

**Communication 328/06 – Front for the Liberation of the State of Cabinda v  
Republic of Angola**

**Summary of facts:**

1. The Complaint is brought by the Front for the Liberation of the State of Cabinda - FLEC (the Complainant) on behalf of the people of Cabinda (Victims) against the Republic of Angola<sup>1</sup> (the Respondent State or Angola).
2. The Complainant submits that Cabinda, formerly known as the Portuguese Congo, consists of a territory of approximately 2800 square miles. The Complainant further submits that in 1885 the independent rulers of Cabinda city and its environs entered into a treaty, the Treaty of Simulambuco, with the Government of the Kingdom of Portugal establishing a Protectorate over much of present day Cabinda.
3. In 1975, the Complainant alleges, the Alvor Conference in Portugal, between the colonial power and UNITA, MPLA, and FNLA (all of which were liberation movements) declared the annexation of Cabinda by Angola without any Cabindan participation. Following this event, Angola has exercised sovereignty over Cabinda despite protestations by the people of Cabinda, through groups dedicated to the idea of a distinct identity for the people of Cabinda.
4. The Complainant alleges that since 2002, following attempts by groups in Cabinda to stake a claim to autonomy for the people of Cabinda, the Respondent State has undertaken a massive military campaign against Cabinda and that when this failed, the state entered into *ad hoc* negotiations with Cabindan factions in an attempt to confuse issues. These negotiations, the Complainant alleges, excluded the Chairman of FLEC, Mr. Nzita Tiago – “the only universally recognized Cabindan authority” – and resulted in a 2006 Peace Accord that was contested by both Cabinda and the democratic opposition in Angola, the UNITA.
5. The Complainant further alleges that following the rejection of the 2006 Peace Accord by the majority of Cabindans, factions in Cabinda continued to demand local autonomy over the wealth of Cabinda. The Complainant states that the Respondent State has responded to the demands by maintaining a large military force in Cabinda, which has committed numerous documented human rights violations therein.<sup>2</sup>
6. The Complainant claims that in 2006 the Angolan Forces (FAA) committed dozens of human rights and humanitarian violations such as: the

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<sup>1</sup> Angola ratified the African Charter on 2 March 1990.

<sup>2</sup> The alleged violations include extrajudicial/summary executions, arbitrary arrests and detention, sexual violence, denial of civilians’ freedom of movement, torture and other mistreatment.

bombardment of civilian dwellings in the Mayombe (Piading) region; summary execution of Cabinda patriots in Buco, Zao and beatings and torture of Mpalabanda members in Caio Poba.

7. It is the Complainant further claim that in July 2006 Angola banned the only independent human rights organization in Cabinda, Mpalabnda (Associacao Civica de Cabinda) through the instrumentality of a court order, allegedly for inciting violence and hatred, and carrying out political activities rather than being a civil society organization.
8. Furthermore, the Complainant avers, Government of the Respondent State is exercising economic exploitation of Cabindan resources since the people of Cabinda are not allowed to have any say in the grant of licences and concessions over their resources. The Complainant claims that the people of Cabinda have been suffering comparatively higher unemployment, lack of educational opportunities, disease and intense poverty since the Government of the Respondent State took over Cabinda's natural resources such as offshore oil, onshore mineral and oil resources.
9. The Complainant further alleges that the Government of the Respondent State has economically dominated the Cabindan people by denying them their status as a people and by extracting more than ninety *per cent* (90%) of their economic patrimony while returning less than ten *per cent* (10%) to Cabinda. By this act, the Complainant alleges, the Respondent State has perpetrated neo-colonialism.
10. The Complainant also contends that although Cabindans are culturally and linguistically separate from Angola and have overwhelmingly identified themselves as 'Cabindans', not Angolans, the people of Cabinda have been denied their right to self-determination by Angola.
11. The Complainant submits that despite over 30 years of conflict over the status of Cabinda, the Respondent State has refused to hold a referendum on the issue of Cabindan question. The Complainant alleges that the Respondent State does not permit Cabinda to determine its own economic and social development. The Complainant states that all economic decisions are made in Luanda, the capital city of the Respondent State and not in Cabinda, even though Cabinda has maintained a government in exile since 1963 and has had an active self-defence force and civil administration inside Cabinda since 1975.

**Articles alleged to have been violated:**

12. The Complainant alleges that in relation to the people of Cabinda, the Respondent State has violated Articles 14, 19, 20, 21, 22 and 24 of the African Charter.

### **Prayers of the Complainant**

13. The Complainant requests the African Commission on Human and Peoples Right (African Commission or Commission):
  - i. To appoint a Special Rapporteur to undertake fact finding and make recommendations on the issues it has raised.
  - ii. Make its good offices available for further engagement on the issues raised
  - iii. Award \$US 50000 against the Respondent State to cover the Complainant's legal fees and costs.

### **Procedure:**

14. This Communication was received at the Secretariat of the African Commission on Human and Peoples' Rights (the Secretariat) on 29 September 2006. The Secretariat acknowledged receipt by letter dated 2 October 2006, informing the Complainant that the Communication would be scheduled for consideration on seizure by the African Commission at its 40<sup>th</sup> Ordinary Session held in November 2006 in Banjul, The Gambia.
15. At its 40<sup>th</sup> Ordinary Session, held from 15 to 29 November 2006, in Banjul, The Gambia, the African Commission decided to be seized of the Communication.
16. On 8 January 2007, the African Commission further received a press statement issued by FLEC on the current struggle for the control of petroleum in Cabinda, alleging continuous violations of the African Charter by the Angolan Government and other actors for which the State is responsible.
17. By a letter dated 8 February 2007 and *Note Verbale* dated 28 February 2007, the Secretariat informed the Parties of the Commission's decision on seizure and requested the Parties to submit their arguments on the Admissibility of the Communication within two months. A copy of the Complaint was also transmitted to the Respondent State.
18. On 25 April 2007, the Secretariat sent reminders to the Parties to submit their arguments on Admissibility by 10 May 2007 in time for the 41<sup>st</sup> Session of the African Commission. At its 41<sup>st</sup> Ordinary Session in May 2007 in Accra, Ghana, the Commission considered the Communication and deferred it pending the receipt of Arguments on Admissibility from the Parties. The Parties were notified accordingly on 20 June 2007.
19. On 15 August 2007, the Complainant's brief with its Arguments on Admissibility and an updated statement of facts was received at the Secretariat. These were transmitted along with a *Note Verbale* to the Respondent State on 20 August 2007 together with a request for the latter to submit its response to the Complainant's submission on Admissibility.

20. During its 42<sup>nd</sup> Ordinary Session in November 2007, the African Commission considered the Communication and decided to give the Respondent State one last chance to make its submissions on the Admissibility of the Communication. The Parties were notified accordingly on 19 December 2007.
21. During its 43<sup>rd</sup> and 44<sup>th</sup> Ordinary Sessions, the African Commission deferred the consideration of the Communication pending the submission on Admissibility by the Respondent State, the parties were accordingly informed.
22. On 27 April 2009 the Secretariat sent a reminder to the Respondent State to make its submissions on Admissibility.
23. On 21 July 2009, the African Commission received supplementary information to the Communication by the Complainant.
24. During its 45<sup>th</sup> and 46<sup>th</sup> Ordinary Sessions respectively, the African Commission considered the Communication and deferred its decision on Admissibility pending the Respondent State's submission on Admissibility
25. On 12 January 2010, the Secretariat received a letter from the Complainant urging the African Commission to take immediate action and to appoint a Special Rapporteur for Cabinda.
26. During its 47<sup>th</sup>, 48<sup>th</sup>, 49<sup>th</sup> and 50<sup>th</sup> Ordinary Sessions, the African Commission deferred the consideration of the Communication, and the Parties were accordingly informed. At its 10<sup>th</sup> Extraordinary Session held in December 2011, the Commission considered the Communication and declared it Admissible. The Parties were accordingly informed and invited to submit their Arguments on the Merit.
27. Between January and March 2012, the Secretariat received submissions from three different organisations representing different groups in Cabinda (joint submission by the Front de Liberation de L'Etat du Cabinda (FLEC) et Union Nationale de Liberation du Cabinda (UNLC), and individual submissions by the "Original FLEC" and the Mouvement Pour Le Rassemblement Du Peuple Cabindais et Pour Sa Souverainete "MRPCS). On 29 March 2012, the Secretariat received a Submission on the Merit from Dr Jonathan Levy acting in his capacity as legal representative of the Complainant.<sup>3</sup> The Complainant's Submission on the Merit was accordingly transmitted to the Respondent State.

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<sup>3</sup> By email to the Secretariat dated 17 Feb 2012, Dr Levy advised the Secretariat to consider submission from Cabindan groups other himself as amicus briefs.

28. On 24 April 2012, the Respondent State's *Note Verbale* forwarding the latter's Arguments on the Merit was received at the Secretariat and transmitted to Complainant through its legal representative.
29. On 12 July 2012, the Complainant through its legal representative forwarded its Supplementary Submission on the Merit. On 10, 12 and 28 September 2012, the Secretariat received the same copy of an updated and amended Submission on the Merit from the Respondent State.
30. On 18 June 2013, the Secretariat received additional Submissions from the "*Collectif des organisations cabindaises*" also known as the "Original FLEC". This submission was followed by a letter protesting notification that the submission has been made out of time and a request for reopening of the procedure for submission of additional documents by both parties.
31. At its 54<sup>th</sup> Ordinary Session held in Banjul, The Gambia in October 2013, the Commission considered the Communication on the Merit based on all the documents submitted by the Parties and the various Amicus briefs.

## **The Law**

### **Admissibility**

#### **Submission of the Complainant on Admissibility**

32. Although the Complainant submitted its written arguments on the admissibility of the Communication, the Respondent State failed to submit any arguments on the admissibility of the Communication despite an invitation and repeated reminders to do so. Accordingly, the Commission addresses the question of Admissibility on the basis of the Complainant's arguments on Admissibility.
33. The Complainant submits that the Communication meets all the Admissibility requirements set out in Article 56 of the African Charter. Regarding Article 56 (1) of the African Charter, the Complainant avers that the Communication is submitted by FLEC on behalf of the people of Cabinda.
34. Concerning Article 56 (2) of Charter, the Complainant submits that the Respondent State has violated Articles 14, 19, 20, 21, 22 and 24 of the African Charter. The Complainant further submits that although the Communication alleges serious violations of the economic and peoples' rights of the people of Cabinda by the Government of Angola, the Complainant does not request the African Commission to take up any matter that would interfere with the sovereignty of Angola or adjudication of Angolan territorial claims in Cabinda. The Complainant states that they are mindful that the African Commission must respect Articles 3(b) and 4(b) of the AU Constitutive Act regarding territorial sovereignty and respecting existing borders.

35. With regards to Article 56 (3) of the African Charter, the Complainant avers that the language used in the Communication is neutral legal language. In relation to Article 56 (4) of the African Charter, the Complainant submits that the Communication is not based exclusively on news disseminated through the mass media, but rather on primary information provided by FLEC and other organizations directly involved in the matter.
36. On the requirement of the exhaustion of local remedies under Article 56 (5) of the African Charter, the Complainant requests the Commission to waive this condition on the basis that exhaustion of domestic remedies is futile and legally impossible on the grounds that there is unrest and armed conflict involving the Parties and this creates difficulties for the commencement of legal proceedings by the Complainant. The Complainant avers further that the only independent civil society organisation which could have brought a legal action on behalf of the Complainant has been disbanded and banned by judicial order instigated by the Respondent State. It is also the Complainant's submission that it cannot pursue legal action in the Respondent State because it (the Complainant) has been branded a terrorist organisation since the signing of a 2006 Peace Accord between the Respondent States and elements in Cabinda.
37. As to Article 56 (6) of the African Charter, the Complainants aver that the Communication has been submitted in a timely manner. Lastly, the Complainant submits that the Communication complies with the requirement of Article 56 (7) of the African Charter because the Communication does not deal with a case which has been settled by the Respondent State.

#### **The Commission's Analysis on Admissibility**

38. Article 56 of the African Charter lists seven Admissibility requirements that have to be cumulatively fulfilled for a Communication to be declared Admissible. In the present Communication, while the Complainant has clearly stated its arguments as to why the Communication meets each of the seven requirements stipulated under Article 56, the Respondent State has not made any submission to contest or refute those claims.
39. From the time when the African Commission was seized with the Communication during its 40<sup>th</sup> Ordinary Session in November 2006 to date, ten (10) reminders were sent to the Respondent State requesting the latter to submit its arguments on Admissibility to no avail.<sup>4</sup>

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<sup>4</sup> Notes Verbale were sent to the Republic of Angola on 28 February 2007, 10 May 2007, 20 August 2007, 19 December 2007, 25 March 2009, 27 April 2009, 23 June 2010, 30 September 2010, 7 December 2010 and 11 August 2011.

40. As the African Commission has stated in the case of the *Institute for Human Rights and Development in Africa v. Republic of Angola*<sup>5</sup> “in the face of the state’s failure to address itself to the complaint filed against it, the African Commission has no option but to proceed with its consideration of the Communication in accordance with its Rules of Procedure.” In the same decision, the African Commission re-affirmed its position by ruling that “... it would proceed to consider Communications on the basis of the submission of the Complainants and information at its disposal, even if the State fails to submit.”<sup>6</sup>
41. In the case at hand, the Complainant submits that the Communication complies with all the seven requirements of Article 56 of the African Charter, except the one relating to the exhaustion of local remedies under Article 56 (5), for which the Complainant asks for waiver.
42. In the absence of any submissions from the Respondent State to the contrary, the African Commission has considered the Complainant’s Submission and is convinced that all the requirements under Article 56, except Article 56(5) are met. The Commission proceeds to consider the legitimacy of the request for waiver based on Article 56(5) of the Charter and relevant jurisprudence.
43. Article 56(5) of the African Charter provides that Communications should be “sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged”. This requirement is based on the principle that “the respondent state must first have an opportunity to redress by its own means within the framework of its own domestic legal system, the wrong alleged to have been done to the individual”.<sup>7</sup>
44. The Commission has stressed that the requirement of the exhaustion of local remedies “does not mean that complainants are required to exhaust any local remedy which is found to be, as a practical matter, unavailable or ineffective.”<sup>8</sup> The jurisprudence of the Commission, in determining compliance with this requirement, sets out “[t]hree major criteria, that is: the local remedy must be *available, effective and sufficient*.”<sup>9</sup>

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<sup>5</sup> Communication 292/04 - Institute for Human Rights and Development in Africa v. Republic of Angola, para. 34

<sup>6</sup> Ibid. The cases cited in this case are: Communication 155/96 Social and Economic Rights Action Center, Center for Economic and Social Rights v. Federal Republic of Nigeria, and 159/96 Union Inter Africaine des Droits de l’Homme, Federation Internationale des Ligues des Droits de l’Homme, Rencontre Africaine des Droits de l’Homme, Organisation Nationale des Droits de l’Homme au Sénégal and Association Malienne des Droits de l’Homme v. Republic of Angola.

<sup>7</sup> Communication 71/92 - Rencontre Africaine pour la Defence des Droits de l’Homme v. Zambia

<sup>8</sup> Ibid.

<sup>9</sup> See *Jawara v The Gambia* para 33, Communication 300/05 – SERAC and Socio Economic Rights and Accountability Project v. Nigeria, para. 45

45. The initial burden is on the Complainant to prove that they have met the requirement set in Article 56 (5) or that those remedies are unavailable in the particular case. Thereafter, the burden shifts to the Respondent State if it contests the allegations of the former.
46. In the present case, the Complainant avers that it has no legal standing under Angolan law and its representatives would face arrest and possible execution under Angolan national security laws if they try to pursue legal remedies in Angola, adding that members of FLEC are considered terrorists in Angolan territory and hence any attempt to take the case before Angolan courts would be futile, if not impossible, and would subject members of the Complainant organisation to arbitrary arrest, detention or execution as terrorists.
47. The Complainant also submits that the only independent human rights organisation in Cabinda, Mpalabanda, that could have taken their case before a court of law was banned on 20 July 2006 for allegedly inciting violence and hatred, and being involved in political activities. Furthermore, the Complainant argues that the principal members of FLEC (the Complainant) are outside Angolan jurisdiction, thus they request for the waiver of the requirement of exhaustion of local remedies.
48. These claims, which are not contested by the Respondent State, show the apparent existence of fear of persecution on the part of the Complainant.
49. In a number of cases the African Commission has used the standard of constructive exhaustion of local remedies to provide an exception to the rule. Fear of persecution is one of the exceptions to the requirement of exhaustion of local remedies. In *Sir Dawda K Jawara v The Gambia*<sup>10</sup> the African Commission reasoned that “the existence of a remedy must be sufficiently certain, not only in theory but also in practice, failing which, it will lack the requisite accessibility and effectiveness. Therefore, if the applicant cannot turn to the judiciary of his country because of generalised fear for his life (or even those of his relatives), local remedies would be considered to be unavailable to him”.
50. In *Rights International v Nigeria*<sup>11</sup> and *John D Ouoko v Kenya*<sup>12</sup>, the African Commission reasoned that the existence of apparent fear of persecution on the part of the victims, to return to their countries to exhaust local remedies would make the remedies not available to such persons and hence exempt them from the requirement to exhaust those remedies.
51. In the present Communication, the fact that the Complainant has no legal standing before Angolan courts, that most of its members live abroad and are

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<sup>10</sup> *Jawara v The Gambia*, para. 35

<sup>11</sup> Communication 215/98 – *Rights International v Nigeria*

<sup>12</sup> Communication 232/99 – *John d Ouoko v Kenya*



considered terrorists by the Government, leads to the conclusion that the chances of the Complainant exhausting local remedies have been practically rendered impossible by fear of prosecution.

52. Therefore, the African Commission holds that local remedies were not available to the Complainant and hence rules that the Communication is in line with the requirement under Article 56(5) of the African Charter.

53. For the above reasons, the African Commission declares the Communication admissible in accordance with Article 56 of the African Charter.

## **Consideration of the Merits**

### **Summary of Complainant's Submission**

54. The Complainant emphasises that the present Communication concerns itself strictly with a claim for economic self-determination of the people of Cabinda and in particular with the disposition and exploitation of onshore oil, mineral and natural resources.

55. The Complainant states further that the Communication excludes the matter of offshore resource allocation and relates only to the extraction of onshore resources which has remained dormant due largely to FLEC's armed opposition to any such exploitation. The Complainant contends that it does not recognise grants of resource extraction licences and concessions made by the Respondent State and asserts that it reserves the right to make its own arrangements with resource extraction companies upon the "decolonisation" of Cabinda.

56. Based on its contention that it has been recognised as the legitimate representative of the Cabinda people since 1974, the Complainant requests that the Commission to appoint a Special Rapporteur on the issue of Cabinda's economic self-determination on the grounds that the Respondent State has violated Articles 14, 19, 20, 21, 22 and 24 of the African Charter.

57. The Complainant argues that as an incident of the right to property under Article 14 of the African Charter, the natural resources of Cabinda remain the property of the people of Cabinda and must be administered largely for the benefit of the people of Cabinda. Accordingly, the grant of licences and concession for the extraction of onshore natural resources by the Respondent State is a violation of Article 14 of the African Charter.

58. It is the further contention of the Complainant that although a state can grant resource extraction rights in the name of its people, a grant made in cases where one people dominate another or a grant made or administered in an irresponsible manner would be illegitimate. The Complainant argues that historically, Cabinda has always maintained a separate identity, linguistically and otherwise, and the people of Cabinda were neither consulted on the

‘unilateral termination of Portuguese colonial protectorate’ nor did they ratify ‘the Angolan occupation’ of Cabinda.

59. The Complainant states that since 1974 it has ‘maintained a civil government inside portions of Cabinda’ and many of the areas of resource extraction ‘are in or near the FLEC zone’. Further, that since the people of Cabinda are distinct, the Respondent State is not entitled to unilaterally grant resource extraction licences or concessions in violation of the right to property of the people of Cabinda as contained in Article 14 of the African Charter.
60. In relation to the alleged violation of Article 19 of the African Charter, the Complainant contends that ‘revenue from onshore resource extraction will flow to Luanda just as offshore revenue does now’. The Complainant argues that a 2006 Cabinda Peace Accord which promised a 50% return of oil revenue to Cabinda ‘has not been realised or audited’ and only ‘10% or less will return to Cabinda’. The Complainant alleges further that any attempt to question the allocation of revenue has resulted in summary imprisonment ‘as in the case of Global Witness Investigatory’ staff who was arrested and charged by Angolan Police after meeting with local representatives of civil society in Cabinda.
61. The Complainant alleges further that in spite of the abundant oil resources in Cabinda unemployment is high and poverty, infant mortality and disease are higher in Cabinda than in most areas of Angola. The Complainant adds that Cabinda’s resources have ‘subsidised the government of Angola’ and the ‘Angolan administration has little concern for providing public goods and incentives to facilitate investment in welfare enhancing improvements for the population at large’. Thus, the Complainant alleges that the Respondent State has violated Article 19 of the African Charter.
62. Regarding the alleged violation of Article 20 of the Charter, the Complainant emphasises that the people of Cabinda are geographically, politically, linguistically and culturally distinct from Angolans so that they are have a right to social and economic development. The Complainant contends that the people of Cabinda are unable to exercise this right because organisations which ‘espouse a uniquely Cabindan point of view’ have been banned by the government of Angola. Complainant alleges further that Cabindans who campaign for economic self-determination are routinely arrested as ‘FLEC sympathisers’ while foreigners who have identified corruption in Cabinda have been sent to jail. Accordingly the Complainant claims that the Respondent State has violated Article 20 of the African Charter.
63. On Article 21 of the African Charter, the Complainant contends that grants and concessions (what it terms onshore oil and mineral rights offerings) have been made by the Respondent State ‘without input from the Cabindans’ and that all decisions regarding natural resources are made from Luanda, the Capital of Angola. The Complainant contends that the Cabinda people and

FLEC as the representative of the Cabinda people have not been adequately consulted about the management of 'their onshore resources. Rather, exploration and exploitation activities have been undertaken under the watch of the Angolan Armed Forces. Thus, the Complainant disputes the legal right of the Respondent State to exploit and dispose onshore resources in Cabinda and alleges that such activities amount to spoliation which is in violation of Article 21 of the African Charter and therefore should be redressed by the Respondent State.

64. On the alleged violation of Article 22 of the African Charter, the Complainant asserts that the people of Cabinda are a distinct people with a right to economic and social development and contends that the current policy of the Respondent State is one of 'Angolanisation of Cabinda' involving discriminating against and arresting individuals and groups that claim a Cabindan identity. Accordingly, the Complainant alleges that the Respondent State has violated Article 22 of the African Charter.
65. Regarding Article 24 of the African Charter, the Complainant alleges that the environment in Cabinda is not conducive for the development of the people of Cabinda. While it claims it does not seek an ideal environment, the Complainant argues that it seeks an environment that permits 'some measure of equity for the people of Cabinda'. The Complainant contends that the operations of companies such as Chevron take place in conditions that harm human health and the environment because the Respondent State has failed to enforce compliance with environmental rules.
66. The Complainant alleges further that the absence of viable civil society in Cabinda following the ban on the Mpalabanda organisation ensures that the activities of oil companies are not monitored and no compensation is paid in the event of damage to the environment. The Complainant therefore argues that the Respondent State has violated the right of the people of Cabinda to a satisfactory environment as guaranteed in Article 24 of the African Charter.
67. In support of all its allegations, the Complaint has submitted five documents as exhibits. They include a "Republic of Kabinda January 8 2010 Committee Report on the Togolese Incident"; a 1974 joint communiqué between Popular Movement for the Liberation of Angola MPLA) and the Complainant (FLEC); a Human Rights Watch report titled "They Put me in the Hole –Military Detention, Torture and Lack of Due Process in Cabinda"; a 2008 Chevron Alternative Annual Report titled "Chevron in Angola" and an Amnesty International Public Statement titled "Angola: Human rights organization banned". Also submitted in support of the Complainant's case are historical accounts presented by different bodies acting on behalf of the peoples of Cabinda.

### **Summary of Respondent State's Submission**

68. In its submission on the merits, the Respondent State argues first that the Communication should not have been declared admissible because that it failed to meet the requirements for admissibility as set out in the African Charter. The Respondent State argues that Article 57 of the African Charter requires that prior to the consideration of a Communication on the merit, the Chairperson of the Commission ought to present the Complaint before the Respondent State, setting out procedural matters and indicating whether the Complaint conforms to the provisions of the African Charter and other African Union (AU) instruments relevant to the matter. The Respondent State contends that this requirement had not been met with respect to the present Communication.
69. The Respondent State argues further that the Communication is not admissible for failure to comply with the requirements of Articles 50 and 56(5) of the African Charter regarding exhaustion of local remedies. The Respondent State also alleges that the Commission failed to comply with Rule 6 (3) of its own Rules of Procedure which prohibits "unrecognised National Liberation Movements from submitting matters for inclusion in the agenda of sessions of the Commission". The Respondent State insists that the Complainant is not qualified to submit this Communication to the African Commission's Session as it is neither a State Party nor a party entitled to bring "Other Communications" before the Commission.
70. Citing Articles 3(b)<sup>13</sup> and 4(b)<sup>14</sup> of the AU Constitutive Act, the Respondent State argues that the present Communication cannot proceed as it challenges the existing borders of an AU Member State and threatens the sovereignty and territorial integrity of the Respondent State.
71. With respect to the merits of the Communication, the Respondent State supplied its version of the history of Angola emphasising that both the Alvor Accord of 1975 and the Constitution of Angola endow it with sovereignty over the territory now known as Angola, including the Province of Cabinda. The Respondent State argues therefore that the right to self-determination has been exercised by the collective "peoples" of Angola and does not avail minorities and ethnic groups because it can only be available to states emerging from colonial boundaries in recognition of the principle of "*uti possidetis juris*".
72. Concerning the alleged violation of Article 14 of the African Charter, the Respondent State contends that the right to property is also enshrined in Articles 14 and 37 of its own Constitution. The Respondent State argues that the right to property in its Constitution is guaranteed in the interest of

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<sup>13</sup> Art 3(b) of the AU Constitutive Act provides that one of the objectives of the Union shall be to "defend the sovereignty, territorial integrity and independence of its Member States".

<sup>14</sup> Art 4(b) of the Constitutive Act provides that the Union shall function in accordance with the principle of "respect of borders existing on the achievement of independence".

individuals, corporate bodies and local communities which “implies all the people of Angola”

73. The Respondent State argues further that the Complainant has not demonstrated that the government of Angola does not manage the resources of Cabinda for the benefit of the people of Cabinda. The Respondent State avers that the government administers all its natural resources in an equitable and balanced manner as a common asset for the economic, social and cultural development of the country and in the national interest.
74. The Respondent State insists that the government of the Province of Cabinda receives a share of the Angolan State General Budget just like every other provincial government in Angola. Further, that by Article 7 of the Angolan State General Budget Act (no 26/10) the Provinces of Cabinda and Zaire receive amounts equal to 10 percent of earnings from petroleum resources in addition to other expenditures and costs for the construction of schools, roads, bridges, harbours, hospitals and other socio-economic infrastructure. Thus, the Respondent State contends that it has not violated Article 14 of the African Charter since its affairs are run “in accordance with the provisions of appropriate laws”.
75. As regards the alleged violation of Article 19 of the African Charter, the Respondent State asserts that Article 21 of its own Constitution provides for the principle of equality and that principle is implemented in all its 18 provinces. The Respondent State argues that as a result of its domestic constitutional obligation it “cannot implement measures aimed at developing the country based on the premise that revenue should be spent only in areas where it is generated”. The Respondent State cites the example of its on-going “Strategy to Fight Poverty” which aims to achieve a “50% reduction by 2015 in the number of people with less than USD1.00 per day”.
76. The Respondent State insists further that as compared to other provinces, the Province of Cabinda enjoys a special status in view of its contribution towards the Angolan State General Budget. The Respondent State also asserts that as contained in recent United Nations Development Programme (UNDP) and United Nations Children Emergency Fund (UNICEF) reports, there is an overall improvement in areas such as child health care and health care generally. Accordingly, the Respondent State contends, it has not violated Article 19 of the African Charter as it relates to the Province of Cabinda.
77. As regards the alleged violation of Article 20 of the African Charter, the Respondent State contends that the right has collectively been fulfilled by all the Angolan people through the attainment of independence on 11 November 1975 and by the conduct of free democratic elections in 1992 and 2008 respectively. The Respondent State asserts that according to available records a total of 7, 213, 281 voters representing 87.36% of the population of Angola

went to the polls in the 2008 Legislative elections in Angola. Out of the 220 deputies elected in the 2008 Legislative elections, 5 came from Cabinda as representatives of the Cabinda Province. Accordingly, the Respondent State argues that the people of Cabinda are represented in the National Assembly of the Republic of Angola by those deputies. In support of these assertions, the Respondent State attaches reports of the 2008 and 2012 elections as released by its National Electoral Commission.

78. Accordingly, the Respondent State contends that as with other of its provinces, the Province of Cabinda has its own political and administrative structures which are defined by law. The Respondent State argues that “like most African peoples, Angola is a multicultural and multilingual society” and Article 87 of its Constitution guarantees the right to respect, appreciation and preservation of the cultural, linguistic and artistic identity of the Angolan people. As such, the Respondent State concludes that it has not violated Article 20 of the African Charter.
79. Concerning the alleged violation of Article 21 of the African Charter, the Respondent State asserts that Articles 94 and 95 of its own Constitution create and separate public and private domains of property rights. It asserts that natural resources fall under the public domain and property in the public domain is constitutionally intended to “serve national interests instead of local interests alone” since it is expected to “benefit the Angolan people as a whole, with no exception”. The Respondent State points out that the Complainant itself agrees that some percentage of oil revenue is already set aside specially for the Province of Cabinda.
80. The Respondent State contends further that Angola operates a unitary system of government in which all provinces are on equal footing such that all public resources should serve the entire population of the state but it was in spite of this fact that the Province of Cabinda has been given special attention as a result of its contribution to national oil production.
81. The Respondent State challenges the Complainant’s claim that it (FLEC) is Cabinda’s representative and argues that the Complainant “lacks moral, legal and any other form of legitimacy” therefore it cannot speak on behalf of the people of Cabinda. The Respondent State insists that as a sovereign state, Angola has the legitimacy and the right to explore the natural resources in its territory, including those found in any of its 18 provinces. Thus, it argues that it has not violated Article 21 of the African Charter.
82. In relation to the alleged violation of Article 22 of the African Charter, the Respondent State argues that the Complainant has failed to produce any evidence to sustain a claim that the rights of the people of Cabinda have been violated. The Respondent State asserts that since Cabinda is part of a single,

indivisible and inalienable territory (Angola) it finds no reason or basis to defend a claim that Cabinda is being “*Angolanised*”.

83. The Respondent State contends that its citizens are Angolans by origin both according to its domestic law and in international law. It being the case, that there is no such thing as the State of Cabinda in Africa but a Cabinda that is a province “which is an integral part of the Angolan State”, the Respondent State argues that it retains a right to punish by law, “every deed, action or attempt to divide the Angolan State”. The Respondent State therefore argues that it has not violated Article 22 of the African Charter.
84. On the alleged violation of Article 24 of the African Charter, the Respondent State asserts that it takes the characteristics of Cabinda’s oil fields and forests into account and has taken measures with a view to preserving the environment. The Respondent State cites the enactment of legislation at national and local levels based on an entrenched right to a healthy and unpolluted environment in Article 39 of its Constitution. The Respondent State contends further that it has a Basic Environment Act in addition to a number of other statutes and institutions such as a Multi-Sector Technical Commission and the National Environment Authority which address the issues arising from oil exploration.
85. The Respondent State claims further that by a Presidential Decree of 2011, oil companies are required to account for any harm stemming from oil spills, while paying greater attention to fishermen and their families. The Respondent State admits that there have been oil spills in the Province of Cabinda but that its Ministry of Environment’s National Environment Surveillance Service has kept track of at least six of these spills, compelling oil companies to compensate fishermen and to replace items that had been lost or damaged.
86. The Respondent State asserts further that it has legislation which compels concessionaires and their associates to take preventive and practical measures to address environmental damage. Such measures include the generation of evaluation studies and environment impact audits, landscape and structural replenishment plans and standing contract mechanisms for environmental management and auditing.
87. The Respondent State submits that following an accident in the Gulf of Mexico, its Ministry of Environment has audited oil rigs in the Angolan sea “with a view to preventing a repetition of what happened in ... the Western Hemisphere”. It also claims that its Ministry of Environment has “been holding public consultation on environment impact evaluation in the Cabinda South Block in terms of Decree No 51”. The Respondent State contends that these measures are not restricted to the oil sector but are extended to other resources. Thus, it argues that it has not violated Article 24 of the African Charter.

88. In proof of its assertion, the Respondent State attached the results of its 2008 and 2012 Legislative elections result but no other documents apart from a “Memorandum of Understanding and Integration of FLEC Members” which states that the Respondent State has spent huge sums of money to register and demobilise former FLEC soldiers. The Respondent State concludes by insisting that the Communication should be considered inadmissible “for lacking a legal basis and probable cause”.

### **Complainant’s Supplementary Submission**

89. In its supplementary submission in reply to the Respondent State’s arguments on the merit, the Complainant reaffirmed and expanded on its version of the history of Cabinda in order to show that the territory of Cabinda was historically administered separately from mainland Angola and had a people with distinct linguistic, cultural and political identity.

### **Amicus Submissions**

90. Between January and March 2012 and again in June 2013, a number of submissions were made by a number of organisations representing different interests of the Cabinda people. With the consent of the legal representative of the Complainant, those submissions are considered as amicus briefs. In all their submissions, the different groups advance the Complainant's version of historical facts and insist that the people of Cabinda are victims of unlawful, aggressive and unilateral invasion by the government of the Respondent State. The groups submit that as a result of these historical facts and considering that the people of Cabinda were not consulted before their territory was ceded to Angola, the actions of the Respondent State amount to colonialism or neo-colonialism such that the people of Cabinda are entitled to self-determination.

### **The Commission’s Analysis on the Merits**

91. Although it did not submit its observations on the Admissibility of the Communication despite the receipt of a formal invitation and reminders to that effect from the Secretariat,<sup>15</sup> the first part of the Respondent State's submission on the Merit challenges the Admissibility of the Communication and raises issues that amount to a preliminary objection to the consideration of the Communication. Before analysing the merits of this Communication, the Commission considers it necessary to address some of the concerns raised by the Respondent State even though most of those issues ought to have been raised at the admissibility stage.

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<sup>15</sup> See para 39 above where the Commission notes that ten reminders were sent to the Respondent State to submit its observations on the Admissibility of the Communication.



92. The Commission notes the Respondent State's argument that Article 57 of the African Charter requires that a Communication to be considered by the Commission should first be presented to the concerned State Party by the Chairperson of the African Commission, setting out procedural matters and indicating whether the Communication conforms to the provisions of the African Charter and other AU instruments. Article 57 reads as follows:

*Prior to any substantive consideration, all communications shall be brought to the knowledge of the State concerned by the Chairman of the Commission*

93. The Commission affirms that Article 57 of the Charter obligates it to notify a State Party of the existence of a Complaint against such a State Party so that the State Party can participate in the proceedings. The Commission recalls that notice of this Communication was transmitted to the Respondent State by *Note Verbale* dated 28 February 2007. As indicated in paragraphs 16 to 20 and paragraphs 24 to 27 of the Admissibility decision, the Secretariat through several subsequent correspondences transmitted to the Respondent State the original Complaint and all other documents filed by the Complainant regarding this Communication. Further, as noted in paragraph 39 above, at least ten (10) reminders were sent to the Respondent State to respond to the Admissibility arguments but these did not yield any response from the Respondent State. Accordingly, the African Commission notes that it has satisfied its duty to the Respondent State as required by Article 57 of the African Charter.

94. The Respondent State further contends that the African Commission has failed to comply with Rule 6(3) of its own Rules of Procedure.<sup>16</sup> The Commission notes that the provisions cited by the Respondent State relating to the Provisional Agenda of the Commission's sessions are now contained in Rule 32 of the Commission's Rules of Procedure. The Commission recalls that Rule 32(2) of its Rules of Procedure provides as follows:

*The provisional Agenda shall include but not be limited to, items on "Communications from States" and "Other Communications" in accordance with the provisions of Articles 48, 49 and 55 of the Charter.*

95. The Commission reaffirms that Rule 32(2) of its Rules of Procedure permits "Other Communications"<sup>17</sup> such as the one now being considered to be included in the Agenda of the Commission's Session. In line with that provision, the present Communication is properly before the Commission as it has duly been included in the Agenda of the Session.

96. The Respondent State contends further that the present Communication ought to have been declared inadmissible because it fails to comply with certain aspects of Article 56 of the African Charter. The Commission recalls that the Respondent State was contacted at every stage and given ample opportunity to present its position and arguments regarding the admissibility

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<sup>16</sup> See para 69 above.

<sup>17</sup> That is Communications other than those Communications submitted by State Parties.

of this Communication but the Respondent State did not take advantage of the opportunity.

97. The Commission notes further that in the event that a State Party fails to submit its observations on admissibility within 60 days from the receipt of the Complainant's submission from the Secretariat as set out in Rule 105(2) of the Commission's Rules of Procedure, this Commission is authorised to proceed to make a decision on the admissibility of the Communication. In such cases, the Commission examines the admissibility submissions of the Complainant against the provisions of Article 56 of the African Charter. The Commission notes that in relation to the present Communication, this procedure has been followed to the letter. Accordingly, the Commission cannot revisit its admissibility decision in respect of the Communication.
98. Notwithstanding the fact that its Admissibility decision in respect of the Communication will not be reviewed, the Commission notes the Respondent State's argument that the present Communication should have been declared inadmissible on the grounds that it contradicts Articles 3(b) and 4(b) of the AU Constitutive Act. In that regard, the Commission recalls the Complainant's submission that the present Communication does not seek a decision on political self-determination or a right to secede from the Respondent State.
99. In its correspondences and submissions to the Secretariat, the Complainant has maintained that its claim is strictly restricted to a request for a decision on economic self-determination and a determination of the right of the people of Cabinda to enjoy the use of natural resources located within the Province of Cabinda. The Commission has also considered the prayers of the Complainant and notes that the claims as formulated do not contradict the provisions of Articles 3(b) and 4(b) of the AU Constitutive Act. The Commission does not consider itself bound to pronounce on the amicus briefs which seek to introduce secessionist dimensions to the Communication. Accordingly, the Commission proceeds to determine the Communication based on the submissions of the Parties.

**Alleged violation of article 14**

100. The Complainant alleges that the Respondent State has violated the right to property of the people of Cabinda contrary to Article 14 of the African Charter. Article 14 of the African Charter provides as follows:
- The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.
101. The Complainant contends that an incident of the right to property as guaranteed in the African Charter is that the natural resources of Cabinda must be administered largely for the benefit of the people of Cabinda since the people of Cabinda claim a distinct identity from the rest of Angola. It is also the Complainant's argument that the Respondent State is not entitled to unilaterally grant resource licences and concessions on Cabinda resources.

102. The Respondent State submits that its Constitution provides for the right to property and that the constitutional right is available to all the peoples of Angola. However, the State argues that certain items are classified in its Constitution as property in the public domain intended to serve the wider national interest rather than the interest of a smaller unit within the state. The Respondent State further challenges the Complainant's argument that the Government of Angola has not managed natural resources for the benefit of Cabinda people.
103. Generally, this Commission has stated in its jurisprudence that the role of the State in relation to the right to property is “to respect and protect this right against any form of encroachment, and to regulate the exercise of this right in order for it to be accessible to everyone.”<sup>18</sup> One way of fulfilling Charter obligation on the right to property is therefore to adopt legislation which recognises the principle of ownership and peaceful enjoyment of property. The inclusion of the right to property in the Angolan Constitution is therefore in compliance with the Respondent State’s Charter duty.
104. With regards to the general question whether a “people” can be bearers of the right to property under the African Charter, this Commission has previously answered in the affirmative in relation to indigenous peoples in Africa.<sup>19</sup> The African Commission reaffirms that a collective or communal right to property exists as a component of the right to property in Article 14 of the African Charter. Similar to the individual right to property, the communal right to property entails a state duty to recognise and protect peaceful enjoyment of ownership by a group or people subject to limitation by a state in the interest of public need or in the general interest and in accordance with the provisions of appropriate laws.
105. The Commission has also expressed the opinion that natural resources located in land owned or occupied by a people can be the subject of ownership in the context of the right to property under the African Charter.<sup>20</sup> In the Commission's view, protection of communal property rights to natural resources as a component of land right enjoyed by indigenous peoples is not alien to the African Charter or to international human rights generally.<sup>21</sup> One justification for the protection of this aspect of the right is the strong

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<sup>18</sup> Communication 279/03 - Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) v Sudan (COHRE case) (2009) ACHPR para 192

<sup>19</sup> Communication 155/96 - Social and Economic Rights Action Center and the Center for Economic and Social Rights v Nigeria (SERAC case) (2001) ACHPR paras 59 - 61; 276/03 - Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) v Kenya (Endorois Case) (2009) ACHPR paras 186 - 238

<sup>20</sup> Endorois Case, paras 186 - 238

<sup>21</sup> Relying on arts 60 and 61 of the African Charter, the Commission is also inspired by the decision in the case of *Saramaka People v Suriname* (Saramaka case) (2007) IACtHR (Judgment of 28 November 2007) para 121.

traditional attachment to their cultural land that indigenous peoples hold on to such that their survival depends on the resources they traditionally extract from the land.<sup>22</sup>

106. The Commission notes that the Complainant does not claim that the people of Cabinda are indigenous peoples with strong attachment to their land and their culture. The basis of the Complainant's claim is that Cabinda existed as a distinct Portuguese protectorate prior to 1975 when it was declared to be part of an independent Angola without the consent of the people of Cabinda. The Commission does not believe that distinct pre-colonial history on its own currently suffices to sustain a claim for special protection of a distinctive overriding communal right to property under the Charter.
107. In the absence of evidence that land in Cabinda is communally owned in a traditional context and that the people of Cabinda had and continue to hold on to strong attachment to their land as part of a distinct culture which requires dependence on land and its resources for the survival of the people of Cabinda, the right to property can be validly limited by the State in the overall public interest of the entire state and in accordance with appropriate laws.
108. In line with its obligation under International law, the African Charter and its domestic laws generally, the Respondent State can only limit the right to property under certain laid down conditions. The Complainant has not claimed or adduced evidence to show that the limitation of the right in relation to the people of Cabinda was not done in the public interest and according to appropriate laws.
109. The Commission recalls the Complainant's argument that an incident of the right to property under the Charter is that the people of Cabinda are entitled to be the main beneficiaries of the natural resources and that the Respondent State cannot unilaterally dispose of the natural resources of the people of Cabinda without their involvement in decisions on such disposal. The Commission agrees with the Complainant that as an aspect of the right to property under the Charter, the people of Cabinda are entitled to benefit from the natural resource found in their lands. However, the Commission believes that the enjoyment of that aspect of the right should not be to the detriment of other communities and groups in the State. The Commission notes further that the Respondent State's submission that the people of Cabinda (along with the province of Zaire<sup>23</sup>) enjoy a fair and equitable share of the proceeds of the petroleum resources of the State has not been challenged despite the

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<sup>22</sup> Ibid

<sup>23</sup> The Respondent State submits that the Province of Zaire also contributes significantly to the natural resources of Angola and accordingly, together with the Cabinda Province, enjoy certain privileges over and above other provinces.

Complainant's claim that the people of Cabinda are entitled to an additional 50% of proceeds from natural resources.

110. The Commission finds that the Complainant has failed to show that the people of Cabinda have a strong and profound cultural or ancestral attachment to their land and the natural resources under the land such that their survival depends on its protection. The Complainant has also failed to show that the Respondent State has denied the people of Cabinda a right to share equitably in the benefits accruing from their natural resources. Accordingly, the African Commission finds no violation in relation to Article 14 of the African Charter.

**Alleged violation of Article 19 of the African Charter**

111. The Complainant contends that the Respondent State has violated Article 19 of the Charter because the people of Cabinda have not enjoyed the right to equality as a people entitled to the same respect and rights as other peoples in Angola. Article 19 provides that:

All peoples shall be equal; they shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another

112. It is the Complainant's submission that Article 19 of the Charter has been violated in relation to the people of Cabinda because it anticipates that revenue from onshore resource extraction will "flow to Luanda just as offshore revenue does now". The Complainant alleges further that despite the resources extracted from Cabinda, unemployment is high and poverty, infant mortality and disease are higher in Cabinda than in most other areas of Angola. Thus, it claims the Respondent State has violated Article 19 of the African Charter in relation to the people of Cabinda.

113. In response to the alleged violation of Article 19 of the Charter, the Respondent State contends that its Constitution provides for the principle of equality and this is implemented in all its 18 provinces. The Respondent State argues further that 'it cannot implement measures aimed at developing the country based on the premise that revenue should only be spent in areas where it is generated. The Respondent State submits that while it is developing the entire country, the Province of Cabinda enjoys a "special status in view of its contribution towards the Angolan State General Budget". Thus, it claims that it has not violated Article 19 of the African Charter in relation to the people of Cabinda.

114. The Commission reaffirms its position that distinct and identifiable groups of "peoples" and communities exist within the State Parties to the African Charter and each set of "peoples" and communities is entitled to enjoy internal legal equality vis-à-vis other "peoples" and communities within the same state.<sup>24</sup> The Commission notes that a claim of unequal treatment in

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COHRE case, para 223

violation of Article 19 of the Charter requires evidence that a given group or set of peoples who is in a position similar to another group or set of people has been or is being treated differently or that a given group or set of peoples who is in a position different to another group or set of people is treated similarly such that the “peoples” complaining suffer unfair and unjustifiable disadvantage that amounts to discrimination.

115. In its submission, the Complainant contends that the bulk of the anticipated revenue from the resources in Cabinda will “flow to Luanda while only 10% or less will get to Cabinda”. The Complainant does not elaborate to show whether any single group of people in the Respondent State enjoys a greater share of allocation than the People of Cabinda. The Complainant also provides no documentary or other evidence in support of its claim. The Complainant does not produce the 2006 Peace Accord which it refers to in its submission. However, the Respondent State does not contest the claims but admits them partially to the extent that the Respondent State submits that the Province of Cabinda enjoys a special status since it receives up to 10% of oil revenue.
116. The Commission notes the Respondent State’s submission that the 10% special revenue that accrues to Cabinda is in addition to other infrastructural costs that the Government funds in the Province of Cabinda. Although the Respondent State has also failed to adduce any documentary or other evidence in support of this claim, the Complainant has not contested the Respondent State’s claim that only the Province of Cabinda (along with the Province of Zaire) enjoy the “special status”. Accordingly, the Commission will make its decision on the basis of the unchallenged submissions of the Parties.
117. Generally, the Commission holds the view that real or substantive equality requires that groups who have suffered previous disadvantages or continue to suffer disadvantages within a state are entitled to some advantageous treatment especially where such groups bear an unequal part of the burden for the exploration of natural resources in that state.<sup>25</sup> However, the Commission also notes the Respondent State’s argument that it cannot implement measures that aim at spending revenue only in areas where it is generated.
118. The Commission takes the view that the principle of equality requires the striking of a balance between a group's claim to advantageous treatment or affirmative action and the legitimate expectation of other groups within the state to share in the resources of that state. Accordingly, the Commission believes that a proper interpretation of equality in the present circumstance is one which recognises the right of the people of Cabinda to receive some

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<sup>25</sup> This is consistent with international best practices. See for instance, the *Samaraka* decision, para 103

advantage without endangering the survival of other peoples within the state or threatening the continued corporate existence of the Respondent State.

119. Although the Complainant contends that the people of Cabinda suffer unequal treatment as compared to the rest of Angola in terms of comparatively higher levels of unemployment, poverty, infant mortality and disease, no tangible evidence or data has been adduced to support these claims. As this Commission had previously observed, a Complainant that has made general claims and allegations needs to substantiate such claims and allegations with either documentary evidence or sworn affidavits or the corroborating testimony of others.<sup>26</sup> In the absence of evidence to support the claim of unequal treatment, the Commission does not find a violation of Article 19 of the Charter.

**Alleged violation of Article 20 of the African Charter**

120. Basing its argument on an acclaimed geographical, political, linguistic and cultural distinction from the rest of Angola, the Complainant claims that the Respondent State has violated the right of the people of Cabinda to social and economic development as guaranteed in Article 20 of the African Charter. The Complainant submits that the people of Cabinda are unable to exercise the right because organisations that “espouse a uniquely Cabindan point of view” are banned by the Government of Angola.

121. The Complainant alleges further that the enjoyment of the right to social and economic development is restricted because people who campaign for economic self-determination are routinely arrested. On these grounds, the Complainant alleges that the right of the people of Cabinda to social and economic development had been violated.

122. The Respondent State contends that it has not violated Article 20 of the African Charter in relation to the people of Cabinda because the right to self-determination had been collectively fulfilled by the entire people of Angola at independence in 1975. The Respondent State submits further the periodic democratic elections take place in Angola and as citizens of Angola, the people of Cabinda have participated fully at such elections, producing 5 out of 220 deputies elected to the Angolan Parliament.

123. It is the Respondent State's further contention that Cabinda also has its own political and administrative structures defined by Angolan law. On these grounds and in view of Article 87 of its Constitution which acknowledges that Angola is a multicultural and multilingual society where the different identities are to be appreciated and respected, the Respondent State contends that it has not violated Article 20 of the African Charter in relation to the people of Cabinda.

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<sup>26</sup> Communication 308/05 – *Majuru v Zimbabwe* (2008) ACHPR, para 92

124. The Commission recalls that Article 20 of the Charter has a particular historical context in the sense that it is one of the provisions of the Charter that was aimed at addressing the situation of Africans who remained under colonial domination at the time the Charter was drafted. Article 20 of the Charter provides that :

1. All peoples shall have the right to existence. They shall have the unquestionable and inalienable right to self-determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen

2. Colonised or oppressed people shall have the right to free themselves from the bonds of domination by resorting to any means recognised by the international community.

3. All peoples shall have the right to the assistance of the State Parties to the present Charter in their liberation struggle against foreign domination, be it political, economic or cultural.

125. The Commission notes the argument of the Complainant regarding the alleged violation of Article 20 of the Charter. In view of its opinion that the right to self-determination, the right of colonised and oppressed people to free themselves from domination and the right to assistance in liberation struggle are reserved for colonised peoples, the Commission does not agree with the Complainant that a distinct pre-colonial history by itself entitles the people of Cabinda to unilaterally claim those rights contained vis-à-vis the Respondent State.

126. As the Commission has noted in its earlier jurisprudence, in post-colonial Africa, the right to self determination can be enjoyed within the existing territories and with full respect for the sovereignty and territorial integrity of State Parties to the Charter.<sup>27</sup> The Commission also believes that the right to pursue economic and social development is attainable within the framework of an existing state insofar as different groups and communities are represented in decision-making institutions of the given state. Accordingly, the Commission does not find any violation of Article 20 of the Charter.

#### **Alleged violation of Article 21 of the African Charter**

127. In relation to Article 21, the Complainant alleges that the Respondent State has violated the right of the people of Cabinda to freely dispose of their wealth and natural resources because the Respondent State has made grants and concessions on Cabinda's onshore oil resources "without input from the Cabindans". The Complainant contends that the acts the Respondent State in this regard amount to spoliation under Article 21 of the Charter and should attract a right to lawful recovery and to an adequate compensation. Article 21 of the African Charter states as follows:

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<sup>27</sup> Communication 75/92 - Katangese Peoples' Congress v Zaire (1995) ACHPR para 4



1. All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it.
  2. In all cases of spoliation, the disposed people shall have the right to the lawful recovery of its property as well as to an adequate compensation.
  3. The free disposal of wealth and natural resources shall be exercised without prejudice to the obligation of promoting international economic cooperation based on mutual respect, equitable exchange and the principles of international law.
  4. State Parties to the present Charter shall individually and collectively exercise the right to free disposal of their wealth and natural resources with a view to strengthening African Unity and solidarity.
  5. State Parties to the present Charter shall undertake to eliminate all forms of foreign exploitation particularly that practiced by all international monopolies so as to enable their peoples to fully benefit from the advantages derived from their national resources.
128. The Respondent State argues that by Articles 94 and 95 of its Constitution, natural resources fall in the category of items classified as property in the public domain which are reserved to serve national rather narrow local interests. The Respondent State submits further the Province of Cabinda already receives special attention for its contribution to oil revenues. Asserting its sovereign authority and legitimacy to explore natural resources in Angolan territory, the Respondent State challenges the authority and legitimacy of the Complainant to speak on behalf of the people of Cabinda with regards to the exploitation of natural resources.
129. The Commission recalls its jurisprudence which traces the origin of Article 21 to the colonial era when human and material resources in Africa were exploited for the benefit of powers from outside the continent.<sup>28</sup> However, the Commission has also held that the rights in Article 21 of the Charter are still applicable in post-colonial Africa in favour of groups within states to the extent that it triggers an obligation on the part of the State Parties to protect their citizens from exploitation by external economic powers<sup>29</sup> and to ensure that groups and communities, directly or through their representatives, are involved in decisions relating to the disposal of their wealth.<sup>30</sup> Nevertheless, the Commission also recognises the right of State Parties to supervise the disposal of wealth in the general interest of the state and its communities.<sup>31</sup>

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<sup>28</sup> Communication 155/96 - Social and Economic Rights Action Center (SERAC) & Center for Economic and Social Rights (CESR) v Nigeria (*SERAC v Nigeria*) (200) para 56

<sup>29</sup> SERAC v Nigeria, paras 57 - 58

<sup>30</sup> Endorois v Kenya, para 268

<sup>31</sup> Ibid.

130. The Commission notes that in relation to Article 21 of the Charter, the Complaint invokes a right of the people of Cabinda to dispose of their wealth and natural resources as well as to receive compensation for resources already exploited. In this regard, the Commission notes that the term “peoples” in Article 21 of the Charter can mean either the entire peoples of a given state or a “peoples” within the state. The Commission believes that in the first context, Article 21 of the African Charter empowers a State Party to exercise the guaranteed right free from interference from any other African or non-African state. This has to be the explanation for sub-Articles 4 and 5 of Article 21 which speak to State Parties.

131. However, the Commission believes that a “peoples” within an existing state can be beneficiaries of the right in Article 21 to the extent that it imposes a duty on the Respondent State to ensure that resources are effectively managed for the sole and equal benefit of the entire peoples of the state. Accordingly, the African Commission is of the view that one aspect of the right in Article 21 of the African Charter is the duty of the State to involve representatives of its peoples in decisions concerning the management of national wealth and natural resources.

132. The Respondent State has shown that elected representatives of the people of Cabinda are in the Angolan Parliament which exercises oversight supervision of the management of natural resources. As this Commission noted in *SERAC v Nigeria*,<sup>32</sup> the State has the right to exploit natural resources in its territory. However, the Commission believes that Article 21 of the African Charter presupposes that that right is held in trust for the people. The Respondent State's submission that it effectively manages natural resources for the benefit of all peoples in Angola has not been challenged. The Commission therefore finds no violation of Article 21 of the Charter.

#### **Alleged violation of Article 22 of the African Charter**

133. The Complainant's allegation that the Respondent State has violated Article 22 of the African Charter with regards to the people of Cabinda is based exclusively on the argument that the Respondent State pursues a policy of “Angolanisation of Cabinda”. In the absence of any other argument or evidence in support, the African Commission finds no violation.

#### **Alleged violation of Article 24 of the African Charter**

134. The Complainant alleges that the Respondent State has violated Article 24 of the African Charter in relation to the people of Cabinda because, as a result of oil exploitation activities authorised by the State, the environment in Cabinda is not conducive for the development of the people of Cabinda. The Complainant argues further that the operations of companies such as Chevron which are authorised by the Respondent State take place in conditions that harm both human health and the environment and this has

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<sup>32</sup> Para 54

happened because in the absence of viable civil society monitoring, the Respondent State has failed to enforce compliance with environmental rules.

135. The Respondent State contends that it has not violated Article 24 of the African Charter in relation to the people of Cabinda since it has taken measures aimed at preserving the environment. The Respondent State cites national legislations that it has adopted to address the challenge of environmental pollution. The Respondent State submits further that it has compelled oil companies operating in the area to account for harm occasioned by oil spills, with emphasis on demanding compensation for fishermen and their families. The Respondent also claims that it has set up a National Environment Surveillance Service that has kept track of at least six oil spills in the area while its Ministry of Environment has audited rigs in the Angolan sea to prevent further spills. In effect, the Respondent State contends that it has taken action to address the concerns of the Complainant.

136. The African Commission notes that apart from the fact that it did not adduce any evidence in support of the general allegation that the right to a satisfactory environment has been violated by the Respondent State, the Complainant has not disputed or challenged the claims of the Respondent State. In the absence of any evidence to support the alleged violation, the African Commission finds no violation of Article 24 of the African Charter.

#### **Decision of the African Commission**

137. In view of the above, the African Commission finds no violations of Articles 14, 19, 20, 21, 22 and 24 of the African Charter as alleged by the Complainants.

**Done in Banjul, the Gambia during the 54th Ordinary Session of the African Commission on Human and Peoples Rights, 22 October to 5 November 2013.**