



UNIVERSAL PERIODIC REVIEW SUBMISSION FOR GABON

NGO Submission

New York, July 8, 2022

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ABOUT HRF

The Human Rights Foundation (HRF) is a nonpartisan nonprofit organization that promotes and protects human rights globally, with a focus on closed societies. HRF unites people in the common cause of defending human rights and promoting liberal democracy. Our mission is to ensure that freedom is both preserved and promoted around the world.

We focus our work on the founding ideals of the human rights movement, those which are most purely enshrined in the 1948 Universal Declaration of Human Rights and the 1976 International Covenant on Civil and Political Rights (ICCPR).

HRF's Center for Law and Democracy (HRF-CLD) is a program of HRF. HRF-CLD promotes legal scholarship in the areas of comparative constitutional law and international law, with a focus on international human rights law and international democracy law.

INTRODUCTION

1. This submission was prepared by HRF, for the Universal Periodic Review (UPR) of Gabon. In this submission, HRF evaluates Gabon's implementation of recommendations made during its previous UPR, as it relates to the current human rights situation in the country, which is characterized by systematic, widespread, and gross violations of human rights, including: the ongoing curtailment of the freedoms of assembly, association, and expression, particularly among opposition leaders, as well as violations of freedom of press and due process, and arbitrary arrests and detentions.

FOLLOW-UP ON THE PREVIOUS REVIEW

2. The most recent UPR of Gabon by the United Nations (UN) Human Rights

Council took place on November 7, 2017.¹ The Human Rights Council considered and adopted the outcome of the country's review during its 28th Session, on March 15, 2018.² A total of 166 recommendations were made to Gabon, with the government accepting 143 recommendations and noting 23.³ Although Gabon accepted the majority of recommendations which covered a range of issues, it has not made significant progress in implementing these recommendations.

3. One of the most common recommendations by UN Member States was that Gabon should ratify particular international conventions and remove reservations to core human rights instruments. Despite the number of States that made these recommendations, critically, Gabon has yet to:
 - a. ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR);
 - b. ratify the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa; and
 - c. ratify the Optional Protocol of the International Covenant on Civil and Political Rights (ICCPR).
4. As a member state of the UN, Gabon has committed to protecting, promoting, and respecting the individual rights and fundamental freedoms laid out in the Universal Declaration of Human Rights (UDHR). Gabon has also ratified the ICCPR.
5. The Constitution of the Gabonese Republic, 1991 (Constitution) formally guarantees the protection of several human rights (*see infra Gabon's National Framework for Protecting Human Rights*). However, despite these constitutional guarantees, in practice, individuals in Gabon are routinely subjected to human rights violations, not least by the very existence of laws that criminalize and impinge on their fundamental freedoms.

GABON'S NATIONAL FRAMEWORK FOR

¹ U.N. Human Rights Council, Working Grp. on the Universal Periodic Review of the Twenty-Eighth Session, *Report on the Working Group on the Universal Periodic Review: Gabon*, U.N. Doc. A/HRC/WG.6/28/GAB/1 (Nov. 7, 2017), https://www.upr-info.org/sites/default/files/documents/2017-10/a_hrc_wg.6_28_gab_1_e.pdf.

² *Gabon: Responses to Recommendations — Third Review, Session 28*, UPR-INFO (Nov. 2017), https://www.upr-info.org/sites/default/files/documents/2018-05/responses_to_recommendations_upr28_gabon.pdf.

³ *Id.*

PROTECTING HUMAN RIGHTS

6. Gabon's Constitution⁴ contains several key provisions relating to the protection of the fundamental rights and freedoms of its citizens.
7. In relation to equal protection of individuals under the law, Gabon's Constitution states in *Article 2*:

The Gabonese Republic assures equality for all citizens before the law, making no distinction of origin, race, sex, opinion or religion.

8. In relation to freedoms of assembly, association, and expression, Gabon's Constitution states in *Article 1(2) and 1(13)*:

The liberty of consciousness, thought, opinion, expression, communication and the free practice of religion, are guaranteed to all, limited only by a respect for the public order;

The right to form associations, political parties or groups, syndicates, companies, establishments of social interest as well as religious communities is guaranteed to all within the conditions fixed by the law...

9. In relation to freedom of the press, Gabon's Constitution states in *Articles 94 and 95*:

Audiovisual and written communication is free in the Gabonese Republic, restricted only by respect of the public order, liberty and dignity of its citizens.

*To this effect, the National Council of Communication is instituted to watch over:
The respect of expression of democracy and the liberty of the press in all of the territory.*

10. In relation to arbitrary detention and due process rights, Gabon's Constitution states in *Article 1(4) and 1(23)*:

⁴ *Gabon Constitution*, 2011, Const. Project (2011),
https://www.constituteproject.org/constitution/Gabon_2011.pdf?lang=en.

The rights to defense, in the case of a trial, are guaranteed to all. Preventative detention must not exceed the time period provisioned by the law;

No one may be arbitrarily detained; if deemed appropriate by the necessities of security and procedure, no one may be kept in police custody or temporary imprisonment if he or she presents sufficient guarantees of legal representation.

11. In relation to respect for human dignity and protection from inhuman treatment, as well as the prohibition of torture, cruel, and inhuman or degrading treatment or punishment, Gabon's Constitution states in *Article 1(1)*:

Each citizen has the right to the freedom of development of his or her personality, while respecting the rights of others and the public order. No one may be humiliated, mistreated or tortured, even during moments of arrest or imprisonment.

POLITICAL BACKGROUND

12. The Gabonese Republic is a presidential republic, with a population of approximately 2.3 million people.⁵ The *Parti Democratique Gabonais* (Gabonese Democratic Party, PDG) has been the ruling party since Gabon gained independence in 1960. It was the sole legal party between 1968 and 1990, until the Constitution was amended to allow a multiparty system.⁶ The President serves seven-year terms, and in 2003, the Constitution was amended to allow presidents to run for, and hold office indefinitely, as long as they win the popular vote.⁷ Moreover, elections are done in a single round of voting by plurality, which favors the incumbent and puts the opposition at a disadvantage.⁸

13. Since gaining independence, Gabon has only had three presidents.⁹ President Omar Bongo held the presidency for 41 years (1968-2009), and his son, President

⁵ *Gabon Population*, WorldOMeter (last accessed June 21, 2022), <https://www.worldometers.info/world-population/gabon-population/>.

⁶ *Gabon, Government and Society*, Britannica (last accessed June 21, 2022), <https://www.britannica.com/place/Gabon/Government-and-society#ref1010528>.

⁷ *Gabon's President Ali Bongo to Seek a Second Term in Office*, France 24 (Feb. 29, 2016), <https://www.france24.com/en/20160229-gabon-president-ali-bongo-seek-second-term>.

⁸ *Id.*

⁹ *Gabon Profile*, BBC News (Jan. 15, 2019), <https://www.bbc.com/news/world-africa-13376514>.

Ali Bongo, has been ruling the country since August 2009.¹⁰ The PDG and Gabonese regime ensure their continued success through state-sponsored intimidation tactics, politicized targeting of opposition members and dissidents, as well as by manipulating state resources.¹¹

14. There have been two coup d'état attempts in Gabon since gaining independence, the most recent being in 2019, to oust Ali Bongo, who was re-elected in 2016 after a controversial election met with protests.¹² President Ali Bongo's capacity to serve as president has been questioned due to the decline in his health.¹³ However, he made a rare public live appearance on March 12, 2022, during which he stated his ambition to run in the 2023 election.¹⁴

FREEDOMS OF ASSEMBLY, ASSOCIATION, AND EXPRESSION

15. Gabon has adopted international instruments such as the UDHR and the ICCPR, which protects the freedoms of expression, assembly, and association. On a regional level, Articles 9, 10, and 11 of the African Charter on Human and Peoples' Rights (ACHPR) to which Gabon is a State Party, provide rights and freedoms related to the freedoms of expression, association, and assembly.¹⁵ At the national level, Article 1(2) of the Gabonese Constitution protects the freedom of conscience, thought, opinion, expression, and communication, among others, as inalienable and imprescriptible human rights.¹⁶ Despite these provisions, the Gabonese government continues to crack down on citizens, activists, and politicians who criticize the government, and dissent of any kind is met with consequences.

¹⁰ *Gabon Overview*, World Bank (Oct. 15, 2021), <https://www.worldbank.org/en/country/gabon/overview>.

¹¹ *Gabon Violence: More than 1000 Arrested after Disputed Election*, BBC News (Sept. 2, 2016), <https://www.bbc.com/news/world-africa-37252778>; *Gabon Government goes after Civil Society and Opposition Members for Failed Military Coup, Raising Concerns*, CIVICUS (Jan. 11, 2019), <https://www.civicus.org/index.php/media-resources/media-releases/3687-gabon-government-goes-after-civil-society-and-opposition-members-for-failed-military-coup-raising-concerns>.

¹² *Gabon Coup Attempt: Government says Situation Under Control*, BBC News (Jan. 7, 2019), <https://www.bbc.com/news/world-africa-46779854>.

¹³ *Freedom in the World: Gabon Country Report 2022*, Freedom House (2022), <https://freedomhouse.org/country/gabon/freedom-world/2022>.

¹⁴ *Gabon: Bongo Promises to "Be There" for the Next Election*, Africa News (Mar. 13, 2022), <https://www.africanews.com/2022/03/13/gabon-bongo-promises-to-be-there-for-next-election/>.

¹⁵ Organization of African Unity (OAU), *African Charter on Human and Peoples' Rights ("Banjul Charter")* (June 27, 1981), CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), Art. 9, <https://www.refworld.org/docid/3ae6b3630.html>.

¹⁶ *Gabon's Constitution*, *supra* note 4.

16. The Gabonese government has consistently used a variety of laws to curtail media freedom and freedom of expression. Following the failed coup attempt of January 7, 2019, the Gabonese government shut down the internet and broadcasting services.¹⁷ Gabonese citizens were deprived of access to reliable information during a time of crisis and decision making. Furthermore, defamation laws are consistently used to discourage or punish criticism of the government, and to silence dissent.¹⁸
17. Freedom of assembly in Gabon is limited by the regime which denies permits for meetings, and uses tactics such as tear gas and arbitrarily arresting protestors.¹⁹ Moreover, in August 2017, the Parliament enacted Law 001/2017 that placed restrictions on freedom of assembly, and has been used by authorities to prevent opposition leaders from meeting in a privately-owned facility.²⁰ Some civil society activists stated that they did not submit requests to hold public meetings, as they believed the government would deny them.²¹ And in February 2021, police fired tear gas and stun grenades into a crowd in Libreville and Port Gentil that was protesting against the government's COVID-19 restrictions.²²
18. Furthermore, relatively few organizations are able to operate freely in Gabon. Although freedom of association is guaranteed by the Constitution, the process for registering NGOs for example, is extremely onerous and is implemented inconsistently, in an attempt to deter NGOs — especially those affiliated with human rights work — from operating.²³

FREEDOM OF THE PRESS

19. Although freedom of the press is guaranteed by law and the Constitution,

¹⁷ *Gabon Shuts Down the Internet and Broadcasting Services Following Coup Attempt*, Committee to Protect Journalists (Jan. 7 2019), <https://cpj.org/2019/01/gabon-shuts-down-the-internet-and-broadcasting-ser>.

¹⁸ *Freedom in the World: Gabon Country Report 2021*, Freedom House (2021), <https://freedomhouse.org/country/gabon/freedom-world/2021>.

¹⁹ *Freedom in the World, Gabon Country Report 2020*, Freedom House (2020), <https://freedomhouse.org/country/gabon/freedom-world/2020>.

²⁰ *BTI Gabon Report 2020, Bertelsmann Stiftung's Transformation Index* (Feb. 1, 2017 - Jan. 31, 2019), pg. 9, https://bti-project.org/fileadmin/api/content/en/downloads/reports/country_report_2020_GAB.pdf.

²¹ *Id.*

²² Freedom House, *supra* note 13.

²³ Freedom House, *supra* note 18.

Gabonese media and journalists continue to be subjected to intimidation, censorship, and arbitrary practices by the government, and the concept of an independent media is far from being recognized.

20. In August 2016, American-Gabonese opposition activist and blogger Landry Amiang Washington was arrested for ‘inciting revolt’ and outraging President Bongo, after criticizing the Gabonese regime on social media.²⁴ Washington was only released in January 2020, after over three years of imprisonment.²⁵

21. In February 2018, the *Haute Autorité de la Communication* (High Authority of Communication, HAC) was established as “an independent Administrative Authority responsible for regulating the Communication sector and enjoying financial management autonomy.”²⁶ Part of their mandate includes respect for freedom of the press, citizens’ access to free communication, and fair treatment by the media to political parties.²⁷ However, since its formation, the HAC has primarily silenced the communications sector, rather than expanded freedom of the press.

22. In January 2019, following the coup attempt, the internet and broadcasting services were shut down by the government, making it impossible for journalists to carry out their work safely and efficiently.²⁸

23. The following month, in February 2019, several media outlets and journalist’s accreditation were suspended by the Gabonese government.²⁹ Following President Bongo’s stroke in October 2018, any speculations on his ill-health, particularly by media outlets and journalists, were penalized.³⁰ *Appel à Agir* (Call

²⁴ Gabon, *Cyberactivist Landry Amiang Washington soon released*, RFI (Jan. 7, 2020),

<https://www.rfi.fr/fr/afrique/20200107-gabon-cyberactiviste-landry-amiang-washington-libere-justice-ali-bongo>.

²⁵ *Id.*

²⁶ *High Authority of Communication, Gabon* (Feb. 23, 2018), <https://directinfosgabon.com/wp-content/uploads/2018/02/Communiqué-final-du-23-Février-2018-.pdf>.

²⁷ *Id.*

²⁸ *Committee to Protect Journalists, supra* note 17.

²⁹ *Several Media Outlets and Journalists Accreditation Suspended*, CIVICUS (Aug. 29, 2019),

<https://monitor.civicus.org/updates/2019/08/29/gabon-several-media-outlets-journalist-accreditation-suspended/>.

³⁰ *Gabon Media Regulator Suspends Two Newspapers Over Defamation Claims*, Committee to Protect Journalists (May 17, 2019), <https://cpj.org/2019/05/gabon-media-regulator-suspends-two-newspapers-over/>.

to Act), a group of opposition and civil society members, filed suit, demanding a medical examination of the president, in order to determine whether he was fit to rule.³¹ The Gabonese government ensured that this case did not progress by suspending the magistrate who was presiding over the case.³² The Gabonese court dismissed this bid from *Appel à Agir* in February 2022.³³

24. In November 2018, the daily newspaper, *L'Aube*, was suspended for three months for referring to the president's health.³⁴ Five months later, in April 2019, *L'Aube* was again suspended for six months for defamation and misleading information related to former high representative for the president Maixent Accrombessi.³⁵ In May 2019, *Echos du Nord* was suspended for four months for defamation of the president of the Constitutional Court.³⁶ *Echos du Nord* was previously raided in 2016 by Gabon's domestic intelligence, which arrested newspaper staff members and allegedly tortured the deputy editor during an interrogation.³⁷ In June 2019, the newspaper *Fraternité* was also suspended for one month after publishing an article — '*Who runs Gabon?*' — which questioned President Ali Bongo's ability to govern following his stroke.³⁸ The HAC claimed the article contained 'malicious, defamatory, insulting and mendacious insinuations,' causing 'harm to the president's honour and dignity.'³⁹

25. In August 2019, the HAC suspended online media outlet *Gabon Review* for three months for 'having damaged the image of the HAC by malicious insinuations.'⁴⁰ Previously, the HAC had also suspended *Gabon Media Time (GMT)* for one month after the outlet shared a story of a two-year old girl being turned away by

³¹ *Gabon Court Refuses to Hear Petition for Tests of Bongo's Health*, France 24 (Sept. 2, 2019), <https://www.france24.com/en/20190902-gabon-court-refuses-to-hear-petition-for-tests-of-bongo-s-health>.

³² *Gabon: Fresh Questions over Bongo's Fitness to Rule after UK Medical Trip*, RFI (Sept. 4, 2019), <https://www.rfi.fr/en/africa/20190903-gabon-fresh-questions-over-ali-bongo-fitness-rule-after-uk-medical-trip>.

³³ *Gabon Court Dismisses Bid for Medical Probe into Bongo's Health*, Barrons (Feb. 25, 2022), <https://www.barrons.com/news/gabon-court-dismisses-bid-for-medical-probe-into-bongo-s-health-01645810808>.

³⁴ *RSF Calls for Overhaul of Gabonese Media's Executioner*, Reporters Without Borders (June 26, 2019), <https://rsf.org/en/news/rsfs-calls-overhaul-gabonese-medias-executioner>.

³⁵ CIVICUS, *supra* note 29.

³⁶ Committee to Protect Journalists, *supra* note 30.

³⁷ *Gabon Newspaper Raided, Deputy Editor Alleges Torture*, Committee to Protect Journalists (Nov. 16, 2016), <https://cpj.org/2016/11/gabon-newspaper-raided-deputy-editor-alleges-tortu/>.

³⁸ Reporters Without Borders, *supra* note 34.

³⁹ *Id.*

⁴⁰ CIVICUS, *supra* note 29.

Gabon's cancer institute due to a bed shortage.⁴¹ The HAC claimed the article was 'full of malicious, suspicious and tendentious insinuations.'⁴² In April 2020, the HAC suspended *GMT* again, for three months, after *GMT* failed to attend a HAC meeting regarding a libel complaint.⁴³

26. In December 2019, Bertin Ngoua Edou, editor of *Le Diagnostic*, was arbitrarily arrested under defamation charges and accusations of spreading false news, despite press offenses under the Communication Code having been decriminalized.⁴⁴ Bertin Ngoua Edou published an article in *Le Diagnostic* that reported a misuse of public funds by former Gabonese Chief of Staff Brice Laccruche Alihanga.⁴⁵

ARBITRARY ARRESTS, DETENTIONS, AND VIOLATIONS OF DUE PROCESS OF THE LAW

27. Gabon's government continues to use arbitrary arrest and detention as a means of silencing political opposition, human rights activists, and journalists, even though Gabon has ratified the ICCPR and the ACHPR, which both prohibit arbitrary detention. Moreover, cases of arbitrary arrest linked to opposition activism have reportedly increased since the 2016 election crisis.⁴⁶

28. The Bongo family and its associates, who have been in power for more than 40 years, have acquired enormous wealth and economic control of Gabon,⁴⁷ which enables them to sustain political patronage networks that fund vote-buying during elections, as well as security forces that ensure they remain in power. These security forces continue to intimidate opposition members, and to detain

⁴¹ *Id.*

⁴² *Id.*

⁴³ Freedom House, *supra* note 18.

⁴⁴ *Journalist Detained for Four Days Despite Press Offences Being Decriminalised*, CIVICUS (Jan. 6, 2020), <https://monitor.civicus.org/updates/2020/01/06/journalist-detained-four-days-despite-decriminalisation-press-offences/>.

⁴⁵ *Bertin Ngoua Edou*, WELT (Jan. 9, 2020), https://www.welt.de/print/die_welt/article204874382/Free-them-all-Bertin-Ngoua-Edou.html?wtrid=amp.article.free.comments.button.more.

⁴⁶ Freedom House, *supra* note 18.

⁴⁷ *Id.*

and threaten them with violence.⁴⁸

29. One of Gabon's primary human rights violations occurs in its prisons, with numerous reports of substandard sanitation and ventilation, as well as poor food quality and healthcare.⁴⁹ Overcrowding is a major issue, as highlighted by Christian Nkombengondo, a political activist who was detained for 83 days in 2015: "imagine thirty inmates living in a squalid cell that is meant to hold, at most, six people. No mattresses, no cooling fan and no access to hygiene."⁵⁰

30. Hervé Mombo Kinga, an activist and prominent supporter of opposition leader Jean Ping, was arrested in 2017,⁵¹ and imprisoned for over 17 months for criticizing the Gabonese government, including over one month in solitary confinement.⁵² During this time, he was denied proper medical attention and care, despite his ailing health.⁵³ HRF made a submission⁵⁴ on Kinga's behalf to the UN Working Group on Arbitrary Detention, which declared his detention to have been arbitrary.

RECOMMENDATIONS

31. HRF calls on Gabon's government to:

- a. Protect, respect, and promote, without reservation, the rights of all individuals to freedoms of expression and association, and ensure that activists, journalists, and opposition groups can operate peacefully and safely within Gabon, without fear of retribution in the form of censorship,

⁴⁸ David Kiwuwa, *Gabon: Bongo's Constitutional "Power Grab" and the Resistance*, African Arguments (Apr. 9, 2018), <https://africanarguments.org/2018/04/gabon-bongos-constitutional-power-grab-and-the-resistance/>.

⁴⁹ Emma Tennyson, *Moving Towards Better Human Rights in Gabon*, The Borgen Project (Aug. 7 2017), <https://borgenproject.org/better-human-rights-in-gabon/>.

⁵⁰ *Gabon's Prisons: A Grave Reflection of the Country*, Vanguard Africa (Feb. 26, 2019), <http://www.vanguardafrica.com/africawatch/2019/2/25/gke977cx3rmdasuck7o4y8abqtrmqb>.

⁵¹ *Gabon 2017/2018*, Amnesty Int'l (Feb. 22, 2018), <https://www.amnesty.org/en/location/africa/west-and-central-africa/gabon/report-gabon/>.

⁵² *Id.*

⁵³ *Celebrated Human Rights Activist Hervé Mombo Kinga Dies in Gabon*, Human Rights Foundation (Feb. 8, 2022), <https://hrf.org/celebrated-human-rights-activist-herve-mombo-kinga-dies-in-gabon/>.

⁵⁴ *Individual Complaint Regarding the case of Hervé Mombo Kinga, to the United Nations Working Group on Arbitrary Detention*, Human Rights Foundation (Jan. 14, 2019), <https://hrf.org/wp-content/uploads/2022/02/Herve%CC%81-Mombo-Kinga-Petition-14-January-2019-FINAL.pdf>.

harassment, arbitrary arrest and detention, torture, ill-treatment, extrajudicial killings, and enforced disappearances, among other types of punishment;

- b. Commit to ratifying critical international human rights instruments, including but not limited to: the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights; the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa; the Optional Protocol of the International Covenant on Civil and Political Rights (ICCPR);
- c. Protect the due process rights of every accused person to a fair, speedy, and public trial and ensure that, absent compelling evidence of criminal conduct, individuals who have been arbitrarily detained, in violation of their rights to freedom of expression and association, are released, and that those in detention receive humane treatment;
- d. Harmonize the state's internal legislation to fully comply with all international human rights instruments it has signed or ratified;
- e. Allow the African Commission on Human and People's Rights and Special Rapporteurs on extrajudicial killings, freedom of expression, and access to information, to conduct unannounced and unobstructed site visits;
- f. Cooperate with regional and international human rights mechanisms by allowing the special procedure mandate holders to carry out an independent assessment of the human rights situation in Gabon and advise the government accordingly;
- g. Ensure that elections are free and fair. The Gabonese government must guarantee the independence of the electoral body, allow international and independent observers to participate in future electoral processes, and cease all forms of harassment and intimidation against political opponents, journalists, and members of civil society; and
- h. Engage in constructive national dialogue with all political, social, and religious groups in Gabon, particularly opposition groups, to generate a sustainable solution to ensuring peace and protection of human rights

within the country.