

The logo for the New York City Bar, featuring the text "NEW YORK CITY BAR" in a serif font, centered between two horizontal blue bars.

NEW YORK
CITY BAR

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April 27, 2007

His Excellency, Joseph Kabila
President of the Democratic Republic of the Congo
State House
Kinshasa, Democratic Republic of the Congo
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Dear President Kabila:

I am writing on behalf of the Association of the Bar of the City of New York (“The Bar”) to express our concern about the case of Ms. Marie-Thérèse Nlandu Mpolo-Nene, a lawyer and former opposition presidential candidate, who is currently being tried by a military tribunal and faces up to 20 years imprisonment. The Bar is concerned that Ms. Nlandu’s detention and trial is not in accordance with Congolese and international law. Given the serious nature of this matter, the Bar respectfully urges to you to take all necessary measures to ensure that Ms. Nlandu is released or, at a minimum, that she receives a fair trial by an independent civilian court. The recently-held elections in the Democratic Republic of Congo (“DRC”) constitute a major step towards democracy. It would be unfortunate for such a clear violation of international human rights standards to tarnish the Congolese government’s efforts to develop a genuinely democratic country.

The Bar is an independent non-governmental organization with more than 23,000 members in over 50 countries. Founded in 1870, the Bar has a long history of dedication to human rights, notably through its Committee on International Human Rights, which investigates and reports on human rights conditions around the world, including within the United States. The Bar closely follows legal and policy developments in Africa through its African Affairs Committee.

It has been reported that Ms. Nlandu was arrested on November 21, 2006 by agents of the *services spéciaux de la police* at their headquarters in the Kin-Maziere police station while attempting to inquire about the whereabouts of her six male associates who had been arrested the previous day. At that time, she was representing opposition presidential candidate Jean-Pierre Bemba in a case before the Supreme Court of Justice contesting the presidential election runoff results. Ms. Nlandu was placed under arrest without any explanation, and during her hearing some hours later, she was reportedly charged with inciting insurrection (*mouvement insurrectionnel*) and illegal possession of firearms.

The Bar is concerned that the first charge appears to relate to a speech she gave on November 20 outside the Supreme Court in which she called on supporters of her client

Mr. Bemba to exercise their right to protest “in a disciplined way.” A prosecution on this basis violates the right to freedom of expression, which is guaranteed under international law, notably under Article 19 of the Universal Declaration of Human Rights; Article 19 of the International Covenant on Civil and Political Rights, to which the DRC acceded on November 1, 1976; and Article 9 of the African Charter on Human and People’s Rights (the “African Charter”), which the DRC ratified in 1987.

With regard to the charge of illegal possession of firearms, the confiscation of three grenades, which were allegedly being held by Ms. Nlandu, was carried out in violation of Article 3 of the DRC’s Military Procedure Code. This Article provides that the seizure and/or confiscation must be conducted in the presence of the parties involved. However, police officers searched Ms. Nlandu’s car while she was inside the Kin-Maziere police station inquiring about her associates’ whereabouts.

The Bar is also concerned that Ms. Nlandu and her six associates are currently being tried by a military court. The African Commission on Human and People’s Rights acknowledged the right of civilians not to be tried by military courts in its resolution on Rights to a Fair Trial and Legal Assistance adopted at its 26th session held in November 1999, stating that:

The only purpose of Military Courts shall be to determine offences of a purely military nature committed by military personnel. . . . Military courts should not in any circumstances whatsoever have jurisdiction over civilians. Similarly, Special Tribunals should not try offences which fall within the jurisdiction of regular courts.¹

Moreover, trying Ms. Nlandu by a military court is in violation of Article 156 of the Constitution of the DRC, which stipulates that military courts have jurisdiction only over military personnel.

Finally, the Bar is deeply concerned by reports that, during the trial, the public prosecutor put forward allegations against Ms. Nlandu that were reportedly obtained from her associates while they were tortured during interrogation at Kinshasa’s central prison, the Centre Penitenciaire et de Rééducation de Kinshasa, where Ms. Nlandu and her associates continue to be detained. Acts of torture contravene fundamental principles of international law, as provided in Article 5 of the African Charter, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which the DRC acceded on March 18, 1996.

As a consequence of the above derogations from international law, we believe that Ms. Nlandu’s trial violates numerous standards of international human rights, the African Charter and Congolese law. Accordingly, we respectfully request that Your Excellency take all necessary measures to ensure the immediate release of Ms. Nlandu or, at a minimum, that Ms. Nlandu receives a fair trial by an independent civilian court. In the event that the military tribunal sentences Ms. Nlandu, we call upon you to commute her sentence.

Respectfully submitted,



Barry Kamins

¹ African Commission on Human & People’s Rights, “Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa,” section L, “Right of Civilians not to be tried by military courts,” parts (a) and (c), November 1999.

cc: His Excellency, John Kuofor, President of Ghana
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