



The Law Society of
Upper Canada

Barreau
du Haut-Canada

August 25, 2017

Office of the Treasurer

Osgoode Hall
130 Queen Street West
Toronto, Ontario
M5H 2N6

Tel 416-947-3415
Fax 416-947-7609

His Excellency President Joseph Kabila Kabange
Gombe, Kinshasa
Democratic Republic of Congo

Dear President:

Re: Arrest and detention of lawyer Sylva Mbikayi

I write on behalf of the Law Society of Upper Canada* to voice our grave concern over the arrest and detention of lawyer Sylva Mbikayi. When serious issues of apparent injustice to lawyers and the judiciary come to our attention, we speak out.

The Law Society received reports that on July 13, 2017, Sylva Mbikayi, a lawyer in the Democratic Republic of Congo, was arrested in the capital city of Kinshasa and detained at the Military Intelligence Headquarters (DEMIAP) in Bumba.

Sylva Mbikayi was arrested without a warrant and without being informed of the reasons for his arrest when he went to DEMIAP to consult his client and friend, activist and lawyer-in-training Jean-Marie Kalonji, who was being detained there.

Jean-Marie Kalonji was arrested a few hours earlier at an exit check-point of a military camp. He had his bag searched by soldiers after he explained “he could not show his passport because it was with an embassy where he had applied for a visa.”¹ The soldiers who stopped him questioned his nationality and found in his bag “flyers for a Lumumba scholarship programme set up by the youth movement Quatrième Voie/ il est temps (the fourth way/ it is time).”² Jean-Marie Kalonji was then arrested.

¹ “Democratic Republic of Congo – Arrest of lawyer Sylva Mbikayi”, (17 July 2017), online: <<http://www.advocatenvooradvocaten.nl/12781/democratic-republic-of-congo-arrest-of-lawyer-sylva-mbikayi/>>.

² *Ibid.*

Sylva Mbikayi was immediately notified of Jean-Marie Kalonji's arrest, and when he went to visit Jean-Marie Kalonji at DEMIAP, Sylva Mbikayi was arrested as well.

Both men have been detained at DEMIAP since their arrest, without being allowed contact with their family members or access to lawyer.

In light of these circumstances, the Law Society urges Your Excellency to comply with the Democratic Republic of Congo's obligations under international human rights laws, including the United Nations' *Basic Principles on the Role of Lawyers*.

Article 16 of the *Basic Principles on the Role of Lawyers* states:

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.

Article 17 states:

Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.

Article 18 states:

Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.

Furthermore, Article 23 provides:

Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization.

The Law Society urges the government of the Democratic Republic of Congo to:

- a. Immediately and unconditionally withdraw all charges against Sylva Mbikayi;

- b. Immediately and unconditionally release Sylva Mbikayi;
- c. Pending his release, immediately disclose the whereabouts of Sylva Mbikayi, and ensure that he is detained in an official place of detention, is not subjected to torture or other ill-treatment, has regular, unrestricted access to his family, lawyers of his choice, and medical care on request or as necessary;
- d. Pending his release, ensure that during his detention, Sylva Mbikayi is treated in accordance with applicable international standards;
- e. Ensure that all lawyers can carry out their peaceful and legitimate activities without fear of physical violence or other human rights violations; and
- f. Ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

Yours truly,

Paul Schabas
Treasurer

**The Law Society of Upper Canada is the governing body for more than 50,000 lawyers and 8,000 paralegals in the province of Ontario, Canada. The Treasurer is the head of the Law Society.*

The mandate of the Law Society is to govern the legal profession in the public interest by upholding the independence, integrity and honour of the legal profession for the purpose of advancing the cause of justice and the rule of law.

cc:

Mr. Dominique Kilufya Kamfwa, Ambassador
Congoese (Dem) Embassy in Ottawa, Canada
18 Range Road
Ottawa, ON K1N 8J3
Canada

Alex Neve, Secretary General, Amnesty International Canada

Mary Lawlor, Executive Director, Front Line Defenders

Vincent Forest, Head of European Union Office, Front Line Defenders

Kenneth Roth, Executive Director, Human Rights Watch

President, National Bar Association, Democratic Republic of the Congo

Adrie van de Streek, Executive Director, Lawyers for Lawyers

David F. Sutherland, Chair, Lawyers' Rights Watch Canada

Yves Berthelot, President, Observatory for the Protection of Human Rights Defenders

Michel Forst, Special Rapporteur on the situation of human rights defenders, Office of the United Nations High Commissioner for Human Rights

Gabriela Knaul, Special Rapporteur of the Human Council on the independence of judges and lawyers, Office of the United Nations High Commissioner for Human Rights

Sarah Smith, Human Rights and Rule of Law Policy Adviser, The Law Society of England and Wales