

URGENT APPEAL TO THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS,
SPECIAL RAPPORTEUR ON THE SITUATION OF HUMAN RIGHTS DEFENDERS IN
AFRICA, HON. COMMISSIONER REMY NGOY LUMBU

URGENT PLEA TO THE UNITED NATIONS SPECIAL RAPPORTEUR ON THE SITUATION
OF HUMAN RIGHTS DEFENDERS, MS. MARY LAWLOR

LUANDA, JUNE 02, 2023

NON-GOVERNMENTAL ORGANIZATIONS OF THE ANGOLAN SOCIETY ARE EXPERIENCING REPRISALS, THREATS AND RESTRICTIONS IN THE EXERCISE OF THEIR RIGHTS, FREEDOMS AND FUNDAMENTAL GUARANTEES RECOGNIZED BY THE ANGOLAN CONSTITUTION AND INTERNATIONAL TREATIES REGARDING HUMAN RIGHTS.

A) FACTS

Associação KUTAKESA, Movimento de Defensores dos Direitos Humanos em Angola (KUTAKESA Association, Movement of Human Rights Defenders in Angola) is an Angolan Civil Society Organization founded three years ago, legally constituted and registered under the number 040/2022, with headquarters in Luanda.

Kutakesa and the Angolan civil society in general have learned, and are concerned, that on May 25, 2023, the 7th Ordinary Plenary Meeting of the National Assembly voted on the **DRAFT LAW APPROVING THE STATUS OF NON-GOVERNMENTAL ORGANIZATIONS.**

This draft law is a clear sign of the Angolan government's intention to further reduce the Angolan civic space, thus seriously compromising the private autonomy of non-governmental organizations, their freedom of association as well as the continuity of the work performed in recent years by Angolan civil society organizations and human rights defenders. This work has been fundamental in what concerns the contributions of non-profit and non-partisan associations to the consolidation of democracy and respect for the basic principles provided for in the Constitution of the Republic of Angola (CRA). This is through reports and recommendations on acts of corruption,

their consequences and negative impact on the lives of people, the realization of economic, social and cultural rights, and the independence and effective functioning of the justice system in Angola.

It is worth recalling that the work performed by Non-Governmental Organizations (NGOs), is part of the framework of a Democratic State under the Rule of Law (art. 2 and 21 al. I. of the CRA) that allows people, individually or collectively, to exercise their rights / duties as citizens through participation in public life and in social or political issues that affect them.

Now, with limited participation of people in social, economic, civil and political affairs that affect them, there can be no accountable governance. Without accountable governance there is room for more acts of impunity and abuse of power, corruption, influence peddling and, thus, society cannot prosper.

Non-Governmental Organizations (NGOs), pro-democracy activists, human rights defenders, land, environmental and indigenous peoples' advocates need an open civic space to be able to do their work without constraints of any kind.

The above-mentioned draft law promotes an environment of reduced or limited freedom of association and assembly. It not only increases the threats against human rights defenders and civil society, but also reduces the effectiveness of their work, thereby compromising social development and democracy in Angola.

In recent months, Kutakesa and other civil society players have witnessed an increasing and more visible reduction of the democratic space. It should be recalled that in March of this year, the leader of the Higher Education Teachers Union, Mr. Eduardo Alberto Peres, was the target of death threats, and in April, a demonstration by members of the Angolan Students Movement (MEA) was repressed by the police and 5 students were arbitrarily arrested, to cite just a few examples.

As Bossuyt, J. and Ronceray, M. (2020) define it, civic space is a public arena in which citizens can freely intervene and organize themselves in order to defend their interests, values, and identities; claim their rights; influence the development of

effective public policies; or hold those in power accountable without interference from anyone.

Many of the provisions of this draft law seriously violate the Constitution by being inhibiting and restrictive in nature and are a threat to the very existence of NGOs and human rights defenders. The provisions also undermine Angola's obligations to guarantee freedom of association and assembly as a State Party to the African Charter on Human and People's Rights. The African Commission on Human and Peoples Rights adopted the Guidelines on Freedom of Association and Assembly in Africa to assist States enact progressive laws.

The arbitrary manner in which the draft law was developed and approved overall by the ruling party means it will be used in an abusive way against human rights and the exercise of fundamental freedoms in Angola. It grants unconstitutional powers to the Holder of the Executive Power to interfere in the freedom of associations to freely pursue their objectives.

Here is the evidence:

B) BRIEF ANALYSIS OF THE DRAFT LAW APPROVING THE STATUS OF NGOS

The draft law that was debated and approved on the whole on May 25, 2023, with 105 votes in favor, 69 votes against and 2 abstentions, is an initiative of the Holder of Executive Power, The President of the Republic, Joao Manuel Goncalves Lourenco:

Following are the findings from our analysis:

i) Purpose and Background of the Draft Law

The explanatory report of the aforementioned draft law states that the Holder of the Executive Power in Angola has faced constraints and difficulties in fulfilling international commitments undertaken by the Angolan Government regarding money laundering and financing of terrorism (art. 14 par. 2 subpar. a), b) d) of the Draft Law), hence the need to monitor the sources, means of financing of NGOs and destination of the financial resources of these organizations.

This narrative of the Angolan government is not true and clearly demonstrates its aversion to civil society organizations that monitor and report on governmental misconduct. The financial support for NGO and human rights defenders' projects comes from well identified organizations, through banking institutions with strict compliance rules, and some of these donors are the same ones that support some government projects.

ii) Indeterminate Concepts

Kutakesa believes that the draft law approving the Status of NGOs includes some provisions that need clarified in the interest of the good interpretation of laws. For example, it is difficult to ascertain the meaning and the normative scope of article 19 par.1 subpar. d), which requires "*NGOs to abstain from subversive practices and actions or any practices and actions that can be perceived as such*". The question about this provision, which needs to be clarified, is: what is the understanding of the entity proposing the Law about subversive actions by NGOs?

The indeterminate concepts in the proposed law violate the principle of legality that requires the law to be clearly articulated and known in advance and not to be applied retroactively. Article 2 of the law approving the Status of NGOs requires existing NGOs to comply with the provisions of this law or else have their status and registrations revoked.

iii) Interference of the Government with NGOs' activities

KUTAKESA understands that the draft law on NGOs interferes with the activities and the private autonomy of NGOs, insofar as, in its article 6, it provides for the creation of a government entity to monitor the work of NGOs to ensure that they are in line with the interests of the Government.

Art. 7, paragraph c) of the draft law on NGOs mandates said entity, which is dependent on the holder of the executive power, to promote and propose to NGOs the execution of programs and projects complementary to those of the government and of the communities. This same mandate is reinforced in Article 19, under the heading

"duties", which, in paragraphs c) and e) requires Non-Governmental Organizations to participate in the implementation of economic and social programs approved by the government and to implement projects approved in the province and region of the national territory as a result of an agreement, contract or convention.

These provisions violate the essential content of the Right, Freedom and Guarantee of Associations provided for in art. 48 par. 2 of the Constitution, which expressly states that "associations freely pursue their objectives, without interference from public authorities (...)". These provisions are also prohibited by the African Commission Guidelines on Freedom of Association and Assembly in Africa

iv) Restrictions, Excessive Control and lack of alignment with Human Rights in the Draft Law

In art. 32 par. 1, the draft law provides for the relevant entity, to be created by the Holder of the Executive Power to monitor the activities of NGOs, to suspend the activities of NGOs. This provision is contrary to the spirit of the Constitution of the Republic (art. 48 par. 1 *in fine*) and to article 182 of the Angolan Civil Code, based on art. 37 of Law No. 06/12 of January 18 - Law on private associations, under which the dissolution or suspension of Associations (i.e., NGOs) may only take place in the following situations:

- Following a deliberation of the Association's General Assembly;
- Expiration of term, if the NGO has a temporary nature;
- Enforcement of any other dissolving cause provided for in the organization's bylaws or founding documents;
- Death or disappearance of all the members;
- Following a judicial decision.

Article 19, paragraph h) of the draft law limits the rights of NGOs, in that it imposes on them the duty to purchase goods and equipment to support the projects in the national market. Such a provision violates the consumer's right to quality goods and services and to freely choose the supplier of goods and services (cf. Art. 78 of the CRA).

Article 19 paragraph f) of the draft law approving the status of NGOs grants excessive powers to the Executive Branch to control NGOs by requiring them to provide information and send monthly, quarterly, semiannual and annual activity reports, during and at the end of projects.

We also consider the interference with the financial and administrative management of NGOs to be controlling. In fact, article 48 par. 1, states that the financial support from national and international donors is what best safeguards the implementation of NGO's activities without interference from any powers.

By forcing NGOs to purchase goods and equipment necessary for the implementation of projects only from the national market (art. 19 paragraph h)), the draft law violates article 78 of the Constitution on consumer rights. In accordance with paragraph 1 of the aforementioned article, a consumer is entitled to quality goods and services and information and should not be limited to the national market.

The excessive concern of the draft law with crimes involving money laundering and terrorism financing is unnecessary because there is already sufficient legislation in the Angolan legal system dealing with these types of crimes. Said legislation provides for criminal proceedings against legal persons of private law (NGOs) involved in such crimes, in accordance with Chapter VI, Articles 90 to 100, of the Angolan criminal code.

The draft law approving the status of NGOs is not in alignment with African Charter on Human and People's Rights, as well as the international human rights conventions and various binding commitments made by the Angolan state that require it to protect such rights, and not enforce the open general clause, as provided for in Article 26 paragraph 1 of the CRA.

Furthermore, the Draft Law on the status of NGOs is not in alignment with resolution 319 (LVII) 2015, issued by the African Commission, under Article 45 par. 1 subpar. b) of the African Charter on Human and Peoples' Rights, which states that supervision of associations should be assigned to a single entity, whose actions should be impartial and fair. It is Kutakesa's understanding that the draft law interferes with the life of NGOs and the free pursuit of their goals.

It creates real dangers of expropriation of NGO funds and assets without a fair judicial process and without reparations for damages caused to human rights defenders. It can also be a means of undermining work related to democracy support and scrutinizing bad governance practices.

For Kutakesa, the draft law increases surveillance and control over NGOs and human rights defenders; it is restrictive and contrary to the legislation on specific situations of restrictions on fundamental rights, freedoms and guarantees provided for in Article 57 of the CRA. It establishes that the fundamental rights and freedoms enshrined in the Angolan Constitution can only be limited or restricted under the terms of general and abstract applicable law and should be limited to what is necessary, proportional and reasonable in a democratic society, in order to safeguard constitutionally protected rights or interests.

C) CONCLUSION AND RECOMMENDATIONS

In light of the foregoing, we plead with the *SPECIAL RAPPORTEUR ON THE SITUATION OF HUMAN RIGHTS DEFENDERS IN AFRICA, HON. COMMISSIONER REMY NGOY LUMBU and the UNITED NATIONS SPECIAL RAPPORTEUR ON THE SITUATION OF HUMAN RIGHTS DEFENDERS, H.E. MARY LAWLOR*, to:

- Urge the Angolan Government to comply with regional and international human rights obligations guaranteeing freedom of association and assembly.
- Implement African Commission Guidelines on Freedom of Association and Assembly in Africa and popularise its objectives with parliamentarians, and among CSOs, NGOs affected by the impeding restrictions, including national human rights institutions and the key state departments, NPO Regulator, law enforcement
- To withdraw the Draft Law Approving the Status of Non-Governmental Organizations and initiate a broad consultation process with civil society;
- Encourage the Angolan Government not to pass any new law to restrict the legal framework through which NGOs come into existence in Angola, neither

apply it retroactively to affect the rights of civil society groups and NGOs that legally and validly exist under the country's current laws;

- Any proposed new legislation regulating the registration and operation of NGOs should not apply to legally existing organizations, in accordance with the principle of legal security and certainty applicable to the Angolan legal system;
- Remind the Executive Branch and the Angolan Parliament that the Constitution of the Republic of Angola is the supreme law and that any proposed law, practice, custom, or conduct must be in accordance with the Constitution, Regional and International Conventions relating to Human Rights;
- Remind the Angolan Government that the Human Rights recognized in the Angolan legal system are binding and apply *erga omnes* to all persons, natural or legal, including the State and all executive, legislative and judicial institutions and government agencies at all levels;
- Any proposed law on NGOs should therefore not limit the civic space or prevent the enjoyment of the fundamental Rights, Freedoms and Guarantees enshrined in the Constitution;
- Any draft law on NGOs should not be used as pretext to criminalize the work of NGOs or human rights defenders and discourage the National Assembly from allowing the Government to perform administrative actions aimed at shutting NGO operations.

KUTAKESA | MOVIMENTO DE DEFENSORES DOS DIREITOS HUMANOS EM ANGOLA
(MOVEMENT OF HUMAN RIGHTS DEFENDERS IN ANGOLA)