

OPINION No. 46/2006 (DEMOCRATIC REPUBLIC OF THE CONGO)

Communication: addressed to the Government on 7 March 2006.

Concerning: Mr. Théodore Ngoyi.

The State is a party to the International Covenant on Civil and Political Rights.

1. (Same text as paragraph 1 of Opinion No. 32/2006.)
2. The Working Group regrets that the Government did not reply, notwithstanding the fact that it had extended the 90-day limit at the Government's request.
3. (Same text as paragraph 3 of Opinion No. 32/2006.)
4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government. In the absence of any information from the Government, the Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, especially since the facts and allegations contained in the communication have not been challenged by the Government.
5. According to the source, Théodore Ngoyi, a pastor, attorney, president of the Congo for Justice political party and also spokesperson for *Rassemblement des partis politiques et des Forces sociales pour le Non au référendum constitutionnel en République Démocratique du Congo* (Alliance of Political Parties and Social Forces for a "No" to the Constitutional Referendum in the Democratic Republic of the Congo), was arrested at his home in Kinshasa, in the commune of Gombe, by some 30 armed police officers in plain clothes and in military uniform, who had arrived in a vehicle without licence plates. Agents of the Kin Mazière police special services reportedly also took part in the arrest. About 10 police officers broke into the house, threatening to shoot anyone who resisted. Mr. Ngoyi and his employees, some of whom were women, were then beaten with rifle butts by police officers, who also punched them and kicked them.

6. Théodore Ngoyi was then apprehended, handcuffed and thrown into the vehicle of the agents of the police special services, who took him to the office of the prosecutor at the Gombe regional court. After questioning, Mr. Ngoyi was accused of “violating general regulatory measures and offences against the authorities and the head of State”. On 31 December 2005, Mr. Ngoyi was transferred to the Kinshasa Penitentiary and Re-education Centre (CPRK, formerly Makala Central Prison), where he is being held in wing 7.

7. On 5 January 2006, Mr. Ngoyi was brought before the Gombe magistrates’ court, which on 6 January 2006 extended his pretrial detention by 15 days. The following day, on 7 January, Mr. Ngoyi appealed against that decision, and the appeal was heard on 12 January 2006. On 13 January 2006, the judge issued an order confirming the extension of Mr. Ngoyi’s detention, but without giving the grounds for the decision. On 16 January 2006, Mr. Ngoyi brought the case before the Supreme Court.

8. On 23 January 2006, at the request of the procurator-general of the Court of National Security, Mr. Ngoyi was questioned by a deputy procurator-general. During the questioning, the examining magistrate considered that written evidence on certain points was required, and he authorized Mr. Ngoyi to go to his home to retrieve the documents in question. The procurator-general of the Court of National Security then asked his deputy to draw up a request to transfer Mr. Ngoyi to the Ngaliema clinic for treatment, as he was ill and his personal physician had already ordered his hospitalization. After first refusing to entertain the request, on 25 January 2006 the director of CPRK finally authorized Mr. Ngoyi to have access to the medical care that he required. Mr. Ngoyi was hospitalized at the Ngaliema clinic. However, pending collection of all the evidence relating to the case, no further hearings were planned.

9. Mr. Ngoyi appeared before the Court of National Security on 16 February 2006. Pastor Ngoyi’s lawyers maintained that his detention was illegal, that the case had been brought before the court without observance of the required procedure, that there was an irregularity in the summons and that the courts should have suspended the proceedings. The prosecution, recognizing the irregularity and illegality of the proceedings against Mr. Ngoyi and of his detention, asked the Court to consider Mr. Ngoyi’s request. The Court was to deliberate on 17 February 2006, the day before its dissolution pursuant to the promulgation of the new Constitution. However, the Court refrained from giving an opinion. Article 225 of the draft Constitution, adopted by referendum on 18 December 2005, provides that “the Court of National Security shall be dissolved upon entry into force of this Constitution”. Since the new Constitution was promulgated on 17 February 2006, the Court of National Security was dissolved on 18 February 2006.

10. The source emphasizes that, in accordance with article 138 of the Criminal Code, “except in cases of flagrante delicto, offences against persons covered by articles 136 and 138 may be prosecuted only upon the complaint of the injured person or of the institution to which such person belongs”. No complaints were filed by the person concerned or by members of the Government.

11. Moreover, article 225 of the draft Constitution, adopted by referendum on 18 December 2005, provides that “the Court of National Security shall be dissolved upon entry into force of this Constitution”. Mr. Ngoyi will therefore not appear before this Court. According to the source, the criminal proceedings against Pastor Ngoyi must be considered to

have lapsed, and Mr. Ngoyi (along with all the suspects in detention) should be released without a trial of any kind. Consequently, the source considers that for these two reasons, Mr. Ngoyi's detention is devoid of any legal basis.

12. The source adds that the proceedings against Pastor Ngoyi were motivated by the action taken by Mr. Ngoyi's party and *Rassemblement des partis politiques et des Forces sociales pour le Non* before the Supreme Court for the annulment of the results of the constitutional referendum, and because of the statements that he made on a local private television station denouncing a certain "sale" by the President, Joseph Kabila, of part of the national territory in South Kivu province.

13. The source's communication was transmitted to the Government by the Working Group on 7 March 2006. Following the expiry of the 90-day time limit, two reminders were sent to the Government (on 9 August and 25 September 2006) inviting it to reply to the source's allegations; however, the Working Group has so far received no reply. The Working Group regrets that the Government has not communicated the requested information, despite the fact that it extended the time limit for submission at the Government's request, and notwithstanding the Working Group's repeated requests. In accordance with its methods of work, the Working Group considers that it is in a position to render an opinion on the facts and circumstances of the case, in the context of the allegations made by the source.

14. The Group notes that, according to the source, the criminal procedure and prosecution brought against Mr. Ngoyi are flawed by irregularities, and that these irregularities were acknowledged by the procurator-general before the court. The Government, which had the opportunity to challenge such allegations, has not seen fit to do so. Consequently, the Working Group concludes that these allegations are substantiated. In addition, the Government has not contested the fact that, following the dissolution of the Court of National Security, no body has been designated to hear the appeal formulated by Mr. Ngoyi challenging the legality of his detention. His continued detention in these conditions is in contravention of the provisions of article 9, paragraph 4, of the International Covenant on Civil and Political Rights, to which the Democratic Republic of the Congo is a party.

15. As for the allegations that the proceedings against Mr. Ngoyi were motivated by his peaceful political activities and those of his party, the Working Group considers that, in the absence of a reply from the Government, these allegations are also substantiated, and that this constitutes a violation of article 19 of the International Covenant on Civil and Political Rights.

16. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Mr. Théodore Ngoyi is arbitrary, being in contravention of articles 9 and 14 of the International Covenant on Civil and Political Rights, and falls within categories II and III of the categories applicable to the consideration of the cases submitted to the Working Group.

Adopted on 22 November 2006.