



## ***Diamond Extraction and Crimes against Humanity in Northeastern Angola***

Paper presented at

**Conference on International Law: War Crimes, Human Rights, and Immigration**

**Elon University School of Law, North Carolina**

February 26, 2012



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Angola celebrates this year a historical landmark – 10 years of peace. It took 14 years of armed struggle to gain our independence, and 27 more years of bloodshed, for Angolans to achieve peace.

Yet, in the diamond-rich region of the Lundas, the peace dividend has been spoiled by a steady rise of extra-judicial killings, and the daily torture of villagers and artisanal miners, who often pan for diamonds along the river bed. The abuses also include the destruction of subsistence farming, the main source of survival for Lundas' citizens, and other measures.

The diamond industry accounts for an average of over a billion dollars a year in revenues, which places the country as the fifth largest diamond producer in the world by value.<sup>1</sup> But Angola is far richer in other natural resources, especially oil. This commodity has endowed the country with remarkable economic progress due to an increase in production and the record-high prices in the international oil markets. In 2002, at the outset of peace, the country had a real GDP of US \$11.2 billion and 10 years later this figure multiplied tenfold.<sup>2</sup> In contrast, the majority of Angolans (54.3%) live below the poverty line, on less than US\$1.25 per day.<sup>3</sup>

How can profitable diamond mining, in a peaceful country with such a fast-growing economy, become the source of so much violence?

This presentation attempts to answer the question by addressing the historical and legal frameworks under which decision-makers and their executioners seem to find justification. By the same measure, it presents a case study of a legal initiative to reverse the trend, and foster a culture of respect for human rights and justice. It does so by analyzing the political and socio-economic narratives that have sustained the diamond trade in Angola.

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<sup>1</sup> See Kimberley Process' Annual Summary Table for 2010 at [https://kimberleyprocessstatistics.org/static/pdfs/public\\_statistics/2010/2010GlobalSummary.pdf](https://kimberleyprocessstatistics.org/static/pdfs/public_statistics/2010/2010GlobalSummary.pdf)

<sup>2</sup> See International Monetary Fund, 2005:41; 2011:25.

<sup>3</sup> <http://hdrstats.undp.org/en/countries/profiles/AGO.html>

## A Brief Overview

Historically, violence has always been a defining feature of diamond extraction in the Lundas' region. During the colonial period, the diamond company Diamang had the exclusive rights to diamond exploration, and administered the Lundas' as a private possession. It controlled every aspect of socio-economic life in the region, and gained a reputation for enforcing the cruelest corporal punishments of all the Portuguese colonial possessions.<sup>4</sup> The Portuguese authorities provided the legal framework, as well as the military and administrative manpower to implement the private needs of Diamang as the most profitable enterprise for the colonial regime in Angola.<sup>5</sup>

The Marxist-Leninist regime that came into power with independence in 1975 used the same template of control and the condition of the local miners and population worsened. The MPLA (Popular Movement for the Liberation of Angola), the ruling party in Angola, banned the exercise of any private trading activity in the province, and provided no job alternatives in the public sector.<sup>6</sup> Furthermore, the regime practically made it illegal for local communities to engage in subsistence farming. It established a stringent system of travel permits, which forbade non-natives to travel to the region and, thus it virtually isolated the Lundas, from the rest of the country, until 1991.<sup>7</sup> These measures were enforced by extra-judicial killings, torture and other coercive mechanisms that became the norm in the relationship between the authorities and the local communities. War further worsened the situation.

Furthermore, isolation contributed to creating an exclusive opportunity for illegal diamond trade by senior government and MPLA officials, and members of the Angolan ruling class, whose unfettered access to the region was renewed in 1989, under the "VIP Status" of Presidential Decree (1/89, Art. 1, c). Five years, before, in 1984, the government had arrested

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<sup>4</sup> See Cleveland, 2008.

<sup>5</sup> Idem

<sup>6</sup> Ministério do Comércio Interno, 1978.

<sup>7</sup> In 1989, the Conselho de Defesa e Segurança [Council for Defense and Security] issued a new Decree 1/89, upholding the severe travel restrictions to the Lundas.

over 500 individuals for diamond smuggling, and it organized a mass televised trial of 124 of them, to showcase its determination to stamp out corruption.<sup>8</sup> But, the accused publicly pointed their fingers to senior members of the regime, as the master minds of the illegal trade, and denounced severe cases of torture inflicted upon them to extract false confessions. The televised mass trials backfired and were brought to a closure. Thus, the leaders continued to profit from the illicit trade. In the subsequent years, the then Ministry of State for Inspection and Control investigated a network of foreign companies which, in collusion with Angolan officials, were involved in up to 50 documented cases of corruption, fraud and forgery to smuggle diamonds out of the country, among other illicit activities. Angola reported losses of over US \$200 million, in the period of 1986-1989, due to such corrupt schemes.<sup>9</sup> There was no punishment for the culprits.

Nevertheless, the 1990's registered four critical events on the twin provinces of Lunda-Norte and Lunda-Sul.

First, in 1991, the Permanent Commission of the People's Assembly passed a law that, for the first time, allowed Angolans to possess and sell rough diamonds (Law 30/91, Art.1). The law was part of the political initiatives designed to open up the country to multi-party elections, within months of a cease-fire, and to build up an electorate from the masses of those initially oppressed. However, the measure triggered an unprecedented diamond rush with tens of thousands of people, from all over the country, converging on the diamond areas for artisanal mining, including mercenaries and foreign nationals.

Second, upon the return to civil war, in October 1992, after a short-lived peace agreement that lasted 16 months, the former rebel movement UNITA (National Union for the Total Independence of Angola) seized the most profitable diamond operations in the Cuango Basin, to fund its war-chest. For five years, UNITA engaged locals and foreigners, particularly from Congo and West Africa, in the artisanal panning for diamonds.

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<sup>8</sup> Economist Intelligence Unit, 1985:17.

<sup>9</sup> The then Minister of State for Inspection and Control submitted the Report to the President, in 1990, but it was shelved. The author is in possession of a copy of the report.

Third, government officials, generals, and other high-ranking members of the regime decided to partake of the chaos by establishing their own diamond mining ventures, either informally or through joint-ventures, in the areas they controlled. After UNITA formally handed over the diamond areas it controlled in Cuango, on September 28, 1997, under United Nations sanctions, the subsequent international campaigns either ignored or played down the government's human rights abuses in the region. The exception, to date, has been the regular United Nations and other international organizations' reports and public stances on the government's deportation of foreign nationals and the rape of Congolese women, especially from the diamond areas.<sup>10</sup>

Fourth, President José Eduardo dos Santos, decided to address the anarchy that descended upon the diamond areas with a radical idea and a vested personal interest. In 1999, he authorized the establishment of a joint-venture company, Angola Selling Corporation (Ascorp), with the exclusive monopoly to trade diamonds produced by artisanal miners (*garimpeiros*).<sup>11</sup>

However, Ascorp was a joint venture between the international diamond merchants Sylvain Goldberg, Lev Leviev, the state-diamond company Endiama and the President's daughter Isabel dos Santos.<sup>12</sup> The constitution of Ascorp violated the country's anti-corruption legislation, and could have been used to impeach the President (Art. 127, 1, 2 of the Constitution) for openly and illegally granting such a business venture to his own daughter.

Nevertheless, the government of President Dos Santos argued that one of Ascorp's main objectives was to fight "the blood diamonds, and position the country as the pioneer of the

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<sup>10</sup> See the African Commission on Human and Peoples' Rights decision on the Angolan Armed Forces' abuses against foreign nationals at <http://www.ihrda.org/2010/05/implementation-of-the-decision-on-communication-2922004-ihrdaangola/>

<sup>11</sup> In April 25, 2003, the Council of Ministers, headed by the President, annulled the joint-venture agreement that established Ascorp, citing failure by the foreign shareholders to fulfill their pleas of investment and provision of security know-how to combat illicit diamond trade. Nevertheless, the joint-venture continued its operations in the informal sector.

<sup>12</sup> Isabel dos Santos set up TAIS Limited, in Gibraltar, in partnership with her mother Tatiana Cergueevna Regan, on April 2, 1997. In 2004 she transferred all her shares (75 percent) to her mother, who became the sole owner of the company, by then renamed Iaxonh.

Kimberley Process.”<sup>13</sup>

Sponsored by the United Nations, the Kimberley Process is an international certification system of diamonds created to prevent blood diamonds from entering the international markets and to create “the conditions necessary for countries to benefit from their own natural resources.”<sup>14</sup>

Pursuant of its mandate, the United Nations General Assembly defined, in 2000, conflict diamonds, also known as blood diamonds, as those “that originate from areas controlled by forces or factions opposed to legitimate and internationally recognized governments, and are used to fund military action in opposition to those governments, or in contravention of the decisions of the Security Council.”<sup>15</sup>

### **A Criminal Complaint**

On February 12, 2012, just four days ago, the Angola’s Office of the Attorney-General notified me so that I can personally deliver summons, and make arrangements for 10 victims and witnesses, from the Lundas, to urgently travel to the capital Luanda for a hearing on human rights, scheduled to happen in the coming days.

Last year, on November 14, 2011, I 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. I provided, as initial evidence, over 500 cases of torture and over 100 cases of murder committed within a period of 18 months (2009-2011), by the Armed Forces and a private security company owned by the generals (Teleservice), which operates under the command of a mining company in which most of such

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<sup>13</sup> United Nations, 2001.

<sup>14</sup> Report of the Kimberley Process Certification Scheme to the General Assembly pursuant to Resolution 61/28, November 2007, available at [www.undemocracy.com/A-62-543.pdf](http://www.undemocracy.com/A-62-543.pdf)

<sup>15</sup> See the United Nations web page on conflict diamonds at <https://www.un.org/peace/africa/Diamond.html>



generals are also major shareholders.<sup>16</sup> The ten individuals that have now been called for the inquiry had willingly signed the criminal complaint.

The first one to appear before the magistrate, on March 5, 2012, will be a farmer, Linda Moisés da Rosa. She provides a paradigmatic case of violence perpetrated by the army and the private security company Teleservice. On December 5, 2009, she lost her son Pereira António Eduardo, who was buried alive, along 44 other diamond diggers, by army soldiers. Two months later, on February 5, 2010, Teleservice guards hacked to death, with a machete, her firstborn son, Kito Eduardo António, for lacking the money to pay the guards to allow him to sift through abandoned gravel, as initially agreed.

Routinely, for years, both FAA and Teleservice have been stripping their victims naked and beating them with the flat sides of machetes on the buttocks, soles of the feet, and palms of the hands. Often they inflict serious injuries on the victims, at times causing limb paralyses and death.

The army executioners are mostly members of the 75<sup>th</sup> Infantry Brigade, which is based in Cuango, and has the task of fighting illegal mining and immigration. Regularly, the government sends additional units for military operations against miners and foreign nationals, but they also target and loot local communities.

Teleservice is the largest private security company in the country, and it provides services to Sociedade Mineira do Cuango (SMC), a joint-venture company that holds a concession of more than 2,000 square kilometers, split between the municipalities of Cuango and Xá-Muteba. The private company Lumanhe, set up by four of the nine generals who co-own Teleservice (see table), holds 21 percent of the shares of SMC, along with the state-owned company Endiama (41 percent) and the Bermuda established ITM-Mining (38 percent), which operates the mines.

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<sup>16</sup> See Marques, 2011:18

General	Position	Teleservice Shares	Lumanhe Shares
Manuel Hélder V. D. Júnior 'Kopelipa'	Minister of State and Chief of the Military Bureau of the Presidency	None	14.285%
Carlos Hendrick Vaal da Silva	Inspector-General of the General Staff of FAA	None	14.285%
Armando da Cruz Neto	Governor of Southern province of Benguela, former Chief of the General Staff	7%	14.285%
António França N'Dalu	Chairman of De Beers Angola, former Chief of the General Staff	10%	None
Adriano Makevela Mackenzie	Head of the National Center for Training and Military Education	None	14.285%
João Baptista de Matos	Former Chief of the General Staff	10%	14.285%
Luís Pereira Faceira	Businessman, Former Chief of the Staff of the Army	9%	14.285%
António Emílio Faceira	Businessman, Former Head of the Commandos	8%	14.285%
Paulo Flugger Barreto Lara	Former Head of Planning and Organization of the General Staff	6%	None
Total		50%	100%

Note: Two civilians, José Figueiredo and José da Silva, hold 16 percent of the shares of Teleservice, while the ownership of the remaining 34 percent remains shrouded in secrecy.<sup>17</sup>

To the cases submitted to the Office of the Attorney-General of the Republic, additional ones can be made available at notice. Since 2004, the author has collected a few thousand individual cases of torture and extra-judicial killings, in a sample area of just two municipalities, Cuango and Xá-Muteba, in order to overcome logistical and security issues. Most of the cases, collected over the past eight years, remain unpublished due to the lack of resources and outlets to

<sup>17</sup> Diário da República, 1994:999.



process and disseminate such a volume of information. Nevertheless, they constitute a body of evidence to be submitted in a court of law.

### **The Legal Arguments for Submission**

The lodging of the criminal complaint is based on the premise that the acts of violence committed by members of the army and Teleservice carry no legal bearing. The Law on Military Crimes forbids soldiers from committing acts of violence against defenseless civilians, even at times of war, and during combat (Law 4/94, Art. 47). Also, the Law on Private Security Companies prohibits such companies from meting out justice either through investigation or any other proceedings (Law 19/92, Art. 1, a), and from establishing any security systems that may “endanger, either directly or indirectly, the life or physical integrity of the individual” (Art. 4, 1, b). These legal provisions are enshrined in the Angolan Constitution regarding the protection of the right to life and physical integrity (Art. 58, c). The Constitution also bans torture, forced labor and inhuman and degrading treatment (Art. 60).

Furthermore, the severe legal restrictions on people’s fundamental rights, contained in the Diamond Law (Law 16/94) and the Special Regime of the Diamond-Bearing Reserve Zones (Law 17/94), are unconstitutional.

To formally conform to international standards, the Angolan constitution states that “the fundamental rights established in the present Constitution do not exclude any other applicable legal and regulatory norms under international law” (Art. 26.1). It also incorporates, in the domestic laws, the Universal Declaration of Human Rights and the African Charter on Human and Peoples’ Rights. (Art. 26. 3), as a failsafe system to overcome the shortcomings of the Angolan legislation concerning human rights.

In addition, the Angolan legislation that defines crimes against humanity, the moral commission of abuse of authority or power (Criminal Code, Art. 2, 19, 20), allows any citizen (Const., Art. 73) to lodge a criminal complaint when in possession of basic evidence of such crimes.

But there is caveat to this. The Office of the Attorney-General may not investigate the suspects simply on human rights abuses. It must also extend the inquiry into acts of corruption. By law, public officials are forbidden from engaging in private business ventures that involve the state (Law on Administrative Probity, Art. 25. 1, a). All diamond concessions involve the state as a significant shareholder, through its diamond and concession-holding company Endiama. All generals mentioned were on active duty at the time Teleservice and Lumanhe were set up and started to entertain such business ventures.

Litigation, in the Angolan courts of law, is a promising course of action. It is a surefire way to challenge the current state of affairs, and help society distinguish between the evils of a number of public officials and the state institutions that must be safeguarded from the wrong hands. Such a high-profile litigation case also helps to educate society about the country's legal system, and how to use it not only to defend their rights, but also to hold their elected officials accountable for their actions.

But there is the drawback of citizens' access to justice. For instance, the Lundas region, which is the size of Florida, has only one practicing lawyer and one paralegal to serve over one million individuals.<sup>18</sup>

As I stand here before you, in Greensboro (North Carolina), I have the real logistical challenge of finding the resources, within a week, to organize the travel of the ten undersigned victims, to lodge and feed them in the capital, currently one of the most expensive cities in the world<sup>19</sup>, and find them legal counsel. The authorities place that burden on me, and it might be expected that I fail at it, given the short notice of the court's notification.

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<sup>18</sup>See the Angolan Bar Association's information on lawyers in the Lundas at <http://www.oaang.org/content/advogados-lunda-norte>, and <http://www.oaang.org/content/advogados-lunda-sul>

<sup>19</sup> See Redvers, 2012.

## Lundas: The Reservation Zone

The summoned citizens are unable to pay their bus fares (US \$100) to the capital, though some of them engage in subsistence artisanal mining or farming. Their levels of poverty and social exclusion need to be contextualized. Although the region is abundant in natural resources, farming land and water, the local communities remain the most disenfranchised in the country, by force and by a legal disposition that converted the entire region into a Reservation Zone (Law 17/94, Art. 3. 2). This law granted discretionary powers to both the governors of Lunda-Norte and Lunda-Sul, to authorize or prohibit any commercial activity in their respective provinces (Art. 1).

The same law granted authority for the government to expropriate anything, from any citizen or private enterprise, on the grounds of public utility, for the benefit of the mining companies in both the restricted and protected areas (Art. 20, 3). As an example, in 2008, I collected receipts issued by Sociedade Mineira do Cuango (SMC) for the expropriation of more than 170,000square meters of farms. The company paid 25 cents of a dollar per square meter of crops destroyed and land seized to 209 peasant families. But even such an insignificant amount of money, which totaled US \$41,793, did not reach its destinations intact. Local officials and company employees kept the lion's share, as illustrated by a local resident, José Turiambe:

“My mother, Matesso Toca, from the area of Nossa, was supposed to receive a compensation of US\$1,000 for her huge farm, but João Eugénio, the municipal delegate for agriculture, got hold of the envelope, gave her only US\$150, and kept US\$850 with him. He told us that the money was for Mr. Passos, the [Cuango municipal] administrator. Later, I personally confronted the administrator to return the money, but he refused”<sup>20</sup>

As it is frequent with the regime's legal reforms, new laws are often passed to maintain the *status quo*. This is the case of the Mining Law (Law 31/11), which came into effect on

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<sup>20</sup>See the author's report on Harvesting Hunger in the Diamond Areas, 2008.

September 23, 2011. It revoked the Diamond Law (Law 16/94) and the Special Regime of the Diamond-Bearing Reservation Zones (Law 17/94), which had turned the Lundas into a formal concentration camp.<sup>21</sup> But, fundamentally, it maintained the same discretionary powers that provide formal authority for the government and mining companies (Art. 209, 1) to arbitrarily define and enforce rules for any kind of people's movement in the Restricted Areas (Art. 201, 3) and Protection Areas (Art. 202, 1, a, 2). For instance, the entire municipality of Cuango, with up to 7,000 square kilometers and over 150,000 people, is generally defined as both a restricted and a protected area. Entire villages, public roads, schools, bridges, etc., fall within the concessions, and their arbitrariness. Within the restricted and protected areas the Mining Law forbids any kind of economic activity "whichever its nature, industrial, commercial, agricultural or any other besides mining," (Art. 206, 1).

Although neither the government nor the companies have followed these laws by the book, what is clear, from years of research in the region, is that they turn the basic acts of subsistence by local communities into hazardous activities.

## **Conclusion**

This presentation has demonstrated the entrenchment of a criminal association in the government of Angola. However powerful, rich and authoritarian those responsible for this current state of affairs are, there shall be no fear in the pursuit of justice. For only justice may offer the protection of rights for both victims and perpetrators.

The risks, challenges and frustrations that such initiatives may involve should be offset by the dream of a better future for the country.

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<sup>21</sup> The U.S. Holocaust Memorial Museum provides a useful definition of a concentration camp as one "in which people are detained or confined, usually under harsh conditions and without regard to legal norms of arrest and imprisonment that are acceptable in a constitutional democracy." See the link:

<http://www.ushmm.org/wlc/en/article.php?ModuleId=10005263>

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