



Upper Tribunal  
(Immigration and Asylum Chamber)

MB (Cabinda risk) Angola CG [2014] UKUT 00434 (IAC)

**THE IMMIGRATION ACTS**

Heard at Field House  
On 19 May 2014

Determination Promulgated

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Before  
UPPER TRIBUNAL JUDGE PETER LANE  
UPPER TRIBUNAL JUDGE JORDAN

Between

MB

Appellant

and

The Secretary Of State For The Home Department

Respondent

**Representation:**

For the Appellant: Ms S. Akinbolu, Counsel instructed by Halliday Reeves Law Firm

For the Respondent: Mr J. Parkinson, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. *FP (Return – Cabinda – Non-Luandan) Angola CG [2003] UKIAT 00204 no longer provides an accurate assessment of country conditions. It ceases to be country guidance.*
2. *There is significant evidence of human rights abuses, including within Cabinda and affecting Cabindans, problems of arbitrary arrest and detention, ill-treatment in detention, poor prison conditions, restrictions on freedom of expression, government action against protest and limitations in the legal system and security laws. However, these problems do not render all those returning to Angola or Cabinda to be at risk of serious harm, whether or not they are Cabindans.*

3. *Unless there exists a situation in which there is generalised violence or armed conflict at a very high level (which is not the case here) in order to establish a real risk of harm, an individual has to establish that, by reason of circumstances as they relate to him, there is a reasonable likelihood he will come into contact with the authorities in a way that will result in his detention.*
4. *The Angolan authorities do not equate being a Cabindan with being a member of or supporter of the Front for the Liberation of the Enclave of Cabinda (FLEC).*
5. *The evidence fails to establish that FLEC currently operates at a level such as to represent a real threat to the Angolan authorities although they are keen to take measures to ensure that there is no resurgence of its activities. Nor does the evidence establish that FLEC reflects the views and aspirations of a majority of Cabindans, notwithstanding the fact that the Cabindan sense of social identity remains very strong and separation from Angola remains an aspiration shared by many. The Angolan authorities readily understand the distinction between FLEC membership or support and Cabindan self-assertion.*
6. *There is clear evidence of normal security checks at airports, including Luanda airport on arrival. Those checks are likely to be thorough and directed towards establishing the identity of the person entering the country.*
7. *There are no obstacles in a returnee to Luanda airport making an onward journey to Cabinda. The finding in FP that travel to Cabinda from Luanda is excluded as a practical possibility is no longer correct.*
8. *Language is a distinctive method of identification but identification as a Cabindan is not sufficient to establish a real risk.*
9. *A person of Cabindan origin returning to Angola will not in general be at real risk of ill-treatment by reason of his or her Cabindan origin. Such a person is reasonably likely to be detained (with the accompanying risk of ill-treatment) only if he or she has a history of active involvement with FLEC (or one of its factions, such as FLEC-PM or FLEC-FAC). Excluded from those at risk are individuals formerly associated with the pro-government FLEC-Renewal (FLEC-Renovada) or Antonio Bembe.*
10. *A person's Cabindan origin will not, in general, preclude him from living or working in Luanda or some other part of Angola.*

## **Introduction**

1. The appellant is a citizen of Angola and comes from the exclave of Cabinda<sup>1</sup>, formerly Portuguese Congo. Cabinda is separated from the rest of Angola by a narrow strip of territory belonging to the Democratic Republic of the Congo. It is,

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<sup>1</sup> Cabinda is an Angolan exclave in that it is not connected to the rest of Angola by land. It is not strictly an enclave, that is, a country or part of a country lying wholly within the boundaries of another since Cabinda has a coastline and is not entirely surrounded by the DRC, although the DRC may well think of it as an enclave. The terms are used indiscriminately in relation to Cabinda.

therefore, geographically separate from the rest of Angola, bordered to the north by the Republic of the Congo and to the west by the Atlantic Ocean. It covers a little over 3000 square miles. The Treaty of Simulambuco of 1885 created Cabinda as a protectorate of the Portuguese Crown. Cabinda was, however, treated as a district of Angola and, in 1975, was reconfirmed as part of Angola, although geographically distinct. It is unsurprising that ethnically and linguistically the Cabindans are distinct from the remainder of Angolans. These distinctions led to low intensity guerrilla warfare in the 1970s and 1980s until a peace agreement was brokered in July 2006 when a ceasefire was negotiated by a group purporting to represent the Front for the Liberation of the Enclave of Cabinda (FLEC) although a faction (or factions) of FLEC continues to maintain that the agreement was effected without their authority or mandate.

### **The population of Cabinda**

2. According to the COI report for Angola dated 1 September 2010 (the last such report to have been produced by the Home Office), the population of Cabinda stands at around 300,000 indigenous people, although out of this number only one third live in the territory of Cabinda. The other two thirds inhabit the surrounding areas in a generally stable state on Congolese and Zairian territory. This, perhaps, accounts for the significant differences that exist in the background material as to the population of Cabinda.

### **Immigration history**

3. The appellant was born on 20 November 1987. He arrived in the United Kingdom in November 2010 avoiding immigration controls. He was then aged 23. He was arrested on 29 November 2010 under immigration powers and a decision was made on 8 December 2010 to remove him as an illegal entrant. He claimed asylum on 14 December 2010 which was subsequently refused on 11 January 2011.
4. His appeal against the removal decision was heard by Judge Handley on 7 March 2011. The appellant claimed that when he was five or six years old his parents had been arrested and killed by the Angolan army because of their involvement with FLEC. He said that, following their deaths, his uncle took him to the DRC where he grew up and attended school. He claimed that his uncle was a leader of FLEC and that he assisted his uncle until he was arrested by the DRC Army. Eventually he was taken to the Cabinda border where he was arrested by the Angolan army. He was detained, interrogated and ill-treated. The appellant said that his uncle then arranged for his release in November 2010 at which point he travelled to the United Kingdom. Although the respondent accepted that the appellant was an Angolan national from Cabinda, she rejected his account of involvement in FLEC and decided the appellant could therefore return to either Angola or Cabinda.

## **The preserved findings of fact**

5. Judge Handley, having considered the evidence, concluded that the appellant was not a member of FLEC. Nor had he been detained, tortured or escaped as he had claimed. He concluded that the appellant would be returned to Luanda and that it was likely that the appellant would be able to fly from there to Cabinda, if he chose to do so.

## **The error on a point of law and setting aside the First-tier Tribunal Judge's determination**

6. Permission to appeal to the Upper Tribunal was granted on the basis that it was arguable that Judge Handley had failed to apply what was the current Country Guidance contained in *FP (Return - Cabinda - Non-Luandan) Angola* CG [2003] UKIAT 00204. At the hearing of the appeal, Judge J.M. Holmes sitting as a Deputy Judge of the Upper Tribunal decided that there was an error of law. The findings of fact we have set above were not disturbed. His decision will be found as appendix 1 to this determination. On the basis of those findings we set aside the decision of Judge Handley and re-make the decision.

## ***FP (Return - Cabinda - Non-Luandan)***

7. In July 2003, a panel of the IAT chaired by its President, Ouseley J, decided *FP (Return - Cabinda - Non-Luandan) Angola*. FP, an Angolan national born in Cabinda, had left Cabinda in June 2001. The Adjudicator concluded that FP had been a member of FLEC in 1999 and that his father had also been a member of FLEC and had been killed. However, he was not satisfied that FP had left Angola for the reasons he claimed but concluded he could safely return to Cabinda because he would neither suffer any problems from members of FLEC nor from the Angolan authorities at whose hands he had suffered no ill-treatment in the past.
8. The removal directions were set to Angola itself and not to the Cabinda enclave and would be effected by return to Luanda. FP was not from Luanda and did not speak Portuguese, the language normally spoken in Angola. He spoke only French and Kikongo. He claimed the Angolan authorities at Luanda Airport would recognise that he came from Cabinda where the conflict between the independence movements and the Angolan government had flared up. It was said that, as a member of FLEC, he would be at risk of being identified as a Cabindan supporter of FLEC, and therefore at risk of torture.
9. The Tribunal heard evidence that, whilst the Cabindan separatist struggle was being played out in Cabinda, the rest of Angola had recently been involved in a lengthy civil war between the two main political factions, the Popular Movement for the Liberation of Angola (MPLA), the political party that has ruled Angola since the country's independence from Portugal in 1975 and the National Union

for the Total Independence of Angola (UNITA). Even if FP were not regarded as a FLEC supporter, the objective evidence showed that the only people who could be returned to Angola were those who had come from Luanda and had connections there, because of the conditions of life in Luanda as the war between the Angolan government and UNITA had only recently ended. A peace accord between the two warring factions was signed in April 2002, the demobilisation of UNITA rebels had been completed by the end of July 2002 and a formal agreement on the timescale for discussions on reconciliation and reintegration of UNITA supporters reached in September 2002.

10. The aftermath of the civil war had resulted in a humanitarian crisis. The general conditions of life in Luanda reflected the extent of internal displacement caused by the civil war. 31% of the population, some 4.3 million, were estimated to have been internally displaced with some 435,000 having fled to neighbouring countries. Luanda's population itself had swollen to many times its normal size; some 500,000 war-displaced people were then living in 20 camps in the Luanda area. In July 2002, the UN's emergency relief co-ordinator had described the humanitarian situation in Luanda as critical. The Tribunal in *FP* described conditions for many there as '*wretched*'. It was only possible to remove people to Luanda and the UK government had agreed, in consultation with UNHCR,

that nobody should be returned to Angola who has not previously lived in Luanda or who does not have close current connections there.

11. Whilst the Respondent pointed out correctly that there was no evidence that Cabindans as such were persecuted or treated worse than any other group, the Secretary of State stated that the policy on return, which drew upon UNHCR advice, was related to the need for careful phasing of returns to Luanda because of the overload of displaced persons there but was not a concession that conditions in Luanda amounted to the level of ill-treatment which would breach Article 3 ECHR.
12. Travel to Cabinda from Luanda was excluded as a practical possibility, resulting in returnees being required to remain in Luanda in the critical conditions then existing. The October 2002 CIPU Report showed how difficult internal movement in Angola then was: even if the illegal roadblocks, checkpoints, and hatreds had diminished, landmines remained a prevalent hindrance to travel. None of the background evidence dealt with the availability of shipping between Luanda and Cabinda to civilians. An overland journey was effectively ruled out.
13. The panel identified the real issue as being how the authorities in Luanda might view the appellant upon arrival in Luanda, given the Angolan authorities' view of the separatist aspirations of the Cabindan people.
14. IRIN news reports of December 2002 and January 2003 suggested that the Angolan army was attacking civilians in Cabinda and abusing their rights, as well as seriously ill-treating former UNITA rebels held in camps. The situation in

Cabinda was supported by an Amnesty International report of 13 December 2002 which detailed arbitrary arrests of civilians and spoke of an upsurge in fighting, with attacks on civilians, arrests, and rapes. FLEC factions had responded in kind. The panel gloomily sought to predict what this might bring:

It may be that the developing peace with UNITA has freed the hands of the Angolan government and army to deal with the independence movement in Cabinda, so as to reinforce its control over the oil-rich enclave.

15. These considerations informed the approach likely to be adopted by the Angolan authorities. The authorities were well aware of the pressures which had led to emigration and the fact of being a failed asylum seeker, if discovered, would not be of any particular interest. However, controls at Luanda Airport were thorough and Angolans who had been deported from abroad or who lived abroad for many years, would be questioned by immigration and police at the airport with a view to establishing their identities and whether they were of interest to the authorities for political or criminal reasons. Once in detention, prison conditions constituted a serious threat to the health and lives of prisoners. The Tribunal continued:

24. The background evidence also shows that he would be identified as someone from Cabinda, both because of the languages which he does speak and because of his lack of Portuguese. He would be questioned to see if he was of political or criminal interest: his Cabindan origin, with the current upsurge in fighting in Cabinda, would make that inevitable. Although it is only realistic to suppose that he would not reveal his FLEC membership voluntarily, he would have to have a story to explain his departure from Cabinda and return to Luanda which would stand up to thorough and at least suspicious, if not downright hostile, questioning. There is an unknown degree of risk that the Angolan authorities have some knowledge of individuals, perhaps of families, who are FLEC members. There is a risk that, even without such knowledge, they would suppose him to be a FLEC supporter.

25. The abuse of the human rights of those suspected of the political support for a warring independence movement is very probable, whether through the general prison conditions in which a suspect might be detained or the more active brutal attentions which he might attract.

26. His lack of Portuguese and other local connections in an overcrowded city would mark him out as a Cabindan and mean that, even if he passed successfully through the airport, he would be at a rather greater risk than most Angolans of again attracting the attentions of the authorities or of being unable to seek their assistance in the difficult living conditions, for fear of what they might ask. This risk would endure until the position in Cabinda had been resolved.

16. In order to avoid increasing the already large number of internally displaced persons already there, the Tribunal concluded that failed asylum seekers could be returned to Luanda if they had come from there or had connections there. UNHCR did not suggest that the return of people to Luanda would breach their Article 3 rights if they came from Luanda or had relatives there and would only do so if they

did not. The panel recognised the Angolan government was struggling to improve conditions.

17. Pausing there, it is as well to summarise the conclusions reached by the IAT in *FP*. Both *FP* and his father were members of FLEC and his father had been killed by the Angolan authorities. It was said that, as a member of FLEC, he would be at risk of being identified as a Cabindan supporter of FLEC, and therefore at risk of torture. There was '*an unknown degree of risk*' that the Angolan authorities have some knowledge of individuals, perhaps of families, who are FLEC members. There was a risk they would suppose a Cabindan was a member of FLEC. There were '*very probable*' suspicions that Cabindans offered political support for the warring independence movement. The Tribunal went further. Regardless of suspicions about Cabindans being supporters of FLEC, a returnee to Angola was effectively marooned in Luanda and the humanitarian crisis was so severe there that, as a matter of policy, failed asylum seekers should only be returned to Luanda if they had come from there or had connections there. That result was not a concession that Cabindan returnees were at risk of persecution or Article 3 harm but was the result of a policy by the UK government, in consultation with UNHCR, that nobody should be returned to Angola who had not previously lived in Luanda or who did not have close current connections there. We note that the IAT's assessment was made a decade ago when Angola was beginning the long process of recovery from a destructive civil war.

### **The status of Country Guidance**

18. This brings us to consider the status of Country Guidance as reflected in the President's Guidance Note 2011 No 2 issued under paragraph 7 of Schedule 4 to the Tribunals, Courts and Enforcement Act 2007. It was amended in February 2012 and September 2013:

10. ... In the absence of a starred case the common law doctrine of judicial precedent shall not apply and decisions of the AIT and one constitution of the Chamber do not as a matter of law bind later constitutions. Judges of the First-tier Tribunal Immigration and Asylum Chamber are, however, expected to follow the law set out in reported cases, unless persuaded that the decision failed to take into account an applicable legislative provision or a binding decision of a superior court.

11. Special arrangements are made for the reporting of country guidance cases. Before a case is promulgated and designated as a Country Guidance case it is considered by the relevant country convener and the Reporting Committee and advice may be tendered to the determining judges. Practice Direction 12.2 states:

"A reported determination of the Tribunal, the AIT or the IAT bearing the letters CG shall be treated as authoritative finding on the country guidance issue identified in the determination, based on the evidence before the members of Tribunal....that determine the appeal. As a result, unless it has been expressly superseded or replaced by any later CG determination, or is inconsistent with other authority that is binding on the

Tribunal, such a country guidance case is authoritative in any subsequent appeal, so far as that appeal:-

- a) relates to the country guidance issue in question; and
- b) depends upon the same or similar evidence”.

If there is credible fresh evidence relevant to the issue that has not been considered in the Country Guidance case or, if a subsequent case includes further issues that have not been considered in the CG case, the judge will reach the appropriate conclusion on the evidence, taking into account the conclusion in the CG case so far as it remains relevant.

12. Country Guidance cases will remain as such on the Chamber web site unless and until replaced by fresh Country Guidance or reversed by a decision of a higher court. Where Country Guidance has become outdated by reason of developments in the country in question, it is anticipated that a judge of the First-tier Tribunal will have such credible fresh evidence as envisaged in paragraph 11 above.

19. In *NM and Others (Lone women – Ashraf) Somalia* CG [2005] UKIAT 00076, Ouseley J (President), Storey and Risius (VPP) the Tribunal said;

140. These decisions are now denoted as “CG”. They are not starred decisions. Those latter are decisions which are binding on points of law. The requirement to apply CG cases is rather different: they should be applied except where they do not apply to the particular facts which an Adjudicator or the Tribunal faces and can properly be held inapplicable for legally adequate reasons; there may be evidence that circumstances have changed in a material way which requires a different decision, again on the basis that proper reasons for that view are given; there may be significant new evidence which shows that the views originally expressed require consideration for revision or refinement, even without any material change in circumstances. It may be that the passage of time itself or substantial new evidence itself warrants a re-examination of the position, even though the outcome may be unchanged. It is a misunderstanding of their nature, therefore, to see these cases as equivalent to starred cases. The system does not have the rigidity of the legally binding precedent but has instead the flexibility to accommodate individual cases, changes, fresh evidence and the other circumstances which we have set out.

## **The political situation**

20. The People’s Movement for the Liberation of Angola (Movimento Popular de Libertação de Angola, MPLA) led by President dos Santos has been in power in Angola since independence in 1975. According to the US State Department report on Human Rights Practices 2013, published on 27 February 2014 the MPLA exercise tight, centralised control over government planning, policy making and media outlets. There were national elections on 31 August, which were the second elections since 1992 and the third since independence in 1975. The August 2012 elections were described by the US State Department as the first fully constituted presidential and legislative elections in the country's history.



21. According to Amnesty International Report on Angola 2013, a new political party, the Broad Convergence for the Salvation of Angola-Electoral Coalition (Convergência Ampla de Salvação de Angola-Coligação Eleitoral, CASA-CE), was registered by the Constitutional Court in April 2012 enabling CASA-CE to take part in the national elections on 31 August 2012. Prior to the elections, there were reports of sporadic political violence by members of the ruling MPLA against the National Union for the Total Independence of Angola (União Nacional para a Independência Total de Angola, UNITA), CASA-CE and other political parties, as well as of UNITA against MPLA. The MPLA won with almost 72% of votes, with about 40% of the population abstaining from voting. Although a number of irregularities were registered prior to the elections, observers judged the elections as free and fair. The results were officially contested by UNITA, CASA-CE and the Social Renewal Party (PRS), but the challenges were rejected as unfounded by Angola's National Electoral Committee (CNE).
22. The US State Department report 2013 speaks of domestic and international observers reporting that polling throughout the country was peaceful and largely well organised but observers highlighted the effect of the ruling party's control of media and other resources.
23. Bertelsmann Stiftung Transformation Index (BTI) 2014 - *Angola Country Report*, 1 January 2014, describes itself as covering the period 31 January 2011 to 31 January 2013. The index assesses the transformation towards democracy and the market economy, as well as the quality of political management, in 129 countries. The Bertelsmann Index stated that civil rights violations increased in the run-up to the 2012 elections, when anti-government activists were arbitrarily detained, beaten, subject to interrogation and sentenced to jail. One month before the August 2012 elections and up until a few months afterward, protests dwindled. Political activists attributed this to the disappearance of many anti-government protesters ahead of the elections.
24. The same organisation, this time in its 2012 report, had spoken on these events in these terms:

However in the months before the 2012 general elections, several leading youth activists disappeared and policing intensified. After mounting tension, the election itself was anticlimactic; the contest was quiet, and was marked by widespread voter abstention. Some interpreted this abstention as voter apathy, and an expression of popular distrust in democratic mechanisms as able to break the dominance of the MPLA. Yet many people complained that they were unable to vote, as their names did not show up on the voter rolls where they had registered. The MPLA took 71.84% of the popular vote (10% less than in 2008), mainly thanks to the rural vote where the spectre of a return to war helped to influence voters. Government and public media immediately interpreted this victory as a plebiscite in favour of the continued rule of Dos Santos, who was elected for another five-year mandate. Opposition complaints over electoral fraud were dismissed by the National Electoral Commission and the Constitutional Court. Nevertheless, UNITA doubled its share of votes from 2008 to

18.66% and CASA-CE captured 6% of the vote, giving the new party eight seats in the 220-strong National Assembly.

25. According to Amnesty International's Annual Report: Angola 2011, parliament approved a new Constitution in January 2010 which provided for the President to be elected by parliament, rather than by the electorate. The Constitution also allowed President dos Santos, who had then been in office for over 30 years, to serve two more five-year terms. In addition, it replaced the Prime Minister with a Vice-President selected by the President, a further consolidation of power into the President's hands.

### **Angola generally - Human Rights Abuses**

26. The Amnesty International Report on Angola 2013 stated that, in general, the authorities maintained effective control over the security forces but the security forces were guilty of human rights abuses. According to a State Department report the three most important human rights abuses were

- (i) cruel, excessive and degrading punishment including reported cases of torture and beatings as well as unlawful killings by police and other security personnel;
- (ii) limits on freedoms of assembly and association, speech and press; and
- (iii) official corruption and impunity.

27. Other human rights abuses included arbitrary or unlawful deprivation of life; harsh and potentially life-threatening prison conditions; arbitrary arrest and detention; lengthy pre-trial detention; impunity for human rights abusers; lack of due process and judicial inefficiency. Although the government took limited steps to prosecute or punish officials who committed abuses, accountability was weak due to a lack of checks and balances and institutional capacity in the context of a culture of impunity and widespread government corruption.

### **Arbitrary arrest and detention**

28. The US State Department Report 2013 said that the law prohibits arbitrary arrest and detention; however, security forces often did not respect these prohibitions. A domestic NGO reported that police throughout the country were abusive.

29. On 29 April 2013, the UN Office of the High Commissioner for Human Rights (OHCHR), 'expressed concern' (in the diplomatic language of its Committee) at reports of torture and ill-treatment or excessive use of force by the police or security forces during arrests, in police stations, during interrogation as well as in other detention facilities. It was further concerned that there is no independent complaints authority to deal with such complaints which are currently only dealt with by a police force investigator.

30. OHCHR in the same report (paragraph 14) was also concerned by reports of arbitrary and extrajudicial killings by government security forces, in particular those which occurred in the province of Huambo in 2010, as well as during the counter-insurgency against FLEC in 2010. The Committee expressed further concern at reports of cases of disappearances of protesters which occurred in Luanda between 2011 and 2012; the lack of concrete and comprehensive information on investigations, prosecutions, convictions and sanctions imposed on those responsible and at the reported impunity of security forces involved in such human rights violations.
31. In a Freedom House report, *Countries at the Crossroads 2011: Angola*, 4 November 2011, it was said that police behaviour remained problematic across the country. Although reform enacted in 2003 was meant to modernise police structures and bolster respect for human rights, new mechanisms established to provide redress for citizens whose rights had been violated were largely ineffective and offered little support to victims. A human rights ombudsman was appointed in 2005 as part of a national justice reform programme, but human rights complaints were often subject to political pressure.

### **Prison conditions**

32. Amnesty International in its 2013 report spoke of prison conditions being potentially harsh and life-threatening and domestic NGOs and media continue to highlight corruption, overcrowding and deaths possibly resulting from poor conditions. The US State Department Report for 2013 referred to a 2012 Human Rights Watch (HRW) report which found that prison guards committed abuses, including sexual violence, torture, and inhumane treatment of migrants, often acting with the complicity of different security services.
33. While noting efforts implemented by the State Party to reduce overcrowding and improve conditions of detention, OHCHR in its report of 29 April 2013, paragraph 19, remained concerned at the inadequate conditions of detention and the limited use of alternatives to detentions, such as bail or release on parole. The Committee was further concerned that in some prisons, separation of minors from adults was not always guaranteed. OHCHR 'regretted' the lack of information on mechanisms set up in prison facilities to receive and address complaints lodged by detainees.

### **Freedom of expression**

34. The US State Department Report 2013 referred to there being reports of police or military presence at community meetings with international NGOs, especially in Cabinda. One civil society organisation, formerly based in Cabinda, Mpalabanda, had been banned but the Supreme Court was considering the lawfulness of the order. By the end of 2012 the Supreme Court had not responded to a petition to re-examine the ban.

35. On 27 October 2012, according to Amnesty International Report on Angola 2013, Media Investe, the company that owns the weekly newspaper *Semanário Angolense*, censored one edition reportedly because it contained a speech on the state of the nation by UNITA leader Isaiás Samakuva which was critical of the government. Although printed versions of the newspaper were burned, an online version was circulated.

### **Action against protest**

36. A further Human Rights Watch Report "*Angola: crackdown on opposition protest*" 27 November 2013 highlighted the killing of an opposition activist by presidential guards in Luanda in November 2013. At almost the same time the Interior Ministry banned a UNITA protest calling for justice for two protest organisers who had been abducted in May 2012 and whose deaths were attributed by a leaked internal government report to the activities of the Angolan security forces. On the day of the protest, police arrested hundreds of opposition activists. The report claimed that since March 2011 the Angolan authorities had repeatedly used unnecessary and excessive force against organisers and participants and observers of anti-government protests.
37. The Amnesty International Report on Angola 2013 spoke of the police and security forces' continued use of excessive force, including against peaceful demonstrators, as well as carrying out arbitrary arrests and detentions. Freedom of assembly was suppressed throughout the country. Two people were feared to have been subjected to enforced disappearance. Freedom of expression was restricted and the press was censored.

### **Legal system and the judiciary**

38. In paragraph 20 of the OHCHR of 29 April 2013, the Committee voiced its 'concern' at the reported lack of independence as well as corruption of the judiciary, and the insufficient number of judges, lawyers, tribunals and courts, all of which might create difficulties regarding access to justice. The Committee was further concerned at the prohibitive cost of legal fees, which might prevent some citizens, in particular disadvantaged persons and those living in rural areas, from accessing justice.
39. Human Rights Watch, "*They Put Me in the Hole: Military Detention, Torture, and Lack of Due Process in Cabinda*", 22 June 2009 referred to 38 detainees who were eventually brought to the judicial authorities and a civilian detention facility but some of whose trial records demonstrated that due process rights had been violated. All 38 detainees were initially held in military custody for long periods—from 26 days to six months—before being transferred to the civilian prison at Yabi in Cabinda and brought either before a prosecutor or to be formally charged or before a judge. At the time of the 2009 report, two trials had taken

place, as a result of which seven persons had been convicted but four were acquitted.

40. According to a 2008 United Nations High Commissioner for Refugees (UNHCR) report, the five-day time limit for the detained to see the public prosecutor is rarely adhered to; police investigators are allowed to interrogate detainees despite the law that decrees a prosecutor must do it; and because of a shortage of legal staff, "*the right to access to a lawyer and a corresponding legal aid system as guaranteed by the Constitution exists only in theory.*" The report concludes that there is "*no effective system in place which can prevent arbitrary detention from occurring*", see Freedom House, *Countries at the Crossroads* 2011: Angola, 4 November 2011
41. According to the Bertelsmann Transformation Index 2014, in the provinces, the situation is generally worse, as the population has less means of redress through the courts or through public scrutiny. This is especially the case in Cabinda, where civil society activists and suspected FLEC-supporters are often prosecuted, detained and tortured. The same holds true in the diamond-producing areas of Lunda Norte and Lunda Sul, where the local population is subjected to human rights abuses by the army, the police and private security forces, including torture and extralegal killings.

## **Article 26 and its repeal**

42. Freedom House *Countries at the Crossroads* 2011 report noted:

Angolan law includes an overly broad and ambiguous range of offenses against the state, including "every and any act, not provided for by law, that endangers or may endanger the security of the State." A 1978 law permits up to 215 days of pre-trial detention for such crimes. This law was used in August 2010 to convict four activists in Cabinda in connection with a fatal January 2010 attack on a bus carrying the Togolese national soccer team through the province. There was no evidence linking the four men to this attack, for which the armed separatist group Front for the Liberation of the Enclave of Cabinda (FLEC) claimed responsibility, but the four men had participated in an October 2009 meeting with FLEC representatives. They were released in December 2010 after the Constitutional Court overturned the part of the state security law under which they were convicted.

43. Whilst the outcome appears to have been resolved in favour of the 4 convicted men as a result of the intervention of the Constitutional Court, Amnesty International, in its 2011 report, placed a somewhat different gloss on what happened:

In September, the Angolan Bar Association asked the Constitutional Court to rule on the legality of Article 26 of the Law on crimes against the security of the state. The article stated that "all and every act, not foreseen in the law that puts at risk or could put at risk the security of the state will be punishable". In December the Court decided it did not have to make a ruling on this due to a new Law on crimes against the security of the state approved by parliament in November. The new law repeals Article

26 of the old law, but makes it a criminal offence to insult the Republic, the President or any organ of power of the state.

44. If Article 26 has been repealed and replaced by less draconian measures, the replacement measures have themselves been criticised as a restriction on freedom of expression.

### **Passage through border controls**

45. According to the US State Department Report, 2013, border control agents placed emphasis on operations in the provinces bordering the Democratic Republic of the Congo (DRC): Cabinda, Zaire, Uige, Malange, Lunda Norte, Lunda Sul, and Moxico. In particular, in diamond-rich Lunda Norte Province, NGOs and the media reported acts of violence and degrading treatment, including rape and sexual abuse, associated with these operations. In April the United Nation's High Commissioner for Human Rights, Navanethem Pillay, visited a border crossing in Lunda Norte and stated sexual abuse of female migrants and property theft continued to be problems. The government did not carry out thorough and impartial investigations into past allegations of serious abuse of migrants by its security forces during expulsions from the country, continued to deny the veracity of the allegations, and failed to prosecute alleged perpetrators.

### **Internal travel – FCO advice**

46. ANGOP or Angola News Agency is the official news agency of the state of Angola, based in Luanda. Its independence from the state is not established but, in a news report of October 2013, it spoke of the Angolan Airlines, TAAG, having transported 150,000 national passengers during the first semester of 2013 with Cabinda being the province with the highest number of travellers. There is no particular reason why this should not be true and it makes internal sense since Cabinda is separated from the rest of Angola by the strip of land belonging to the DRC and is relatively distant from the capital Luanda and, therefore, perhaps more suitable for internal air transport than other population centres in Angola.
47. Foreign and Commonwealth Office advice (updated 16 July 2013) advises against all but essential travel to the provinces of Cabinda where there are regular violent incidents including rape, murder and kidnappings involving foreigners and Angolans. Groups claiming responsibility for these attacks, so the Advice says, have declared their intention to continue attacks against foreigners. Major roads between Luanda and the provincial capitals are improving, but driving standards and some road conditions are very poor and travel outside major towns is usually in convoys of two or more four-wheel drive vehicles. Outside major towns, mines and unexploded ordnance remain a problem. There are taxis at the airport and these can also be booked through hotels. Local minibus transport is unsafe.

48. There is a low threat from terrorism but FCO advice suggests the traveller should be aware of the global risk of indiscriminate terrorist attacks which could be in public areas, including those frequented by expatriates and foreign travellers.
49. The US State Department 2012 Report on Human Rights Practices commented that, at times, the government restricted freedom of internal movement, foreign travel, emigration, and repatriation. During 2012 the government improved the road network and decreased checkpoints between provinces. The government cooperated with the Office of the UN High Commissioner for Refugees (UNHCR), the International Organization for Migration, and other humanitarian organizations in providing protection and assistance to internally displaced persons, refugees, asylum seekers, and other persons of concern. That said, security forces frequently abused irregular migrants in the border region shared with the DRC.
50. Dealing with internal movement, the US State Department report stated that extortion and harassment at government checkpoints in rural areas and at provincial and international border checkpoints interfered with the right to travel. Extortion by police was routine in cities on major commercial routes. Land mines and other explosive remnants of war remaining from the civil war continued to impede freedom of movement in rural areas.

### **Bertelsmann Stiftung's Transformation Index (BTI) 2012 Angola report**

51. The Executive Summary of the Bertelsmann Transformation Index 2012 provides a perceptive description of the tentative steps towards change that has occurred in Angola:

In March 2011, a notice was posted online calling for an anti-government demonstration to demand the resignation of a long-time President Jose Eduardo Dos Santos. Such open defiance of the government was unprecedented, even in Angola's post-independence history. While the post was first described by commentators and opposition parties as a hoax (as it was anonymous, signed with the pseudonym), the regime, however, reacted with concern. Luminaries of the ruling Popular Movement for the Liberation of Angola party (MPLA) and members of government strongly condemned any attempt at "creating confusion" as an illegal act, warning that whoever demonstrated against the government "would get some" - a reminder of the regime's capacity of the violence, the threat of which has long hampered open political dissent. The MPLA organised a mass counter-demonstration on March 5, two days before the planned demonstration; as schoolchildren, state functionaries and employees of state companies were bussed to the march under threat of sanctions, the gathering was hardly a spontaneous show of popular support. On March 7, however, around 20 people gathered in Luanda's Independence Square, and were immediately arrested. Because of the regime's overreaction, the March 7 demonstration was widely discussed and had an impact disproportionate to the number of actual anti-government demonstrators. A number of youth protests, increasing in frequency and size and organised under the banner, "32 is Too Much" - alluding to Dos Santos' 32 years in power - occurred during the review period, in Luanda and in other provincial capitals.

The authorities reacted with mounting repression; demonstrators faced administrative and legal obstacles, police brutality, arbitrary arrests and suffered sham trials. Plainclothes "thugs" affiliated with the regime increasingly resorted to violence; the government's control of the media also intensifies. But these demonstrations changed the tone of Angolan politics. Opposition parties, hitherto weak in their positioning, started attacking the government more forcefully, condemning the inefficiency of the administration and deploring the dire living conditions for a majority of the population. The creation of a new party, the Broad Convergence for the Salvation of Angola -- Electoral coalition (CASA-CE), only six months before the elections, attracted dissidents from both the National Union for the Total Independence of Angola party (UNITA) and the MPLA and further stimulated the political debate.

### **The background material as it relates to Cabinda**

52. So far, we have considered the background material as it relates to Angola as a whole. The references to Cabinda we have noted above have been casual references arising out of the general information; for example, a specific organisation located in Cabinda that had been subject to limitations upon its freedom of expression [34], a specific reference to lack of due process of law in relation to a specific group of detainees in Cabinda and a lack of redress [39 and 41] and the FCO advice of July 2013 advising against all but essential travel to Cabinda [47]. We now move on to set out evidence that is more specifically related to Cabinda. Inevitably, not all the evidence will relate solely to Cabinda. Clear cut distinctions are not always possible.
53. Although, as we have said, the law prohibits arbitrary arrest and detention, these prohibitions were often disregarded by the security forces, according to Amnesty International in its 2013 report. Several civil society and political party representatives reported incidents of security forces detaining Cabinda residents suspected of FLEC activity or collaboration. Representatives of one political party claimed that security forces were holding at least 29 alleged FLEC members without charging them, some sources put the figure closer to 50. Attempts to meet with government representatives in Cabinda were unsuccessful but several government officials described publicly that conditions in Cabinda were largely positive and peaceful during media interviews in the course of 2012.
54. The Human Rights Watch report for 2013 dated 21 January 2014 spoke of arbitrary detentions in the enclave of Cabinda. Between 10 August and 12 September 2013, military and intelligence officials arrested, mistreated and in several cases, tortured and jailed at least 20 men in Cabinda who had been charged with armed rebellion and remained in pre-trial detention. Nine men of Congolese origin and Angolan, Belgian and French nationalities, alleged to be former members of the defunct Armed Forces of Zaire, were arrested in November 2012 beaten and tortured by military and border guards while kept in *incommunicado* detention. They were subsequently charged with armed rebellion



against the government of the DRC and illegal entry into Angola. A lawyer instructed to represent them had been threatened by intelligence officials.

## **The conflict between the Angolan authorities and FLEC and the Memorandum of Understanding (MOU)**

### **FLEC**

55. As recorded by the Tribunal in *FP*, FLEC had emerged in 1963 seeking a separate independence from Portugal, but had split into several competing factions. Though retaining widespread Cabindan support, they had been marginalised and, following the independence of Angola, remained unrecognised by the Organisation for African Unity as an independence movement. A low level intensity war, accompanied by atrocities on all sides, had endured for many years and was then expected to continue. Hopeful signs in 2001 had come to nothing. The CIPU Report stated that in August 2002 any possibility of an immediate reconciliation over the status of the province had ended by a major offensive launched by the Angolan army. It was against this background, that the risk was assessed in *FP*.

### **Memorandum of Understanding**

56. According to Human Rights Watch, *Military Detention, Torture etc*, 22 June 2009, the Memorandum of Understanding was signed by the Angolan government and Antonio Bembe in 2006; the former leader of FLEC Renovada wing and president of the Cabinda Forum for Dialogue (FCD) sought formally to end the armed conflict. The FCD had been established in 2004 as a joint commission including representatives of the two main FLEC factions (FLEC Renovada and FLEC-FAC) as well as members of civil society and the churches to facilitate the peace negotiations with the government. The MOU included an amnesty, a demobilisation and reintegration plan for former FLEC combatants and the allocation of a number of government posts to a range of former FLEC officials.

57. The peace agreement, according to HRW, enjoyed little credibility in Cabinda because prominent FLEC activists as well as others from the FCD had been excluded from the talks. The armed insurgency has continued but since 2006 the government has asserted the war has ended. There had however been a number of armed attacks but the intensity of the armed conflict and the level of serious human rights violations have decreased since 2004 but the presence of the Angolan armed forces is proportionately higher in Cabinda than elsewhere in Angola, suggesting a continuing concern on the part of the government about separatist activities. According to Human Rights Watch, despite the peace agreement in 2006, freedom of expression and association remains restricted in Cabinda and the government has used state security concerns to crack down on peaceful opposition and scrutiny.

58. There is a faction of FLEC currently living in Paris. These Paris exiles maintain the conflict has not yet ended. According to IRIN news report '*Cabindan separatists in exile deny end to conflict*' dated 22 July 2010, offers of peace by senior FLEC which '*seemingly ended*' a long-standing separatist conflict in northern Angola, were made without the knowledge or consent of its president, Henrique N'Zita Tiago, leader of FLEC-FAC (Armed Forces of Cabinda), now in exile in Paris:

"We did not sign any ceasefire with the Angolans."

59. He had told IRIN that all correspondence from him to the Angolan government and its President, Eduardo dos Santos, offering to engage in peace negotiations had always been ignored. The 2010 IRIN report referred to the Memorandum of Understanding signed by Antonio Bembe in 2006 and the fact that, in 2005, while in the Netherlands, Bembe was arrested on an international warrant for the kidnapping of an oil company employee 15 years earlier while he was a FLEC combatant, but had given parole through the use of an Angolan diplomatic passport and returned to Luanda. The report continued:

Bento Bembe, recently appointed Angola's first minister of human rights in the ruling MPLA government, told IRIN during a recent interview in the Angolan capital, Luanda, that Tiago "*dreams of a glorious military victory, but he is a sick old man on his death-bed in Paris, and when he dies, so will his cause*".

60. According to IRIN, Bembe dismissed any suggestion that the separatist movement to which he had dedicated 30 years of his life still existed, apart from "*in the mind*" of Tiago.

### **Current level of violence between the Angolan authorities and FLEC**

61. The MOU did not see the end of the conflict and the government remained afraid of a resurgence. According to Human Rights Watch in 2009, *Military Detention, Torture etc*, 22 June 2009, this sense of fearfulness on the part of the government resulted in continued arrests for security crimes between 2007 and 2009. Their research was then based on new first-hand, field-based information and showed '*a disturbing pattern of human rights violations during pre-trial detention of persons accused of state security crimes in Cabinda.*' In most of the 38 cases that Human Rights Watch investigated, those accused of security crimes endured arbitrary arrests, lengthy incommunicado detention, and interrogations under torture in military custody.

62. The Freedom House Freedom in the World 2013 report, released 16 January 2014, stated:

In 2006, the government signed a peace agreement with secessionists in the oil-rich northern exclave of Cabinda, hoping to end a conflict that had continued intermittently since 1975. While between 80 and 90 percent of

the rebel fighters have reportedly joined the army or demobilized, some violence has continued. The military continues to arrest Cabindans for alleged state security crimes. Most of these detainees are allegedly denied basic due process rights and subjected to inhumane treatment. Citing continued attacks by rebels-primarily from the FLEC-FAC group, a splinter from the main FLEC movement-the military restarted a counterinsurgency campaign in Cabinda in 2011, which continued in 2012. In August, the rebels called for talks with the government, which did not take place by year's end.

63. The Amnesty International Annual Report, 2011 spoke of there being '*further attacks by FLEC in Cabinda during 2010*' but these were not detailed. However, two attacks in 2010 were specifically mentioned in the Bertelsmann Transformation Index 2014.
64. According to the Index, the remaining armed FLEC factions, estimated at a few hundred men, have continued sporadic attacks on the Angolan Armed Forces (FAA) troops and supply convoys from and into the Democratic Republic of the Congo. While their primary targets are what they call FAA 'occupation troops,' they see the oil companies active in Cabinda as complicit in the Angolan 'occupation' and therefore as legitimate targets for attacks. Reference is made to the January 2010 attack carried out by FLEC on the Togolese national football team. In June 2010, three Chinese workers were killed and one kidnapped in an attack on a supply convoy.
65. The same report continues that, due to FAA operations and a lack of external support, the FLEC have been confined to the far north-east of the province. They have little military capacity to stage attacks beyond small hit-and-run ambushes. Furthermore, the Angolan government has the tacit consent of its neighbours that FAA units can cross the border into the Democratic Republic of the Congo (DRC) and the Republic of the Congo in pursuit of FLEC guerrillas who may be seeking sanctuary there. Raids in August and November 2012 led to the killing of several FLEC fighters.
66. The Executive Summary of Jane's Sentinel Security Assessment for Angola (updated in August 2013), noted:

Cabinda separatists remain an issue. But incidents are sporadic and localised Rebel activity by unreconciled FLEC factions in Angola's tiny Cabinda enclave persist at a low and sporadic level. The objectives of the various factions have varied from aiming to secure independence for Cabinda, to trying to push the Angolan government to cede more autonomy to the region and achieve redistribution of the enclave's oil wealth. From late 2002, Luanda was largely conducting its pacification policy in the region through a military offensive against FLEC bases in the Cabinda hinterland. By mid-2003, a number of notable successes had been recorded, including the capture of FLEC rear bases, and the defection of significant numbers of FLEC political and military leaders. There have been attempts at negotiated settlement over the years, although the

factionalism of the group has complicated peace efforts. This was again evident with the most recent peace agreement signed in August 2006, which incorporated Antonio Bento Bembe's supporters within FLEC-Renewal (FLEC-Renovada), for example. Under the terms of the agreement, insurgents were given amnesty and, while the Cabinda enclave was to remain part of Angola, it would be accorded "special status" (greater autonomy). However, with some elements still outside the agreement, further sporadic conflict has remained likely. The most widely reported assault in recent years took place in January 2010 when two FLEC factions claimed responsibility for an attack on the bus of the Togolese football team in Cabinda. More recently, ahead of the August 2012 election, another FLEC faction leader, Nzita Henriques Tiago, voiced a willingness for talks with the next post-poll government.<sup>1</sup>

### **The attack on the Togo football team**

67. As we see in these glancing references, the attack on the Togo football team has been the subject of widespread coverage and separate consideration proves to be instructive. Wikipedia, using fully sourced material cited in the report provides the most detailed description of the incident. On 8 January 2010, traveling through Cabinda en route to the 2010 Africa Cup of Nations tournament, under the escort of Angolan forces, the bus of the Togo national football team was attacked by gunmen. The ensuing gunfight resulted in the deaths of the assistant coach, team spokesman and bus driver, as well as injuring several others.
68. An offshoot of the FLEC claimed responsibility. Rodrigues Mingas, secretary general of the Front for the Liberation of the Enclave of Cabinda-Military Position (FLEC-PM), said his fighters had meant to attack security guards as the convoy passed through Cabinda. "This attack was not aimed at the Togolese players but at the Angolan forces at the head of the convoy", Mingas told France 24 television. "So it was pure chance that the gunfire hit the players. We don't have anything to do with the Togolese and we present our condolences to the African families and the Togo government. We are fighting for the total liberation of Cabinda." According to Mingas, 15 FLEC fighters participated in the ambush. The siege lasted for at least 30 minutes. A statement signed by Mingas in which he described himself as the secretary general of FLEC, "This operation is just the start of a series of planned actions that will continue to take place in the whole territory of Cabinda." The Armed Forces of Cabinda (FLEC-FAC) based in Paris also claimed responsibility. The leader of FLEC-FAC, Jean-Claude N'Zita [Tiago], dismissed Mingas' faction as opportunist.
69. Amnesty International in the 2011 Annual reported two men, João António Puati and Daniel Simbai, were arrested on suspicion of carrying out the attack. João António Puati was convicted and sentenced to 24 years' imprisonment for the attack, while Daniel Simbai was acquitted. At least 14 others were arrested following the attack, although not accused directly of carrying it out.
70. The attack clearly had repercussions going beyond the small group of fighters directly involved. According to Human Rights Watch, *'Angola: quash convictions*

of Cabinda activists', 5 August 2010, a Cabinda court sentenced 4 human rights defenders including a Catholic priest, a lawyer and a university professor to 6 years imprisonment on 3 August 2010 following the 8 January 2010 attack on the Togolese football team bus. The prosecution took place under article 26 of the 1978 law on Crimes against the Security of the State which permitted convictions for unspecified "*other acts against the security of the state*".

71. There appears to be no suggestion that the four convicted were directly involved in the attack and the participation of the defendants in what was said to be illegal meetings with representatives of the guerrilla group in October 2009 was said by them to be aimed at facilitating the peace process with the government. (Human Rights Watch, '*Angola: quash convictions of Cabinda activists*', 5 August 2010.) As we have set out above in relation to Article 26, the convictions of these men were the subject of intense attention and significant criticism. The Constitutional Court set aside their convictions. They were released in December 2010. The Amnesty International report 2011 suggests this was because of the November 2010 Law on Crimes against the Security of the State repealing Article 26 but replacing it with new measures which might also have wide effect.

### **The government's denial of a conflict and its response**

72. Officially, since the MOU in 2006, says Human Rights Watch, *Military Detention, Torture etc*, 22 June 2009, the Angolan government has denied the continued existence of an armed FLEC guerrilla movement. Senior FAA and police officials had explained to Human Rights Watch in March 2008 that those people who were arrested for national security crimes were "*bandits who oppose development,*" or "*people who still identify with FLEC, seeking to call attention to compromise the government's cooperation with countries and companies.*" Bento Bembe, the former FLEC Renovada and FCD leader and then a minister without portfolio, had explained to Human Rights Watch in March 2009 that "*those people cannot be from the FLEC, because I represent the guerrillas.*" However, the cases documented in the HRW report, they said, clearly contradicted him, as many of the charges in the cases refer to alleged involvement in concrete acts of armed insurgency. Court records also often explicitly referred to alleged cooperation with FLEC-FAC.
73. Human Rights Watch, *: Military Detention, Torture etc*, 22 June 2009, is sceptical about the Angolan government's professions that the conflict is a thing of the past:

Despite its insistence that the insurgency is no longer active, the military's systematic arbitrary detention and torture of people in Cabinda suggests that the government has resorted to unlawful means to retaliate against people with perceived sympathy for the FLEC's armed independence campaign. Angolan military and intelligence services have a widespread presence in the small territory, and they have intimidated and harassed people with perceived dissident views.

74. Four years later, the US State Department 2012 Report on Human Rights Practices, released 19 April 2013, noted:

Unlike in previous years, there were no reports of security forces detaining Cabinda residents suspected of FLEC activity or collaboration.

75. The Bertelsmann Transformation Index 2012 Angola report noted that the attack on the Togolese delegation triggered a strong reaction by the Angolan armed forces and security services, and early in 2011 the chief of staff of the faction involved was arrested. The writer concluded:

It seems likely that for the time being this will put an end to Cabindan military resistance to the Angolan state, but the specific Cabindan social identity remains very strong, the separation from Angola is still an aspiration shared by many, and the prospect of future acts of armed resistance cannot be discounted. In addition, in early 2011, under heavy pressure from the Angolan regime, the Vatican appointed a priest from Luanda as bishop of Cabinda, cancelling the sacerdotal status of three Cabindan priests who had come out in favour of regional aspirations, a move aimed at weakening the spirit of resistance.

### **Friction between FLEC factions**

76. As we pointed out above, the various factions within FLEC appear keen to claim credit for acts of violence committed in the name of Cabindan independence. Little is known of FLEC - Military Position (FLEC-PM) or its soi-disant general-secretary Mingas. (FLEC-FAC) also claimed the responsibility with the Paris-based leader, Jean-Claude N'Zita Tiago dismissing, as we have said, Mingas' faction as 'opportunist'. Whilst the Amnesty International Annual report for 2011 refers to '*further attacks by FLEC in Cabinda during 2010*' there is very little evidence of these apart from the attack on the Togo football-team. It is well to remind ourselves that the attack took place nearly 4 ½ years ago. It appears to fall well short of the threat made by Mingas of FLEC-PM that the attack was to be the start of a series of planned actions that would continue across the whole of Cabinda.

### **The Angolan authorities' attitude towards FLEC**

77. In the Bertelsmann Transformation Index 2014, the writer provides the plausible assessment that Angola seems intent on pursuing a military solution to the conflict, combined with infrastructure spending. A very strong incentive for Angola is the retention of the Cabindan off-shore oil reserves. This has echoes of the Tribunal's comments in *FP* that,

It may be that the developing peace with UNITA has freed the hands of the Angolan government and army to deal with the independence movement in Cabinda, so as to reinforce its control over the oil-rich enclave.

78. Bertelsmann Transformation Index 2012 report noted:

... the state's monopoly on the use of force remains challenged by forces seeking autonomy for the enclave of Cabinda. Although the Front for the Liberation of the Enclave of Cabinda (FLEC) has suffered from internal divisions and unstable strategy, aspiration for autonomy remains strong in Cabindan society. The Angolan government signed a memorandum of understanding with the leader of one FLEC faction in August 2006 regarding the demilitarization and integration of FLEC cadres into the Angolan state apparatus. However, the agreement was rejected by the FLEC leadership in exile, and in the following months, resistance and acts of sabotage against Angolan authorities again mounted. While authorities reacted on the one hand with increased repression (not only directed at FLEC, but also at the Cabindan civil society organization Mpalabanda and several representatives of the Catholic Church in Cabinda), they also took measures aimed at calming the situation, such the 2008 introduction of a special customs regime favouring Cabinda, the construction of a large stadium for national and international sports events, and the creation of a public university in Cabinda in 2010.

### **FLEC's attempts at a peaceful resolution**

79. A Reuters report, '*Angola Cabinda rebels want talks with Government after vote*', 6 August 2012 refers to a statement from the FLEC leader Nzita Henriques Tiago, in exile in Paris, in which he said:

"FLEC is observing the start of campaigning for the general election in Angola and will take the necessary measures to explore official and direct contact with the government that wins the ballot on August 31....Our political commitment to end the war remains that of an understanding through a direct, negotiated solution with the Angolan government."

The reporter stated that Mr Tiago said that talks could lead to the end of the Cabinda conflict if the new government showed the political will and created the conditions to reach a peaceful solution. The report continued that oil output from wells off the coast of Cabinda represented more than half of the around 1.8 million barrels per day produced by Angola, Africa's second-largest crude producer after Nigeria. Reuters reported that requests for comment from the Angolan government obtained no immediate response. The report continued that FLEC and several splinter groups said Cabindans do not receive a fair share of Angola's oil revenues but the fact that Cabinda's oil is produced offshore meant that the rebels had less chance of disrupting output than militants in Nigeria's Niger Delta.

80. An Africa Review article, '*Angola's Cabinda rebels ready to lay down arms*', 2 May 2013 also spoke of overtures towards a resolution of the conflict:

Rebels who have been fighting for the independence of Angola's oil-rich territory of Cabinda are planning to lay down arms and re-negotiate with the government, state media reported. '*It is needful to make concessions to our yesterday's enemies and adversaries today. In this new era, we are going to hold rational talk with the Angolan Government*', the

state-owned newspaper *Jornal de Angola* quoted a press release from the rebels as saying.

81. According to the newspaper, FLEC was also seeking a peaceful conflict resolution and, presumably quoting the same source, stated, '*Angolan government has to see FLEC as a partner. Cabinda can exist in Angola without claiming its independence.*'

### **Heidelberg Institute for International Conflict Research**

82. In many cases it will be difficult to find an objective yardstick by which the intensity of a conflict is assessed by an organisation whose objectivity and methodology have gained respect by the outside world. However, we have no reason to doubt the academic objectivity of the Heidelberg Institute for International Conflict Research and its findings set out in the *Conflict Barometer for 2013*. In the report, the concept of conflict intensity is treated as an essential feature of political conflicts:

...conflict intensity is an attribute of the sum of conflict measures in a specific political conflict in a geographical area and a given space of time. Since 2003, the HIIK has been using a five-level model of conflict intensity. Under its revised methodology, the intensity levels are now known as (i) dispute, (ii) non-violent crisis, (iii) violent crisis, (iv) limited war and (v) war.

These are calibrated in a level of intensity measured 1 to 5. Intensity levels 1 and 2, termed a *dispute* and a *non-violent crisis* respectively, both have a level of violence described as non-violent and of low intensity. Whilst a dispute is described as a political conflict carried out completely without resorting to violence, in a non-violent crisis one of the actors is threatened with violence. The last three levels, intensity levels, 3 to 5, constitute the categories of violent conflicts of increasing ferocity in contrast to the non-violent conflicts.

83. Using this methodology, we find at page 45 of the report a reference to the Angola conflict (FLEC-Cabinda) where the conflict parties are FLEC and the government in which the conflict items are described as secession and resources. There is no indication of any change in the intensity level since the last report and the intensity level is described as intensity level 1, that is, a political conflict carried out completely without resorting to violence and without the threat of violence. In contrast the conflict involving UNITA, where the conflict parties are described as CASA-CE and UNITA against the government (a conflict described as one for national power), the level of intensity is described as intensity level 3, low-level violence.
84. In the text, found at page 48 of the report, it is only the conflict with UNITA that is described, thereby indicating its relative importance in terms of conflict descriptions. However it is a useful indication of the government's attitude towards opposition.



The government repeatedly cracked down on illegal settlements, especially in the outskirts of the capital Luanda. When UNITA tried to deliver assistance to the settlements on February 23, security forces blocked them, allegedly beating them up. On March 3, police raided UNITA's headquarters in Luanda, confiscating audiovisual materials. Three days later, the car of UNITA's president was rammed by another car and overturned four times. UNITA claimed the attack was a politically motivated assassination attempt. On May 21, alleged MPLA members attacked a group of 23 UNITA members who were preparing a rally ... leaving one dead.

Over the course of the year, police and protesters repeatedly clashed in the context of anti-government demonstrations led by the main opposition parties. On November 23, presidential guards killed a CASA-CE member in Luanda who was putting up posters.... The demonstrations in Luanda and several provinces the same day turned violent. While the police cracked down on protests using guns, water cannon, and teargas, the protesters threw stones. Several people were injured and 292 detained. Police forces are prohibited other demonstration attempts in the provinces of ... [amongst others] Cabinda."

## Returns from the DRC

85. A report of 22 January 2013 from IRIN '*Uncertainty for Angolans stripped of refugee status in DRC*' spoke of the effect of the revocation of refugee status of former Angolan refugees:

In June 2012, it was determined that the circumstances - created by a civil war - that led to refugee status being granted to tens of thousands of Angolans were no longer in place. Under the terms of the 1951 Convention Relating to the Status of Refugees, this means that there is no longer a prima facie case for international protection. In short, the refugee status of these Angolans was revoked.

Refugees from Cabinda say they continue to live in fear, and accuse Angolan security forces of entering DRC and other neighbouring countries to kidnap those believed to be linked to the province's rebel groups, some of which have been fighting for independence from Angola for decades.

"I continue to live with fear because if you have a Cabindan name, it means you are considered by Angolan authorities as a rebel. Recently a friend of mine was kidnapped when he went to trade near the DRC-Angola border," said Alfred Gomez, a 48-year-old refugee and former school teacher originally from Cabinda, now living in Kinshasa.

Cabindan refugees are reluctant to return home, either because they support the secessionist movement or because they fear they will be pressured to pick a side once they return.

"Some are not activists, but they are former fighters of the FLEC [Front for the Liberation of the Enclave of Cabinda, the main Cabindan secessionist group]," Jose Vase, a Cabindan journalist based in Kinshasa, told IRIN.

"Others are regular citizens who cannot go back home. This is because when they

do so, they will be obliged by Angolan local authorities to make statements against rebel groups, showing also the good things the government is doing for returnees... When they do it, they are considered as enemies [of Cabindan separatists]."

### **The risk at Luanda airport**

86. In *FP* a principal focus in the assessment of risk was at the precise point of arrival in Angola, at Luanda's airport:

14. The problems faced by those returning to Luanda, at the point of return, is dealt with in paragraph 6.55 [of the CIPU report]. It comments that the Angolan authorities are well aware of the pressures which lead to emigration and that asylum claims are used to facilitate that; the fact of being a failed asylum seeker, if discovered, would not be of any particular interest. However, the controls at Luanda Airport are thorough. Any Angolans who have been deported from abroad, or who lived abroad for many years, would be questioned by immigration and police at the airport with a view to establishing their identities and whether they were of interest to the authorities for political or criminal reasons.

87. In the appellant's skeleton, it is accepted that current evidence as to procedure at the airport is limited. It is, however, common ground that border controls remain tight. The respondent makes the positive claim that there is no evidence that returning failed asylum seekers of Cabindan ethnicity are subject to any form of ill treatment at Luanda airport. The most informative material relating to this important element of the claim comes from UNHCR and the organisation known as 'Search for Common Ground' in their responses to questions put by the Home Office, to which we will return later. Both responded by saying that there are the normal security checks performed on those embarking from and arriving at all the airports in the country in accordance with regular and standard internationally-accepted safety check occurs; the implication being that the checks went no further.

88. UNHCR were not aware of particular procedures for those in possession of a national passport. Those with other types of travel document are normally submitted to an interview at the airport, the purpose of which is, essentially, to ascertain their Angolan nationality. UNHCR said there were no reported cases of ill-treatment. Search for Common Ground responded to the effect that Cabindan failed asylum seekers would certainly face interrogation at the airport when returning especially (and not surprisingly) if they are suspected of being an outspoken FLEC supporter. There would be no ill-treatment but they would remain there until State Intelligence sanctions their release. According to SFCG, there were cases, however, of Cabindan failed asylum seekers being ill-treated by state intelligence officers.

### **The Embassy letter of 22 January 2014**

89. In connection with a Case Management hearing that took place on 7 January 2014, Mr Parkinson had been in touch with the British Embassy in Luanda. The embassy is small, a five-member post but they had agreed to conduct fact-finding work, to approach NGOs and to speak to the Minister for Human Rights. The COI unit liaised with the post although there is no in-house immigration staff there. In response to these enquiries, the British Embassy wrote a letter dated 22 January 2014 in these terms:

At the request of colleagues in the Home Office, the British Embassy in Luanda approached a number of different organisations in Angola during the latter half of 2013 to clarify if there was any specific risk to Angolans returning to Angola who were originally from the province of Cabinda. These organisations included being Angola and Ministry of Justice and Human Rights, the United Nations High Commission for Refugees (UNHCR), the International Organisation for Migration (IOM) and Search for Common Ground (SFCG).

...The responses are self explanatory but it is worth adding that the British Embassy is also aware that members of the Angolan government from Cabinda include former members of [FLEC]. It is particularly relevant that the Secretary of State for Human Rights is from Cabinda.

We approached IOM in late November 2013 and although they felt unable to answer our questions, they advised us that they were not aware of any evidence of violence or persecution in Cabinda, 'as things stand now', and that they were aware that people from Cabinda were returning to Angola from Switzerland and Finland.

SFCG is a Non-Governmental Organisation (NGO) with offices in Luanda and Cabinda which was established in 1996 to support the peace and reconciliation process in Angola through activities with media, civil society, community members and the Angolan government. The response from SFCG represents the views of the author, Carl Frederick Paul, the Country Representative for SFCG rather than the organisation itself.

This letter has been compiled by staff at the British Embassy in Luanda entirely from information obtained from the sources indicated. The letter does not reflect the opinions of the author nor any policy of the Foreign and Commonwealth Office. The author has compiled this letter in response to a request from the Home Office...

90. Although the responses included a response from the Ministry of Justice and Human Rights, from the Cabinet of the Secretary of State, we have decided not to include the answers provided since it may be suggested they lack appropriate objectivity and repeat the government line that all is well. However, we set out in full the 16 answers provided by UNHCR and Search for Common Ground in the body of this text as they are not otherwise in the public domain.

### **Responses from UNHCR and Search for Common Ground NGO, Angola**

[We note that in neither case was English the first language of the respondent. In order to avoid editing or making alterations, we set out the responses as provided, save for spelling mistakes. Any ambiguity in the responses is for the reader to resolve, see for example, the answer to question 1 where the

respondents' answers 'Yes' and 'No', although apparently contradictory, are not in fact.]

**1. Are there numbers of Angolans of Cabindan origin (Cabindans) ordinarily resident in Greater Angola?**

UNHCR response (16 December 2013),

*Yes, but it is unknown how many. As you know, freedom of movement exists between all the provinces of the country and there is no registration mechanism in place when one citizen moves from one province to the other.*

Search for Common Ground response (13 December 2013),

*No, there are no numbers of Angolans of Cabinda origins resident in Greater Angola. Such numbers will be provided by the Ministry of Interior but there is no official numbers. The census, forecasted for 2014, will provide hopefully those numbers. Nevertheless, lots of Angolans from the Cabinda province live in greater Angola where employment opportunities are better. The rest remaining in Cabinda usually work for the governmental institutions, oil companies or perform commerce with neighbouring country.*

**2. Is there any evidence that these Cabindans are subject to any form of ill-treatment of any type by virtue of being Cabindans? If so what types of ill-treatment and to what degree?**

UNHCR response,

*There is no report on ill-treatment against Angolans from Cabinda by virtue of being Cabindan.*

Search for Common Ground response,

*The ordinary Cabindans living in Greater Angola are not subject to any kind, form of any type of ill-treatment for being Cabindan except for the normal sincere rivalry and camaraderie amongst native of different provinces as it would occur in any country.*

**3. Is there any evidence that young Cabindan males are subject to the treatment outlined in 2 above?**

UNHCR response,

*Same as above. [There is no report on ill-treatment against Angolans from Cabinda by virtue of being Cabindan.]*

Search for Common Ground response,

*There is no ill-treatment performed on male Cabindan living in Angola. Therefore, no evidence is applicable.*

**4. Is there any evidence that merely by being Cabindan a person is perceived as being a supporter of FLEC?**

UNHCR response,

*There is no evidence of the sort. There are also Cabindans that are supporting the party in power (MPLA).*

Search for Common Ground response,

*Being a Cabindan person makes the individual perceived as being a supporter of FLEC although Cabinda is also a stronghold of the MPLA or at least the MPLA try to make it appear as such. Nevertheless, the FLEC is a very restricted movement and is a military organisation. To my personal interaction with Cabindans in general, mostly are not FLEC supporters or at least supporters of their manners. However, in general any Cabindan is more prone to be inclined to the separatism ideas promoted by the FLEC although a high percentage of the population will also support continued ties with greater Angola. But, no, there evidence of a Cabindan is perceived as being a supporter of FLEC.*

**5. Is there any evidence that young Cabindan males are routinely suspected of being FLEC supporters and are therefore at risk of ill treatment?**

UNHCR response,

*No, there is no evidence of the sort.*

Search for Common Ground response,

*No, the young Cabindan males are not routinely suspected of being FLEC. Nevertheless, if they are suspected of being FLEC supporters, they will face scrutiny from intelligence services (phone tapping, e-mail spying) and pressure from the MPLA propaganda (job offer, psychological pressure, money etc).*

**6. Please could answers be provided in respect of questions 2 to 5 for Cabindans living in Cabinda itself?**

UNHCR response,

*There is no evidence that all Cabindans living in Cabinda are suspected to be part of the FLEC, nor that young Cabindans are at risk of ill-treatment.*

Search for Common Ground response,

*For the Cabindans living in Cabinda itself, the rule is quite simple: Avoid being an outspoken to the MPLA and don't be a clear supporter of FLEC. Cabinda is the smallest province of Angola yet it has the same intelligence, police, army, security forces for a standard normal province such as Luanda and for a larger city. Therefore, the province is highly controlled. If it happens that a Cabindan, living in Cabinda, is suspected of being a FLEC supporter and/or UNITA and/or CASE-CE supporter, the authorities will make their lives impossible ranging from blocking employment opportunities, pressures, corruption by money, interrogations and very possible imprisonments. Since Cabinda is not connected, geographically, to Greater Angola and since the press (there is only state radio and one commercial radio and Jornal de Angola) is severely controlled, therefore, such imprisonment and/or mistreatments are difficult to monitor and to report on.*

## **7. What languages do Cabindans speak?**

UNHCR response,

*Flote and Portuguese.*

Search for Common Ground response,

*Normally, the Angolan from the Cabinda province do speak Portuguese as well as the local language such as Ibinda, Tchiove and the languages of the two Congo: Lingala and French. There is a high percentage of Angolan from Cabinda province that speaks fluent French due to their emigration to the Congos during the civil war of Angola. The newer generation normally does not speak French but have a basic understanding of it.*

## **8. How likely would language be in exposing a person to risk (if any)?**

UNHCR response,

*There is no report that would establish that a person from Cabinda is at risk by virtue of his/her language. Portuguese is the national language of Angola.*

Search for Common Ground response,

*None. You can easily speak the language of your choice in the Cabinda province. Due to the high presence of foreigners, English is used as well. The local population is somehow more familiar with English and French (also due to the migrants of West Africa) than in Greater Angola. But if you are a visiting diplomat or representative of a foreign government, it is best to be accompanied with a local person who will make the translation for you.*

## **9. What is the procedure at the airport for the reception of failed asylum seekers returned from Europe? (I gather the Dutch have some agreement with the Angolan government on returnees.)**

UNHCR response,

*We are not aware of particular procedures for those in possession of a national passport. Those with other type of travel document such as 'Salvo Conducto' are normally submitted to an interview at the airport. Essentially, the purpose of this interview is to ascertain the Angolan nationality.*

Search for Common Ground response,

*I am not qualified to answer this question and have no information on this procedure.*

**10. Any evidence to suggest that a returned Cabindan failed asylum seeker will face interrogation and ill-treatment at the airport? If so, to what degree?**

UNHCR response,

*There is no evidence of the sort unless the individual is returning using travel documents other than the national passport. In this case, the individual will most probably be submitted to interrogation, but no reported cases of ill-treatment.*

Search for Common Ground response,

*Yes, Cabindan failed asylum seekers will definitely and surely face interrogation at airport when returning especially if they are suspected of being clear/outspoken FLEC supporter. There will be no ill-treatment but they will be retained the days of questioning until the state intelligence 'clears' them and release them. In some cases, the situation degenerated and the Cabindan failed asylum seeker will get beaten and physically molested during interrogation with state intelligence officers that were looking for information.*

**11. If no general risk is there any evidence to suggest that a young male Cabindan would face a risk of ill-treatment?**

UNHCR response,

*There is no evidence.*

Search for Common Ground response,

*Cabinda failed asylum seeker males are more prone to face ill-treatment.*

**12. How is the internal public transportation system arranged in Angola? Are there buses taxis etc? Is internal transportation generally available and affordable? What are the levels of cost involved?**

UNHCR response,

*Private taxis are available as well as public transportation. Public transportation are widely available and cost 100 Kwanza for a ride, although one might need to take several taxis ('candongueiro') to get home, hence might have to pay more than 100 Kwanza.*

Search for Common Ground response,

*There are taxis mostly: both public and private taxi. It is recommended to hire a private taxi and negotiate a fare per day and/or for the duration of the stay. Recommended also that the driver is authorised to drive in all the province with you and can speak at least one local language, besides Portuguese. SFCG can provide references.*

*Internal transportation is available and affordable. Make sure that you have authorisation from government to travel in municipalities other than the Cabinda province. The transportation is safe and the transportation personnel is quite courteous in relation to the Luanda one. It is highly recommended to have a driver that can drive you in the other municipalities.*

*[The cost] is all based on negotiation with a private owner of the car or the car rental company. The average price with driver cost is between 10,000-12,000 Kwanzas for a standard SUV car.*

**13. Is there any evidence to indicate that persons arriving by air at Luanda airport would be unable to travel or that such travel would be unduly harsh from Luanda to the port of Soyo in Angola and thence by ferry to Cabinda?**

UNHCR response,

*There are regular flights from Luanda to Soyo and Cabinda. We have no information in respect of the use of ferry from Soyo to Cabinda or the use of boat transportation from Luanda Soyo.*

Search for Common Ground response,

*That is impossible so far. You can take the air-taxi shuttle from Soyo to Cabinda but the best way is to travel directly from Luanda to Cabinda was one of the airlines. We recommend TAAG. For TAAG, please use always the first daily flight or last daily flight to/from Cabinda. Those ones are never cancelled whereas the second or third services are often schedule due to plane delay or lack of passengers. Since the first one occurs at 6 am and the last one at 20h40 pm, it is gives enough time to work during a full day.*

**14. Could you provide locally available information on the ferry from Angola to Cabinda including timings, ticket costs?**

UNHCR response,

*See above.*



Search for Common Ground response,

*There is no ferry (water transportation from Soyo to the Cabinda city).*

**15. Please could you provide locally available information on air flights the ferry from Angola (Luanda) to Cabinda including timings, ticket costs?**

UNHCR response,

*In respect of flights from Luanda to Cabinda: one trip cost about 150 USD. Flight timetable is as follows: 6h00 am; 11h30 am, 16h00 an 20h00. But this timetable can change from one week to the other, as sometimes flight and timetable varies.*

Search for Common Ground response,

*For the flight, please check out the [www.taag.com](http://www.taag.com) website and then the domestic routes schedule. But normally there are three flights to/from Luanda to Cabinda: a) 6:40 am b) 11 am c) 6 pm. The flight takes about 45-50 minutes and then takes off back to Luanda. The prices range on the classes, airfare basis etc. The average price for a round trip ticket from Luanda to Cabinda is 25,000 Kwanzas. [Currently, about US\$250]*

**16. Is there any evidence of security checks on those embarking from Soyo to Cabinda whether at Soyo or on arrival at Cabinda.**

UNHCR response,

*There are security checks performed on those embarking from Soyo to Cabinda and to Cabinda upon arrival, like in all airports of the country.*

Search for Common Ground response,

*Regular check and standard internationally accepted safety check occurs.*

### **The questions agreed by the parties**

91. In what we regard as a sensible and useful practice, the parties agreed a series of questions that are or may be material. They are:
- a. Whether the authorities consider anyone who is from Cabinda as being allied to FLEC?
  - b. What would one have to be able to do to convince (or seek to convince) the Angolan authorities of one's not being allied to FLEC?
  - c. What the procedure would be with regards to questioning Cabindans on return to Angola (if any)?
  - d. How difficult internal movement in Angola for Cabindans is currently?
  - e. What is the availability of shipping between Luanda and Cabinda (i.e. travel to and from same by water)?

- f. What is the cost of such travel if possible?
- g. What, if any, internal displacement there is due to war/conflict in Angola/Cabinda currently?
- h. How likely language would be in exposing a person to risk (if any)?
- j. Situation for Cabindans over and above the above.

## Submissions

92. Extensive skeleton arguments have been provided. Both sides have produced two each.
93. The appellant maintains that there is an ongoing risk to Cabindans returned to Angola. It is, of course, accepted that there have been welcome developments, although it is said these are mainly economic in character. Ms Akinbolu submitted that the conflict between the ruling party and UNITA has ceased but this does not have a sufficiently marked impact on returnees to Cabinda. We should, however, note that the HIIK Conflict Barometer adopts a somewhat different approach.
94. She submitted there is general consensus that the government is guilty of human right abuses and that the government is continuing to maintain a counter-insurgency campaign so that returnees remain at real risk.
95. Ms Akinbolu argued that much has been made of the 2006 Memorandum of Understanding as a peace accord but that the MOU did not receive widespread support and at least a section of FLEC do not consider themselves bound by it. Fighters on the ground, she said, continue to take their instructions from Paris. She maintains that FLEC is (in her words) a '*joined up*' organisation whose stated aims are devised by its political wing but intended to be carried out by its military wing. She accepted that this was a low-level insurgency with relatively few incidents. However, she argued that it is not the level of activity that FLEC now manages to engage in but the response of the Angolan government to it. Cabinda is governed by the Angolan Armed Forces and they provide security, border controls, checkpoints and similar security measures, a role performed elsewhere by the police. It has resulted in concerns by NGOs including UNHCR. There is evidence of raids, checkpoints, regular stop and search as well as arbitrary arrests by those perceived to support FLEC. Once detained, it is the unanimous view that there is a risk; indeed, torture is present throughout all detention facilities. The appellant's case is that FLEC are still active and that the government is attempting to combat the threat it poses, including by taking military action in the course of which human rights abuses are noted and a risk of Article 3 violations arise. The risk is that identified in paragraphs 14 and 15 of *FP*. Controls at the airport are thorough. Failed asylum seekers are not at risk for that reason alone but are likely to be questioned or interrogated to establish their identity and whether they are of interest to the authorities for political or criminal reasons. The responses by the US State Department and the Search for Common

Ground, the answer to question 10, annex Ad support this proposition. Ms Akinbolu accepted the response does not amount to ill-treatment but submitted that this does not tie in with the broader background information that detention does establish a risk.

96. The appellant relies upon the answers to questions 4 and 5 of the Search for Common Ground and its advice: *'avoid being a critic of the government or demonstrate support for FLEC'*.
97. Ms Akinbolu, therefore argued that a broad interest on the part of the authorities coupled with tight controls would cause authorities to have an interest, at the very least, in a person in the appellant's position. He is likely to be asked about his background. Checks will be made. That process attracts a real risk of a breach of his Article 3 rights. The risk, she maintains, is on arrival and therefore internal relocation does not arise. Even if the Tribunal were to consider a return to Cabinda, then the same risk occurs in Cabinda. The Angolan authorities maintain security at border control points and, if anything, it is greater in Cabinda than in Luanda. Travel to Cabinda suggests that air travel is the only viable option; there is no reference to ferry transport in the background material.
98. If relocation to Luanda is to be considered, there are an undetectable number of IDPs and those who internally travel are at the lowest end of the economic ladder. The appellant would not be able to maintain a reasonable life: he returns with no particular skills and the booming economy benefits only those who are at the top.
99. In response, Mr Parkinson referred to C23 of the respondent's bundle and a Lonely Planet travel forum which records the exploits of an Australian traveller who travelled from Soyo in Angola to Cabinda by ferry. He refers to the ferry departing every other day, taking about 5 hours and costing approximately US\$45.
100. Mr Parkinson submitted that even if the breakaway group of FLEC (FAC) maintains its struggle against the Angolan authorities, the only significant matter is the January 2010 incident involving the team bus of Togo nationals. The responsibility for this is confused. One source identifying Rodriguez Mingas from FLEC (PM), an otherwise unidentified group as being responsible, a suggestion dismissed by FLEC (FAC), anxious to maintain its position as the principal faction. This was enormously embarrassing public relations disaster for the government which, Mr Parkinson accepted, resulted in a clear response by way of a crackdown over a period of perhaps 18 months. However, he said, it was a singular event and, apart from it, there is little to indicate that a serious on-going conflict is taking place. Compare this situation, for example, with the LTTE in Sri Lanka where the LTTE area was a state within-a-state, subject to an on-going military campaign with inevitable consequences for those opposed to, or perceived to be, in opposition to the government. The Heidelberg Institute for International Conflict Research offers a more reliable gauge. There is no reliable

evidence that FLEC is a significant force in Cabinda but, given the government is a repressive one, it is not surprising that it maintains a high level of its armed forces there.

101. The response from Search for Common Ground, question 5, establishes there is no evidence that a Cabindan is at real risk for that reason alone. Those detained are those suspected of being associated with FLEC or the opposition, that is, human rights defenders, lawyers, activists and those with a profile.
102. The Dutch government no longer consider there remains a risk of ill treatment. Nor does UNHCR in its 2012 report: there is no longer a need for refugee status for former Cabindans located outside Cabinda. The interrogation of prisoners is to be contrasted with others who are not in detention. It is clear that there are returns from Switzerland and Finland. Given the number of NGOs on the ground, if there were ill-treatment, UNHCR would have reacted.
103. The United Kingdom Embassy letter makes reference to members of the government including those from Cabinda including those who were part of FLEC. Bembe is a notable example. The IOM has a presence in Angola.
104. As the informants make clear in answer to questions 1 and 2, it is not necessary to return to Cabinda if the appellant does not wish to do so.
105. In reply, Ms Akinbolu drew to our attention the evidence of the UNHCR return programme and the IRIN report [84, above] which makes it clear that Cabindans remain in fear of returning and the January Human Rights Watch report speaks of on-going military action and on-going concerns of NGOs precisely because of the on-going military response by Angolan government forces. A specific risk of torture is posed to those who are tortured to disclose associates and associations.

### **Our analysis - Generalised Violence and Armed Conflict**

106. This determination is principally concerned with the Angolan authorities' attitude to Cabindans. In passing, however, we have assessed the evidence before us as to more general levels of violence and the Angolan authorities' attitude towards opposition. We have mentioned the Heidelberg Institute's methodology in assessing levels of conflict and its assessment that the conflict between the government and UNITA/CASA-CE has ascribed to it a level of intensity calibrated at intensity level 3, low-level violence. We remind ourselves that there are examples of heavy-handed response by government forces to the actions of the opposition groups, for example, when UNITA tried to deliver assistance to illegal settlements in February 2013, the security forces used violent force against them, similarly the allegation of May 2013 when it was said MPLA members attacked a group of 23 UNITA members who were preparing a rally.

107. That said the August 2012 election has been described as ‘anticlimactic’ with much voter apathy. UNITA doubled its share of the vote from 2008 to 18.66%
108. This material establishes that neither Angola as a whole nor Cabinda is in a state of conflict or generalised violence at such a high level that persons are at risk of persecution or serious harm or ill-treatment merely by virtue of being civilians. Indeed the preponderance of the evidence indicates that armed conflict is low and incidents are sporadic and numerically few.

### **The risk faced by Cabindans or in Cabinda**

109. We will begin by attempting to answer the questions the parties themselves have agreed merit consideration. Before doing so, however, it is crucial to point out that whilst Angola's laws on civil liberties are generally consistent with international norms, the problem lies in whether reality lives up to those standards. Paragraphs 26 to 46 above pinpoint the problems. There is significant evidence of human rights abuses, including within Cabinda and affecting Cabindans, problems of arbitrary arrest and detention, ill-treatment in detention, poor prison conditions, restrictions on freedom of expression, government action against protest and limitations in the legal system and security laws. These problems do not render all those returning to Angola or Cabinda at risk of serious harm, whether or not they are Cabindans. The effect is that in order to establish a real risk, an individual has to establish that, by reason of circumstances as they relate to him, there is a reasonable likelihood he will come into contact with the authorities in a way that will result in his detention. This is sometimes referred to as arising by reason of ‘his profile’. Arbitrary exercise of force against an individual, being arbitrary, presupposes no rational basis for it. The fact that such incidents do occur does not, however, establish a reasonable likelihood that all Angolans are at risk.
110. The fact that the presence of the Angolan armed forces is proportionately higher in Cabinda than elsewhere in Angola shows a continuing concern on the part of the government about separatist activities and, consequently, a greater potential for the exercise of force, but the evidence still falls well short of establishing that all Cabindans are at a real risk of harm. This applies equally to an individual returning to Luanda and to greater Angola as it does to Cabinda.

### **Whether the authorities consider anyone who is from Cabinda as being allied to FLEC?**

111. Although it is suggested that the Angolan authorities equate being a Cabindan with being a member of FLEC, we emphatically reject this. The Angolan authorities do not equate being a Cabindan with being a member of or supporter of FLEC. It is axiomatic that any member or supporter of FLEC will be a Cabindan but the reverse is not true. The size, effectiveness, recent record and goals of FLEC are plain as they emerge from the background material. The Bertelsmann Transformation Index 2014 estimated the remaining armed FLEC

members to be a few hundred men. Jane's Sentinel Security Assessment for Angola (August 2013) spoke of incidents being sporadic and localised. The group who attacked the Togo football team was said to number 15 FLEC fighters by Mingas, one of those claiming responsibility and the attack lasted for about 30 minutes. Bertelsmann Transformation Index 2012 thought that the crack-down after the Togo football team attack and the arrest in 2011 of the chief of staff of the faction involved were likely to have put an end to Cabindan military resistance to the Angolan state. The readiness of the Paris exiles to lay down their arms strongly supports recognition by them of a reduced level of violent intervention. The Heidelberg Institute for International Conflict Research (2013), in the passage summarised in paragraphs 74-75 above, saw no change in the intensity level since its last report and an intensity level described as level 1, that is, a political conflict carried out completely without resorting to violence and without the threat of violence. The US State Department 2012 Report on Human Rights Practices, [ paragraph 66 above] in contrast to earlier years, spoke of there being no reports of security forces detaining Cabindan residents suspected of FLEC activity or collaboration.

112. The evidence fails to establish that FLEC currently operates at a level such as to represent a real threat to the Angolan authorities although they are keen to take measures to ensure that there is no resurgence of its activities. Nor does the evidence establish that FLEC reflects the views and aspirations of a majority of Cabindans, notwithstanding the fact that the Cabindan sense of social identity remains very strong and separation from Angola remains an aspiration shared by many. We consider that it is likely that the Angolan authorities readily understand the distinction between FLEC membership or support and Cabindan self-assertion. Indeed, the government's efforts to spend money on infrastructure in Cabinda and to afford it some form of special status demonstrate a willingness to win over the hearts and minds of Cabindans rather than to view them as potential terrorists. The evidence also suggests that, amongst Cabindans, there is a divergence of opinion, some seeking independence whilst others seek greater autonomy. These considerations must inform the Angolan authorities' assessment of the likelihood that an individual from Cabinda is, or may be, associated with FLEC.

113. The Tribunal's conclusion in paragraph 24 of *FP* that there is an unknown degree of risk that the Angolan authorities have some knowledge of individuals, perhaps of families, who are FLEC members or that there is a risk that, even without such knowledge, they would suppose a person to be a FLEC supporter, is no longer supported by the background material we have considered.

**What would one have to be able to do to convince (or seek to convince) the Angolan authorities of one's not being allied to FLEC?**

114. We do not consider that an individual needs to convince the Angolan authorities that he is *not* a FLEC activist or supporter since there is no

presumption on the part of the Angolan authorities that he is. We accept that it would obviously court danger for a FLEC fighter to reveal his activities to the Angolan authorities and, by parity of reasoning, for a Cabindan who aspires to a separate Cabindan state to express his views in such outspoken terms as to excite the hostility of those members of the Angolan armed forces with whom he is speaking. But such a degree of caution does not amount to a violation of his right to enjoy his sense of identity as a Cabindan. It will be assumed by the authorities that he shares the Cabindan sense of social identity and may well aspire to separation from Angola, but these features, common amongst Cabindans, do not lead to a real risk of harm.

**What the procedure would be with regards to questioning Cabindans on return to Angola (if any)?**

115. There is clear evidence of normal security checks at airports, including Luanda airport on arrival. We would expect those checks to be thorough. They will be directed towards establishing the identity of the person entering the country. Where the identity document produced by the returnee is valid and in a form acceptable to the authorities, there will be no reason for suspicion to be aroused. There is no credible evidence before us to suggest that entry procedures are conducted by the Security Service or that any heightened attention is paid to those returning from particular countries. Thus, whilst we are satisfied that security checks are conducted at border posts, we are not satisfied those checks will lead to arrest and detention unless there is a specific reason for attention.
116. There is evidence [83, above] that at remote land border posts the discipline of the individuals manning those posts may be lax and pose particular threats to those using them. The risk, however, is not suggested to arise from any suspicion that the individual is a member of FLEC; rather, it is the unrelated risk of extortion and misbehaviour which falls well below a generalised or real risk.

**How difficult is internal movement in Angola for Cabindans is currently? What is the availability of shipping between Luanda and Cabinda (i.e. travel to and from same by water)? What is the cost of such travel if possible?**

117. There are no obvious difficulties in Cabindans travelling between Angola and the enclave of Cabinda by air. There is no clear evidence of a regular ferry system, although the Secretary of State produced an account from one seasoned western traveller who had travelled the coast by boat. However, the predominance of the evidence is that ferries do not operate and the preferred method of transport is by air via the national airline. Although the road network is improving, the FCO's advice is against its use. What is clear, however, is that there are no obstacles for a returnee to Luanda airport in making an onward journey to Cabinda.
118. The cost of travel does not act as a practical bar, see the response to question 15, page 32, above.

119. It is as well to recall that in *FP (Return - Cabinda - Non-Luandan)*, the AIT concluded that travel to Cabinda from Luanda was excluded as a practical possibility. That conclusion no longer holds good.

**What if any internal displacement there is due to war/conflict in Angola/Cabinda currently?**

120. When *FP* was decided, the aftermath of the civil war had resulted in a humanitarian crisis. There was massive internal displacement caused by the civil war principally fought between the MPLA and UNITA. The humanitarian situation in Luanda was variously described as critical and wretched. The situation is very different now. We do not know the fate of the millions displaced, the thousands who fled to neighbouring countries or the half a million in the camps around Luanda. As we have pointed out [84, above], there are those who were afforded refugee status in the DRC but whose refugee status has now been withdrawn and, after many years in the DRC, do not wish to return home. Some fear they will be treated as former member of FLEC, indeed some may have been FLEC members, but the evidence is clearly insufficient to establish that all those returning to Angola will be suspected of being former FLEC fighters and at risk because of it.

121. The US State Department 2012 Report on Human Rights Practices, 19 April 2013, noted:

Officially there were no longer significant numbers of IOPs. The majority of persons previously considered IOPs either returned home or did not intend to return to their area of origin, as many considered their new locations to be home. Some stated a lack of physical infrastructure, government services such as medical care, and the presence of land mines were major deterrents to their return.

122. Suffice it to say that the humanitarian crisis no longer exists.

**How likely language would be in exposing a person to risk (if any)?**

123. Language is a distinctive method of identification but identification as a Cabindan is not sufficient to establish a real risk.

**Situation for Cabindans over and above the above.**

124. Our assessment of risk is a composite exercise since there is no material distinction between risk of persecution, the need for humanitarian protection or a violation of the appellant's article 3 rights. Instead, our focus has been on the assessment of whether the appellant faces the reasonable likelihood of serious harm on return to Angola. Our twin considerations have been directed towards Angola itself, including the situation at the airport, and in Luanda generally on the one hand and the situation at the airport in Cabinda, and in Cabinda



generally, on the other, as well as the means of travel from Luanda to Cabinda. Whilst these may be trigger-points, none of them pose a risk in normal circumstances to an Angolan or Cabindan returning to the country.

### **Internal relocation**

125. The evidence establishes that there is freedom of movement between all the provinces of Angola, including Cabinda. There is no evidence of a registration system that operates as a clog and UNHCR in its response to the United Kingdom Embassy states that there is no such registration system. The evidence establishes there are many Cabindans who live in greater Angola, often for economic reasons. There is no evidence to suggest that, in general, it would be unduly harsh for a Cabindan to relocate to greater Angola, at least, by relocation to Luanda.
126. The risk posed to a person returning to Angola will depend upon the threat he poses or, more importantly, the threat he is *perceived* to pose to the Angolan authorities. Whilst individuals in the security forces may not always act rationally, there is no evidence of widespread random violence meted out at the point of return, as opposed to what the evidence suggests occurs in detention facilities. The perception of threat on the part of the Angolan authorities will, inevitably, vary depending upon the intensity of the conflict with which the authorities are engaged from time to time. Where there is a full on-going conflict of violent intensity, the level of scrutiny likely to be operated by the authorities is likely to be greater than during a period of relative calm with an attendant greater risk posed to those perceived to be a threat or potential threat.
127. Our assessment is that FLEC no longer represents a significant military or political force capable of organising a military opposition to the government. We do not accept Ms Akinbolu's suggestion that the organisation is well-defined by reference to a political wing directing and controlling a military wing within Cabinda itself or, for that matter, Angola. We accept the government has adopted a policy of stonewalling any suggestion that the conflict even exists which does not assist in our assessment but, on the other hand, the presence of a number of NGOs in the area has not produced hard evidence of a significant insurgency. In the current climate, there is little room for a *perception* on the part of the Angolan authorities that a person returning to Angola will pose a threat to Angola by reason of links with FLEC in the absence of evidence justifying the suspicion.

### **Conclusions**

128. *FP (Return – Cabinda – Non-Luandan) Angola* CG [2003] UKIAT 00204 no longer provides an accurate assessment of country conditions. It ceases to be country guidance.

129. There is significant evidence of human rights abuses, including within Cabinda and affecting Cabindans, problems of arbitrary arrest and detention, ill-treatment in detention, poor prison conditions, restrictions on freedom of expression, government action against protest and limitations in the legal system and security laws. However, these problems do not render all those returning to Angola or Cabinda to be at risk of serious harm, whether or not they are Cabindans.
130. Unless there exists a situation in which there is generalised violence or armed conflict at a very high level (which is not the case here) in order to establish a real risk of harm, an individual has to establish that, by reason of circumstances as they relate to him, there is a reasonable likelihood he will come into contact with the authorities in a way that will result in his detention.
131. The Angolan authorities do not equate being a Cabindan with being a member of or supporter of FLEC.
132. The evidence fails to establish that FLEC currently operates at a level such as to represent a real threat to the Angolan authorities although they are keen to take measures to ensure that there is no resurgence of its activities. Nor does the evidence establish that FLEC reflects the views and aspirations of a majority of Cabindans, notwithstanding the fact that the Cabindan sense of social identity remains very strong and separation from Angola remains an aspiration shared by many. The Angolan authorities readily understand the distinction between FLEC membership or support and Cabindan self-assertion.
133. There is clear evidence of normal security checks at airports, including Luanda airport on arrival. Those checks are likely to be thorough and directed towards establishing the identity of the person entering the country.
134. There are no obstacles in a returnee to Luanda airport making an onward journey to Cabinda. The finding in *FP* that travel to Cabinda from Luanda is excluded as a practical possibility is no longer correct.
135. Language is a distinctive method of identification but identification as a Cabindan is not sufficient to establish a real risk.
136. A person of Cabindan origin returning to Angola will not in general be at real risk of ill-treatment by reason of his or her Cabindan origin. Such a person is reasonably likely to be detained (with the accompanying risk of ill-treatment) only if he or she has a history of active involvement with FLEC (or one of its factions, such as FLEC-PM or FLEC-FAC). Excluded from those at risk are individuals formerly associated with the pro-government FLEC-Renewal (FLEC-Renovada) or Antonio Bembe.
137. A person's Cabindan origin will not, in general, preclude him from living or working in Luanda or some other part of Angola.

## **Re-making the decision**

138. The appellant, although a Cabindan, was not a member of FLEC. He had not been detained, tortured or escaped as he had claimed. He will be returned to Luanda and is able to fly from there to Cabinda, if he chooses to do so. He will be returned with documentation sufficient to establish his identity. There is nothing about his circumstances that will excite the suspicion of the Angolan authorities. He is not at risk of harm from the Angolan authorities on return to Luanda or on onward transit to Cabinda. It is not unreasonable for him to locate himself in Luanda if he chooses not to return to Cabinda.

## **DECISION**

The Judge made an error on a point of law and we substitute a determination dismissing the appeal on all the grounds advanced.

ANDREW JORDAN  
JUDGE OF THE UPPER TRIBUNAL  
July 2014

APPENDIX 1



The Upper Tribunal  
(Immigration and Asylum Chamber)

THE IMMIGRATION ACTS

Heard at North Shields	Determination Promulgated
On 19 April 2012	
Prepared on 26 April 2012	.....

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL JM HOLMES

Between

MB

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr Boyle, Solicitor, Halliday Reeves Law Firm

For the Respondent: Ms Rackstraw, Home Office Presenting Officer

**REASONS FOR FINDING THAT THE FIRST TIER TRIBUNAL MADE AN  
ERROR OF LAW**

1. The Appellant, a citizen of Angola, born on 20 November 1987, claimed asylum on 14 December 2010 after a clandestine entry to the United Kingdom, and his arrest on 29 November 2010. The application for asylum was refused, and a decision was made to remove him to Angola on 11 January 2011. The Appellant

sought to appeal that decision, and his appeal was heard by Immigration Judge Handley, and dismissed on all grounds, in a Determination promulgated on 23 March 2011.

2. The Appellant sought permission to appeal from the First-Tier Tribunal, which was granted by Immigration Judge Gibb on 7 April 2011 on the basis that it was arguable the Judge had wrongly departed from the country guidance to be found in FP (Return – Cabinda – Non Luandan) Angola CG [2003] UKIAT 204 having no proper evidential basis for doing so. Thus the matter comes before me.
3. It was not disputed before the Judge that the Appellant was an Angolan national, from Cabinda, or that he would be perceived as such upon return to the airport at Luanda, which the Respondent had confirmed to the Judge would be the point of return to Angola.
4. The Appellant has raised no challenge to the findings of fact made by the Judge in rejecting the claims; (a) that he was a member of FLEC (in any of the different categories of membership of that organisation), or (b) that he had ever worked for FLEC, or, (c) that he had experienced any past persecution in Angola on the basis that he was perceived to be a member of FLEC, or, (d) that his body bore any scars which resulted from injuries sustained in the way he had described, or, (e) that he had in the past been detained as claimed by the authorities in Angola.
5. Mr Boyle confirmed that the appeal therefore turned upon the discrete issue of how the Appellant would be perceived upon return to Luanda. Thus whether he as one who would be likely to be perceived to be a failed asylum seeker who had originated from Cabinda, was at risk as a result of being perceived by the Angolan authorities to be a member, or a supporter, of FLEC, and thus at risk of persecution. In the light of the unchallenged findings of fact it was accepted that this was not a case that raised the prospect of the Appellant having to lie, or dissemble, in order to hide his true political allegiances, because the Judge had made no finding in his favour to the effect that he was even in truth a FLEC supporter (no doubt because of his dishonest account and his inability to give accurate evidence about FLEC).
6. No separate complaint is made in relation to the Judge's approach to the human rights appeal.
7. It is accepted that the Judge correctly identified FP as being the current country guidance in relation to the risks faced upon return to Angola of Cabindans, despite the passage of time since its promulgation. In paragraph 47 of the Determination the Judge sought to summarise that decision, and to apply it to the facts as he had found them to be.
8. To the extent that Mr Boyle went so far as to say that it was improper for the Judge to ignore evidence of changes in country conditions since FP, simply

because the Tribunal had not expressly withdrawn current country guidance status from FP, his argument is unsustainable because it does not engage with the President's Practice Direction of 4 April 2005, paragraph 18.2, and thus the proper status of such a decision. A country guidance case is only to be treated as an authoritative finding on the issue identified in the determination, based upon the evidence that was then before the Tribunal. Thus, even if that decision has not been expressly superseded, or replaced, by later country guidance it is only authoritative in a subsequent appeal so far as that subsequent appeal; (a) relates to the same issue, and, (b) depends upon the same or similar evidence.

9. Accordingly in my judgement the Judge sought, quite properly, to consider the more recent evidence upon Angola that was relied upon by the Respondent. There were two limbs to the evidence relied upon by the Respondent to establish that there had been a change in country conditions since FP.
10. First, that a returnee could now travel by air from Luanda to Cabinda, and would not therefore be required to face the difficulties inherent in the overland or sea journey to Cabinda that the Tribunal considered at paragraph 23 of FP. The Appellant has not sought to rebut or challenge that evidence, either before the Judge, or subsequently. There is therefore no basis upon which the Appellant can properly challenge the Judge's conclusion that the Appellant could upon return to Luanda, take a flight to Cabinda if he wished to travel there, without having to make a journey to Cabinda by land by sea.
11. Second, that a returnee perceived to be Cabindan would not face the difficulties at the Luanda airport that were identified in FP. The Respondent relied upon a Country of Origin Information request dated 28 October 2008, and the reply dated 30 October 2010. The request read as follows;

*I would be grateful if you could please provide information on whether the Angolan authorities (particularly the authorities at the airport and in Luanda) would perceive an ethnic Cabindan to be a member or supporter of FLEC in the absence of any evidence that he or a family member was actually involved with FLEC. If you are not able to find anything useful from the usual sources in the public domain, I would appreciate it if you could please approach the FCO Desk Officer/post for their comments in disclosable form.*

The reply read as follows;

*The UK Foreign Office in an email dated 30 October 2008 stated; "Not unless they were a member. It would also depend on if they had been outspoken during their time in exile. If they had made any kind of public statement about independence for Cabinda then there is a slim possibility they might be so accused.*

12. It was not suggested by Mr Boyle in the course of argument that the Appellant had relied before the Judge upon any more recent, relevant evidence as to the treatment of those returned to Angola. However subsequent to the hearing, I have had the opportunity to go through the whole of the bundle of documents

that had been prepared by IAS (the Appellant's former representatives) and relied upon before the Judge. I note that this bundle contains a report dated 29 October 2010 prepared by the Refugee Documentation Centre (Ireland) upon the treatment of those returned to Angola. It does not appear that the content of this report was specifically drawn to the attention of the Judge by the Appellant's then representatives, because there is no reference to it in either the Skeleton Argument prepared by IAS for the hearing, and no reference to it in the Determination. That this report was apparently overlooked is a pity because its content is of direct relevance to the issue raised by this appeal. That it was apparently overlooked by the Judge means in my judgement that there was an error of law in his approach to the evidence placed before him.

13. The 2010 Irish report notes that a UNHCR position paper of January 2004 withdrew the advice previously issued to states against the involuntary return of failed asylum seekers to Angola, except Cabinda. The report notes that whilst UNHCR advice in relation to Cabinda was reinforced in a paper dated January 2009, UKBA in a June 2009 Operational Guidance Note did not accept that all person presenting as from Cabinda were, irrespective of their individual circumstances, automatically in need of some form of international protection. Neither of these documents was placed in evidence before the Judge, or is now placed in evidence before me.
14. It is in my judgement significant that other recent reports from NGOs that are contained in the bundle prepared for the hearing before the Judge by IAS, also do not echo the guidance to be found in FP as to the likely attitude of the Angolan authorities towards those returned to Angola, who would be perceived as failed asylum seekers. Thus the Human Rights Watch report upon Angola of 24 January 2011 refers to some recent arbitrary detentions in Cabinda of those suspected to be rebels, but not of any risk in the remainder of Angola, or Luanda in particular, to those perceived to be Cabindan. The US State Department report of 11 March 2010 refers to the government's co-operation with the UNHCR, and the IOM, and other humanitarian organisations in providing protection and assistance to internally displaced persons, returning refugees, asylum seekers, and other persons of concern, and makes no reference to difficulties faced at the airport (as the point of return) by those perceived by to be Cabindan.
15. It is not clear from the Tribunal file whether either party referred the Judge to the COI report upon Angola dated 1 September 2010, and the Determination does not quote from it. Both parties sought however to place reliance upon that report before me, although neither had filed in advance of the hearing, or was able to produce at the hearing a complete copy of it. Once I had obtained a complete copy of that document, and the representatives had time to peruse it, it was common ground that this document did not contain either the passage that

was quoted in FP as having been taken from paragraph 6.55 of the October 2002 CIPU report, or any passage expressed in similar terms. Indeed the 2010 COI report makes no reference to difficulties faced by those returning to Angola, whether or not they are perceived to be failed asylum seekers who originated from Cabinda. On the contrary, as Ms Rackstraw argued, paragraph 26.01 can only reasonably be read as describing a quite different situation;

26.01 The United States State Department 2009 *Country Report on Human Rights Practices on Angola* stated that:

“The constitution and law provide for freedom of movement within the country, foreign travel, emigration, and repatriation; however, the government at times restricted these rights in practice. The government cooperated with the UN High Commissioner for Refugees (UNHCR), the International Organization for Migration, and other humanitarian organizations in providing protection and assistance to internally displaced persons (IDPs), returning refugees, asylum seekers, and other persons of concern.

“Extortion and harassment at government checkpoints in rural areas, and at provincial and international border checkpoints, interfered with the right to travel. Extortion by police was routine in cities on major commercial routes. The government and private security companies restricted access to designated diamond concessions. Citizens living near concession areas were regularly denied access for any purpose, including obtaining water.”

16. The decision of the Presidential panel in FP does not suggest that the Tribunal had the benefit of evidence from any individual called by either party and held out as an expert upon the then situation within Angola. Instead paragraphs 11, 14 and 15 of that decision clearly record that the Tribunal was relying primarily upon the content of the October 2002 CIPU report in seeking to ascertain the likely reception at the airport in Luanda of a failed asylum seeker who would be at risk of being perceived to be of Cabindan origin. Thus;

14. The problems faced by those returning to Luanda, at the point of return, is dealt with in paragraph 6.55. It comments that the Angolan authorities are well aware of the pressures which lead to emigration and that asylum claims are used to facilitate that; the fact of being a failed asylum seeker, if discovered, would not be of any particular interest. However, the controls at Luanda Airport are thorough. Any Angolans who have been deported from abroad, or who lived abroad for many years, would be questioned by immigration and police at the airport with a view to establishing their identities and whether they were of interest to the authorities for political or criminal reasons

15. The Report describes prison conditions, should someone be arrested and detained, as constituting a serious threat to the health and lives of prisoners; paragraph 5.25 states:

"There is widespread and generalised abuse of suspects. Security service personnel regularly employ torture and other forms of cruel and degrading treatment including rape. Confessions are regularly obtained this way ... ."

17. The Tribunal went on to conclude;

24. The background evidence also shows that he would be identified as someone from Cabinda, both because of the languages which he does speak and because of his lack of Portuguese.



He would be questioned to see if he was of political or criminal interest: his Cabindan origin, with the current upsurge in fighting in Cabinda, would make that inevitable. Although it is only realistic to suppose that he would not reveal his FLEC membership voluntarily, he would have to have a story to explain his departure from Cabinda and return to Luanda which would stand up to thorough and at least suspicious, if not downright hostile, questioning. There is an unknown degree of risk that the Angolan authorities have some knowledge of individuals, perhaps of families, who are FLEC members. There is a risk that, even without such knowledge, they would suppose him to be a FLEC supporter.

18. It is now some nine years since FP was decided, and it is hardly surprising that the evidence suggests that conditions in Angola have changed in that time. It would have been quite wrong for the Judge to ignore the Presidential Guidance in his approach to the assistance he could properly derive from FP but it is also quite clear from his Determination that he did not do so.
19. In the circumstances of this appeal I am satisfied that the proper course is to adjourn the hearing of this appeal to permit further submissions to be made in relation to the material that was before the Judge, and to which the parties did not refer to in the course of the submissions they did make. Given that neither party seeks to disturb the findings of fact made by the Judge, and set out above in paragraphs 3 & 4, the appeal would appear to give the Upper Tribunal the opportunity to give further country guidance in relation to Angola, and specifically the risk of detention and ill treatment at the hands of the authorities for those returnees who are likely to be perceived to be Cabindan. Directions will be issued separately, and the matter listed for a case management hearing, to allow that opportunity to be explored further.

Signed

Deputy Judge of the Upper Tribunal JM Holmes

Dated 26 April 2012

**APPENDIX 2 : SCHEDULE OF EXPERT AND BACKGROUND EVIDENCE**

<b>Item</b>	<b>Document</b>	<b>Weblink</b>	<b>Date</b>
1	Foreign and Commonwealth Office - Angola travel advice	unavailable	April & March 2014 and July 2013
2	Office of the United Nations High Commissioner for Human Rights, 'Report of UN Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment - Angola excerpt'	<a href="http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session25/Documents/A-HRC-25-60-Add2_EFS.doc">http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session25/Documents/A-HRC-25-60-Add2_EFS.doc</a>	March 2014
3	US Department of State - 2013 Country Reports on Human Rights Practices: Angola	<a href="http://www.state.gov/j/drl/rls/hrrpt/2013/af/220081.htm">http://www.state.gov/j/drl/rls/hrrpt/2013/af/220081.htm</a>	27 February 2014
4	Reporters without borders - Police cell mistreatment	<a href="http://en.rsf.org/angola-six-month-suspended-sentence-for-11-02-2014,45846.html">http://en.rsf.org/angola-six-month-suspended-sentence-for-11-02-2014,45846.html</a>	11 February 2014
5	Heidelberg Conflict Barometer 2013 (Analyzed Period: 01/01/13 - 12/31/13)	<a href="http://www.hiik.de/en/konfliktbarometer/pdf/ConflictBarometer_2013.pdf">http://www.hiik.de/en/konfliktbarometer/pdf/ConflictBarometer_2013.pdf</a>	February 2014
6	Letter from British Embassy in Luanda	unavailable	22 January 2014
7	Human Rights Watch World Report 2014 - events of 2013: Angola	<a href="http://www.hrw.org/world-report/2014/country-chapters/angola">http://www.hrw.org/world-report/2014/country-chapters/angola</a>	21 January 2014
8	Bertelsmann Stiftung's Transformation Index 2014, Angola Country Report	<a href="http://www.bti-project.org/reports/country-reports/esa/ago/index.nc">http://www.bti-project.org/reports/country-reports/esa/ago/index.nc</a>	1 January 2014
9	Human Rights Watch - 'Angola Crackdown on Opposition Protest'	<a href="http://www.hrw.org/news/2013/11/26/angola-crackdown-opposition-protest">http://www.hrw.org/news/2013/11/26/angola-crackdown-opposition-protest</a>	26 November 2013
10	Angola Press Agency - Angola: TAAG transported over 150,000 national passengers in first half	<a href="http://www.portalangop.co.ao/angola/en_us/noticias/economia/2013/9/40/TAAG-transported-over-150-000-national-passengers-first-half,c36776a-6aad-479b-b8ed-90d779659e86.html">http://www.portalangop.co.ao/angola/en_us/noticias/economia/2013/9/40/TAAG-transported-over-150-000-national-passengers-first-half,c36776a-6aad-479b-b8ed-90d779659e86.html</a>	6 October 2013
11	The World Bank - Angola Overview	<a href="http://www.worldbank.org/en/country/angola/overview">http://www.worldbank.org/en/country/angola/overview</a>	Last updated September 2013
12	Embassy Notice for American Citizens - Angola Country Specific Information	<a href="http://travel.state.gov/travel/cis_pa_tw/cis/cis_1096.html">http://travel.state.gov/travel/cis_pa_tw/cis/cis_1096.html</a>	28 August 2013

13	Global Security.org – profile of Cabinda	<a href="http://www.globalsecurity.org/military/world/war/cabinda.htm">http://www.globalsecurity.org/military/world/war/cabinda.htm</a>	Last modified in August 2013
14	Jane’s Sentinel Security Assessment for Angola – Executive Summary	<a href="https://janes.ihs.com/CustomerPages/Janes/DisplayPage.aspx?DocType=Reference&amp;ItemId=+++1304277&amp;Pubabbrev=SAFR">https://janes.ihs.com/CustomerPages/Janes/DisplayPage.aspx?DocType=Reference&amp;ItemId=+++1304277&amp;Pubabbrev=SAFR</a> (subscription site)	Last updated August 2013
15	Amnesty International – State of the World’s Human Rights Annual report 2013: Angola	<a href="http://www.amnesty.org/en/region/angola/report-2013">http://www.amnesty.org/en/region/angola/report-2013</a>	23 May 2013
16	Africa Review – ‘Angola’s Cabinda rebels ready to lay down arms’	<a href="http://www.africareview.com/News/Angola+rebels+to+lay+down+arms/-/979180/1799340/-/c91yrl/-/index.html">http://www.africareview.com/News/Angola+rebels+to+lay+down+arms/-/979180/1799340/-/c91yrl/-/index.html</a>	2 May 2013
17	Office of the United Nations High Commissioner for Human Rights, Human Rights Committee: Concluding observations on the initial report of Angola, adopted by the Committee at its 107th session (11–28 March 2013)	unavailable	29 April 2013
18	US Department of State – 2012 Country Reports on Human Rights Practices: Angola	<a href="http://www.state.gov/j/drl/rls/hrrpt/2012/af/204088.htm">http://www.state.gov/j/drl/rls/hrrpt/2012/af/204088.htm</a>	19 April 2013
19	US Overseas Security Advisory Council (OSAC), Angola 2013 Crime and Safety Report	<a href="https://www.osac.gov/pages/ContentReportDetails.aspx?cid=13904">https://www.osac.gov/pages/ContentReportDetails.aspx?cid=13904</a>	18 April 2013
20	The United Nations Human Rights Committee ‘Concluding observations on the initial report of Angola, adopted by the Committee at its 107th session (11-28 March 2013)’	<a href="http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhssYKsbEpZrhJQHFjCpU9uxwcQk%2fqN3CcH6VSzg8gQyhInvN3NpzfyqO96r%2ftTeOfsZbMr3D6wN5nxWyYW3FDkHlrxA3H3rCty1SbhI3xeoj">http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhssYKsbEpZrhJQHFjCpU9uxwcQk%2fqN3CcH6VSzg8gQyhInvN3NpzfyqO96r%2ftTeOfsZbMr3D6wN5nxWyYW3FDkHlrxA3H3rCty1SbhI3xeoj</a>	April 2013
21	Open Society Foundations, Angola: A Test Case for European Union Diplomacy	<a href="http://www.opensocietyfoundations.org/voices/angola-test-case-european-union-diplomacy">http://www.opensocietyfoundations.org/voices/angola-test-case-european-union-diplomacy</a>	6 February 2013
22	Human Rights Watch submission on Angola to UN Human Rights Committee	<a href="http://www.hrw.org/news/2013/02/15/hrw-submission-angola-un-human-rights-committee">http://www.hrw.org/news/2013/02/15/hrw-submission-angola-un-human-rights-committee</a>	February 2013
23	Human Rights Watch- World Report 2013: Angola	<a href="http://www.hrw.org/world-report/2013/country-chapters/angola">http://www.hrw.org/world-report/2013/country-chapters/angola</a>	31 January 2013

24	Integrated Regional Information Networks News (IRIN) - uncertainty for Angolans stripped of refugee status in DRC	<a href="http://www.ecoi.net/local_link/236264/345230_en.html">http://www.ecoi.net/local_link/236264/345230_en.html</a>	22 January 2013
25	Freedom House – Freedom in the World 2013: Report on Angola	<a href="http://www.freedomhouse.org/report/freedom-world/2013/angola">http://www.freedomhouse.org/report/freedom-world/2013/angola</a>	16 January 2013
26	Angola Press Agency – Cabinda political and military situation considered stable – General Nunda	<a href="http://www.portalangop.co.ao/angola/en_us/noticias/politica/2012/9/41/Cabinda-political-and-military-situation-considered-stable-General-Nunda,fc98035d-dd4d-49ef-8da1-45385f17f240.html">http://www.portalangop.co.ao/angola/en_us/noticias/politica/2012/9/41/Cabinda-political-and-military-situation-considered-stable-General-Nunda,fc98035d-dd4d-49ef-8da1-45385f17f240.html</a>	8 October 2012
27	Voice of America News – ‘Oil-rich Cabinda still waits for independence from Angola’	<a href="http://www.voanews.com/content/cabinda-still-waits-for-independence/1515340.html">http://www.voanews.com/content/cabinda-still-waits-for-independence/1515340.html</a>	26 September 2012
28	Reuters - ‘Angola Cabinda rebels want talks with government after vote’	<a href="http://www.trust.org/item/20120806100600-hpy9v/?source=search">http://www.trust.org/item/20120806100600-hpy9v/?source=search</a>	6 August 2012
29	Front Line (Ireland), Angola: Six Years On, Ban on Mpalabanda's Activities Yet to be Lifted	<a href="http://www.frontlinedefenders.org/node/19039">http://www.frontlinedefenders.org/node/19039</a>	20 July 2012
30	Committee to Protect Journalists – Independent Angolan Journalist’s Home Robbed in Cabinda	<a href="http://www.cpj.org/2012/06/independent-angolan-journalists-home-robbed-in-cab.php">http://www.cpj.org/2012/06/independent-angolan-journalists-home-robbed-in-cab.php</a>	13 June 2012
31	Angola Press Agency - ‘Former guerrillas thank Government for vocational training’	<a href="http://www.portalangop.co.ao/angola/en_us/noticias/politica/2012/4/21/Former-guerrillas-thank-Government-for-vocational-training,2acd9320-9f76-4029-bd07-a1990f587184.html">http://www.portalangop.co.ao/angola/en_us/noticias/politica/2012/4/21/Former-guerrillas-thank-Government-for-vocational-training,2acd9320-9f76-4029-bd07-a1990f587184.html</a>	22 May 2012
32	Inter Press Service News Agency, ‘After Ten Years of Peace, Angola’s Future is Dark’	<a href="http://www.ipsnews.net/2012/04/after-ten-years-of-peace-angolarsquos-future-is-dark/">http://www.ipsnews.net/2012/04/after-ten-years-of-peace-angolarsquos-future-is-dark/</a>	4 April 2012
33	Agreements between Netherlands and Angola on return of failed asylum seekers	<a href="http://www.government.nl/news/2012/03/28/agreements-between-the-netherlands-and-angola-on-return-of-failed-asylum-seekers.html">http://www.government.nl/news/2012/03/28/agreements-between-the-netherlands-and-angola-on-return-of-failed-asylum-seekers.html</a>	28 March 2012
34	Front Line (Ireland), Angola-Joint statement: Eight years on, human rights defenders in Cabinda continue to struggle to see their right to freedom of association fully respected	<a href="http://www.frontlinedefenders.org/node/17773">http://www.frontlinedefenders.org/node/17773</a>	15 March 2012

35	UNHCR- 'For an Angolan refugee, a milestone birthday leads to a momentous decision'	<a href="http://www.unhcr.org/4f4f74b86.html">http://www.unhcr.org/4f4f74b86.html</a>	1 March 2012
36	Bertelsmann Stiftung's Transformation Index 2012, Angola Country Report - Summary	<a href="http://www.bti-project.de/fileadmin/Inhalte/reports/2012/pdf/BTI%202012%20Angola.pdf">http://www.bti-project.de/fileadmin/Inhalte/reports/2012/pdf/BTI%202012%20Angola.pdf</a>	2012
37	Freedom House, Countries at the Crossroads 2011: Angola	<a href="http://www.freedomhouse.org/report/countries-crossroads/2011/angola">http://www.freedomhouse.org/report/countries-crossroads/2011/angola</a>	4 November 2011
38	Amnesty International Annual Report 2011: Angola	<a href="http://www.amnesty.org/en/region/angola/report-2011">http://www.amnesty.org/en/region/angola/report-2011</a>	2011
	Human Rights Watch, Angola: Revise New Security Law, Free Prisoners in Cabinda	<a href="http://www.hrw.org/news/2010/12/08/angola-revise-new-security-law-free-prisoners-cabinda">http://www.hrw.org/news/2010/12/08/angola-revise-new-security-law-free-prisoners-cabinda</a>	9 December 2010
39	UK Home Office Country of Origin Information Report: Angola	<a href="http://webarchive.nationalarchives.gov.uk/20101208171359/http://rds.homeoffice.gov.uk/rds/pdfs10/angola-010910.doc">http://webarchive.nationalarchives.gov.uk/20101208171359/http://rds.homeoffice.gov.uk/rds/pdfs10/angola-010910.doc</a>	1 September 2010
40	Human Rights Watch, Angola: Quash Convictions of Cabinda Activists	<a href="http://www.hrw.org/news/2010/08/05/angola-quash-convictions-cabinda-activists">http://www.hrw.org/news/2010/08/05/angola-quash-convictions-cabinda-activists</a>	5 August 2010
41	Integrated Regional Information Networks News (IRIN), Angola: Cabindan separatists in exile deny end to conflict	unavailable	22 July 2010
42	Human Rights Watch, Transparency and Accountability in Angola: An Update	<a href="http://www.hrw.org/reports/2010/04/13/transparency-and-accountability-angola-0">http://www.hrw.org/reports/2010/04/13/transparency-and-accountability-angola-0</a>	13 April 2010
43	UK Home Office Country of Origin Information Service, Angola COI Key Documents	unavailable	14 January 2010
44	Human Rights Watch, "They Put Me in the Hole": Military Detention, Torture, and Lack of Due Process in Cabinda	<a href="http://www.hrw.org/reports/2009/06/22/they-put-me-hole">http://www.hrw.org/reports/2009/06/22/they-put-me-hole</a>	22 June 2009
45	Supplement to New York Times: 'Insider's View - Cabinda'	<a href="http://www.summitreports.com/pdfs/cabinda.pdf">http://www.summitreports.com/pdfs/cabinda.pdf</a>	20 February 2009
46	Immigration and Refugee Board of Canada, Angola: Front for the Liberation of the Enclave of Cabinda - Armed Forces of Cabinda (FLEC-FAC), including human rights abuses committed by and against this organization	unavailable	22 March 2007

47	Inter Press Service News Agency, Angola: Peace in Cabinda, the Enclave Between the Two Congos	<a href="http://www.ipsnews.net/2006/08/angola-peace-in-cabinda-the-enclave-between-the-two-congos/">http://www.ipsnews.net/2006/08/angola-peace-in-cabinda-the-enclave-between-the-two-congos/</a>	1 August 2006
48	UNHCR - 'Returning to the Angolan enclave of Cabinda'	<a href="http://www.unhcr.org/42f0c2ea4.html">http://www.unhcr.org/42f0c2ea4.html</a>	3 August 2005
49	FP (Return- Cabinda -Non -Luandan) Angola CG [2003] UKIAT 00204	<a href="https://tribunalsdecisions.service.gov.uk/utiac/2003-ukiat-204">https://tribunalsdecisions.service.gov.uk/utiac/2003-ukiat-204</a>	16 July 2003
50	AllAfrica.com- Angola Portal	<a href="http://allafrica.com/angola/?aa_source=main-nav-t3">http://allafrica.com/angola/?aa_source=main-nav-t3</a>	Undated
51	Angola Liberation Movements in Cabinda	<a href="http://www.mongabay.com/history/angola/angola-liberation-movements-in-cabinda.html">http://www.mongabay.com/history/angola/angola-liberation-movements-in-cabinda.html</a>	Undated
52	Angola Press Agency - Cabinda news Portal	<a href="http://www.portalangop.co.ao/angola/en_us/noticias/provincias/cabinda.html">http://www.portalangop.co.ao/angola/en_us/noticias/provincias/cabinda.html</a>	Undated
53	Ethnologue languages of the world - Angloa	<a href="http://www.ethnologue.com/country/AO/default/***EDITION***">http://www.ethnologue.com/country/AO/default/***EDITION***</a>	Undated
54	Flights and travel to Cabinda - Fly 540 Africa	unavailable	Undated
55	Flights and travel to Cabinda - TAAG	<a href="http://info.flightmapper.net/flight/TAAG_DT_125">http://info.flightmapper.net/flight/TAAG_DT_125</a>	Undated
56	International Organization for Migration - Angola	<a href="http://www.iom.int/cms/en/sites/iom/home/where-we-work/africa-and-the-middle-east/southern-africa/angola.html">http://www.iom.int/cms/en/sites/iom/home/where-we-work/africa-and-the-middle-east/southern-africa/angola.html</a>	Undated
57	Lonely Planet - 'Travelling overland by Public Transport through Angola' - Extracts from forum	<a href="https://www.lonelyplanet.com/thorntree/forums/africa/angola/traveling-overland-by-public-transport-through-angola">https://www.lonelyplanet.com/thorntree/forums/africa/angola/traveling-overland-by-public-transport-through-angola</a>	Undated
58	Minorities At Risk - Assessment for Cabinda in Angola	<a href="http://www.cidcm.umd.edu/mar/assessment.asp?groupId=54003">http://www.cidcm.umd.edu/mar/assessment.asp?groupId=54003</a>	Undated
59	UNHCR - Angola Profile	<a href="http://www.unhcr.org/pages/4a03e30d6.html">http://www.unhcr.org/pages/4a03e30d6.html</a>	Undated
60	Wikipedia - Cabinda Province	<a href="http://en.wikipedia.org/wiki/Cabinda_Province">http://en.wikipedia.org/wiki/Cabinda_Province</a>	Undated
61	Wikitravel - Angola	<a href="http://wikitravel.org/en/Angola">http://wikitravel.org/en/Angola</a>	Undated