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August 29, 2005

H.E. José Eduardo dos Santos
President of the Republic of Angola
Palacio do Povo
Luanda
ANGOLA

Re: *Rafael Marques de Morais v. Angola* (UN HRC Communication No. 1128/2002)

Your Excellency,

In September 2002, the Open Society Institute and Interights submitted to the United Nations Human Rights Committee the above referenced Communication, on behalf of Rafael Marques de Morais, for violations of his rights under the International Covenant on Civil and Political Rights (the Covenant). As you will be aware, on March 29, 2005, the Human Rights Committee (“Committee”) adopted its Views on this Communication, finding multiple violations of Mr. Marques de Morais’ rights by the Republic of Angola.¹

The Committee requested the State party to provide, within 90 days, information on the measures taken to give effect to its Views (para. 9). In particular, the Committee urged the Republic of Angola to grant Mr. Marques de Morais effective remedies, including compensation, for the violations of his rights; as well as to “take measures to prevent similar violations in the future” (para. 8). We are not aware of any measures taken to this date by the Republic of Angola to comply with, as well as publish, the Committee’s Views.

I. Views of the Human Rights Committee

The Committee found the Republic of Angola liable for violations of the ICCPR in relation to the October 16, 1999 arrest, detention and subsequent criminal conviction

¹ The Committee’s Views are available at www.ohchr.org/tbru/ccpr/Marques_de_Morais_v_Angola.pdf.

of Mr. Marques de Morais for causing injury, through media publications, to the President of the Republic. Specifically, the Committee held that:

- a) his detention for forty days, including ten days of *incommunicado* detention, during October and November 1999 was “neither reasonable nor necessary,” in violation of Article 9(1) of the Covenant;
- b) he was not informed of the reasons for his arrest, in violation of Article 9(2) of the Covenant;
- c) he was denied counsel at an initial stage, and his right to *habeas corpus* was violated, in violation of Article 9(4) of the Covenant;
- d) his arrest and detention, and the restrictions on his travel following his conviction, violated his right to freedom of expression, in contravention of Article 19 of the Covenant; and
- e) his right to freedom of movement was violated, in violation of Article 12 of the Covenant.

II. Remedies for Violations Suffered by Mr. Marques de Morais

As the Committee noted in its Views, by becoming a party to the Optional Protocol of the Covenant, the Republic of Angola has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not. Furthermore, Article 2 of the Covenant requires the Republic of Angola to ensure all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in case a violation has been established.

Considering the findings of the Committee in this case, we request that the following measures be taken by the Republic of Angola to remedy the violations of Mr. Marques de Morais’ rights under the Covenant:

- a) translate into Portuguese and publish in full the Views of the Committee on the case without any further delay;
- b) publish an official apology for the Covenant violations committed by the Angolan authorities in this case;
- c) quash Mr. Marques de Morais’ criminal conviction and take all measures necessary to annul its legal effects;
- d) provide adequate monetary compensation to Mr. Marques de Morais for the violations of his rights under Articles 9, 14 and 19 of the Covenant. As the Committee noted in its General Comment No. 31/80, “in addition to the explicit reparation required by articles 9, paragraph 5 [compensation for unlawful arrest], and 14, paragraph 6 [compensation for unjust imprisonment],

the Committee considers that the Covenant generally entails appropriate compensation.”² Such compensation should take due account both of the seriousness of the violations and the damage caused to the victim.³ The State must compensate Mr. Marques de Morais for all and any material losses and mental and emotional distress caused by the multiple violations of his rights, as well as the legal fees incurred in the defense of his rights. The amount of compensation should be decided through good faith negotiations, on the basis of the above principles, between the victim and the Angolan authorities.

III. Measures to Prevent Similar Violations in the Future

The Committee has requested that the Republic of Angola take measures to prevent future violations of the kind committed in this case, including violations of the rights to personal liberty and security under Article 9, and the right to freedom of expression under Article 19 of the Covenant. In the authoritative opinion of the Committee,

the purposes of the Covenant would be defeated without an obligation integral to article 2 to take measures to prevent a recurrence of a violation of the Covenant. Accordingly, it has been a frequent practice of the Committee in cases under the Optional Protocol to include in its Views the need for measures, beyond a victim-specific remedy, to be taken to avoid recurrence of the type of violation in question. Such measures may require changes in the State party’s laws or practices.⁴

We are not aware of any measures taken by the Republic of Angola in this respect. A number of changes to Angolan laws and practices are necessary to prevent future violations of Articles 9 and 19.

1. Violations of Article 9

The Law. Angolan law falls short of the requirements of Article 9 in several essential respects:

- a) The law fails to require law enforcement authorities to inform arrested persons of their rights at the moment of arrest. There is also no legal requirement that family members or other persons designated by a detainee be informed of the arrest and given the opportunity to visit the detainee and arrange legal representation for him or her. These basic rights should be recognized explicitly by law.

² The Committee noted further that “where appropriate, reparation can involve restitution, rehabilitation and measures of satisfaction, such as public apologies, public memorials, guarantees of non-repetition and changes in relevant laws and practices, as well as bringing to justice the perpetrators of human rights violations.” General Comment No. 31(80) on “The nature of the general legal obligation imposed on States parties to the Covenant,” adopted at its 2187th meeting on March 29, 2004, para. 16.

³ *Wilson v. the Philippines*, Communication No. 868/1999.

⁴ General Comment No. 31(80), note 2 *supra*, para. 17.

- b) Domestic legislation lacks a requirement that detainees be brought promptly before a judge empowered to review the legality of their detention. Relevant laws should be amended to provide that all detainees must be brought before a judge within 48 hours of their arrest.
- c) The *habeas corpus* provisions (articles 312 to 325 of the Code of Criminal Procedure) include a requirement that petitions be signed by an attorney. In addition, if a *habeas corpus* petition is deemed to lack proper foundation, the petitioner and his/her attorney can be ordered to pay a substantial fine and, if the petition is considered as made with the intent to “render difficult the prompt action of justice,” the petitioner can be charged with the felony of “offense to the court.” These provisions place an unacceptable burden on the exercise of *habeas corpus* rights, and must be repealed.
- d) Relevant laws should also be amended to provide for the right of a detainee, at any time during the period of detention, to take proceedings before a court, in order that that court may decide without delay on the lawfulness of detention and order release if detention is not lawful, as well as the right to file written petitions, with or without legal assistance, regarding any matter relevant to the fundamental rights and procedural interests of the detainee.
- e) Angolan law and practice does not provide free legal aid to indigent persons charged with a crime, in violation of international human rights norms. A legal aid system – for example, through the establishment of public defender offices or in cooperation with the national bar association – is required to effectively guarantee the rights of detainees during detention and throughout the criminal proceedings.

Practice. Additional practical measures are required to overcome the culture of pervasive violations of the basic rights of detainees. In particular:

- a) Law enforcement authorities should cease all practice of *incommunicado* detentions, which are in flagrant violation of international human rights law.
- b) A body of magistrates should be appointed to regularly visit all detention facilities in order to assess whether detainees are being held in accordance with the law, and to hear and rule on any complaints regarding conditions of detention. Defense counsel and representatives of the Angolan bar should also be granted unhindered access to detention facilities. Given the dearth of qualified lawyers in large parts of Angola, it is also essential that non-governmental organizations are allowed to visit prisons and monitor compliance with international human rights standards.
- c) The authorities should adopt detailed guidelines and provide training for law enforcement and criminal investigation personnel on the rights of all persons in detention. Detainees should also be informed of their rights, both at the

moment of arrest and while in detention – for example, through posters in police stations and other detention facilities.

2. Violations of Article 19

Angola's press and defamation laws are in many respects inconsistent with the letter and spirit of Article 19 of the Covenant. The following provisions are particularly problematic and in need of urgent reform:

- a) Article 46 of the Press Law establishes strict liability for defamation of the President of the Republic and certain foreign officials insofar as it renders irrelevant, and prohibits admission of evidence, of the truth of defamatory statements. Such a prohibition serves no legitimate purpose and cannot be considered necessary in a democratic society.⁵ Absolute protection for the President, who is the chief executive and the most powerful government official in the country, imposes severe chilling effects on political debate that goes to the heart of the guarantee of freedom of expression. Article 46 must therefore be repealed.
- b) Similarly, under Article 45 of the Press Law, truth or publication in good faith do not constitute a complete defense in a defamation case, but only a basis for exemption from punishment. Article 45 must be amended to make truth and good faith publication complete defenses.
- c) Article 43 of the Press Law defines the “crime of abuse of the press” so broadly as to encompass “any act or behaviour that injures the juridical values and interests protected by the Criminal Code, effected by publication of texts or images through the press, radio broadcasts or television.” This formulation is both vague and extremely broad, and, as such, capable of covering and deterring legitimate expression. The crime of abuse of the press should be repealed and replaced with specific, well-defined infractions of a non-criminal nature.
- d) More generally, defamation in Angola is primarily a matter of criminal law, with severe criminal penalties that include imprisonment of up to two years. According to established international and domestic jurisprudence, criminal sanctions on expression are capable of severely undermining the vigor and quality of democratic debate.⁶ The Republic of Angola should consider replacing criminal sanctions for defamation with appropriate civil remedies and other non-criminal measures that provide adequate protection for personal

⁵ See inter alia *Castells v. Spain*, European Court of Human Rights, Judgment of March 26, 1992; and *Colombani and Others v. France*, European Court of Human Rights, Judgment of June 25, 2002.

⁶ See for example *Castells v. Spain* (“[T]he dominant position which the Government occupies makes it necessary for it to display restraint in resorting to criminal proceedings, particularly where other means are available for replying to the unjustified attacks and criticisms of its adversaries or the media”) (para. 46); and *Thorgeirson v. Iceland*, European Court of Human Rights, Judgment of June 25, 1992 (holding that even small criminal fines “are capable of discouraging open discussion of matters of public concern”) (para. 68).

reputation without infringing upon legitimate expression. At the very least, the State must repeal prison terms and lower the amount of fines for defamation offenses.

We remain ready, Your Excellency, to discuss with the relevant Angolan authorities the precise nature of the remedies and reparation to be granted to Mr. Marques de Morais for violations of his fundamental rights, as well as the measures to be taken to prevent future violations of the Covenant.

Sincerely,

The image shows two handwritten signatures in black ink. The signature on the left is 'Helen Duffy' and the signature on the right is 'James A. Goldston'. Both are written in a cursive, flowing style.

Helen Duffy
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INTERIGHTS

James A. Goldston
Executive Director
Open Society Justice Initiative

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