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Military Detention, Torture, and Lack of Due Process in Cabinda

ANRCongolese National Intelligence Service (Agence Nationale de Renseignement)

DRCDemocratic Republic of Congo

FAAAngolan Armed Forces (Foras Armadas Angolanas)

FCD Cabindan Forum for Dialogue (Frum Cabinds do Dilogo)

FLEC Liberation Front of the Enclave of Cabinda (Frente de Libertao do Enclave de Cabinda)

FLEC-FAC Liberation Front of the Enclave of Cabinda Cabindan Armed Forces (Frente de Libertao do Enclave de Cabinda Foras Armadas Cabindesas)

GOI Operative Intelligence Group (Grupo Operativo de Inteligencia)

ICCPR International Covenant on Civil and Political Rights

MPLA Popular Liberation Movement of Angola (Movimento Popular de Libertao de Angola)

OAA; Angolan Bar Association (Ordem dos Advogados de Angola)

UNITA National Union for the Total Independence of Angola (Unio Nacional para a Independncia Total de Angola)

VOA Voice of America

At least 38 people who have been arrested by Angolan military and intelligence officials in Cabinda, Angolas oil-rich enclave, from September 2007 to March 2009 have been subjected to torture and cruel or inhumane treatment in military custody and been denied basic due process rights as well as the right to a fair trial. The detainees are accused by the authorities of involvement in armed opposition in Cabinda in the context of a separatist insurgency.

The intensity of the armed conflict in Cabinda has declined as a result of large-scale counterinsurgency operations in 2002-2003, and the government publicly claims that the Cabinda conflict came to a close in 2006, when a peace agreement was signed with a faction of the rebel Liberation Front for the Independence of the Enclave of Cabinda (FLEC). But the campaign for independence remains unresolved, and sporadic guerrilla attacks have been ongoing.

Despite its insistence that the insurgency is no longer active, the militarys systematic arbitrary detention and torture of people in Cabinda suggests that the government has resorted to unlawful means to retaliate against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 FLECs 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.

Human Rights Watch has previously reported on government intimidation in Cabinda. In a February 2009 report on the parliamentary elections of September 2008, Human Rights Watch showed how the government has continued to use security concerns in Cabinda to justify restrictions on freedom of expression, association, and movement, as well as arbitrary arrests and unfair trials. In December 2008, Human Rights Watch called attention to the Angolan governments use of torture and unfair trials in state security cases, in connection with 14 civilians who were arbitrarily detained and tortured in military custody in Cabinda.

This report extends that work with new first-hand, field-based information and shows 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. All 38 detainees were eventually brought to the judicial authorities and a civilian detention facility. But trial records in several cases show that due process rights were violated.

In addition to providing further detail on the high-profile case of Fernando Lelo, a former Voice of America correspondent who was convicted of national security crimes in September 2008, this report also draws attention to those cases that have attracted much less public attention and risk being overlooked.

The Angolan government should immediately adopt all necessary measures to ensure that the Angolan Armed Forces (FAA) act in accordance with Angolas obligations under international human rights and humanitarian law. In particular, the government should ensure, in accordance with Angolan law, that the armed forces promptly transfer individuals detained for security crimes to the competent civilian authorities, hold them according to international standards for pre-trial detention, and provide a prompt and fair trial.

The Angolan courts should also promptly review the proceedings against detainees currently or previously held for state security offenses, and then release unconditionally or fairly retry individuals convicted in trials that violated basic fair trial standards. The Angolan government should investigate allegations of serious human rights violations by members of the military and intelligence services, and prosecute alleged perpetrators.

In order to prevent further abuses, the Angolan government should set up an independent and impartial inquiry into human rights violations allegedly committed by the Angolan Armed Forces and branches of intelligence in Cabinda and establish mechanisms to compensate victims of torture and arbitrary detention.

Between March 2008 and March 2009, a Human Rights Watch researcher visited the Angolan enclave province of Cabinda (capital and municipality of Cacongo) three times and conducted interviews there, in Luanda, and elsewhere. The researcher interviewed 60 persons, in person, by phone, or email, including lawyers, members of religious groups and civil society organizations, activists, journalists, diplomats and officials of the government, military, police, and the judiciary. In March 2009, the researcher also conducted in-person group and individual interviews with 20 persons detained at Yabi prison in Cabinda who had been charged with crimes against the security of the State and related crimes. Interviews with detainees were conducted freely, without interference or the presence of government officials. Yet, provincial government, military, and police officials were less open for Human Rights Watch interviews in March 2009 than previously. In response to official meeting requests, most claimed being unavailable. The researcher also consulted legal documents referring to the cases. The initials of detainees whose accounts were quoted have been changed to protect their security.

The Angolan enclave province of Cabinda, with an estimated population of 300,000, is separated from the countrys other 17 provinces by a strip of the Democratic Republic of the Congo (DRC). It produces half of Angolas oil.

The armed separatist FLEC movement, founded in 1963, first fought for independence from Portugal, Angolas colonial rulers, and then from Angola itself when Angola became independent in 1975. Following the end of a civil war in Angola in 2002 between the government, dominated by the Popular Liberation Movement of Angola (MPLA), and the main opposition movement, National Union for the Total Independence of Angola (UNITA), the Angolan Armed Forces (FAA) re-deployed some 30,000 government soldiers to Cabinda to wipe out the remaining separatist insurgency. These military efforts led to the destruction of FLECs main bases in the interior and considerably weakened the guerrillas military capacity.

In 2004, Human Rights Watch documented human rights violations against civilians in Cabinda in the course of these counter-insurgency operations, including extrajudicial killings, arbitrary detention, torture, and excessive restrictions on freedom of movement. According to that research, most of the human rights violations were committed by the Angolan Armed Forces with impunity.^[1] In 2004, the government claimed that the war in Cabinda was over, but dialogue would continue. However, successive attempts to reach a formal peace agreement with several wings of the FLEC remained unsuccessful, and sporadic insurgent attacks continued.

In 2006, a Memorandum of Understanding (MOU) signed by the Angolan government and Antnio Bento Bembe, the former leader of the FLEC Renovada wing and president of the Cabindan Forum for Dialogue (FCD), sought to formally 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 peace negotiations with the government. The MOU included an amnesty, a demobilization and reintegration plan for former FLEC combatants, and the allocation of a number of government posts to a range of former FLEC officials.^[2]

The peace agreement, however, has enjoyed little credibility in Cabinda, because the most active FLEC wing, FLEC-FAC, as well as other members of the FCD, had been excluded from the talks, and no political concessions were made to the separatists. The armed insurgency has continued, but since 2006 the government has claimed the war ended in Cabinda and has attributed continuing sporadic attacks to bandits. FLEC-FAC has claimed responsibility for a number of armed attacks targeting government forces and expatriate workers of private companies. The intensity of the armed conflict and the level of serious human rights violations have decreased since 2004, but the FAA presence is proportionately higher in Cabinda than elsewhere in Angola today, suggesting the governments continuing concern about the separatist movement.

Despite the peace agreement in 2006, freedom of expression and association remains restricted in Cabinda. The government has used state security concerns to crack down on peaceful opposition and scrutiny. In late 2006 and early 2007, two high-profile civil society activists were arrested for alleged state security crimes in Cabinda and were later released, following local and international public pressure, without having been formally charged.^[3] In July 2006, the provincial court banned the civic association of Cabinda, Mpalabanda, founded in 2003, and alleged that the organization had incited violence and acted as a political party campaigning for Cabinda's independence. The new bishop who took office in June 2006 temporarily dissolved the Catholic Justice and Peace Commission, which had been essential to documenting human rights violations since 2002. As a result, local and international organizations have struggled to obtain independent information from the interior to corroborate allegations of human rights abuses committed by both the FAA and FLEC since 2006.

Officially, since the MOU in 2006, the Angolan government has denied the continued existence of an armed FLEC guerrilla movement. Senior FAA and police officials explained to Human Rights Watch in March 2008 that those people who were arrested for national security crimes were bandits who oppose development,^[4] or people who still identify with FLEC, seeking to call attention to compromise the government's cooperation with countries and companies.^[5] Bento Bembeformer FLEC Renovada and FCD leader and current minister without portfolio explained to Human Rights Watch in March 2009 that those people cannot be from the FLEC, because I represent the guerrillas.^[6] However, the cases documented in this report clearly contradict this claim, as many of the charges in the cases refer to alleged involvement in concrete acts of armed insurgency. Court records also often explicitly refer to alleged cooperation with FLEC-FAC.

Between September 2007 and March 2009, at least 38 persons, including six members of the Angolan Armed Forces, (see list in Annex) were arrested by military and intelligence agents for alleged crimes against the security of the State, including armed rebellion and sabotage, and other crimes relating to the armed FLEC insurgency in Cabinda, such as homicide, illegal possession of arms, and desertion. The Angolan law on crimes against the security of the state from 1978, which allows for up to 215 days pre-trial detention,^[7] includes an overly broad and ambiguous range of offenses: Every and any act, not provided for by law, that endangers or may endanger the security of the State...^[8]

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.^[9] So far, two trials have taken place, as a result of which seven persons were convicted and four were acquitted.

The 38 individuals targeted, arrested and charged can roughly be grouped into three categories:

The Angolan Armed Forces in September 2007 arrested six FAA personnel: Antnio Santos Nguimbi (soldier), Loureno Ila Dembe (soldier), Alberto Suami (1st sergeant), Alberto Joo Chimbinda (soldier), Baslio Muanda (1st corporal), and Custdio Nguimbi Sumbo (1st sergeant). Their arrests led to the November 15, 2007 arrest of former Voice of America (VOA) journalist Jos Fernando Lelo by the Angolan military at his workplace in the oil compound of Malongo.

All of these men were eventually charged with having organized or carried out three armed attacks between December 2006 and July 2007; the FAA members were additionally charged with having committed military crimes such as desertion.^[10] Lelo and the six were put on trial before the Cabinda military court from May 5 to June 11, 2008 and convicted on September 16, 2008. Lelo was sentenced to 12 years of imprisonment. Five of the co-accused were sentenced to 13 years of imprisonment. Custdio Nguimbi Sumbo was acquitted. Lelo and the five convicted military personnel are currently prisoners at Yabi prison in Cabinda, which Human Rights Watch visited, while an appeal against their conviction to the Supreme Military Court is pending.

Human Rights Watch and other organizations believe that Lelo was primarily targeted for arrest and conviction as a result of opinions he expressed as a VOA journalist until December 2006, which were perceived to be critical of the Angolan government and the 2006 Memorandum of Understanding.^[11]

Most of those who were arrested and charged with security crimes between January 2008 and March 2009 were residents of villages in the interior of Cabinda. The majority were arrested in groups during military raids, which followed armed attacks attributed to the FLEC separatist guerrilla movement in the municipalities of Buco Zau and Cacongo.^[12]

So far, only five of those arrested Joo Mateus Luemba, Elias Menos, Garcia David Antnio, Antnio Zau, and Natalcio Mbatches were tried by the provincial civil court from March 24 to April 22, 2009. On May 7, the judge acquitted four of the accused for lack of evidence, while sentencing Mbatches to 18 months in prison for illegal possession of arms. All five had been arrested in January 2008, over a year previously, and charged with crimes against the security of the State and related crimes. At that time, all were released from custody, including Mbatches, who had already spent 17 months in pre-trial detention.

Local human rights activists told Human Rights Watch that more people have been arrested during such military raids and were later released from military custody without having been charged and presented to the public prosecutor.^[13]

Seven detainees at Yabi prison interviewed by Human Rights Watch confirmed that they previously were FLEC members. Five had been living in the Democratic Republic of Congo (DRC) since 2005 and 2006. They said that they had not been FLEC members since. They were arrested in different places in the DRC in October 2008 by the Congolese Agence Nationale de Renseignement (ANR) and later transferred to Angola. Two former FLEC members were also arrested in Cabinda in Dinde (Cacongo) and in Cabinda city in the same month. They alleged not having yet been formally charged with any crime.

Human Rights Watch also interviewed two registered refugees from Cabinda, including one former FLEC member now in Lisbon, Portugal, and the current Voice of America correspondent in Kinshasa, both of whom allege having been threatened with arrest and transfer to Angola in early 2008 and early 2009, respectively.^[14] These firsthand accounts and secondary reports received by Human Rights Watch suggest a wider pattern of arrests of Cabindans in the DRC at the request of the Angolan authorities.

This chapter details key human rights violations committed by the Angolan Armed Forces against persons detained under the charge of crimes against the security of the state and related crimes since September 2007.

The 20 detainees interviewed at Yabi prison and lawyers of those and other detainees told Human Rights Watch that all were arrested without warrants, most of them by the military. Arrests without a warrant are permitted under Angolan law when the persons are caught in the act of which they are accused, but the arrests need to be validated by the public prosecutor on the same day, or within five days maximum, when a public prosecutor cannot be reached immediately.^[15] This time limit is often exceeded in Angola, as even the Cabinda public prosecutor conceded to Human Rights Watch.^[16]

According to the detainees, lawyers, and legal counsel, none of those arrested was apprehended in combat situations or with arms alleged to have been used in guerrilla attacks, nor were the detainees presented to any authorized magistrate immediately following their arrest, as required by law. Lelo was presented with an arrest warrant, with no issuing authority, at his work place in Cabinda and was taken in handcuffs to the military section of So Paulo prison in Luanda, where he was held for more than three months before being transferred back to Cabinda on March 30, 2008. Most of the detainees arrested in villages said they were arrested following a guerrilla attack that had taken place close to their village or several villages away. In addition, several detainees told Human Rights Watch that they were arrested when they presented themselves to the authorities, either because they had heard a military commander was looking for them at their homes, were seeking information about an arrested relative, or, as in the case of three former FLEC members in the DRC, because they formally announced to the Congolese authorities their intention to return to Cabinda.

All detainees told Human Rights Watch that they were held incommunicado in military custody for long periods of time in several cases, for more than 35 days and in some cases for up to 50 days before being presented to an authorized magistrate (the public prosecutor) and the criminal investigation police and eventually brought to the civilian prison of Yabi. During military custody, they were unable to contact legal counsel or family members. Only Fernando Lelo had access to a lawyer five days after his arrest.

FAA members co-accused with Lelo (but arrested before him) were held incommunicado in military custody for up to six months in Cabinda and Luanda, without access to a legal counsel, until they were transferred to Cabinda on March 30, 2008, brought to the prison at Yabi, and presented to the Cabinda public prosecutor.^[17]

Those detainees who were arrested in rural areas told Human Rights Watch that they first were held in different military garrisons and in the FAA headquarters in Cabinda, before eventually being brought to the prison at Yabi and presented to the public prosecutor.^[18]

Detainees arrested in the DRC by Congolese intelligence agents said they were first sent to and held in unknown places in the capital, Luanda, before being directly transferred to the FAA headquarters in Cabinda, where they were held for more than three weeks before being presented to the public prosecutor and finally brought to the prison at Yabi.^[19]

According to Angolan law, incommunicado detention is allowed until the public prosecutor interrogates the detainee. This must occur on the same day, or within five days maximum. Incommunicado detention can be extended after the first interrogation for national security crimes for up to 10 days but only if authorized by the public prosecutor.^[20]

Extended incommunicado detention violates the fundamental human rights to humane treatment and access to counsel, as provided under the International Covenant on Civil and Political Rights (ICCPR), which Angola ratified in 1992.^[21] The UN Commission on Human Rights has repeatedly said that incommunicado detention should be prohibited.^[22] In addition, Angola's practice is contrary to the minimum international standards of detention as set out in the UN Standard Minimal Rules for the Treatment of Prisoners.^[23]

Many detainees told Human Rights Watch that military officers and soldiers under their command tortured them to force them to incriminate themselves and others. Others said they were threatened that they would be killed unless they say the truth. Some were forced to sign written confessions at gunpoint in local military garrisons, before they were transferred to the FAA headquarters in Cabinda city.

All detainees interviewed by Human Rights Watch were specific about where and how they were tortured. Several practices of torture and degrading treatment described to Human Rights Watch in March 2009 are consistent with practices documented by Human Rights Watch in 2003a period when the armed conflict in Cabinda was more intense.^[24] A Human Rights Watch researcher saw that most of the detainees had visible scars on their arms near their elbows, consistent with their accounts of having been tied up with cords across their back.

One of the legal counsel of the FAA members convicted along with Lelo in 2008 told Human Rights Watch that his clients were subjected to torture and inhumane treatment including mock executions, severe injuries with firearms, beatings with various objects, and public humiliation of relatives in several FAA garrisons. One soldier lost a leg as a result of injuries suffered in military custody.^[25] Lelo was the only detainee interviewed by Human Rights Watch who said he had not been physically mistreated.

Three other detainees described to Human Rights Watch their treatment by the military as follows:

Detainees told Human Rights Watch that they were eventually held for varying periods of time under inhumane conditions at the FAA headquarters in Cabinda in a dark, dirty cellar without windows and sanitation facilities, which floods when it rains. This detention facility is commonly known and feared as the hole. The FAA spokesperson in Cabinda in March 2008 denied to Human Rights Watch the existence of such a prison.^[29] Some detainees said they met military personnel who were being held there for internal disciplinary offenses. Most who had been detained there complained that they were prevented from washing for up to 17 days and defecating for up to five days. A lawyer acting as defense counsel for the six FAA members co-accused with Lelo told Human Rights Watch that the detained FAA members were handcuffed for three months in the hole, where they were beaten and often denied food.^[30] Another defense lawyer told Human Rights Watch his client was beaten at the FAA headquarters with whips until he fell unconscious.^[31]

Former FLEC members arrested in October 2008 in the DRC and transferred to Angola told Human Rights Watch that they were held in the hole for long periods of time between 25 and 30 days where they were threatened with execution, beaten, and kicked by officials identified only by aliases Colonel Walter, Major Cafundinho and several unidentified military, including military police officers from the FAA headquarters. As a former FLEC member arrested in Cabinda described:

The local representative of the Angolan Bar Association (OAA) told Human Rights Watch that 10 people arrested on March 26, 2009 in

the village Liambo-Lione (Caongo municipality) alleged that they were severely beaten by military personnel inside the FAA headquarters. Only five of the men after 26 days of incommunicado detention were eventually presented to the public prosecutor. The other five, including the wife of one detainee, were released directly from military custody after five days.[\[33\]](#)

According to Angolan law, only the public prosecutor has the power to interrogate detainees.[\[34\]](#) However, detainees and lawyers interviewed by Human Rights Watch said that, in all cases, military intelligence officers carried out interrogations. In addition, military officials in command of interrogation sessions that involved torture, in which some participated actively, never formally identified themselves, either by name or affiliation. Thus, soldiers and commanding officers involved in the torture of detainees are only known by aliases, or *noms de guerre*, the most quoted being Colonel Fuchi, Colonel Walter,[\[35\]](#) and Major Cafundinho. Some detainees, lawyers, and others told Human Rights Watch that the officers belong to a unit called the Operative Intelligence Group (Grupo Operativo de Inteligencia or GOI), created some years ago to coordinate the counter-insurgency activities of Angolas domestic and military intelligence services in Cabinda.[\[36\]](#) Human Rights Watch could only identify the full name of one well-known senior military officer, Col. Antnio Jos da Conceio Kambanda, alias Lacrau, commander of the Third Infantry Regiment of the FAA, who oversaw the torture of detainees in Buco Zau. Several detainees told Human Rights Watch that some local administrators and military commanders as well as senior military officials tried to intervene on behalf of detainees they perceived to be innocent, but were overruled by Colonel Lacrau.

The provincial public prosecutor and former military prosecutor, Antnio Nito, denied having any knowledge of unofficial military detention places, as well as interrogations under torture in military custody, and questioned the credibility and accuracy of detainees accounts. He told Human Rights Watch: They would say anything, but this is not sufficient. They have to present evidence and file a legal complaint.[\[37\]](#) Nevertheless, the accounts collected by Human Rights Watch are remarkably consistent and suggest a systematic pattern of abuse by the Angolan military and intelligence services.

The prohibition on torture is a fundamental principle of international human rights law; torture is prohibited at all times and under all circumstances. Angola has yet to ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which obliges states to prevent and sanction acts of torture and other mistreatment. The Angolan government has on several occasions promised to ratify the convention and its optional protocol, which allows international monitoring of detention facilities. It reiterated this promise in its voluntary pledges submitted to the UN General Assembly in May 2007[\[38\]](#) before being elected as a member of the Human Rights Council for 2007-2010.

As a member of the United Nations, Angola has agreed to abide by the Universal Declaration of Human Rights, which bans all use of torture and other mistreatment.[\[39\]](#) Angola is party to the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples Rights, both of which prohibit arbitrary detention and outlaw the use of torture and cruel, inhuman, or degrading treatment.[\[40\]](#) In addition, Angola is bound by international humanitarian law, the laws of war. Common article 3 of the 1949 Geneva Conventions, which applies during internal armed conflicts, protects captured combatants and detained civilians against torture and cruel, humiliating, and degrading treatment.

In addition, Angolas constitution, which is currently under review in parliament, states that Constitutional and legal norms related to fundamental rights shall be interpreted and integrated harmoniously with the UN Universal Declaration of Human Rights, the African Charter on Human and Peoples Rights and other international instruments to which Angola is party, and that In the assessment of disputes by Angolan courts, those international instruments shall apply even when not invoked by parties.[\[41\]](#) These international instruments place a legal obligation on Angola to end its arbitrary detention, torture, and mistreatment of detainees in Cabinda.

Detainees at Yabi prison told Human Rights Watch that detention conditions at the newly built prison facility, where all were eventually brought, were generally good. That was less true for the former VOA journalist Fernando Lelo, who told Human Rights Watch that he was only allowed to leave his cell for the prison yard after several months. My detention conditions are not determined by the prison director, but by orders from his superiors, he said. Its as if I was in a private prison here.[\[42\]](#)

However, several detainees at Yabi prison told Human Rights Watch that after finally being presented to the public prosecutor and criminal investigation police, they were first shuttled back and forth to different cells of the Cadeia Civil, a transit detention center for military and civilian detainees, including illegal migrants.[\[43\]](#) Some detainees told Human Rights Watch they were forced under the seats of the cars by officials shuttling them to and from the Cadeia Civil.[\[44\]](#)

Others described to Human Rights Watch the inhumane conditions at that jail:

Human Rights Watchs research into the criminal proceedings and trial of Fernando Lelo and the co-accused FAA members found that their treatment fell far short of international due process standards.

The six FAA members were arrested in September 2007 without a warrant and were held incommunicado in military custody for up to six months, during which time they were forced to confess and incriminate Lelo and themselves under torture and degrading and inhumane treatment.

Lelo and the six co-accused FAA members were formally charged by the military prosecutor of Cabinda in March 2008 with crimes against the security of the state and military crimes. They were tried by a military court in hearings lasting from May 5 to June 11, 2008. This was in violation of Angolan law, because crimes against the security of the State and cases against civilians, like Lelo, should be tried in civilian courts.[\[47\]](#)

No credible evidence, either during the criminal investigation or at the trial, was presented against any of the detainees, while evidence in defense of the accused was not taken into account. The military prosecutor and military judge dismissed all objections regarding arbitrary arrest, evidence obtained under torture, and the jurisdiction of military courts.[\[48\]](#)

Lelo was accused of having undertaken a vast recruitment of former FLEC soldiers integrated into the FAA, with the aim of carrying out armed attacks against the FAA in order to influence national and international opinion that the separatist insurgency in Cabinda continues to be active.[\[49\]](#) However, the co-accused FAA members had not identified Lelo during two lineups. They allege that they were tortured to incriminate themselves and Lelo. No other evidence was presented to suggest that Lelo had met the FAA soldiers whom he was

accused of paying and instructing to carry out armed attacks.[\[50\]](#)

The trial was further tainted by government statements that infringed upon judicial independence and Lelo's right to a fair trial. Long before the start of the trial, Attorney General Joo Maria de Sousa, stated repeatedly in the state media that there were strong indications of Lelo's guilt.[\[51\]](#) Such statements were widely viewed as intended to exert pressure on the judge to hand down a conviction.

In addition, according to Angolan law and international human rights standards, trials are to be public.[\[52\]](#) However, several trial observers told Human Rights Watch that public access to the hearings, including for family members and the privately owned press, was restricted, while a large number of domestic and military intelligence and police agents occupied the courtroom.[\[53\]](#) Lelo himself described the atmosphere during the trial to Human Rights Watch:

On September 16 almost three months after the trial five FAA members were sentenced to 13 years of imprisonment for military crimes (violence against a superior and subordinate and desertion) and crimes against the security of the state, including armed rebellion. One FAA member was acquitted. Fernando Lelo was sentenced to 12 years of imprisonment for inciting the co-accused to commit the crimes.

Human Rights Watch has argued that the court's verdict was delayed until after Angola's parliamentary elections on September 5-6, 2008, in order to avoid potential damage to the ruling party MPLA's electoral campaign in Cabinda.[\[55\]](#)

While Lelo and the FAA soldiers convicted along with him were tried before a military court, current detainees charged with state security crimes in Cabinda have had their cases signed by the civilian prosecutor and so will be brought before a civilian court. This is a step forward. Nevertheless, Human Rights Watch research found that other current detainees have been denied basic due process rights, even when transferred after varying periods in military custody, to the civilian prison of Yabi and presented to the criminal investigation police and the public prosecutor.

Human Rights Watch has documented a number of procedural irregularities in the judicial proceedings against two groups of detainees, both arrested in January 2008. According to international human rights standards, evidence obtained under duress, such as interrogations under torture, must be considered inadmissible in judicial proceedings.[\[56\]](#) However, in both cases, records of the criminal proceedings show that lawyers were denied access to military and intelligence interrogation files quoted by the prosecution as evidence. In one case, interrogation files were classified as secret, according to the Law on the Secret of the State.[\[57\]](#) By withholding essential information to the defense and failing to dismiss evidence alleged to have been obtained by coercion and torture, the prosecutor violated international principles guaranteeing a fair hearing.[\[58\]](#) In addition, military intelligence officers who were called for questioning during the investigation by the defense failed to show up during the criminal investigation and at court.[\[59\]](#) In one case, the defense objected to the public prosecutors' conclusion that there were strong indications of a linkage between the accused and the FLEC FAC guerrillas, simply because several known guerrilla members have relatives in that particular village.[\[60\]](#)

The Cabinda public prosecutor and two of the three judges in the civil judiciary previously served as military magistrates in other provinces before being appointed in Cabinda in 2006. It is not uncommon in Angola for military magistrates to occupy posts in the civilian judiciary; the Attorney-General himself is a former military magistrate. But rights advocates credibly fear that, in national security cases, these judges will not show sufficient independence from the government to provide fair trials. Indeed, a senior military official told Human Rights Watch that previous civilian magistrates in Cabinda had been replaced in 2006 because they never managed to convict anybody for crimes against the security of the state.[\[61\]](#)

There are some cautious grounds for hope for fairer trials in national security cases. A judge in Cabinda on May 7, 2009 cited lack of evidence and the principle of *in dubio pro reo* to acquit four men on national security charges, while sentencing one man for a minor offense.[\[62\]](#) The public prosecutor challenged the judge's sentence at the Supreme Court, which has not yet issued a ruling. Lawyers have expressed hope that the verdict, if upheld by the Supreme Court, may reflect a willingness by judges to act independently and impartially in national security cases.[\[63\]](#) However, with more upcoming trials of the remaining detainees all with a far lower public profile than Fernando Lelo and as-yet unconfirmed reports that more arrests for national security crimes have occurred in April 2009, concerns about the due process rights of detainees in national security cases in Cabinda remain.

The report was researched and written by Lisa Rimli, Human Rights Watch researcher. It was edited by Jon Elliott, advocacy director of the Africa Division; Rona Peligal, deputy director of the Africa Division; Iain Levine, program director; and James Ross, legal and policy director. Jeffrey Severson, associate of the Africa Division, provided production assistance.

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Antnio Santos Nguimbis soldier in the Angolan Armed Forces (FAA), arrested on September 9, 2007 in Buco Zau. Sentenced by the provincial military court on September 16, 2008 to 13 years in prison.

Loureno Ila Dembe FAA soldier, arrested in Buco Zau on September 17, 2007. Sentenced by the provincial military court on September 16, 2008 to 13 years in prison.

Alberto Suami 1st sergeant in the FAA, arrested on September 18, 2007 in Cabassango (Buco Zau municipality). Sentenced by the provincial military court on September 16, 2008 to 13 years in prison.

Alberto Joo Chimbinda FAA soldier, arrested in Cabassango (Buco Zau) in September 2007. Sentenced by the provincial military court on September 16, 2008 to 13 years in prison.

Baslio Muanda 1st corporal in the FAA, arrested in Buco Zau on September 22, 2007. Sentenced by the provincial military court on September 16, 2008 to 13 years in prison.

Jos Fernando Lelo employee of Algoa and former VOA journalist, arrested at the Cabinda Gulf Oil Company compound Malongo on November 11, 2007. Sentenced by the provincial military court on September 16, 2008 to 12 years in prison.

Sebastio Samboc techist, arrested in Tando Malele (Inhuca commune, Buco Zau) on January 24, 2008.

Carlos Jos Sambo arrested in Tando Malele on January 24, 2008.

Joo Domingos Mabet traditional leader and deputy village coordinator, arrested in Tando Malele on January 24, 2008.

Paulo Simo arrested in Tando Malele on January 24, 2008.

Lus Geraldo Barro traditional leader, arrested in the village of Conde (Inhuca commune, Buco Zau) on January 29, 2008 .

Joo Paulo Mombote teacher and coordinator of Micuma I (Buco Zau), arrested in the village of Micuma I on April 2, 2008.

Joao Baptista Maeia employee of Encica, arrested in Micuma I on April 2, 2008.

Zacarias Joo Zau arrested in Micuma I on April 2, 2008.

Marcos Lbuca Malila Tovo arrested in Micuma I on April 2, 2008.

Joaquim Valentim Culebi arrested in Micuma I on April 2, 2008.

Armando Muabi arrested by the Agence Nationale de Renseignement (ANR) in Buendi Kassanfu, Democratic Republic of Congo (DRC), on October 7, 2008.

Prspero Bianga arrested by the ANR in Buendi Kassanfu, DRC, on October 7, 2008.

Joo Alfredo Dumbi arrested by the ANR in Buendi Kassanfu, DRC, on October 7, 2008.

Joo de Deus Deu Muanda arrested by the ANR in Tshela, DRC, on October 14, 2008.

Csar Dneri Dunge arrested by the ANR in Kimbadi Kuimba, DRC, on October 19, 2008.

Jos Fernandes Jorge arrested in Dinga (Cacongo) on October 20, 2008.

Cornlio Mabiala arrested in his home in Cabinda city on October 28, 2008.

Clemente Joo Mavungu coordinator of Cossuenda, arrested in Necuto (Buco Zau) on January 2, 2009.

Paulo Mavungu teacher, arrested in Sassa Zau Velho (Buco Zau) on January 7, 2009.

Rafael Futia arrested in Sassa Zau Velho on January 7, 2009.

Alexandre Fundo arrested in Sassa Zau Velho on January 7, 2009.

Massota Vunda arrested in Liambo-Lione (Cacongo) on March 26, 2009.

Alexandre Antnio Fortunato arrested in Liambo-Lione on March 26, 2009.

Francisco Linda Luemba Panzo arrested in Liambo-Lione on March 26, 2009.

Lus Massiti Gomes arrested in Liambo-Lione on March 26, 2009.

Joo Baptista Puati village coordinator, teacher and pastor, arrested in Liambo-Lione on March 26, 2009.

Custdio Nguimbi Sumbo 1st sergeant in the Angolan Armed Forces, arrested in Buco Zau in September 2007. Acquitted by the provincial military court on September 16, 2008.

Natalicio Mbatchi arrested in Sevo da Vula (Necuto, Buco Zau) on January 16, 2008. Sentenced on May 7, 2009 by the provincial court to one year and six months in prison, and released.

Joo Mateus Luemba nurse, arrested in Sevo da Vula on January 16, 2008. Acquitted by the provincial court on May 7, 2009.

Elias Menos arrested in Sevo da Vula on January 16, 2008. Acquitted by the provincial court on May 7, 2009.

Garcia David Antnio arrested in Sevo da Vula on January 16, 2008. Acquitted by the provincial court on May 7, 2009.

Antnio Zau arrested in Sevo da Vula on January 16, 2008. Acquitted by the provincial court on May 7, 2009.

[1] Human Rights Watch, *Angola: Between War and Peace in Cabinda*, briefing paper, December 2004, <http://www.hrw.org/en/news/2004/12/22/angola-oil-rich-cabinda-army-abuses-civilians>. Local civil society, including the civic association of Cabinda, Mpalabanda, and the Catholic Church's Justice and Peace Commission also issued several human rights reports detailing abuses in Cabinda, most of them by the FAA.

[2] The Memorandum of Understanding for Peace and Reconciliation in the Province of Cabinda was signed on August 1, 2006 and

approved by the Angolan parliament on August 16, 2006. See Resolution 27-B/06 of August 16, 2006, published in the state gazette (Dirio da Repblica) on August 16, 2006.

[3] Raul Danda, then spokesperson of the civic association Mpalabanda, was arrested under state security charges on September 29, 2006 in Cabinda, allegedly for carrying newspaper articles that expressed criticism of the governments policy in Cabinda. He was released on November 3, 2006 and later formally pardoned under the amnesty law, despite never having been charged. Sarah Wykes, a campaigner for the international organization Global Witness, was arrested in Cabinda on February 18, 2007 under alleged charges of espionage, and was later released and allowed to leave the country in March 2007.

[4] Human Rights Watch interview with Miguel Jos Lus Muhonga, provincial first superintendent and second commander of the National Police, Cabinda, March 26, 2008.

[5] Human Rights Watch interview with Colonel Antonino Pessala, spokesperson of the second regional command of the FAA, Cabinda, March 27, 2008.

[6] Human Rights Watch interview with General Bento Bembe, Luanda, March 26, 2009.

[7] Law on Pre-trial detention (18-A/92) (Lei da priso preventiva em instruo preparatria), arts. 25-26, allows 90 days pre-trial detention in cases of crimes against the security of the state, which can be extended three times for 45, 45 and 35 days.

[8] Law on crimes against the security of the State (Law 17/78 of May 26, 1978), art. 26.

[9] The International Covenant on Civil and Political Rights (ICCPR) in article 9 requires that Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him and that Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power.

[10] The Cabinda military prosecutors accusation quoted the following attacks: On December 29, 2006 against a military vehicle in Buco Zau, killing three and injuring two soldiers; on July 27, 2007 against military guarding a cell phone antenna in Buco Zau, killing one soldier and injuring another; and on September 13, 2007 against a military vehicle, killing two soldiers and seriously injuring five. Cpia do Despacho da Pronncia, Procuradoria Militar da Segunda Regio, Cabinda, March 5, 2008.

[11] Human Rights Watch, AngolaEnd Torture and Unfair Trials in Cabinda, Human Rights Watch news release, December 10, 2008, <http://www.hrw.org/en/news/2008/12/05/angola-end-torture-and-unfair-trials-cabinda> ; see also Amnesty International, Angola: Unfair Trial of Fernando Lelo, AFR 12/008/2008, September 22, 2008, <http://www.amnesty.org/en/library/info/AFR12/008/2008/en> (accessed June 5, 2009).

[12] Five men were arrested in January 2008 in the village of Sevo da Vula, Buco Zau, following an attack on December 29, 2007 against border police, killing one. Five men were arrested in January 2008 in the village of Tando Malele, Buco Zau, after an attack against the oil company Grant on December 29, 2007, which killed a Brazilian worker. Five men were arrested in April 2008 in Micuma I, Buco Zau, following an attack against staff of the private company Emcica on December 31, 2008, which killed two workers. One man was arrested in January 2009 in Cossuenda, Buco Zau, after the assassination of a traditional leader on December 30, 2008. Three men were arrested in the village of Sassa Zau Velho, Buco Zau, on the day of an attack against a military vehicle on January 7, 2009. Five men were arrested in the village of Liamba-Lione, Cacongo, on the day of an attack against a vehicle, which killed one Chinese worker and seriously injured two on March 26, 2009.

[13] Local human rights activists documented 11 such cases between June 2007 and January 2008. This includes the case of Jos Gabriel Puati, who was allegedly killed by FAA soldiers upon his arrest on December 29, 2007. Human Rights Watch interviews with three human rights activists (names withheld) in Cabinda, March 2008 and March 2009.

[14] Human Rights Watch phone interviews with VOA correspondent in Kinshasa, February 11, 2009, and with Jos Luis Luemba Veras, in Lisbon, April 6, 2009. Human Rights Watch also had access to a letter of complaint written by Mr. Veras to the regional UNHRC delegation in Kinshasa from March 24, 2008, describing the threats he was subjected to, which led him to seek refuge in Portugal in July 2008.

[15] Law on Pre-trial detention (18-A/92) (Lei da priso preventiva em instruo preparatria), art. 9 and 14.

[16] Human Rights Watch interview with Antnio Nito, public prosecutor, Cabinda, March 18, 2009. See also: United Nations General Assembly, Human Rights Council: Report of the Working Group on Arbitrary Detention, AddendumMission to Angola, A/HRC/7/4/Add. 4, February 29, 2008; Human Rights Watch interview with Fernando Macedo, member of the Angolan human rights organization Association Justice Peace and Democracy (Associao Justia Paz e Democracia or AJPD) in Luanda, March 20, 2009.

[17] Their legal counsel, Aro Tempo, spoke with his clients for the first time on April 7, 2008. Human Rights Watch phone interview with Aro Tempo, May 30, 2009.

[18] Human Rights Watch interviews with detainees at Yabi prison, Cabinda, March 16, 2009.

[19] Human Rights Watch interviews with detainees arrested in the DRC at Yabi prison, Cabinda, March 16, 2009.

[20] Law on Pre-trial detention (18-A/92) (Lei da priso preventiva em instruo preparatria), art. 3. Angolan human rights activists of the Association Justice Peace and Democracy (AJPD) challenge this provision. See Pedro Romo and Fernando Macedo, Anotaes Lei da Priso Preventiva e Legislao Complementar, Coimbra, May 2008, p. 18.

[21] See ICCPR, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* Mar. 23, 1976, arts. 10 (1), and 14 (3).

[22] See, e.g. UN Commission on Human Rights, Resolution 2003/32, para 11.

[23] United Nations Minimal Rules for the Treatment of Prisoners, adopted 1955, U.N. Doc A/CONF/611, annex I, E.S.C. res. 663C, 24 U.N. ESCOR Supp. (n 1) at 11, U.N. Doc E/3048 (1957), amended E.S.C. res. 2076, 62. U.N. ESCOR Supp. (n 1) at 35, U.N. Doc. E/5988 (1977).

[24] These practices include, for example, tying detainees elbows together at the back or holding detainees in pits dug into the ground. See Human Rights Watch, *Between War and Peace in Cabinda*, p. 16f.

[25] See AngolaEnd Torture and Unfair Trials in Cabinda, Human Rights Watch news release, December 10, 2008, <http://www.hrw.org/en/news/2008/12/05/angola-end-torture-and-unfair-trials-cabinda>.

[26] According to the detainee A.B.C. (fictitious abbreviation), these abuses took place in April 2008. Human Rights Watch interview at Yabi prison, Cabinda, March 16, 2009.

[27] According to the detainee D.E.F. (fictitious abbreviation), these abuses took place in April 2008. Human Rights Watch interview at Yabi prison, Cabinda, March 16, 2009.

[28] Human Rights Watch interview with G.H. (fictitious abbreviation), at Yabi prison, Cabinda, March 16, 2009.

[29] Human Rights Watch interview with Colonel Antonino Pessala, FAA spokesperson and head of the department for patriotic education, Cabinda, March 27, 2008. See AngolaEnd Torture and Unfair Trials in Cabinda, Human Rights Watch news release, December 10, 2008, <http://www.hrw.org/en/news/2008/12/05/angola-end-torture-and-unfair-trials-cabinda>. In March 2009, the office of the second regional FAA command in Cabinda declined a meeting with the Human Rights Watch researcher by referring to an outstanding authorization from the head of the general chief of staff of the FAA in Luanda.

[30] Human Rights Watch email interview with Aro Tempo, November 25, 2008. See also AngolaEnd Torture and Unfair Trials in Cabinda, Human Rights Watch news release, December 10, 2008.

[31] Human Rights Watch interview with Francisco Luemba in Cabinda, March 25, 2008; Objection to the Judges Counselors of the Chamber for Crimes against the Security of the State of the Supreme Court, presented by Francisco Luemba regarding the process 490-C/08 of the public prosecutor against Lus Geraldo Barros and others, Cabinda, January 31, 2009.

[32] Human Rights Watch interview with I.J. (fictitious abbreviation), detainee at Yabi prison, Cabinda, March 16, 2009.

[33] Human Rights Watch phone interview with Aro Tempo, Cabinda, May 4, 2009.

[34] Law on Pre-trial detention (18-A/92) (Lei da prisao preventiva em instruo preparatria), art. 4.

[35] Former detainees interviewed by Human Rights Watch in Cabinda in 2004 had referred to an officer called Walter as head of the intelligence. See Human Rights Watch, *Between War and Peace in Cabinda*, p. 18.

[36] Human Rights Watch interviews with a local lawyer and journalist (names withheld) in Cabinda, March 2009 and follow-up email and phone interviews in May 2009.

[37] Human Rights Watch interview with Antnio Nito, public prosecutor, Cabinda, March 18, 2009.

[38] Angolas voluntary pledges to promote human rights, Annex to the letter dated 3 May 2007 from the Permanent Representative of Angola to the United Nations addressed to the President of the General Assembly, <http://daccessdds.un.org/doc/UNDOC/GEN/N07/331/59/PDF/N0733159.pdf?OpenElement> (accessed May 12, 2009).

[39] [Universal Declaration of Human Rights](#), G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948), art. 5.

[40] ICCPR, art. 7; The African Charter on Human and Peoples Rights, adopted on June 27, 1981, entered into force on October 21, 1986, ratified by Angola in 1990, art. 5.

[41] Lei Constitucional (1992), art. 21. See also comments by the UN Working Group on Arbitrary Detention: United Nations General Assembly, Human Rights Council: Report of the Working Group on Arbitrary Detention, Addendum - Mission to Angola, A/HRC/7/4/Add. 4, February 29, 2008, p. 11, para 32.

[42] Human Rights Watch interview with Fernando Lelo at Yabi prison in Cabinda, March 16, 2009.

[43] An official request by Human Rights Watch to visit the Cadeia Civil in March 2009 was not responded to.

[44] Human Rights Watch interview with K.L., M.N., O.P. (fictitious abbreviations), detainees at Yabi prison, Cabinda, March 16, 2009.

[45] Human Rights Watch interview with K.L. (fictitious abbreviation), detainee at Yabi prison, Cabinda, March 16, 2009.

[46] Human Rights Watch interview with Q.R. (fictitious abbreviation), detainee at Yabi prison, Cabinda, March 16, 2009.

[47] Law on Military Crimes (4/94 of January 28). See also United Nations General Assembly, Human Rights Council: Report of the Working Group on Arbitrary Detention, Addendum Mission to Angola, A/HRC/7/4/Add. 4, February 29, 2008, p. 11, para 28.

[48] See: Objection to the President Judge of the Military Court of the 2nd Region presented by defense counselors Francisco Luemba and Aro Tempo regarding the process 19/2008 of the military prosecutor against Alberto Joo Chimbinda and others, Cabinda, May 5,

2008. According to the Angolan Criminal Procedure Code currently under review defense lawyers may only challenge an accusation alleging procedural irregularities after the criminal investigation is completed. The UN Working Group on Arbitrary Detention expressed concern with the fact that a detention cannot be effectively challenged during the investigation phase and judges are not involved before trial in Angola. See: United Nations General Assembly, Human Rights Council: Report of the Working Group on Arbitrary Detention, Addendum Mission to Angola, A/HRC/7/4/Add. 4, February 29, 2008, para 40-45 and 75-77.

[49] Cpia do Despacho da Pronncia, Procuradoria Militar da Segunda Regio, Cabinda, March 5, 2008.

[50] According to the defense lawyer Martinho Nombo, a former municipal police commander whose testimony was quoted by the accusation, denied at court having ever seen Lelo at the village in Buco Zau where he allegedly met the co-accused soldiers on July 12, 2007, while Lelos employer confirmed he had been working within the Malongo compound on the same day. Human Rights Watch interviews with Martinho Nombo, Cabinda, March 2009.

[51] For example: Detention of journalist Lelo is not arbitrary, says Attorney-General (Deteno do jornalista Fernando Lelo no arbitria, diz PGR), Rdio Nacional de Angola/ Angop, January 7, 2008.

[52] ICCPR, art 14 (1).

[53] Human Rights Watch interviews with local journalists (names withheld), March 2009.

[54] Human Rights Watch interview with Fernando Lelo at Yabi prison, Cabinda, March 16, 2009.

[55] Human Right Watch, AngolaEnd Torture and Unfair Trials in Cabinda, Human Rights Watch news release, December 10, 2008, <http://www.hrw.org/en/news/2008/12/05/angola-end-torture-and-unfair-trials-cabinda>.

[56] Human Rights Committee General Comment 20, para 12.

[57] Law on the Secret of the State (10/02) from August 16. See Objection to the Judges Counselors of the Chamber for Crimes against the Security of the State of the Supreme Court, regarding the process 490-C/08 of the public prosecutor against Lus Geraldo Barros and others, presented by lawyer Francisco Luemba, Cabinda, January 31, 2009.

[58] Human Rights Committee General Comment 13, para 15.

[59] Objection to the Judges Counselors of the Chamber for Crimes against the Security of the State of the Supreme Court, regarding the process 490-C/08 of the public prosecutor against Lus Geraldo Barros and others, presented by lawyer Francisco Luemba, Cabinda, January 31, 2009; Objection to the Honorable Judge of the Common Crimes Chamber of the provincial court in Cabinda regarding the process 0470-C/08 of the public prosecutor against Natalcio Mbachi and others, Cabinda, presented by lawyer Aro Tempo, Cabinda, March 27, 2009.

[60] Objection to the Judges Counselors of the Chamber for Crimes against the Security of the State of the Supreme Court, regarding the process 490-C/08 of the public prosecutor against Lus Geraldo Barros and others, presented by lawyer Francisco Luemba, Cabinda, January 31, 2009.

[61] Human Rights Watch interview with senior military official (name withheld) in Cabinda, March 17, 2009.

[62] See Verdict of the Provincial Court of Cabinda, Cabinda, May 7, 2009.

[63] Human Rights Watch phone interview with Aro Tempo, May 7, 2009, and email correspondence with Francisco Luemba, May 8, 2009.

Report Describes Pattern of Torture and Due-Process Violations Against Rebel Suspects

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