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Convention against Corruption**

Executive summary

Note by the Secretariat

Addendum

Contents

| | <i>Page</i> |
|-----------------------------|-------------|
| II. Executive summary | 2 |
| Angola | 2 |

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II. Executive summary

Angola

1. Introduction: Overview of the legal and institutional framework of Angola in the context of implementation of the United Nations Convention against Corruption

The Republic of Angola signed the United Nations Convention against Corruption on 10 December 2003, and ratified it on 29 August 2006.

According to the Constitution, international law is an integral part of the Angolan legal order, with the application of the principle of automatic reception of international law. Among the various national laws that give effect to the Convention are:

- Government Integrity Act (Law No. 3/10)
- Law on Public Probity (Law No. 3/15)
- Legislative Decree No. 2/05 that approves the Penal Code (“PC”)
- Legislative Decree No. 2/05 that approves the Code of Penal Procedure (“CPP”)
- Law No. 34/11 on Combating Money Laundering (Law No. 34/11)
- Law No. 6/99 on Infractions against the Economy (Law No. 6/99)
- Act on Financial Institutions (Law No. 13/05)

Law No. 13/15 on International Judicial Cooperation in Criminal Matters regulates both extradition and mutual legal assistance in cases where there is no treaty basis. The Constitution is the supreme law of the land.

The most prominent institutions in preventing and countering corruption are the Ministry of Justice, the Prosecutor-General’s Office, the Judicial Police (Ministry of Justice), the Financial Intelligence Unit, the National Inspectorate, the National Accounting Office and the Judiciary, including an Audit Court.

2. Chapter III: Criminalization and law enforcement

2.1. Observations on the implementation of the articles under review

Bribery and trading in influence (arts. 15, 16, 18 and 21)

Article 15 of Law No. 3/10 provides for a definition of “public official” in accordance with the Convention. Articles 48 and 49 of Law No. 6/99 and articles 319, 421 and 447 of the PC partially criminalize bribery of public officials.

Active and passive bribery of foreign public officials and officials of public international organizations have not been criminalized.

Active and passive trading in influence is administratively sanctioned by articles 25 and 26 of Law No. 3/10; article 39 of the same law partially criminalizes the conduct as described in the Convention. Bribery in the private sector has not been criminalized through specific legislation, although articles 318 and 321 of the PC partially penalize bribes paid or offered by private persons.

Money-laundering, concealment (arts. 23 and 24)

Angola has criminalized money-laundering through Law No. 34/11. This law punishes any person who converts, transfers, or assists in or facilitates the conversion or transfer of proceeds obtained either by that person or by a third party, for the purpose of either concealing the unlawful origin thereof or preventing the offender or any participant in the commission of the offence from being criminally prosecuted or subjected to criminal proceedings (art. 60 of Law No. 34/11).

It also punishes the acquisition, possession, or use of property, when at the time of receipt it is known that such property is the proceeds from the commission, under any form of complicity.

The association with a conspiracy to commit, attempt and facilitating and counselling the commission of any of the predicate offence, as established by the Convention, is not provided for in Law No. 34/11. The law defines the proceeds of crime as the products from the commission of offences predicate to a money-laundering offence, under any form of complicity. The same law foresees as predicate offences any crime punishable by imprisonment for a minimum term exceeding six-months. Obstruction of justice and embezzlement are partially included among predicate offences.

A financial intelligence unit (FIU) was created through a presidential decree (No. 35/11) for the purpose of preventing and suppressing money-laundering and terrorism financing.

Angola partially complies with the Convention, concerning the widest inclusion as predicate offences of a comprehensive range of criminal offences.

The money-laundering offence can be applied in a situation where the predicate offence occurs abroad, regardless of whether the location in which the offence was committed or the identity of the offenders is known.

The offence set forth in paragraph 1 of article 23 of the Convention does not apply to the person who committed the predicate offence.

Concealment as a criminal offence is partially regulated in articles 23(4) and 106 of the PC. These provisions do not foresee the concealment or continued retention of property per se; they regulate the purchasing, selling, giving or otherwise profiting from or assisting the offender in profiting from the proceeds of crimes, knowing, while doing so, of the criminal origin thereof.

Embezzlement, abuse of functions and illicit enrichment (arts. 17, 19, 20 and 22)

Embezzlement is established as a criminal offence in article 313 of the Penal Code, which punishes any public official who, being entrusted by reason of his office with money or properties belonging to the State or private parties, disposes of, steals or allows another to steal, or converts the same to his use or to the use of another and in so doing fails to lawfully utilize or dispose of the same. Furthermore, embezzlement is regulated by articles 23, 24, 25, 26 and 39 of Act No. 3/10 (Government Integrity Act) and by Act No. 13/10 (Statute of the Court of Auditors).

The abuse of functions is criminalized by article 12 of the Act on Crimes Committed by Public Office Holders (Act No. 21/90) and article 39 of the Government Integrity Act. However, the failure to perform an official act is not criminalized.

Angola has criminalized illicit enrichment under article 37 of the Government Integrity Act, which addresses unjustified enrichment.

Embezzlement of property in the private sector is criminalized in article 453 of Criminal Code and article 39 of the Government Integrity Act.

Obstruction of justice (art. 25)

Angola criminalizes the obstruction of justice through provisions in the Penal Code (arts. 240, 288, 289 and 297) and in the Government Integrity Act (art. 38). Through these provisions false testimonies and obstruction to law enforcement authorities in the exercise of their duties to enforce legal orders are punished with imprisonment from two to eight years. These domestic provisions partially cover the offence, as envisaged in the Convention.

Liability of legal persons (art. 26)

The liability of legal persons is regulated in articles 3(1), 3(2) and 5 of Act No. 6/99; arts. 123, 124, 125, 126, 127 and 133 of Act No. 13/05 on Financial Institutions; and articles 43(2) and 65 of the Money-Laundering Act.

The liability of the legal person coexists along with individual liability of members of the relevant bodies, shareholders, members of management or those acting as agents in a statutory or voluntary capacity.

There is, however, an exemption of liability for legal persons, whereas the officers, employees or agents who committed a crime have acted against orders from management and such entities have not obtained any advantages or benefits, have voluntarily abstained from deriving any advantage or have, on their own initiative, returned the same to its lawful origin (art. 3(2) of Act No. 6/99).

Participation and attempt (art. 27)

Participation in a criminal offence as an accomplice, assistant and as an instigator is regulated in articles 20 and 21 of the Penal Code. Article 20 of the Penal Code considers principal offenders to be those who commit a crime or take part in its commission. Accomplices are persons who counsel or instigate another person to commit an offence, or assist in facilitating and preparing the commission of the crime itself. Attempt is provided for in article 11 and 12 of the Penal Code. Preparatory acts are not criminalized.

Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (arts. 30 and 37)

Angola provides for custodial penalties under the articles 55, 56 and 57 of the Penal Code, along with the limitations established in article 73 of the Penal Code itself, which sets out a maximum period of imprisonment of up to 30 years. Article 57 establishes special penalties for public officials, such as removal from office, suspension and reprimand. Article 78 sets out disqualification from public offices limited to cases of embezzlement; hence it does not apply to all the criminal offences in accordance with the Convention.

Article 31 of the Government Integrity Act provides for return of illegally obtained property and sets out penalties, in addition to those of imprisonment, such as full payment of damages, removal from public office, suspension of political rights, payment of a fine, prohibition from contracting with government entities or receiving tax incentives, and loss of property.

The Constitution provides for the immunity of members of the National Assembly, the Prosecutor-General and members of the High Council of the Judiciary. Such immunities can be lifted through special procedures upon indictment. Immunities are also provided for lawyers in the procedural actions and representations required in the exercise of their profession. Regarding offences foreseen in the Convention, the national Constitution specifically foresees that the President is only responsible in the case of bribery and treason. There is no specific provision lifting immunities in cases concerning offences established in accordance with the Convention. Judges can be only imprisoned for offences that are punishable by over two years of imprisonment. Ministers, deputy ministers and secretaries of States can be investigated without any procedure concerning functional immunities. No statistics or example of cases lifting immunities to allow for prosecution of offences were provided.

The principle of reintegration into society of the person convicted is promoted in Angola through article 5 of the Penal Code, which provides for programmes for social reintegration, including for public officials.

The sanctions may be exceptionally mitigated if the offender cooperates in the investigation and prosecution of the criminal offence (art. 39 (18) and (20) of the Penal Code and art. 60 of the Money-Laundering Act).

Protection of witnesses and reporting persons (arts. 32 and 33)

Protection of witnesses and reporting persons is not available in Angola. In particular, evidentiary rules are not provided in order to permit witnesses and experts and their relatives to give testimony in a manner that ensures their safety. Angola has not entered into any agreements and arrangements for the relocation of witnesses and experts.

No measures have been adopted to enable the view and concern of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner that does not prejudice the rights of the defence.

No measures for the reporting persons in good faith and on reasonable grounds in relation to the criminal offence established under the Convention have been provided.

Freezing, seizing and confiscation; bank secrecy (arts. 31 and 40)

Article 136 of Law No. 13/05 sets out that, where necessary for the purposes of investigation or collection of evidence for proceedings, documents may be seized.

Based on article 31 of the Government Integrity Act, article 133 of Act No. 13/05 (Financial institutions) and article 75 (2) of the Penal Code (Non-penal effects of convictions), Angola recognizes that a person found guilty of malfeasance is liable for the loss of property and/or loss of proceeds illicitly incorporated into the offender's property to the extent required to fully repair any damages.

Article 32 of the Government Integrity Act establishes that, when evidence is found concerning acts of malfeasance, the Public Prosecutor's Office may request an order for seizure of the property and freezing of the bank accounts of a public official or third party allegedly involved in the offence.

According to article 58 of Act No. 34/11, bona fide third parties are protected if they can demonstrate that they have no role in the commission of the criminal offences established in the Convention.

Bank secrecy can be lifted during legal proceedings through an order issued by a judge, a magistrate for public prosecution or by the Governor of the National Bank of Angola according to articles 60 and 61 of the Law on Financial Institutions and article 96(1)(b) of Act No. 16/10 on confidentiality and bank secrecy.

Statute of limitations; criminal record (arts. 29 and 41)

Angola establishes a statute of limitations in the Criminal Code (art. 125, para. 2) to a period of 15 years if the offence carries a correctional penalty exceeding five years, and of one year for misdemeanours (para. 2). The statute of limitations period begins at the commission of the crime (para. 4).

Angola may exchange information on previous convictions in another State of alleged offenders for the purpose of using such information in criminal proceedings. A number of national bodies have adopted databases in order to implement the provision of article 41 of the Convention concerning the criminal record. These bodies include: National Department for Civil and Criminal Records; National Department for Criminal Investigation, National Department for Scrutiny of Economic Activities, Provincial Department for Criminal Investigation and Provincial Department for Scrutiny of Economic Activities; the Virtual Prosecutors' Office administrating electronic archives; and the Financial Intelligence Unit.

Jurisdiction (art. 42)

The principle of territorial jurisdiction is regulated in different legal provisions (art. 175 of the Constitution; art. 7 of the Unified Justice System (Territorial jurisdiction in criminal matters); art. 42 of the Act against Money-Laundering and Terrorist Financing); and art. 53 (1) of the Penal Code (Territorial application of the Criminal Code)). Unless specified otherwise in an international treaty, criminal law will apply to all offences committed in Angolan territory.

Article 42 of the Act against Money-Laundering and Terrorist Financing and article 53 (1) of the Penal Code grant jurisdiction to crimes committed aboard Angolan-flagged ships or aircraft, unless otherwise provided in an international treaty or convention.

The domestic courts can exercise jurisdiction to adjudicate on any crime, established in accordance with the Convention, committed by a national in a foreign country every time the offender is found in Angola when the offence is also a crime under the legislation of the country in which it was committed and the offender has not been tried in the country in which the crime or misdemeanour was committed.

Consequences of acts of corruption; compensation for damage (arts. 34 and 35)

Angola regulates the consequences of acts of corruption with regard to the public procurement law. In particular, article 20 (Corrective measures) of the Act on Public Procurement envisages that the Director of the Office for Public Procurement may order to annul, in whole or in part, any illegal act or decision done or made by the public contracting entity; review any illegal decision made by a contracting public entity or replace such decision with his own; and where the contract is not yet being performed, order the procurement procedure to be cancelled. Article 100 of the same law sets out that no award shall be made in case of serious suspicion of collusion among tenderers.

Concerning the compensation for damage, article 75 of the Constitution states that States, public bodies, and their agents and staff are jointly liable, under civil law, in the exercise or as a result of their legislative, jurisdictional and administrative duties.

Specialized authorities and inter-agency coordination (arts. 36, 38 and 39)

Angola has a number of specialized authorities to fight the offences criminalized under the Convention such as the National Department for Criminal Investigation and Prosecution, the National Department for Prevention and Suppression of Corruption, the National Department for Criminal Investigation (DNIC) at the Ministry of the Interior, and the National Department for Scrutiny and Investigation of Economic Activities at the General Command of the National Police Investigation. The Audit Court has authority and responsibility for the financial scrutiny of State and other public entities and the Financial Information Unit (FIU) is tasked with preventing and assessing suspicious banking transactions.

In Angola the FIU exchanges information with the Office of the Attorney General of the Republic, the law enforcement authorities, the National Directorate for Investigation and Inspection of Economic Activities of the General Command of the National Police, the National Directorate for Criminal Investigation of the General Command of the National Police, and the Intelligence and Homeland Security Agencies. This agency also exchanges information with other government agencies such as the National Tax Directorate, the National Customs Agency, the Immigration and Foreigners Agency, the National Directorate of Registries and Notaries and the National Directorate of Trade.

Except for reporting obligations of private entities to the FIU, under anti-money-laundering legislation, specific cooperation between national authorities and the private sector is not established in Angola.

2.2. Successes and good practices

Overall the following good practices in implementing Chapter III of the Convention are highlighted:

- Mandatory cooperation of internal control agencies, namely the National Inspectorate and the National Accounting Office or any other control or audit bodies of Government agencies or Government corporations, which have a duty to cooperate with the Court of Auditors (art. 36).
- The establishment of databases at the National Department for Civil and Criminal Records, at the National Department for Criminal Investigation, National Department for Scrutiny of Economic Activities, Provincial Department for Criminal Investigation and Provincial Department for Scrutiny of Economic Activities, and the creation of Electronic archives of the Virtual Prosecutors' Office (art. 37).

2.3. Challenges in implementation

The following actions are recommended to further strengthen the existing anti-corruption framework:

- Amend legislation to criminalize bribery of public officials in accordance with the Convention (art. 15)
- Ensure the criminalization of bribery of foreign public officials and officials of public international organizations in accordance with the Convention (art. 16)
- Consider the criminalization of trading in influence as described in the Convention (art. 18)
- Consider criminalizing the abuse of function when failing to perform an act (art. 19)
- Consider criminalizing bribery in the private sector (art. 21)
- Consider amending legislation to fully criminalize embezzlement of property in the private sector, in accordance with the Convention (art. 22)
- Enhancing the forms of criminal participation in the offence of proceeds of the crime (art. 23)
- Ensure that all offences established in accordance with the Convention are included as predicate offence of money-laundering (art. 23)
- Consider legislative measures to criminalize concealment fully established in accordance with the Convention (art. 24)
- Amend Angola's legislation to establish and fully implement as an offence the obstruction of justice as described in the Convention, including the element of corruption practices as a means to obstruct the proper administration of justice (art. 25)
- Take measures to ensure a suspension of the statute of limitations when the alleged offender has evaded the administration of justice (art. 29)
- Ensure through specific regulation an appropriate balance between immunities and the ability to effectively investigate, prosecute and adjudicate offences established in accordance with the Convention (art. 30, para. 2)
- Take measures to establish an effective programme and system for the protection of witnesses and experts, their relatives and persons close to them, as established by the Convention (art. 32, paras. 1 and 2)
- Ensure the provision of evidentiary rules that permit witnesses and experts to provide testimony through the use of communication technology so as to ensure their safety (art. 32, subpara. 2 (b))

- Apply the provisions envisaged for witnesses to victims also (art. 32, para. 4)
- Ensure that the views and concerns of victims can be presented at appropriate stages of criminal proceedings against offenders while, at the same time, protecting the right of the defence (art. 32, para. 5)
- Consider establishing appropriate measures, in accordance with the Convention, for the protection of reporting persons (art. 33)
- Take appropriate measures to encourage cooperation with law enforcement authorities (art. 37) and strengthen cooperation between national authorities (art. 38)
- Consider encouraging reporting of offences established through awareness-raising and other outreach measures to national investigating and prosecuting authorities (art. 39, para. 2)
- Take measures to enhance the legal framework application on jurisdiction for offences established in accordance with the Convention and consider including the reference to stateless person or habitual residence of persons, as established in accordance with the Convention (art. 42 (2)(b)).

2.4. Technical assistance needs identified to improve implementation of the Convention

Angola indicated in its self-assessment that the following technical assistance, if available, would be useful to strengthen the anti-corruption framework:

- Summary of good practices/lessons learned
- On-site assistance of an anti-corruption expert
- Legal advice
- Elaboration of an action plan as provided for in the national strategy for combating corruption and money-laundering
- Examples of model agreements/arrangements.

3. Chapter IV: International cooperation

3.1. Observations on the implementation of the articles under review

According to article 13(2) of the Constitution of Angola, any “[d]uly approved and ratified international treaties and agreements shall become an integral part of Angolan law”. Therefore, the Convention could arguably be applied directly. However, this proposition as well as the rank of treaties in the hierarchy of norms remains a point of discussion.

In 2015, new Law No. 13/15 on International Judicial Cooperation in Criminal Matters came into force and comprehensively governs both mutual legal assistance and extradition where there is no treaty basis.

Extradition; transfer of sentenced persons; transfer of criminal proceedings (arts. 44, 45 and 47)

According to Law No. 13/15, extradition can be granted on the basis of reciprocity. The principle of dual criminality is generally required, but is handled flexibly; non-coercive measures can be taken in the absence of dual criminality. Moreover, article 4 of Law No. 13/15 refers to the provisions of ratified international conventions and treaties, which take precedence over the rules in the Law. However, using the Convention as the legal basis for extradition in respect of Convention offences has not yet found widespread legal acceptance.

The extradition procedure is mixed judicial-executive, with the Supreme Court having the last word.

Angola allows “accessory” extradition on the basis of the Law No. 13/15 and does not consider any corruption crime as a political crime.

Articles 32 et seq. of Law No. 13/15 lay down the requirements for extradition, including a three-year minimum penalty requirement that is fulfilled for most but not all corruption offences, and reasons to refuse extradition, which include offences that would carry the death penalty. It has also implemented a simplified extradition procedure (art. 55(5) of Law No. 13/15). Provisional arrest is allowed under article 52 of Law No. 13/15.

Angola largely complies with the principle *aut dedere aut judicare*. While Angolan nationals cannot be extradited (art. 70 of the Constitution), Angola has jurisdiction over its nationals on the basis of the active personality principle. International obligations provide that this jurisdiction shall be exercised at the request of the State requesting extradition.

Angola has concluded five bilateral treaties (with Brazil, China, Namibia, Portugal and the Russian Federation) to carry out extradition and three multilateral treaties, including the Convention on Extradition between the Member States of the Community of Portuguese-speaking countries (CPLP Convention), the Protocol on Extradition of the Member States of the Southern African Development Community (SADC Protocol) and the Convention.

The CPLP Convention and article 110 et seq. of Law No. 13/15 provide for the transfer of sentenced persons. Angola also established the possibility of transferring criminal proceedings in article 75 et seq. of Law No. 13/15.

Mutual legal assistance (art. 46)

Angola has concluded four bilateral treaties (with Brazil, China, Portugal and the Russian Federation) on mutual legal assistance (MLA) and two regional treaties, namely the Convention on Legal Assistance in Criminal Matters between the Member States of the Community of Portuguese-speaking countries (CPLP Convention) and the Protocol on MLA in Criminal Matters of the Member States of the Southern African Development Community (SADC Protocol). Where there is no treaty basis for MLA, Law No. 13/15, Title VI-Mutual Legal Assistance in Criminal Matters (art. 141 et seq.) provides the legal framework for MLA.

Angola does not generally require dual criminality when fulfilling judicial assistance requests for non-coercive measures. With regard to legal persons, coercive measures would require dual criminality but legal persons are not liable to criminal sanctions.

A wide range of measures including the whole spectrum of legal assistance measures included in article 46(3) of the Convention are defined in Law No. 13/15 through articles 141 and 151.

According to the CPLP Convention and the SADC Protocol, it is possible for Angola to exchange information on criminal offences without prior request. Those offences include Convention offences, money-laundering and terrorist financing. The confidentiality of the information provided will not prevent Angola from disclosing it when such information is exculpatory for an accused person. Bank secrecy is not a ground for refusing to render MLA.

The transfer of a person being detained or serving a sentence for the purpose of testimony is possible on the basis of bi- or multilateral agreements like the CPLP Convention or the Law No. 13/15 where no treaty has been concluded. Safe conduct is granted on the same basis. Although it is contemplated in some multilateral agreements, Angolan laws do not permit hearings of individuals to take place by videoconference.

According to Art. 22 of Law No. 13/15, the President of Angola shall designate a central authority who has the responsibility to receive the MLA requests. Although Angola has designated the Ministry of Justice and the Attorney General as central

authorities for certain aspects of international cooperation, the Secretary-General of the United Nations has not been notified. Only requests in Portuguese are accepted. The form and content of requests for MLA are governed by Law No. 13/15, the CPLP Convention and the SADC Protocol. However, Angola fulfils requests in accordance with the procedure specified unless such procedure conflicts with national law. The rule of specialty is observed. According to the multilateral agreements concluded and to Law No. 13/15, any request can be treated confidentially.

Law No. 13/15, the SADC Protocol and the CPLP Convention define the grounds for the refusal of MLA requests in compliance with the Convention. Fiscal matters are not listed as a ground for refusal. Angola confirmed that no MLA request has been formally refused yet. Requests may be delayed when the presence in Angola of the individual requested by the requesting State may interfere with ongoing investigations or criminal proceedings.

Ordinary costs of complying with MLA requests are borne by Angola. Documents in the public domain can be provided upon request.

Law enforcement cooperation; joint investigations; special investigative techniques (arts. 48, 49 and 50)

Angola does not consider the Convention as a basis for mutual law enforcement cooperation in respect of the offences covered by the Convention.

Angola has been a member of the International Criminal Police Organization (INTERPOL) since 1982 and its National Contact Bureau has two departments (cooperation and operations) belonging organically to the Ministry of Interior. Angola is also a member of the Southern African Regional Police Chiefs Cooperation Organization (SARPCCO), which supports cross-border police operations under the coordination of the Subregional Bureau of INTERPOL. The Angolan FIU cooperates with foreign counterparts on the basis of Presidential Decree No. 35/11, which established its organization and functioning. It is a member of the Egmont Group of Financial Intelligence Units. Angola had previously appointed liaison officers in Zimbabwe and other SADC States. However, currently, no police liaison officers are posted abroad.

Joint investigations are regulated in article 142 of Law No. 13/15 and have been conducted under the umbrella of INTERPOL.

Law No. 13/15 specifically provides in its articles 160-162 for the use of the special investigative techniques envisaged in article 50 of the Convention. However, the Angolan CPC does not contain any provisions on those techniques and thus evidence derived from them would not be admissible in court for domestic purposes.

3.2. Successes and good practices

Overall, the following successes and good practices in implementing chapter IV of the Convention are highlighted:

- The new comprehensive legal framework regulated in Law No. 13/15 on international cooperation.

3.3. Challenges in implementation

With regard to international cooperation, it is recommended that Angola:

- Ensure that all Convention offences are extraditable offences, even if they do not fulfil the three-year threshold in article 32(2) of Law No. 13/15 (art. 44(4), (7))
- Consider to officially designate a central authority, pursuant to article 22 of Law No. 13/15
- Ensure that its legislation permits a hearing to take place by videoconference

- Consider adopting legislation to govern the domestic use of special investigative techniques and to allow for the admissibility in court of evidence derived from such techniques
 - Consider the establishment and enhancement of channels of communication between competent law enforcement authorities, agencies and services.
-