which could trigger a constitutional crisis.

This report documents the DRC government's crackdown on politicians and activists speaking out or peacefully mobilizing against these developments. It exposes a pattern of arbitrary arrests, prolonged incommunicado detentions by the National Intelligence Agency (ANR) and trials based on trumped-up or illegitimate charges violating the rights to liberty, freedom of expression, association and peaceful assembly.

Amnesty International conducted extended research for this report in Kinshasa, in June and September 2015. This report is based on interviews with family members and defence lawyers of the eight political detainees whose cases are documented in the report, victims of arbitrary arrests, government officials, representatives of national and international human rights organizations, United Nations officials, and foreign diplomats. Additional information was also gathered through phone interviews and desk research between January and October 2015.

Three politicians, whose cases are documented in this report, were arrested after speaking out publicly against President Kabila standing for a third term. One of them, Jean-Bertrand Ewanga, Member of Parliament and Secretary General of the opposition party Union pour la Nation Congolaise (UNC), was sentenced to one year in prison for insulting the Head of State, the presidents of the Senate and the Parliament and the prime minister. Two others, Jean-Claude Muyambo and Vano Kiboko, were both part of the Presidential Majority when they

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<sup>1</sup> «C'est la justice instrumentalisée. Nous avons perdu tous nos repères... »

spoke out against a third term. Vano Kiboko was sentenced to three years in prison following a trial riddled with irregularities. The trial against Jean-Claude Muyambo is still ongoing.

A controversial bill tabled before the National Assembly in January 2015, widely perceived as an attempt to delay the legislative and presidential elections by linking them to a time-consuming census process, which would have given President Kabila the possibility to stay in power beyond 2016, triggered protests and more arrests. Security forces put down protests with excessive force arresting several hundred people, who were mostly released without charge in the following weeks. Human rights defender, Christopher Ngoyi, who was monitoring the use of excessive force during the protests, was arrested by the ANR and held in incommunicado detention for 21 days. His trial, based on charges for which there is no legal basis, continues. Two opposition leaders, Ernest Kyaviro and Cyrille Dowe were arrested during the January protests, transferred to ANR detention, and held incommunicado, with the exception of sporadic visits by their spouses, for 86 and 145 days respectively. Both faced prosecution for inciting 'civil disobedience' for their involvement in the protests against the proposed bill. Ernest Kyaviro was sentenced to three years in prison. Cyrille Dowe was acquitted on 7 October 2015.

Others including Fred Bauma and Yves Makwambala were arrested by ANR agents who stormed a press conference on 15 March where the youth activists were launching the civic education platform, Filimbi. Twenty-seven people, including activists from West African countries, international journalists and a US diplomat were arrested. Except for Fred Bauma and Yves Makwambala, all of them were released. Fred Bauma and Yves Makwambala were held in ANR detention for 50 and 40 days respectively, incommunicado without charge and without access to a lawyer. Together with four other Filimbi leaders who are in exile, they face charges including conspiracy against the Head of State and inciting people to take up arms against the authorities. They risk the death penalty for having peacefully exercised their rights to freedom of expression, association and assembly.

Solidarity protests and actions organized by youth movement Lutte pour le Changement (LUCHA) to demand the release of those held incommunicado in Kinshasa were systematically repressed. On 17 March, 11 Lucha activists were arrested, subjected to ill-treatment by ANR agents and released the same evening. A lawyer and human rights defender who tried to visit the LUCHA detainees in ANR detention, was refused access and beaten up by unknown assailants that same evening. Between March and August, three people, linked to Filimbi and LUCHA, were arrested or abducted by the ANR, held in secret detention and released three days later.

The ANR, which reports directly to President Kabila, has arbitrarily arrested opposition leaders and activists, seemingly in a bid to silence them, and consistently violated the human rights of those arrested. In five of the eight cases documented in this report, individuals were detained by the ANR for between 21 and 162 days in violation of the requirement under Congolese law to be presented before a magistrate within 48 hours. Detained incommunicado, they were interrogated without a lawyer present.

Even after individuals have been belatedly handed over to the regular justice system, their fair trial rights continue to be violated, as the courts reject requests for provisional liberty without a proper justification, in contravention of Congolese law. Records of interrogations

during incommunicado detention are also used to prosecute individuals for peacefully exercising their rights. In the case of Fred Bauma and Yves Makwambala, requests filed by lawyers to have this evidence excluded have so far been rejected. The *Cour de cassation* is due to render its final verdict on the exclusion of interrogation records obtained during incommunicado detention.

Amnesty International urges the DRC government to stop using arrest and detention as a tool to prevent those raising concerns about delays to elections or the possibility of President Kabila standing for a third term from voicing their views and organizing peacefully. The government should immediately and unconditionally release all prisoners of conscience arrested solely for peacefully exercising their right to freedom of expression and peaceful assembly. To safeguard against future human rights violations by the ANR, Amnesty International also recommends the creation of an independent oversight body tasked with reviewing their operations to ensure they fall within national and international legal frameworks.

DRC's development partners should ensure that any assistance or aid provided to the DRC government does not cause or contribute to human rights violations linked to the clampdown on dissenting voices. Governments or other donors funding elections should exercise due diligence in this regard, including by seeking commitments from the DRC government that human rights, including the rights to freedom of expression, association and assembly will be respected throughout the election process.

Regional actors, especially the African Union (AU) and the Southern African Development Community (SADC), should step up their engagement with the DRC, pressing the government to respect the rights to freedom of expression, association and peaceful assembly to reduce the risk of an electoral crisis and a corresponding deterioration in DRC's human rights situation, and regional instability.

The stakes for DRC's forthcoming elections are high and how the Congolese authorities handle the issues highlighted in this report will shape the country's trajectory for years to come. If the current clampdown intensifies, despite warnings from politicians, civil society and members of the international community, there is significant risk of socio-political unrest, in a country where armed conflict is ongoing in several provinces and where stability elsewhere remains fragile.

## METHODOLOGY

Amnesty International conducted field research for this report in Kinshasa in June 2015. Amnesty International researchers had 31 face-to-face interviews during this visit, including with family members and defence lawyers of the eight political detainees whose cases are documented in this report, government officials, and representatives of national and international human rights organizations, diplomatic missions and the UN Joint Human Rights Office of the UN Organisation Stabilization Mission in the Democratic Republic of Congo (MONUSCO).

Amnesty International met with the Vice Prime Minister and Minister of Interior and Security, Professor Evariste Boshab, the Vice Minister of Justice and Human Rights, Mbose Kodia Pwanga and the Attorney-General Flory Kabange Numbi.

Amnesty International conducted a follow-up visit to Kinshasa in September 2015. During this visit they also met with representatives of the National Independent Electoral Commission (CENI) and the National Human Rights Commission (CNDH).

Additional information was gathered through phone interviews and desk research between January and October 2015. Amnesty International shared the concerns reflected in this report in writing with the Vice Prime Minister and Minister of Interior and Security, Professor Evariste Boshab, the Minister of Justice and Human Rights, Alexis Tambwe Mwamba, the Attorney-General Flory Kabange Numbi and the General Administrator of the ANR, Kalev Mutond, on 10 November, but had not received a response at the time of writing.

Amnesty International regrets that the authorities did not facilitate the delegation's request to access to the *Centre pénitentiaire et de rééducation de Kinshasa*, also referred to as Makala Central Prison, where most of the detainees whose cases are documented in this report are held.<sup>2</sup>

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Amnesty International would like to thank all those who provided information for this report.

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<sup>2</sup> Although access was not formally denied to Amnesty International, several government institutions referred to each other as responsible for providing permission to access the prison hindering access for the team.

# BACKGROUND

President Kabila took office in 2001 succeeding his father, former President Laurent Désiré Kabila, following his assassination. He was declared winner of the 2006 and 2011 elections. DRC's constitution limits a president to two consecutive terms. It also prohibits the number and length of terms from being changed by a constitutional review<sup>3</sup> making President Kabila ineligible to stand again in November 2016.

As the November 2016 presidential election draws closer, calls by politicians from the Presidential Majority (known by its French acronym, MP)<sup>4</sup> and the opposition, religious leaders and activists for President Kabila to step down after his constitutionally mandated two-terms have intensified, as has the government crackdown on those voicing these views. President Kabila has yet to officially declare his intentions, but his silence, and attempts by his supporters to extend his rule, have contributed to a climate of political uncertainty. Delays in the preparation of elections have also heightened concerns that President Kabila or those close to him may seek a delay in elections to allow a *glissement*,<sup>5</sup> slippage, of the electoral calendar which would result in an extension of President Kabila's current term.

Statements by prominent supporters of President Kabila as early as June 2013, including Evariste Boshab, the then Secretary General of President Kabila's People's Party for Reconstruction and Development (PPRD) and Claude Mashala, the national secretary of the PPRD, led to speculation that the constitution may be reviewed or replaced to abolish term limits.<sup>6</sup>

By January 2015, talk of constitutional reform gave way to a short-lived attempt to amend

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<sup>3</sup> Constitution of the Democratic Republic of Congo, modified by law n° 11/002 of 20 January 2011 regarding the revision of certain articles of the Constitution of the Democratic Republic of Congo of 18 February 2006, <http://www.leganet.cd/Legislation/Droit%20Public/Constitution.2011.pdf> (accessed 20 October 2015), Article 220 of the Constitution states "the number and length of the terms of office of the President of the Republic, may not form the object of a Constitutional amendment." Article 70 states "the President of the Republic is elected by direct universal suffrage for a term of five years which is renewable only once. At the end of his term, the President stays in office until the President-Elect effectively assumes his functions".

<sup>4</sup> The Presidential Majority or *Majorité Présidentielle (MP)* is a bloc of political parties that constitutes the ruling coalition.

<sup>5</sup> *Glissement* (slippage) is a term used in DRC to refer to the strategy of delaying or postponing the elections.

<sup>6</sup> Radio Okapi, "RDC: le livre d'Evariste Boshab sur 'la révision de la constitution' fait polémique", 28 June 2013, <http://radiookapi.net/actualite/2013/06/28/rdc-le-livre-devariste-boshab-sur-la-revision-de-la-constitution-fait-polemique-2/> (accessed 8 August 2015); Radio Okapi, "Claude Mashala: La prochaine élection n'est pas en 2016", 18 March 2014, <http://www.radiookapi.net/actualite/2014/03/18/claude-mashala-la-prochaine-election-nest-pas-en-2016> (accessed 27 August 2015).

the electoral law. On 5 January 2015, Evariste Boshab, in his capacity as Vice Prime Minister and Minister of Interior, introduced a bill before the National Assembly to amend the electoral law. This was rejected by the opposition who interpreted this as a strategy of the Presidential Majority to extend President Kabila's term beyond December 2016 by trying to link legislative and presidential elections to a general census.<sup>7</sup> Given the time needed to conduct a census across the DRC, this proposal would likely have delayed elections and prolonged President Kabila's current term. Despite opposition, on 17 January 2015, the National Assembly voted in favour of these amendments, triggering widespread demonstrations between 19 and 21 January in Kinshasa and in other towns, including Bukavu, Goma and Lubumbashi. Security forces put down the demonstrations with excessive force with 36 people killed during the demonstrations and several hundred arrested.<sup>8</sup> Following the protests, the National Assembly passed an amended version of the bill in which the reference to a census was removed.<sup>9</sup>

On 12 February 2015, the CENI published the electoral calendar with six polling days to be organized between 25 October 2015 and 27 November 2016.<sup>10</sup> Five polling days are dedicated to elections delayed from the 2011 electoral cycle before the legislative and presidential elections scheduled for 27 November 2016. The local elections that were slated for 25 October 2015 are an unprecedented exercise. They are due to take place in over 7,000 electoral districts, compared to 266 electoral districts in the 2006 provincial elections, making them the most technically complicated election in the country's history.<sup>11</sup> Delays to local elections risk having a domino delay effect on other elections, potentially prolonging President Kabila's term contrary to the Constitution.

In addition to the local elections, the government announced in February 2015 that it was also prioritizing the implementation of *découpage*, an un-implemented change foreseen in the 2006 Constitution, which divides DRC's 11 provinces into 26. Analysts have raised concerns that this complex and costly process could also result in delays to the electoral

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<sup>7</sup> Le Potential, "Modification de la loi électorale : la lecture du projet de loi par Evariste Boshab sous les sifflets des députés de l'Opposition", 12 January 2015, [http://www.lepotentielonline.com/index.php?option=com\\_content&view=article&id=11755:modification-de-la-loi-electorale-la-lecture-du-projet-de-loi-par-evariste-boshab-sous-les-sifflets-des-deputes-de-l-opposition&catid=90:online-depeches](http://www.lepotentielonline.com/index.php?option=com_content&view=article&id=11755:modification-de-la-loi-electorale-la-lecture-du-projet-de-loi-par-evariste-boshab-sous-les-sifflets-des-deputes-de-l-opposition&catid=90:online-depeches) (accessed 12 October 2015).

<sup>8</sup> Human Rights Watch, "DR Congo: Deadly Crackdown on Protests", 24 January 2015, <https://www.hrw.org/news/2015/01/24/dr-congo-deadly-crackdown-protests> (accessed 11 October 2015).

<sup>9</sup> Radio Okapi, "RDC: le projet de loi électorale enfin voté", 26 January 2015, <http://www.radiookapi.net/actualite/2015/01/25/rdc-le-projet-de-loi-electorale-enfin-vote> (accessed 16 October 2015).

<sup>10</sup> Décision n°001/CENI/BUR/15 du 12 février 2015 portant publication du calendrier des élections provinciales, urbaines, municipales et locales 2015 et des élections présidentielle et législative 2016, [http://www.ceni.gouv.cd/lois/decision\\_calendrier\\_contraintes\\_2015\\_2016.pdf](http://www.ceni.gouv.cd/lois/decision_calendrier_contraintes_2015_2016.pdf) (accessed 16 October 2015).

<sup>11</sup> Jason Stearns, 'Is the Congolese electoral calendar a pipe dream?', 24 February 2015, [http://congosiasa.blogspot.com/2015/02/is-congolese-electoral-calendar-pipe.html?sm\\_au=iVVFj4SMBVtBfB4N](http://congosiasa.blogspot.com/2015/02/is-congolese-electoral-calendar-pipe.html?sm_au=iVVFj4SMBVtBfB4N) (accessed 30 August 2015).

process and that resources used to create new provinces may leave the country with limited funds for the elections.<sup>12</sup> The creation of the new provinces added another unplanned election for the governors of the new provinces.

Even if local elections go ahead, between eight and ten million eligible voters, mainly youth, will be excluded from voting.<sup>13</sup> The CENI has announced that they would not update the 2011 voter register for these elections, as they are part of the delayed 2011 cycle.

Divergent views over the elections are fragmenting the Presidential Majority heightening political tensions within the ruling coalition. On 16 September 2015, President Kabila expelled seven senior politicians from the Presidential Majority after they published an open letter calling on the president to respect the constitution's two-term limit.<sup>14</sup> Opposition parties, the Catholic Church, civil society, and foreign governments have also cautioned against President Kabila standing again or delays to the elections.<sup>15</sup> Any extension to President Kabila's current term could trigger a constitutional crisis and socio-political unrest.

The DRC is one of several African countries where constitutional limits on presidential terms is emerging as a controversial issue to recent or upcoming elections.<sup>16</sup> Incumbent attempts to

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<sup>12</sup> International Crisis Group, "Congo: Is Democratic Change Possible?", No 225, 5 May 2015, <http://www.crisisgroup.org/~media/Files/africa/central-africa/dr-congo/225-congo-is-democratic-change-possible> (accessed 22 October 2015); Christophe Wille, "Carving Up Congo: President Kabila's Latest Ploy to Stay in Power", *Foreign Affairs*, 21 May 2015, <https://www.foreignaffairs.com/articles/democratic-republic-congo/2015-05-21/carving-congo> (accessed 22 October 2015).

<sup>13</sup> Meeting with the CENI, Kinshasa, 21 September 2015.

<sup>14</sup> For a copy of the letter see: La Voix de l'Afrique au Canada, "Déclaration choc: Kuyngu et les G7 de la MP demandent à Kabila de quitter le pouvoir et de respecter la constitution", 14 September 2015, <http://vacradio.com/2015/09/14/declaration-choc-kyungu-et-les-g7-de-la-mp-demandent-a-kabila-de-quitter-le-pouvoir-et-de-respecter-la-constitution/> (accessed 16 October 2015).

<sup>15</sup> Radio Okapi, « RDC : La CENCO appelle le gouvernement à garantir la tenue des élections dans les délais », 2 July 2014, <http://www.radiookapi.net/actualite/2014/07/02/rdc-la-cenco-appelle-le-gouvernement-garantir-la-tenue-des-elections-dans-les-dela> (accessed 16 October 2015) Radio Okapi, "RDC: 33 ONG demandent Joseph Kabila de ne pas violer la constitution », 28 August 2015, [http://www.radiookapi.net/2015/08/28/actualite/politique/rdc-33-ong-demandent-joseph-kabila-de-ne-pas-violer-la-constitution?utm\\_source=feedburner&utm\\_medium=email&utm\\_campaign=Feed%3A+radiookapi%2Factu+u+%28Radiookapi.net%29](http://www.radiookapi.net/2015/08/28/actualite/politique/rdc-33-ong-demandent-joseph-kabila-de-ne-pas-violer-la-constitution?utm_source=feedburner&utm_medium=email&utm_campaign=Feed%3A+radiookapi%2Factu+u+%28Radiookapi.net%29) (accessed 16 October 2015), Radio France International, « Elections en RDC : L'ONU et les Etats-Unis maintiennent la pression », 27 August 2015, [http://www.rfi.fr/afrique/20150827-congo-rdc-onu-etats-unis-pression-kabila-elections-novembre-2016-presidentielle-mon?ns\\_campaign=reseaux\\_sociaux&ns\\_source=twitter&ns\\_mchannel=social&ns\\_linkname=editorial&aef\\_campaign\\_ref=partage\\_aef&aef\\_campaign\\_date=2015-08-27&dlvrit=1112231](http://www.rfi.fr/afrique/20150827-congo-rdc-onu-etats-unis-pression-kabila-elections-novembre-2016-presidentielle-mon?ns_campaign=reseaux_sociaux&ns_source=twitter&ns_mchannel=social&ns_linkname=editorial&aef_campaign_ref=partage_aef&aef_campaign_date=2015-08-27&dlvrit=1112231) (accessed 16 October 2015).

<sup>16</sup> Two of DRC's neighbours, the Republic of Congo and Rwanda, are considering constitutional

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DRC's race to silence dissent in the run up to elections

cling on to power by overturning or ignoring constitutional term-limits has sparked conflict and mass protests in Burkina Faso, and more recently, Burundi. As in DRC, the pre-election period in Burundi was preceded by a failed attempt to change the constitution to allow President Nkurunziza to stand again, growing splits within the ruling party, strong statements by the Catholic Church, and popular mobilization which was violently repressed by security forces.<sup>17</sup>

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amendments to allow President Denis Sassou Nguesso and President Paul Kagame to stand again.

<sup>17</sup> Amnesty International, Braving Bullets: Excessive force in policing demonstrations in Burundi, AFR 16/2107/2015, July 2015, <https://www.amnesty.org/en/documents/afr16/2100/2015/en/> (accessed 13 October 2015).

# ARRESTS AND DETENTIONS IN THE PRE-ELECTION PERIOD

The Congolese authorities have arbitrarily arrested opposition leaders and activists who have publicly spoken out, or demonstrated, against the possibility of President Kabila standing in the November 2016 presidential elections, seemingly in a bid to silence them. In five of the eight cases documented in this report, individuals were detained incommunicado by the ANR in Kinshasa for periods between 21 and 162 days, in violation of the requirements under Congolese law to be presented before a magistrate within 48 hours of arrest.

## FREEDOM OF EXPRESSION UNDER FIRE

Following statements by the Secretary General and National Secretary of the ruling PPRD<sup>18</sup>, which led to speculation that the constitution might be reformed to abolish term limits, opposition members organized a peaceful political rally on 4 August 2014 to oppose such a change. Jean-Bertrand Ewanga, Secretary General of the *Union pour la Nation Congolaise* (UNC) and member of the National Assembly told Amnesty International about a threatening phone call he received shortly after speaking at the rally.<sup>19</sup>

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<sup>18</sup> Radio Okapi, "RDC: le livre d'Evariste Boshab sur 'la révision de la constitution' fait polémique", 28 June 2013, <http://radiookapi.net/actualite/2013/06/28/rdc-le-livre-devariste-boshab-sur-la-revision-de-la-constitution-fait-polemique-2/> (accessed 8 August 2015); Radio Okapi, "Claude Mashala: La prochaine élection n'est pas en 2016", 18 March 2014, <http://www.radiookapi.net/actualite/2014/03/18/claude-mashala-la-prochaine-election-nest-pas-en-2016> (accessed 27 August 2015).

<sup>19</sup> Interviews with Jean-Bertrand Ewanga, Kinshasa, June and September 2015.



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*“Thirty minutes after the end of the meeting I received a call from Kalev, the head of the ANR. He asked me ‘Do you realise what you have done? You have destabilised the regime. Can you present yourself in my office?’ I told him I did not want to go through the same experience as Chebeya<sup>20</sup>. He got very angry and said, ‘where are you right now?’ I told him I would call him back and hung up. I called some friends who advised me to go home”.*<sup>21</sup>

Jean-Bertrand Ewanga was arrested by security forces at his home early the following morning. One of his family members explained how the security forces started knocking at their gate around 2 – 3am:

*“They told the policeman who was guarding our compound, ‘it is the ANR, you have to open up’. There were two jeeps with more than 12 officers, they were all hooded. Our guard refused to let them pass. Only one jeep stayed and at 6:30 am they started to climb over the walls. There were both ANR officers in plain clothes and policemen in uniform. They were not hooded anymore. I was in the main house... The boys were in the small house in the corner of our compound. The agents started to brutally handcuff the boys (aged 16-25). [Jean-Bertrand Ewanga] could not bear to see them being treated like that and walked out of the house. They had an arrest warrant signed by the Attorney General, which stated charges of incitement to hatred and insulting the Head of State.”*<sup>22</sup>

## **LEGAL PROTECTION FOR PARLIAMENTARIANS IN DRC**

According to Article 107 of the Constitution of the DRC, parliamentarians cannot be prosecuted for their opinions or votes when carrying out their professional duties. Members of parliament can only be arrested or prosecuted if their immunity is lifted, in accordance with clear procedures which govern the lifting of

<sup>20</sup> Floribert Chebeya, a leading Congolese human right activist was asked to present himself in the office of Général John Numbi, Director General of the Police on 1 June 2010 at 5pm, he was found dead the day after. The circumstances of his murder are not yet clear.

<sup>21</sup> Interview with Jean-Bertrand Ewanga, Kinshasa, June 2015.

<sup>22</sup> Interview with family member of Jean-Bertrand Ewanga, Kinshasa, 16 June 2015.

immunity. The sole exception is in cases of *flagrante delicto*.<sup>23</sup>

The Court of Cassation has jurisdiction to hear matters pertaining to parliamentarians, and is a court of final instance, meaning that there is no right of appeal.<sup>24</sup> The absence of the right to have these decisions reviewed by a higher court violates the right to fair trial contravening Article 14 of the International Covenant on Civil and Political Rights (ICCPR).<sup>25</sup>

Jean-Bertrand Ewanga was immediately brought before the Supreme Court of Justice on the grounds that he was allegedly caught in *flagrante delicto*.<sup>26</sup> When the trial was suspended over a procedural question, Jean Bertrand Ewanga was taken to Makala Central Prison.<sup>27</sup> After an intervention by the National Assembly, he was transferred to a hotel room where he was held under house arrest for the duration of the trial.<sup>28</sup>

**“The opposition in DRC is divided. When he was still free, Ewanga was the one who was good at bringing them together”.**<sup>29</sup>

On 11 September 2014, Jean Bertrand Ewanga was sentenced to one year in prison for insulting the Head of State, the Presidents of the Senate and the National Assembly, and the Prime Minister.<sup>30</sup> He was released at the end of his sentence, on 30 July 2015.

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<sup>23</sup> The Constitution of the Democratic Republic of Congo, Article 107.

<sup>24</sup> Article 93 Law n°13/011-B of 11 Avril 2013 on the organisation, functioning and competences of the jurisdictions of the judiciary. Pending the establishment of the Court of Cassation, the Supreme Court of Justice still sits as Court of Cassation.

<sup>25</sup> Human Rights Committee, General Comment n°32, 23 August 2007, para. 47.

<sup>26</sup> Caught in the act or *flagrante delicto*.

<sup>27</sup> Interview with a lawyer of the defence team of Jean-Bertrand Ewanga, 15 June 2015.

<sup>28</sup> Interview with family member of Jean-Bertrand Ewanga, Kinshasa, 16 June 2015.

<sup>29</sup> Interview with family member of Jean-Bertrand Ewanga, Kinshasa, 16 June 2015.

<sup>30</sup> Radio France Internationale, « RDC : un an de prison ferme pour Jean-Bertrand Ewanga », 12 September 2014, <http://www.rfi.fr/afrique/20140912-rdc-an-prison-ferme-jean-bertrand-ewanga-unc> (accessed 21 October 2015).



## Vano Kiboko

**Pavilion 8, Room 13**  
***Makala Central Prison***

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Vano Kiboko used to be a parliamentarian within the Presidential Majority representing Kolwezi Constituency in ex-Katanga Province. After his arrest and five months of arbitrary detention, Vano Kiboko decided to leave the Presidential Majority in May 2015. He is also the president of a non-profit association, 'Lwanzo Lwa Mikuba', which brings together the Sanga-speaking people of Katanga.

Vano Kiboko held a press conference on 27 December 2014 at the Hotel Karavia in the provincial capital, Lubumbashi. During the press conference he condemned excessive use of force by the police during a demonstration in Kolwezi on 8 December 2014, which resulted in the death of a 38-year-old woman. Vano Kiboko reiterated his call to the authorities to recognize the district of Kolwezi as an independent province.<sup>31</sup> In response to a journalist's question, Vano Kiboko suggested that the Presidential Majority should start preparing President Kabila's successor and that Moise Katumbi, the governor of ex-Katanga Province, would be the most suitable candidate.<sup>32</sup>

When Vano Kiboko tried to leave for the USA the following day, his passport was confiscated at the airport in Kinshasa. He was told to retrieve his passport from the Immigration Office (DGM) in Kinshasa which he did on 29 December. Vano Kiboko was approached by four people in plain clothes as he left the DGM offices with his daughter and lawyer. Without any explanation or arrest warrant, they pulled him into a white van and drove off.<sup>33</sup>

About an hour later, around 7pm, Vano Kiboko's lawyer managed to find him at the Attorney General's office. Vano Kiboko was then placed under police custody and interrogated about the press conference. After 48 hours in police custody he was transferred back to the Attorney General's office on the afternoon of 31 December.<sup>34</sup> As everyone had left the office, Vano Kiboko was arbitrarily held at the Attorney General's office without any formal procedure until

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<sup>31</sup> Transcript of the press conference, 27 December 2014, Hotel Karavia, seen by Amnesty International.

<sup>32</sup> Interview with individual familiar with the case, 27 July 2015.

<sup>33</sup> Interview with individual familiar with the case, Kinshasa, 15 June 2015.

<sup>34</sup> Interview with individual familiar with the case, Kinshasa, 15 June 2015.

2 January 2015 when the Advocate General for the State Prosecutor issued a provisional arrest warrant and ordered his transfer to Makala Central Prison.<sup>35</sup>

On 9 January 2015, Vano Kiboko was charged with incitement to hatred, spreading false rumours and defamation linked to his statement at the press conference.<sup>36</sup> In May 2015 Vano Kiboko announced from his prison cell that he was leaving the Presidential Majority and joined the opposition.<sup>37</sup> On 14 September he was convicted to three years' imprisonment for incitement to racial and tribal hatred and spreading false rumours.<sup>38</sup> Amnesty International considers that Vano Kiboko is a prisoner of conscience, arrested and detained solely for peacefully exercising his right to freedom of expression.

Jean-Claude Muyambo, president of the political party *Solidarité Congolaise pour la Démocratie* (SCODE), a constituent party within the Presidential Majority coalition, also publicly spoke out against a third term for President Kabila. On 15 November 2014, his plane was refused permission to land at the airport of the city Mbuji-Mayi where he was scheduled to address a political meeting. He was forced to fly back to Lubumbashi.<sup>39</sup> Jean-Claude Muyambo announced later that day that his party was leaving the Presidential Majority.<sup>40</sup> Five days later, on 20 November 2014, a decree from the Ministry of Communication and Media accused Jean-Claude Muyambo's radio and television station '*Radio Télévision Lubumbashi Jua* (RTLJ) of incitement to hatred and rebellion.<sup>41</sup> RTLJ's transmission signal was cut on 24 November, and the station remains closed.<sup>42</sup> Jean-Claude Muyambo was arrested in January 2015 and remains

<sup>35</sup> To legalise any detention after 48 hours, a magistrate needs to issue a provisional arrest warrant which prolongs the detention for a further five days, see Article 28 du Code de procédure pénale.

<sup>36</sup> Prosecutions' request for court hearing for Vano Kiboko, 9 January 2015, seen by Amnesty International.

<sup>37</sup> La Voix d'Afrique aux Canada, « Vano Kiboko, l'un des nouveaux leaders de l'UDPS/Kibassa, vient de claquer la porte de la Majorité Présidentielle », 30 May 2015, <http://vacradio.com/2015/05/30/vano-kiboko-lun-des-nouveaux-leaders-de-ludpskibassa-vient-de-claquer-la-porte-de-la-majorite-presidentielle/> (accessed 5 September 2015).

<sup>38</sup> Radio Okapi, « Kinshasa : l'ex député Vano Kiboko condamné à 3 ans de prison », 16 September 2015, <http://www.radiookapi.net/2015/09/16/actualite/justice/kinshasa-lex-depute-vano-kiboko-condamne-3-ans-de-prison> (accessed 18 October 2015).

<sup>39</sup> Interview with Jean-Claude Muyambo, Kinshasa, 11 June 2015.

<sup>40</sup> Radio Okapi, « RDC : Jean-Claude Muyambo quitte la Majorité Présidentielle », 16 November 2014, <http://www.radiookapi.net/actualite/2014/11/16/rdc-jean-claude-muyambo-quitte-la-majorite-presidentielle> (accessed 18 October 2015).

<sup>41</sup> Ministerial order n°26/CAB/MRPINC/LMO/MIN/2014 of 20 November 2014 on the transmission ban for a private company in the audiovisual sector Radio Television Lubumbashi Jua, seen by Amnesty International.

<sup>42</sup> Lubumbashi infos, "La radio-télévision Lubumbashi a arrêté d'émettre, <http://lubumbashiinfos.mondoblog.org/archives/278> (accessed 8 August 2015).

in custody (see below, clampdown on political protest).

## CLAMPDOWN ON POLITICAL PROTEST

The public protests in January 2015 against proposed changes to the electoral law were violently repressed by security forces. According to the Ministry of Justice, 280 people were arrested over three days, although the figure may have been higher.<sup>43</sup> Most of those detained were gradually released without charge in the following weeks. Christopher Ngoyi Mutamba, a human rights defender, who was investigating killings by security forces during the protests, was arbitrarily arrested, and held in incommunicado detention for 21 days. Christopher Ngoyi was later charged with spreading false rumours, incitement to civil disobedience, inciting racial hatred, tribalism, and theft with violence. Jean-Claude Muyambo and Cyrille Dowe, both leaders of the political party SCODE, were also arrested.

Security forces surrounded the UNC headquarters the night before the protests, effectively preventing Vital Kamerhe, president of the UNC, and Jean-Claude Muyambo, who were in the building, from attending the protests.

Jean-Claude Muyambo explained to Amnesty International: *"On Sunday 18 January I spent the night at the UNC headquarters with Vital Kamerhe. When we arrived at 11:30pm the police were already in the surrounding area. Vital continued to tweet and I went to rest. When I woke up at around 1:35am [the building] was already encircled. They had put chains on the front door which were locked with padlocks. There were about 20 policemen. Around 5am the Republican Guard was already there. At 8am the protests started and we stayed inside. In the end troops from MONUSCO [United Nations Organization Stabilization Mission in the Democratic Republic of the Congo] intervened and we were released around 5pm".*<sup>44</sup>

By preventing these opposition politicians from participating in the protests, the security forces violated their rights not to be arbitrarily detained as well as their rights to peaceful assembly, guaranteed in Article 26 of the Congolese Constitution, Article 11 of the African Charter on Human and Peoples' Rights, and Article 21 of the ICCPR to which the DRC is a state party.<sup>45</sup>

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<sup>43</sup> Meeting with the Vice-Minister of Justice, Kinshasa, 15 June 2015; UN News Centre, "UN human rights office urges probe into excessive use of force in DR Congo protest", 23 January 2015, <http://www.un.org/apps/news/story.asp?NewsID=49890#.ViOsb34rLIU> (accessed 18 October 2015). The United Nation High Commissioner for Human Rights reported more than 300 cases of detention, while national human rights organisations spoke about 700 arrests.

<sup>44</sup> Interview with Jean-Claude Muyambo, Kinshasa, 11 June 2015.

<sup>45</sup> Constitution of the DRC, Article 26, African Charter on Human and Peoples' Rights (ACHPR), adopted 27 June 1981, OAU Doc.CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986, ratified by DRC 9 December 1982, Article 11, <http://www.achpr.org/instruments/achpr/ratification/> (accessed on 21/10/2015), International Covenant on Civil and Political Rights (ICCPR), adopted 16 December 1966, G.A.Res.2200A (XXI), 21 U.N.GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force 23 March 1976, ratified by DRC 5 October 1983, Article 21, [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-4&chapter=4&lang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en)



## Jean-Claude Muyambo

**Pavilion 1, Room 17**  
**Makala Central Prison**  
**Currently detained in a private hospital**

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Security forces arrested Jean-Claude Muyambo at his home in the early morning hours of 20 January. *“At around 3:30am I heard people climbing over the walls of our compound. They were well-armed military men. They pointed their gun at our guard who is already an old man. They forced [open] the door of our house. There were four jeeps in total, 12 soldiers of the Republican Guard who were wearing police uniform and eight ANR agents who were in civilian clothes.”*

The security forces broke Jean-Claude Muyambo's left foot when they trampled on it with heavy boots as they arrested him.<sup>46</sup> Jean-Claude Muyambo remains under arrest, but at a private clinic where he is receiving treatment at his own expense.

Immediately after his arrest, Jean-Claude Muyambo was taken to the ANR offices before being transferred to the Office of the Attorney General later that day. The warrant for Jean-Claude Muyambo's arrest was issued by the Prosecutor General of Lubumbashi, and put him under investigation for breach of confidence and selling of property that did not belong to him (*stellionat*).<sup>47</sup> The allegations against Jean-Claude Muyambo date back to 2002 when he was a practicing lawyer in Lubumbashi. A Greek expatriate, Emmanuel Stoupis, had contracted Jean-Claude Muyambo to re-acquire and sell properties he had lost following a 1976 decree ordering the nationalisation of foreigners' property. Emmanuel Stoupis lodged a complaint against Jean-Claude Muyambo for delays in this process, which he later withdrew in April 2014.<sup>48</sup>

Seven days after Jean-Claude Muyambo's arrest, Emmanuel Stoupis filed a new complaint against him from Athens.<sup>49</sup> Following the work of a rogatory commission, which could not

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(accessed on 21/10/2015).

<sup>46</sup> Interview with Jean-Claude Muyambo, Kinshasa, 11 June 2015; medical report seen by Amnesty International

<sup>47</sup> Interview with Jean-Claude Muyambo, Kinshasa, 11 June 2015.

<sup>48</sup> Interview with one of Jean-Claude Muyambo's defence lawyers, Kinshasa, 6 June 2015.

<sup>49</sup> Statement by Emmanuel Stoupis, 30 April 2015, seen by Amnesty International.

establish whether Jean-Claude Muyambo had sold property that did not belong to him, the allegations of *stellionat* were dropped when his file was transferred to court. Another allegation, threatened assault, was added to Jean-Claude Muyambo's file at that stage. When Emmanuel Stoupis was asked by the prosecution whether he had ever been a victim of such threats, he answered that he had received a text message from Jean-Claude Muyambo's phone number asking for his address in Greece and that "once when he walked out of a supermarket in Lubumbashi, he had been followed by two people in civilian clothes, who called him by his name".<sup>50</sup>

On 12 May 2015, the case was transferred to the *Tribunal de paix* in Kinshasa/Ngaliema. Jean Claude Muyambo was charged with breach of confidence, illegal withholding of documents, and threatened assault. The charge 'threaten assault' is based on the allegation that Jean-Claude Muyambo had sent death threats by text message to Emmanuel Stoupis in Athens, because he refused to give his address in Greece and pay his honorarium fees.<sup>51</sup>

Considering the timing of Jean Claude Muyambo's arrest, the way in which he was arrested, and the inconsistency between the statements and the charges for which he is prosecuted, Amnesty International believes that his prosecution and detention is politically motivated, and aimed at preventing him from playing an active role within the opposition. Jean-Claude Muyambo's trial is currently ongoing. He remains in detention at a private hospital.



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Cyrille Dowe is Secretary General of SCODE, the political party which left the Presidential Majority after a dispute on the third term issue (see previous section 'Freedom of Expression under fire'). Cyrille Dowe was living in Lubumbashi, in ex-Katanga Province, but travelled to Kinshasa to help coordinate the 19 January protests.

Cyrille Dowe was arrested by police on the morning of 19 January. They confiscated his phone and his iPad, which he was using to take pictures of the demonstration at the time of his arrest.

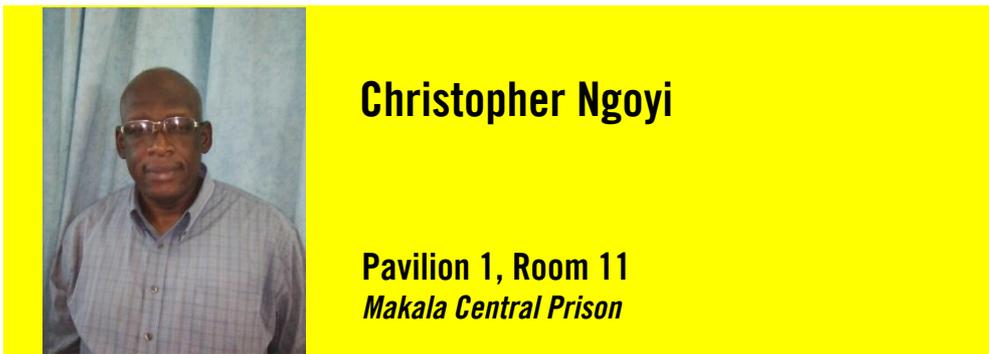
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<sup>50</sup> Statement by Emmanuel Stoupis, 30 April 2015, seen by Amnesty International.

<sup>51</sup> Prosecutions' request for court hearing for Jean-Claude Muyambo, 12 May 2015, seen by Amnesty International.

Cyrille Dowe remained incommunicado under ANR custody for almost five months. In June 2015, the Minister of the Interior, Attorney General and the Vice-Minister of Justice told Amnesty International that they had not heard of Cyrille Dowe's arrest, and committed to follow up.<sup>52</sup>

A few days later, on 29 June, Cyrille Dowe was transferred to Makala Central Prison.<sup>53</sup> He was charged with inciting civil disobedience and insulting the Head of State for having posted a cartoon picture found on his iPad, showing a wrestling match between President Kabila and Jean-Claude Muyambo with Moïse Katumbi as a referee.<sup>54</sup> On 8 October Cyrille Dowe was acquitted. He was released from Makala prison on 8 October.



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Christopher Ngoyi is a respected human rights defender with a considerable following. He is the president of a human rights NGO called Congo Culture and Development Synergy (*Synergie Congo Culture et Développement*) and the coordinator of a civil society platform called Civil Society of Congo (*Société Civile du Congo*). In early 2014, Christopher Ngoyi had helped create a coalition, Save the Congo (*Sauvons le Congo*), bringing together opposition political parties and civil society organizations opposed to a third term for President Kabila.

Christopher Ngoyi's friends and civil society colleagues describe him as someone who "can mobilize people behind a specific cause".<sup>55</sup> "He is not someone who speaks on television, but he takes to the street and speaks to the people. He is a grassroots activist".<sup>56</sup>

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<sup>52</sup> Meeting with the Minister of Interior, Kinshasa, 13 June 2015; meeting with the Vice-Minister of Justice, Kinshasa, 15 June 2015; meeting with the Attorney General, Kinshasa, 16 June 2015.

<sup>53</sup> Phone interview with family member of Cyrille Dowe, Nairobi, 27 July 2015.

<sup>54</sup> Prosecutions' request for court hearing for Cyrille Dowe, 24 July 2015, seen by Amnesty International.

<sup>55</sup> Interview with colleagues of Christopher Ngoyi, Kinshasa, June 2015.

<sup>56</sup> Interview with colleagues of Christopher Ngoyi, Kinshasa, June 2015.

## PROTECTION OF HUMAN RIGHTS DEFENDERS IN THE DRC

While the DRC has endorsed several international and regional declarations which commit states to promote and protect the work of human rights defenders, there is no specific domestic framework that protects them.

A draft bill on the protection of human rights defenders was first introduced to parliament by the government in May 2011.<sup>57</sup> A revised version of the bill was submitted in 2014, but was not adopted. The government rejected recommendations made during its Universal Periodic Review 2014 before the UN Human Rights Council, to adopt a law protecting human right defenders.<sup>58</sup> The Minister of Justice and Human Rights stated at the time that this law was not a government priority.<sup>59</sup>

Human rights defenders have previously been targeted, including during the 2011 elections, for carrying out legitimate activities promoting and defending human rights. They continue to be targeted in the run-up to the 2016 elections, as evidenced by the prosecution of Christopher Ngoyi and others documented in this report.

Christopher Ngoyi did not participate in the 19 January protests. A family member explained to Amnesty International that he kept a low profile immediately before the protests. The family member said that he told him *"with the planned events [reference to planned protests] it is dangerous for me in the city"*.<sup>60</sup> Christopher Ngoyi had stayed at a friend's house close to UPN (*Université Pédagogique Nationale*) the day before, and during, the protests. He only returned to his home in Kinshasa on the evening of 20 January.

Christopher Ngoyi was arrested by security agents on the evening of 21 January, while meeting colleagues at Hotel Intermatonge. Events leading up to his arrest suggest that he was targeted for carrying out his legitimate activities as a human rights defender.

Earlier that day, Christopher Ngoyi, together with a delegation of political opposition leaders, visited Kinshasa General Hospital, also known as ex-Mama Yemo Hospital, to speak to people who had been wounded. According to patients at the hospital, they had been told not to speak

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<sup>57</sup> Draft law on the promotion and protection of human rights defenders and those denouncing acts of corruption and embezzlement of public funds in the DRC.

<sup>58</sup> Human Rights Council, Report of the Working Group on the Universal Periodic Review, Democratic Republic of Congo, A/HRC/27/5, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G14/075/47/PDF/G1407547.pdf?OpenElement> (accessed 22 October 2015); UPR Info, Democratic Republic of Congo, Responses to recommendations and voluntary pledges, [http://www.upr-info.org/sites/default/files/document/congo\\_democratic\\_republic/session\\_19\\_-\\_april\\_2014/recommendations\\_and\\_pledges\\_drc\\_2014.pdf](http://www.upr-info.org/sites/default/files/document/congo_democratic_republic/session_19_-_april_2014/recommendations_and_pledges_drc_2014.pdf) (accessed 22 October 2015).

<sup>59</sup> Justice and Peace Nederland, "Democratic Republic of Congo: Protection of human rights defenders", April 2015, [http://www.justiceandpeace.nl/userfiles/files/150430\\_JPN\\_Lobbydocument\\_Congo.pdf](http://www.justiceandpeace.nl/userfiles/files/150430_JPN_Lobbydocument_Congo.pdf) (accessed 10 August 2015).

<sup>60</sup> Interview with family member of Christopher Ngoyi, Kinshasa, 9 June 2015.

to the delegation by a woman who they suspected was an intelligence agent.<sup>61</sup> The delegation attempted to challenge the woman, which led to an altercation before the delegation left.

A witness at the hospital, who knew Christopher Ngoyi, phoned him to report that security forces who arrived after the delegation left, shot indiscriminately in the hospital, injuring several visitors.<sup>62</sup> Later that day Christopher Ngoyi passed on this information to a media outlet denouncing the presence of intelligence agents and armed security forces in the hospital.<sup>63</sup>

Christopher Ngoyi met with four colleagues at the Hotel Intermatonge that night to exchange information and discuss next steps.<sup>64</sup> One of them told Amnesty International how Christopher Ngoyi was arrested, "*We saw a white jeep arriving. Four people in military police uniforms and one person in civilian clothes stepped out. They walked straight to the table where Christopher was sitting. They did not brutalise him. He just stood up without resisting and they handcuffed him*".<sup>65</sup>

Christopher Ngoyi's colleagues unsuccessfully tried to follow the vehicle. For 21 days there was no news of Christopher Ngoyi's whereabouts. His family and colleagues went to places of detention across the city but could not locate him. The day after his arrest, plain clothed security agents arrived at Christopher Ngoyi's house around 6am with a search warrant. They searched the house and took some documents.<sup>66</sup>

**« Christopher is someone who mobilises, he had to be isolated, because he is a strategist ».**<sup>67</sup>

Following pressure from national and international human rights organizations, on 26 January, the General Administrator of the ANR confirmed that Christopher Ngoyi was in ANR custody, but did not reveal where precisely he was detained.<sup>68</sup> On 10 February, a group of NGO

<sup>61</sup> Interview with individual familiar with the case, Kinshasa, 9 June 2015.

<sup>62</sup> Interview with colleagues of Christopher Ngoyi, Kinshasa, 11 June 2015.

<sup>63</sup> RTBF, "Avant d'être enlevé, il dénonçait des exactions de soldats de Kabila », 30 January 2015, [http://www.rtf.be/info/monde/detail\\_avant-d-etre-enleve-il-denoncait-des-exactions-de-soldats-de-kabila?id=8877941](http://www.rtf.be/info/monde/detail_avant-d-etre-enleve-il-denoncait-des-exactions-de-soldats-de-kabila?id=8877941) (accessed 8 August 2015).

<sup>64</sup> Interview with a colleague of Christopher Ngoyi, Kinshasa, 9 June 2015; interview with two witnesses of Christopher Ngoyi's arrest, Kinshasa, 11 June 2015.

<sup>65</sup> Interview with witness of Christopher Ngoyi's arrest, Kinshasa, 11 June 2015.

<sup>66</sup> Interview with family member of Christopher Ngoyi, Kinshasa, 9 June 2015.

<sup>67</sup> Interview with colleagues of Christopher Ngoyi, Kinshasa, 11 June 2015.

<sup>68</sup> Human Rights Watch, "DR Congo: Intelligence Agency Says Holding Activist", 27 January 2015, <https://www.hrw.org/news/2015/01/27/dr-congo-intelligence-agency-says-holding-activist> (accessed 9 August 2015).

representatives met with the Minister of Internal Affairs, Professor Boshab. NGO representatives said that the Minister agreed that they could visit Christopher Ngoyi together. On exiting the building, the NGO representatives found that a public stage had been set up, and Christopher Ngoyi was brought out before the press.<sup>69</sup> He sat on a chair in front of cameras as a list of accusations was read out by a judicial police officer. They included instructing protestors to commit acts of violence, pillage and vandalism.<sup>70</sup>

One of the documents confiscated after Christopher Ngoyi's arrest is what the ANR referred to as "*a handwritten report of the visit, on 21 January, to the General Hospital of Kinshasa (ex-Mama Yemo) stating the biased figure of 39 deaths amongst the protesters on 19 and 20 January 2015*".<sup>71</sup>

On 24 February, the case was referred to the *Tribunal de Grande Instance de Kinshasa/Matete*. Christopher Ngoyi was charged with spreading false rumours, inciting racial hatred, inciting others to disobey the authorities, and inciting others to steal and pillage.<sup>72</sup> His trial is ongoing. Amnesty International considers that Christopher Ngoyi is a prisoner of conscience, deprived of his liberty for having exercised his human rights.

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<sup>69</sup> According to the NGO representatives, journalists present told them that they had been called by the ministry.

<sup>70</sup> Radio Okapi, "RDC: Christopher Ngoyi présenté au ministre d l'Intérieur", 10 February 2015, <http://radiookapi.net/actualite/2015/02/10/rdc-christopher-ngoyi-presente-au-ministre-de-linterieur/> (accessed 14 August 2015).

<sup>71</sup> Police report of ANR investigations in the file of Christopher Ngoyi Mutamba, seen by Amnesty International.

<sup>72</sup> Prosecutions' request for court hearing for Christopher Ngoyi, 24 February 2015, seen by Amnesty International.



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By 21 January, protests in Kinshasa had been quashed, but those in Goma, North Kivu Province were growing in strength. Ernest Kyaviro, Secretary General of the political opposition party *Rassemblement pour la Démocratie Congolais/Kisangani Mouvement de Libération* (RDC/KML) in North Kivu, and a former parliamentarian, was trying to keep a low profile when he was arrested in Goma on 22 January. His wife told Amnesty International that he had been avoiding areas where the protests were taking place out of fear of possible arrest.

*"I had asked him to accompany me to the small market that day. When we turned around the corner of our house, we saw there were a lot of young people. He told me 'this is not a good idea, I should not go there. I will wait for you here. Do your shopping and come back'. But the people saw him and started to chant, 'honourable, honourable' (the title of respect used for parliamentarians). There were some military men close by, who were in plain clothes and they started to beat him up".<sup>73</sup>*

The police confirmed to Ernest Kyaviro's wife that they were holding him, but refused to grant her access to see him. Very early in the morning of 23 January she received a call from a number she did not recognize. *"It was my husband to say he was already in the plane for Kinshasa. It only lasted 20 seconds, they had just handed him the phone,"* she said.<sup>74</sup>

Ernest Kyaviro's wife became a target of harassments when she spoke out against her husband's arrest. She received threats in Goma, just after the arrest of her husband and when she was in Kinshasa during and after the trial.<sup>75</sup>

Ernest Kyaviro was held incommunicado by the ANR in Kinshasa for 86 days. On 15 April, he was transferred to Makala Central Prison. He was convicted for inciting civil disobedience on

<sup>73</sup> Interview with the wife of Ernest Kyaviro, Kinshasa, 13 June 2015.

<sup>74</sup> Interview with wife of Ernest Kyaviro, Kinshasa, 13 June 2015.

<sup>75</sup> Interview with the wife of Ernest Kyaviro, Kinshasa, 13 June 2015; phone interview with the wife of Ernest Kyaviro, September 2015.

18 September and sentenced to the maximum penalty of three years' imprisonment. Amnesty International considers him a prisoner of conscience.

## YOUTH MOVEMENTS AS TARGETS

Filimbi ('Whistle' in Kiswahili) was established in April 2014 by two Congolese youth organizations, *Jeunesse pour une Nouvelle Société* (JNS) and *Forum National de la Jeunesse pour l'Excellence* (FNJE), and a youth movement called *Lutte pour le changement* (LUCHA). Filimbi is trying to encourage dialogue between Congolese youth and political actors and to foster the participation of youth in political and social questions in DRC.<sup>76</sup>

On 14-15 March 2015, Filimbi organized a workshop to discuss youth civic engagement in political processes in DRC. The workshop brought together youth activists, including four from Senegal and Burkina Faso, representing groups who had campaigned against their respective presidents holding on to power. *Y'en a Marre*, a civil society group from Senegal, successfully mobilized against President Wade's decision to stand for a third term. President Wade refused to stand down, but accepted defeat when he lost the election. In Burkina Faso, *Balai Citoyen* and other protest groups contributed to the ousting of President Blaise Compaoré in October 2014 after 27 years in power and to the formation of a transition government.

A press conference to close the workshop and launch the Filimbi platform was disrupted by members of the Congolese security forces, who stormed the venue and arrested 27 participants, including international journalists and a US diplomat. Another Filimbi member was arrested the following day, on 16 March.

The international journalists and the US diplomat were released the same day, but the four activists from *Y'en a Marre* and *Balai Citoyen* were declared *personae non grata* and expelled from the DRC.<sup>77</sup> At a press conference, government spokesperson Lambert Mende alleged the West African activists had come to DRC to promote violence by training youth groups close to the opposition to use violence against other groups or against government institutions.<sup>78</sup>

The Congolese activists were held incommunicado by the ANR. Initially, it was unclear how many were detained, because an unknown number of activists present at the press conference managed to escape arrest and went into hiding. By 28 March, only three people, Sylvain Saluseke, Fred Bauma and Yves Makwambala were still detained. Sylvain Saluseke was released without charge on 21 April 2015.

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<sup>76</sup> For more information see <http://filimbi.org/qui%20sommes-nous.php> (accessed 25 September 2015)

<sup>77</sup> Amnesty International, "DRC: Release human rights activists unlawfully held in Kinshasa", 30 March 2015, <https://www.amnesty.org/en/latest/news/2015/03/liberez-des-defenseurs-des-droits-humains-detenus-illegalement-a-kinshasa/> (accessed 21 October 2015).

<sup>78</sup> Radio Okapi, "Des leaders de Y'en a marre et du Balai citoyen arrêtés à Kinshasa, 16 March 2015, <http://radiookapi.net/actualite/2015/03/16/des-leaders-de-yen-marre-du-balai-citoyen-arretes-kinshasa/> (accessed 8 August 2015).

Protests and actions in solidarity with those detained organized by LUCHA in Goma were systematically repressed by the security forces. On the morning of 17 March, 10 activists from LUCHA were arrested in Goma as they staged a sit-in protesting the arrests outside the ANR's provincial office.<sup>79</sup> After being ill-treated by the ANR agents, they were released the same evening.<sup>80</sup>

On 17 March, Olivier Ndoole, a lawyer and human rights defender was refused access to the LUCHA activists in ANR detention and beaten up by unknown assailants that same evening. He was hospitalised following the incident.<sup>81</sup>

On the evening of 21 March, Serge Sivya, another LUCHA activist was forced into a car by unknown assailants while he was walking home. He was held in an unknown location for three days and questioned about LUCHA's activities and its links with others, before being released. He and other LUCHA activists had received several threatening text messages and phone calls since they started campaigning for the release of their colleagues held in Kinshasa.<sup>82</sup>

On 4 April, LUCHA launched a daily symbolic action to demand the release of their colleagues who had been held in secret detention in Kinshasa since 15 March 2015. People on the street were asked to blow whistles from 5 to 5:05pm. On 7 April four activists, Tresor Akili, Vincent Kasereka, Gentil Mulume and Sylvain Kambere, were arrested at '*Deux Lampes*' roundabout, in Goma. They were explaining their action to bystanders and distributing whistles at the time of their arrest.<sup>83</sup> On 13 April, the Public Prosecutor signed a provisional arrest warrant prolonging their detention. The four were transferred to Munzenze prison in Goma the same day. The activists were granted bail and temporarily released on 29 April.<sup>84</sup> Their trial began on 7 August. On 18 September, they were found guilty of incitement to civil disobedience and sentenced to six months' suspended imprisonment with 12 months' probation.<sup>85</sup> In practice, they will be under judicial observation for a year. Their conviction violates their right to peaceful

<sup>79</sup> Amnesty International, "DRC: Free human rights activists", 19 March 2015, <https://www.amnesty.org/en/latest/news/2015/03/free-human-rights-activists/> (accessed 8 August 2015).

<sup>80</sup> Human Rights Watch, "DR Congo: Release 7 Detained Democracy Activists", 15 April 2015, <https://www.hrw.org/news/2015/04/15/dr-congo-release-7-detained-democracy-activists> (accessed 8 August 2015).

<sup>81</sup> Phone interview with Olivier Ndoole, 18 March 2015.

<sup>82</sup> Phone interview with LUCHA activist, 23 March 2015.

<sup>83</sup> Amnesty International, "DRC: Four activists detained for symbolic action", AFR 62/1465/2015, 15 April 2015, <https://www.amnesty.org/en/documents/afr62/1465/2015/en/> (accessed 8 August 2015).

<sup>84</sup> Amnesty International, "DRC: Further information: Activists to stand trial, released on bail", AFR 62/1619/2015, 19 May 2015, <https://www.amnesty.org/en/documents/afr62/1619/2015/en/> (accessed 8 August 2015).

<sup>85</sup> Radio Okapi, "Goma: 4 militants de la Lucha condamnés à 6 mois de prison avec sursis », 19 September 2015, <http://www.radiookapi.net/2015/09/19/actualite/justice/goma-4-militants-de-la-lucha-6-mois-de-prison> (accessed 21 October 2015).

assembly, and has a chilling effect on freedom of association across the country.

In Kinshasa, the designer of the Filimbi logo was arrested at his workplace on 4 April. When Amnesty International asked the ANR's General Administrator for information on his whereabouts, Kalev Mutond denied that he was in ANR custody.<sup>86</sup> He was released after three days in ANR detention.

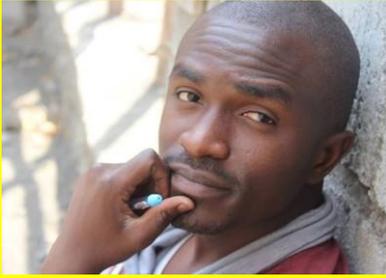
On 8 August, Bienvenu Matumo, a LUCHA activist studying in Kinshasa, received a phone call from someone purporting to be a student who insisted on meeting him that day. The caller turned out to be an ANR agent. Bienvenu Matumo was forced into a car and brought to the ANR's detention facilities.<sup>87</sup> He was held in secret detention and questioned about his links with LUCHA and Filimbi before being released without charge on 12 August.<sup>88</sup>

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<sup>86</sup> Phone call with Kalev Mutond, General Administrator of the ANR, 8 April 2015.

<sup>87</sup> Amnesty International, "Democratic Republic of Congo: whereabouts of Lucha activist unknown: Bienvenu Matumo", AFR 62/2261/2015, <https://www.amnesty.org/en/documents/afr62/2261/2015/en/> (accessed 21 October 2015).

<sup>88</sup> Phone interview with Bienvenu Matumo, 15 August 2015.



## Fred Bauma & Yves Makwambala

**Pavilion 1, Room 17**  
***Makala Central Prison***



© Private

Fred Bauma and Yves Makwambala were held in incommunicado detention by the ANR. In late March, the father of Yves, who lives in Kinshasa, received a phone call from the ANR. They confirmed that they were detaining his son and said he could bring food.<sup>89</sup> The family of Fred who lives in Goma never received confirmation that their son was held by the ANR.<sup>90</sup> Both of them had been held without charge and without access to legal assistance.

After 40 days in detention, Yves Makwambala was transferred from ANR detention to Makala Central Prison on 24 April. Fred Bauma was transferred to the same prison after 50 days in ANR detention on 4 May.

On 3 June, Fred Bauma and Yves Makwambala were charged with belonging to an association formed for the purpose of attacking people and property; plotting against the Head of State; and attempting to either destroy or change the “constitutional regime” or incite people to take up arms against state authority.<sup>91</sup> Four Filimbi leaders who remain at large were charged in

<sup>89</sup> Interview with family member of Yves Makwambala, Kinshasa, 8 June 2015.

<sup>90</sup> Regular communication with family members of Fred Bauma and other individuals familiar with the case, April-June 2015.

<sup>91</sup> Interview with the collective of lawyers defending Fred Bauma and Yves Makwambala, Kinshasa, 13

absentia with the same offences. Fred Bauma was also charged with disturbing the peace, and Yves Makwambala with publicly offending the Head of State. One of the charges, belonging to a criminal association, carries a possible death sentence. Amnesty International considers Fred Bauma and Yves Makwambala prisoners of conscience, detained for solely having peacefully exercised their rights to freedom of expression and association.

On 27 March a parliamentary commission was set up to “collect information on how the security services had managed” the Filimbi dossier. The commission in its report on 20 April concluded that “no evidence had been found that would confirm Filimbi as having any terrorist characteristics”.<sup>92</sup> After a closed session of parliament on 12-13 June where the report was discussed, the parliament recommended a political solution be found to release Fred Bauma and Yves Makwambala.<sup>93</sup>

Nevertheless, the two remain in detention and the trial against them is ongoing.

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June 2015.

<sup>92</sup> *Rapport de mission d'information relatif à la gestion par les services publics du dossier des organisateurs des rencontres « Y'en a marre »*, seen by Amnesty International.

<sup>93</sup> Amnesty International, “DRC: Free ‘Filimbi’ activists over 200 rights groups urge respect for free expression, assembly”, 15 June 2015, <https://www.amnesty.org/en/latest/news/2015/06/drc-free-filimbi-activists-over-200-rights-groups-urge-respect-for-free-expression/> (accessed 14 August 2015).

# JUDICIAL INDEPENDENCE UNDERMINED

## THE ANR ABOVE THE LAW

**“The ANR is a very special institution. It is a little republic within the Republic, where they can do whatever they want. ”**

Human rights defender, Kinshasa.<sup>94</sup>

Amnesty International has previously raised concerns that some security force units are answerable to individual political figures and are often used to persecute perceived or real political opponents.<sup>95</sup> The United Nations Joint Human Rights Office (UNJHRO) also reported worrying trends of manipulation of the police, intelligence and justice sectors by political actors in the run-up to the 2011 elections.<sup>96</sup> These concerns remain largely unaddressed and may intensify as the 2016 elections draw closer.

### LEGAL FRAMEWORK

The 2003 Decree-law establishing the ANR, places the agency under the authority of the President.<sup>97</sup> The ANR is mandated to safeguard internal and external state security. All agents working for the ANR are judicial police officers.<sup>98</sup> Contrary to other judicial police officers who work under the authority of the public prosecutor<sup>99</sup>, judicial police officers working for the ANR

<sup>94</sup> Human rights defender quoted anonymously for security reasons.

<sup>95</sup> Amnesty International, “DRC: Torture and killings by state security agents still endemic”, AFR 62/012/2007, 23 October 2007, <https://www.amnesty.org/fr/documents/afr62/012/2007/en/> (22 October 2015).

<sup>96</sup> Report of the United Nations Joint Human Rights Office on Human Rights and Fundamental Freedoms during the pre-electoral period in the Democratic Republic of Congo, November 2011.

<sup>97</sup> Article 2 Decree law n° 003-2003 regarding the creation and organisation of the National intelligence agency, 11 January 2003.

<sup>98</sup> Article 22 Decree law n° 003-2003 regarding the creation and organisation of the National intelligence agency, 11 January 2003.

<sup>99</sup> Article 66 Organic law n°13/011-B du 11 April 2013 on the judicial organisation, functioning and competences of jurisdictions.

receive orders and are under the sole supervision of the General Administrator of the ANR. Yet, they are bound by the same legal framework as other officers of the judiciary police.<sup>100</sup>

For example, any person arrested by the ANR has to be informed at the time of arrest of the reason for their arrest and their right to a lawyer in a language that they understand.<sup>101</sup> Detention by the ANR must follow the same judicial control procedure as detention following arrest by the police. Any person arrested has the right to have his detention reviewed by a competent judicial authority, no later than 48 hours after arrest.<sup>102</sup>

On 20 March 2015, the Minister of the Interior and Security addressed a letter to the heads of the National Police, ANR and Directorate for Immigration. The letter, entitled 'humanisation of the services', calls on the security services to respect fundamental rights protected in the Constitution, such as the 48 hour limit on police custody, the right to the detainees' family to information, the presumption of innocence and the right to be free from degrading treatment.<sup>103</sup> This letter reaffirms the legal framework and is a clear indication that even within the government there are concerns about the non-compliance of the security and immigration services with the law.

However, in response to a letter from national NGOs, who raised concerns about arbitrary arrests and detentions, the Minister of Interior responded in May 2015 that "*in all countries in the world, intelligence services follow a legal framework that differs from the common legal framework, for reasons of state security. The Democratic Republic of Congo cannot be an exception*".<sup>104</sup>

While it is possible for intelligence agencies to operate under a legal framework that differs from the common criminal law and procedures in the country, any such framework needs to be established by law and embody the highest standards of procedural and substantive fairness, including the presumption of innocence. The DRC does not currently have a legal framework that gives different arrest or detention powers to security services.<sup>105</sup>

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<sup>100</sup> Article 23 Decree law n° 003-2003 regarding the creation and organisation of the National intelligence agency, 11 January 2003.

<sup>101</sup> Constitution of the Democratic Republic of Congo, Article 18, para. 4.

<sup>102</sup> Constitution of the Democratic Republic of Congo, Article 18, para. 4.

<sup>103</sup> Letter entitled '*Humanisation des services*' written by Ministère de l'Intérieur et Sécurité, addressed to Le Commissaire Général de la Police Nationale Congolaise, L'Administrateur Général de l'Agence Nationale de Renseignement and Le Directeur Général de la Direction Générale de Migration, provided to Amnesty International by the Minister of Interior.

<sup>104</sup> Letter N°25/CAB/VPM/MININTERSEC/1542/2015, Ministry of Interior and Security, 20 May 2015, seen by Amnesty. International.

<sup>105</sup> Decree-law 1-61 of 25 February 1961 regarding measures of state security, right of search, internment and surveillance, and its accompanying Ministerial Order 05/02 of 22 April 1961, still exists, however most of its articles have become unconstitutional.

#### ANR OPERATING OUTSIDE ITS MANDATE

The ANR has arrested or detained almost all of the civil society and political actors documented in this report. The ANR's constitutive act does not define state security, but tasks the agency with investigating crimes against state security. These crimes are listed in Articles 181 to 211 of DRC's penal code.

Only four out of the eight people whose cases are documented in this report are charged with offences which constitute crimes against state security. The case of Jean-Bertrand Ewanga, who received a phone call from the ANR's General Administrator 30 minutes after commenting on President Kabila's political options, and who was arrested by ANR agents the following morning, is an example where his actions posed no threat to state security. Likewise the ANR was involved in the arrest of Jean-Claude Muyambo, accused of offences related to his work as a lawyer from 2002-2009, which are not related to state security.

Vano Kiboko and Christopher Ngoyi are both accused of 'spreading false rumours which may alarm the population or incite them against the authorities', which is categorized as a state security offence under Article 199ter of DRC's penal code. Vano Kiboko's condemnation of excessive use of force by the security forces during a demonstration in Kolwezi forms the basis of the accusation of spreading false rumours. Christopher Ngoyi is accused of spreading the rumour that President Kabila intended to stay in power beyond 2016, by linking the organization of the presidential elections to a general census.

Both statements are protected by the right to freedom of expression and do not constitute crimes against the state security. Restrictions on expression cannot be justified on grounds of national security when they are actually intended to protect a government from embarrassment or exposure of wrongdoing.<sup>106</sup> Criticism of, or insult to, the government, its agencies, or public officials are forms of expression, which do not constitute a threat to national security.<sup>107</sup>

Ernest Kyaviro was under investigation for undermining state security, inciting civil disobedience, and rebellion. In his transfer file, which Amnesty International has seen, the ANR justifies the charges stating that the protests which took place in Goma between 19 and 22 January were organized to hinder the modification of the electoral law in Parliament and to overthrow the government. Indeed, protesters were showing their disapproval of the proposed amendments to the electoral law. This was a legitimate way of expressing their political opinions rather than an attempt to overthrow the government by violent means. Legitimate and peaceful protests which turn violent, do not constitute incitement to violent overthrow of the government. As the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association has stressed "public assemblies should be presumed to be peaceful and lawful until proven otherwise".<sup>108</sup> Isolated acts of violence or other punishable acts, such as pillage,

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<sup>106</sup> Report of the Special Rapporteur on the protection and promotion of the right to freedom of opinion and expression, Abid Hussain, E/CN.4/1999/64, para. 22.

<sup>107</sup> Johannesburg Principles on National Security, Freedom of Expression and Access to Information. Principle 7 (a) (ii) (Johannesburg Principles).

<sup>108</sup> Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association,

do not deprive peaceful individuals of their right to freedom of peaceful assembly and organizers should not bear responsibility for them.<sup>109</sup> Legitimate protests, even if they turn violent, should not be categorized as a threat to state security.

Fred Bauma and Yves Makwambala are both accused of several crimes against the state. Filimbi was categorized as a criminal organization created to change or destroy the constitutional regime of the DRC and to call for the immediate interruption of President Kabila's mandate.<sup>110</sup> Yet, Filimbi's youth platform aims to promote peaceful and responsible civic engagement by Congolese youth. Any expression that advocates non-violent change of government policies or the government itself is protected expression and does not constitute a threat to national security.<sup>111</sup>

#### VIOLATION OF PROCEDURAL STANDARDS

##### **The Congolese Constitution states that every person has the right to:**<sup>112</sup>

- not be arbitrarily detained or imprisoned
- be presumed innocent
- be promptly informed, in a language that he or she understands, of the reason of arrest or detention
- prompt access to legal counsel of one's own choosing and to be informed of this right
- have the lawfulness of detention determined within 48 hours
- access to their family and a lawyer during this 48 hour period.

In all the cases documented in this report, the rights of those in custody have been violated and procedures for arrest and detention disregarded. The right to legal counsel starts as soon as someone is deprived of their liberty, but people detained by the ANR rarely have access to a lawyer. Having a lawyer present during interrogations is an important safeguard against torture and other ill-treatment, coerced "confessions" and other human rights violations. The African Commission's Principles and Guidelines on the Right to a Fair Trial for instance states that any confession or admission made during incommunicado detention should be considered as having been obtained by coercion, and must be excluded from evidence.<sup>113</sup> Five persons whose

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Maina Kiai, A/HRC/26/29, para. 45.

<sup>109</sup> Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, A/HRC/20/27, para. 31 and Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, A/68/299, para 27.

<sup>110</sup> Prosecutions' request for court hearing Aff; c/Makwambala Man'siam Fumu Yves alias Lemak et crts, 3 June 2015, seen by Amnesty International.

<sup>111</sup> Johannesburg Principles, Principle 7 (a) (i).

<sup>112</sup> Constitution of the Democratic Republic of Congo, Article 18.

<sup>113</sup> African Commission's Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, 2003 Section N(6)(d)(i). <http://www.achpr.org/instruments/principles-guidelines-right-fair-trial/>

cases are documented in this report, were interrogated without the presence of a lawyer while they were in incommunicado detention at ANR detention facilities. In the case of Fred Bauma and Yves Makwambala, requests filed by lawyers to have this evidence excluded have so far been rejected. The *Cour de cassation* is due to render its final verdict on the exclusion of interrogation records obtained during incommunicado detention.

Christopher Ngoyi, Yves Makwambala, Fred Bauma, Ernest Kyaviro and Cyrille Dowe were all subjected to arbitrary arrests and detention, including arrest without any warrant, denial of access to counsel and detention without judicial oversight far beyond the 48 hours limit provided for under domestic law.

Prompt judicial oversight of detention serves to safeguard the right to liberty and the presumption of innocence. It also aims to prevent human rights violations occurring in police custody and arbitrary detention. The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment recommends that arrested individuals should not be held in facilities under the control of their interrogators or investigators for more than the time required by law to obtain a judicial warrant of pre-trial detention. The initial hearing before a judge or judicial officer should mark the end of detention in police custody. Suspects who are not released should be transferred to a detention centre that is not under the control of the police unit that is investigating their case.<sup>114</sup>

Under Congolese law, to legalise any detention after 48 hours, a magistrate needs to issue a provisional arrest warrant which prolongs the detention for a further five days.<sup>115</sup> If there is still a need to detain the suspect beyond this seven day period, the person must appear before the *chambre de conseil* of the *tribunal de paix* which sits behind closed doors. If the *chambre de conseil* considers there is a valid need to keep the person detained, it can issue an *ordonnance de detention provisoire* which is valid for 15 days and can be extended for a further month.

Christopher Ngoyi, Yves Makwambala, Fred Bauma, Ernest Kyaviro and Cyrille Dowe spent 21, 40, 50, 86 and 162 days in ANR custody respectively. They were held incommunicado, detained without charge, without access to a lawyer, and far beyond the allowed 48 hours.

#### ARBITRARY ARREST FOR THE PURPOSE OF INTELLIGENCE GATHERING ONLY

In two cases documented in this report, arrests seem to have been carried out for the purpose of intelligence gathering, which has no legal basis in DRC law or international law. Bienvenu Matumo was forced into a car in violation of all procedural safeguards and rights during arrest. He was held in incommunicado detention in ANR detention facilities in Kinshasa, interrogated about his relations with Lucha and Filimbi, and released without charge. Another Lucha activist, Serge Sivya, was previously forced into a car in Goma, and brought to a secret and unofficial place of detention for the sole purpose of questioning him. These arrests fall completely outside of the legal framework and amount to arbitrary arrest and seem to be

<sup>114</sup> Report of the UN Special Rapporteur on the torture, and other cruel, inhuman or degrading treatment or punishment, Theo van Boven, E/CN.4/2003/68, para. 26(g).

<sup>115</sup> Penal Procedure Code Decree of 6 August 1959 (Code of Penal Procedure, August 1959), Article 28.

designed to intimidate youth activists rather than protect state security.

#### LACK OF ACCOUNTABILITY

ANR agents have not been held to account for the various human rights violations documented in this report. Individuals who are arbitrarily arrested by the ANR and later released without charge are mostly too intimidated to file complaints.<sup>116</sup> The ANR constitutive act states that judicial police officers or officers of the Office of the Prosecutor need the General Administrator before they can prosecute an ANR agent for acts committed in his or her official capacity.<sup>117</sup> There is no provision to hold the General Administrator to account.

In light of the pattern of ongoing violations and abuses by the ANR, there is an urgent need for a comprehensive reform of the legal framework that governs the operations of the ANR to prevent and remedy further human rights violations. Abuses committed by ANR agents acting outside their professional capacity, or in situations where it is unclear whether ANR agents are acting in their personal or professional capacity, also need to be addressed through immediate investigations as well as reform of operating procedures.

### **THE NEED FOR OVERSIGHT OF THE ANR'S WORK**

Intelligence agencies around the world play a critical role in protecting state security. They contribute to fulfilling the state's obligations to safeguard human rights, safety and most notably the right to life of citizens. However, while protecting the rights of citizens, intelligence agencies cannot violate the rights of others. In many countries, lack of oversight and political and legal accountability has facilitated illegal activities and human rights violations by intelligence agencies.<sup>118</sup> The situation in DRC is no different.

A first step in ensuring that intelligence agencies are accountable is the establishment of a specific and comprehensive legislative framework that defines the agency's mandate and its powers to execute its mandate.<sup>119</sup> The current legislative framework governing the mandate and power of the ANR is formulated in vague and broad terms, which opens the door for abuses.

Secondly, the DRC government has to guarantee effective mechanisms in which individuals can challenge the lawfulness of ANR actions in court and ensure that individuals whose rights have been violated have access to an effective remedy. The state has the duty to create a framework that enables an independent investigation into all complaints received to establish the facts and hold the intelligence agency accountable for their actions.<sup>120</sup>

Lastly, the DRC should devise an effective system of supervision that reviews the work of the intelligence

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<sup>116</sup> Interview with human rights defender, Kinshasa, Monday 21 September 2015.

<sup>117</sup> Law 003-2003 concerning the creation and organisation of the National intelligence agency, 11 January 2003, Article 25.

<sup>118</sup> Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin, A/HRC/10.3, para. 25 (Scheinin A/HRC/10.3).

<sup>119</sup> Scheinin A/HRC/10.3, para. 27.

<sup>120</sup> Scheinin A/HRC/10.3, para 58.

agencies, including the ANR, and guarantees that their work stays within the national and international legal frameworks. The executive branch of the government must direct and supervise the activities of the intelligence agency and be held accountable for the effectiveness of their operations.<sup>121</sup> In addition, the activities of Congolese intelligence agencies must be reviewed by a body that is independent of the government and the agencies themselves.<sup>122</sup> To effectively fulfil their function this body needs to have unrestricted access to all files, premises and personnel of the agencies.<sup>123</sup> The body should report on a regular basis on developments and actions of the intelligence agencies. The last part of oversight falls on the parliament, which should hold the executive branch and intelligence agencies accountable to the general public.<sup>124</sup>

## A JUSTICE SYSTEM WITH TIED HANDS

**“For these types of cases, the hands of the magistrates are tied. It is the ANR who decides. The justice system to give credibility to their work.”**

Human rights defender, Kinshasa.<sup>125</sup>

### PROVISIONAL DETENTION UNDER CONGOLESE AND INTERNATIONAL LAW

This principle of any pre-trial detention regime is that ‘detention is the exception, freedom the rule’.<sup>126</sup> This is reiterated in DRC’s criminal procedure code, which does not only guarantee the

<sup>121</sup> Ottawa Principles on Anti-terrorism and human rights, Principle 9.2.1 (Ottawa Principles), Scheinin, A/HRC/10.3, para. 42

<sup>122</sup> Ottawa Principles, Principle 9.3, Scheinin, A/HRC/10.3, para. 44

<sup>123</sup> Several countries including South Africa and Canada have this type of system in place, see Scheinin, A/HRC/10.3, para. 44

<sup>124</sup> Ottawa Principles, Principle 9.4, Scheinin, A/HRC/10.3, para. 44

<sup>125</sup> Human rights defender quoted anonymously for security reasons.

<sup>126</sup> Article 17 of the DRC Constitution of 2011 stating ‘*individual liberty is guaranteed. It is the rule, detention the exception*’, is a domestication of the right to liberty safeguarded in Article 3 of the Universal Declaration of human rights, Article 9(1) of the ICCPR, Article 6 of the African Charter on Human and Peoples’ Rights and Section M(1) of the Principles on Fair Trial in Africa.

right to liberty of the person, but also reflects the presumption of innocence.<sup>127</sup>

According to Congolese law, provisional detention is only permissible when the person is charged with an offence carrying a minimum penalty of six months and where there are serious indications of guilt.<sup>128</sup> It is essential that the magistrate makes his/her own independent judgement, after having heard the accused.

For offences where the minimum penalty is below six months, the threshold to arrest and/or keep someone in provisional detention is even higher. An individual can only be remanded in custody if there are serious indications of guilt and if his/her detention is essential for public security, if there is a risk they would flee, or if their identity is unknown or suspicious.<sup>129</sup>

#### AUTOMATIC REFUSAL OF PROVISIONAL LIBERTY AFTER ANR DETENTION

In practice, when cases come from the ANR, magistrates seem to have limited space to make independent judgements, according to lawyers and human rights defenders interviewed by Amnesty International.

A Congolese lawyer and human rights defender based in Kinshasa explained to Amnesty International; "*In theory, the prosecuting officers can decide independently whether or not to follow the conclusions of the ANR. But in practice, when a file comes from the ANR, even if it is empty, the judges of the chambre de conseil never grant a request for bail*".<sup>130</sup>

Another lawyer added; "*What the ANR does is illegal, and afterwards they put pressure on magistrates who try to legalize the situation. The big problem we face is that the magistrates follow instructions from the security services who arrest people, [detain them illegally] and then the magistrates come to legalize the case, so they can keep the person as long as possible*".<sup>131</sup>

#### *Fred Bauma and Yves Makwambala*

In the case of Fred Bauma and Yves Makwambala, for example, a multi-party Congolese parliamentary commission which collected information on how the security services had dealt with the Filimbi case clearly stated that there was no evidence that Filimbi had any terrorist profile and recommended a political solution for the case. This statement further calls into question the 'serious indications of guilt' which formed the basis for the judges' refusal to grant them bail.

#### *Ernest Kyaviro*

To justify Ernest Kyaviro's preventive detention, the instructing magistrate who issued a provisional arrest warrant and the judge who ordered his preventive detention should have

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<sup>127</sup>Code of Penal Procedure, August 1959, Article 28, para. 1.

<sup>128</sup>Code of Penal Procedure, August 1959, Article 27, para. 1.

<sup>129</sup>Code of Penal Procedure, August 1959, Article 27, para. 2.

<sup>130</sup> Interview with human rights defender, Kinshasa, 9 June 2015.

<sup>131</sup> Interview with defence lawyer of one of the cases mentioned, Kinshasa, 8 June 2015.

evaluated whether there was serious evidence indicating responsibility for undermining state security, inciting civil disobedience, or rebellion.

Yet, the provisional arrest warrant only mentions the charge of inciting civil disobedience which carries a minimum sentence of two months' imprisonment. The warrant does not contain any justification for his continued detention. On 24 April, the *chambre de conseil* refused his request for provisional release, indicating that "*his request was premature and the investigating magistrate [needed more time] to undertake a good investigation and make progress with his enquiries*". By calling the request 'premature' the judge ignored Ernest Kyaviro's right to request bail and to have his detention reviewed by an independent judicial authority which is protected under both international and Congolese law.<sup>132</sup> The continuation of investigations does not require the suspect to remain in detention, and is not included in the criteria which should be considered when reviewing provisional detention.<sup>133</sup>

*Jean-Claude Muyambo and Vano Kiboko*

Jean-Claude Muyambo and Vano Kiboko are both charged with offences that carry less than a six month minimum sentence. No valid reasons were given to justify their detention for public security reasons.

If the authorities believe that certain measures are necessary to guarantee the presence of the accused for trial, less restrictive measures than deprivation of liberty should be considered.<sup>134</sup> Article 32 of the Code of Criminal Procedure provides options, in addition to a bail guarantee, which include requiring the accused to:

1. live in the locality where the investigating magistrate has his office;
2. not go beyond a certain limited area without authorization of the investigating magistrate or his delegate;
3. not go to certain places like ports or stations;
4. present themselves regularly to the investigating magistrate or another public official;
5. appear before the magistrate or judge when required.<sup>135</sup>

When Vano Kiboko had the possibility to request bail on 7 January 2015, this decision and his file were passed to the *chambre de conseil* of the *Tribunal de Paix de Kinshasa/Ngaliema*, which is not competent to judge his case, as it is neither linked to his place of residence, place of arrest, nor to the location where the alleged crime was committed. The decision confirming his preventive detention, seen by Amnesty International, does not indicate which tribunal issued it, nor the names of the judges.<sup>136</sup> When his trial had started before the *tribunal de paix*

<sup>132</sup> Code of Penal Procedure, August 1959, Article 28, para. 5.

<sup>133</sup> Code of Penal Procedure, August 1959, Article 27.

<sup>134</sup> Principles on Fair Trial in Africa, Section M(1)(e).

<sup>135</sup> Code of Penal Procedure, August 1959, Article 32.

<sup>136</sup> Preventive detention order for Kalemba Kiboko Vano, Kinshasa, 6 January 2015.

of Kinshasa/Gombe, all his requests for provisional release have been denied.

#### USE OF UNLAWFULLY OBTAINED EVIDENCE

One of the established principles of fair trial is the prohibition on use of evidence obtained through torture, coercion or other forms of ill-treatment in any proceedings including in court.

The UN Human Rights Committee for instance has extended this exclusionary rule to wider forms of ill-treatment in its General Comment on Article 7, stating that “the law must prohibit the use of admissibility in judicial proceedings of statements or confessions obtained through torture or *other prohibited treatment* [emphasis added]”.<sup>137</sup> The UN Body of Principles on Detention also recommend the exclusion of evidence obtained in violation of broader standards of detention apart from torture, such as irregularities during arrest, the failure to inform the detainee of reasons for his arrest or his rights, failure to promptly bring the detainee before a judicial or other authority, the denial of legal assistance or contact with the outside world, failure to keep records of the interrogation, or other methods of interrogation which impair a detainee's judgment or take advantage of the situation to compel statements.<sup>138</sup> The African Commission's Principles and Guidelines on the Right to a Fair Trial also outlines that any confession or admission made during incommunicado detention should be considered as having been obtained by coercion, and must be excluded from evidence.<sup>139</sup>

However, some of the cases documented in this report, including the cases of Christopher Ngoyi, Fred Bauma and Yves Makwambala, and Ernest Kyaviro indicate that evidence obtained during incommunicado detention has been or may in future be used in court in violation of this established principle of fair trial. The defence lawyers of Fred Bauma and Yves Makwambala, have requested the rejection of evidence against their clients obtained by the ANR during their incommunicado detention. So far both the *Tribunal de Grande Instance de Kinshasa* and the Appeal Court have rejected this demand.

#### CRIMINALISATION OF EXPRESSION AND PEACEFUL PROTEST

At the time of writing, seven individuals whose cases are described in this report have been convicted and sentenced for having peacefully expressed their opinion or having supported or participated in protest.<sup>140</sup> In doing so, the Congolese courts have effectively criminalized the exercise of the rights to peaceful assembly and expression.

Over the past two decades, UN Special Rapporteurs on the right to freedom of expression have condemned the use of defamation and libel laws to prevent criticism of the government.<sup>141</sup>

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<sup>137</sup> Human Rights Committee, General Comment n° 20, 10 March 1992, para. 12.

<sup>138</sup> UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, G.A. res. 43/173, annex, 43 U.N. GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49 (1988).

<sup>139</sup> Principles on Fair Trial in Africa, Section N (6) (d) (i).

<sup>140</sup> Jean-Bertrand Ewanga, Vano Kiboko, Jean-Ernest Kyaviro and four LUCHA activists

<sup>141</sup> See Reports of the Special Rapporteur on the protection and promotion of the right to freedom of opinion and expression, Abid Hussain, E/CN.4/1999/64, E/CN.4/2000/63, Ambeyi Ligabo, E/CN.4/2001/64, E/CN.4/2006/55, A/HRC/4/27, A/HRC/7/14, Frank La Rue, A/HRC/14/23,

Defamation laws should not afford special protection to the President or other senior political figures, who are required to tolerate a greater degree of criticism than private citizens.<sup>142</sup>

The African Commission for Human and Peoples' Rights and the European Court for Human Rights have confirmed that politicians, who seek public office and are elected officials, must tolerate harsh criticism: "The limits of acceptable criticism are ... wider as regards a politician as such than as regards a private individual. Unlike the latter, the former inevitably and knowingly lays himself open to close scrutiny of his every word and deed by both journalists and the public at large, and he must consequently display a greater degree of tolerance".<sup>143</sup> This principle is equally included in the Declaration of Principles on Freedom of Expression in Africa.<sup>144</sup>

The right to question political figures is thoroughly legitimate and represents a significant part of the exercise of the right to freedom of opinion and expression.<sup>145</sup> Sanctions for defamation should never be of a nature as to exert a chilling effect on freedom of opinion and expression. Penal sanctions in particular imprisonment should never be applied.<sup>146</sup>

In DRC, a 1963 decree criminalizes insulting the Head of State, without defining what constitutes an insult.<sup>147</sup> This vagueness has allowed judges to interpret the law in a very broad way, criminalizing opinions and criticism of the government. In both the 2006 and 2011 electoral periods, the Congolese authorities have arrested and prosecuted people who publicly criticized the President, on the basis that they have committed a crime by insulting the Head of State.<sup>148</sup> After the 2011 elections, the UNJHRO recommended amending this legislation to

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<sup>142</sup> Report of the Special Rapporteur on the protection and promotion of the right to freedom of opinion and expression, Abid Hussain, E/CN.4/1999/64, para. 28.

<sup>143</sup> European Court of Human Rights, Case of Lingens v. Austria, application no. 9815/82, 8 July 1986 para 42, African Commission for Human and Peoples' rights, Kenneth Good v. Republic of Botswana, 313/05, May 2010, para 199.

<sup>144</sup> Principle XII Protecting Reputations, Resolution on the Adoption of the Declaration on Freedom of Expression in Africa, Banjul, October 2002.

<sup>145</sup> Reports of the Special Rapporteur on the protection and promotion of the right to freedom of opinion and expression, Ambeyi Ligabo, A/HRC/4/27, para 44.

<sup>146</sup> Report of the Special Rapporteur on the protection and promotion of the right to freedom of opinion and expression, Abid Hussain, E/CN.4/1999/64, para. 28.

<sup>147</sup> Decree-law No 300 outlawing insults against the Head of State, 16 December 1963.

<sup>148</sup> Report of the United Nations Joint Human Rights Office on Human Rights and Fundamental Freedoms during the pre-electoral period in the Democratic Republic of Congo, November 2011, para. 25.

avoid the abusive application of the law on offences towards the Head of State.<sup>149</sup> This did not happen and the provision continues to be used in the lead-up to the 2016 elections.

Jean-Bertrand Ewanga was convicted to one year imprisonment for criticising the government. Yves Makwambala is at risk of being convicted under the same law.

Vano Kiboko was convicted for spreading false rumours. This offence is categorised as a crime against state security in Article 199ter of DRC's penal code and applies when someone, even unintentionally, spreads false rumours which alarm or create unrest amongst the population or incite them against the authorities. According to experts in international law, expression should only be punished as a threat to national security if it can be demonstrated that:

- (a) The expression is intended to incite imminent violence;
- (b) It is likely to incite such violence; and
- (c) There is a direct and immediate connection between the expression and the likelihood or occurrence of such violence.<sup>150</sup>

Amnesty International believes that the offence of spreading false rumours has been used to criminalize Vano Kiboko and others for the legitimate exercise of their right to freedom of expression by criticizing the government. Christopher Ngoyi is also facing trial for the same offence for having alleged that President Kabila intended to stay in power beyond 2016, by linking the organization of the presidential elections to a general census.

In a similar way, the offence of provocation to disobey the law, or 'civil disobedience', criminalized by Article 135bis of DRC's penal code has been used to criminalize peaceful assembly. Article 26 of the Congolese Constitution guarantees the right to assembly and requires the organizers to notify the administrative authorities of all demonstrations taking place in the public space. In practice, people who organize or participate in peaceful protests against government policy or practice often face criminal prosecution. They are frequently charged with undermining state security and inciting civil disobedience. Yet, dissent is a legitimate part of the exercise of the right to freedom of peaceful assembly, including in the context of elections, as it is a unique opportunity for pluralist expression through peaceful means.<sup>151</sup> The DRC government must fully respect, protect and guarantee the right to peaceful assembly and accept that participation in peaceful protest is an alternative to violence and armed force as a means of expression.<sup>152</sup>

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<sup>149</sup> Report by the United Nations Joint Human Rights Office on the violations of human rights and fundamental freedoms committed during the electoral period in the Democratic Republic of Congo, as well as on the actions taken by Congolese Authorities in response to these violations, October 2011-November 2013.

<sup>150</sup> Johannesburg Principles, Principle 6.

<sup>151</sup> Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association Maina Kiai, A/68/299, para. 16 (Maina Kiai, A/68/299).

<sup>152</sup> Maina Kiai, A/68/299, A/68/299, para. 17

Prior notification for demonstrations allows authorities to take necessary measures to facilitate and protect the demonstration, whilst taking measures to ensure public safety and order.<sup>153</sup> Yet, in special circumstances when an immediate response, in the form of a demonstration, to a political event might be justified, there should be space for spontaneous assemblies, which are exempted from prior notice.<sup>154</sup> In the scenario where the organizers fail to notify the authorities, the assembly should not be dispersed and the organizers should not be subjected to criminal or administrative sanctions resulting in fines or imprisonment.<sup>155</sup>

The Congolese courts have used the offence of incitement to civil disobedience to criminalize the right to peaceful assembly. Ernest Kyaviro was sentenced to the maximum penalty of three years' imprisonment for allegedly having failed to notify the authorities of the protests which took place in Goma between 19 and 22 January 2015. While the protests on 20, 21 and 22 were spontaneous protests, the authorities were notified of the protests on 19 January and the call for protest was signed by the political opposition party of which Ernest Kyaviro is a member, rather than by himself. Four activists of the youth movement LUCHA were also convicted to six months' imprisonment, with a 12 month suspension, for having organized a symbolic action without giving prior notification to the authorities. LUCHA says that they delivered a written notification to the town hall in Goma, but that the secretary of the town hall refused to acknowledge receipt. The tribunal that decided the case ordered a LUCHA activist and the secretary to testify in court on this matter. While the LUCHA activist appeared and confirmed his statement, the witness from the town hall did not show up.<sup>156</sup>

Amnesty International believes that criminalizing the failure to notify the government of protests is not in line with the right to peaceful assembly.<sup>157</sup> In DRC, the incommunicado detention for up to five months of individuals accused of failing to notify the authorities of protests is designed to dissuade the organization of assemblies that are critical of the government.

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<sup>153</sup> Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, A/HRC/20/27, para. 28. (Maina Kiai, A/HRC/20/27)

<sup>154</sup> Maina Kiai, A/HRC/20/27, para. 29. See also European Court of Human Rights, *Bukta and Others v. Hungary*, application No. 25691/04 (2007).

<sup>155</sup> Maina Kiai, A/HRC/20/27, para. 29.

<sup>156</sup> Notes of an independent trial observer present at the hearing of the *Tribunal de grande instance* of Goma, 21 August 2015.

<sup>157</sup> Maina Kiai, A/HRC/20/27, para. 29.

# CONCLUSION AND RECOMMENDATIONS

The current uncertainty about whether President Kabila will step down in November 2016 when his constitutionally mandated two-terms will end, has heightened political tensions in DRC.

This report has exposed a pattern of arbitrary arrest and detention during the pre-electoral period that are part of a widespread crackdown on politicians and activists who have spoken out, or peacefully mobilized, against attempts to extend the presidential term limit or to delay the elections. Both the ANR and the justice system have been used to repress the rights to freedom of expression, association and assembly, and to safeguard the political interests of the incumbent government.

The report outlines how ANR is operating beyond its mandate and has repeatedly violated human rights that are protected under both national and international law without anyone being held to account for these violations. Amnesty International is calling on the ANR to halt its involvement in situations that do not threaten state security. Expression that advocates non-violent change of government policies or the government itself is protected expression and does not constitute a threat to national security. The ANR must also immediately stop all practices of incommunicado and secret detention. To prevent future human rights violations, Amnesty International recommends a comprehensive review of the legislative framework that governs the work of the intelligence services in DRC, including the establishment of an effective system of oversight to guarantee that their work operates within the national and international human rights legal frameworks. Individuals who have been arbitrarily arrested and/or detained by the ANR should have access to an effective remedy.

Courts have flouted Congolese law and international human rights standards during proceedings in politically motivated cases, especially those transferred from the ANR. Individual requests for bail have been routinely rejected without proper assessment. Interrogation records and evidence obtained during incommunicado detention have also been used to support prosecutions. Seven individuals whose cases are documented in this report have been convicted and sentenced for having peacefully exercised their freedoms of expression and/or assembly.

Amnesty International calls for the immediate and unconditional release of all prisoners of conscience. They should receive adequate reparations for the violations they have suffered at the hands of the security services during their arbitrary arrest and detention.

Regional actors, especially the African Union (AU) and the Southern African Development Community (SADC), should step up their engagement with the DRC. They should press the government to respect human rights, to reduce the risk of an electoral crisis and a corresponding deterioration in DRC's human rights situation, and regional instability.

Any further crackdown on the rights to freedom of expression, association and assembly would

cause growing frustration among the population and politicians and could lead to further socio-political unrest in a country where armed conflict is ongoing in several provinces and where stability remains fragile.

## TO THE GOVERNMENT OF THE DEMOCRATIC REPUBLIC OF CONGO

### **Freedom of expression, freedom of association and peaceful assembly**

Ensure full respect for individuals' rights to freedom of expression, association and peaceful assembly, in line with regional and international human rights obligations and commitments by:

- Allowing civil society groups, youth movements and opposition parties to freely organize and hold meetings, public gatherings and peaceful demonstrations;
- Ensuring that all security forces refrain from unlawful and/or excessive use of force and strictly apply the law and international standards. The use of force should be strictly limited to situations where it is absolutely necessary and strictly proportional to the legitimate aim pursued and to minimize damage and injury;
- Ensuring that human rights defenders, lawyers, youth activists and political opponents are able to carry out their legitimate activities without fear or threat of reprisal, harassment or arbitrary arrest;
- Immediately and unconditionally releasing all prisoners of conscience, who are detained solely for the peaceful exercise of their rights;
- Refraining from the criminal prosecution of organizers of peaceful demonstrations;
- Refraining from using defamation laws to punish or prevent legitimate criticism of government or public officials, including the Head of State;
- Ensuring that political actors are not subjected to arbitrary arrest or detention.

### **Unlawful and Arbitrary Arrests and Detentions, Due process and Fair Trial Guarantees**

Urgently implement safeguards against human rights violations by security forces, including taking immediate measures to end unlawful arrest; unlawful, incommunicado and arbitrary detentions; torture and ill-treatment. Specifically the Government should:

- Ensure that the arrest and detention of persons conform fully with the DRC Constitution, international human rights treaties ratified by DRC as well as international human rights standards, including by:
  - Issuing orders to all law enforcement officials currently authorised to conduct arrests, including the ANR, defining the circumstances under which arrest and detention are justified under Congolese law and international treaties; and

- Ensuring that upon being brought into custody, the grounds for arrest are recorded. If there are insufficient grounds and authority for arrest, the person must be released.
- Ensure that all detainees are charged with a recognizable criminal offence and tried in accordance with international standards, or released.
- Ensure that detainees are brought promptly and regularly before a court for independent judicial review of their detention as provided under Congolese law and international law and that they have access to a procedure through which they may challenge the lawfulness of their detention.
- Urgently ensure that all detainees have prompt and ongoing access to their relatives and legal counsel in accordance with international standards.
- Ensure that there is a process that allows detainees to lodge complaints about their treatment.
- Ensure that confessions or other evidence obtained during incommunicado detention may never be invoked in legal proceedings.

#### **Accountability and Reparations**

Immediately address impunity for human rights violations committed by the ANR and ensure justice is delivered by;

- Initiating prompt, independent, impartial, and effective investigations into all allegations of arbitrary arrests and detentions and possible crimes of torture or ill-treatment by the members of the ANR with the aim of bringing suspects to justice in fair trials:
- These investigations should specifically include:
  - the illegal arrest and secret detention in an unofficial place of detention of Serge Sivya;
  - the physical attack on Olivier Ndoole, the lawyer who tried to visit activists detained in the ANR detention facilities in Goma;
- These investigations should lead to those criminally responsible for violating the rights of others being brought to account through fair trials that are not subject to the death penalty.
- Ensuring and providing full and adequate reparations in form of restitution, compensation, rehabilitation, satisfaction and guarantee of non-repetition to those who suffered violations of their right in ANR custody;

#### **To the Parliament, the Minister of Justice and the Minister of Interior**

- Conducting a comprehensive review of the legal framework that governs the operations of the ANR, including Decree-law n° 003-2003 of 11 January 2003 regarding the creation and

the organisation of the *Agence Nationale de Renseignement* ;

- Creating an independent body of supervision which is tasked with the review of the work of the intelligence agencies, including the ANR, to guarantee that they operate in accordance with the law and international human rights obligations and standards.

## TO THE CHAIRPERSON OF THE AU COMMISSION

- Issue a public statement expressing concern about the pattern of arbitrary arrests and detentions during this pre-election period that result in violations of the rights to freedom of expression, association and assembly of political opponents, human rights defenders and activists;
- Call on the DRC government to ensure that no one is criminalised for exercising the rights to freedom of peaceful assembly and of association, nor is subjected to threats, harassment, persecution, intimidation or reprisals.
  - Ensure that the human rights experts deployed in DRC as part of the AU Action Plan of the Human Rights Strategy for Africa document and report on human rights violations in the pre-election period, including arbitrary arrests and detentions violating the rights to freedom of expression, association and peaceful assembly.
  - Ensure that the mandate and resources of the AU human rights experts are enhanced to enable effective monitoring of human rights violations in the pre-election period;

## TO THE AU PEACE AND SECURITY COUNCIL

- Assess the pre-election context and the ongoing widespread attack on political opponents and activists in DRC, with a view towards taking preventive measures and making recommendations for strengthening safeguards against the recurrence of violations and for appropriate accountability measures.

## TO THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

- Adopt a country-specific resolution at its 58th Ordinary Session expressing concerns about the pattern of using arrest and detention to hinder the enjoyment of the rights to freedom of expression and assembly of political opponents and human rights defenders and activists;
- Urge the Government of the DRC to fully and effectively comply with the Commission's Guidelines on conditions of arrest, police custody and pre-trial detention and to end incommunicado and secret detention;
- Urge the Government of the DRC to immediately and unconditionally release all prisoners of conscience.
- Call on the Government of the DRC to ensure that no one is criminalized for exercising the

rights to freedom of peaceful assembly and of association, nor is subjected to threats, harassment, persecution, intimidation or reprisals.

**TO THE AFRICAN COMMISSION SPECIAL RAPORTEURS ON FREEDOM OF EXPRESSION AND ACCESS TO INFORMATION, ON THE SITUATION OF HUMAN RIGHTS DEFENDERS, AND ON PRISONS AND CONDITIONS OF DETENTION**

- Express concern about the pattern of using arrest and detention to hinder the rights to freedom of expression and assembly of political opponents and human rights defenders and activists;
- Urge the Government of the DRC to immediately and unconditionally release all prisoners of conscience who are held for the peaceful exercise of the rights to freedom of expression, association and peaceful assembly.

**TO THE UNITED NATIONS SPECIAL RAPORTEURS ON THE PROMOTION AND PROTECTION OF FREEDOM OF OPINION AND EXPRESSION, AND THE SPECIAL RAPORTEUR ON THE RIGHTS TO PEACEFUL ASSEMBLY AND OF ASSOCIATION**

- Express concerns about the pattern of using arrest and detention to hinder the rights to freedom of expression and assembly of political opponents and human rights defenders and activists;
- Urge the government to immediately and unconditionally release all prisoners of conscience who are held for the peaceful exercise of the rights to freedom of expression, association and peaceful assembly;
- Call on the Government of the DRC to ensure that no one is criminalized for exercising the rights to freedom of peaceful assembly and of association, nor is subjected to threats, harassment, persecution, intimidation or reprisals.

**TO THE UN SPECIAL ENVOY FOR THE GREAT LAKES REGION, UN SPECIAL REPRESENTATIVE FOR THE DRC, AFRICAN UNION SPECIAL REPRESENTATIVE FOR THE GREAT LAKES, THE EUROPEAN UNION SENIOR COORDINATOR FOR THE GREAT LAKES REGION AND BELGIUM'S SPECIAL ENVOY FOR THE GREAT LAKES**

- Express concerns about the pattern of using arrest and detention to hinder the rights to freedom of expression and assembly of political opponents and human rights defenders and activists;
- Call on the Government of the DRC to respect the rights to freedom of expression, association and assembly, and recall that dissent is a legitimate part of these rights and is a unique opportunity for pluralist expression through peaceful means.

## TO THE CHAIRPERSON OF THE SOUTHERN AFRICAN DEVELOPMENT COMMUNITY (SADC)

- Closely monitor the human rights situation in DRC in the lead-up to the elections;
- Express concerns about the pattern of using arrest and detention to hinder the rights to freedom of expression and assembly of political opponents and human rights defenders and activists in the lead-up to the elections in DRC.

## TO THE DEVELOPMENT PARTNERS OF THE DRC, INCLUDING THE EU AND THE US

- Exercise due diligence and take all reasonable steps, including seeking commitments from the Government of the DRC that the rights to freedom of expression, association and assembly will be respected in the election process.
- Urge the Government of the DRC to immediately and unconditionally release all prisoners of conscience.
- Continue to monitor politically motivated trials of politicians, human rights defenders and activists.



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# TREATED LIKE CRIMINALS

## DRC'S RACE TO SILENCE DISSENT IN THE RUN UP TO ELECTIONS

One year before the November 2016 elections are due to take place in the Democratic Republic of Congo (DRC), calls for President Joseph Kabila to step down after his constitutionally mandated two-terms have intensified, as has the government crackdown on those voicing these views.

This report is based on research in Kinshasa and documents the DRC government's crackdown on politicians and human rights defenders speaking out or peacefully mobilising against these developments. The report exposes a pattern of arbitrary arrests, detentions and trials based on trumped-up or illegitimate charges violating the rights to liberty, freedom of expression, association and peaceful assembly.

Amnesty International urges the Government of the DRC to stop arresting and detaining those raising concerns about delays to elections and those voicing their political views and organising peacefully against the possibility of President Kabila standing for a third term. The Government of the DRC should immediately and unconditionally release all prisoners of conscience named in this report, arrested solely for peacefully exercising their rights to the freedoms of expression and peaceful assembly. The report also contains recommendations for regional actors to step up their engagement with the DRC and press the Government of the DRC to respect rights to reduce the risk of an electoral crisis.

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