



NEW YORK  
CITY BAR

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August 9, 2017

Hon. Marie-Ange Mushobekwa  
Ministère Des Droits Humains  
Place Royal  
Kinshasa-Gombe  
Democratic Republic of Congo

General Delphin Kahimbi  
Détection Militaire des Activités Anti-Patrie  
Avenue Bokoro  
Kintambo, Kinshasa  
Democratic Republic of the Congo

Dear Minister Mushobekwa and General Kahimbi:

I write on behalf of the New York City Bar Association (the Association) to express our grave concern over the arrest and detention, without formal charges or access to lawyers or visits from their families, of youth activists who were detained in Kinshasa. We urge you to take all necessary measures to ensure that these activists be given due process protections. These requested actions are necessary for the Democratic Republic of the Congo (DRC) to comply with international law and its Constitution.<sup>1</sup>

The Association is an independent non-governmental organization with more than 24,000 members in over 50 countries. Founded in 1870, the Association has a long history of dedication to human rights, notably through its Committee on International Human Rights, which investigates and reports on human rights conditions around the world, and the Committee on African Affairs, which closely monitors and responds to legal developments in Africa. Our Task Force on the Independence of Lawyers and Judges seeks to prevent the harassment and intimidation of judges and lawyers.

On June 23, 2017, Jean-Marie Kalonji reportedly was stopped by Congolese armed forces in the Salongo neighborhood in the Lemba municipality while attempting to visit a family member.<sup>2</sup>

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<sup>1</sup> We wrote previously on the seizure and detention of youth activists in Kinshasa and Goma in May 2015. See Letter dated May 1, 2015 to Hon. Alexis Tambwe Mwamba, Minister of Justice and Human Rights, from Debra L. Raskin, President of the New York City Bar Association (<http://www2.nycbar.org/pdf/report/uploads/20072901-LettertoDemocraticRepublicofCongoDetentionofYouthActivists.pdf>).

<sup>2</sup> Human Rights Watch, *Activist, Lawyer Arbitrarily Detained in Kinshasa*, available at [https://www.hrw.org/blog-feed/democratic-republic-congo-crisis](https://www.hrw.org/blog/feed/democratic-republic-congo-crisis).

After Mr. Kalonji was interrogated and failed to produce identification, soldiers allegedly searched Mr. Kalonji's bag and found flyers for a Lumumba scholarship program organized by the youth movement Quatrième Voie/Il est Temps and detained him.<sup>3</sup> Subsequently, while attempting to visit Mr. Kalonji, attorney Sylva Kabanga Mbikayi was also detained by the Congolese military. Although it has been reported that Congolese armed forces released Mr. Kalonji and Mr. Mbikayi on July 17, 2017,<sup>4</sup> apparently the two were held without charge or cause.<sup>5</sup>

Mr. Kalonji and Mr. Mbikayi both serve as leaders of the youth group, Quatrième Voie/Il est Temps, an organization that defends the rights of youth in DRC, promotes civic education and engages youth in social projects for change. The arrest and detention of the youth activists, apparently due to their affiliation with Quatrième Voie/Il est Temp—an organization that has at times criticized the government of the DRC and advocated for political change—violated the DRC's obligations under the International Covenant on Civil and Political Rights (ICCPR) that the DRC acceded to in 1976,<sup>6</sup> the African Charter on Human and Peoples' Rights (ACHPR) that the DRC ratified in 1987,<sup>7</sup> and the Constitution of the DRC. In addition, the arrest of Mr. Mbikayi, an attorney attempting to visit Mr. Kalonji to provide legal assistance, violated the DRC's obligations under the Basic Principles on the Role of Lawyers.

As a signatory to the ICCPR, the DRC is obligated to abide by Part II, Article 14 3 (a) which states that everyone shall be entitled "To be informed promptly...of the charge against him;" and (b) has the right "to communicate with counsel of his own choosing." Article 18 requires State Parties to allow everyone the right to freedom of thought.<sup>8</sup> Furthermore, Article 9 states that "Anyone arrested or detained...shall be brought promptly before a judge or other authorized officer...and shall be entitled to trial within a reasonable time or to release," and Article 14 3(c) requires that a defendant "be tried without undue delay."

The ACHPR stipulates in Article 71.c that every individual shall have the right "to be defended by counsel of his choice." Article 9 states that, "Every individual shall have the right to express...his opinions." And Article 71.d provides "the right to be tried within a reasonable time."

The DRC Constitution states in Title II, Article 18 that "Any person who has been arrested must be immediately informed of the reasons for his/her arrest," and that "A person kept in custody has the right to immediately contact his/her family and his/her counsel. Custody must not exceed

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<sup>3</sup> *Id.*

<sup>4</sup> Amnesty International, *Activist and his Lawyer Released without Charge*, available at <https://www.amnesty.org/en/documents/afr62/6766/2017/en/>.

<sup>5</sup> Amnesty International, *Activist and Lawyer Held at Military Facility*, available at <https://www.amnestyusa.org/urgent-actions/urgent-action-activist-and-lawyer-held-at-military-facility-democratic-republic-of-the-congo-ua-162-17/>.

<sup>6</sup> Guide to International Procedures Available in Cases of Human Rights Violations in Africa, *Claiming Human Rights-in the Democratic Republic of the Congo*, available at <http://www.claiminghumanrights.org/drcongo.html>.

<sup>7</sup> *Id.*

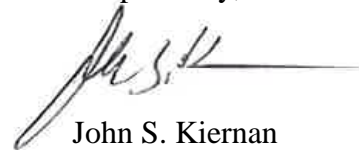
<sup>8</sup> International Covenant on Civil and Political Rights, available at <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

48 hours. On expiry of this period, the person in custody must be released or placed in the hands of a competent judicial authority.” Article 23 ensures the right to freedom of expression, and Article 22 states that, “All persons have the right to freedom of thought...both in public and in private.” And in Article 25 the freedom of peaceful meetings without weapons is guaranteed.<sup>9</sup>

The Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress (the “Havana Convention”), states in Principle 16 that “Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.”<sup>10</sup>

While the release of Mr. Kalonji and Mr. Mbikayi is a positive development, due to the violations of international law and the DRC’s Constitution, we respectfully request that these individuals be afforded full due process in any proceedings stemming from their arrest and detention, and that subsequent detentions of Congolese citizens, without any charges, be avoided. Such steps are necessary to uphold the right of freedom of expression and peaceful assembly.

Respectfully,



John S. Kiernan

CC:

The Honorable Alexis Thambwe Mwamba  
Minister of Justice and Human Rights of the Democratic Republic of the Congo

The Honorable François Balumuene  
Ambassador to the United States of the Democratic Republic of the Congo

The Honorable Zeid Ra'ad Al Hussein  
U.N. High Commissioner for Human Rights

The Honorable Rex Tillerson  
United States Secretary of State

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<sup>9</sup> The Constitution of the Democratic Republic of the Congo, Title II Human Rights, Fundamental Liberties and the Duties of the Citizen and the State, available at <http://www.constitutionnet.org/files/DRC%20-%20Congo%20Constitution.pdf>.

<sup>10</sup> Basic Principles on the Role of Lawyers, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx>

The Honorable Virginia Bennett  
Acting Assistant Secretary and Principal Deputy  
United States Department of State, Bureau of Democracy Human Rights and Labor

The Honorable Jeff Flake  
Chairman, United States Senate Committee on Foreign Relations Subcommittee on Africa and  
Global Health Policy

The Honorable Cory Booker  
Ranking Member, United States Senate Committee on Foreign Relations Subcommittee on  
Africa and Global Health Policy

The Honorable Christopher Smith  
Chairman, United States House Committee on Foreign Affairs Subcommittee on Africa, Global  
Health, Global Human Rights, and International Organizations

The Honorable Karen Bass  
Ranking Member, United States House Committee on Foreign Affairs Subcommittee on Africa,  
Global Health, Global Human Rights, and International Organizations

The Honorable Nikki Haley  
United States Ambassador to the United Nations

The Honorable Faith Pansy Tlakula  
Chairperson of the African Commission on Human and People's Rights