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Energy and Natural Resources Across the Globe: An Update to Energy Policy in Africa, South America and Asia

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This Article updates selected international legal developments relating to energy and natural resources in 2018.

I. Africa

A. Angola

In the nation’s petroleum sector, Angola issued six important Presidential Decrees:

1. Presidential Decree 86/18 (which approved new rules applicable to both public tenders for the selection of Sonangol EP associates and the procurement of goods and services for petroleum operations, which inter alia increased contractual thresholds);  
2. Presidential Decree 91/18 (on abandonment of wells and decommissioning of oil and gas facilities);  
3. Presidential Legislative Decree 5/18 (on additional exploration activities within development areas of petroleum concessions);  
4. Presidential Legislative Decree 6/18 (on incentives and procedures for the adaptation of contractual and fiscal terms applicable to Qualified Marginal Zones);

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5. Presidential Legislative Decree 7/18 (legal and fiscal regime applicable to natural gas);\(^6\) and
6. Presidential Order 112/18 (the creation of the Installation Committee for the National Agency of Petroleum and Gas, which will assume the role of concessionaire currently entrusted with Sonangol EP).\(^7\)

Moreover, in July 2018, Angola approved a new Diamond Marketing Policy.\(^8\) The policy sets forth numerous objectives: the possibility for mining companies to sell up to 60 percent of their production to subsidiaries or companies of their choosing; the replacement of the old “Preferential Customers” system with a “Long-Term Contracts Customers” system (subject to parameters to be approved by the Ministry of Mineral Resources and Petroleum); and the progressive implementation of uniform criteria for classification and valuation of rough diamonds aimed at simplifying and promoting transparency in pricing.\(^9\)

B. BURKINA FASO

Throughout 2018, Burkina Faso confirmed that it was committed to pursuing an energy transition by joining the International Solar Alliance (ISA)\(^10\) and announcing its participation in several ISA initiatives in collaboration with Benin, Gabon, Niger, and Togo.\(^11\) Together, these nations look to mobilize and facilitate investment\(^12\) and create a digital

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\(^6\) Id.


\(^9\) Id.

\(^10\) International Solar Alliance (ISA) is an alliance of more than 121 countries initiated by India, whose primary objective is to work for the efficient exploitation of solar energy to reduce dependence on fossil fuels. See About ISA, Int’l Solar All., http://isolaralliance.org/AboutISA.aspx (last visited Mar. 27, 2019).


platform for members of ISA to purchase solar energy and other forms of renewable energy through group purchases.13

In July 2018, the African Development Bank issued a report outlining the main objectives of their reform support program for Burkina Faso’s energy sector.14 The program includes a loan of fifteen million euros and aims at improving the country’s legal and regulatory environment, as well as the framework for public and private investment in the energy sector.15 In particular, one of the program’s main objectives is to improve the regulatory and institutional framework for public-private partnerships.16

1. Electricity

In July 2018, the Burkina Faso government issued a decree17 that gave concrete form to the end of the monopoly of the national company, Sonabel, in terms of electricity production.18 This decree is in line with law no. 014-2017 regulating the energy sector, which had already opened the electricity production market to private companies.19

In August 2018, the government launched a call for tenders for the electrification of twelve localities as part of a project financed as a whole by the Islamic Development Bank to extend both its transportation and distribution networks.20

15. Id. at iii – v.
16. Id. at v.
2. **Hydrocarbons**

According to a statement by the Minister of Mines in April 2018, traces of oil and uranium were discovered north of Nouna and Essakane. This discovery could be Burkina Faso’s first attempt at exploiting oil and uranium.

C. **BURUNDI**

1. **Renewable Energy**

This year Burundi signed or ratified several agreements aiming to favor renewable energy, including ratifying the 2015 Paris Agreement on Climate Change, signing the framework agreement for Adherence of the Republic of Burundi to the ISA, and ratifying the agreement with the International Bank for Reconstruction and Development for the financing of the Jiji and Mulembwe Hydroelectric Project. The Jiji and Mulembwe Hydroelectric Project is of major importance, as it aims to double Burundi’s electricity production. Additionally, a comprehensive Ministry of Hydraulics, Energy and Mines was created comprising several competences.

On August 22, 2018, President Nkurunziza launched the very first National Development Plan for the period 2018 – 2027. This plan...
comprises five strategic goals in the energy sector and is aimed at enhancing renewable energy by producing 300 megawatts of hydropower electricity.\(^{29}\)

2. **Oil & Gas**

The Ministry of Hydraulics, Energy and Mines organized a validation workshop in September 2018 to draft petroleum legislation in partnership with the United Nations Development Program.\(^{30}\) This project includes a Hydrocarbons Code Project, a Hydrocarbons Regulation Project, and a new Production Sharing Agreement Model.\(^{31}\)

3. **Mining**

The Gakara Project, the first rare earths African mine and one of the highest grade rare earth projects globally, started its first production and export of rare earth concentrate in December 2017.\(^ {32}\)

D. **Equatorial Guinea**

Through Order 1/2018, the Ministry of Mines and Hydrocarbons updated the rules for registration of companies that wish to carry out activities in the oil, gas, and mining sectors.\(^ {33}\) The new statute also sets forth the procedure for granting licenses for the commercialization of liquefied petroleum gas and liquid fuels for domestic use.\(^ {34}\) Subcontractors performing short-term work in the country now have access to a special authorization regime that can grant work for up to three projects.\(^ {35}\)

E. **Mali**

1. **Renewables**

Together with Benin, Gabon, Burkina Faso, Niger, and Togo, Mali announced its participation in several initiatives launched by and with the ISA.\(^ {36}\) These initiatives will focus on mobilizing and facilitating investment\(^ {37}\)

\(^{29}\) Id. at 20.


\(^{31}\) Id.


\(^{33}\) Id.

\(^{34}\) Id.

\(^{35}\) Id.

\(^{36}\) See supra text accompanying note 9.
and creating a digital platform for members of ISA to purchase solar energy and other forms of renewable energy production through group purchases.38

2. Electricity

In early 2018, the Republic of Guinea and Mali launched an electricity interconnection project.39 According to government officials of both Guinea and Mali, this project will provide electricity to over 200 localities in both Mali and Guinea.40 In March, the Malian government issued a decree to set up, organize, and operate procedures for the steering committee and the management unit of the interconnection project between the two countries.41 The government also issued a decree in 2018 authorizing the financing of the project by the African Development Fund and the European Investment Fund.42

In February, the national energy management company, Société de gestion de l’énergie de Manantali, launched a call for tenders for the construction of an interconnection between Mali and Senegal.43 The project will be financed largely by funding obtained by Mali from the International Development Association (IDA).44

37. Energie solaire, supra note 12.
40. Id.
44. Id. The IDA is a member of the World Bank whose purpose is to offer loans and grants to the world’s poorest developing countries. See What is IDA?, INT’L DEV. ASS’N, http://ida.worldbank.org/about/what-is-ida (last visited April 1, 2019).
3. Mines

In March, while in the midst of negotiations with mining companies regarding the revision of the Mining Code, the government announced that it was willing to unilaterally revise the law if no compromise is reached.45

F. Morocco

1. Gas

In late 2017, the Ministry of Energy presented a draft law relating to downstream natural gas regulations, which aims at developing renewable energy and fuel diversification by increasing the share of natural gas in the energy mix and improving energy efficiency.46 This draft law is aimed at setting appropriate pricing and organization structures for the natural gas sector to increase investments and regulate various security and environmental aspects of the sector.47

In July 2018, Nigeria and Morocco signed a Memorandum of Understanding for the establishment of the Nigeria-Morocco Gas Pipeline.48 In addition to Nigeria and Morocco, this pipeline will provide West African states with the potential for pipelines to extend into Europe.49 The first negotiations and the preparation of preliminary documents with international banks are expected to begin in early 2019.50

2. Infrastructure

In July 2018, the Ministry of Finance presented a draft law amending existing legislation on Public-Private Partnership as part of a wider project to improve the regulatory framework for infrastructure projects.51 The new law aims to enlarge the definition of Collectivité Territoriales, to broaden

47. Id.
49. Id.
the scope of the State’s liability, to establish a National Commission for Public-Private Partnerships, to simplify the spontaneous tender process, and to harmonize general legal provisions with sectorial provisions.2

3. Mining

In January 2018, the Ministry of Equipment and Transportation published a draft decree within the framework of modernization of mining processes, aiming mainly at establishing automatized mining procedures, which will allow administrations to follow mining exploitation processes remotely.3

In July 2018, the Ministry of Energy presented a decree amending the mining code.4 The amendment plans to introduce a special regulatory framework regarding the grant of licenses to define and exploit spoil heaps and waste rock removed in mining processes.5

G. Mozambique

In June 2018, the Ministry of Energy and Mineral Resources approved, inter alia, a mechanism for the implementation of a fuel-tagging program.6 These procedures impose specific obligations on companies operating petroleum facilities at distribution terminals.7

H. Senegal

1. Oil and Gas

After his victory at the parliamentary elections in July 2017, President Macky Sall conducted a cabinet reorganization that unveiled a new Ministry of Petroleum and Energies, replacing the Ministry of Energy and Renewable Energies Development.8 This new Ministry is not only aimed at promoting the exploration and exploitation of hydrocarbons, but to also foster

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52. Id.
55. Id.
57. Id.
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renewable energy, energy efficiency, and the electrification of rural areas and local content.\(^59\)

With the prospect of the adoption of a new Petroleum Code, the government requested that Gilles Lhuilier, Professor of Law at the Ecole Normale Supérieure, review twelve Upstream Government Petroleum Contracts. Professor Lhuilier’s report found that the petroleum contracts were unbalanced and fell below international best practices.\(^60\) The report called for a renegotiation of the contracts.\(^61\)

In July 2018, the Secretary-General of the International Centre for Settlement of Investment Disputes registered a request for the initiation of the first arbitration proceeding in the oil and gas sector against Senegal.\(^62\) In this proceeding, the Africa Petroleum Corporation seeks compensation for the cancellation by Senegal of two oil and gas licenses.\(^63\)

2. Mining

In May 2018, Senegal was declared the first country in Africa to have made satisfactory progress in implementing the Extractive Industries Transparency Initiative (EITI) Standard.\(^64\) The EITI Standard requires the gathering of information along the extractive industry value chain from the point of extraction to how revenue makes its way through the government to how this revenue contributes to the state’s economy.\(^65\)

3. Power

Senegal is the second African state to benefit from the World Bank Group’s Scaling Solar program (Zambia being the first).\(^66\) The program is designed to help remove obstacles to developing large-scale solar power in

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59. Id.
61. Id.
developing countries producing electricity for under five cents (U.S. dollars) per kilowatt hour.67

I. SOUTH AFRICA

1. Oil and Gas

Pending the completion of the ongoing reform of the upstream oil and gas sector, the Minister of Mineral Resources issued a general moratorium on the granting of applications for technical co-operation permits, exploration rights and production rights.68

Moreover, in Stern N.O. and Others v. Minister of Mineral Resources, the High Court of South Africa held that the 2015 Regulations of Petroleum and Production are invalid, which helps to further explain the large-scale prohibition on hydraulic fracturing in South Africa.69

2. Mining

In September 2018, the Mining Charter III was published in the Government Gazette.70 This important text aims to transform the mining industry, and “deracialise ownership patterns in the mining industry through redress of past imbalances and injustices.”71 To that end, this instrument requires the mining industry to favor “Black Economic Empowerment” with regard to ownership, mine community development, employment equity, procurement, beneficiation, housing and living conditions, and human resources.72

J. TUNISIA

1. Hydrocarbons, Mining & Power

An important governmental decree regarding the rationalization of administrative authorizations for business activities was enacted in May 2018.73 This decree addresses the hydrocarbon, mining, and power sectors,
and sets a common sixty-day-long period for the administration to process authorization applications with an obligation to justify its silence if it does not respond in time.74

2. Renewable Energy

Through a Presidential decree dated August 31, 2018, Tunisian Head of State Youssef Chahed dismissed the Ministry of Energy, Mines and Renewable Energies.75 Following this decision, this Ministry will now be attached to the Ministry of Industry and Trade.76

On February 28, 2018, the Tunisian Ministerial Council launched the Tunisian Solar Plan (TSP),77 which aims to increase renewable electricity production to thirty percent of total Tunisian electricity production by 2030, with an intermediate target of twelve percent in 2020.78

3. Power

In January 2018, a governmental decree fixed penalties for electricity theft,79 while former Minister of Energy Khaled Kaddour announced a future bill criminalizing electricity theft.80

417 of May 11, 2018 Setting the Publication of the Restricted List of Economic Activities Subjected to Authorisation and the List of Administrative Authorisations for the Realisation of Projects and Implementation of Relative Dispositions and Simplification], JOURNAL OFFICIEL DE LA REPUBLIQUE DE TUNISIENNE [J.O.] [OFFICIAL GAZETTE OF TUNISIA], May 11, 2018, No. 38.

74. Id.
78. Id. at 10.
In April 2018, the Société Tunisienne de l'Électricité et du Gaz was restructured by a governmental decree.ii

II. South America

A. Argentina

1. Natural Gas Exports Resume Under New Exports Authorization Framework

After increasing its natural gas production and overcoming its natural gas deficit through a number of policies,82 exports of natural gas to neighboring Chile resumed in 2018.83

Resolution 104/2018 of the Argentine Ministry of Energy enacted a comprehensive new set of Natural Gas Export Authorization Proceedings and repealed numerous provisions, including the standard natural gas export authorization proceedings;85 special automatic natural gas export authorization proceedings;86 the suspension of natural gas exports;87 and a temporary export authorization system, which was implemented in 2017 to allow assistance exports for emergency situations and exports in the context of transportation capacity restrictions for terms no longer than two years.88

The new Natural Gas Export Authorization Proceedings allow for the granting of:

- Long term firm export authorizations, which may be granted for up to ten years but subject to review and validation at year five;
- Short term firm export authorizations for up to one year;
- Long term interruptible export authorizations, which may be granted for up to ten years;
- Interruptible short term export authorizations for up to one year;
- Firm summer export authorization to take effect between October 1 and April 30 for up to five years; and
- Operational exchanges and emergency exports for up to twelve months and subject to re-import of the exported volumes.89

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85. Id. at 18-19.
86. Id.
87. Id. at 20.
88. Id. at 19.
But every type of export authorization will be granted to the extent that the domestic supply is not affected and will be conditioned to assuring such security.\textsuperscript{90} In assessing natural gas export applications, the National Secretary of Energy shall conduct a comprehensive and systemic analysis of the operating conditions of the domestic market to assure its efficient and secure supply.\textsuperscript{91}

The proceedings for firm export authorizations require the submission of an application with a summary of the terms of the intended exports, the exporter reserves, production and delivery capabilities, the regulations governing the import at its destination, the transportation arrangements for the natural gas to be exported, and an assessment by the exporter that the projected export shall not jeopardize the domestic market nor its supply security.\textsuperscript{92}

The application package shall be published,\textsuperscript{93} and eligible interested third parties who express interest in acquiring the natural gas intended to be exported shall be allowed to submit an irrevocable purchase offer for such volumes.\textsuperscript{94}

2. \textit{New Offshore G\&G Data Multi-Client Seismic Survey Regulations}

In an effort to boost offshore seismic acquisition over the country’s extensive and little explored continental platform and to pave the way for the much-planned offshore licensing round,\textsuperscript{95} Resolution 197/2018 of the National Ministry of Energy and Mining approved a set of regulations to govern offshore reconnaissance permits subject to national jurisdiction and multi-client geological and geophysical data acquisition and marketing.\textsuperscript{96}

Reconnaissance permits provided under sections fourteen and fifteen of Hydrocarbons Law 17319\textsuperscript{97} required companies acquiring G\&G data thereunder to deliver the acquired data to the government under a two year confidentiality restriction, affording little incentive to risk the cost of the exploration works.\textsuperscript{98} Under the new resolution, interested service companies with a record of over five years of experience in G\&G data acquisition are allowed to apply for one or more surface reconnaissance permits to acquire data over open acreage offshore areas and licensed offshore areas with the approval of the relevant license holders.\textsuperscript{99} Surface reconnaissance permits shall extend for up to eight years and shall be granted to qualified applicants

\begin{itemize}
\item \textsuperscript{90} Id. ¶ 1.4.
\item \textsuperscript{91} Id.
\item \textsuperscript{92} Id. ¶ 3.2.
\item \textsuperscript{93} Id. ¶ 3.3.
\item \textsuperscript{94} Id. ¶ 3.4.
\item \textsuperscript{96} Resolución 197/2018, May 16, 2018, [33871] B.O. 41 (Arg.).
\item \textsuperscript{97} See Law No. 17319, June 23, 1967, [21220] B.O. 1 (Arg.).
\item \textsuperscript{98} Resolución No. 197/2018, May 16, 2018, [33871] B.O. Annex 1, art. 7(b) (Arg.).
\end{itemize}
within sixty days from completing their applications, but the works shall only proceed after concluding the required environmental impact study and obtaining other applicable permits.\textsuperscript{99}

Key to the resolution is the so-called “commercial profit rights” afforded to the reconnaissance permit holders to disseminate and market the data obtained in a transparent and non-discriminatory manner for a term of two years following the expiration of the term of the permit.\textsuperscript{100} After the expiration of such two-year term, the government may disclose the data to third parties.\textsuperscript{101}

Irrespective of said commercial profit rights, ownership of the acquired G&G data shall vest with the permit holder and the government jointly.\textsuperscript{102}

Finally, the resolution allowed expressly the conversion into the new framework of reconnaissance permits granted under the old framework,\textsuperscript{103} such as the permit granted to Spectrum ASA under Resolution of the Ministry of Energy and Mining 19-E/2017. This permit allowed Spectrum—who had taken chances and started a massive acquisition campaign without assurance that commercial rights to disseminate and market such data would be recognized to them—to survey the northern Argentine continental shelf.\textsuperscript{104}

B. CHILE

On January 30, 2018, the Government of Chile, along with the Asociación de Generadoras de Chile announced plans to start the phase-out of certain coal power plants in the country.\textsuperscript{105} This announcement marked a new direction for energy policy in Chile, which used coal for about 40 percent of its energy production in 2016.\textsuperscript{106} Chile and the Association, which includes AES Gener SA, Colbún SA, Enel SpA, and Engie SA, announced three items:\textsuperscript{107}

1. The Association agreed not to undertake new coal power projects that lack carbon capture and storage technology or similar systems.\textsuperscript{108}

\textsuperscript{99} Id.
\textsuperscript{100} Id. art. 26.
\textsuperscript{101} Id.
\textsuperscript{102} Id.
\textsuperscript{103} Id. art. 33.
\textsuperscript{107} Press Release, Ministry of Energy, supra note 105.
\textsuperscript{108} Id.
2. Chile and the Association agreed to create a working group to discuss the technological, environmental, social, and economic elements relating to each coal power plant’s safety and sufficiency, and to the electrical system as a whole, within the context of Chile’s Energy Policy 2050, which aims to ensure that seventy percent of Chile’s 2050 energy requirements are met by renewable sources. The working group will establish timelines for the gradual cessation of operations at coal plants that do not have carbon capture and storage technology or similar systems.

3. Chile’s Ministerio de Energía will coordinate the working group and ensure it is included in all discussions relating to the plans to reduce coal usage. After the plan’s announcement, Engie SA declared its intention to shut down its coal-fired power plants in Chile and replace them with renewable energy. The announcement aligns Chile with nations such as the United Kingdom, Canada, and France, who are part of the Power Past Coal Alliance, an organization committed to phasing out its members’ use of coal.

III. Asia

A. Timor-Leste

In March 2018, the “Treaty Between Australia and the Democratic Republic of Timor-Leste Establishing their Maritime Boundaries in the Timor Sea” (the “Maritime Boundary Treaty”) was signed before the United Nations’ Secretary-General, the Honorable António Guterres. The Maritime Boundary Treaty is a major breakthrough in the relations between the two States, and was an outcome of the Compulsory Conciliation process initiated by Timor-Leste in April 2016 under section two, annex V, of the United Nations Convention on the Law of the Sea. After decades of discussion and dispute, this important boundary has finally been delimited, thus reinforcing Timor-Leste’s political and economic sovereignty.
Joint Petroleum Development Area, previously in force under the Timor Sea Treaty, will be dissolved as soon as the Maritime Boundary Treaty is ratified.118