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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its seventy-fifth session, 18-27 April 2016

Opinion No. 21/2016 concerning Henrique Luaty da Silva Beirão, Manuel Chivonde, Nuno Álvaro Dala, Nelson Dibango Mendes dos Santos, Hitler Jessy Chivonde, Albano Evaristo Bingobingo, Sedrick Domingos de Carvalho, Fernando António Tomás, Arante Kivuvu Italiano Lopes, Benedito Jeremias, Inocêncio Antônio de Brito, José Gomes Hata, Osvaldo Sérgio Correia Caholo and Domingos da Cruz (Angola)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. The Human Rights Council assumed the mandate in its decision 1/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. The mandate was extended for a further three years in resolution 24/7 of 26 September 2013.

2. In accordance with its methods of work (A/HRC/30/69), on 16 October 2015 the Working Group transmitted a communication to the Government of Angola concerning Henrique Luaty da Silva Beirão, Manuel Chivonde, Nuno Álvaro Dala, Nelson Dibango Mendes dos Santos, Hitler Jessy Chivonde, Albano Evaristo Bingobingo, Sedrick Domingos de Carvalho, Fernando António Tomás, Arante Kivuvu Italiano Lopes, Benedito Jeremias, Inocêncio Antônio de Brito, José Gomes Hata, Osvaldo Sérgio Correia Caholo and Domingos da Cruz. The Government has not replied to the communication. The State is a party to the International Covenant on Civil and Political Rights.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);

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(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

Submissions

Communication from the source

4. The present communication concerns the following 14 individuals, who are citizens of Angola: Henrique Luaty da Silva Beirão, a 33-year-old hip-hop artist; Manuel Chivonde (also known as Nito Alves), an 18-year-old student; Nuno Álvaro Dala, a 31-year-old lecturer at the Technical University of Angola and a teacher at a centre providing services for and supporting the integration of children with special needs; Nelson Dibango Mendes dos Santos, a 32-year-old self-employed computer technician; Hitler Jessy Chivonde (also known as Hitler Samussuko), a 25-year-old student and hip-hop artist; Albano Evaristo Bingobingo, a 29-year-old driver; Sedrick Domingos de Carvalho, a 25-year-old journalist; Fernando António Tomás (also known as Nicolas o Radical), a 37-year-old self-employed generator technician; Arante Kivuvu Italiano Lopes, a 20-year-old student; Benedito Jeremias (also known as Dito Dali), a 26-year-old student; Inocêncio Antônio de Brito, a 28-year-old student; José Gomes Hata (also known as Cheick Hata), a 29-year-old hip-hop artist; Osvaldo Sérgio Correia Caholo, a 26-year-old lieutenant in the national air force and lecturer at the Technical University of Angola; and Domingos da Cruz, a 31-year-old lecturer at the Independent University of Angola.

5. All of the individuals belong to a group called the Angola Revolutionary Movement, except for Messrs. Jeremias, Caholo and da Cruz. Since 2011, members of the movement have been organizing peaceful protests promoting human rights, social justice and democracy in Angola.

6. On 20 June 2015, members of the group held a peaceful meeting in a house in Luanda to discuss politics and governance concerns. The meeting included a group reading and discussion on Gene Sharp's book *From Dictatorship to Democracy: A Conceptual Framework for Liberation*. Mr. da Cruz had planned to give a lecture during the group discussion.

7. All 14 individuals were arrested by Angolan security forces between 20 and 24 June 2015 in connection with the above-mentioned meeting. No arrest warrant was presented. Mr. Caholo was also arrested, even though he did not belong to the group and had not participated in the meeting of 20 June 2015. According to the source, the police searched the homes of the individuals without a warrant and seized computers, documents and cameras.

8. On 16 September 2015, they were formally charged with plotting a rebellion and attempting to stage a coup against the president of Angola, offences that are considered crimes against the security of the State and are punishable by up to three years in prison or a fine. Under Angolan law, the period of pretrial detention for crimes against the security of the State may not exceed 90 days, from the date of a suspect's arrest to the date on which he or she is notified of the charges against him or her, but is subject to extension. Although the 90-day limit had expired on 19 September 2015, the accused were only informed of the indictment on 5 October 2015. Once detainees have been notified of the charges against them, Angolan law allows them to be detained for a maximum of 120 days until the judge makes a decision regarding the allegations presented by the prosecutor. Since the accused were only informed of the charges against them on 5 October, the above-mentioned law can only apply from that date. Therefore, the period that the individuals spent in detention between 19 September and 5 October 2015 appears to be without justification under Angolan law.

9. On 20 September 2015, some of the activists went on hunger strike for a few days to protest against the illegality of their detention. At the time of the transmission of the initial communication to the Government, Mr. Beirão was still on hunger strike. Although he had been transferred to the hospital prison in São Paulo, his condition remained critical.

10. According to the source, the 14 individuals have been held in solitary confinement and have not been allowed to communicate with each other. On 9 October 2015, six of them protested against the detention regime that prevented them from speaking to each other during breaks. According to the source, those who protested were beaten with electric truncheons and subjected to other forms of cruel and degrading treatment.

11. At the time of the transmission of the initial communication to the Government, the 14 individuals were still in detention and had yet to be brought before a judge.

12. Concerns have been raised regarding Mr. Beirão's critical state of health. On 11 October 2015, after three weeks on hunger strike, Mr. Beirão received intravenous saline for the first time.

13. The source submits that the continued detention of the 14 individuals is arbitrary and falls under categories II and III of the Working Group's defined categories of arbitrary detention.

14. The source is of the view that the arrest and detention of the 14 individuals resulted from the peaceful exercise of their rights to freedom of opinion, expression and assembly, as guaranteed under articles 19 and 20 of the Universal Declaration of Human Rights and articles 19 and 21 of the International Covenant on Civil and Political Rights. Thus, the source submits that the deprivation of their liberty is arbitrary and falls under category II, as defined in the Working Group's methods of work.

15. The source further submits that, during the period of their deprivation of liberty, international norms of due process were violated and the 14 individuals were denied the right to a fair trial, in violation of articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights. They were arrested and held in pretrial detention without being informed of the charges against them for over 90 days, which exceeded the time limit permitted under Angolan law, in violation of article 14 (3) (a) of the Covenant. The source further argues that the 14 individuals have not been brought before a court without undue delay, as guaranteed under article 14 (3) (c) of the Covenant.

Response from the Government

16. On 11 December 2015, the Government of Angola responded to an urgent appeal concerning 17 persons,¹ including the 14 individuals listed in paragraph 4 above, issued on 23 October 2015. Regrettably, the Government did not respond to the communication sent by the Working Group. In line with its methods of work, the Working Group may issue an opinion based on all the information available to it. The Working Group will therefore duly consider the response made to the urgent appeal, as it is relevant to the present case.

17. In its response, the Government of Angola confirms the arrest and detention of the individuals, but states that Angolan law provides for 90 days' detention during a "preparatory fact-finding phase". In its view, that time frame has been respected. In addition, the Government stated that it would not interfere with the independence of the judiciary with regard to its oversight of the detention of these individuals.

Discussion

18. The Working Group welcomes the partial cooperation of the Government of Angola in this case, namely its response to the urgent appeal. However the Working Group is of the view that full cooperation would include a substantive response to the communication, addressing in detail the allegations brought to the attention of the Government.

19. In the present case, the Government corroborates the facts as presented by the source, namely that the persons listed above have been arrested and detained pending trial. Only the circumstances of and underlying reasons for their arrests remain to be clarified. In that regard, the Working Group only has access to information from the source. The Working Group considers that the Government's corroboration of part of the information received from the source strengthens the credibility of the source to the extent that the Working Group views the information as sufficiently substantiated.

20. All 14 individuals were arrested after a meeting held in a private residence to discuss a book on politics. Among those persons, 11 were members of the Angola Revolutionary Movement. They were all arrested between 20 and 24 June 2015, but were only notified of the charges against them on 16 September 2015. The Government states that the action taken was in accordance with its laws providing for 90 days of detention during the investigation phase. Given the circumstances of the arrest, the Working Group is of the view that the charges stated above by the source appear to have a political basis. In addition, during their time in detention, the individuals were held in solitary confinement and were beaten whenever they protested.

21. The Working Group considers that these individuals were arrested and detained without being notified of the reasons for their arrest, in violation of articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights. In addition, the Working Group considers that the charges against them lack material grounds, and the Government has failed to provide any

¹ See the summary of the urgent appeal issued by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the situation of human rights defenders, A/HRC/31/79, p. 129. The 17 individuals listed are: Henrique Luaty da Silva Beirão (Luaty Beirão), Manuel Chivonde (Manuel Nito Alves), Afonso Mahenda Matias (Mbanza Hanza), Nuno Álvaro Dala, Nelson Dibango Mendes dos Santos, Hitler Jessy Chivonde (Hitler Samussuko), Albano Evaristo Bingobingo, Sedrick Domingos de Carvalho, Fernando António Tomás (Nicolas o Radical), Arante Kivuvu Italiano Lopes, Benedito Jeremias (Dito Dali), José Gomes Hata (Cheick Hata), Inocêncio António de Brito, Domingos da Cruz, Osvaldo Sérgio Correia Caholo, Laurinda Manuel Gouveia and Rosa Kusso Conde.

substance in support of criminal prosecution, or any evidence to support the allegations. Given those circumstances, the Working Group is also of the view that the individuals were arrested and detained because of the exercise of their freedom of assembly, opinion and expression, in violation of articles 19 and 20 of the Universal Declaration of Human Rights and articles 19 and 21 of the International Covenant on Civil and Political Rights. The Working Group recalls that these rights were exercised in a private environment. On that basis, the Working Group concludes that the 14 individuals were arbitrarily arrested and detained. It further concludes that their case falls under categories II and III, as defined in its methods of work.

22. The Working Group is concerned by the allegations of ill-treatment, the applicants' detention conditions and the risk to their health.

Disposition

23. In conclusion, the Working Group on Arbitrary Detention renders the following opinion:

The arrest and deprivation of liberty of Henrique Luaty da Silva Beirão, Manuel Chivonde, Nuno Álvaro Dala, Nelson Dibango Mendes dos Santos, Hitler Jessy Chivonde, Albano Evaristo Bingobingo, Sedrick Domingos de Carvalho, Fernando António Tomás, Arante Kivuvu Italiano Lopes, Benedito Jeremias, Inocêncio António de Brito, José Gomes Hata, Osvaldo Sérgio Correia Caholo and Domingos da Cruz are arbitrary, being in violation of articles 9, 10, 19 and 20 of the Universal Declaration of Human Rights and articles 9, 14, 19 and 21 of the International Covenant on Civil and Political Rights and fall within categories II and III of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

24. Consequent upon the opinion rendered, the Working Group requests the Government of Angola to take the necessary steps to remedy the situation of Henrique Luaty da Silva Beirão, Manuel Chivonde, Nuno Álvaro Dala, Nelson Dibango Mendes dos Santos, Hitler Jessy Chivonde, Albano Evaristo Bingobingo, Sedrick Domingos de Carvalho, Fernando António Tomás, Arante Kivuvu Italiano Lopes, Benedito Jeremias, Inocêncio António de Brito, José Gomes Hata, Osvaldo Sérgio Correia Caholo and Domingos da Cruz, and to bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

25. The Working Group considers that, taking into account all the circumstances of the case, the adequate remedy would be to immediately release them and accord them an enforceable right to compensation and, at the same time, to put an end to the unlawful criminal proceedings against them.

26. The Working Group also wishes to remind the Government of Angola of the benefits of a constructive dialogue, in the form of a follow-up visit, which would help the Government to prevent such violations in the future.

27. In accordance with rule 33 (a) of its methods of work, the Working Group considers it appropriate to refer the allegations of ill-treatment to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment for appropriate action.

[Adopted on 27 April 2016]