



Em defesa da democracia
Contra a corrupção

Supporting democracy
Fighting corruption

Diplomacy to Combat Corruption

Rafael Marques de Morais

Presentation delivered at the conference "Raw Materials: A raw Deal for Developing Countries?"

An initiative of the Group off the Progressive Alliance off Socialists and Democrats

European Parliament, Brussels

October 3, 2013

This panel is discussing prospects for more engaging and effective international diplomacy to "assist" developing countries in profiting and benefiting more from the extraction of their natural resources, particularly mineral resources.

Angola is the focus of this presentation for it is among Africa's leading exporters of raw materials, namely oil and diamonds. Angola provides a remarkable case study in how it engages international diplomacy. First, the Angolan government has mastered the ability to negotiate highly profitable contracts with Western multinationals. Second, it has excelled in exploiting the Western and Chinese thirst for the country's oil, and the finance that flows from this, which allows the country to enjoy international diplomatic impunity. These combined international factors have enabled the ruling elite to loot the country with abandon, and abuse its own people at will.

What can the European Union's diplomacy do to help reverse such a situation? Corruption is a scourge that besets Angola, in common with much of Africa, and enables natural resources to become resource curses for the majority of the affected peoples.

This presentation underscores a central idea that what is needed is not more diplomacy or legal frameworks, at the national or international level, but enforcement of the laws that already exist to combat kleptocracies and to prevent the looting of national resources in any form.

Political and Legal Frameworks

There are comprehensive international mechanisms to combat corruption. Most important, for the subject under discussion are the United Nations Convention against Corruption (UNCAC) and the African Union Convention on Preventing and Combating Corruption (AUCPCC), both of which the great majority of African countries have ratified. There is also the regional SADC Protocol against Corruption, and the OECD Convention on Combating Bribery, to which many EU member states are signatory. The EU countries also have significant national legislation.

For instance, the AUCPCC has established the need for collaboration with the countries "of origin of multinationals to criminalize and punish the practice of secret commissions and other forms of corrupt practices during international trade transactions" (Art. 19). It also encourages "all countries to take legislative measures to prevent corrupt public officials from enjoying ill-acquired assets by freezing their foreign accounts and facilitating the repatriation of stolen or illegally acquired monies to the countries of origin" (Art.19, 2).

Meanwhile, the UNCAC provides a stronger framework within international law for the recovery of stolen assets.

These treaties provide the international legal framework to keep in check both kleptocratic regimes that have captured states, such as the Angolan regime; as well as fragile states with rather weak institutions, such as Liberia and Guinea.

Despite these mechanisms, experts have been raising a major concern regarding their effectiveness, namely, the lack of transnational mechanisms to enforce member states compliance.

Unlike some African regimes that lack national legislation and enforceable mechanisms to combat corruption, the Angolan regime takes legalism to the extreme. In 1996, it enacted the Law on the High Authority against Corruption, but the President has since stalled the procedures to elect its members and for its office to be established. The incorporation of the AU and UN conventions against corruption, as well as the referent SADC Protocol, into domestic law in 2006 and 2007, strengthened the criminalization of acts by public officials who take commissions, percentages or other forms of benefits, in businesses with the state, for personal enrichment.

In 2009, President José Eduardo dos Santos declared a zero tolerance policy against corruption. In the following year, in 2010, a new anti-corruption law came into effect, and it merged into a single document the different anti-corruption legislation that had been in existence since the eighties. Furthermore, in 2010 the President also enacted the anti-money laundering and terrorism financing law. As high-level corruption became a more obvious and institutionalized mechanism of government, on September 13, 2013, the President set up an inter-ministerial working group to “study and draft a proposal to implement, under the Angolan legal system, the UN Convention against Corruption.”¹

¹ ANGOP: “Presidente da República ordena implementação no ordenamento jurídico”, September 12, 2013, http://www.portalangop.co.ao/angola/pt_pt/noticias/politica/2013/8/37/Presidente-Republica-ordena-implementacao-ordenamento-juridico,fc9c38da-f31a-4394-8c36-cf3d30d36b0e.html

Angola's Deals

Since 2000, President Dos Santos has been issuing executive decisions to openly transfer or award significant shares in diamond mining concessions to his family, privileged members of his inner circle, generals, senior members of government and of his ruling MPLA. As of 2006, the process was extended to the open and illicit capture of shares in oil blocks. These decisions have been in violation of the national and international anti-corruption legislation that I have already mentioned, to which Angola is a signatory.

Oil accounts for more than 95% of Angola's export revenues, which represents up to half of the GDP. Oil exports are set to reach a record high of US\$ 69.7 billion next year, while diamonds will remain within the recent average of US\$1.1 billion in revenues.²

Angola has consistently had one of the fastest growing economies in the world for the past decade. But this picture is incomplete. One simple example is that in 2012, in salaries and other honoraria, Portuguese citizens remitted €270,6 million, from Angola to Portugal.³ This value is far more than what the Angolan government had allocated to oil producing Zaire province and the diamond producing provinces of Lunda-Norte and Lunda-Sul. These three provinces, along with Cabinda, provide most of the country's revenues. Remittances to China remain a secret, but given the activities of nearly a half million Chinese citizens in Angola, it must be superior to what the Angolan government allocates to its several strategic provinces combined.

² World Bank: Angola Economic Update, June 2013, Issue I, pp.52.

³ Público: "Remessas de portugueses em Angola cresceram quase quatro vezes em cinco anos", 21 de Fevereiro de 2013, <http://www.publico.pt/economia/noticia/remessas-de-portugueses-em-angola-cresceram-quase-quatro-vezes-em-cinco-anos-1585336>

Angolan investors have, by country, provided the largest quantity of investment in companies listed on the stock exchange in Portugal, an EU member state. These investors, most of them leading members of the Angolan kleptocracy and Sonangol, have invested more than €2.86 billion in recent years.

Angola's role as an important supplier of oil to global markets has allowed the government to do as it wishes, free of the diplomatic censure that limits the autonomy of many African and other developing countries. This applies to the conduct both of its financial and its political affairs.

Angola's position of financial strength allows it to escape the scrutiny of international financial institutions, but the drop in the oil price that followed the 2008 financial crisis caused the government to seek a new stand-by arrangement with the International Monetary Fund (IMF). As part of this arrangement, a 2011 audit by the IMF found that \$32 billion was unaccounted for in the period since 2007. However, the IMF readily accepted the government's explanation that the discrepancy was the result of "quasi fiscal" functions performed by the state petroleum company, Sonangol.⁴ What this meant was that Sonangol, which on behalf of the Angolan state receives all dues paid by foreign petroleum companies drilling oil in Angola, was performing transactions with state money that should have been directed through the Finance Ministry. These clandestine transactions, illegal under Angolan legislation, have been a notorious channel for corruption in Angola. Yet, the IMF made no attempt to investigate what had happened to the missing funds. It appears that for the IMF, maintaining good relations with the Angolan government was more important than carrying out its duties as a watchdog of good financial management.

⁴ See the full IMF response, dated April 9, 2012, to questions raised by Human Rights Watch and the Revenue Watch Institute, on the missing funds. The letter is available at http://www.hrw.org/sites/default/files/related_material/IMF%20Angola%20Response%20Letter.pdf

What applies to state finances applies also to politics: during Angola's last election, in August 2012, European and North American governments and NGO's sent no observer missions. They remained mostly silent in the face of the evidence, collected by Angolan civil society and opposition parties, of widespread irregularities in the electoral process. By contrast, electoral misconduct in Zimbabwe, to give one prominent example, never escapes the vocal criticism of western diplomats and journalists.

Furthermore, this year, in a clear case of nepotism, President Dos Santos appointed his own inexperienced 35-year-old son to run the Angolan Sovereign Wealth Fund, endowed with an initial US \$5 billion purse from oil revenues, and an average US\$3.5 billion a year from the sale of 100,000 barrels of oil a day. The World Bank has acknowledged that the fund's mandate "remains unclear and a detailed description of the FSDEA's objectives and operational rules has not yet been made public".

It is common sense in Angola that the fund is another strategy for the President to circumvent international pressure to account for the oil revenues. It is a clear diversion of funds to enrich his family, and an attempt to groom his son to succeed him. With such a purse the President's son may become a powerful and much sought out figure to dispense patronage at home and abroad through the fund's billions.

Corruption has been creating serious fault lines in the country that might grow into threats to political stability.

First, despite the annual \$5 billion budget allocated to defense and security, the army has failed to provide essentials such as uniforms, boots and basic food rations for its soldiers in many parts of the country. Corruption has secured the allegiance of the top brass of the army, but has been alienating the rank and file.

Second, Angola is exporting half of its oil to China in deals that remain shrouded in secrecy. The country's sovereignty and natural resources have been exposed to obscure Chinese official and buccaneer interests, in partnership with a few officials in the Angolan president's office.

Finally, the government has become increasingly repressive in an attempt to silence the growing outcry over the plundering of natural resources and the consequent further impoverishment of local communities. Since 2009, the government has arrested over 300 people in the diamond-rich Lunda provinces suspected of peacefully campaigning for more benefits or autonomy for the region. Among them, several are serving jail terms. Most prominently is a primary education headmaster, serving a six-year jail sentence, since 2010, for a crime against the state security: even though such a crime does not exist in the Angolan legislation.

Conclusion

The Angolan regime must be accorded the kind of diplomatic treatment reserved for kleptocratic regimes, for that is what it is. What does this mean in practice for the European Union and its member states?

The member states should review their law enforcement capabilities in the OECD Convention against Bribery and in the Kleptocracy Working Group. This latter instrument has devised a policy of No Safe Haven “to deny safe haven to the corrupt, those who corrupt them, and their assets, through seizure and forfeiture of the proceeds of corruption, and the denial of entry to or extradition and prosecution of those who participate in corruption.”⁵

⁵ U.S. government. “Response of the United States Questions Concerning Phase 3 OECD Working Group on Bribery”, May 3, 2010.

The No Safe Haven policy must be applied to notorious members of the Angolan regime who continue to use the European Union member states, particularly Portugal, to freely park their stolen loot and show off their ill-gotten gains.

European Union diplomacy can also play a more constructive role in levelling the playing field by using the combined power of its member states to audit the work of multilateral agencies, such as the IMF and the World Bank, in Angola. These institutions have been diligent accessories of the Angolan regime in providing international legitimacy for its deployment of new strategies for grand theft.