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The Permanent Mission of the Republic of Angola to the United Nations Office and other International Organizations in Geneva presents its compliments to the Special Procedures Branch, OHCHR and has the honor to forward the Government Observations to the Communication with Ref. G/SO 218/2 of the Working Group on Arbitrary Detention on the trial of Mr Rafael Marques de Morais.

The Permanent Mission of the Republic of Republic of Angola to the United Nations Office and other International Organizations in Geneva avails itself of this opportunity to renew to the Special Procedures Branch, OHCHR the assurance of its highest consideration.

Special Procedures Branch, OHCHR

Geneva

Fax: +41 22 917 9008

E-MAIL: registry@ohchr.org



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REPUBLIC OF ANGOLA

**Observation on the Communication with Ref. G/SO 218/2 of the Working Group on
Arbitrary Detention on trial of Mr Rafael Marques de Morais**

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As part of strengthening the existing cooperation between the Republic of Angola and the United Nations Human Rights mechanisms, in particular with the Working Group on Arbitrary Detention, the Government of Angola takes this opportunity to make same observation to the questions raised by Working Group in the Note Verbale REF: G/SO/218/2 dated on 19th August 2015, referring to the allegations on trial of Mr Rafael Marques de Morais, as follows:

1. In 2011, Mr Rafael Marques de Morais, authored a book entitled “*Diamantes de Sangue: Corrupção e Tortura em Angola*” (Blood Diamonds: Corruption and Torture in Angola). In addition, Mr. Rafael de Morais filed a criminal complaint with the Office of the Public Prosecutor of the Republic of Angola against seven (7) Angolan citizens, members of the Angolan Armed Forces, one Angolan civilian, two private security companies and one mining company, as presumed perpetrators of the crimes he reported, in his book.
2. A total of nine criminal proceedings were brought with the following numbers: **32, 33, 34, 35, 36, 27, 39, 41 and 58/2013**. For financial reasons, all of these proceedings were put together, under reference number **1/14-C**.
3. In this regard, the Office of the Public Prosecutor of the Republic of Angola opened a preliminary investigation under No. 04/2012-INQ, which found that Mr Rafael Marques Morais’s complaint was neither proven nor supported. A well-documented decision was issued in which the case was dismissed.
4. Given this situation, the accused citizens and the representatives of the private security and mining companies filed claims against Mr. Morais for slanderous denunciation [*denúncia caluniosa*], provided for and punished by Article 245 of the Penal Code of Angola. Taking into consideration that the complaint filed by the

author of the book was supported by facts that were not proven which affect the honour and good name of those citizens and companies, a complaint was registered.

5. Mr. Rafael Marques de Morais was notified by the Provincial Court of Luanda of the content of the accusations against him and he hired an attorney.
6. Mr. Rafael Marques de Morais was convicted by the Provincial Court of Luanda in the first instance under case No. **1/14-C** to six months suspended prison sentence for the crime of slanderous denunciation that is provided for and punishable by the Article 245 of the Penal Code of Angola.
7. It is important to mention that Mr Rafael Marques de Morais was convicted by the Court for committing an offense of public nature and negotiation with the State is not available for this kind of offenses, in accordance with the criminal system of the Republic of Angola.
8. Despite the conviction, Mr. Rafael Marques de Morais is free while waiting for the final decision by the Supreme Court.
9. The defendant was not tried for the acts that were dismissed in Portugal since, in that country, the complaint filed by the Angolan citizens against Mr. Rafael Marques de Morais were for libel and defamation [injúrias e difamação]. This complaint was dismissed, and thus there was no breach of the *non bis in idem* principle, according to which no person can be tried and convicted twice for committing the same criminal acts, as both the legal types of the offenses in question and the acts are different.
10. Regarding the decriminalization of slander, libel and defamation, the Republic of Angola considers that freedom of expression is a fundamental right, enshrined in Article 40 of the Constitution of the Republic of Angola, along with Law No. 7/06 of 15 May, the Act on the Press, as well as other international legal instruments ratified by the Republic of Angola, and in particular the African Charter on Human and Peoples' Rights, Article 9, and paragraph 3 of Article 19 of the International Covenant on Civil and Political Rights, provided that the respect of honour, good name, reputation, image and the citizen's privacy are not violated.
11. The restriction referred to in Article 19 of the International Covenant on Civil and Political Rights, as is the case of other legal systems, requires that the perpetrator of the offense (whether a journalist or not) to be tried in a criminal proceeding for defamation, slander or libel pursuant to No. 3 and 4 of Article 40 of the Constitution of the Republic of Angola and Articles 407 and 410 of the Criminal Code. In addition, there is a possibility of a perpetrator to be tried in a civil suit and subject to disciplinary action.
12. The limitation provided for by the law seeks only to protect the interest of citizens who are offended. Therefore, the intention of the Government cannot be interpreted

as breaching or restricting the right to freedom of expression in these cases, and the same is true for other legal systems.

PERMANENT MISSION OF THE REPUBLIC OF ANGOLA, Geneva, 1 December 2015.