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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 for reasons of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation or disability or other status, that aims towards or can result in ignoring the equality of human rights (category V).

Submissions

Communication from the source

4. Mr. José Marcos Mavungo (hereinafter Mr. Mavungo), born on 12 June 1958, is an Angolan national. He is a human rights activist and the former vice president of Associação Cívica de Cabinda (also known as Mpalabanda), a Government banned human rights group based in Cabinda. 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 3:00 p.m. The letter explained that the demonstration would denounce violations of human rights and fundamental freedoms. The letter explained further that the demonstration would also bring attention to the lack of transparency in the management of public property and to demand adherence to the rule of law and sound economic management by the Angolan Government. 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 “represent[ing] 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 when departing from a morning mass session at a local Catholic church. He was arrested without a warrant by a large group of police officers. At the time of the arrest, 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 the 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 the Cabinda Provincial Court for trial. The court acknowledged the lack of any prima facie evidence to uphold the sedition charge. However, the court did not order the release of Mr. Mavungo, instead, it referred the matter to a pre-trial investigative body and 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 a more serious crime of rebellion in accordance with article 21 (3) of the Law 23/10, Law 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 and subject to extension.

10. On 26 March 2015, Mr. Mavungo's attorney applied for bail to the Prosecutor but the application has never been responded to. In addition, according to the source, the authorities have not responded to any request 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, his legal counsel was only informed of it on 22 June 2015.

12. On 17 July 2015, the court issued its indictment and ordered Mr. Mavungo to 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 respectively on 12 June and 29 June 2015.

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 on the use of violence to overthrow the Government. According to the source, the indictment failed to establish any link between the seized explosives and Mr. Mavungo. There was no reference to any evidence that could prove that Mr. Mavungo either wrote, or distributed, or was in possession of or had any knowledge of the flyers.

14. The source raises grave concerns regarding the fragile and deteriorating health condition of Mr. Mavungo. In April 2015, Mr. Mavungo was admitted to the hospital twice due to serious cardiac problems. This is of greater concern with his continued detention because he requires constant medical attention; he suffers from cardiopathy and has a liver condition. In addition, the source raises suspicion about the quality of the cells where Mr. Mavungo has and is being detained because 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 the continued detention of Mr. Mavungo is arbitrary and falls under category I, II and III of the Working Group's defined categories of arbitrary detention.

16. The source argues that the detention of Mr. Mavungo is without legal basis. He was arrested without a warrant while the police officer 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. This is in violation of article 9 of the Universal Declaration of Human Rights (UDHR) and article 9(1) and (2) of the International Covenant on Civil and Political Rights (ICCPR), thereby rendering the detention arbitrary as it falls within category I.

17. The source is of the view that the arrest, detention, and conviction of Mr. Mavungo resulted from the exercise of his right to freedom of opinion and expression and his right of peaceful assembly, as guaranteed by articles 19 and 20 of the Universal Declaration of Human rights (UDHR), and articles 19 and 21 of the International Covenant on Civil and Political Rights (ICCPR). Thus the deprivation of liberty is arbitrary and it falls under categories II.

18. The source further submits that Mr. Mavungo has not been guaranteed the international norms of due process and guarantees to a fair trial 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. Due to lack of evidence, the court dropped the original charge but Mr. Mavungo was then charged with a more serious crime of rebellion. The source submits that the sudden alternation of the charges after the arrest of Mr. Mavungo, in the absence of any new evidence, underscores the arbitrary nature of the proceedings against Mr. Mavungo. This holds even truer with Mr. Mavungo's conviction without any evidence tying him to the supposed bag, flyer, and explosives.

Response from the Government

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

Discussion

20. Paragraph 16 of the Methods of Work (A/HRC/30/69) 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". This provision 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. And the Working Group has to assess the *prima facie* reliability of the information provided by the source.

21. In this case, it is worth noting that not only did the Government not respond on the communication, but it has also failed to respond to the Urgent Appeal issued on 28 September 2015. It is such a disappointment that an allegation on the critical conditions of someone in detention would not be addressed by the Government having custody of that person. It failed the system of protection voluntarily designed by the States, and it is considered very serious.

22. In the present case, different sources have provided clear, consistent and coherent information that is equally 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 charged for sedition. However, once presented to the judge five days after his arrest, the court found that there is no *prima facie* evidence in support of the charge, without him getting discharged. The following day, he was informed that the sedition charge has been dropped and is now accused of rebellion. The alleged underlining facts that supported this accusation were under a classified intelligence file that was not disclosed to him. It was two months after his arrest that his lawyer was informed of the charges against him, while he did not have any access to the lawyer from the beginning of his arrest and detention. Mr. Mavungo was then tried and convicted for rebellion, and sentenced to 6 years in prison. In addition, Mr. Mavungo was ordered to pay some court fees. The visits by his wife are limited while she is required to pay for each visit, and must bring him his daily meals.

23. The lack of charges notified to the person who is arrested and subsequently detained is a violation of Art. 9 UDHR and Art. 9 ICCPR and leads to an arbitrary detention of the first category. There is no doubt for the Working Group that the current situation of Mr. Mavungo matches such a definition. This is further reinforced by the first decision by the court that the initial charge was not supported by the evidence; yet the victim was kept in detention and new charges were brought against him.

24. Additionally, the situation where the person arrested and detained is not able to benefit from the assistance of a lawyer constitutes a violation of the fair trial right as established in Art. 9 and 10 UDHR and Art. 9 and 14 ICCPR and recently reinstated 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* (A/HRC/30/37). States cannot overlook the need for legal assistance when the individual is facing the criminal justice, and that is a fundamental right which, if it is violated, leads to an overall defect of the criminal justice. In addition, the lack of access to evidence used against an accused is in violation of the same fair trial principle, especially Article 14(3)(a) of the ICCPR. The seriousness of such violations supports the view that the Working Group holds here that this is an arbitrary detention under category III.

25. The overall process started with the notification by Mr. Mavungo of the demonstration that he had planned. His status of human rights defender is not challenged. Art. 19 and 20 UDHR guarantee the freedom of opinion and expression and the right to peaceful assembly. Those same rights are provided in Art. 19 and 21 ICCPR. And one cannot be detained for exercising those rights inherent to all human beings as acknowledged universally. As a result, in the view of the Working Group, this is an arbitrary detention within category II.

Disposition

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

27. The deprivation of liberty of Mr. 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 ICCPR; it falls within categories I, II and III of the categories referred to by the Working Group when considering cases submitted to it.

28. Consequent upon the opinion rendered, the Working Group requests the Government of Angola to take the necessary steps in order 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.

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

[Adopted on 3 December 2015]