LOCAL CONTENT

Angola – Petroleum
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The Project[1] - Background

Resource-rich countries are increasingly inserting requirements for local content ("local content provisions") into their legal framework, through legislation, regulations, contracts, and bidding practices. If successful, a policy to increase local content can lead to job creation, boost the domestic private sector, facilitate technology transfer and build a competitive local workforce. However, local content goals are often unfulfilled and the opportunities are not captured. For example, local content provisions typically require investors to meet targets measured as a percentage of investment, hours worked, equipment supplied, or jobs created. If targets are too high, they may either scare away investment or remain unmet as investors accept the fines or find loopholes. If they are too low, the country will not maximize potential linkages. This shows the importance of the framing of local content provisions. Targets, and other local content objectives, need to be carefully quantified, adapted to the local context and collaborative. Because local content provisions can be key to translating resource investments into sustainable benefits for the local population, this project examines the detail of the existing legal frameworks for local content in a number of countries.

CCSI has conducted a survey of the local content frameworks of a number of countries – identifying the key legislation, regulations, contracts and non-binding policies and frameworks dealing with local content issues in the mining and petroleum sectors[2]. A profile was created for each country, summarizing the provisions in the legal instruments dealing with local content and highlighting examples of high impact clauses[3] – those containing precise language which might be useful as an example to those looking to draft policies to enhance a country's local content[4]. The profiles examine provisions dealing with local employment, training, procurement, technology transfer, local content plans as well as local ownership, depending on the country's approach to and definition of local content. In addition, as key to translating provisions into action, the profiles look at implementation, monitoring and enforcement provisions as well as the government's role in expanding local involvement. Aside from emphasizing the strong clauses, which may be adaptable across countries, the profiles summarize the provisions but do not provide commentary, because local content is so context specific. The profiles are intended as a tool for policy makers, researchers and citizens seeking to understand and compare how local content is dealt with in other countries, and to provide some examples of language that might be adopted in a framework to achieve local content goals. Hyperlinks are provided to the source legislati on, regulations, policies and contracts where available.

[1] The project is managed by Perrine Toledano and the profile was researched by Connor Olson.

[2] General legislation with provisions that relate to local content (for example, tax laws with incentives for local procurement or employment in any industry), was not included in the review. The review included dedicated mining or petroleum sector or specific local content legislation, regulations, policy and contracts.

[3] Those clauses are framed and singled out by a "thumb up".

[4] Our criteria for assessment of the quality of the provisions were language that is less likely to present a loophole, i.e. less likely to be subject to interpretation due to vagueness and more likely to lead to enforcement because of its clarity in terms of rights and obligations of both parties (state and investor), and reasonable in its obligations on the company. In addition, as mentioned above, we looked for clauses that encourage collaboration between the company and the government in defining local content targets and goals, and those where the government has a role, as well as clauses enabling implementation and monitoring of the requirements and those giving the government strong remedies to enforce companies' compliance.

The Project - Background

The impact of international law

The World Trade Organization (WTO)'s agreements and investment treaties can present an obstacle to the realization of local content goals by prohibiting some types of local content requirements (a sub-category of “performance requirements”[1]). CCSI therefore surveyed the relevant WTO agreements and investment treaties in each country profiled to identify the provisions th at may prevent, counsel against and/or shield local content standards. These provisions are quoted in the profile in order to show the potential barriers to implementation of local content so that they can be kept in mind when countries enter into these intern ational investment treaties[2]. Free Trade Agreements other than the WTO agreements, some of which may contain investment chapters, are not included in the scope of the review, but may also be relevant and should be similarly kept in mind.

[1]Performance requirements are measures in law, regulation or contract that require investors to meet specified goals when entering, operating or expanding in, or leaving a host country. Some are strictly mandatory; others are imposed as a condition for receiving some sort of added benefit or advantage.

[2]Countries implementing local content requirements should be aware of the possibility of a challenge to those provisions either through the WTO (state-to-state dispute settlement) or arbitration under the bilateral investment treaties (which is investor-state dispute settlement). While the potential for such actions may be low, they remain a risk depending on the circumstances, and particularly should relations between the state and the investor sour over the course of the investment.

Synopsis

Highlights

- Angolanisation is defined as “all activities related to recruiting, training and development of national staff, as well as the transmission of knowledge by technical opportunities for national technicians and their replacement” (PD 271/20, Art. 3, subpoint A).
- Local Content in the Petroleum Sector is defined as “all and any of the activity in the petroleum sector that includes participation of the business and the national citizens…” (PD 271/20, Art. 3, subpoint D).
- Local content regulations are spread across various laws and decrees passed between 2009 and 2020. Presidential Decree 271/20 “Legal Framework on Local Content in the Petroleum Industry” is the most comprehensive.
- The framework for the provision of national goods and services is based on a three-level typology (exclusivity, preferential, competition).
- The decree-law on human resources development includes very detailed lists of offences and high fines for infringing human resource development provisions.
- A Fund dedicated to the promotion of entrepreneurship was created in 2008, but unfortunately we did not find the source text.
- It is important to note that some of the information introduced by Presidential Decree 271/20 might contradict previous information. However, because of Art. 2 in Decree 271/20, any previous legislation that conflicts with 271/20 is no longer active and 271/20 will take priority.
- Our analysis is based on translations of the laws and decrees and not on the original text. We therefore do not guarantee the accuracy of the text.

✓	Employment Requirements
✓	Procurement Requirements
✓	Training Requirements
✓	Technology Transfer Requirements
✓	Monitoring and Enforcement Mechanisms
✓	Government Obligations in Support of the Companies’ Program

Synopsis

International Law

Legislation

Law 10/04 "*Petroleum Activities Law*" ("Law 10/04") and *Law for the Promotion of Business for Local Private Companies 2003* ("Law 14/03")—None of these laws constitute a comprehensive local content framework.

Regulation

Decree-Law 271/20 "*Legal Framework on Local Content in the Petroleum Industry*" ("Presidential Decree 271/20") addresses local content. If previous legislation conflicts with 271/20, then the rules under 271/20 will be followed. *Decree 48/06 on Open Tender Procedures in the Oil Industry* ("Decree 48/06") and *Decree Law on the rules and procedures to observe in recruitment, integration, training and development of workers from the oil sector ("Decree-Law 17/09")*—those decrees explicit several points of the country's local content objectives. There is also-Decree 39/08 establishing the Fund for the Promotion of Entrepreneurship, but we could not find the text.

Key definitions

- **Angolanisation : "**All activity related to the recruitment, training and development of the national staff, as well as the transmission of knowledge by technicians expatriated to national technicians and their gradual replacement" (Decree 271/20, Art. 3)
- **Local Content in the Oil Sector**: "All activity in the Oil Sector that includes the participation of entrepreneurs and national citizens, Angolan Commercial Companies and Commercial companies under Angolan Law, the use of goods and services produced in Angola, and the integration and development of the Angolan workforce in a consistent and sustainable way" (Decree 271/20, Art. 3)
- **Angolan Company**: "For the purposes of this decree an Angolan firm is understood to be one which as a sole trader or in the form of a company has been legally and regularly constituted and established in Angola has its effective headquarters on national territory and which is wholly owned by Angolan citizens or where at least 51% of the share capital is held by Angolan citizens or Angolan firms exclusively or jointly." (Decree 48/06, Art.6)
- **Angolan Commercial Companies**: "A sole proprietorship or joint ownership company, legally constituted, with headquarters in national territory, in which the totality of the share capital is held by Angolan citizens or companies" (Decree 271/20, Art. 3)
- **Commercial Companies Under Angolan Law:** "Any company constituted and established in accordance with Angolan law" (Decree 271/20, Art. 3)

Overview

Rights application

- Preference is given to Angolan concessionaires.

Plans

- A detailed human resources development plan needs to be submitted by October 31st and an annual review of the plan by March 31st to the department that oversees the petroleum sector.

Training and Employment

- Foreigners can be employed only upon the authorization of the Ministry of Petroleum and upon evidence that there is no qualified Angolan in the market.
- Angolans need to be employed upon the same conditions as foreigners.
- Companies are required to financially contribute to human resource development and those expenses are tax deductible.

Procuring goods and services

- Preference for goods and services will be given Angolan companies.
- Under Presidential Decree 271/20, there are three different regimes: exclusivity, preferential, and competition regimes.
- Goods and services that are in the exclusivity and preferential regimes need to be approved by the competent regulatory entity and listed by the National Concessionaire. Only goods and services that are not listed can be contracted under the competition regime
- The National Concessionare's list is posted online and regularly updated.

Technology Transfer

- Contractors need to ensure that their training program result in transfer of technology and know -how.

Implementation

- The Petroleum Law stipulates the Government should take action to promote the business community of the oil sector.
- For human resources development, the law authorizes the Ministry of Petroleum to develop an incentive policy based on fiscal, financial, and technical support.
- A Fund for the Promotion of Entrepreneurship was established in 2008 to support the creation of local companies.

Monitoring and Enforcement

- Companies must submit annual human resources development plans.
- A detailed list of foreigners that have been hired needs to be submitted.
- Regular reports on contributions to training need to be submitted.
- Each breach of the reporting requirements constitutes an offence for which a high fine is payable and a failure to accord favorable treatment to national goods can render the contract null and void.

Objectives of Local Content in the Petroleum Sector

- Presidential Decree 271/20 *"Legal Framework on Local Content in the Petroleum Industry"* outlines the objectives and goals of the decree specifically for local content in the petroleum sector:
  - The objectives of the Legal Content Regime of the Oil Sector:

    a) Protection and promotion of the competitiveness of the industry nationally;

    b) Creation of employment and a qualified national labor force;

    c) Protection of Angolan jobs and of Angolan Commercial Companies in the Petroleum sector;

    d) Promotion of national entrepreneurship;

    e) Focus on the national business community;

    f) Maximization of national revenues;

    g) Transfer of technology and knowledge;

    h) Promotion of social and educational development in oil exploration regions or areas (Presidential Decree 271/20, Art. 4).
  - The general principles of the Legal Regime of the Local Content of the Oil Sector:

    a) Preservation of national interest;

    b) Integration of the Angolan business community in the Petroleum Sector

    c) Promotion of free competition;

    d) Hiring of the Angolan workforce;

    e) Promotion of technological development in Angola;

    f) Promotion of Angolans and of Angolan Law. (Presidential Decree 271/20, Art. 5).
  - The promotion of sustainable industrial development of Angolan entrepreneurship and the local workforce must be made by preserving the national interest in order to generate economic growth, employment, and wealth under the Law No. 10/04 of 12 November and related legislation (Presidential Decree 271/20, Art. 6).

Applications for Rights and Plans

- Preferential treatment is given to Angolan concessionaires to ensure participation of Angolan citizens in the ownership and management of the national wealth. As part of that preferential treatment, the Government offers special conditions for former combatants, displaced persons, disabled demobilized soldiers, and families seriously affected by the war (Law 14/03, Art. 17). No more explanation is available.

Training and Employment

- Companies are required to only employ Angolans unless there is no Angolan citizen available with the required qualifications and experiences (Law 10/04, Art. 86).

- The hiring of foreign workers can only be done with the prior authorization of the Ministry of Petroleum and should be demonstrated (Decree-Law 17/09, Art. 4):

"2. If there there are not, demonstrably, in the national labor market, Angolan citizens available and sufficient with the qualifications and experience required, the hiring of foreign workers can only be done with prior authorization from the Ministry of Petroleum at the request of the company concerned, which may be granted block or a case, as the particular situation warrants.
3.The evidence referred to in the preceding paragraph shall be made upon publication of announcements about the availability of places, the description of the function to perform, as well as curricula or any evidence submitted by candidates for the positions to be filled.
4. With regard to foreign workers (…), [the company] must submit to the Ministry of Petroleum, within 45 days from the date of publication of this law, a list with their name, profession, function carried on, the workplace, remuneration, allowances, and other social benefits received, as well as justification of their appointment, proof of professional qualifications, and job description."

- Discrimination between national and foreign workers for the same post is forbidden (Law 10/04, Art. 86):

"National and foreign workers employed by the entities referred to in the preceding paragraph who occupy identical professional categories and carry out identical functions shall enjoy the same rights of remuneration and the same working and social conditions, without any type of discrimination."

- Companies must conclude an agreement with the Angolan personnel beneficiary from the training, in which they commit to maintain the employment relationship with them for a certain minimum period of time defined by the Ministry of Petroleum according to the nature of the training, role to play after training, and related costs (Decree-Law 17/09, Art. 11).

- The Law encourages the Ministry of Petroleum to create a database of national temporary workers to enable their integration (Decree-Law 17/09, Art. 21).

Training and Employment

- Companies are required to financially contribute to human resource development as follows (Decree-Law 17/09 Art. 12 and 14). The financial contributions are deductible for tax purposes (Decree-Law 17/09, Art. 20).

"12. 1. Under this law, companies (…) [s]hall be required to establish each year, an amount in internationally convertible currency to be the background of training and human resource development of the Angolan oil sector, under management Ministry of Petroleum.

2. Annual contributions of the companies or entities referred to in Article 3 shall be calculated based on the following criteria:

a) The company holds a prospecting license: USD 100 000,00;
b) Undertaking research period: USD 300 000,00;
c) Period of production company: 15 U.S. cents per barrel produced during the year;
d) Undertaking carrying on the business of refining and processing of oil: 15 U.S. cents per barrel of crude oil processed during the year;
e) Company or business entity engaged in the storage, transmission, distribution, and marketing of petroleum products: a contribution of 0.5% of revenue on the volume of business transacted annually;
f) The company or entity providing services: 0.5% matching contribution to the value of contracts made during the year.

"14. 1. Are expenses of the Fund for the Development of Angolan Human Resources:

a) Costs with the training and specialization of Angolan personnel in the oil industry;
b) Benefits to the National Petroleum Institute and other educational institutions related directly or indirectly to the oil industry;
c) Acquisition of books, documents, and technical equipment related to the training and expertise of the Angolan staff of the oil industry;
d) Expenses for visits and internships in the research centers, production, refining, and other oil facilities;
e) Expenses resulting from participation in seminars and conferences related to the oil industry;
f) Funds assigned to Agostinho Neto University, the Catholic University and National Institute of Vocational Training;
g) Funds consigned for the implementation of development projects in higher education and vocational training, with criteria to be established;
h) Other expenses related to training of Angolan personnel in the oil industry not provided for in the preceding paragraphs.

2. Whenever circumstances so require, the Ministry of Petroleum may award subsidies to educational institutions related to scientific and technical research in the country."

Training and Employment

- The requirements that are outlined in the decree include ensuring a competitive wage and proper social conditions for Angolan citizens based on their qualifications and not discriminating against the Angolan workforce. This also includes attracting research and development, in addition to transferring skills and knowledge into the Angolan workforce. (Presidential Decree 271/20, Art. 8)

- Companies must submit an annual contract program for the development of human resources on October 31st that includes (Presidential Decree 271/20, Art. 13):

"a) Definition of knowledge of information, technology, petroleum, and management experience to be transferred for Angolan people, their detailed description, and transmission deadline;

b) Description of the workforce forecast, including the number of technicians who must know and be employed in petroleum operations, with respective occupational profiles and the indication of the total number of workers purchased in each occupational category;

c) Specification and programming for the process of integration of Angolan personnel, indicating the respective number of jobs to be occupied, professional categories, and salary groups;

d) Specification of training actions for Angolan staff to implement, according to the professional target plans defined;

e) Precise definition of housing needs, transport, food, and other benefits necessary for the integration of staff government and respective implementation programs."

Procuring Goods and Services

- To promote Angolan entrepreneurs, public tenders may be wholly or partly limited to “Angolan firms” (see definition slide), which must be specified in the prequalification announcement (Decree 48/06, Art, 6).

- Those Angolan firms also need to record in their company object the “provision of support services to the oil activities;” update the share capital in accordance with the requirements to be established by the Oil Ministry; and be registered and certified by the Oil Ministry and by the Chamber of Commerce and Industry of Angola in accordance with the requirements to be established by those organizations (Decree 187/03, Art. 3).

- An annual plan for local content should be submitted to the National Concessionaire* and should feature:

  “a) Annual plan for contracting needs in goods and services, detailing the capacities necessary for the project phases;
  b) The summary of estimated costs for implementation of the plan;
  c) Plan for transferring internal services to Angola;
  d) Other additional information may be requested whenever necessary.”

  The National Concessionaire should in turn submit the information to the Petroleum Ministry (Presidential Decree 271/20, Art. 12).

* The National Concessionaire is the national petroleum agency

Procuring Goods and Services

- Licensees, the National Concessionaire* and its associates, and any other entities which cooperate with them in carrying out Petroleum Operations must contract goods from the national productions and services from the local providers provided that the equality is equal and that prices are no more than 10% higher than the imported items (including transportation and insurance costs and customs charges due for goods) (Law 10/04, Art. 27). It remains unclear if the price difference preference remains in place under the new Presidential Decree.

- Companies in the petroleum sector must purchase raw material, goods, and equipment that have been manufactured in Angola or provided by Angolan Companies if these companies can prove that they posses the equipment, personnel, and ability to execute the service (Presidential Decree 271/20 Art. 10). All companies in the petroleum sector (including service providers, providers, and suppliers of goods) now have to procure goods and services from local companies; under 127/03 the onus was just oil companies.

- Under Presidential Decree 271/20, there are three different regimes: exclusivity preferential, and competition regimes. From Article 2 of Presidential Decree 271/20, the regimes are defined as:

    - Competition Regime: consists of the economic activity without distinction of the origin of companies, without prejudice to possibility of partnerships between Angolan Commercial Companies and foreign companies.

    - Exclusivity Regime: consists of the obligation imposed on Commercial Companies of the Petroleum Sector and the associates of National Concessionaire to use the goods and services of Angolan Commercial Companies appearing on the list of goods and services, waiving any other suppliers, within the scope of the award of a contract for the supply of goods and provision of services needed to carry out oil company operations.

    - Preferential Regime: consists of the obligation imposed on the Commercial Companies of the Petroleum Sector and National Concessionaire's associates to use the assets and services of Angolan Commercial Companies that are on equal terms in terms of quality, technical capacity, price, and deadlines for delivery with foreign commercial companies, within the scope of the award of the supply contract.

* The National Concessionaire is the national petroleum agency

Procuring Goods and Services

- Goods and services that are in the exclusivity and preferential regimes need to be approved by the competent regulatory entity and listed by the National Concessionaire. Only goods and services that are not listed can be contracted under the competition regime (Presidential Decree 271/20, Arts. 18 and 19).
    - All Commercial Companies Under Angolan Law and Angolan Commercial Companies that provide goods and services that appear on the list approved by the National Concessionaire, after hearing the Regulatory Authority on Competition, are subject to the exclusivity and preference regime for Angolan business initiatives (Presidential Decree 271/20, Art. 18).
    - Angolan Commercial Companies, Commercial Companies Under Angolan Law, and foreign companies are subject to the competition regime (Presidential Decree 271/20, Art. 19).

- The National Concessionaire will establish a list of goods and services according to transparent criteria. The list will be posted online and updated annually. The National Concessionaire must submit to the Ministerial Department that oversees the Petroleum a copy of the lists of goods and services (Presidential Decree 271/20, Art. 18).

- Alternatively, Commercial Companies are allowed to import goods if they can provide proof of the difficulty or challenges to acquire these same goods from Angolan companies (Presidential Decree 271/20 Art. 11).

Technology Transfer

- Organizations in the petroleum sector should attract investment in research, development, technology transfer, and capacity building of the Angolan labor force (Presidential Decree 271/20, Art. 9)

Implementation

- The Government should implement actions so as to promote and develop the Angolan business community in the oil sector (Law 10/04, Art.16):

1. The Government shall adopt measures to guarantee, promote, and encourage investment in the petroleum sector by companies held by Angolan citizens and create the conditions necessary for such purpose.
2. The National Concessionaire and its associates shall cooperate with governmental authorities in developing public actions to promote the socio-economic development of Angola.
3. Before such public actions are undertaken, the parties involved shall agree upon the scope of the projects, the origin of the funds to be used, and the recovery of costs related thereto, if applicable.

- There is a Fund for the Promotion of Entrepreneurship which was established in 2008 and is administered by the Ministry of Finance to support the creation of local companies. (We could not find the decree creating the Fund).
- The following are types of incentives and support which the State and other public promoters may grant to projects contributing to the establishment or expansion of national private companies:
  a) Fiscal incentives;
  b) Financial support;
  c) Technical support;
  d) Special rights privileges and guarantees on assets;
  e) To support the creation of professional training centres led by economic or professional associations and their participation in national and international fairs and seminars (Law 14/03, Art. 22).
- Each of these mechanisms is described in detail from Law 14/03, Art. 23 to Art.32. Some of the more noteworthy financial incentives ("promotional venture capital," "private funds under consultative management," and "financial guarantees") are quoted below.

"27. Promotional venture capital shall be considered to be the sharing with private members in the share capital which the State, a public institute, or public company agree to take out individually or jointly in a national company to be constituted for which the economic viability and economic interest of the project for national or regional economic development require this as the most appropriate and solid resolution."

Implementation

"28. 1. The State, public institutes, personalized public funds, and public companies may provide concessionaires which have submitted applications for financial support with access to private business financing funds supported through their opinion on the requirements of the viability of the business projects, the suitability of their promoters, and the national economic interests, or agreed in any other way with the holders of the private funds and the concessionaires through the negotiation and agreement of guarantees or incentives and considerations to be provided to private financiers.
2. The public services and public institutes or companies shall be appointed not only to attract private funds available for the purposes of the paragraph above but also in partnership with the national and foreign credit institutions to play the role of trustee and joint managers of the private funds made available with a view to the efficient and safe realization of these private and national business promotion purposes.
3. The public and private parties mentioned in the paragraph above shall enter into a contract to manage the funds and incentives by agreeing upon considerations and guarantees granted.
4. The private funds attracted by the public institutes and companies shall be deposited with national credit institutions or their correspondents abroad which in management contracts or in any other way have been chosen by the parties as partners to provide the banking service."

"29. 1. The State, public institutes, and public companies which have approved business projects for which they have no funds to provide other types of financial support shall, according to the criteria of opportunity or discretion of interests, provide financing guarantees which may be granted by other financial institutions and which are required by them for the concessionaires in particular:

a) Sureties or other forms of guarantee of loans which may be available on national and international capital markets;

b) Guarantee of the issue of debentures.

2. The system for the provision of financing guarantees shall be derived from civil and commercial legislation unless otherwise agreed and without prejudice to the possibility of their specific regulation according to the specific nature of the support for the promotion of business and the experience of its application to be recommended. (….)"

- Bonus paid to the national concessionaire will be party used to support Angolan firms (Law 10/04, Art. 84):

"84.2. A portion of the bonuses referred to in the previous paragraph shall be spent in projects of regional and local development and promotion of Angolan private business community, under terms to be regulated by the Government."

Monitoring and Enforcement

- Operators must submit an annual plan for developing human resources for approval to the Ministry of Petroleum within 180 days (Decree-Law 17/09, Art. 7):

"1. To implement the annual program contract, the companies listed in Article 3 shall submit to the approval of the Ministry of Petroleum plans for human resource development by 31 October each year, which must contain at least the following elements:

a) Definition of knowledge of oil technology and management experience to transfer to the Angolan staff, its detailed description, manner and time of transmission;

b) Description of the forecasting work force, including the number of technicians who must be employed in oil operations, with their occupational profiles, and information on the total number of workers included in each occupational category;

c) Specification and programming of the integration process of Angolan personnel, indicating the number of jobs to fill and professional and labor groups;

d) Specification of the training of Angolan personnel to implement, in accordance with defined career plans;

e) Precise definition of the needs for housing, transportation, food, and other necessary social benefits to the integration of Angolan personnel and their implementation programs under this ordinance."

- The plans, approved by the Human Resources department of the Ministry of Petroleum are binding and cannot be changed without the prior consent of the Ministry of Petroleum (Decree-Law 17/09, Art. 8).

- In the first quarter of each year, companies need to submit a detailed report on the implementation of plans for human resources development from the previous year (Decree-Law 17/09, Art. 9).

- If there are difficulties implementing the plans, the Ministry of Petroleum must take action (Decree-Law 17/09, Art. 10):

"(….) [T]he Ministry of Petroleum, based on the difficulties encountered in implementing the plans and human resource development in line with new technological requirements of the oil industry should take appropriate measures to be overcome these difficulties, notifying these entities of the decisions taken."

- Companies required to financially contribute to trainings must submit, on the first day of the month following the quarter in which the payment was made, a statement showing the amounts paid and an explanation of how the amount was calculated (Decree-Law 17/09, Art. 13.6).

Monitoring and Enforcement

- Contracts in breach of the requirements for the procurement of national goods and services will be null and void (Law 10/04, Art 27.3).

- With regard to foreign workers that have been approved by the Ministry, the company must submit to the Ministry of Petroleum, within 45 days from the date of publication of the Decree-Law 17/09 (which was in June 2009), a list with their name, profession, function carried on, the workplace, remuneration, allowances, and other social benefits received, as well as justification of their appointment, proof of professional qualifications, and job description (Decree-Law 17/09, Art. 4.4).

- Here below is clearly stipulated that defaulting on reporting constitutes an offence (Decree-Law 17/09, Art. 15):

"Constitute offenses to this law:

a) not to conclude the contract program with the Ministry of Petroleum, as provided by paragraph 1 of Article 6;

b) failure to submit annually to the Ministry of Petroleum, plans for human resource development as provided for in Article 7;

c) non-implementation of development plans approved by the Human Resources Ministry of Petroleum and the change thereof without proper authorization, as provided by Article 8;

d) failure to submit to the Ministry of Petroleum of the implementation report plans for human resource development as provided for in Article 9;

e) the failure by the operator from presenting the list of contracts referred to in paragraph 4 of Article 3 or its incomplete presentation;

f) not to award the national staff of the same conditions of foreign workers in breach of Article 5;

g) lack of payment of contributions referred to in paragraph 5 of Article 13 of the deadline;

h) failure to submit to the Ministry of Petroleum of the declaration referred to in paragraph 6 of Article 13;

i) the hiring of foreign staff without authorization from the Ministry of Petroleum, in violation of the provisions of paragraph 2 of Article 4;

j) not submitting to the Ministry of Petroleum the list of foreign personnel already admitted, as provided in paragraph 4 of Article 4.

- Each offence stipulated above is attached to a specific fine. Fines are a percentage between 10% and 25% of the training contribution. 50% to the fine goes towards the State budget and the remaining 50% to the Social Fund of the Ministry of Petroleum. Each company that is liable to pay a fine cannot enter into a new contract before the fine has been paid (Decree – Law 17/09, Art.16). The fund seems to be different from the 2008 fund for entrepreneurship.

Monitoring and Enforcement

- Presidential Decree 271/20 outlines new penalties and sanctions for companies in the petroleum sector if they break the local content requirements, “a) The non-acquisition of national materials, equipment, machinery, production of consumer goods, and services of the same quality comparatively the products and services imported; b) The installment payment of the contract; c) Failure to comply with contractual procedures stipulated in this Decree; d) Failure to execute the Program Contract; e) The non-inclusion of the local content clause in the contracts for the provision of goods and services; j) Failure to provide information to the competent body for inspection; g) Violation of the provisions provided for in this Decree.” (Presidential Decree 271/20 Art. 25)

- Violation of these rules is punishable with fines between $50,000 USD to $300,000 USD to be paid in the Angolan Currency, the kwanza.

    - Points “a,” “b,” and “e” of Article 25 are punishable with fines up to $300,000 USD

    - Points “d” and “f” are punishable with fines up to $200,000 USD

    - Points “c” and “g” in Article 25 are punishable with a maximum fine of $150,000 USD

- Additional penalties for violating the articles in Presidential Decree 271/20 include:
  “a) Prohibition of the exercise of activity for a period of one to two years;
  b) Suspension of the authorization to operate the establishment;
  c) Prohibition on entering into new contracts, as long as there is no completion of the obligations to which administrative transfers say respect” (Presidential Decree 271/20 Art. 28).

International Law – WTO Agreements

Agreement on Trade-Related Investment Measures (TRIMs)[1]

- Angola has been member of the WTO since November 23, 1996.
- All World Trade Organization (WTO) Members must adopt and abide by the obligations of TRIMs. This can impact a country's ability to impose certain local content requirements (referred to as "investment measures"), to the extent they affect trade in *goods.*
- Angola, as a Least Developed Country, is only required to implement TRIMs to the extent consistent with its individual development, financial and trade needs and administrative and institutional capabilities, subject to notification to the General Council.
- The following types of local content requirements are covered by TRIMS[2]:
  - requiring a company to purchase or use products of domestic origin – TRIMs prohibits discrimination between goods of domestic and imported origin;
  - limiting the amount of imported products that an enterprise may purchase or use depending on the volume or value of local products that the enterprise exports;
  - restricting foreign exchange necessary to import (e.g., restricting the importation by an enterprise of products used in local production by restricting its access to foreign exchange); and
  - restricting exports.

[1] The TRIMs Agreement clarifies existing rules contained in Articles III (National Treatment Obligation (NTO)) and XI (Prohibition on Quantitative Restrictions) of the General Agreement on Tariffs and Trade (GATT), 1994.

[2] It is important to be aware of the types of measures prohibited under the TRIMs Agreement, in order to avoid the potential for dispute settlement under the WTO - a state can bring an action against another state for an alleged violation of the TRIMs Agreement (i.e. "state-to-state action").

International Law – WTO Agreements

General Agreement on Trade in Services (GATS)

- A separate WTO agreement, the General Agreement on Trade in Services ("GATS"), covers investment measures related to services (in Article XVI), including the following which are relevant to local content:
  - Requirements to use domestic service suppliers
  - Limits on the number of service suppliers
  - Limits on the total value of service transactions or assets
  - Limits on the total number of service operations or quantity of service output
  - Limits on the total number of natural persons permitted
  - Restrictions on or requirements for certain types of legal entities (e.g., joint venture requirements)
  - Imposition of domestic equity
- GATS only applies to those service sectors that the country chooses to include in its Schedule of Commitments. Angola's commitments related to Financial Services can affect the implementation of Law 10/04, Art. 27 (1,b).

International Law – Bilateral Investment Treaties

- As of 1 June 2013, Angola had entered 17 bilateral investment treaties (BITs) but only 6 were in force (https://investmentpolicy.unctad.org/international-investment-agreements/countries/5/angola)

- Investment treaties are international agreements between two or more countries which establish the terms and conditions of foreign investment within each country and provide rights directly to the investors of each country which is party to the treaty. The treaties can contain restrictions on local content requirements.[2]

- Investment treaties can contain the following types of provisions, each of which affects a country's ability to impose local content requirements:
  - non-discrimination provisions ("national treatment" and "most-favored nation" obligations), which are relevant in the context of local content when:
    1. host countries require some foreign investors to source from certain goods and service providers but don't impose similar requirements on other investors; and
    2. host countries give an advantage to some domestic or foreign goods and services providers, but not to a foreign provider whose state has a relevant treaty with the host country. (Note that this is relevant only where the foreign provider of goods or services has or intends to have[3], a presence in the host country);
  - restrictions on capital transfers;
  - "pre-establishment" protections, which prevent a state from imposing conditions on foreign investors that are not imposed on domestic investors, such as requirements to transfer technology to local firms, to establish the firm through a joint venture, or to reinvest a certain amount of capital in the host country;
  - incorporation of the TRIMs agreement; and
  - *explicit* prohibition of performance requirements that go beyond what is restricted by the TRIMs Agreement.

[1] According to UNCTAD's country specific list of bilateral investment treaties

[2] It is important to be aware of the BITs a country has signed and the types of requirements prohibited under it, in order to avoid the potential for arbitration against the country - the majority of investment treaties allow investors to bring arbitration claims directly against the country in which they have invested ("investor-state arbitration).

[3] I.e., the conditions under which an investor may enter into the territory of a party, not only the conditions once the investment is made.

International Law – Bilateral Investment Treaties

- Aside from the inclusion of National Treatment Obligations and Most Favored Nation clauses, which are included in most BITs, performance requirements are not more specifically prohibited.

- Angola has signed a Cooperation and Investment Facilitation Agreement with Brazil which includes a best-effort obligation for investors regarding their corporate social responsibility which is relevant for local content:

    - Article 10 Corporate Social Responsibility
        - “Investors and their investments should endeavor to make the highest possible level of contributions to the sustainable development of the receiving State and the local community, through the adoption of a high degree of socially responsible practices, taking into account the voluntary principles and standards defined in the Annex II - “Corporate Social Responsibility”

    - ANNEX II CORPORATE SOCIAL RESPONSIBILITY
        - “Investors and their investments will use their best efforts to observe the following voluntary principles and standards for responsible business conduct consistent with the laws adopted by the State party receiving the investment: (…)
        - iii. Encourage the strengthening of local capacities, through close cooperation with the local community.
        - iv. Encourage the formation of human capital, in particular creating job opportunities and facilitating workers' access to vocational training;...
        - ix. Promote workers' knowledge of corporate policy through the appropriate dissemination of this policy, including through vocational training programs.”