

Presidential Self-Dealing Has Corrupted Society

Rafael Marques de Morais

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Summary

In August, I sent a letter to the President of the Republic, in which I drew attention to the fact that the Attorney General of the Republic was breaking the law by serving as managing director of various private firms, something that is incompatible with the office that he holds.¹

Several people have asked me about the lack of a response from the Head of State and Government regarding these complaints. My response has been that one cannot and should not expect any positive reaction from the President of the Republic concerning corruption and respect for the law. I argued that José Eduardo dos Santos embodied the same practices of conflating public duties with private interests, which he himself had condemned as the worst evil of his government.² I also stated that disregard for the law was common practice for Dos Santos.

In response to these questions, I present a brief investigation into the practices of the Eduardo dos Santos Foundation (FESA) as a case study of the President's behaviour in relation to the institutions of state, the current law, and corruption. While serving as President of the Republic, José Eduardo dos Santos also serves as chairman of his foundation, a private entity whose structures include members of the government, members of parliament, multinational corporations and private businesses. Research reveals several articles of legislation which have been ignored by FESA since it was founded in 1996, and which outlaw the use of public powers to personal ends, conflict of interests, influence-peddling and other corrupt practices.

Why has society seemed powerless in the face of the innumerable abuses of power by the President of the Republic? This article tries to locate Dos Santos's actions in the context of the collective mentality that is paralysing society: generalised corruption. The article questions the President's political and moral legitimacy in continuing to rule

¹ See the author's letter about the Attorney General's business activities, addressed to the President of the Republic on 13 August 2009. A copy is available at <http://makaangola.com/wp-content/uploads/Letter-to-the-President-of-Angola.pdf>

² Dos Santos, José Eduardo (2008) *Devemos corrigir todas as práticas negativas que afectam a imagem do Governo*, address at the opening of the 11th Extraordinary Meeting of the MPLA Central Committee.

the country after thirty years in power, while disrespecting the laws approved by his own government, and allowing corruption to become institutionalised.

The reign of Dos Santos

According to Article 65 of the Angolan constitution, “the President of the Republic is not responsible for acts carried out in the exercise of his duties, except for cases of bribery or treason to the Fatherland”. (Some lawyers argue that Angolan legislation does not define the crime of bribery and that the provision on treason does not apply to the president. Nevertheless, as a signatory to the SADC Protocol against Corruption,³ Angola makes up for this omission since the state has incorporated the Protocol into its domestic law.⁴) Thus, with constitutionally-enshrined freedom from responsibility, the President can do as wishes. His slightest whim is law. Lawyers from the ruling MPLA party go to extremes to interpret the president’s violations of the law as acts of sovereignty and as demonstrations of the political wisdom of their leader.

The thirty-year reign of José Eduardo dos Santos has been successful in two respects. First, in the accumulation of wealth beyond measure, in shadowy ways and with impunity, by the presidential family, the closed inner circle of government, generals of the Angolan Armed Forces, high officers of the Angolan National Police, the MPLA elite and foreigners partners. Secondly, in the absolute control of political, economic and social power through a web of corruption that is complemented by strategies of repression.

In a recent talk on Radio Ecclesia I drew attention to a number of concrete cases of corruption in the highest echelons of the state. I referred to the ongoing violation of the law by members of the government and by those who control public resources. I quoted in particular the flouting of the Law on Crimes Committed by Public Office Bearers⁵ and the Disciplinary Regulations for Public Management⁶, both which clearly prohibit officials from using their positions or engaging in state business for personal benefit, beyond the proper remuneration for their work.

Several citizens have spoken to me about this subject. Yet it seems that society in general is still not yet prepared to deal with the truth. People feel offended, and can even become hostile, when someone exposes the truth to public view. This is one of the effects of generalised corruption, not of fear of repression. Even though the looting of public wealth has been laid bare, a large part of society prefers to survive by hiding behind the illusion that everyday corruption is an act of benevolence by those in power.

³ Assembleia Nacional, *Resolução n.º 38/05 de 8 de Agosto, Protocolo contra a Corrupção da SADC.*

⁴ According to the SADC Protocol Against Corruption, “Corruption ... includes bribery or any other behaviour in relation to persons entrusted with responsibilities in the public and private sectors which violates their duties as public officials, private employees, independent agents or other relationships of that kind and aimed at obtaining undue advantage of any kind for themselves or others.”

⁵ Assembleia do Povo (1990) *Lei n.º 21/90 de 22 de Dezembro.*

⁶ Comissão Permanente da Assembleia do Povo (1989) *Lei n.º 10/89 de 30 de Dezembro.*

“They [the power holders] plunder, but also allow others to plunder their share.” This seems to be the justification among the more enlightened sections of society.

The fear that is so often evoked as an explanation for the impotence of society is simply the fear of losing the property or benefits that are to be gained through dealings based on institutional, party-political or family connections. This is the condition of citizens who are aware of reality and capable of effecting change. This is a middle class riding on the back of opportunism.

The President’s Law

The President of the Republic, José Eduardo dos Santos, is the chairman of FESA, a private organisation which the Council of Ministers, chaired by President José Eduardo dos Santos, ratified as a public utility institution.⁷ From an ethical and legal point of view, this act in itself reveals a conflict of interest and influence-peddling, in that the President, acting through a collegiate institution of government, approved his private foundation as a public utility.

According to the Regulations for Associations and Other Public Utility Institutions,⁸ public utility status is bestowed upon “philanthropic or humanitarian associations, or aid and educational institutions founded by private individuals, of which the beneficiaries are the inhabitants of a particular place, and which are not administered by the State”.⁹

According to FESA itself, the foundation was created in 1996, “with His Excellency President José Eduardo dos Santos as its founder”.¹⁰ Bestowing upon FESA the status of public utility thus violates the regulation referred to above, which was approved by the President of the Republic as head of the Council of Ministers, and which is supposed to apply only to institutions created by private individuals. The President of the Republic is not a private entity.

As the chairman of FESA, the organisation’s highest authority, the President of the Republic plays an active role, with the power to chair meetings of the Trustees’ Committee, to appoint the members of the same committee, to convene meetings, to appoint and dismiss the president and vice-presidents of the foundation, to “determine the disposal of the foundation’s assets,” among other tasks.¹¹

From an ethical and legal point of view, the incumbent President of the Republic may not exercise any private function. Although the Constitutional Law is not specific on the matter, this conclusion can be reached through extensive interpretation, according

⁷ Conselho de Ministros, *Resolução n.º 14/96 de 20 de Dezembro*.

⁸ Conselho de Ministros (2001) *Decreto n.º 5/01 de 23 de Fevereiro*.

⁹ *Ibid.*, Artigo 2º, n.º 3.

¹⁰ See <http://www.fesa.og.ao/fundacao/estatuto.htm>

¹¹ See section II of the FESA Statutes on the foundation’s organs, particularly article 8, which defines the role of chairman, and article 9 which sets out the competencies of the chairman in six lines.

to the constitutional expert Mihaela Webba. If parliamentarians and judges may not fulfil private functions other than teaching, then definitely not the President of the Republic as the bearer of the highest state office.

Moreover, in Angola the president is an executive entity, since he is head of government and as such should, at the very least, respect the judicial regime applied to members of the government, namely the Law on Crimes Committed by Public Office Bearers. Even if this law does not apply to the President of the Republic, by association and by interpretation José Eduardo dos Santos ought to comply with this law as a member of the government.¹² This law prohibits the use of public office for personal gain, and combining private and public roles. Good sense should have persuaded José Eduardo dos Santos not to establish the foundation while in office as President of the Republic.

The very nature of the foundation conflicts with the statesmanlike behaviour that is expected of the president, and damages the supposed separation of public power from private interests. FESA, in point 1.2 of article 3 of its constitution, provides for delivering special consultancy services “with a view to technical assistance to public and private institutions (...)”. In point 1.3 of the same article, FESA intrudes into the realm of national politics by declaring itself ready to “contribute to the formulation of national policy conducive to the sustainable development of the country”.¹³

Article 4 of FESA’s statutes states that the foundation must “promote the creation of private business enterprises in which the foundation becomes a shareholder.”¹⁴ This is something which has happened with great success. FESA’s participation in commercial business, with no line drawn between the state and the private sphere, makes the President of the Republic the representative of the commercial interests of a private association in which local meets international capital.

As proof of his absolute power, José Eduardo dos Santos has brought part of the government and other bodies of state, such as the National Assembly, into the management of FESA, in disregard of the law. The sustenance of such a decision corrupts the workings of the public administration. This is demonstrated by looking at the management structures of FESA and of its sporting offshoot, the Santos Football Club.

¹² The Supreme Court controversially ruled on 21 December 1999 that “the President of the Republic is in a certain manner a member of the government since he presides over the formation of the government, having the power of decision in the Council [of the Republic]”. The Angolan lawyer António Paulo disagrees with this interpretation by the Supreme Court, and argues that from a constitutional point of view, the leadership of the government falls on the prime minister. Nevertheless, the president shelters behind this ruling as a way of legitimising his absolute control over the government’s decisions. He must therefore be held to account as a member of the government.

¹³ See Fundação Eduardo dos Santos (2009) *Alteração do Pacto Social da FESA*, Diário da República, III Série, n.º 77, de 27 de Abril, p 3607.

¹⁴ Ibid.

FESA¹⁵

Public officials	Public role	Role in FESA
Manuel Vicente	CEO of state oil company, Sonangol	Vice-Presidente
Pinda Simão	Vice-minister of Education	Curator, Member of the Permanent Committee
Mankenda Ambroise	Minister of Geology and Mines	Curator, Member of the Permanent Committee
Manuel Rabelais	Minister of Information	Curator
Domingos Peterson	MPLA Member of Parliament	Curator
Francisca Espírito Santo	Governor of Luanda and Minister without Portfolio	Curator
Nelson Cosme	Africa and Middle East Director, Ministry of Foreign Affairs	Curator
Victória de Barros Neto	Vice-Minister of Fisheries	Curator
Teresa Cohen	MPLA Member of Parliament	Curator

Santos Football Club¹⁶

Public officials	Public role	Role in Santos Football Club
Pinda Simão	Vice-minister of Education	deputy-chairman of General Assembly (GA)
Afonso Domingos Pedro Van-Dúnem "Mbinda"	Member of parliament, member of MPLA political bureau	1st member of GA
Francisco Magalhães Paiva "Nvunda"	Member of parliament, member of MPLA political bureau	2nd member of GA
Manuel Paulo da Cunha	Secretary to the President of the Republic	3rd member of GA
Gen. Leopoldino Nascimento	Head of Communications to the President of the Republic	1st member of the executive board
Gen. José João Mawa	Head of the Presidential Security Unit	2nd member of the executive board

Manuel Vicente, the chairman of the board of the Angolan state oil company, Sonangol, is breaking the Disciplinary Code for Public Management by serving as vice-chairman of FESA, a private function: even though he was mandated to do so by the President of the Republic. On the other hand, Sonangol, a state company, is a member of the FESA General Assembly, one of the main donors to the foundation and a partner in FESA's investment arm, Suninvest, in the Empreendimentos Miramar project in

¹⁵ Table based on information available on the FESA website.

<http://www.fesa.og.ao/fundacao/orgaos.htm>

¹⁶ Ibid. <http://www.fesa.og.ao/projectos/sfc.htm>

Luanda.¹⁷ This is a modern high-rise complex currently under construction next to the Alto das Cruzes cemetery, and includes a five-star Hotel Intercontinental¹⁸, the biggest casino in the country and three apartment towers, with the most expensive flats currently on the market. Sonangol holds 43% of the shares, Suninvest 40% while the foreign business that is building the project, the Nankwing Rainbow Company, holds the remaining 17%.¹⁹ This raises the question of who is paying the millions of dollars needed for the construction of the project? Where is Suninvest getting its funds from? Or is Sonangol covering all the costs and offering shares to Suninvest? This information is not in the public domain.

Although the National Assembly has removed the explicit definition of acts of corruption from the Law on Economic Crimes, and its succeeding laws, Angola remains a signatory to the SADC Protocol Against Corruption,²⁰ the United Nations Convention Against Corruption,²¹ and the African Union Convention on Preventing and Combating Corruption.²² The legal mechanisms and definitions set out in these documents apply to Angola.

More seriously, there is a simple explanation for the total support that the president's actions enjoy among members of the government, MPLA parliamentarians, and the leaders of the armed forces and the police: they do as the president wishes so that they too may act with impunity.

Let us take the example of the head of Sonangol, Manuel Vicente, whose personal businesses, such as Sadissa, engage in multi-million dollar deals with the state, but who has never been punished for such illegal acts.²³

The same can be said of Manuel Rabelais. The Minister of Information is managing director of various companies, some of which provide services to the state media outlets. Apart from giving away Channel 2 of TPA (Angolan Public Television) to the president's children, Manuel Rabelais insists on breaking the law by keeping Tchizé dos Santos, the president's daughter, as one of the interim directors of TPA.²⁴ Tchizé dos Santos is the managing director of Semba Comunicação, which is responsible for producing the content of TPA's Channel 2. The law known as the Statute of the Public Manager prohibits the simultaneous holding of public and private office in the way

¹⁷ See Miramar Empreendimentos, Limitada (2007) *Constituição da sociedade Miramar Empreendimentos, Limitada*, Diário da República, III Série, n.º 70, de 11 de Junho, pp.2169-71.

¹⁸ See InterContinental Luanda at <http://www.ichotelsgroup.com/intercontinental/en/gb/new-hotels/luanda>

¹⁹ Ibid. p.2170

²⁰ Assembleia Nacional, *Resolução n.º 38/05 de 8 de Agosto, Protocolo contra a Corrupção da SADC*.

²¹ Assembleia Nacional, *Resolução n.º 20/06 de 23 de Junho, Convenção das Nações Unidas contra a Corrupção*.

²² Assembleia Nacional, *Resolução n.º 27/06 de 14 de Agosto, Convenção da União Africana sobre a Prevenção e o Combate à Corrupção*.

²³ Marques de Moraes, Rafael (2009) *Legal Doubts over Thales' Angola Deal*, text available at <http://makaangola.com/?p=44&lang=en-us>

²⁴ Gabinete do Ministro da Comunicação Social (2009) *Despacho n.º 38/09*, 28 May.

that Tchizé dos Santos does. She has the double role of public servant and the main private supplier to TPA. What possibility does this leave for an oversight role by the state?

As members of FESA structures, ministers Manuel Rabelais, Francisca Espírito Santo and Mankenda Ambroise, vice-ministers Pinda Simão and Victória de Barros Neto, as well as the ambassador to Unesco, Sita José, and the Africa and Middle East Director in the Foreign Ministry, Nelson Cosme, are committing the crime of abuse of power, according to the Law on Crimes Committed by Public Office Bearers (Lei dos Crimes Cometidos por Titulares de Cargos de Responsabilidade).

The Members of Parliament Domingos Peterson and Teresa Cohen are violating Line H of Article 16 of the Deputies' Statute (Estatuto dos Deputados), by serving on FESA's Curators' Committee.²⁵ Two of the longest-standing members of the MPLA's Political Bureau – the parliamentarians Afonso Domingos Pedro Van-Dúnem "Mbinda" and Magalhães Paiva "Nvunda" – are also involved in the Santos Football Club.

The President in turn abuses the human resources that are put at his disposal for the fulfilment of his state duties and for his personal security, by deploying them in the management of the Santos Football Club. This is the case with Manuel Paulo da Cunha and Generals Leopoldino Nascimento and José João Mawa.

Moreover, according to the Santos Football Club website, the club's main objectives include commercial success through "finding the best and easiest route to acquire resources through the international known model of the "business-club".²⁶ Since José Eduardo dos Santos continues his role in FESA, and the Santos Football Club is a FESA project, it is fair to say that the president is directly involved in private business.

Influence-peddling

Furthermore, FESA represents the most blatant example of influence-peddling ever seen in the country. The FESA general assembly includes representatives of the oil multinationals British Petroleum (BP), ExxonMobil, Total and of the Block 2 associates (Braspetro, Sonangol Chevron, and the Angolan private companies Somoil, Poliedro and Kotoil), as well as the diamond giant De Beers. The construction firms that have benefited the most from state contracts – the Brazilian Odebrecht and the Portuguese Soares da Costa, Teixeira Duarte and MotaEngil – enjoy presidential favour as members of the FESA general assembly and its main donors. The firm that is almost exclusively responsible for the overseeing of the main state construction projects, Dar, offered FESA office space while the foundation was being set up. Dar is a member of the FESA general assembly, while its proprietor, the Lebanese Ramzi Klimk, is also the chairman of the foundation's fiscal committee. Klimk is also a shareholder in FESA's

²⁵ According to this point of law, one may not "use the position of member of parliament to benefit private interests, whether one's own or of a third party, in any way".

²⁶ ²⁶ See FESA (2009) *Programas e Projectos, Santos Futebol Clube de Angola: Objectivos do Clube*. <http://www.fesa.og.ao/projectos/sfc.htm>

investment arm, Suninvest, and of the German multinational Siemens, in Siemens Angola.²⁷ The main state-owned companies, Sonangol, TAAG (Angola Airlines), the diamond company Endiama, and Angola Telecom also have seats in the FESA general assembly.

According to Article 21, point 1, line B of the FESA statutes, one of the requirements for a seat in the general assembly is the donation of at least a minimum sum “determined by the Council of Curators”. However, there is no public information as to what this minimum sum is.²⁸

In terms of current legislation,²⁹ the monetary and material contributions by these companies to FESA can be defined as acts of corruption since they involve direct or indirect gifts to the highest state official, the president, who as head of the Council of Ministers has the power to decide on the awarding of all relevant state contracts. Until recently, FESA’s president, Ismael Diogo, who works with members of the general assembly on a daily basis, was also a public office holder with the position of Angolan consul general in Rio de Janeiro.

Conclusions

During 30 years in power, José Eduardo dos Santos has never earned a democratic mandate as president. Appointed President of the Republic by the MPLA in 1979, he did not win an outright majority in Angola’s first and only presidential election in 1992, and the required second round of that election never took place. His current behaviour deprives him of any political or moral legitimacy to continue in office. As Manuel Jorge points out, “there is no legitimate power without respect for the law.”³⁰

Since bribery is defined as an act of corruption, citizens ought to organise themselves to explore all the legal, civic and political means to insist on an independent audit of FESA’s activities, since there are plenty of indications that criminal action could be taken against the President of the Republic, José Eduardo dos Santos.

Society urgently needs a debate on how to restore the legitimacy, honour and authority of the office of the President of the Republic. The ongoing disrespect for the law is, in itself, a form of tyranny and the corruption of political power and of state institutions.

²⁷ Vide *Siemens, S.A*, Diário da República, III Série, n.º 94, de 4 de Agosto de 2006, pp. 2629-33.

²⁸ A public disclosure by a former member of FESA’s General Assembly, the then Norwegian oil company Norsk Hydro (currently StatoilHydro), revealed that it contributed with an annual sum of US\$100,000 to the president’s foundation. See <http://www.hydro.com/upload/33521/Final%20Libya%20Investigation%20Report%202008-10-06.pdf>

²⁹ As an illustration, the African Union Convention on Preventing and Combating Corruption defines corruption, in Article 4, point 1, line B as “the offering or granting, directly or indirectly, to a public official or any other person, of any goods of monetary value, or other benefit, such as a gift, favour, promise or advantage for himself or herself or for another person or entity, in exchange for any act or omission in the performance of his or her public functions”.

³⁰ Jorge, Manuel (2001) *Poder e Autoridade: A Legitimidade em Questão*, text sent to the *Fórum sobre as Múltiplas Consequências da Guerra*, 14-15 March, Luanda.

To take a stand against the political irresponsibility, impunity and corruption that are robbing Angolans of the prospect of a better collective future is an act that is in keeping with the constitution and with aspirations for a more moral society. Angola needs a leader who can restore morality to society and to government for the benefit of future generations.