
SEEKING JUSTICE IN A REPRESSIVE SYSTEM:
THE CASE OF BLOOD DIAMONDS IN ANGOLA

REMARKS BY
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I. INTRODUCTION

In 2010, Angola ratified a new constitution. The new Angolan constitution broadened guarantees for the fundamental rights of citizens, but also conceded dictatorial powers to the president. This paradoxical give-and-take strategy has been deeply felt in the application of the laws concerning political and individual rights.

The forthcoming presentation examines the institutional reactions to a report on human rights abuses in Angola's diamond areas, which was published in Portugal in September 2011, in order to circumvent censorship in Angola. Entitled "Diamantes de Sangue: Corrupção e Tortura em Angola" (translated "Blood Diamonds: Corruption and Torture in Angola"), the report generated two criminal complaints. In Angola, the author lodged a complaint in November 2011 against nine generals and executives of a diamond mining company for crimes against humanity. In March 2012, the generals, in turn, filed a criminal complaint against the author and his publisher, Tinta da China, in Portugal for defamation and slander.

Together, the two complaints provide a narrative that revisits the international effort to stem the trade of diamonds that are harvested in conflict and tainted by gross human rights abuses. It also underscores an attempt to use the Angolan legal framework for the promotion of human rights and the rule of law under the 2010 Constitution. How-

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ever, in the climate of fear and repression imposed by the presidential authoritarian rule, this presentation highlights a fundamental issue: how to ensure that the government respects the laws pertaining to the rights of citizens as enshrined in the Constitution. This is a political problem, and not a legal one, because the Angolan judiciary remains subordinate to President Dos Santos. For instance, in April 2012, he promoted the longtime Chief Justice of the Supreme Court, Cristiano André, to the rank of three-star general. The same rank is bestowed on the Attorney General of the Republic, General João Maria de Sousa. The militarization of justice is just another layer of control of the legal system by the Commander-in-Chief through the direct subordination of his generals. The same strategy of militarization is also applied to the political economy, as top generals on active duty make up the most powerful group of private business people in the country. The diamond sector is just one among several business sectors under the control of generals. Moreover, by being the interface of foreign investments in the country through joint ventures, the ruling elite buys international support through complicity.

A brief overview of the relevant body of national legislation introduces the cases proper, followed by a conclusion.

II. THE INTERNATIONAL TREND

In 2003, governments and non-governmental organizations (NGOs), under the auspices of the United Nations (UN), launched the Kimberley Process. The Kimberley Process is a diamond certification scheme, from source to purchase, with a system of internal and external checks and balances to prevent the circulation of conflict diamonds in the international market.

This initiative came to represent a new and successful model of cooperation among governments and civil societies in addressing human rights abuses and conflicts fueled by natural resources. It combined voluntary principles and legally binding norms in national and international jurisdictions.

By the time the certification scheme had come into effect in 2003, the armed conflicts that inspired the effort (in Sierra Leone, Liberia and Angola) had already ended. Rebel groups remained a problem only in the Democratic Republic of the Congo (DRC). In 2009, following relentless international campaigns led by Human Rights Watch and Global Witness, and with the support of the United States and British governments, the Kimberley Process imposed an international

embargo on trade in diamonds from the Marange mines in Zimbabwe. These, in fact, became part of international sanctions against the Zimbabwean government for human rights abuses in Marange. Moreover, in May 2012, the International Criminal Court in The Hague sentenced former Liberian president, Charles Taylor, to fifty years in prison for, among other crimes, channeling weapons and ammunitions to rebels in Sierra Leone in exchange for diamonds.

The one case (on a scale arguably worse than Zimbabwe's) of persistent and systematic government-backed human rights abuses involving diamonds, which has been ignored, is that of Angola's diamond region of Lundas. In 2009, a monitoring group from the Kimberley Process, which included representatives of governments and international NGOs, visited Angola and raised the issue of human rights abuses against mainly Congolese nationals in the diamond region who were subject to mass deportation. The monitoring group ignored the violence against locals and focused merely on the dominant narrative established by international NGOs and Western media, which covered the rape and abuse of Congolese women facing deportation. The difference of treatment accorded to Angola and Zimbabwe and to Congolese nationals by the international community reflected three important factors: the geo-political interests and lobbying of major donors, the credibility of mainstream organizations and media outlets in mobilizing public opinion, and the strength of national civil society.

III. THE LAW AND THE AUTHORITARIAN RULE

Since it gained independence in 1975, the Lundas region has been the subject of special laws established to protect the extraction of diamonds. During the period of "Marxism-Leninism" (1975-1991), the one-party Angolan state established legal, security, and coercive mechanisms that insulated the area and the local communities from the rest of the country, deprived locals of basic rights such as freedom of movement, and impaired the ability of the uprooted communities to legally pursue their common livelihood activities such as farming and trading. As civil war ravaged the region and the country, arbitrariness by the state security apparatus and local officials effectively replaced the law and became the conventional rule on what citizens could and could not do.

In 1994, under a new constitutional dispensation that nominally enshrined democracy, the free market, and a broad set of human rights, the National Assembly passed the Law 17/94 (also known as the

Law on the Special Regime for the Diamond Reserve Zones Diamond Law), which established the entire region as a Reservation Zone. In the reserved or mining areas, the preceding Law on Diamonds (Law 16/94) defined two areas, protected and restricted, in which the government had the discretionary power in the name of the public interest to expropriate any property from any citizen or private enterprise for the benefit of the mining companies. Provincial governors also received arbitrary powers to administratively authorize or prohibit any commercial activity in their domains. In 2011, the National Assembly passed a new Mining Law, which revoked the Diamond Law, but maintained the arbitrary powers of the government and mining companies to define and enforce rules regulating people's movement in the Restricted and Protected Areas. In these areas, the Mining Law forbids any kind of economic activity "whichever its nature, industrial, commercial, agricultural or any other besides mining." Hundreds of thousands of people live within the Restricted and Protected areas, and acts of basic subsistence in these areas, which encompass entire municipalities, have been rendered illegal. Neither the government nor the companies have provided alternative means of subsistence, besides the severely limited job opportunities in the public sector mining companies.

IV. THE HUMAN RIGHTS LAW

In spite of the harsh legal regime for the Lundas, the Constitution and certain relevant laws still have provisions for the protection of physical integrity and human life. They ban torture, forced labor, and inhuman or degrading treatment.

The Constitution incorporates into domestic law the Universal Declaration of Human Rights and the African Charter on Human and Peoples' Rights as well as other relevant legal and regulatory norms of international law, creating a robust protection of human rights in the United States. Furthermore, and essential here, the Constitution grants to any citizen the right to lodge a criminal complaint for crimes against humanity, as defined by Angolan and international law.

But there is a caveat to this. The Office of the Attorney General may not investigate a suspect on human rights abuses alone. It must also extend the inquiry into acts of corruption. The law forbids public officials from engaging in private business ventures while on duty. All diamond concessions involved the state as a significant shareholder through its diamond and concession-holding company, Endiama.

All generals mentioned in the 2011 report were on active duty when the largest private security companies in the country, Teleservice and Lumanhe, were set up. Moreover, despite the regime of exceptionality in the Lundas, neither the military nor the private security companies have legal authority to undertake acts of violence against defenseless civilians.

V. THE CRIMINAL COMPLAINT IN ANGOLA

On November 14, 2011, the author lodged a criminal complaint at the Office of the Attorney General against nine Angolan Armed Forces (FAA) generals and five executives of a foreign diamond mining company for crimes against humanity. As evidence, the author appended the 2011 report “Blood Diamonds: Corruption and Torture in Angola” that narrated cases of torture, involving over 500 victims and over 100 cases of murder committed within a period of 18 months (from 2009 to 2011). The cases detailed the involvement of the FAA and a private security company, Teleservice, owned by FAA generals, in the crimes. Teleservice had been hired by Sociedade Mineira do Cuango (SMC), the mining company that both holds a major diamond concession in the area and has as its major shareholders most of the FAA generals.

Among the generals named are the current Minister of State and Head of the Intelligence Services at the Presidency, Manuel Hélder Vieira Dias “Kopelipa;” the Chief-Inspector of the General Staff, Carlos Vaal da Silva; the ruling party’s (i.e., The People’s Movement for the Liberation of Angola) Member of Parliament and Chair of De Beers Angola, António dos Santos França “Ndalú” (ret.); and the Head of the Directorate for Training and Education of FAA, Adriano Makevela Mackenzie. Three of the generals are former chiefs of the General Staff of the FAA.

In response, on February 12, 2012, the Office of the Attorney General summoned the author and ten of the victims, who had also undersigned the criminal complaint, to testify. Four of the victims testified on March 5 and 8, while the author spent four hours providing additional evidence during his own hearing on March 14. None of the witnesses had legal counsel, owing both to the lack of resources and to the risks faced by lawyers who take on cases such as these. Further, the authorities provided for neither travel expenses nor legal counsel, notwithstanding the fact that the state is under a constitutional obligation to guarantee that those citizens who lack resources have access to judicial and legal representation.

The authorities first questioned farmer Linda Moisés da Rosa. Her two sons were murdered in the Lundas within two months. On December 5, 2009, army soldiers buried alive her son Pereira António Eduardo, among forty-four other diamond diggers, by removing the bars that protected the entrance to the tunnel in which they were working, and then using the bars to force it to collapse, without allowing anyone out. The soldiers belonged to the 75th Infantry Brigade, stationed in Cuango. On February 5, 2010, a Teleservice guard hacked Ms. Rosa's firstborn, Kito Eduardo António, to death with a machete. Three youths, as well as other guards, witnessed the killing. The reason for the assassination, according to witness accounts, was that, unlike the three youths, Kito Eduardo António did not have enough money to bribe the guards in order to be allowed to sift through abandoned gravel. This practice is something that is usually negotiated between miners and guards, and is prevalent in a well-established system of petty corruption and abuse.

Linda Moisés da Rosa explained to the investigators how, in the first case, she and other grieving families were threatened with guns when they approached the military to complain about the murders; how the police blamed the deaths of her sons on the victims themselves; and how the local government claimed to have no authority to deal with the issue. There were no other authorities to which Linda Moisés da Rosa could seek recourse. In 2010, *The Wall Street Journal* and the local media reported her tragic losses.

Ms. Rosa's sadness and eloquence in narrating the tragic events brought tears to the eyes of the investigators. However, during the hearing, the investigators kept suggesting to her that mass burial might have been the work of the opposition party, known as the National Union for the Total Independence of Angola (UNITA). Later, Ms. Rosa told the authorities that she would not sign the transcript of the hearing because she did not trust them. In her mind, they were trying to twist her words. Two other witnesses, Óscar Cabral and Cassule Waribita, who were both tortured by army soldiers, also refused to sign the transcripts, as they too mistrusted the authorities. In turn, Jordan de Almeida Manuel told investigators of mass torture by Teleservice personnel, which involved more than 100 diamond diggers (including himself), and was carried out by hitting the diggers more than 100 times each with machetes and shovels on the buttocks, palms of the hands, and soles of the feet. Teleservice later transferred the prisoners to the FAA, which also inflicted further physical punishment against them.

The fact that the Office of the Attorney General decided to undertake a preliminary hearing on the case was, in itself, a landmark. Nevertheless, the office initially failed to notify the victims or the author of its conclusions on the case, as is constitutionally required. The Attorney General, General João Maria de Sousa, simply made the announcement while in Portugal to the local Portuguese press. But due to public pressure, his office delivered its decision to the author's residence on November 21, 2012, which was dated June 22, 2012. By delivering it five months late, the Office of the Attorney General denied the complainant the opportunity to appeal the decision.

During the preliminary hearings, the manager of Teleservice, Valentim Muacheleca, denied the acts of violence, but offered the possibility that some of them might have been accidents, suggesting that some of the deaths were caused by fleeing illegal miners falling "into holes for the artisanal mining dug by themselves," while "others [threw] themselves in the rivers."

The director of SMC, Victor Nunes, claimed no knowledge of such acts of violence. Still, both individuals criticized the author for not having included in his book a June 11, 2012 skirmish between Teleservice guards and illegal miners, which took place after the book had already been sent out to print. According to Victor Nunes' version, illegal miners ambushed thirty Teleservice guards who were on a patrol, beat them up, "took away nine AKM weapons," and badly wounded four guards. A private weekly newspaper, *O País*, reported that the guards besieged the miners and shot dead one Pedrito Muatelembe. According to the news report, other miners fought back, overpowering some of the armed guards by taking their guns and severely beating them. Supplied with reinforcements, the guards besieged the illegal miners, and the ensuing attack resulted in the death of six more illegal miners, according to the paper. Ironically, *O País* is owned by one of the shareholders of SMC: the Minister of State and Head of Intelligence at the Presidency, General Manuel Hélder Vieira Dias "Kopelipa."

The main conclusions of the Office of the Attorney General on the preliminary inquiry were as follows:

- If the abuses reported in the book were indeed committed, then the criminal responsibility should be assigned exclusively to individual private security guards and soldiers of the FAA. The shareholders and management of Teleservice, as well as the FAA, should not bear any responsibility for the individual deeds of those under their employment or command.

- The witnesses had not presented any new evidence, besides that already reported in the book, “to confirm their statements.”
- The office considered the link between the generals, as co-owners of the companies involved, their high responsibilities in the army, and the violence in the diamond region as “a theoretical construct without any factual and legal support.”
- It also noted that the author should have included in the report the acts in which private security companies were the victims of the artisanal miners.
- Finally, it called upon its office in the region to be cognizant of the complaints lodged by locals, and to investigate them with due diligence. It also acknowledged that the victims do not need to lodge complaints, for such cases of violence are public crimes, and the authorities must therefore act on them as they arise.

The public prosecutor’s interpretation of the laws is flawed. According to Angolan legislation, once a complaint concerning murder and torture has been filed on which a number of victims are identified and witnesses offered, the case shall not be closed without a trial. Instead, it should only be closed in those circumstances in which it is determined that the applicable statute of limitation has expired, or that either the alleged victim died of natural causes or non-wrongful means. Otherwise, the inquiry should not be closed, even if the authorities are unable to find evidence incriminating the alleged wrongdoers. In that event, even if the accused are exonerated by exculpatory evidence, the case remains open “against persons unknown” or it conversely should be filed as “pending until better evidence.” In this case, the Prosecutor’s Office merely exonerated the accused parties and closed the case without ascertaining that each death had been made the object of a proper inquiry as mandated by Angolan criminal procedure law. Thus, this omission is unlawful and constitutes a denial of justice to the alleged victims.

Notwithstanding the procedural failures, the book and the public outcry it generated had a major impact. Teleservice withdrew entirely from the region by March 1, 2012, ending its eighteen-year reign of terror and profiteering in the region. Although neither the authorities nor the generals will admit it publicly, the termination of its contracts in the region was part of an internal compromise.

VI. THE CASE IN PORTUGAL HEARINGS

Upon being exculpated by the Office of the Attorney General in Angola, the generals proceeded to Lisbon, Portugal to lodge a criminal complaint against the author and the publisher of the book, *Tinta da China*, for defamation and slander. On October 4, 2012, months

after lodging the complaint, the generals, executives and several witnesses traveled to Lisbon to argue their case before a Portuguese magistrate. The complainants claimed that even though the co-owners of the companies involved are generals, that fact does not imply that they bear any responsibility for the alleged crimes. They also claim that such a fact does not mean they might have any knowledge of the companies' actions. The generals' initiative to sue for justice in a European Court raised interesting jurisdictional and other questions, both legal and political. Given the authoritarian nature of the regime in which they are leading members, why wouldn't they take advantage of the judiciary available to them to prosecute a fellow citizen?

The main factor in avoiding a trial in Angola has to do with corruption. While the Attorney General's office could exonerate the generals from accusations of crimes against humanity, it could not rationalize the ownership of the companies. The generals admitted being shareholders of the companies in question. By entering into joint ventures with the state for personal enrichment, the generals were clearly breaching the anti-corruption laws. The generals enjoyed impunity but were aware of the need to preserve the veneer of a legal system that affords some legitimacy to the regime, especially regarding its interactions with the international community.

Prosecution of the author in Angola could also potentially turn into a public trial against the generals and the regime, for human rights abuses in the diamond areas are well known by society. As a matter of fact, on January 9, 2013, a delegation of four chiefs, representing more than 100 traditional authorities from the Lundas, filed a petition before the Attorney General's Office in Angola to expose the truth. They requested the case to be reopened, for investigations to be conducted in situ, and for their communities to be heard.

The author's human rights reports on the Lundas since 2004 have earned international acclaim. They have been featured in discussions at the UN, in United States Senate hearings, in United States State Department annual human rights reports, and in multiple debates on blood diamonds in several international fora. More importantly, they have caused much concern for the national authorities. Thus, it seemed the right course of action to attack the reputation of the human rights defender abroad, specifically in Portugal. Leading members of the Angolan regime, including the offended generals, have made massive investments in Portugal, including in the media sector,

which has yielded them a powerful grip on the Portuguese political, business and media establishments.

Furthermore, Portugal offers a major advantage to the generals. They have the means to fly in as many witnesses as they wish to make their case, while the author barely can fundraise to pay his own airfare. For the past six years, the author undertook volunteer fieldwork, with basic in-kind support from locals and concerned individuals, to monitor the human rights situation in the region. Concerned local and international organizations have either failed or lost interest in conducting consistent work in the region.

VII. CONCLUSION

What this case has demonstrated is the ability of citizens to generate enough political pressure and public discussion, even in the context of repression, to sue for justice by using legal mechanisms. It is because of the citizens' demand for the rule of law that attorneys, in such circumstances, can feel encouraged and empowered to take greater risks in defending human rights and in challenging tyranny, regardless of its veneer of democracy. Out of these dynamics, a new social and political consciousness can flourish and bring about desired legal and political change in the future, as people envision better models of social and political coexistence.