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ON FREEDOM OF EXPRESSION AND ACCESS TO INFORMATION, MS FAITH PANSY  
TLAKULA

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ON HUMAN RIGHTS DEFENDERS, MS REINE ALAPINI-GANSOU

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11 August 2014

**Urgent Appeal concerning the prosecution of Rafael Marques de Morais by the  
Government of the Republic of Angola**

Dear Ms Tlakula, Ms Alapini-Gansou, Mr Forst and Mr Kaye,

The Media Legal Defence Initiative, Article 19, Associação OMUNGA, Committee to Protect Journalists, Equal Rights Trust, Freedom House, Human Rights Foundation (HRF), Human Rights Watch, International Federation for Human Rights (FIDH), National Endowment for Democracy, PEN International, Rencontre pour la Paix et les Droits de l'Homme (RPDH), Reporters Without Borders, SHERPA, Transparency International, World Movement for

Democracy, and the World Organisation Against Torture (OMCT) (the “signatory organisations”) are submitting this Urgent Appeal for your consideration in the hope that you will urgently 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 further pursuit of charges against him.

## **I. Request for action by the Special Rapporteurs of 2 August 2013**

On 2 August 2013, a collective of international and Angolan human rights and free speech organisations submitted a Letter of Allegation regarding the proceedings for defamation brought against Mr Marques de Morais in the Republic of Angola ([Annex I](#)). The signatory organisations respectfully refer the Special Rapporteurs to this Letter of Allegation for more information on the background of Mr Marques de Morais and the human rights situation in Angola.

In the Letter of Allegation, the signatory organisations set out in detail that Mr Marques de Morais, a well-known journalist and human rights defender, was indicted in January 2013 on charges of defamation in relation to his book “Blood Diamonds: Corruption and Torture in Angola.” His book, which was published in Portugal in 2011, describes how Angolan military officials and private security companies committed human rights abuses against Angolan villagers in the course of diamond mining operations. Although he was not informed of the exact charges against him, Mr Marques de Morais was informed that there were 11 charges against him, based on criminal complaints filed by seven Angolan generals, a civilian, two mining companies and a private security company. The Letter of Allegation further explained that this is not the first time that Mr Marques de Morais was being targeted for the lawful exercise of rights conferred to him by the African Charter on Human and Peoples’ Rights (the “African Charter”) and the International Covenant on Civil and Political Rights (the “ICCPR”).

The Letter of Allegation submitted that the Angolan Government appeared to be using their criminal defamation laws to deter Mr Marques de Morais from his human rights reporting, thereby violating (i) his right to freedom of expression as protected by Article 9 African Charter and Article 19 ICCPR, (ii) his right to a fair trial as protected by Article 7 African Charter and Article 14 ICCPR, and (iii) acting contrary to the principles and rights set out in the UN Declaration on Human Rights Defenders. In that context, the signatory organisations respectfully requested, *inter alia*, that the Special Rapporteurs call upon the Government of the Republic of Angola to halt the proceedings against Mr Marques de Morais for defamation and to refrain from any formal pursuit of charges.

## **II. Update regarding the prosecution of Rafael Marques de Morais**

The signatory organisations are sending this Urgent Appeal because, recently, Mr Marques de Morais has been formally charged with defamation. On 7 July 2014, Mr Marques de Morais’ lawyer was served with the indictment in his case ([Annex II](#)), which means that proceedings against him have officially commenced. While the indictment was served on 7 July, the document itself was dated 25 March 2014, once again underlining the highly

irregular manner in which the proceedings against Mr Marques de Morais are unfolding. Mr Marques de Morais' lawyer was given a five-day deadline to submit a list of witnesses for his defence, together with his submissions on the merits of the case. As the authorities had not allowed any access to the case file at that time, Mr Marques de Morais' lawyer was unable to present any arguments. On 14 July 2014, his lawyer did submit a list of witnesses. On 6 August 2014, his lawyer was finally given access to the case file.

Under Angolan law, a date for a court hearing will now be set by the relevant court, of which Mr Marques de Morais will have to be notified at least three days in advance. In short, the proceedings against Mr Marques de Morais could now commence at a moment's notice, at the discretion of the authorities, while Mr Marques de Morais' fair trial rights are being violated by denying him and his lawyer the opportunity to examine the details of the case brought against him.

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

The signatory organisations respectfully refer the Special Rapporteurs to the overview provided in the Letter of Allegation of the violations of Mr Marques de Morais' human rights. As set out in detail in the Letter of Allegation,<sup>1</sup> 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 and Article 19 of the ICCPR as it is clearly linked to the publication of his book "Blood Diamonds", in which he documents corruption and human rights abuses in connection with diamond mining in Angola. The United Nations Human Rights Committee is explicit in its dismissal of the use of criminal charges for defamation, in particular the use of such charges to stifle dissenting opinions,<sup>2</sup> and has established a stringent standard under the ICCPR regarding the criminalisation of speech directed at public officials.<sup>3</sup>

The proceedings against Mr Marques de Morais are also contrary to the principles and rights specified in the UN Declaration on Human Rights Defenders, adopted by the UN General Assembly in March 1999 (the "Declaration").<sup>4</sup> Mr Marques de Morais has worked to bring human rights violations to light and hold those responsible to account. He should therefore enjoy the right to freely publish his views on human rights (Art. 6(b)-(c) of the Declaration)

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<sup>1</sup> See Annex I, under III.

<sup>2</sup> General Comment No. 34, Article 19: Freedoms of opinion and expression (12 September 2011), Human Rights Committee, 102nd Session, U.N. Doc. No. CCPR/C/GC/34, par. 37-38 and 47. See also the Report of the Special Rapporteur on the protection and promotion of the right to freedom of opinion and expression (January 29, 1999) E/CN.4/1999/64, par. 28, and the Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression (2002).

<sup>3</sup> See e.g. Human Rights Committee, *Aduayom v. Togo*, No.422/1990, UN Doc. CCPR/C/51/D/422/1990 (1996), par. 7.4.

<sup>4</sup> 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>.

and to be protected effectively under national law in reacting against or opposing human rights violations (Art 12(3) of the Declaration). By instigating proceedings against Mr Marques de Morais instead of ensuring that he is able to enjoy the rights and freedoms listed in the Declaration in practice, the government of Angola is acting contrary to the principle set out under Article 2 of the Declaration.

Finally, the proceedings against Mr Marques de Morais have been marked by violations of his right to a fair trial and due process as protected by Article 7 of the African Charter and Article 14 ICCPR. As set out in the Letter of Allegation, Mr Marques de Morais' right to a fair trial and due process was violated *inter alia* by interrogating him without the presence of counsel, failing to inform him of the indictment brought against him until months later, and not informing Mr Marques de Morais of the full extent of the charges laid against him so he can mount a proper defence.

These fair trial violations have only continued since the proceedings against Mr Marques de Morais have officially commenced. In particular the fact that Mr Marques de Morais and his lawyer have not had access to the case file until last week, in combination with the unreasonably short deadlines given by the court, makes it impossible to examine the details of the case against him and mount a proper defence. This constitutes a further violation of Mr Marques de Morais' right to a fair trial and due process as protected by Article 7 of the African Charter and Article 14 ICCPR.

As set out in the Letter of Allegation, the fact that Mr Marques de Morais is prosecuted in Angola on the basis of the same facts that underlie the private prosecution for defamation in Portugal is contrary to the principle of *ne bis in idem* as codified in both Angola's Constitution (Article 65(5)) and Penal Code (Article 146 of the Code of Criminal Procedure of 1929).<sup>5</sup>

Given the fact that Mr Marques de Morais fair trial rights have not been respected in the pre-trial phase and have continued to be violated since the proceedings against him have officially commenced, it is clear that there is no chance that Mr Marques de Morais will receive a fair trial in Angola.<sup>6</sup>

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<sup>5</sup> See Annex I, under III.

<sup>6</sup> See also Annex I, under I regarding the lack of judicial protections in Angola and the threat this poses to the fair trials rights of human rights defenders.

#### **IV. Request for action by the Special Rapporteurs**

As outlined in this Urgent Appeal and the Letter of Allegation, the proceedings for defamation pursued by the Government of Angola are in violation of Mr Marques de Morais' right to freedom of expression, right to a fair trial and due process, and contrary to the rights and principles set out in the UN Declaration on 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 Mr Marques de Morais and refrain from any further pursuit of charges against him;
- (2) should the Angolan Government refuse to follow a recommendation by the Special Rapporteurs to halt the defamation proceedings and refrain from any further pursuit of charges against Mr Marques de Morais, 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 and the relevant provisions of Angolan law;
- (3) declare that the current proceedings against Mr Marques de Morais constitute a violation of his human rights, in particular those protected by Article 7 and 9 of the African Charter and Article 14 and 19 of the ICCPR; and
- (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,

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