

BEFORE THE AFRICAN COMMISSION ON HUMAN & PEOPLES' RIGHTS



Federal Republic of Cabinda, FLEC-FAC (Front for the Liberation of the Enclave of Cabinda – Armed Forces of Cabinda), The National Bank of Cabinda and President N'zita Henriques Tiago

(for themselves & on behalf of the People of Cabinda)

vs.

The Republic of Angola

In re: On Shore Resource Extraction in Cabinda

Communication to the African Commission on Human and Peoples' Rights alleging that Republic of Angola, a state party to the African Charter on Human and Peoples' Rights, has violated one or more of the rights contained therein.

For the Complainants:

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Advocate for Complainants**

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Pursuant to Article 55 of The African Charter on Human and Peoples' Rights, Complainants hereinafter referred to as "Cabinda" alleges that the Republic of Angola has violated multiple articles of The African Charter on Human and Peoples' Rights and respectfully bring the complaint based on personal knowledge of the Complainants and International Law to the attention of the Commission as a matter of first impression.

Historic Introduction

Cabinda

1. Cabinda, formerly known as the Portuguese Congo, consists of territory of approximately 2800 square miles. In 1885 the rulers of Cabinda city and its environs entered into a treaty, the Treaty of Simulambuco, with the government of the Kingdom of Portugal establishing a Protectorate over much of present day Cabinda. In 1954 the Portuguese President reaffirmed the treaty by establishing a monument to it at Cabinda Bay.
2. FLEC was founded in 1963 through efforts of N'zita Henriques Tiago and many other Cabindan patriots seeking independence from Portugal. In the 1960's and 1970's FLEC repeatedly petitioned the United Nations, African Union-OAU and Portugal for independence.
3. In 1963 the Organization for African Unity recognized the division of Angola and Cabinda by ranking Cabinda as the 39th state still to be decolonised and Angola as the 35th.
4. The Portuguese Constitution of 1971 maintained the distinction between Cabinda and Angola.
5. In 1975, the Alvor Conference in Portugal, between the colonial power and UNITA, MPLA, and FNLA declared the annexation of Cabinda by Angola without any Cabindan input or participation.
6. In 1975 Cabinda unilaterally declared independence and has maintained control of up to 85% of the countryside as "Liberated Cabinda." FLEC-FAC maintains a civil administration and self defense force in the field under Army Commander Stanislaw Boma who is loyal to President Tiago. Military operations are ongoing on both sides of the conflict.
7. Cabinda is a member of the UNPO in The Hague.¹
8. The Republic of Cabinda maintains liaison offices in Paris, London, The Hague and other locations worldwide in coordination with FLEC-FAC. President Tiago is president

of both the Republic of Cabinda and FLEC-FAC. The National Bank of Cabinda was created by executive order of President Tiago in February 2006 and entrusted with safeguarding the natural resources and wealth of Cabinda.

Angola

8. The Republic of Angola maintains a large military force in Cabinda and has committed numerous documented human rights violations. In 2004, Human Rights Watch found that: “The Angolan army arbitrarily detained and tortured civilians with impunity in Cabinda and continued to commit violations against civilians with almost complete impunity.” Human Rights Watch documented violations of including extrajudicial executions, arbitrary arrests and detention, torture and other mistreatment, sexual violence, and the denial of civilians’ freedom of movement.² Likewise in 2004 the United States State Department reported the killing of civilians in Cabinda by Angolan forces and that 17 religious groups in Cabinda remained banned.³

9. In 2006 the UNPO Human Rights Commission found that instances of summary execution and arrest without cause by the Angolan authorities continued unabated.⁴ A march for peace planned for the January 29, 2006 anniversary of the Treaty of Simulambuco was banned. Likewise in 2006, Amnesty International issued a public statement condemning the Angolan ban on the activities of the Mpalabanda (Associação Cívica de Cabinda), a human rights organization operating in Cabinda.⁵ Mpalabanda itself has documented in 2006 instances of torture, summary execution, and rape perpetrated by Angolan forces.

10. The government of the Republic of Cabinda has also investigated and confirmed dozens of human rights and humanitarian including recent violations by Angolan forces in 2006 including bombardment of civilian dwellings by the Angolan Army (FAA) in the Mayombe (Piading) region; summary execution of Cabindan patriots in Buco Zao, and beatings and torture of Mpalabanda members in Caio Poba.

11. Angola is a signatory to The African Charter on Human and Peoples' Rights hereinafter “Charter” and ratified it on March 2, 1990.

On Shore Resource Extraction

12. Since 1975 an uneasy unofficial status quo has existed between Angola and Cabinda regarding large scale extraction oil and mineral resources on shore (on land) in Cabinda. Neither party has engaged in major extraction of on shore resources. However Angola has issued leases and permitted some limited exploration. Actual extraction in terms of total oil, gold, diamond, uranium reserves has been minimal by both parties.⁶ Cabinda has recently entered into a partnership with two St. Helena corporations, Equatorial African Mining PLC and Cabinda National Petroleum PLC to explore its options. Angola in turn has encouraged ROC Oil, an Australian oil company, to begin large scale on shore oil exploration.⁷

13. Angola upon achieving independence and occupying Cabinda took over de facto control of existing offshore oil leases in Cabinda from Portugal. Offshore oil production in Cabinda since 1975 has been the second largest in sub Saharan Africa. Because the offshore oil leases date back prior to the Alvor Conference, Cabinda excludes all offshore matters from this communication.

14. Both Cabinda and Angola have engaged in small scale gold and diamond extraction in Cabinda. For example, Cabinda has permitted South African miners to operate in its liberated zones.⁸

15. Sources in the liberated zones of Cabinda have reported the presence of Chinese mining engineers. These Chinese prospectors are reportedly part of an advance team to extract uranium ore. Cabinda has warned both the Chinese and ROC that their safety may be at risk if they operate in liberated zones of Cabinda.

16. Despite Angolan assurances that at least 10% of oil revenues will be reinvested in Cabinda, Cabinda remains one of the poorest regions in central Africa. Meager reinvestment by Angola has benefited only the infrastructure that supports the Angolan Army and offshore oil production. Cabindans suffer from high unemployment, lack of educational opportunities, disease, and intense poverty.

17. Offshore oil production exceeds one million barrels of crude oil daily with that amount to increase in coming years. On shore oil reserves however are estimated to be greater than offshore reserves enough to make Cabinda Africa's largest oil producer. Likewise uranium resources are estimated to be significant along with gold and diamonds.

Charter Violations – Supporting Facts

18. The Cabindans constitute a separate people. Geographically Cabinda is separated from Angola. Politically, both Portugal and the OAU treated Cabinda as a separate entity until 1975. Cabinda has maintained a government in exile since 1963 and has had an active self defense force and civil administration inside Cabinda since 1975.

19. The Cabindans are separate culturally and linguistically from Angola and overwhelmingly identify themselves as Cabindans not Angolans.

21. Angola has undertaken a massive military campaign against Cabinda since 2002 and when this has not succeeded has entered into ad hoc negotiations with Cabindan factions in an attempt to confuse issues. The most recent manifestation being the supposed accord reached with Antonio Bento Bembe, a renegade commander of the splinter group FLEC-Renovada. Cabinda does not recognize Bembe as its leader; the only universally recognized Cabindan authority being President Tiago who was excluded from negotiations. The democratic opposition in Angola, UNITA, has also expressed grave

concerns about the recent “agreement” with Bento Bembe and the exclusion of President Tiago and FLEC-FAC from it.⁹

22. The on shore mineral and oil resources belong to the Cabindan people not the Angolan government and its foreign partners. On shore mineral and oil exploitation will not benefit the Cabindan people as the vast majority of their resource revenues flows to Luanda and not Cabinda. More importantly, on shore exploitation will enflame the current political and military situation as a flagrant breach of the long standing economic status quo.

23. Angola has economically dominated the Cabindan people by denying their status as a people and extracting more than 90% of their economic patrimony while returning less than 10%.¹⁰ In doing so Angola’s government has perpetrated neocolonialism¹¹ and a resource extraction based economy seemingly modeled on the infamous Congo Free State of King Leopold. The admitted 90-10 ratio is a fair indicator of domination of one people by another. Angola claims its rule in Cabinda is benevolent echoing the 19th Century imperialists who claimed in regards to Congo Free State: “[Leopold’s] only object still continues to be to introduce freedom, civilization, and equal privileges for all...endowing it for that purpose...with a princely revenue.¹²” Since January 2006 there have been 10 documented summary executions by Angolan forces including four women and two children under the age of one and there have been many cases of arbitrary arrests and rape by Angolan troops.¹³

24. The Cabindan people have been denied their right to self determination by Angola.¹⁴ Despite a bloody conflict of over 30 years duration, Angola refuses and continues to refuse a simple referendum on the issue of Cabindan autonomy, independence, or continued occupation by Angola. A referendum was first called for in 1975 by Zairean president Mobutu Sese Seko and repeatedly by FLEC but has never been implemented by Angola.¹⁵

25. Angola does not permit Cabinda to determine its own economic and social development within the framework of the principles of self-determination. All economic decisions are made in Luanda not Cabinda. The precipitous decision to exploit Cabinda’s hitherto untouched on shore resources was hatched in Angola and threatens to engulf Cabinda in a new cycle of violence. Under the current Angolan economic regime ill planned development of on shore resources without regards to Cabindan self determination is about to be undertaken.

26. Angola by engaging in combat with Cabindan forces has engaged in neocolonialism and oppression and has been repeatedly cited by the United Nations and NGOs for its human rights violations in Cabinda. In turn the Cabindan people are entitled to defend themselves and engage in passive resistance including economic boycott, general strikes and civil disobedience.¹⁶

27. Angola's stewardship of Cabinda's natural resources is in violation of international law. In particular the unequal method in which resources are extracted with very little benefit to the Cabindan people equates to conversion and misappropriation.

28. Angola's economic policy in Cabinda weakens African unity as whole. The status quo in Cabinda recognized that Cabinda's self defense forces would fight to prevent economic exploitation of on shore resources. The inevitable result of the new Angolan policy of rapid exploitation of oil and mineral resources will be violent conflict.¹⁷ Because of Cabinda's strategic geographic location and the longstanding relations of the Cabindan people with the two Congos, the entire region may become destabilized. Additionally, the Angolan grab of disputed resources will set an unfortunate precedent for other regions of Africa.

29. Angola's policies regarding on shore exploitation of resources in Cabinda does not benefit the Cabindan people but does benefit Angola's foreign partners. In particular Chinese and Australian firms¹⁸ will reap the benefits of oil and mineral exploration. Cabinda which could become the Kuwait of Africa with a local based economic policy will continue as a poor province of Angola.¹⁹

30. Angola has signed an accord with Bento Bembe the former leader of the splinter group FLEC Renovada and has tried to convince the world that the situation in Cabinda has been resolved. In fact the Bento Bembe agreement has been denounced by all Cabindan organizations. The agreement is with Bento Bembe only who has no authority to speak on behalf of Cabinda but who was appointed by Angola to represent Cabinda.²⁰ But by engaging in this sham arrangement, Angola has admitted that Cabinda is entitled to self determination as long as Angolan territorial integrity is not compromised. Unfortunately, by promoting the straw man Bento Bembe, Angola has undermined the entire peace process. President Tiago, Republic of Cabinda, FLEC and Mpalabanda (Associação Cívica de Cabinda) and its spokesman Raul Danda have denounced Bento Bembe as a puppet on Angola's payroll.

31. A patently unequal distribution of existing oil revenues as well as a callous disregard for the future economic self determination of the Cabindans ignores co-operative economic development and its traditional place at the heart of African Society.²¹ Angola's plan for the untapped on shore oil and mineral resources of Cabinda have been made without consulting the Cabindan people or its representatives. The main beneficiaries will be Angolans and foreign stakeholders, if past actions translate to present policies, the Cabindans will receive little if any tangible benefits from their vast on shore wealth.

32. Further the Angolan government has not required oil and mining companies or its own agencies to produce basic health and environmental impact studies regarding hazardous operations and materials relating to oil and minerals production, despite the obvious health and environmental consequences from large scale development. Angola also permits oil companies like Cabinda Gulf Oil Company to employ mercenaries in violation of international law.²²

33. The current situation in Cabinda is not a satisfactory one for development. Despite the sham accord reached with Bento Bembe, military hostilities between FLEC-FAC and Angola continue. Likewise, Cabinda following the example of the de facto Puntland and Sahrawi governments has taken measures to issue oil and mineral leases.²³ Further economic exploitation without the makings of true self determination is a crucible in which further bloodshed and destruction will be spawned.²⁴

Charter Violations

34. The proceeding allegations are violations of Charter Articles: 14, 19, 20, 21, 22, and 24.

Exhaustion of Remedies

35. The Complainants and Angola are in a state of armed conflict with casualties on both sides continuing with recent military action at M'Pumbo Chionzo by FLEC-FAC against the FAA.²⁵ But assuming Complainants could take the matter of on shore resources to a tribunal in Angola the process would be futile or impossible and would subject Complainants to arbitrary arrest, detention, or execution as terrorists.

36. In July 2006, Angola began the process of banning the only independent human rights organization in Cabinda, Mpalabanda (Associação Cívica de Cabinda). On Monday 19 June 2006, Agostinho Chicaia the president of Mpalabanda was summoned to court (tribunal da comarca de Cabinda) where he was issued with a copy of a government application to ban Mpalabanda. The application alleged that Mpalabanda incited violence and hatred. It also accused Mpalabanda of carrying out political activities rather than being a civil society organization. The organization was given ten days to submit a responding affidavit, which it submitted within the given time. On Thursday 20 July the Court decided to ban the organization. Mpalabanda was informed of this decision on Monday 24 July. There is no mention in the judgment that Mpalabanda promoted violence and hatred. Nor were any of the cited witnesses called to give evidence to this effect.²⁶

37. Mpalabanda is the only independent organization that was still functioning in Angolan Cabinda that could have represented Complainants' grievance. The banning of this organization and the subsequent signing of the accords with the self appointed Bento Bembe in August 2006 means that dissent by Cabindan organizations espousing self determination will not be tolerated by the Angolan courts since the Bento Bembe accord has "officially" closed the matter. Cabindans must accept "amnesty" under the accord or face arrest or execution as terrorists.

38. Since the so called peace accord of August 30, 2006, Angolan troops with the active assistance of the new FAA General Bento Bembe have launched an offensive in Cabinda.

Angolan forces have made serious incursions across the border with the Democratic Republic of the Congo to attack Cabindan refugees and FLEC-FAC forces. Popular demonstrations in Yema against Bento Bembe were broken up with live ammunition fired on the crowd by Angolan forces. General Sachipendo Nunda of the Angolan FAA has declared those FLEC-FAC forces and their supporters who have not surrendered to Angola and Bento Bembe to be “terrorists.” Since Complainants are opposed to the Angola - Bento Bembe accord, they cannot litigate the case in Angola nor would an Angolan court or tribunal entertain these allegations.²⁷

Prayer for Relief

Cabinda prays for the Commission to:

Find this communication admissible;

Expedite this matter under Rule 111 in order to prevent further bloodshed;

Appoint a Special Rapporteur;

Make the Good Offices of the Commission available.

Respectfully submitted:

Dr. Jonathan Levy
Attorney for Complainants



Republic of Cabinda
Office of the President
Cabinda National Bank
FLEC-FAC

¹ Other UNPO members include the de facto sovereign states of Taiwan and Somaliland.

² Human Rights Watch, Angola: Between War and Peace in Cabinda, December 2004 [<http://hrw.org/backgrounders/africa/angola/2004/1204/>].

³ US Department of State, Report on Angolan Human Rights Practices, Bureau of Democracy, Human Rights, and Labor. February 28, 2005 [<http://www.state.gov/g/drl/rls/hrrpt/2004/41587.htm>].

⁴ UNPO Commission on Human Rights, Sixty-second session, Item 9 of the provisional agenda, March 12, 2006.

⁵ Amnesty International, AFR 12/006/2006 (Public) News Service No: 203 4 August 2006 [<http://www.amnestyusa.org/regions/africa/document.do?id=ENGAFR120062006>]

⁶ Antonio Bento Bembe and his faction FLEC-Renovada (not a party to this communication), have targeted foreign oil and mining personnel in the past. Bente Bembe is now an ally of Angola. Source: Agência Angola Press, (the official press organ of the Angolan government) September 4, 2006.

⁷ [[http://www.rocoil.com.au/Public/Activities/West_Africa/Angola_\(Cabindia\).aspx](http://www.rocoil.com.au/Public/Activities/West_Africa/Angola_(Cabindia).aspx)].

⁸ Liberated zones refer to those rural areas of Cabinda under full or partial control of the Republic of Cabinda civil authorities or the self defense forces of FLEC-FAC. The best definition of a liberated zone in Cabinda is one from which the FAA has been fully or partially expelled and the populace organized to support the liberation of Cabinda.

⁹ U.N. Office for the Coordination of Humanitarian Affairs – IRIN, Angola: Rebels Vow to Fight on Despite Peace Deal, August 1, 2006 [http://www.irinnews.org/report.asp?ReportID=54930&SelectRegion=Southern_Africa].

¹⁰ [<http://www.globalsecurity.org/military/world/war/cabinda.htm>] Cabinda contends actual reinvestment is much lower and that actually few benefits flow to Cabindans themselves.

¹¹ Neocolonialism is specifically condemned in the preamble of the Charter.

¹² New York Times, The Congo Free State, May 26, 1885.

¹³ Source: Mpalabanda.

¹⁴ Self determination does not necessarily mean independence: “The Commission believes that self-determination may be exercised in any of the following ways independence, self government, local government, federalism, confederalism, unitarism or any other form of relations that accords with the wishes of the people but fully cognisant of other recognised principles such as sovereignty and territorial integrity.” *Katangese Peoples' Congress v. Zaire*, African Commission on Human and Peoples' Rights, Comm. No. 75/92 (1995). See also: Articles 1 and 55 of the U.N. Charter; U.N. Declaration on the Granting of Independence to Colonial Countries and Peoples; International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, art. I, pare. 1, 993 U.N.T.S. 3, 5; International Covenant on Civil and Political Rights, Dec. 19, 1966, art. I, pare. 1, 999 U.N.T.S. 171, 173 (both providing that “[a]ll peoples have the right of self-determination”).

¹⁵ U.N. General Assembly Resolution 637A(VII) provides that “the wishes of the people [be] ascertained through plebiscites or other recognized democratic means U.N. G.A. Res. 637A(VII), Dec. 16, 1952, passed 40-14-40-14-6.

¹⁶ The legitimacy of using force to achieve self-determination of a people subject to colonial or alien domination was expressly approved in U.N. G.A. Resolution 3103 (XXVIII), entitled Basic Principles of the Legal Status of the Combatants Struggling Against Colonial and Alien Domination and Racist Regimes. Further, the Definition of Aggression, adopted by the General Assembly in 1974, expressly approves the right of "peoples under colonial and racist regimes or other forms of alien domination . . . to struggle to [achieve "self-determination, freedom and independence"] and to seek and receive support, in accordance with the principles of the Charter and in conformity with the [Declaration on Friendly Relations]." This right of struggle and support is affirmed in Article 1, paragraph 4, of Protocol I to the Geneva Conventions of 1949.

¹⁷ U.N. Charter of Economic Rights and Duties of States, Article 3 states: "In the exploitation of natural resources shared by two or more countries, each State must co-operate on the basis of a system of information and prior consultations in order to achieve optimum use of such resources without causing damage to the legitimate interest of others."

¹⁸ The Australian company, ROC Oil, has announced it will commence test drillings in "Cabinda South Block."

See: [[http://www.rocoil.com.au/Public/Activities/West_Africa/Angola_\(Cabindia\).aspx](http://www.rocoil.com.au/Public/Activities/West_Africa/Angola_(Cabindia).aspx)].

Cabinda South Block has been granted in a rival lease by the Cabinda National Bank to Cabinda National Petroleum PLC.

See: [<http://www.afrol.com/articles/18962>] and generally [<http://www.cabindapetroleum.com>].

¹⁹ For an example of peaceful self-determination resolutions involving similar issues see the agreement reached between the Inuit and the Canadian government concerning Nunavut.

²⁰ U.N. Office for the Coordination of Humanitarian Affairs – IRIN, Cabinda separatists divided over peace talks, July 14, 2006 [<http://www.irinnews.org/report.asp?ReportID=54621>]

²¹ *The Social and Economic Rights Action Center for Economic and Social Rights v. Nigeria*, African Commission on Human and Peoples' Rights, Comm. No. 155/96 (2001) at paragraph 56.

²² Source: Republic of Cabinda Information Agency [<http://www.cabinda.net/mercenary.htm>]. See also: International Convention against the Recruitment, Use, Financing and Training of Mercenaries, Adopted and opened for signature and ratification by U.N. General Assembly resolution 44/34 of 4 December 1989, Entry into force: 20 October 2001, in accordance with article 19 [<http://www.ohchr.org/english/law/mercenaries.htm>].

²³ Afrol News, Cabinda (Angola) sells oil licenses on "freed territory," April 26, 2006. [<http://www.afrol.com/articles/18962>].

²⁴ Charter of Economic Rights and Duties of States, Jan. 15, 1975, 14 I.L.M. 251.

²⁵ U.N. Office for the Coordination of Humanitarian Affairs – IRIN, Cabinda separatists divided over peace talks, July 14, 2006 [<http://www.irinnews.org/report.asp?ReportID=54621>] and confirmed by FLEC-FAC field command.

²⁶ Amnesty International, AI Index: AFR 12/006/2006 (Public) News Service No: 203 4 August 2006 [<http://web.amnesty.org/library/Index/ENGAFR120062006?open&of=ENG-2AF>].

²⁷ It is a well established rule of international law that where a local remedy is a sham or ineffective that the exhaustion of remedies rule may be waived. *El Oro Mining and Railway Company Claim (Great Britain v. Mexico)* 5 RIAA 191(1931); See also Comment No. 4 on Art. 44 of ILC Draft Articles on Responsibility of States for Internationally Wrongful Acts, 2001, in ILC's Commentary, 2001, p. 306; American Federal courts have also

recognized that some tribunals are potentially so skewed as to violate notions of due process. *Bird v. Glacier Elec. Coop., Inc*, 255 F.3d 1136 (9th Cir. 2001); *Bank Melli Iran v. Pahlavi*, 58 F.3d 1406 (9th Cir. 1995).

The burden is on the respondent to show the existence of a local remedy when lack of one has been alleged. *Electronica Sicula SpA Case*, (ELSI Case), (Second Phase), ICJ Rep., 1989, (pars. 48-63) [http://www.icj-cij.org/icjwww/icsases/ielsi/ielsi_isummaries/ielsi_isummary_19890720.htm].