AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS SPECIAL RAPPORTEUR ON FREEDOM OF EXPRESSION AND ACCESS TO INFORMATION, MS FAITH PANSY TLAKULA

AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS SPECIAL RAPPORTEUR ON HUMAN RIGHTS DEFENDERS, MS REINE ALAPINI-GANSOU

C/o African Commission on Human and Peoples' Rights
31 Bijilo Annex Layout
Kombo North District
Western Region
P.O. Box 673 Banjul
The Gambia

Sent via e-mail:
au-banjul@africa-union.org

UNITED NATIONS SPECIAL RAPPORTEUR ON THE PROMOTION AND PROTECTION OF THE RIGHT TO FREEDOM OF OPINION AND EXPRESSION, MR FRANK LA RUE

UNITED NATIONS SPECIAL RAPPORTEUR ON THE SITUATION OF HUMAN RIGHTS DEFENDERS, MS MARGARET SEKAGGYA

c/o Office of the High Commissioner for Human Rights
Palais Wilson, United Nations Office at Geneva
CH1211 Geneva 10
Switzerland

Sent via e-mail:
freedex@ohchr.org
defenders@ohchr.org

2 August 2013

Letter of Allegation concerning the prosecution of Rafael Marques de Morais by the Government of the Republic of Angola

Dear Ms Tlakula, Ms Alapini-Gansou, Ms Sekaggya and Mr La Rue,

The Media Legal Defence Initiative, Article 19, Associação Justiça, Paz e Democracia (AJPD), Associacão Mãos Livres, Associação OMUNGA, Committee to Protect Journalists, Corruption Watch UK, Freedom House, Human Rights Foundation (HRF), Human Rights Watch, National Endowment for Democracy, Observatory for

the Protection of Human Rights Defenders, Rencontre pour la Paix et les Droits de l'Homme (RPDH), Reporters Without Borders, SOS Habitat-Acção Solidaria, Transparency International and the World Movement for Democracy (the "signatory organisations") are submitting this Letter of Allegation for your consideration in the hope that you will act upon our request to call upon the Government of the Republic of Angola to halt the proceedings against Rafael Marques de Morais for defamation and to refrain from any formal pursuit of charges.

Mr Marques de Morais is a journalist and human rights defender who has received several international awards recognising his accomplishments in these fields. As set out in more detail below, he was summoned for interrogation by the Organised Crime Unit of the National Police in Luanda, Angola on 3 April 2013. He was then informed that he had been indicted in January 2013 on charges of defamation in relation to his book "Blood Diamonds: Corruption and Torture in Angola", which was published in Portugal in 2011 and described how Angolan military officials and private security companies committed human rights abuses against Angolan villagers in the course of diamond mining operations. Mr Marques de Morais did not have legal counsel present during the interrogation, nor was he properly summoned with a warrant or fully informed of the charges and evidence against him.

On 20 May 2013, Mr Marques de Morais' lawyer, Mr Luís Nascimento, met with the officer in charge of the criminal procedure against Mr Rafael Marques de Morais, Mr Nelson Monteiro, in the office of the Department for Combating Organised Crime at the National Directorate for Criminal Investigation. Mr Nascimento was informed that Mr Marques de Morais' case had been transferred to the National Directorate for Investigation and Penal Action ("DNIAP"), a department in the Office of the Attorney General of the Republic. On 21 May 2013, Mr Nascimento went to the department and confirmed this information with the new officer in charge of the case, Mr Iloutério Wilson Lourenço. Mr Lourenço explained that the Directorate for Investigation and Penal Action was conducting a number of preliminary investigations against Mr Marques de Morais. The decision to transfer the case had come from the Attorney General of the Republic of Angola. Apparently, the understanding of the relevant authorities was that under current Angolan law, the nature and content of such investigations do not need to be disclosed to the accused or their legal counsel.

Most recently, Mr Marques de Morais received a summons dated 17 July 2013 for interrogation at the DNIAP. The summons mentions that Mr Marques de Morais has 11 charges pending against him, but does not specify what these charges are. He was summoned for questioning on 23 July 2013 in relation to these charges, and was questioned on 31 July 2013. No further details were provided to Mr Marques de Morais at that time, other than that the 11 charges were based on eight individual complaints and three collective criminal complaints, filed by seven Angolan generals, a civilian, two mining companies and a private security company. No indication was given as to the evidence underlying these charges and no clarity was provided as to whether or when Mr Marques de Morais would be called in for questioning again.

As regards the first 10 charges, Mr Marques de Morais is the accused, but in the final case, which is the refiling of a defamation case brought against him earlier in Portugal, where it was dismissed, he is both the accused and a state witness. This is a fundamental contradiction, and will result in Mr Marques de Morais acting as a witness against himself.

Mr Marques de Morais has been regularly and repeatedly harassed by State authorities because of his work, so this is not the first time he is being targeted for the lawful exercise of rights conferred to him by the African Charter on Human and Peoples' Rights, the International Covenant on Civil and Political Rights and United Nations Declaration on Human Rights.

The Angolan Government appears to be using their criminal defamation laws to deter Mr Marques de Morais from his human rights reporting. By doing so, the Government of Angola is violating Mr Marques de Morais' right to freedom of expression as protected by Article 9 of the African Charter on Human and Peoples' Rights (the "African Charter"), Article 19 of the International Covenant on Civil and Political Rights (the "ICCPR") and Article 19 of the Universal Declaration on Human Rights ("UDHR"), as well as his right to a fair trial, protected by Article 7 of the African Charter, Article 14 ICCPR and Article 11 UDHR, and his right to enjoy the protections bestowed upon him by the UN Declaration on Human Rights Defenders.

I. Background

Rafael Marques de Morais

Rafael Marques de Morais was born on 31 August 1971 in Luanda, Angola. He is a journalist and human rights defender who has received several international awards recognising his accomplishments in these fields.

Having received a bachelor's degree in anthropology and media at the University of London and a master's degree in African studies from the University of Oxford, Mr Marques de Morais started his career working as a journalist for *Jornal de Angola* in 1992. *Jornal de Angola* remains the only daily newspaper in the country. Following the accidental publication of one of his articles, which quoted part of an opposition leader's speech criticising President Dos Santos, Mr Marques de Morais suffered repeated demotions.

In 1996, Mr Marques de Morais left Angola for a year and, upon his return, began working as a freelance journalist for Reuters and other news outlets. He also established and ran the Open Society Institute's office in Angola until 2005.

On 8 January 1999, Mr Marques de Morais wrote an opinion piece entitled "Cannon Fodder" in the newspaper *Folha 8*, criticising the government's use of youth conscriptions in the war. On 6 April 1999, he was summoned by the police for questioning, and threatened with "martyrdom." Eventually, Mr Marques de Morais was released without charges.

On 3 July 1999, the weekly magazine *Agora* published an article by Mr Marques de Morais entitled "The Lipstick of Dictatorship." This article was a rejoinder to an article published by a ruling MPLA (People's Movement for the Liberation of Angola) Member of Parliament, Mr João Melo. In the article, Mr Marques de Morais criticised Angolan President José Eduardo dos Santos, labelling him a dictator and accusing him of destroying Angola. "Moreover," Mr Marques de Morais wrote, "Dos Santos is accountable for the promotion of incompetence, embezzlement and corruption as political and social values…the persistence in the war is pretence to cover up the dirt of the power holders."

The article led to Mr Marques de Morais' arrest in his home on the morning of 16 October 1999. He was held for forty days without charges and was allowed no contact with his family or lawyer. Following international pressure, Mr Marques de Morais was released on bail on 25 November 1999, on the condition that he remained in Luanda and did not speak to journalists or make public statements. According to the Committee to Protect Journalists, the Angolan government then began a campaign against Marques de Morais, citing a statement by MPLA legislator Mendes de Carvalho, that, if Marques kept criticising President Dos Santos, he "would not live to the age of 40."[1]

On 9 March 2000, Mr Marques de Morais' trial began. He was charged with defamation, slander and injury against the President and Attorney General of the Republic. The proceedings were marred with irregularities and resulted in a guilty verdict on 31 March 2000 for defaming and injuring the President under Articles 407 and 410 of the Penal Code, as well as abuse of press under Articles 43, 44, 45, and 46 of the Media Law (21/91). Mr Marques de Morais was sentenced to six months in prison and ordered to pay a fine equivalent of USD 60,000.00. Various national and international organisations expressed their concern that Mr Marques de Morais had not received a fair trial.[2]

The conviction was initially upheld on appeal before the Angolan Supreme Court, but on 27 October 2000, due to international pressure, the sentence was suspended on the condition that Mr Marques de Morais did not commit any criminal offences for the following five years.[3] The Supreme Court quashed the conviction on defamation

---

[1]Committee to Protect Journalists, "Angola: Outspoken journalist will be tried", Ann K. Cooper, 6 March 2000, see http://cpj.org/2000/03/angola-outspoken-journalist-will-be-tried.php.

[2] "Journalist convicted of defaming Angolan President", 31 March 2000, see http://news.bbc.co.uk/1/hi/world/africa/697643.stm;
Special Reports, "Rafael Marques on Trial", 31 March 2000, see http://cpj.org/reports/2000/03/angola-marques-00.php;
Litigation, "Marques v. Angola", 11 February 2010, see http://www.opensocietyfoundations.org/litigation/marques-v-angola;
Amnesty International, UA 76/00 Unfair trial, 31 March 2000, see http://www.amnesty.org/es/library/asset/AFR12/004/2000/es/3a2a0230-df67-11dd-acaa-7d9091d4638f/afr120042000en.html.

[3] Tribunal Supremo, Processo nº 2066, Acórdão. Luanda, 26 de Outubro de 2000

(Article 407 of the Penal Code), reduced the financial penalty to the equivalent of USD 17,000.00 and ordered confiscation of his passport until the end of February 2001. The United Nations Human Rights Committee later found in the case of *Rafael Marques de Morais v. Angola*[4] that the judgment had violated Mr Marques de Morais' rights, most notably the right to liberty and security of person, freedom of movement and freedom of expression as protected by Articles 9, 12 and 19 of the ICCPR. The Human Rights Committee ordered Angola to pay damages, stating that Mr Marques de Morais was *"entitled to an effective remedy, including compensation for his arbitrary arrest and detention, as well as for the violations of his rights under articles 12 and 19 of the Covenant."* The Committee also found that Angola was under an obligation to take measures to prevent similar violations in the future.

Between 1999 and 2002, Mr Marques de Morais wrote a series of articles about the trade in conflict diamonds in the Luanda Province and corruption in the Cabinda Province, which is a major oil centre. This was followed in 2003 by the publication of "Cabinda: A Year of Pain," which catalogued hundreds of human rights abuses committed by government forces and "Lundas: The Stones of Death" in 2005, which Mr Marques de Morais edited and which documented human rights abuses in the Lundas region and the pivotal role military generals played in those abuses.[5] Marques de Morais' September 2011 book *Blood Diamonds: Corruption and Torture in Angola* described how Angolan military officials and private security companies killed and terrorised Angolan villagers to protect diamond-mining operations.

In November 2011, Mr Marques de Morais filed a criminal complaint in Luanda accusing nine Angolan generals of crimes against humanity in connection with diamond mining in the Lundas region. The Attorney General's office refused to take the case. The three victims and a mother who lost two sons to the reported violence, who were brought in for questioning, gave the same testimony to the public prosecutor as they had given to Mr Marques de Morais for his book. Therefore, the Office of the Attorney General ruled, such testimonies were "worthless" as they had "not provided any new information." Mr Marques de Morais has been publishing articles about this case, as well as other news items and analysis, on the anti-corruption website *Maka Angola*,[6] which he founded in 2009.

Mr Marques de Morais' work has been internationally recognised. In 2000, he received the Percy Qoboza Award of the US National Association of Black Journalists[7] and the "Freedom Passport" from the European Parliament.[8] The Train Foundation awarded Mr Marques de Morais the Civil Courage Prize in 2006,[9] noting that "his unvarnished criticisms of the Angolan army's brutality and the malfeasance of the

---

[4] Communication No. 1128/2002, U.N. Doc. CCPR/C/83/D/1128/2002, 2005

[5] Rafael Marques, "Lundas – The stones of death. Angola's deadly diamonds: Human rights abuses in the Lunda provinces, 2004", 9 March 2005, see http://www.medico.de/media/lundas--the-stones-of-death-angolas-deadly-diamond.pdf.

[6] http://makaangola.org/o-que-e-a-makawhat-is-maka/?lang=en.

[7] Journalist of the Year, Past Winners, see http://www.nabj.org/?page=pastspecial.

[8] 2006 Civil Courage Prize Honoree, Year 2006 Award Recipient, see http://www.civilcourageprize.org/honoree-2006.htm.

[9] Id.

government and foreign oil interests put him at extreme personal risk."[10] In 2010-2011, Mr Marques de Morais was a Reagan-Fascell Democracy Fellow at the National Endowment for Democracy. He received the Human Rights Watch Hellman-Hammett Grant in 2011, and was a visiting scholar at Johns Hopkins' School of Advanced International Studies in 2012.

Angola's climate for free expression and human rights defenders

The indictment of Mr Marques de Morais is not the first attempt to suppress media coverage critical of the Angolan government and its officials.

Human Rights Watch's 2013 Report on Angola states that "[t]he media face a broad range of restrictions that hamper the right to free expression and encourage self-censorship,"[11] and Amnesty International's 2013 Annual Report notes that "[f]reedom of expression, particularly the press, continued to be suppressed."[12] The United Nations Country Team noted in 2009 that press laws in Angola may excessively limit press freedom by criminalising defamation and by creating other barriers to publication.[13] In similar vein, the 2010 report of the Working Group for the Universal Periodic Review of Angola called for the decriminalisation of press offences.[14] The African Commission on Human and Peoples' Rights' Concluding Observations on the Periodic Report for Angola, adopted in 2012, also recommended that Angola take measures to decriminalise press offenses and guarantee freedom of expression.[15]

The use of defamation charges in particular to muzzle dissenting voices in Angola has been a consistent point of critique in international reports. Human Rights Watch has reported that "since 2007, there have been a number of criminal defamation lawsuits against journalists for criticizing government officials", noting that the recent jailing

---

[10] Id.

[11] Human Rights Watch, "World Report: Angola", 2013, see http://www.hrw.org/world-report/2013/country-chapters/angola?page=1.

[12] Amnesty International Report 2013, "The State of the World's Human Rights", January-December 2012, see http://www.amnesty.org/en/library/asset/POL10/001/2013/en/b093912e-8d30-4480-9ad1-acbb82be7f29/pol100012013en.pdf, p 24.

[13] Human Rights Council, "Compilation prepared by the office of the High Commissioner for human rights, in accordance with paragraph 15(b) of the annex to Human Rights Council Resolution 5/1", 11 November 2009, see http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/169/94/PDF/G0916994.pdf?OpenElement, at 29.

[14] Human Rights Council, "Report of the Working Group on the Universal Periodic Review – Angola", 24 March 2010, see http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/125/27/PDF/G1012527.pdf?OpenElement, at 102.

[15] African Commission on Human & Peoples' Rights, "Concluding Observations on the Cumulative Periodic Reports (2nd, 3rd, 4th and 5th) of the Republic of Angola", Twelfth Extraordinary Session, 30 July – 4 August 2012, see http://www.achpr.org/files/sessions/12th-eo/conc-obs/2nd-1999-2010/concluding_observations_angola_eng.pdf, at XXXII.

of journalists "makes a mockery of the Angolan legal system." [16] Amnesty International has reported on two journalists that wrote pieces critical of government officials who have been convicted of defamation in the last two years.[17] The 2011 Annual Report of the Observatory for the Protection of Human Rights Defenders, a joint programme of the International Federation for Human Rights and the World Organisation Against Torture, reported that Angolan defenders denouncing corruption and abuses by officials were facing reprisals, as was the case of "Mr. Armando Chicoca, an independent journalist, [...] sentenced to one year in prison on March 3, 2011, for 'defamation' after disclosing the testimony of the former housekeeper of [the] Judge and President of the Court of Namibe, accusing him of having fired her for refusing his advances."[18] In 2013, the UN High Commissioner for Human Rights Navi Pillay called Angolan defamation law "a threat to investigative journalism" and added that "freedom to investigate and expose possible abuses should not be undermined by heavy-handed actions, threats and intimidation on the part of the authorities."[19]

Despite continuing calls for reform, Angola remains a dangerous place for journalists. Freedom House ranks Angola 157 out of 197 countries in its 2013 Press Freedom Ranking[20] and the Committee to Protect Journalists has recorded two killings with confirmed political motivations in the last three years.[21] In 2010, Reporters Without Borders wrote to Angolan interior minister Sebastiao José Antonio Martins, voicing concern about the recent wave of threats and violence against journalists: "one has been murdered, two have been physically attacked and injured, and a fourth has been the target of intimidation."[22]

---

[16] Human Rights Watch, "Angola's Upcoming Elections: Attacks on the Media, Expression, and Assembly", 2012, see http://www.hrw.org/sites/default/files/reports/angola0812ForUpload.pdf, p 11; Human Rights Watch, "Angola: Free Journalist Jailed for Reporting on Judge", 16 March 2011, see http://www.hrw.org/news/2011/03/16/angola-free-journalist-jailed-reporting-judge.

[17] Amnesty International, "Angola", see http://www.amnesty.org/en/region/angola/report-2012.

18 The Observatory (FIDH-OMCT), "Steadfast in Protest", 2013 Annual Report.

[19] Opening remarks by UN High Commissioner for Human Rights Navi Pillay at a press conference during her mission to Angola, 24 April 2013, see http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13262&LangID=E.

[20] Freedom House, "Global Press Freedom Rankings", 2013, see http://www.freedomhouse.org/sites/default/files/Global%20and%20regional%20tables.pdf.

[21] Committee to Protect Journalists, "10 Journalists Killed in Angola since 1992/Motive Confirmed", see http://www.cpj.org/killed/africa/angola/

[22] Reporters Without Borders, "Letter to Interior Minister About Violence Against Journalists", 2 November 2010, see http://en.rsf.org/angola-letter-to-interior-minister-about-02-11-2010,38737.html.

The Committee to Protect Journalists commented on press freedom in Angola in 2013:[23]

> In fact, Angola is one of Africa's worst offenders on freedom of expression. Its media are strictly controlled by the ruling party, and independent journalists are regularly harassed. Ten journalists have been killed for their work, with absolute impunity, since CPJ began keeping records in 1992.

Human rights defenders in Angola also face government reprisal. The African Commission on Human and Peoples' Rights' 2012 Concluding Observations on the Periodic Report on Angola expressed concerns about allegations of harassment of human rights defenders.[24] The 2010 Working Group on the Universal Periodic Review for Angola calls for a dialogue with human rights defenders, some of whom have been detained without evidence, according to the report.[25] That same year, Human Rights Watch called on the Angolan government to drop politically motivated charges against three human rights activists.[26]

Concerns about arrests of human rights defenders are exacerbated by the absence of judicial protections in place in Angola. The Working Group on Arbitrary Detention's 2008 Mission to Angola reported:[27]

> The Working Group is concerned about the weak role judges play in the current system, which is dominated by the Ministry of the Interior and the prosecution. Judges are not involved in verifying the lawfulness of detention during the criminal investigation.

Amnesty International has reported that "[p]olice have on a number of occasions carried out arbitrary arrests of individuals and human rights defenders…"[28] The

---

[23] Jean-Paul Marthoz, Committee to Protect Journalists, "Portuguese media chilled by Angolan involvement", 20 March 2013, see http://www.cpj.org/blog/2013/03/portuguese-media-chilled-by-angolan-involvement.php#more.

[24] African Commission on Human & Peoples' Rights, "Concluding Observations on the Cumulative Periodic Reports (2nd, 3rd, 4th and 5th) of the Republic of Angola", Twelfth Extraordinary Session, 30 July – 4 August 2012, see http://www.achpr.org/files/sessions/12th-eo/conc-obs/2nd-1999-2010/concluding_observations_angola_eng.pdf, at 40.

[25] Report of the Working Group on the Universal Periodic Review, Angola, 24 March 2010, see http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/125/27/PDF/G1012527.pdf?OpenElement, at 104.

[26] Human Rights Watch, "Angola: End Case Against Cabinda Rights Defenders", 23 June 2010, see http://www.hrw.org/news/2010/06/22/angola-end-case-against-cabinda-rights-defenders.

[27] Report of the Working Group on Arbitrary Detention, "Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development", 29 February 2008, see http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/111/22/PDF/G0811122.pdf?OpenElement, p 2.

[28] Amnesty International, "Angola Submission to the African Commission on Human and Peoples' Rights", 51st Ordinary Session, April 2012, see

organisation has also voiced concerns that provisions of the pending 'Draft Criminal Code' reveal the Angolan government's intention to further suppress the activity of human rights groups.[29]

II. Prosecution of Rafael Marques de Morais for defamation

On 3 April 2013, Rafael Marques de Morais was summoned by telephone to be interrogated by the Organised Crime Unit of the National Police in Luanda, Angola. According to the interrogator, Mr Marques de Morais had been indicted in January 2013 on charges of defamation in relation to his book, "Blood Diamonds: Corruption and Torture in Angola", which was published in Portugal in 2011. The book documents widely-reported allegations of homicides, torture, forced displacement of civilian settlements and intimidation against inhabitants of the diamond-mining areas of Angola's Lundas region.

Prior to the interrogation, Mr Marques de Morais had not been informed of this indictment. He was summoned without a warrant and did not have legal counsel present during his interrogation. Mr Marques de Morais was questioned about his book with reference to a large file of evidence, which he was not allowed to view.

It became clear during the interrogation that Mr Marques de Morais was questioned on suspicion of defamation. This signified further irregularity in the situation, as the Organised Crime Unit is not the body within Angola's National Police that is authorised to handle defamation charges. This particular police unit apparently appended, as evidence against Mr Marques de Morais, two articles published on 1 and 2 March 2013 by the state-owned *Jornal de Angola* and the weekly *Independente,* a proxy publication of the domestic intelligence service SINSE.

Jornal de Angola made headlines accusing Mr Marques de Morais of conspiring with both "invading foreign illegal diamond miners" and the former rebel movement UNITA to loot the region's riches. The front page accusations also claimed that the victims reported in Mr Marques de Morais' writings are "truthfully foreigners who invaded Angola." The article also accused Mr Marques de Morais of being the sponsor of illegal diamond mining in the region, corruption and the theft of Angolan riches.[30]

Meanwhile, the unsupported article in *Independente* alleged that Mr Marques de Morais was part of a mafia ring involving the former Portuguese President Mário Soares and the previous deputy-attorney general and head of the Portuguese Central

---

http://www.amnesty.org/en/library/asset/AFR12/001/2012/en/a585a308-f90c-4b66-a60a-628a4cc136af/afr120012012en.pdf, p 10.

[29] Amnesty International, "Angola: Provisions of the 'Draft Criminal Code' are Incompatible with Angola's Human Rights Obligations", January 2013, see http://www.amnesty.org/en/library/asset/AFR12/001/2013/en/56902fc1-3a39-4b2b-9cad-d759a82d8edc/afr120012013en.pdf, p 4.

[30] Fula Martins, "Mentiras em Portugal", 1 March 2013, see http://jornaldeangola.sapo.ao/sociedade/mentiras_em_portugal.

Department For Investigation and Penal Action, Cândida de Almeida. Together, they were supposedly vying for Angola's wealth and hoping to bring down the Angolan regime.

The new complaint against Mr Marques de Morais has been brought by civilian business partners of Angolan generals, including the three former Joint Chiefs of Staff of the Armed Forces, State Governors, and a serving minister and Head of Military House of the President, General Manuel Hélder Vieira Dias Júnior "Kopelipa." Mrs Renato Hermínio Teixeira, Andrew John Smith and Sérgio Eduardo Monteiro da Costa and others are shareholders and/or directors of the diamond mining company Sociedade Mineira do Cuango and its private security contractor Teleservice, the alleged perpetrators of many of the crimes outlined in the *Blood Diamonds* book.

As is shown by a summons dated 17 July 2013, which was recently served upon Mr Marques de Morais, he is both a formal suspect and state witness in this case. There is a fundamental conflict in this: as he is also the accused, he will be called to act as a witness against himself. This violates national and international fair trial standards and is inherently in contradiction with the presumption of innocence.

The summons set out that, in addition to the charge in the above-mentioned case, 10 other charges had been laid against Mr Marques de Morais, though the summons did not specify which charges these were or on which grounds they were brought. He was summoned for questioning on 23 July 2013 by Angola's National Directorate of Investigation and Penal Action and Mr Marques de Morais was questioned on 31 July 2013. Mr Marques de Morais was not given any additional information as to the charges brought against him, other than that these concerned "defamation." No indication was given regarding the evidence underlying the charges. When asked by Mr Marques de Morais' legal counsel, the authorities refused to inform him whether Mr Marques de Morais would be called in for questioning again.

Previously, in 2012, the aforementioned Angolan generals had filed a criminal defamation lawsuit against Mr Marques de Morais in Portugal related to the same publication. The Portuguese Prosecution Service on 11 February 2013 chose not to pursue the matter, stating that "the author's intention is clearly not to offend, but to inform."[31] The plaintiffs are now pursuing a private prosecution in Portugal for libel and defamation against Mr Marques de Morais and his publisher Tinta da China, seeking a total of EUR 300,000.00 (USD 390,000.00) in damages.

Both the previous and current cases in Portugal against Mr Marques de Morais are a matter of public record. A libel case against Mr Marques de Morais in Angola also raises questions regarding the principle of double jeopardy, which under Angolan law constitutes a peremptory defense. Other issues raised include the relevant statute of limitations, the right to legal representation, and other due process standards in both

[31] Procuradoria-Geral Distrital de Lisboa, "Caso 'Diamantes de Sangue'. Não exercício da acção penal pelo MP. MP no DIAP de Lisboa", 11 February 2013, see http://www.pgdlisboa.pt/novidades/nov_main.php?ficha=126&pagina=&destaque=.

Angolan and international human rights law. Most importantly, the government must formally inform Mr Marques de Morais of the charges against him, in order for him to prepare a proper defense.

III. Violation of Rafael Marques de Morais' human rights under the African Charter, ICCPR, UDHR and Angolan law

Violation of the right to freedom of expression

The investigation conducted by the Organised Crime Unit into Mr Marques de Morais on grounds of defamation amounts to a violation of his right to freedom of expression as guaranteed under Article 9 of the African Charter, Article 19 of the ICCPR and Article 19 of the UDHR. Angola ratified the African Charter on 2 March 1990[32] and acceded to the ICCPR on 10 January 1992.[33] It therefore has an obligation to uphold and protect the rights enshrined in those treaties.[34]

The investigation is clearly linked to the publication of Mr Marques de Morais' book "Blood Diamonds", in which he documents corruption and human rights abuses in connection with diamond mining in Angola. The exercise of the right to free expression is of particular importance in realising transparency and accountability, as clearly stated by the UN Human Rights Committee in its General Comment 34: [35]

> Freedom of expression is a necessary condition for the realization of the principles of transparency and accountability that are, in turn, essential for the promotion and protection of human rights.

The Human Rights Committee also is explicit in its dismissal of the use of criminal charges for defamation and in particular the use of such charges to stifle dissenting opinions: [36]

> States 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. It is impermissible for a State party to indict a person for criminal defamation but then not to proceed to trial expeditiously –such a practice has a chilling effect that may unduly restrict the exercise of freedom of expression of the person concerned and others. [emphasis added]

---

[32] African Commission on Human and Peoples' Rights, see http://www.achpr.org/states/angola/ratifications/,

[33] United Nations Treaty Collection, "Chapter IV: Human Rights", see http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en.

[34] Article 1 African Charter, Article 2 ICCPR.

[35] General Comment No. 34, Article 19: Freedoms of opinion and expression, Human Rights Committee, 102nd Session, U.N. Doc. No. CCPR/C/GC/34 (12 September 2011) (hereinafter "General Comment 34"), par 3.

[36] General Comment 34, par. 37.

The actions of the Organised Crime Unit in calling Mr Marques de Morais in for questioning, not allowing him to see the dossier compiled against him, and subsequently failing to either formally press charges or dismiss them are therefore in clear violation of Angola's obligations under the ICCPR. The steps taken against Mr Marques de Morais are also in violation of the Constitution of Angola, most notably Articles 40 and 44, which protect freedom of expression and freedom of the press, respectively.[37]

Violation of the right to a fair trial and due process

Interrogating Mr Marques de Morais without the presence of counsel, failing to inform him of the indictment brought against him until months later, not informing Mr Marques de Morais of the full extent of the charges laid against him so he can mount a proper defence, and failing to instigate a formal prosecution or dismiss the charges within a clearly identifiable timeframe constitute violations of Mr Marques de Morais' right to a fair trial and due process as protected by Article 7 of the African Charter, Article 14 ICCPR and Article 11 UDHR. Specifically, investigative proceedings in Angola for the same facts underlying the private prosecution for defamation in Portugal raise questions regarding the principle of *ne bis in idem* or "double jeopardy". This is a fundamental principle of criminal law and as such has been codified in both Angola's Constitution (Article 65(5)) and Penal Code (Article 146 of the Code of Criminal Procedure of 1929). Both the current and the previous, failed, prosecution in Portugal are a matter of public record. Consequently the Angolan authorities ought to have been aware of these cases and should have refused to follow through on proceedings in Angola.

Failure to respect the rights and freedoms guaranteed to human rights defenders

Finally, the proceedings against Mr Marques de Morais are contrary to Angola's obligation to protect and ensure the necessary rights of human rights defenders, as specified in the UN Declaration on Human Rights Defenders, adopted by the UN General Assembly in March 1999 (the "Declaration").[38] The Declaration describes human rights defenders as "individuals, groups and associations…contributing to…the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals".

Mr Marques de Morais, as described above in Section I of this Letter of Allegation, has worked tirelessly to document and bring to light human rights violations in Angola and to hold those responsible to account. As a human rights defender he

[37] Republic of Angola, "Constitution of the Republic of Angola", see http://www.wipo.int/wipolex/en/text.jsp?file_id=196467, pp. 16 and 18.

[38] Resolution 53/144 Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, United Nations General Assembly, 53rd Sess., UN Doc. A/RES/53/144 (8 March 1999), see http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N99/770/89/PDF/N9977089.pdf?OpenElement.

should therefore, amongst other rights, enjoy the right to "freely publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and to draw public attention to those matters" (Art. 6(b)-(c) of the Declaration) as well as the right to "be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, attributable to States that result in violations or affect the enjoyment of human rights and fundamental freedoms" (Art 12(3) of the Declaration).

Article 2 of the Declaration provides that States have the responsibility to ensure all persons under its jurisdiction are able to enjoy the rights and freedoms listed in the Declaration in practice. By instigating proceedings against Mr Marques de Morais, the government of Angola is acting contrary to its obligations under the Declaration.

IV. Request for action by the Special Rapporteurs

As outlined in this Letter of Allegation, the proceedings for defamation pursued by the Government of Angola are in violation of Rafael Marques de Morais' right to freedom of expression, right to a fair trial and due process and his right to enjoy the rights and freedoms guaranteed to human rights defenders. Accordingly, the signatory organisations respectfully request the Special Rapporteurs to urgently undertake the following actions:

(1) urge the government of Angola to immediately halt the defamation proceedings against Rafael Marques de Morais and refrain from any further pursuit of charges against him;

(2) should the Angolan Government refuse to follow the recommendation by the Special Rapporteurs listed under (1), request the Government of Angola to ensure that any further proceedings take place in accordance with the appropriate international standards as specified in the African Charter, ICCPR, UDHR and the relevant provisions of Angolan law;

(3) declare that the current proceedings against Rafael Marques de Morais constitute a violation of his human rights, in particular those protected by Article 7 and 9 of the African Charter, Article 14 and 19 of the ICCPR, and Article 11 and 19 of the UDHR;

(4) more generally urge the Angolan government to put an end to any kind of harassment against human rights defenders and to ensure that they are able to carry out their activities free from any hindrances, in line with the 1998 UN Declaration on Human Rights Defenders.

Please do not hesitate to contact us if you have any questions or if we can provide you with any additional information you may need.

Yours sincerely,

Media Legal Defence Initiative (MLDI)
Nani Jansen, Senior Legal Counsel
E. nani.jansen@mediadefence.org
T. +44 20 324 4760

Article 19
Fatou Jagne Senghore, Director
E. fatouj@article19.org

Associação Justiça, Paz e Democracia (AJPD)
Maria Lúcia da Silveira, Program Manager
E. ltumelo@gmail.com

Associacão Mãos Livres
Salvador Freire dos Santos, President
E. salvafreire@gmail.com

Associação OMUNGA
José Patrocínio, General Coordinator
E. omunga.coordenador@gmail.com

Committee to Protect Journalists
Sue Valentine, Africa Program Coordinator
E. svalentine@cpj.org

Corruption Watch UK
Andrew Feinstein, Director and former ANC MP
E. andrew@policyorg.com

Freedom House
Daniel Calingaert, DPhil
Executive Vice President
E. Calingaert@freedomhouse.org

Human Rights Foundation (HRF)
Javier El-Hage, International Legal Director
E: javier@thehrf.org

Human Rights Watch
Daniel Bekele, Africa Director
E. bekeled@hrw.org

National Endowment for Democracy
Sally Blair, Senior Director, Fellowship Programs
E. sallyb@ned.org

Observatory for the Protection of Human Rights Defenders
Karim Lahidji, FIDH President
Gerald Staberock, OMCT Secretary General
E. afrique@fidh.org
E. omct@omct.org

Rencontre pour la Paix et les Droits de l'Homme (RPDH)
Christian Mounzeo, President
E. rp.dh@laposte.net

Reporters Without Borders
Ambroise Pierre, Head of Africa Desk
E. afrique@rsf.org

SOS Habitat-Acção Solidaria
Rafael F. Morais, Coordenador de Direcção
E. sos.habitat.angola@gmail.com

Transparency International
Chantal Uwimana, Africa Regional Director
E. cuwimana@transparency.org

World Movement for Democracy
Art Kaufman, Senior Director
E. artk@ned.org