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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its seventy-third session, 31 August-4 September 2015

No. 31/2015 (Democratic Republic of the Congo) Concerning Frédéric Bauma Winga

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended in Commission 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 15 May 2015, the Working Group sent a letter concerning Frédéric Bauma Winga to the Government of the Democratic Republic of the Congo. The Government has not replied to the letter. 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 the detainee) (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. Mr. Bauma Winga, born on 20 March 1990 in Goma (Democratic Republic of the Congo), is a human rights activist who has been active in several youth social movements, including Lucha (Lutte pour le changement — Fight for change) and the Filimbi (“whistle” in Kiswahili) network. In October 2014, Mr. Bauma Winga began working as an assistant programme consultant for the organization Geneva Call in the Democratic Republic of the Congo.

5. Lucha, which is a civic movement of young residents of the city of Goma, calls for the political and administrative authorities to shoulder their responsibilities and works for social justice through non-violent civic action. Filimbi is a network of young democracy activists that publicly denounces the anti-democratic trends connected with the electoral environment in the Democratic Republic of the Congo. Lucha and Filimbi are peaceful and non-violent movements.

6. According to the information received, Mr. Bauma Winga travelled to Kinshasa on 10 March 2015 to participate in a discussion workshop on the involvement of Congolese youth in the electoral process and to work, together with young Congolese and foreign activists, in the Filimbi network.

7. The source states that on the morning of 15 March 2015, Mr. Bauma Winga was among the main speakers at a press conference held as part of a workshop organized by Filimbi at the Eloko ya Makasi Centre, a cultural centre in the municipality of Masina. At around 12.30 p.m., the Congolese military police, a branch of the armed forces of the Democratic Republic of the Congo, arrested Mr. Bauma Winga and some 40 other young activists from the civic movements Balai citoyen (Civic broom) of Burkina Faso, Y’en a marre (Fed up) of Senegal, and Lucha and Filimbi of the Democratic Republic of the Congo. Several activists were abused during their arrest. The military police confiscated the identity cards, cameras and other personal belongings of those arrested and took them to the premises of the National Intelligence Agency in Kinshasa. No reason for the arrest was given to Mr. Bauma Winga.

8. The source states that, early in the evening of the same day, the Congolese Government spokesman, Lambert Mende, informed the public that the young people arrested had been labelled as “terrorists”. He accused them of, among other things, promoting violence and planning an armed rebellion, without producing any evidence for the allegations.

9. The source claims that on 17 March 2015, Sylvain Saluseke, one of Filimbi’s leaders, was arrested at the Grand Hotel in Kinshasa while keeping an appointment with the director of the National Intelligence Agency to seek the release of Mr. Bauma and his arrested companions. On the same day, in Goma, some 10 Lucha activists were arrested by personnel of the National Intelligence Agency while they were demanding, in a peaceful demonstration in front of the offices of the National Intelligence Agency, the release of Mr. Bauma Winga. On 19 March 2015, the Congolese Government ruled on the fate of the arrested Congolese citizens, stating that they would be released or brought before a lawfully established court. That did not happen for Mr. Bauma Winga.

10. According to the source, on 18 March 2010, the activists from Senegal and Burkina Faso who had been arrested were released and deported to their respective countries.

11. On 23 March 2015, Mr. Sylvain Lumu, the attorney for Mr. Bauma Winga and other arrested young people, filed a criminal complaint against a person or persons unknown for abduction, arbitrary arrest, detention and illegal searches, as well as violations of rights guaranteed to individuals. Despite Mr. Lumu's numerous attempts to contact his client, Mr. Bauma Winga, he was denied access by the Congolese authorities.

12. On 25 March 2015, the President of the National Assembly, Aubin Minaku, spoke on an international radio station about the arrest of Mr. Bauma Winga and the other Congolese human rights activists who were detained without being brought before a judge. He claimed that the security services had obtained permission from the public prosecutor to prolong the detention beyond the 48 hours within which, under Congolese law, an arrested person must be brought before a judge.

13. On 30 March 2015, Mr. Minaku approved the establishment of a parliamentary task force to investigate the arrest of the civil society activists on 15 March 2015. The 15 deputies on the parliamentary task force were allowed to meet Mr. Bauma Winga, who was not brought before a prosecutor or a judge. According to the report of the parliamentary task force, Mr. Bauma Winga had apparently not been abused but had asserted that he did not understand why he had been arrested and that he had not been informed of his right to a lawyer. In addition, one member of the parliamentary task force stated that the documents transmitted by the authorities to the task force did not make it possible to associate the activities of the persons concerned with any terrorist plan.

14. On 5 May 2015, Mr. Bauma Winga was transferred to Kinshasa's central prison. The prosecutor from the public prosecutor's office of La Gombe has been assigned responsibility for investigating the case.

15. The source claims that there were serious flaws in the procedure concerning Mr. Bauma Winga and that he did not receive guarantees of a fair trial, in that he was arrested without being informed of the reasons for the arrest, he was not in contact with his lawyer or his family, and he has not been brought before a prosecutor or judge for a ruling on his detention since 15 March 2015, although under Congolese law a detainee must be brought before a judge within 48 hours.

16. The source therefore claims that the detention of Mr. Bauma Winga is arbitrary and thus falls under categories II, III and V of the categories applicable to the cases submitted to the Working Group, insofar as it violates articles 7, 9, 10, 19 and 20 of the Universal Declaration of Human Rights and articles 9, 14, 19, 21, 22 and 26 of the International Covenant on Civil and Political Rights.

Response from the Government

17. The Working Group notes that the Government of the Democratic Republic of the Congo has not responded to the letter sent to it on 15 May 2015. As the 60-day deadline for a reply has long since passed, the Working Group is now in a position to render its opinion, in accordance with its methods of work.

Discussion

18. The political situation in the Democratic Republic of the Congo has been at the heart of the work of the United Nations since the mid-1990s; successive peacekeeping operations have been conducted there, all with components involving the protection of

human rights. The events of 15 March 2015 are well known, since the international media covered them and diplomatic missions were involved. In the absence of a reply from the State party, the assessment of the credibility and reliability of the source was facilitated by these unusual circumstances, especially since the account was consistent and, in part, documented. The Working Group therefore considers the facts to be as reported.

19. Mr. Bauma Winga is a youth leader in Goma and a human rights defender. He was arrested when, along with others, he was expressing a political opinion, without having been made aware of any criminal allegations that would justify his arrest and subsequent detention, and without having been brought before a judge. Article 9 of the Universal Declaration of Human Rights and article 9, paragraph 1, of the International Covenant on Civil and Political Rights have thus been violated. In addition, his right to the assistance of counsel was violated, in breach of article 14 of the International Covenant on Civil and Political Rights.

20. In the opinion of the Working Group, it is clear that the victim's status as a leader and the political opinion he was expressing that day led to his arrest and detention. The violation of his right to legal representation is incidental, although it cannot be ignored. Accordingly, the arrest and ongoing detention of Mr. Bauma Winga are arbitrary under categories I, II and III as defined in the Working Group's methods of work.

Disposition

21. In the light of the foregoing, the Working Group on Arbitrary Detention renders the following opinion:

The ongoing detention of Mr. Bauma Winga is arbitrary in that it lacks a legal basis and began when he was exercising his freedom of expression and opinion, and in that his right to the assistance of counsel was violated. The detention thus falls under categories I, II and III of the categories applicable to the consideration of cases submitted to the Working Group.

22. The Working Group therefore requests the Government of the Democratic Republic of the Congo to release Mr. Bauma Winga without delay and take the necessary steps to remedy the serious material and non-material damage that he has suffered, by providing for full compensation in accordance with article 9, paragraph 5, of the International Covenant on Civil and Political Rights. In addition, the Government should ensure that an investigation is conducted to ascertain the facts, determine responsibilities and ensure that any misconduct is punished.

[Adopted on 3 September 2015]