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**CONSEIL DES DROITS DE L'HOMME**

**UNITED NATIONS**  
**OFFICE OF THE UNITED NATIONS**  
**HIGH COMMISSIONER FOR HUMAN RIGHTS**

**SPECIAL PROCEDURES OF THE**  
**HUMAN RIGHTS COUNCIL**

**Mandates of the Special Rapporteur on the human rights of migrants and the Special Rapporteur on violence against women, its causes and consequences.**

REFERENCE: AL G/SO 214 (106-10) G/SO 214 (89-15)  
AGO 2/2012

3 May 2012

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the human rights of migrants and Special Rapporteur on violence against women, its causes and consequences pursuant to General Assembly resolution 60/251 and to Human Rights Council resolution 17/12 and 16/7.

We would like to bring to the attention of your Excellency's Government information that our mandates continued to receive concerning the **alleged mass deportations of Congolese nationals from Angola to the Democratic Republic of Congo (DRC), and the serious violations of their human rights in the expulsion process, including physical mistreatment, sexual violence, arbitrary detention including allegations of death and torture of migrants whilst in detention.**

*United Nations Engagement on the matter to date*

The situation of DRC nationals facing suspected human rights abuses by Angolan security forces since at least 2005 was already the subject of two joint communications sent to your Excellency's Government on 13 December 2007 and 18 December 2009. We also brought a communication in relation to this situation to the attention of your Excellency's Government on 4 March 2011.

We further observe that in March 2011, the Special Representative of the Secretary General (SRSG) on Sexual Violence in Conflict, Ms. Margot Wallström, visited Angola and addressed the Angolan authorities regarding the alleged charges. Following the mission, a joint Angola-United Nations communiqué was issued in which your Excellency's Government committed to preventing sexual violence, investigating alleged violations on the basis of credible information and punishing perpetrators. Your Excellency's Government also agreed to facilitate assessment missions of the United Nations (UN) and the International Organization for Migration (IOM) to areas of

concern, to give UN personnel in such missions access to detention centres, and to allow them to observe the organized expulsions and repatriations carried out by Angolan authorities.

*Involvement of the African Commission on Human and Peoples' Rights*

The matter has also been raised by the African Commission on Human and Peoples' Rights (African Commission) in the case *Institute for Human Rights and Development in Africa v Angola* (AHRLR 43 ACHPR 2008). While the case in question was brought by 14 Gambian individuals, the African Commission made some important general observations about the human rights implications of the mass-expulsion of foreigners from Angola, and noted that of the majority of those persons were from the Democratic Republic of Congo.<sup>1</sup>

In examining the case, African Commission found that your Excellency's Government was in breach article 12(5) of the African Charter on Human and Peoples' Rights (ACHPR) which prohibits mass expulsions. Moreover, the African Commission held that your Excellency's Government also violated the principle of discrimination (Article 2) as the expulsions were carried out in a way which targeted foreign nationals. Furthermore, the Commission also found Angola to be in breach of a number of provisions regarding due process of law, including articles 12(4), 7(1)(a) and 6, as those expelled were arbitrarily arrested, not afforded a right of appeal, and were expelled from Angola in violation of the principle that deportation may only occur by virtue of a decision taken in accordance with the law. Finally, the African Commission also found that the conditions of detention and the mistreatment by guards were in breach of article 5 of the African Charter, which protects the dignity of the person, and prohibits torture, and cruel inhuman and degrading punishment.

One of the recommendations of the African Commission, among others, is that your Excellency's Government establish a Commission of Inquiry to investigate the circumstances under which the victims were expelled and ensure payment of adequate compensation of all those whose rights were violated in the process.<sup>2</sup>

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<sup>1</sup> Para 67

<sup>2</sup> Paragraph 87.

### *Response of the Government of Angola*

While we regret that there was no reply received by your Excellency's Government to the earlier communications of 2007 and 2009, we were pleased to receive a response on 12 April 2011 to the letter of 2011. In that response, your Excellency's Government indicated that a Multidisciplinary Commission had been established to investigate the allegations. According to the information provided, this Commission visited the provinces of Luanda Norte, Cabinda and Zaire, where they worked in conjunction with the local authorities. They also allegedly met with the border authorities at both the Kamaco and Yema border posts, to verify the situation. The Commission reportedly concluded that there were no facts to prove the allegations mentioned in our letters, and found that these were unclear and inaccurate.

Regarding the allegations of widespread sexual violence, from the response of your Excellency's Government it appears that the Multidisciplinary Commission allegedly did visit the various locations where the abuses occurred. However, it is stated that the Commission relied exclusively on those cases reported to local authorities. As a result, according to the information submitted to us by your Excellency's Government, the Commission only found one case of sexual abuse in Luanda Norte, which had been addressed through local courts.

Moreover, the response indicated that your Excellency's Government remain concerned at the large number of DRC nationals in Angola, including those in an irregular situation, and the alleged negative consequences of this, including 'criminal acts and consequences harmful to the Angolan economy.' Another concern raised was the case of DRC nationals giving birth in public hospitals in Angola, and abandoning newborn babies there.

We further acknowledge that on 1 December 2011, your Excellency's Government provided further information to the UN in follow up to SRS Wallström's visit. From this letter, we appreciate that your Excellency's Government has taken a number of other important steps to secure the rights of migrants in Angola.

In 2011, Angola passed Law No. 2/11 of 31 May 2011, on the Judicial Framework for Foreigners in the Republic of Angola, and Presidential Decree No. 108/11 of 25 May on Regulations on the Legal Framework for Foreigners. Both laws establish a number of minimum guarantees for non-Angolan persons in the Republic of Angola, including guaranteeing rights of appeal, prohibiting arrest or expulsion unless legally prescribed, protecting the property rights of migrants, and protecting them from discrimination.

Moreover, we also note the reform of the Migration and Foreigners Service, which has been developing Detention Centers and temporary accommodation centers, with the aim of providing accommodation to foreigners and ensuring their safety and dignity in the process of expulsion.

### Observations and further comments

We thank your Excellency's Government for its constructive engagement with all arms of the UN on this matter. In a spirit of continued constructive dialogue and cooperation, we would also like to make a number of observations regarding the measures put in place thus far and draw the attention of your Excellency's Government to the additional information received.

Firstly, we note that the precise mandate and authority of the Multidisciplinary Commission, including its composition, its methods of work, and its capacity to carry out full and proper investigations in accordance with the standards required by international law remains unclear. We have received information indicating that civil society organisations in Angola remain unaware of the existence of the Commission, leading to doubts about its transparency, independence and mandate. While the Secretary of State for Human Rights allegedly did visit the province of Lunda Norte, in mid-February 2012, the mission report of this visit has not been made public, further contributing to the lack of transparency of the process of investigation. It is also unclear whether the visit of the Secretary of State for Human Rights was part of the work of the Multidisciplinary Commission.

Furthermore, we observe that the investigations of the Commission did not result in any charge being laid against any member of the Angolan law enforcement, security officials, or private military companies, for the human rights violations allegedly committed against the deported persons. In particular, regarding the investigations of allegations of sexual violence, we observe that only one case was noted by the Commission, as already dealt with by national courts. This appears to be due to the fact that the Commission has relied solely on information provided by local authorities, thus indicating that the Multidisciplinary Commission has not conducted its own independent investigation into the allegations. This reliance on cases already reported to the local authorities is particularly problematic given that many of the victims of the sexual violence were DRC nationals subsequently deported to the DRC, and thus unable to report these abuses to the local Angolan authorities. Moreover even for those victims not immediately deported, in light of their vulnerable status not only as victims of sexual violence but also as migrants who had experienced systematic discrimination, it is further unlikely that victims would be forthcoming about their experiences to local authorities.

We also note with interest the reform of the Migration and Foreigners Service, which has been developing Detention Centers and temporary accommodation centers, with the aim of providing accommodation to foreigners and ensuring their safety and dignity in the process of expulsion. We welcome the fact that your Excellency's Government reaffirmed its commitment to facilitating missions by the UN and IOM regarding alleged violations, including granting access to detention centers and permitting the presences of observers in repatriation processes. However, we remind your Excellency's Government that detention should only be used as a measure of last resort, and thus be prescribed by law and necessary, reasonable and proportional to the

objectives to be achieved, and length of detention should be as short as possible, with periodic review. Furthermore, migrants detained must be guaranteed key procedural safeguards, such as prompt access to a lawyer, interpretation/translation services, necessary medical care, means of contacting family or consular representatives, and ways of challenging detention. Moreover, the conditions of detention and accommodation centers must be adequate: substandard detention conditions may potentially amount to inhuman or degrading treatment (The International Covenant on Civil and Political Rights (ICCPR), article 7). In accordance with the principle of dignity of the person (ICCPR, article 10(1)), detainees must also be provided with access to food, water and sanitation, and healthcare.

Similarly, we welcome the new legislative framework regarding foreigners, which appear to afford important rights to non-Angolans in Angola. However, despite the new legal and administrative framework guaranteeing the rights of foreigners in Angola, and the assurance of your Excellency's Government that deportation processes are being conducted in accordance with the new Angolan legislation and relevant international instruments, we remain concerned that DRC nationals are reportedly continued to be expelled by Angolan authorities in abusive situations and not in according with these new laws. According to the information received:

On 29 March 2012, more than two thousand individuals were allegedly expelled from Angola and were repatriated to the DRC via the border crossing of Mayanda, in Kasai-Oriental. Those deported allegedly arrived in deplorable conditions, they had been stripped of all their possessions, and some deported women were allegedly sexually abused by members of the Angolan military.

On 26 March 2012, four DRC nationals who were detained by the Angolan authorities and awaiting deportation allegedly died of asphyxiation in a dungeon in the Angolan province of Cabinda.

Earlier in March 2012, over five thousand DRC nationals were reportedly also expelled from the provinces of Cabinda and Soyo in Angola to the DRC, under degrading conditions.

Without in any way implying any conclusions as to the facts of these cases, we would appeal to your Excellency's Government to seek clarification of the circumstances described above, and recalling our earlier letter of 4 March 2011, would appreciate some further details regarding the investigation of this matter:

1. Please provide further information regarding the Multidisciplinary Commission, in particular details of its composition, when and how it was set up, who participated in the investigations, and its investigatory powers, including the ability to investigate cases not already reported to local authorities, the modalities of how investigations were carried out, and how conclusions were reached. Could you please confirm if any information

regarding these investigations has been made public, and provide any copies of relevant reports thereto?

2. Please provide further information about the new administrative policies on migration, including the new detention centers and temporary accommodation centers, in particular indicating how these centers meet the minimum human rights standards prescribed by international law?
3. Please provide information on the existing legal framework on migrants, including the aforementioned laws No. 2/11 of 31 May 2011, on the Judicial Framework for Foreigners in the Republic of Angola, and Presidential Decree No. 108/11 of 25 May on Regulations on the Legal Framework for Foreigners. In particular, please provide details about the implementation of these laws. Please also provide copies of the relevant legislation.
4. Please provide further information about the alleged expulsions that took place in March 2012.
5. Please provide details regarding the case of sexual abuse that the Multidisciplinary Commission identified in Luanda Norte, including how it was resolved by the local courts.
6. Please provide information on the status of implementation of the decision of the African Commission, in particular regarding the establishment of a Commission of Inquiry with powers to fully investigate the matter and compensate victims.

Please provide details of the steps taken by your government to comply with the commitments expressed in the joint Angola-United Nations communiqué in which your Excellency's Government committed to preventing sexual violence, investigating alleged violations and punishing perpetrators?

Your Excellency's Government's response will be made available in a report to the Human Rights Council for its consideration.

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

François Crépeau  
Special Rapporteur on the human rights of migrants

Rashida Manjoo  
Special Rapporteur on violence against women, its causes and  
consequences