

# ANGOLA

## Freedom of expression on trial

### Introduction

On 31 March 2000 Rafael Marques, a freelance journalist who had written an article criticizing State President José Eduardo dos Santos, was sentenced to six months' imprisonment and a heavy fine for defamation. Neither the pre-trial nor the trial procedures conformed to international standards of fairness. André Mussamo, a radio journalist, was accused of divulging state secrets in an article which he had drafted but not published. He was detained for over three months. He was acquitted in June 2000 after a court found no evidence to support the charges against him. Amnesty International considers that both journalists were prisoners of conscience imprisoned solely for the exercise of their right to freedom of expression.

Since January 1999, at least 30 journalists have been summoned for questioning by police concerning their newspaper articles or radio broadcasts and two were held for over five and 12 weeks respectively before they were charged. Newspapers and radio stations have been ordered not to comment on certain issues. Journalists have faced threats of physical harm. In 1999 some were assaulted. Several were accused of libel or defamation of government officials, or of publishing information deemed to endanger the security of the state. Despite these attempts to stifle freedom of expression journalists continued to report views opposing official policies and to criticise the government on such issues as corruption and military conscription procedures.

This document is a sequel to a report entitled *Angola: Freedom of expression under threat*, which Amnesty International published in November 1999.<sup>1</sup> The 1999 report outlined the cases of some 25 journalists who had been interrogated, detained, threatened or assaulted in connection with their work since January 1999.

The present report takes up the story. Since December 1999, so far, the trials of eight journalists have taken place. Those convicted have been sentenced to between three and 12 months' imprisonment and some have been ordered to pay fines and large sums in compensation to the plaintiffs. At the time of writing, appeals against these convictions were pending. The cases described in this report illustrate how legal procedures failed to conform to the requirements of international human rights law. Also, since December 1999, several other journalists have had their right to freedom of expression curtailed by threats or physical assault.

The right to freedom of assembly is closely connected with that of freedom of expression. In February 2000, several people who had gathered to protest about a fuel price hike were briefly detained and beaten.

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<sup>1</sup> The report, *Angola: Freedom of expression under threat* (AI Index: AFR 12/16/99) may be obtained on request from Amnesty International's International Secretariat, 1 Easton Street, London WC1X 0DW, telephone +44 20 7413 5500, e-mail: [amnestyvis@amnesty.org](mailto:amnestyvis@amnesty.org). Web: <http://www.amnesty.org>.

Both in its own constitution and under international human rights treaties, Angola has committed itself to upholding press freedom and other human rights. However, it appears that the political will to foster these rights is absent. Mass violations of human rights take place in Angola, particularly extrajudicial executions of suspected criminals and of real or perceived political opponents by soldiers and police and deliberate and arbitrary killings, torture and mutilation by UNITA. So long as freedom of expression is curtailed, the violation of these human rights remains shrouded in silence.

### **1. The political context**

Since the peace agreement of November 1991 between the government of the *Movimento Popular da Libertação de Angola* (MPLA), People's Movement for the Liberation of Angola, and the *União Nacional para a Independência Total de Angola* (UNITA), National Union for the Total Independence of Angola, the opening of a variety of privately owned periodicals and radio stations has reduced the government's formerly complete domination of the communications media. However, most privately owned radio stations reach only a limited local audience and very few Angolans can afford to buy newspapers. The government controls the daily *Jornal de Angola*, the *Radio Nacional de Angola* and the only television station. Most Angolans have access only to the national radio.

Angola has been at war for much of its 25 years as an independent state. The 1991 peace agreement broke down in late 1992. A 1994 protocol to the agreement reduced the fighting but full-scale war resumed in late 1998. The United Nations Observer Mission in Angola closed in early 1999. By early 2000 government troops had inflicted heavy defeats on the forces of UNITA leader Jonas Savimbi and had regained control of large tracts of territory. At present, UNITA retains control of some territory in the east of the country but conducts guerrilla operations in many other parts of the country. During the conflict it has been particularly difficult for journalists to report on the military situation. Calls for peace and dialogue with Jonas Savimbi, whom the government has denounced as a war criminal, have met with rejection by the government. Criticism of government policies and of the widespread corruption have brought reprisals. Members of non-governmental organizations (NGOs) seeking to protect human rights and members of opposition political parties have also faced threats and other forms of harassment.<sup>2</sup> Throughout the 1990s, there have been incidents in which journalists were assaulted or received threats to their physical safety. Some were murdered, apparently because of their work. The dead include Ricardo de Melo, director and chief editor of the first independent Angolan newspaper, *Imparcial Fax*, who was killed in Luanda in January 1995, and

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<sup>2</sup> For example, five members of the National Assembly representing a UNITA faction which had renounced violence were detained in January 1999. Four of them were held until October when a judge ruled that there was not enough evidence to prove their alleged complicity in UNITA attacks. Their detention appeared to have been arbitrary and politically motivated.

television reporter António Casimiro, killed in October 1996 in Cabinda, an Angolan enclave separated from the rest of the country by a strip of Democratic Republic of Congo territory. The authorities have consistently failed to investigate such crimes against journalists and other perceived political opponents and to bring the suspected perpetrators to justice. This apparent policy of impunity, which continues to the present, calls into question the government's stated commitment to democratic principles and the rule of law.

Under the mantle of silence about what is happening in war zones, broken by occasional reports, poorly paid government troops, accustomed to acting with impunity, have robbed the civilian population, and carried out extrajudicial executions of hundreds of people suspected of supporting UNITA. Journalists have been taken to the war zones, apparently for propaganda purposes, for example following a radio report on 22 December 1999 of the extrajudicial execution by government soldiers of at least 48 people in Muambunda village, Lunda Sul province in October 1999. The journalists were told that the report was false. However, no formal investigation into the alleged killings is known to have been carried out.

UNITA forces have been responsible for a massive death toll through the practice of deliberate and arbitrary executions of government officials and supporters or internal dissidents and indiscriminate shelling of civilian targets. UNITA also widely uses torture and in recent months Amnesty International has received accounts of the mutilation of suspected government spies or supporters. UNITA publishes information on the Internet but no longer has a radio station. Journalists who worked for the now defunct UNITA radio station, VORGAN, were allowed no freedom of expression and risked imprisonment and torture if they were suspected of passing information to the government.

Measures to prevent journalists from reporting on military matters or corruption have included raiding premises, forbidding the publication of certain articles and obliging journalists to agree not to report on certain issues. In response to criticisms of the government, the Minister of Social Communication has issued public admonitions to journalists and accused them of being unpatriotic and of supporting UNITA. Other forms of limitation exist. Journalists say that their office and home telephones are routinely tapped and that government advertising is withdrawn from media outlets which criticize the government. Despite the crackdown on freedom of expression, the Angolan media continues to criticize government policies. The authorities have set up a commission to review the press law but journalists have complained that they have not been involved in this process.

## **2. The law on defamation**

Several journalists have been accused and some have been convicted of *difamação* and *injúria* -- literally 'defamation' and 'injury', both of which are criminal charges and each punishable by up to a year's imprisonment. *Difamação* concerns an attack on a person's reputation. It is

defined under Angolan law as defaming someone publicly, orally, in published writing or drawing, or by any means of publication, by imputing to that person a fact which is offensive to his or her honour and dignity, or by reproducing such an imputation. Article 46 of the Press Law states that if the person defamed is the President of the Republic of Angola, or is a foreign head of state or his or her representative in Angola, proof of the facts imputed is not admissible. *Injúria* is defined as defaming someone without imputing to him or her a specific fact, but doing so publicly by gesture, orally, in published writing or drawing or by any other means of publication.

The laws concerning the crimes of *difamação* and *injúria* include the Press Law<sup>3</sup>, and a law<sup>4</sup> altering various articles of two other laws, the Law of Crimes Against the Security of the State<sup>5</sup> and the Law on State Secrets<sup>6</sup>. Under these laws, in conjunction with Article 181 of the Penal Code, *difamação* and *injúria* are each punishable by a maximum sentence of one year. According to Angolan law, people charged with crimes punishable by less than one year's imprisonment may not normally be detained pending trial. Under the press law, such suspects should normally be formally charged within 15 days of arrest.

The laws under which journalists are charged and tried do not fully conform to the requirements of Article 19 of the International Covenant on Civil and Political Rights (ICCPR), to which Angola acceded on 10 January 1992 (see page 18), that the right to freedom of expression and information should only be restricted as far as is necessary (emphasis added) for the respect of the rights and reputations of others and for the protection of national security or public order, or public health or morals. As part of their normal professional duties journalists are expected to report on matters of public interest and it is generally recognized that the media have an important role to play as public watchdogs. The use of charges of *difamação* and *injúria* to defend the reputation of public officials denies the rights of the public to receive information and the rights of journalists to express their opinions about the conduct of public officials. Professor Kevin Boyle, an eminent international human rights lawyer, has noted: "... it is well established under international and comparative human rights law that politicians and public officials must tolerate a higher degree of criticism than ordinary citizens. The key role they play in the democratic process, the fact that they have willingly submitted themselves to public scrutiny and the importance of a free flow of information and ideas about political matters to a democratic system of government all inform this conclusion."<sup>7</sup>

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<sup>3</sup> Law N° 22/91 of 15 June 1991

<sup>4</sup> Law N° 22-C/92 of 9 September 1992, Alterations to Law N° 7/78 of 26 May and Law N1/83 of 23 February

<sup>5</sup> Law N° 7/78 of 26 May 1978

<sup>6</sup> Law N° 1/83 of 23 February 1983

<sup>7</sup>The Republic of Angola and Rafael Marques: Legal opinion of Professor Kevin Boyle, Professor of International Human Rights Law, University of Essex, United Kingdom, commissioned by Article 19, the International Centre against Censorship.

Under Angolan law, a person accused of defamation is required to prove the truth of statements which he or she has published and which are deemed to be defamatory. The presumption of the prosecution is that the statements are false. What occurs is a reversal of the normal principle of justice requiring the prosecution, not the accused, to produce proof that a crime has occurred. This denies the defendant's right to be presumed innocent until proved guilty. It also violates Article 28 of Angola's Constitution and Article 14 (2) of the ICCPR (see page 18) both of which protect the presumption of innocence. Professor Kevin Boyle, in his legal opinion on the case of Rafael Marques, noted that: "While presumptions of fact or law against the accused are not entirely precluded by international human rights law, they must be 'within reasonable limits which take into account the importance of what is at stake and maintain the rights of the defence'. Where such a presumption operates to force the accused to prove he has not committed the central element of the offence rather than requiring the prosecution to prove he has, it cannot be regarded as consistent with the right to be presumed innocent. In defamation cases, particularly as they involve restriction of the fundamental right to freedom of expression, the State should bear the burden of proving that the statements are false."<sup>8</sup>

In the Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion or expression presented at the 56<sup>th</sup> session of the Commission on Human Rights on 18 January 2000,<sup>9</sup> the Special Rapporteur noted, in paragraph 52, that "To require truth in the context of publications relating to matters of public interest is excessive; it should be sufficient if reasonable efforts have been made to ascertain the truth ..." and "The onus of proof of all elements should be on those claiming to have been defamed rather than on the defendant."

Article 46 of the Press Law concerning non-admissibility of the proof of facts imputed against the President of the Republic of Angola provides scope for any statement criticizing the President to be considered a criminal offence.

### **3. Recent cases: harassment, arbitrary arrest and trials which fall short of international standards of fairness**

The following cases, which have occurred since late 1999, illustrate how journalists are threatened; questioned and detained by police using methods which exceed their legal powers; and tried under laws and procedures which do not fully conform to international standards of fairness. Taken together, these cases present a pattern of intimidation of journalists aimed at limiting their right to freedom of expression and information. A significant part of this pattern is the impunity which shields the perpetrators of threats or other illegal acts against journalists who are merely exercising their right to criticize government policies or corruption. Amnesty

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<sup>8</sup> Ibid, citing *Salabiaku v. France* (1988), Series A, 141-A, para.28, European Court of Human Rights.

<sup>9</sup> Ref. E/CH/2000/63.

International's concerns in relation to the cases described in this report are summarized in section 4 below.

Several journalists convicted under the defamation laws and sentenced to prison terms remain in provisional liberty pending the results of their appeals. If imprisoned, Amnesty International would consider adopting them as prisoners of conscience.

### **Gustavo Costa**

Gustavo Costa, correspondent of the Portuguese weekly, *Expresso*, was charged with *difamação* against the Head of the *Casa Civil do Presidente da República* (Presidential Office) in connection with an article entitled *Corrupção faz vítimas em Angola* (Corruption makes victims in Angola) published in *Expresso* in April 1999. However, he was not detained.

The article he wrote reportedly alleged that President dos Santos complained, in a meeting, that officials in the presidency were involved in corruption and that as a result the Head of the Presidential Office had some of his powers curtailed. Soon after the article was published, Gustavo Costa said that he noticed that his movements were being watched. In June 1999 he said that a veiled threat had been made against his life. He also said he had been put under pressure by the *Departamento Nacional de Investigação Criminal* (DNIC), National Criminal Investigation Department, to reveal the sources of his article in violation of Article 6 (4) of the Press Law which states that journalist may not be obliged to reveal the sources of their information, nor may their silence be subject to any direct or indirect sanction.<sup>10</sup>

After several postponements, the trial began on Monday 13 December. At the request of the prosecution, and despite a protest by the defence, the judge ordered that the trial be held *in camera* (behind closed doors), which denied the defendant his right under Article 14 of the ICCPR (see page 18) to a public trial. At a second session on Tuesday 21 December, Gustavo Costa maintained that the Luanda Provincial Court had not listened impartially to the evidence produced in his defence which reportedly included evidence that corruption had occurred and that the powers of the Head of the Presidential Office had been reduced. On 24 December the court announced the verdict. It considered that the defendant had attributed acts of corruption to the plaintiff and that some of the terms used in the article were injurious. Gustavo Costa was sentenced to 12 months' imprisonment for *difamação* and nine months' imprisonment for *injúria*. The sentences were to run concurrently (that is for a total of 12 months) and suspended for five years. Gustavo Costa was also ordered to pay a fine of approximately US

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<sup>10</sup>Although there is no specific provision in international standards for the protection of sources, jurisdictions around the world have increasingly accepted that the protection of sources is an important element of freedom of expression. See discussion in *Protection of Sources, Media Law and Practice in Southern Africa, Volume 2*, published by Article 19 - International Centre Against Censorship, Freedom of Expression Institute, Media Institute of Southern Africa (MISA), November 1996.

\$500 and a sum of about US \$20,000<sup>11</sup> as compensation to the plaintiff. Immediately after the sentence was passed, Gustavo Costa's lawyer lodged an appeal, which has not yet been heard.

### ***Folha 8***

In 1999 **William Tonet**, the director of the privately owned bi-weekly, *Folha 8*, had been summoned for interrogation at the DNIC on various occasions in relation to articles published in the newspaper. He was also briefly detained in October 1999 in what appears to have been an arbitrary and repressive manner. At about 5:00 a.m. on 2 October 1999, a Saturday, William Tonet was wakened when eight armed police arrived at his home. He was taken to the DNIC where he was questioned about an alleged failure to pay taxes on some goods he had imported. Despite being granted provisional release later that day, he was not in fact released until the evening of the following Monday, 4 October. He said that the explanation he had been given was that there was no official on duty with the authority to execute the release order.

On 31 October 1999, *Folha 8* journalist **Gilberto Neto** and other journalists were at the airport and about to board a plane for South Africa when Gilberto Neto's passport was confiscated. The journalist said that he had not previously been notified of any prohibition to travel. The prohibition was apparently connected with an article for which he and William Tonet had been questioned in September 1999. The article described how police had arrested journalists of the Catholic *Rádio Ecclesia* in August 1999 after the station had re-broadcast a British Broadcasting Corporation (BBC) program containing part of an interview with UNITA leader Jonas Savimbi.<sup>12</sup> To date *Folha 8* has been subpoenaed 58 times on suspicion of *difamação* or *injúria*, frequently under the terms of the state security law.

On 10 December 1999, the directors of *Folha 8*, and the privately owned weekly newspapers, *Agora* and *Actual* – William Tonet, Joaquim Manuel Aguiar dos Santos (**Aguiar dos Santos**), and **Leopoldo Baio**, respectively – were ordered by the head of the Department of Selective Crimes in the DNIC to retract stories they were about to publish. These concerned a report by the British NGO, Global Witness, saying that the government used its oil wealth in a corrupt way, perpetuating the poverty of most Angolans.<sup>13</sup> The DNIC officer reportedly entered the publications' premises and used threatening words and gestures. Failing to present any judicial order authorizing the censorship of the articles, the officer reportedly justified his actions only on the grounds of "superior orders". It is not clear how the police found out that the stories were to be published. The *Folha 8* and *Actual* editions of 11 December suppressed the

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<sup>11</sup> Most Angolan journalists earn between about US\$100 and US\$350 per month.

<sup>12</sup> See *Angola: Freedom of Expression under threat*, AI Index: AFR 12/16/99, November 1999

<sup>13</sup> *A Crude Awakening: the Role of Oil and Banking Industries in Angola's Civil War and the Plunder of State Assets*, Global Witness Ltd, 5 December 1999.

text of the article, leaving blank pages, and *Agora* was forbidden to publish an article about the police action. This action delayed the appearance of the 11 December editions, reportedly causing financial loss to the publications. In contrast, the government controlled media published rejections of the Global Witness report without giving details of its contents. The Directors of *Folha 8*, *Agora* and *Actual* lodged a complaint with the Procurator General's office about the police abuse of power and sued for damages but by June 2000 the case had not come to court.

On 28 May 2000 William Tonet was at the airport preparing to travel abroad for medical attention when he was informed that he was prohibited from travelling abroad. He said that he had not been informed about the ban.

### **Rafael Marques, Aguiar dos Santos and António de Freitas**

Rafael Marques de Morais (Rafael Marques) was arrested at his home in Luanda on 16 October 1999 in connection with an article published in *Agora* on 3 July 1999. Entitled *O baton da ditadura*, ("The big stick of dictatorship"), the article strongly criticised President dos Santos, alleging that he was a dictator, and blaming him for the destruction of the country, for widespread corruption and incompetence in state institutions and for using the war as an excuse for the government's failings. Rafael Marques had previously been questioned by the police with respect to other articles he had written.

Rafael Marques later explained that he had been arrested at pistol-point by over 20 police, including riot police carrying Kalashnikov rifles. According to the DNIC he "was arrested in *flagrante delicto* (caught in the act) ... as a result of strong suspicions of having committed the crime of calumny, defamation and injury.<sup>14</sup> He was taken to the high security detention centre at the Central Forensic Laboratory in the capital, Luanda, where he was held incommunicado for 10 days. He was then moved to Viana prison outside the city. During his detention he was not physically tortured but he spoke of other prisoners having been beaten and of inhumane prison conditions.

A "silent march" by journalists and others, which was to take place on 3 November 1999 to protest at Rafael Marques' detention, was called off after it was prohibited by the provincial government, reportedly on the grounds that it was "not opportune".

On 26 October, the Procurator General's Office rejected Rafael Marques' lawyer's request of 18 October that he be released pending trial. On the same day, the lawyer entered a *habeas corpus* petition to test the legality of his client's continuing detention. The Supreme Court had not responded to the petition by the time of writing.

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<sup>14</sup> Copy of a letter from the DNIC to the Ministry of Justice forwarded to Amnesty International members in response to their inquiries, reference: OFICION° 359/DCS.DNIC/99 of 17 December 1999.



Although, according to the Press Law, Rafael Marques should have been charged within 15 days of his arrest, it was not until 18 November 1999 that he, together with Aguiar dos Santos and António José Freitas de Jesus Correia (**António Freitas**), respectively director and chief editor of *Agora*,<sup>15</sup> neither of whom had been detained, were formally charged with defaming President dos Santos and the Procurator General of the Republic. António Freitas faced charges in connection with Rafael Marques' article. Aguiar dos Santos, who was not present at the newspaper when *Agora* published Rafael Marques' article, was charged in connection with a different article, entitled *Solidão, o poder e a sucessão* ("Solitude, power and the succession") and published in *Agora* on 28 August 1999. In it, Aguiar dos Santos claimed that the President's management of affairs left gaps in which suspect dealings in oil revenues and arms purchases took place. The indictment cited several sentences from the articles by Rafael Marques and Aguiar dos Santos, but without specifying what made them defamatory.

Rafael Marques was provisionally released on 25 November having been denied the right to be heard by a judge. The terms of his release, under Article 270 of the Code of Penal Procedure, forbade him to travel abroad or to "engage in activities related to the crime". As such 'activities' were not further specified, it appeared that Rafael Marques was prevented from practising his profession as a journalist.

On 19 January 2000, during a parliamentary debate on freedom of the press and respect for the press law, a member of parliament for the ruling MPLA party, reportedly issued a veiled threat against the life of Rafael Marques. He is alleged to have said that if Rafael Marques continued to write critical articles about the President of the Republic, he would not reach the age of 40.

On 9 March 2000, when the trial resumed, the judge ruled against a request of the prosecution for the trial to be conducted *in camera*. The case was adjourned to 21 March, pending the resolution of various procedural questions including a claim submitted by Aguiar dos Santos' defence counsel that there had not been adequate time to prepare the defence case and that Aguiar dos Santos should be tried separately from Rafael Marques. Luís do Nascimento, the lawyer defending Rafael Marques and António Freitas, had also submitted a request that the court should admit proof of the facts of the alleged *difamação*.

About 30 minutes after the trial resumed on 21 March, the judge ordered the public, including national and international journalists, representatives of NGOs and diplomatic delegations, to leave the court. The reason given for this decision was that someone named as a reporter-photographer had taken a photograph in defiance of a court order forbidding

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<sup>15</sup> Neither Aguiar dos Santos nor António Freitas were detained.

photography or sound recordings. Journalists said they had never heard of the photographer whom they described as an impostor.

During the court session, the judge refused to respond to the request of Luís do Nascimento that the court should admit proof of the facts of the alleged *difamação*. According to law<sup>16</sup> the judge must decide whether the request is admissible, then notify the defence of the decision. The defence may appeal against the decision to the Supreme Court. The lawyer, saying that this refusal to respond interfered with his duty to defend his client, left the court on 23 March. Aguiar dos Santos' lawyer also said that she would leave if the judge continued to ignore the defence counsel. After Luís do Nascimento departed the judge reportedly ruled that he be disbarred for six months, apparently basing this action on a 1931 law which was revoked in 1982.<sup>17</sup> Rafael Marques was then offered the assistance of a 'public defender' - someone appointed by the court who is not necessarily a trained lawyer. Though the defendant declined the offer, the judge reportedly ordered an official of the procurator's office attached to the Luanda Provincial Court, who was not a trained advocate, to take over the defence of Rafael Marques' case. It was reported that the only intervention this appointee made in court was to ask for justice to be done. Rafael Marques' lawyer returned to court on 25 March and submitted that the judge did not have the power to suspend him but was overruled and left the court. Later, Rafael Marques remarked: "How can a man feel when he is only defended by two words (*peço justiça* - I ask for justice) in every argument. How could I defend myself in those circumstances or rebut the prosecution's arguments?"

When the trial resumed on 28 March, after an adjournment, a defence witness was ordered to leave the court during testimony. He had claimed that Article 46 of the Press Law (see above, pages 3-5) was unconstitutional. The court then refused to allow the defence to present two other witnesses. The prosecution, presenting two witnesses, claimed that Rafael Marques had humiliated the government, tarnished the honour of President dos Santos and demoralized the Angolan army.

On 31 March the court convicted Rafael Marques and Aguiar dos Santos of defaming President José Eduardo dos Santos. They were sentenced to six months' and two months' imprisonment respectively. Both were also fined and ordered to pay the plaintiff a large sum as an indemnity.<sup>18</sup> António Freitas was acquitted. Rafael Marques and Aguiar dos Santos appealed to the Supreme Court against their conviction and sentence. They are currently free on bail pending the result of their appeals.

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<sup>16</sup> Code of Criminal Procedure, Article 590.

<sup>17</sup> According to the Statute of the Bar Association, Decree N° 28/90 of 13 September 1996, Article 3 f), the Bar Association has the exclusive power to discipline lawyers.

<sup>18</sup> The reported totals were approximately equivalent to US\$18,000 and US\$10,000 respectively.

### **Francisco Lopes**

Francisco Lopes, the chief editor of the Namibe province service of the *Rádio Nacional de Angola* (RNA), Angola National Radio, was arrested in Huila, the provincial capital, on 31 December 1999 and held at the Provincial Criminal Investigation Department. Prior to his arrest the director of the radio station had reportedly beaten him and pointed a gun at him because he had altered the timing of a news bulletin without consulting the director, who was not available at the time. After the assault Francisco Lopes went home where he was arrested later that day.

Five days later, Francisco Lopes appeared in court to be tried under summary procedures - these procedures apply to defendants caught in the act (*flagrante delicto*) and to crimes punishable by up to six months' imprisonment. Under these procedures, if the defendant cannot be brought to trial immediately, he should be provisionally released. The judge may postpone the trial if further investigation is necessary. Francisco Lopes was reportedly accused of offending and assaulting the RNA station director. The judge ordered his provisional release on the grounds that the accusations contained irregularities and referred the case to the provincial attorney for review. At the time of writing, Francisco Lopes had not been formally charged nor had a date for his trial been set. The conditions of his provisional release did not prevent him from working, but they did oblige him to report to the DNIC periodically. The journalist sued the director for assaulting him but at the time of writing the case had not come to court. The RNA subsequently dismissed the Namibe director.

### **André Mussamo**

André Domingos Mussamo Cambúe, (André Mussamo), who also writes under the name Aires Moura, the chief editor of RNA in Kwanza Norte province and correspondent of *Folha 8*, was arrested in N'Dalatando, the provincial capital, on 2 December 1999. He was held in incommunicado detention for two weeks and detained for a further three months.

Police had reportedly entered the journalist's office without presenting a search warrant and removed from his desk drawer or briefcase the draft of an article he had written in September 1999 but which had not been published. The provincial authorities alleged that the draft had been based on the text of a confidential letter which the provincial governor, Manuel Pedro Pacavira, had written to President dos Santos in July 1999, concerning the defence of the province against UNITA attacks. The head of the provincial government press office, **Agostinho Mateus Augusto**, was also detained on suspicion of showing the letter to André Mussamo. These accusations were based on laws concerning state secrets and crimes against the security of the state and allow for suspects to be detained without charge for a renewable period of 45 days.

Prior to the arrest of André Mussamo and Agostinho Mateus Augusto, a judicial police officer was sent to N'Dalatando by the DNIC in Luanda to investigate the case. Amnesty International was informed that the DNIC officer and one other official advised that there was

insufficient evidence at that point to arrest André Mussamo. Nevertheless, the arrest was carried out by provincial police on the basis of a warrant issued by the Provincial Procurator's Office.

On 15 February 2000, while he was still detained in N'Dalatando, the provincial authorities reportedly claimed that André Mussamo had written an article about poor conditions in the prison resulting in the deaths of some prisoners. In a letter subsequently smuggled out of prison to a friend, André Mussamo said that the prison director had shouted at him in the presence of other prison officials and prisoners and told him that he should be careful as he was "too young to die".

The RNA reportedly arbitrarily suspended André Mussamo without pay. His motorbike, a domestic gas container and his telephone, including cables connecting other telephones in the neighbourhood, were said to have been removed from his home – the reason for these confiscations is not clear as the items were apparently not removed on the basis of any court order. André Mussamo's wife was able to pay him fortnightly visits but his lawyer, who was based in Luanda, was prevented by distance from being able to visit regularly.

André Mussamo and Agostinho Mateus Augusto were charged in late February and released in mid March pending trial. They were charged under Law N° 22-C/92 (the law altering the laws on crimes against the security of the state and the law on state secrets) and under the penal code<sup>19</sup> with obtaining state secrets with the object of revealing them. According to Articles 11 and 12 of Law N° 22-C/92, those who obtain and reveal state secrets in their professional capacity may be sentenced to between 12 and 16 years' imprisonment.

The trial began in the Kwanza-Sul provincial court on 28 May. On 2 June, André Mussamo was acquitted. The court found that the prosecution had produced no material evidence of the charges against him. Agostinho Mateus Augusto was sentenced to a year's imprisonment for negligence in failing to prevent André Mussamo from seeing a draft of the governor's letter: he lodged an appeal against the conviction and sentence.

### **Isidoro Natalício**

Isidoro Natalício, a freelance journalist and the N'Dalatando correspondent of the *Jornal de Angola* and of several radio stations, was reportedly briefly held for questioning in early January 2000 concerning articles which allegedly offended the Kwanza Norte provincial governor, Manuel Pedro Pacavira, and which contained information which the provincial governor said was confidential. In February the provincial authorities reportedly threatened to evict Isidoro

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<sup>19</sup> Law on State Secrets, Law N° 22-C/92 of 9 September 1992 and Articles 153 and 311 of the Penal Code which was in force at the time of independence from Portugal in 1975.

Natalício from his home on account of his reports broadcast by the Voice of America and other media outlets.

### **Alves Fernandes and José Amorim and the demonstrations by PADPA**

Alves Fernandes and José Amorim, respectively reporter and camera operator of the Africa program of the Portuguese broadcasting company, *Rádio-Televisão Portuguesa*, were briefly detained and interrogated on 18 February 2000. They had been covering preparations for a demonstration called by the *Partido de Apoio Democrático e Progresso de Angola* (PADPA), Angolan Party for Democratic Support and Progress, in protest against a 1600% rise in the price of fuel. The president and secretary general of PADPA were arrested at the same time and apparently accused of not obtaining official permission for the demonstration. Under Angolan law,<sup>20</sup> everyone has a right to demonstrate peacefully in public places for any purpose which is not against the law, or the interests of public order or the rights of other people. The organizers are not required to seek authorization but they are obliged to inform the authorities of the date, time and place of the demonstration. Carlos Alberto de Andrade Leitão, the party president, reportedly said in a radio interview on 17 February that the authorities had been informed in advance of the demonstration.

During their interrogation Alves Fernandes and José Amorim had their video tapes confiscated and were asked why they had been filming in the area. They then were accused of filming police positions in the vicinity of the Ministry of Finance building where the demonstrators had gathered. According to an interview with Carlos Leitão published in *Folha 8* on 4 March, the PADPA president said that he had complained to the police and to the Supreme Court that the demonstrators had been molested by police from the *Grupo Operativo de Luanda* (Luanda Operative Group).

The demonstrators decided to hold a 48-hour hunger strike on 23 and 24 February, again in protest at fuel prices. On 23 February the police dispersed the hunger-strikers who had peacefully gathered in front of the Luanda Provincial Government buildings, beating some of them. They regrouped in the nearby gardens of the Church of Our Lady of Carmo. On 24 February the police again arrived. Armed with rifles, they surrounded the small crowd which had gathered, causing people to leave the scene. After closing in on the demonstrators, the police arrested 10 of those present, including PADPA's president, its secretary-general and an on-looker, Filomeno Vieira Lopes, the leader of another political party, the *Frente para Democracia* (FpD), Front for Democracy. A journalist who remained at the scene was prevented from continuing with an interview and police tried to seize her recording equipment. Many of the demonstrators were beaten, three of them very badly. On 25 February the police apologized for the arrests, saying that they had made a mistake and that the detainees would be

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<sup>20</sup> Law on the Right to Assemble and Demonstrate, Law N° 16/91 of 11 May 1991

released. After their release, the detainees reportedly complained that the police had refused to issue release warrants, apparently in order to avoid acknowledging the detentions. PADPA has reportedly lodged a criminal complaint of physical aggression and abuse of authority against the police and the Luanda Provincial Government which reportedly called the police to the scene. On 11 March there was another demonstration against the fuel price rise and also against the authorities' attacks on freedom of assembly and expression. About 30 people, leaders and members of several opposition parties, were joined by many more after it became clear that, this time, the police presence was not intimidatory. This demonstration proceeded peacefully and there were no arrests.

### **Américo Gonçalves and Felisberto Graça Campos**

Américo Gonçalves and Felisberto Graça Campos, respectively director and chief editor of the weekly newspaper *Angolense*, had been charged with defaming Manuel Pedro Pacavira, the Kwanza Norte provincial governor. They were not detained. The charge arose from various articles which appeared in *Angolense* from February 1999, including one entitled *No olho da rua por incompetência e má gestão do erário público* ("To be sacked for incompetence and mismanagement of public funds") published in the 13-20 February edition. The unsigned article suggested that eight of the 18 provincial governors were likely to be sacked for incompetence and embezzlement and added that they spent most of the time in Luanda or abroad where they all had luxury houses. The journalists' trial began in February 2000 in the criminal section of the Luanda Provincial Court. There were four sessions. At the third, Claudino Tavares, the Delegate of the Ministry of Finance in Kwanza Norte province, testified for the defence. However, according to the defence, the judge did not take the testimony into account. On 12 March, Felisberto Graça Campos and Américo Gonçalves were convicted of defamation, given suspended prison sentences of four and a half and three months respectively and together ordered to pay the plaintiff the equivalent of US \$40,000. They have appealed against both conviction and sentence on the grounds that the Luanda Provincial Court was not competent to understand fully the financial evidence presented in the case for the defence.

**Cristóvão Lwemba**, a Rádio Ecclesia correspondent in Cabinda, was beaten by two men in police uniform on 18 May. He was on his way home after covering the celebrations for the Pope's 80<sup>th</sup> birthday at the Cabinda Cathedral. He reported the incident to the police who said that they would investigate. The results of the investigation had not been announced by the end of May.

## **4. Amnesty International's concerns**

The cases detailed above reveal a pattern of actions aimed at stifling press freedom and, more generally, limiting the rights to freedom of expression, information and assembly. These actions have violated international human rights treaties, particularly Article 19 but also other provisions

of the ICCPR and provisions of the African Charter on Human and Peoples' Rights (African Charter), to which Angola acceded on 9 October 1990.

In its previous report, *Angola: Freedom of expression under threat*,<sup>21</sup> Amnesty International noted that, "Despite the lack of legal protection for the right to freedom of expression, journalists have called for cases of suspected abuse of press freedom to be settled fairly in court." The recent trials have shown that the protection offered by the law and by trial procedures is deeply inadequate. Other cases described in this document have shown that attacks on the right to freedom of expression, and the closely related right of freedom of assembly are continuing. The following summary of Amnesty International's concerns is not exhaustive but focuses on a few key issues.

**Article 19 of the International Covenant on Civil and Political Rights**

1. *Everyone shall have the right to hold opinions without interference.*
2. *Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.*
3. *The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:*
  - a) *For respect of the rights or reputations of others;*
  - b) *For the protection of national security or of public order, or of public health or morals*

**The criminal law is an inappropriate means of dealing with cases of defamation**

The criminal law is an inappropriate means of dealing with the issue of defamation and such practice contravenes international treaties. Article 19 of the ICCPR states that the right to freedom of expression "carries with it special duties and responsibilities" and may therefore be subject to certain restrictions. However, these restrictions may only be imposed if they are provided by law and if they are necessary to respect the rights or reputation of others or for the protection of national security or public order or other issues affecting the community as a whole. Nevertheless, Article 19 recognizes a wide latitude for robust criticism of government officials. The Human Rights Committee, the body which oversees implementation of the ICCPR, has stated that "... when a State party imposes certain restrictions on the exercise of freedom of expression, these may not put in jeopardy the right itself." The UN Special Rapporteur on the promotion and protection of the right to freedom of expression and opinion has stated that

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<sup>21</sup> *Op cit.*

“International jurisprudence also supports the view that Governments and public authorities as such should not be able to bring actions in defamation or insult.”<sup>22</sup>

**Article 9 of the African Charter on Human and Peoples’ Rights**

1. Every individual shall have the right to freedom of information.
2. Every individual shall have the right to express and disseminate his opinions within the law.

Article 9 of the African Charter seems to provide State-parties with considerable latitude to determine what is within the law under the so-called “claw-back” clauses. However, the African Commission on Human and Peoples’ Rights, which oversees implementation of the African Charter, has stated: “The Commission is of the view that the “claw-back” clauses must not be interpreted against principles of the Charter. Recourse to these should not be used as a means of giving credence to violations of express provisions of the Charter.”<sup>23</sup>

As regards the need to protect the rights or reputations of others, Amnesty International believes that public officials or authorities who consider themselves defamed should be able, like ordinary citizens, to seek redress through civil laws in order to protect their reputation. Criminal legislation should not be used in such a way as to stifle criticism of state authorities, or to intimidate those who voice legitimate concerns about the actions or practices of state authorities. The UN Special Rapporteur on the promotion and protection of the right to freedom of expression and opinion has recommended: “Criminal defamation laws should be repealed in favour of civil laws as the latter are able to provide sufficient protection for reputations.”<sup>24</sup>

**Arbitrary, incommunicado and long-term detention**

In arresting and detaining journalists, the authorities have failed to conform to Article 9 of the ICCPR and Article 6 of the African Charter. They have also violated Angolan law.

- Rafael Marques’ detention appears to have violated Law Nº 18-A/92 on pre-trial detention. This law permits a suspect to be held in custody only if the crime is punishable by more than 12 months’ imprisonment, unless there are specific grounds to refuse provisional release including a danger that the person may abscond. Rafael Marques was accused of an offense which carries a maximum penalty of 12 months. As far as Amnesty International is aware, no reason was ever provided by the DNIC as to why he should not

<sup>22</sup> Report of the Special Rapporteur on the promotion and protection of the right to freedom of expression and opinion E/CN/2000/63, 18 January 2000, 56<sup>th</sup> session of the Commission on Human Rights.

<sup>23</sup> 212/98 Amnesty International/Zambia 12<sup>th</sup> Annual Activity Report of the African Commission on Human and Peoples’ Rights, 1998 - 1999.

<sup>24</sup> Op. cit.



be provisionally released. Rafael Marques faced charges concerning other articles he had written and had made no attempt to evade the authorities.

- Rafael Marques was held incommunicado for 10 days and detained for 41 days. This violated Angolan law which allows incommunicado detention only until the first time the detainee is interrogated: in Rafael Marques' case, this occurred on the day he was arrested. According to the Press Law, Rafael Marques should have been formally charged within 15 days.
- The Supreme Court failed to respond to the *habeas corpus* petition challenging the legality of Rafael Marques' detention, thus denying him the right to challenge the lawfulness of his detention as required by Article 9 (4) of the ICCPR.
- André Mussamo was held incommunicado for 14 days and detained for over three months, at least two weeks more than the already excessive 90 days allowed by law in cases of detainees accused of crimes against the security of the state.
- Rafael Marques and André Mussamo were held for weeks without being informed promptly and in detail of the charges against them in violation of Article 14 (3) (a) of the ICCPR.
- Francisco Lopes was held for five days in connection with an offence which carries a maximum penalty of six months' imprisonment. According to the law he should not have been detained at all.

### Unfair trial

In no case where a journalist has been tried for *difamação* or *injúria*, as far as Amnesty International is aware, has the court taken into consideration the fundamental principle set out in Article 19 of the ICCPR that any restriction on the right to freedom of expression or information should be "necessary" for the protection of one of the legitimate objectives of Article 19 (3), in this case, "for respect of the rights or reputations of others". It appears that the in trials described above, courts have tended to focus on the protection of the reputation of officials, who, as noted above (page 4), "must tolerate a higher degree of criticism than ordinary citizens". In doing so, the authorities appear to have given insufficient weight to the rights of individuals to freedom of information and expression and have thus threatened these rights.

- Aguiar dos Santos' defence counsel noted that the prosecuting authorities had failed to specify precisely the statements in Aguiar dos Santos' article which were considered defamatory or to note on the charge sheet specific legal provisions under which they were considered defamatory, thus violating Article 14 (3) (a) of the ICCPR.
- The trial of Rafael Marques, Aguiar dos Santos and António Freitas, initially open to the public, was subsequently held in secret. The trial of Gustavo Costa was also held *in camera*: in this case the judge cited Article 593 of the Code of Penal Procedure which empowers the judge to decide, without giving reasons, that a trial should be held *in camera*. The holding of trials in secret without justifiable reasons, as required by Article 14 (1) of the ICCPR, is in violation of Angola's obligations under international law.

- The defence in the case of Rafael Marques, Aguiar dos Santos and António Freitas, in the case of Américo Gonçalves and Felisberto Graça Campos and that of Gustavo Costa complained that the court had favoured the prosecution and had not taken the submissions of the defence into full account, thus contravening the principle of “full equality” under Article 14 (3) of the ICCPR.
- In relation to the trial of Rafael Marques, Aguiar dos Santos and António Freitas:
  - the court did not seem to act impartially when it refused to decide on the defence request to submit proof;

**Article 14 of the International Covenant on Civil and Political Rights**

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

- (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
- (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
- (c) To be tried without undue delay;
- (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
- (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;
- (g) Not to be compelled to testify against himself or to confess guilt....

- "disbarring" the defence lawyer is outside the powers of the court and contrary to Principle 19 of the UN Basic Principles on the Role of Lawyers which states: "No court or administrative authority before whom the right to counsel is recognized shall refuse to recognize the right of a lawyer to appear before it for his or her client unless that lawyer has been disqualified in accordance with national law and practice and in conformity with these principles";
- the 'disbarring' of the lawyer denied Rafael Marques the right to be defended by a lawyer of his choice;

- appointing a public defender who is not legally trained violates Article 14 (3) (d) of the ICCPR, Article 7 (1) (c) of the African Charter and Principle 6 of the Basic Principles on the Role of Lawyers which states that everyone "... shall, in all cases in which the interests of justice so require, be entitled to have a lawyer of experience and competence commensurate with the nature of the offence assigned to them in order to provide effective legal assistance ...": moreover, the public defender appointed failed to provide any legal assistance;
- the dismissal of the defence witness and the refusal to allow other witnesses to testify is a violation of Article 14 (3) (e) of the ICCPR and Clause E (3) of the African Commission's Resolution on the Right to Recourse Procedure and Fair Trial;
- in addition to prison sentences, courts have ordered journalists convicted of defamation to pay large sums of money in compensation, thus increasing the "chilling" effect on the democratic right to criticize government officials.

**Article 7 (1) of the African Charter on Human and Peoples' Rights**

1. Every individual shall have the right to have his cause heard. This comprises:
- (a) The right to an appeal to competent national organs against acts violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force;
  - (b) the right to be presumed innocent until proved guilty by a competent court of tribunal;
  - (c) the right to defence, including the right to be defended by counsel of his choice;
  - (d) the right to be tried within a reasonable time by an impartial court or tribunal.

**Failure to prosecute those suspected of assaulting or threatening journalists**

This report documents a range of cases in which journalists have been subject to threats and other abuses at the hands of the police or other authorities. Demonstrators have been beaten. Amnesty International's previous report also related cases of journalists who had been physically assaulted on account of their work, including by the military authorities. No one has been brought to justice for these crimes. The police also appear to exceed their powers with impunity when they summon journalists for questioning without having clear evidence of any crime, enter premises and confiscate materials without the appropriate warrants, censor newspapers, beat demonstrators, and carry out arbitrary arrests and detentions.

Failure to investigate such human rights violations and abuses of power contravenes the obligation undertaken by Angola under human rights treaties to take all the necessary measures to give effect to the rights enshrined in these treaties.

**5. Amnesty International's recommendations**

The recommendations made in Amnesty International's previous report remain relevant: in summary, it recommended that the government adopt a tripple strategy to protect the right to

freedom of expression in full accordance with Article 19 of the ICCPR and other international and regional standards for the protection of human rights. This would require:

- amending the law in accordance with international standards for the protection of freedom of expression;<sup>25</sup>
- ensuring that official rhetoric and action conform to these standards; and
- bringing the perpetrators of threats and assaults against journalists to justice.

The organization has three additional recommendations.

### **1. Amending the law on defamation**

A commission of government representatives in the ministries of Defence, the Interior, Justice and Social Communication and led by Dr. João da Cunha Caetano, the Vice Procurator General, was set up in late 1999 to examine the Press Law with a view to its reform. The precise mandate of this commission has not been published. Journalists have complained that they have not been involved in the work of the commission but they have reportedly been given assurances that their views will be sought at a later date.

Amnesty International has written to the commission urging it to ensure that the law is altered to bring it into full conformity with international human rights law. The organization further recommends that the commission should examine not only the Press Law but also other laws and procedures under which journalists have been questioned and detained. They should take into consideration, in the light of international standards for the protection of freedom of information and freedom of expression, all recent cases of restriction on freedom of expression in Angola, including those outlined in the present document and in Amnesty International's previous report. They should also include the following among their recommendations to the National Assembly and the government that:

- offences such as *difamação* and *injúria* are removed from the ambit of the criminal law and made subject to prosecution only under the civil law;
- the new law should ensure that in the case of any restriction of liberty of expression or information the government bears the burden of showing that the restriction is necessary and that it is proportional to the harm which the restriction seeks to avoid;

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<sup>25</sup> Amnesty International's recommendations for amending the law were based on the Johannesburg Principles on National Security, Freedom of Expression and Access to Information. These principles were adopted on 1 October 1995 by a group of experts in international law, national security and human rights convened by the human rights organizations, ARTICLE 19 and the International Centre Against Censorship, in collaboration with the Centre for Applied Legal Studies of the University of the Witwatersrand, in Johannesburg. The Johannesburg Principles were endorsed by the UN Special Rapporteur on the protection and promotion of the right to freedom of expression and opinion in his report to the 55<sup>th</sup> session of the UN Commission on Human Rights on 29 January 1999 [ECN.4/1999/64].

- there is provision for prompt, full and effective judicial scrutiny by an independent court of any restriction of freedom of expression or information;
- appropriate action must be taken by the government to ensure that any acts by government officials, including the police, which violate rights to freedom of information or expression, will be thoroughly investigated with a view to bringing the suspected perpetrators to justice, in conformity with international standards of fairness.

## **2. Investigating arbitrary restrictions on freedom of expression and bringing suspected perpetrators to justice**

Amnesty International also recommends that, in connection with the last point made above, an independent commission of inquiry be set up to inquire into the behaviour of the police who have been involved in reported cases of journalists and others whose rights to freedom of information, expression or assembly appear to have been illegally restricted. Since Angola is a party to the ICCPR and to the African Charter, the commission should base its inquiry on the requirements of these treaties, particularly Articles 19, 9 and 14 of the ICCPR and Articles 6, 7 and 9 of the African Charter.

## **3. Ensuring fair trial**

Amnesty International urges the Procurator General of the Republic and the Supreme Court to take appropriate steps, within their separate areas of competence, to ensure that pre-trial procedures and the conduct of trials conform fully with Angola's obligations under the Angolan Constitution and international human rights treaties.

*“Where freedom of the press is wanting or curtailed, people cannot settle their differences through open debate and the authorities overreact, fearing the overall impact of dissent. Uprisings and fear follow. Freedom of the press may not guarantee peace, but it is a vital first step. Therefore, special care has to be taken to ensure that writers, poets, journalists and editors are not intimidated or prevented from expressing their views in their writings through censorship or other covert methods.... Abuses against the press, journalists and writers have to be halted by launching investigations and publishing findings, in the press itself or by interested NGOs, with a view to raising public consciousness and making the Government act according to international standards.” E/CN.4/1999/64 Report of the Special Rapporteur on the protection and promotion of the right to freedom of expression and opinion, 29.01.99.*