

Criminal libel has no place in law books

He has made it his mission "to expose, through my investigations, the scourge of corruption, which is robbing (Angola) of billions of dollars a year", journalist and human rights activist Rafael Marques de Morais said last year at the annual Carlos Cardoso Memorial Lecture.

 By Anton Harber 20 Mar 2015

There could not have been a more appropriate person to pay tribute to Cardoso, a Mozambican journalist assassinated in 2000 while investigating high-level corruption. Marques de Morais told how Cardoso had mobilised support for him when he was jailed in 1999 for calling Angolan President Dos Santos a corrupt dictator. He had promised to travel to Maputo as soon as he could to thank Cardoso and to talk about their mutual interest in exposing corruption. Marques de Morais could only visit Cardoso's widow.

At last year's lecture, Marques de Morais said of Cardoso and his fellow Angolan, Ricardo de Melo, who was gunned down in 1995 while investigating corruption: "They did not want to be heroes, but concerned citizens and dedicated professionals."

Remarkable courage

Of course, he could have been talking about himself and his remarkable courage in continuing his outspokenness while watching his colleagues being gunned down. He called on us to "campaign relentlessly for our peers who are wrongfully imprisoned".

Now Marques de Morais goes on trial in Luanda on March 24 for criminal libel. He published a book in Portugal in 2011, titled *Blood Diamonds: Torture and Corruption in Angola*, which recounted 500 cases of torture and 100 killings over 18 months in an Angolan mining area.

Seven Angolan generals, a civilian, two mining companies and a private security company have laid criminal charges against him and he faces 11 charges. In other words, he is going on trial for being a dedicated journalist, and for recording human rights abuses.

There are already worrying signs that he will get less than a fair trial. Human rights organisations have pointed to "numerous procedural irregularities", such as his legal team being given just five days to make submissions and present a list of witnesses, without seeing the case file.

Burdensome

Even if he gets a proper trial, the charge of criminal defamation can make it extremely burdensome to criticise those with power and has no place in democracies, which should welcome scrutiny of those in authority.

Just two months ago, the African Court on Human and Peoples' Rights ruled in a Burkina Faso case that imprisonment for defamation violates the right to free expression and could only be used in restricted circumstances. As Human Rights Watch said: "From Angola to Tunisia to Somalia, criminal defamation laws are used by governments to jail journalists... who try to expose corruption, critique government policy, and inform the public. International norms on freedom of expression standards hold that defamation should be

considered a civil matter, not a crime punishable with imprisonment."

Pansy Tlakula, the African Union's Special Rapporteur on Freedom of Expression, has been leading a continent-wide drive to have such laws repealed.

In SA, this law remains on our books: journalist Cecil Motsepe was charged with criminal defamation in 2011 for suggesting that a magistrate had racial bias. Last year the Pretoria High Court overturned his conviction but failed to knock down the old apartheid law that threatens to convict him for expressing what is a not uncommon opinion. (Am I risking criminal defamation by even suggesting this? That I have to ask that question shows the chilling effect of such laws.)

We can only hope that this law is tested soon before our Constitutional Court and that we, and Angola, fall in line with the international move to banish such old colonial laws from our books.

ABOUT ANTON HARBER

Anton Harber, Wits University Caxton Professor of Journalism and chair of the Freedom of Expression Institute, was a Weekly Mail (now Mail & Guardian) founding editor and a Kagiso Media executive director. He wrote *Diepsloot* (Jonathan Ball, 2011), Recht Malan Prize winner, and co-edited the first two editions of *The A-Z of South African Politics* (Penguin, 1994/2000). He also wrote *What is Left Unsaid: Reporting the South African HIV Epidemic* (Jacana, 2010) and *Troublemakers: The best of SA's investigative journalism* (Jacana, 2010).
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