

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the independence of judges and lawyers; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE: UA SSD 2/2016:

18 July 2016

Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the independence of judges and lawyers; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 24/7, 24/6, 26/7, 25/13.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the continued arbitrary detention of four Kenyan nationals, namely, Messrs. Boniface Muriuki Chuma, Ravi Ramesh Ghaghda, Anthony Keya Munialo, and Anthony Mwandime Wazome, in South Sudan.**

All four individuals were the subjects of Opinion No. 18/2016 (A/HRC/WGAD/2016/18), adopted by the Working Group on Arbitrary Detention at its seventy-fifth session, on 27 April 2016, in which the Working Group considered their continued deprivation of liberty since 29 May 2015 to be arbitrary and called for their immediate release. The Working Group found their deprivation of liberty to be in contravention of the international norms on detention, including articles 9 and 10 of the Universal Declaration of Human Rights, falling within the arbitrary detention categories I (when there is no legal basis justifying the detention) and III (when there is non-observance of the international norms relating to the right to a fair trial) defined by the Working Group. The Working Group drew attention to the failure of the National Security Forces to produce an arrest warrant or any reason for the arrest; denial of visits by lawyers and family; the criminal investigation being continued despite the court dismissing their case; and continued detention of the abovementioned persons despite the investigating committee's confirmation that they were innocent and would be released. Thus far, the Working Group has received no response from the Government.

According to new information received:

On 13 June 2016, the abovementioned four Kenyan nationals together with 12 other defendants were convicted to life imprisonment. They were also fined a joint sum of approximately 15 million USD. The High Court Judge announced the

ruling in Arabic without English interpretation, despite the fact that the accused persons, including the four Kenyan nationals, did not all understand Arabic.

The judge ordered specifically that no visits by lawyers or family members were to take place until 30 days after the ruling. As a result, lawyers were not able to speak to their clients before filing an appeal to the Court of Appeal in Juba, which were submitted on 27 June 2016 (national law requires that appeals be submitted within 15 days of the verdict).

According to the source, Messrs. Chuma, Ghaghda, Munialo, and Wazome are currently held in prison with no access to water or food which could have a detrimental impact on their physical and mental health.

In addition to the information on the initial investigation and court hearings included in the opinion of the WGAD (A/HRC/WGAD/2016/18), the source added that the lawyers had never been permitted to meet with their clients. Allegedly, the Kenyan defendants were only able to exchange notes with their lawyer during court hearings. Furthermore, the lawyers were not given enough time to adequately defend their clients.

During the court proceedings, witnesses were threatened, intimidated and forced to change their statements. Witnesses coming from abroad were reportedly threatened with arrest if they would set foot in South Sudan. The defendants were given inadequate time to arrange for witnesses to appear. The High Court judge consistently supported the complainant, rejecting some important defense documents containing evidence.

On 31 March 2016, their lawyer was threatened at gun point in the presence of a judge by National Security personnel, who then confiscated the notes from his clients and coerced him to stop participating in the case. On 23 May 2016, a journalist from Radio Bakhita was arrested for covering the trial.

While we do not wish to prejudge the accuracy of these allegations, serious concerns are raised for the safety and health conditions of the aforementioned individuals who have reportedly been deprived of access to food and water. Furthermore, grave concerns have been raised about the safety of the defense lawyers and journalists covering this case. In addition, we are concerned about what appear to be serious flaws in the judicial proceedings, including the allegation, among the other cited in this letter, that the defense lawyer of the four individuals was not allowed to meet with his clients prior to the appeal process.

We would like to appeal to your Excellency's Government to take all necessary measures to guarantee their right not to be deprived arbitrarily of their liberty and their right to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights.

In addition, we would like to refer to The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (A/RES/43/173), adopted on 9 December 1988 by the UN General Assembly without a vote, which specifies under

principle 18 that a “detained or imprisoned person shall be entitled to communicate and consult with his legal counsel.” The opportunity to challenge the lawfulness of one’s detention requires the assistance of a lawyer, in order to be effective, according to the Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of His or Her Liberty by Arrest or Detention to Bring Proceedings Before Court developed by the Working Group.

Furthermore, we would like to draw the attention of your Excellency's Government to the Basic Principles on the Role of Lawyers, which provide that all arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality.

Regarding the health conditions of the aforementioned individuals, we would like to draw the attention of your Excellency's Government to the 1955 Standard Minimum Rules for the Treatment of Prisoners as revised in 2015 (known as ‘Mandela Rules’) which set out what is generally accepted as being good principles and practice in the treatment of prisoners and prison management. As a general principle, the Mandela Rules establish that all prisoners should be treated with the respect due to their inherent dignity and value as human beings (Rule 1) and, more specifically, that every prisoner should be provided by the prison administration, at the usual hours, with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served. Prisoners should also have access to drinking water whenever they need it (Rule 22).

The Committee against Torture and the Human Rights Committee have consistently found that conditions of detention can amount to inhuman and degrading treatment.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

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 above-mentioned person(s) in compliance with international human rights norms and standards.

As 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, we would be grateful for your observations on the following matters:

1. Please provide information on any action taken to implementing the recommendations made by the Working Group in its Opinion No. 18/2016 (A/HRC/WGAD/2016/18).
2. Please provide any additional information and any comment you may have on the above mentioned allegations.

3. Please explain why the defendants have not been provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer during the various stages of the legal proceedings. Please also provide detailed information on the measures your Excellency's Government intends to take to promote and protect the right to a fair trial of the Kenyan defendants in accordance with relevant international human rights norms and standards.

4. Please provide information on whether Messrs. Chuma, Ghaghda, Munialo, and Wazome had free assistance of an interpreter in court.

5. Please provide information concerning the legal grounds for the sentencing of the individuals concerned.

6. Please provide information about the health status of the four individuals mentioned in this communication, including information about conditions of detentions and access to adequate food and water.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

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

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

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