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Environmental law in Angola – recent evolution and present status

Angola is one of the African countries with the richest natural heritage, putting it in a unique position to contribute significantly to global and national sustainable development goals. This can be achieved either through active conservation of these natural resources or by maximising the ecological services and financial benefits that stand to be gained for the development of the country.

Challenges in Angola

However, the sustainability of this heritage was seriously undermined by poor management practices undertaken since the colonial era, which were necessarily exacerbated as a result of the war. Currently, there are many causes for the degradation of the environment but in essence it is safe to say that they are rooted in poverty and the use of firewood and coal as primary energy sources for rural and urban populations.¹

The consequences of war, needless to say, were profound in terms of both loss of life and means of subsistence, causing long-term consequences that still affect every aspect of the environment and of the lives of the inhabitants. In the same way, although there is a group of people in Angola with outstanding intellectual and professional skills in the field of environmental management, it is clear that the prolonged armed conflict also weakened the skills and abilities of individuals and national institutions, by limiting access and sharing of knowledge as well as the implementation of technological practices and sustainable policies.

Poverty, still evident in Angola both in urban and rural areas, causes energy production based on vegetable coal to become, in certain regions of the country, the main source of income which, in turn, threatens the subsistence of food production. At the urban level, the urban solid waste management systems are flawed and necessarily cause the emergence of dumping grounds and polluted environments.

Legal and institutional framework

One of the major challenges that the country faces nowadays is at the legal and institutional level. In fact, although major advances have been registered in the environmental legal framework, as evidenced by the approval of more than 25 legal instruments since the creation of the Environment Ministry in 2009, with particular relevance to the regulatory legislation on environmental audits and environmental impact assessment of the investment projects, the truth is that there is still a long way to go in terms of the environmental legal framework.

Indeed, the establishment of the Environment Ministry gave the environmental sector fundamental institutional support. However, it is still necessary to empower and make the corresponding specialised institutions fully operational.

Constitution of Angola and post-independence legal reform

In Angola, the aspects concerning the environment are provided for in the Constitution, both regarding the rights, freedoms and guarantees (Article 39 of the Constitution of the Republic of Angola – CRA) and the Economic Constitution (Article 89, subparagraph h and Article 91, paragraph 2 of the CRA). In fact, Article 39 of the CRA enshrines the right of the environment and declares the right of citizens to live in healthy and non-polluted environments, as well as the duty to defend and preserve the environment. This same rule also requires the state to adopt the necessary measures of protection of the environment and ecological balance and to penalise acts that have harmful impacts on the conservation of the environment within the context of sustainable environment, respect for the rights of future generations and the preservation of different species.
The enshrining of the protection of the environment in the Constitution affords a range of powers and duties to the government, insofar as constitutional requirements establish not only the obligation to develop an environmental policy, but also the existence of a legally constitutional duty of the state and, consequently, the administration to protect the environment.

The process of post-independence legal reform has been comprehensive, innovative and ambitious and has resulted in the conclusion of a number of fundamental instruments relating to the environment, notably the 1998 Basic Law of the Environment. This statute serves as the baseline reference for the new legal instruments on the protection of the environment developed over recent years, particularly regarding the pursuit of the goals established in Articles 5 and 6, such as ‘achieving a sustainable development in all areas of national life’, integrating the aspects of the environment into the process of socioeconomic development and ‘establishing the responsibility of all stakeholders – governmental, private and civil society – whose activities have any influence on the environment through use or management’, and defining the general guidelines for each of these responsibilities.

National Environmental Management Programme 2009

For the purpose of developing a coherent policy on environmental matters, and in line with the goals established in Article 6 of the Basic Law of the Environment, the Angolan government approved, in January 2009, the National Environmental Management Programme. This programme defined as a general goal compliance with the Basic Law of the Environment regarding the sustainable development of the country, based on the preservation of the environment in the development and social process, and the responsibility of public and private entities for acts that may cause environmental damage.

The referred document contains a survey of existing environmental legislation, such as:

- the Basic Law of Environment (Law 5/98, 19 June 1998);
- Law of the Environmental Protection Associations (Law 3/06, 18 January 2006);
- the Land Law (Law 9/04, 9 November 2004);
- the Spatial Planning Law (Law 3/04, 25 June 2004);
- the Waters Law (Law 6/02, 21 June 2002);
- the Law on Biologic Aquatic Resources (Law 6-A/04, 8 October 2004);
- the Law on Geological and Mineral Activities (Law 1/92, 7 October 1992);
- Legislation on the Fishing Industry;
- Legislation on the Oil Industry;
- Decree on Environmental Impact Assessment (Decree 51/04, 23 July 2004);
- Decree on Environmental Licensing (Decree 59/96, 14 July 1996); and
- Decree on the Prohibition to Import Genetically Modified Foods (Decree 92/04, 14 December 2004).

A substantial number of laws and decrees were enacted, covering a variety of areas of the environment and natural resources. However, financial, human and institutional resources have not been allocated to make their implementation possible. Additionally, many of the statutes overlap in their powers, while others are unrealistic regarding the feasibility of the proposed objectives.

Environmental impact assessment procedure and environmental audits

From the legal-juridical instruments of environmental protection, reference should be made to the statute establishing the Environmental Impact Assessment (EIA) procedure.

This law is an environmental policy instrument of a preventive nature, based on studies and consultations with actual public involvement and analysis of possible alternatives, aimed at gathering information, identification and forecast of the environmental impacts of certain projects, as well as the identification of proposed measures to prevent, mitigate or offset such impacts, to allow for a decision to be made on the viability of such projects and their post-evaluation.

The law defines which projects are subject to the EIA and which are not, and specifies which projects are approved at central or provincial level. The environmental impact statement issued at the end of this procedure on the viability of the project under consideration may also establish the conditions under which the project can be licensed or authorised and contains, when required, the measures to mitigate the negative environmental impacts to be adopted by the applicant during the construction of the project, as well as the
corresponding monitoring measures to be adopted throughout the different stages of the project.

Another important tool in the field of environmental protection is the environmental audits, enshrined in Decree No 1/10 of 13 January 2010. This instrument will allow the regular or occasional examination and evaluation of the performance of certain projects as they relate to the environment. Environmental audits can be public or private, as may be determined by the competent state body or by the company itself. Such audits are mandatory for activities subject to EIA.

Under the law, environmental audits are performed by natural or legal entities with recognised expertise in environmental matters which must be registered with the Ministry of Environment. The statute that regulates environmental audits requires that all foreign consultancy firms wishing to pursue their activities in Angola must, necessarily, work together with Angolan auditors or environmental audit firms operating under Angolan law.

Conclusion

In summary, as with other modern constitutions, the CRA regulates environmental matters as a fundamental right with a clear concern of ensuring a close relationship between environmental protection, sustained economic development and the creation of a welfare state.

Despite recognised progress in the environment legal framework, there are still considerable challenges to overcome before the attitude towards the environment changes. Indeed, two generations of Angolan citizens have lived without solid waste management systems, clean water, sewage or a balanced environment and, evidently, this lack of experience brings a natural separation between the people and their natural surroundings, with the consequent lack of awareness regarding the interdependence between human health and the health of the environment.

Note


Environmental and natural resource courts in Brazil

This article presents an overview of Brazil’s specialised courts that adjudicate environmental matters and provides general information about Brazil and its legal system, as well as information about the environmental legal regime.

Brazil is a federal republic, a union of 26 states and a federal district where the city of Brasilia, the country’s capital, is located. According to the International Monetary Fund, Brazil has one of the world’s largest economies as well as plentiful biodiversity and natural resources.

Considered a strong emerging market player, Brazil has experienced impressive growth in recent years that is attributable to urbanisation and a rising middle class, strong economic diversification, significant levels of foreign direct investment and highly diverse trading partners, as well as a sound financial sector. The country is a strong source of natural resources, minerals and other agricultural products.

The Brazilian legal and judiciary system and the environmental courts

The Brazilian Federal Constitution of 1998 establishes a presidential form of government with three independent branches:
• the executive;
• the legislative; and
• the judicial.

The judiciary is composed of federal and state courts, such as the Federal Supreme Court (STF), the Superior Court of Justice (STJ), the Federal Regional Court (TRF), labour courts, electoral courts, military courts, and state, federal district and territories courts.

The STF is the court of final recourse on