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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its seventy-fourth session, 30 November-4 December 2015

Opinion No. 47/2015 concerning José Marcos Mavungo (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 19 August 2015 the Working Group transmitted a communication to the Government of Angola concerning José Marcos Mavungo. 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 sentence or despite an amnesty law applicable to him) (category I);

(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. José Marcos Mavungo, born on 12 June 1958, is an Angolan national. He is a human rights activist and the former vice-president of the Associação Cívica de Cabinda, also known as Mpalabanda, a human rights group based in Cabinda that was banned by the Government. Mpalabanda used to monitor and report on human rights violations in Cabinda Province.

5. On 10 March 2015, Mr. Mavungo and five other human rights activists signed a letter in which they notified the Governor of Cabinda Province of their intention to hold a peaceful demonstration on 14 March 2015 at 3 p.m. The letter explained that the demonstration would denounce violations of human rights and fundamental freedoms, draw attention to the lack of transparency in the management of public property, and demand adherence to the rule of law and sound economic management by the Government of Angola. On 11 March 2015, Mr. Mavungo issued a press release to local journalists announcing the demonstration as a protest against human rights violations and poor governance.

6. On 11 March 2015, three days before the scheduled demonstration, the Governor issued a statement banning the demonstration and accusing Mr. Mavungo and his fellow activists of “representing lack of honour and consideration owed to people and government institutions”.

7. On 14 March 2015, at approximately 7.30 a.m., Mr. Mavungo was arrested as he was leaving morning mass at a local Catholic church. He was arrested by a large group of police officers who did not present a warrant. At that time, he was not informed of the reasons for his arrest. According to the source, it is believed that Mr. Mavungo was arrested for organizing and intending to participate in a peaceful demonstration. Mr. Mavungo was taken to the Provincial Directorate of Criminal Investigation where he was held in custody for two days. He was later transferred to Yabi Central Prison in Cabinda and only then was he informed that he was suspected of committing the crime of sedition, in violation of article 179 of the Angolan Penal Code.

8. On 19 March 2015, Mr. Mavungo was brought before Cabinda Provincial Court for trial. The court acknowledged the lack of any prima facie evidence to uphold the sedition charge. However, it did not order Mr. Mavungo’s release, instead referring the matter to a pretrial investigative body. Mr. Mavungo was transferred to the civil prison of Cabinda.

9. On 20 March 2015, the Prosecutor of the Republic at the Cabinda Provincial Directorate of Criminal Investigation dropped the original charge of sedition and informed Mr. Mavungo that he would be charged with the more serious crime of rebellion, in accordance with article 21 (3) of Law 23/10 on crimes against the security of the State. If convicted, Mr. Mavungo would face between 3 and 12 years’ imprisonment. In accordance with Angolan law, a person charged with a State security crime can be remanded for up to 90 days, subject to extension.

10. On 26 March 2015, Mr. Mavungo’s attorney applied to the Prosecutor for bail, but no response was ever received to the application. In addition, according to the source, the

authorities have not responded to any requests for facts or information relating to Mr. Mavungo's detention and the charges against him.

11. On 27 May 2015, the Prosecutor formally charged Mr. Mavungo with rebellion. However, Mr. Mavungo's legal counsel was informed of that on 22 June 2015 only.

12. On 17 July 2015, the court issued its indictment and ordered that Mr. Mavungo remain in detention until trial. The indictment reportedly reproduced word for word the Prosecutor's formal accusation. There is no indication that the court took into consideration any of the defence counsel's written complaints submitted to the Prosecutor and the court on 12 June and 29 June 2015 respectively.

13. According to the indictment, the rebellion charge is essentially based on a summarized account of an alleged intelligence operation. The full intelligence file is classified as confidential. According to that account, on the eve of the planned demonstration on 14 March 2015, intelligence agents allegedly approached "some individuals" who subsequently fled and left a bag behind. The bag allegedly contained explosives and flyers that called for the use of violence to overthrow the Government. According to the source, the indictment failed to establish any link between those explosives and Mr. Mavungo. There was no reference to any evidence that could prove that Mr. Mavungo either wrote, distributed, was in possession of, or had any knowledge of the flyers.

14. The source raises grave concerns regarding Mr. Mavungo's fragile and deteriorating state of health. In April 2015, Mr. Mavungo was admitted to hospital twice with serious cardiac problems, which is of great concern in the light of his continued detention, as he requires constant medical attention. He has heart disease and a liver condition. In addition, the source raises suspicion about the quality of the cells in which Mr. Mavungo has been and is being detained; he has been diagnosed with malaria multiple times as a result of being held in a "stuffy and humid cell, infested with mosquitoes". For those reasons, the source requested an urgent appeal.

15. The source submits that Mr. Mavungo's continued detention is arbitrary and falls under categories I, II and III of the Working Group's defined categories of arbitrary detention.

16. The source argues that Mr. Mavungo's detention is without legal basis. He was arrested without a warrant and the arresting officers failed to provide any legal basis for the arrest at the time it was carried out. Mr. Mavungo was formally charged on 27 May 2015, more than two months after his arrest. That is in violation of article 9 of the Universal Declaration of Human Rights and article 9 (1) and (2) of the International Covenant on Civil and Political Rights, thereby rendering the detention arbitrary, as it falls under category I.

17. The source is of the view that Mr. Mavungo's arrest, detention and conviction resulted from the exercise of his right to freedom of opinion and expression and his right to peaceful assembly, as guaranteed by 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 his deprivation of liberty is arbitrary, as it falls under category II.

18. The source submits that Mr. Mavungo's right to the international norms of due process and guarantees to a fair trial have not been upheld during the period of his deprivation of liberty, 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. Mr. Mavungo was initially charged with sedition. Owing to the lack of evidence, the court dropped the original charge, but Mr. Mavungo was then charged with the more serious crime of rebellion. The source submits that the sudden alteration of the charges after

Mr. Mavungo's arrest, in the absence of any new evidence, underscores the arbitrary nature of the proceedings against him, even more so in view of his conviction without any evidence linking him to the supposed bag, flyer or explosives.

Response from the Government

19. The Government of Angola has not responded to the allegations from the source, sent to it on 19 August 2015. The 60-day time period for such a response has elapsed.

Discussion

20. Paragraph 16 of the Working Group's methods of work reads as follows: "Even if no reply has been received upon expiry of the time limit set, the Working Group may render an opinion on the basis of all the information it has obtained". That means that the lack of response by a State does not prevent the Working Group from issuing an opinion. However, such silence does not mean that everything in the source should be considered as established. The Working Group has to assess the *prima facie* reliability of the information provided by the source.

21. In the present case, it is worth noting that not only did the Government not respond to the allegations, but it also failed to respond to the urgent appeal issued on 28 September 2015. The Working Group regrets that an allegation concerning the critical condition of a person in detention was not addressed by the Government that has custody of that person. The Government has failed to uphold the system of protection that was voluntarily designed by the United Nations Member States, which is a serious failure on its part.

22. In the present case, different sources have provided clear, consistent and coherent information that is also available in the public domain. There is therefore no reason to doubt the *prima facie* case that Mr. Mavungo, a human rights defender in Cabinda, was arrested after having notified the authorities of a planned demonstration. He was not properly notified of the legal grounds for his arrest and detention. Two days later, he was informed that he was being charged with sedition. However, once presented to the judge, five days after his arrest, the court found that there was no *prima facie* evidence in support of the charge. His case, however, was not dismissed. The following day, he was informed that the sedition charge had been dropped and that he was instead accused of rebellion. The alleged underlying facts supporting that accusation were held in a classified intelligence file that was not disclosed to him. It was not until two months after Mr. Mavungo's arrest that his lawyer was informed of the charges against him. Mr. Mavungo had no access to his lawyer from the moment of his arrest or throughout his detention. Mr. Mavungo was tried and convicted for rebellion, and sentenced to six years in prison. In addition, he was ordered to pay some court fees. His wife's visits are limited. Moreover, she is required to pay for each visit, and she has to provide his daily meals.

23. The failure to notify persons who are arrested and subsequently detained of the charges against them is a violation of article 9 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights and leads to arbitrary detention that falls under category I of the Working Group's defined categories of arbitrary detention. The Working Group is in no doubt that Mr. Mavungo's current situation matches the definition in category I. That is further reinforced by the court's first ruling that the initial charge was not supported by the evidence. Notwithstanding that finding, the victim was kept in detention and new charges were brought against him.

24. Additionally, arresting and detaining individuals and not allowing them to benefit from the assistance of a lawyer constitutes a violation of their right to a fair trial, as established in 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 and recently restated in

principle 9 of the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court. States cannot overlook the need for legal assistance when an individual is facing criminal justice. That is a fundamental right that, if violated, results in an overall failing on the part of the criminal justice system. Moreover, the lack of access to the evidence used against Mr. Mavungo constitutes another violation of the right to a fair trial, especially under article 14 (3) (a) of the International Covenant on Civil and Political Rights. The seriousness of such violations supports the Working Group's view that the present case constitutes an arbitrary detention under category III.

25. The series of events started with the notification by Mr. Mavungo of the demonstration that he had planned. His status as a human rights defender is not challenged. Articles 19 and 20 of the Universal Declaration of Human Rights guarantee freedom of opinion and expression and the right to peaceful assembly. Those same rights are enshrined in articles 19 and 21 of the International Covenant on Civil and Political Rights. An individual cannot be detained for exercising those rights, which have been universally acknowledged as inherent to all human beings. As a result, in the view of the Working Group, the present case constitutes an arbitrary detention within category II.

Disposition

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

The deprivation of liberty of José Marcos Mavungo is 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 falls within categories I, II and III of the categories referred to by the Working Group when considering cases submitted to it.

27. Consequent upon the opinion rendered, the Working Group requests the Government of Angola to take the steps necessary to remedy the situation of Mr. Mavungo 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.

28. The Working Group believes that, taking into account all the circumstances of the case, the adequate remedy would be to immediately release José Marcos Mavungo and to accord him an enforceable right to compensation.

[Adopted on 3 December 2015]