



## Angola's new Constitution: The old hegemony authorized

ANDRÉ MONTEIRO  
Researcher, IPRIS

Angola's new Constitution entered into force in February in the midst of the Cabinda incident and the African Cup of Nations. The timing of this approval contributed to limit its visibility for outsiders. Internally, however, many sectors of society understood that the legal changes it brought about are paramount for the future of the country.

How can one explain the changes introduced by the Constitution? Looking back, one can recall the concept of "political and economic hegemony", applied to Angola by Christine Messiant as a way of analysing the quasi-total grip exerted by the MPLA party. Above all, this was used to explain Presidential control over the country in those areas since the late 1980's. Hence, truth be told, this new Constitution does not bring real po-

litical change; it only translates into legal text Angola's political and economic reality. These legal changes will influence Angola's immediate prospects.

The main change introduced is, of course, the method of electing the President. One could hardly describe it as an election, as the head-list of the winning party in legislative elections is directly picked as President without any form of indirect election or approval by the Parliament. This method erases any effective separation of power between executive and legislative. Furthermore, this Constitution reinforces the President's authority, as he now becomes head of the Executive, nominating both the Vice-President as well as government ministers. The Parliament – vastly controlled by the MPLA – becomes a rubber-stamp institution. Similarly, public prosecutors and magistrates are also nominated by the President, thus deepening his control over the political system.

This new Constitution having been approved, the main question facing Angola in the near future – the one about the Presidential succession – is answered. It is now clear that the present President will choose his successor, not the electorate. With MPLA's current hegemony, it seems clear that its own candidate will win

the 2012 general elections. José Eduardo dos Santos already signalled he will run and ordered the party politburo to start preparing to win the elections. Two years ahead of polling, the President and the party are already campaigning – with means incomparably larger than the opposition.

By establishing these electoral mechanisms and by reinforcing the position of the current power holders, the Constitution mirrors the Presidency's growing control over the country in the last 20 years. Ever since the peace talks with UNITA in the end of the 1980's and after the first elections in 1992, Angola has been stuck in transition. Scholars would identify it – using Marina Ottaway's concept – as a triple transition: from war to peace, from authoritarianism to liberal democracy, from state to market economy. Nowadays, one can clearly assert that none of these transitions were fully achieved, proving that "regime transition" theories have many shortfalls. Angola only transited to a hybrid regime: the Cabinda situation remains murky, although under control; the Presidency controls the political situation; and the economy is dominated by a clientelistic network centred on the Presidency.

This said, the Angolan situation is, without comparison, much better in



that Portugal will play a role in the gas market of the South, a successful strategy must not only be concerted with Spain, but should also assume an integrated approach regarding upstream and downstream operations.

## São Tomé and Príncipe: 12 oil ministers since 1999, but not a single drop of oil yet

GERHARD SEIBERT

Researcher, Centre of African Studies (CEA)/ISCTE - Lisbon University Institute

In 1999, Luís dos Prazeres "Kapa-la", a Nigerian-trained airline pilot and, since its inauguration in 2004, the executive director of São Tomé and Príncipe's National Oil Agency (ANP), became the country's first minister of natural resources. Since then, the small country has had another eleven ministers in charge of the oil portfolio. Prime Minister Rafael Branco alone, himself the third oil minister in 2002, has appointed four different ministers of natural resources since he assumed office in June 2008. Curiously enough, the country has not yet discovered any hydrocarbons, let alone produced a single barrel of oil. However, since October 2007 São Tomé has resold crude supplied by Nigeria. At that time President Olusegun Obasanjo

conceded São Tomé an allocation of 30,000 barrels per day at a preferential price for resale on the international market. The supply was suspended in 2007 after Obasanjo was succeeded in office by President Umaru Yar-Adua, but in early 2009 the latter promised President Menezes the resumption of the crude supply.

Long gone is the enthusiasm of 2003 when the first licensing round for oil blocks in the Joint Development Zone (JDZ) with Nigeria took place. Then the minimum bid per block was set at US\$30 million. Chevron submitted the highest offer of US\$123 million for Block 1, while the highest bids for the seven blocks in this auction amounted to a total of some US\$500 million. Almost forgotten were the troubles of São Tomé's contested oil agreements with the Nigerian ERHC (signed in 1997), Mobil (1998), and the Norwegian PGS (2001), which had been renegotiated in 2003 after international oil experts had denounced their terms as detrimental to São Tomé's national interests. The initial euphoria of the licensing round subsided when the governments in Abuja and São Tomé realized that most bidders were Nigerian companies without any financial or technical capacities for deep-sea oil exploration.

Consequently, in 2004 only the exploration license of Block 1 was awarded to Chevron (51%), ExxonMobil (40%) and a Nigerian company (9%). In December of the same year, Blocks 2-6 were again put on sale in a second auction. Following a process marked by accusations of irregularities, in May 2005, the five blocks were attributed to various consortiums. However, Product Sharing Contracts (PSC) were only signed for Blocks 2, 3 and 4, while the ownership of Blocks 5 and 6 has become the object of a never ending juridical dispute involving ERHC, which claims 15% preferential rights on both blocks. For the four blocks with a PSC, São Tomé received its share of 40% in signature bonuses,

altogether US\$77.8 million. Nearly a quarter of this amount was used to repay debts to Nigeria, while the remainder was channelled to the national budget and predominantly spent on current expenditures.

A major setback occurred in May 2006 when Chevron announced the results of the exploration well drilled in Block 1 earlier that year. Hydrocarbons had been found, but they were not considered commercially viable. For more than three years the oil sector in São Tomé and Príncipe came almost to a standstill. Additional exploratory wells were not drilled and licensing rounds were held neither in the JDZ nor in the country's Exclusive Economic Zone (EEZ).

Irrespective the unproven hydrocarbon reserves in the JDZ, since 2005 the original ownership of the exploration licenses for the four blocks has changed considerably through acquisitions and a major takeover. Owing to its preferential rights, ERHC maintains working interests in Blocks 2 (22%), 3 (10%), and 4 (19.5%). Through acquisitions, Addax Petroleum, a Swiss company that had not participated in the licensing rounds, became the largest stakeholder in the JDZ. In February 2006, Addax and the China Petroleum & Chemical Corporation (Sinopec), which likewise did not take part in the auctions, took over 14.3% and 28.7% respectively in Block 2 from a U.S. company. In September 2007, Addax bought ExxonMobil's 40% working interest in Block 1. Finally, last August, Addax acquired Anadarko's 51% stake in Block 3. At that time Addax owned stakes in Block 1 (40%), Block 2 (14.3%), Block 3 (66%) and Block 4 (45.5%). Already in June 2009 Addax had announced its takeover by Sinopec for \$7.3 billion, which became effective in October. Besides the stakes in the JDZ, Addax owned drilling rights in Gabon, Nigeria, and Kurdish area in Iraq. Through the takeover, Sinopec has now become by far the largest investor in the JDZ. At least so far,



the Chinese engagement in the JDZ has not affected São Tomé's relations with Taiwan, which since 1997 has been one of the archipelago's major donors. Meanwhile, in early March, it was reported that Chevron might sell its interest in Block 1 to the French Total.

Finally, in late August 2009 Sinopec and Addax, the operators of Blocks 2 and 4 respectively, started exploration drillings that initially had been announced for 2008. In October, Addax commenced exploration drillings in the newly acquired Block 3. In November and December Addax drilled another two wells in Block 4. Jorge Santos, executive director of the Joint Development Authority (JDA) in Abuja, has announced that signs of oil have been found in Blocks 2 and 3. However, official drilling results have not yet been disclosed. Instead, the two companies asked the JDA for a 6-12 month extension of the exploration period that ends in March.

Last November, São Tomé approved an amendment to the oil revenue management law of 2004 that now allows the direct award of blocks in the EEZ to interested oil companies, provided that the bidding round failed to attract suitable bids.

On 2 March the ANP launched the first licensing round for seven of 19 delineated blocks in the EEZ that will be closed on 15 September. This time no minimum bid was required. Already in February, ERHC and Equator Exploration, a company that had acquired PGS pre-emption rights in 2004, exercised their preferential options of 100% working interests in two blocks of their choice each in the EEZ. Consequently, ERHC and Equator were awarded Blocks 4 and 11 and Blocks 5 and 12 respectively. Furthermore, ERHC and Equator have additional rights to acquire up to 15% paid working interests in another two blocks and one block respectively. Meanwhile, Luís dos Prazeres of the ANP has claimed that various reputable oil companies have manifested their interest in the

open tender, including the majors ExxonMobil and Shell.

Preceding the licensing round, São Tomé has resumed efforts for the constitution of a "lusophone" consortium for oil exploration in the EEZ. This idea was first launched by São Tomé in 2005, but the consortium has never gotten off the ground. The Brazilian *Petrobrás*, a company with deep-sea exploration capacity, has already declined participation due to other operational priorities. Angola's *Sonangol* has manifested interest, but stressed that nothing was definite yet, while the Portuguese *Galp Energia* initiated exploratory talks with São Tomé about a consortium with *Petrogás*, the archipelago's state oil company, which still exists only on paper. The establishment of the consortium is also a political decision, since both Portugal and Angola maintain close ties with São Tomé and Príncipe. However, it remains to be seen if without *Petrobrás* and in the absence of proven commercial hydrocarbon reserves in the EEZ such a consortium is economically viable at all.

## The recurring dilemma in Timor Leste: Tribunals or trade?

KAI THALER  
Affiliated Researcher, IPRIS

Since Timor Leste's independence in 2002, following a quarter century of Indonesian occupation, human

rights groups have issued continuous calls for a tribunal to press charges against those responsible for ordering and committing atrocities under Indonesian rule and during the tumultuous period leading up to and following the independence referendum of 30 August 1999. Discussion on this topic recently reentered the news following a report from Amnesty International on 8 March that President José Ramos-Horta had told the group that "he would support the establishment of an international criminal tribunal for crimes committed during the 1975-99 occupation by Indonesia, should the UN Security Council set it up". This stood in contrast to Ramos-Horta's previous stance of eschewing a tribunal in favor of reconciliation with Indonesia. Indeed, the next day Ramos-Horta told *Agence France-Presse* that he had been misquoted by Amnesty, saying "I remain firmly unconvinced that the interests of the victims of my country and the cause of peace and democracy are best served with an international tribunal".

While the Commission for Reception, Truth and Reconciliation in Timor Leste (CAVR) issued its final report, *Chega!*, in 2006, and a Commission for Truth and Friendship (CTF) to review crimes committed in 1999 was jointly established by Timor Leste and Indonesia in 2005 and issued a report in 2008, the issue of impunity and the establishment of tribunals has remained a thorny one. The *Chega!* report is clear in its recommendation that the United Nations "be prepared to institute an International Tribunal pursuant to Chapter VII of the UN Charter should other measures be deemed to have failed to deliver a sufficient measure of justice and Indonesia persists in the obstruction of justice". While the Security Council has failed to press the matter and Indonesia has most certainly been clay-footed on the issue, much of the reluctance to pursue the establishment of a tribunal has come from the government of Timor Leste itself.



## Reading List

Alex Vines, "China and India in Angola: Differing Strategies", in Fantu Cheru and Cyril Obi (eds.), *The Rise of China and India in Africa: Challenges, Opportunities and Critical Interventions* (Zed Books, 2010).

Dirk Kohnert, "Democratization via Elections in an African 'Narco-state'? The Case of Guinea-Bissau" (*GIGA*, Working Papers No. 123, February 2010).

**EDITOR** | Paulo Gorjão  
**ASSISTANT EDITOR** | Pedro Seabra

Portuguese Institute of International Relations and Security (IPRIS)  
Rua Vitorino Nemésio, 5 - 1750-306 Lisboa  
PORTUGAL

<http://www.ipris.org>  
email: [ipris@ipris.org](mailto:ipris@ipris.org)

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