

PUBLIC

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Further Information on UA 319/06 (AFR 62/022/2006, 27 November 2006) – Prisoner of conscience/fear of torture or ill-treatment and new concerns: Possible death sentence/unfair trial/health concern

DEMOCRATIC REPUBLIC OF CONGO (DRC)	Marie-Thérèse Nlandu Mpolo-Nene (f), lawyer and political leader Bienvenu Tungu Mukumbu (m), driver (name corrected) Charles Félix Kianza Bata (m) journalist / press officer (name corrected) José Lifumba Botumbele (“José Inonga”) (m) – church leader André (“Gauthier”) Lusiladio Mavambu (m) (bodyguard) (name corrected) Bona Kongbo Nzingaba (m) (bodyguard) Claude Gayo Tenvo (m) (bodyguard)
New names:	Gbala Kukambisa (m) (Nlandu household employee) Ruffin Edjanga Fataki (m), soldier Basisa Iyondo (m), soldier

Lawyer and political leader Marie-Thérèse Nlandu and her associates have been put on trial, together with two soldiers, before a military court in the capital, Kinshasa. If convicted they could be sentenced to death.

Marie-Thérèse Nlandu had run for election to the presidency, but was defeated in the first round. She then switched her party's allegiance to candidate Jean-Pierre Bemba, the former vice-president. He was defeated in the second round, and mounted a legal challenge, alleging fraud, with Marie-Thérèse Nlandu representing him.

Police arrested Marie-Thérèse Nlandu's associates on 20 November, having allegedly discovered three hand-grenades in a car they were using. The following day, Marie-Thérèse Nlandu spoke to the crowd of Bemba's supporters waiting outside the Supreme Court, and what she said, according to the prosecutor, amounted to an incitement to insurrection. After she had spoken, there were violent clashes between the police and Bemba's supporters. Shots were fired, allegedly by soldiers loyal to Bemba, and the police withdrew. The protesters set fire to the Supreme Court building, damaging it badly. Marie-Thérèse Nlandu, was arrested later that day with Gbala Kukambisa when she went to the police station to enquire about the detention of her associates and to bring them food.

Marie-Thérèse Nlandu has been charged with organizing, and her associates charged with participating in, *un mouvement insurrectionnel* ("insurrectionary movement") and with possessing or procuring firearms or ammunition for use by an insurrectionary movement, both of which are punishable by death. The two soldiers, whose connection (if any) with Marie-Thérèse Nlandu is unknown, are also charged with participating in an insurrectionary movement.

Their trial began before a military court in Kinshasa on 22 December, and was adjourned on 3 January, to allow Marie-Thérèse Nlandu to receive medical treatment for a chest infection and high blood pressure. Her health has deteriorated in custody, reportedly due to the poor prison conditions. The trial resumed on 24 January.

The prosecution appears to be politically motivated, and it seems that Marie-Thérèse Nlandu is being targeted for her work as a lawyer and her peaceful political activities. Some of the prosecution evidence that

may be presented was reportedly obtained through torture or ill-treatment, which would make it inadmissible under international law.

The trial of civilians by a military court is a violation of international fair trial standards. It is also forbidden by the DRC's 2006 Constitution, which states that military courts may only hear cases involving army and police personnel (Article 156). The defence objected to the trial being before a military court, but the tribunal rejected this legal challenge, basing its decision on the Military Penal Code, which predates the new Constitution and allows for trial of civilians for certain offences and in certain circumstances.

BACKGROUND INFORMATION

Military tribunals in the DRC regularly impose death sentences, although no one is known to have been executed since January 2003.

The African Commission on Human and People's Rights, in its 2003 *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa*, makes clear that civilians must not to be tried by military courts, noting that "The only purpose of Military Courts shall be to determine offences of a purely military nature committed by military personnel" and that "Military courts should not in any circumstances whatsoever have jurisdiction over civilians" (Provision 5(L) Right of Civilians Not To Be Tried by Military Court).

RECOMMENDED ACTION: Please send appeals to arrive as quickly as possible, in French, English or your own language:

- pointing out that Marie-Thérèse Nlandu is a prisoner of conscience, imprisoned solely for the peaceful expression who should be immediately and unconditionally released;
- stating AI's objection to the death penalty and the imposition of death sentences in all circumstances;
- urging an immediate end to the trial of civilians by military court as both unconstitutional and in violation of international fair trial standards. If the prosecutor maintains that there is enough admissible evidence, the case should be heard before a properly constituted civilian court which respects international fair trial standards and excludes the possibility of the death penalty;
- expressing concern at Marie-Thérèse Nlandu's poor state of health, reportedly brought about by poor prison conditions, and calling for all the detainees in the case to be afforded appropriate medical care;
- expressing concern that some of the prosecution evidence in this case may have been obtained through torture or other forms of ill-treatment, and calling for an independent investigation of these allegations.

APPEALS TO:

President

S.E. Joseph Kabila, Président de la République, Palais de la Nation, Kinshasa-Gombe, République Démocratique du Congo

Fax: +243 81 346 4116

Email: presipp@yahoo.fr

Salutation: Dear President Kabila

Minister for Human Rights

Marie-Madeleine Kalala, Ministre des Droits humains, Ministère des Droits humains, 33/C Boulevard du 30 juin, Kinshasa-Gombe, République Démocratique du Congo

Email: min_droitshumains@yahoo.fr

Salutation: Dear Minister

COPIES TO: diplomatic representatives of the Democratic Republic of Congo accredited to your country.

PLEASE SEND APPEALS IMMEDIATELY. Check with the International Secretariat, or your section office, if sending appeals after 7 March 2007.