



**Still Not Fully Protected  
Rights to Freedom of Expression and Information under  
Angola’s New Press Law**

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## I. Summary

On February 2, 2006, Angola's National Assembly approved a new press law, which entered into force on May 15. The law regulates the activity of media companies and professionals in television and radio broadcasting and in the written and electronic press. This report analyses the new law in the context of international human rights standards.

Given the Government of Angola's poor record in protecting freedom of expression, the press law is especially crucial in the current pre-election period in Angola to ensure that the press can report freely in the run-up to national elections, tentatively scheduled for 2007.

The new legislation represents an improvement over Angola's previous press law in many respects. Key improvements include the elimination of the state monopoly over TV broadcasting; the creation of public TV and radio that are to be governed by principles of public interest (such as ensuring the plurality of opinions, providing accurate and impartial information that is widely accessible and providing politically balanced information during election periods), and provisions that allow a journalist accused of defamation to cite the truthfulness of the facts reported in his or her defense in cases involving Angola's president.

While Human Rights Watch welcomes the Government of Angola's reform of its media law, it is concerned that the new law still contains elements that fall short of international human rights standards. The law defines certain conduct as "criminal" in unclear and sweeping terms and establishes excessive penalties for those crimes, including defamation; it includes provisions that may result in excessive limitations on press freedom; and it provides for the establishment of licensing procedures for private TV and radio broadcasters that are largely subject to the discretion of governmental bodies.

The Angolan government should amend those provisions of the press law that are not in accordance with international and regional human rights standards, most urgently those criminalizing defamation.

In addition, too many key principles and procedures of the law are left for further implementing laws and regulations and no transitional arrangements are defined to address problems that may arise in the application of the law pending adoption of the implementing legislation. The lack of such laws and regulations makes several provisions of the new press law largely inoperable.

To make the new law fully operable, implementing laws and regulations should include the establishment of administrative and judicial procedures for parties to challenge decisions on limitations to freedom of press. The government should also establish fair and transparent licensing procedures for both private radio and TV broadcasters and ensure the editorial independence and accountability of public TV and radio to the public, rather than to the government. Such accountability can be achieved through an independent governing board, annual activity reports to the legislature and civil society, and regular external audits. The National Council on Media Communication (Conselho Nacional da Comunicação Social, CNCS) must be independent and its members are appointed through a transparent process. The Angolan government should, as soon as possible, draft and approve the Statute of Journalists (Estatuto do Jornalista), with the full involvement of journalists' associations. Finally, the government should take steps to enable the establishment and independent functioning of the Commission on the Press Card and Ethics (Comissão da Carteira e Ética).

Implementing laws and regulations on these issues should be enacted as a matter of urgency.

## II. Recommendations

### To the Government of Angola

- Decriminalize defamation in both the press law and the Criminal Code (Código Penal) through repeal or amendment of the relevant provisions.
- Enact without delay all the necessary implementing laws and regulations of the new press law, in consultation with media professional associations and broader civil society organizations.
- Ensure that such laws and regulations are in accordance with international human rights law and standards regarding freedom of expression and information, including the Johannesburg Principles on National Security, Freedom of Expression and Access to Information; the Siracusa Principles on Derogations from the ICCPR; the Declaration on Freedom of Expression in Africa; and the Principles on Freedom of Information Legislation.

In particular, implementing laws and regulations should:

- Include clear administrative and judicial procedures for parties to challenge legal decisions on, and seek remedies for abuse of, limitations to freedom of press.
- Establish fair and transparent licensing procedures for both private radio and TV broadcasters, including possible transitional arrangements for those already operating, and to ensure supervision of the licensing process by an independent body.
- Ensure that public service broadcasters are protected against political or economic interference, their editorial independence is guaranteed, and that they are accountable to the public and not the government, through measures such as the establishment of an independent governing board, annual activity reports to the legislature and civil society, and regular external audits.
- Ensure that the National Council on Media Communication (Conselho Nacional da Comunicação Social) is independent and protected from interference of any kind and that its members are appointed through a

transparent process with the participation of civil society and independently of political parties.

- Ensure that the Journalists' Statute (Estatuto do Jornalista) is drafted in consultation with, and full involvement of, journalists' associations.
- Take measures to enable the independent functioning of the Commission on the Press Card and Ethics (Comissão da Carteira e Ética), such as approving implementing laws and regulations on the CNCS (detailing its composition, competences, and functioning) to ensure that its role in relation to the Commission is limited to administrative support as envisaged in the press law.
- Create clear procedures for the establishment and operation of community radios and encourage the free circulation of information throughout the country. In particular, the Angolan government should consider measures such as lowering taxes on printing paper and facilitating transportation of private newspapers to the provinces outside Luanda.
- Extend an invitation to the African Commission on Human and Peoples' Rights to assess media laws and freedom of expression in Angola in advance of upcoming national elections.

### **To Angolan Journalists' Associations**

- Formulate, adopt and promote the implementation of the Journalists' Code of Ethics (Código Deontológico).

### **To the United Nation Human Rights Committee**

- Request the government of Angola to include information on legislative, regulatory, and other measures taken to implement the press law in Angola's pending report to the Committee under article 40 of the International Covenant on Civil and Political Rights.

### **To the African Commission on Human and Peoples' Rights**

- Seek an invitation from the Angolan Government to visit the country and assess the media laws and freedom of expression in advance of upcoming national elections.

### III. International and Regional Standards

Freedom of expression is guaranteed by the Universal Declaration of Human Rights (UDHR) under article 19:

Everyone has the right to freedom of opinion and expression; this right includes the right to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.<sup>1</sup>

Although the UDHR is not binding on states because it has been adopted as a General Assembly resolution, it is considered applicable customary law by a number of domestic systems.

The International Covenant on Civil and Political Rights (ICCPR)—which Angola acceded to in 1992<sup>2</sup>—imposes legal obligations on states to respect its provisions, including the protection of freedom of expression and information set forth in its article 19:

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.<sup>3</sup>

The importance of free media in a democratic society has been highlighted by the UN Human Rights Committee:

[T]he free communication of information and ideas about public and political issues between citizens, candidates and elected

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<sup>1</sup> Universal Declaration of Human Rights (UDHR), adopted December 10, 1948, G.A. Res. 217A(III), U.N. Doc. A/810 at 71 (1948).

<sup>2</sup> International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, (entered into force March. 23, 1976), acceded by Angola January 10, 1992.

<sup>3</sup> International Covenant on Civil and Political Rights (ICCPR), article 19.

representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion.<sup>4</sup>

The Committee has also stressed the crucial role of freedom of expression in pre-election periods, affirming that freedom of expression is an “essential condition[s] for the effective exercise of the right to vote and must be fully protected.”<sup>5</sup>

As a party to the African Charter on Human and Peoples’ Rights (ACHPR),<sup>6</sup> Angola is also obligated to protect the right to freedom of expression and information:

1. Every individual shall have the right to receive information.
2. Every individual shall have the right to express and disseminate his opinions within the law.<sup>7</sup>

Angola’s Constitutional Law also ensures “freedom of expression, assembly, demonstration and all other forms of expression....”<sup>8</sup> Additionally, the constitution and the press law both state that norms related to fundamental rights shall be interpreted in accordance with the Universal Declaration of Human Rights, the ACHPR and other international instruments to which Angola is a party.<sup>9</sup>

Several international documents detail the content and meaning of international legal provisions on freedom of expression, as well as the permissible limitations to such freedom. These are the Johannesburg Principles on National Security, Freedom of Expression and Access to Information,<sup>10</sup> the Siracusa Principles on Derogations

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<sup>4</sup> Human Rights Committee, General Comment 25, The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service, U.N. Doc. CCPR/C/21/Rev.1/Add.7 (1996), para. 25.

<sup>5</sup> Human Rights Committee, General Comment 25, The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service, U.N. Doc. CCPR/C/21/Rev.1/Add.7 (1996), para. 12.

<sup>6</sup> African [Banjul] Charter on Human and Peoples’ Rights, adopted June 27, 1981, OAU doc. CAB/LEG/67/3rev.5, 21 I.L.M. 58 (1982) entered into force October 21, 1986, ratified by Angola on March 2, 1990.

<sup>7</sup> Banjul Charter, art. 9 (right to receive information and express opinions).

<sup>8</sup> Lei Constitucional da República de Angola (Lei Constitucional), lei no. 23/92, de 16 de Setembro, art. 32.

<sup>9</sup> Lei Constitucional, art. 21.

<sup>10</sup> Johannesburg Principles on National Security, Freedom of Expression and Access to Information (Johannesburg Principles), adopted in 1996, E/CN.4/1996/39(1996), <http://www1.umn.edu/humanrts/instree/johannesburg.html> (accessed August 7, 2006).



from the ICCPR,<sup>11</sup> the Declaration on Freedom of Expression in Africa,<sup>12</sup> and the Principles on Freedom of Information Legislation.<sup>13</sup>

Angola is also a member of the Southern Africa Development Community (SADC). SADC has not adopted specific legal instruments or guidelines on freedom of expression, but in the Principles and Guidelines Governing Democratic Elections, SADC members committed to “safeguard the human rights and civil liberties of all citizens, including freedom of...expression....”<sup>14</sup>

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<sup>11</sup> Siracusa Principles on Derogation from the International Covenant on Civil and Political Rights (Siracusa Principles), adopted in 1985, E/CN.4/1985/4, Annex, <http://www1.umn.edu/humanrts/instreet/siracusaprinciples.html> (accessed June 5, 2006).

<sup>12</sup> Declaration of Freedom of Expression in Africa, adopted in 2002, [http://www.achpr.org/english/\\_doc\\_target/documentation.html?../declarations/declaration\\_freedom\\_exp\\_en.html](http://www.achpr.org/english/_doc_target/documentation.html?../declarations/declaration_freedom_exp_en.html) (accessed August 7, 2006).

<sup>13</sup> The Public’s Right to Know: Principles on Freedom of Information Legislation (Principles on Freedom of Information), UN Commission on Human Rights, Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Abid Hussain (Report of the Special Rapporteur Abid Hussain), E/CN.4/2000/63, January 18, 2000, Annex II.

<sup>14</sup> SADC Principles and Guidelines Governing Democratic Elections, Adopted August 2004, [http://www.sadc.int/english/documents/political\\_affairs/index.php](http://www.sadc.int/english/documents/political_affairs/index.php) (accessed August 17, 2006), principle 7.4.

## IV. The Context for Freedom of the Press in Angola

Despite the extensive obligations incumbent on the Angolan government deriving from the legal provisions described above, Angolan law and practice have in the past violated international standards on freedom of expression and information. Previous research by Human Rights Watch exposed deficiencies in press freedom legislation and relevant sections of Angola's Criminal Code that seriously hampered the exercise of press freedom, in particular by the private media.<sup>15</sup>

The Angolan constitution protects the “right to honor”<sup>16</sup> and the Criminal Code ensures this protection through sanctions for defamation (*difamação*) and *injúria* (the attribution of a negative characteristic to someone that may affect the person's moral dignity). In the past, public officials abusively invoked this legislation against journalists to silence criticism in the press regarding those public officials public and private activities. Journalists who openly criticized government officials were sometimes convicted of defamation and sentenced to prison as well as fined.<sup>17</sup> Some of the court cases are still pending after several years. Although the journalists involved have not been arrested and continue to practice journalism, they are under a constant *de facto* threat that the case may be restarted and they may be found guilty of defamation.<sup>18</sup>

In one case, the United Nations Human Rights Committee (HRC) ruled that the Angolan government violated its obligations under article 19 of the ICCPR by imposing restrictions on freedom of expression that were unnecessary and disproportionate to the aims it was trying to achieve. The 40-day detention, including 10 days of incommunicado detention of the journalist in this case was ruled by the HRC to constitute arbitrary detention in violation of article 9 of the ICCPR.<sup>19</sup>

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<sup>15</sup> Human Rights Watch, *Unfinished Democracy: Media and Political Freedoms in Angola*, July 14, 2004, <http://hrw.org/backgroundunder/africa/angola/2004/>.

<sup>16</sup> Lei Constitucional, art. 20.

<sup>17</sup> Human Rights Watch, *Unfinished Democracy*, pp. 18, 20.

<sup>18</sup> Human Rights Watch interview with a local journalist staff member of an international organization based in Angola, Luanda, April 2006 (follow-up Human Rights Watch email interview with the same staff member in October 2006).

<sup>19</sup> Human Rights Committee (HRC), communication no. 1128/2002, CCPR/C/83/1128/2002, April 18, 2005.

Many other violations of the right to freedom of expression have been previously documented by Human Rights Watch. These have included arbitrary imprisonment of, and violence against, journalists or editors who published stories that reflected poorly on the government (such as corruption or mismanagement of funds or institutions). Many have also been threatened into not writing about or publishing on certain subjects. The main private radio station in the country—the Catholic Church-run Rádio Eclésia—has been subjected to restrictions that have prevented it from broadcasting nationally, despite possessing the technical conditions to do so. Additionally, there have been several cases where journalists from private newspapers have been denied access to official government documents or public events.<sup>20</sup>

The long civil war in Angola and the many years of one party rule have left a fear of censorship on the part of journalists that has caused many to self-censor their work even today when addressing issues that could be viewed as controversial by the government.<sup>21</sup>

Although no serious events of violence against, or arbitrary arrests, of journalists have been reported in 2006, a number of occurrences demonstrate that the environment in which journalists exercise their profession is still not completely free of government interference.

Some journalists have reported to Human Right Watch that significant obstacles exist in the circulation of private newspapers throughout the country. Paper and printing costs are too high and exacerbated by excessive taxing. Transportation is extremely difficult and costly given the degree of destruction of infrastructure in the country due to the war. These obstacles have been aggravated by instances where newspapers containing articles critical of the government have been apprehended by unidentified individuals upon arrival in the provinces or where state subsidies are

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<sup>20</sup> Human Rights Watch, *Unfinished Democracy*, pp. 17-25.

<sup>21</sup> Human Rights Watch interviews with journalists and international organizations, Luanda, April and August 2006.

provided only to state owned media.<sup>22</sup> This situation seriously jeopardizes access to information.

Journalists in private newspapers have also pointed out that the government often releases important information on Fridays, when the weekly private newspapers are in print already and can only comment on the issue one week later, when it is already “old news”.<sup>23</sup> One journalist, for example, reported that this occurred a few months ago when the government released on Saturday, April 1 2006, the results of the Commission of Enquiry (sindicancia) that investigated the circumstances of the exoneration of the former head of the External Intelligence Services, General Fernando Miala.<sup>24</sup>

On some occasions journalists have been forbidden to use cameras to cover news facts or had their cameras apprehended by the police. A journalist from *O Angolense* told Human Rights Watch that he was warned by the police not to carry his camera while visiting the neighborhood of São Paulo, where he was investigating reports of alleged police harassment against street vendors. Another journalist told Human Rights Watch that journalists have not been allowed to use cameras when covering events of forced evictions and demolitions.<sup>25</sup>

The following section analyzes the provisions of the new press law in light of international standards on freedom of expression and information.

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<sup>22</sup> Human Rights Watch, *Unfinished Democracy*, pp. 24; Human Rights Watch interview with Angolan journalist, Luanda, April 2006.

<sup>23</sup> All private newspapers in Angola are weekly and come out on Saturday.

<sup>24</sup> Human Rights Watch interview with Angolan journalist, Luanda, April 2006.

<sup>25</sup> Human Rights Watch interview with Angolan journalist, Luanda, April 2006. Several cases of forced eviction and demolitions have taken place in Luanda over the past five years. In 2006 there was one such case that attracted a lot of media attention, in Cambambas, in March 13-14.

## V. Analyzing the Press Law

### Criminal responsibility for certain conduct

#### 1. Definition of crimes

The press law defines two specific categories of conduct that may constitute crimes: “crimes of abuse of freedom of press” and “crimes of disobedience”. Some of this conduct is also defined as a crime under the Criminal Code, but in the press law it is either formulated differently or made specific to situations where the crime is committed by media companies or professionals.

The definition of “crimes of abuse of freedom of press,” in particular, does not meet international human rights standards on freedom of expression. According to article 74 of the press law, “crimes of abuse of freedom of press” include:

- “[S]preading information inciting secession”.
- “[S]preading information that causes disruption of public order and tranquility, social panic or distrust in the financial and banking system”.
- “[F]raudulent promotion (promoção dolosa) of persecution and defamation campaigns, through the systematic and continued publication of partially or totally false information about facts, attitudes, and professional, administrative or commercial performance of any person.”<sup>26</sup>

Human Rights Watch takes the position that, as a principle, the criminalization of defamation is unnecessary and disproportionate and, in itself, a violation of the right to freedom of expression. The United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression (UN Special Rapporteur) has also recommended that defamation suits should give rise to civil and not criminal responsibility.<sup>27</sup>

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<sup>26</sup> Lei da Imprensa, lei no. 7/06, de 15 de Maio de 2006, art. 74 no. 2(b), (c), (d).

<sup>27</sup> UN Commission on Human Rights, Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Ambeyi Ligabo (Report of the Special Rapporteur Ambeyi Ligabo), E/CN.4/2006/55, December 30, 2005, para. 51, 55.

Article 74 of the law also frames defamation in terms that are overly broad and liable to a politicized application. The UN Special Rapporteur has defined defamation as “an intentional false communication that injures another person’s reputation, being the communication without the consent of the allegedly defamed person”.<sup>28</sup> The concepts of “persecution” and “partially false information” go beyond this ambit and are undefined. Other crimes of “abuse of freedom of expression” outlined above are also defined in terms that are susceptible to over-broad interpretation (“disruption of public order and tranquility”, “social panic”, or “distrust in the financial and banking system”).

In light of Angola’s past record in suppressing press freedom, such rights would be better protected through the adoption of regulations detailing the content of such categories. This would also help ensure that the application of these provisions of the press law will not be contrary to the basic legal principle that a crime must be defined in the most clear and specific terms so that citizens know exactly what conduct may constitute a crime and what penalties they may incur by adopting such conduct (*princípio da tipicidade da lei*).

## 2. Penalties

According to the new press law, “crimes of abuse of freedom of press” are punished by penalties set forth in the Criminal Code. Such penalties should be financial “if higher penalties are not applicable”.<sup>29</sup> The law, however, does not define “higher penalties” or refer to the conditions that may give rise to them. The usual legal interpretation of this term is that “higher penalties” may include prison sentences if and when so envisaged in the Criminal Code. Prison sentences for both defamation and “injúria” are envisaged in the Criminal Code.<sup>30</sup> Although “injúria” is not listed in the press law as a “crime of abuse of freedom of expression”, publications can be suspended if they publish information that gives rise to conviction for this crime (see below).<sup>31</sup>

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<sup>28</sup> Report of the Special Rapporteur Ambeyi Ligabo, para. 45.

<sup>29</sup> Lei da Imprensa 2006, art. 74 no. 3 (crimes of abuse of freedom of press).

<sup>30</sup> Código Penal, Código Penal de Angola, Decreto de 16 de Setembro de 1886 (in force through article 58 of the Constitution and subsequently amended by multiple laws), art. 407, 410 (defamation and *injúria*).

<sup>31</sup> Lei da Imprensa 2006, art. 77 no. 1 (suspension of publications).

“Crimes of disobedience” are punished by financial penalties only, but the definition of these penalties is deferred to subsequent regulation.

Any media that publishes a text or image giving rise to three convictions for defamation, injúria, “disobedience” or “abuse of freedom of press” over a period of three years will be suspended by judicial order for periods that range from a few weeks to one year.<sup>32</sup> The director of a media company who is convicted for three crimes committed “through the press, radio or TV” is barred from directing any media company for 3 years.<sup>33</sup> The circulation of foreign publications containing text or images “susceptible to incrimination” can be suspended by a court, at the request of the public prosecutor’s office.<sup>34</sup>

The UN Special Rapporteur has stated that “suspension of the right to express oneself through any particular form of media or to practice journalism or any other profession...should never be available as a sanction for the breach of defamation laws.”<sup>35</sup> By these terms, the Angolan law provisions above are excessive. This is particularly the case with the suspension of foreign publications, for which the press law does not require a conviction for defamation or other crime, but merely a request by the public prosecutor’s office to suspend a publication on the grounds that it contains information that potentially fits a crime in Angolan law. This means that a foreign publication could be suspended before it has the chance to defend itself against a criminal accusation and before a court reaches a final decision on the case. In practical terms, this may also be economically devastating to publications that cannot wait out the time it would take to challenge such a suspension in the courts. Additionally, suspension for a potential infraction is more far-reaching in effect than even prior censorship, which is strongly disfavored under international law, other than in exceptional cases.

In general, criminal lawsuits follow a procedure described by the Code of Criminal Procedure. Such procedure sets forth procedural steps and deadlines aimed at guaranteeing due process and impartiality. According to the new press law, suits for

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<sup>32</sup> Lei da Imprensa 2006, art. 77 no. 1, 2.

<sup>33</sup> Lei da Imprensa 2006, art. 77 no. 4.

<sup>34</sup> Lei da Imprensa 2006, art. 77 no. 3.

<sup>35</sup> Report of the Special Rapporteur Ambeyi Ligabo, para. 52.

“crimes of abuse of the freedom of press” are considered urgent (no justification for designating these suits as urgent is provided in the law). As urgent cases, all procedural deadlines set forth in the Code of Criminal Procedure are reduced to half expediting the procedure and cutting to half the total length of the lawsuit. Judicial procedures in Angola are generally considered lengthy, so this provision could be considered a positive measure. However, judges adjudicating such cases must ensure that, in applying this rule, they do not curtail the right of the defendant to have minimum adequate time to prepare his or her defense.

Under the previous press law, there was a provision that prevented a journalist accused of defamation from using the truthfulness of the facts (“veracity of facts”) the journalist reported in his or her defense in cases involving the Angolan president and other heads of state.<sup>36</sup> This was an exception applicable only to the president that permitted journalists to be subject to criminal charges, including prison sentences, for anything the journalist said which the head of state did not like—even if proven to be true. This section was eliminated from the new press law bringing it in line with the general rule of the Code of Criminal Procedure on this issue, which states that the admissibility of the ‘veracity of facts’ will be decided by the judge in each specific case.

However, there are still several provisions in the Criminal Code that award higher protection against defamation and injuria to public officials than to private citizens. Article 114 provides that the penalties defined for defamation cases will apply to any act that offends the respect (“consideracao”) owed to “public authority”.<sup>37</sup> Article 181 also provides for a prison term of one year for anyone who offends, through words, threats or acts, a variety of public officials, including ministers or state counselors, members of parliament and commanders of a public force.<sup>38</sup>

These provisions are contrary to the well established principle under international law that the media should be afforded higher protection of the law when covering matters of public interest and that politicians and other public figures must tolerate

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<sup>36</sup> Lei da Imprensa, lei no. 22/91, 26 de Março de 1991, art. 46 (revoked by law 7/06).

<sup>37</sup> Código Penal, art. 414 (offenses to public authority).

<sup>38</sup> Código Penal, art. 181 (*injuria* to public authorities).



a higher degree of scrutiny and potentially criticism. Both the European Court of Human Rights and the Inter-American Commission on Human Rights have affirmed these principles in their jurisprudence.<sup>39</sup>

## **Limitations to the exercise of freedom of press**

The Angolan press law states that the exercise of the freedom of the press can be limited by “principles, values and constitutional and other legal rules” that “protect and ensure the right to good name, image and word, and the preservation of intimacy of the private life of citizens.”<sup>40</sup> On their face, these limitations do not violate international standards, which allow restrictions to freedom of expression when they are necessary for the respect of the rights or reputation of others or for the protection of national security, public order and public health or morals.<sup>41</sup> However, the practical implementation of this provision, in particular the definition or interpretation of the “principles and values” that may legitimately limit freedom of expression, remains a concern in light of the fragile capacity of the judiciary.

Additionally, the law states that journalists cannot obtain information through “disloyal” means.<sup>42</sup> Since there is no definition in the press law of what “disloyal” means or what acts might constitute “disloyalty” and bearing in mind that no strong tradition of rights protection exists within the Angolan judiciary, a general word such as “disloyal” is an invitation to abusive criminalization of press speech.

## **Licensing procedures for private TV and radio broadcasting**

Private broadcasting plays a crucial role in ensuring the dissemination of diverse and independent views in democratic societies. It facilitates the media’s role of publicizing and checking government action. Private broadcasting also contributes to guaranteeing freedom of expression by ensuring diversity of views on public policies and political issues and by making any abuses in this area known to the general public.

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<sup>39</sup> European Court of Human Rights, *Oberschlick v. Austria*, Judgment of 23 May 1991, Series A no. 204, para. 59. See also, *Lingens v. Austria*, Judgment of July 8, 1986, Series A no. 103, para. 42.

<sup>40</sup> Lei da Imprensa 2006, art. 7 no. 1(b). The “good name and reputation of citizens” is also protected by article 20 of the constitution.

<sup>41</sup> ICCPR, art. 19(3).

<sup>42</sup> Lei da Imprensa 2006, art. 7 no. 2 (limitation to the exercise of freedom of expression).

The new press law sets forth the basic rules for licensing private TV and radio broadcasters. Licenses are awarded through public tender, which must be proposed by the Ministry for Media Communication and the Ministry for Post and Telecommunications and launched by the Council of Ministers. The results of the public tender are also approved by the Council of Ministers. Following this, a license title (*alvara*) is granted by the Ministry for Media Communication but only after the Ministry for Post and Telecommunications issues a positive advisory opinion (*parecer*). Broadcasting companies must have a different license title (*alvara*) for each wave frequency they broadcast in.<sup>43</sup>

The Declaration on Freedom of Expression in Africa stipulates that an independent regulatory body issue broadcasting licenses and monitor the fulfillment of license conditions.<sup>44</sup> Although specific criteria and procedures for licensing TV and radio broadcasters are to be established by subsequent legislation (see the section on the need of implementing laws and regulations below), the basic rules established in the press law have created an overly bureaucratic process and excessive reliance on governmental bodies, rather than independent bodies.<sup>45</sup> The press law establishes an independent regulatory body—the National Council on Media Communication—but it does not set forth its functions or powers, including with regard to licensing procedures.

Currently, no private TV broadcasters are operating in Angola. There are a few private radio stations operating in the country although none cover the whole territory. One of these stations—Radio Eclésia—has for a long time had the technical means to broadcast nationally but the government has failed to authorize such broadcasting.<sup>46</sup> According to the press law, radio companies presently broadcasting have six

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<sup>43</sup> Lei da Imprensa 2006, arts. 45, 47 (licensing and condition for operation of radio and TV broadcasters).

<sup>44</sup> Declaration of Freedom of Expression in Africa, principle V (private broadcasting).

<sup>45</sup> Lei da Imprensa 2006, arts. 45, 46, 47 (licensing and condition for operation of radio and TV broadcasters).

<sup>46</sup> Radio Eclésia and Radio Luanda Antena Comercial broadcast in Luanda province. Radio 2000 broadcasts in Huíla, Radio Morena in Benguela and Radio Comercial in Cabinda. Radio Eclésia had a license to broadcast nationally under colonial rule. After independence its assets were ceased and it was only authorized to broadcast again in 1992. At that time, transmissions were limited to Luanda as the transmitters used to reach other provinces no longer worked. Once these were operational again the direction of Radio Eclésia wrote a letter to the relevant ministry informing it was undertaking trial national transmissions. It received a letter from the Minister in reply, stating that this would be illegal. To date, and despite efforts by Radio Eclésia, the government has not authorized the extension of Radio Eclésia's signal outside of Luanda.

months to “adjust to the law”,<sup>47</sup> but there are no provisions setting up the procedure for such adjustment.

## **The need for implementing laws and regulations**

Several provisions of the press law are formulated in general terms and are left to be detailed through subsequent implementing laws and regulations.<sup>48</sup>

According to article 87, “the present law should be regulated by the government within 90 days.” This regulation will detail many principles and procedures that, in the absence of a regulation, remain ineffective. At the time of publication of this paper the deadline had expired and no such regulation had been issued.<sup>49</sup>

In addition, many articles establish new bodies, codes, statutes, and procedures that will be, according to the press law, further detailed by specific laws (*lei propria* or *lei especial*). No deadline is set for enacting these. The lack of such legislation renders several provisions of the press law inoperable.

Article 2 of the ICCPR states that a party to the Covenant should “adopt such laws or other measures as may be necessary to give effect to the rights recognized in the...Covenant.” According to its international obligations, therefore, the government of Angola should enact implementing laws and regulations as a matter of urgency.

Since the new press law revokes previous legislation on the matter but does not establish transitional arrangements to be applied pending the adoption of its regulation and further specific legislation, a legal void was created in relation to many aspects of freedom of press, which are detailed below. Implementing laws and

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<sup>47</sup> Lei da Imprensa 2006, arts. 48 no. 3 (exercise of radio broadcasting activity).

<sup>48</sup> It is a common feature of civil law countries to issue first broad laws with general provisions, followed by specific legislation detailing aspects of its implementation. When implementing legislation is not enacted, or when it takes too long to enact, many provisions of a law can remain inoperable. The implementing legislation can take the form of a regulation (*regulamento*), which is approved by the Government through a decree. It can also take the form of another law, which is enacted by the parliament. It is most common that implementing legislation to a law will take the form of a regulation approved by government decree, but depending on the subject matter, it may also take the form of another law passed by the parliament. It is common, and it is the case with the new Angolan Press Law, that a law will not always specify which of these types of laws and regulations are required for its implementation but that it uses general expressions such as “special legislation” or “special law” (*lei ou legislação especial*), specific law (*lei propria*) or legal diploma (*diploma legal*).

<sup>49</sup> The law entered into force on May 15, 2006, so the 90 days expired on August 13, 2006.

regulations on these matters, once adopted, must reflect international standards on freedom of expression.

### *1. Public Broadcasting Service*

Article 9 of the press law states that the government ensures the existence of a public broadcasting service, the creation and functioning of which will be detailed through a specific law. The establishment of this service aims to guarantee the “right of citizens to inform, seek information and be informed”<sup>50</sup>. Although similar public broadcasting services have been created in many countries around the world, it is crucial that safeguards are put in place to guarantee that such service is impartial and independent. This is especially true in Angola where the public TV and radio service are awarded, respectively, to the existing Public Angolan Television (Televisão Pública de Angola, TPA) and the National Angolan Radio (Rádio Nacional de Angola, RNA), through concession agreements.<sup>51</sup> TPA and RNA are both currently state owned media and, in the case of TPA, a state monopoly. Serious concerns remain about balance in the broadcasting of news and information in both vehicles, with disproportionate attention given to activities of the government and ruling party.

These concerns about political bias are exacerbated by the fact that, currently, the directors of both TPA and RNA are appointed by the government. The implementing legislation should be urgently enacted to define the principles and functioning of the public broadcasters and the guidelines for concession agreements. Its text should include provisions on funding, accountability and rules of membership. Powers and responsibilities should be clearly stated and independence explicitly guaranteed. In particular, public service broadcasters should be governed by a board which is protected against political, economic or other interference, its editorial independence should be guaranteed and they should be protected from arbitrary interference by the government in their budgets. Public service broadcasters should contribute to plurality of opinions, provide accurate and impartial information and be widely accessible to the population. They should ensure that the public receives politically balanced information during election periods.

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<sup>50</sup> Lei da Imprensa 2006, art. 9 (public TV and radio service).

<sup>51</sup> Lei da Imprensa 2006, art. 50, 61 (public TV and radio providers).

## *2. National Council for Media Communication*

Article 8 of the press law states that “[t]he National Council for Media Communication is an independent body aimed at safeguarding the objectivity and impartiality of information, as well as the freedom of expression and thought in the press.” The very establishment of a statutory body to regulate the media is in itself a concern. International practice indicates that self regulation in the media is highly preferable, especially in countries where rule of law and democracy are still not consolidated. The Declaration of Principles on Freedom of Expression in Africa affirms that “[e]ffective self-regulation is the best system for promoting high standards in the media.”<sup>52</sup>

Article 8 further states that the composition, competences and functioning of the Council will be regulated by a specific law (*lei propria*).<sup>53</sup> Currently, there is a similar council in operation but its mandate has formally expired. While the new council awaits activation by a specific law and executive appointment, the status of the existing council remains unclear. A new law should be urgently drafted and tailored to avoid this uncertainty and to provide the specific principles and powers under which the new council will operate. In this regard it is important to include provisions in the new legislation to safeguard real independence of the new council. The current body, for example, includes members which represent political parties and this may render the body vulnerable to political interference.

## *3. The regulation of journalism: the Journalists’ Statute, the Journalists’ Code of Conduct, and the Commission on the Press Card and Ethics*

Article 21 of the press law establishes that the practice of journalism shall be regulated by the Statute of Journalists (*Estatuto do Jornalista*) and the Journalists’ Code of Conduct (*Codigo Deontologico*). Both the statute and the code of conduct are important to protect journalists’ rights, as well as to ensure professional responsibility. The law states that the Statute of Journalists will be approved by the government and that journalists’ unions and associations should be consulted in the process of drafting the statute. The law, however, does not specify the nature and

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<sup>52</sup> Declaration of Freedom of Expression in Africa, Principle IX (complaints).

<sup>53</sup> *Lei da Imprensa* 2006, art. 8 (National Council for Media Communication).

extent of their participation. The government should ensure meaningful participation of these representative associations in all phases of the drafting process and that their concerns and recommendations are duly taken into consideration by legislators. According to the press law, the statute should define who is a journalist, a journalist's rights and duties and the conditions for issuing, renewing, suspending and confiscating the press card.<sup>54</sup> The government should also set up, without delay, the Commission on the Press Card and Ethics, the body comprised of journalists and responsible for issuing the press card. Finally, it is also vital that the government fully respects the provisions of the press law stating that it is the role of the professional associations to draft and approve the Code of Conduct.<sup>55</sup>

#### *4. Broadcasting licenses*

The criteria and procedures for applications for radio and TV broadcasting licenses will be defined by a special law (see section on licensing procedures above).<sup>56</sup> This law should include provisions that guarantee that license applications are assessed in a transparent manner, according to clear and precise criteria and that, whenever denied, refusals should be accompanied by written justification.

#### *5. The use of national languages and the establishment of community radios*

Other provisions of the press law could be better clarified by implementing regulations, although the current absence of such regulations does not render these provisions ineffective as in the cases mentioned above.

The press law regulation should require the government to make efforts to remove any obstacles to the circulation of print media to Angola's inland provinces. This is an essential step towards guaranteeing access to information in rural areas, which has been consistently reported as a problem in the country.<sup>57</sup> At the moment the circulation of private newspapers outside the capital city, Luanda, is very limited. High printing and transportation costs are, for example, an obstacle to the broad

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<sup>54</sup> The press card is essentially a license to work as a journalist.

<sup>55</sup> Art. 21(4) of the press law states that "[t]he Code of Conduct is adopted by the associations of journalists in an assembly especially convened."

<sup>56</sup> Lei da Imprensa 2006, art. 46, 60 (licensing procedures for radio and TV broadcasters).

<sup>57</sup> Human Rights Watch, *Unfinished Democracy, World Report 2006*, (New York: Human Rights Watch, 2006), <http://www.hrw.org/wr2k6/wr2006.pdf>, p. 74. Associação Justiça, Paz e Democracia, "Angola: Violation of my Rights Hidden by the Country's Peace Process and Expectations for the Next Elections," Luanda, May 2006, pp. 21-26.

circulation of newspapers. The government could change this situation through measures such as reducing taxes on paper for print media or facilitating the transportation of newspapers to other provinces in the state owned air company (TAAG). Easy and broad circulation of information from diverse sources is crucial to ensuring the population makes informed decisions in the upcoming elections. The Declaration on Freedom of Expression in Africa states that “[e]fforts should be made to increase the scope of circulation of the print media, particularly to rural communities.”<sup>58</sup>

Access to information could also be improved through the circulation of information in national languages spoken in different provinces of Angola. According to the press law, media companies should, in principle, convey information in national languages but this should be done in accordance with a regulatory framework that is not yet established.<sup>59</sup> Although the state owned TV and radio broadcast programs in national languages<sup>60</sup> there is currently no incentive for private media to also do so.

The future regulation of the press law should also clarify the procedure for the setting up of community radios which, for the moment, do not exist in Angola.<sup>61</sup> Although the establishment of such radios is foreseen by the press law, absent implementing laws and regulations outlining the criteria and procedure for the granting of licenses, these radios can not yet be created. Community radios could play a crucial role in disseminating information to rural areas in advance of the elections. This is particularly important in Angola where illiteracy rates are very high and radio is the media vehicle that reaches the widest proportion of the population.

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<sup>58</sup> Declaration of Freedom of Expression in Africa, principle VIII (print media).

<sup>59</sup> Lei de Imprensa 2006, art. 12 (national languages).

<sup>60</sup> Portuguese speakers in Angola: 26 percent; Umbundo speakers: 30 percent; Kinbundo: 16 percent; Others: 28 percent (data from 1999). In Tony Hodges, *Angola – Do Afro-Stalinismo ao Capitalismo Selvagem*. (Lisbon: Principia, March 2003), p. 47.

<sup>61</sup> Lei da Imprensa 2006, art. 54 (radio coverage at the national, regional and community levels).

## **VI. Conclusion**

Approving a new press law was an important and long awaited step by the Angolan government towards ensuring freedom of expression in the country. However, the provisions that establish criminal responsibility for media professionals and limitations to the exercise of freedom of press are still not in accordance with international human rights law and standards. Unless these provisions are amended, freedom of the press during the pre-election and election periods will be compromised, and thus the credibility and integrity of the electoral process itself will be compromised as well.

It is imperative that the government immediately put in place all the implementing laws and regulations required by the press law to give effect to its provisions. Many positive aspects of the law—the creation of a public information service, the licensing of private radio and TV broadcasting and the establishment of a Commission on the Press Card and Ethics—will remain inoperable in the absence of such laws and regulations. Since the previous press law is expressly revoked by the new law, the lack of implementing laws and regulations will create legal uncertainty and render the exercise of freedom of expression liable to restrictions and manipulation.



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