

Mandates of 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 AGO 2/2018

24 May 2018

Excellency,

We have the honour to address you in our capacities as 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 34/18 and 34/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning judicial harassment and charges against Mr. **Rafael Marques de Morais**.

Mr. Rafael Marques de Morais is a human rights defender and an award winning investigative journalist known for his work in denouncing human rights abuses, conflict-diamonds and alleged corruption in Angola. He is head of the anti-corruption watchdog Maka Angola. He has been the subject of a joint allegation letter dated 23 March 2015 sent by the Special Rapporteur on freedom of opinion and expression together with the Special Rapporteur on freedom of expression and access to information in Africa (ACHPR/LPROT/SM/FOE), as well as one previous joint allegation letter sent by special procedures mandate holders on 18 August 2015, case no. AGO 1/2015. We acknowledge your Excellency's Government's response to the latter communication, dated 21 December 2015.

According to new information received:

On 26 December 2016, the Criminal Investigation Service called Mr. Rafael Marques de Morais in for interrogation in relation to an article he published on 3 November 2016, which updated and reprised allegations of corruption concerning former Attorney General Mr. João Maria Moreira de Sousa originally made in 2006. The article also reported on former President José Eduardo dos Santos' alleged involvement in corruption.

On 25 May 2017, Mr. de Sousa filed a civil lawsuit against Mr. de Morais for "abuse of press freedom" under article 74, paragraph 2 of the former Media Law No. 7/06, "slander" under article 7 of the Penal Code and "defamation" under article 410 of the Penal Code.

On 20 June 2017, the Office of the Attorney General criminally charged Mr. de Morais with "outrage towards a sovereign body" (the President), under article 25, paragraph 1 of the Law on Crimes against State Security and article 105,

paragraph 1 of the Angolan Constitution, and “insult towards public authority” (former Attorney General de Sousa) under article 181 of the Penal Code.

On 19 March 2018, Mr. de Morais appeared before the Criminal Court of the Province of Luanda. During the hearing, the plaintiff’s lawyer submitted a last-minute request to have the trial postponed sine die (without a set date) and for the proceedings to be held in camera. These requests were however dismissed due to the Judge’s determination that the information reported by Mr. de Morais was of public interest and supported by sufficient evidence. Due to the absence of the main plaintiff, the trial was postponed until 16 April 2018.

Mr. de Morais’ trial was further postponed on 16 April and 24 April 2018. On 16 April Mr’ de Sousa’s lawyer and the public prosecution successfully argued that, as former Attorney General, Mr. de Sousa has special privileges and immunity, and thus future hearings were moved to the Office of the Attorney General and held in camera. Further, Mr. de Morais would only be permitted to take one lawyer, who would not be able to pose questions directly to Mr. de Sousa. Rather, the lawyer would only be able to submit questions to the Judge which would then be vetted and relayed.

Mr. de Morais’ next trial date is set for 21 May 2018. He faces up to four years and six months in prison if convicted.

We express concern at the criminal prosecution of Mr. de Morais which appears to be directly linked to his work as an investigative journalist. We express concern that the charges brought against Mr. de Morais represent a criminalization of the legitimate exercise of the right to freedom of expression and are hence unlawful under international human rights law. We also express concern at the indications that the legal proceedings do not comply with the right to a fair trial as guaranteed by international human rights law.

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 be grateful for your observations on the following matters:

1. Please provide any additional information and/or any comment(s) you may have on the above-mentioned allegations.
2. Please provide detailed information on the legal and factual basis for the charges against Mr. de Morais, as well as information on how such charges are compatible with international human rights standards, especially article 19 of the International Covenant on Civil and Political Rights (ICCPR), which Angola acceded to on 10 January 1992.

3. Please provide detailed information on the reasons for the continuation of Mr. de Moraes' trial in the Office of the Attorney General, in camera, and for the limitations placed on his rights of defence. Please explain how these measures are compatible with international human rights law, especially with regards to article 14 of the ICCPR.
4. Please indicate what measures have been taken to ensure that human rights defenders in Angola are able to carry out their legitimate work, including through the use of their right to freedom of opinion and expression, in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any sort.

We would appreciate receiving a response within 60 days.

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(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.

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 draw your attention to the following international human rights standards:

We would like to draw to your Excellency's Government's attention to article 14 of the ICCPR which guarantees the right to a public hearing. The press and the public may only be excluded from hearings for reasons of morals, public order, national security in a democratic society, the security of the private lives of the individuals concerned, or where publicity would prejudice the interests of justice. Furthermore, article 14(3)(c) provides for the right to be tried without undue delay and article 14(3)(e) states that everyone the right to examine, or have examined, witnesses against him.

We would also like to draw the attention of your Excellency's Government to article 19 of the ICCPR, which provides for the right to freedom of opinion and expression, as well as to Human Rights Council resolution 12/16 which calls on States to refrain from imposing restrictions that are not consistent with paragraph 3 of that article, including on: discussion of government policies and political debate; reporting on human rights, government activities and corruption in government and engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy.

The Human Rights Committee in its General Comment 34 highlights 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." The Human Rights Council in its Resolution 12/16 calls 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.

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. Indeed, the African Commission Resolution on Repealing Criminal Defamation Laws in Africa 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.

In connection with the above alleged facts and concerns 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, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right 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.

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the UN Declaration on Human Rights Defenders:

- article 6 (a), which provides for the right to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms;
- article 6 (b and c), which provides for the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance of these rights.
- article 12 (2 and 3), which provides that the State shall take all necessary measures to ensure the protection of everyone 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.