
Advance Unedited VersionDistr.: General
31 May 2016

Original: English

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 António 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 the Republic 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 António 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 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. The following 14 individuals are citizens of the republic of Angola.
5. **Mr. Henrique Luaty da Silva Beirão**, 33 years old, hip-hop artist;
6. **Mr. Manuel Chivonde (also known as Nito Alves)**, 18 years old, student;
7. **Mr. Nuno Álvaro Dala**, 31 years old, lecturer at the Technical University of Angola and teacher at the Centre for Services and Integration of Children with Special Needs;
8. **Mr. Nelson Dibango Mendes dos Santos**, 32 years old, self-employed computer technician;
9. **Mr. Hitler Jessy Chivonde (also known as Hitler Samussuko)**, 25 years old, student and hip-hop artist;
10. **Mr. Albano Evaristo Bingobingo**, 29 years old, driver;
11. **Mr. Sedrick Domingos de Carvalho**, 25 years old, journalist;
12. **Mr. Fernando António Tomás (also known as Nicolas o Radical)**, 37 years old, self-employed generator technician;
13. **Mr. Arante Kivuvu Italiano Lopes**, 20 years old, student;
14. **Mr. Benedito Jeremias (also known as Dito Dali)**, 26 years old, student;
15. **Mr. Inocêncio António de Brito**, 28 years old, student;
16. **Mr. José Gomes Hata (also known as Cheick Hata)**, 29 years old, hip-hop artist;
17. **Mr. Osvaldo Sérgio Correia Caholo**, 26 years old, lieutenant in the National Air Force and lecturer at the Technical University of Angola; and
18. **Mr. Domingos da Cruz**, 31 years old, lecturer at the Independent University of Angola.
19. All of them belong to a group called the Angola Revolutionary Movement, except for Mr. Benedito Jeremias, Mr. Osvaldo Caholo and Mr. Domingos da Cruz. Since 2011,

members of this movement have been organizing peaceful protests promoting human rights, social justice and democracy in Angola.

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

21. In connection with the meeting, between 20 and 24 June 2015, all 14 were arrested by Angolan security forces without arrest warrant. Mr. Osvaldo Caholo was also arrested even though he did not belong to the group nor did he participate in the meeting on 20 June 2015. According to the source, police forces searched homes of these individuals without warrant and seized computers, documents and cameras.

22. On 16 September 2015, they were formally charged with preparing a rebellion and a coup attempt against the President of Angola, which are considered crimes against the security of the State and punishable by up to three years imprisonment or a fine. According to Angolan law, from the date of arrest to the date of notification of the charge, the period of pre-trial detention for crimes against the security of the State may not exceed 90 days but subject to extension. Although the 90 days limit expired on 19 September 2015, the accused were only informed of the indictment on 5 October 2015. Upon notification of the charges to detainees, the Angolan law allows that they are held for a maximum of 120 days until the judge makes a decision on the accusation presented by the prosecutor. Since the accused were only informed of their charges on 5 October, therefore the law can only apply thereafter. The detention period between 19 September and 5 October 2015 appears therefore without justification under Angolan law.

23. 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 this current communication, Mr. Luaty Beirão is still on hunger strike. Although he has been transferred to the hospital prison of São Paulo, his health condition remains critical.

24. According to the source, the 14 individuals have been held in solitary confinement and not allowed to communicate with each other. On 9 October 2015, six of them protested against the regime which 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 degrading and cruel treatment.

25. Until the date of the current communication, the 14 individuals have been held in detention without trial.

26. Concerns have been raised regarding the critical health condition of Mr. Luaty Beirão. Having been on hunger strike for three weeks, on 11 October 2015, Mr. Beirão received for the first time intravenous saline.

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

28. The source is of the view that the arrest and detention of the 14 individuals result from the peaceful exercise of their rights to freedom of opinion, expression and 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 source submits that the deprivation of their liberty is arbitrary and it falls under categories II as defined in the Working Methods.

29. The source further submits that the 14 individuals have not been guaranteed the international norms of due process and guarantees to a fair trial during the period of their deprivation of liberty, in violation of articles 9 and 10 of the UDHR and articles 9 and 14 of the ICCPR. They were arrested and held in pre-trial detention without being informed of the charges against them for over 90 days which exceeded the time limit permitted by Angolan law, which contravenes article 14(3)(a) of the ICCPR. The source further argues that the 14 individuals have not been brought before a court without undue delay as guaranteed under 14(3)(c) of the ICCPR.

Response from the Government

30. On 11 December 2015, the Government of Angola responded to an urgent appeal concerning 17 persons¹ including the 14 listed above in paragraph 3, issued on 23 October 2015. However the Government did not respond to the communication sent by the Working Group and such failure to cooperate is regrettable. The Methods of Work provide for the Working Group to make its decision based on all information available to it. It will therefore duly consider the response made to the urgent appeal as it is relevant to the current case.

31. In that response, the Government of Angola confirms the arrest and detention of those individuals but stated that its law provides for 90 days detention for “preparatory fact-finding phase”. In its view, that timeframe has been respected. In addition, the Government states that it would not interfere with the independence of the judiciary in how it oversees the detention of these individuals.

Discussion

32. The Working Group is grateful for the partial cooperation of the Government of Angola in this case, with the response to the urgent appeal. However the Working Group is of the view that full cooperation would entail substantive response to the communication tailored to the allegations brought to the attention of the Government.

33. In the present case, the Government corroborates the facts as presented by the source, that the persons listed above have been arrested and detained pending their trial. Only remain the circumstances of the arrest and the underlining reasons of that arrest. On those aspects, the Working Group only has the information from the source. And the Working Group considers that the corroboration of part of the information from the source reinforces the credibility of the source to the extent that the Working Group is of the view that the information is established.

34. All 14 individuals were arrested after a meeting held in a private residence to discuss a book titled *From Dictatorship to Democracy: A Conceptual Framework for Liberation*. Among those persons, eleven are members of the Angola Revolutionary Movement. They were all arrested between 20 and 24 June 2015. They were only notified of the charges

¹ See [AGO 3/2015](#). The 17 individuals 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. The urgent appeal was issued by (i) the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; (ii) the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and (iii) the Special Rapporteur on the situation of human rights defenders.

against them on 16 September 2015, and the Government states that this was in accordance with its laws providing for 90 days of detention during the investigations. The charges stated above by the source appear political in the view of the Working Group, knowing the circumstances of the arrest. In addition, during the time in detention, these individuals were held in solitary confinement and were beaten any time that they would protest.

35. The Working Group considers that these individuals were arrested and detained without notification of the reasons for it, in violation of Articles 9 and 10 of the Universal Declaration of Human Rights and article 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 substance in support of the criminal prosecution in addition to not providing any evidence in support of the challenges of the allegations. In those circumstances, the Working Group is also of the view that these 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 article 19 and 21 of the International Covenant on Civil and Political Rights. The Working Group recalls that this exercise was made in a private environment. On those bases, the Working Group concludes that the 14 individuals were arbitrarily arrested and detained. The Working Group further concludes that their situation fits in categories II and III as defined in the Working Methods.

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

Disposition

37. 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 categories referred to by the Working Group when considering cases submitted to it.

38. As a result, the Working Group requests the Government of Angola to take the necessary steps in order 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.

39. 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.

40. The Working Group also wishes to remind the Government of Angola of the benefits that it would gain from a constructive dialogue through a follow-up visit which would help it, among others, to prevent these violations in the future.

41. 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]
