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Angolan Petroleum Research Insight: Anti-Corruption & Better Governance

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Introduction

Angola is a country that is rich in natural resources. It is the second largest oil-producing country in sub-Saharan Africa and the sixth largest diamond producer in the world.¹ Yet despite such natural resource wealth, Angola faces severe developmental challenges. Since 2018 the United Nations Development Programme placed the country in the medium category of the Human Development Index. This is an improvement, for prior to 2018 Algeria was consistently placed in the low category of of Human Development (from 2000 to 2017) in all but one year.² Despite this, the fact that Angola ranks only 148 out of 189 countries and territories in the 2020 Human Development Index shows that there is still a lot of work that needs to be done.³ While as recently as 2017, Angola's capital city of Luanda was listed as the most expensive city for expatriates to live in (surpassing places like Zurich and Hong Kong),⁴ two-thirds of the population continue to live on less than two dollars a day.⁵



Offshore oil rig, photo credit: Catmoz, Pixabay license



Docked container ship in Namibe, Angola, photo credit: Heibby Cris Marvel, Pexels license

Throughout Angola's history as an independent nation, oil revenues have consistently accounted for the vast majority of government revenue. A nation's economic dependence on oil, combined with its exceptional value as a commodity often leads to the corruption and poor governance that begets the 'resource curse'.⁶ Therefore, it is not surprising that, generally, corruption issues are among the top reported concerns for most African citizens.⁷ Many indicate that they have become despondent and place no trust in important institutions such as the legislature, the judiciary, the police service, and even national electoral commissions.⁸ These sentiments were highlighted further in the first independent public opinion survey conducted in Angola since the lockdown of 2020. The survey results revealed that the five major reasons for civil unrest in Angola at the end of 2020 were: the mismanagement of the government response to COVID-19; mass unemployment; entrenched institutional corruption; crime and insecurity; and a general loss of confidence in political leaders.⁹

These issues are inextricably linked, but for the sake of brevity, this Insight will focus on the oil and gas sector, the anti-corruption crusade led by President João Lourenço and his ambitious plans to diversify the country's economy away from petroleum. Part 1 of this Insight therefore, consists of a brief overview of corruption in the Angolan oil and gas sector, including an introduction to the state oil company Sonangol. This section will also illustrate the current legal, economic and political climate by exploring some of the anti-corruption measures and economic efforts undertaken by President Lourenço. When he first took office in 2017, President Lourenço

¹ 'The mining industry in Angola, no longer a diamond in the rough', Euronews (22 July 2021) <<https://www.euronews.com/2021/03/17/the-mining-industry-in-angola-no-longer-a-diamond-in-the-rough>> accessed 8 August 2021

² United Nations Development Programme, 'Human Development Reports 1990-2020' <<http://hdr.undp.org/en/global-reports>> accessed 18 October 2021

³ United Nations Development Programme, 'Human Development Report 2020. The Next Frontier: Human Development and the Anthropocene' (2020), p. 363 <<http://hdr.undp.org/sites/default/files/hdr2020.pdf>> accessed 8 August 2021

⁴ Angolan capital 'most expensive city for expats' BBC News (21 Jun 2017) <<https://www.bbc.co.uk/news/business-40346559#:~:text=Luanda%2C%20the%20capital%20of%20Angola,rest%20of%20the%20top%20five>> accessed 7 June 2021

⁵ Aaron O'Neill, 'Angola Statistics and Facts' (Statista, Apr 22 2021) <<https://www.statista.com/topics/4143/angola/>> accessed 16 June 2021

⁶ Sambit Bhattacharyya and Roland Hodler, 'Natural Resources, democracy and corruption' (May 2010) 54 *European Economic Review* 608; Michael L. Ross 'What Have We Learned about the Resource Curse?' (2015) 18 *Annual Review of Political Science* 239

⁷ Rudo Kwaramba-Kayombo, 'The AU needs to walk the talk on corruption' Mail & Guardian (9 February 2019) <<https://mg.co.za/article/2019-02-09-00-the-au-needs-to-walk-the-talk-on-corruption>> accessed 24 May 2021

⁸ *ibid*

⁹ EXX Africa Business Risk Intelligence, 'Angola Survey' <<https://www.pangea-risk.com/survey/angola/>> accessed 24 May 2021

was faced with the Herculean task of combatting the omnipresent corruption in Angola while tackling the severe economic crisis that had devastated the country since the slump in oil prices in 2014. The new administration set about making changes based on the logic that by eradicating corruption, it would instil confidence in foreign investors while removing the obstacles to the free market, thereby boosting overall economic growth.¹⁰

Some of the short-term results of these undertakings are discussed in this Insight in order to situate the Angolan context. In summary, while the fight against corruption has led to the conviction of a few famous wrong-doers and the repatriation of some assets; there is still room for improvement – particularly within the judiciary and with respect to adherence with international treaties.

Concerning the economy, in 2018, GDP growth in Angola was negative at -2%. This was worsened by the Coronavirus pandemic which contributed to the reduction of this figure to -4% at the end of 2020.¹¹ Furthermore, ordinary Angolans have been dissatisfied with higher prices, scarcity of resources, unemployment, and financial uncertainty.¹² During his election campaign, Lourenço had promised to deliver an ‘economic miracle’ on a par with that of Deng Xiaoping.¹³ In comparing himself to a leader known as an economical pragmatist who held an iron grip on the ruling political party; Lourenço connects the achievement of economic development with the fight against corruption, albeit alongside the glaring omission of plans for the systemic political and democratic overhaul necessary to solidify results.

Taking these circumstances into consideration, this Insight broadens its lens by considering the Lourenço administration’s economic and anti-corruption goals in the context of two endeavours of the African Union (AU): the Convention on Preventing and Combatting Corruption (the Convention),¹⁴ and the African Continental Free Trade Area (AfCFTA). Part 1 examines the extent to which the Angolan government is efficaciously pursuing the Convention’s implementation and the AfCFTA’s goals domestically. Part 2 explores the link between the AfCFTA, President Lourenço’s anti-corruption and economic diversification plans and the Convention’s potential to promote their complementary goals.

Hence, the purpose of this Insight is to critically examine the situation in Angola with the aim of exploring the pursuit of African solutions (by both Angola and the AU) for African, herein Angolan, problems. This Insight enquires about the extent to which, at a pan-African level, there must be a strengthening of regional and continental cooperation (as envisioned by the AU and its State Parties) in order to properly achieve the Convention’s implementation. The role of the AfCFTA is considered alongside the Convention as both are under the aegis of the AU; and both are linked by the concept of “Regional Economic Communities” (RECs), as introduced below.

On the 11th of July 2020, The AU’s Advisory Board on Corruption (AUABC) Chaired a number of African Anti-Corruption Day events convened under the theme ‘Regional Economic Communities: Critical Actors in the Implementation of the African Union Convention on Preventing and Combating Corruption’,¹⁵ during which the AUABC specifically encouraged stakeholders to reflect on and discuss the role of the RECs in ‘promoting the anti-corruption agenda’.¹⁶ The genesis of the RECs was the Organization of African Unity¹⁷ (OAU)’s Lagos Plan of Action for the Development of Africa (1980)¹⁸ and the Abuja Treaty of 1991.¹⁹ The latter established the continent-wide African Economic Community, within which overall geography the overlapping RECs operate regionally with the purpose of promoting wider regional and continental African economic integration. As such, they have been described as the building blocks to the work of the AU.²⁰ The AU recognises eight RECs, namely the: East African Community; Arab Maghreb Union, Economic Community of Central African

¹⁰ Rui Santos Verde, *Angola at the Crossroads: Between Kleptocracy and Development*, (1st edn, Bloomsbury Publishing 2021) 6

¹¹ World Bank, GDP growth (annual %) – Angola

<<https://data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG?end=2020&locations=AO&start=2017>> accessed 16 August 2021

¹² ‘João Lourenço’s reforms in Angola are pleasing the IMF: What about ordinary Angolans?’ *The Economist* (Johannesburg, 20 Feb 2021); Santos Verde (no 10)

¹³ ‘President-elect of Angola wants to emulate China’s success, not Russia’ *Agencia EFE* (Madrid, 29 August 2017)

<<https://www.efe.com/efe/english/world/president-elect-of-angola-wants-to-emulate-china-s-success-not-russia/50000262-3364271>> 16 August 2021; Stephen Eisenhammer, ‘On eve of vote, Angola’s Lourenco denies he’d be a puppet president’ *Reuters* (22 August 2017)

<<https://www.reuters.com/article/us-angola-election-idUSKCN1B21CF>> accessed 18 June 2021

¹⁴ African Union Convention on Preventing and Combating Corruption (adopted 1 July 2003, entered into force 5 August 2006) (the Convention)

¹⁵ African Union, ‘African Anti-Corruption Day 2021: “Regional Economic Communities: Critical Actors in the Implementation of the African Union Convention on Preventing and Combating Corruption”’ (11 July 2021) <<https://au.int/en/african-anti-corruption-day-2021>> accessed 6th August 2021

¹⁶ *ibid*

¹⁷ The OAU was the main precursor organisation to the AU, which was founded in 2002.

¹⁸ Lagos Plan of Action for the Economic Unity of Africa 1980 <<https://www.resakss.org/node/6653>> accessed 6 August 2021

¹⁹ Treaty Establishing the African Economic Community (adopted 3 June 1993, entered into force 12 May 1994)

²⁰ African Union, ‘Regional Economic Communities (RECs)’ <<https://au.int/en/organs/recs>> accessed 7 August 2021; East African Community <<https://www.eac.int/press-releases/1764-eac-takes-the-lead-as-the-most-integrated-bloc-in-africa>> accessed 6 August 2021

States, Inter-Governmental Authority on Development, Economic Community of West African States, Community of the Sahel-Saharan States; and Common Market of Eastern and Southern Africa (of which Angola is a former member State).²¹

The roles, structures and efficiency of each REC varies widely, but they have the potential to coordinate AU member states' interests while working closely with the organisation itself. Within this context, the RECs can play an important role in sustaining a culture of accountability and transparency, while monitoring and evaluating good governance practices in their regions. Angola is a member of Southern African Development Community (SADC), an REC consisting of 16 countries in the southern region. As such, it was State party to the first anti-corruption treaty in Africa, the SADC Protocol against Corruption in 2001.²² Additionally, it is party to some United Nations (UN) international anti-corruption treaties including the UN Convention Against Corruption²³ and the UN Convention against Transnational Organized Crime.²⁴

Just as the RECs are the building blocks to the anti-corruption efforts of the AU, the national anti-corruption authorities of State parties to the Convention can be described as the building blocks to the RECs.²⁵ Therefore, although the responsibility of fighting corruption rests mainly with each sovereign State, regional frameworks are also necessary to address corruption holistically. This is explicitly recognised in the Convention, which called for parties to cultivate regional and continental cooperation in order to facilitate 'candid, constructive dialogue and exchanges of best practices'.²⁶ The AU's decision to focus on the role of RECs in combatting corruption within the context of the newly launched AfCFTA was therefore particularly apt in its recognition of the need to reflect on progress made, while encouraging parties to share the challenges encountered and best practice solutions implemented.

²¹ *ibid*

²² Adopted on 14 August 2001, entered into force on 8 August 2003.

²³ United Nations Convention against Corruption (adopted 15 November 2000, entered into force 29 September 2003). The only legally binding universal anti-corruption treaty.

²⁴ United Nations Convention against Transnational Organised Crime and the Protocols Thereto (adopted 31 October 2003, entered into force 14 December 2005)

²⁵ African Union, 'Regional Economic Communities (RECs)' (n 19)

²⁶ African Union (n 10); the Convention, art 2(2), art 2(3), art 19(2), art 19(4)

Part 1: Tackling Angolan Oil Corruption

Introduction



Sunset, Huila province landscape, Angola,
photo credit: Bellawhitephoto, Pixabay license

Oil is the driving force of the economy in Angola. In 2019, it accounted for over one third of Angola's GDP, 90% of exports and 75% of government revenues.²⁷ The industry plays an important role in Angola's complex transformation from a 'state-led oil economy to a private-sector-led' model.²⁸ Prior to the end of the oil boom, Angola enjoyed some of the highest economic growth in the world following a devastating 27 year-long civil war. Due to the lack of a diversified economy, however, Angola struggled with the fall of exported oil prices in 2014, reducing oil revenues from 35.3% in 2013/14 to 17.5% of GDP in 2017.²⁹ The recession which followed has undoubtedly been exacerbated by the COVID-19 pandemic.

Central to the economy is Angola's state-owned oil company, Sociedade Nacional de Combustiveis de Angola (Sonangol), which owns stakes in almost every other industry in the nation. Although it has the potential to be a vessel through which the government could transform the country, Sonangol has in the past been at the centre of the systematic looting of state assets, with at least \$1 billion³⁰ a year going unaccounted for since 1996.³¹ As the Angolan government has been the direct beneficiary of a revenue stream in the form of Sonangol, rather than relying on domestic tax revenue or a diversified economy, those in power have had access to unique opportunities for self-enrichment while simultaneously avoiding responsibilities of transparency and accountability.³² This is the case in Angola to the extent that President Lourenço himself has referred to Sonangol as the 'golden goose'.³³

In response, President Lourenço has committed to systematically tackling this corruption. A positive indicator of that work is this year's upwards credit re-rating of Angola by international ratings agency Moody's, in light of governance improvements categorised as permanent. Prior to his presidency, a 2004 study conducted to determine how much oil revenue was being deposited into Angola's central bank, the Banco Nacional de Angola, found that billions of dollars from Sonangol were missing.³⁴ The study also concluded that the government at the time did not have any mechanism in place to investigate and reconcile the discrepancies.

²⁷ Angola Market overview (22 August 2019) <<https://www.export.gov/apex/article2?id=Angola-Market-Overview>> accessed 18 June 2021; IEA, 'Africa Energy Outlook 2019, Overview: Angola' (19 November 2019) <https://iea.blob.core.windows.net/assets/1d996108-18cc-41d7-9da3-55496cec6310/AEO2019_ANGOLA.pdf> accessed 18 June 2021

²⁸ World Bank, 'The World Bank in Angola' (1 July 2020)

<<https://www.worldbank.org/en/country/angola/overview#:~:text=Despite%20significant%20progress%20on%20macroeconomic,more%20than%2090%25%20of%20exports.>> accessed 18 June 2021

²⁹ African Development Bank Group, 'Angola Economic Outlook' (2021)

<<https://www.afdb.org/en/countries/southern-africa/angola/angola-economic-outlook>> accessed 18 June 2021

³⁰ All \$ figures are United States Dollars

³¹ Marie Chêne, 'Overview of corruption and anti-corruption in Angola' (*U4 Expert Answer - Transparency International*, 25 February 2010)

<https://www.transparency.org/files/content/corruptionqas/257_Corruption_and_anti_corruption_in_Angola.pdf> accessed 25 May 2021

³² Human Rights Watch, 'Some Transparency, No Accountability: The Use of Oil Revenue in Angola and Its Impact on Human Rights' (12 Jan 2004)

<<https://www.hrw.org/report/2004/01/12/some-transparency-no-accountability/use-oil-revenue-angola-and-its-impact-human>> accessed 24 May 2021

³³ Ake Group, 'Angola: A family empire, dismantled?' (12 Dec 2017) <<https://akegroup.com/2017/12/20/angola-dos-santos-jlo-sonangol/>> accessed 24 May 2021

³⁴ Human Rights Watch (no 32)



Luanda Bay, Angola, photo credit: Carlos César, Pexels license

The systemic and conscious mismanagement of Sonangol was accorded mainstream global visibility by the 'Luanda Leaks' publication in early 2020.³⁵ The detailed report published by the International Consortium of Investigative Journalists revealed how the former President of Angola, José Eduardo dos Santos, and his family and allies embezzled billions of dollars from Sonangol. After having served as the President of Angola from 1972 until 2017, dos Santos appointed his children to powerful positions shortly before his resignation – with daughter Isabel being placed as the CEO of Sonangol and son José Filomeno as the head of the sovereign wealth fund (Fundo Soberano de Angola, FSDEA). Despite promises to the public that Isabel dos Santos was the right person for the job, Sonangol's profits fell by 72% in the 12-month period following her appointment.³⁶

Meanwhile, Angola currently ranks 142nd of the 180 countries assessed by Transparency International's Corruption Perceptions Index (CPI) with a score of 27/100 (lower than the average regional score of 32/100).³⁷ The score has, however, improved reasonably well from 18/100 in 2016, largely due to the new administration's adoption of new legislation and continued cooperation with international organisations. On the Ibrahim Index of African Governance's 'Security and Rule of Law' category, Angola ranks 35 out of 54 countries with a score of 44.1 as of 2019. This places it below the average score in the continent, although Angola's score on this index has also experienced a steady rise since the election of President João Lourenço in 2017.³⁸

Despite these improvements, more work remains to be done. Last year, in 2020, Reuters' analysis of Sonangol's 121-page annual financial publication showed that the company made no money from its core oil activities. Sonangol's net profit fell by over a half between 2018 and 2019 despite Brent crude oil prices averaging at \$64 barrel of oil equivalent.³⁹

³⁵ Sydney P. Freedberg, Scilla Alecci, Will Fitzgibbon, Douglas Dalby and Delphine Reuter 'Luanda Leaks: How Africa's richest woman exploited family ties, shell companies and inside deals to build an empire' (*International Consortium of Investigative Journalists*, 19 January 2020) <<https://www.icij.org/investigations/luanda-leaks/how-africas-richest-woman-exploited-family-ties-shell-companies-and-inside-deals-to-build-an-empire/>> accessed 18 June 2021

³⁶ Ake Group, (no 33)

³⁷ 'Angola climbs four places in Transparency International's corruption index' *Ver Angola* (28 January 2021) <<https://www.verangola.net/va/en/012021/Defense/23768/Angola-climbs-four-places-in-Transparency-International-s-corruption-index.htm> > accessed 15 August 2021

³⁸ The Mo Ibrahim Foundation, 'Overall Governance for Angola' <<https://iag.online/data.html?meas=GOVERNANCE&loc=AO|g1&view=table>> accessed 25 May 2021

³⁹ Noah Browning and Dmitry Zhdannikov, 'Angolan energy giant made no money from oil in 2019 as debt bites' *Reuters* (29 September 2020) <<https://www.reuters.com/article/angola-oil-sonangol-idUSL8N2GP4V2>> accessed 4 June 2021

President João Lourenço

Despite After decades of civil war which killed and displaced millions, life in Angola began to be stabilised following a 2002 peace agreement. The democratisation process, however, remained slow with former president Jose Eduardo dos Santos remaining in power for almost 40 years. On announcing his retirement, dos Santos appointed former defence minister João Manuel Gonçalves Lourenço from within the Popular Movement for the Liberation of Angola (MPLA) party as his hand-picked successor. Under the 2010 constitution, Angola held its second ever Presidential election on August 23, 2017, formally electing Lourenço as the President of Angola.

The overarching theme of President Lourenço's election campaign was the promise to put an end to the corruption that characterised the tenure of his predecessor; along with plans to diversify the economy and end the country's dependence on oil and diamond revenues.⁴⁰ At the beginning of his term in office, President Lourenço immediately set about removing family members and allies of the former President from leadership positions.⁴¹ In fact, just 50 days after his inauguration, he dismissed Isabel dos Santos from her position as the CEO of Sonangol. By that time, he had already put in place regulations which targeted artificial monopolies by preventing the exclusive ownership of businesses by certain families, including the dos Santos family.⁴² These included the national broadcaster *Televisão Pública de Angola* (controlled by other children of the former President) and *Brumangol*, a company with the monopoly on food lab analysis, which was at the time in the ownership of the former President's son José Filomeno. Filomeno was also subsequently fired from his role as the head of the Sovereign Fund of Angola and has since been sentenced to five years in prison for fraud and influence peddling.⁴³ Filomeno's business partner, Jean-Claude Bastos de Morais, was also convicted of similar charges alongside the former governor of the National Bank of Angola, Valter Filipe da Silva.⁴⁴

More high-profile cases have been initiated, including the arrests of high ranking MPLA member and former director of the Technical Unit for Private Investment (UTIP) Norberto Garcia and the former transport minister Augusto Tomas on various corruption-related charges. This unexpected widespread legal action and redistribution of power was initially praised by many Angolans, but also viewed upon with suspicion by observers who interpreted it as a potential prelude to the establishment of a new patronage network.

⁴⁰ 'Dos Santos Inc Under Threat' (*Africa Confidential*, 25 Aug 2017 < <https://www.africa-confidential.com/article/id/12084/>> accessed 4 June 2021

⁴¹ Nelson Domingos and Zefanias Matsimbe, 'Angola's 2017 Elections And The Start Of A Post-Dos Santos Era' (2018) 17 *Journal of African Elections*, 19

⁴² *ibid* 20

⁴³ Estelle Maussion 'Lourenço's Angola : The winners, the losers and the escape artists' *The Africa Report* (13 May 2021)

<<https://www.theafricareport.com/87947/lourenco-angola-the-winners-the-losers-and-the-escape-artists/>> accessed 5 June 2021

⁴⁴ 'Angola sentences ex-president's son to five-year jail for fraud' *Al Jazeera* (14 August 2020)

<<https://www.aljazeera.com/news/2020/8/14/angola-sentences-ex-presidents-son-to-five-year-jail-for-fraud>> accessed 15 August 2021

New institutional frameworks and economic policies



Ascending road, Siera de Leba, Angola, photo credit: wjgomes, Pixabay license

More Prior to the 2017 election, many regulations relating to transparency and anti-corruption in Angola were written and published but rarely enforced. For example, the dos Santos administration passed the Public Probity Law in 2010, which required all government officials to declare their wealth in Angola and abroad. This included property, valuables, bonds and shares; yet no effective mechanism was put in place to monitor adherence to this. Furthermore, the declarations that *were* provided were kept in ‘sealed envelopes’ which could only be opened if the relevant official had been arrested in connection to a relevant crime.⁴⁵ Therefore, the law proved entirely ineffective in monitoring suspicious wealth of officials within all sectors.

Similarly, some voluntary international commitments were made to signal some political will to combat corruption, yet ultimately no real action was taken to enforce their provisions domestically. Examples of this include Angola’s decision to join the African Peer Review Mechanism in 2004 and the attendance of the Extractives Industries Transparency Initiative (EITI) conferences as observers, without fully signing up to the EITI Standard.

Since his election, however, President Lourenço has undertaken a multitude of visible changes that proved popular with Angolan citizens and onlookers worldwide. Alongside the high-profile dismissals discussed above, his administration set about restructuring the Penal Code for the first time in 133 years.⁴⁶ Therefore, the main legal framework on corruption and financial crimes today consists of the new Criminal Code and the Code of Criminal Procedure.⁴⁷ These pieces of legislation came into force in February 2021 as part of the government’s reform of Angola’s judicial system to place it in line with modern international standards.

⁴⁵ Marie Chêne (no 31)

⁴⁶ Juliana Rodrigues, ‘Angola: Ramping Up the Fight Against Corruption’ (*Lexology*, May 2 2019) <<https://www.lexology.com/library/detail.aspx?g=5c8548b5-f073-4ed8-9b79-2346b0e02901>> accessed 7 Jun 2021

⁴⁷ Criminal Code approved by Law 38/20 of 11 November 2020; Code of Criminal Procedure approved by Law 39/20 of 11 November 2020



Luanda Bay at night, Angola, photo credit: Franciscovenancio, Pixabay license

A fundamental change contained in the new Criminal Code is the extension of criminal liability to corporate entities.⁴⁸ This provision may enhance compliance with procedures and policies within the oil and gas sector. Additionally, as successor entities can now be held criminally liable as well, oil corporations are further encouraged to complete thorough pre-acquisition due diligence checks in Angola.⁴⁹ Notably, the Code also featured some novel anti-money laundering provisions, such as the prohibition of payments in cash above three million kwanzas for citizens (\$4,637.98), and five million kwanza (\$7,729.97)⁵⁰ for corporations.⁵¹ This new limitation could prove useful in preventing the circulation of large amounts of money outside of the formal financial systems.⁵² Another noteworthy element of the new code is the criminalisation of active and passive corruption in *both* the public and private sectors.⁵³

In addition to the new codes, the Strategic Plan on the Prevention and Combatting of Corruption was adopted in 2018 alongside the establishment of the National Directorate for Preventing and Fighting Corruption (DNPCC) within the country's Criminal Investigation Service.⁵⁴ Angolan sources have reported a notable increase in investigations initiated by the Attorney General through the newly established DNPCC, with 192 investigations being launched between 2017 and 2019 alone.⁵⁵

The Lourenço government has also placed great emphasis on enhanced international cooperation. In 2018, the government invited the UNDP to train the judiciary with the assistance of Brazilian and Portuguese financial crime experts.⁵⁶ The Portuguese government also provides Angola with information regarding the considerable assets held by Angolan citizens in the country.⁵⁷ This type of cooperation complements the new Law on Coercive Repatriation of Capital and Extended Loss of Assets,⁵⁸ which approved the creation of the National Services for Recovery of Assets (SENRA), a body established to identify and seize financial assets obtained through criminal activities.⁵⁹ The wealth that could be repatriated from oil sector-related corruption in Angola has the potential to contribute to job creation, increase welfare spending and reduce social tensions that the country is currently experiencing.

⁴⁸ 'Angola – Criminal law overhaul in line with international standards' (VDA Legal Partners, 11 November 2020) <https://www.vda.pt/xms/files/05_Publicacoes/2020/Flashes_Newsletters/Flash_Vda_Legal_Partners_-_Angola_-_Criminal_Law_overhaul_in_line_with_International_Standards.pdf> accessed 7 June 2021

⁴⁹ *ibid*

⁵⁰ converted on 17 August 2021: 1 Kwanza = 0.00154600 USD

⁵¹ Art 470, Law 38/20

⁵² Juliana Rodrigues (no 46)

⁵³ Art 459 and 460, Law 38/20

⁵⁴ Presidential Decree 78/18, of 15 March 2018

⁵⁵ 'DNPCC opens 192 inquiries in two years - President' *Agência Angola Press* (15 October 2019)

<http://cdn2.portalangop.co.ao/angola/en_us/noticias/politica/2019/9/42/DNPCC-opens-192-inquiries-two-years-President,b2631293-a0e3-4fa4-ace5-30a303367b53.html> accessed 2 June 2021

⁵⁶ UNDP, 'Independent Country Programme Evaluation: Angola'

<https://www.undp.org/content/dam/angola/docs/Publications/ICPE_ANGOLA_2018%20.pdf> accessed 4 June 2021, 18

⁵⁷ Nelson Domingos and Zefanias Matsimbe (no 41), 20

⁵⁸ Law 15/18, of 26 December 2018

⁵⁹ Asset Recovery Inter-Agency Network for Southern Africa (ARINSA), 'Annual Report 2019' (2020)

<https://www.unodc.org/documents/southernafrica/Publications/TransnationalOrganisedCrime/ARINSA_Annual_Report_2020_Final.pdf> accessed 5 June 2021, 22-23

The government has also already been successful in working with UK state authorities to recover \$500 million from a bank in London.⁶⁰ The amount had been illegally transferred by the former governor of the National Bank of Angola, Valter Filipe da Silva, who was subsequently arrested, charged and sentenced.⁶¹ Further collaborations with the Mauritian government resulted in the freezing of \$206 million belonging to a business partner of Jose Filomeno dos Santos.⁶² The head of the Civil Office of the President announced that since 2018, assets valued at \$2.7 billion dollars in cash, and \$2.6 billion in real estate and bonds have already been recovered through SENRA.⁶³ The Attorney General, Hélder Pitta Gróz, confirmed these figures, noting the significant international cooperation with countries such as Switzerland, Luxembourg, Bermuda and the UK.⁶⁴ Much of the impressive progress described in this section has come *ex post*. It is even more crucial for President Lourenço's administration to tackle the demand and supply opportunities of corruption in the earlier stages of the natural resource value chain.



In use retail petrol pump, Angola, photo credit: paulbr75, Pixabay license

A promising step towards this preventative outlook came in September 2020, when the Angolan government formally notified the Extractive Industries Transparency Initiative (EITI) of its intention to join the EITI Standard.⁶⁵ By committing to the EITI Standard, Angola commits to disclosing the beneficial owners of extractives companies, including 'politically exposed persons',⁶⁶ as well as taking specific steps towards the transparent managements of revenues and state-owned enterprises such as Sonangol.⁶⁷

This move has the potential to contribute considerable success to Angola's fight against corruption as implementation of the EITI Standard incorporates a systematic data collection process which is both transparent and accessible. It also provides frameworks that bring together the expertise and perspectives of stakeholders from the government, the private sector and civil society. Alongside the other progress achieved by the country, this presents an unprecedented opportunity for reform in the oil and gas sector.

⁶⁰ Nelson Domingos and Zefanias Matsimbe (no 41), 20

⁶¹ Stephen Eissenhammer 'Angola charges ex-central bank chief in \$500 million fraud case' *Reuters* (15 March 2018) <<https://www.reuters.com/article/us-angola-corruption-idUSKCN1GR1SH>> accessed 6 June 2021

⁶² Nelson Domingos and Zefanias Matsimbe (no 41), 20

⁶³ 'Angola prepares strategic plan to prevent, fight corruption' *The Angola Press Agency* (3 June 2021)

<<https://www.angop.ao/en/noticias/politica/autoridades-preparam-plano-estrategico-de-prevencao-e-combate-a-corrupcao/>> accessed 21 June 2021

⁶⁴ 'Attorney- General: Over \$5 billion recovered' *Agência Angola Press* (29 December 2020) <<https://www.angop.ao/en/noticias/politica/pgr-recupera-mais-cinco-mil-milhoes-de-dolares/>> accessed 9 August 2021

⁶⁵ 'Angola formalises its intention to join the EITI' (*Extractives Industry Transparency Initiative*, 22 September 2020) <<https://eiti.org/news/angola-formalises-its-intention-to-join-eiti>> accessed 19 June 2021

⁶⁶ 'The Global Standard for the Good Governance of Oil, Gas and Mineral Resources 2019' (the EITI Standard) <<https://eiti.org/document/eiti-standard-2019>> accessed 10 August 2021, 2.5

⁶⁷ *ibid*, 5.3



Luanda intersection, Angola, photo credit: Eryxson Fonseca, Unsplash license

Even though President Lourenço has displayed grand gestures of his commitment to tackling corruption, many foreign and domestic spectators wonder about the intentions and scope of his commitments. The United Nations Human Rights Committee (HRC) concluded, in the second periodic report of Angola, that despite the leaps forward initiated by President Lourenço, it found widespread evidence of corruption risks and corruption still prevalent in the public sector. Listed among the concerns were the low prosecutions and convictions, the insufficient protection of whistle-blowers and the extensive continued flows of illicit funds for money laundering purposes.⁶⁸ Angola has since introduced a law which provides a protection mechanism for victims, witnesses and even those accused of collaborating in judicial processes.⁶⁹

However, the HRC's additional critiques are more complicated to legislate away. President Lourenço's approach to battling corruption has been described as 'ambivalent' by Ricardo Soares de Oliveira, Professor of the International Politics of Africa at the University of Oxford. He describes the leader's rhetoric as 'systematic and all-encompassing', but the actual practice as 'discretionary and political'.⁷⁰ This can be illustrated by President Lourenço's continued support and attachment to current chief of staff, Edeltrudes Costa and former vice president Manuel Vincente.⁷¹ Costa was implicated, via a Portuguese public channel TVI, of owning significant assets abroad as a result of obtaining government contracts during his time under the dos Santos administration. Similarly, Lourenço's himself admitted that more than \$13 billion was stolen by a company headed by Manuel Vincente - yet the two remain close.⁷²

Similarly, consider the noteworthy dismissal of Isabel dos Santos from her role as the head of Sonangol. On the surface, the dismissal was a grand symbolic presentation of Lourenço's no-nonsense stance on nepotism and corruption, a sign that he was not beholden to the wishes of his predecessor. Yet, it was reported that in October 2017, senior representatives from corporations including BP, Chevron and ExxonMobil called an unusual meeting with the newly elected president.⁷³ During this meeting, the executives warned President Lourenço of the monumental effects of Sonangol's mismanagement on the oil industry, as well its backlog of debts. The dismissal of Isabel dos Santos occurred soon later, with no official explanation – leading many to consider that the pressure from the oil executives constituted the actual grounds for her removal.⁷⁴

⁶⁸ United Nations Human Rights Committee, 'Concluding observations on the second periodic report of Angola' (8 May 2019) UN Doc CCPR/C/AGO/CO/2 <<https://www.ecoi.net/en/file/local/2005659/G1913436.pdf>> accessed 18 June 2021, 1

⁶⁹ Law 1/20 22 January 2020

⁷⁰ Joseph Cotterill, 'Angola sharpens fight to recover stolen cash as debt pressure mounts' *Financial Times* (11 November 2020) <<https://www.ft.com/content/5ebceb76-5e3f-4e08-98b8-3345b86a3482>> accessed 24 May 2021

⁷¹ Also the former Minister of State to former president dos Santos

⁷² Joseph Cotterill (no 70)

⁷³ Stephen Eisenhammer et al, 'How "princess" of Angola lost her oil crown' *Reuters* (23 Nov 2017) <<https://www.reuters.com/article/uk-angola-sonangol-isabel-insight/how-princess-of-angola-lost-her-oil-crown-idINKBN1DN17G>> accessed 12 June 2021

⁷⁴ *ibid*



Angola flag, photo credit: jorono, Pixabay license

Rafael Marques de Morais, a prominent journalist and head of the anti-corruption watchdog Maka Angola, has also recognised the two sides to President Lourenço's battle. While on one hand, he describes the president's conduct as 'basically a reproduction of the same structures, the same status quo, the same way of doing things from dos Santos's dark past';⁷⁵ he also portrayed Lourenço's crusade as a very slow yet somewhat effective institutionalisation of anti-corruption measures in the country.⁷⁶

This demonstrates that the departure of former president dos Santos and some of his closest allies is not enough to mitigate the institutional corruption in Angola. Political scientists Domingos and Matsimbe suggest that the allies of President Lourenço, many of whom did not enjoy the monetary benefits of the previous administration, will expect that it is now 'their turn to eat'.⁷⁷ If indeed the President's anti-corruption campaign is as principled as he portrays, it remains to be seen how he will combat the problems of the past while dealing with the same issues amongst his allies and others under his leadership.

It will also be interesting to observe how the government plans to balance the tackling of various economic challenges with its fight against corruption. This tension is illustrated by Sonangol's ongoing engagement in complex lawsuits against Isabel dos Santos, whilst visibly fighting to control its own finances.⁷⁸ Recently, the Netherlands Arbitration Institute ruled that dos Santos and her husband, Sindika Dokolo had obtained a stake in Portuguese energy company Galp through highly corrupt proceedings, rendering the transaction null and void.⁷⁹ Dos Santos has been ordered to surrender the assets, worth \$500 million, to Sonangol, which is still reeling from the effects of dos Santos's previous leadership. Meanwhile, Angola has experienced a sharp decline in oil production resulting in a 17-year low of just under 1.10 million barrels per day, as Sonangol continues to struggle due to a lack of major projects in the pipeline.⁸⁰

When he assumed the presidency in 2017, Lourenço pledged to fight corruption, increase foreign and domestic investment, diversify the Angolan economy away from oil and facilitate private sector development. One of the most important steps towards this vision was the sale of around 200 state-owned enterprises and assets (including subsidiaries of Sonangol) through the Privatisation Programme (PROPRIV), an initiative which was strongly promoted by the International Monetary Fund in order to reduce public debt.⁸¹ PROPRIV, along with the Macroeconomic Stabilisation Program and the National Development Plan 2018 - 2022 formed a large basis of the government's plans for economic diversification and growth. On paper, the stated goals of these projects are generally in line with Lourenço's anti-corruption promises, and his promises to the Angolan people across the country.

⁷⁵ Joseph Cotterill (no 70)

⁷⁶ Estelle Maussion, 'Angola: Is Lourenço using his anti-corruption fight to settle scores' *Africa Report* (12 May 2021) <<https://www.theafricareport.com/87503/angola-is-lourenco-using-anti-corruption-fight-to-settle-scores/>> accessed 30 May 2021

⁷⁷ Nelson Domingos and Zefanias Matsimbe (no 41), 21

⁷⁸ Joseph Cotterill (no 70)

⁷⁹ Will Fitzgibbon 'Isabel dos Santos ordered to return to Angola \$500 million in shares "tainted by illegality"' (*International Consortium of Investigative Journalists*, 2 August 2021) <<https://www.icij.org/investigations/luanda-leaks/isabel-dos-santos-ordered-to-return-to-angola-500-million-in-shares-tainted-by-illegality/>> accessed 15 August 2021

⁸⁰ Eklavya Gupte, 'FEATURE: Angola faces daunting task to boost output to 1.3 million b/d in coming years' (*S&P Global*, 11 August 2021) <<https://www.spglobal.com/platts/en/market-insights/videos/market-movers-asia/081621-china-oil-covid-iron-ore-ningbo-port>> accessed 11 August 2021

⁸¹ Governed by the Privatisation Framework Law (Law No. 10/19, enacted in May 2019 and approved by Presidential Decree no.250/19 in August 2019)



Angolan fishermen, photo credit: ID 12019, Pixabay license

For example, the Privatisation Framework law lists individuals and entities that are banned from participating in PROPRIV, including certain public officials and those connected to them. Furthermore, privatisation under PROPRIV must only be undertaken through stock exchange offerings or a tender process with all procedures being subject to the Public Contract Act.⁸² Among others, the World Bank and Angola's financial sector closely monitor the execution of PROPRIV sales.⁸³ However, doubts remain as to the full adherence to the laws laid out by even the President himself. While President Lourenço made a show of cancelling several contracts awarded by the former president through ad-hoc and opaque deals, he himself has engaged in such deals despite pledging to expand the use of tenders.⁸⁴

Despite the current international support for Lourenço in the context of his anti-corruption drive, the public, the opposition parties and even members of the MPLA itself have criticised the ever-high unemployment rates and poor living conditions which have been worsened by the pandemic. Furthermore, the austerity measures included within PROPRIV risk exacerbating the economic inequality in Angola, with the government stating its plans to increase public transport fares and reduce fuel subsidies 'once the pandemic subsides'.⁸⁵ The government has also been criticised as being careless for introducing policies which contradict with significant long-term economic plans. One example is that despite Lourenço's push to target the agricultural, mining, fishing and tourism industries for diversification, a law was passed which allows oil exploration activities in protected areas.

As many of the financial plans scheduled by the government were severely affected by COVID-19 and falling foreign currency oil revenues, this year's rise in oil prices may signal a turning point for Angola. The budget was calculated based on a price of \$39 boe, but with the current price of a barrel approximately \$80 boe at the time of writing (October 2021),⁸⁶ the implementation of programmes such as PROPRIV may resume with more promising results. It is estimated that in Angola, an average annual price of \$60 boe will produce a revenue surplus equal to 3% of GDP.⁸⁷ Should this materialise, Angola would be well placed to take advantage of this period of rising oil prices and regional collaboration mechanisms in order to employ a more comprehensive approach to its own diversification and to anti-corruption as a country.

⁸² Public Contract Act (Law 9/16) of 14 September 2016

⁸³ Samuel Curne and Inigo Esteve 'Africa Focus: Autumn 2020 – Looking to a future beyond oil (Angola's Privatization Programme 2019-2022)' (*JD Supra*, 13 October 2020) <<https://www.jdsupra.com/legalnews/africa-focus-autumn-2020-looking-to-a-89279/>> accessed 30 May 2021

⁸⁴ Estelle Maussion, 'President João Lourenço's mission impossible: Fixing Angola's economy' *Africa Report* (21 May 2021)

<<https://www.theafricareport.com/89963/president-joao-lourencos-mission-impossible-fixing-angolas-economy/>> accessed 30 May 2021

⁸⁵ Henrique Almeida et al, 'IMF Disburses \$488 Million to Angola, Backs Plan to Cut Debt' (*Bloomberg*, 12 January 2021)

<<https://www.bloomberg.com/news/articles/2021-01-12/imf-to-disburse-488-million-to-angola-as-it-seeks-to-curb-debt>> accessed 7 September 2021

⁸⁶ October 2021

⁸⁷ Statement by Tiago Bossa Dioniso of Eaglestone for Africa Report

Part 2: Angola, AfCFTA, and the Convention

African Continental Free Trade Area (AfCFTA)

The African Continental Free Trade Area (AfCFTA) was created by a momentous treaty which sought to connect 1.3 billion people across 54 African countries with a combined GDP of \$3.4 trillion.⁸⁸ The purpose was to usher in a new era of development on the African continent by creating 'a single market for goods [and] services facilitated by movement of persons in order to deepen the economic integration of the African continent'.⁸⁹ The Treaty is wide-ranging – aiming to reduce trade costs to facilitate the integration of Africa into global supply chains, while also addressing the movement of people, competition, investment and intellectual property.⁹⁰ Currently, only 17% of exports in Africa are intra-continental, compared to 59% in Asia and 68% in Europe; but according to the World Bank, the AfCFTA is expected to raise this figure by 81%.⁹¹ Prospective economic developments include the diversification of exports, growth acceleration, an increase in foreign direct investment, more employment opportunities, higher incomes and widespread competitive integration into the global economy by African countries.⁹² Therefore, its successful implementation is crucial for both the short-term economic recovery following the COVID-19 pandemic, and longer term resilience building on the continent. The Treaty first entered into force in May 2019 after it was ratified by 22 countries. Angola became the 30th country to ratify the treaty at the end of 2020, shortly before the AfCFTA was launched in January 2021. The progress of the AfCFTA will be affected by various issues such as inadequate infrastructure, security concerns and complex customs procedures.

Just as many of the goals of the AfCFTA align with the Angolan government's national ambitions, many of the obstacles to the success of the AfCFTA and President Lourenço's plans are not only interlinked, but also related to corruption and transparency issues. Take for example the delayed development of vital infrastructure which is required to attract foreign investors and facilitate the ease of intra-regional trade. The lack of infrastructure is linked to the widespread institutional corruption that has plagued countries like Angola for decades. Although it is the second largest oil exporter in Africa,⁹³ grand corruption in Angola has in the past prevented the development of the infrastructure necessary to supply its Southern neighbours despite the clear mutual benefits of such trade partnerships. Full participation in the AfCFTA is highly likely to have a positive impact on Angola's oil and gas sector by facilitating the opportunity for significant investments in regional infrastructure, as well as cheaper and easier trade between neighbouring countries.

President Lourenço has expressed great enthusiasm for continental economic integration as envisioned by the AfCFTA, with Angola actively participating in the negotiations for its implementation. Lourenço proposed cooperation with Ghana, in particular, in oil and gas exploration, agriculture, tourism and the cultural sector; while also emphasising the 'huge potential ... to explore much more areas of cooperation [for the purposes of] progress and development'.⁹⁴ Despite the fact that corruption and a lack of transparency within free trade zones can strip governments of much needed revenue to pursue such projects, thereby constituting a major hindrance to the goals of the AfCFTA,; the Treaty does not overtly address anti-corruption.⁹⁵ However, Part IV touches on transparency by stating that 'each state party shall promptly publish or make publicly available through accessible mediums its laws, regulations, procedures and administrative rulings of general application'. The Treaty also includes a Protocol on Trade in Services which mentions the 'prevention of deceptive and fraudulent practices', without further elucidation on what exactly is expected of State Parties. While some have called for the inclusion of a section dedicated to anti-corruption measures in the AfCFTA agreement, this Insight posits that a comprehensive implementation of the AU's already existing convention is a more effective route.

⁸⁸ Agreement Establishing the African Continental Free Trade Area (hereafter known as 'the Treaty')

⁸⁹ The Treaty, Art 3(a)

⁹⁰ *ibid*

⁹¹ Caroline Kende-Robb, '6 reasons why Africa's new free trade area is a global game changer' (*World Economic Forum*, 9 February 2021) <<https://www.weforum.org/agenda/2021/02/afcfta-africa-free-trade-global-game-changer>> accessed 30 June 2021; World Bank 'Trade Pact Could Boost Africa's Income by \$450 Billion, Study Finds' <<https://www.worldbank.org/en/news/press-release/2020/07/27/african-continental-free-trade-area>> (Press Release No: 2021/013/EFI, 27 Jul 2020) accessed 7 September 2021

⁹² Maryla Maliszewska et al, 'The African Continental Free Trade Area: Economic and Distributional Effects' (*World Bank*, 2020)

<<https://openknowledge.worldbank.org/bitstream/handle/10986/34139/9781464815591.pdf?sequence=4&isAllowed=y>> accessed 30 June 2021

⁹³ Julia Faria, 'Export volume of crude oil by country in Africa 2019' (*Statista*, 22 February 2021)

<<https://www.statista.com/statistics/1197901/export-volume-of-crude-oil-by-country-in-africa/>> accessed 25 July 2021

⁹⁴ Alan Cash 'AfCFTA to provide greater protection to small & informal businesses – Angola president' *The Business and Financial Times Ltd Online* (9 August 2021) <<https://thebftonline.com/09/08/2021/afcfta-to-provide-greater-protection-to-small-informal-businesses-angola-president/>> accessed 10 August 2021

⁹⁵ Global Financial Integrity 'Trade Integrity' <<https://gfintegrity.org/issue/trade-integrity/>> accessed 25 July 2021

The Convention

Adopted by the African Union Assembly in July 2003, the African Union Convention on Preventing and Combating Corruption (the Convention) is a concise international convention that functions as a guideline for State Parties to address the most prevalent aspects of systemic corruption.⁹⁶ Like the AfCFTA, the Convention was created by cooperation fostered through the AU. It has been ratified by over two-thirds of African countries, including Angola, and contains provisions that not only complement Angola's development goals but leave room for domestic modifications where necessary.

The ratification of the Convention arguably constitutes the minimum level of political will to which the governments in Africa may commit in order to demonstrate their determination to combat corruption in their jurisdictions and across the continent. However, the launch of the AfCFTA, along with the Angolan government's economic goals and political commitment to tackle corruption, represents a unique opportunity to expand the relevance of the Convention. Angola completed the ratification step in December 2017,⁹⁷ around ten years after signing the Convention and shortly after the election of President Lourenço. Angola has since implemented many legislative measures that have even exceeded the standards set by the provisions in the Convention.

This Insight takes the view that the most important content of the Convention is the group of fundamental principles which underscore the obligations that State Parties assume on ratification. The principles are as follows:⁹⁸

1. Respect for democratic principles and institutions, popular participation, the rule of law and good governance.
2. Respect for human and peoples' rights in accordance with the African Charter on Human and Peoples Rights and other relevant human rights instruments.
3. Transparency and accountability in the management of public affairs.
4. Promotion of social justice to ensure balanced socio-economic development.
5. Condemnation and rejection of acts of corruption, related offences and impunity.

Despite the lack of detail, this unique statement of principles set the Convention apart from comparable instruments such as the UNCAC and the Inter-American Convention Against Corruption. Attempts to combat corruption in a progressive, effective and sustainable way would be futile without the prioritisation of these fundamental principles.⁹⁹ The danger of ignoring these principles is summarised by Professor Susan Rose-Ackerman:

"[t]oo often, former rulers are accused of corruption at the same time as the new rulers are creating corrupt structures of their own that will repeat the pattern.

*The effort to retrieve looted funds should be combined with affirmative programs of reform."*¹⁰⁰

Thus, the long-lasting entrenchment of systemic anti-corruption reform depends on the socio-economic and political reforms that enforce the above fundamental principles.

Interestingly, the Convention itself at times falls short of integrating these principles into its provisions. For example, one of the most important substantive articles concerns the establishment of the crime of illicit enrichment, defined as "the significant increase in the assets of a public official or any other person which he or she cannot reasonably explain in relation to his or her income."¹⁰¹ The wording is ordinarily interpreted as an attempt to place the burden of proof on a defendant, thus contradicting the first stated fundamental principle – that of the rule of law. This provision in particular is in direct conflict with the AU's own African Charter on Human and People's Rights, namely the unequivocal right to be presumed innocent until proven guilty.¹⁰²

⁹⁶ Won Kidane and Thomas R Snider, 'Combatting Corruption Through International Law in Africa: A Comparative Analysis' (date) 40 Cornell International Law Journal, 711

⁹⁷ Date of Signature 22/01/2007; Date of ratification 20/12/2017; Date of deposit 25/01/2018

⁹⁸ The Convention, art 3

⁹⁹ Won Kidane and Thomas R Snider (no 96), 744

¹⁰⁰ Susan Rose-Ackerman, 'Establishing the Rule of Law', in Robert I. Rotberg (ed) *When States Fail: Causes And Consequences*, (Princeton University Press 2004) 185

¹⁰¹ The Convention, Art 8

¹⁰² The African Charter on Human and People's Rights, Art 7(b)



Angolan interior landscapes, Pixabay licenses . Left, photo credit: ID 12019. Right, photo credit: mdccruz01

Undoubtedly, illicit enrichment is one of the most damaging aspects of grand corruption. At present more than \$50 billion illicitly flows out of Africa annually,¹⁰³ and financial experts have found that at least \$100 billion may have flowed from Angola in the last two decades alone.¹⁰⁴ To combat this serious crime, it is necessary for State Parties to create innovative responses to illicit enrichment while upholding recognised principles of criminal justice. Generally speaking, therefore, when it comes to adapting provisions of the Convention within its legal sphere, it would be best practice for Angolan policymakers and legislators to be on their guard for provisions that could potentially contradict the stated fundamental principles. Finding alternative solutions for contradictions within the Convention would help to strengthen the domestic legislation and propel it to a high legal and regulatory standard.¹⁰⁵

Angola has a long way to go in terms of aligning Lourenço's anti-corruption efforts with the fundamental principles in the Convention. Professor Rose-Ackerman's observation above bears an eerie resemblance to the criticisms of President Lourenço's methods described in Part 1. The reforms he has spearheaded have been largely limited to the recovery of stolen assets, but progress is still required in terms of the judiciary's independence from the executive.¹⁰⁶ Correspondingly, according to senior lawyers from an Angolan law firm, the biggest challenges that national enforcement agencies face when investigating bribery and corruption are related to access to the relevant information, and the length and bureaucratic nature of the entire investigative and judicial process.¹⁰⁷ Improving the investigative services' resources and simplifying these processes would require the maintenance of national anti-corruption agencies that are funded sufficiently and empowered to investigate and prosecute independently. In Angola, however, the Ministry of Justice – arguably one of the most important agencies for any substantial anti-corruption action - currently operates on a smaller budget than that of the president's security.¹⁰⁸

The weaknesses of these institutions, alongside the President's refusal to accede to public demands to amend the Angolan constitution to limit presidential powers, could revert Angola's progress and send the leadership down an authoritarian path.¹⁰⁹ Civil society in Angola continues to push for more varied reforms predicated upon democratic principles such as the expansion of Angolan media, the depoliticization of the highest courts and even processes similar to the South African Truth Commission for the purpose of full accountability.¹¹⁰ Therefore, while State Parties can and should take inspiration from the substantive measures suggested by the Convention, it is paramount to domesticise these measures within the context of the wider democratic and human rights-based principles of article 3 in order to create long-lasting and impactful change.

¹⁰³ 'Report of the High Level Panel on Illicit Financial Flows from Africa' (Commissioned by the AU/ECA Conference of Ministers of Finance, Planning and Economic Development, January 2015) <https://au.int/sites/default/files/documents/40545-doc-IFFs_REPORT.pdf> accessed 24 May 2021, 13

¹⁰⁴ Patrick Smith, 'Angola Exposé: President Lourenço breaks the mould' *Africa Report* (13 May 2020)

<https://www.theafricareport.com/27737/angola-expose-president-joao-lourenco-breaks-the-mould/> accessed 13 May 2021

¹⁰⁵ Rudo Kwaramba-Kayombo (no 7)

¹⁰⁶ 'The Challenges of Reform in Angola' (*Africa Center for Strategic Studies*, 21 January 2020) <<https://africacenter.org/spotlight/the-challenges-of-reform-in-angola/>> accessed 25 May 2021

¹⁰⁷ Euridce Baptista and Berta Grilo of FBL Advogados, 'Angola: Bribery & Corruption' (*The Legal 500*, 2021)

<<https://www.legal500.com/guides/chapter/angola-bribery-corruption/>> accessed 20 June 2021

¹⁰⁸ Estelle Maussion, 'President João Lourenço's mission impossible: Fixing Angola's economy' (no 84)

¹⁰⁹ *ibid*

¹¹⁰ *ibid*



Arboreal sunset, Angola, photo credit: wjgomes, Pixabay license

The Convention itself is far from perfect. Several publications are available online which already closely analyse its limitations and contradictions.¹¹¹ Generally, restrictions related to national sovereignty considerations, domestic implementation and proper enforcement are inherent within any soft law instrument. The gaps within this Convention, however, can also serve as opportunities for Angola and its regional neighbours to close gaps within national legislation and intra-regional implementation.

The Convention is extremely concise and includes vaguely worded provisions. The positive aspect of this is that the Convention can be flexible, allowing each State Party to personalise solutions to suit its own unique challenges and perspectives. This can be illustrated by the Convention's inclusion of criminal sanctions for illicit financial flows, without suggesting methods of providing remedies for those who have been affected by corruption. This exclusion is problematic, especially when one considers that similar exemplary conventions such as the UNCAC call for states to create frameworks that allow victims to seek and receive compensation or restitution for damages caused by corruption.¹¹² This is an area where the Angolan government can develop its capacity as it reaches a more stable economic situation. Not only could such a framework prove to be a legitimate method of redistributing wealth siphoned off by corruption, but it would also appear to be a tangible representation of the government's dedication to fight corruption, thereby increasing public and corporate confidence in the government's efforts.

With, a serious risk of this vagueness is that it could cause complications in terms of harmonising regional or continental legislative measures and interpretations. Moreover, States can simply choose to ignore the gap alongside the Convention's other non-mandatory provisions, thereby hindering domestic and continental progress.

The provisions on international cooperation and enforcement within the Convention include domestic and international components. One of the challenges which the AfCFTA aims to minimise in order to achieve its goals for intra-African trade is that of the uncoordinated and complex domestic bureaucratic procedures. These issues in particular lead to an increase in trading costs and often disincentivise commerce within the continent. These challenges are often caused or exacerbated by poor infrastructure and a variety of opaque and corrupt domestic practices. The Convention provides a good basic starting platform for overcoming this barrier and creating opportunities for Africa to connect faster with itself than the rest of the world.

The Convention also features provisions on extradition, mutual legal assistance and the tracing, seizure and confiscation of the proceeds of corruption.¹¹³ Article 19 calls for international cooperation between States but does not provide substantial details explaining under which circumstances evidence may be requested or denied. The Convention also asks State Parties to foster alliances with non-parties in order to facilitate the freezing and return of stolen assets.¹¹⁴ Fortunately, the Convention emphasises the importance of affording due process at the enforcement level by including a mandatory provision for a fair trial, as well as reiterating the principle against double jeopardy.¹¹⁵

¹¹¹ See Won Kidane and Thomas R Snider (no 96); Transparency International, 'Implementing And Enforcing The African Union Convention On Preventing And Combating Corruption: A Comparative Review'; Peter W Schroth, 'The African Union Convention on Preventing and Combatting Corruption'; Kolawole Olaniyan, 'The African Union Convention on Preventing and Combatting Corruption: a critical appraisal'

¹¹² Art 35

¹¹³ The Convention, art 15, art 18, art 16

¹¹⁴ The Convention, art 19(3)

¹¹⁵ The Convention, art 13(1)(d), art 13(3) and art 14; Won p 715

Two major important enforcement steps are outlined within the Convention. First is the creation or designation of a national authority which is responsible for mutual legal assistance and cooperation.¹¹⁶ Second is the establishment of The AU Advisory Board on Corruption (AUABC) which functions as part of the follow-up mechanism within the AU. The AUABC consists of eleven independent members, tasked with monitoring the implementation of the Convention and supporting member states in their fight against corruption.¹¹⁷ Some of the other responsibilities of the AUABC include the research and dissemination of information, advising governments on anti-corruption, developing codes of conduct for public officials and submitting annual reports to the AU Executive Council.¹¹⁸

A robust and independent intergovernmental monitoring system is crucial to ensure that the obligations undertaken within agreements are translating into practice. Transparency International reported that available data suggests enforcement through the AUABC is severely lagging in most countries.¹¹⁹ In an interview with a representative from the AUABC secretariat, Transparency International learned that the follow-up mechanism contained within the Convention was almost entirely inactive, partly due to a lack of resources for the AUABC.¹²⁰ As of 2020, the AUABC had only received 13 reports, many of which were incomplete and none of which are available to the public.¹²¹

Additionally, the AUABC itself has been subject to allegations of corruption by figures such as the late Daniel Batidam, the former Chairperson of the AUABC.¹²² In his resignation letter he stated that over the course of three years, he witnessed 'abuse of entrusted power [and a] lack of probity, accountability, transparency and integrity' in the organs of the AUABC and AU Commission, with no action having been taken on his complaints.¹²³ According to Batidam, the AU did not request any evidence for these serious claims and his letter was accepted without question.

Therefore, while the Convention presents an excellent avenue for the harmonisation of anti-corruption laws through its overarching fundamental principles, suggestions of preventative measures and introduction of a wide range of corruption related crimes, it is up to the AUABC and State Parties to integrate its content into real domestic, regional and intra-continental progress.

¹¹⁶ The Convention, art 20

¹¹⁷ The Convention, art 22

¹¹⁸ The Convention, art 22 (5)

¹¹⁹ Matt Tromme et al, 'Implementing And Enforcing The African Union Convention On Preventing And Combating Corruption: A Comparative Review' (*Transparency International*, 2020) <https://images.transparencycdn.org/images/2020_Report_AU-Convention-Review_English.pdf> accessed 30 May 2021, 6

¹²⁰ *ibid*, 9

¹²¹ *ibid*

¹²² Christina Okello, 'Official quits AU anti-corruption body over 'multiple irregularities' *RFI* (23 June 2018) <<https://www.rfi.fr/en/africa/20180616-official-quits-au-anti-corruption-body-over-multiple-irregularities-african-union>> accessed 8 August 2021

¹²³ Daniel Batidam's resignation letter can be found at: 'Daniel Batidam resigns from AU because of corruption and lack of accountability' <<https://www.ghanaweb.com/GhanaHomePage/NewsArchive/Daniel-Batidam-resigns-from-AU-because-of-corruption-and-lack-of-accountability-661711>> (*GhanaWeb*, 20 June 2018) accessed 1 October 2021

Conclusions

*"The speeches were compelling and authoritative, the legislation was feeble and ill-conceived, the actions were forcible, but meagre."*¹²⁴

These words summarise the public and academic discourse on President Lourenço's fight against corruption in Angola. His own rhetoric has always demonstrated a fervour to root out the abuse of power and return stolen wealth to Angola. The variety of legislation introduced has been impressive, yet the results have not been as extensive as many had hoped, and his actions against the corrupt of the dos Santos era have been described as contradictory.

Yet, credit should be given where it is due. In four years, incompetent and allegedly corrupt leaders have been ousted from great positions of power, outrageous monopolies have been abolished, and the prosecution services have launched an array of investigations and legal cases in line with President Lourenço's election promises. Furthermore, the legislative landscape has received some much-needed reform. The new laws discussed in Part 1 introduced and enhanced corruption-related offences and sought to improve transparency. The administration's economic programs were based on the notion that the petroleum sector would act as a catalyst for a "new, dynamic renewable and self-sustainable ... economy".¹²⁵ In particular, PROPRIV contained express provisions relating to transparency and accountability in the privatisation of Angola's resources, including in the sale of oil concessions where corruption is particularly rampant.

However, the steps taken by this administration have not been universally lauded. Corruption is so structurally conditioned that anti-corruption practices and strategies too must be structurally rooted. The fight against corruption cannot fall squarely on the shoulders of one leader, when the entire system still contains gaps that provide opportunities for wrongdoers. In Angola, the judiciary is still not sufficiently independent from the executive, the investigation and prosecution services are not as well-funded or empowered as is required and the legal administrative processes are still long-winded and time-consuming. It is argued that corruption in Angola is quickly becoming more sophisticated, and more secretive methods are being developed which may not be as obvious to most of Angolan civil society, international investors, and international organisations.¹²⁶ Lawyers in Angola have already expressed concern over the lack of education in the general populace about grand corruption, as well as the lack of access to relevant information in the prosecution services.¹²⁷ Time will tell whether the anti-corruption agencies, as they stand, are equipped to deal with the alleged new forms of corruption, which are arising partly due to the gaps in Lourenço's current strategies.

The crusade against accused corrupt people has been described as selective and arbitrary - a prime example being President Lourenço's defence of former vice president and former head of Sonangol Manuel Vicente against corruption charges in court, and his appointment of the same man as a special adviser on oil and gas matters. The Angolan government has been successful in cooperating with international governments and financial institutions in relation to the freezing or return of assets. However, little evidence is publicly available on their cooperation with regional and continental partners in terms of structured and harmonised agreements relating to the extension of jurisdiction to fight corruption; procedures for intra-continental mutual legal and technical assistance; corruption as a basis for extradition; or any vigorous peer-review mechanisms to share good practices and challenges.

It is easy to notice, applaud and satisfy oneself with the high-profile attention-grabbing headline cases. It is easier still to neglect to delve deeper into what it truly means on an institutional level, and to ask what has changed in the life of the ordinary Angolan citizen. Afrobarometer is a pan-African nonpartisan survey research organisation which conducted 26,777 interviews across 18 countries (including Angola) in November and December 2019.¹²⁸ As a perception survey, Afrobarometer reflects the way those most affected by corruption perceive its impact in their own lived realities. On average, 59% of those interviewed said that corruption had increased in their country in the previous year, while 21% believed it decreased at least "somewhat".¹²⁹

¹²⁴ Santos Verde (no 10) 178

¹²⁵ President Joao Lourenço at the Africa Oil & Gas Conference 2019

¹²⁶ Anita Powell and Salem Solomon, 'Africa Is Angola's Anti-Corruption Drive Real or Cosmetic?' *VOA News* (10 January 2020) <<https://www.voanews.com/africa/angolas-anti-corruption-drive-real-or-cosmetic>> accessed 15 August 2021

¹²⁷ Euridce Baptista and Berta Grilo of FBL Advogados (no 107)

¹²⁸ Christiaan Keulder, 'Afrobarometer Dispatch no. 421: Africans see growing corruption, poor government response, but fear retaliation if they speak out' (*Africa Portal*, 26 January 2021) <https://media.africaportal.org/documents/ad421-africans_see_growing_corruption-afrobarometer_dispatch-bh-24jan20.pdf> accessed 9 August 2021, 1, 16

¹²⁹ *ibid*, 2, 4



Angolan citizen in the wetlands of Lunda Norte province, Angola.
Photo credit: Yolande Conradie, Unsplash license

Angola was the only country where more people saw a decrease in corruption (44%) than an increase (33%).¹³⁰ Nearly 75% feared retaliation or other negative consequences if they were to report corruption to the authorities.¹³¹ Angola was the country with the lowest perceived risk of retaliation, even though 55% of those surveyed feared retaliation.¹³² Another highly telling metric was the public's view on the question:

'How well or badly would you say the current government is handling the following matters: Fighting corruption in government?'

On average, 64% of the African citizens interviewed answered 'fairly badly' or 'very badly' while 30% replied with either 'fairly well' or 'very well'.¹³³ In Angola, 54% believed Lourenço's government was handling the fight against corruption badly while only 32% approved of his measures.¹³⁴ It is likely that these perceptions are partly due to the fact that legislative changes such as the Asset Recovery Acts and the Private Investments Acts have not done enough to boost Angola's economy or fund its welfare programmes. Most Angolans do not appear to be reaping the tangible benefits of the recent return of assets. The perception may be improved if the people see that repatriated funds are invested into the clear improvement of their quality of life: reliable healthcare, waste management; assistance to small business owners and education. This survey illustrated that despite the powerful headlines and policies on paper, there is still a long way to go to root out deeply entrenched corruption and eradicate its severe impact in the everyday lives of the Angolan people.

The Angolan government has not explicitly linked the Convention or the SADC Protocol with its recent anti-corruption strategies but has nevertheless taken actions consistent with many of the obligations they contain. Since a country can make such advancements on its own, it follows that one may regard the effectiveness of the international and regional agencies with scepticism. This Insight suggests that instead, it should be seen as an opportunity for stronger institutional capacity through the harmonisation of important legislation, mutual assistance, and systems of peer review. Furthermore, the Angolan government's enthusiasm for regional and continental economic integration by way of the AfCFTA provides a solid economic and political justification for further cooperation in terms of anti-corruption frameworks, as corruption will serve as a barrier to achieving the type of integration the administration hopes to foster. If the pan-African and regional underpinnings of the achievements discussed in this Insight were stronger and more coordinated, citizens of Angola and other member States of the AU could realistically expect to see a universal structural shift in the impact of corruption in their daily lives.

It is evident that despite the political platitudes, the signing and ratification of anti-corruption agreements, and other legal and political developments and progress; change has been too slow or stagnant and corruption generally remains unceasing in most of the AU's member states. Many of these states can draw wider lessons from Angola's experience at the national level. First, an anti-corruption crusade which is rooted in simply securing an election win, settling political scores or attracting a quick injection of cash from foreign investors is doomed to either fail or produce mediocre results. The strengthening of the country's institutions to ensure independence, accountability and transparency is paramount to creating lasting change. In the same way, all action should be undertaken in line with the foundational principles of the Convention to ensure the protection of civil and human rights along the way.

¹³⁰ *ibid*, 2, 5

¹³¹ *ibid*, 14

¹³² *ibid*

¹³³ *ibid*, 12

¹³⁴ *ibid*



Kissama, north-western Angola, photo credit: Eden Constantino, Unsplash license

Secondly, the redistribution of wealth among the poorest of the society must be considered alongside any punitive anti-corruption action – especially within resource rich nations. Publicly shaming and arresting the ruling classes does not suffice – the social security, healthcare, education and infrastructure advancements should be equally as widespread.

At the regional and continental level, the AU and wealthier RECs such as the SADC should adopt the responsibility of leading by example. Take for instance the task of creating synergy among the different multi-layered anti-corruption bodies and agreements available to the member States. A crucial step forward would be for governments and civil society organisations to first determine the areas of overlap and of differences between the relevant instruments to create a harmonised minimum standard with a robust, coercive and transparent monitoring system. To illustrate this point, consider President Lourenço's enthusiasm for establishing strong commercial and developmental links with Ghana under the AfCFTA. Both countries would be incentivised to adhere to harmonised laws or agreements and can hold each other accountable under a non-adversarial peer reviewing system.

This Research Insight thus concludes that the Convention provides a sound foundation for the achievement of both AfCFTA goals and domestic Angolan ambitions. Angola's participation in the AfCFTA offers an opportunity to promote better governance within the country's oil and gas sector, while also providing an environment which is conducive to the nation's journey to economic diversification. President Lourenço's wide-ranging legal reforms and other measures described in Part 1 aimed to improve governance and increase foreign and domestic investment with the goal of reducing Angola's dependence on oil exports. The government planned to fund this process through further oil exploration and production, as well as the sale of around 200 state-owned enterprises to the private sector. This, along with participation in the AfCFTA provides an opportunity for Angola to take advantage of the substantive content and fundamental principles within the Convention to not only strengthen its governance, but to hold itself and other regional and continental parties accountable.

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