

# REPUBLIC OF THE CONGO 2012 HUMAN RIGHTS REPORT

## EXECUTIVE SUMMARY

The Republic of the Congo is a parliamentary republic in which the constitution vests most of the decision-making authority and political power in the president and his administration. Denis Sassou-N'Guesso was reelected president in 2009 with 78 percent of the vote, but opposition candidates and domestic nongovernmental organizations (NGOs) questioned the validity of this figure. The 2009 election was peaceful, and the African Union declared the elections free and fair; however, opposition candidates and NGOs cited irregularities. Legislative elections were held in July and August 2011 for 137 of the National Assembly's 139 seats; elections could not be held in two electoral districts in Brazzaville because of the March 4 munitions depot explosions in the capital's Mpila neighborhood. The African Union declared the elections free, fair, and credible, while still citing numerous irregularities. Civil society election observers estimated the participation rate for the legislative elections at 10 to 15 percent nationwide. While the country has a multiparty political system, members of the president's Congolese Labor Party (PCT) and its allies won 95 percent of the legislative seats and occupied most senior government positions. Security forces reported to civilian authorities. The government generally maintained effective control over the security forces; however, there some members of the security forces acted independently of government authority, committed abuses, and engaged in malfeasance.

Major human rights problems included beatings and torture of detainees by security forces, poor prison conditions, and lengthy pretrial detention.

Other human rights abuses included arbitrary arrest; an ineffective and underresourced judiciary; political prisoners; infringement of citizens' privacy rights; some restrictions on freedom of speech, press, and assembly; official corruption and lack of transparency; lack of adequate shelter for victims of the March 4 explosions; domestic violence, including rape; trafficking in persons; discrimination on the basis of ethnicity, particularly against indigenous persons; female genital mutilation/cutting; and child labor.

The government seldom took steps to prosecute or punish officials who committed abuses, whether in the security services or elsewhere in the government, and official impunity was a problem.

**Section 1. Respect for the Integrity of the Person, Including Freedom from:****a. Arbitrary or Unlawful Deprivation of Life**

There were no reports the government or its agents committed arbitrary or unlawful killings.

**b. Disappearance**

There were no new reports of disappearances or politically motivated abductions or kidnappings.

The UN Working Group on Enforced or Involuntary Disappearances visited the country in September and October 2011 and issued its final report in January. The working group recommended the government continue to seek the truth concerning the fate of all alleged victims of the 1999 Beach disappearances, in which more than 350 persons went permanently missing.

**c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment**

The law prohibits such practices; however, NGOs reported cases of government-led torture and other cruel, inhumane, and degrading treatment.

For example, there were widespread reports from local human rights NGOs of detainees being regularly beaten in the jails. Detainees were frequently required to pay police for protection or risk being beaten. Medical personnel at the Pointe Noire prison acknowledged that pretrial detainees who arrived from jails were frequently malnourished and ill from mistreatment. Although the law limits jail detentions to 48 to 72 hours, detainees were frequently held several weeks before being released or transferred to the prison to await trial.

The police commissioner of Pointe Noire's Arrondissement 3 Tie-Tie reportedly ordered his subordinates to beat and rape a woman who was in his custody following a dispute he had with her related to her selling merchandise in a public venue without authorization.

**Prison and Detention Center Conditions**

Physical Conditions: Prison and detention center conditions were harsh and life-threatening. At year's end there were approximately 1,300 prisoners, three-quarters of whom were awaiting trial. As of August 27, the Brazzaville prison, built in 1943 to hold up to 150 prisoners, held approximately 645, including 31 women and seven minors. The Pointe Noire prison, built in 1934 to hold up to 75 prisoners, held 192, including three women and three minors. There were approximately 50 to 60 detainees and prisoners in each of the remaining 10 departmental prisons. Due to the facilities' infrastructure constraints and lack of education services, these departmental facilities did not hold minors. Convicted minors in these districts were therefore given punishments that did not include prison sentences. Police stations regularly housed individuals in their limited incarceration facilities beyond the maximum statutory holding period of 48-72 hours.

Separate facilities were generally maintained for minors, women, and men in Brazzaville and Pointe Noire. In the 10 other prisons, there were no reported juvenile detainees, and men were held separately from women. Security measures in Brazzaville's prison were insufficient to maintain minors' isolation from the general prison population. Brazzaville's prison also kept two men in the women's facility reportedly to separate them from the general prison population for their own safety. Authorities held pretrial detainees with convicted prisoners in each of the 12 prisons. In Brazzaville prisoners with illnesses were kept in one cell but allowed to interact with other inmates. In Brazzaville and Pointe Noire, most cells had a functioning television. There were no televisions in the other 10 prisons.

Most inmates slept on the floor on cardboard or thin mattresses in small, overcrowded cells, exposing them to disease. The prisons lacked any significant ventilation, had poorly maintained lighting, and had wiring protruding from the walls. In Pointe Noire, water regularly backed up into prisoners' cells. Basic and emergency medical care was limited, and meaningful access to social services personnel was severely limited due to insufficient personnel and overcrowding.

Prison inmates reportedly received, on average, only one meal a day, consisting of inadequate portions of rice, bread, and fish or meat. Families were allowed to bring meals to inmates.

Authorities in the prisons provided detainees and prisoners potable water. The Pointe Noire prison occasionally had running water. All of the prisons supplied potable water to inmates in buckets.

Prison conditions for women were better than those for men in the country's 12 prisons. There was less crowding in the women's cells than in those for men.

The Brazzaville prison has a library with approximately 50 books but no recreation facilities. The Pointe Noire prison has no library but does use its central detainment courtyard for sports, such as soccer matches. The other prisons do not have libraries or sports facilities. The Brazzaville prison has a school for juveniles that functions three times per week for two hours per day. When available, qualified inmates taught classes. Otherwise, civil servants from the Ministry of Education taught them. There were no schools in the other prisons.

Administration: Recordkeeping in the penitentiary system did not improve during the year. Prison officials continued to use a noncomputerized recordkeeping system despite having the necessary computer equipment. A lack of Internet access and training inhibited the systematic adoption of computerized recordkeeping.

Prisoners and detainees were permitted religious observance. Representatives of religiously affiliated charitable organizations visited prisons and detention centers for charitable work and religious support. Prison rules provide for prisoners and detainees to submit complaints to judicial authorities, but this right was not respected. There was no provision for an ombudsman. Defendants with sufficient means were able to hire private attorneys to advocate on their behalf for alternatives to incarceration or to alleviate inhumane conditions.

Before a trial the law obligates the government to provide legal assistance to detainees who cannot afford to hire a private attorney. However, the availability of this legal assistance was inconsistent because the government did not generally pay for public defenders. The government investigated and monitored prison conditions at the request of local NGOs following complaints from prisoners' and detainees' families. However, little was done to address the penal system's failure to provide due process for detainees.

Lengthy pretrial detentions were primarily due to the judicial system's lack of capacity and financing. Judges often had a large backlog of cases, and the Ministry of Justice typically had to wait six months for funding to arrive from the national treasury before cases could go to trial. By law, criminal courts must review cases four times per year. In practice this was not possible since the ministry receives funding for processing criminal cases once a year based on the number of pending cases at the time of the request for funding.

Monitoring: As in the previous year, the government provided domestic and international human rights groups with only limited access to prisons and detention centers. However, it granted diplomatic missions access to both prisons and police jails to provide consular assistance to their nationals.

Access to prisoners requires a communication permit from a judge. The permit allows visitors to spend five to 15 minutes with a prisoner. Visits take place in a small room that holds one extended table at which approximately 10 detainees at a time may sit and converse with their visitors. A new permit is required for each visit. Visitors often had to bribe prison authorities to be allowed in. Since many prisoners' families lived far away, visits were often infrequent because of the financial hardship of travel.

Improvements: During 2011 the government took some steps to improve the conditions of its prisons as part of a three-year project spearheaded by the European Union. However, the project made no progress during the year due to a lack of funding. A new prison was opened in Impfondo, capital of Likouala Department. The prison in Ouesso, capital of Sangha Department, was refurbished.

#### **d. Arbitrary Arrest or Detention**

The constitution and law prohibit arbitrary arrest and detention. However, arbitrary arrest continued to be a problem.

#### **Role of the Police and Security Apparatus**

The security forces consist of the police, the gendarmerie, and the military. The police and the gendarmerie are responsible for maintaining internal order, with police primarily operating in cities and the gendarmerie mainly in other areas. Military forces are responsible for territorial security, but some units also have domestic security responsibilities, such as the specialized Republican Guard battalion charged with the protection of the president, government buildings, and diplomatic missions. The minister of defense oversees the military forces and the gendarmerie, and the minister of the interior and decentralization oversees the police.

A police unit under the Ministry of Interior and Decentralization is responsible for patrolling frontiers. Another military unit, the military police, reports to the

minister of defense and is composed of military and police officers responsible for investigating professional misconduct by members of any of the security forces. Overall, professionalism of the security forces continued to improve, in large part due to training by the international law enforcement community. The government provided training in Brazzaville and Pointe Noire for police from around the country on the prevention of human rights abuses. The government began the process of decentralizing management of the police.

The government generally maintained effective control over the security forces; however, there were members of the security forces who acted independently of government authority, committed abuses, and engaged in malfeasance. Traffic police extorted bribes from drivers under threat of seizure of their identity cards or impoundment of their vehicles.

Although the Human Rights Commission (HRC) was established to receive reports from the public of security force abuses, impunity for members of the security forces remained widespread.

### **Arrest Procedures and Treatment While in Detention**

The constitution and law require that a duly authorized official issue warrants before arrests are made, a person be apprehended openly, a lawyer be present during initial questioning, and detainees be brought before a judge within three days and either charged or released within four months. However, the government habitually violated these provisions. There is a system of bail, but, with 70 percent of the population living in poverty, most detainees could not afford to post bail. Detainees generally were informed of charges against them at the time of arrest, but filing of formal charges often took at least one week. Police at times held persons for six months or longer before filing charges due to administrative errors or delays in processing. Most delays were attributed to lack of staff in the Ministry of Justice and the court system. Family members usually were given prompt access to detainees--but often only after payment of bribes. The law requires that indigent detainees facing criminal charges be provided lawyers at government expense, but this usually did not occur.

The penal code states a detainee may be detained for a maximum of 48 to 72 hours in a police jail before the case must be reviewed by an attorney general and a decision must be made to either release the individual or transfer him or her to a prison for pretrial detention. However, the 72-hour maximum was not observed.

Detainees were frequently held for several weeks before being freed by an attorney general or transferred to a prison to await trial.

The penal code sets a maximum of four months in pretrial detention--which may be extended an additional two months with judicial approval--and thereafter detainees must be released pending their court hearing. However, this requirement was not observed. Three-quarters of detainees in Brazzaville's prison were pretrial detainees. Prison authorities stated the average provisional detention for noncriminal cases lasted one to three months and for criminal cases at least 12 months. However, human rights activists stated the average was much longer.

Arbitrary Arrest: Arbitrary arrest continued to be a problem, with police, gendarmes, or soldiers often detaining vehicle operators (mainly taxi drivers) for minor and frequently nonexistent offenses. To extort funds, immigration officials also routinely stopped persons and threatened them with arrest on some pretext, such as claiming they lacked some required document or were committing espionage. The victims usually paid a bribe; if not, the person was detained at a police station (or the airport) until either a bribe was paid or someone with influence put pressure on authorities to release the individual.

In 2004 authorities in Brazzaville arrested three former government agents of the Democratic Republic of the Congo (DRC)--Major Germain Ndabamenya Atakilome, Staff Chaplain Medard Mabwaka Egbonde, and Police Captain Bosch Ndala Umba-- under suspicion of passing intelligence to a foreign power and for undermining national security. They released Atakilome and Egbonde in June after eight years of detention at the Central Directorate of Military Intelligence and the Directorate General of Territorial Surveillance (DGST). Umba remained in detention at the DGST at year's end. None of the three had ever met with a magistrate or been convicted of a crime.

Pretrial Detention: Lengthy pretrial detention due to judicial backlogs was a problem. Pretrial detainees continued to constitute three-fourths of the prison population. On average detainees waited one to three months in noncriminal cases and at least 12 months in criminal cases, according to prison authorities, or 12 to 36 months, according to human rights activists, before going to trial.

#### **e. Denial of Fair Public Trial**

Although the constitution and law provide for an independent judiciary, the judiciary continued to be overburdened, underfunded, poorly organized, and in some cases subject to political influence and corruption.

In rural areas traditional courts continued to handle many local disputes, particularly property cases, inheritance cases, and domestic conflicts that could not be resolved within the family.

The Martial Court, a military tribunal established to try criminal cases involving military members, gendarmes, or police, does not try civilians. The court was believed to be subject to influence and corruption.

### **Trial Procedures**

The constitution provides for the right to a fair trial presided over by an independent judiciary. Although the courts were subject to political influence and corruption in some cases, for the most part the government respected judicial independence. The penal code defines three levels of crime: the misdemeanor; the delict, punishable by fewer than five years in prison; and the felony, punishable by more than five years in prison. The courts that hear misdemeanor and delict charges meet frequently. The constitution also provides for courts to conduct felony trials at least four times per year. For more than 20 years, however, felony trials have only been held once or twice per year due to a lack of funding in the Ministry of Justice. The combination of a legal caseload that far exceeded the capacity of the judiciary and the lack of adequate funding to cover felony trials resulted in the government's being unable to provide fair and timely trials. The Court of Justice processed 84 felony cases nationwide during 2010, including cases of misappropriation of public money, murder, rape, armed robbery, infanticide, indecent assault, and arson. Through 2010 felony cases were all tried in Brazzaville, but in 2011 the Ministry of Justice began to decentralize the trial process. Appeals courts exist in five departments (Brazzaville, Pointe Noire, Dolisie, Owando, and Ouesso), and as of 2011, each of the appeals courts has authority to hold trials for felony cases that are brought within its jurisdiction. According to available Ministry of Justice statistics, 33 felony cases were tried in Dolisie and 102 cases in Pointe Noire between the start of 2011 and March. Juries were used in felony cases. Defendants have the right to be informed promptly and in detail of the charges (with cost-free interpretation as necessary). Defendants have a right to a fair and public trial and have the right not to be compelled to testify or confess guilt. Defendants have the right to be present at their trial and to consult with an attorney in a timely manner, although this did not always occur.

Any indigent defendant facing serious criminal charges is entitled to an attorney at public expense, although such assistance was not provided consistently. Defendants were occasionally convicted in absentia after the court tried unsuccessfully for six months to locate the accused to stand trial. Defendants could generally confront or question accusers and witnesses against them and present witnesses and evidence on their own behalf. The defense has access to prosecution evidence. Defendants are presumed innocent and have the right of appeal. In principle the law extends the above rights to all citizens, and the government generally abided by these provisions.

### **Political Prisoners and Detainees**

Unlike in 2011, there were reports of political detainees. Twenty-six military (with ranks up to colonel) and civilian personnel arrested in connection with the March 4 explosions at the armored regiment weapons depot in Brazzaville remained in pretrial detention. The government based the detentions on the findings of the investigation of its commission of inquiry's into the explosions' cause. Many speculated the detainees were scapegoats for the decisions of more senior military officers. Some believed one detainee's arrest was the result of disparaging remarks regarding the president he made in public on March 3.

On April 17, authorities detained the former spokesperson of the opposition Alliance for the Republic and Democracy (ARD), Paul-Marie Mpouele, for allegedly insulting President Sassou-N'Guesso and undermining national security by sending text messages to military officers suggesting the president should resign in light of the March 4 explosions in Brazzaville. The pretrial detention prevented Mpouele from being a candidate in the July and August legislative elections. He was released on September 13 without trial.

### **Civil Judicial Procedures and Remedies**

In contrast to the felony courts, the civil courts review cases on a regular basis throughout the year. The civil courts experienced long delays-- although less than the felony courts--but were considered to be functional. Individuals may file a lawsuit in court on civil matters related to human rights, including seeking damages for or cessation of a human rights violation. However, the public generally lacked confidence in the judicial system's ability to address human rights problems.

#### **f. Arbitrary Interference with Privacy, Family, Home, or Correspondence**

The constitution and law prohibit such actions, and the government generally respected these prohibitions.

## **Section 2. Respect for Civil Liberties, Including:**

### **a. Freedom of Speech and Press**

The constitution and law provide for freedom of speech and press, but also criminalize certain types of speech, such as incitement of ethnic hatred, violence, or civil war. As in 2011, the government generally respected freedom of speech and press, according to the international NGO Freedom House. The nongovernment print media experienced few constraints. However, broadcast journalists and government print journalists practiced self-censorship. Approximately 10 private weekly newspapers in Brazzaville often published articles and editorials critical of the government. There were no government restrictions on Internet access.

Freedom of Speech: Individuals could criticize the government publicly or privately without reprisal on relatively minor issues. Persons feared reprisal if they named high-level officials while criticizing government policies. Two lawyers of Colonel Marcel Ntsourou, Edouard Ambroise Malonga, and Gabriel Hombess, were arrested on April 10 and detained at the Brazzaville prison for four months after organizing a press conference at Ntsourou's private residence to denounce the government's detention of Ntsourou. The minister of justice told the media the ministry considered Ntsourou's residence a military facility, and any attempt to hold a press conference there amounted to an infringement of national security. The Brazzaville courts ruled on July 27 that the government had insufficient evidence and dropped the charge against the two lawyers.

Freedom of Press: There was one state-owned newspaper, *La Nouvelle République*, and 54 private publications, some of which were closely allied with the government and others that were at times critical of the government. On September 10, the High Council on the Liberty of Communication (CSLC) prohibited newspapers *La Voix du Peuple* and *Le Glaive* from publishing for periods of nine and six months, respectively. The CSLC ruled *La Voix du Peuple* violated its existing six-month prohibition on publishing by printing an issue in September. The CSLC previously ruled *La Voix du Peuple* broke national laws by inciting hatred and ethnic division. Regarding *Le Glaive*, the watchdog council ruled the newspaper had published "seditious articles that included lies and

defamation of private citizens.” Newspapers occasionally published open letters written by government opponents. The print media did not circulate widely beyond Brazzaville and Pointe Noire.

Most citizens obtained their news from local radio or television stations. There were no nationwide radio or television stations. Collectively, there were 39 radio stations, four of which were government-owned, and 23 television stations, of which at least 15 were privately owned. Several satellite television services were available for the few who could afford them.

Government journalists generally were not independent.

A number of journalists based in Brazzaville represented international media. There were no reports of the government revoking journalists’ accreditations if their reporting reflected adversely on the government’s image; however, the government did not repeal the policy that allowed for such revocation. This policy potentially affected journalists employed by both international and government-controlled media. Local private journalists were not affected.

Libel Laws/National Security: For defamation and incitement to violence, the press law provides for monetary penalties and suspension of the publication’s printing.

### **Internet Freedom**

There were no government restrictions on access to the Internet, or reports the government monitored e-mail or Internet chat rooms. A growing proportion of the public, especially youth, accessed the Internet more frequently and utilized online social media. However, only the most affluent had Internet access in their own homes; others who accessed it used cyber cafes. The government made no known attempts to collect personally identifiable information via the Internet. According to the International Telecommunication Union, the percentage of individuals who used the Internet (2011 figure) was 5.6 percent.

### **Academic Freedom and Cultural Events**

There were no government restrictions on academic freedom or cultural events.

### **b. Freedom of Peaceful Assembly and Association**

## **Freedom of Assembly**

The constitution and law provide for freedom of assembly; however, the government generally did not respect this right.

Groups that wished to hold public assemblies were required to seek authorization from the Ministry of Interior and Decentralization and appropriate local officials, who could withhold authorization for meetings they claimed might threaten public order.

The government did not always respect the right of peaceful assembly. For example, on March 29, police used tear gas to prevent hundreds of disaffected citizens from assembling to protest the inadequacy of the government's response to the March 4 explosions in Brazzaville.

## **Freedom of Association**

The constitution and law provide for freedom of association, and the government generally respected that right. Political, social, or economic groups or associations generally were required to register with the Ministry of Interior and Decentralization. Registration was sometimes subject to political influence. There were no reports of discriminatory practices that targeted any particular group.

### **c. Freedom of Religion**

For a description of religious freedom, see the Department of State's *International Religious Freedom Report* at [www.state.gov/j/drl/irf/rpt](http://www.state.gov/j/drl/irf/rpt).

### **d. Freedom of Movement, Internally Displaced Persons, Protection of Refugees, and Stateless Persons**

The constitution and law provide for freedom of internal movement, foreign travel, emigration, and repatriation; unlike during the previous year, the government generally respected these rights.

The government cooperated with the Office of the UN High Commissioner for Refugees (UNHCR) and other humanitarian organizations in providing protection and assistance to internally displaced persons, refugees, returning refugees, asylum seekers, stateless persons, and other persons of concern.

In-country Movement: The 2003 disarmament agreement effectively ended the organized rebellion in the Pool Region. Unidentified armed elements believed to be former Ninja rebels largely refrained from harassing and intimidating citizens. The major road and railroad connecting the capital, Brazzaville, to the port of Point Noire traverse the Pool Region. The increased presence of law enforcement officers in 2010 and 2011 throughout the Pool Region, including on railcars, significantly reduced banditry and increased freedom of movement of persons and goods through much of the country.

As in the previous year, the government's two operations to improve security in the Pool region, "Kimia" and "Kidzounou," continued to achieve results.

Emigration and Repatriation: The government generally did not prevent the return of citizens, including political opponents of the president. The most recent returnee was former first lady Jocelyne Lissouba, who fled with her husband, former president Pascal Lissouba, in 1997 and returned to the country in 2010. She enjoyed a warm reception from the president. Her husband was pardoned in 2009 but remained in France for health reasons.

### **Protection of Refugees**

The law provides for the granting of asylum or refugee status, and the government has established a system for providing protection to refugees. The government provided protection against the expulsion or return of refugees to countries where their lives or freedom would be threatened because of race, religion, nationality, membership in a particular social group, or political opinion.

Access to Asylum: By the end of 2011, a total of 3,011 asylum seekers remained in the country. According to the UNHCR, as of October the country hosted 3,181 asylum seekers and an additional 136,174 refugees. Most of the refugees and asylum seekers came from the DRC, Rwanda, and Angola.

The country, especially in areas that border the DRC, received numerous waves of displaced persons in recent years. Between October 2009 and May 2010, nearly 115,000 refugees fleeing ethnic violence and rebellion in Equateur Province of the DRC sought shelter in the country's Likouala Department. As of July, the country hosted 126,607 DRC refugees and 2,454 DRC asylum seekers.

The country hosted 890 Angolan refugees, of whom most were from the Angolan enclave of Cabinda. On September 30, the government announced the signing of

an accord granting refugee status to Angolan citizens who sought refuge between 1961 and 2002.

The country also hosted 8,392 Rwandan refugees who fled the genocide in 1994. At a tripartite meeting in January, the governments of the Republic of the Congo and Rwanda, and the UNHCR decided to invoke a cessation clause that would revoke the refugee status of Rwandans in the Congo beginning on June 30. This date was extended one year to give the governments more time to implement a strategy of voluntary repatriation. Current Rwandan refugees need either to repatriate to Rwanda or change their status in the Congo to permanent resident.

The National Refugee Assistance Center (CNAR) handled applications for refugee status. The CNAR received 80 to 90 percent of its operating budget from the UNHCR.

Refugee Abuse: Gender-based violence was frequent at refugee sites, with 43 cases of rape reported in the first half of 2011, 28 of which involved minors. The UNHCR provided care to 38 of the victims. There were 59 cases concerning gender-based violence pending before the courts. According to the UNHCR, the vast majority of such cases went unreported because complaints could take a year or more before courts examine them; therefore, families of victims often preferred to negotiate settlements directly with the perpetrators. The UNHCR's protection officers and medical personnel provided medical, psychosocial, and legal assistance to victims of gender-based violence, including rape. Refugees had equal access to community health centers and hospitals and legal recourse for criminal complaints, e.g., rape and civil disputes.

Employment: The law does not address employment for refugees. Anecdotal evidence suggested quotas and excessive work permit fees limited refugee employment opportunities. A health care organization stated the law required it to hire the country's nationals for at least 90 percent of its positions. The same organization stated refugees were required to obtain two-year work permits that cost approximately 150,000 CFAF (\$302), roughly equivalent to three months' salary.

Many refugees worked informally in the agriculture sector to obtain food. Some refugees farmed land that belonged to local nationals in exchange for a percentage of the harvest or for a cash payment.

Access to Basic Services: UNHCR-funded primary schooling was accessible to all refugees. During the academic year primary schools enrolled 28,405 refugee children, including 13,846 girls. Access to secondary education for refugees was severely limited. Most secondary education teachers were refugees themselves who either volunteer or were paid by the parents of refugee children. There were 8,621 refugee children enrolled in secondary school, including 2,881 girls.

Durable Solutions: In June 2010 the government signed a tripartite agreement with the government of the DRC and the UNHCR that outlined the conditions and means for voluntary repatriation of the Likouala refugees to the DRC's Equateur Province. However, the refugees' desire to wait for the postconflict peace and reconciliation between the Lobala and Boba tribes to be reinforced, and for repatriation assistance from the international community primarily delayed large-scale repatriation. On May 7, the UNHCR began its repatriation campaign and by October 18 transported approximately 29,000 DRC nationals across the Oubangui River into Equateur Province.

In October 2011 the government convened a second tripartite meeting with the government of Angola and the UNHCR. Agreement was reached to launch a voluntary repatriation effort in November 2011 that would fall within the framework of the 2002 tripartite agreement, but repatriations were delayed until midyear. As of July, 164 Angolan refugees returned to Luanda or Cabinda.

### **Section 3. Respect for Political Rights: The Right of Citizens to Change Their Government**

The constitution and law provide citizens the right to change their government peacefully, and citizens exercised this right during the 2009 presidential election.

#### **Elections and Political Participation**

Recent Elections: Denis Sassou-N'Gusso was reelected president in the 2009 election with a claimed 78 percent of the vote. Officially, 66 percent of eligible voters participated in the election, although the opposition estimated the turnout to be much lower. While the election was peaceful, opposition candidates and NGOs criticized the election for irregularities, such as gross manipulation of voter lists and discrepancies between the officially reported rates of voter participation and those observed by independent election observers. The African Union declared the elections free and fair.

The president's PCT and its allies won 95 percent of National Assembly seats during the legislative elections in July and August. Voters elected seven opposition candidates, all of whom belonged to the Pan-African Union for Social Democracy (UPADS). Civil society election observers estimated the voter participation rate to have been 10-15 percent.

In late October, following complaints of fraud during the legislative elections, the Constitutional Court invalidated the victories of the PCT candidates in three districts. The court also reversed the results of a PCT victory in a fourth district, awarding the victory directly to the challenger.

Political Parties: Major political parties included the PCT, UPADS, the Congolese Movement for Democracy and Integrated Development (MCDDI), the Union for Democracy and the Republic (UDR-Mwindu), and the Assembly for Democracy and Social Progress (RDPS). Opposition parties encountered government restrictions, particularly with regard to the right to organize. They were restricted from organizing before, during, and after the 2009 presidential election, and to a lesser extent during the year's legislative elections. For example, before the second round of legislative elections, a military cadre allegedly stopped a convoy of vehicles carrying the president of the ARD, an opposition coalition composed of 14 political parties, and prevented the convoy from entering Brazzaville.

Participation of Women and Minorities: After the October Senate elections, there were nine women in the 72-seat Senate and 13 women in the 139-seat National Assembly. There were five women in the 37-member cabinet.

Many indigenous persons--largely Pygmies--were excluded from the political process due to their isolation in remote areas, lack of registration, cultural barriers, and stigmatization by the majority Bantu population (see section 6). However, parliament's passage of an indigenous persons' rights protection bill in 2010, which became law in February 2011, strengthened indigenous rights.

#### **Section 4. Corruption and Lack of Transparency in Government**

The law provides for criminal penalties for corruption by officials; however, the government did not implement the law effectively, and officials engaged in corrupt practices with impunity. According to the World Bank's most recent Worldwide Governance Indicators, government corruption was a severe problem, although the Bank and the International Monetary Fund (IMF) noted the government undertook

reform measures to combat corruption. These reform measures continued during the year.

There was a widespread perception of corruption throughout government, including misuse of revenues from the oil and forestry sectors. Some local and international organizations claimed government officials, through bribes or other fraud, regularly diverted revenues from these sectors into private overseas accounts before the remaining revenues were declared officially. The government located and repatriated some of these funds, but the location of most remained unknown. A number of ministries also were identified as having diverted funds to secret accounts; these included the ministries of education, health, and foreign affairs, the last of which was being internally investigated for receiving funds to operate several nonexistent embassies abroad. Civil servants of the Ministry of Finance were under investigation for diverting funds related to the government's payment of three million CFAF (\$6,000) to each head of household victim of the March 4 explosions. The ministry's employees were also accused of demanding a portion of pension payments in exchange for processing payments for legitimate beneficiaries.

Pervasive lower-level corruption included security, customs, and immigration officials demanding bribes. During the year families of arrested individuals reportedly bribed police to secure their release.

Senior officials were subject to financial disclosure laws. However, no financial disclosure statements were made public.

The law provides for public access to government information for citizens, noncitizens, and the foreign media; however, there were lengthy delays before the government released information, if it did so at all. For example, the IMF completed consultations on an extended credit facility in mid-2011, but the government refused to provide certain financial information from the Ministry of Finance and the Treasury concerning the state-owned oil company.

## **Section 5. Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights**

A number of domestic and international human rights groups generally operated, with some exceptions, without government restriction during their investigations and when publishing their findings on human rights cases. Government officials generally were more cooperative with and responsive to international groups than

to domestic human rights groups. Some domestic human rights groups tended not to report specific incidents due to fear the government would impose obstacles to their work.

Government Human Rights Bodies: The government-sponsored HRC is charged with acting as a government watchdog and addressing public concerns on human rights problems. Some civil society members claimed the commission was completely ineffective, lacked independence, was primarily composed of persons who had no expertise in human rights, and was created to appease the international community. The president appointed most, if not all, of its members.

As in 2011, the HRC did not undertake activities directly responding to human rights problems in the country. Instead it focused on reforming its institutional structure and on increasing its subject-matter expertise through staff participation in international conferences on human rights.

## **Section 6. Discrimination, Societal Abuses, and Trafficking in Persons**

The law and constitution prohibit discrimination on the basis of race, gender, language, religion, social status, and disability; however, the government did not effectively enforce these prohibitions. There were documented instances of societal discrimination and violence against women and discrimination against indigenous persons.

### **Women**

Rape and Domestic Violence: Rape, including spousal rape, is illegal; however, the government did not effectively enforce the law. The law prescribes five to 10 years in prison for violators. However, according to a local women's group, the penalties for rape ranged from as little as several months' imprisonment to rarely more than three years. The government established two centers in Brazzaville to care for rape victims. The government could not provide national figures for cases of rape, but it reported there were nine convictions for rape (five in Dolisie and four in Pointe Noire) in 2011 and three convictions for rape in Pointe Noire through September 2012.

Rape was common, although the extent of the problem was unknown because the crime was seldom reported. Fewer than 25 percent of reported rape cases were prosecuted, according to local and international NGO estimates. In August 2010 a

suspected serial killer who allegedly raped and killed nine women was arrested and detained in the Brazzaville prison; at year's end he was still awaiting trial.

Domestic violence against women, including rape and beatings, was widespread but rarely reported. There were no specific provisions in the law outlawing spousal battery other than general statutes prohibiting assault. The extended family or village traditionally dealt with domestic violence matters, and only more extreme incidents were reported to police because of victims' fears of social stigma and retaliation, and a lack of confidence in the courts. Local NGOs sponsored domestic violence awareness campaigns and workshops.

Sexual Harassment: Sexual harassment is illegal. Generally the penalty if convicted is two to five years in prison. In particularly egregious cases the penalty can equal the maximum for rape, i.e., five to 10 years' imprisonment. However, the government did not effectively enforce the law. According to local NGOs, sexual harassment was very common but rarely reported. As in previous years there were no available official statistics on its incidence.

Reproductive Rights: No laws restrict reproductive rights, childbirth, or timing of pregnancies. There are no restrictions on the right to access contraceptives; however, they were not widely used due to cost. According to the UN Population Fund (UNFPA) in 2008, only an estimated 13 percent of married girls and women ages 15 to 49 used some form of modern contraceptive method. Health clinics and public hospitals were generally in poor condition and lacked experienced health staff. The UNFPA estimated the maternal mortality ratio (the ratio of maternal deaths per 100,000 live births) to be 781 and a woman's lifetime risk of maternal death to be one in 39. According to the Population Reference Bureau, skilled personnel attended approximately 83 percent of births.

HIV-positive persons continued to experience social stigmatization and discrimination that limited their access to reproductive services. The National Committee to Fight HIV/AIDS coordinated national policy to counter the spread of the HIV/AIDS virus.

Discrimination: Customary marriage and family laws discriminate against women. Adultery is illegal for both women and men. Polygyny is legal while polyandry is not. The law provides that a legal wife shall inherit 30 percent of her husband's estate. The law limits dowries to symbolic amounts. However, this often was not respected, and men were obliged to pay excessive bride prices to the woman's

family. The Ministry of Promotion of Women's Rights is in charge of protecting and promoting the rights of women.

The law prohibits discrimination based on gender and stipulates that women have the right to equal pay for equal work. However, women were underrepresented in the formal sector of the economy. Women experienced economic discrimination with respect to employment, credit, equal pay, and owning or managing businesses. Most women worked in the informal sector and thus had little or no access to employment benefits. Women in rural areas were especially disadvantaged in terms of education and wage employment, and were confined largely to family farming, small-scale commerce, and child-rearing responsibilities. Many local and international NGOs have developed microcredit programs to address these problems, and government ministries, including those of social affairs and agriculture, also actively helped women set up small income-producing businesses.

## **Children**

Birth Registration: Citizenship is acquired by birth in the country as well as from one's parents. The government does not require registration of births; it is up to parents to request birth registration for a child. A birth certificate is necessary for school enrollment and other services. Pygmies, in particular, were denied social services as a result of not being registered. Those living in remote villages had difficulty in registering, since offices for registration were located only in provincial capitals. The government continued a system of providing free birth registration in Brazzaville but not other areas.

Education: Education is compulsory, tuition-free, and universal until the age of 16, but families are required to pay for books, uniforms, and school fees. School enrollment was generally higher in urban areas. Specific data were lacking, but most Pygmy children could not attend school because they did not have birth certificates. School facilities were overcrowded and extremely poor. Girls and boys attended primary school in approximately equal numbers; however, boys were five times more likely than girls to go on to high school and four times more likely to go on to university. There were reports teachers pressured teenage girls to exchange sex for better grades, which contributed both to the spread of HIV/AIDS and to unwanted and unplanned pregnancies.

Child Abuse: Child abuse was not commonly reported, but was thought to be prevalent. Most reports in previous years involved forced child labor within the West African immigrant communities.

Child Marriage: The law prohibits child marriage, and the legal age for marriage is 18 years for women and 21 for men. However, marriage at an earlier age is permissible if both sets of parents give their permission; the law does not specify a minimum age in such a case. The penalty for forced marriage between an adult and child is a prison sentence of three months to two years and a fine of 150,000 CFAF (\$302) to 1,500,000 CFAF (\$3,024).

Harmful Traditional Practices: Female genital mutilation/cutting (FGM/C) existed despite being illegal. The scale of the phenomenon remained unclear, but was known to exist among West African immigrant communities in Pointe Noire and Brazzaville and within the indigenous population in Likouala Department in the Northeast. Victims of FGM/C were generally between the ages of eight and 12. The UNFPA provided technical and financial assistance to the government to investigate the extent of FGM/C in the country further.

Sexual Exploitation of Children: There were cases of children, particularly those who lived on the streets, engaging in prostitution with third-party involvement. The prevalence of the problem remained unclear, although UNICEF estimated in a 2007 report 25 percent of the approximately 1,800 internationally trafficked children were sexually exploited. In August the Organization of International Migration began a six-month nationwide study to assess the extent of trafficking in persons in the country, including sexual exploitation of children.

The minimum age for consensual sex is 18. The maximum penalty for sex with a minor is a prison sentence of five years and a fine of 10,000,000 CFAF (\$20,000).

A child protection code promulgated in 2010 provides penalties for crimes against children such as trafficking, pornography, neglect, and abuse. Penalties for these crimes range from forced labor, to fines of up to 10,000,000 CFAF (\$20,000), to prison sentences of several years. The penalty for child pornography includes a prison sentence of up to one year and a fine up to 500,000 CFAF (\$1,008).

Displaced Children: International organizations assisted with programs to feed and shelter street children, the majority of whom lived in Brazzaville and Pointe Noire and were believed to be from the DRC, according to UNICEF. Children who lived

on the streets were vulnerable to sexual exploitation. Many begged, while others sold cheap or stolen goods to support themselves.

International Child Abductions: The country is not a party to the 1980 Hague Convention on the Civil Aspects of International Child Abduction.

### **Anti-Semitism**

There was no substantial Jewish community. There were no reports of anti-Semitic acts.

### **Trafficking in Persons**

For information on trafficking in persons, please see the Department of State's annual *Trafficking in Persons Report* at [www.state.gov/j/tip](http://www.state.gov/j/tip).

### **Persons with Disabilities**

The law specifically prohibits discrimination against persons with physical, sensory, intellectual, and mental disabilities in employment, education, access to health care, or in the provision of other state services, although the government generally did not enforce the law. The Ministry of Social Affairs is the lead ministry responsible for this problem.

There were no laws mandating access for persons with disabilities.

### **National/Racial/Ethnic Minorities**

The law prohibits discrimination based on ethnicity; however, the government did not effectively enforce this prohibition.

Regional ethnic discrimination existed among all ethnic groups and was evident in government and private sector hiring and buying patterns. The relationships among ethnic, regional, and political equities could be difficult to discern. A majority of the president's cabinet members and generals originated from the northern departments.

### **Indigenous People**

According to local NGOs, Pygmies were severely marginalized in regard to employment, health services, and education, in part due to their isolation in remote areas and their different cultural norms. Pygmies were often considered socially inferior and had little political voice; however, in recent years several Pygmy rights groups have developed programs to overcome this. Many Pygmies were not aware of the concept of voting and had minimal ability to influence government decisions affecting their interests. The Ministry of Justice continued to promote the rights of the indigenous population, and a community radio station called Radio Biso na Biso, located 450 miles north of Brazzaville, worked to promote mutual understanding between the Bantu majority and the indigenous Pygmy minority.

The 2007 national census estimated the indigenous population to be 2 percent of the general population.

### **Societal Abuses, Discrimination, and Acts of Violence Based on Sexual Orientation and Gender Identity**

The constitution prohibits discrimination based on, sexual orientation. There was a small openly gay or lesbian community due to the social stigma associated with consensual same-sex sexual conduct. A law promulgated during the colonial era and still in force prohibits homosexual conduct and makes it punishable by up to two years' imprisonment; however, the law was rarely enforced. The most recent arrest under this law was in 1996.

There were no known cases of violence against gays, lesbians, or transgender individuals during the year. Although homosexual activity is generally stigmatized by society, overt intimidation was not believed to be a factor in preventing reports of incidents of abuse. There was no known advocacy group or organization representing the interests of gays, lesbians, or transgender individuals in the country, and homosexuality remained a private subject.

### **Other Societal Violence or Discrimination**

Public opinion polls showed societal discrimination against individuals with HIV/AIDS was significant. The law provides penalties for unlawful divulgence of medical records by practitioners, negligence in treatment by health professionals, family abandonment, and unwarranted termination of employment. Civil society, including organizations advocating for the rights of persons with HIV/AIDS, was fairly well organized and sought fair treatment, especially regarding employment. NGOs and the government worked widely on HIV/AIDS problems, including

raising public awareness that those living with HIV/AIDS were still able to contribute to society.

## **Section 7. Worker Rights**

### **a. Freedom of Association and the Right to Collective Bargaining**

The law allows workers, except for members of the security forces and other services “essential for protecting the general interest,” including the army, police, gendarmerie, and some personnel at ports and airports, to form and join unions of their choice without previous authorization or excessive requirements. The law allows unions to conduct their activities without interference.

Workers have the right to strike, provided all conciliation and nonbinding arbitration procedures have been exhausted and due notice has been given. A minimum service requirement binds workers in essential services to a limit on the length of time they may strike. There were no known cases of workers in these essential services being terminated for violating the minimum service rule, likely due to the cumbersome termination process for civil servants. Instead, some workers who violated the rule were either transferred to another service or denied some job privileges.

The law also provides for the right to bargain collectively, and workers generally exercised this right freely, although collective bargaining was not widespread due to the severe economic conditions.

The law prohibits antiunion discrimination. These laws are respected on an official level, and there were no reports of any official government or police action against unions or unionized workers. A dialogue between unions and the government on labor problems continued. This cooperation brought some success; for example, the government increased the minimum wage in public service and implemented couple’s benefits for public service workers. However, most unions were reportedly weak and subject to government influence due to corruption. As a result, in cases where demonstrations would run counter to the government’s interest, the government was generally able to persuade union leaders themselves to prevent workers from demonstrating.

There were no reports of antiunion discrimination or violations of collective bargaining rights during the year. Nor were there reports of employers firing workers for union activity or blacklisting union members. However, there were

reports employers used hiring practices such as subcontracting and short-term contracts to circumvent laws prohibiting antiunion discrimination.

### **b. Prohibition of Forced or Compulsory Labor**

The law prohibits some forms of forced or compulsory labor. The government has not repealed a 1960 law that allows persons to be requisitioned for work of public interest and provides for their possible imprisonment if they refuse. However, there were no reports of the law's ever being applied or enforced. There were no reports the government took steps to prevent and eliminate forced labor during the year, except as relating to trafficked persons. During the year 24 adult victims forced to work in domestic service, some of whom endured enslavement for up to 16 years, were also discovered.

Children--mostly from Benin, Togo, Mali, Guinea, Cameroon, Senegal, and the DRC--were subjected to domestic servitude, market vending, and forced agricultural and fishing work. Child victims experienced harsh treatment, long work hours, and had almost no access to education or health services; they received little or no remuneration for their work.

Also see the Department of State's annual *Trafficking in Persons Report* at [www.state.gov/j/tip](http://www.state.gov/j/tip).

### **c. Prohibition of Child Labor and Minimum Age for Employment**

Although there are laws and policies designed to protect children from exploitation in the workplace, child labor was a problem. By law, children under the age of 16 may not to be employed, even as apprentices, without a waiver from the minister of national education. However, this law generally was not enforced, particularly in rural areas and in the informal sector.

The Ministry of Labor, which is responsible for enforcing child labor laws, concentrated its limited resources on the formal wage sector, where its efforts generally were ineffective. As in the previous year, limited resources prevented the ministry from carrying out a review of the formal sector, which would include child labor inspection trips. Some labor inspections occurred during the year, but there were no official data available at year's end. International aid groups reported little change during the year in child labor conditions.

The most common forms of child labor were in markets, commercial fishing, or in domestic servitude, where children were subjected to harsh conditions, long hours, and little or no pay. Children worked with their families on farms or in small businesses in the informal sector without government monitoring. Children were engaged in the worst forms of child labor in agriculture and domestic service. There were no official government statistics on general child labor. However, a 2005 International Labor Organization survey indicated that 85 percent of the sample of 47,000 working children resided in rural areas, and slightly more than half (53 percent) were girls who performed household chores or worked in exchange for pay.

Also see the Department of Labor's *Findings on the Worst Forms of Child Labor* at [www.dol.gov/ilab/programs/ocft/tda.htm](http://www.dol.gov/ilab/programs/ocft/tda.htm).

#### **d. Acceptable Conditions of Work**

The national minimum wage was 54,000 CFAF (\$109) per month in the formal sector. There was no official minimum wage for the agricultural and other informal sectors. High urban prices and dependent extended families obliged many workers, including teachers and health workers, to seek secondary employment, mainly in the informal sector.

The law provides for a standard workweek of seven hours per day with a one-hour lunch break, five days a week. There was no legal limit on the number of hours worked per week. The law stipulates overtime pay for all work in excess of 42 hours per week; however, there is no legal prohibition against excessive compulsory overtime. Overtime is subject to agreement between employer and employee. These standards were generally observed, and workers were usually paid in cash for overtime work beyond 42 hours per week.

Although health and safety regulations require biannual visits to businesses by inspectors from the Ministry of Labor, such visits occurred much less frequently, and enforcement of findings was uneven. Unions generally were vigilant in calling attention to dangerous working conditions; however, the observance of safety standards often was lax in both the private and public sectors. Workers have no specific right to remove themselves from situations that endanger their health or safety without jeopardizing their continued employment. There were no exceptions for foreign or migrant workers.