

To His Excellency
Eng. José Eduardo dos Santos
President of the Republic of Angola
Palácio do Povo
Luanda
ANGOLA

February 15, 2012

Re: *Omission of Investigation and Accusation by the General Prosecutor of the Republic in Cases of Unlawful Killings and Torture in the Lundas*
(Preliminary Inquest No. 04/2012-INQ)

Your Excellency,

In November 14th 2011, the undersigned Rafael Marques de Morais filed a criminal complaint against several defendants, which are suspected of a series of unlawful killings and instances of torture. The pattern of illegal activity denounced in the complaint concerned over an hundred victims and extended to the regions of Lunda-Norte and Lunda-Sul.

The parties implicated in the criminal complaint were the shareholders and executive directors of several mining companies and ancillary services in the mining industry. These include a number of flag rank officers, one of which currently serves in the capacity of Head of the Military House of the President, and concurrently as Minister of State in your administration.

Namely, the accused flag officers were the following: General Hélder Manuel Vieira Dias Júnior “Kopelipa”; General Carlos Alberto Hendrick Vaal Da Silva; General Armando Da Cruz Neto; General Adriano Makevela; General João Baptista De Matos; General Luís Pereira Faceira; General António Pereira Faceira, General António Dos Santos França “Ndalú”; General António Emílio Faceira; General Armando Da Cruz Neto; and General Paulo Pfluger Barreto Lara.

Also accused were the following corporate officers of ITM-Mining: Renato Herculano Teixeira; Andrew John Smith; Sérgio Eduardo Monteiro Da Costa; Helen M. Forrest; and Nadine H. Francis.

The complaint made reference to facts and a large body of criminal evidence arising from investigations previously related by the undersigned in several highly publicized reports, namely in “Lundas: As Pedras da Morte”; “Operação Kissonde: os Diamantes da Miséria e da Humilhação” and “Angola: A Colheita da Fome nas Áreas Diamantíferas”, each and all authored by the petitioner.

These reports were well received by the international community, by academics and human rights specialists worldwide, and are often quoted in the peer reviewed academic publications as in official documents of foreign State agencies (namely in Canada and the Netherlands), and are generally considered as an highly credible work of reference in the field of human rights investigations.

The reports contained both a vast body of testimonial evidence, and substantial and unequivocal corroborating material evidentiary means, including photographic evidence both of a substantial cluster of wrongful deaths and of extensive and abhorrent acts of torture.

The publicity received by denunciations and the substantial evidence quoted the named reports should have sufficed to demonstrate a pattern of serious human rights abuses and criminal activities. This finding should in turn, according to the rules and principles that govern Angolan criminal procedure law, have caused the relevant prosecutor's offices to launch ex officio the necessary investigations in order to bring to justice the responsible parties.

As Your Excellency is well aware, criminal prosecution of the crimes of homicide and aggravated assault and battery, under Angolan law (see articles 6 and 7.1. of Decree-Law 35007 of October 13th 1945, in conjunction with the language of article 165 of the Code of Criminal Procedure) is initiated ex officio by the prosecutor's offices and the competent police authorities, independently of the filing of any complaint, whenever the suspicion of a crime comes by whatever means to the attention of the authorities.

It was to be expected that such a test was more than met by the publication of the above referred reports. However, no prosecution ensued, and the omission of any such initiative forced the undersigned, acting as a concerned citizen, to file himself the complaint in reference.

The undersigned has recently received service of process in the case in reference in the form of a letter dated June 22 2012, but mailed in late November 2012, from the Office of The General Prosecutor of the Republic of Angola. The decision that was communicated to the undersigned was in the sense of closing the case, even while some of the evidence offered in support of the claim was not considered nor were the suggestions as to further means of inquiry acted upon.

Notably, depositions were not taken, on the grounds of a technicality totally devoid of legal merit, namely that the witnesses were related to the victims, a circumstance that entails no hindrance under Angolan law, (as under the law of any other State in the world, most obviously) to the taking of a deposition in a criminal matter, as it is clearly stated in § 2 of article 216 of the current Code of Criminal Procedure.

As Your Excellency certainly understands, it defies common sense to believe that any professional prosecutor might, acting in good faith, argue that, for instance, a widow may not identify the killer of her husband, on the grounds that she was his spouse, and that a father may not give a statement to the authorities concerning the killing of his son, whenever he may have witnessed the murder.

In fact, as Your Excellency also well knows, a case concerning an unresolved death by non-natural causes may only be closed without accusation for one of two reasons:

- one consists in the running of the statute of limitations;
- the other, in the entry of a formal finding in the sense that the death was self-inflicted and not caused by a third party.

In all other instances, as a matter of law, a murder case is always left open, pending further investigation or the finding of new evidence. Obviously, the decision of closing a case may only rest either on the finding that no crime was committed or else in the running of the limitation period. Such is, in Angolan law, the rationale of articles 25 and 29 of the Decree-Law 35.007, of October 13, 1945.

Mr. President,

It is an established fact, beyond any possible doubt, as recognized by a vast number of unrelated witnesses, that as much as one hundred Angolan citizens have recently been kidnapped, robbed and killed in Angolan territory by an armed group of security guards hired by mining companies or by its service providers. Nor is there any doubt whatsoever that the culprits have acted under the auspices of the denounced flag officers and in the interest of the mining companies of which the other accused are executive officers.

In this regard, the undersigned begs to recall the established jurisprudence of the United Nations Human Rights Committee that criminal investigation and consequential prosecution are necessary remedies for violations of human rights such as the right to life and any rights protected by article 6 of the International Covenant on Civil and Political Rights.

Also, the Committee's General Comment 31, Nature of the General Legal Obligation on States Parties to the Covenant, CCPR/C/21/Rev/Add.13 (2004), paragraphs 15, 18, lies down that where investigations reveal violations of certain Covenant rights, States parties must ensure that those responsible are brought to justice. A practical example of the application of this doctrine may be found, *inter alia*, in Communication No.1436/2005, *Sathasivam v. Sri Lanka*, Views adopted on 8 July 2008, paragraph 6.4.

A similar doctrine is to be found in the jurisprudence of the African Commission on Human and Peoples' Rights. In the case of *Mouvement Burkinabé des Droits de l'Homme et des Peuples v Burkina Faso* (2001) AHRLR 51 (ACHPR 2001), the Comissions has laid down the following views: "Article 4 of the Charter states that: Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right. The communication contains the names of various people who were victims of assassinations, forced disappearances, attacks or attempted attacks against their physical integrity, and acts of intimidation. The respondent state did not deny these facts [...] nor did it identify the perpetrators of the offences or take any measures against them. [...] The Commission would also like to reiterate a fundamental principle proclaimed in article 1 of the Charter that not only do the states parties recognise the rights, duties and freedoms enshrined in the Charter, they also commit themselves to respect them and to take measures to give effect to them. In other words, if a state party fails to ensure respect of the rights contained in the African Charter, this constitutes a violation of the Charter, even if the state or its agents were not the perpetrators of the violation. (See communication 74/92 [Commission Nationale des Droits de l'Homme et des Libertés v Chad (2000) AHRLR 66A (ACHPR 1995)].) "

In the case that concerns the killings and other human rights abuses in the region of the Lundas, though almost ten years have elapsed since the initially reported killings took place, the prosecuting authorities have not indicted, prosecuted or brought to justice anyone in connection with these events.

Indeed, it was only a formal complaint was filed that a pro-forma preliminary investigation was initiated as mandated by statute.

After a perfunctory investigation, the prosecutor's office decided not to initiate criminal proceedings against any of the suspects due to an alleged lack of sufficient evidence, and the prosecutors have even declined to hear the witnesses offered.

This is what results from the notice served upon the undersigned. In sharp contrast to their omission in deposing the material witnesses, the prosecutors took the initiative of deposing an alleged exculpatory witness, namely an alleged king of the region of interest, who has in the interim been unanimously denounced as an impostor (see attachment) by the true, recognized and legitimate bearers of the traditional authority in the region of interest to the investigations.

Excellency,

The evidence begs the conclusion that in fact no investigation was undertaken nor was any inquiry worthy of such name carried out to ascertain the responsibility either of the accused or of the members of the armed groups identified by the witnesses, namely the nefarious serial offender known as “Guard Katana”, of the security outfit Teleservice.

In view of the above, one is clearly forced to conclude that the absence of investigations to establish responsibility for the murder and torture of the victims amounts to a deplorable and blatant denial of justice. The prosecutor’s office has in this instance failed to live up to its constitutional mandate and is in breach of its legal obligations of properly investigating the death and assaults of the victims and of taking appropriate legal action against those found guilty.

Excellency,

The office of the Presidency is the first guarantor of the rights and liberties of the Angolan citizens and the highest magistrate in the land. In view of these constitutional responsibilities and taking also into consideration that one of the accused serves the Presidency as Chief of the Military House, the undersigned hopes that Your Excellency will take it to heart to put an end to the current denegation of justice.

Your Excellency will best know how to put to bear the substantial powers of His office over the prosecuting authorities so that they may be brought to order and abide the law of the land. In so acting, you shall be able to right the wrong done to the victims and to show that the strong arm of justice does not in its action discriminate between the mighty and the feeble and that its reach attains even those who prevaricate under cover of the dispensations and prerogatives of political or martial status.

Your Excellency will assuredly not be remiss in ordering a discriminating and impartial review of the facts denounced and of the applicable legal standards both in the domestic legislation and under International Human Rights Law.

Should Your Excellency, after an independent review of the facts of the matter and of the applicable provisions of both Angolan criminal procedure law and of International human rights law, decline to pursue any course of action in the domestic legal system, or to exert your magisterial influence in the sense of further investigation of the fact matter of the complaint in reference, the undersigned would beg to respectfully recall the following:

- The President of Angola is one of the born Members of the Assembly of Heads of State and Government of the African Union;
- As such, he has in the meetings of Addis Ababa (6 and 8 July 2004), as in several further instances, implicitly recognized both the merits and the competence of the African Human Rights Court.

- In the July 2005 AU Summit in Sirte, Libya, the Assembly of Heads of State and Government decided that the African Human Rights Court should be set up and the processes towards putting it in operation should begin; and
- Furthermore, Your Excellency was a part to the decision of the Assembly of Heads of State and Government of the African Union, following a proposal by the Chairperson of the Assembly of the AU and head of the Federal Republic of Nigeria, President Olusegun Obasanjo, to integrate the African Human Rights Court and the Court of Justice of the African Union.

This being the case, in coherence with the commitments and undertakings assumed by Your Excellency in the higher African Union instances, the undersigned respectfully petitions, pursuant to the provision of article 73 of the Constitution, with reference to articles 26.2;28.1;119,i); and 121.b) and c) of the same fundamental law, the following:

- That Your Excellency procure domestically through the adequate political and administrative measures the proper legal relief and vindication of the victims rights, namely compensate for the losses suffered and the identification and just punishment of the parties responsible; or, should Your Excellency decide to abstain of proceeding in such fashion,
- That Your Excellency submit the matter of the performance of the Angolan judiciary in the case in reference to the African Court of Human's and Peoples Rights pursuant to the provisions of article 4 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights; and also, in any event,
- That Your Excellency take the appropriate legal steps, using the authority conferred to him by Articles 119 to 121 of the Constitution, to ratify the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights.

The petitioner remains ready to discuss with any relevant authority or advisor of Your Excellency the facts and allegations of interest to the case in reference. Similarly, the undersigned stresses his determination in characterizing the inherent violations of the fundamental rights of the victims, as well as in fostering any adequate and proper measures to ensure that the denial of justice be cured and the legal culprits be made to answer for their crimes, to this day as yet unpunished.

Sincerely,

Rafael Marques de Morais
Address: [omitted]