

Mandates of the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on the situation of human rights defenders

REFERENCE: AL
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Excellency,

We have the honour to address you in our capacities as Chairperson of the Working Group on the issue of human rights and transnational corporations and other business enterprises; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolutions 26/22, 25/2, and 25/18.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning the trial on charges of criminal defamation of Mr. Rafael Marques de Morais, an Angolan journalist and human rights defender.

We write to Your Excellency with the understanding that Your Excellency's Government received a communication dated 23 March 2015 (ACHPR/LPROT/SM/FOE) in relation to this issue from the Special Rapporteur on Freedom of Expression and Access to Information in Africa, and the Special Rapporteur on the Right to Freedom of Opinion and Expression. We further note that Mr. Marques is an award winning journalist whose work has garnered international attention and that, in March 2015, the Index on Censorship awarded Mr. Marques its annual Freedom of Expression Award for journalism.

According to the information received:

Mr. Marques was indicted in January 2013 on charges of defamation in relation to his book titled "Blood Diamonds: Corruption and Torture in Angola" which was published in Portugal, in 2011. It is alleged that following criminal complaints by seven Angolan generals, a civilian, two mining companies and a private security company implicated in the book, 11 charges of criminal defamation were brought against Mr. Marques. It is further alleged that a number of procedural irregularities took place during the pre-trial period of Mr. Marques' trial. For example, Mr. Marques was given a five day deadline to make

submissions on the merits of his case and submit a list of witnesses, while access to the case file was withheld, making it hard to present substantive arguments. Furthermore, additional charges were lodged against Mr. Marques when the trial started on 24 March this year, bringing the total criminal defamation charges lodged against Mr. Marques to 24. Conviction on such charges could allegedly have led to a nine year prison sentence and fine of \$1.2million. In May 2015, the case had been settled by way of a negotiated agreement but on 28 May 2015 the settlement agreement was reversed, and the court issued a six month sentence to Mr. Marques, suspended for two years, whereby, according to reports, if he engages in any behaviour that the Republic of Angola deems criminal, the sentence will be implemented.

While we do not wish to prejudge the accuracy of these allegations, concern is expressed that the criminal defamation charges were brought against Mr. Marques as a result of his peaceful and legitimate human rights activities, including his enjoyment of the right to freedom of expression and opinion. While we take note of the reply provided by your Excellency's Government to the above-mentioned communication of 23 March 2015, and the State's need "to protect the individual interests of the offended citizens", we are nonetheless concerned that the recent suspended sentence handed down by the court has the effect of obstructing such legitimate activities, notably Mr. Marques' work in drawing attention to adverse business-related human rights impacts. We are concerned in particular that the Angolan criminal defamation laws appear to be being used to prevent Mr. Marques from conducting his important and legitimate activities as a journalist researching and highlighting alleged human rights abuses in the mining industry in Angola.

We are further concerned that if the information received is accurate, it would amount to a failure on the part of the Government of the Republic of Angola to fulfil its obligations to uphold the right to freedom of expression, as set out in articles 9 and 19 of the African Charter on Human and Peoples' Rights and the International Covenant on Civil and Political Rights (ICCPR), which Angola ratified on 2 March 1990 and acceded to on 10 January 1992 respectively. Preventing Mr. Marques from reporting on human rights violations is also contrary to the United Nations Declaration on Human Rights Defenders.

Without pre-judging the Angolan legal process, and the outcome of any appeal process that may be initiated, we urge Your Excellency's Government to take immediate action to ensure that Mr. Marques is free to carry out his work documenting alleged human rights abuses in the mining sector in Angola. To this end, we urge Your Excellency's Government to intervene in this case to make sure that Mr. Marques' rights are respected, and to refrain from any further pursuit of charges against him.

Considering the vulnerable situation in which Mr. Marques finds himself, we would appreciate a response as soon as possible on the steps taken by your Excellency's Government to safeguard the rights of Mr. Marques in compliance with international human rights law. We sincerely hope that this communication will receive Your Excellency's favorable attention and prompt response.

Furthermore, we ask Your Excellency's Government to take immediate steps to clarify that the Government of Angola respects the right of all human rights defenders, journalists, activists, and others to enjoy their right to freedom of expression. In addition, we respectfully encourage your Excellency's Government to repeal its criminal defamation laws and end prosecutions on the basis of these laws.

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

In connection with the above alleged facts and concerns, please refer to the **Reference to international law Annex** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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 therefore be grateful for your observations on the following matters:

1. Are the facts summarized accurately?
2. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
3. Please provide information on the case brought against Mr. Marques, including how the legal grounds for bringing charges of criminal defamation are compatible with international norms and standards on the right to freedom of opinion and expression, in particular, article 19 ICCPR and Principle XII (I) of the Declaration of Principles on Freedom of Expression in Africa.
4. Please provide information on any investigations that have been carried out in relation to the alleged human rights violations documented by Mr. Marques, including information, where available, on any judicial or other inquiries carried out, and on their results.
5. Please indicate if the Government of the Republic of Angola has provided any guidance to business enterprises operating in Angola on their expected human rights due diligence process? Such a process allows companies to identify, prevent, mitigate and account for how they address their impacts on human rights (as per the Guiding Principles on Business and Human Rights, Principles 17-21).
6. What steps is the Government taking to ensure that victims have access to effective remedy in cases of alleged human rights abuses concerning State and privately owned enterprises in Angola?

7. Please explain what the Government of the Republic of Angola is doing specifically to implement the Guiding Principles on Business and Human Rights in the mining industry, and other business sectors, in Angola.

We would appreciate receiving a response within 60 days.

While awaiting a reply, we reiterate our call for Your Excellency's Government to intervene in the case of Mr. Marques and 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(s) responsible for 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.

Margaret Jungk
Chairperson of the Working Group on the issue of human rights and transnational corporations and other business enterprises

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Michel Forst
Special Rapporteur on the situation of human rights defenders

Annex
Reference to international human rights law

In connection with above alleged facts and concerns, we would like to take this opportunity to draw your attention to applicable international human rights norms and standards, as well as authoritative guidance on their interpretation. These include:

- The International Covenant on Civil and Political Rights (ICCPR);
- The Universal Declaration of Human Rights (UDHR);
- The UN Guiding Principles on Business and Human Rights;
- The UN Global Compact principles;
- The International Covenant on Economic, Social and Cultural Rights; and
- The United Nations Declaration on Human Rights Defenders

We would like to appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression of the above mentioned persons, in accordance with fundamental principles as set forth in article 19 of the International Covenant on Civil and Political Rights (ICCPR), which provides that "[e]veryone 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".

We also draw the attention of your Excellency's Government to article XII (1) of the Declaration of Principles on Freedom of Expression in Africa, where "public figures shall be required to tolerate a greater degree of criticism" and "sanctions shall never be so severe as to inhibit the right to freedom of expression, including by others".

We would like to remind your Excellency's Government that the African Commission has consistently called on Member States to the African Charter on Human and Peoples' Rights to repeal criminal defamation laws and to repeal or amend all other similar criminal laws, such as false news, insult and sedition, which restrict the enjoyment of freedom of expression. To this end, the African Commission has adopted a Resolution on Repealing Criminal Defamation Laws in Africa, which calls on State Parties to repeal criminal defamation laws or insult laws which impede freedom of speech, and adhere to the provisions of freedom of expression articulated in the African Charter, the Declaration, and other regional and international instruments.

The Human Rights Council in its Resolution 12/16 has called upon all States to refrain from the use of imprisonment or the imposition of fines for offences relating to the media, which are disproportionate to the gravity of the offence and which violate international human rights law. Furthermore, the Human Rights Committee in its General Comment 34 on the right to freedom of opinion and expression (article 19 ICCPR) indicates that "State Parties should consider the decriminalization of defamation and, *in*

any case, the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty."

Furthermore, I wish to take this opportunity to refer your Excellency's Government to paragraph 79 of the 2012 report of the previous Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, where he specifically expresses his concern "at the continuing existence and use of criminal laws against journalists and members of the media, which are often used by authorities to suppress 'inconvenient' information and to prevent journalists from reporting on similar matters in the future." In paragraph 83 of this report, he emphasizes that "criminal defamation laws are inherently harsh and have a disproportionate chilling effect on free expression." Individuals face the "constant threat of being arrested, held in pretrial detention, subjected to expensive criminal trials, fines and imprisonment, as well as the social stigma associated with having a criminal record." In the following paragraph, the Special Rapporteur calls upon States "to repeal criminal defamation provisions allowing prosecution of authors of media content, as well as to limit civil law penalties for defamation so that it is proportionate to the harm done. He emphasizes that criminal prosecution for defamation inevitably becomes a mechanism of political censorship, which contradicts freedom of expression and of the press" (A/HRC/20/17).

In accordance with its mandate from the Human Rights Council, the Working Group on the issue of human rights and transnational corporations and other business enterprises is authorized to "seek and receive information from all relevant sources, including Governments, transnational corporations and other business enterprises" in order to, *inter alia*, promote the effective and comprehensive implementation of the United Nations Guiding Principles on Business and Human Rights¹.

The UDHR proclaims that every organ of society shall strive to promote respect for human rights and fundamental freedoms and to secure their universal and effective recognition and observance. Following years of consultations that involved Governments, civil society and the business community, the Human Rights Council unanimously adopted in June 2011 the Guiding Principles on Business and Human Rights (contained in A/HRC/17/31).

The Guiding Principles have been established as the authoritative global standard for all States and business enterprises with regard to preventing and addressing adverse business-related human rights impacts. These Guiding Principles are grounded in recognition of:

- (a) "States' existing obligations to respect, protect and fulfil human rights and fundamental freedoms;

¹ A/HRC/RES/17/4, para. 6

- (b) “The role of business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws and to respect human rights;
- (c) “The need for rights and obligations to be matched to appropriate and effective remedies when breached.”

The Guiding Principles recognize the important and valuable role played by independent civil society organizations and human rights defenders. In particular, Principle 18 underlines the essential role of civil society and human rights defenders in helping to identify potential adverse business-related human rights impacts. The commentary to Principle 26 underlines how States, in order to ensure access to remedy, should make sure that the legitimate and peaceful activities of human rights defenders are not obstructed.

The corporate responsibility to respect human rights covers the full range of rights listed in the UDHR, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights. It also includes the respect of the eight International Labour Organization core conventions also envisaged in Principle 4 of the UN Global Compact, which states that business enterprises should uphold the elimination of all forms of forced and compulsory labour. The Guiding Principles 11 to 24 and 29 to 31 provide guidance to business enterprises on how to meet their responsibility to respect human rights and to provide for remedies when they have caused or contributed to adverse impacts.