

**Some Transparency, No Accountability:  
The Use of Oil Revenue in Angola and Its Impact on Human Rights**

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## I. Summary

The Angolan government has consistently mismanaged its substantial oil revenues and, despite rhetorical commitments, has yet to demonstrate a meaningful commitment to reform. In recent years, literally billions of dollars in oil revenues have illegally bypassed the central bank and remain unaccounted for. Such missing revenues reflect a failure of government accountability more generally and are directly linked to the Angolan government's continuing failure to foster institutions that uphold the rule of law and human rights.

The sums involved are staggering. From 1997 to 2002, unaccounted for funds amounted to some U.S.\$4.22 billion. In those same years, total social spending in the country—including Angolan government spending as well as public and private initiatives funded through the United Nations' Consolidated Inter-Agency Appeal—came to \$4.27 billion. In effect, the Angolan government has not accounted for an amount roughly equal to the total amount spent on the humanitarian, social, health, and education needs of a population in severe distress.

Due at least in part to such mismanagement and corruption, the government also has impeded Angolans' ability to enjoy their economic, social, and cultural rights. It has not provided sufficient funding for essential social services, including healthcare and education. As a result, millions of Angolans continue to live without access to hospitals and schools, in violation of the government's own commitments and human rights treaties to which it is a party.

In recent years, as oil revenues surged, the Angolan government has refused to provide information about the use of public funds to its population, undermining their right to information. It has failed to establish hundreds of courts and allowed the judiciary to become dysfunctional, undermining Angolan's ability to hold government officials and others accountable. And it has not fully committed to free and fair elections, thus removing another avenue of accountability.

Had the government properly accounted for and managed the disappeared funds it is likely that more funds would have been allocated to the fulfillment of economic, social, and cultural rights, such as increased spending on education, health, and other social services. The government of Angola has not complied with its obligations under

international human rights law because it has misallocated resources at the expense of the enjoyment of rights.

When a government is the direct beneficiary of a centrally controlled major revenue stream and is therefore not reliant on domestic taxation or a diversified economy to function, those who rule the state have unique opportunities for self-enrichment and corruption, particularly if there is no transparency in the management of revenues. Because achieving political power often becomes the primary avenue for achieving wealth, the incentive to seize power and hold onto it indefinitely is great. This dynamic has a corrosive effect on governance and ultimately, respect for human rights. Instead of bringing prosperity, rule of law, and respect for rights, the existence of a centrally controlled revenue stream—such as oil revenue—can serve to reinforce or exacerbate an undemocratic or otherwise unaccountable ruler’s or governing elite’s worst tendencies by providing the financial wherewithal to entrench and enrich itself without any corresponding accountability. Human rights typically are among the first casualties. This has happened in Angola.

Despite repeated efforts by diverse actors to promote greater transparency—including multilateral financial institutions, nongovernmental organizations (NGOs), corporations, and even other governments—the Angolan government has sought to maintain the status quo. The Angolan people, who have endured decades of war while seeing their country’s resources mismanaged and its social development stunted, continue to be the primary victims of government recalcitrance.

The International Monetary Fund (IMF), interested in transparency for economic reasons, has been an important force pushing for greater fiscal transparency in Angola. Human Rights Watch does not take a position on the work of the international financial institutions *per se*, but can and does examine the positive or negative impact IMF activities can have on human rights. Whatever one thinks of the IMF’s economic prescriptions, its efforts to promote transparency in the oil sector in Angola have been an important source of leverage for those interested in human rights improvements in the country. This report focuses on two aspects of IMF-led pressure for reform: the so-called “Oil Diagnostic” monitoring system set up by joint agreement of the IMF and the Angolan government starting in 2000; and the IMF’s findings regarding the government’s consistent lack of transparency and gross mismanagement of public funds.

The Oil Diagnostic showed that billions of dollars from the Sociedade Nacional de Combustiveis de Angola (Sonangol), the state-owned oil company, illegally bypassed the

Angolan central bank and that the government did not have any procedures in place to reconcile hundreds of millions of dollars of discrepancies in its accounting of oil revenue. The overall picture from the Oil Diagnostic is one of gross mismanagement of a country's public funds, largely derived from oil production and sales. The IMF went further and detailed billions of dollars in unexplained expenditures, consistent government unwillingness to disclose the use of those funds, and other troubling examples of government opaqueness.

Recent changes in Angola, however, including an end to the civil war, renewed government interest in better political and economic integration with the rest of the world, and rising popular demands for change, have created an unprecedented opportunity for reform. How Angola manages its oil revenues will be an important barometer of progress toward transparency, accountability, good governance, and increased respect for human rights. Whether meaningful reforms are implemented depends ultimately on the Angolan government, but the international community can play an important role by using its influence to press forcefully for change. Otherwise, the promise of Angola's wealth will be squandered once more at the expense of good governance and human rights.

This report analyzes the IMF's overall relationship with the government and successes and failures of the Oil Diagnostic to date. It examines what the Oil Diagnostic and failed efforts at reform can tell us about Angolan government oil revenue mismanagement, and what continuing difficulties in obtaining basic information from the government and major gaps in the data tell us about the ground still to be covered before the Angolan government can meaningfully be said to embrace transparency and accountability. It also analyzes how much money is missing in comparison to how much has been spent on activities and institutions that could facilitate Angolans' enjoyment of their civil, political, economic, social, and cultural rights.

Based on research conducted in Angola, the United States, and United Kingdom between 1999 and 2003, the report begins with a brief overview of IMF efforts to promote fiscal transparency in Angola. It then looks in detail at oil revenue mismanagement revealed by the Oil Diagnostic, the massive scope of fiscal discrepancies and unexplained Angolan government expenditures in recent years, and systemic government attempts to limit access to information. The report concludes with a survey of existing international initiatives aimed at promoting greater transparency, with analysis of how each might be used to promote change in Angola.

## **II. Recommendations**

### ***To the Government of Angola***

- Publish all of the Oil Diagnostic reports and make them publicly available in Portuguese;
- Publish all details of incoming revenues and outgoing expenditures;
- Publish the audits of the Banco Nacional de Angola (BNA);
- Conduct and publish an audit of Sonangol, beginning with the year 2000;
- Publicly disclose the amount and uses of Sonangol's and the government's oil-backed debt;
- Revise the State Secrets Law so that disclosure of information by third-parties is not a criminal offense when it relates to the use of public funds;
- Authorize the publication of all IMF Article IV Staff Reports; including those from previous years;
- Join the Extractive Industries Transparency Initiative as a formal participant and implement its principles;
- Publish a National Plan of Action for the realization of universal primary compulsory education. Such a plan should include a detailed accounting of the funds required, funds allocated, and accounting mechanisms to ensure their appropriate use;
- Publish a National Health Strategy in order to ensure the progressive realization of the right to health. Such a plan should include a detailed accounting of the funds required, funds allocated, and accounting mechanisms to ensure their appropriate use;

### ***To the International Monetary Fund***

- Ensure that any new Staff Monitored Program includes requirements to publish the Oil Diagnostic reports; that audits of Sonangol and the BNA are made public; and that a full account of revenues, expenditures, and debt is made public as part of a new Staff Monitored Program and before any formal lending program with the IMF is finalized.

### ***To the World Bank***

- Insist upon full compliance and implementation of the transparency measures contained in the Transitional Support Strategy before considering new lending;
- Make future cooperation with the government of Angola contingent on publication of all of the Oil Diagnostic reports; publication of audits of Sonangol and the BNA; and publication of a full account of revenues, expenditures and debt.

### ***To Donor governments, the G-8 and Member Governments of the Extractive Industries Transparency Initiative***

- Press the government of Angola to join the EITI and ensure that companies also participate in the initiative with respect to Angola;
- Require that Angola publish the Oil Diagnostic reports; that audits of Sonangol and the BNA are made public; and that a full account of revenues, expenditures, and debt is made public prior to an agreement to hold a donors conference;
- Develop mechanisms mandating that companies disclose their payments to governments.

### ***To Oil Companies Operating in Angola***

- Encourage the government to publish the Oil Diagnostic reports; that audits of Sonangol and the BNA are made public; and that a full account of revenues, expenditures, and debt is made public;
- Disclose any signature bonus payments to the government publicly at the time that they are paid;
- Join the EITI and comply with its principles.

### **III. Background: The IMF and Angolan Government**

The Angolan government and IMF have had a strained relationship since the mid-1990s. It has been characterized by periods in which the government has faced dire economic conditions and has appeared to sincerely negotiate a reform program<sup>1</sup> with the Fund, followed by periods of improved economic conditions in which it abandons the reforms. The principal reason that reform programs have failed is the government's lack of political will. Throughout this process, increased transparency has been a key condition for further cooperation with the IMF. There was some progress in 2000 when the government agreed to the Oil Diagnostic; a study to determine how much oil revenue is actually deposited in the BNA, as part of a larger economic reform program. However, that reform program collapsed in October 2001 after the government received repeated extensions, but still failed to implement promised reforms. Nevertheless, the Oil Diagnostic continued. But relations with the IMF were extremely strained, largely because of the government's consistent inability or unwillingness to provide the IMF basic information to assess the state of the economy.

#### ***Staff-Monitored Programs: 1995-2001***

Since 1995, there have been at least four Staff Monitored Programs (SMPs) negotiated between the IMF and the Government of Angola and three that were formally started. An SMP is typically a set of economic reforms that the government negotiates with the IMF, and then agrees to implement, while the IMF monitors its progress. Typically, an SMP is a six-month program that can be extended to give a government time to implement reforms. But it cannot be extended indefinitely because that would signal that reforms are not progressing. Successful implementation of an SMP is a precursor to formal IMF lending. If a government implements a successful SMP it is eligible for increased World Bank lending on favorable terms as well as debt rescheduling or relief. Successful implementation also enhances a government's credibility in managing its economy.

The Angolan government's decisions to negotiate agreements with the IMF consistently have been motivated by severe economic difficulties that inflicted severe hardship on Angolans as a whole. In 1994-95, the rapidly devaluating Kwanza and hyperinflation

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<sup>1</sup> The program of reforms included increased transparency and disclosure of incoming revenues and outgoing expenditures; assessing the function of government institutions; and widespread economic reforms.



highlighted the dire economic circumstances. The situation further deteriorated in 1996, prompting further negotiations with the IMF even though a program had just expired.<sup>2</sup> In 1997-98, the global price of oil collapsed, starving the government of its key source of revenue during a ceasefire with UNITA. Emmanuel Carneiro, the then Minister of Planning and Economic Development, outlined the government's motivations to negotiate with the IMF in a 1998 speech he gave while he was in Washington, D.C:

New economic and political realities—namely the decline in world oil prices, deteriorating social conditions within Angola, and the continuation of the peace process—have created a new impetus to restructure our economy. We must move forward on economic reform, on an agreement with the IMF and with the peace process.<sup>3</sup>

However, each SMP failed because of the government's unwillingness to either agree upon an SMP or implement the reforms once the program was underway. The first SMP began in July 1995 but was abandoned by the IMF in December 1995.<sup>4</sup> Shortly thereafter, the economy further deteriorated and the government began preliminary negotiations for another SMP. In November 1997, the IMF sent a country representative to Angola in anticipation of a new agreement. The IMF believed that the period of relative peace was going to become a permanent peace and that an IMF program would facilitate much-needed reconstruction and reforms.<sup>5</sup> A new SMP was negotiated in mid-1998, but was not implemented because of "presidential objections."<sup>6</sup> The IMF country representative at the time recalled the situation:

In 1997, people really believed, especially the IMF and myself, that there would be a real peace and that a major reconstruction program would be needed involving the [World] Bank and the Fund. But after three months, it was clear in Angola that there would not be peace. After six

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<sup>2</sup> Tony Hodges, *Angola: From Afro-Stalinism to Petro-Diamond Capitalism* (Bloomington: Indiana University Press, 2001), pp. 106-107.

<sup>3</sup> Emmanuel Carneiro, former Minister of Planning and Economic Development, speech before the U.S.-Angola Chamber of Commerce, Washington, D.C., August 27, 1998.

<sup>4</sup> *Angola: From Afro-Stalinism to Petro-Diamond Capitalism*, pp. 106-107.

<sup>5</sup> Human Rights Watch interview with Corentino Santos, Luanda, May 31, 2001.

<sup>6</sup> *Angola: From Afro-Stalinism to Petro-Diamond Capitalism*, pp. 106-107.

months, I joked with my colleagues in Washington that I wanted to leave...there was no commitment to reform.<sup>7</sup>

By the end of 1998, the ceasefire with UNITA had collapsed and the war began anew. Nevertheless, the government and IMF continued to negotiate an SMP. The two parties finally reached an agreement on April 3, 2000.<sup>8</sup> It was an ambitious agreement scheduled to run until December 2000. The government committed to implement a wide range of economic and institutional reforms, including the Oil Diagnostic. These measures, if implemented, would likely have increased transparency and accountability particularly in the management of oil revenue and government expenditures. Successful implementation would have led to further lending and cooperation with the IMF and World Bank.<sup>9</sup> However, by December 2000, the government was far behind schedule in implementing reforms. The IMF and government agreed upon an extension that effectively began another SMP scheduled to run from January to June 2001. The government partially implemented some important reforms; including continuing the Oil Diagnostic and conducting an audit of the central bank, but many others were incomplete or unfulfilled. For example, the government did not provide adequate data on revenues and expenditures. The IMF reported:

There has been some progress in the implementation of the structural measures under the program, namely the preparation of the reports from the diagnostic study of the oil sector...the completion of the external audit of the 1999 accounts of the central bank, and the liquidation of the CAP bank. Many of these and other measures, however, remain to be completed, and urgent action is required to

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<sup>7</sup> Human Rights Watch interview with Corentino Santos, Luanda, May 31, 2001.

<sup>8</sup> Government of Angola, "Government of Angola and International Monetary Fund Reach New Agreement," press release, April 5, 2000.

<sup>9</sup> In addition to the Oil Diagnostic, the monitoring program set out a series of ambitious reforms that the government must undertake before becoming eligible for Enhanced Structural Adjustment Facility loans from the international financial institutions, including: creating an integrated financial management system; eliminating domestic fuel subsidies; limiting subsidies to indebted state-owned enterprises; eliminating tax exemptions that are not a part of international agreements; eliminating import licenses and non-tariff barriers; simplifying commercial licensing; progressively adjusting tariffs for public services such as water and electricity to market levels; liquidate the *Caixa de Crédito Agropecuária* (CAP); defining a strategy to deal with the country's external debt; clearing arrears payments to multilateral financial institutions; gradually eliminating external commercial credits to the central bank; creating a register of debt service payments, including oil-backed loans; preparing a restructuring of the financial system, including privatization of state banks; revising of the special foreign exchange regime; presenting a policy document on privatization; implementing a pilot program involving the privatization of five state-owned companies; publishing comprehensive statistics on government accounts and macroeconomic indices; and preparing a plan for tax reform.

improve the production and publication of data on government revenues and expenditures from all sources, including that on external debt transactions.<sup>10</sup>

The government also started a Ministry of Finance website that was intended to make public data on some oil production and revenues, but that website was not updated, nor was the information comprehensive.<sup>11</sup>

Although the government failed to adequately implement two consecutive SMPs, the IMF agreed to extend the program until October 2001, but with significant new requirements in order to increase transparency, including:

[I]dentifying and eliminating or including in the treasury account all extrabudgetary expenditures; strengthening the control of the treasury over fiscal operations and foreign debt transactions; publishing data on oil and other government revenues and expenditures, as well as on external debt; conducting a financial audit of the 2000 accounts of the central bank; hiring an independent international company to implement international accounting standards in Sonangol; and seeking the assistance of the World Bank for a complete overhaul of the procurement system.<sup>12</sup>

Despite the extension, the government again failed to implement many of the reforms, particularly those related to fiscal transparency. The government was less inclined to implement reforms by 2001 because the price of oil had rebounded and revenues had increased. Instead, the government wanted to do as little as possible in order to secure a formal program. According to a former IMF official, the government had various motivations for agreeing to an SMP, none of which involved transparency or accountability:

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<sup>10</sup> International Monetary Fund, "Angola: Preliminary Conclusions of the IMF Mission," mission concluding statement, August 14, 2001.

<sup>11</sup> See: [www.minfin.gv.ao](http://www.minfin.gv.ao).

<sup>12</sup> International Monetary Fund, "Angola: Preliminary Conclusions of the IMF Mission," mission concluding statement, August 14, 2001.

During 1997-1998, the government was not interested in real reform; it wanted the IMF program because it was short of cash while oil prices were low and because it wanted international approval to start the war again. They craved legitimacy for the war effort and this was never a sincere exercise in reform...now [in 2001] the motivations are different. The government is seeking international legitimacy again...it cannot use the war as justification for poor economic management. Discontent is growing and the international community is unconvinced of government performance...It also realizes that it needs money and debt relief. It cannot use oil-backed loans to finance itself.<sup>13</sup>

The lack of commitment to reform was also reflected in the government's unwillingness to provide basic information to the IMF. The government would not provide key data such as full information on oil-backed loans, on unexplained expenditures, and on oil bonus payments.<sup>14</sup> This led to an increasingly tense and strained relationship between the government and the Fund. Publicly, the IMF issued an unusually bleak statement after its annual visit to Angola during February 2002. The Fund noted that the economic situation had deteriorated "despite a massive increase in oil and diamond-related income over the last three years."<sup>15</sup> The Fund noted that poverty and humanitarian needs had increased even as government revenues, primarily because of growing oil revenue. The IMF attributed these problems to a lack of transparency and poor government management of revenue. The Fund noted:

Given that poverty indicators have shown no improvement in recent years and the humanitarian situation has reached dire proportions, there is an urgency to reallocate expenditures in favor of the social sectors, including humanitarian assistance. More broadly, cost-benefit analyses and public information would also help to ensure that major financial transactions (such as debt refinancing operations) and large infrastructure projects are both economically efficient and socially desirable.

In relation to the transparency of government operations, the discussions centered on the need to identify and eliminate or include in

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<sup>13</sup> Human Rights Watch interview with Corentino Santos, Luanda, May 31, 2001.

<sup>14</sup> Human Rights Watch interviews with key officials who were part of those discussions, March 14, 2002 and November 27, 2002.

<sup>15</sup> International Monetary Fund, "Angola—2002 Article IV Consultation: Preliminary Conclusions of the IMF Mission," mission concluding statement, February 19, 2002.

the treasury account all extrabudgetary and quasi-fiscal expenditures; record and transfer to the treasury all revenues, including the total amount of signature oil bonuses; ensure that all foreign currency receipts and government revenues, including Sonangol receipts, are channeled through the central bank as mandated by the law; eliminate all subsidy and tax arrears to and from Sonangol; publish data on oil and other government revenues and expenditures, as well as on external debt; and conduct independent financial audits of the 2001 accounts of Sonangol and of the central bank.<sup>16</sup>

The IMF did not suggest that a new SMP was imminent or even under negotiation, but only noted that it had “reviewed economic developments in 2001 and prospects for 2002, as well as progress made in the implementation of measures contemplated in the lapsed staff-monitored program for January-June 2001...The discussions did not involve the formulation of an economic program that could be monitored by Fund staff.”<sup>17</sup> For the IMF, it was an unusually blunt statement, but far more diplomatic than the private March 2002 Staff Report (see Section V below). That report was far more critical and provided far more detail on the state of the Angolan economy, the lack of transparency, and the lack of desire to implement reforms. The government did not authorize its public release and it remains a private and confidential document at this writing, another indication of the government’s hostility to transparency.

### ***The Oil Diagnostic***

The opaqueness of the Angolan government’s budget and expenditures has generated widespread concern both with and outside Angola that finances were being grossly mismanaged. Public funds, derived largely from oil revenues were used to secretly finance arms purchases and to mortgage future oil revenues in return for immediate oil-backed loans to the government. Under Angolan law (Decree 30/95), all oil revenue is supposed to be deposited in the BNA. However, oil revenues illegally bypassed the BNA and went through the state-owned oil company, Sonangol, or through the Presidency. These activities sparked allegations of official corruption. The Oil Diagnostic, promoted by both the IMF and World Bank, was meant to shed light on some of these practices as a starting point to press for greater transparency.

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<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

As early as 1996, the IMF wanted a full audit of incoming and outgoing oil revenues as part of an SMP. However, those negotiations stalled because the government would not agree to an audit and other reforms. The Oil Diagnostic represented a compromise between the IMF's desire for an audit and the government's desire to do nothing.<sup>18</sup> It was finally included in the April 2000 SMP. It was not a full audit, but a study conducted by an internationally recognized accounting firm to determine how much oil revenue is generated in comparison to how much oil revenue is actually deposited in the central bank. Although the initial agreement to carry out the Oil Diagnostic was reached in April 2000, procedural delays held up the announcement of the monitoring contract for several months. On November 20, 2000, the Angolan government announced that KPMG had been awarded the U.S. \$1.6 million consulting contract to conduct the Oil Diagnostic. The government would pay 68 percent of the costs of the program while the World Bank would pay the remainder under a prior loan it extended to the Ministry of Finance.<sup>19</sup> KPMG was given the following terms of reference:

- Creation of a database that contains an assessment of proven and probable oil reserves, production, and exports.
- Development of projections of export oil prices, production, exports, and subsequent revenues payable to the government on a quarterly basis from mid-2000 to the end of 2001, and annually until 2005.
- Monitoring actual revenues received by the government and comparing these figures to the projections of revenues on a quarterly basis from June 2000 to December 2001. This includes signature bonus payments.
- Assessing the government's existing monitoring of exports, data management, and financial and procurement procedures.
- Providing recommendations to improve institutional and regulatory controls within the government to "support the sound management of oil revenues."
- Designing and implementing a monitoring system for the government so that it can accurately assess oil revenues.

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<sup>18</sup> Human Rights Watch interview with Corentino Santos, Luanda, May 31, 2001.

<sup>19</sup> "Petróleos sob Auditoria Internacional," *Jornal de Angola*, November 20, 2000; and "Angola Announces Audit of Oil Industry," Associated Press, November 21, 2000.

- Training Angolan staff and providing proposals for institutional strengthening so that the government can continue monitoring oil revenues.<sup>20</sup>

The Oil Diagnostic leaves much to be desired: among other things, it does not provide for a comprehensive audit, despite persistent allegations of widespread government corruption and financial mismanagement. In fact, the agreement between KPMG and the government explicitly states that “the consultants [KPMG] shall *not* be expected or required to consider or investigate or conduct any form of enquiry into the conduct, practices, honesty, integrity or standards of, or nature or quality of work performed by, any person who has or may have had, any involvement in or connection with, directly or indirectly, the facts, matters, circumstances or events which shall be diagnosed, monitored, studied, assessed or considered by the consultants during the performance of these services.”<sup>21</sup>

Despite these limitations, the Oil Diagnostic does, however, have a number of positive features and it remains in place today even as other aspects of the April 2000 SMP and other SMPs have fallen by the wayside. In its conception, if not in its execution (as described in Section IV below), the Oil Diagnostic marked a limited, but positive first step toward promoting transparency, accountability, and good governance in Angola and, ultimately, greater respect for human rights because it was the first time that there had been meaningful scrutiny of Angola’s oil revenues. At a minimum, it detailed the extremely poor accounting practices of the government as it managed the country’s oil and underscores the need for a full audit of Angola’s oil revenue and expenditures.

### ***Delays in Implementation and a Failure to Publish Reports***

The key to the Oil Diagnostic’s success would be government cooperation since the data KPMG required would have to come from the government, cross referenced by information from companies. Past efforts by the international financial institutions to monitor oil revenues in other countries had been unsuccessful because of the inability or unwillingness of governments to provide adequate information. This problem also plagued the Angolan Oil Diagnostic. For example, KPMG was awarded the contract in November 2000, but it was unable to complete its first report until July 2002. The IMF

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<sup>20</sup> Contract for the Oil Diagnostic between the World Bank, the Government of Angola, and KPMG, Appendix A, “Description of the Services,” p. 23. Human Rights Watch has confirmed with KPMG and oil companies that this document accurately details the services provided by KPMG.

<sup>21</sup> “Description of the Services,” p. 24 (emphasis in original).

reported that the delay arose “mainly because the data on the central bank accounts and external loans was not provided to the consultants” in a timely manner.<sup>22</sup>

At this writing, there have been eight Oil Diagnostic reports: the Inception Report, six quarterly reports, and the final report with recommendations. Even though these reports have been completed, the results have been disappointing because the government has failed to make any of the Oil Diagnostic reports public. Instead, only the executive summary of the first report has been released on the website of the government’s U.S. embassy.<sup>23</sup> In June 2001, Human Rights Watch asked Aguinaldo Jaime, then central bank Governor, when the government would publish the Oil Diagnostic reports. He replied: “the reports are public—the government has seen them.”<sup>24</sup> It is unclear whether he actually saw the final versions of the reports, since the first report was only completed over a year later—in July 2002. Two years later, Jaime, now Deputy Prime Minister, told Human Rights Watch that the government had not committed to publishing the full reports.<sup>25</sup>

Instead, the government only committed to publish the executive summary of the first report by December 2002 and the final report’s executive summary shortly after it was finished.<sup>26</sup> However, the government delayed publication of the first executive summary until July 2003 and has yet to announce when or if it will publish the final executive summary. Jaime told Human Rights Watch that the government had “technical differences” with KPMG over the final report and this was delaying its completion.<sup>27</sup> Human Rights Watch believes that all of the quarterly Oil Diagnostic reports should be public, and not just the executive summaries. Availability of information, particularly information regarding government activity and spending is crucial for human rights. It allows individuals to exercise some oversight over government activity, informs public debate, and allows individuals to hold government accountable. At this writing, the

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<sup>22</sup> International Monetary Fund, “Angola: Staff Report for the 2002 Article IV Consultation,” March 18, 2002, p.18.

<sup>23</sup> See: [www.angola.org](http://www.angola.org).

<sup>24</sup> Human Rights Watch interview with Aguinaldo Jaime, the former central bank Governor of Angola and current Deputy Prime Minister, Washington, D.C., June 12, 2001.

<sup>25</sup> Human Rights Watch interview with Aguinaldo Jaime, Deputy Prime Minister of Angola, London, June 16, 2003.

<sup>26</sup> Government of Angola, Ministry of Finance, “Press Release by the Ministry of Finance on the Oil Diagnostic,” November 5, 2002.

<sup>27</sup> Human Rights Watch interview with Aguinaldo Jaime, Deputy Prime Minister of Angola, London, June 16, 2003.



government has not made any of the Oil Diagnostic reports public, nor has it committed to do so. However, Human Rights Watch has obtained the first Oil Diagnostic report and assesses its findings in Section IV.

#### IV. The Oil Diagnostic: Oil Revenue Discrepancies

KPMG's July 2002 Oil Diagnostic report, known as the "Inception Report,"<sup>28</sup> provided the first third-party scrutiny of how Angola's oil revenue is managed by the government. It was not an audit, but it did reveal how the government mismanaged the country's principal source of income. The government has not agreed to publish the full report, nor has it agreed to publish any of the subsequent quarterly reports under the Oil Diagnostic's terms of reference with KPMG. It did publish an executive summary of the Inception Report on July 17, 2003. Human Rights Watch has obtained a copy of the full July 2002 Inception Report. The difference between the July 2002 full report and July 2003 executive summary are minimal: some information on oil-backed loans is altered, for example, but the analysis and criticism of the Angolan oil sector is identical. However, the July 2002 report has much more detail on the state of the Angolan oil industry and the government's management of oil revenues.

The Oil Diagnostic is especially significant because oil revenue is the Angolan government's principal source of income. Angola is the second largest oil producer in sub-Saharan Africa and enabled the government to pursue vigorously its conflict with Jonas Savimbi's rebel National Union for the Total Independence of Angola (União Nacional para a Independência Total de Angola, UNITA) movement until April 2002, after Savimbi was killed and the war with UNITA ended. Between 1995-2002, oil revenues comprised approximately 70 to 89 percent of government revenues and from 85 to 92 percent of exports, according to the IMF. In 2000, when the Oil Diagnostic was announced, oil accounted for 89 percent of government revenue, more than U.S. \$4 billion. In 2001, oil accounted for about 81 percent of government revenue and was estimated to be at least 75 percent of government revenue in 2002.<sup>29</sup>

The report reveals serious defects in Angola's oil revenue management. The report makes clear that in 2000 the state-owned oil company Sonangol did not follow Decree 30/95 that requires all oil revenue to be deposited in the central bank, passing over two billion dollars through other accounts; the government did not have meaningful procedures to verify payments by companies, including Sonangol; Ministry of Finance records were unreliable because in many cases they were based on paper transactions

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<sup>28</sup> The full title of the report is: *Current Assessment of the Angolan Petroleum Sector: Inception Report* by KPMG for the Ministry of Finance, Government of Angola, July 2002.

<sup>29</sup> "Angola: Staff Report for the 2002 Article IV Consultation," p. 32.

rather than actual transfers; and the government lacked or failed to provide sufficient information to allow KPMG to reconcile hundreds of millions of dollars in discrepancies. KPMG, dependent on information that the government was willing to provide, found that, in many cases, the government did not have adequate information or procedures to reconcile conflicting information. The government's failure to make these reports public makes it very difficult, if not impossible, for the Angolan public to exercise adequate oversight over the government's use of public funds. Moreover, the report's findings that the government could not adequately account for billions of dollars of revenues makes it extremely difficult to plan and allocate sufficient resources to those activities that could improve human rights, such as increased assistance to internally-displaced persons (IDPs) and demobilized soldiers, or strengthening the weak judiciary. Furthermore, the opaqueness of the government's activity impedes Angola's emerging civil society from exercising government oversight, educating the public, or critiquing government decision making, all of which are crucial for increased respect for human rights.

From the start, it was clear that the key to the Oil Diagnostic's success would be government cooperation since the data KPMG required would have to come from the government, cross referenced by information from companies. Past efforts by international financial institutions to monitor oil revenues in other countries had been unsuccessful because of the inability or unwillingness of governments to provide adequate information. This problem also plagued the Angolan Oil Diagnostic. For example, the Inception Report was due in April 2001, but KPMG did not actually finish it until July 2002 due to delays in receipt of data from the government.

### ***KPMG's July 2002 Inception Report and the July 2003 Executive Summary***

Ideally, the Angolan government would have agreed to an audit of its oil revenue and would have allowed it to be retroactive, since there were many allegations of opaque arms purchases and misuse of oil revenue. However, the government only agreed to the forward-looking Oil Diagnostic study. Nevertheless, the Inception Report was critically important since it provided the initial baseline data to compare against subsequent assessments of the oil sector. The Inception Report examined oil revenue flows for 2000, even though it was not published until 2002 and only made public in summary form in 2003.<sup>30</sup> The IMF reported that the principal reason for delays was the

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<sup>30</sup> KPMG, *Current Assessment of the Angolan Petroleum Sector: Inception Report*, July 2002, p. 103.

government's failure to provide information to KPMG.<sup>31</sup> The difference between the 2002 Inception Report and the 2003 executive summary was a revision of aggregate oil revenues. In its July 2002 report, KPMG presented the following table showing aggregate incoming oil revenue:

Table 1: Sources of Incoming Oil Revenue 2000<sup>32</sup>

| SOURCE OF INCOMING OIL REVENUE FOR 2000   | AMOUNT (U.S.\$ MILLIONS) |
|---|--------------------------|
| Taxes (Royalties, Petroleum Income Tax, Petroleum Transaction Tax), except for Sonangol | 1,697                    |
| Sonangol taxes  | 1,355                    |
| Concessionaire Profit Oil   | 1,075                    |
| <b>SUB-TOTAL:</b>   | <b>4,127</b>             |
| Concessionaire Commission   | 134                      |
| Signature Bonus Payments  | -                        |
| Payments to Provincial Governments (Cabinda and Zaire)                                  | 149                      |
| <b>SUB-TOTAL</b>  | <b>283</b>               |
| Active Loans received under the Cabinda Trust for the past 10 years                     | 1,418                    |
| Active Loans received under the Soyo Palanca Trust over the past 10 years               | 1,075                    |
| <b>SUB-TOTAL</b>  | <b>2,493</b>             |
| Sonangol Net Profit after tax from un-audited financial statements                      | 406                      |
| <b>Total Incoming Oil Revenues minus loans</b>  | <b>4,816</b>             |
| <b>Total Incoming Oil Revenues including loans</b>                                      | <b>7,309</b>             |

<sup>31</sup> "Angola: Staff Report for the 2002 Article IV Consultation," p.18.

<sup>32</sup> The source for this table is KPMG, *Inception Report*, p. 22.

KPMG acknowledged, however, that it could not accurately determine overall government oil revenues, primarily because of incomplete data on oil-backed loans the Angolan government had received. Oil-backed loans are up-front loans that are paid for by future oil production. In effect, Angola mortgages future oil production for immediate cash. These loans play a critical role for the Angolan government since it has very few sources of financing and routinely uses these loans to raise hard currency. However, the number, amount, and use of those loans by the government have rarely been disclosed. KPMG needed this data to assess whether the government had received additional revenue as a result of such loans and what portion of its oil was pledged to repay loans. But as the report phrased it, KPMG could not “determine the amount of loan facilities which were actually received during the year 2000,” nor could KPMG “establish the amount repaid in either cash or in settlement through oil.”<sup>33</sup> Unable to determine precisely how much of the money was received from loans, KPMG based the figures in the table on the amount of all loans active in 2000.

KPMG appeared to have obtained better data from the government a year later, however, when the July 2003 executive summary was published. In that report the amount of revenue from loans was revised downward to approximately U.S.\$1 billion. The following table shows the revised incoming oil revenue for 2000:

Table 2: Revised Incoming Revenue in 2000<sup>34</sup>

| SOURCE OF INCOMING REVENUE FOR 2000   | AMOUNT (U.S.\$ MILLIONS) |
|---|--------------------------|
| Taxes (Profit Oil, Petroleum Income Tax, Petroleum Transaction Tax), excluding Sonangol | 1,697                    |
| Taxes for Sonangol  | 1,355                    |
| Profit Oil for the Concessionaire   | 1,075                    |
| Payments to the Provinces of Cabinda and Zaire  | 149                      |
| Signature Bonus Payments  | -                        |
| Loans received in 2000  | 1,000                    |
| Loans between states  | 94                       |

<sup>33</sup> KPMG, *Inception Report*, p. 22.

<sup>34</sup> KPMG, *Avaliação do Sector Petrolífero Angolano Sumário Executivo Relatório Inicial*, July 2003, p.18.

|   |              |
|---|--------------|
| Sales by Sonangol of petroleum products | 102          |
| <b>TOTAL</b>                            | <b>5,472</b> |

### ***Incoming Revenue Discrepancies***

In its study, KPMG found major discrepancies in incoming oil revenue, poor record keeping, and numerous areas where data was missing. Revenue discrepancies broadly fell into two categories: the discrepancy between the amount Sonangol was due to deposit in the Banco Nacional de Angola (BNA), the Angolan central bank, as required under Angolan law Decree 30/95, versus what it actually deposited in the BNA; and discrepancies between the amounts that different departments within the Ministry of Finance have recorded for the same transactions involving Sonangol including for funds that have illegally bypassed the central bank. It took a comprehensive look at these activities for 2000 as the starting year for the Oil Diagnostic reports.

### ***Taxes and Royalties***

Under Decree 30/95, all taxes and royalties of all oil companies, including Sonangol, must be paid into a special Petroleum Account housed within the BNA. The account is also supposed to receive all of Sonangol's uncommitted export oil sales. Those funds are used by the BNA to repay public debt, to credit the Ministry of Finance for Sonangol's and other oil companies' tax payments, and to set aside funds that can be used by Sonangol to meet cash calls. These sums are received in dollars and the BNA is supposed to credit back Sonangol with equivalent sums in Angolan Kwanzas so that it can meet any obligations it may have in Angola. Any surplus amounts after these obligations are met are transferred back to Sonangol and are supposed to be deposited in Sonangol's accounts in Angolan commercial banks. If a deficit in the Petroleum Account occurs, the BNA is supposed to make withdrawals from Sonangol's accounts in Angolan commercial banks. Through the Petroleum Account, oil revenues and expenditures revenues and expenditures can be adequately recorded and tracked by the BNA on behalf of the Ministry of Finance.<sup>35</sup>

Private companies were paying the BNA account during 2000 as the following table shows:

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<sup>35</sup> KPMG, *Inception Report*, p. 111.

Table 3: 2000 Tax Receipts Received by the Angolan Central Bank from Private Companies<sup>36</sup>

| Company                  | Tax Receipts from BNA (U.S.\$ millions) |
|--------------------------|---|
| Cabinda Gulf Oil Company | 954.004                                 |
| Elf Exploration Angola   | 34.476                                  |
| Elf Petroleum Angola     | 235.583                                 |
| Agip                     | 286.273                                 |
| Texaco Panama            | 17.266                                  |
| Petrogal                 | 8.517                                   |
| Braspetro                | 18.771                                  |
| Ajoco                    | 3.978                                   |
| Angola Japan Oil Co.     | 19.412                                  |
| Ina-Naftaplin            | 2.888                                   |
| Naftagas                 | 2.227                                   |
| Sonvol                   | .237                                    |
| Svenska                  | 1.966                                   |
| Omega                    | .036                                    |
| Total Angola             | 24.839                                  |
| Total Fina Elf S.A.      | 21.214                                  |
| Sonangol                 | 18.712                                  |
| <b>TOTAL</b>             | <b>1,650.400</b>                        |

While private companies apparently abided by the system of paying into the account, Sonangol did not. KPMG reported a discrepancy of U.S. \$2.0 – 2.6 billion between the revenues the Ministry of Finance claimed it had received and what the BNA said it had

<sup>36</sup> Ibid., p. 134.

received.<sup>37</sup> KPMG found five different sums for incoming oil revenues: figures of the Accounting Department of the Ministry of Finance; figures of the Tax Department for the Ministry of Finance; a revised Ministry of Finance total that subtracted 1999 taxes received in 2000, taxes and Profit Oil paid during 2000, and 2000 taxes and Profit Oil that was going to be paid in 2001; figures from Ernst & Young's (E&Y) fiscal reports on oil revenues conducted on behalf of the Ministry of Finance; and the amount of money that the BNA reported it had received.<sup>38</sup> The Ernst & Young figures were not an audit, but a compilation of taxes paid, taxes payable, sales exports, volumes, and sales prices of companies taken from the companies' own data.<sup>39</sup> KPMG used the E&Y reports extensively because they provided a comprehensive set of data.<sup>40</sup> The following table illustrates the discrepancies:

Table 4: Total Taxes And Profit Oil Received By All Companies In 2000 (U.S.\$ And Kwanzas Millions)<sup>41</sup>

|                         | Accounting Department<br>Ministry of Finance<br>(MinFin) | Tax Department<br>Ministry of Finance (MinFin) | Ernst&Young<br>Fiscal Report | Revised MinFin Total Adjusted<br>Minus 1999 Taxes and Profit Oil<br>Paid in 2000 and Including<br>Profit Oil for 2000 Paid in 2001 | Central Bank<br>of Angola<br>(BNA) |
|-------------------------|--|--|------------------------------|--|------------------------------------|
| Amount<br>in U.S.\$     | 4,469.136  | 4,276.196                                      | 3,881.962                    | 3,654.893  | 1,650.400                          |
| Amount<br>in<br>Kwanzas | 40,773.580   | 39,013.312                                     | 37,174.210                   | -  | 18,165.933                         |

KPMG was unable to reconcile the approximately U.S.\$192 million discrepancy between the figures provided by the Accounting Department and the figures provided by Tax Departments within the Ministry of Finance. Nor could it find any procedures by the Ministry of Finance to reconcile those figures.<sup>42</sup> KPMG was also unable to reconcile the approximately U.S.\$394 million to U.S.\$587 million difference between the various

<sup>37</sup> Ibid., p. 107.

<sup>38</sup> Ibid.

<sup>39</sup> Ibid., p. 129.

<sup>40</sup> Ibid.

<sup>41</sup> Ibid., p. 130.

<sup>42</sup> Ibid., p. 137.



Ministry of Finance figures and the Ernst & Young figures. KPMG was unable to resolve this discrepancy by the time it published the July 2002 Inception Report and still had not resolved the discrepancy by July 2003 when the Executive Summary was made public.

### ***Sonangol's Tax and Royalty Discrepancies***

A major controversy surrounding oil revenue has been the role of private companies. Their inability or unwillingness to publish their payments to governments has drawn substantial criticism from the press and NGOs, in particular. Such scrutiny has also led to international initiatives, such as the Publish What You Pay Campaign or the Extractive Industries Transparency Initiative, that promote greater corporate and government transparency (see Section VI below). However, the Inception Report determined that the primary source of oil revenue discrepancies was not foreign companies, but Sonangol itself. In the case of royalties and taxes, KPMG found that the Ministry of Finance reported that it had received U.S.\$114 million to U.S.\$418 million more than Sonangol's Fiscal Report said it had paid. The following table illustrates the discrepancies:

Table 5: Discrepancies Between Sonangol's Fiscal Report and Two Sets of Figures from the Ministry of Finance Tax Directorate (U.S.\$ Millions)<sup>43</sup>

| Description  | Royalties      | Petroleum Income Tax | Petroleum Transactions Tax | Petroleum Income Tax (50%) | TOTAL           |
|--|----------------|----------------------|----------------------------|----------------------------|-----------------|
| Sonangol Fiscal Report Revenues Paid               | 295.828        | 423.517              | 164.316                    | 53.478                     | 937.140         |
| Revenues Received According to Tax Directorate (1) | 344.929        | 530.142              | 176.917                    | -                          | 1,051.988       |
| <b>DISCREPANCY (1)</b>                             | <b>+49.101</b> | <b>+106.625</b>      | <b>+12.601</b>             | <b>-53.478</b>             | <b>+114.848</b> |
| Sonangol Fiscal Report Revenues Paid               | 295.828        | 423.517              | 164.316                    | 53.478                     | 937.140         |

<sup>43</sup> Ibid., pp. 138-140.

|  |                 |                 |                |                |                 |
|--|-----------------|-----------------|----------------|----------------|-----------------|
| Revenues Received According to Tax Directorate (2) | 468.280         | 733.511         | 153.533        | -              | 1,355.324       |
| <b>DISCREPANCY (2)</b>                             | <b>+172.352</b> | <b>+309.994</b> | <b>-10.783</b> | <b>-53.478</b> | <b>+418.085</b> |

According to the Inception Report, the Ministry of Finance did not attempt to reconcile these discrepancies, nor did it have any procedures in place to reconcile the discrepancies.<sup>44</sup>

### *Sonangol's Profit Oil Discrepancies*

Sonangol's Profit Oil, the amount of oil it sells for profit after companies have taken their share and Sonangol has paid its expenses, was another source of discrepancies. Sonangol receives Profit Oil from its production sharing agreements in various oil blocks. Under Decree 15/89, it is required to transfer the specified amounts, minus a 10 percent commission, to the Ministry of Finance. The Profit Oil it remits to the Ministry of Finance is an aggregation of Sonangol's own Profit Oil, along with any Profit Oil that private companies are required to pay to the government under certain production sharing agreements. However, KPMG was unable to disaggregate these sums or determine whether the total amount paid was equal to the amount owed. The Inception Report states:

The Consultants [KPMG] were unable to prepare from the information in the fiscal reports a meaningful composite analysis of profit oil due from each foreign company and Sonangol P&P in order to match the total of such an analysis, in gross terms, with the equivalent profit oil paid over by these companies, on an individual and total all company basis, to the concessionaire [Sonangol]. Nor were we able to match from the fiscal reports the actual total paid over by these companies to the concessionaire with the agreed gross amount payable by the concessionaire to the Ministry of Finance before the deduction of commission.<sup>45</sup>

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<sup>44</sup> Ibid., p. 138.

<sup>45</sup> Ibid., pp. 146-147.

Despite these limitations, KPMG was able to analyze the aggregated Profit Oil reportedly paid to the Ministry of Finance. KPMG found that the Ministry of Finance received approximately U.S.\$135 million or U.S.\$323 million less than what Sonangol reported it had paid. KPMG used data from Sonangol’s Fiscal Report, compiled by Ernst & Young, and two sources of data from the Ministry of Finance’s Tax Directorate. The following table illustrates these discrepancies:

Table 6: Comparison between Profit Oil Paid to Ministry of Finance versus Profit Oil Received in 2000 (US\$ Millions)<sup>46</sup>

| Entity                                  | Profit Oil Payable | Profit Oil Paid | Outstanding Balance by 12/31/2000 |
|---|--------------------|-----------------|-----------------------------------|
| Sonangol Fiscal Report                  | 1,720.109          | 1,209.612       | 510.497                           |
| Ministry of Finance Tax Directorate (1) | 1,183.770          | 1,074.794       | 81.407                            |
| <b>DISCREPANCY (1)</b>                  | <b>-536.339</b>    | <b>-134.818</b> | <b>-429.090</b>                   |
| Sonangol Fiscal Report                  | 1,720.109          | 1,209.612       | 510.497                           |
| Ministry of Finance Tax Directorate (2) | 1,183.770          | 886.773         | 269.429                           |
| <b>DISCREPANCY (2)</b>                  | <b>-536.339</b>    | <b>-322.839</b> | <b>-241.068</b>                   |

KPMG could not reconcile the approximately U.S.\$188 million difference in the two figures the Ministry of Finance’s Tax Directorate provided for the same amount of Profit Oil it had reportedly received. Similarly, KPMG was unable to reconcile the discrepancies between the outstanding balances due from Sonangol. KPMG noted that the Tax Directorate attributed some of these funds balances owed from previous years, but did not provide a detailed analysis of this factor and “were therefore unable to apply them either against our other information on Profit Oil receipts for 2000 or the receipts

<sup>46</sup> Ibid., pp. 144-145.

of the other tax categories.<sup>47</sup> As a result of the lack of information, KPMG reported that it could not:

- Confirm actual Profit Oil due for 2000 by Sonangol with the actual amount paid during 2000 reflecting transactions that actually occurred in 2000 as opposed to late-payments for 1999 or early payments for 2001.
- Confirm a balance outstanding of Profit oil due and unpaid for 2000 at the end of the year.
- Find a composite aged analysis of Profit oil due at 31/12/00 which would analyze arrears by year.

Moreover, KPMG said that without a master reconciliation spreadsheet and better bookkeeping by the government, KPMG or the government could not:

- Match Profit oil due by individual companies including Sonangol for the year.
- Compare this total due with the Profit oil actually remitted to the Tax Directorate in 2000
- Apply a schedule of adjustments relating to arrears for previous years, Profit oil paid in 2001 relating to 2000 and related cut off adjustments.<sup>48</sup>

KPMG essentially stated that there was no way to reconcile the various discrepancies in order to accurately determine how much money the government should receive or even how much it did receive based on the available data. KPMG noted:

At present there is no coordinated linkage and comparison between the forecasts for Profit oil as per the Financial Model developed by the Consultants [KPMG], with the Profit oil due by and received from the oil companies as per the fiscal reports and related data received by the Ministry of Finance.<sup>49</sup>

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<sup>47</sup> Ibid., p. 143.

<sup>48</sup> Ibid., p. 143.

<sup>49</sup> Ibid.

## ***Reconciling Incoming Revenues***

Despite these limitations and numerous discrepancies between royalties, taxes, and Profit Oil owed versus what was actually paid, KPMG was able to approximate how much money was sent to the government and how much illegally bypassed the central bank. KPMG's analysis showed that throughout 2000, Sonangol had underpaid the BNA by more than U.S.\$2.1 billion, based on the Ernst & Young reports. Even though it owed over \$2 billion in taxes and Profit Oil, Sonangol paid less than U.S. \$20 million, less than 1% of what it owed, to the BNA.<sup>50</sup> KPMG attributed the discrepancies to two major factors: an underpayment of taxes by Sonangol to the BNA and its failure to remit any of its Profit Oil to the central bank.<sup>51</sup> KPMG could not determine the overall accuracy of the Ministry of Finance records nor could it reconcile discrepancies within various Ministry of Finance figures for the same transactions, raising further questions as to how the money actually was used.

By January 2001, Sonangol had formally announced that it would stop paying into the Petroleum Account altogether. According to the Oil Diagnostic report, Sonangol said that it had stopped paying because the BNA would delay crediting Sonangol in Kwanzas for the funds it received since it only paid Sonangol after it had paid other government debts. Sonangol also claimed that BNA took more money in dollars from Sonangol than it should have and delayed crediting Sonangol in Kwanzas, leaving the Petroleum Account with insufficient funds. Because of high inflation, the Kwanza devaluates quickly against the dollar and Sonangol was actually receiving less than it paid in dollars and was unable to meet its tax obligations.

Following its decision to withdraw from the Petroleum Account system, Sonangol reportedly retained a portion of the dollar export sales proceeds and did not deposit them into the BNA. Instead, it deposited the funds into Sonangol accounts in Angolan commercial banks and reportedly paid its taxes directly to the Ministry of Finance, bypassing the BNA altogether, in violation of the law.<sup>52</sup> The balance is reportedly paid to the BNA as proscribed under Decree 30/95 so that the BNA can pay off government debts.<sup>53</sup> However, this explanation does not explain how the company could violate

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<sup>50</sup> *Ibid.*, p. 132.

<sup>51</sup> *Ibid.*

<sup>52</sup> *Ibid.*, p. 113.

<sup>53</sup> *Ibid.*

existing laws without consequence or why Sonangol only paid U.S.\$18.712 million in 2000 to the BNA.

Moreover, KPMG could not adequately determine whether sums that were reported as having been paid to the Ministry of Finance were actually paid or whether they were paper transactions that never went to the Ministry, but went to pay off other debts or were used for other purposes. Unlike the BNA, which records revenues that are actually deposited, the Ministry of Finance records inflows even when it has not actually received them, raising further questions as to the veracity of those transactions. For example, if Sonangol used oil proceeds directly to pay an oil-backed loan, the Ministry of Finance would record this as a paper transaction claiming that it received those funds, even if it never physically received any money.<sup>54</sup> But, as noted, KPMG could not determine the veracity of the paper transactions.<sup>55</sup>

### ***Other Sources of Revenue***

Various forms of bonus payments were included in KPMG's July 2002 Oil Diagnostic report and the July 2003 Executive Summary. These payments included Signature Bonus Payments that companies paid to the central government once they were awarded oil blocks, exploration bonuses that were designated by Sonangol for community and development projects, and commercial discovery bonus payments companies made once fields were declared commercially viable. Signature Bonus Payments were not paid in 2000, but were detailed for previous years. However, exploration and commercial bonuses were paid, but it is not clear whether these were solely paid to Sonangol or intended for the central government.

### ***Signature Bonus Payments***

Signature bonus payments were particularly important since these were large cash payments from oil companies in exchange for lucrative offshore oil blocks. The government has rarely disclosed the amount and use of those funds. In the past, approximately U.S.\$970 million in bonus payments were used for opaque arms purchases.<sup>56</sup> Even though no signature bonus payments were made in 2000 it was

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<sup>54</sup> Ibid., p. 134.

<sup>55</sup> Ibid., p. 156.

<sup>56</sup> See: *Angola Unravels*, pp. 94-98; and Human Rights Watch interview with Foreign Minister Venâncio de Moura, Luanda, December 9, 1998.

extremely important to provide a historical record of signature bonuses to determine how much money the government had previously received.

All of the oil blocks awarded in Angola, except for Block 0 and Block 4 have included a signature bonus payment from the oil companies to the government. While no signature bonuses were paid in 2000 and did not constitute part of government revenue for this year, KPMG did provide the amounts for signature bonuses paid in prior years, while the bonus payments for Blocks 16 and 34 were disclosed from other sources. The following table details these payments.

Table 7: Signature Bonus Payments by Block, Year, and Amount<sup>57</sup>

| Block             | Companies   | Year Paid | Amount<br>(U.S.\$ Millions) |
|-------------------|---|-----------|-----------------------------|
| 1<br>(Safueiro)   | TotalFinaElf (25%), Petrogal (10%), INA-Naftaplin (7.5%), Naftagas (7.5%)   | 1982      | 3.5                         |
| 2<br>(Area 80-85) | ChevronTexaco (20%), Petrobras (27.5%), TotalFinaElf (27.5%), Sonangol (25%)                                      | 1980      | 1.0                         |
| 3<br>(Area 85-91) | TotalFinaElf (53.34%), Agip (16%), Mitsubishi (13.33%), Sonangol (6.67%), INA-Naftaplin (5.33%), Naftagas (5.33%) | 1980      | 1.0                         |
| 14                | ChevronTexaco (31%), Sonangol (20%), Agip (20%), TotalFinaElf (20%), Petrogal (9%)                                | 1995      | 12.0                        |
| 15                | ExxonMobil (40%), BP (26.67%), Agip (20%), Statoil (13.33%)   | 1994      | 35.0                        |
| 16                | Ranger Oil (50%), Odebrecht (30%), Sonangol (20%)   | 2002      | 30.0                        |
| 17                | TotalFinaElf (40%), ExxonMobil (20%), BP  | 1993      | 10.0                        |

<sup>57</sup> All information taken from KPMG, *Current Assessment of the Angolan Petroleum Sector: Inception Report*, July 2002, p. 124, unless otherwise noted.

|                        |  |      |                        |
|------------------------|--|------|------------------------|
|                        | (16.67%), Statoil (13.33%), Norsk Hydro (10%)  |      |                        |
| 18                     | BP (50%), Shell (50%)  | 1996 | 9.0                    |
| 19                     | TotalFinaElf (30%), Canadian Natural Resources (25%), Sonangol (20%), Ocean Energy (20%), Naphta-Israel (5%)   | 1998 | 10.0*                  |
| 21                     | BHP (30%), Sonangol (20%), BP (20%), ExxonMobil (20%), Shell (10%)   | 1998 | 41.0                   |
| 24                     | ExxonMobil (50%), Sonangol (20%), Ocean Energy (15%), Petronas (15%)   | 1999 | 69.0                   |
| 25                     | Agip (40%), ExxonMobil (35%), Sonangol (25%)   | 1999 | 69.0                   |
| 31                     | BP (26.67%), ExxonMobil (25%), Sonangol (20%), Statoil (13.33%), Marathon Oil (10%), TotalFinaElf (5%)   | 1999 | 335.0                  |
| 32                     | TotalFinaElf (30%), Sonangol (20%), Prodev (sold to Marathon Oil, 20%), ExxonMobil (15%), Marathon Oil (15%, now 35% with Prodev acquisition), Petrogal (5%) | 1999 | 231.0                  |
| 33                     | ExxonMobil (45%), Sonangol (20%), TotalFinaElf (15%), Falcon Oil (10%), Naphta-Israel (5%), Petrogal (5%)  | 1999 | 300.0                  |
| 34                     | Sonangol (20%), Norsk Hydro (30%), ConocoPhillips (20%), Petrobras (15%), Shell (15%)  | 2001 | 400.0 (278.6)          |
| <b>TOTAL 1980-2002</b> | -  | -    | <b>1487.5 (1366.1)</b> |

The payment for Block Thirty-Four was not part of KPMG's study, but the IMF reported that this was the amount paid, along with an additional U.S.\$100 million for

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\* \$1 million was designated for the improvement of Kissama National Park.



social projects in 2002.<sup>58</sup> In 2003, it revised downward the payment to U.S.\$278.6 million, but it did not address the reported U.S.\$100 million social bonus payment or how the government used those funds.<sup>59</sup>

Later, the government was forced to disclose the U.S.\$30 million bonus payment made by Ranger Oil, Odebrecht, and Sonangol for Block 16 on June 5, 2002. The disclosure was in response to parliamentary inquiries about the deal; to the knowledge of Human Rights Watch, this was the first time that the government had disclosed such a payment to parliament.<sup>60</sup> Additionally, *Energy Compass*, a specialty publication that covers the international oil and gas industry, reported that ChevronTexaco and its partners had agreed to pay an approximately U.S.\$500 million bonus payment on June 27, 2003. The payment was agreed upon as part of the companies' renegotiation for the lucrative Block 0 concession in offshore Cabinda.<sup>61</sup> It is not clear when the companies would make this payment, but Human Rights Watch believes that both the companies and the government should fully disclose the amount and use of the bonus payment.

### *Production Discrepancies*

The actual amount of oil production was another area marred by discrepancies and crucial since this figure provides the central bank a way to determine taxes due. During the course of its analysis, KPMG examined how much oil was actually produced and sold by private companies and the government through Sonangol by comparing data from the companies with an independent analysis conducted by Saybolt, a Netherlands-based (but founded in the United States) auditing and inspection firm. Saybolt concluded that 268,550,010 barrels were lifted in 2000, whereas the total amount of liftings from the companies' fiscal reports was 272,525,440 barrels. The net discrepancy was 3,975,430 barrels. While comparatively small in terms of production volume—about 1.5 percent, it would be quite large in financial terms since the 3.9 million barrel difference would total approximately \$87,459,460 to \$98,590,664, depending on the

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<sup>58</sup> "Angola: Staff Report for the 2002 Article IV Consultation," pp.19-20.

<sup>59</sup> International Monetary Fund (IMF), "Angola: Staff Report for the 2003 Article IV Consultation," statistical appendix, July 14, 2003, pp. 77-78.

<sup>60</sup> Human Rights Watch interviews, June 10, 2002; and the Economist Intelligence Unit, "Angola: Country Report," August 2002, p.22.

<sup>61</sup> Christina Katsouris, "Money-spinners," *Energy Compass*, June 27, 2003.

price of oil.<sup>62</sup> These discrepancies were not attributable to any one company, but a combination of overreporting and underreporting by all of the companies that lifted oil during 2000. However, TotalFinaElf and Sonangol's refinery stood out for their sizable discrepancies. In the case of TotalFinaElf, Saybolt recorded 16,081,071 barrels less than what the company reported in its fiscal reports. The Sonangol Refinery reported some 8,636,037 barrels less than what Saybolt found. KPMG was "unable to establish" whether the central bank or Ministry of Finance had any way of auditing or comparing oil liftings to determine how much tax should be paid.<sup>63</sup>

The portrait the Inception Report painted of Angola's management of oil revenues was indeed bleak. Billions of dollars illegally bypassed the BNA, hundreds of millions of dollars in discrepancies were found within the Ministry of Finance, and no government institutions had procedures in place to determine why this had happened. But the shortcomings in Angola's management of incoming oil revenue are not unique. As the next section details, the IMF determined that its management of expenditures was equally problematic.

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<sup>62</sup> KPMG, *Inception Report*, p.114. Oil price data for the dollar estimates was taken from the U.S. Department of Energy, Energy Information Agency, "Selected Crude Oil Prices, Beginning of the Year: 1991-2001," available at: [www.eia.doe.gov/emeu/iea/table71.html](http://www.eia.doe.gov/emeu/iea/table71.html).

<sup>63</sup> KPMG, *Inception Report*, p.115.

## V. Expenditure Discrepancies

While the Oil Diagnostic shed light on how laws were flouted, how the central bank did not really know how much revenue was generated through oil production, how much the government was entitled to receive, and where missing funds might have been diverted, it did not examine expenditures since that was not part of KPMG's terms of reference for the Oil Diagnostic. However, the IMF elsewhere has examined how the government spent its money, most recently in its sharply critical March 2002 and July 2003 annual staff reports on the Angolan economy. The IMF determined that the government could not account for more than four billion dollars of public funds from 1997-2002 and attributed this loss of funds to mismanagement, the government's refusal to provide accurate information on those expenditures, and corruption.

The IMF concluded that from 1997-2002, the Angolan government could not account for about U.S.\$4.2 billion in expenditures—an average of about U.S.\$703 million, or about 9.25 percent of the country's GDP, per year.<sup>64</sup> The scale of discrepancies is staggering. For example, if 9.25 percent of the U.S. GDP “disappeared” in 2002, the loss would total approximately U.S.\$966 billion.<sup>65</sup> The IMF noted that the lack of transparency and accountability over the use of funds was the main obstacle to greater humanitarian relief and social development. It rejected the government's argument that excessive opaqueness, mismanagement, and a failure to fully implement reforms were caused by a lack of capacity, but instead concluded that they were due to lack of political will.<sup>66</sup>

### ***The March 2002 and July 2003 IMF Staff Reports***

Every year, the IMF conducts a visit to its member countries to examine the state of the economy and discuss issues with the relevant government officials. Following those consultations, the IMF releases a “Staff Report” that details the state of the economy, the content of policy discussions, and recommendations to the government. Over the

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<sup>64</sup> “Angola: Staff Report for the 2002 Article IV Consultation,” pp. 31-33; and International Monetary Fund (IMF), “Angola: Staff Report for the 2002 Article IV Consultation,” March 18, 2002, p. 33; and International Monetary Fund (IMF), “Angola: Selected Issues and Statistical Appendix,” July 11, 2003, pp. 107-109.

<sup>65</sup> According to the U.S. Department of Commerce, Bureau of Economic Analysis, the 2002 GDP of the United States was U.S.\$10.4462 trillion. See: U.S. Department of Commerce, Bureau of Economic Analysis, “Gross Domestic Product: Second Quarter 2003,” press release, July 31, 2003.

<sup>66</sup> “Angola: Staff report for the 2002 Article IV Consultation,” pp. 25-26.

last few years, those reports usually have been made public. However, governments must authorize their public release and sometimes choose to keep them confidential because they believe that the information is sensitive. Although the government of Angola had allowed the release of prior staff reports, it chose to keep the highly critical March 2002 staff report confidential, thereby avoiding public scrutiny or criticism.<sup>67</sup> The government did agree to publish the July 2003 Staff Report. That report and its related appendix was made public on September 10, 2003. However, the July 2003 report was not as overtly critical of the government and did not highlight the problems of poor governance and corruption to the same extent as the prior report. But it did not say that the government's performance had improved. It noted that the economic and humanitarian situation was fundamentally unchanged and the government had not implemented major reforms. In effect, the analysis and conclusions from the March 2002 report were still applicable in 2003. Human Rights Watch, however, has obtained copies of the March 2002 report and the July 2003 statistical appendix.

Prior public releases by the IMF had indicated that reforms were not on track and many steps were not implemented. But the March 2002 IMF staff report went much further and was scathing in its criticism of the Angolan government. The Fund found numerous problems with the government's management of the economy generally and oil revenues in particular. The Fund concluded that despite the IMF's efforts, the government was largely unwilling to implement reforms and become more transparent. It described a secretive government that sent large sums to offshore accounts free from public scrutiny. Such shortcomings further undermined the economy, hindered poverty-alleviation, and contributed to widespread corruption. As the IMF's March 2002 report phrased it:

Frequent dialogue with the authorities [the Angolan government] and significant technical assistance in recent years has yielded little progress in the key areas of governance and transparency. There is virtually no public information on fiscal and external borrowing, the state-owned oil company manages the country's oil-related receipts through a web of opaque offshore accounts, the central bank and other public companies suffer from poor internal controls and large operational deficits, and the

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<sup>67</sup> Since the report was kept confidential, the government could also claim that the pace of economic reform was adequate and that the relationship with the IMF was sound, even when it was not. For example, the then Finance Minister, Julio Bessa, told Angop, the Angolan state news agency, that relations with the IMF were "good" because of the government's "good performance" on economic reforms, even though the Fund had just concluded a tense mission to the country. See: "Finance Minister Says Relationship with IMF, World Bank, 'Good.'" ANGOP, February 19, 2002.

weakness of basic economic data hampers the design and monitoring of a macroeconomic program. It would be very difficult for Angola to formulate a meaningful poverty reduction strategy without addressing these and other transparency and governance-related problems.<sup>68</sup>

The government often claimed that the main impediments to reform were lack of capacity and war, which restricted access to many parts of the country, diverted resources away from social expenditures and towards defense, and led to the destruction of infrastructure. In one case, Aguinaldo Jaime, the then central bank Governor and currently deputy prime minister, even claimed that “global warming” led to massive destruction of infrastructure that required substantial funds to rebuild.<sup>69</sup> Governmental capacity and war—much less global warming—however, could not explain lack of transparency, something firmly within the government’s control: nothing prevented the government from maintaining accurate accounts or publishing them. The IMF thus concluded that the principal impediment was a lack of political will, stating: “Transparency enhancements, initially in the provision of information and data, would be the first step in designing a new SMP. Such a step requires political commitment, much more than it does technical assistance.”<sup>70</sup>

### ***Missing Funds***

Perhaps the most disturbing disclosure by the IMF in its March 2002 and July 2003 reports was the sheer size of unaccounted for funds, which it describes as “discrepancies,” in government expenditures. The report included a stark account of how much money had been spent for unexplained purposes and were effectively missing. Contrary to some public reports, the amount was not exactly U.S. \$1 billion per year for the prior five years, but had varied with the year.<sup>71</sup> Nevertheless, the total amount of lost funds was substantial. It totaled about U.S.\$ 703 million per year from 1997 to 2002, or about 9.25 percent of the country’s GDP.<sup>72</sup>

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<sup>68</sup> “Angola: Staff Report for the 2002 Article IV Consultation,” p. 3.

<sup>69</sup> Aguinaldo Jaime, Former central bank Governor and current Deputy Prime Minister, “Angola: Economic Reform and Adjustment Program,” speech at the Center for Strategic and International Studies, Washington, D.C., June 12, 2001.

<sup>70</sup> “Angola: Staff Report for the 2002 Article IV Consultation,” p. 3.

<sup>71</sup> See, for example: Global Witness, “Will Angola finally publish its oil accounts?” press release, June 20, 2003.

<sup>72</sup> “Angola: Staff Report for the 2002 Article IV Consultation,” pp. 31-33; and “Angola: Selected Issues and Statistical Appendix, 2003,” pp. 107-109.

In Angola, the largest discrepancies occurred in 1997 and 1999, when unaccounted for monies totaled nearly U.S.\$1.8 billion (23.1 percent of GDP) and more than U.S.\$1.1 billion (18.4 percent of GDP), respectively.<sup>73</sup> The IMF defined discrepancies as “recorded inflows (revenue and financing) in excess of all recorded (i.e. including recorded extrabudgetary outlays) expenditures.”<sup>74</sup> These funds were spent, but basically “disappeared” since the government could not, or would not, account for how they were spent. These expenditures were categorically different from expenditures that were “unclassified”. Unclassified funds were determined to have been spent legitimately, but were not properly classified. Discrepancies, however, were largely missing funds. The IMF believed that some of the money was spent for legitimate purposes, but some was also lost to corruption.<sup>75</sup> Such expenditures further damaged the already precarious economy and contributed to very high levels of deficit spending. The following table illustrates the IMF’s findings:

Table 8: Angolan Government’s Unexplained Expenditure Discrepancies 1997-2002<sup>76</sup>

| Year  | 1997  | 1998  | 1999  | 2000  | 2001  | 2002  | TOTAL  |
|---|-------|-------|-------|-------|-------|-------|--------|
| Total Government Expenditures (U.S.\$ Millions) | 4,966 | 2,771 | 5,016 | 5,387 | 4,383 | 5,370 | 27,893 |
| Discrepancy (U.S.\$ millions)                   | 1,775 | 34    | 1,119 | 407   | 540   | 347   | 4,222  |
| Discrepancy (% Government Expenditures)         | 35.7  | 1.23  | 22.3  | 7.56  | 12.3  | 6.46  |        |
| Discrepancy (% GDP)                             | 23.1  | 0.6   | 18.4  | 4.6   | 5.7   | 3.1   |        |
| Average Discrepancy 1997-2002 (U.S.\$ millions) | 703.6 |       |       |       |       |       |        |

<sup>73</sup> Ibid.

<sup>74</sup> “Angola: Staff Report for the 2002 Article IV Consultation,” p. 9.

<sup>75</sup> Human Rights Watch interviews with IMF staff on April 3, 2002, November 30, 2002, December 3, 2002, and December 5, 2002.

<sup>76</sup> The sources for this table are: Angola: Staff Report for the 2002 Article IV Consultation,” pp. 31-33; and “Angola: Selected Issues and Statistical Appendix, 2003,” pp. 107-109.

|   |       |
|---|-------|
| Average Discrepancy 1997-2002 (% Government Expenditures) | 15.14 |
| Average Discrepancy 1997-2002 (% GDP)                     | 9.25  |

It is possible that the actual discrepancies were far more than the IMF estimated because the IMF included in its calculations “ex post” extrabudgetary expenditures for goods and services, even though the uses of such expenditures were not fully explained. These expenditures were in addition to the discrepancies above. The government provided accounts of such extrabudgetary expenditures sometimes months after the IMF had requested explanations for them,<sup>77</sup> and the IMF noted that the “total amount and nature of these expenditures had not been fully identified.”<sup>78</sup> The following table shows the amount of these expenditures from 1997 to 2001:

Table 9: Ex Post Extrabudgetary Expenditures for Goods and Services 1997-2001 (U.S.\$ millions)<sup>79</sup>

| 1997 | 1998 | 1999  | 2000  | 2001 | TOTAL |
|------|------|-------|-------|------|-------|
| 980  | 566  | 1,290 | 1,062 | 205  | 4,103 |

The IMF believed that some of these funds were actually spent on goods and services, but the government’s inability to adequately account for them also created suspicions of mismanagement and potential corruption.<sup>80</sup>

<sup>77</sup> “Angola: Staff Report for the 2002 Article IV Consultation,” p. 32; and Human Rights Watch interview with an official close to these discussions, April 3, 2002.

<sup>78</sup> “Angola: Staff Report for the 2002 Article IV Consultation,” p. 32.

<sup>79</sup> Ibid.

<sup>80</sup> Human Rights Watch interview with officials close to these discussions, April 3, 2002.

## ***Inadequate Record Keeping***

The government's failure to account for missing funds also stems from the government's failure to keep accurate records of its revenues and expenditures. In this context, even if the government decided to fully disclose information, it would not necessarily meet public needs, since its own record keeping is so poor. It is possible to determine that funds are missing and that there are major discrepancies in government accounts, but without an audit, it is very difficult to determine exactly how public funds were spent. Historically, major corruption scandals have been uncovered by foreign law enforcement agencies, such as the Swiss or French (see section VI below).

This failure to keep records and disclose information is part of the reason why the Oil Diagnostic and the still-confidential IMF Staff Report are so critical: they provide some meaningful insight into the use of public funds. An even more meaningful step would be conducting an audit of major government institutions—Sonangol, the Ministry of Finance, and the central bank (the Banco Nacional de Angola, or BNA)—and making the results public.

The BNA has been audited by Ernst & Young and it found that widespread mismanagement plagues the institution.<sup>81</sup> But since much of Sonangol's revenue bypasses the BNA, a full audit of that institution alone would not enable Angolans to exercise their right to information. For example, KPMG in the July 2003 Oil Diagnostic Executive Summary noted that:

The Consultants [KPMG] also had access to the Relatório de Revisão Limitada ao Balanço da Sonangol (Report on the Limited Revision to Sonangol's Balance Sheet) and concluded that, due to scope limitations, the external auditors could not perform an audit in conformity with the international accounting standards (IAS). One of the main results of the scope limitation was that no auditor could voice an opinion on this accounting giving or not a true and just picture of the financial status of the Sonangol Group. It is important that the readers be aware of this limitation.<sup>82</sup>

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<sup>81</sup> KPMG, *Avaliação do Sector Petrolífero Angolano Sumário Executivo Relatório Inicial*, July 2003, p.35.

<sup>82</sup> *Ibid.*, p.32.



The government has only agreed to “limited reviews” of Sonangol and perhaps audits by at some point in the future.<sup>83</sup> Given these problems, transparency and accountability over the use of public funds in Angola requires both disclosure and affirmative measures to discern the amount and use of funds. The Oil Diagnostic and IMF Staff Reports were first steps towards greater transparency, but much more is needed.

### ***Indications of Corruption***

The World Bank and Transparency International generally define corruption as “the abuse of public office for private gain.” The World Bank notes that this definition includes situations when “public officials accept, solicit, or extort bribes; and when private actors offer bribes to subvert or circumvent public policies for competitive advantage and profit.” Corruption can also occur in the absence of bribes. For example, the World Bank considers patronage or nepotism by government officials, theft of state assets, or diverting state revenues as corruption.<sup>84</sup>

The World Bank also distinguishes between two forms of corruption: state capture and administrative corruption. State capture is defined as the “actions of individuals, groups, or firms in both the public and private sectors to influence the formation of laws, regulations, decrees, and other government policies (i.e., the basic rules of the game) to their own advantage by means of the illicit and non-transparent provision of private benefits to public officials.”<sup>85</sup> Administrative corruption involves changing or altering the implementation of existing laws, rules, and regulations to “provide advantages to either state or non-state actors as a result of the illicit and non-transparent provision of private gain to public officials.” In this case, state officials can “simply misdirect public funds under their control for their own or their family’s direct financial benefit.”<sup>86</sup>

Corruption has a corrosive impact on human rights. It facilitates violations of human rights and can impede accountability for such violations. Corruption can contribute to civil and political rights violations such as torture, ill-treatment, and arbitrary detention

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<sup>83</sup> “Angola: Staff Report for the 2003 Article IV Consultation,” p. 10.

<sup>84</sup> The World Bank, *Helping Countries Combat Corruption: The Role of the World Bank* (Washington, D.C.: The World Bank, 1997), p.8; and Transparency International, “Frequently Asked Questions About the Corruption Perceptions Index: 2002,” press release, August 28, 2002.

<sup>85</sup> The World Bank, *Anticorruption in Transition: A Contribution to the Policy Debate* (Washington, D.C.: The World Bank, 2000), pp.1-2.

<sup>86</sup> *Ibid.*, p.2.

because officials sometimes use such means to extort bribes. Corruption can also undermine the judiciary: equal treatment under the law can be manipulated or ignored if officials exploit their positions for personal gain. Freedom of information is undermined when corrupt officials impede the flow of information. Where there is a significant financial incentive to hold onto power and officials use corrupt means to resist democratization, corruption can undermine the ability of individuals to choose their government and participate in elections.

The diversion of funds from institutions or activities that can improve or protect human rights is another negative consequence of corruption. Where it leads to underfunding of hospitals, schools, and other essential services, diversion of funds can prevent or impede the progressive realization of economic, social, and cultural rights.

Human Rights Watch believes that when corruption or gross mismanagement of funds contribute to human rights violations or prevent improvements in human rights, they must be addressed as part of efforts to improve human rights practices. As in this report, Human Rights Watch believes it important to document such linkages.

In Angola, corruption appears to be a persistent problem, and the IMF concluded that corruption played a substantial role in the discrepancies noted in its reports. While not all of the unexplained discrepancies could be attributed to corruption, there were signs that corruption was a major factor. The IMF highlighted Angola's declining living standards when it cited a 2000-2001 confidential Angolan Ministry of Planning study that found "the percentage of households living under the poverty line and that in extreme poverty have increased since a similar survey was carried out in 1995." While poverty levels increased, the IMF reported that expenditures of the richest 10 percent of Angolans had increased during the same period and led to a wider gap in income inequality.<sup>87</sup> The IMF went further and described the specific types of corruption present in Angola:

Cross-country analyses have shown a strong positive correlation between, on the one hand, easily appropriable rents arising from the exploitation of mineral resources and, on the other, higher levels of corruption, slower economic growth, and higher poverty rates...In a recent survey by a local organization...among a panel of Luanda

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<sup>87</sup> "Angola: Staff Report for the 2002 Article IV Consultation," p. 6.

residents (including parliamentarians), the majority of those interviewed identified corruption in Angola as a “systemic problem” affecting all level of society, particularly “the top political and administrative hierarchies...”

Petty corruption is widespread in Angola. Typical examples involve cases of civil servants receiving a “facilitation fee” in exchange for the processing of applications or licenses, as well as widely reported incidents involving the economic police, in which it extracts bribes from small businesses in the process of verifying compliance with operating licenses and “profit” margins. On a larger scale, corruption involves monopolistic practices maintained by political access and public banks engaging in connected lending (to companies where there was no expectation of repayment or to nonexistent ones) that eventually necessitates bailouts from the treasury.

A general lack of transparency in public finances—with scant data being officially published and a complex set of offshore finances—has generated the perception of a poorly managed treasury...substantial funds received as signature bonuses for oil contracts and oil royalties have been outside the control of the treasury; and nontransparent external debt transactions have been made.<sup>88</sup>

The IMF highlighted two oil-related transactions that raised suspicions of corruption. The first was the government’s underreporting of a U.S.\$400 million signature bonus payment for Block 34 and the second was a questionable series of transactions to repay Russian debt that led to Swiss authorities freezing U.S.\$750 million in Angolan funds deposited in Swiss banks.<sup>89</sup> A corruption trial in France also raised suspicions of widespread corruption (see Section VI below for more details on these three cases).

In August 2002, Transparency International (TI), the anti-corruption organization, ranked Angola 98<sup>th</sup> out of 102 countries in its *Corruption Perceptions Index* (1 being the least corrupt and 102 the most corrupt country). The TI survey also ranks countries on a scale of one to ten, where one is the most corrupt and ten the least. The ten-point scale

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<sup>88</sup> Ibid., p.13.

<sup>89</sup> Ibid., pp. 19-20.

is a statistical calculation of a country's score based on the twelve in-depth data sources TI draws upon to formulate its Index.<sup>90</sup> Angola received a score of 1.7 (+/-4).<sup>91</sup> Based on the TI ten-point scale, the IMF noted that even a slight improvement in Angola could have a significant impact on education, health, income inequality, and child mortality, among other areas of government expenditure. It said that a "one-point increase in the transparency scale would leave Angola with an estimated level of corruption still higher than in most of its neighboring countries. The benefits would likely increase if Angola were to achieve greater improvement along the transparency scale."<sup>92</sup> For example, the IMF estimated that a one-point decrease on the TI corruption scale—improving from 1.7 to 2.7, for example—could increase annual expenditures by 0.7-0.9 percent of GDP for education; 0.6-1.7 percent of GDP for public health; could reduce the infant mortality rate by 1.1-2.7 deaths per 1,000 births; and could annually improve the income of the lowest 20 percent of Angolans by 1-1.5 percent of GDP.<sup>93</sup>

Increasing those expenditures would have a positive impact on the population. A 0.7-0.9 percent GDP increase in funding for education would add approximately U.S.\$77-\$99 million per year.<sup>94</sup> According to a recent UNICEF study, the country faces an acute shortage of primary school teachers. The government reportedly budgeted U.S.\$40 million in 2003 to pay for approximately 29,000 teachers, some of whom would have to be recruited and trained. Adding U.S.\$77-\$99 million to the education budget would facilitate the hiring of additional teachers and further improvements in education.<sup>95</sup> Similarly, a 0.6 to 1.7 percent increase in health spending would equal approximately U.S.\$66-\$187 million in additional funds. In 2002, Angola spent approximately U.S.\$213 million on health, so an increase of U.S.\$66 million to U.S.\$187 million could have a substantial impact on improving Angolans' healthcare.<sup>96</sup>

The Economist Intelligence Unit (EIU) raised more suspicions of corruption in its February 2003 quarterly report when it published information about Angola's wealthiest

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<sup>90</sup> For a complete discussion of the scale, see: Dr. Johann Graf Lambsdorff, "Framework Document 2002: a background paper to the 2002 Corruption Perceptions Index," a background paper by Transparency International and Göttingen University, July 2002.

<sup>91</sup> Transparency International, Corruption Perceptions Index, August 28, 2002.

<sup>92</sup> "Angola: Staff Report for the 2002 Article IV Consultation," p.15.

<sup>93</sup> Ibid.

<sup>94</sup> Estimates based on IMF figures. See "Angola: Selected Issues and Statistical Appendix, 2003," p. 109

<sup>95</sup> "Angola: Rebuilding Education System Vital, UNICEF," IRIN, July 24, 2003.

<sup>96</sup> Ibid.

people. The EIU reported that there were thirty-nine individuals worth at least U.S.\$50 million in Angola and another twenty reportedly worth at least U.S.\$100 million. Six of the seven wealthiest people on the EIU's list were longtime government officials, while the seventh had only left longstanding government service about two years earlier. Overall, the combined wealth of these fifty-nine people was at least U.S.\$3.95 billion.<sup>97</sup> By comparison, the total GDP of Angola with a population of about 13 million was approximately U.S.\$10.2 billion in 2002.<sup>98</sup>

### ***War as an Impediment to Economic Reform***

Angolan officials have long maintained that war was the major impediment to economic reform. For example, in August 1998, shortly before the country resumed a state of all out war, Emmanuel Carneiro, the former Minister of Planning, said:

[T]he last few months have brought increasing violent actions by UNITA... Not only do such actions set the peace process back, they also hamper economic reconstruction efforts and impede economic activity.<sup>99</sup>

A few years later, Aguinaldo Jaime, the then central bank Governor and current Deputy Prime Minister also held the war as partly responsible for the slow pace of reforms. He said:

[T]he rebellion took their actions close to some urban areas. The need to strengthen security around those areas implied the allocation of additional financial resources beyond the framework of the program. As a result government expenditure is likely to be out of target by the end of program period.<sup>100</sup>

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<sup>97</sup> Economist Intelligence Unit, "Angola: Country Report," February 2003, p. 17.

<sup>98</sup> Economist Intelligence Unit, "Angola: Country Report," May 2003, p. 5.

<sup>99</sup> Former Minister of Planning Emmanuel Carneiro, Speech at the US-Angola Chamber of Commerce Washington, D.C., August 27, 1998.

<sup>100</sup> Aguinaldo Jaime, former central bank Governor and current Deputy Prime Minister, "ANGOLA: Economic Reform and Adjustment Program," speech at the Center for Strategic and International Studies, Washington, D.C., June 12, 2001.

It is true that war required significant expenditure and much of Angola’s infrastructure was degraded or destroyed because of the war. Landmines, displacement, and lack of government control over key areas of the country also impeded economic diversification and development. However, the war would not have prevented increased transparency by the government or investment in programs to improve respect for human rights in areas under government control; nor would it have affected the oil sector since virtually all of the oil industry was offshore.

Angola was not under any embargoes during the 1990s and afterwards. The government often has claimed that it had no choice but to give funding for the war precedence over other claims on revenue. Military and security expenditures have historically been the largest government expenditure, averaging about 13 percent of GDP and about 19 percent of total government expenditures from 1997 to 2002.<sup>101</sup> This explanation, while plausible, does not account for the massive discrepancies in expenditures and thus does not address whether necessary military and security expenditures could have been maintained while allocating sufficient resources for humanitarian and social needs.

From 1997 to 2002, unexplained expenditures were sometimes greater than total reported military expenditures and strongly suggest that military expenditures were not the reason for the government’s failure to provide for basic needs and were not the primary destination of diverted oil revenues. The following table compares military expenditures with unexplained discrepancies:

Table 10: Comparison between Military and Security Expenditures and Unexplained Discrepancies 1997-2002<sup>102</sup>

| Year   | 1997  | 1998 | 1999  | 2000 | 2001 | 2002 |
|--|-------|------|-------|------|------|------|
| <b>Military Expenditures (U.S.\$ millions)</b> | 640   | 934  | 1,572 | 793  | 680  | 808  |
| <b>Discrepancy (U.S.\$ millions)</b>           | 1,775 | 34   | 1,119 | 407  | 540  | 347  |

<sup>101</sup> Angola: Staff Report for the 2002 Article IV Consultation,” pp. 31-33; and “Angola: Selected Issues and Statistical Appendix, 2003,” pp. 107-109.

<sup>102</sup> Angola: Staff Report for the 2002 Article IV Consultation,” pp. 31-33; and “Angola: Selected Issues and Statistical Appendix, 2003,” pp. 107-109.

|  |        |      |      |      |      |      |
|--|--------|------|------|------|------|------|
| <b>Military Expenditures (% GDP)</b>   | 8.3    | 14.5 | 25.8 | 9.0  | 7.2  | 7.2  |
| <b>Discrepancy (%GDP)</b>  | 23.1   | 0.6  | 18.4 | 4.6  | 5.7  | 3.1  |
| <b>Difference (\$U.S. millions)</b>  | -1,135 | +900 | +453 | +385 | +140 | +461 |
| <b>Total Military Expenditures 1997-2002 (U.S.\$ millions)</b>                         | 5,427  |      |      |      |      |      |
| <b>Total Discrepancy 1997-2002 (U.S.\$ millions)</b>                                   | 4,222  |      |      |      |      |      |
| <b>Total Difference: Military Expenditures-Discrepancy 1997-2001 (U.S.\$ millions)</b> | 1,205  |      |      |      |      |      |

In 1997, discrepancies outpaced military expenditures, even though that was a year of relative peace. Overall, the discrepancies were about 78 percent of military expenditures from 1997 to 2002. Based on this information, the government's assertion that the war diverted resources away from humanitarian and reconstruction is questionable. Military expenditures rapidly declined in 2000 and 2001, but were exceptionally high in 2002. This is notable since the war with UNITA had ended by April 2002, yet military expenditures for that year were much higher than when the war was ongoing in 2000 and 2001.<sup>103</sup> Moreover, military expenditures themselves were controversial and led to allegations of corruption. (see Section VI above).

Overall, the most serious impediment to development was the government's mismanagement of the economy and not the war. Had the unaccounted-for funds been available to it, the government could have easily sustained the same levels of military expenditures while spending more funds on social and economic development. This was also the opinion of the IMF when it said, "despite the reduction of hostilities in war zones and substantially lower military expenditures in 2000 and 2001, poverty was not

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<sup>103</sup> "Angola: Selected Issues and Statistical Appendix, 2003," p. 109.

being reduced because of the hesitant implementation of the government [reform] program and the persistence of severe governance and transparency problems that...prevented the reallocation of public resources to priority sectors."<sup>104</sup>

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<sup>104</sup> "Angola: Staff Report for the 2002 Article IV Consultation," p. 14.



## VI. Government Attempts to Restrict Information

The government not only mismanaged public resources, it enacted domestic laws that criminalized possession of information and restricted its distribution. On the international level, the government often refused to provide information about its use of revenue and its expenditures, and attempted to prevent other institutions from disclosing information or conducting investigations. This was true with the IMF, private companies, and even other governments. In no case did the government take steps to provide adequate information to counter serious allegations of misuse of public funds.

### ***Domestic Laws that Would Criminalize and Restrict Information***

The government passed three laws—the Access to Administrative Documents Bill, the National Security Bill, and the State Secrecy Bill—during 2002-2003 that could severely restrict access to information. Of particular concern is the State Secrecy Bill, passed on July 19, 2002, which criminalizes possession of documents that the government considers sensitive, even if obtained lawfully by individuals not employed by the government.

The law defines how state secrets will be determined, who makes such a determination, and provides penalties for breaching its terms. There are some extremely troubling provisions of the bill in the context of transparency and freedom of information. Article 2 of the law states that “financial, monetary, economic, and commercial interests of the State” can be classified as secret, broad terms that invites application of the law to data on oil revenues, IMF documents, or other documents that should be in the public domain in order to further public oversight.<sup>105</sup> Any civil servant or political appointee can be punished with up to two years imprisonment for divulging information classified as a state secret.<sup>106</sup> Individuals who are not government officials can also be penalized for possessing or republishing “state secrets,” regardless of how they received them. Article 26 of the law states:

Those who are not civil servants or holders of public office, and who have access to classified information and materials, irrespective of the

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<sup>105</sup> State Secrets Bill, art. 2.

<sup>106</sup> *Ibid.*, art. 24 and 25.

manner and source, and disclose such information publicly without being so authorized to do by the relevant bodies, shall be subject to the penalties set forth in Articles 24 and 25 of the present act, according to whether they acted with intent or through negligence.<sup>107</sup>

The penalties enumerated in articles 24 and 25 of the Bill are six months to two years imprisonment for an “intentional breach of state secrecy,” or six months imprisonment for an unintentional, but “negligent” breach of state secrecy.<sup>108</sup> This could have a chilling effect on the Angolan press and civil society since they are subject to the same penalties as government officials if they report on government activities.

Moreover, the law has provisions for extraterritorial prosecution of individuals. Article 3 of the law states that “[s]tate secrecy shall cover all persons within or beyond national territory, irrespective of whether they are employed by the public administration and who, for any reason, come into contact with materials deemed to be State secrets under the terms of the present act.”<sup>109</sup> Some observers have interpreted these provisions as an attempt to prevent representatives of multilateral institutions, international NGOs, international press, or other institutions from publishing materials that may be sensitive or embarrassing for the government.<sup>110</sup> The Economist Intelligence Unit reported that “[o]ne aim of the bill is believed to be to prevent damaging information, such as that regarding the “Angolagate” arms and banking scandal in France and the secretive and controversial Russian debt deal, from leaking out” (for more on these issues, see chapter TK, below).<sup>111</sup> Human Rights Watch believes that the Oil Diagnostic reports, revenue data, expenditure data, and debt figures should never be classified as state secrets and that the government should clarify this immediately.

### ***Failure to Provide Information to the IMF***

A major source of tension between the government and IMF was the government’s repeated unwillingness to provide basic information to the Fund. For example, when the IMF sought an exact figure for the signature bonus payment paid for Block Thirty-

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<sup>107</sup> Ibid., art. 26.

<sup>108</sup> Ibid., art. 24 and 25.

<sup>109</sup> Ibid., art. 3.

<sup>110</sup> Human Rights Watch interview, Luanda, December 9, 2002.

<sup>111</sup> Economist Intelligence Unit, “Angola: Country Report,” August 2002, p.16.

Four<sup>112</sup>, the government did not provide accurate information and underreported the amount that had been paid. The Fund said:

Oil exploration bonuses, or up-front payments from the oil companies to the government for exploration rights, have been a common feature in Angola's oil contracts in recent years. The allocation of these bonuses is decided by the presidency in conjunction with Sonangol, and even though they are identified as income in the budget, their use is not normally recorded in the fiscal accounts. The most recent bonuses involved a large ultra-deepwater block auctioned in September 2001 [Block 34]. The authorities reported receiving U.S.\$285 million for this block in October 2001 and are planning to transfer these funds to the budgetary accounts in March or April 2002. The delay in effecting this transfer could not be explained, except by the fact that these funds are outside the control of the treasury. More important, this amount is lower than the payments for the treasury of about U.S.\$400 million (not including additional payments of nearly U.S.\$100 million to Sonangol's Social Fund and other funds) reported to the staff by the oil companies for the same concession.<sup>113</sup>

When IMF staff asked the government for an explanation of the U.S.\$115 to U.S.\$215 million difference between what the government said it had received and the companies said they had paid, the government officials said that they "could not provide any supporting documentation on these payments because of confidentiality agreements with the oil companies."<sup>114</sup> In 2003, the IMF said that the bonus payment was U.S.\$327.7 million based on information from Sonangol. But because of repayments back to oil companies for services and prior debt, the net amount was U.S.\$278.6 million. However, the IMF could not determine the use of those funds; did not comment on the U.S.\$100 million social bonus payment that it had previously reported; or reconcile the discrepancy between what Sonangol said it received as a bonus payment in 2003 and what the companies told the IMF they had paid in 2001.<sup>115</sup> As recently as

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<sup>112</sup> Norsk Hydro (30 percent), ConocoPhillips (20 percent), Sonangol (20 percent), Royal Dutch/Shell (15 percent), and Petrobras (15 percent) are the companies involved in Block Thirty-Four; and "Angola: Staff Report for the 2002 Article IV Consultation," pp.19-20.

<sup>113</sup> "Angola: Staff Report for the 2002 Article IV Consultation," pp.19-20.

<sup>114</sup> *Ibid.*, p. 20.

<sup>115</sup> International Monetary Fund, "Angola: Staff Report for the 2003 Article IV Consultation," statistical appendix, July 11, 2003, pp. 77-78.

November 2003, a representative from a company that is a partner in Block 34 told Human Rights Watch that the partner had paid the “largest” bonus payment in Angolan history that totaled about U.S.\$500 million, of which about U.S.\$100 million was a social bonus payment.<sup>116</sup> Despite more details from the government it still did not fully disclose the amount and use of that payment.

Similarly, the government refused to fully disclose the details of suspicious transactions related to frozen assets in Swiss banks. In 1996, a “secret” rescheduling of Angola’s approximately U.S.\$5 billion debt to Russia was negotiated between the Angolan and Russian governments. The debt was largely related to arms purchases made between 1980-1991.<sup>117</sup> The debt rescheduling reportedly involved U.S.\$3.25 billion in debt forgiveness and repackaging the balance into a U.S.\$1.5 billion loan that was payable by 2016 through a series of thirty-one promissory notes were payable to the Russian Ministry of Finance and issued by the Banco Nacional de Angola (BNA), the Angolan central bank. Russia reportedly sold the debt at a sizable discount to Abalone, a private company, in August 2001. Two principals in the company were businessmen with close ties to the Angolan government. The company and the government of Angola then reportedly secured a series of oil-backed loans that were worth at least half of the promissory notes. Those payments eliminated the debt to Russia since the debt was purchased at a discount.

However, Daniel Devaud, a Swiss magistrate, then froze at least U.S.\$700 million held in account at the Geneva branch of a Swiss bank in February-March 2002. Devaud found that “hundreds of millions of dollars” were allegedly paid to “Russian and Angolan dignitaries” and blocked payment of the remaining promissory notes. Only about U.S.\$161 million had been paid to Russia’s Finance Ministry, while at least U.S.\$257.6 million went to Angolan government officials and private businessmen. Devaud also found that three accounts had been opened at a bank in Luxembourg registered to Panamanian companies but whose beneficiaries were allegedly the two businessmen, and Angolan President José Eduardo dos Santos.<sup>118</sup> According to the Economist Intelligence

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<sup>116</sup> Human Rights Watch interview, London, November 12, 2003.

<sup>117</sup> For more information on arms procurement and military expenditures see the following Human Rights Watch reports and backgrounders: *Angola: Arms Trade and Violations of the Laws of War Since the 1992 Elections* (New York: Human Rights Watch, 1994); *Between War and Peace: Arms Trade and Violations of the Laws of War Since the Lusaka Protocol* (New York: Human Rights Watch, 1996); *Angola Unravels: The Rise and Fall of the Lusaka Peace Process* (New York: Human Rights Watch, 1999); “The International Monetary Fund’s Staff Monitored Program in Angola: The Human Rights Implications,” backgrounder, April 2000; and “The Oil Diagnostic in Angola: an Update,” backgrounder, March 2001.

<sup>118</sup> Economist Intelligence Unit, “Angola: Country Report,” May 2002, pp.28-29.

Unit, there was “a strong suspicion that the value of the loans greatly exceeded the reduced value of the debt bought by Abalone” which raised suspicions that the balance of those oil-backed loans, guaranteed by the government of Angola’s oil, fell into private hands at the public’s expense. One of the businessmen told the French newspaper *Le Monde* that the Angolan government approved of the operation and that it benefited both Russia because it recovered debt and Angola because its debt was reduced.<sup>119</sup>

When the IMF first asked the government to provide details of the Russian debt transactions in mid-2001, the government refused.<sup>120</sup> According to one participant in those meetings, when an IMF official asked for details, the government official would look through documents that appeared to have contained many of the details of the transactions, but provided only cursory information. The IMF official abruptly ended the meeting and left out of frustration over the lack of disclosure.<sup>121</sup>

After details of the Russian debt transactions were widely reported in the French and Portuguese press in early 2002, the government was more forthcoming with the IMF. However, when the IMF asked the government for supporting documentation for these transactions and other oil-backed loans in order to reconcile them with a database of the country’s external debt, the government refused “because it would infringe on national sovereignty.”<sup>122</sup> The IMF then said that “[g]iven the increased secrecy of Angola’s external borrowing practices...all external public sector loans [should] be documented, disclosed to the public, and submitted to the National Assembly for approval.”<sup>123</sup> Once again, however, the government refused because it “felt that such a level of transparency vis-à-vis parliament and civil society would be too intrusive on government affairs.”<sup>124</sup>

### **Threats Against Governments**

The Angolan government’s repeated denunciations of arms or possible corruption investigations abroad only underscored the government’s hostility to greater transparency. In particular, the government could have offered assistance to determine

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<sup>119</sup> *Ibid.*, p. 29.

<sup>120</sup> “Angola: Staff Report for the 2002 Article IV Consultation,” p. 20.

<sup>121</sup> Human Rights Watch interview, Luanda, December 9, 2002.

<sup>122</sup> “Angola: Staff Report for the 2002 Article IV Consultation,” p. 20.

<sup>123</sup> *Ibid.*

<sup>124</sup> *Ibid.*

how hundreds of millions of dollars were allegedly stolen or whether bribes had been paid. Instead, it condemned the Swiss and French governments for investigating those activities.

### **Switzerland**

In response to Switzerland's investigation into the Russian debt transactions and its freezing of assets, the Angolan government announced on June 5, 2002 that it would "take legal action against Swiss judge, Daniel Devaud, for defamation of the image and prestige of the Angolan authorities, particularly the Head of State, José Eduardo dos Santos."<sup>125</sup> The government also said that it had withdrawn its ambassador to Switzerland in protest. President dos Santos reportedly said that he "considered judge Daniel Devaud's attitude as arrogant and an abuse of power and a violation of the principles of international law on the basis of which the relations between Angola and Switzerland were established."<sup>126</sup> At this writing, the government had not filed a case against Devaud and the government funds are still frozen in Switzerland. Swiss and Angolan authorities were negotiating a settlement that would involve the release of the funds on the condition that the banks would initially release only U.S.\$37 million to U.S.\$74 million and only to be used for social or humanitarian purposes. The agreement reportedly has been delayed because Angolan authorities apparently rejected those conditions.<sup>127</sup>

### **France**

A corruption trial related to the events in Switzerland that involved former officials of Elf Aquitaine (now part of Total) and others, continued to cause tension between France and Angola. On March 17, 2003 a corruption trial began in Paris that involves thirty-seven defendants who were accused of obtaining approximately U.S.\$430 million from Elf Aquitaine for "personal enrichment and political kickbacks during the late 1980s and early 1990s."<sup>128</sup> Among the defendants was former French interior minister, Charles Pasqua, who allegedly supported questionable arms sales to Angola in 1993 and 1994. The French media refer to these events colloquially as "Angolagate."

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<sup>125</sup> "Government to Sue Swiss Judge," ANGOP, June 6, 2002.

<sup>126</sup> *Ibid.*

<sup>127</sup> Christina Katsouris, "Money Spinners," *Energy Compass*, June 27, 2003.

<sup>128</sup> Martin Arnold, Rebecca Cockburn, and Robert Graham, "The Elf Affair-Who's Who," *Financial Times*, London, April 15, 2003.

The Elf trial also shed light on some of the companies alleged payments to heads of state in Africa because of the alleged activities of one of its defendants, André Tarallo. Tarallo, the former head of Elf-Gabon, was nicknamed “Mr. Africa” because he allegedly funneled tens of millions of dollars in “commissions and “subscriptions” to heads of state in Angola, Cameroon, Congo-Brazzaville, and Gabon in exchange for influence and lucrative oil deals.<sup>129</sup> Tarallo first made these allegations to French investigators in July 2000 and they quickly were reported in the international media.<sup>130</sup> Shortly after the allegations became public, the Office of President dos Santos issued a strong denunciation of the allegations rather than offering to assist the investigation. The statement said that:

The Cabinet of the Presidency of Angola was appalled to learn through the press, of the declarations that have allegedly been made by Mr. André Tarallo [sic], former Director for Africa of the Elf Aquitaine [sic] Group, to French judicial authorities. These declarations gravely denigrate the person and reputation of several African Chiefs of State and their families, among whom his Excellency José Eduardo dos Santos, President of the Republic of Angola...Considering the dubious and irresponsible character of such declarations lies at the root of the defamation campaigns and accusations that have been launched against the Chief of the Angolan state, this Cabinet feels the obligation to forcefully repudiate such allegations, with which Mr. Tarallo [sic] may be trying to disguise possible criminal actions committed by himself or his colleagues at ELF...The Cabinet of the President of Angola believes Mr. Tarallo’s [sic] attitude to be unacceptable and unfair, given that the Angolan authorities granted him, in good will, all manner of assistance to ensure the success of ELF’s operations in Angola and its good performance, which allowed France to occupy the second position in the Angolan oil industry, with obvious benefits.<sup>131</sup>

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<sup>129</sup> Ibid.

<sup>130</sup> For example, see, “Former Executive of Elf Reveals Alleged Kickbacks-Tarallo Says Bribes Went to Christian Democrats,” *Wall Street Journal Europe*, July 12, 2000.

<sup>130</sup> Office of President José Eduardo dos Santos, “Office of the President Repudiates Accusations by Former Elf Employee,” press communication, Luanda, July 19, 2000.

The government also said that it “reserves the right to take, if deemed necessary, the appropriate measures to ensure the defense of the Angolan state.”<sup>132</sup> The Economist Intelligence Unit also reported that President dos Santos had repeatedly declined invitations to France and that the government had delayed approvals for a major Total oilfield in Angola because of displeasure over the legal proceedings.<sup>133</sup> Nevertheless, French courts convicted Tarallo of corruption for misusing Elf’s funds and sentenced him to five years imprisonment and fined him €2 million on November 12, 2003. Tarallo maintained that bribing government officials in Africa was not a misuse of funds since it led to business deals for Elf.<sup>134</sup>

### **Efforts to Prevent Companies from Publishing Data**

The government was also hostile towards company efforts to publish their payments to the government. Following pressure from NGOs, and after negotiations with Sonangol and the government, BP’s spokesperson told Global Witness on February 6, 2001, that it would annually publish financial data on Angola, though without specifying when or in what format this would be done.<sup>135</sup> In particular, BP committed to publish the total net production by exploration/production block; aggregate payments made by BP to Sonangol; and the total amount in taxes and levies paid to the Angolan government. Additionally, BP noted that the amount of the signature bonus payment it made for the offshore concession, Block Thirty-One, was recorded in the 1999 annual report for BP Exploration (Angola) Limited available, at Companies House in London.<sup>136</sup> BP paid a signature bonus of U.S. \$111,089,000 for Block Thirty-One, according to the annual report.<sup>137</sup> KPMG reported that all of the joint venture partners in Block Thirty-One, including BP, paid a total bonus payment of approximately U.S. \$335 million.

However, the Angolan government had either not agreed or changed its mind regarding the publication of payments. In response to BP’s effort at openness, Manuel Vicente,

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<sup>132</sup> Ibid.

<sup>133</sup> Economist Intelligence Unit, “Angola: Country Report,” May 2003, p.18.

<sup>134</sup> Robert Graham, “French Court Jails Elf Officials for Corruption,” *Financial Times*, November 13, 2003.

<sup>135</sup> Global Witness, “All the President’s Men: The Devastating Story of Oil and Banking in Angola’s Privatised War,” March 2002, p. 41.

<sup>136</sup> Letter dated February 6, 2001 from BP to Global Witness; and “Campaign Success: BP Makes Move for Transparency in Angola,” Global Witness press release, February 12, 2001.

<sup>137</sup> BP Exploration (Angola) Limited, “Annual Report and Accounts 1999,” October 16, 2000, p. 11. BP published this payment because it was considered a “material payment” that had to be disclosed to Companies House in London.



the Chairman and Chief Executive Officer of Sonangol, issued a harsh letter to BP that threatened to cancel its multibillion dollar contracts in the country if BP proceeded with the publication of data. The letter was also sent to all of the other companies operating in Angola as a warning not to follow BP's lead. The letter read:

*The Sonangol Letter to BP*<sup>138</sup>

Dear Sir,

It was with great surprise, and some disbelief, that we found out through the press that your company has been disclosing information about oil-related activities in Angola, some of which have a strict confidential character.

According to the media, your company promised to continue to supply further such information in a letter dated 06/02/01 and signed by Mr. Richard Oliver [sic], thereby seriously violating the conditions of legal contracts signed with Sonangol.

As a result, we are making enquiries to confirm the veracity of information that has been published which, if confirmed, is a sufficient reason to apply measures established in Article 40 of the PSA [Production Sharing Agreement] i.e. contract termination.

We are aware that some oil companies have been under pressure by organized groups that use available means in an orchestrated campaign against some Angolan institutions by calling for "pseudo-transparency" of legitimate government actions.

As the national authority that awards concessions, Sonangol is fully aware that its economic link with your company should not be mixed with other relationships that seriously violate existing contracts in order to attract bogus credibility.

Given this situation, we highly recommend that your company scrupulously respect the agreements that it has signed with Sonangol, as well as Angolan legislation relating to the confidentiality of information.

May we recall that there are specific channels, which should be respected, to release any type of authorized information.

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<sup>138</sup> Letter from Manuel Vicente to BP, February 2001.

Given the seriousness of this situation, if the provision of information by your company is confirmed and we observe moral or material damage thereof, we reserve the right to take appropriate action. The same is valid if you repeat such practices in the future.

Finally, and in the hope of maintaining the good relations that we have always had with the oil companies that operate in Angola, we strongly discourage all our partners from similar attitudes in the future.

In closing, please accept our best wishes.

[signed]

The President of the Administrative Council

Manuel Vicente

The letter had an obviously chilling effect on the industry and efforts to promote voluntary transparency. No other company has tried to undertake a similar effort on Angola. BP has continued to promote transparency and publishes data in its filings in Companies House in the United Kingdom. It has not, however, published its production data by oil block as it previously promised. Other companies often cite the response by Sonangol as the reason that they will not publish this data voluntarily. For example, Lee Raymond, the Chairman and Chief Executive Officer of ExxonMobil told *The Financial Times* that ExxonMobil rigorously followed confidentiality clauses with the Angolan government.<sup>139</sup>

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<sup>139</sup> David Buchan and Sheila McNulty, "A Dinosaur Still Hunting For Growth: Interview Lee Raymond, ExxonMobil: The Oil Chief Makes No Apology for His Company's Dominance—or for His 'Political Incorrectness,'" *Financial Times*, March 12, 2002.

## VII. The Impact of Lack of Transparency and Accountability on Human Rights and Development

A considerable amount of research by the World Bank, IMF, and academic specialists has shown that a country's reliance on natural resource revenues, particularly oil, can impede economic growth and diversification and facilitate corruption. It is particularly problematic when the government is the direct beneficiary of economic activity and is therefore not reliant on domestic taxation or a diversified economy to function.<sup>140</sup> This dynamic is known as the "Resource Curse" or as one academic labeled it, "The Paradox of Plenty."<sup>141</sup>

However, little research has focused on the negative human rights impact of a government's reliance on natural resource revenues. Human Rights Watch believes that a country's substantial reliance on natural resource revenues can have a negative impact on human rights unless measures are taken to ensure that they are managed and spent transparently. In such an economy, those who rule the state have unique opportunities for self-enrichment and corruption. Because achieving political power often becomes the primary avenue for achieving wealth, the incentive to seize power and hold onto it indefinitely is great. This dynamic has a corrosive effect on governance and ultimately, respect for human rights. In this context, a key indicator of the quality of governance is whether a government is committed to transparency, accountability, the rule of law, and human rights. When a ruler or a governing elite are undemocratic or otherwise unaccountable to their citizens, poor management, poor economic decision-making, corruption, and human rights abuses thrive. Instead of improving the overall situation, the existence of a centrally controlled stream of revenue—such as oil revenue—can serve to reinforce or exacerbate an undemocratic or otherwise unaccountable ruler's or governing elite's worst tendencies by providing the financial wherewithal to entrench and enrich itself without any corresponding accountability.

These problems are clearly present in Angola. There have been many efforts to reform government practice, but most have not been effective, despite pressure from international institutions, governments, nongovernmental organizations (NGOs), and

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<sup>140</sup> Alan Gelb and associates, *Oil Windfalls: Blessing or Curse?* (New York: The World Bank and Oxford University Press, 1988); Carlos Leite and Jens Weidmann, "Does Mother Nature Corrupt? Natural Resources Corruption, and Economic Growth," International Monetary Fund Working Paper, July 1999; and Terry Lynn Karl, *The Paradox of Plenty: Oil Booms and Petro States*, (Berkeley: University of California Press, 1997).

<sup>141</sup> *The Paradox of Plenty: Oil Booms and Petro States*.

companies. The Angolan government does not make information about its financial dealings available to the public, or even to international institutions. The government's behavior has had a negative impact on the ability of the public to exercise oversight of the use of public funds and in the absence of true democracy, there are few avenues for public accountability. In this context, the data from the Oil Diagnostic and IMF Staff Reports represent a first window onto how the government uses or misuses public funds. The mismanagement of resources documented here has had an extremely negative effect on the country's development and the well-being of the population. Insufficient resources have been spent on the needs of the population and the government has tried to force the international community to shoulder much of that burden. Human Rights Watch welcomes the international community's efforts to provide substantial funding for Angola's reconstruction and development. However, such funds should complement, not replace, a serious commitment by the Angolan government to attain minimum standards in critical areas such as health and education. To date Angolan government efforts have been grossly inadequate.

This section describes how the government's actions and inaction have led to violations of human rights under the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR). The government's failure to provide adequate information about its use of public funds violates Angolan's right to information under article 19 of the ICCPR.<sup>142</sup> The government's failure to allocate adequate financial resources to health and education, at least in part because of mismanagement and corruption, contravenes its obligations under articles 12 and 13 of the ICESCR.<sup>143</sup> Moreover, the Angolan government has

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<sup>142</sup> Article 19 of the ICCPR states: 1. Everyone shall have the right to hold opinions without interference. 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. 3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health or morals.

<sup>143</sup> Article 12 of the ICESCR states: 1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. 2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for: (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child; (b) The improvement of all aspects of environmental and industrial hygiene; (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases; (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

Article 13 of the ICESCR states: 1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote

repeatedly failed in its treaty obligation to report on its compliance with the covenants as required under article 40 of the ICCPR and articles 16 and 17 of the ICESCR. Angola acceded to the ICCPR and ICESCR in October 1992.<sup>144</sup> Reports on its compliance with the ICCPR were due in 1997 and 1998. A third report will be due in September 2003. While compliance reports under the ICESCR were due in 1994 and 1999.<sup>145</sup> Angola has yet to submit even one of these long-overdue periodic reports.

Even in cases where Angola may not have violated its human rights treaty obligations, it has clearly undermined the ability of Angolans to enjoy their rights and to exercise adequate oversight of the government. Two areas where this has occurred are elections and funding of the judiciary. The government's failure to hold elections since 1992 has prevented Angolans from holding their government accountable and has undermined the government's commitments under article 25 of the ICCPR. The underfunding of the judiciary has prevented Angolans from having adequate recourse when their rights are violated, impeding another mechanism of government accountability.

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understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace. 2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right: (a) Primary education shall be compulsory and available free to all; (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education; (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education; (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education; (e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved. 3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions. 4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

<sup>144</sup> United Nations, Office for the High Commissioner for Human Rights, "International Covenant on Civil and Political Rights: Angola," treaty bodies ratification database; and United Nations, Office for the High Commissioner for Human Rights, "International Covenant on Economic Social and Cultural Rights: Angola," treaty bodies ratification database.

<sup>145</sup> United Nations, Office for the High Commissioner for Human Rights, Angola: Reporting Status for the International Covenant on Civil and Political Rights, treaty bodies database: reporting status; and United Nations, Office for the High Commissioner for Human Rights, Angola: Reporting Status for the International Covenant on Economic, Social, and Cultural Rights, treaty bodies database: reporting status.

## **Freedom of Information**

One major obstacle to public scrutiny of the government's use of public funds has been the government's failure to provide relevant data. The government severely restricts information about its activities and refuses to disclose basic information about its revenues and expenditures. Since the early 1990s, there have been numerous allegations of mismanagement of funds, revenue illegally bypassing the central bank, and opaque arms purchases (see sections V and VI above). Because the Angolan public cannot obtain relevant information, however, citizens have little way of evaluating such allegations. This lack of transparency undermines Angolan citizens ability to enjoy their right to information as enshrined under Article 19(2) of the ICCPR that states, "[e]veryone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."<sup>146</sup>

In Human Rights Watch's view this right should be interpreted as generally entailing a right of access to official information as well as information that is generally available. Although international human rights law does not explicitly provide a right to such official information, the state *is* required to "ensure" and "give effect to" the right to inform oneself.<sup>147</sup> Human Rights Watch believes that except in narrow cases of national security, citizens should have maximum access to information relating to the financial activities of their government. In the case of Angola, the national security exception clearly cannot justify the government's behavior: it withholds virtually all data about revenues and expenditures and its budgets are widely considered to be unreliable and inaccurate.<sup>148</sup>

## **Underfunding of the Judiciary and the Right of Access to Justice**

Gross mismanagement and misuse of funds also has had a dramatic impact on the welfare of the Angolan population. It impedes social development and economic stability, and undermines economic and political support for institutions necessary to protect human rights, often the same institutions necessary to combat corruption and

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<sup>146</sup> International Covenant on Civil and Political Rights, Art. 19(2).

<sup>147</sup> Human Rights Watch, *Chile: Progress Stalled-Setbacks in Freedom of Expression Reform*, a Human Rights Watch short report, March 2001.

<sup>148</sup> For example, see the IMF's comments on the Angolan budget in "Angola: Staff Report for the 2002 Article IV Consultation," p. 16.

increase transparency. In Angola, one such underfunded institution is the judiciary. It is difficult to determine exactly how much money is allocated to the judiciary. However, studies of Angola's judiciary have noted a chronic lack of resources to rebuild or maintain judicial infrastructure or pay salaries of judges. For example, the International Bar Association repeatedly noted these problems in its July 2003 assessment of the Angola's judiciary<sup>149</sup>

The U.N. Committee on Economic, Social, and Cultural Rights, the U.N. body charged with interpreting the ICESCR, has noted the importance of the judiciary in protecting all human rights. In its commentary, the committee noted:

In relation to civil and political rights, it is generally taken for granted that judicial remedies for violations are essential. Regrettably, the contrary assumption is too often made in relation to economic, social and cultural rights. This discrepancy is not warranted either by the nature of the rights or by the relevant Covenant provisions... While the general approach of each legal system needs to be taken into account, there is no Covenant right which could not, in the great majority of systems, be considered to possess at least some significant justiciable dimensions. It is sometimes suggested that matters involving the allocation of resources should be left to the political authorities rather than the courts. While the respective competences of the various branches of government must be respected, it is appropriate to acknowledge that courts are generally already involved in a considerable range of matters which have important resource implications. The adoption of a rigid classification of economic, social and cultural rights which puts them, by definition, beyond the reach of the courts would thus be arbitrary and incompatible with the principle that the two sets of human rights are indivisible and interdependent. It would also drastically curtail the capacity of the courts to protect the rights of the most vulnerable and disadvantaged groups in society.<sup>150</sup>

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<sup>149</sup> International Bar Association, *Angola: Promoting Justice Post-Conflict* (London: International Bar Association, 2003).

<sup>150</sup> United Nations, "Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies," General Comment 9 by the Committee on Economic, Social, and Cultural Rights, HRI/GEN/1/Rev.6, May 12, 2003, p. 54.

The recommendations of the Committee cannot be implemented if courts do not physically exist. As described below, the Angolan government does not provide sufficient resources for its judiciary, effectively curtailing the ability of Angolans to seek redress.

There are supposed to be nineteen provincial courts and 168 municipal courts in Angola, according to the assessment by the International Bar Association.<sup>151</sup> All of the provincial courts nominally function. However, only twenty-three of the country's 168 municipal courts were functioning as of July 2003. The government has said that it plans to reopen municipal courts that were closed or destroyed because of the war at the rate of two or three per year. At that rate, it would take at least forty-eight years for all of the courts to reopen. The International Bar Association (IBA) reported that Canada donated U.S.\$250,000 to the government to facilitate reopening of the courts, but almost withdrew the money because the government did not use it quickly enough. Even where courts function, it may be at a very low level. The IBA reported that the provincial court in the province of Malanje consists of a storage room, court proceedings must stop when it rains because of flooding, and the prosecutor works from home due to a lack of facilities. In many cases, there is only one judge per province. Some observers estimate that the country needs another 200 judges in order for the courts to adequately function.<sup>152</sup>

U.N. representatives have repeatedly stressed that chronic underfunding of the judiciary has had a negative impact on human rights. For example, Angolans displaced by the war—many of whom suffered rape, sexual harassment, killings, beatings, or extortion—do not have adequate judicial redress and lack of judicial resources is one important cause.<sup>153</sup> Francis Deng, the U.N. Special Representative on Internally Displaced Persons noted in 2001 that:

The magnitude of protection problems in Angola is seriously compounded by the absence of effective remedies to address such

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<sup>151</sup> *Angola: Promoting Justice Post-Conflict* p.19.

<sup>152</sup> *Ibid.*, pp.30-33.

<sup>153</sup> See: Human Rights Watch, "Struggling Through Peace: Return and Resettlement in Angola," a Human Rights Watch short report, August 2003; Human Rights Watch, "The War is Over: The Crisis of Angola's Internally Displaced Continues," a Human Rights Watch briefing paper, July 2002; and United Nations, "Report of the Representative of the Secretary-General on Internally Displaced Persons, Mr. Francis Deng, Addendum 5, Profiles in Displacement: Angola," E/CN.4/2001/5/Add. 5.



problems. Less than 5 percent of Angolan municipalities have a fully functioning justice system. A senior government official readily conceded to the Representative [Deng] that, to the extent justice existed, it was only in Luanda. By the same token, the Representative was informed by the Attorney-General that his office is operational in all provinces throughout Angola and, indeed, provincial courts are occasionally known to solve problems. However, rural areas and camps for the displaced are underserved, leaving the resident and displaced populations in these areas outside the scope of State protection structures and with little recourse against the military and police personnel who are supposed to be protecting them. The Representative was informed that where international organizations and NGOs bring protection concerns to the attention of the military and provincial authorities, little or no remedy is provided.<sup>154</sup>

Even after the war with UNITA had ended, abuses and the lack of access to justice have not subsided. The U.N. Secretary-General's February 2003 mission report on Angola raised similar concerns about ongoing abuses and the lack of access to the judiciary:

Although war-related violations of human rights have virtually disappeared since the cessation of hostilities, other human rights abuses continue to occur. Violations against war-affected populations, including harassment, looting, extortion, intimidation, physical abuse, rape and arbitrary detention have continued, particularly in areas where State administration is weak or has been extended only recently and where mechanisms for redress remain inadequate. Many of those violations have affected internally displaced persons and have included forced resettlement and return as well as exclusion from social services and humanitarian assistance. A number of violations have also been reported in reception areas, where populations have only limited access to the formal judicial system.<sup>155</sup>

The lack of a functioning judiciary also has a serious impact on detainees and defendants. In the absence of functioning municipal courts, cases are transferred to provincial courts. This creates a high backlog of cases. Prolonged pretrial detentions are

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<sup>154</sup> "Report of the Representative of the Secretary-General on Internally Displaced Persons, Mr. Francis Deng, Addendum 5, E/CN.4/2001/5/Add. 5, p. 24.

<sup>155</sup> United Nations, "Report of the Secretary-General on the United Nations Mission in Angola," S/2003/158, February 7, 2003, p. 6.

common and often last two to three years. In one case, a fourteen-year old boy spent seven years in prison without facing trial. He was ultimately released.<sup>156</sup> Because of the malfunctioning judiciary, the State Department reported, “in many cases, police beat and then released detainees rather than make any effort to prepare a formal court case.”

Given the large amount of public funds that cannot be accounted for by the government, Human Rights Watch believes that there are sufficient resources to significantly reconstitute the judiciary, provided those resources are properly allocated and managed. In this context, the government’s failure to quickly reconstitute the judiciary represents a major failure of political will and not a lack of resources.

### ***Inadequate Funding of Health, Education, and Social Services***

Human Rights Watch does not as a general matter make recommendations on how governments should allocate resources or weigh competing funding priorities. However, when there is clear evidence of gross mismanagement or misuse of public funds that diverts resources away from support for human rights, we believe it proper to document the impact. In the case of Angola, the scale of financial mismanagement is so large and the underfunding of essential social services so glaring that it compels the conclusion that funds needlessly have been diverted away from services and institutions critical to fulfillment of Angolans’ economic and social rights. The U.N. Secretary-General’s April 2001 report to the Security Council on the U.N. mission in Angola noted:

Social and economic rights remained a serious problem in Angola...Despite recent initiatives, there is still a gap between Angola’s substantial revenues and the funds allocated to improving the living conditions of the population. A larger effort is needed from the government, with the support of the international community, to provide for more basic rights and develop a stronger strategy against poverty in Angola.<sup>157</sup>

An overall sense of the impact that lack of transparency and mismanagement have had on the well-being of the country’s population can be derived from a comparison of the total amount of unaccounted for funds and the total amount of social spending. As

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<sup>156</sup> *Angola: Promoting Justice Post-Conflict*, pp.37-39.

<sup>157</sup> “Report of the Secretary-General on the United Nations Office in Angola,” S/2001/351, p. 5.

noted earlier, Angola is one of the poorest countries in the world. Approximately 70 percent of Angolans live in poverty and the country ranked 164<sup>th</sup> out of 175 countries in the United Nations Development Programme (UNDP) 2003 Human Development Index.<sup>158</sup> What is particularly troubling is that Angola's 2003 HDI ranking was its lowest in several years, even though oil production and revenues had increased and its war had ended. In 2002, the country was ranked 161<sup>st</sup> out of 173 countries in the Human Development Index (HDI).<sup>159</sup> In 2001, Angola's HDI ranking was 146<sup>th</sup> out of 162 countries.<sup>160</sup> And it ranked 160<sup>th</sup> out of 174 countries in both 1999 and 2000.<sup>161</sup>

Overall, Angola's social spending is far below its regional neighbors. Between 1997 and 2002, the average spending on social programs (including health) for Cameroon, Chad, the Republic of Congo (Congo-Brazzaville), Equatorial Guinea, Gabon, Mozambique, Nigeria, and South Africa was about 6.7 percent of total government spending annually. Angola, however, only spent about 3.45 percent of its budget on social programs annually.<sup>162</sup>

This relatively low level of funding stands in stark contrast to the Angolan population's desperate need for more services. Healthcare is a case in point. The average life expectancy in Angola is only 36.1 years, and this in part reflects the failure of the government to make basic healthcare services available.<sup>163</sup> Olara Otunnu, the U.N. Special Representative for Children and Armed Conflict noted after his visit to Angola:

Infant mortality in Angola is the second highest in the world. One third of Angolan children die before their fifth birthday. Out of every 10 children, five die of malaria before reaching the age of five. Immunization rates in Angola are among the lowest in the world,

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<sup>158</sup> United Nations Development Programme (UNDP), *Human Development Report 2003* (New York: Oxford University Press, 2003), Annex III: Human Development Indicators.

<sup>159</sup> United Nations Development Programme (UNDP), *Human Development Report 2002* (New York: Oxford University Press, 2002), Annex I: Human Development Indicators.

<sup>160</sup> United Nations Development Programme (UNDP), *Human Development Report 2001* (New York: Oxford University Press, 2001), Human Development Indicators.

<sup>161</sup> United Nations Development Programme (UNDP), *Human Development Report 2000* (New York: Oxford University Press, 2000), Human Development Indicators; United Nations Development Programme (UNDP), *Human Development Report 1999* (New York: Oxford University Press, 1999), Human Development Indicators.

<sup>162</sup> International Monetary Fund, "Angola: Staff Report for the 2003 Article IV Consultation," July 14, 2003, p. 36.

<sup>163</sup> World Health Organization, "Angola: Selected Indicators," available at [www.who.int](http://www.who.int).

causing death from otherwise preventable diseases such as tetanus, measles, pneumonia and meningitis.<sup>164</sup>

60 percent of hospitals and clinics were destroyed during the war, taking a devastating toll on the health care system. Even the effects of war, however, do not adequately explain the state of the health system in areas firmly under government control.<sup>165</sup> Francis Deng, the U.N. Special Representative on Internally Displaced Persons made similarly bleak observations about the state of the health system in government-controlled areas after his visit to Angola in 2000:

The assessment confirmed that the health system in Angola was unable to meet the needs of at-risk populations, including the displaced. None of the hospitals visited during the assessment had sufficient essential medicines. All were found to be understaffed, under funded and in need of basic equipment. Throughout the country, there were shortages of both general and trained medical personnel and in several locations the staff had not received salaries for a number of months. The conditions of hospitals and health posts varied. In some cases, buildings were adequate, while in others, roofs were in need of repair. More than 50 percent of the buildings lacked a regular supply of potable water and many had inadequate sanitary facilities...Vaccinations were incomplete in many locations. Large numbers of children under five had received only one dose of a multi-dose vaccine or none at all. Coverage for children over five was even more limited. In all locations visited, delivery practices were rudimentary. Although problems with birthing are common, there were virtually no delivery or post-delivery facilities in either hospitals or health facilities.<sup>166</sup>

Education spending is similarly low. The average for Cameroon, Equatorial Guinea, Mozambique, Nigeria, and South Africa was about 12.7 percent of government expenditure from 1997 to 2002. In Angola, it was only 4.9 percent of government

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<sup>164</sup> Office of the Special Representative of the Secretary-General for Children and Armed Conflict, "Report on the Mission by the Special Representative of the Secretary-General for Children and Armed Conflict, Olara A. Otunnu to Angola, May 11-17, 2002, May 2002, p. 5.

<sup>165</sup> *Ibid.*

<sup>166</sup> "Report of the Representative of the Secretary-General on Internally Displaced Persons, Mr. Francis Deng, Addendum 5: Angola," E/CN.4/2001/5/Add.5, pp. 7-8.

expenditure during the same period.<sup>167</sup> The need, however, is great. About 60 percent of school-age children do not have access to education and about 5,000 schools were destroyed during the war.<sup>168</sup> According to the United Nations Children's Fund (UNICEF), only 4 percent of Angolan children who attend primary schools reach the fifth grade.<sup>169</sup>

In addition to the government, the U.N. and NGOs in Angola provide essential assistance to millions of Angolans. In 2003, the U.N.'s Consolidated Inter-Agency Appeal, the combined request from the U.N. and NGOs to provide humanitarian assistance in Angola, requested U.S.\$313,843,200 to fund all of its humanitarian activities, including food aid, health, education, landmine clearance, resettlement of internally displaced persons (IDPs), and human rights protection for IDPs. The appeal stated that 1 million Angolans were dependent on "external aid to survive" and a total of 3.7 million required various forms of humanitarian assistance—about 36 percent of the total population.<sup>170</sup> From 1997 to 2002, requests under the Consolidated Appeal ranged between U.S.\$80.9 million and U.S.\$289.1 million, but donors only funded between 43.9 percent and 81 percent of these requests.<sup>171</sup>

An important reason for such low levels of government funding is the unexplained diversion of funds, as detailed in the IMF reports. It is revealing to compare the amount of money the U.N. needed for humanitarian needs; the amount of money the government spent on education, health, and other social services (social security, welfare, and housing); and the disappeared funds. The contrasts are striking as the following table shows.

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<sup>167</sup> "Angola: Staff Report for the 2003 Article IV Consultation," p. 36.

<sup>168</sup> "Report on the Mission by the Special Representative of the Secretary-General for Children and Armed Conflict, Olara A. Otunnu to Angola, May 11-17, 2002," p. 4.

<sup>169</sup> UNICEF, Angola: Statistics," August 2003.

<sup>170</sup> United Nations, *Consolidated Inter-Agency Appeal 2003* (New York: United Nations, November 2002), p.1.

<sup>171</sup> See: United Nations, *Consolidated Inter-Agency Appeals* from 1997-2003. These statistics and reports are available at [www.reliefweb.int/appeals/index.html](http://www.reliefweb.int/appeals/index.html) in the Angola section.

Table 11: Comparison of Angolan Government social expenditures, United Nations Humanitarian Assistance, and Government Discrepancy (U.S.\$ millions)<sup>172</sup>

| Year   | 1997  | 1998 | 1999  | 2000 | 2001 | 2002 | TOTAL |
|--|-------|------|-------|------|------|------|-------|
| Angolan Government Total Social Spending (Health, Education, Social Security, Welfare, Housing)                  | 547   | 316  | 238   | 834  | 857  | 840  | 3,632 |
| Angolan Government Spending on Education and Health Alone  | 442   | 256  | 165   | 348  | 544  | 533  | 2,288 |
| U.N. Inter-Agency Appeal Requested   | 199   | 80.9 | 111   | 261  | 153  | 289  | 1,094 |
| U.N. Inter-Agency Appeal Actual  | 87.4  | 56.0 | 82.1  | 137  | 124  | 159  | 645.5 |
| Government Discrepancy   | 1,775 | 34   | 1,119 | 407  | 540  | 347  | 4,222 |
| Amount by Which Actual U.N. and All Angolan Government Social Spending Exceeds Government Discrepancy: 1997-2002 | 55.5  |      |       |      |      |      |       |
| Amount by Which Government Discrepancy Exceeds Angolan Government's Health and                                   | 1,934 |      |       |      |      |      |       |

<sup>172</sup> Sources: "Angola: Staff Report for the 2002 Article IV Consultation," p. 33; "Angola: Selected Issues and Statistical Appendix," p.109; and United Nations, *Consolidated Inter-Agency Appeals* from 1997-2003. These statistics and reports are available at [www.reliefweb.int/appeals/index.html](http://www.reliefweb.int/appeals/index.html) in the Angola section. Angolan government expenditures were classified as education, health, social security, welfare, and housing.

|                                      |  |
|--------------------------------------|--|
| Education<br>Spending: 1997-<br>2002 |  |
|--------------------------------------|--|

As the table shows, unexplained expenditures in every year from 1997-2002 were far greater than both the total amount that the U.N. requested and what it received for humanitarian programs, except in 1998. In aggregate, the unexplained expenditures were some U.S.\$3.1 billion more than the amount requested under the Inter-Agency Appeal and U.S.\$3.6 billion more than the appeal actually received. That sum is staggering: more than six times the amount of money received under the Inter-Agency Appeal has disappeared at a time when international assistance was providing for the critical needs of about 30 percent of Angolans.

Overall, expenditures under the Inter-Agency Appeal plus the Angolan government's social spending were only about U.S.\$55 million more than unexplained expenditures from 1997 to 2002. Total humanitarian and social spending was approximately U.S.\$4.27 billion while unexplained expenditures were about U.S.\$4.22 billion. In effect, the Angolan government misspent an amount roughly equal to the total amount spent on the humanitarian, social, health, and education needs of a population in severe distress. Based on those figures, it is apparent that the Angolan government could have allocated far more for social expenditures had it chosen to do so.

### **Social Bonus Payments from Companies**

Payments made by oil companies to Sonangol for social projects were not scrutinized in the Staff Report. However, KPMG did examine these payments as part of the Inception Report. Social bonus payments were made as part of the contracts with oil companies that were exploring and producing in Angola. Technically, this is social spending, but it falls outside of formal government spending since Sonangol designates the use of the funds. To our knowledge, there has been no audit or other detailed accounting of the use or effectiveness of such funds. These bonus payments were either payable in a single lump sum either in the year the contract was signed or when exploration began. They can also be paid annually; beginning with the year the contract is signed.<sup>173</sup> KPMG compiled these sums from the Production Sharing Agreements themselves and according Inception Report this is the known amount paid in social bonus funds:

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<sup>173</sup> KPMG, *Inception Report*, p.125.

Table 12: Exploration Bonuses (U.S.\$ Millions)

| Year         | Block 18                 | Block 21                 | Block 24                  | Block 25                 | Block 31                 | Block 32                 | Block 33                  | Block 34 | Total       |
|--------------|--------------------------|--------------------------|---------------------------|--------------------------|--------------------------|--------------------------|---------------------------|----------|-------------|
| 1997         | 3.0                      | -                        |                           | -                        | -                        | -                        | -                         | -        | 3.0         |
| 1999         | -                        | -                        |                           | -                        | 1.0                      | 1.0                      | 12.5                      | -        | 14.5        |
| 2000         | -                        | -                        | 10.0                      | 1.0                      | 1.0                      | 1.0                      | 12.5                      | -        | 15.5        |
| 2001         | -                        | 3.0                      |                           | -                        | 1.0                      | 1.0                      | 12.5                      | -        | 17.5        |
| 2002         | -                        | -                        |                           | -                        | 1.0                      | 1.0                      | 12.5                      | -        | 14.5        |
| 2003         | -                        | -                        |                           | -                        | -                        | -                        | -                         | -        | -           |
| 2004         | -                        | -                        |                           | -                        | -                        | -                        | -                         | -        | -           |
| <b>Total</b> | <b>3.0<sup>174</sup></b> | <b>3.0<sup>175</sup></b> | <b>10.0<sup>176</sup></b> | <b>1.0<sup>177</sup></b> | <b>4.0<sup>178</sup></b> | <b>4.0<sup>179</sup></b> | <b>50.0<sup>180</sup></b> | <b>-</b> | <b>65.0</b> |

In addition to the exploration bonuses that KPMG reported, the IMF determined that approximately U.S.\$100 million had been paid for Block Thirty Four. Thus, since 1997, Sonangol has received at least U.S. \$165 million from oil companies for social projects, but the government has not provided an accounting of those funds. Human Rights Watch spoke to an oil company representative in Luanda who has visited some of the projects. He confirmed that some projects were underway, such as water projects, but could not verify whether the scope and scale of those projects matched the amount of funds that Sonangol had received.<sup>181</sup>

Human Rights Watch believes that a mechanism to coordinate all forms of social spending should be developed in order to adequately coordinate the use of resources. This is especially important given the sizable amount of corporate bonus payments directed to social projects.

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<sup>174</sup> To be used in community and social projects.

<sup>175</sup> To be used in community and social development projects to be defined by Sonangol

<sup>176</sup> Ibid.

<sup>177</sup> Ibid.

<sup>178</sup> Ibid.

<sup>179</sup> Ibid.

<sup>180</sup> Ibid.

<sup>181</sup> Human Rights Watch interview, Luanda, November 30, 2002.



## ***The Angolan Government's Obligation to Fulfill Economic, Social and Cultural Rights***

The ICESCR acknowledges that different countries have different levels of resources available to them and does not unrealistically require countries to immediately devote more resources than they have to fulfill their obligations. Rather, the covenant calls upon governments to progressively implement those rights commensurate with the amount of resources available.

Gross misallocation of resources to the detriment of the enjoyment of economic and social rights can constitute a human rights violation. The diversion of funds from health services and facilities is a case in point. Article 12 of the ICESCR requires that states “recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.” This includes “provision for the reduction of the stillbirth-rate and of infant mortality...prevention, treatment and control of epidemic, endemic, occupational and other diseases;” and “creation of the conditions which would assure to all medical service and medical attention in the event of sickness.”<sup>182</sup>

The U.N. Committee on Economic, Social, and Cultural Rights, the authoritative interpretive body for the ICESCR, has said in General Comment 14 that a “violation of the obligation to fulfill” requirements under article 12 can occur when there is “insufficient expenditure or misallocation of public resources which results in the non-enjoyment of the right to health by individuals or groups.”<sup>183</sup> Similarly, the Maastricht Guidelines on Violations of Economic, Social, and Cultural Rights state that a violation “through the acts of commission” of the ICESCR can occur if a government engages in the “reduction or diversion of specific public expenditure, when such reduction or diversion results in the non-enjoyment of such rights and is not accompanied by adequate measures to ensure the minimum subsistence rights for everyone.”<sup>184</sup> The Maastricht Guidelines were an effort by a group of more than thirty experts on international law to elaborate obligations, violations, and remedies under the ICESCR. Governments, multilateral organizations, and NGOs use the guidelines as guidance for interpreting the ICESCR.

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<sup>182</sup> ICESCR, Art. 12.

<sup>183</sup> U.N. Committee on Economic, Social, and Cultural Rights (CESCR), “Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social, and Cultural Rights,” General Comment No. 14 (2000), E/C.12/2000/4, November 8, 2000, paragraph 52.

<sup>184</sup> The Maastricht Guidelines on Violations of Economic, Social, and Cultural Rights, paragraph 14(g).

In the case of Angola, billions of dollars of funds have been mismanaged and misspent. Those funds have not been spent on health, education, or other social services. In effect, that mismanagement of funds has come at the expense of enjoyment of economic and social rights. Indeed, as noted above, the amount of money that has disappeared from 1997 to 2002 is roughly equal to the total social and humanitarian spending by the government and U.N. combined over that same period. Had the government properly accounted for and managed the disappeared funds it is likely that more funds would have been allocated towards the fulfillment of economic, social, or cultural rights, such as increased spending on education, health, and other social services. The government of Angola has not complied with its obligations under international human rights law because it has misallocated resources at the expense of the enjoyment of rights.

The disappearance of funds has been a major impediment to human rights improvements. During the last years of the war, the humanitarian and human rights situation continued to be poor even in areas under government control. For example, the 2001 report of the U.N. Special Representative on Internally Displaced Persons, citing a prior study, reported:

[T]he Government's attitude to the displaced has, in the past, been described as one of neglect: "The Government does very little for those people under its control, and most of the time it asks very little of them. They are left alone to sink or swim without the benefit of any social safety net...Government structures such as MINARS [Ministry of Social Assistance and Reintegration], and the Ministries of Health and Education exist, but are so chronically underfunded as to be almost entirely ineffectual." ...Such an assessment gives particular cause for concern when one considers Angola's endowments of natural resources, in particular its oil reserves.<sup>185</sup>

Like the IMF, the U.N. has repeatedly noted the need for the government to allocate more resources for social expenditures. Olara Otunnu, the U.N. Special Representative for Children in Armed Conflict noted in 2002:

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<sup>185</sup> "Report of the Representative of the Secretary-General on Internally Displaced Persons, Mr. Francis Deng, Addendum 5: Angola," E/CN.4/2001/5/Add.5, p. 11.

With the war now over, the pattern of distribution of national resources should be redirected to address the rehabilitation needs of the population, especially children and youth. In particular, budgetary allocations should reflect a clear priority to basic social services, especially the provision of education, medical facilities, and food.<sup>186</sup>

Even when the government does devote resources for humanitarian purposes, it exaggerates the amount of funding and usually allocates much less than what is needed. Moreover, it also expects the international community to pay for the bulk of assistance. For example, Francis Deng, the U.N. Special Representative on Internally Displaced Persons, commented on this problem in 2001:

The Government has in the past, and for reasons related to the collapse of consecutive peace agreements, tended to consider the responsibility of providing assistance to its displaced and war-affected population as resting with the United Nations. It has since show an increased commitment to emergency assistance, starting with the establishment of the Inter-Ministerial Commission of the National Programme for Emergency Humanitarian Assistance. However, the inter-agency mission of March 2000 noted that the scale and scope of assistance delivered under the National Programme was yet to be clearly determined. More recent sources indicate that the U.S.\$55 million allocated under the first phase of the National Programme was not spent and that in excess of U.S.\$34 million remains, though only U.S.\$17 million of this was rolled into the budget, making overall expenditure much less than originally claimed.<sup>187</sup>

The government's apparent callousness towards humanitarian assistance has had a chilling effect on donors and U.N. Inter-Agency Appeals have never been fully funded (see Table 11 above). Deng noted:

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<sup>186</sup> "Report on the Mission by the Special Representative of the Secretary-General for Children and Armed Conflict, Olara A. Otunnu to Angola, May 11-17, 2002," p. 8.

<sup>187</sup> "Report of the Representative of the Secretary-General on Internally Displaced Persons, Mr. Francis Deng, Addendum 5: Angola," E/CN.4/2001/5/Add.5, p. 18.

Donors are said to feel strongly that the international community should not be expected to provide unlimited assistance and that the Government must assume greater responsibility by reallocating funds towards the social and emergency sectors. Such a view is increasingly convincing given high oil prices, from which the Government gains a substantial proportion of its revenues...[T]he Representative was informed by one senior government official that funds freed by any reductions in military spending would be used to expedite payments on debts accrued through government investment in the oil industry. The need to repay such debts notwithstanding, the Representative strongly recommends that the Government commit additional resources to the humanitarian effort, not least because a greater and more visible commitment on its part may prompt a similar response from donors.<sup>188</sup>

The government's claim that oil-related debt would prohibit increasing humanitarian assistance is not credible because of the massive discrepancies. And the government's pattern of overstating its social expenditures while demanding the international community should pay more has continued into 2003. For example, the government announced that it would spend U.S.\$800 million on education from 2004 until 2015. The government would spend U.S.\$400 million while the remainder would come from the Brazilian government and other sources. According to these numbers, the government's burden would only be about U.S.\$37 million per year, much less than the government already spends.<sup>189</sup>

Similarly, a World Bank official told Human Rights Watch that the government claimed it had spent approximately U.S.\$120 million of an approximately U.S.\$180 million emergency demobilization and resettlement program to assist former UNITA soldiers, their families, and war-affected civilians in 2002. The World Bank official added that the government said that it had spent enough on the program and more than it had originally intended. As a result, the government claimed that it was not its responsibility to pay for any more assistance. Instead, the government said that it would be up to the international community to pay for the balance of the program and any additional assistance. Moreover, the World Bank could not confirm that the government had

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<sup>188</sup> *Ibid.*, p. 18.

<sup>189</sup> "U.S.\$ 800 million Needed for Education Reform," ANGOP, July 30, 2003.

actually spent \$120 million and believed its true spending was actually U.S.\$50 to U.S.\$60 million.<sup>190</sup>

The failure to adequately fund the demobilization program has a direct impact on human rights. The program includes components to provide human rights education to demobilized soldiers, their families, and the communities that where they settle, assistance to women, and child soldiers. Human Rights Watch has found, however, that government demobilization programs effectively excluded assistance to child soldiers. Thus, children's suffering as combatants is only increased when the government provided no specific assistance for them once the war with UNITA ended.<sup>191</sup>

Increased government expenditures alone would not fully resolve the dire humanitarian situation in Angola. But, the availability of additional funds could facilitate major improvements. Human Rights Watch recognizes the magnitude of Angola's humanitarian and social needs and welcomes international assistance in order to fully fund the U.N. Inter-Agency Appeal. However, we also believe that the Angolan government has been negligent by mismanaging public funds and failing to meet the acute needs of its citizenry.

### ***Emerging Issues: HIV/AIDS***

The low level of government spending for health also has serious implications for Angola's emerging public health crises. According to UNAIDS, HIV prevalence increased to 8.6 percent of the population in 2002, but Angola has little data on HIV. It is likely that HIV prevalence is much higher in Angola because the government only conducted a limited survey in the provinces of Luanda and Huila. No other surveys have been conducted since 1996. Even the earlier surveys suggested that the infection rate might be much higher than 8.6 percent. For example, a 1996 survey in the province of Cabinda found that infection rates were rapidly increasing. In 1992 the rate was 6.8 percent and had increased to 8.5 percent by 1996.<sup>192</sup>

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<sup>190</sup> Human Rights Watch interview with World Bank official, Washington, D.C., June 19, 2003.

<sup>191</sup> Human Rights Watch, "Forgotten Fighters: Child Soldiers in Angola," a Human Rights Watch short report, vol.15, no.10 (A), April 2003.

<sup>192</sup> UNAIDS, UNICEF, and WHO, "Angola: Epidemiological Fact Sheets on HIV/AIDS and Sexually Transmitted Infections," 2002 Update, p. 2.

In the case of epidemics and public health emergencies, such as HIV/AIDS, General Comment 14 by the Committee on Economic, Social and Cultural Rights specifies the “right to prevention, treatment and control of diseases” and states that this includes “the creation of a system of urgent medical care in cases of accidents, epidemics, and similar health hazards.”<sup>193</sup> In acceding to the ICESCR, Angola undertook to establish systems that would provide health care to all in epidemics, including HIV/AIDS. However, under General Comment 14, unjustifiably low allocations for HIV/AIDS could lead to a violation of Article 12 of the ICESCR.<sup>194</sup>

The government did develop a national AIDS strategy, scheduled to run from 1999 to 2002. UNAIDS reported that the government expenditure was primarily for the National AIDS plan and that “provincial programmes have a very low budget allocation, and limited staff and infrastructure.”<sup>195</sup> However, even the resources for the program were nominal: only about U.S.\$7.1 million.<sup>196</sup> By comparison, Tanzania had an HIV prevalence rate of 7.8 percent in 2002 and had allocated U.S.\$19 million for HIV programs for that year.<sup>197</sup> The government said that it would apply for approximately U.S.\$75 million in funding for HIV/AIDS and other diseases from the Global Fund to Fight AIDS, Tuberculosis, and Malaria in May 2003.<sup>198</sup> Nevertheless, Human Rights Watch believes that greater resources should be devoted to Angola’s HIV/AIDS crisis. A failure to do so could undermine Angola’s commitments under Article 2 of the ICESCR.

### ***Lack of Democracy***

A critical way for the public to hold officials accountable is through voting. Elections allow voters to choose how they should be governed and, indirectly at least, provides an

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<sup>193</sup> CESCR General Comment No. 14, “The right to the highest attainable standard of health,” paragraph 16.

<sup>194</sup> U.N. Committee on Economic, Social, and Cultural Rights (CESCR), “Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social, and Cultural Rights,” General Comment No. 14 (2000), E/C.12/2000/4, November 8, 2000, paragraph 52.

<sup>195</sup> UNAIDS, “Angola: National Response Brief,” 2002. This document is available at: [www.unaids.org/nationalresponse/r](http://www.unaids.org/nationalresponse/r).

<sup>196</sup> Government of Angola, Ministry of Health, National Office of Public Health, “Strategic Plan for the National Program in the Fight Against AIDS: 1999-2002,” July 15, 1999, p. 49.

<sup>197</sup> UNAIDS, “Tanzania: National Response Brief,” 2002. This document is available at: [www.unaids.org/nationalresponse](http://www.unaids.org/nationalresponse).

<sup>198</sup> “Country to Get USD 74 Million from Global Fund,” ANGOP, May 30, 2003.

opportunity for public input on government use of public funds. In Angola, however, this has not been the case.

Angola does not comply with article 25 of the International Covenant on Civil and Political Rights (ICCPR), which states: “Every citizen shall have the right and the opportunity...without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors....”<sup>199</sup>

On paper, Angola is a republic that allows elections of members of the National Assembly (parliament) and the president. In practice, however, Angolans do not have the ability to change their government. Power is concentrated in the hands of the president and the National Assembly has largely served as a “rubber stamp” body for the president and council of ministers.<sup>200</sup> The last elections were held in September 1992 and reported to have been generally free and fair. However, UNITA refused to recognize the need for runoff elections and rejected the results. By October, UNITA resumed the war with the government.<sup>201</sup> Since that time, there have not been elections in the country. As a result of UNITA’s rejection of the 1992 elections, President José Eduardo dos Santos has been in power since 1979.<sup>202</sup>

Prior to the end of the war in April 2002, the government did state that it wanted to hold elections.<sup>203</sup> However, it has never firmly committed to do so. In May 2002, a month after the war had ended, the International Foundation for Election Systems (IFES), the International Republican Institute (IRI), and the National Democratic Institute (NDI) jointly published a “pre-election assessment report” detailing the steps

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<sup>199</sup> ICCPR, Art. 25.

<sup>200</sup> United States Government, Department of State, *Country Reports on Human Rights Practices, 2002: Angola* (Washington, D.C.: Department of State, 2003).

<sup>201</sup> Human Rights Watch, *Angola Unravels: The Rise and Fall of the Lusaka Peace Process* (New York: Human Rights Watch, 1999), p.15.

<sup>202</sup> Government of Angola, “Profile of President José Eduardo dos Santos.” This biography is available at the Angolan Embassy in the U.S. website ([www.angola.org/politics/p\\_bios.htm](http://www.angola.org/politics/p_bios.htm)).

<sup>203</sup> Government of Angola, “Angola’s President Reaffirms Commitment to Democracy; Calls on Savimbi to Take the Path to Peace,” press statement, May 11, 2001.

needed for free and fair elections.<sup>204</sup> That report concluded that meaningful elections would not be possible until four major steps were taken. The first was a major commitment to restore basic rights, including respect for freedom of association, expression, assembly, and movement. Second, the report recommended constitutional reforms and the introduction of legislation to enable those reforms. Third, revising key electoral laws so that opposition parties could fairly compete with the ruling Movimento Popular da Libertação de Angola (MPLA) party. Finally, the report recommended setting a firm date for elections in order to have a meaningful deadline in order to implement reforms.<sup>205</sup>

At this writing, however, the government has not set a date for elections, nor has it comprehensively undertaken needed reforms.<sup>206</sup> It is unlikely that elections could take place before 2005 and without reforms would not be free or fair and could further entrench the MPLA in power. In the absence of a firm date for elections and the political will to implement reforms, the Angolan people are unable to exercise their rights under article 25 of the ICCPR. This also allows the government to maintain its control over the political and economic resources of the country, without any electoral accountability. Another factor delaying elections is the government's mismanagement of the economy. According to one senior diplomat based in Angola, the government's mismanagement has led to a lack of funds for the reforms required to conduct free and fair elections.<sup>207</sup> The government has repeatedly said it would like to hold elections by 2004 or 2005 and has estimated that U.S.\$350 million would be required to pay for those reforms. But it has not specified whether it had allocated those funds.<sup>208</sup>

Mismanagement of funds may have also created a political disincentive to hold free and fair elections. According to the same foreign diplomat, the government is reluctant to hold elections because it cannot show that it has provided for the population and fears that it would lose an election as a result.<sup>209</sup>

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<sup>204</sup> The International Foundation for Election Systems, the International Republican Institute, and the National Democratic Institute, "Angola: Pre-election Assessment Report," May 2002.

<sup>205</sup> *Ibid.*, p. ii.

<sup>206</sup> "Government Prepares Next Elections in the Country," *ANGOP*, July 25, 2003.

<sup>207</sup> Human Rights Watch interview, London, June 18, 2003.

<sup>208</sup> "Government Prepares Reliable General Elections—Minister," *ANGOP*, August 8, 2003.

<sup>209</sup> Human Rights Watch interview, London, June 18, 2003.



## VIII. International Initiatives to Promote Transparency

Since about 1999, the international community has increasingly recognized the need for transparency in natural resource rich states. In many countries, such as Angola, Azerbaijan, Chad, Equatorial Guinea, Kazakhstan, and Nigeria, oil revenues have been misused, undermining democracy, facilitating corruption, and depriving the public of important services. Five major initiatives to address this problem, described below, are the IMF's transparency efforts; World Bank programs; the U.K.-sponsored Extractive Industries Transparency Initiative (EITI); the Publish What You Pay (PYWP) campaign led by George Soros' Open Society Institute and an NGO-coalition; and the G-8 statement on corruption and transparency. All of these initiatives would have beneficial impacts on transparency, if implemented. However, the initiatives are at different stages of development and have differing potential for influencing practices in Angola.

### ***IMF and World Bank***

IMF and World Bank engagement with Angola is limited because of the government's past history of noncompliance with Staff Monitored Programs. The World Bank, however, has lending programs within the country that are largely focused on humanitarian needs. Of the initiatives and institutions that could have a beneficial impact on transparency in Angola, the World Bank and IMF are the most promising, provided transparency is a foundation of their terms of engagement.

### ***The IMF***

Perhaps the best opportunity to press for increased transparency in Angola lies with the IMF. Although its relationship with the government has been strained and there is no formal program at the moment, the IMF is still crucially important for the government because the country has a considerable amount of debt, no access to financing or loans other than oil-backed loans, and the government has no credibility with the international community in terms of its economic management of the economy.<sup>210</sup> By mid-2003, there were also indications that the government might be ready to negotiate a new program with the IMF.

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<sup>210</sup> Human Rights Watch interviews, Washington D.C., May 20, 2003.

As noted above, the government historically has committed to transparency during periods of severe economic hardship, only to halt reforms when the country's financial situation improves. However, the IMF has made transparency a key condition of further cooperation with the government, as it said in the March 2002 Staff Report:

[C]urrent problems related to the availability and quality of basic data make it very difficult to formulate a meaningful economic program. As a first step, critical transparency problems, particularly related to the disclosure of information on external debt operations, the amounts of oil-related flows, the management of foreign reserves of the central bank, and the nature of the large discrepancies in the fiscal accounts, would need to be addressed.<sup>211</sup>

The IMF also reported that the Angolan government was, "not interested in another SMP, in part because they preferred not to be tied to public commitments and timetables." The IMF noted that, "[l]oose and informal monitoring by Fund staff, however, is not likely to provide a basis for establishing a track record that could lead to a Fund-supported program."<sup>212</sup>

It appears that the financial situation of the Angolan government has deteriorated considerably since March 2002 because of falling oil revenues, low foreign exchange reserves, high debt, and an inability to secure adequate financing or donor assistance.<sup>213</sup>

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<sup>211</sup> "Angola: Staff Report for the 2002 Article IV Consultation," pp. 25-26.

<sup>212</sup> *Ibid.*, p. 25.

<sup>213</sup> According to the June 2003 *Economist Intelligence Unit* report on Angola, the country's oil exports are expected to fall sharply from U.S.\$8.6 billion to U.S.\$6.8 billion, due largely to a falling oil price. Foreign exchange reserves (the amount of money needed to pay for imports) fell sharply through 2003, to about U.S.\$469 million. This is only enough to cover about 1.3 months worth of imports and far lower than the minimum 2.5 to three months that the IMF recommends for a country. The fall in reserves was largely attributed to the need to repay oil-backed loans. The Economist Intelligence Unit reported that from June 2001 to March 2002, Approximately 39.7 percent of Sonangol's oil production was pledged for the repayment of oil-backed loans. This volume of oil totaled approximately U.S.\$2.5 billion. By June 2003, Sonangol secured a U.S.\$1.15 billion loan from a consortium of banks led by BNP Paribas. It was reportedly the largest single oil-backed loan secured by the government. The five-year loan pledged 20,000 barrels per day (bpd) in the first year, 40,000 bpd in the second year, and 50,000 bpd in the remaining three years, for a total of 75 million barrels pledged for this loan. Some observers believed that this loan, in conjunction with prior loans, has virtually committed all of Sonangol's oil production to repay loans. One observer with detailed knowledge of the Angolan economy told Human Rights Watch that Angola normally keeps a "buffer" of oil production that is not collateralized for loans so that banks are comfortable that the country's oil production is sufficient to repay outstanding loans. However, the government has reduced this buffer making new loans very risky for banks. At this writing, Angola had an estimated 70-100 million barrels of annual oil production that had not been mortgaged, worth approximately U.S.\$300 to U.S.\$400 million.<sup>213</sup> Similarly, the Angolan ambassador to the U.S., Josefina Pitra

A new economic team, led by Deputy Prime Minister Aguinaldo Jaime, was appointed in December 2002. As a result, the government has started negotiations with the IMF for a new SMP, an outcome consistent with its historical pattern of negotiating with the IMF when under economic duress.<sup>214</sup> Although a new program may well contain seemingly strong provisions aimed at increasing transparency, meaningful change will continue to depend on political will and the Angolan government's desire to actually implement any relevant provisions. That may diminish by the third quarter of 2004, when oil revenues and production are expected to rise, easing the government's tight financial situation.<sup>215</sup>

One of the major priorities of the government has been to hold a donors conference after the end of the war with UNITA for the reconstruction of the country. The government hoped to secure as much as U.S.\$1.5 billion in assistance from the international community for the reconstruction of the country and believed that donors would be readily provide funds. The conference was initially scheduled for July 12 and July 18, 2002 in Geneva.<sup>216</sup> However, donor governments did not agree to a conference, in part because of the government's poor economic performance; its lack of transparency; allegations of corruption; a feeling that the government was not committing enough of its own funds for reconstruction; and its failure to reach an agreement with the IMF. At least two donor governments—the U.S. and U.K.—have told the government that they would not support a donor conference unless there was an agreement with the IMF that included measures to increase transparency and accountability.<sup>217</sup> The inability to secure a donors conference was a major embarrassment and disappointment for the government and it has repeatedly postponed the date and location of a donor conference, even though donor governments have been clear about the need for an IMF program.<sup>218</sup>

It is too early to determine what steps will be implemented because the IMF and the government have not begun to negotiate a new SMP and because of the government's

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Diakité, said that 40 percent of the government's U.S.\$8.2 billion in expenditures were designated for oil-backed loan repayments. Angola's total debt is estimated between U.S.\$8 billion and U.S.\$11 billion.

<sup>214</sup> Human Rights Watch interviews, Washington, D.C., June 2, 2003.

<sup>215</sup> Human Rights Watch telephone interview, July 19, 2003.

<sup>216</sup> "International Donors Conferences Soon," ANGOP, July 5, 2002.

<sup>217</sup> Human Rights Watch interviews, Luanda, December 9, 2002; and London, June 18, 2003.

<sup>218</sup> "Donors Conference Fundamental to National Reconciliation—Minister," ANGOP, February 25, 2003.

historical failure to implement such reforms. As recently as July 2003, the IMF once again reiterated that, “[g]reater transparency lies at the heart of the reform process.”<sup>219</sup>

There are already early indications of noncompliance. For example, the government publicly committed to publishing the executive summary by December 30, 2002.<sup>220</sup> However, the government only published the executive summary of the first oil diagnostic report on July 17, 2003, eight days before a crucial IMF board meeting on Angola. The government has not announced when or whether it would publish the final oil diagnostic report’s executive summary as it had earlier said it would. Similarly, the government has only agreed to “limited reviews” of Sonangol’s accounts.<sup>221</sup> Even the 1999 and 2000 are troubling. The IMF reported that the key problems that the audits have identified include “an overriding lack of internal controls and...an incomplete/inadequate accounting of central bank foreign assets and liabilities...”<sup>222</sup>

Despite the government’s apparent lack of commitment, Human Rights Watch believes that a new SMP with strong provisions for transparency may be the best chance for greater transparency in Angola because successful implementation would require greater transparency and an increased allocation of resources towards social expenditures that could improve human rights. The first step is to increase transparency. In order to improve transparency and accountability in Angola, a new SMP should include, at a minimum: complete public disclosure of incoming revenues and outgoing expenditures; public disclosure of debt, including oil-backed debt; publication of all of the Oil Diagnostic reports; continued audits of the BNA; disclosing the exact amount and use of the expected U.S.\$500 million bonus payment for Block 0; and a full and public auditing of the Sonangol.

### ***The World Bank***

Prior to 2003, the World Bank’s last loan to the government was a U.S.\$33 million loan in 2000 primarily for assistance with education, water, and health projects. Most of the Bank’s lending took place between 1991 and 1999, but due to poor economic conditions and the resumption of the war, the Bank reduced its presence in the country by mid-

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<sup>219</sup> “Angola: Staff Report for the 2003 Article IV Consultation,” p. 18.

<sup>220</sup> Government of Angola, Ministry of Finance, “Press Release by the Ministry of Finance on the Oil Diagnostic,” November 5, 2002.

<sup>221</sup> “Angola: Staff Report for the 2003 Article IV Consultation,” p. 10.

<sup>222</sup> *Ibid.*, p. 22.

1999. The International Finance Corporation (IFC) had one project with a soap manufacturer, and the Multilateral Investment Guarantee Agency (MIGA) had four projects insured. After the end of the war with UNITA, the World Bank and government agreed upon a new program, known as the Transitional Support Strategy (TSS), in March 2003.<sup>223</sup>

The TSS has three components: improving transparency and public resource management; providing services to vulnerable groups; and preparation for economic growth that could help the poor. The program covers a fifteen-month period and could be worth as much as U.S.\$125 million.<sup>224</sup> It is in part intended to provide the technical assistance the government needs in order to comply with a possible SMP, particularly in the area of transparency.

The first component includes completing the Oil Diagnostic; completing a Country Procurement Assessment Report (CPAR) that will help to establish procurement policies and procedures that are “consistent with international practice” in order to reduce mismanagement and corruption; conducting a Public Expenditure Management and Financial Accountability Review (PEMFAR) that begins in 2003 and ends in 2004; conducting a possible study on corporate social responsibility in the oil sector that will examine the “social development and community investment” programs of oil companies and to “sensitize oil companies to the importance of transparency and good governance with a view towards reducing that collective action problem that currently discourages greater transparency by any individual company;” and raising awareness of transparency and governance issues. These programs will be financed by a U.S.\$17 million World Bank credit.<sup>225</sup> While there are many encouraging aspects to the design of these programs, implementation will depend on the government’s will to act on them.

The second component of the TSS includes a U.S.\$86 million Emergency Demobilization and Reintegration Program. U.S.\$33 million will come from the Bank and the remaining U.S.\$53 million will be paid for out of a donor trust fund. The goals of this project are to support a national effort to demobilize and reintegrate 105,000 UNITA and 33,000 FAA soldiers. It will also assist with agricultural rehabilitation, employment, job and skills training, medical services, and family reunification. The Bank

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<sup>223</sup> The World Bank, “Transitional Support Strategy for the Republic of Angola, March 4, 2003, p.16.

<sup>224</sup> *Ibid.*, p.20.

<sup>225</sup> *Ibid.*, p.22.

will also request a U.S.\$55 million credit to support an ongoing Social Action Fund in late 2003. Finally, a U.S.\$20 million grant for an HIV/AIDS project will be disbursed.<sup>226</sup>

The third and final component does not initially involve any funding, but is focused on assisting the government in providing a framework for better governance and economic growth that benefits the poor. It includes drafting a Country Economic Memorandum, a document that comprehensively outlines the policies needed for adequate macroeconomic reform. It is supposed to be finalized in 2004. An ongoing study to identify the policies and other steps required allowing for more private sector participation in infrastructure. This includes electricity, downstream natural gas, water supply, sanitation, solid waste in Luanda, telecommunications, ports, airports, roads, and bridges.<sup>227</sup>

A full-scale lending program that would include a comprehensive Country Assistance Strategy is possible by 2005, but contingent on following criteria:

- A 50 percent reduction in extrabudgetary and quasi-fiscal outlays for 2003;
- satisfactory implementation of the first year of the Public Finance Modernization Program, including strengthening of the integrated financial management system;  
publication of all government tax revenues;
- completion of the Oil Diagnostic and ensuring that all oil revenues, except those pledged to oil-backed loans, are deposited in the Banco Nacional de Angola (BNA), the central bank; including those revenues in the BNA's annual audit;
- satisfactory implementation of the ADRP, including issuing ID cards with photographs and transporting all ex-combatants to chosen areas by June 30, 2003;
- operationalizing the National AIDS Commission;
- a full Poverty Reduction Strategy Paper; and
- a formal IMF program.<sup>228</sup>

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<sup>226</sup> Ibid., pp.23-24.

<sup>227</sup> Ibid., p.24-25.

<sup>228</sup> Ibid., p.25.

Human Rights Watch supports the Bank's efforts to improve governance, provide humanitarian assistance, and press for policy reforms. But the program is still contingent on the government's willingness to institute reforms, something the government has repeatedly failed to do in the past. Moreover, it does not specify that the Oil Diagnostic reports be made public, a critical step towards improving transparency and accountability. Unless these reforms are implemented it will not be possible for Angolan's to hold their government accountable. Nor will it be possible to determine the full resources available that can be directed towards those institutions, such as the judiciary, or activities, such as greater spending on health and education, that will improve human rights.

### ***The Extractive Industries Transparency Initiative (EITI)***

The Extractive Industries Transparency Initiative (EITI) was launched by U.K. Prime Minister Tony Blair at the World Summit on Sustainable Development in Johannesburg, South Africa on September 2, 2002.<sup>229</sup> It is a voluntary initiative that aims to increase the transparency of natural resource revenues by developing standardized reporting requirements for companies and governments. The initiative has broad support from multinational and national companies, industry organizations, governments, NGOs, and multilateral institutions.<sup>230</sup> Human Rights Watch has participated in this effort. At this writing, the reporting guidelines are still being revised.

Since it is a voluntary initiative, host governments and companies must agree to adopt the initiative before data can be published. Companies have generally refused to publish

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<sup>229</sup> Government of the United Kingdom, Department for International Development, "Extractive Industries Transparency Initiative, Statement of Principles and Agreed Actions," June 17, 2003.

<sup>230</sup> The companies and industry organizations include: the American Petroleum Institute, Anglo-American plc., Areva, BG Group, BHP Billiton, BP, Chevron Texaco, ConocoPhillips, De Beers, ExxonMobil, the International Association of Oil and Gas Producers, the International Council on Mining and Metals, ISIS Asset Management on behalf of a coalition of investment funds, Marathon, Newmont, NNPC, Repsol YPF, RioTinto, Shell, South Africa Chamber of Mines, SOCAR, Sonangol, Statoil, Total. The governments include, Angola, Azerbaijan, Belgium, Botswana, Cameroon, Canada, China, Democratic Republic of Congo, Equatorial Guinea, France, Germany, Ghana, Indonesia, Italy, Japan, Kazakhstan, Mozambique, Netherlands, Nigeria, Norway, Sierra Leone, South Africa, Timor-Leste, Trinidad and Tobago, and the United States. The participating NGOs include: the African Network for Environmental and Economic Justice, Angolan Civil Society, CAFOD, CARE International, Global Witness, Human Rights Watch, Open Society Institute, the Publish What You Pay Coalition, Save the Children Fund, Transparency International, Transparency Kazakhstan, and the Trend Information Analytical Agency of Azerbaijan. The multilateral organizations include: the International Monetary Fund, NEPAD, the Organisation for Economic Co-operation and Development, the United Nations Development Programme, and the World Bank.

their payments to governments without approval of the host government. This stance is partly in response to BP's experience in Angola as well as excessive caution towards contractual agreements. It is also not clear whether sponsoring governments, such as the U.K., U.S., or Norway, will forcefully press governments and companies to implement the guidelines. As of June 17, 2003 when a large formal meeting to endorse the process took place, only Timor-Leste, Azerbaijan, Ghana, Trinidad and Tobago, Indonesia and Nigeria have said that they would implement and pilot the initiative.<sup>231</sup> The Angolan government has refused to implement the initiative, even though Sonangol expressed a willingness to publish data.<sup>232</sup>

### ***The Publish What You Pay Campaign (PWYP)***

The Publish What You Pay Campaign is an NGO-led initiative that is pressing governments to require publicly traded natural resource extraction to disclose net payments, including taxes, royalties, fees and other transactions with governments and/or public sector entities for every country in which they operate. Global Witness, George Soros and the Open Society Institute originally started it. Human Rights Watch is a member of this coalition and the campaign is supported by more than one hundred NGOs throughout the world.<sup>233</sup>

The PYWP campaign addresses one of the main problems with voluntary initiatives: the real or perceived competitive advantage some companies may gain if they do not adopt standards. Governments may shun such companies in favor of companies that do not want to be more transparent. A regulatory approach would apply equally to all companies, thereby negating this problem. However, even if all publicly listed companies were required to publish payments to governments, it would not necessarily shed light on all extractive industry payments to governments. Private companies would not be covered by the same requirements as public companies, nor would state-owned companies. Because state-owned companies, in particular, would not be covered, a substantial amount of revenue would still be opaque. For example, the Inception Report of the Oil Diagnostic showed that in 2000, foreign companies paid approximately U.S.\$1.65 billion to the Angolan central bank as required by law. Sonangol, however,

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<sup>231</sup> Government of the United Kingdom, Department for International Development, "Draft Report of the Extractive Industries Transparency Initiative (EITI) London Conference," June 17, 2003.

<sup>232</sup> Angolan government Statement at the EITI High Level Meeting, London, June 17, 2003.

<sup>233</sup> See: [www.publishwhatyoupay.org](http://www.publishwhatyoupay.org).



underpaid the central bank by approximately U.S.\$2.127 billion.<sup>234</sup> Nevertheless, a regulatory requirement that applied to publicly listed companies would help to determine how much those companies paid governments. It would not be a solution in itself, but would contribute to a broader solution to the problem of revenue opacity.

### ***The G-8 Statement***

On June 2, 2003, the G-8 issued a declaration on “Fighting Corruption and Improving Transparency.” It noted that:

Transparency inhibits corruption and promotes good governance. Increased transparency of government revenue and expenditure flows, as well as strengthened enforcement efforts against bribery and corruption, will contribute to achieving these goals and to increasing integrity in government decision-making - thereby ensuring that resources, including development assistance, achieve their intended purposes.<sup>235</sup>

The G-8 member states committed themselves to press countries to be more transparent; guide bilateral aid to governments that are committed to improve transparency, good governance, and rule of law; encourage publication of IMF Article IV Staff Reports; participate in reviews under the IMF Code of Good Practices for Fiscal Transparency; and incorporate anti-corruption plans into Poverty Reduction Strategy Papers (PRSPs).<sup>236</sup>

The G-8 member states also pledged to increase law enforcement by strengthening their own anti-bribery laws; accelerating peer reviews under the Organization for Economic Cooperation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials; encouraging the private sector to develop and implement anti-bribery compliance programs; completing the U.N. Convention Against Corruption; denying “safe haven” to corrupt officials and allowing for their extradition; encouraging wider accession and ratification of the U.N. Convention on Transnational Organized Crime; requiring financial institutions to conduct greater “due diligence” in regards to suspicious activities by government officials; implementing the recommendations of the Financial

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<sup>234</sup> KPMG, *Inception Report*, p. 132.

<sup>235</sup> “Fighting Corruption and Improving Transparency,” a G-8 Declaration, Evian, June 2, 2003, preamble.

<sup>236</sup> *Ibid.*, paragraphs 1-1.7.

Action Task Force (FATF); and considering whether to include provisions that would require transparency in government procurement as part of bilateral and regional trade agreements. Based on this declaration, the G-8 committed to “commence negotiations aimed at achieving an inclusive multilateral agreement on transparency in government procurement.”<sup>237</sup>

In its provisions addressing corruption and transparency in revenue dependent countries, the prescriptions of the G-8 were similar to those of the EITI. The G-8 said that it would encourage governments and companies to provide aggregated data on revenue flows to a third-party such as the IMF or World Bank; provide technical assistance to governments; and encourage the World Bank and IMF to provide technical assistance to governments. However, the G-8 only committed to do this with governments that voluntarily agree to participate and it did not specify which governments would be involved in this effort or when it should begin.<sup>238</sup> While a positive step forward, the declaration does not set up a new program to identify specific countries in need of improvement, imposed deadlines, or provide penalties for noncompliance. Instead, it complements the activities of governments and institutions.

### ***The Soros Announcement***

At this writing in mid-December 2003, the Angolan Government and George Soros’s Open Society Institute (OSI) appeared poised to announce a new transparency initiative. The initiative is intended to bring Angola into compliance with the EITI in exchange for technical assistance, OSI programmatic support, and possible investment from George Soros. Assistance and investment are contingent on the government’s compliance with the agreement. Secret negotiations for the agreement began in March 2003 and details of the agreement were made public in November 2003. Originally scheduled for a public signing on November 13, the initiative was delayed by the Angolan government. The official signing and start date remain unclear at this writing.

The draft agreement would require the government to take a number of steps to improve transparency within specified periods of time. The government is supposed to publish the “results of the oil diagnostic study” within sixty days after the signing of the agreement and participate in the EITI. It is to state its intention to publicly disclose all

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<sup>237</sup> Ibid., paragraphs 2-5.3.

<sup>238</sup> Ibid., paragraphs 5-6.4.

payments of “taxes, royalties, dividends, VAT [Value Added Tax], customs duties, bonuses and other similar revenues” that are paid by extractive industry companies to the government. The government and Sonangol are to waive any confidentiality clauses they have with companies so that the companies can disclose their payments to the government.<sup>239</sup>

In order to facilitate these commitments, the government and Soros are to create a task force to “assess the legal framework of existing agreements” in order to develop a strategy so oil companies can disclose their payments to the government. The task force is to be organized within thirty days after the agreement is signed and will have a mandate to complete its work and provide a recommendation on how to remove confidentiality agreements within ninety days of the signing. The government is to submit legislation and “use its best efforts” to alter relevant laws in order to waive confidentiality agreements within ninety days after the task force issues its recommendation. If legal impediments prevent company-by-company disclosure, the government is to aggregate that data and make it publicly available until confidentiality agreements are removed. Finally, the government is to set-up “advisory bodies” made up of government, NGO, and business representatives to review and assess the information disclosed.<sup>240</sup>

The draft agreement calls for Sonangol to publicly disclose on its website production levels, taxes, and transfers semi-annually beginning in 2003. It also is to disclose proceeds of oil-backed loans that are “transferred to the government or used to support projects or purposes that are customarily the responsibility of Government.” Sonangol is to provide its financial results beginning in 2003 and provide those results in a format compatible with international accounting standards (IAS) from 2004. Future contracts with Sonangol are not to have confidentiality agreements restricting the publication of revenues.<sup>241</sup>

Soros and OSI are to provide assistance to the government as long as the previous requirements are met. They may provide consultants to assist the government with macroeconomic issues who can aid them in acquiring a debt rating or issuing debt. They may also help the government with reform of their budget policy; increasing Angolan

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<sup>239</sup> Government of Angola, Sonangol, and Soros, “Heads of Agreement: Government of Angola, Sonangol, and Soros”, draft agreement, August 25, 2003.

<sup>240</sup> Ibid.

<sup>241</sup> Ibid.

employment in the oil industry; and possibly assisting with reducing the size of the military. Soros and OSI also are to publicize the agreement to international and bilateral financial institutions, NGOs, investors, and the U.S. government. If the government sufficiently complies and the “economic and investment climate improves,” Soros is to organize a group of international investors that could pursue projects within Angola.<sup>242</sup>

Overall, the agreement would be an important step forward since it provides meaningful incentives for the government to increase transparency. Soros and OSI are only required to provide assistance or organize investment if the government sufficiently complies with the agreement. However, there are some vagaries that need clarification. The draft agreement does not specify which of the eight oil diagnostic reports should be published to fulfill the terms of the agreement. That provision should be interpreted to include all of the Oil Diagnostic reports. Much of the information the government is required to disclose is contained within the Oil Diagnostic reports. Incoming revenues, taxes, royalties, bonus payments, loans, and Sonangol’s payments to government are all included in the Oil Diagnostic reports. The contract for the Oil Diagnostic includes provisions to develop and implement a model that allows the government to monitor all oil revenues and project future revenues. The World Bank is already providing some of the technical assistance proposed within the Soros agreement. Similarly, the final Oil Diagnostic report contains recommendations to improve management and monitoring of oil revenues. The Soros initiative does not specify whether the EITI reporting requirements will be harmonized with the model and recommendations that are part of the Oil Diagnostic or whether the technical assistance provisions will account for the World Bank’s efforts. Finally, the agreement does not require an audit of Sonangol. As noted earlier, Sonangol has never been audited and the IMF has insisted upon an audit as a condition of future cooperation. This is a critical step that would immensely improve transparency in Angola and should be part of this effort.

If the agreement is signed, remains in its current form, and the aforementioned issues are clarified, the key to success of the initiative will be the government’s willingness to implement its provisions. Historically, the government has made commitments to improve transparency, but then delayed or refused to implement measures necessary to fulfill those commitments.

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<sup>242</sup> Ibid.

## IX. Conclusion

In addition to decades of war and humanitarian crisis, the Angolan public has had to bear the brunt of government mismanagement of billions of dollars in public funds. Such mismanagement has contributed to woefully inadequate social spending and underfunding of institutions necessary to protect human rights. It also has been accompanied by government unwillingness to hold free and fair elections, possibly because officials fear that the government has not sufficiently provided for the population and would not be able to retain power if Angolans were able to express their preferences freely.

From a human rights standpoint, the current situation is untenable. It is difficult to imagine that government programs or institutions essential to protecting human rights will be able to function properly until the revenues of the state and its expenditures are fully and accurately disclosed. Only then will the Angolan public begin to have the tools required to exercise meaningful oversight over their government. Without such steps, the dire humanitarian situation may worsen and Angolans' rights to health and education will not be fulfilled. Historically, every effort to increase transparency and accountability has been met with government intransigence. The limited steps the government has taken, such as releasing the executive summary of the first Oil Diagnostic report and authorizing the publication of the 2003 IMF Article IV Staff Report are positive. But they are small steps and much more remains to be done to make the government genuinely accountable.

However, a small window of opportunity for reform may have opened. The government has mismanaged the economy to the point where it can no longer rely on past practices, lurching forward from crisis to crisis and still avoiding accountability. But if Angolans are going to finally have the opportunity to exercise adequate oversight over their collective wealth and its use, it will require a concerted effort by the government and consistent pressure from the international community.

The proposed Soros initiative is a positive step that could facilitate greater transparency. Given Angola's record of failing to implement promised reforms, however, additional efforts are necessary. One important tool would be another IMF SMP with detailed requirements of public disclosure and accountability. Regardless of what one may think of the overall economic proscriptions of the IMF, it is clear that the Fund has been one of the most consistent and forceful proponents for government transparency in Angola.

However, the government has not expressed much interest in a new IMF program. If negotiations between the IMF and government continue, it is crucial that the international community generally, and the IMF in particular, insist upon full audits of Angola's oil revenues and expenditures; publication of data; revision of laws that prevent government oversight; and full disclosure of debt. Otherwise Angola will remain an example of how not to govern and how mass impoverishment can coexist with substantial natural resource wealth.

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