CONGO: POLITICAL OPPOSITION UNDER PRESSURE

AMNESTY INTERNATIONAL SUBMISSION FOR THE UN UNIVERSAL PERIODIC REVIEW, 31ST SESSION OF THE UPR WORKING GROUP, NOVEMBER 2018
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Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.

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INTRODUCTION

This submission was prepared for the Universal Periodic Review (UPR) of Congo in November 2018. In it, Amnesty International evaluates the implementation of recommendations made to Congo in its previous UPR, assesses the national human rights framework and the human rights situation on the ground, and makes a number of recommendations to the government of Congo to address the human rights challenges mentioned in this report.

Amnesty International has documented dozens of cases of activists and opposition members arbitrary arrested and detained – some since the 2015 constitutional referendum – for simply exercising their right to freedom of expression and peaceful assembly. The organisation has also documented the forced return of more than 179,000 people to the Democratic Republic of Congo (DRC) by the Congolese authorities during the launch of the first phase of “Mbata ya Bakolo”.

Amnesty International also raises concerns about continuing restrictions of the rights to freedom of expression, association and assembly, including arrest and detention of peaceful protesters and stifling of the media.

FOLLOW UP TO THE PREVIOUS REVIEW

Congo has failed to implement a number of recommendations it accepted during its second review in 2013. The authorities continue to severely restrict human rights using national legislation and national security as an excuse to repress dissent.

THE DEATH PENALTY

Following recommendations accepted in 2013,1 Congo abolished the death penalty during a review of its Constitution, through the inclusion of Article 8 which states “the death penalty is abolished”.2 However, the Criminal Code has not yet been reformed to align it with the Constitution, and Congo has not ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty.

PROMOTION AND PROTECTION OF HUMAN RIGHTS

Congo accepted, but has failed to implement several recommendations to align its domestic legal framework with international and regional human rights treaties to which it is a party,3 and to

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1 Report of the Working Group on the Universal Periodic Review – Congo, A/HRC/25/16, recommendations 110.8-110.18 (Uruguay, Australia, France, Germany, Hungary, Spain, Italy, Montenegro, Rwanda, Djibouti, Estonia) and 110.107 (Paraguay).


3 A/HRC/25/16, recommendations 111.35-36 (Philippines, Russian Federation).
strengthen national systems for the promotion and protection of human rights. Since 2015, the human rights situation has deteriorated amid contestation against a constitutional review and contested presidential and local elections.

TORTURE AND OTHER ILL-TREATMENT

Although Congo accepted recommendations to complete a review of legislative codes on preventing and punishing torture by 2014, and to establish a National Mechanism for the Prevention of Torture, these have not been implemented. Cases of torture in detention facilities continue to be reported and the authorities have not taken preventive steps nor investigated allegations of torture to bring suspected perpetrators to justice.

THE NATIONAL HUMAN RIGHTS FRAMEWORK

FREEDOM OF EXPRESSION AND PEACEFUL ASSEMBLY

Although the Congolese Constitution guarantees the right to attend and organize meetings, proceedings and peaceful protests, to freedom of expression, information and communication, and prohibits censorship, the authorities regularly violate these rights using national law provisions. Ordinance No. 62-28 related to demonstrations in public venues requires prior

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4 A/HRC/25/16, recommendations 111.36 (Russian Federation) and 111.39 (Nigeria).

5 The referendum held on 25 October 2015 aimed to remove the age limit of the President of the Republic, increase the number of terms from 2 to 3 and reduce the president mandate from seven years to five years. These changes would allow the incumbent President to run for a third term in 2016. In a statement released on 7 April 2016, the US State Department said it “is profoundly disappointed by the flawed presidential electoral process in the Republic of Congo” and reported “widespread irregularities and the arrest of opposition supporters”, available at https://2009-2017.state.gov/r/pa/prs/ps/2016/04/255597.htm. In a statement published on 22 October 2015, the Spokesperson on the EU political situation in the Republic of Congo has warned that the “constitutional referendum threaten the stability of the country.”, available at http://collections.internetmemory.org/haeu/content/20160313172652/http://eeas.europa.eu/statements-eeas/2015/151022_04_en.htm

6 The presidential elections were organized on March 20, 2016. There were nine candidates running for presidency including the incumbent President, Denis Sassou-Nguesso, Guy Brice Parfait Kolelas, General Jean-Marie Michel Mokoko, Pascal Tsaty Mbiale, Andre Okombi Salissa, Claudine Munari, Joseph Kignoumbi Kia Mboungou, Michel Mboussi Ngouari, Anguio Nganguia Engabe. The results of the polls were contested by the opposition parties. In a statement released on 7 April 2016, the US State Department said it “is profoundly disappointed by the flawed presidential electoral process in the Republic of Congo” and reported “widespread irregularities and the arrest of opposition supporters”, available at https://2009-2017.state.gov/r/pa/prs/ps/2016/04/255597.htm.

7 Legislative and local elections were held July 2017. Irregularities were also reported and the results challenged by opposition leaders.

8 A/HRC/25/16, recommendations 111.37 (United Kingdom of Great Britain and Northern Ireland) and 111.106 (Paraguay).

9 Constitution of Congo revised in 2015, Article 25 “Every citizen has the right to freely express and disseminate his opinion by word, writing, image or any other means of communication. Freedom of information and communication are guaranteed. It is exercised in accordance with the law. Censorship is prohibited. Access to sources of information is free and protected under the conditions determined by law.”

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authorization for all demonstrations in public venues except for funeral cortège.\textsuperscript{10} This restriction runs counter to the recommendations of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association who highlighted that states may, at most, require prior notification – not authorization – for large peaceful assemblies or for assemblies where a certain degree of disruption is anticipated.\textsuperscript{11} Article 3 of Law No. 023/60 on public meetings contains vague and broad provisions which allow the authorities to ban peaceful assemblies for public disorder reasons.\textsuperscript{12} Thus, jeopardizing the right itself. Both laws prescribe prison sentences and fines for taking part in unauthorized or banned public meetings and demonstrations.\textsuperscript{13}

In several cases documented by Amnesty International, the authorities relied on Law No. 21-2006 on political parties to arrest and detain political activists and members of opposition parties critical of their decisions on the grounds of “public disorder” or “undermining state security”. The Law punishes “any leader or member of the political party who, through his writings, public statements, proceedings, incites to public disorder and seeks to seize state power illegally” with up to five years imprisonment and a fine of up to XAF 5 million (US$ 9,400).\textsuperscript{14}

\section*{ARBITRARY ARRESTS AND DETENTION}

While the Congolese Constitution provides protection of individuals from arbitrary arrests and detention,\textsuperscript{15} the authorities have arbitrarily arrested and detained more than a thousand individuals. They include refugees and asylum-seekers during the police operation “Mbata ya \textit{Bakolo}”\textsuperscript{16} and dozens of political opposition members during the referendum and presidential

\begin{footnotesize}
\begin{itemize}
\item Article 2 of the law no.62-28 of 23 October 1962 related to demonstrations on public venues says “are subject to authorization, all processions, parades and gatherings of people and, in a general way all demonstrations on the public road. However, exemptions from this authorization, but subject to prior declaration, are demonstrations on public roads in accordance with local practice. Funeral processions are authorized.”
\item Article 3 of the law no.023/60 of 11 May 1960 on public meetings says “Any public meeting is subject to prior declaration. However, meetings of a strictly professional nature are excepted of it including those held by professional unions or union and federation of trade unions, as well as those held by sports and non-political youth groups, are excepted dispensed with.”
\item Article 7 of Ordinance no. 62-28 of 23 October 1962 related to demonstrations on public venues prescribes between one month to one year prison term and a fine of up to XAF 300,000 (US$ 570); Article 6 of Law no.023/60 of 11 May 1960 on public meetings prescribes between 15 days to six months in prison and a fine of up to XAF 150,000 (US$ 285).
\item We have used the exchange rate as of 9 March 2018, XAF 1 = US$ 0.0019 in this submission.
\item Article 9 of the Congolese constitution states: “The freedom of the human person is inviolable. No one can be arbitrarily accused, arrested or detained. Every defendant is presumed innocent until proved guilty by a fair and equitable trial guaranteeing the rights of the defense. The rights of the victim are also guaranteed.” Further, in article 11, it adds: “Everyone arrested shall be informed of the reason for his arrest and his rights in a language which he understands.”
\end{itemize}
\end{footnotesize}
TORTURE AND OTHER ILL-TREATMENT

Despite the prohibition in the Constitution of torture and cruel, inhuman or degrading treatment and the Congolese Criminal Code punishing torture and other ill-treatment with prison terms under specific circumstances, there is no legislative or regulatory provision that incorporates a definition of torture and other cruel, inhuman or degrading treatment or punishment.

HUMAN RIGHTS SITUATION ON THE GROUND

RESTRICTIONS ON THE RIGHTS TO FREEDOM OF EXPRESSION

On 7 May 2018, 20 activists from the citizen movement Ras-le-bol were arrested in Pointe-Noire by agents from the General Direction of Territorial Surveillance (Direction générale de la surveillance du territoire, DGST) while they were peacefully protesting for the release of political prisoners. Two days later, three other members of the same movement were arrested in Brazzaville while they were putting up posters demanding the release of political prisoners. They were all charged with organising and engaging in an unauthorised protest. A week later, 17 of those arrested in Pointe-Noire were released and the rest of them were freed in June 2018.

On 25 October 2015, ahead of protests organized by the opposition parties against the reform of the Constitution to allow the incumbent President to run for another term, the authorities shut down the Internet and telecommunication networks for “security reasons”, as well as the Radio France International broadcast signal in Brazzaville. Similarly, on 20 and 21 March 2016, during the presidential elections, the authorities shut down the Internet and telecommunications networks as well as some radio stations in Brazzaville.

19 Article 11 of the Congolese Constitution stipulates: “Any act of torture, cruel, inhuman or degrading treatment is prohibited. The judiciary, guardian of individual liberties, ensures the respect of this principle under the conditions fixed by the law”. Further, article 14 states: “Any individual, any agent of the State, any agent of the local authorities, any public authority which would be guilty of torture or cruel, inhuman or degrading treatment, either on his own initiative or on instruction, is punishable in accordance with the law”.
20 Article 303 of the Congolese Criminal Code punishes torture under the aggravating circumstances of the offense of murder, articles 309 to 312 under intentional assault and articles 330 to 333 under acts of mischief.
21 The letter signed by the Minister of Interior and Decentralization, Mr. Raymond Zephirin Mboulou on 18 March 2016 was sent to a private telecommunications company and stated “security reasons” to justify the telecommunications shutdown.
In February 2015, the authorities refused entry at the border to an Amnesty International delegate despite him possessing the required visas and official invitations.22

RESTRICTIONS ON THE RIGHTS TO PEACEFUL ASSEMBLY

On 9 October 2015, six activists from the youth movement Ras Le Bol were arrested following a peaceful protest they had organized against the referendum. They were charged with “participation in an unauthorized protest” and sentenced to three months imprisonment and a fine each of XAF 150,000 (US$ 285).23

On 17 October 2015, in Pointe-Noire, a plainclothes police officer fired live ammunition into a crowd demonstrating against the referendum, wounding 13 people. On 20 October 2015, security forces fired tear gas and live ammunition at protesters in Brazzaville demonstrating against proposed constitutional changes. Local civil society organizations told Amnesty International that at least six people were killed.24 On the same day, opposition groups reported that at least 12 protesters and bystanders were killed by military police and several others wounded in protests organized in Pointe Noire. Amnesty International is not aware of any investigations into these incidents having been initiated.

In March 2016, several members of opposition political parties were arrested, including Jean Ngouabi, Jacques Banagandzala, Colonel Marcel Pika, Ghislain Christian Sende Moungondo and Anatole Limbongo Ngoka, following a call by the opposition parties for a “ville morte”25 protest to be held on 29 March. The authorities accused them of inciting public disorder, based on Law No. 21-2006 on political parties. They remain in detention, except for Pika Marcel who was released on bail on 29 December 2017 due to his deteriorating health.26

On 23 March 2017, the Prefect of Brazzaville rejected a request to hold a peaceful demonstration by the Congolese Observatory of Human Rights, the Association for Human Rights and Prison Conditions, and the United Forces for Freedom and Democracy. The organizations had intended to hand over a letter to the Prime Minister raising concerns about the human rights situation.


23 Other organizations including Reporters without Borders (Reporters Sans Frontieres, RSF) and the Committee to Protect Journalists (CPJ) have reported on the arbitrary arrest of Ghys Fortuné Dombe Bemba and requested his immediate release. For more information, visit https://rsf.org/fr/actualites/congo-brazzaville-rsf-sinquiete-de-letat-de-sante-de-ghys-fortune-bemba-et-demande-sa-liberation and https://cpj.org/2017/09/calls-for-republic-of-the-congo-president-to-free-.php.


25 From the French villes mortes, this protest method request protestors to stay at home during a pre-communicated period of time. Opposition parties and Civil Society Organisations in Congo have often opted for this protest method to circumvent bans on public demonstrations because they could be violently repressed.

ARBITRARY ARRESTS AND DETENTION OF POLITICAL OPPOSITION MEMBERS AND JOURNALISTS

At least 60 leading political figures have been arrested for opposing constitutional changes and objecting to the outcome of presidential elections. Most of them remain in detention as of March 2018.

On 23 November 2015, Paulin Makaya, President of the political party “Unis pour le Congo” (UPC), who opposed the proposed changes to the Constitution, was arrested by police officers while at the office of the Public Prosecutor of the High Court of Brazzaville. He was detained at the Central Police Station of Brazzaville until 1 December 2015 without being brought before a court or charged, and questioned on several occasions without the presence of his lawyer. On 25 July 2016, he was sentenced to two years in prison and fined XAF 2.5 million (US$ 4,750). The sentence was upheld by the Court of Appeal of Brazzaville on 21 March 2017. Although he completed the two-year prison sentence on 1 December 2017, as of March 2018 he remains in prison. Additional charges were brought against him on 6 January 2017, which included “undermining national security, complicity in a plan to escape from detention, and complicity in the unlawful possession of arms and munitions of war”. The charges were related to a shooting in Brazzaville Central Prison in December 2016 in which, according to witnesses, he played no part.27

On 11 January 2017, Ghys Fortuné Dombé Bemba, editor of the Talassa newspaper was arrested by the judicial police and charged with “complicity in undermining state security after publishing a statement by Reverend Ntumi, who is the leader of the “Ninjas”, an armed group operating in the Pool Department. Although his health is deteriorating the authorities have rejected at least two of his bail requests on medical grounds. As of March 2018, he was still in detention.

TORTURE AND OTHER ILL-TREATMENT

On 24 January 2017, Modeste Boukadia, President of the opposition party Circle of Democrats and Republicans of the Congo (Cercle des démocrates et républicains du Congo, CDRC), was admitted to the Guénin Clinic in Pointe-Noire after being beaten up by prison guards. He had two broken lumbar vertebrae, high blood pressure and a heart condition. In August 2017, the authorities released him on bail to permit him to travel to France for medical treatment. The authorities have yet to conduct an investigation into his allegations of torture.28

Local NGOs told Amnesty International delegates that Noël Mienanzambi Boyi, President of the Association for the Culture of Peace and Non-Violence (Association pour la culture de la paix et de la non-violence, ACPNV) and a local radio host, was allegedly tortured during his arrest in January 2017 and during detention. He has been held without trial in Brazzaville Central Prison since June 2017 and there has been no investigation into his allegations of torture.29


28 Modeste Boukadia was arrested on 15 January 2016 by the police at the Maya-Maya International Airport in Brazzaville. The arrest followed Modeste Boukadia sentencing in absentia in April 2014 by the Court of Appeal of Pointe-Noire. He was found guilty for “undermining security of the State” for his participation in the organization of a peaceful protest and sentenced to 30 years of forced labor. During his detention at the Pointe-Noire prison, Modeste Boukadia was allegedly tortured on several occasions by prison guards.

29 Noël Mienanzambi Boyi, was arrested on 21 January 2017, by police officers in Kinkala. The authorities claimed that he was carrying drugs and food to Pastor Frédéric Bintsamou (aka Pastor Ntumi) and charged him with “complicity in undermining the internal security of the state”. Local NGOs told Amnesty International that he was arrested after he agreed to mediate between the authorities and Pastor Ntumi, at the request of the government. Since June 2017, he has been held in Brazzaville Central Prison without trial and no investigation was conducted into the allegations of torture. This information was confirmed through a letter signed by Noël Mienanzambi Boyi and other human rights organisations including International
REFUGEE AND MIGRANT RIGHTS

Between 2014 and 2015, Congo engaged in unlawful mass expulsions of non-nationals, including refugees and asylum seekers, during the operation “Mbata ya Bakolo” (Slap of the Elders in Lingala) carried out by police in cities nationwide. According to the police, the operation aimed at reducing irregular immigration and criminality which they claimed was being driven by “kuluna” gangs (organized criminal gangs) from the DRC.

The first phase of the police operation, launched on 4 April 2014, targeted DRC nationals in particular and more than 179,000 of them were forcibly returned to DRC. A second phase of the operation was launched on 14 May 2015 in Pointe-Noire and targeted West African nationals, including Senegalese, Malians, and Ivoirians.

Amnesty International’s research has shown that detention conditions are extremely poor in Congo. The organization interviewed at least six people who described being held for days without food or water, in overcrowded cells, with room to stand only. NGOs are denied access to the detention sites. No official figures have been issued concerning the number of people arrested and returned during the operation.

In May 2014 the authorities announced that 18 police officers suspected of involvement in human rights violations during the “Mbata ya Bakolo” operation were suspended from duty. Amnesty International is also not aware of any investigations into human rights violations committed during the “Mbata ya Bakolo” operation.30

RECOMMENDATION FOR ACTION BY THE STATE UNDER REVIEW

AMNESTY INTERNATIONAL CALLS ON THE GOVERNMENT OF CONGO TO:

THE DEATH PENALTY

- Amend the Criminal Code to align it with the abolition of the death penalty in the Constitution;
- Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights.

RIGHTS TO FREEDOM OF EXPRESSION AND PEACEFUL ASSEMBLY

- Immediately and unconditionally release all prisoners arrested solely for peacefully exercising their rights to freedom of expression and assembly;
- Refrain from restricting telecommunication networks and access to the internet, including

social media and messaging sites;

- Refrain from misusing the criminal justice system to target and harass people simply for exercising their rights to freedom of expression, association and peaceful assembly, including political opposition members and journalists.

RIGHT TO PEACEFUL ASSEMBLY

- Amend Article 5 of Law No. 023/60 on public meetings to ensure it provides further information on the grounds under which the right to peaceful assembly may be subjected to restrictions;
- Amend Articles 3-6 of Ordinance No. 62-28 related to demonstrations on public venues to ensure the right to peaceful assembly is not subject to prior authorization but at most a prior notification and only for large peaceful assemblies or for assemblies where a certain degree of disruption is anticipated;
- Amend Law No. 21-2016 on political parties to ensure its conformity with international human rights standards on the right to freedom of expression;
- Refrain from using Article 6 of Law No. 023/60 on public meetings and Article 7 of Ordinance No. 62-28 related to demonstrations on public venues to arrest and sentence to prison individuals who organize or attend banned peaceful public meetings and demonstrations.

ARBITRARY ARRESTS AND DETENTION OF POLITICAL OPPOSITION MEMBERS AND JOURNALISTS

- Instruct the police, the army, the General Direction of Territory Surveillance (Direction General de surveillance du territoire, DGST) and the gendarmerie, to refrain from detaining people without charge beyond the 72-hour period stipulated in Article 48 of the Criminal Code of Procedure;
- Ensure that the Public Prosecutor is informed whenever a suspect is arrested by the General Direction of Territory Surveillance (Direction General de surveillance du territoire, DGST), including the reasons for the arrest and allow the Public Prosecutor to visit detainees, including those detained at the DGST facilities;
- Allow independent national and international human rights monitors access to all detention centres, including the General Direction of Territory Surveillance (Direction General de surveillance du territoire, DGST) facilities.

TORTURE AND OTHER ILL-TREATMENT

- Ensure that a definition of torture, in line with the Convention against Torture, is included in the Criminal Code and that torture and other ill-treatment are prohibited in all their forms;
- Allow all detainees, after their arrest and regularly during their detention, access to their families and lawyers of their choosing, from the moment of arrest and throughout all judicial proceedings;
- Ensure that all detainees are examined by an independent doctor of their choosing whenever needed;
- Effectively investigate all allegations of torture and other ill-treatment and bring suspected perpetrators to justice in fair trials and provide effective remedies and adequate reparations.

REFUGEES AND MIGRANTS’ RIGHTS

- Promptly adopt comprehensive asylum legislation, recognising in particular the right not to be subjected to refoulement, in line with international law;
- Ensure that a definition of discrimination, in line with international law, is included in the
Criminal Code and that discrimination is prohibited in all its forms;

- Publicly announce on the radio and television and other media that discrimination against foreign nationals, including from the DRC, will not be tolerated;
- Recognize the right to health and education of refugees and migrants;
- Ensure those suspected of crimes under international law and human rights violations during the operation “Mbata ya Bakolo” are prosecuted in proceedings before ordinary civilian courts which comply with international fair trial standards;
- Provide all victims of crimes under international law and human rights violations committed during the operation “Mbata ya Bakolo” with full reparation, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.
ANNEX

AMNESTY INTERNATIONAL DOCUMENTS FOR FURTHER REFERENCE

REPORTS:


PRESS RELEASES AND PUBLIC STATEMENTS:

Congo-Brazzaville: Torture and arbitrary detentions of dozens of people put freedom of expression under severe strain, 21 March 2018.


Republic of Congo: Air strikes hit residential areas including schools, 18 April 2016.

Republic of Congo: End wave of opposition arrests following the presidential elections, 31 March 2016.


Congo-Brazzaville: Restraint needed as protesters clash with security forces, 20 October 2015.

Congo-Brazzaville: Mass deportations of DRC nationals may amount to crimes against humanity, 2 July 2015.

URGENT ACTIONS:
Opposition member facing new charges, 7 February 2017 (UA 274/15 Index: AFR 22/5596/2017).

Detained opposition member hospitalised, 30 January 2017 (UA 28/17 Index: AFR 22/5567/2017).

Opposition leader’s appeal yet to be heard, 15 November 2016 (UA 274/15 Index: AFR 22/5125/2016).

Two year sentence for taking part in a protest, 3 August 2016 (UA 274/15 Index: AFR 22/4607/2016).

31 All these documents are available on Amnesty International’s website:
Opposition member risks prison for protesting, 1 July 2016 (UA 274/15 Index: AFR 22/4348/2016).


Judge yet to review bail for opposition member, 13 January 2016 (UA 274/15 Index: AFR 22/3200/2016).

Opposition member charged, set to stand trial, 4 December 2015 (UA 274/15 Index: AFR 22/3000/2015).

Congo opposition member held without charge, 1 December 2015 (UA 274/15 Index: AFR 22/2979/2015).
AMNESTY INTERNATIONAL IS A GLOBAL MOVEMENT FOR HUMAN RIGHTS. WHEN INJUSTICE HAPPENS TO ONE PERSON, IT MATTERS TO US ALL.