

# REVIEW OF ANGOLAN NATIONAL LAWS & POLICIES for Mining and Natural Resource Development



prepared for  
Model Mining Legislation Project

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# OVERVIEW AND INTRODUCTION TO THE LEGAL & POLICY REVIEW

## Introduction

The main objective from the MMLP provides contextual insight to this legislation and policy review. The final output for year one will be 5 individual case study reports, a synthesis report of the case studies integrated with a regional legislative and policy review report. The research process, reflection practice and benchmarking is dealt with in part 2 of this document whilst Part 1 is a legal and policy review questionnaire. The aim of this Legal and Policy Review is to firstly determine common areas and issues incorporated in legislation and policy that play a significant role in the impact of mining on indigenous and local communities in the region. With the common set of criteria it will then be possible to conduct a national comparative analysis along with analysis of the interaction between international and national legal and institutional frameworks through which to surface lessons that may be of use in advocacy efforts at national and regional level.

### Extract from the MMLP Project Proposal

**Overall Objectives:** *Good governance in the minerals sector in Africa which ensures accountability and contributes to inclusive and sustainable growth and development, and protects human rights.* In the long term this action will lead to more sustainable use of natural resources, enabling vulnerable communities and groups to enjoy their right to equitable benefits resulting from natural resources. Duty bearers (from public & private sector) will benefit from the action as good governance can lead to more effective development, fewer grievances and reduced conflict. The government & private sector will demonstrate greater accountability to the poorest and most vulnerable by incorporating their views and needs into the planning & monitoring of investments. Communities affected by exploitative extraction of mineral resources will experience greater protection of their rights through the inclusion of human rights protections/promotion in model legislation and policies, as well as new or improved national legal recourse for human rights violations.

**Specific Objective:** *A strong IANRA network representing its member CSOs and their constituencies of vulnerable groups and communities taking action on mineral resources legislation and policy at regional and continental level.* This action will further establish IANRA as an international network that conveys the interests of the poorest communities into policymaking around mineral resources legislation and policy. It will be able to attract new member organisations working towards improved decision making and choices regarding natural resources. In addition, IANRA, as an Africa-wide network with 10 strong national networks representing 29 CSOs, will firmly establish its credibility with national, regional and continental decision-makers (government, AU policymakers, private sector) as a key actor in the international debate on mineral resources, able to tackle issues of international concern

## PART 1: Political and Economic Synthesis and Analysis Framework

### Section 1: Country Development and Political economy

1. Please give a brief introduction of the country such as, for example: area, population and demography (including rough breakdown of major ethnicities and Indigenous peoples), Rural and urban populations, breakdown of population by gender and age, key geographical and ecological features and key economic features (including rough breakdown of main industries, trade, and investment priorities), and so on.



#### Geography

Angola, located in the Southwestern part of Africa, is 1,246,700 km<sup>2</sup>, with a 1,650 km-coastline on the Atlantic Ocean. It is bordered by the Republic of the Congo (North of Cabinda), the Democratic Republic of the Congo (North and East), the Republic of Zambia (East) and the Republic of Namibia (South). The territory is administratively divided into 18 provinces and 165 municipalities. Cabinda province is an oil-rich enclave separated from the rest of the country by a strip of land belonging to the Democratic Republic of the Congo.

About 65% of the country is between 1,000 and 1,600 meters of altitude. Situated partly in the inter-tropical zone of the Southern hemisphere and partly in its sub-tropical zone, Angola is climatically divided between two regions: the coastline region (humid and 23°C as yearly average temperature) and the interior of the country. The latter is subdivided between the Northern zone (heavy rains and hot temperatures), the high zone (high plateau mainly located in the central part of the country) and the Southwestern zone (semi-arid by its proximity with the Namibian desert).

Angola is home to a large variety of landscapes, from desert to dense forests, from low altitude coastal areas to high plateau and mountains. Local fauna is as varied but was heavily affected in the interior of the country by several decades of civil war, including the Black Palancas (sable), which only exist in Angola and are one of its national symbols. The fauna has partially increased since the end of the war, through natural growth as well as being brought from neighbouring countries to natural reserves. However, illegal hunting by local communities still places some pressure on animal repopulation. Angola contains 13 protection zones, as well as 18 forest reserves and a few protected seashore areas, totalling 188,650 km<sup>2</sup> (around 15% of the territory).

### *Demography*

Population estimates vary widely, from 14 to more than 19 million inhabitants, as the last available census data is from 1970, when the country was still under Portuguese colonial rule. However, Angola just conducted its first post-Independence census during the last two weeks of May 2014. The results are expected to be released in 2015. Although the accuracy of the expected data is somewhat under question given some issues with the census administration, they should provide a more realistic picture of the national population. This will be an important step as up until now the statistical data that are used for planning and programmes depend on the political decision of the highest State official of the area. For instance, the population of Uíge province is, according to the National Institute of Statistics, less than 1 million, but according to provincial data, reaches 2 million. In such a case, the final decision regarding which figures to work with lies with the Provincial Governors.

It is important to highlight that, generally speaking, quantitative data is very unreliable in Angola. This is due to the lack of an integrated system of data collection, technical capacity to collect data, difficult logistical conditions, as well as economic and political interest at various levels. For instance, traditional authorities receive an income from the State, but they only do so if they have at least 200 families under their authority, which leads many of them to declare having in their area more people than actually exist. Official statistics also have not been using the same basis of calculation, comparing results, including poverty levels that are often incomparable.

With these limitations in mind, the National Institute of Statistics—INE by its acronym in Portuguese—organized a survey in 2008-2009 on a population sample (INE, 2010), which gave the following characteristics:

- A total population of 16,367,880 inhabitants, with 29% living in the capital province, Luanda, and another 27,7% in only 3 other provinces;
- 18,9% of the population under 5 years of age and, in total, 47,7% under 15;
- Life expectancy at 48 years-old, mainly due to very high levels of child mortality, with a mortality rate under 1 year old of 116 for 1,000 born alive, reaching 194 for 1,000 for the under 5.

From the data collected in 2008-2009, INE projected that Angola would have around 19,8 million people in 2014, 51,5% of which women and 27,2 living in Luanda (INE, 2012). This figure seems counterintuitive though, as the flow of Angolans migrating from the interior of the country towards Luanda remains a steady trend since the end of the war. This rural-to-urban migration trend is also present in the other provinces, where a lot of young people, mainly men, leave rural areas towards first the main city of their district, then to the capital city of their province, with some eventually arriving in Luanda, to find better school and work opportunities. Living conditions in suburban areas creates some return flows of youth, but this does not counter-balance the overall flow to Angola's cities.

Despite formal recognition of the six existing Bantu languages as “national” languages, the sole “official” language is Portuguese. While national languages and dialects are still very much used in rural areas, the younger generations living in the biggest cities tend not to speak them anymore and know only Portuguese. They also don’t feel a strong sense of ethnic identity but identify themselves with respect to the province of origin of their parents. In the interior of the country, differences between ethnic groups are stronger and traditions maintained. It is important to note, however, that the civil war in Angola was not along ethnic divisions.

Another important point is that public discourse rarely refers to indigenous people in Angola, except in the case of the bushmen (called *Koysan* or *San* in Angola), who are non-bantus and are recognised as those who were “the first ones” in the territory. Living in small pockets of the semi-arid region of the country (Southern part, close from Namibia), their number decreased dramatically because of decreasing access to land and natural resources they used to live off (mainly forest fruits and wild animals). They are now estimated to be only 7,000 and tend to be discriminated by Bantu peoples. Other ethnic groups could probably be recognized as indigenous peoples, but they have not actively sought recognition thus far, one of the criteria generally used in the classification of indigenous peoples.

#### *History and post-war characteristics*

Little research has been conducted with respect to pre-colonial Angola and its people. The history curriculum in schools makes little mention of this period, as well as the civil war (1975-2002) that started immediately after the struggle for independence (1961-1975). The lack of coverage of Angola’s civil war in history education is probably a result of the sensitivity with which the topic is still dealt in the country, as most of its actors are still alive. From time to time, a specific episode of the war is “re-written” or debated along political party lines, without much historical value.

While the consequences of the war on the Angolan society have never been publicly discussed, and no significant work on national reconciliation has been conducted, the impact of the war on the country’s infrastructure has been very present in public discourse, mirroring the focus of national reconstruction efforts. Post-war reconstruction has mainly consisted of rebuilding the primary roads connecting the different provinces, which indeed met a significant need. Unfortunately, the quality of road rehabilitation is regularly the source of public contention, especially following the annual rainy season which results in the deterioration of these works. Moreover, most secondary and tertiary roads have not yet been rehabilitated, which negatively impacts rural communities with no access to services or markets to sell their agricultural outputs. Some investments have been made in the education and health sectors, but primarily in physical infrastructures while service quality has shown little improvement. Public investments in agriculture have been steadily decreasing, whilst those in health and education have remained lower than public spending on defence.

#### *Economy*

Since the ending of the war in 2002 Angola’s economy has been steadily growing due to crude oil production increasing from 800,000 barrels a day (b/d) in 2003 to almost 2m b/d in 2008. The economy grew at an average rate of 10% per year between 2001 and 2010, and it now has the fifth biggest in Africa (The Economist, 2014). Despite this positive performance, current growth since the oil price crash of 2010 has greatly reduced, against Government expectations, with an expected 4.1% growth rate for 2013 according to IMF figures. In 2013, the Government experienced its first budget deficit since 2009. Angola continues to feature poorly in the World Bank “ease of doing business survey” due to a mixture of heavy bureaucracy and systemic corruption.

Despite diversification of Angola's oil dominated economy being a stated Government priority in recent years, little results can be seen. The oil sector, which provides very little local employment, continues to dominate, contributing 46% to GNP, 75% of tax revenues and 95% of export revenues in 2013 (CEIC, 2013). Other sectors of the economy, i.e. agriculture, manufacturing, and construction, continue to be relatively small sectors of the national economy.

Sectors	2002	2012
Agriculture Livestock and Forestry	4.07	3.94
Fishery	1.82	1.03
Oil and Gas	44.45	45.62
Diamonds and Others	2.55	0.63
Industry	3.69	4.05
Electricity	0.39	1.14
Construction	5.45	9.15
Services	38.23	34.48

Source: INE- National Accounts-2002-2012 (Taken from CEIC, 2013)

Despite almost 50% of the population being involved in the agricultural sector, the sector continues to suffer from a lack of systematic and sustained public and private investment. On the contrary, public works and construction remains a key engine of growth outside of the oil sector with public investments focusing on this sector, despite a steady reduction since 2010. Similarly, the services industry, mainly linked to banking and insurance, has continued as a relatively significant sector of the economy.

In terms of salaries, the national average salary in Angola is very low (approx. USD370 per month) (CEIC, 2013). Despite increasing since the ending of the war in 2002, labor income constitutes a mere 25-30% of national income. Moreover, huge cross-sector salary disparities exist, with the average salary in the oil sector estimated to be 21 times more than the national average and up to 56 times more than the average salary of small farming families (MAPTSS, 2013).

## 2. Does the country have a specific development plan?

Angola, through its Ministry of Planning and Territorial Development, published its National Development Plan for 2013-2017 in December of 2012, which follows the long-term development strategy referred to as "Angola 2025" (February 2007). Between 2013 and 2014, a few Provincial Development Plans have also been approved, prepared by the Provincial Governments and reviewed by the Ministry of Planning. Several have not been approved yet though. However, in May of 2014 the President stated the importance of provincial level plans, and thereafter the Ministry of Planning announced that proposed investments not included in provincial development plans will not be funded by future national budgets.

The weight given to these mid-term plans is new and should not be under-emphasized, especially as only once before, since the end of the war, have such plans been developed. Despite this, however, the plans were never taken into account in subsequent public programmes. A few ministries (health, agriculture, youth) have also published their mid-term development plans. Planning is therefore a recent process in post-war Angola, but it



seems to be more and more considered as an important basis to organize public authorities work at central and provincial levels, at least in terms of having a plan in existence, which can only be positive. At local (municipal) level, this process is not systematised yet and only interested municipalities or provinces have started it.

3. If so what are the main ideas about how development will occur. Does it for example prioritise resource extraction as a means of financing development?

Angola's national development plan for 2013-2017 follows the main principles of a long-term development strategy (2025). Its stated objectives include: preservation of national cohesion, guarantee of basis for development, improvement of quality of life, provision of youth employment opportunities, development of the private sector, and competitive integration of the country in the international context. Development should also be more balanced regionally (between provinces).

To reach these objectives, the plan is based on a series of specific policies (such as the population policy, the integrated policy for youth, the policy for tax reform and the policy for economic growth), sectorial policies (divided between economic, social, infrastructural and institutional sectors) and structuring projects. One should observe that only structuring projects are budgeted for, specifically (by project) in the case of sectorial structuring sectors, and in broad budget lines when it comes to the projects of clusters considered as priorities (water and energy, food supply and agricultural industry, housing and transports & logistics). Mining & geology is considered as another important cluster that should be diversified, to reduce dependency on oil and diamond production only. Part of those projects are based on public-private partnerships.

Whilst the economy in general should be diversified, in practice Angola's GDP has remained heavily dependent on oil, while the growth of other sectors is not taking off as it should. Agriculture constitutes the poor parent of the economy, receiving less of the national budget every year, when most families depend on it for their livelihood security.

The way the "real economy" (private-sector-based investments) should be financed is explained in the national plan, but not how public expenses will.

4. If so, how does the plan conceptualize local economic development and its relationship to national economic development?

The development of the plan is based on a top-down approach and also serves as the basis and model for "local" economic development, which should be dealt with locally (in provincial and municipal plans).

5. How does the development plan link to specific industrial policies if there are any?

There was no specific industrial policy yet, when the national development plan turned public. A national program for the industrialization of the country has been developed in the meantime, and a specific program on industrialization in rural areas (PROFIR) that is starting to be implemented as a pilot in three provinces. In the development plan, industry is considered as one of the economic sectors but no detail is given.

6. What is the impact of natural resource extraction on other natural resources, such as land and water?

Oil extraction is, so far, only offshore. Some prospection is underway in some provinces for onshore extraction, but it has not been conclusive so far. Offshore extraction has had

some environmental impact on the seashores of Cabinda and the northern province of Zaire, however this appears to have been quite minimal, when compared to cases such as that in the Niger Delta region of Nigeria. (Please see environmental section below).

Diamond extraction, mainly in the eastern part of the country (Lundas provinces, Malange and Moxico) and some provinces in the central highlands (Bié) has had a major impact on rivers, some turning red from the additional soil created by mining activity, which their waters carry. It has also increased erosion, creating ravines in the most affected areas.

Quarrying of construction materials such as sand and rocks, and wood extraction, even though still limited, has increased considerably in recent years with national reconstruction efforts. They also have an impact on some rivers and on the level of soil erosion, as well as contributing to air pollution, which in turn has often been cited as a contributor to respiratory illnesses in neighbouring communities.

Note: There is many mineral resources in the country, which have not yet been extracted given the pace of post-war recovery. However, as a decade and two electoral processes have passed since the war ended, investors are now starting to explore the country's potential. Several consortiums of companies are now part of a national geological mapping process that started in May 2014, with means to cover the whole country. It is anticipated that copper mining will be a key area in Angola's mining diversification efforts.

7. How does mining legislation impact on local and community level development options and alternatives? Provide examples if possible.

In traditional diamond areas where the 1994 mining legislation used to be applied, it drastically restricted local and community development options. The two affected provinces, Lunda Norte and Lunda Sul were considered as zones reserved for extraction, meaning that at any time, land could be confiscated and turned into exploration zones. In the new mining code, communities' rights are better recognized and it states that exploration should not prevent local development. However, in practice, this has not yet changed how exploration is undertaken in the east of the country and the same restrictive "zoning" principle has been maintained. Local administrations have no power over extraction areas, as they are fully managed by private companies, as is stipulated in the agreements with Endiama, the State-owned diamond company.

8. How is extractivism as a development paradigm (see Samantha's input) reflected in the legal and policy framework?

[See question 33]

9. Of the three paradigms of extractivism (see Samantha's input) where would you locate your country. Please make recommendations as to how this could be changed.

Angola has been relying so far on predatory extractivism. It was the case during the colonial period and went on during the civil war, which was largely fueled by mineral extraction. Extractivism has kept on being predatory since the end of the war (2002), as it fuels the national budget, but does not transform into development. Investments in social areas stay largely under other less-wealthy African countries, and results in human development have not improved as much as they could have.

## ***Section 2. Communities & Environmental Change***

10. Briefly describe the main Indigenous peoples and major types of local communities or community-level livelihood strategies in your country (e.g. forest-dependent, livestock keepers, marine, etc.).

The majority of Angolans are Bantu peoples, including; the Ovimbundu (37%), Kimbundu (25%), Bakongo (13%) , while the San are descendants of the indigenous Khoisan people. Traditionally from the rural central highlands, Ovimbundu migrated to urban centers in large numbers in search of economic opportunities during the twentieth century.

The Mbundu are concentrated in and around the Luanda capital, and the north-central provinces. While some Mbundu still speak kiMbundu, many among this minority speak Portuguese as a first language.

Covering both sides of the Congo river, Bakongo people are primarily located in Angola's impoverished but oil-rich north-west, including the enclave of Cabinda.

Semi-nomadic cattle-herding people preside in the south-western provinces, most of whom are Ambo, Nyaneka-Nkumbi (also known as Nyaneka-Humbe) or Herero.

Finally, scattered throughout the southernmost provinces of the country are the San and Kwisi peoples, whose nomadic existence is largely based on hunting, gathering and petty trade. However, it should be noted that only the San can be considered Indigenous People, if one is to apply the principle of a group actively seeking formal recognition of this status.

Angola's oil based economy has limited direct positive impact on the livelihood strategies of the population in so far as it provides little direct employment opportunities to local populations. The diamond sector, on the other hand, has traditionally been highly labour-intensive, and has played an increasingly important role for the livelihoods of many informal, artisanal miners, the "garimpeiros". The majority of livelihoods strategies for Angolans, however, are "non-mining" and informal in nature. Subsistence agriculture (farming, livestock, artisanal fishing) is the main livelihood source for rural populations. However, difficulties associated with farming (i.e. access to land and other agricultural inputs, agricultural technical know-how, and market access) mean that rural populations also adopt alternative or additional livelihood strategies that are natural resource intensive, such as casual labour and/or collection and sale of firewood and charcoal production. Retailing in the informal market is the main income-generating activity for people in urban contexts. Other urban livelihood strategies include small-scale limestone, sand and gravel quarrying, particularly around Luanda.

11. What is the general division of labour in each of these groupings/livelihood strategies? I.e. what is the differential role of men and women?

### **Gender Division of Labour in Angola**

Women work on average between 10 to 15 hours per day whilst men work for between eight to 10 hours per day, enjoying several hours of rest particularly during the quieter times of the year (May to September). Both are active in farm work but women are solely responsible for the sale of food crops (carrying produce to market and selling). Women also care for animals (goats and chicken) around the home whilst men hunt and trap wild animals. In fishing communities, men are in charge of catching fish whilst women are responsible for fish processing and sale. Women undertake nearly all the domestic work, such as cleaning the house, fetching water and firewood, preparing meals, and caring for children. Men are more active at the community level, participating in project committees,

political parties and local administration.

(FAO, <http://www.ifad.org/genderpf/pdf/angola.pdf> , 2002)

The position of women in the labour market has not changed fundamentally since the ending of the war in 2002. Even in sectors where women form the majority of the work force, they rarely (if ever) hold leadership or decision-making positions. A notable example are the small farmer associations (associações de camponeses) which are almost entirely made-up of women in some cases, yet always have a male leader.

12. Are certain communities considered to be Indigenous peoples? If so, how is this identity defined in legislation or generally understood?

The “San” tribe (Khoi San), also referred to as “bushmen”, are some of the oldest inhabitants of the southern part of Angola, and Southern Africa. They are thought to account for 0.04% of the total population but exact figures are not available. The majority of the San reside in Huila, Cunene and Cuando Cubango provinces in southern Angola and probably also in Moxico Province in south-eastern Angola, and they live in extreme poverty with high illiteracy rates and high mortality rates. Given their nomadic lifestyle, the San are extremely vulnerable to environmental shocks (such as droughts which are common to the southern parts of Angola). In terms of legislative recognition and/or protection of the San, Angola has ratified ILO Convention 107 concerning the Protection and Integration of Indigenous and other Tribal and Semi-Tribal Populations in Independent Countries. However, there are no specific national laws on indigenous peoples’ rights in Angola. The new Angolan Constitution (2010) does not foresee a specific policy or law to protect the indigenous peoples of the country.

13. What are the impacts of mining activities on these different groupings of peoples? E.g. where minerals are located may impact on some peoples more than others. Also How does mining impact on women in each of these different groupings given the division of labour and roles typically assigned to men and women?

Mining activities directly impact on rural communities given their high dependence upon natural resources (land and water) for food security and income generation needs. Specifically, mining activities in Angola affect communities in a number of important ways, including; restriction of movement, limiting access to land and other natural resources such as rivers, de facto restriction of economic activity given the prominence of subsistence farming, longer term environmental damage (soil and rivers), and arbitrary search and seizure by private security firms and police (PAC, 2007) and even sexual violence against female Congolese migrant workers in the diamond mines (HRW, 2012). These issues are dealt with in more detail in Part two of the review.

These impacts have been largely limited to the diamond mining areas of the country, due to low confidence of foreign investors up to the first post-war elections. With the new Mining code, which extends many of the provisions of its predecessor (1994 diamond laws) to the whole country and in relation to a myriad of minerals, the possibility of mining activities impacting on communities is greatly increased.

14. Where does the community selected for the case study fit into this identity categorization? How typical is the experience of this group.

The Angola project team has not yet identified a community for the case study. This review will be presented in a workshop with stakeholders whereupon input on community selection will be gathered.

15. Briefly list and describe any laws and policies (e.g. intellectual property, folklore) that focus on or contain provisions relating to traditional knowledge or communities' intangible heritage and culture, including language that are relevant for Indigenous peoples and local communities' conserved territories and areas. Are there any limiting provisions affecting the implementation of these laws? If so, what are these?

Angola does not have any specific laws or policies that recognise Indigenous People's rights, including the Constitution. The Constitution (2010) contains a number of provisions related to general local (traditional African culture) heritage and culture, however, these consist of rather broad statements.

The promotion and protection of the cultural heritage and the Angolan languages is identified as one of the primary tasks of the State (Article 21). Whilst, article 87 recognises the right of "citizens and communities" to have their cultural, linguistic and artistic identity respected, valued, and preserved, and this is the primary responsibility of the State (Article 87).

The Cultural Heritage Law (94/05) defines cultural heritage as both material and immaterial goods that are of recognised cultural value (article 2), including historical monuments, archaeological sites, and artefacts of historical and or\cultural significance (article 6). No mention is made of conserved community territories or areas. With respect to local communities' land tenure rights, the Land Law (2004) and associated regulations (2007) provide specific provisions, which are covered in detail in Part 3 of this review.

16. To what extent do these provisions allow for self-determination, local and/or customary decision-making and governance systems, and access to or tenure over territories, areas, and natural resources?

The above pieces of legislation do not contain any provisions related to self-determination, customary decision-making and governance systems, access to or tenure over territories, areas, and natural resources.

The soba (traditional leader) largely remains an important figure in relation to customary decision-making and governance at the local level, particularly in rural parts of Angola. However, without a national legal framework outlining the power of traditional authorities and their relationship to the State, sobas occupy an ambivalent legal position. The Angolan state has developed strategies to control the traditional authorities, their role and legal limits, in particular trying to impose a hierarchy of legal powers between; the different actors (traditional authorities, local government and central government) and between customary and statutory law. Whilst, in practice, traditional leaders continue to play a central role in the administration and management of land in Angola, their "authority" on these issues is not clearly provided for within legislation, but rather a number of tasks in the land registration process. The role of local decision-making and governance in the administration and management of land is dealt with in more detail in Part 3 of this review.

17. What major Environmental concerns confront the country? Also consider here scarce natural resources such as water.

The most recent country-level environmental assessment in Angola was published by the Ministry of Environment in 2006 (Ministry of Urbanism and Environment, 2006). It presents an overview of the key environmental issues facing the country at the turn of the 21st Century. Soil degradation and erosion as a result of deforestation, over-cultivation without restoration of soil nutrients or without fertilization, and the frequent use of fires as a form of land management (restore nutrients and removal of unwanted vegetation)

were identified as key environmental issues. Such activities weaken the natural resistance of the soil to rain and wind, with 50% of the soils in Angola suffering from constant or periodic erosion (*ibid*). The main environmental threats facing Angola's rich water sources include; pollution from erosion (silting) for industrial wastewater, urban waste water that is not treated to an adequate level polluting low level areas (sea, rivers, etc), and water pollution due to burning of extensive areas of the Central Plateau area of the country. Despite being one of Africa's most water-endowed countries, with 1 600km of Atlantic coastline, hosting the Zambezi, Congo and Okavango rivers, and having the most rainfall in the Southern Africa region, only 42% of the population have access to clean water and less than 60% to "appropriate" sanitation (IBEP, 2011).

Climate change impacts in Angola have been severe with cyclical floods and droughts afflicting communities on an annual basis. For example, during the first half of 2013, an estimated one million people in the southern provinces of Cunene, Huila, Namibe and Kwando Kuando Kubango were suffering from food insecurity during the dry season, after a second consecutive year of very low levels of rainfall. Whilst the situation has been given "emergency" status in the affected parts of neighbouring Namibia, the Angolan Government has not made a similar pronouncement.

Due to a lack of adequate planning and regulation, diamond mining has wreaked environmental havoc in Angola, contributing to soil erosion, deforestation, and in some cases forcing local populations to relocate. Angola's diamond industry has been particularly careless in protecting rivers and streams from exploitation. Diamond miners have re-routed rivers and constructed dams to expose riverbeds for mining, with disastrous effects on fish and wildlife. Oil industry operations in Angola are primarily off-shore in nature. A depletion of fish stocks is a common complaint against oil operations in the northern provinces, while coastal residents claim that there are regular oil spills from offshore facilities (OSISA, 2012). However, with on-shore oil operations beginning to increase, further environmental impacts can be expected in the near future.

### ***Section 3: Human Rights***

18. List and describe any human rights laws or policies that support or hinder Indigenous peoples' and local communities' rights such as, for example, those relating to their self-determination, self-governance, connection with and governance of territories, areas or natural resources, freedom of culture and religion/belief, rights over traditional knowledge systems (bio-cultural) and innovations and so on. This may include a wide range of procedural as well as substantive rights.<sup>1</sup>

First, there is no law or policy in Angola that specifically supports nor hinders indigenous peoples' rights. Indigenous peoples are not mentioned in Angolan laws<sup>2</sup>, including in the new Constitution that was approved in 2010. Second, there are two legal systems recognised in the country: statutory and customary law. However, customary law is not written and varies from region to region. It is only recognised, in legal texts, as a set of traditional or community norms that should be taken into account by State and private actors when they deal with communities.

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<sup>1</sup> Procedural rights include, for example, rights to participation, free, prior and informed consent and access to justice. Substantive rights include, for example, rights to self-determination, healthy environment, and culturally appropriate education.

<sup>2</sup> As explained earlier (see Part I, Section 1, question 1 – Demography), indigenous people is a term that is rarely used in the Angolan public and private discourse. Except in the case of the koysan people (bushmen), there is also no work undertaken by or with other communities to be recognized as indigenous peoples.

In the **Constitution (2010)**, customary law is referred to in the following contexts: 1) While the State guarantees the coexistence between public, private and cooperative sectors, it also recognizes and protects the right of rural communities to use and benefit from means of production, within the terms of statutory law and customary norms; and 2) Traditional authorities are recognised, and by so doing, the Constitution states that public and private entities are obliged to respect, in their relations with these authorities, the customary values and norms observed in traditional communities, as long as they do not go against the Constitution nor human dignity [Article 223°].

The **Land Law (9/04, of 9 November 2004)**, which was relatively largely discussed among civil society organizations as it was being drafted, is the law that refers most often to local communities' rights. In this text, they are referred to as rural communities and their rights are considered collective. By law, land belongs to the State. The Land Law states in its Article 9°. 1. that the State respects and protects rural communities' land rights, including those based on customs. However, it adds in its Article 9°. 2 that rural communities' lands can be expropriated for public utility, with fair compensation.

Rural communities' lands are recognised as those used traditionally by the community according to customs, including areas used for itinerant agriculture, transhumance corridors and corridors used to access water, roads and urban areas (Article 23°). Recognised rights are those of occupation and possession, as long as the communities entitled to them occupy and use the lands in a useful and effective way according to customs (Article 37°). Participation is not mentioned in any article of the law.

Added to a lack of clarity in relation to when statutory law applies and when customary law does, the main limitation to this law was that, after its approval, people and communities were given a mere three years to register their lands. Despite major civil society efforts to raise awareness among communities, many remained unaware of the law. Many did not understand why they should register lands that, according to collective memory, always belonged to them, at least since their ancestors occupied them. Moreover, the few communities that tried to register their lands, even supported and helped by local organizations, failed or have had their file in process for years, without actually obtaining any legal title. Registration process length, cost, difficulty and the failure of those who have attempted to register their lands, have ultimately deterred other willing communities.

The country does not yet have a national human rights strategy. However, this is currently being drafted by the Ministry of Justice and Human Rights.

19. Is there a National Human Rights institution in the country and how does its mandate determine how it deals with extractive related human and women's rights violations.

According to the Constitution (2010), the office of the Ombudsman (Provedor da Justiça) is the primary institution responsible for the defence of the rights, freedoms and guarantees of citizens in Angola ensuring, by "informal means", justice and legality of public administration (article 192). Citizens, individually or collectively, and corporate bodies may present the Ombudsman with complaints concerning acts or omissions by public authorities (local and national government, public companies, public institutions, and public service partners) (Law 04/06, Article 3). The Ombudsman does not have any decision-making power but can make recommendations to the relevant public authorities with respect to the prevention and remedy of injustices and human rights violations (Law 04/06, Article 4). Furthermore, in cases of a "flagrant" violation of human rights or injustice by public administration, it can, by its own initiative, instigate an investigation (Law 04/06, Article 2). The Ombudsman submits a biannual activity report to the parliament (Article 21). According to the 2012 activity report, the Ombudsman received a

total of 211 cases during the first semester, of which only 36 involved female complainants. The most common cases included; labour issues, property/land disputes, the administration of justice, and social security related issues.

The institution in Angola responsible for coordinating the state's intervention in the protection and promotion of human rights is the State Secretariat for Human Rights, which is housed within the Ministry for Justice and Human Rights (Decreto n.º 121/13, Article 7) . The secretariat is comprised of a national directorate, a human rights research and studies office, and provincial-level human rights committees. No specific mention is made of either extractive industry-related human right or women's rights issues in relation to the secretariat's mandate. However, at least in theory, the secretariat may engage both the Mining and Women's Issues Ministries, as well as relevant private sector entities, in its coordination capacity to "promote a culture of respect for human rights among State organs, enterprises and citizens" (Article 24.2(d)). As previously mentioned, a national human rights strategy is currently in development, whereupon it is hoped the Secretariat will play a more active role.

20. Are there any human rights laws or policies that support or hinder women's access to and ownership of resources and other socio cultural rights.

The word "woman" is mentioned three times in the Angolan Constitution; that promoting equality between men and women is one of the State's fundamental tasks (Article 21º), and to recognize women's equality with men in the family, society and State, therefore holding the same rights and bearing the same duties (Article 35º). One should add that Article 35º is related to family, marriage and filiation, underlining the fact that women's rights in Angola are, above all, recognised according to the role she plays in the family.

Women are not mentioned at all as a specific group in the Land Law. Customary principles governing women's property, land tenure and inheritance, vary from region to region in Angola, depending on whether communities are organised according to patrilineal or matrilineal principles. However, in general, the vast majority of women have restricted access to and control over such resources.

The family Code (Law 01/88) has established the equal right and responsibility of husband and wife household assets management. However, the law does not consider the issue of property possession following separation or divorce, which leaves women in a vulnerable position. The code is currently under revision.

The Domestic Violence Law (Law 25/11) incorporates a broad definition of "violence" to include patrimonial violence, including the retention, removal, partial or total damage of goods (mobile and immobile). The law provides for the protection of the property rights of victims of domestic violence whilst the legal case is being processed.

The recent national Policy on Gender Equality and Equity (Policy 222/13) acknowledges gender disparity in Angola in terms of access to housing, loans and credit, land and property and includes the elimination of the factors (socio-cultural) that hinder women's access to and control over resources as a "priority area" for interventions (Chapter 4 (33, 45)). The policy provides a guideline for Government, Private sector and civil society actors to ensure programmes and plans reflect a gender equality and equity agenda. The policy contains (as an annex) a number of suggested strategies to address the priority areas outlined in the policy. With respect to women's access to, and control over resources (i.e. land), the policy limits activities to awareness raising activities with women on the land law.



21. Which state agency (or agencies) is mandated to develop and implement these laws and policies? Please describe any relevant political and institutional dynamics with other agencies that are responsible for community rights and welfare (e.g. those listed in other sections of this review). Where is this mandate and power derived? (That is, which legislative instrument identifies and gives the State agency its power?).

Generally speaking, the vast majority of laws in Angola are developed by the Executive via Presidential Decree, which has been the case for key legislation related to Women's rights, for example the recent Domestic Violence Law (2011).

In terms of implementation, the Ministry for Family Issues and the Advancement of Women (MINFAMU) is responsible for promoting women's rights and responding to women's specific needs (Law 07/98). Whilst MINFAMU plays a supportive role in coordinating the inclusion of women's issues and rights across government ministries, it is the responsibility of each individual ministry to ensure the integration of a gender equality and women's empowerment agenda within its sectorial programme and plans (Diploma 222/13- National Policy for Gender Equality and Equity).

Finally, both the Ombudsman and the Secretary of State for human rights, via their general human rights mandates, also play a role (in theory) in protecting and promoting women's rights.

22. Comment on the extent and effectiveness of implementation. Highlight key processes, dynamics, and pressures that affect the ways in which they are implemented.

In Angola's legislative system all laws must come with an "enacting law", but many never do, leaving them unimplemented or implemented according to political will. Additionally, civil society organizations using the legal system or defending poor people's and communities' rights are very few and all based in Luanda (i.e. AJPD, Associação Mãos Livres).

Angolan laws never hinder any groups' rights, but often fail in clearly protecting them, making implementation of laws difficult in practice. There is also a deep lack of trust in the legal system from Angolan citizens and groups as many doubt its independence given the system of Presidential appointment. According to the Constitution, the President of the Constitutional Tribunal, the President of the Supreme Court, the President of the Court of Accounts ("Tribunal de Contas") and the President of the Supreme Military Court, as well as part of their judges, are appointed by the President of the Republic.

Very few cases are known where local groups or communities resorted to Angola's court system to defend their rights and won. Legal processes are very long and costly discouraging citizens from engaging in judicial processes. Most people also do not know their rights, especially outside of the Luanda capital, and still consider what should be State obligations as favours. Outside of Luanda, access to information on laws is an issue (even public administrations, in their majority, do not receive the laws), and communities do not have easy access to lawyers, as 90% of them live and work in the capital.

23. Are there any general policies that interpret or give meaning to development, transformation and/ or human rights in the legislative system?

There is no official interpretation of what development means for Angola. However, in the Constitution, a link is drawn between "social development" and "social justice". Its Article 90° is on social justice and it defines how the State should promote social development,

i.e. through the adoption of wealth redistribution criteria; promotion of social justice; promotion, support and regulation of the private sector intervention in social rights fulfilment; removal of economic, social and cultural obstacles to real equality of opportunities among citizens; and quantitative and qualitative improvement of people's life.

The idea of transformation is not referred to in Angolan legislative system.

As for human rights, some are partly defined in specific laws, for example the right to water has a specific law (Lei de Águas). However, there is no general policy giving meaning to human rights.

24. Are there specific constitutional provisions relating to socio economic and development rights (e.g. access to education, work, etc.)?

Chapter three of the Angolan Constitution deals with ESC rights. The below table outlines the constitutional provisions related to the so-called "development" rights.

**Rights to free economic initiative (article 38):**

1. Private enterprise shall be freely undertaken and exercised with respect for the Constitution and the law.
2. Everyone shall have the right to engage in free business and cooperative initiatives, to be exercised under the terms of the law.
3. The law shall promote, regulate and protect the economic activities and investments of private, national or foreign individuals and corporate bodies in order to guarantee their contribution to the development of the country, defending the economic and technological emancipation of the Angolan people and the interests of workers.

**Right to work (article 76):**

1. Work shall be the right and duty of all.
2. Every worker shall have the right to vocational training, fair pay, rest days, holidays, protection, and workplace health and safety, in accordance with the law.
3. In order to ensure the right to work, the state shall be charged with promoting:
  - a) The implementation of policies to generate work;
  - b) Equal opportunities in the choice of profession or type of work and conditions which prevent preclusion or limitation due to any form of discrimination;
  - c) Academic training and scientific and technological development, as well as vocational development for workers.
4. Dismissal without fair cause shall be illegal and employers shall be obliged to pay just compensation for workers who have been dismissed, under the terms of the law.

**Health and social protection (Article 77)**

1. The state shall promote and guarantee the measures needed to ensure the universal right

to medical and health care, as well as the right to child care and maternity care, care in illness, disability, old age and in situations in which they are unable to work, in accordance with the law.

2. In order to guarantee the right to medical and health care, the state shall be charged with:

- a) Developing and ensuring an operational health service throughout national territory;
- b) Regulating the production, distribution, marketing, sale and use of chemical, biological and pharmaceutical products and other means of treatment and diagnosis;
- c) Encouraging the development of medical and surgical training and research into medicine and health care.

3. Private and cooperative initiatives in the spheres of health care, welfare and social security shall be overseen by the state and exercised under the conditions prescribed by law.

#### **Right to education, culture and sports (Article 79)**

1. The state shall promote access for all to literacy, education, culture and sport, encouraging various private agents to become involved in their implementation, under the terms of the law

2. The state shall promote science and scientific and technological research.

3. Private and cooperative initiatives in the spheres of education, culture and sports shall be exercised under the terms prescribed by law.

#### **Right to housing and quality of life (Article 85)**

Every citizen shall have the right to housing and quality of life.

Generally speaking, with respect to ESCR, the State is tasked to progressively create the necessary conditions, including by legal means, to fulfil these (Articles 21° e 28°).

25. Are there constitutional provisions for any of the following and if so what are these?

a. Environment

The Constitution (Article 39) recognizes the right to live in a healthy and unpolluted environment as well as the responsibility to defend and preserve the environment. With respect to the interaction between environmental protection and economic development, the State will ensure economic activities and the use of natural resources are guided by principles of “sustainable development and respect for the rights of future generations and species”. Finally, the constitution states that endangerment or damage to the environment shall be punishable by law (Article 39).

b. Public participation

The rights to take part, directly and indirectly, in political life and, to be informed regarding state actions and the management of public affairs are provided for in the Constitution. However, citizens' participation is conditioned. Citizens are also expected to exercise their right to participate responsibly and the same article (Article 52) states that citizens must comply with and respect the law and obey the orders of the "legitimate authorities".

c. Parliamentary oversight

The new Constitution (2010) greatly weakens the power of the parliament, further bolstering the power of the President. Among other things, the revised constitution abolished the position of the Prime Minister, opting instead for a Vice-President appointed by the President. The President plays a key role in the legislative process via the creation of presidential decrees which can then be passed into law by the parliament (Article 126). However, even without the approval of the parliament, such decrees enjoy legal force for a period of sixty days with provision for extensions. The parliament is afforded oversight powers with respect to the implementation of the State Budget (Article 104). A recent judgment by the Constitutional court (2013), after a request for "clarification" from MPLA MPs, has acted to further weaken the power of the parliament. According to the ruling, the Constitution does not give the National Assembly the power to hold inquiries into executive decisions. It also states that MPs cannot call for public audiences with ministers

on specific topics. Ministers and high-ranking officials can only be brought before the

house with prior ministerial authorisation as well as by formal parliamentary request.

d. Access to information

Article forty of the Constitution, recognizes the right to freely express, publicise and share ideas and opinions through a variety of mediums and the right to inform others, oneself and to be informed without hindrance or discrimination, nor any type of censorship. The article, however, goes on to identify a number of instances which could warrant a restriction of these rights, including; defamation, child protection, and state secrecy. Any infringements will be punishable under the law and the victims will have the right of reply and compensation.

The Constitution also recognizes the rights of citizens to have access to information regarding "habeas" data which is stored about them, when this is not in conflict with safeguarding state and legal secrecy (Article 69). Institutions and agencies holding such data are prohibited from transferring the information to third parties, unless warranted by law or legal ruling.

e. Public financial management

The national budget has gained importance in the new Constitution as the primary instrument of financial planning and management (Article 104) and budget execution will follow "the principles of transparency and good governance and is controlled by the National Assembly and the Tribunal of Accounts". However, there have also been setbacks in terms of accountability such as the elimination of references to the need for budget execution reports. Furthermore, changes to the National Assembly and the Tribunal

of Accounts did not amount to greater accountability. The National Assembly has experienced only very gradual increases in its capacity to oversee the budget process, however, given the ruling party's majority in parliament these powers of oversight are not currently exercised. Although, the Tribunal of Accounts is now written into the Constitution, its new legal framework states that the government is no longer obliged to submit the general state accounts (Conta Geral do Estado) to the Tribunal for an audit which will represent a serious setback in terms of accountability unless the National Assembly makes it a standard procedure to pass it on to the Tribunal.

26. Broadly characterise your country's approach to second and third generation human rights?

Despite legal guarantees, in practice, Angola's approach to the protection, promotion and fulfilment of social and economic rights (second generation) is underpinned by discrimination and inequality between the majority poor and those with links to the country's political and economic elite. Access to public housing projects, education scholarship schemes, and quality health care are all conditioned by socio-economic and political position. Angolan citizens often face economic obstacles in accessing their rights to health and education in the form of "informal fees" (bribes), which discriminates against the majority poor.

With the exception of the right to self-determination and independence (recognized by the Constitution), the third generation of human rights are very broadly and informally defined in Angolan legislation. With respect to self-determination and independence, the right is often used by the Angolan Government to defend principles of non-interference in the internal affairs of sovereign states. In contrast, the Angolan Government has taken a strong stance against the claims for independence within the oil-rich Cabinda enclave.

The right to a healthy environment is partially recognized through Environmental legislation, which is also referred to in the Mining Code for example, but in practice, environmental issues are not a priority, and mostly ignored in the mining sector. In summary, Angola has a double approach to second and third generation of human rights: it legally promotes them, but not to the point of having binding regulations that actually ensure that they are respected, protected nor fulfilled.

## Part 2: Natural Resource exploration and Extraction (mining legislation)

**Note:** We mostly focused here on the new Mining Code as it now constitutes the main legislation that governs mineral resource exploration. The legislation that preceded it was only reserved to two provinces of the country (out of 18) and diamond extraction. Therefore it seems relevant to focus on the Mining Code as it is a lot broader and the current active legislation. Oil extraction is legally bounded to another set of laws, but as oil production is all offshore so far, the impact on communities is relatively limited. This is why, given time constraints, we did not include the oil-related legislation in this review, except in question 100, as it summarizes main issues related to laws impact on communities.

### Section 1. Overview

27. Briefly list and describe laws and policies with respect to minerals and hydrocarbons exploration and extraction.

a. The purpose and/objective of the policy and legislation?

The **Mining Code**, the main law with respect to minerals, regulates all activities linked to geological and mineral resources in Angola, from geological mapping to resources exploration and trade. It includes noble metals, precious stones, rare metals, radioactive minerals, as well as construction materials such as sand. Hydrocarbons activities are regulated separately, as oil extraction is considered as a separate sector, as agriculture and tourism are. It defines three types of mining: industrial, semi-industrial and artisanal.

The **Artisanal Mining Regulation (2009)** is the law covering artisanal mining activities. The regulation (2009) restricts the activity to locals working part-time, with no machinery on local lands. However, the regulation does not give artisanal producers the right to dig for, transport and sell any diamonds they find. Diamond produced by artisanal miners is to be sold exclusively to Sociedade de Comercialização de Diamantes de Angola (SODIAM). The royalty tax for artisanal mining is 5% of the value of the minerals. Contrary to Kimberly Process Principles, the regulation, and the 2011 Mining Code, fail to outline any concrete procedures for tracking artisanal production, and no mechanisms for collating, analysing or publishing data on artisanal trade and production. According to the 2009 Regulation, artisanal mining may only take place on land that has been surveyed and deemed economically nonviable for industrial-scale exploitation. Areas for artisanal mining may not exceed a total area of 5km<sup>2</sup>.

b. How long have these laws and policies been in place?

The **Mining Code** was passed as a law on 19<sup>th</sup> July 2011 and the regulation allowing its implementation has been under discussion since the end of 2013, not yet being passed at the time of writing. The Mining Code replaced, and is based on, the 1994 Diamond Law that preceded it.

The **Artisanal Mining Regulation** was passed into law on the 25<sup>th</sup> of August 2009, replacing relevant provisions within the 1994 Diamond Law.

c. Have there been major law reforms (e.g. an entirely new statute) in minerals and hydrocarbon extraction related legislation?

Yes, the **Mining Code** is an entirely new statute.

d. If so, please describe differences between past and present laws and policies and the impact these changes have had on local communities.

The **Mining Code** covers a spectrum of resources and geographical areas a lot larger than the preceding legislation: from only diamonds to all mineral resources, from only two provinces to the whole country. The legal content though, however softer and broader, has not majorly changed as far as human rights and community protection are concerned. The zoning system of extraction areas is the same, which, given the enlargement of scope, has the potential to have a major impact on local communities across the country. However, as this Code has not been implemented yet on the ground, we cannot describe its real impact. A national geological mapping is currently underway as a first step.

e. Have there been amendments to these statutes?

There has not been amendment to the **Mining Code** yet given it is a new law.

f. If so, please describe differences between past and present laws and policies and the impact these changes have had on local communities.

N/A

g. Are these laws likely to be amended or rewritten in the future?

As explained above, a regulation to the **Mining Code** that should define its implementation is under discussion. Therefore, it is still very new and unlikely to be amended or rewritten before years.

h. If so, please discuss potential reforms.

N/A

28. To what extent do minerals and hydrocarbons extraction laws take into account the environment and/or human rights? How adequate are these provisions? (is it in the law or contained elsewhere)

In the former law (Diamond Law, 1994), no rights at all were recognized for communities. This has somewhat improved in the new **Mining Code**. Article 7° states that when planning mineral activities, the Government must take effective measure to promote sustainable economic development and protect local communities' rights and legitimate interests. However, protection is limited to taking into account communities' customs and creating consultation mechanisms. Consultation is obligatory only if mining projects might result in damaging the material, cultural or historical goods of the local community as a whole (Art. 16°). There is no specific reference to human rights in general in the code.

Environmental issues are taken into account at various levels in the new Mining Code, with a separation between industrial and artisanal mining exploration. Industrial mining companies must respect the environmental legislation (Art. 63°). Their projects must also include an environmental impact assessment and this study must be approved by the Ministry of Geology and Mining for the company to receive an exploration license (Art. 65° and 116°). It should include a social impact assessment, an environmental assessment and management plan, environmental audits and accompaniment program, as well as water and solid waste management plans, among others (Art. 66°).

Companies must also plan for environmental recuperation after they leave the exploration site (Art. 250° mainly) and local communities should be informed of taken measures. During exploration, industrial mining companies must also contribute to an environmental fund, to be created by the President of the Republic (Art. 267°).

As far as artisanal mining is concerned, license owners must respect environmental norms. The implied rules are to be defined by the Ministry of Geology and Mining (Art. 183°). As

in the case of industrial mining activities, artisanal mining activities can be suspended if they are found to be damaging for the environment.

These provisions can be considered as improvements in relation to the former legislation. However, especially those on communities' rights protection are too broad to be effective. How they will be detailed in the forthcoming regulation, currently under discussion, will be determinant to how adequate they will actually be.

29. According to statute, who owns the minerals and hydrocarbons?

Minerals are the original property of the State and part of its private domain (Art. 42°).

30. Has this changed historically? If so give details. (surface and subsurface)

No, this has not changed historically.

31. Who owns other resources such as water?

Other resources such as water are also owned primarily by the State.

32. Are there any provision in mining law or allied law that protects mining company rights in the event of a change in statutory law?<sup>3</sup>

It was not possible to obtain information in response to this question.

## ***Section 2. General concepts and objectives***

33. What are the main objectives or stated purpose of the main mining Act? Explain to what extent these objectives are supportive of community development prerogatives?

The Mining Code regulates all mineral activities in the country, except for those related to hydrocarbons (Art. 3°). It follows the objectives and principles of the mining sector, as stated in its Section II, according to which the Government must have a mining policy and a strategy for its implementation. When elaborating this policy, the Government must respect the principles stated in the Constitution, the Mining Code, as well as the legal principles and strategic objectives of the mineral activities as stated in the latter.

Amongst the mining sector strategic objectives listed in the Mining Code (Art. 8°), the following are worthy of mention with respect to this review:

- To guarantee the sustainable social and economic development of the country (stated as 1<sup>st</sup> strategic objective);
- To create jobs and improve living conditions of the populations living in mining exploration areas (stated as 2<sup>nd</sup> in the list);
- To guarantee tax revenues for central and local administration of the State;
- To support and protect private companies, giving preference to Angolan companies in the concession of mining rights;
- To harmonize, when possible, the national mining legislation with the regional and

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<sup>3</sup> Ε.γ. ΔΡΧ ιφ τηε λαω χηανγες μινινγ χομπανψ ριγητσ αρε ρεταινεδ φορ α περιοδ οφ τωεντη ψεαρσ αφτερ στατυτορψ αμενδμεντ.



international ones, taking into account good practices;

- To protect the environment and fight against bad environmental practices;
- To fight illegal mining activities;
- To establish an effective, fast and transparent regime for mining rights concession;
- To guarantee the sustainable development of national human resources;
- To promote the reinvestment in the country of mining exploration revenues, and ensure, before mines close, that other economic activities are developed, so that abandoned mining areas do not enter into economic depression.

Whilst sustainable development and improving local communities' living conditions are definitely recognized as important, given their position in the list of objectives, it is not in a way that supports community development prerogatives. Through the consultation mechanisms to be created according to later articles of the Mining Code, these could be promoted, but this would need to be clearly stated in the law that will regulate the implementation of the code.

34. How does mining legislation define the following concepts (this may be in the definition sections of the act or in the body of the legislation)

- a. Community: not defined, local communities are only defined as those communities living in the mining areas, but the concept of community is not subject to a specific definition.
- b. Indigenous: not defined, nor mentioned.
- c. Consultation: not defined as such. Article 16° on community rights states that the consultation mechanisms to be created should allow local communities affected by mining projects to actively participate in the decisions relative to the protection of their rights.
- d. Sustainable development: not defined.
- e. Extraction: there is no definition of extraction, but of exploitation and mining. These terms are defined in the glossary as the activity that follows research, prospection and evaluation, and which includes preparation and extraction, as well as loading and transportation inside the mine, minerals treatment and processing.
- f. Participation: not defined as such, but Article 68° about the participation of communities in environmental preservation only refers to their right to be informed about environmental impact assessment results and the measures that will be taken by the company to avoid or mitigate potential losses.
- g. Stakeholders: not defined as such. The only stakeholder defined in the Mining Code glossary is the "concession holder", being the holder of the mining rights coming from the contract or concession decree, within the conditions established in the code and other relevant legislation.
- h. Interested parties: not defined.

### ***Section 3: Prospecting and mining claims/rights and regulation***

35. What rights does a mining company get from the natural resource extraction legislation e.g. do they own the minerals, are their timeframes involved in their extraction, use it or (defining the meaning of claim and right) describe different rights prospect, mine, dispose, process)

According to Art. 92° of the Mining Code, mining companies have, among others, the following rights: to obtain the necessary information and support from administrations; to use the superficial and subterranean waters existing close to the concession area; to alter the natural configuration of the concession area; to extract, transport and benefit from the mineral resources stipulated in their contract; to get back, through results, the expenses invested in the exploration and evaluation phases; and to be compensated for any action that would limit the exercise of these rights. They should be exercised within the limits of the law and not go against third party rights.

According to Art. 133°, mining rights can be attributed for a maximum of 35 years, including the prospecting and evaluation phases. After this limit, the mine reverts to the State.

36. To what extent do natural resource extraction laws contain provisions mandating the provision of an environment, social and/or cultural impact assessment prior to receipt of prospecting and/or extraction licenses?

[See answer to question 28]

37. If natural resource extraction laws contain provisions relating to impact assessments, do those provisions allow for community engagement by way of consultation or free, prior and informed consent? What timeframes does legislation provide for consultation/consent processes?

Community participation rights in relation to environmental protection are limited to being informed about the assessment results and what measure the concession holder will take. Mining projects with potential negative impact on communities cultural, material and historical goods must consult communities, so that they can “actively participate” in the decisions relating to the protection of their rights, but what active participation means is not defined. No timeframe is set.

38. Are environmental and social impact assessment dealt with separately or in an integrated way?

Social impact assessment is referred to as one of many parts of what should be the environmental impact assessment (Art. 66°). In this sense, they are dealt with in an integrated way, but with no details, remaining relatively superficial and undemanding.

39. What timeframes are provided for in terms of social and environmental impact assessments?

No timeframes are provided, except that environmental impact assessments need to be approved before concession rights are given.

40. What conditions are placed on the right to explore and the right to mine? For example must there be local/indigenous/African or Black partnerships?

Against the concession of exploration rights, the State participates in the production results, through State companies, by owning at least 10% of private companies' social capital, and/or by directly receiving part of the production (Art. 11°).

It is also stated as part of the mining sector strategic objectives to give preference to Angolan companies in the concession of mining rights, as well as to stimulate the emergence of Angolan economic groups that are technically and financially competitive in the national and regional mining sector (Art. 8°).

Mining rights over strategic mineral resources, such as diamonds, can be given entirely to national State companies (Art. 23°).

41. How (process) does a mining entity get a claim/right?

Articles 101-106 of the Code deal with the application process for mining rights. The initial application should be made to the Ministry of Geology and Mines and must be accompanied by supporting documentation of financial and technical capacity of the applicant, as well as written commitment to respect environmental requirements. A response shall be given with respect to the availability of the site and approval (102). Following payment of due taxes and fees (payable within a period of 15 days), the applicant shall receive the Mining Concession Registration Certificate (RPCM) (106). Once in possession of the RPCM, the applicant may then proceed with negotiating the contracts, or authorizing the concession of the respective titles (*ibid*).

According to the 2009 regulation as well as the mining code, artisanal producers must first obtain a series of documents as part of the claim process: a mining permit (or credencial) and an artisanal mineral claim (*senha mineira*). Both permits and mining claims are restricted to Angolan citizens, 18 years or older, who have been resident in the area of production for at least ten years. Up to five people may work a single artisanal claim, but all five must be licensed, and must come from the same family or village, verified by the village chief and local administration. The claim holder must submit a list of the five diggers when submitting a claim application. Applications are to be made to the provincial division of the Ministry of Geology and Mines.

42. Are mining rights/claims transferable to another party?

Yes, mining rights are transferable during the life or by death of the rights holder. They can be given as a guarantee to obtain loans and can be subject to judicial execution (Art. 48°). However, Article 117° states that subcontracting services cannot involve mining rights transfer to the subcontracted companies.

Mining titles are transferable to another party if it responds to all requirements defined in the Mining Code and it has to be approved by the Government (Art. 94°).

43. What are the grounds for licence revocation?

Grounds for licence revocation are mainly project economical unfeasibility, company technical incapacity, crime of administrative disobedience and absolute incapacity to comply with contract obligations (Art. 56°).

One should notice though that grounds for mining activities suspension are of a very different nature and are related to serious risks that mining activities might cause on populations' life and health, mines security, health conditions of the working place, environment, fauna and flora (Art. 53°).

44. Is there a cap on licence renewals or a time limit for the use of a license?

Mining rights shall be granted for a period of up to 35 years, including the prospecting and assessment period, at the end of which time they shall expire and the mine shall revert to the State (article 133). Mining rights may be extended by one or more periods of 10 years each (ibid).

Artisanal mining licenses are granted for a period of 3 years with option for renewal for a further 3 years and for one year periods thereafter, until mineral exploration has been deemed “exhausted”. In the case of artisanal diamond mining, licenses are issued for renewable one year periods.

45. Is there a single licensing authority?

Yes, the supervisory authority responsible person, in this case the Minister of Geology and Mining (Art. 97° e 101°). However, in the case of strategic minerals, like diamonds, the contracts are negotiated by a specific organ created by the holder of the executive power, i.e. the President, and approved by him. Only after the President’s approval can the contracts be sent back to the Ministry of Geology and Mining for title emission (Art. 164° e 165°).

46. Is there a model mining contract or standardised set of terms and conditions (that may help reduce discretionary powers of the Minister/responsible authority)? Or licences and/contracts are awarded on case by case basis?

It was not possible to obtain the necessary information in response to this question.

47. What are the problems/benefits with these claim/rights processes?<sup>4</sup>

In the case of artisanal mining, a number of problems exist with the claim process. Firstly, the documentation required to make an application (criminal record, national identity card, and confirmation of local origin by traditional leader) can be difficult to obtain for many people engaged in artisanal mining. Secondly, specific areas for artisanal mining must be identified by the Ministry of Geology and Mines and few of these exist. Finally, the approval process for artisanal mining licenses is cumbersome and a limited number of such licences have been awarded to date, despite legal provisions being in place since 1994.

With respect to larger-scale commercial mining, it was not possible to obtain the necessary information to respond to this question.

48. What is the extent of ministerial discretion in the Main mining act? How is such discretion generally exercised in terms of Community interests vs mining interests?

Ministerial discretion is very broad, as everything has to be authorized by the supervising authority. However, issues related to strategic minerals, as well as creation of new mechanisms and commissions are with the PR or, more broadly, “Executive power”.

On the ground, this centralism means that community interests are simply not taken into account, as mining rights and titles are given by the Central Government in Luanda, and even local administrations are only informed that part of the territory under their jurisdiction will start to be explored and administrated by such or such company.

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<sup>4</sup> E.g. the competence of an authority in granting a claim/right.

Community interests should be taken into account during the environmental impact assessment but in practice, it depends on the company's good will.

49. What provisions are made in the legislation for end of mine life?

As explained earlier, environmental impact assessment should include a plan for environmental damage mitigation and reconstitution after exploration ends. One of the mining sector strategic objectives is also to organize the development of alternative activities to avoid economic depression of abandoned mining areas, namely to create new job opportunities.

50. What are the environmental requirements for mining?

[See answer to question 28. There are no other requirements specifically defined.]

51. What is necessary to mine on collectively owned or trust land? Is this different to individually titled land? If so how so?

There is no specific provisions for collectively owned land. Mining areas belonging to individual owners, the private domain of the State or collective legal persons, mining rights holders must obtain their agreement before starting with geological prospection on their land, which includes yearly land rent payment or deposit. In the exploration phase, the mining rights holder has to obtain agreement of the land owner as well or the State obtain it by compulsory acquisition on the ground of public interest (Art. 72°).

52. Are different criteria applied to state owned mining companies?

It was not possible to obtain the necessary information to respond to this question.

#### ***Section 4. Engagement and community***

53. Do minerals and hydrocarbon extraction laws take precedence over or limit the rights of Indigenous peoples and local communities? How so?

Yes they do. In its general objectives, the Mining Code states that rights of local communities should be protected, but they should only be consulted if they shall suffer losses. Extraction activities are not submitted to their prior consent and their lands can be confiscated on grounds of public interest if the Ministry of Geology and Mines so decides.

There are also restrictions for local communities that vary according to the zone they find themselves in, namely in terms of circulation of people and goods (Chapter XIII). In restricted zones (exploration site and 1km around), no one can enter and the mining rights holder has the responsibility to create alternative access roads. In protection zones (5km further), special permits are needed to circulate and can only be given by the mining rights holder. In reserve zones (all areas with strong mining potential), local development and stability should be respected as much as possible.

This zoning system comes from the 1994 diamond laws, but now extends to all minerals, including construction materials.

54. How do these provisions conflict with domestic property laws governing land formally owned (through title deeds) or community land laws?

Within these restricted areas, the zoning system and the aforementioned associated regulations take precedence over provisions regarding land rights held within the Land Law. However, given the new Mining Code extends the geographic and mineral scope of

this zoning system, the Ministry of Planning is believed to be currently analysing the situation and classifying land for mining, agriculture, and water access.

55. Describe any State-implemented laws, policies, frameworks or measures in place that govern processes and/or relations between interested parties and Indigenous peoples and local communities with respect to consultation, free prior and informed consent, and the fair and equitable sharing of costs and benefits;

There are none so far. These aspects should be defined in the subsequent regulation to the new Mining Code, currently being discussed, but they might not be included at all if there is no civil society advocacy and lobbying conducted.

56. What is the status of customary law as opposed to statutory law governing minerals extraction (mining law)?

Contrary to the Land Law, the Mining code does not include any reference to customary law.

57. What State agency (or agencies) has been mandated to develop, implement and monitor these laws and policies (who makes the decisions)? Where is this mandate and power derived? (That is, which legislative instrument identifies and gives the State agency its power?).

There is no specific State agency that has been mandated to develop, implement and monitor these laws. Everything is supervised and decided broadly by the Executive Power, and specifically by the Ministry of Geology and Mining.

58. To what extent are immediate host communities elevated in status (if at all and relative to other stakeholders) for consultation, consent, environmental and social impact studies?

Host communities are not elevated in status at all. They may only be consulted and should be informed of environmental impact and measures taken to mitigate it. Consultation mechanisms should mean their active participation in decisions regarding their rights, but what this means in practise is undefined.

59. Is relocation identified as a measure of last resort? Is there provision for compensation where community displacement is likely? How is such compensation calculated? What is covered in such compensation? How is compensation paid and to whom? We need to specifically probe provisions for compensation of common resources/ all natural resources used in family and community livelihoods. How have these provisions been implemented historically?

In the **Mining Code**, relocation is identified as a right of local populations if their normal housing conditions are put into question by mining activities, i.e. they are forced to relocate (Art. 17°). The mining company/entity is supposed to build houses and social infrastructures in an area as close as possible from the area the affected communities were forced to leave. However, this compensation mechanisms is not obligatory if the land has been expropriated “por utilidad pública” (for public use).

The **Constitution (2010)** and the **Land Law (2007)** both recognise the right to fair compensation in cases of expropriation of land by the State for public interest. However, it

is not clear how these rights are protected with respect to mineral rich areas identified for mining activities.

60. Are there any provisions for community based preferential claims on mining rights? If so how are these exercised? Are they frequently exercised?

No. Provisions giving preference to national-based claims are linked to Angolan companies (both private and public), but there are none on community based preferential claims, except in the case of artisanal mining.

61. To what extent do provisions with respect to resource extraction allow for free, prior and informed consent, effective consultations etc with Indigenous peoples and local communities, recognition of traditional governance systems and/or customary decision-making?

In the Mining Code, provisions with respect to resource extraction do not include communities' right to give their consent. Only legal land owners have this right and they are only defined as individuals or State agencies. Local communities must be consulted, if their cultural, material or historical property will be affected by mining activities, in a way they can actively participate in the decisions, but this does not mean that their opinions have to be followed. Ideally, this should be clarified by the implementation regulation under discussion, but it might not be the case. In the previous legislation, consultation was not even recognized as a right.

According to Art. 16° on communities' rights, the consultation mechanisms referred to should include people with good repute within the community and chosen according to customary decision-making, as long as they do not act against the Constitution.

62. In these provisions are women given any specific consideration?

No. Women are not specifically mentioned at all in the Mining Code.

63. Is there any independent body set up by legislation to deal with disputes between communities and mining companies and or the state? (linked to access to justice discussion)

No. In the first draft of the Mining Code, an ad-hoc paralegal body was proposed to be created, when need be, to resolve disputes, but the fact that only 60% of legal fees should be borne by the mining company implicitly meant that the other 40% would be covered by the community. The decisions of this body were supposed to be definitive, not subject to legal court appeal, and irrevocable. Analysts showed the danger of such a body and it was removed from the final version of the Mining Code, but it was not replaced by anything fairer.

64. How effective is this body?

N/A

65. What other mechanisms to solve such disputes exist and are commonly used?

See response to question 109 below.

66. Are there any specific provisions for where people are likely to be displaced by minerals or hydrocarbon extraction processes?

[See answer to question 59]

### ***Section 5. Legislation and CSR/CSI***

67. Does legislation dictate any social development spending? How is this determined? What is the quantum of such spending? What criteria is applied to determine who the beneficiaries of such spending are?

The Mining Code states that non-artisanal mining companies should pay to the State a contribution with which will be created an Environmental Fund (Art. 267°). The President has the competence to create the Fund, approve its organizational framework, define the value of the contribution and the way it will be collected and used, among other rules. No presidential decree has been published on this matter yet.

68. Does legislation dictate any local procurement conditions? If so; How is this determined?

Whilst Angola has developed specific policies and laws with respect to local content (including procurement rules) within its Oil and Gas sector, no such legislation exists for the mining sector.

69. Are there any industry based standards used to assess mining company performance?

Angola is part of the Kimberley Process and companies must respect the law, but there are no national-based standards to assess mining company performance in relation to impact on environment and communities.

70. Are there capital investment provisions that are applied to local community development and how does this mechanism work? (e.g. a % of capital spent goes to the local community)

There is not such a mechanism in the Mining Code.

### ***Section 6. Benefit sharing***

71. Is there any benefit sharing provision for local communities? (a set amount or %)

No, there is no shared benefits with the communities.

72. If benefit sharing exists, how is it calculated, who is identified to benefit (what gender dimensions in this?), how is it paid, what requirements for governance of these resources?

N/A

73. What impact do benefit sharing provisions or practices have on local economic development?



N/A

74. Are their ownership provisions allocated on the basis of race, nationality etc. that apply beyond host indigenous and local peoples?

No ownership provisions are allocated to host indigenous and local peoples, but provisions give exploration rights first to nationals (see question 40). However, they are about exploration, not ownership.

75. To what extent do provisions with respect to resource extraction allow for the fair and equitable sharing of costs and benefits arising from resource extraction

It does not. Costs are for the companies, benefits for the companies and the State, through public-private partnerships, public companies, and directly through taxes. Local communities do not have any benefits, except potentially in terms of job creation.

76. Do any other crosscutting investment laws carry such provisions that would be applicable to mining?

No.

### ***Section 7. Royalties and taxation***

77. Describe any legislation, policy or standards that regulate royalty payments and taxation of mining companies

The Mining Code states that mining companies must pay, at least, the following taxes: income tax, royalties and surface fee (Art. 239°). Taxes are calculated independently for each mining concession (Art. 240°). Each of the four types of taxes above mentioned is defined in details in the following articles. All that is not planned for in the Code is subject to the National Tax Code and other laws about taxes and administrative duties (Art. 243°).

78. What royalties and/or taxes are mining companies liable for? (how are royalties and taxation different?) (do different minerals have different royalty amounts?)

[See answers above and below] Royalties are considered as one type of taxes, i.e. the tax on the mineral resources value.

79. Is there any provision for royalties to be paid per mineral extracted?

There is a provision for the level of royalties to be paid by type of mineral (Art. 257°): 5% of value for strategic minerals (for both industrial and artisanal mining), stones and precious metal minerals, 4% for semi-precious stones, 3% for non-precious metallic minerals and 2% for construction materials of mineral origin and other minerals.

80. What income for government does the mining industry provide?

Mining contributed 0.63% to GNP in 2012 (CEIC 2013), but this is counting without oil revenues.

81. Is there any provision that revenue generated is proportionately allocated to subnational government in the local of said generation?

[See answer to question 70]

82. How does mining legislation and policy attempt (if at all) to support or interact with local economic development?

As stated in the Mining Code, the official first objectives of the mining sector, which should be the basis for the definition of a national mining policy, are to guarantee the continuous social and economic development of the country, create jobs and improve local populations living conditions. It is also stated that mining activities, at least in the reserve zones, should disturb as little as possible the local economic and social arrangements. Finally, when mining is over, a job creation plan should be defined from the beginning, to create new economic dynamics and job opportunities, so that the area being abandoned does not economically suffer from the end of mining activities.

83. Are local communities allocated a proportion of revenue and if so how is this mechanism applied practically?

No, not directly. There is only some redistribution through taxes.

84. Are there any fiscal or monetary policies/measures that impact on the revenue (broad understanding of income) applied in the mining industry in terms of national income and local benefits?

It was not possible to obtain the necessary information to respond to this question.

85. Can you make recommendations as to how to prevent tax avoidance and or capital flight in relation to extractive industries?

Given there is a lack of specific local work on tax justice issues in relation to the extractive industries in Angola, we can only refer for now to the recommendations produced in the “Lusaka Declaration” (2010) by IANRA members, which should be discussed at a later stage with Angolan CSOs.

However, we would also like to mention the recommendations from CEIC/CMI recent Chapter in “Fugais de Capitais”<sup>5</sup>. They are primarily related to the role of banks in capital flight and not specific to the extractive industries, therefore they would need to be revised at a later stage to be more specific. They constitute an important Angola specific reference though.

#### Recommendations for banking institutions

- Banks should regularly publish information about their shareholding structures, including details about who owns direct and indirect stakes, i.e. the beneficial ownership of companies, trusts, and other legal entities.
- Clear control mechanisms, policies and procedures should be established to manage risk of money laundering may help bank staff and management to address and mitigate risk.
- Establishment of comprehensive KYC routines to help detecting suspicious transaction and to give guidance on how to act when discovered.

<sup>5</sup> Chapter 3 (pp. 49-92) in Alves da Rocha, Regina Santos and Vibeke Skauerud (eds.) 2014. “Fuga de Capitais e a Política de Desenvolvimento a Favor do Mais Pobres em Angola” [Capital Flight and Pro-Poor Development Policy in Angola]. Luanda: CEIC/NCA. Accessible @ <http://www.cmi.no/publications/file/4920-capital-flight-from-africa-with-a-little-help-from.pdf>

- Better reporting routines to relevant authorities such as the Central Bank or the Financial Intelligence Unit should be established to make the process more streamlined for the bank personnel.
- Compliance officers at the management level should be given the responsibility to ensure that the regulatory framework is used in practice to signal that the area is a priority in the institution.
- Regular training of staff in due diligence and ‘know your customer’ (KYC) principles will give bank officers better knowledge on how to meet the official requirements in practice.

#### Recommendations for governments

- Stricter regulations for banks on ownership disclosure, auditing and risk management, responding to international calls for increased transparency and supervision.
- African countries should support calls for G20 member states and other developed countries to create public registries of the true beneficial owners and controllers of corporations, limited-liability companies, and other legal entities.
- Know-your-customer provisions in the laws governing financial institutions should be strengthened to make it illegal for banks and other financial institutions to open new accounts without knowledge of the natural person(s) owning the account(s).
- Identification of bank customers will be more secure with nationally approved and standardised identification papers.
- FATF recommendations will be easier to follow in practice if governments agree on an effective review mechanism.
- FATF member governments should use their position within FATF to make fighting corruption a priority and to ensure that FATF members comply with the standards.
- Governments should establish legislation that makes aggressive, personal marketing of banking in tax havens within the boundaries of their country more difficult.

#### Recommendations for international organisations and development agencies

- Internationally organisations should aim to establish legislation that require financial institutions in secrecy jurisdictions and developed countries to collect information on the ultimate beneficial ownership of an account before accepting transfers into that account.
- FATF should assess whether their guidelines are sufficiently addressing the particular context of African economies which (a) largely are cash based, and (b) rely heavily on a parallel, informal banking system where informal value transfer methods are the norm.
- Illicit flows out of the developing world are a cross-ministerial issue for governments. Development agencies should therefore approach a wide range of institutions in the country they are working in. Counterparts in the treasury, justice, foreign and trade ministries can potentially all be key to coordinate the design and implementation of policies addressing money laundering, corruption and capital flight.
- Asset recovery cases often require extensive juridical knowledge, capacity and resources. Donor agencies should therefore consider to support African governments in building national capacity to fight money laundering and tax evasion, and provide technical assistance and other resources required to follow up asset recovery cases.

- Capacity building and training of bank personnel in due diligence and KYC principles and the rationale behind why these are important should be supported by donor agencies in collaboration with the banking sector.
- NGOs and the media may play an important role in informing the public of cases of and specific challenges of capital flight for the country.

### **Section 8. Implementation and reforms**

86. Where there are potentially supportive provisions for communities Identify and comment on key factors that contribute to or undermine effective implementation of supportive provisions.

The key factor that undermines most supportive provisions right now is the lack of an implementing regulation to the new Mining Code. This complementary law is essential to allow effective implementation. Civil society consultation needs to take place during the drafting of this law to ensure, among other areas, that clear, effective and binding provisions for community-supportive mechanisms are included. In October 2013, a consultation was announced. This “public” debate was with representatives of various ministries and of public companies. Local State representatives, civil society organization or community representatives were not present.

87. Provide specific recommendations to the relevant agencies and other actors such as Indigenous peoples and local communities and women about how to improve implementation of supporting laws and policies.

*To be defined following case study and with other organizations at national level.*

88. In addition to specific reforms you have proposed above What institutional, legal and/or policy reforms do you feel are required to better enable Indigenous peoples and local communities and women to govern their lands, territories and natural resources? What specific reforms are needed to guarantee women’s interests within these communities?

In relation to land, the review would like to support the following recommendations made by a study conducted the Rural Development Institute in partnership with Development Workshop (RDI, 2008).

**Conduct targeted research countrywide.** The actual land tenure situation in most of Angola is unknown Even less is known about the land rights of women. In order to develop effective strategies to address land rights and tenure security, and particularly those of women, a country-level mapping of land tenure and use should be conducted, similar to the current geological mapping being done by the Government.

**Reinstate a national awareness raising campaign on the Land Law.** The majority of Angolan citizens, particularly women, remain unaware of their land rights and the specific provisions of the land law, including the process for title claims.

**Develop and Implement a technical Land Management and Administration Capacity Building plan with local government officials.** As one of the key stumbling blocks to effective land management and administration, improved capacity at provincial and municipal levels to interpret and implement the land law is essential to protecting community land rights.

**Develop and pilot procedures for the formalization of land rights that integrate customary law and practices to the extent possible and appropriate.** Neither the

Land Law nor any other formal or customary law currently provides procedures to direct this process.

**Provide assistance and training to local traditional authorities regarding land rights, dispute resolution procedures, and women's rights.** As a central community figure in relations between citizens and state, traditional leaders have the potential to play a key role in protecting community land rights.

**Support the work of legal aid centres and land rights lawyers.** With many Angolan citizens, especially in rural areas, lacking access to lawyers, the small number of lawyers and associations working to protect land rights play an important role in Angola.

*The case study results should allow to discuss how mining impact on women and what specific reforms should be promoted to face these specific issues.*

89. Specifically, what changes could be made to the existing legal or policy frameworks to ensure appropriate legal recognition and support of such rights?

See previous answers.

90. Who and how would these reforms be implemented?

91. Are there international law supportive provisions or precedents that may support reform attempts – to tackle government reluctance – get recommendations from international judicial bodies for legal reform and to plug gaps?

### ***Section 9 Interaction with other laws and policies***

92. Which policies in the country drive and or inform the particular nature and provisions of minerals and hydrocarbon extraction laws?

Art. 6° of the Mining Code if about who should define the national mining policy and how, meaning that in this case, the law constitutes the basis for the policy and not the way around.

93. How do access to information laws apply to extractive activities and regulation in practice?

In its review of the Law on Access to Documents held by Public Authorities (11/02), the African Freedom of Information Center (AFIC) concluded that the law has the potential to “excessively restrict access to information held by State-run entities that are not formally public institutions” and “does not cover private entities” in an explicit manner (AFIC, 2013). The Law also includes broad security-related exemptions. Furthermore, this law was eventually subverted by the passing of the State Secrecy Act, which states that ‘...financial, economic and commercial interests of the State can be classified as secrets’. Therefore, access to information in Angola is already quite restrictive. The mining code does not contain any freedom of information provisions.

Within the oil industry, article 77(1) of the Petroleum Law states that ‘...all finance related information provided by oil companies should be confidential’. The Petroleum Taxation Law states in article 68 (1) that ‘...all revenues received from oil companies should be kept confidential’. However, according to OSISA report on Angola’s oil operations (2012), the template for Sonangol’s Production Sharing Agreements states, ‘Unless otherwise agreed by Sonangol...all technical, economic, accounting or any other information...shall be held strictly confidential...either party may, without such approval, disclose the aforementioned data: to the extent required by any applicable law, regulation or rule (including without limitation, any regulation or rule of any regulatory agency, securities commission or securities exchange on which the securities of such Party or of

any such Party's affiliates are listed)'. The Angolan Government has previously provided this authorisation to companies such as Statoil, that are bound by Norwegian Transparency Laws.

There has been a notable improvement since 2004 in the publication by the Ministry of Finance of more information on oil sector related financial activity. However, many discrepancies exist, casting some doubt of their accuracy. Additionally, major gaps in such information still exist, particularly in relation to royalties and concession bonuses.

94. How does minerals and hydrocarbon legislation and policy interact with other laws and policies that relate to water?

Mining Code states that mining activities must comply with the Law on Waters (Art. 64°).

95. How does minerals and hydrocarbon legislation and policy interact with other laws and policies that relate to environmental regulation?

The Mining Code states that specific standards related to environment preservation must be observed in mining activities. These standards must be set by the Ministry of Geology and Mines and the Ministry of Environment, but in drafting them, environmental risks must be compared with the advantages that mining activities might bring to the communities, with the aim to balance both interests (Art. 63°). In practice, this could be a critical issue, as it can be used by companies as a reason to justify environmental-unfriendly activities.

Art. 63° also states that all national and regional strategies and programs on environment and sustainable development are applicable to mining activities, as well as international instruments that have been ratified by Angola. Mining activities must also comply with the Law on Environment, Biological and Aquatic Resources, as well as standards on environmental impact assessment (Art. 64°).

96. How does minerals and hydrocarbon legislation and policy interact with other laws and policies that relate to world heritage sites and areas of particular sensitive bio diversity (protected areas)?

The Mining Code does not explicitly refer to world heritage sites and natural reserves as areas where there cannot be mining activities. It only states that the Government can exclude some areas of mining activities areas to protect, among other things, fauna, flora and environment (Art. 14°).

97. How does minerals and hydrocarbon legislation and policy interact with other laws and policies that relate to local authorities?

The main laws that relate to local authorities are the decentralization laws and they are not referred to in the Mining Code. However, the latter gives specific attributions to local authorities in relation to the the process for artisanal mining licenses (Art. 290°).

98. How does minerals and hydrocarbon legislation and policy interact with other laws and policies that relate to traditional Authority?

The Mining Code does not recognize customary law.

99. How does the responsible state authority (e.g. Ministry of Mines/Mining Affairs Board/Mining Commissioner) Interact with other agencies-sector organisations?

*Question for lawyers and workshop*



**Land Law (Lei de Terras, Lei 09/04) (2004)**

The land Law grants the right to “private property” in urban, but not rural areas, where right is limited to ‘superficio’ (World Bank, 2007). Whilst, land titles are based upon the principle of concession of usage rather than permanent ownership, these rights and titles can be inherited or transferred. It formally recognizes collectively controlled community land, regulated through traditional power structures and community level and good for collateral for community loans. It permits expropriation in cases of existence of natural resources or due to inefficient use of the allocated land; and it imposes requirements on the efficient use of land and conditions on capacity to cultivate.

**Law of Territorial Planning and Urbanization, Lei 03/04, 25 June 2004 (*Lei do Ordenamento do Território e do Urbanismo*) (“LOTU”)** governs both rural and urban land and requires territorial development plans at central, provincial, and municipal levels. The National Assembly is charged with approving high level strategic plans. The provincial government officials develop their provincial level plans within the national framework. Municipal level plans (or city level management) plans follow from the provincial and are used for implementation. (Art 32)

**Law Concerning Refutation of Administrative Decisions, 2/94 (14 January 1994):** permits challenge of government processes and exercises of authority, such as alleged arbitrary expropriations of land and urban evictions for land development.

**2001 Decree Regarding Resettlement of Displaced People.** The Resettlement Law, which addresses resettlement of persons displaced by the conflict, acknowledges a right to housing, and provides for new government allocations of land (Article 14).<sup>102</sup>

**Decrees (Decreto-Lei) 17/99 and (Decreto) 27/00** assign to the provincial government the control over development, plot demarcation, and registration through an Inspection and Control Office (*Gabinete de Inspeccao e Fiscalizacao*) and planning and housing responsibilities through the Provincial Directorate for Public Works and Urbanism (*Direccao Provincial de Obras Publicas e Urbanismo*)

102. How do common and statutory law interact in the context of land and property?

The vast majority of Angolans hold their land under principles of customary law. Despite the existence (2004) and regulation (2007) of statutory law related to land use, occupation and possession, few people are aware of their land rights or the process to formalize these, and the law and regulations have not yet been fully implemented. In rural and peri-urban areas, traditional leaders (sobas) continue to administer land on the basis of customary law. Rural communities can obtain a perpetual right of useful customary domain via a recognition title given by the local authority as is provided for by the Land Law. “The Government of Angola remains the holder of the direct domain; only the useful domain transfers. Holders of useful customary domain title have the rights of occupation, possession, and use of the land” (USAID, 2007).

103. What is the legislation relevant to recognition (or lack thereof) of community territories? What are the forms of title or tenure? Are there any specific provisions related to women’s tenure rights within families and communities?

The Constitution (2010), the 2004 Land Law, and the 2007 land regulations, constitute the key legal instruments that formally recognise community lands in Angola. Moreover, rural communities are recognised entities and have legal standing to defend their collective



rights under the Land Law. The below table summarises the types of land tenure provided for within Angolan legislation (*ibid*):

**Useful Customary Domain.** Rural communities – defined as groups of neighboring families that have collective rights of possession, administration, and use of land – can obtain a perpetual right of useful customary domain. The relevant government authority has the power to recognize a rural community’s useful customary domain for land occupied by the community and used by the community in a useful and effective manner and according to custom. The holder of useful customary domain cannot transfer the land rights granted. A right of useful customary domain cannot be seized unless by foreclosed mortgage. If the community land is recognized as useful customary domain under the land law, it cannot be the subject of a concession (GOA 2004a; ARD 2007a).

**Useful Civil Domain.** The government can grant rights of useful civil domain over rural and urban land by means of a concession contract or lease. Useful civil domain is a perpetual right that can be mortgaged (GOA 2004a).

**Surface Rights.** The government can grant surface rights to rural and urban land to individuals and entities for the construction of buildings or to make or maintain plantations. Surface rights are granted provisionally for a 5-year term and can be extended to 70 years (GOA 2004a; ARD 2007a).

**Precarious Occupation Rights/Temporary Leaseholds.** The government can grant temporary occupation rights up to one year in duration (subject to renewal) to rural and urban land to individuals and entities for purposes of construction, mining, scientific investigation, and other activities permitted by the relevant authorities’ regulations (GOA 2004a).

**Customary Rights and Former Landowners.** A majority of Angolans hold land under customary law, asserting rights based on principles such as —first clearer of land, inheritance, and informal transactions. Some former landholders, such as Portuguese holders of large farms, claim de facto rights based on their former ownership and continued occupancy. In at least one area of Benguela Province, the local government classifies the rights of these farmers as akin to perpetual leaseholds (GOA 2004a; GOA 2007; ARD 2009a).

No special provisions are made for women with respect to land use or ownership, leaving women vulnerable to discriminatory traditional practices as prescribed by customary principles.

104. How does the land policy, common law and legislation framework distinguish between use and ownership?

As is prescribed by the Constitution, the State has ultimate ownership of Angola’s land (the land of Embassies and churches are notable exceptions) but rights to occupy and use lands can be granted to individuals as well as communities. The Land Law (2004) allows private rights to urban land with freehold titles, whereby the holder has a perpetual right to occupy and use the land and where an approved urban development plan exists. The holder can transfer, mortgage and sell this right, but the sale of urban land must be by public auction and in accordance with fixed price indices and municipal rules. Landholders who have received their private property rights from the State, can only transfer these with the authorisation of the local authority. Rural communities fall under the Land Law provisions of “useful customary domain”.

Land is not privately owned by individuals, but rather as collective ownership by rural households\communities. Customary law gives rural families the power to use and occupy; for each family to construct their housing and cultivate the land for their livelihood. (Article 22 paragraph 2 of the LT; article 15 and 72 of RGCT - General Regulations for Granting of Land - Decree n ° 58/07 of 13 July). Community occupied lands that are considered by the relevant local authority to be used by the community in a “useful and effective manner and according to custom” can be granted “useful customary domain”. Once granted, these rights cannot be transferred, seized (unless by foreclosed mortgage) or subject to a concession. Although the State retains “permanent ownership” rights, use and occupation rights and titles can be granted, and once granted, with the exception of community titles, can be transferred and inherited.

105. Please describe and identify specific provisions within the land related legislative instruments. Are there any limiting provisions? Is so, what are these? Describe any laws that conflict or take precedence over this legislation.

Overall, the land law and subsequent regulations are quite ambiguous in a number of areas. Whilst the land law provides a broad overview of landownership in Angola (i.e. the types of tenure), the regulations are quite generic and fail to set out concrete and clear guidelines on how the law should be applied (i.e. how to process land tenure applications). Specifically, they do not provide sufficient detail on how communities can secure communal land. Finally, they fail to address gender disparity between men and women in terms of land ownership and access. The land legislation (the 2004 Land Law and the 2007 regulations), in itself, does not contain conflicting provisions, however, this could be as a result of the ambiguous nature of statutory legislation and conflicts often arise due to the nature of law implementation; in favour of some provisions over others, as well as interaction with other pieces of legislation, most notably the extractives sector.

According to the Land Law, despite holding original ownership rights of the land, the State must respect and protect the land rights held by rural communities, including those based on land use and customary principles. The State should facilitate the process of formally recognizing these rights via the award of land titles. However, despite this provision, over four years following the original deadline established for securing land titles (including community titles), very few communities have formalized their land rights. By contrast, an increasing number of “private” land transfers in rural areas for commercial purposes are taking place. Local authorities commonly feel sandwiched by orders from the capital to process “individual” concessions in the interest of national and local economic development and the customary usage and tenure practices and rights of local communities.

106. Which state agency (or agencies) is mandated to develop and implement land laws and policies that relate to territorial and tenure rights?

The below table identifies the various state agencies involved in land legislation and management in Angola and their specific roles and responsibilities (USAID, 2007):

**Central government.** The central GoA office is responsible for maintaining a central archive of land, demarcation, maps, and records. (Arts 60 and 67)

**Provincial government.** The provincial government is responsible for authorizing the transfer of provincial land 1,000 hectares or less in size, with the exception of public lands, which are within the jurisdiction of the Council of Ministers. The provincial government has authority over the transfer of urban land and establishment of rights to urban land in accordance with urban plans, manages leases, and administers the province’s land. (Art 68)

**Municipal and *comuna* government.** No specific responsibilities or authority is granted the municipal- and *comuna*-level officials under the land legislation, although the provincial government can devolve its authority for demarcation if desired. To date, no provincial government has devolved the authority successfully.

**Central level.** The Ministry of Agriculture and Rural Development (MINADER) has responsibility for rural land. In 2003, the Ministry of Urbanism and Environment (MINUA) was created and given authority over urban land matters, including urban planning. MINUA includes the National Institute of Geography and Cadastre (INGC), which is responsible for creating and maintaining the cadastre, and the National Institute of Spatial Planning and Urban Development (INOTU), which is charged with setting planning and development standards. The Ministry of Public Works (MOP) is responsible for the development of roads, highways, and other physical infrastructure.

**Quasi-governmental bodies.** *Bairro* level authorities and *Comissoes de Moradores*—bodies that operate informally and without government sanction—provide access to land and “regularize” encroachments. The population recognizes these bodies, which grew out of the operations of political parties after independence, as having authority over land in urban and peri-urban informal settlements.

**Autarquais locais.** Angola plans to further devolve authority of matters such as land administration and management, by creating a system of locally elected governmental councils. These councils will operate as the lowest level of formal government (below the *comuna* level). These bodies have yet to be established, and it is unknown what authority they will have over land matters and whether they will achieve a form of community-based land administration.

107. Where is this mandate and power derived? (that is, which legislative instrument identifies and gives the State agency its power?). What are the political and institutional dynamics with other agencies?

The Land Law (2004) and its subsequent regulations (2007) provide for the mandates and powers outlined in the previous table.

108. Is collective, Native or Aboriginal title recognized? If so, is it considered ‘private’ or ‘public’? Please specify relevant laws and describe any issues surrounding this.

Please see response to question 103.

109. Describe any specific processes or pressures that infringe upon de jure or de facto territorial or tenure rights in your country; examples may include land grabbing, natural resource exploration/exploitation, etc. Explain if/how these processes are provided for in the legal and policy framework.

Land conflicts are common in Angola and are caused by a number of processes including national development, commercial and natural resource exploration/exploitation activities.

The majority of land conflicts in Angola take place in urban and peri-urban settings. Land expropriation in urban and peri-urban areas of informal settlements by the Government for purposes of constructing formal residential settlements and infrastructural development has been a common source of conflict since the end of the war, resulting in the mass eviction and relocation of thousands of affected communities.

Although less common to date, land conflicts in rural areas exist (and some expect them to greatly increase in the coming years), typically between rural communities and large-scale

commercial farms (fazendas) that have begun to resume or begin operations, following the end of the war in 2002. In some cases the disputes arise due to community occupation and use of pre-existing fazendas, whilst in others the fazendas are encroaching on community lands. The granting of concessions to large-scale farms on the basis of old colonial boundaries is juxtaposed to both the community claims of pre-colonial ancestral rights as well as the customary rights of communities who have occupied and used the land, during the war, for more than 25 years.

With respect to natural resource exploration and extraction, community land tenure and rights are particularly vulnerable. As is the case with land, the Constitution (2010) recognizes all natural resources (solid, liquid and gaseous), both soil and sub-soil as the property of the State (article 16), whilst the Land Law allows expropriation in cases of the existence of natural resources.

Furthermore, the recent Mining Code (2011), extended draconian provisions regarding the establishment of legal jurisdictions restricting the movement of people and land tenure and use in mineral rich areas (zoning system), previously limited to the diamond mining provinces of Lundas, nationwide.

In theory, the Land Law, via its recognition of customary domain, should protect the rights of peasant communities from large speculators (those who buy land with the intention of raising its price for resell) and other powerful economic elites and commercial entities. The customary domain gives families in rural communities, a perpetual right of possession and use of land as if it was their own property according to the custom of each community (article 22, paragraph 2; Article 19 paragraph 7 of the LT; Article 18 paragraph 1 of RGCT). However, in practice, communities' land tenure rights often lose out to private and individual land transfers with economic\ commercial objectives.

Land legislation contains provisions to deal with cases of conflict. In the case of public acquisitions, whereby the State wishes to acquire land that is under community customary domain for public interest, the law requires that local community leaders (traditional leaders, pastors, priests, elders, etc) must be heard via a consultation process and fair compensation (either alternative land or other forms of compensation) must be provided (art. 11 and 12 LT, Article 21 of RGCT.) It is important to note that the Law recognises the right holder as the "community" and not just the traditional leader, *soba*. (Mosaiko, Inform N°19, June 2013). In this sense, the *soba* does not have the power to sell or transfer land without the approval of the community (cf. art. 15°; 16° e 18° do RGCT). However, regulations and procedures to ensure consultation processes with affected communities take place, have not yet been established and implemented, and there are no legal provisions for communities to formally sanction traditional leaders who abuse their power. (Cain, 2013) Finally, both the law and regulations do not protect against large-scale land grabs given large parcels have to be approved by the Council of Ministers, and the land-registry is non-transparent, inaccessible and involves a number of separate agencies (PLAAS report 2010).

Traditional and customary mechanisms for dispute resolution prevail in rural parts of Angola. "Traditional systems have more social acceptance but are localized, have limited impact, often lack neutrality, reflect existing social hierarchies at the expense of equality, and are impotent against the formal law" (Nielsen, 2008). In most rural areas, citizens (including women) will take a land dispute to their traditional leader or pastor for resolution. Most of these cases are inter-marital or familial and do not involve outsiders. However, under the law, formal or statutory dispute resolution mechanisms have supremacy.

The Constitution, Civil Code and the Land Law and regulations provide three forms of dispute resolution processes; Civil court procedure; Mediation and arbitration (ADR); and limited traditional dispute resolution.

110. What is happening about women's tenure right in the country? (e.g. inheritance)

Despite the existence of a family law that provides for the economic and social rights of women, for example, in common law marriages and the inheritance rights of daughters, customary laws and traditional practices, the majority of which favor men<sup>7</sup>, prevail. Furthermore, land legislation in Angola makes no official statements regarding the land tenure rights of women. This leaves women at a great disadvantage given the gender disparity in Angola with respect to women's access to rights, generally, and traditional practices with respect to women's property rights, more specifically.

The below table summarises key issues affecting women's tenure rights in Angola (Nielsen, 2008):

**Separate and community property:**

Angola recognizes that married (registered and de facto) individuals may hold separate property, community property, or both. The Family Code requires couples to elect whether to hold property individually within the marriage or to adopt a community property approach. If the couple elects a community property system, the spouses each have equal, undivided shares to property earned and received during the marriage. If the couple makes no election, the presumption of community property governs (Articles 49-53). A spouse cannot alienate community property without the consent of the other spouse (Article 56). At death, community property carries no automatic right of survivorship; spouses can gift their 50 percent share as they wish at their death.

**Divorce, abandonment, separation, and division of property:**

The Family Code provides no formula for the division of property in the event of divorce or separation. The couple will often manage the division of property themselves with the involvement of the families as necessary. Disputes are referred to elder family members or respected members of the community. Women in rural areas often move to their husbands' villages upon marriage and often live and cultivate land owned by the husband's family. In some areas, if the women are subsequently abandoned, separated, or divorced, the former husband or relatives of the husband may force the women from the husband's land. Whether these women are welcome back in their natal homes is a matter of local custom and far from assured.

**Inheritance**

The succession provisions of Angola's Civil Code allow for testamentary disposition of property in accordance with the testator's wishes. Intestate provisions grant property to surviving spouses and children equally. As a matter of practice, however, daughters may not inherit land or will inherit a smaller amount than sons. Families divide their land based on the theory that daughters will receive land when they marry, while sons will be required to provide sufficient land to support a wife and children and care for elderly parents.

**Widowed**

If widowed, the fate of the woman largely depends upon the families and the soba. Women are often at risk for eviction by their in-laws, particularly in rural areas. In some cases, widows are allowed to stay on their husbands' land but only as holders in trust for the children; they do not have the right to lease or sell the land, and the land's use is

<sup>7</sup> In some areas of the country daughters as well as sons commonly inherit land from their parents, and married couples hold property jointly.

controlled by the in-laws. In other cases, the widow may decide to leave because of tensions and conflicts with the in-laws. If a widow returns to her birth family, she may or may not receive a plot to farm from her parents or brothers.

### **Impact upon women's land rights**

In these cases of loss of land rights, women are unlikely to have the assets necessary to lease or purchase land and they are often forced to resort to the most insecure and least lucrative arrangements: they may borrow land, sharecrop, or squat on former commercial farms, making sporadic payments to landlords. In all of these cases, the land that women can access is most likely to be among the lowest quality. In some areas, the sobas may support the rights of divorced women seeking land from their fathers. However, the women's success depends on the active support of the sobas as opposed to settled principles of customary law.

111. How is collective tenure managed and protected in practice? What are the governance arrangements? What challenges are being confronted in the practical day to day management of collective tenure systems?

Traditionally, the soba was (and in many areas still is) responsible for managing the community's collective tenure. The soba holds a number of administrative tasks, including; establishing plots to individuals and households, as well as the areas of land for common use, setting rules governing communal land and its resources (and, in some circumstances, the use of land allotted to individuals), and adjudicating land disputes.

112. How can the practice of customary law be made compatible with progressive gender provisions within constitutions and land and related statute and policy?

At the local level, given the central role played by sobas in administering customary land rights at community level, efforts should be made to work with sobas, as well as other local governance bodies to identify the laws and principles they apply and revise these to meet standards of gender equity and the just access for women to resources, such as land. At the same time, given women's legal literacy is significantly lower than that of men, necessary awareness raising campaigns related to land rights should make particular efforts to target women.

113. What threats exist to the use of customary law as a basis for collective land rights?<sup>8</sup>

See response to question 109.

114. How are customary law systems accommodated in land and similar legislation, regulation and policy?

While a number of provisions of the 2004 Land Law recognize customary law or traditional practices, the scope of customary law is highly restricted and always subject to formal law. The Land Law permits communities to use customary methods of dispute resolution in cases related to rural community land rights (possession, management, use and production) or issues related to the useful domain of rural community lands. If dissatisfied with the ruling of traditional mechanisms, the plaintiffs may appeal to the

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<sup>8</sup> E.g. moves to individual tenure as per World Bank and similar policy prescriptions?

mandatory mediation, conciliation, and arbitration. The law is unclear on the interaction between formal and customary law in cases of conflict between these.

115. What are the specific points of weakness and challenge for women in these communal tenure systems? What efforts are being made by state and civil society to reform law/policy/practice to advance women's land rights and protections?

Please see answer to question 110.

116. Are there conflicts between customary law and statutory law in relation to land use and ownership and resources?

The main points of conflict between customary and statutory law with respect to land use in Angola include:

- ☐ Whilst community land and customary tenure is recognised by the Land Law and regulations, the law requires existing land occupiers to acquire a formal title from municipal or provincial government authorities, within a period of three years, after which time informal occupation would become illegal. From a procedural perspective, given the extremely short time period for land registration, coupled with a weak administrative structure, this statutory provision directly conflicts with principles of customary tenure ;
- ☐ Traditional principles regarding sub-surface mineral resources are not well defined in contrast to statutory law which places primary ownership with the State. This can, and has, led to conflicts between communities and concession holders in mineral resource rich parts of the country.

117. How does the constitution interpret the status of customary law as opposed to statutory law?

The Constitution formally recognises customary law so far as it does not contradict the Constitution or statutory law.

118. What are the problems and opportunities' with use and interpretation of customary law in engagements around natural resource extraction, in land use?

It was not possible to obtain information on concrete examples of this (case law). Also, the Angolan legal system does not respect the principle of "jurisprudence".

119. How are issues of traditional leadership conduct and customary law dealt with in your countries?

The Constitution recognises the status, role and functions of traditional authorities in accordance with customary law, which are to be respected by both public and private in their relations with traditional authorities, in so far as they do not contradict the Constitution (articles 223 and 224).

Angola's traditional leaders, the *sobas*, act as local governing authorities in rural and many peri-urban areas. A variety of local governance issues, including land administration and management, have traditionally been handled by sobas in conjunction with village elders. In recent years the division between traditional and formal governance structures has

tended to become somewhat ambiguous. In some cases, sobas have gradually lost power while, in other cases, they have been almost totally absorbed into formal government structures. In the more remote areas of the country sobas often continue to serve as the sole governing authority.

120. Is there any policy legislation or customary law that protect women's use right to communal land and spaces (sometimes commons).

Whilst the land law makes no specific provisions pertaining to women's rights to land, the Constitution, via its stated principles of equality and non-discrimination, should, in principle, provide at least some protection of women's land rights in terms of the application of statutory law.

Customary principles and practice tend to favor men and women's access to rights, including communal land, is dependent upon the traditional leader, soba.

121. Are there laws or policies that deal with reparations for land lost to natural resource extraction?

The following are the legal provisions covering reparations for land lost to natural resource extraction:

Land Regulations (2007):

**Partial reserves.** A partial reserve is land set aside for public services, economical housing,

water projects, public health facilities, public utilities, conservation zones, ports, airports, railways (with expansion zones), tourism related projects, industrial projects, forest protection, and prospecting for and utilization of mineral resources. (art 27)

**Expropriation for reserves.** Holders of land rights affected by expropriations for reserves may select compensation for rights lost or participation in the reserve as a stockholder in mixed economy associations established for the activities on the reserve land. (art 28)

**Calculation of land value.** The compensation paid for land expropriation for reserves shall be the fair value of the land as of the date of expropriation and cannot take into account the establishment of the reserve, and projects that were not completed on the land five years prior, and any improvements after notification of its status as a reserve. (art 30)

## **Part 4: Judgments**

Part 4 does not contain any responses. The only case (high profile) known in Angola is that of the case brought against a number of military generals by a well-known Angolan human rights activist, Rafael Marques, related to the human rights violations in the Lunda Provinces. In September 2011, Marques published a report in Portugal (to try and evade draconian censorship laws in Angola) on human rights abuses in Angola's diamond areas (the Lundas). Entitled "Diamantes de Sangue: Corrupção e Tortura em Angola" (translated "Blood Diamonds: Corruption and Torture in Angola"), the report generated two criminal complaints. In Angola, the author then lodged a formal complaint in November 2011 against nine generals and executives of a diamond mining company for "crimes against humanity". The Office of the Attorney General (PGR) in Luanda summoned the ten witnesses who had signed the complaint, to testify in the case. However, it then refused to investigate the crimes reported and closed the case, following a summary investigation in which only four of the ten witnesses presented in the case were heard. Judges from the office of the District Attorney apparently threw out the



evidence given by the plaintiffs, arguing that they had merely “repeated what they had already said to the journalist and that it was also contained in his book.” The inference is that the PGR was only interested in hearing testimonies that contradicted Marques’ report. In March 2012, the generals, in turn, filed a criminal complaint against the Marques and his publisher, Tinta da China, in Portugal for defamation and slander. Despite numerous national and international advocacy efforts to have the charges against Marques dropped, the case is still in process.

**We did not find any further case law or precedents existing in relation to these issues in our contacts with lawyers. Also, it is important to note that the Angolan legal system does not base itself at all on “jurisprudence”, and as such, even if there existed any case law promoting community rights, these are non-binding and have limited impact upon future cases. Finally, during the Luanda workshop where the preliminary results of this review were presented, civil society participants from the diamond-rich Lunda Note province, stated that they had more confidence in international instruments than the national legal system in Angola with respect to accessing justice on these issues.**

122. Describe any case law/judgments that either support or hinder indigenous peoples and local communities’ rights. Issues of relevance include, for example, Indigenous peoples and/or local communities’ self-determination, land, territory and natural resource ownership, self-governance, connection with and governance of territories, areas or natural resources, freedom of culture and religion/belief, etc. This may include a wide range of procedural as well as substantive rights.
123. If applicable, discuss any major precedents set – either negative or positive in relation to the rights of Indigenous peoples and or local communities and women– and how they may be affecting or used by other communities as leverage in their own cases or movements.
124. If applicable, discuss any major precedents set – either negative or positive at international or regional judicial forums in relation to the rights of Indigenous peoples and or local communities and women– and how they may be affecting or used by other communities as leverage in their own cases or movements.(include compliance)
125. Can we identify important public interest litigation firms and organisations that would be useful to engage in attempting to creating new and positive law and interpretations (precedent and constitutional cases)in a network context. Provide the name and contact details including an email address, key contact person if possible along with a few lines on their focus areas.

## **Part 5: Constitutional, International law and non judicial mechanisms**

### ***Section 1: International agreements/treaties***

126. Which of the following instruments has the country signed and ratified or only signed?

International Agreements/Treaties	Signatory	Ratified
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International Covenant on Economic, Social and Cultural Rights		10/01/1992 (Accession)
Optional Protocol to the International Covenant on Economic, Social and Cultural Rights	24/09/2013	X
Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa	22/01/2007	30/09/2007
Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights	22/01/2007	X
Protocol on the Statute of the African Court of Justice and Human Rights (merged court)	27/01/2012	X
African Charter on the Rights and Welfare of the Child		11/04/1992
Additional Protocol on the African court (access by non-state actors so called article 34)		X
ILO Indigenous and tribal peoples Convention 169		X
SADC Mining Protocol	08/09/1997	X
Angola voted "Yes" to the UN Declaration on the Rights of Indigenous Peoples		

127. Are you are aware of any bilateral investment treaties that override or negatively impact on the governments ability to facilitate development or regulation of investment company conduct. E.g. cant amend the law because of BIT provisions.

It was not possible to obtain the necessary information to respond to this question.

### ***Section 2: Constitutional rights***

128. What key rights provisions exist in the constitution that may serve to either strengthen or undermine community development and control claims?

The following rights of communities are specifically recognized by the Constitution:

- Right to property, requisitions and expropriations (article 37(2))
- Historic, cultural and artistic heritage (article 87)
- Use of and benefit from means of economic production (article 92(2))
- Land rights (articles 98 and 15)

Communities are mentioned specifically in reference to the legal recognition of traditional authorities (articles 223 and 224) as representatives of rural communities.

129. What does the constitution say about International law (e.g. is it a monist state)

Article 13 of the Constitution deals with international law. The Constitution states that international law, general and common, shall form an integral part of the Angolan legal system, as well as international agreements and treaties which Angola has ratified and published.

### ***Section 3. Non judicial and quasi judicial remedies***

130. Has the UNGPs impacted on national legislation and access to remedies in your country? Has this had any noticeable impact on the ability of communities to defend themselves or advance their interests?

With the exception of Global Witness and others (i.e. OSISA), who have developed country specific recommendations for oil companies operating in Angola, there has been little explicit civil society engagement of the business and human rights policy and advocacy agenda in Angola.

131. What does the African Mining vision mean for the conduct of minerals and hydrocarbon extraction and affected community development prospects in your country

It was not possible to obtain the necessary information to respond to this question.

### ***Section 4: Other declarations and conventions***

132. Explain how your country has attempted to observe or honour the following conventions and or declarations?

- a. African Union Convention For The Protection And Assistance Of Internally Displaced Persons In Africa (Kampala Convention)  
<http://www.unhcr.org/4ae9bede9.html>

MINARS (The Ministry for Social Assistance and Reintegration) has primary responsibility for the provision of basic assistance and support to a number of migrant groups, including; Angolan former-refugee returnees, demobilized military, IDPs, and asylum seekers and refugees residing in Angola during both repatriation and resettlement phases (Decree 00/07). Despite weak local government capacity, MINARS has promoted a “decentralized” approach to its operations, delegating responsibilities to provincial level government via Provincial Humanitarian Coordination Groups (PHCG) (Decree 01/01)..

Within the PHCG a sub-group of IDPs and Refugees consists of Provincial Directorates, including health. The sub-group is responsible for identifying resettlement sites and ensuring, amongst other prerequisites, the sites contain functional health structures (Article 2). The regulation contains specific provisions related to these “functional health structures”, including distance from communities, human resource requirements, health services and medical equipment and supplies (Articles 7 & 8). It was not possible to verify whether the PHCGs still exist or are functional, nor in what contexts.

In terms of implementation, little information is available. However, a number of health initiatives implemented by MINARS were identified. As part of recent joint MINARS-IOM-UNHCR repatriation efforts, transit centres were expected to be established in the provinces of Bengo, Cabinda, Huambo, Moxico, Uige and Zaire (UNHCR 2011). MINARS planned to “provide returnees with social reintegration kits, including household items, “do-it-yourself” construction tools, agricultural tools and seeds” (ibid). Since 2003, IOM has worked alongside MINARS in Moxico and Bié provinces as part of the

UN JP on Children, Food Security and Nutrition. IOM has established a strategic partnership with MINARS in relation to the reintegration of returnees, including capacity building on nutrition and HIV. The most recent available data on MINARS activities covers the period 2002-2008 (MINARS 2008). The general Activities Report highlighted the following health-related interventions:

- Support to the construction of health centres and health posts at destination sites of repatriation (provinces were not specified by the activities report).
- Health education (Malaria control and HIV prevention) as part of Demobilization and Reintegration of Former Military Personnel and Child Protection programmes.
- Support (type not specified) to families affected by the Marburg epidemic in 2009 in the province of Uige.

At the level of policy, resettlement programmes include a health component, whilst responsibility for implementation has been delegated to the Provincial level of Government. Given the lack of available information, however, it is not possible to verify to what extent MINARS is currently implementing health activities as part of its reintegration and resettlement support to migrant groups.

b. Pretoria Declaration on Economic, Social and Cultural Rights in Africa

See response to question 26.

c. Declaration on Gender Equality in Africa

A number of policies and programs have been adopted by the Government with respect to gender equality, resulting in some small gains. Women now make-up over 35% of members of Parliament, as well as heading a number of Angola's ministries. A law on Domestic Violence was approved in 2011 which provides much needed protection to victims of gender based violence. Implementation has been slow and civil society is only beginning to conduct monitoring activities. A national rural micro-credit programme claims that 80% of beneficiaries are women. Angola has a National Gender Policy (2011-2015) and an Action Plan for Women's Empowerment and Gender Equality, however it was not possible to obtain a copy of the action plan nor civil society analysis of the same. A national consultation process with rural women to identify their development priorities is currently underway. Despite these efforts, however, gender equality in Angola is still far from secured in Angola and civil society organizations continue to raise this problem in national, regional and international human rights fora.

d. State Party reporting guidelines for Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights (Tunis Reporting Guidelines)

Angola has submitted two periodic reports, covering the periods 1990-1998 and 1999-2010, respectively. The second report combined the second, third, fourth and fifth Periodic Reports. Angola has established the Inter-sectoral Commission in Charge of Preparing Human Rights Reports (CIERDH), a broad-based inter-departmental Commission responsible for preparing State reports, which whilst open to civil society organizations in theory, in practice does not always involve the participation of some of the most well-known human rights organisations in Angola. However, in its concluding observations related to Angola's 2<sup>nd</sup> periodic report (2012), the ACHPR stated that the report did not conform neither to the African Commission's Guidelines on State Reporting under Article 62 of the African Charter, nor to the Guidelines on the Maputo Protocol. In doing so, it recommended that the Angolan Government ensure that all the relevant stakeholders, including human rights NGOs, are involved in the preparation of future periodic report

and that future reports conform to the Guidelines on State Reporting under the African Charter and the Maputo Protocol.

e. Draft Guidelines and Principles on Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights

In its concluding remarks on the second periodic report submitted by Angola (see above), the ACHPR commended Angola on the following actions taken in the promotion and protection of ESCR:

- ☐ Policy to provide free and compulsory education
- ☐ Measures adopted to give effect to the right to the best attainable state of health, including: immunization campaigns against poliomyelitis and measles; the Accelerated Child Survival and Development Plan; the free distribution of insecticide-treated mosquito nets; the provision of free medical assistance to women with cervical cancer; and the National Strategic Plan to Reduce Maternal and Child Mortality.
- ☐ Policies and programmes to alleviate poverty and improve the living conditions of the population, including: The Poverty Alleviation Strategy; The Development Programme; The National Rural Development Strategy; The Plan for Accelerating Child Survival and Development Actions; The 2009-2013 National Food Security and Nutritional Strategy; The National HIV/AIDS Strategic Plan; The National Institute for AIDS Control (INLS); and The National Programme for Preventing Mother-to-Child Transmission.

With respect to areas of concern, the concluding observations included the following:

- ☐ The reduction by 30% in 2009 of public spending in the health sector and the fact that the overall health budget dropped from 3.2% to 2.38%.
- ☐ The allegations of forced evictions without prior consultation with the affected citizens, and without adequate compensation.
- ☐ The lack of information on revenue obtained from the extractive industries, nor on initiatives taken to ensure transparency in the exploitation and utilization of mineral and natural resources in Angola

f. African Charter on Human and Peoples' Rights

In addition to the above responses to (d) and (e) the ACHPR's most recent recommendations made to Angola on the occasion of Angola's 2<sup>nd</sup> periodic report (2012) (Angola has not submitted a report since this 2<sup>nd</sup> periodic report) were as follows:

- ☐ Ratify and domesticate a number of regional and international legal instruments, including: The Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (the Court Protocol), and make the declaration under Article 34(6) of the Court Protocol to allow direct access for individuals and NGOs to the African Court on Human and Peoples' Rights; The African Charter on Democracy, Elections and Governance; The African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention); The African Union Convention on Preventing and Combating Corruption; The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol; The International Convention on the Elimination of All Forms of Racial Discrimination; The Convention on the Rights of Persons with Disabilities and its Optional Protocol; The International Convention on the

Protection of the Rights of All Migrant Workers and Members of their Families; The Convention on the Prevention and Punishment of the Crime of Genocide; The Second Optional Protocol to the International Covenant on Civil and Political Rights; and The Optional Protocol to the International Convention on Economic, Social and Cultural Rights

- ☐ Adopt the appropriate legislative measures, plans, policies and programmes to give effect to the provisions of the African Charter and the Maputo Protocol;
- ☐ Ensure dissemination of the African Charter and the Maputo Protocol to the public, including through translating the texts into the local languages;
- ☐ Include current statistics and gender disaggregated data in the next periodic report;
- ☐ Include, in the next periodic report, specific information on the provision of legal and judicial assistance services to underprivileged citizens;
- ☐ Establish an independent national human rights institution in accordance with the Paris Principles;
- ☐ Adopt specific legislation criminalizing torture in accordance with the provisions of the Guidelines and Measures on the Prohibition and Prevention of Torture, Cruel, Inhuman and Degrading Treatment or Punishment (the Robben Island Guidelines);
- ☐ Ensure training on and dissemination of the Robben Island Guidelines to all judicial personnel and prison officers;
- ☐ Provide in its next Periodic Report, comprehensive information on prisons and conditions of detention;
- ☐ Take all necessary measures to reduce overcrowding in prisons, such as adopting alternative sentencing policies and imposing non-custodial sentences such as community service;
- ☐ Adopt all appropriate measures to ban forced evictions without prior consultation and ensure adequate compensation to people who are evicted from their homes;
- ☐ Take all necessary measures to ensure allocation of the required budget to the health sector;
- ☐ Strengthen reproductive health programmes and policies in order to ensure increased access to family planning by women and adolescent girls;
- ☐ Increase the number of health centres in order to reduce the high maternal and child mortality rate, with emphasis on providing free, adequate and available services to rural women and women from indigenous communities; Strengthen existing education policies and programmes to ensure reduced gender disparity at all levels of education;
- ☐ Adopt a national plan of action for implementing UN Security Council Resolution 1325, in order to increase the participation of women in conflict prevention and management;
- ☐ Adopt affirmative action measures in order to increase the representation and participation of Angolan women in all decision-making institutions;
- ☐ Ensure that relevant programmes are put in place to protect and provide assistance to migrants and refugees living in the country;

- ☐ Expedite the process to finalize the study and review of the Law on the Status of Refugees by the Inter-sectoral Commission, in order to guarantee the rights of refugees in Angola;
- ☐ Expedite measures taken in the area of programmes to remove anti-personnel mines and other explosive ordinances;
- ☐ Strengthen its public policy services, programmes and projects which ensure protection of the rights of people with disabilities;
- ☐ Continue to take all necessary measures to improve care for the elderly, including through development of a National Action Plan for the Protection of Older Persons, and concerted implementation of Decree No.14/06 on the Regulation of the Conditions of Installation and Operation of Elderly Care Homes;
- ☐ Adopt legislative measures and establish relevant policies and programmes to address human trafficking, with emphasis on the protection of women and children;
- ☐ Adopt legislative measures to recognize the rights of indigenous communities in Angola, and strengthen the existing programmes and policies regarding them, with adequate financial resources provided;
- ☐ Take all necessary measures to guarantee the rights of persons working in extractive industries;
- ☐ Guarantee free access to anti-retroviral drugs, ensuring access to vulnerable groups, specifically women, children and indigenous communities;
- ☐ Strengthen programmes to raise awareness about HIV/AIDS, in particular programmes targeting youths;
- ☐ Continue to take all necessary measures to guarantee that free and compulsory primary education is universal, including ensuring access to children from indigenous communities;
- ☐ Take the appropriate legislative measures to decriminalize press offences and guarantee freedom of expression and access to information;
- ☐ Adopt legislative measures to guarantee freedom of association and ensure the protection of human rights defenders;

g. African Union Convention on Preventing and Combating Corruption

Despite introducing important reforms in recent years, most notably with regard to revenue and budget transparency, Angola's overall legal and institutional anti-corruption framework remains extremely weak and subject to political interference.

**Public Anti-Corruption Initiatives in Angola**

**(Business Anti-Corruption Portal)**

**Legislation:** A penal code indirectly addresses corruption committed by public officials and criminalising attempted corruption. The Law of Crimes Against the Economy (in Portuguese) criminalises extortion, as well as active and passive corruption. In 2010, two important laws were passed, one regarding money laundering and the other on public probity, according to Countries at the Crossroads 2011. In March 2010, the parliament passed the Public Probity Law, which obliges all government officials to declare their wealth, including revenues, bonds and shares, or any other kind of property and

valuables, domestic or abroad. The law covers entities holding public posts, either elected or appointed, managers of public property, the armed forces, national police, public institutions, as well as executive organs and magistrates and other public officials. According to the Revenue Watch Institute's Angola profile, the Law on State Secrecy 2002 and the Law on National Security neutralised the positive effect on transparency in the discharge of government tasks brought about by the Law on Access to Administrative Documents of 2002. These laws limit the types of documents citizens can have access to and grant the government the authority not only to imprison anyone who releases information that could be regarded as damaging to Angolan state interests, but also to censor news that deals with corruption. Furthermore, the laws also target multinational oil companies, providing for prosecution if they choose to release data on their transactions in Angola. Since passing these laws, the government has voluntarily disclosed many of its oil receipts, thereby shedding some light on the sector. However, much remains to be done, for the focus on lack of transparency has now moved to the lower level of sub-contractors, according to the Revenue Watch Institute's Angola profile. Access the Lexadin World Law Guide for a collection of laws in Angola.

**Government Strategies:** The government's most successful initiative in Public Financial Management (PFM) and fiscal transparency has been an information system which covers all the provinces and has helped strengthen budget execution, reporting and information-sharing on PFM issues. The system will be also extended to include some autonomous bodies. The effectiveness of the system, however, is limited because foreign credit lines and the state-owned oil company's (Sonangol) large quasi-fiscal activities are not executed through the system. The government has also established a programme that monitors most government expenditures as they occur.

**Anti-Corruption Agency:** Angola does not have a functional, politically independent anti-corruption institution with a mandate to investigate and prosecute corruption cases. Other institutions that are mandated with anti-corruption tasks include the Audit Court (Tribunal de Contas), the Inspector General of Finance and the Attorney General, according to Countries at the Crossroads 2011.

**Attorney General:** The Attorney General's Office is legally bound to combat corruption and is independent of the Ministry of Justice, representing a significant step toward moving the judicial branch away from executive influence, according to Countries at the Crossroads 2011. Furthermore, the Office's mandate includes combating money laundering, corruption and organised crime, but it is currently without adequate resources. Future plans include an anti-corruption unit.

**Inspector General of Finance (INF):** Part of the Ministry of Finance, the INF is charged with reviewing government finances, and individual ministries have their own internal audit offices, according to the Countries at the Crossroads 2011. The same source reports that the INF is frequently subject to political influence and lacks sufficient resources to adequately execute its functions.

**Auditor General:** The legal provisions are in place for audit and control systems of public finances. However, the Audit Court (Tribunal de Contas, in Portuguese), Angola's supreme audit office, has only recently started to audit the accounts of some ministries and provincial governments, and it generally struggles under a politically controlled environment and from large unaccounted funds. The Court is supported by South Africa's auditor general. According to Global Integrity 2010, the appointments to this agency do not sufficiently support its independence from the executive; appointments are sometimes



based on political considerations, and individuals appointed may have clear party loyalties. In practice, the head of the agency is not protected from unjustified removal. According to Global Integrity 2010, the government usually ignores or gives superficial attention to the audit reports. The findings and recommendations of the agency are unknown to the public, are not discussed in parliamentary debates and are often not implemented by the executive.

**Office of the Ombudsman:** The Office of the Ombudsman exists as an intermediary between the public and the government. Even though it has no real authority, it is intended to help individuals access justice and to advise government agencies on the rights of citizens, according to the Human Rights Report 2013. The ombudsman is elected for a four-year term. The functions of the ombudsman include issuing recommendations to the concerned institutions. A further expansion of its scope of action is slowed by the lack of qualified personnel. Global Integrity 2010 is somewhat critical towards the efficiency of this institution as in practice it is not sufficiently protected from political interference, and the current ombudsman is considered by some as politically influenced. Appointments to the agency do not always support its independence, and individuals appointed may have clear party loyalties. The ombudsman reports to the Commission of the National Assembly on a biannual basis, but these reports are not publicly available. The government does not usually act on the findings of the ombudsman and often ignores or gives superficial attention to its reports, according to Global Integrity 2010.

**Integrated Financial Management System (SIGFE):** SIGFE is a system implemented by the government, with international assistance, to track all government revenues and expenditures at national and local levels. SIGFE has been highlighted as a major step for government accountability and in fighting corruption. However, according to Human Rights Watch's Transparency and Accountability in Angola 2010, SIGFE's efficiency as an anti-corruption measure could be questioned. According to the report, among others, US-based consulting company Development Alternatives (DAI) has noted that there are serious problems with SIGFE. Nor is the information in the SIGFE system public, so there is no way for Angolans to assess how the government uses public funds. Given this system's limitations, the report assesses that SIGFE cannot yet be seen to provide adequate tracking of expenditures, let alone to serve as an effective tool for combating corruption.

**E-Governance:** The government has established the Portal of the Republic of Angola (in Portuguese), where citizens and companies can access various forms and guidelines for obtaining public services. The government has also set up the Guichê Único da Empresa (Single Booth Company) (in Portuguese), which functions as a one-stop shop for investors with the aim of simplifying the investment process and reducing registration times for companies. In addition, Doing Business - Business Reforms in Angola 2013 reports that the introduction of mandatory electronic filing of social security for companies with more than 20 employees has made it more convenient to pay taxes. Land administration has also been digitised, enabling faster procedures for transferring property.

**Public Procurement:** Major procurements require competitive bidding by law, but no strict formal requirements limit the extent of sole sourcing, according to Global Integrity 2010. Unsuccessful bidders cannot ask for an official review of the bidding process but can challenge the concrete procurement decision in the courts. A significant problem within public procurement is that the awarding of contracts in the oil sector suffers from

low levels of transparency and, generally, competitive bidding is not adequately enforced in the Angolan public procurement regime. According to the Chr. Michelsen Institute 2011, a new 2010 Public Procurement Law was put in place, but it excludes a number of important items in its provisions for competitive tendering and is said to only give the illusion that reform is taking place. The effectiveness of procurement processes could be questioned, as companies guilty of major violations of procurement regulations, including bribery, are not prohibited from participating in future procurement bids. Furthermore, the government is not required by law to publicly announce the results of procurement decisions, which is not an indication of a transparent procurement system, as cited by Global Integrity 2010, which also notes that the Angolan procurement law presents some serious flaws as it neither addresses procurement officials' conflict of interests nor provides a system to scrutinise their assets. Moreover, no debarment system exists for companies found guilty of misfeasance in the procurement process. Foreign investors should note that the Promotion of Angolan Private Entrepreneurs Law 2003 grants Angolan-owned companies preferential treatment in government tenders for goods and services, as well as in public works contracts.

**Whistleblowing:** According to Global Integrity 2010, no legislation protects whistleblowers in Angola.

# ANNEXES

## AUTHORS' GUIDELINES<sup>9</sup>

**We would appreciate if you go through these guidelines carefully before writing the legal review.**

### Methodology & Formatting

Please use all available sources of information, including (a) your own observations and research, (b) secondary published or unpublished sources, and (c) responses from other experts and experienced persons. We strongly encourage you to circulate drafts of your case study for review by such experts/experienced persons. In particular, please seek comments and inputs from a range of relevant actors including Indigenous peoples, local communities, and government officials. Fresh fieldwork is not envisaged as part of this study, but if it helps in providing examples to illustrate your key points, please do use the time available for such fieldwork.

Specifically:

- ☐ **Quote the text of national legislation** and or policy on key issues. (e.g. consultation clauses in mining legislation) For larger extract use a box.
- ☐ **Use of examples:** Please use examples that illustrate the key points you are making, either in the main text, or where a slightly extended description may be necessary/desirable, in a box.
- ☐ **Boxes** should be used for examples, key terms, or other aspects that need an extended treatment and would disrupt the flow of the main text; these should not be more than about 300 words long.
- ☐ **Numbering of sections/sub-sections:** Please follow the part, section and question number breakdown used in the questionnaire
- ☐ **Formatting:** Please use consistent formatting, see below.
- ☐ **Referencing:** Please follow the format given below; inconsistency in referencing is very time-consuming for editors, so please do follow this!
- ☐ **Footnotes:** Any additional short text (e.g. explanation of a term) that will disturb the flow of the main text should go into a footnote.

Please use Times New Roman, 12 point font, with numbering and formatting as in the sample below:

#### **Referencing Style**

Please use the referencing system in Microsoft word and set this to APA style. It should then be possible to set up references in a word database and the combined synthesis report bibliography easily achieved.

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<sup>9</sup> Many thanks to natural justice for the use of part of their questionnaire framework and guidelines for the purposes of constructing this framework

Alternatively follow the following guidelines

- Integrate the citation into the main text within brackets, e.g.: There are several dozen ICCAs in Tanganistan (Brown 2010).
- Where there is more than one reference to the same author with the same year, e.g.: There are several dozen ICCAs in Tanganistan (Brown 2010a). This country has recently put in legislation to recognise ICCAs (Brown 2010b).
- Where there is more than one author with the same surname, add the initial, e.g.: There are several dozen ICCAs in Tanganistan (Brown, B. 2010a). This country has recently put in legislation to recognise ICCAs (Brown, B. 2010b). However, a number of limitations have been pointed out in the relevant laws (Brown, W. 2011).

The full references, at end of chapter, will be:

Author/editor. Year of publication. Title. Publisher. Place of publication. Page numbers (for chapters in books and articles in journals).

*Note:*

- ☒ Book and journal titles are italicized, not chapters and articles.
- ☒ Book titles are all caps; chapter and journal articles are not.

Samples:

- ☒ **For a book:** Brown, B. 2010a. *Indigenous and Community Conserved Areas in Tanganistan*. Biodiversity Society of Tanganistan, Tangniyan. If this is edited, please add (ed.) after author's name, e.g. Brown, B. (ed.) 2010a.
- ☒ **For a chapter in a book:** Brown, B. 2010b. Laws relating to ICCAs in Tanganistan. In White, C., *Towards Community Based Conservation in Tanganistan*, Oxford University Press, London, pp. 33-54. If the book is cited elsewhere in the references, simply write: In White, C., op cit.
- ☒ **For an article in a journal:** Brown, W. 2011. Limitations in legislation related to ICCAs in Tanganistan. *Journal of the ICCA Consortium*, Vol. 1 No. 3, pp. 33-

## COUNTRY LEVEL LEGAL REVIEW QUESTIONNAIRE

### OVERVIEW

This questionnaire is intended for use by the individuals undertaking national reviews.

**Structure of the Questionnaire:** The questionnaire has 5 parts each with a number of more specific sections.

Under each Part, we have grouped questions that relate to that broad heading. The questionnaire is fairly detailed, as we want to probe a number of quite specific and multi-faceted issues in each country. It is intended to help you consider a wide range of issues relevant to natural resource in general and mining in particular policy and

legislation.

**Gender:** Please also consider gender as a cross-cutting issue and discuss its relevance as appropriate in each section of the review. . Specific gender questions have been added into each section.

**Responding to the Questionnaire:** First, read through the entire questionnaire in order to get a sense of the different sections and information that the whole review intends to elicit. The detail and scope are intended to extend rather than limit your ability to provide a comprehensive response. We acknowledge that you cannot provide comprehensive answers to every question in the suggested space provided. Thus, you have the discretion to frame your answers in order to address the critical questions in your country. If you feel that some questions do not lead you to the most salient issues, please discuss with the regional coordinator and use your judgment to ensure your responses provide the most relevant information. There may be overlap in some questions and we suggest you do not need to repeat information so use your discretion as to where to place information for the best understanding.

If a question is in no way relevant or applicable to your country, you may skip it but provide a brief reason why.

**Consultations and Peer Review:** It is critical that you adequately consult and seek input from relevant experts, not only to ensure credibility but also to build a network of in-country supporters around the process and results of the review. We suggest that you consider compiling a list of people and/or organisations that may be able to provide overall guidance or specific inputs at different stages of the review. We strongly suggest you liaise with a gender expert familiar with legal and policy issues and or a local organization partnered in the Womin project to strengthen the gendered nature of the analysis. Such stages may include, for example: gathering relevant laws, policies and supporting literature; involving representatives of Indigenous peoples and local communities in the writing and/or feedback processes to the extent possible; analysing the information in the context of the different questionnaire sections; seeking feedback on drafts from a range of peers, including Indigenous peoples and local communities; and developing strategies for practical follow-up, as appropriate.

**Communication and Feedback:** If you have any questions, comments, or concerns at any stage of the review, please contact the project coordinators. S/he will be your primary person for communication and feedback throughout the review process.

After you have completed the review, we will seek feedback on the whole process, including what you liked and disliked and suggestions for methodological improvements in addition to which partners will be asked to participate in the analysis process of the synthesis report.

Best Regards

Michael Koen  
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