

**Angola's 3rd Universal Periodic Review
34th Session (Oct-Nov 2019)**

**Addendum by:
Southern Africa Litigation Centre**

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The Southern Africa Litigation Centre (SALC) promotes and advances human rights and the rule of law in Southern Africa, primarily through strategic litigation support and capacity building.

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In March 2019, the Southern Africa Litigation Centre made a submission for Angola's 3rd UPR. At the time, SALC requested an opportunity to make supplementary submissions once Angola's new Penal Code becomes available. These are our submissions in relation to the new Penal Code, which highlights both the positive and concerning aspects of the Penal Code.

Addendum in Response to the New Penal Code

1. On 23 January 2019, Angola passed a new Penal Code. According to Angolan law, the Penal Code is not released to the public until a 90-day waiting period has passed. In early June, SALC obtained a copy of the new Penal Code.
2. Article 2(3) of the Penal Code stipulates that where persons were sentenced for a crime that no longer exists, the execution and effects of the sentence must cease immediately. This places a requirement on the State to conduct an inventory of those persons sentenced to imprisonment for offences which are not in the current Penal Code, and to process their release.

Freedom of Expression

3. Article 216 of the new Penal Code retains the offence of criminal defamation. The offence is punishable with fines or a custodial sentence of up to a year.
4. The criminal defamation offence in Article 216 is slightly more circumscribed than in other jurisdictions:
 - a. It requires that the criminal defamation was directed at and received by a third party.
 - b. The sentence is aggravated where such defamation is formulated based on race, color, ethnicity, place of birth, sex, sexual orientation, illness or physical or mental disability, belief or religion, political or ideological beliefs, social condition or origin or any other cause of discrimination in respect of a person or group of persons.
 - c. The defenses to this charge include public interest, truth and good faith.
 - d. Defenses are not applicable where the defamation relates to a person's privacy and private life.
5. Some jurisdictions in Africa have concluded that the offence of criminal defamation is disproportionate in its limitation of freedom of expression because of the chilling effect of the offence, the existence of a civil remedy, and the severe impact of imprisonment. This position was taken by the Zimbabwe Constitutional Court,¹ by the African Court on Human and Peoples' Rights,² by the Kenya High Court³ and by the Lesotho Constitutional Court.⁴ The African Commission on Human and Peoples' Rights has issued a resolution calling for the repeal of criminal defamation laws and insult laws.

¹ *Madanhire and Another v Attorney General* CCZ 2/2014, [2014] ZWCC 2.

² *Lohé Issa Konaté v The Republic of Burkina Faso*, (2014) App 004 of 2013.

³ *Okuta and Another v Attorney General and Others*, Petition No. 397 of 2016 [2017] eKLR.

⁴ *Basildon Peta v Minister of Law, Constitutional Affairs and Human Rights and Others* (CC 11/2016) [2018] LSHC 3.

6. The offences of slander and criminal defamation are similar in nature and the same concerns relating to the impact of the offence of criminal defamation mentioned above applies to slander.
 - a. Article 217 retains the criminal offence of slander. The offence is punishable with fines or a custodial sentence of up to two years. However, the offence does not have the same defenses applicable to criminal defamation.
 - b. Article 218 raises the penalties for slander and criminal defamation for those acts which occur through wider publication. According to Article 218(2), the highest penalties are subjected to those who are convicted of criminal defamation or slander which is disseminated through “information systems”, which definition includes the internet.
 - c. Article 219 criminalizes the slander of the memory of a deceased person.
7. The above offences may be waived by the court if the offence was caused by unlawful or reprehensible conduct of the victim (Article 221).
8. Articles 328 and 329 prohibit insulting or defaming the honor of foreign States or their symbols or leaders. These offences will only be prosecuted when there is a complaint by a foreign government (Article 330).
9. Article 335 makes it an offence to cause outrage or insult to the State, its symbols or its organs. This includes causing insult to the President of Angola. The offence is punishable with fines or a custodial sentence of up to three years. The offence of defamation of the President does not contain the explicit defences that exist in the offence of criminal defamation. The offence is broader in application than that of criminal defamation and does not fit in a democracy where a President is elected and as a public officer should be willing to face criticism. Public figures ought to be required to tolerate a greater degree of criticism. The sanction is further so severe as to inhibit freedom of expression. It is a great concern that the offence extends to the State, its symbols or organs, as has a chilling effect of freedom of expression.
10. Article 226(1)(e) codifies the offence of the intentional publication of false news. The offence is punishable with fines or a custodial sentence of up to six months.
11. Article 226(1)(d) prohibits the dissemination of information obtained by fraudulent means, but does not provide a defense of public interest, truth and good faith.
12. Our March submission refers to the arrest of Rafael Marques in June 2017 and three Angolan students in August 2018. They were all charged with defamation of the president, a charge which remains under the new Penal Code. Angola should remove custodial sentences for the crimes of criminal defamation, slander, sedition, publication of false news, and insult to the State or the President. Furthermore, Angola should repeal these sections from the Penal Code altogether, as criminal liability for these offences risk curtailing the right to freedom of expression as protected under international law and the constitution of Angola. Similar provisions are also contained in the Press Law and were not repealed by the new Penal Code.

13. We would like to draw attention to the 2012 Resolution of the United Nations Human Rights Council,⁵ which affirms that “the same rights that people have offline must also be protected online, in particular freedom of expression, which is applicable regardless of frontiers and through any media of one’s choice”. The heightened penalties for commission of sedition and criminal defamation offences on “electronic information systems” creates a cooling effect for the exercise of freedom of expression online. The ability of Angolans to exercise their rights online should be the same as their ability to exercise their rights in the public square. The Angolan government should take steps to encourage access to the internet, and regulate it in the same way as other spaces where people express opinions and ideas.
14. We welcome the provisions aimed at protecting the media. Article 228 prohibits the disruption of the media. Article 443 prohibits the interruption of electronic communication systems or computer systems.

15. Recommendations

- a. Remove the custodial sentence for the offence of criminal defamation or repeal the offence.
- b. Repeal criminal slander offences.
- c. Remove criminal liability for the spread of false news.
- d. Repeal the offence of insulting the foreign States, the Angola State or the president.
- e. Remove heightened liability for offences committed online.

Torture

16. Article 372 of the Penal Code prohibits torture, cruel, inhuman or degrading treatment, carried out by person law enforcement and criminal justice personnel. It imposes a penalty of 1 to 6 years, unless another Penal Code provision imposes a more severe penalty for the person’s actions.
17. Article 374 provides that persons superior to those who carried out the torture or cruel treatment, can be held criminally liable where they failed to denounce such actions once they became aware of it, and in instances where they expressly or tacitly allowed the practice by a subordinate, in which case they are liable to an aggravated sentence.
18. The Penal Code criminalizes crimes against humanity, and genocide, and has gone further to criminalize “other crimes against humanity”, and “other war crimes” under international law, thus ensuring that these provisions are not cast in stone and incorporates developments in international law (Articles 386 and 390).

Child Justice

19. The Penal Code includes some important provisions on child justice. The effectiveness of these provisions would depend on their implementation and subsidiary legislation.

⁵ “The promotion, protection and enjoyment of human rights on the Internet” HRC/RES/20/8 (2012).

20. Article 17 of the Penal Code provides for reduced sentencing in the case of minors and that their sentences be served in facilities for child offenders aimed at recovery, education and training. The provision prohibits the incarceration of children with adults.

Criminal Justice

21. The Penal Code provisions relating to detention and sentencing of offenders are welcomed for their endeavors to create a more just criminal justice system:

- a. Article 40(2) states that the execution of the prison sentence should be directed towards reintegration of the prisoner into society.
- b. Article 40(4) emphasizes that convicted persons who are deprived their liberty still retain their fundamental rights.
- c. Article 44(2) states that a prison sentence may never exceed 35 years, even in the case of recidivism.
- d. Article 45(1) states that where a sentence is to less than 6 months' imprisonment, it must be substituted with a fine unless imprisonment is required to prevent commission of future crimes.
- e. Article 56 provides that where a sentence is for less than 1 year, it can be replaced with community service, provided that the length of work may not exceed those of a normal working day.
- f. Article 58 provides that judicial admonition can be a sufficient sentence.
- g. Article 71 provides that it is an aggravating factor in sentencing, where the crime was committed in circumstances of discrimination; through an abuse of power; against a child, older person or pregnant woman or against person experiencing misfortune.
- h. The Penal Code does not criminalize acts related to begging or vagrancy, except where the begging is coerced.

22. The Penal Code contains some provisions which could be abused. For example:

- a. Article 87 provides that a person who committed a crime whilst under the influence of alcohol can face an extended sentence if the person is a repeat offender or the extension of sentence is necessary to assist the convicted person from recovering from alcoholism. Whilst such an approach might sound practical, it is a punitive response to a problem which is better addressed through psycho-social support interventions.
- b. Article 101-106 allows for the detention of persons with mental and psychosocial disabilities who committed a wrongful act, and where it is feared that they might commit similar acts. Whilst there are provisions of judicial oversight, our experience is that persons so incarcerated do become lost in the system and are not always treated with the care they require.

Abuse of Power and Corruption

23. Several provisions in the Penal Code seeks to address corrupt and abuse behavior by public officials or persons in a position of authority:

- a. Article 64 provides that a holder of public office who is convicted of a crime will also be prevented from occupying a public office when the crime was committed through serious abuse of power.
 - b. Article 375 criminalizes the processing of a person through the criminal justice system knowing that such person is innocent.
 - c. Article 376 specifically criminalizes the act of abusing power inherent in a person's position with the intention of obtaining a benefit or causing harm to another person.
24. A more problematic provision is Article 110, which prevents a person from exercising a profession, trade or industry, for a specific period, even in instances where that person was acquitted.
25. Article 350 criminalizes the refusal or delay by a prosecutor, magistrate or judge to administer justice. This provision is helpful to ensure improvements in the criminal justice system, however it could be used to deter strikes by prosecutors, magistrates or judges in legitimate instances.

Non-discrimination

26. The Penal Code introduces several measures aimed at fostering a culture of non-discrimination. We indicate in bold those grounds of discrimination which are particularly unique:
- a. Article 71 provides that discrimination in the conduct of a crime is an aggravating factor in sentencing: The grounds of discrimination are inclusive and include race, color, ethnicity, place of birth, sex, **sexual orientation**, disease or physical or mental disability, belief or religion, political or ideological beliefs, social status or origin or **any other form of discrimination**.
 - b. Article 172 criminalizes threats against persons' physical integrity, liberty, sexual self-determination or property. Sentence is aggravated where the threats were directed at a person because of their race, color, ethnicity, place of birth, sex, **sexual orientation**, illness or disability, belief or religion, political or ideological beliefs, status or social origin or **any other form of discrimination**.
 - c. Articles 210 and 211 might also be of assistance to groups who face discrimination. These sections criminalize the failure to provide aid or health care where a person's life is in danger.
 - d. Article 214 specifically criminalizes discrimination in the workplace because of race, color, ethnicity, place of birth, sex, **sexual orientation**, illness, physical or psychological disability, belief or religion, political or ideological beliefs, social status or origin or **any other form of discrimination**.
 - e. Article 382 prohibits the incitement to discrimination and hatred against a person or group of persons because of race, color, ethnicity, place of birth, sex, **sexual orientation**, illness, physical or psychological disability, belief or religion, political or ideological beliefs, social origin or **any other cause**.
 - f. Article 384 includes under crimes against humanity, the persecution on political, ideological, racial, ethnic, social, cultural or national grounds, gender, religion, **illness or physical or mental disability**, or **sexual orientation**.
27. Whilst these provisions are encouraging, criminalization of discriminatory behavior might not be the best way to address it, unless the sentence is carefully considered.

28. The Penal Code also recognizes the vulnerable position of women and children in society and criminalizes the abandonment of support for a spouse or child (Article 249).

Prescription of Offences

29. Article 129 of the Penal Code provides that crimes of genocide and crimes against humanity do not prescribe.

30. Article 202 of the Penal Code provides that sexual crimes committed against children do not prescribe until the victim reaches 25 years of age. It is submitted that whilst this provision acknowledges the difficulties experienced by children in reporting sexual abuse, it does not go far enough. Some persons who experienced child sexual abuse might not be able to disclose the offence until far into their adulthood due to the psychological impact the abuse had in their lives. It is submitted that child abuse and sexual offences should not prescribe.

Abortion

31. Article 158 provides for the instances in which abortion is permitted. Any acts outside of that provision are criminalized Article 156, which criminalizes both the pregnant woman, the service provider, and persons advertising abortion services outside of those permitted in Article 158.

32. Article 158 permits abortion a) when it is necessary to save the pregnant woman from death, or serious and irreversible injury to her physical or psychological integrity; b) when the fetus is not feasible; and c) when the pregnancy is the result of rape and the abortion occurs within the first 16 weeks of pregnancy.

33. Article 158(c) however only permits abortion after rape where there is a certificate from the Public Prosecutor's Office, and a medical report attesting to the rape. It is submitted that these requirements are overly onerous and might affect the extent to which a victim is able to access abortion services within the first 16 weeks.

34. Abortions permitted under Article 158 must be carried out by a physician in an official health center, and after the doctor has counselled the woman. Additional laws are required to further legislate such services to ensure that are accessible to women throughout the country and that women are aware of how to access these services.

Environmental Justice

35. The Penal Code includes provisions which prohibit pollution, although the maximum sentences attached to these provisions are negligible in the case of wide-spread pollution.