

# Open Society Justice Initiative Implementation Demands in the Marques Case

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RAFAEL MARQUES, an Angolan journalist, criticized his President in a newspaper article and was subsequently arrested, kept in prolonged and incommunicado detention, convicted of defamation, and prevented from leaving Angola. The United Nations Human Rights Committee declared that Marques deserved an effective remedy—including compensation—for his arbitrary arrest and detention, and for restraints on his freedom of expression and movement in violation of the International Covenant on Civil and Political Rights (“ICCPR”). The decision also recommended that Angola publish the committee’s views and prevent similar violations from occurring in the future.

On August 29, 2005, when Angola had failed to comply with the Committee’s views in Marques’s case, the Open Society Justice Initiative and Interights sent an open letter to President dos Santos of Angola, reminding him of the country’s obligation to provide an effective and enforceable remedy for the violations of Marques’s rights.

## **The Justice Initiative made specific implementation requests:**

1. Angola should *translate into Portuguese and publish the Views of the Committee* without delay.
2. Angola should *publish an official apology* for violating Marques’s rights under the ICCPR.
3. *Marques’s criminal conviction should be quashed*, and its *legal effect annulled*.
4. Angola should *compensate Marques adequately* for the violation of his rights, taking into account their seriousness and the damage caused.
5. In order to prevent similar violations from occurring in the future, *Angola should amend its laws, which fall short of Article 9* of the ICCPR (liberty and security of person) in several respects:
  - Angolan law does not require law enforcement to immediately inform arrestees of their rights, nor that designated persons be informed of the arrest and given opportunity to visit the detainee and arrange for counsel.
  - The law does not require detainees to be promptly brought before a judge to review the legality of detention;
  - The law does not entitle detainees to challenge their detention or empower the judge to order release where detention is unlawful.
  - The law does not entitle detainees to file written petitions regarding their fundamental rights and procedural interests.
  - Angola has no system of free legal aid for those who cannot afford a lawyer—such a system is required to safeguard the rights of detainees.
  - Law enforcement continues the practice of incommunicado detention.
  - Detention centers are not adequately open to inspection. A body of magistrates should regularly visit detention facilities to assess the

lawfulness of detention and adjudicate complaints on conditions of confinement. Lawyers and NGOs should also be given access.

- Finally, there are no detailed guidelines for law enforcement on the rights of detainees; detainees are not informed of their rights in detention.

6. Angola should also ***amend those aspects of its law which fall short of Article 19*** of the ICCPR:

- Article 46 of the Press Law imposes strict liability for defamation of the President and certain foreign officials by rendering irrelevant the truthfulness of defamatory statements. This serves no legitimate purpose in a democratic society and chills political debate, going to the heart of the guarantee of freedom of expression. It should be repealed.
  - Article 45 of the Press Law makes truth or publication in good faith only a basis for exemption from punishment in a defamation case; Article 45 should be amended to make truth or good faith complete defenses.
  - Article 43 of the Press Law defines the crime of abuse of the press in an extremely overbroad and vague manner, capable of encompassing and deterring legitimate expression. This crime should be repealed and replaced with specific, well-defined, non-criminal infractions.
  - Defamation in Angola is generally a criminal law matter, triggering severe penalties including imprisonment of up to two years. Such sanctions undermine the strength of democratic debate. Angola should consider replacing criminal sanctions with civil remedies providing adequate protection for reputation without infringing upon legitimate expression. At a minimum, prison terms should be repealed, and fines lowered.
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