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HIGH COMMISSIONER FOR HUMAN RIGHTS

PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE: UA G/SO 218/2 G/SO 217/1 G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9) G/SO 214 (53-24)
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Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 15/18, 16/16, 16/4, 15/21, 16/5, and 16/23.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the alleged incommunicado detention of Mr. **Emiliano Catumbela "Ticreme"** and alleged arbitrary arrests and excessive police actions of eight other human rights defenders during their participation in a vigil.

All nine human rights defenders mentioned in this communication, namely Messrs. **Emiliano Catumbela "Ticreme"**, **Manuel Nito Alves**, **Albano Bingo**, **Nicola Domingos Cipriano "Aristocrata"**, **Adolfo Miguel Campos André**, **Graciano Ferbern** and **Raul Lindo "Mandela"**, are members of the Movimento Revolucionário (Revolutionary Movement), which peacefully defends human rights, democracy and accountability in Angola. The movement has reportedly called for peaceful protests against the alleged absence of adequate Government response to the disappearance of two human rights defenders in May 2012. The two, Messrs. Silva Alves Kamulingui, also known as António Alves Kamulingue, and Isaías Sebastião Cassule, were allegedly last seen on 29 May 2012, a few days after a protest they had organised in Luanda.

Several of the persons mentioned in this communication were the subject of a previous joint allegation letter (case no. AGO 2/2013) sent to your Excellency's Government on 26 April 2013, by the Working Group on Enforced or Involuntary Disappearances and the Special Rapporteurs on the promotion and protection of the right to freedom of opinion and expression; the rights to freedom of peaceful assembly and of association; and the situation of human rights defenders. In this communication, concern was expressed regarding allegations received of excessive use of force by the police and arbitrary arrests and subsequent release without charges of several persons, including human rights defenders. No response had been received in relation to this communication at the time the present communication was being prepared.

According to the information received:

On 27 May 2013, the afore mentioned persons took part in a protest in Luanda on Largo da Independência, the aim of which was reportedly to commemorate the one-year anniversary of the disappearance of Messrs. Alves Kamulingue and Cassule.

It is reported that the protesters encountered a heavy police presence when they arrived at the site of the vigil around 1600 hours, including helicopters and a canine brigade.

During the vigil, several protesters, including Messrs. Manuel Nito Alves, Albano Bingo and Nicola were reportedly arrested by National Police officers and detained for several hours without charges. Mr. Cipriano was reportedly held and released by police shortly after.

Around 2000 hours, Messrs. Campos André, Graciano and Ferber were reportedly arrested by National Police officers near Praça 1 Maio. During approximately three hours, they were allegedly held in a police car, consequently driven to the outskirts of Luanda. The police officers attempted to release them in a remote area, but after they refused to be left there, they were taken back to the city and released without charge.

It is further reported that Mr. Lindo, also known as "Mandela" was arrested by police officers at approximately 2100 hours and found unconscious by the side of the road some 5 kilometres outside Luanda between 2200 hours and 2300 hours. Sources have further informed that several private clinics have refused to treat Mr. Lindo citing fear of reprisals for doing so. It is reported that Mr. Lindo was eventually treated at Hospital Geral do Capalanga on 28 May.

Sources further inform that Mr. Catumbela was arrested during the vigil, taken by police to the 3rd Police Unit at Vila Alice and eventually transferred to the Provincial Directorate for Criminal Investigation in Luanda where he is currently detained.

Sources inform that Mr. Catumbela has been refused access to his lawyer while in detention yet that he has been interrogated nonetheless. It is alleged that he has been charged with the attempted murder of a police officer and throwing stones at the police. It is nonetheless reported that these accusations have so far been denied by witnesses.

Although his lawyer was reportedly informed that Mr. Catumbela would be led before the Prosecutor on 29 May, it is reported that the Public Prosecutor's Office has referred the case back to the police as Mr. Catumbela did not appear. It was reported that Mr. Catumbela was seen in a cell at a police station and his face allegedly displayed serious injuries.

Grave concern is expressed at the allegations that Mr. Emiliano Catumbela is being held in detention without access to his family or legal representatives, and that due to this reported lack of contact he may find himself at serious risk of ill-treatment. Serious concern is further expressed that the charges against Mr. Emiliano Catumbela and the alleged arbitrary arrest and excessive police action against other peaceful protesters who participated in the vigil on 27 May 2013, may be the result of their legitimate and peaceful exercise of their rights to freedom of expression and peaceful assembly, in their struggle for justice for victims of enforced disappearances.

We would like to recall that in the Declaration on the Protection of all Persons from Enforced Disappearance, adopted by General Assembly resolution 47/133 of 18 December 1992, it is stated that States must take steps to ensure that persons involved in investigations [of cases of disappearance], including the complainant, counsel, witnesses and those conducting the investigation, are protected against ill-treatment, intimidation or reprisal. It also stated that States must take steps to ensure that any ill-treatment, intimidation or reprisal or any other form of interference on the occasion of the lodging of a complaint or during the investigation procedure is appropriately punished.

We would also like to recall that in its resolution 21/4, adopted without a vote, the Human Rights Council urged States to take steps to provide adequate protection to witnesses of enforced or involuntary disappearances, human rights defenders acting against enforced disappearances and the lawyers and families of disappeared persons against any intimidation, persecution, reprisals or ill-treatment to which they might be subjected, paying special attention to women as relatives of disappeared persons in the context of their struggle to resolve the disappearance of members of their families.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of Mr. Emiliano Catumbela is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee his right not to be deprived arbitrarily of his liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights (UDHR) and articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR).

With regard to the allegations that Mr. Catumbela was denied access to a lawyer and that the police allegedly could not find him in his cell and that subsequently he was not led before the Prosecutor on 29 May 2013, we would like to draw the attention of your Excellency's Government to paragraph 8b of Human Rights Council Resolution 16/23, which reminds States that "Prolonged incommunicado detention or detention in secret places can facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment, and urges all States to respect the safeguards concerning the liberty, security and the dignity of the person and to ensure that secret places of detention and interrogation are abolished."

Furthermore, we would like to refer your Excellency's Government to article 19 of the ICCPR, which provides that "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

Similarly, we would like to refer your Excellency's Government to article 21 of the ICCPR, which provides that "The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others."

In this connection, we would like to refer to Human Rights Council resolution 21/16, and in particular operative paragraph 1 that "reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law."

In this connection, we would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that "everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels" and that "each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice".

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the Declaration:

- article 5 point a) which establishes that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels, to meet or assemble peacefully.
- article 6 points b) and c) which provide that everyone has the right, individually and in association with others as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.
- article 12 paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

Furthermore, we should like to appeal to your Excellency's Government to seek clarification of the circumstances regarding the cases of the aforementioned persons. We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth inter alia in the UDHR and the ICCPR.

With regard to Mr. Lindo, who was allegedly found unconscious by the side of the road after his arrest, we would like to draw the attention of your Excellency's Government to paragraph 1 of Human Rights Council Resolution 16/23 which "Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, including through intimidation, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all States to implement fully the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment."

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the aforementioned persons in compliance with the noted international instruments.

Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the above summary of the case accurate?
2. Please provide information concerning the legal grounds for the arrest and detention of the individuals named above and how these measures are compatible with international norms and standards as stated, inter alia, in the UDHR and the ICCPR.
3. Please provide the details on how the actions undertaken by public officials regarding this case are compatible with the international human rights norms and standards governing the exercise of the rights to freedom of opinion and expression, peaceful assembly, and association.
4. Please provide the details, and where available the results, of any investigation, and judicial or other inquiries carried out in relation to these cases. If no inquiries have taken place, or if they have been inconclusive, please explain why.
5. Please provide the full details of any prosecutions which will be undertaken in relation to the present cases. Will penal, disciplinary or administrative sanctions be imposed on the alleged perpetrators?
6. Please explain what measures have been taken to ensure that Mr. Emiliano Catumbela's physical and psychological integrity is guaranteed while in detention, and that he is granted unfettered access to his legal representative and family.
7. Please explain what measures have been taken to ensure that the right of human rights defenders in Angola to participate in peaceful demonstrations and otherwise to carry out their peaceful and legitimate activities is guaranteed at all times.

We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report we will submit to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the above mentioned persons are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the

alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

Please accept, Excellency, the assurances of our highest consideration.

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