Angola Freshwater Resource Rights Report

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Executive Summary

Scope and Purpose

This report analyzes Angola's legal approach to freshwater resource rights and community-based management of freshwater resources. For purposes of this study, freshwater resources, or FWR, are defined as "any body of water that is fresh (not salty), together with its associated species and ecosystem resources, including aquatic plants and animals such as fish." FWR rights can be framed as either "use rights" or "control rights." The primary FWR use rights analyzed in this study are access rights (*i.e.*, "the right to enter freshwater bodies or pieces of land from which FWR can be accessed") and withdrawal rights (*i.e.*, "the right to remove water, fish, or other FWR"). The primary FWR control rights analyzed in this study are exclusion rights (*i.e.*, "the right to prevent other from using the FWR" in question), alienation or transfer rights (*i.e.*, "the right to redistribute, sell, rent, gift, or bequeath rights over FWR"), and management rights (*i.e.*, "the right to make decisions about FWR, such as flow regulation, aquaculture, or fishery management").

Methodology

In keeping with the report's legal focus, the authors conducted a desk-based analysis of Angolan law. This analysis centers on national laws, decrees, and regulations. Readers should bear in mind this limitation when digesting the report and its conclusions. Where additional field study would be particularly valuable, the authors have noted as much and have provided a summary of all topics that may be further pursued with field research as an Annex to this report.

Highlights of Analysis and Findings

When measured against best practices and global indicators, the report concludes that Angola maintains the scaffolding of a legal framework broadly supportive of community-based management of freshwater resources and associated rights.

Angola's water law regime is premised on the fundamental role that serving the domestic and subsistence needs of local communities plays in realization of national water policy goals. This is given effect by providing for free water use rights for non-commercial local community water uses. These use rights are coupled with access rights, and common uses have primacy and are to be given effect before and in lieu of other use rights.

Less clear is the extent to which it would be fair to say that local members hold management rights to FWR. Certainly, the law provides opportunities for public participation in planning processes and certain decision-making processes, but ultimately, the Hydrographic Basin Management Bodies are primarily responsible for the management of FWRs to the extent that these rights are derivative of water flows and availability. The role of traditional authorities also appears crucial, as does that of user associations.

I. Introduction

The Nature Conservancy's (TNC) Voices, Choices, Action program is premised on four interconnected, mutually reinforcing pillars—secure rights to territories and resources, strong community leadership and capacity, effective multi-stakeholder platforms for decision-making, and environmentally sustainable economic development opportunities. Achieving successful community-based conservation programs depends on the implementation of these pillars and the additional cross-cutting themes of connection to place and equity. This report examines whether the first pillar—secure rights to territories and resources—is realized in Angola in the context of freshwater resources (FWR). In other words, this report focuses on the security of freshwater resource rights in Angola, with a special focus on those rights most relevant to community-based management of freshwater resources (CBMFWR).

Through a property rights lens, the key features of freshwater resource rights comprise both use rights and control rights. Use rights, or usufruct rights, describe the ability to access and withdraw FWR, whereas control rights describe the ability to manage, exclude, alienate, or transfer rights to a particular resource. The freshwater resource context gives rise to unique considerations, particularly in the context of the diversity of stakeholders and users of freshwater resources and the complexity of water flows across time and space.

Together, these use rights and control rights form the "bundle of rights," a phrase that describes the variety of rights that one, or many, may hold to property or, in this case, FWR. The security of freshwater resource rights depends on three intersecting characteristics that apply to rights in this so-called "bundle." First, the distribution of the various rights in the "bundle" matters, i.e. whether the various rights are held by one person or distributed amongst stakeholders and who holds which rights. Second, the duration of the rights, including whether such duration is contingent on water availability, is an important factor. Third, the overall robustness of any rights system depends on the extent to which rights are known by holders, accepted by communities, and enforceable when conflict arises.

Like rights to territory or land, both the existence of rights and the governance of those rights may be subject to multiple legal systems. Such legal pluralism takes many forms and may be the result of either de jure or de facto realization. For example, legal pluralism might exist in such a way that custom and modern law sit side-by-side and operate on an equal hierarchical footing where the juridical parity of both custom and modern law is constitutionally provided. At other times, custom and State law co-exist because a modern legal system provides that, in certain circumstances, customary law controls. In these cases, the law of the State establishes that its legal system prevails in the face of conflict. Finally, in some cases, customary law simply persists to fill in the gaps of State-based law or operates de facto in communities with strong connections to traditional ways of life—sometimes the same communities wherein the State has but a tenuous presence. In any given context, understanding the security of freshwater resource rights depends on a close examination of the legal systems at play. When legal pluralism is de jure, the nature of the relationship between codified law and customary law depends on both how it is described legally and how it is interpreted and applied on the ground.

In ways both direct and subtle, whether a country prescribes to a "modern" or a "traditional" approach to water rights is interrelated to its approach to custom. In general, a "traditional" legal approach is one in which water rights are "linked to land tenure rights and in particular to land ownership rights." In its simplest form, the traditional approach holds that water rights "run with the land" and thus are largely derivative of land rights. Under a traditional legal approach to water rights, clarity and security of land tenure is crucial. Without land tenure, water rights may be either difficult or expensive to procure.

A "modern" approach, in contrast, sets water apart for separate legal treatment. Water rights under such a system "are not intrinsically tied to specific land plots." Thus, the holders of water rights in a modern regime are often able to transfer those rights independent of land rights, including through assignment or sale on a temporary or permanent basis. More fundamentally, modern systems strive to codify the myriad uses of freshwater, recognizing that these uses are interrelated and deserving of a body of law unto themselves. Yet, while the move to codify generally heightens legal certainty surrounding water

rights—providing clearer answers to questions surrounding use rights and control rights—there is at least one exception. Under a "modern" approach to water law, the shift to codification may actually sow ambiguity regarding the extent to which custom and use are given adequate legal space and effect.

Angola expressly implements a unitary legal system that, through endorsement by the State, officially recognizes that traditional governance, norms, and structures persist, so long as not in conflict with codified law. This approach is manifest in Law N. 6/02 of 21st June (Water Law), which provides that subsistence use of water resources is a "free" use that remains primarily governed by traditional authorities and exercised in accordance with customary norms. Because they are largely exempted from the Water Law governance structure, the security of these water use rights and the nature of the full "bundle" of rights may be subject to local nuances—such as power dynamics, hierarchal structures, and socio-economic realities in local communities—and thus difficult to assess.

After briefly describing the methodology, this report identifies key features of a legal apparatus supportive of CBMFWR, including the integral role that secure FWR rights play in Section III. Section IV provides framing insights into the legal system in Angola with a focus on Angola's treatment of custom. Section V overviews the legal regime governing FWR rights in Angola, their legal character, and interaction with other pertinent legal regimes, such as the protected areas regime. Section VI contextualizes these rights through the lenses of the water management and planning scheme, community participation, and enforcement. Section VII concludes that while Angola's freshwater resource management regime reflects many of the features of a strong legal apparatus, outstanding questions remain. These questions include how the regime is implemented in local communities and the scope of custom and traditional authority in Angola, insofar as relevant to the security of rights to subsistence use of freshwater resources in local communities.

II. Methodology

This report is based on a desk-based analysis of Angolan law. Our approach to identifying relevant Angolan laws was comprehensive. We considered the following laws and national policies, although not all of these ultimately informed the analysis and some remain to be translated for review and incorporation:

Relevant Legislation, Regulations, and Policies
Angolan Constitution
Water Law, Law N. 6/02 of 21 June 2002
Presidential Decree No. 82/14 approving the Regulation of General Use of Water Resources
Law on Biological Aquatic Resources, Law. N. 6-A/04 of 8 October 2004
Basic Environmental Law, Law N. 5/98
Forest and Wildlife Base Law, Law N. 6/17 of 24 January 2017
Environmental Conservation Areas Act, Law N. 8/20 of 16 April 2020
Land Law, Law N. 9/04 of 9 November 2004
Decree 58/07 approving the General Regulation for Land Concession
Law on Territorial Planning and Urban Affairs, Law N. 03/04 of 25 June 2004
Presidential Decision No. 14/18 Creating the Interministerial Commission whose Objective is to Promote the Registration of Rural Land in Favour of Local Communities

Laws and Policies to be Translated

Laws and Policies to be Translated
Cooperatives Law, Law N. 23/15 of 31st August
Law of Association, Law. N. 14/91
Environmental Impact Assessment legislation
Civil Code
Cubango Basin Water Management Plan
Strategy for the Development of the Energy Sector
Strategy for the Development of the Electricity Sector

The core of the analysis herein relies on a thorough examination of the freshwater rights and management scheme established according to the Water Law and the Decree on the General Uses of Water. Where certain provisions implicate land tenure, other property rights, or otherwise intersect with Angola's land law, this report explores relevant provisions from Law N. 9/04 of 9th November (Land Law). However, the report does not provide a detailed exploration of land tenure in Angola as this is outside the scope of this freshwater resource rights analysis. Because laws concerning FWR are often linked to laws concerning other natural resources and management regimes (*e.g.*, forests, protected areas), this study also examines such ancillary laws to the extent necessary to elucidate FWR rights and community-based management of freshwater resources (CBMFWR).

To understand whether and how CBMFWR may operate in a given jurisdiction, the relevant legal regime must be analyzed through both a *de jure* (legally codified) and *de facto* (occurring in practice) lens. For this reason, field-based research is a critical element of a full analysis. This report highlights specific issues that require field research and further analysis.

III. Community-Based Management of Freshwater Resources: A Legal Framework

CBMFWR is a theoretical and practical approach to achieving environmentally sound, economically tenable, and socially just management of FWR. For purposes of this study, freshwater resources, or FWR, are defined as "any body of water that is fresh (not salty), together with its associated species and ecosystem resources, including aquatic plants and animals such as fish." CBMFWR is built on the premise that local communities ought to have an outsized role in managing locally present FWR. Subsidiarity, or "devolution of decision-making power and authority," serves as a key condition precedent for the achievement of longer-term CBMFWR goals: just and equitable use of FWR, a durable and socially legitimate management model, and environmental sustainability.

The academic literature on local management of natural resources and ecosystem services identifies a series of guiding principles that are generally adaptable to CBMFWR. Once adjusted to the CBMFWR context, these principles serve as a set of key features that a model legal regime might incorporate to support CBMFWR. The principles articulated below, adapted from CBNRM literature, provide the contours of a legal system that hosts an enabling environment for robust CBMFWR, but CBMFWR also depends on how the legal system identifies, distributes, prioritizes, and secures the rights related to FWR. The FWR rights analyzed in this study are (1) access rights, (2) withdrawal rights, (3) exclusion rights, (4) alienation or transfer rights, and (5) management rights.

Key Legal Principles, Adapted to the FWR Context

Legal system provides for local management of FWR/local participation in management of FWR

Legal system facilitates collaborative partnerships (*e.g.*, government-NGO alliances) in support of CBMFWR
Legal system recognizes water for essential human uses as an inalienable "fundamental right," "human right" or similar
Legal system contains transparency and access-to-information mechanisms regarding FWR use and government actions that could impact FWR
Legal system includes a specialized regime regarding indigenous peoples' rights to FWR
Legal system embodies principle of free, prior, and informed consent (FPIC) regarding activities that could impact FWR in territory held or occupied by indigenous peoples
Legal system promotes secure land tenure for indigenous peoples and local communities, including recognition of communally held lands
Legal system contains a clear FWR use prioritization regime, with basic human and ecosystem needs taking precedence over other uses
Legal system includes incentives for FWR conservation
Legal system includes deterrent penalties for violations related to FWR
Legal system provides special protections for riparian areas, while providing for equitable and sustainable access for community members
Legal system incorporates user-pays and polluter-pays principles
Legal system includes an efficient and just system for conflict resolution (may include non-judicial apparatuses)
Legal system provides for fair compensation to persons impacted by violations of FWR laws and other prejudicial acts or omissions related to FWR
Legal system recognizes customary practices as a valid source of law in certain circumstances
Legal system is clear vis-à-vis FWR management structure and decision-making authorities (*i.e.,* authorities and roles are well defined)
Legal system contemplates science-based decision-making/a strong role for science in decision-making
Legal system incorporates a version of the precautionary principle

Some of these principles reflect a particular FWR right or duty, such as access to water and the duty to avoid unnecessary diminishment or pollution. Others are cross-cutting, bearing on several rights and duties. Still others deal with structural variables, such as management and organization. Taken as a whole, these principles provide the basic contours of a legal regime that supports implementation of CBMFWR. While these principles work together to achieve synergistic effects, the absence of laws implementing one or more principles does not necessarily mean that the legal system as a whole is

unsupportive of CBMFWR. Evaluation of a country's legal system vis-a-vis CBMFWR depends on the totality of the circumstances and is highly dependent on national context.

FWR rights can be framed as either "use rights" or "control rights." As the name suggests, use rights determine permitted uses of FWR—along with the access necessary to achieve such uses (i.e., withdrawal rights and access right). Control rights, for their part, complement use rights by increasing the holder's power to participate in management and other regulatory decisions regarding FWR (i.e., management rights), exclude third parties from accessing the resource (i.e., exclusion rights), decide whether, and under what conditions, to transfer her rights to a third party (i.e., transfer rights), and in the case of deprivations, achieve recompense or another legal remedy. When present, control rights render use rights more robust and secure.

The primary FWR use rights considered in this study, along with definitions, are as follows:

- Access rights: For purposes of this study, "access rights" means "the right to enter freshwater bodies or pieces of land from which FWR can be accessed."

- Withdrawal rights: For purposes of this study, "withdrawal rights" means "the right to remove water, fish, or other FWR."

The primary FWR control rights considered in this study are as follows:

- Management rights: For purposes of this study, "management rights" means "the right to make decisions about FWR, such as flow regulation, aquaculture, or fishery management."

- Exclusion rights: For purposes of this study, "exclusion rights" means "the right to prevent others from using the FWR" in question.

- Alienation or transfer rights: For purposes of this study, "alienation or transfer rights" means "the right to redistribute, sell, rent, gift, or bequeath rights over FWR."

Whether falling in the category of "use" or "control," FWR rights may derive from international law, constitutional law, statutory law, regulatory law, or local customary law—or from a combination thereof. Further, as concerns custom, there may be cases in which traditional customs and practices add a gloss to the understanding of legal rights even if they do not alter those rights in a strictly legal sense. Particularly in rural and indigenous areas of the developing world, custom and use exert a strong influence on the *de facto* implementation of the law, which is in line with international statements of principle, such as the U.N. Declaration on the Rights of Peasants and other People Working in Rural Areas, which recognize the importance of maintaining and respecting customary norms in rural communities.

Finally, FWR rights may be categorized as either individually or communally held rights. Individually held rights are rights that belong to an individual person. Communally held rights are those held by a collection of individuals. Under such a system, individual members of the community use water resources, but title is held by the community as a whole.

IV. An Overview of Angola's Water Law System

The core of Angola's water rights regime reflects its civil law tradition. Angola's Water Law makes clear that water is State property and regulated as a public domain resource for the benefit of the public interest. The rights regime articulated in the Water Law is comprehensive—in terms of the range of uses directly regulated, the rights and corollary duties articulated, and the definitional scope of "water." According to the Water Law, "water" includes all "inland waters, both surface and subterranean, constituting the national water cycle." The Decree on General Water Usage elaborates this definition, providing that

"surface and underground waters, namely watercourses, lakes, ponds, swamps, springs, reservoirs, estuarine areas, and other water bodies," fall under the purview of Angola's freshwater rights regime.

In general, Angola's water law regime reflects "modern water law" as described by the Food and Agriculture Organization (FAO). The characteristics comprising a modern water law regime include the use of primary legislation, the nationalization of water resources, comprehensive institutional arrangements for water resource management, distinctions between "free" use of water and other fee-required uses, and explicit determination of the relationship between the water law regime and traditional and other pre-existing rights. Angola's water law regime is built to reflect these characteristics; as such, on paper, the regime is a comprehensively envisaged system for the management of both private and public use of water and the ecologically-sound development of water resources.

This system reflects core constitutional principles and several key features of a legal framework for CBMFWR. Angola's Constitution enshrines a Right to Life in Article 30. Unclear however are the contours of this right and whether it embodies the instrumentalities required for human life, such as access to FWR. More specifically, the Constitution also articulates a right to live in a healthy and unpolluted environment. A clear obligation complements this right, given some modicum of additional legal weight: The State is required to take necessary measures to protect the environment, maintain ecological balance, locate development projects wisely, and promote the rational development of resources.

The Water Law and Water Decree build out these rights with a set of core principles for the management and development of Angola's water resources, intended to give effect to the rights of citizens and collective entities. These principles include the following:

- Community participation
- Unity of the water cycle
- Hydrographic basin as the planning unit
- Integrated water management
- Compatibility with land use and environmental policies
- Recognition of water as a social, renewable good with economic value
- Rational and sustainable use of water resources
- User pays
- Polluter pays
- Recognition of uses and customs
- Precaution

The following sections elaborate how these principles are given effect, with a focus on those principles that are key features of CBMFWR frameworks.

Of critical importance is the relationship between custom and codified law. Angola's legal system—both generally and specifically with respect to FWR—incorporates elements of customary law and this is reflected in the water law regime. The term "customary law" is subject to a range of meanings depending on the context. At the most basic level, customary law means unwritten or uncodified law. Without attempting to define either the outer boundaries of the term or all its permutations, two approaches to customary law are particularly important when analyzing the Angolan FWR legal regimes. First, in some countries, customary legal systems occupy the same hierarchical rung as their formal, written counterparts. For instance, in Ecuador and Bolivia, the national constitution enshrines customary indigenous legal systems as autonomous and co-equal with the "ordinary" justice system, meaning that, within indigenous territories, indigenous communities are free to maintain, create, and enforce norms that operate independently of national legislation. Second, many countries recognize customary norms and practices as a source of law that gives rise to rights and privileges. In such systems, legislative regimes

may incorporate customary norms and practices by recognizing pre-existing rights based on usage and custom, and in some cases, acknowledging the primacy of those rights and/or the role that traditional authorities may play in the managing of such uses. It is this latter approach that finds purchase within Angola. This approach often results in a system that is part government-endorsed and part a *de facto*, unauthorized legal system.

Article 7 of the Constitution states affirmatively that Angola recognizes the validity and legal force of custom, so long as it does not contradict the Constitution. The Constitution further identifies a clear role for traditional authority in Angola. Article 223 provides that "the State shall recognize the status, role and functions of the institutions of the traditional authorities founded in accordance with customary law which do not contradict the Constitution." The Water Law and Land Law both contain references to the legal role of custom. In setting forth the "common use" water regime, Article 23 of the Water Law provides that such uses are "carried out according to the traditional water use regime." Relatedly, Article 26 of the Water Law qualifies certain water rights that flow from land rights by providing that exercise of such attendant water rights (e.g., the right to pump groundwater, the right to collect rain water) may not prejudice "pre-existing common uses, when traditionally established." For its part, the Land Law contains even more references to custom and traditional uses. For example, in a clause of potentially broad reach, Article 9 provides that the State shall "respect[] and protect[] the land rights held by rural communities, including those that are based on usage or custom."

Secondary literature confirms that customary land tenure norms play a significant role over occupancy and use of land—and disputes concerning the same—in the Angolan countryside. This suggests that rural communities more often default to traditional authorities and norms, perhaps also regarding issues related to water rights. Taken together, the Water Law, Land Law, and associated secondary sources imply that customary practices and norms may frequently supplement, though not supplant, otherwise applicable codified law. Drawing firmer conclusions beyond these basic points requires field research.

Similarly, assessing whether FWR rights are held individually or collectively requires field research. Neither the Water Law nor the Water Decree address this distinction, but could be of significance. The Base Law for Forests and Wild Fauna appears to distinguish between "local communities" and "rural communities" according to how rights are held and exercised, as opposed to the location of particular communities, for example. "Local communities" refers to "a social group of people resident in a locality with interests or rights in relation to the forest or wildlife resources therein, which they hold, or for which rights are exercised until the law, custom, or contract." "Rural communities," on the other hand,

> have collective rights of ownership, management and use and enjoyment of the Community's means of production, in particular of the rural areas which they occupy and use in a useful and effective way, in accordance with principles of self-administration and self-management, both for housing and the exercise of its activity, or for the achievement of other purposes recognized by custom and legislation in force.

Neither the Water Law nor the Water Decree even use the "local"/"rural" terminology. Without as clear a distinction and consistent use of terminology in the Water Law or Water Decree, it is difficult to determine whether the various subsistence and domestic FWR rights discussed below are individually or collectively held.

V. Freshwater Resource Rights

According to Article 95 of the Constitution, "all inland waters . . . in addition to lakes, lagoons and watercourses, including their beds, and the biological and non-biological resources existing in inland . . . waters" constitute the public domain. The Water Law and Land Law both confirm that freshwater resources fall within the public domain in Angola, providing the State ownership and management authority. Article 5 of the Water Law provides that "[t]he right to use the public water domain is granted

to guarantee its preservation and management to benefit the public interest." As the ultimate custodian and owner of water, the Angolan government establishes a comprehensive management regime for the allocation of water use rights that accommodates custom and community-based rights. Notably, though, while the legal regime carves out a role for custom and traditional authority, the State ultimately appears to function as both manager of the availability of water resources and arbiter of rights-related conflicts.

Built into the water law regime in Angola are principles of "user pays" and "polluter pays." The "user pays" principle posits that the users of freshwater resources ought to pay for the cost of drawing down the resource. Angola's water law regime gives direct effect to this principle, with the important caveat that certain uses are "free," such as common uses and specific private uses—namely, non-commercial fishing, recreation, and aquaculture. Other uses require the payment of a user fee, based on water abstraction rates. Both direct and indirect beneficiaries of hydraulic infrastructure, which appears to include dams, must pay fees. Direct users include those who enjoy water use from artificially recharged aquifers and who "use the waters of artificial dams." Indirect users include those whose water rights arise from the regulation of water flow realized through the infrastructure project.

The polluter pays principle provides that entities causing pollution or some other harm should bear the responsibility of internalizing the cost of the pollution or harm. Angola's water law regime requires that anyone releasing effluent into Angolan waters pay a user fee that includes the cost of treating the polluted water. In addition, the Water Decree establishes a comprehensive regime of water-related offences and subsequent liabilities, requiring amongst other things that polluters return the polluted area to its prior state.

A third key principle is priority treatment for local subsistence uses. Specifically, the legal regime for freshwater resource management in Angola elevates local community, subsistence uses above other water users and uses, providing both primacy and security, which are fundamental to CBMFWR.

Implementing these principles is ultimately the function of the management bodies, likely working with the traditional authorities and user associations to address subsistence needs, priority uses, and ecological constraints. The Water Law establishes the availability of resource users to form user associations in line with community-based freshwater resource principles. However, these user associations appear to be limited to users of "water resources." "Water resources" is defined as "resources in available or potentially available water, in quantity and quality . . .," according to the Water Decree. This suggests that a broad reading of the reasons for the existence of a user association is possible and thus could include a user association established for the purpose of fishing, for example (See further Section V.B.2).

The Water Law contemplates a supervisory body that functions at the hydrographic basin level but does not establish such an entity. Instead, the Water Decree provides that a Hydrographic Basin Management Body serves this supervisory role. The stated purpose of the Hydrographic Basin Management Body is to plan and manage water resources. In so doing, they play a critical role in establishing limitations on the availability of freshwater resources and subsequently the use of those freshwater resources. Their role requires both that they prioritize community freshwater resource access but also that they limit such uses in line with the ecological constraints of the basin. Hydrographic Basin Management Bodies also act as the licensing entity and issue "opinions" in order to approve certain activities, as discussed below.

As the analysis below shows, the basic legal scaffolding exists to build strong CBMFWR; however, questions remain as to the levels of enforcement, true community participation, and the role of traditional authorities. These are outstanding concerns that require field research and analysis. As such, the balance of this section should be read strictly as a desk analysis that provides potentially only the legal outlines of a water management scheme that is much more nuanced and complicated upon closer examination.

A. Common Uses

In recognition of custom and use, and in line with Article 223 of the Constitution, the water rights regime incorporates elements of a pre-existing, traditional water rights regime by delineating certain "free" water uses for subsistence purposes. Per the Water Law, these are deemed "common uses" and comprise water uses that meet domestic, personal, and family needs, including the withdrawal of water for irrigation and watering cattle, carried out according to a traditional water use regime. The common use rights do not allow for diversions of water resources "from their beds"; however, the "capture of water" is allowed for irrigation purposes. Thus, for instance, it appears that an individual could not lawfully construct an irrigation ditch to draw off water from a stream—even if the ultimate use of the water were a "common use," such as watering a family plot, but water could be gathered from the river or as rainwater for irrigation purposes. Common use rights may be exercised without formal authorization; however, uses might require registration with the relevant Hydrographic Basin Management Body and are subject to any limitations set by that Body and incorporated into relevant planning documents (See Section VI(B)).

Common uses are "free uses" and are not subject to title. As a result, while local community members may have usufruct rights, they may not have control rights. In referencing "a traditional water use regime," the Water Law does not make clear the precise role that any customary water regime plays in distribution, allocation, or transferability of common use rights.

Because common uses are untitled rights, whether Angola's Civil Code applies, or whether custom applies, is an open question that requires further research. If custom determines whether and which control rights exist, it could be that traditional authority in a particular community wields significant power in distribution and control of water rights allocation.

Without formal title, the legal security of these water rights is questionable, and, as noted, it is unclear whether the common use right manifests a property-like interest, yielding the benefits captured in the so-called "bundle" of rights. However, water is considered an immovable asset according to the Water Law and thus a security that may be subject to mortgage. In the case of common uses, it appears that mortgages are only allowed when the water use right is mortgaged along with the property to which it is relevant and registered.

Angola's water law regime does make clear that common uses have primacy over other uses. The Decree on General Water Use makes this explicit, providing that "common uses take precedence over any other uses." Moreover, in cases of incompatibility between common uses and other uses, common uses prevail. This primacy does not reflect in and of itself the security of the water use right, but it does reflect some security as to the availability and distribution of water resources amongst competing interests—an important feature of a legal framework for CBMFWR.

B. Private Uses

All uses that are not common uses are considered "private uses" and fall squarely under the management regime. The regulation and management of private uses varies depending on the nature of the use. Uses may be available "free" and without administrative approvals; they may be subject to the need to obtain a type of title, either a license or a concession; or they may require a positive opinion from the Hydrographic Basin Administrative Body.

1. Private use and Land Ownership

True to its Roman roots, Angola's water law at least implicitly distinguishes between public waters and private waters, adjusting the regulatory regime for the management of water resources accordingly. The law does not explicitly delineate so-called "private waters," but it does exempt from the title regime uses that derive "from the right to exploit the land," providing that non-commercial uses that fall below certain threshold quantities and impacts are free. The waters that may be subject to these free uses are lakes,

ponds, and swamps that are contained wholly by such land, spring waters that do not cross the boundaries of such land, groundwater under such land that is not in a protection zone, and rainwater.

With respect to these waters, landowners have the right to withdraw water for domestic needs and the "regular and foreseeable" needs of agriculture. Although these uses are generally exempt from the title regime and are thus free, the Water Decree provides that users must notify the relevant Hydrographic Basin Management Body. The Water Decree explicitly prohibits commercial uses of these waters under the exemption.

In addition to excluding commercial water uses, the exemption from the title regime for waters found on private land is additionally limited by ecological and prioritization constraints. The Water Law caveats that these "private waters" may be subject to the title regime when the waters are important to the hydrological basin or their use may have a negative impact on the quantity or quality of basin waters. According to the Water Decree, withdrawals that cross a certain volumetric threshold may also be subject to the title regime. The Water Decree provides that any free use associated with land rights must not exceed 100 cubic meters per month, or in the case of groundwater, a maximum operating flow of two cubic meters per day.

Further, the exercise of the free landowner water rights is subject to a water rights hierarchy built into the law, which places both traditional water rights holders and title holders in a position of primacy. According to the Water Law, no use "from the right to exploit the land" may affect pre-existing traditionally established common uses or other third-party rights. To further give effect to traditional uses and rural community practices, landowners are required to maintain and guarantee access to land and water on which communities historically, and in accordance with customary law, grazed and watered cattle or used water for other traditional purposes.

2. *Other Private Uses that do Not Require Title*

The Water Decree establishes that certain private uses do not require acquisition of title. A few private uses are "free," just like common uses and water rights associated with land rights. These uses must be non-commercial and include navigation and recreation, fishing, and communal and research aquaculture. When these same activities serve commercial purposes, they require what the Decree refers to as an "opinion" from the Hydrographic Basin Management Body.

"Free" navigation and recreation use must be carried out for domestic, personal, family or community needs by traditional means or by a motor with less than 50 horsepower capacity. The use of the water for these non-commercial purposes may not affect other titled or legally protected uses, such as common uses, water quality, or the integrity of either the waterbed or infrastructure. Commercial navigation requires a positive opinion from the Hydrographic Basin Management Body.

Subsistence, recreational, and sports fishing, as well as scientific research fishing, qualify for free use rights, with the constraint that the exercise of these rights must not alter the functionality of the watercourse, disturb the functionality of the ecosystem, harm flora or fauna, affect navigation, or impact other legally protected or titled uses. In order to qualify as a free use, subsistence fishing must be carried out under a traditional regime or without the use of motorized vessels. The Fishing Law similarly recognizes subsistence fishing as a free use, and as such, a permit is not required. Similarly, recreational and sport fishing must be carried out by traditional means or with the use of a motorized vessel with less than 50 horsepower capacity.

All other types of fishing—artisanal, industrial, and semi-industrial fishing and related activities—require a positive opinion from the Hydrographic Basin Management Body.

Law No. 6-A/04 on Aquatic Biological Resources also regulates fishing in inland, or continental, waters. Like the Water Law, the Fisheries Act identifies subsistence fishing as "fishing activity in which the fisherman fishes regularly for his own and his family's consumption"; however, it also indicates that subsistence fishing may include "sporadically sell[ing] the surplus production." This provision contradicts the Water Law and Water Decree, suggesting that multi-sectoral consultation and collaboration is critical to any CBMFWR project to ensure legal compliance.

Artisanal fishing is created as distinct from industrial fishing and subsistence fishing under both the Water Law and the Fishing Law. Under the Fishing Law, artisanal fishing operations are allowed in freshwater, and "artisanal fishing" is defined as meeting specific criteria. Namely, artisanal fishing is carried by vessels shorter than 14 meters in length that are propelled by oars, sail or by outboard; the fishing gear may be handlines, seines, and gillnets; and fishermen rarely require the use of ice for preservation. Establishing a fishing cooperative, or user association, likely entails fishing under these parameters. Fishing permits are required from the "competent Minister," i.e. the Ministry with authority over continental fishing. In addition to this permit, such a cooperative would require a positive opinion from the Hydrographic Basin Management Body.

Communal aquaculture for personal consumption is a free use, not subject to title, so long as it meets the conditions established by the Hydrographic Basin Management Body. Research aquaculture is treated similarly. Semi-intensive and commercial aquaculture both require title, as discussed below.

3. *Private Uses that Require Title*

The Water Decree provides that any water withdrawal, effluent release, and all aquaculture, other than communal aquaculture, are private uses that require a license or concession. Under this regime, water usage is only allowed after acquisition of a license or a concession, depending on the nature of the use. Whether a license or concession is necessary for a private use depends on the intensity of the use. For example, water withdrawals utilizing pumping stations that have a flow rate below 15 liters/second or utilizing irrigation channels and drainage ditches with a flow rate below 50 liters/second require licenses, whereas water withdrawals in excess of those rates require concessions. Water withdrawals subject to this regime include human consumption purposes, agriculture and livestock activities, industrial activities, hydroelectric energy production, and any other purpose not otherwise covered by the law. Similarly, semi-intensive aquaculture requires a license, while commercial aquaculture requires a concession. Whether effluent release requires a license or concession depends on the location of the release.

Securing a license or a concession for a regulated water use provides the holder with certain rights related to the exercise of the water use and concomitant duties that dovetail with the administration of Angola's water management regime. In some cases, the rights provided may potentially impact other private and or communal land or water rights.

In addition to the conduct of activities approved under the contractual terms of the license or concession, holders are the beneficiary of additional rights for the purpose of executing such activities. Both license and concession holders have the right to temporarily occupy lands or create easements to exercise those rights. In addition, concession holders may request expropriations of property held by third parties, as long as they do not prejudice third parties' legally protected rights or interests without due compensation. This may also force the sale of, or payment-in-kind for, "rustic or urban" buildings that exist in the area to which the concession applies, provided the building properties are indispensable to the concession and no preemptory rights exist over them. Additionally, concession holders may use the property of the State if necessary to give effect to the concession, and may obtain title to such property.

License and concession holders must allow and facilitate inspections of their activities, minimize environmental impacts, pay necessary fees or charges, and comply with the obligations of their license and Angolan law. Given the scale of activities requiring a concession—concessions are usually required for larger or more impactful endeavors—additional duties apply to concessionaires. Unless the government approves a suspension, concessionaires must continuously exploit and use water resources according to the concessions adhering to appropriate technical standards. Environmentally, they must refrain from acts that could deplete or degrade water resources, render public use unfeasible, or cause significant environmental impact. To that end, concessionaires must guarantee water quality by carrying out regular analyses by specialized laboratories.

During the period of validity, licenses and concessions may only be transferred, assigned, disposed of, or encumbered with the prior approval of the granting entity. They are valid for either 15 years (in the case of licenses) or 50 years (in the case of concessions). However, prior to expiration, concessions may be terminated for several reasons, including in both fault and no-fault scenarios.

In most cases, termination is due to changed circumstances. For example, a concession may be subject to expiry due to significant water reduction, significant degradation of the water's characteristics, or a superseding water resource need. Similarly, situations of *force majeure* may also result in the termination of the concession. These situations do not appear to result in a compensable loss for the licensee or concessionaire. In other circumstances, compensation may be due a concessionaire (but not a licensee), such as when termination is the result of malfeasance by a government actor. Additionally, when the government revokes a concession in order to use the water resources for the public interest, and does so in accordance with the terms set out in the Water Decree, a concessionaire may be due compensation.

Termination of the license or concession may also arise when the concessionaire acts in violation of prescribed duties. Non-compliance—such as the failure to perform administrative tasks on time, contamination of the water resources, or violation of others' legally protected rights—may result in revocation of the title. This provision functions to protect the legally established common use rights to water use, although, as noted above, a local community may be required to give up or compromise certain lands and possibly infrastructure under the terms of the law.

In the case of concessions, certain violations may be deemed intentional and severe, and in such cases, the termination is final. However, in other cases that do not meet the "intentional and severe" criteria, the concessionaire may challenge revocation. Licensees, on the other hand, do not appear to enjoy the same opportunity for appeal.

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In sum, Angola's water law regime identifies several categories of water uses, covering a spectrum of non-commercial to commercial uses, and administrative requirements.

Types of Use	Administrative Requirements					
	Registration		"Free Use"	User Fee	License/Concession	Positive Opinion
	Basin	National				
Common Uses						
Domestic Use	✓	-	✓	-	-	-
Subsistence Irrigation	✓	-	✓	-	-	-

Watering and grazing cattle for non-commercial use	✓	-	✓	-	-	-
Private Uses						
Abstractions						
Non-commercial use of internal waters by landowners	-	-	✓	-	-	-
Water Abstraction for Human Consumption	-	-	-	✓	✓	-
Agricultural and Livestock Activities	-	-	-	✓	✓	-
Industrial Activities	-	-	-	✓	✓	-
Hydroelectric energy production	-	-	-	✓	✓	-
Navigation and Recreation						
Non-commercial navigation and recreation	-	-	✓	-	-	-
Commercial navigation or recreation	-	✓	-	✓	-	✓
Fishing and Aquaculture						
Subsistence or recreational fishing	-	-	✓	-	-	✓
Artisanal fishing		✓	-	✓	-	✓
Semi-industrial fishing	-	✓	-	✓	-	✓
Industrial fishing	-	✓	-	✓	-	✓
Communal or research aquaculture	-	-	✓	-	✓	-
Semi-intensive aquaculture	-	-	-	✓	✓	-
Commercial aquaculture	-	-	-	✓	✓	-
Riparian Land Uses						
Obtaining land rights to riparian areas and/or beds	-	✓	-	✓	-	✓
Mining in or near water	-	✓	-	✓	-	✓
Discharges						

Effluent Discharge	-	-	-	✓	✓	-

C. Protection and Land Rights to Riparian Areas and the Beds of Lakes and Rivers

The Water Law and Water Decree provide for the establishment of "water protection zones." Water protection zones partially restrict activities in waterbeds, banks, and adjacent areas up to 200 meters from the water, subject to expansion by the National Water Resources Institute and Hydrographic Basin Management Bodies. Water protection zones generally prohibit any action that could pollute or disrupt water flow, including constructing infrastructure, buildings, and houses; installing mining heaps and ditches; performing excavations; introducing animals; and initiating land cultivation. Additionally, the government may declare partial water protection zones in flood zone land.

The Land Law also contemplates establishing protected areas for the purpose of water resource management, preservation, and exploitation. Article 27 of the Land Law establishes the concept of "reserved lands," which can be "whole" or "partial." The government may create "total reserved lands" for the purpose of environmental protection, national defense, preservation of monuments or historic sites, settlement, or repopulation. Use and occupancy within "total reserved lands" is permitted only insofar as necessary to conserve, manage, or otherwise pursue the public interest for which the reservation was made. This protected area regime is similar to the protected areas regime contemplated under the Law of Environmental Conservation Areas. (See Section V.D).

While the Land Law does not itself establish specific "total reserved lands"—it appears to simply authorize their creation through subsequent government action—the Land Law affirmatively creates "partial reserved lands" in a variety of situations, including "the protection strip adjacent to water sources" and "the strip of protective terrain around dams and reservoirs." Decree 58/07 of July 13th on Land Concessions provides more detail on the nature of "partial reserves," enumerating an "exemplary" list of purposes for which the government may create such reserves. Two of the identified purposes are directly linked to water. First, the government may establish a partial reserve to collect and distribute water. Second, the government may create a partial reserve to facilitate "hydroelectric or hydro-agricultural exploitation." In "partially reserved lands," occupation and use are permitted so long as they "do not conflict with the purposes" underlying the reservation.

Despite these protection zones, acquisition of land rights over beds, banks, and areas adjacent to water bodies may be granted after a binding opinion from the relevant Hydrographic Basin Management Body. Requests must include a detailed description of the claim along with an environmental impact study. Requests involving hydraulic infrastructures such as dams, dikes, bridges, and sanitation systems necessitate additional studies and information, such as hydrological studies, determinations of upstream and downstream water uses, and mitigation plans. If the Hydrographic Basin Management Body decides to issue an opinion, it may grant riparian land-use rights insofar as the usage will not affect ecological diversity, water flow, flood spread, biophysical integrity, groundwater, fauna and flora, and wetland and lagoon zones. Any claims subject to the community rural land regime are exempt from this process.

In light of textual ambiguities, field research is necessary to discern the relationship between water protection zones and the constitution and exercise of riparian land rights as described above. To be more precise, it appears that the water-protection-zone regime simply restricts, but does not eliminate, the exercise of properly constituted riparian land rights.

D. Conservation Areas and Freshwater Resource Rights

Building on the Land Law's concept of reserved lands, the Law of Conservation Areas establishes a detailed regime for the creation and management of areas protected for conservation purposes. The Law of Conservation Areas articulates several types of protected areas: (1) Natural Reserves, (2) National Parks, (3) Natural Monuments, (4) Sites for the Management of Habitat or Species, and (5) Protected Landscapes. Each designation has implications for local community access to FWR. The path to resolution of such designations and potential conflicts is unclear and requires field research.

Of the five categories of conservation areas, Natural Reserves offer the highest degree of protection. Minimal human intervention is a key management tool for Natural Reserves. The Conservation Areas Law subdivides Natural Reserves into three categories: Whole, Partial, and Special, distinguishing the three categories of Natural Reserves by the degree of permissible human intervention. In Whole Natural Reserves, hunting, fishing, and harvesting are only permissible for scientific purposes with prior authorization. Local communities are not permitted to live in Whole Natural Reserves. In Partial Natural Reserves, hunting, harvesting, and fishing are only permitted for scientific and subsistence purposes with prior authorization. The Conservation Areas Law does not expressly state whether local communities may reside within Partial Natural Reserves. In contrast, the law states that Special Natural Reserves *depend* on human intervention for the health of the protected area—including through the presence of local communities in low densities and recreational use by citizens—and permits hunting, harvesting, and fishing for scientific and subsistence purposes with prior authorization.

National Parks and National Monuments both exist to protect areas that have important natural or cultural features. Local communities may reside in both National Parks and National Monuments, so long as such occupation is not incompatible with protection goals. In National Parks, hunting, harvesting, and fishing may occur only for scientific or subsistence purposes with prior authorization. In National Monuments, the law only prohibits exploitation incompatible with the designation. The law is silent as to whether exploitation in National Monuments, to the extent permitted, requires a permit or other affirmative authorization.

The fourth category of protected area, Sites for the Management of Habitat or Species, aims to protect habitats of aquatic migratory birds, to preserve international biological diversity, and to promote eco-tourism. The Conservation Areas Law contemplates meeting these goals through designation of wetlands, marshes, river banks, reservoirs, coastal zones, estuaries, and bays as protected areas, without prejudicing individuals or communities with subsistence rights or prior authorization in those areas. These protected areas may overlap with the water protection zones established in riparian areas in the Water Law (see Section V(C)).

Finally, Protected Landscapes cover areas significantly influenced or shaped by humans and may encompass the coast and adjacent waters and should (a) promote traditional forms of land occupation and (b) improve the economic and social development of local communities. The Conservation Areas Law prohibits forms of occupation or exploitation incompatible with the designated environment. Improvements in the social and economic well-being of local communities may occur by extending employment opportunities or by allowing access to the benefits of approved development, such as access to improved drinking water and sanitation facilities developed to support sustainable tourism initiatives.

VI. Water Resource Management Planning and Due Process Rights

Although the security of both use and control rights is most often linked to the distribution, durability, and enforceability of the bundle of rights, the context in which these rights sit makes all the difference for the full realization of the benefits of secure FWR rights. This context includes due process rights and is part of the larger legal framework for CBMFWR and its effectiveness. This section provides a brief introduction to water resource management planning, opportunities for community participation, and potential recourse options when infringements occur. While desk research has provided an understanding of the scaffolding here, field research is necessary to build out understandings of how these features of the water regime intersect and work on the ground. Moreover, additional translations may be necessary to build out the State's approach to these issues as they overlap with separate laws on user associations, environmental impact studies, and others.

A. Water Resource Management Planning

Angola manages its water resources through extensive planning. The plans drive constraints and opportunities to use water in many contexts, especially commercial use of water, but they can also limit the availability of water for common uses. The goal of these plans is to manage Angola's water resources on a hydrographic basin level, ensuring the integrity of water systems and an integrated management approach. Angola's water management system balances environmental management and the social and economic value of water. Additionally, the management system places emphasis on the right to water for citizens and institutional coordination and participation.

Numerous entities are involved in water resource management in Angola. At the national level, the National Water Resources Institute is responsible for the National Water Resource Plan. Within each basin, a Hydrographic Basin Management Body is responsible for the planning and management of water resources within the area of a hydrographic basin or set of watersheds and also acts as the administrative body for approving water uses, including issuance of opinions, licenses, and concessions. In addition, a National Water Council and Hydrographic Basin Councils exist. These entities sit within the Ministry of Water and Energy and serve as liaisons with all relevant stakeholders, both private and public. Understanding the ongoing nature of these entities requires field research as the names provided here do not appear to correlate with recent ministerial reforms and changes may have occurred.

Two types of plans are central to the water resource management regime— the National Water Resources Plan (National Plan) and General Plans for the Development and Use of Water Resources in the Hydrographic Basins (Basin Plans). These plans are intended to be integrated and reflect common principles, as well as management cohesiveness. The Water Decree outlines in detail the content requirements for the National Plan and for the Basin Plans. The Basin Plans take inventory of the water resources, set priorities for use, propose measures for improving environmental management, and identify specific physical, financial, and institutional management actions. The National Water Resources Plan synthesizes Basin Plans with an eye toward troubleshooting, including where water shortage challenges might arise and where competing water needs might affect transfers between basins. Additionally, the National Plan addresses national-level water resource planning, including criteria for financing and approving national and regional projects. National Plans are in place for a maximum of 15 years, whereas Basin Plans last for 10 years.

B. Community participation in decision-making

The Water Law incorporates opportunities for public participation in several ways. First, as a general proposition, Article 9(1) states that all aspects of Angolan water management, including the management and development of water resources, must adhere to the principle of community participation. The Water Decree restates this in Article 11(e).

Second, when the responsible entity drafts a Basin Plan, Article 15 requires the "participation of communities[.]" Article 6(d) of the Water Decree reiterates this, stating that water resource plans must involve participation from all parties interested in water use and management. In theory, these provisions offer local communities a chance to influence the basic contours of the Basin Plan during the early stages of design. Because the Basin Plan must reflect the principle of "multiple uses" and account for the economic and social impact of such uses, community participation at the Basin Plan level would appear to provide a critical opportunity for communities to identify and convey priority uses and needs to government decision-makers. Likewise, Article 16 reinforces the related principle of subsidiarity in the design and implementation of Basin Plans by requiring national authorities to consult with "local authorities" and to develop a "methodology" to carry out "consultations at different levels." Whether this integrates consultation with traditional authorities—and, if so, how that works—are questions for field research.

Next, the Water Law contemplates the possibility of ongoing community participation through the formation of "user associations" by water users. When issuing either a license or concession, as discussed below, the Water Law requires prior consultation with these "user associations." However, the Water Law does not define the term, and the Water Decree is entirely silent on the topic. Separate legislation establishes another category of associations—"Environmental Protection Associations" (EPAs)—that appear to perform a set of functions at least partially overlapping with those of water user associations. As nonprofit entities focused on environmental defense and sustainable use of natural resources, EPAs seem to have a remit inclusive of conveying to the government community concerns regarding FWR use and related activities. However, whether water user associations are a distinct entity with distinct remit and formation rules is an open question. Additional field research is needed to identify the character of water "user associations" in practice and the relevance of EPAs to FWR management.

In addition to these baseline participatory features, the Water Law establishes a special rule for public participation in the context of permits and concessions for private uses of water. Specifically, Article 36 states that certain projects subject to a license or concession require prior public consultation, particularly from user associations, local authorities, social organizations, and other entities directly interested in water usage in the proposed project area. However, the law does not clearly state what authority or impact, if any, community input has in these processes. For example, the law does not insist that the government must consider, let alone heed, public opinion as part of its permitting or concession analysis. Whether community input has ever reshaped a proposed project or exerted any influence on the issuance of a license or concession could be an interesting field question and possibly the subject of a case study.

C. Community Recourse Opportunities

Angola's Water Law recognizes that individuals and entities will not always comply with the law and that competing interests may experience prejudice. With this in mind, the Water Law describes a government monitoring and enforcement scheme, along with a series of administrative offenses and corresponding penalties. Yet, while the scope of the government's authority to sanction offenders is clear, the options for recourse and remedies available to aggrieved individuals or communities under the Water Law is not as well developed.

To be sure, the Water Law in several instances recognizes victims' rights to obtain recourse for certain violations. In Article 8(5), people affected by excessive "flooding" from a drainage system have the right to request the system's modification, provided that such changes would not prejudice the owner and third parties. In the case of water pollution, Article 69 obligates people who pollute more than the allowed limits to restore the affected water resources to their state prior to the excess pollution. Perhaps most significantly, under Article 35, third parties injured by a license or concession grant may appeal that decision. Nevertheless, in most cases, the only clear option for the aggrieved to obtain monetary

compensation under the Water Law is civil litigation, as Article 72(2) creates actionable claims out of most water-related infractions listed in Article 72(1).

Secondary literature on access to justice and legal recourse in the land context casts significant doubt on the effectiveness of Angola's justice system in rural areas, highlighting deficiencies that would also seem to impact FWR. A 2005 USAID report observed low rates of legal literacy (*i.e.*, a lack of basic understanding of rights and duties under law) in the countryside and a profound scarcity of lawyers and courts. Although the Land Law provides for three different dispute-resolution mechanisms, the USAID team found that "the majority of citizens [in rural Angola] do not understand the court system and do not have access to courts as a practical matter." Given the time that has elapsed since publication of this study, it is possible that its conclusions are no longer valid. On the other hand, it is quite possible that these problems persist and that they hamstring access to justice in the water context to a similar degree. This, too, warrants additional field research.

In cases of expropriation of FWR, the law is unclear whether common use rights holders benefit from due compensation. Because of the uncertain character of the common use right and lacking specific provision of the right to compensation, whether the State would owe compensation is not certain, at least under the water law regime. That said, if such rights are considered property rights, Article 37 of the Constitution requires payment of just compensation in cases of civil requisition or expropriation for public use.

VII. Conclusions

Angola's water law regime is premised on the fundamental role that serving the domestic and subsistence needs of local communities plays in realization of national water policy goals. This is given effect by providing for free water use rights for non-commercial local community water uses. These use rights are coupled with access rights, including easements over privately held land. Although the legal regime does not explicitly provide for exclusion rights, the law does hold that common uses have primacy and are to be given effect before and in lieu of other use rights. The availability of these rights appears to be mostly enforceable through the recourse provisions of the Water Law. However, as noted, custom and traditional authority may play an outsized *de facto* role in adjudicating competing interests between and amongst communities.

Unclear is the extent to which it would be fair to say that local members hold management rights to FWR. Certainly, the law provides opportunities for public participation in planning processes and certain decision-making processes, but ultimately, the Hydrographic Basin Management Bodies are primarily responsible for the management of FWRs to the extent that these rights are derivative of water flows and availability. The role of traditional authorities also appears crucial, as does that of user associations. The law posits that common uses are subject to "traditional" regimes, but it provides little clarity as to the scope of this authority. The traditional authorities may play a role in managing and distributing the various uses that community members may hold, such as fishing rights, aquaculture projects, agriculture or household uses. Similarly, traditional authority may dictate the transferability and alienability of these rights. Relatedly, it appears that common use rights are not treated as property rights under Angolan law in that they are distinct from "titled" rights, and may not be subject to the bundle of rights that may be available to other property rights holders through the Angolan Civil Code.

While further research may be necessary to further understand the nature of traditional authorities and intersections with the distribution, duration and enforceability of the bundle of rights, the legal framework in Angola, as it stands on paper, broadly provides a context that is supportive of CBMFWR. The following table identifies salient features of Angola's legal framework relative to the legal principles that guide a strong CBMFWR framework.

Key Legal Principles	*Relevant Provisions in Angola*
Legal system provides for local management of FWR/local participation in management of FWR	Yes – local participation is a core feature of the legal regime. Whether local management opportunities exist is less clear, particularly in conservation areas, although user associations might provide such an opportunity. The management of common uses through traditional authorities is also an opportunity but field research is necessary to assess how this works on the ground.
Legal system facilitates collaborative partnerships (*e.g.*, government-NGO alliances) in support of CBMFWR	Possibly through User Associations
Legal system recognizes water for essential human uses as an inalienable "fundamental right," "human right" or similar	No
Legal system contains transparency and access-to-information mechanisms regarding FWR use and government actions that could impact FWR	This is unclear; review of Environmental Impact legislation is required.
Legal system includes a specialized regime regarding indigenous peoples' rights to FWR	This appears largely to exist through common use regime, subsistence use "free" rights to forest and faunal resources, and access rights via easements, etc.
Legal system embodies principle of free, prior, and informed consent (FPIC) regarding activities that could impact FWR in territory held or occupied by indigenous peoples	This is unclear. Although FPIC is not operationalized in the regulatory framework for water, it may exist through other legal avenues. Review of Environmental Impact legislation may be necessary.
Legal system promotes secure land tenure for indigenous peoples and local communities, including recognition of communally held lands	Whether security exist and customary land tenure is fully realized is beyond the scope of this report but 2005 USAID report on land tenure in Angola is instructive.
Legal system contains a clear FWR use prioritization regime, with basic human and ecosystem needs taking precedence over other uses	Yes – common use rights enjoy primacy over other use rights.
Legal system includes incentives for FWR conservation	Obligations exist regarding conservation objectives, but it is not clear that incentives, per se, exist.
Legal system includes deterrent penalties for violations related to FWR	Yes
Legal system provides special protections for riparian areas, while providing for equitable and sustainable access for community members	Yes
Legal system incorporates user-pays and polluter-pays principles	Yes

Legal system includes an efficient and just system for conflict resolution (may include non-judicial apparatuses)	It appears that this remains a challenge in Angola
Legal system provides for fair compensation to persons impacted by violations of FWR laws and other prejudicial acts or omissions related to FWR	Not clear – if common use rights are considered property rights, then possibly.
Legal system recognizes customary practices as a valid source of law in certain circumstances	Yes
Legal system is clear vis-à-vis FWR management structure and decision-making authorities (*i.e.,* authorities and roles are well defined)	For the most part – there are some questions around the role of traditional authorities.
Legal system contemplates science-based decision-making/a strong role for science in decision-making	Yes, in terms of concepts of the water cycle and hydrographic basin management and planning analyses.
Legal system incorporates a version of the precautionary principle	The precautionary principle is recognized as a key principle for water management and decision-making, but it is hard to see how it is given effect.

This report provides an initial desk study and provides only interim conclusions. Further desk research is necessary of laws that still require translation. Additionally, field research is necessary to discern important *de facto* context and implementation realities. Many of the relevant questions for these next stages of research have been identified throughout this report. As these next steps are taken, this report will be modified as necessary.

Annex A

According to Article 134 of the Constitution, the president presides over, convenes, and sets the agenda of for the Council of Ministers, the main administrative body of Angola. The Council of Ministers sets and executes government policy, establishes national planning instruments, proposes legislation, and issues regulations and decrees for the implementation of legislation, amongst other relevant authorities. The Council of Ministries comprises the following Ministries:

Ministry of Agriculture and Fisheries	Ministry of Mineral Resources, Petroleum, and Gas
Ministry of Culture, Tourism and the Environment	Ministry of National Defense and Veterans of the Homeland
Ministry of Economy and Planning	Ministry of Public Administration, Labor and Social Security
Ministry of Education	Ministry of Public Works and Territorial Planning
Ministry of Energy and Water	Ministry of Social Action, Family, and Promotion of Women
Ministry of Higher Education, Science, Technology and Innovation	Ministry of Telecommunications, Information Technology, and Social Communication
Ministry of Health	Ministry of Territorial Administration
Ministry of Foreign Affairs	Ministry of Transport
Ministry of Industry and Commerce	Ministry of Youth and Sports
Ministry of the Interior	

The following are potentially relevant Ministries for TNC's research and work in Angola:

Ministry of Social Action, Family, and Promotion of Women (MASFAMU): The Ministry of Social Action, Family and Women's Promotion, abbreviated as MASFAMU, is the auxiliary Ministerial Department of the Executive Branch, which, in accordance with the principles, objectives and priorities defined, has the mission of designing, proposing and implementing the policy social protection of the most vulnerable groups of the population, combating poverty, as well as the defense and well-being of the family, the promotion of women, community development and the guarantee of women's rights, gender equality and equity.

Ministry of Territorial Administration: The Ministry of Territorial Administration (MAT) is the Auxiliary Ministerial Department of the President of the Republic, whose mission is to propose, coordinate, execute and evaluate the Executive's policy on Local Government, Local Government, Territorial Organization and Traditional Authorities, as well as ensuring the technical conditions for conducting general and local elections.

Ministry of Agriculture and Fisheries: The Ministry of Agriculture and Fisheries (MINAGRIP) is the Ministerial Department, whose mission is to propose, conduct, execute and control executive policy in the areas of agriculture, livestock, forests, food security, food, fisheries, aquaculture, salt production, and coastal management with a view to sustainable development. As a part of these duties, it also promotes irrigation plans and licenses, and coordinates maritime affairs including their management, exploration, use, exploitation and enhancement of aquatic resources and a sustainable sea economy.

Ministry of Economy and Planning: The Ministry of Economy and Planning is the ministerial department responsible for national development planning, formulating proposals and coordinating the implementation of national economic development policies and coordinating actions in the area of economic integration, economic cooperation for development and of international business.

Ministry of Energy and Waters: The Ministry of Energy and Water does the following:

- Propose and promote the execution of the policy to be pursued by the energy and water sectors
- Establish strategies, promote and coordinate the use and rational use of energy and water resources, ensuring their sustainable development
- Elaborate, within the general planning of the economic and social development of the Country, the sectorial plans related to its areas of action
- Propose and promote the national policy of electrification, the general use of water resources, their protection and conservation, as well as the policy of water supply and sanitation of waste water
- Promote research activities with repercussion in the respective areas of action; Propose and produce legislation that establishes the legal and legal framework of the activity in the energy, water and wastewater sanitation sectors
- Propose the institutional model to carry out the activities of production, transportation, distribution and commercialization of electricity and promote its implementation
- Propose the institutional model to carry out the activities of abstraction, adduction, transport, distribution and commercialization of drinking water in the areas of water and wastewater sanitation and promote its implementation
- Define, promote and guarantee the quality of the public service in its area of operation; Licensing, supervising and inspecting the operation of services and installations in the energy sector
- Licensing, inspecting and inspecting hydraulic and water supply and sanitation systems
- Promote international exchange and cooperation in its area of action
- Promote the development of human resources in the fields of energy, water and sanitation
- Collaborate with the Local State Administration in the elaboration and implementation of electrification programs, water supply and support to rural development, peri-urban and urban areas
- Perform all other attributions that are assigned by law or by higher determination.

Ministry of Culture, Tourism, and the Environment: The Ministry of Culture, Tourism, and the Environment, hereinafter referred to as MCTA, is the Ministerial Department whose mission is to propose the formulation, conduct, execution and control of the Executive's policy on culture, tourism, and the environment with a view to contributing to the economic, social, cultural and sustainable development of the country. The National Institute of Biodiversity and Conservation Areas (INBAC) falls under this ministry.

Annex B

What does the law (and relevant policy) say about community rights to develop forestry co-management institutions and acquire community rights to forest concessions?

Given that this topic is quite distinct from the topic of FWR rights generally, it is dealt with here.

The Forest and Wildlife Base Law, Law. N. 6/17 of 24 January, provides both individual and community rights to forest resources for subsistence and domestic use. "Subsistence Use" rights include rights to use forest resources for food, medicinal purposes, housing, energy production, and cultural purposes. In most cases, commercial exploitation is forbidden, except in the case of handicrafts produced from forest resources and non-wood forest resources. Subsistence use rights are free and do not require authorization. As such, commercial endeavors related to non-wood products and handicrafts do not require prior authorization from the Angolan government. Similarly, "Community use and fruition" rights allow the harvest of forest resources for food, medicines, housing, energy, and cultural purposes, including handicrafts. The distinction is that these rights are held by the community, and thus collectively, and they exist exclusively regarding forest resources on community land.

Commercial development of the forest resources on community land is subject to authorization and require a license. Article 76 of the Forest and Wildlife Base Law sets out this regime, indicating that community licensing is subject to a simplified procedure and that the State should provide technical and administrative assistance for such projects.

The law is unclear whether a rural community could acquire a forest concession for commercial exploitation in land beyond their community lands. The answer might depend on whether a rural community is considered a "legal person" under Angolan law. This could be a question for field research or further legal analysis as the answer is not clear from the laws we currently have translated.

Annex C

Follow-up Issues for Field Research

- Role of traditional authorities in establishing what the law refers to as "traditional use regime"
- Relationship and composition of National Institute of Water Resources, National Water Council and Hydrographic Basin Management Body.
- The relationship between customary practice and codified law—specifically whether the two function synergistically as the codified law and constitution seem to imply or whether, in rural communities, it is more likely that customary practices supplant rather than supplement codified law. As indicated by the USAID report, this could be particularly important as regards legal recourse and remedies.
- Whether FWR rights are held individually or collectively—the Forest Law speaks directly to communal rights but the Water Law does not. Is this intentional or merely an oversight?
- The transferability of FWR, especially common use rights, remains an open question. Field research and interviews with local communities and sobas would help understand how transfer works. Further desk research may be relevant as well, including a review of Angola's Civil Code; however, it makes most sense to ask questions on the ground before translating such a large document.
- Clarification is necessary regarding the relationship between water protection zones and riparian land rights.
- At a later date when draft Conservation Area regulations are finalized, it will be important to incorporate those provisions in this analysis.
- Although we have attempted to document the nature of water resource management planning based on what we have reviewed in the law, follow-up questions are necessary to understand how these plans are developed and when and how local communities participate in the drafting and finalization processes, including legally required consultation with local authorities.
- Further translation of the Law on Associations and the Law on Environmental Impact Assessment may be desirable.
- In addition to relevant law regarding user associations, field research and interviews could cultivate an understanding of existing user associations and how they work and intersect with government institutions and processes.
- Whether community input has ever reshaped a proposed project or exerted any influence on the issuance of a license or concession.
- Does FPIC exist as a right in Angola?