



# General Assembly

Distr. General  
20 June 2012

Original: English

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## Human Rights Council Working Group on Arbitrary Detention

### Opinions adopted by the Working Group on Arbitrary Detention at its sixty-second session, 16–25 November 2011

#### No. 54/2011 (Angola)

#### Communication addressed to the Government on 27 June 2011

Concerning José António da Silva Malembela, José Muteba, Sebastião Lumani,  
Augusto Sérgio and Domingos Henrique

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

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the former Commission on Human Rights. The mandate of the Working Group was clarified and extended in resolution 1997/50. The Human Rights Council assumed the mandate in its decision 2006/102. The mandate was extended for a further three-year period in resolution 15/18 of 30 September 2010.

2. 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 the 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; disability or other status, and which aims towards or can result in ignoring the equality of human rights (category V).

### **Submissions**

#### *Communication from the source*

3. José António da Silva Malembela, José Muteba and Sebastião Lumani, primary schoolteachers, were arrested on 12 February 2010 in Nzagi, Lunda Norte province. They were taken to the Provincial Directorate of the Criminal Investigation Police and charged with vandalism. On 7 September 2010, after several postponements, they were tried without the assistance of their lawyer. They were convicted of crimes against the security of the State under article 26 of the now repealed Law No. 7/78 on Crimes against the Security of the State, which expressly criminalized “all and every act not foreseen in the law that puts at risk the security of the State”. Mr. Malembela was sentenced to four years’ imprisonment. Mr. Muteba and Mr. Lumani were sentenced to five and six years’ imprisonment, respectively.

4. Augusto Sérgio was arrested in April 2009 in Lucapa, Lunda Sul province. He was subsequently transferred to Conduege prison. He was initially accused of forging unspecified documents. In the absence of evidence to substantiate that charge, he was accused of crimes against the security of the State. Mr. Sérgio was tried on 4 May 2010, for supporting Comissão do Manifesto Jurídico Sociológico do Protectorado da Lunda Tchokwe (Commission of the Legal Sociological Manifesto of the Lunda-Tchokwe Protectorate CMJSP-Lunda), in contravention of article 27 of the now repealed Law No. 7/78, which criminalized instigation, provocation and apology of crimes against the security of the State. He was sentenced to four years’ imprisonment.

5. Domingos Henrique was arrested on 8 October 2010, in Dundo, Lunda Norte province, together with two other individuals. It was not until February 2011 that they were charged with crimes against the security of the State under article 26 of the already at that time repealed Law No. 7/78. On 10 March 2011, they were tried on charges of rebellion and perturbing public order pursuant to article 19 of the repealed Law No. 7/78, currently article 21 of the new law. Mr. Henrique was convicted and sentenced to three years’ imprisonment while his two co-defendants were acquitted.

6. The source reports that Messrs. Malembela, Muteba, Lumani, Sérgio and Henrique are members of CMJSP-Lunda, which advocates for the autonomy of the Lunda-Tchokwe region of Angola. They are part of a larger group of 38 CMJSP-Lunda members who had been arrested in the period between 1 April 2009 and November 2010, and charged under article 26 of the Law No. 7/78.

7. This law was repealed in December 2010. On 12 January 2011, a writ of habeas corpus was lodged on behalf of all the arrested CMJSP-Lunda members. All of them but Messrs. Malembela, Muteba, Lumani, Sérgio and Henrique were released on 17 March 2011, without a trial.

8. The source argues that the arrest and continued detention of Messrs. Malembela, Muteba, Lumani, Sérgio and Henrique is contrary to the municipal law of Angola and constitutes a violation of article 9 of the International Covenant on Civil and Political Rights. Messrs. Malembela, Muteba, Lumani, Sérgio and Henrique were presented with no arrest warrant and it was only after almost four months in detention that they were for the first time informed of the charges against them.

9. The source further contends that the continued detention of the CMJSP-Lunda members constitutes an arbitrary deprivation of their liberty since they were charged, tried and convicted on the basis of an impermissibly vague and sweeping provision contained in article 26 of the now repealed Law No. 7/78. According to the source, the terms of this article purported to limit the rights and freedoms of expression, assembly and association guaranteed under international human rights law. The source expresses similar concerns with regard to the provisions contained in articles 19 and 27 of the now repealed Law No. 7/78 and article 21 of the new law, which served as a basis for convicting Mr. Sérgio and Mr. Henrique.

10. According to the information received, Messrs. Malembela, Muteba, Lumani, Sérgio and Henrique were tried without the assistance of their lawyer. Their lawyer was not informed of the trial and instead the defendants were represented in court by a lawyer allocated to them ex officio by the court at the last minute. Moreover, in the case of Mr. Henrique, it is reported that no evidence was present before the court to suggest his participation in any violent activity or public demonstration.

11. Messrs. Malembela, Muteba, Lumani, Sérgio and Henrique were held in Conduege prison in Dundo, Lunda Norte province, from the moment of their arrest until 7 February 2011. The source reports that, while at the Conduege prison in Dundo, Messrs. Malembela, Muteba, Lumani, Sérgio and Henrique might have been subjected to alleged acts of torture or other ill-treatment, including having cold water poured over them. It is reported that investigations into such allegations have not yet taken place.

12. Mr. Sérgio has been intermittently ill during his detention in Conduege where he was reportedly deprived of food and clean drinking water for several days. In this respect, it must be noted that paragraphs 20 (1) and (2) of the Standard Minimum Rules for the Treatment of Prisoners provide that “every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served” and “drinking water shall be available to every prisoner whenever he needs it”. Moreover, paragraph 22 (1) provides expressly for medical services that must be provided to prisoners in need.

13. On 7 February 2011, Messrs. Malembela, Muteba, Lumani, Sérgio and Henrique were transferred to Kakanda prison where they are currently being held. Although the conditions at Kakanda prison are somewhat improved, concerns are expressed with regard to absence of medical facilities and scarcity of food.

#### *Response from the Government*

14. By letter dated 27 June 2011, the Working Group requested the Government to provide it with a detailed response on the allegations presented by the source. No response was received within the prescribed delay of 60 days. Nor has the Government requested an extension for its reply in accordance with paragraph 16 of the Working Group’s revised methods of work. In these circumstances, the Working Group is in a position to render an opinion on the basis of the information at its disposal.

#### **Discussion**

15. The Working Group notes a number of human rights violations in the present case.

16. First, all the defendants have been tried on the grounds of endangering the security of the State under the now repealed Law No. 7/78. Without entering the merits of whether the defendants were properly charged before or after the law was repealed, the Working Group notes that they were not presented with an arrest warrant and were informed of the charges for the first time after approximately four months in detention. This constitutes a breach of article 9, paragraph 2, of the International Covenant on Civil and Political Rights.

17. Second, the Working Group notes that the charges brought against the defendants were based on vague and imprecise legal provisions such as article 26 of Law No. 7/78, which criminalized “all and every act not foreseen in the law that puts at risk the security of the State”. In the light of the information provided by the source and not rebutted by the Government, no specific violent or otherwise illegal conduct was reproached to the defendants. The defendants are all members of CMJSP-Lunda. This organization advocates for the autonomy of the Lunda-Tchokwe region in Angola. It transpires from the information available to the Working Group that there is a prima facie link between the detention of Messrs. Malembela, Muteba, Lumani, Sérgio and Henrique and their membership in CMJSP. It follows that their detention is contrary to their rights to freedom of opinion and expression as guaranteed by article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights.

18. Third, the Working Group notes a number of violations relating to a fair trial. According to the information available to the Working Group, the defendants were tried without proper legal assistance. Their lawyer was not informed of the trial and the defendants were represented in court by a lawyer allocated to them minutes before trial. This is in breach of article 14, paragraph 3 (b) and (d), of the International Covenant on Civil and Political Rights.

### **Disposition**

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

The deprivation of liberty of Messrs. Malembela, Muteba, Lumani, Augusto and Henrique is arbitrary and constitutes a breach of articles 9 and 19 of the Universal Declaration of Human Rights and articles 9, 10, 11 and 19 of the International Covenant on Civil and Political Rights, falling into categories II and III of the categories applicable to the cases submitted to the Working Group.

20. As a result of the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation, which would include the immediate release of Messrs. Malembela, Muteba, Lumani, Augusto and Henrique and adequate reparation to them in accordance with article 9, paragraph 5, of the International Covenant on Civil and Political Rights.

21. The Working Group refers the allegations of torture and cruel, inhuman and degrading treatment of Messrs. Malembela, Muteba, Lumani, Augusto and Henrique to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, in accordance with paragraph 33 (a) of the revised methods of work of the working group on arbitrary detention.

*[Adopted on 17 November 2011]*