

International Energy and Natural Resources Law

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This article surveys the developments during 2013 in Angola, Argentina, Bolivia, Chile, Ecuador, Equatorial Guinea, Gabon, Mozambique, Nigeria, Portugal, Russia, Ukraine, and the United States.

I. Angola

After focusing largely on offshore development for economic growth, Angola enacted two statutes in 2013 to provide a framework for an expected onshore oil and gas licensing round for the Lower Congo and Kwanza Basins in 2014. First, the Minister of Petroleum divided the Lower Congo Basin into ten onshore oil concession blocks.¹ Second, the President of the Republic created an Inter-Ministerial Commission to oversee the imple-

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1. See Decreto Ejecutivo No. 83/13, art. 1, de 19 de Marco de 2013, DIÁRIO DA REPÚBLICA, [D.R.] (52, t. I): 690-700 de 10.03.2013 (Angl.).

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mentation of onshore development within the Kwanza and Lower Congo Basins.² This Commission includes, among others, the Minister of Petroleum, the Minister of Industry, the Minister of the Environment, and the chairman of Sonangol E.P., a state-owned oil company.³ The new Commission has the authority “(i) to study and propose a bidding policy that allows the Angolan private sector to adequately participate in the tender, (ii) to review bids for petroleum blocks, and (iii) to assess and decide on any environmental and social conflicts that may arise in the block areas.”⁴

II. Argentina

A. OIL AND GAS

1. *Investment Promotion Regime*

After the expropriation of YPF S.A. from the Spanish company Repsol in 2012,⁵ Argentina encouraged foreign investment in 2013 to exploit the vast Vaca Muerta shale deposits in Neuquén, Patagonia and to help reverse its current energy deficit.⁶ On July 15, 2013, the government created the Investment Promotion Regime aimed at hydrocarbon exploration and production concession holders.⁷ Participants must submit a hydrocarbon development project with a minimum investment of U.S. \$1 billion in foreign currency to be transferred into Argentina within the project’s first five years.⁸ After the project’s fifth anniversary, the participant can export 20 percent of the hydrocarbons exempt from export taxes and can maintain the proceeds from those sales abroad.⁹

2. *Unconventional Hydrocarbons Concession*

Under the Investment Promotion Regime, eligible entities may have their existing production concessions subdivided into new unconventional hydrocarbons concessions with extendable terms of twenty-five years plus ten additional years for the new concessions.¹⁰ Existing concessionaires with discovered shale resources within their plots may obtain new unconventional concessions with the same extendable terms.¹¹

2. Despacho Presidencial No. 28/13, art. 1, de 22 de Marco de 2013, DIÁRIO DA REPÚBLICA [D.R.] (55, t. I): 719 de 22.03.2013 (Angl.)

3. *Id.*

4. *Id.* art. 2; see *Inter-Ministerial Commission Created to Follow up Bids for New Blocks*, ANGL. LEGAL NEWS (Fátima Freitas Advogados, Luanda, Angl.), Mar.–Apr. 2013, at 1, available at http://www.mirandalawfirm.com/uploadedfiles/20130606_f76b0a.pdf.

5. Caryl C. Ben Basat et. al., *Int’l Energy & Natural Res. Law*, 47 INT’L LAW. 295, 297 (2013).

6. Simon Romero & Clifford Krauss, *An Odd Alliance in Patagonia*, N.Y. TIMES., Oct. 22, 2013, at B1, available at <http://www.nytimes.com/2013/10/22/business/energy-environment/argentinas-oil-ambitions-create-unlikely-alliance-with-chevron.html>.

7. Decree No. 929/2013, July 15, 2013, [32.679] B.O. 1 (Arg.).

8. *Id.* art. 3.

9. *Id.* art. 6.

10. *Id.* art. 14.

11. *Id.*

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3. *New Development Contracts*

In July 2013, YPF S.A. and Chevron Corporation agreed to develop the shale oil and gas resources in Vaca Muerta with an expected investment of U.S. \$1.24 billion.¹² YPF S.A. and the local subsidiary of Dow Chemical have also agreed to develop the El Orajano area.¹³ YPF S.A.'s management publicly called for more investment agreements.¹⁴

4. *Key Supreme Court Rulings on Hydrocarbon Royalties*

The Supreme Court struck down a provincial law in Neuquén prohibiting hydrocarbon producers from deducting natural gas consumed for power generation from total hydrocarbon production for the purpose of calculating royalty payments due to the province.¹⁵ The Supreme Court held that the provincial law contradicted national energy law and policy.¹⁶ National energy policy matters remain within the jurisdiction of the federal government, as provided under Hydrocarbons Law 25,561.¹⁷

The Supreme Court also ruled in favor of several hydrocarbon producers on whether royalties on oil sold domestically should be calculated on the basis of the lower domestic wellhead or the higher international price.¹⁸ A federal law passed in 2002 imposed duties on exported hydrocarbons but prohibited the reduction of wellhead value, for royalty calculation purposes.¹⁹ The Supreme Court interpreted the law's provision prohibiting wellhead value reduction to apply only to royalty payments for exported oil.²⁰

12. Press Release, Chevron Corp., Chevron, Argentina's YPF Sign Accord to Develop Vaca Muerta Shale (July 16, 2013), *available at* http://www.chevron.com/chevron/pressreleases/article/07162013_chevronargentinasyfsgnaccordtodevelopvacamuertashale.news.

13. YPF S.A., FORM 6-K: REPORT OF FOREIGN ISSUER PURSUANT TO RULE 13A-16 OR 15D-16 OF THE SECURITIES EXCHANGE ACT OF 1934 FOR THE MONTH OF SEPTEMBER, 2013 (Sept. 24, 2013), *available at* [http://www.wikininvest.com/stock/YPF_Sociedad_Anonima_\(YPF\)/Filing/6-K/2013/F112579211](http://www.wikininvest.com/stock/YPF_Sociedad_Anonima_(YPF)/Filing/6-K/2013/F112579211).

14. Galuccio, *Se Necesitan Muchos Chevrone para Desarrollar Vaca Muerta* [Many Chevrone Are Needed to Develop Vaca Muerta], EL INVERSOR (Aug. 23, 2013), http://inversorenergetico.com/newsletters/newsletter_ver.news_banners.php?idnews=1126.

15. Corte Suprema de Justicia de la Nación [CSJN] [National Supreme Court of Justice], 25/6/2013, "Provincia del Neuquén v. Chevron San Jorge S.R.L./cobro ejecutivo," Colección Oficial de Fallos de la Corte Suprema de Justicia de la Nación [Fallos] (2013-XLVI-746) (Arg.), *available at* <http://csjn.gov.ar/confal/ConsultaCompletaFallos.do?method=verDocumentos&id=702628>.

16. Corte Suprema de Justicia de la Nación [CSJN] [National Supreme Court of Justice], 1/11/2011, "Chevron San Jorge S.R.L. v. Provincia del Neuquén/acción de inconstitucionalidad," Colección Oficial de Fallos de la Corte Suprema de Justicia de la Nación [Fallos] (2011-XLI-2126) (Arg.), at para. 6, *available at* <http://csjn.gov.ar/juris/jsp/fallos.do?usecase=Mostrardocumento&falloId=5739>.

17. Law No. 25561, art. 2, Jan. 6, 2002, [29810] B.O. 1 (Arg.), *available at* <http://www.infoleg.gov.ar/infolegInternet/anexos/70000-74999/71477/texact.htm>.

18. Corte Suprema de Justicia de la Nación [CSJN] [National Supreme Court of Justice], 8/10/2013, "YPF S.A. c/ Mendoza, Provincia de y otro s/ acción declarative de certeza," Colección Oficial de Fallos de la Corte Suprema de Justicia de la Nación [Fallos] (2013-XLIII-49) (Arg.), *available at* <http://csjn.gov.ar/confal/ConsultaCompletaFallos.do?method=verDocumentos&id=705711>; CSJN, 8/10/2013, "Desarrollos Petroleros y Ganaderos S.A. c/ Mendoza, Provincia de s/ acción declarativa de inconstitucionalidad," Fallos (2013-XLIII-569), *available at* <http://csjn.gov.ar/confal/ConsultaCompletaFallos.do?method=verDocumentos&id=705713>.

19. Law No. 25561, art. 6, Jan. 6, 2002, [29810] B.O. 1 (Arg.), *available at* <http://www.infoleg.gov.ar/infolegInternet/anexos/70000-74999/71477/texact.htm>.

20. Corte Suprema de Justicia de la Nación [CSJN] [National Supreme Court of Justice], 8/10/2013, "YPF S.A. c/ Mendoza, Provincia de y otro s/ acción declarative de certeza," Colección Oficial de Fallos de la Corte Suprema de Justicia de la Nación [Fallos] (2013-XLIII-49) (Arg.), *available at* <http://csjn.gov.ar/confal/Con>

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5. *Ecuador v. Chevron-Texaco*

In June 2013, the Argentine Supreme Court reversed prior lower court decisions and declined to execute precautionary measures against the assets of Chevron Argentina S.R.L., Ingeniero Roberto Priú S.R.L., CDC Aps, and CDHC.²¹ Ecuador requested that the Argentine courts execute the precautionary measures under the Inter-American Convention on Execution of Preventative Measures (CIDIP-II).²² The precautionary measures were ordered to enforce an Ecuadorian judgment against Chevron Corporation and its subsidiaries and their respective shareholders.²³ The Argentine Supreme Court held that the Ecuadorian judgment was contrary to domestic public policy because none of the entities or their shareholders were parties in the Ecuadorian case.²⁴ Piercing the corporate veil to reach shareholders is an extraordinary remedy that requires an adversarial proceeding affording the defendants an opportunity to be heard.²⁵

B. MINING

The province of Santa Cruz instituted a new annual mining tax targeting production in an area rich in gold and silver.²⁶ The tax is 1 percent of the value of a mine's technically and economically exploitable reserves, as measured in the domestic or international market, whichever is higher.²⁷

The largest impact will be on companies with projects in the exploration stage because they must prove their reserves to attract financing. But, once the reserves have been measured, the tax will accrue regardless of whether or when production commences. Companies with projects in production may be protected by the Federal Mining Investment Law, which established a thirty-year tax stability regime effective from the project's feasibility study filing date.²⁸ They may be entitled to request that federal authorities withhold funds covering their obligations from the tax sharing system's daily revenue distributions

sultaCompletaFallos.do?method=verDocumentos&id=705711; Corte Suprema de Justicia de la Nación [CSJN] [National Supreme Court of Justice], 8/10/2013, "Desarrollos Petroleros y Ganaderos S.A. c/ Mendoza, Provincia de s/ acción declarativa de inconstitucionalidad," Colección Oficial de Fallos de la Corte Suprema de Justicia de la Nación [Fallos] (2013-XLIII-569), available at <http://csjn.gov.ar/confal/ConsultaCompletaFallos.do?method=verDocumentos&id=705713>.

21. Corte Suprema de Justicia de la Nación [CSJN] [National Supreme Court of Justice], 25/6/2013, "Aguinda Salazar v. Chevron Corp.," Colección Oficial de Fallos de la Corte Suprema de Justicia de la Nación [Fallos] (2013-XLIX-253), para. 5 (Arg.), available at <http://csjn.gov.ar/confal/ConsultaCompletaFallos.do?method=verDocumentos&id=702200>.

22. *Id.* para. 2.

23. *Id.* para. 5.

24. *See id.*; see also Corte Provincial de Justicia de Tucumán [CPJS] [Provincial Court of Tucumán], 3/1/2012, Juicio No. 2011-0106, available at http://www.redibec.org/pdf/senencia_TEXACO2.pdf.

25. Corte Suprema de Justicia de la Nación [CSJN] [National Supreme Court of Justice], 25/6/2013, "Aguinda Salazar v. Chevron Corp.," Colección Oficial de Fallos de la Corte Suprema de Justicia de la Nación [Fallos] (2013-XLIX-253), para. 7 (Arg.), available at <http://csjn.gov.ar/confal/ConsultaCompletaFallos.do?method=verDocumentos&id=702200>.

26. Law No. 3318, June 13, 2013, [4720] B.O. 4 (Arg.) (amending the Provincial Tax Code).

27. *Id.* art. 277.

28. Law No. 24196, May 19, 2013, [1a] B.O. 1 (Arg.).

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to the provinces.²⁹ Relief to the new tax may come either through the courts or through a negotiated settlement with the Santa Cruz provincial administration.

III. Bolivia

A. OIL AND GAS

The Bolivian government signed seven service contracts between state-owned Yacimientos Petrolíferos Fiscales Bolivianos and various oil and gas companies,³⁰ signaling its interest in further incentivizing development and investment in the upstream sector.

The government issued two regulations to align downstream oil and gas activities more closely with international industry standards and practices. The first regulation strengthens quality control and inspection standards for fuel products produced in or imported to Bolivia.³¹ The regulation harmonizes fuel quality standards with those of neighboring countries to minimize the sale of substandard fuel products.³² The second regulation establishes legal and technical requirements related to compressed natural gas plants and empowers the National Hydrocarbons Agency to oversee safety, environmental, and technical compliance.³³

Bolivia ratified the legal instruments to formalize its status as a member of the Gas Exporting Countries Forum, an international governmental organization of leading natural gas producers.³⁴

B. MINING

The new Mining Rights Revocation Law gives the state increased power to expropriate, without compensation, inactive or unproductive private mining concessions.³⁵ The law calls for the Vice Ministry of Mineral Policy, Regulation, and Supervision to verify the activities of mining concessions.³⁶ Based on that information, the government's mining authority may revoke companies' mining rights, taking into consideration environmental

29. *Id.* art. 11.

30. Law No. 380, May 17, 2013, [527NEC] G.O. (Bol.); Law No. 405, Sept. 20, 2013, [566NEC] G.O. (Bol.); Law No. 406, Sept. 20, 2013 [566NEC] G.O.; Law No. 407, Sept. 20, 2013, [566NEC] G.O. (Bol.); Law No. 408, Sept. 30, 2013, [568NEC] G.O. (Bol.); Law No. 409, Sept. 30, 2013, [568NEC] G.O. (Bol.); Law No. 420, Sept. 30, 2013, [568NEC] G.O. (Bol.).

31. Supreme Decree No. 1499, Feb. 20, 2013, [485NEC] G.O. (Bol.) (replacing standards under Supreme Decree No. 26276, Sept. 6, 2001, [33ESP] G.O.); *cf.* EUR. AUTO. MFRS. ASSOC. ET AL., WORLDWIDE FUEL CHARTER (5th ed. 2013), available at http://www.acea.be/uploads/publications/Worldwide_Fuel_Charter_5ed_2013.pdf.

32. Supreme Decree No. 1499, art. 5, Feb. 20, 2013, [485NEC] G.O. (Bol.) (replacing standards under Supreme Decree No. 26276, Sept. 6, 2001, [33ESP] G.O.).

33. Supreme Decree No. 1539, Mar. 20, 2013, [499NEC] G.O. (Bol.).

34. Law No. 382, June 7, 2013, [533NEC] G.O. (Bol.) (ratifying the Agreement on Functioning of the Gas Exporting Countries Forum and Statute); *see generally About Us*, GAS EXPORTING COUNTRIES F. (Feb. 5, 2014, 9:41 PM), <http://www.gecf.org/aboutus/about-gecf>.

35. Law No. 403, art. 2, Sept. 18, 2013, [563NEC] G.O. (Bol.).

36. *Id.* art. 3.

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liabilities.³⁷ The government expects to revoke 70 percent of the country's private mining concessions.³⁸

C. NATURAL RESOURCES CONSERVATION LAWS

Bolivia took steps to strengthen its protection and conservation of natural resources. First, Bolivia designated three large wetlands preserves, becoming the world's leader for the greatest land area preserved under the Ramsar Convention on Wetlands of International Importance, an intergovernmental treaty with 164 contracting parties.³⁹ Second, the government enacted a law requiring state and local governments to incorporate the sustainable use of wetlands into development plans.⁴⁰ Lastly, the President created new administrative frameworks and financial mechanisms targeted at the sustainable management of natural resources, including the protection and reforestation of forests and climate change mitigation and adaptation strategies.⁴¹

IV. Chile

A. NEW ENVIRONMENTAL OVERSIGHT REGIME

Chile implemented a new environmental oversight regime in 2013 pursuant to legislation passed in 2012.⁴² The law established a Superintendent of the Environment and specialized environmental courts with authority to review decisions of the Superintendent.⁴³ The environmental courts focused on cases related to the rights of indigenous communities,⁴⁴ urban land use,⁴⁵ and challenges to the Superintendent's decisions and Environmental Impact Assessment approvals.⁴⁶

37. *Id.*

38. Donal Anand, *Bolivia: Morales Signs New Law to Revoke 'Inactive' Mining Concessions*, THE ARG. INDEP. (Sept. 19, 2013), <http://argentinaindependent.com/currentaffairs/bolivia-president-evo-morales-passes-law-returning-mining-concessions-to-state/>.

39. *Ramsar, with Bolivia's Help, Surpasses 200 Million Hectares of Global Coverage*, RAMSAR SECRETARIAT (Feb. 2, 2013), http://www.ramsar.org/cda/en/ramsar-news-archives-2013-bolivia-200-million/main/ramsar/1-26-45-590%5E26064_4000_0_; see generally *Ramsar Convention on Wetlands of International Importance*, RAMSAR SECRETARIAT, <http://www.ramsar.org> (last visited Mar. 26, 2014).

40. Law No. 404, art. 7, Sept. 18, 2013, [563 NEC] G.O. (Bol.).

41. Supreme Decree No. 1696, art. 8, Aug. 14, 2013, [550 NEC] G.O. (Bol.).

42. Law No. 20600, Junio 18, 2012, DIARIO OFICIAL [D.O.] (Chile). For a discussion of the Environmental Courts, see João Otaívio et al., *Latin America and the Caribbean*, 47 INT'L L. 607, 615-16 (2013).

43. Law No. 20600, arts. 1, 17, Junio 18, 2012, D.O. (Chile).

44. See, e.g., Segundo Tribunal Ambiental, Santiago [Second Environmental Court], 16 agosto 2013, "Rasmus Sonderris y Otros c. Eduardo Mena Marambio," Rol de la causa: 05-2013 (Chile) (Camino de la Fruta highway project).

45. See, e.g., Segundo Tribunal Ambiental, Santiago [Second Environmental Court], 25 septiembre 2013, "Desarrollos Urbanos S.A. c. Director Ejecutivo del Servicio de Evaluación Ambiental," Rol de la causa: 004-2013 (Chile).

46. See, e.g., Tribunal Ambiental [Environmental Court], 6 junio 2013, "Agrícola Santa Mónica y Otros c. Superintendencia de Medio Ambiente," Rol de la causa: 8-2013 (Chile); Tribunal Ambiental [Environmental Court], 6 junio 2013, "Reclamación de Oscar Spichiger S. c. Comité de Ministros del Servicio de Evaluación Ambiental," Rol de la causa: 3-2013 (Chile); see generally *Tribunal Ambiental* [Environmental Court], TRIBUNAL AMBIENTAL, <http://www.tribunalambiental.cl> (last visited Mar. 26, 2014).

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B. MINING

The Mine Site Closure Law became effective in 2013, imposing new health and environmental protections and mandatory financial guarantees for mine closure plans.⁴⁷

The Superintendent of the Environment suspended construction at Barrick's major Pascua Lama project⁴⁸ and imposed a fine of over U.S. \$16 million for serious violations of the project's environmental permits.⁴⁹ Chile's Supreme Court upheld the project's environmental permit itself, provided that the operator constructs a satisfactory water management system.⁵⁰

The Chilean legislature considered a Glacier Law, which would regulate and limit mining activities in glacier zones.⁵¹ The legislative reforms could impact major mining projects, including the expansion of Codeco's Andina 244 mine project, Angloamerican's Los Bronces project, and Barrick's Pascua Lama project.⁵²

C. INDIGENOUS COMMUNITIES

Indigenous communities continued to assert their rights under the International Labor Organization's Convention Concerning Indigenous and Tribal Peoples in Independent Countries (ILO Convention 169)⁵³ and under constitutional guarantees, such as the right to live in a clean environment⁵⁴ and to challenge energy and mining projects.⁵⁵ Atacama and Aysén indigenous groups respectively convinced appeals courts to block the construction of the Punta Alcalde coal-fired thermoelectric project⁵⁶ and the Rio Cuervo hydroelectric dam.⁵⁷ Similarly, the court of appeals threw out previously approved permits for Cerro Chuño, a thermoelectric plant in Arica.⁵⁸ In 2012, Chile's Supreme Court concluded that environmental permits for the El Morro gold and copper project in northern Chile violated the Diaguita community's rights under ILO Convention 169 and halted the

47. Law No. 20551, art. 1–2, 31, Octubre 28, 2011, D.O. (Chile).

48. Superintendencia de Medio Ambiente, Resolución Exenta No. 477, Mayo 24, 2013, DIARIO OFICIAL [D.O.] 417 (Chile).

49. *Id.*; see Cecilia Jamasmie, *Chile Imposes \$16 million in Fines to Barrick for Environmental Violations at Pascua-Lama*, MINING.COM (May 24, 2013), <http://www.mining.com/chile-imposes-16-million-in-fines-to-barrick-for-environmental-violations-at-pascua-lama-64050/>.

50. Corte Suprema de Justicia [C.S.J.] [Supreme Court], 27 septiembre 2013, "Solange Bordonos Cartagena y Otros Con Compañía Minera Nevada SpA y Otra," Rol de la causa: 5339-2013 (Chile).

51. Cecilia Jamasmie, *Chile's Proposed Glaciers Protection Law Worries Miners, Investors*, MINING.COM (Oct. 9, 2013), <http://www.mining.com/chiles-proposed-glaciers-protection-law-worries-miners-investors-15134/>.

52. *See id.*

53. Convention Concerning Indigenous and Tribal Peoples in Independent Countries, June 27, 1989, 72 ILO Official Bull. 29, 28 I.L.M. 1382 [hereinafter ILO Convention 169].

54. CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE CHILE [C.P.] art. 19(8).

55. *Id.* For a discussion of similar court challenges in 2012, see Caryl C. Ben Basat et al., *International Energy & Natural Resources Law*, 47 INT'L L. 295, 301–02 (2013).

56. Corte Suprema de Justicia [C.S.J.] [Supreme Court], 3 septiembre 2013, "Juana Quinsacara Troncoso y Otros c. Comité de Ministros de la Ley de Bases del Medio Ambiente," Rol de la causa: 6563-2013, 6564-2013, 6565-2013 & 6566-2013 (Chile).

57. Corte de Apelaciones de Coyhaique [Court of Appeals of Coyhaique], 9 mayo 2013, "Energía Austral Limitada c. Martínez Carvajal, Félix Eduardo," Rol de la causa: 40-2013; 50-2013 & 135-2013 (Chile).

58. Corte de Apelaciones de Arica [Court of Appeals of Arica], 3 septiembre 2013, "David Zapata Valenzuela, Luis Rocafull, Debora Arancibia García y Héctor Benavides Laporte c. Dirección Regional del Servicio de Evaluación Ambiental de la Región de Arica y Parinacota," Rol de la causa: 167-2013 (Chile).

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project.⁵⁹ When subsequent amended permits were approved, the Diaguita community appealed, asserting inadequate consultation under ILO Convention 169.⁶⁰ This resulted in a new court injunction halting the project.⁶¹ The Ministry of Environment approved a modification to the Environmental Impact Assessment System to help clarify how to properly interpret and apply ILO Convention 169.⁶²

V. Ecuador

A. OIL AND GAS

In response to a petition from the President,⁶³ the National Assembly authorized the controversial development of the Ishpingo-Tambococha-Tiputini (ITT) oil and gas field within the Yasuni National Park,⁶⁴ a designated UNESCO Biosphere Reserve since 1989.⁶⁵ The Yasuni ITT field, located in the Amazonian rainforest in Ecuador's north-eastern region, could provide an estimated 20 percent of the country's oil reserves.⁶⁶ Development is conditioned on it affecting only 0.1 percent of the park, with part of the revenue funding investments in new industries, technology, and social development projects.⁶⁷ Leading up to the authorization, the President ordered the liquidation of the Yasuni ITT Trust Fund and Initiative, which sought to generate voluntary financial contributions from the international community in exchange for a prohibition of drilling in the Yasuni ITT field.⁶⁸

Legal disputes continued over environmental damages attributed to Texaco's activities in Ecuador's northeast Amazonian region from 1964 until 1992. In November 2013, Ecuador's Supreme Court reduced the amount that Chevron Corporation, which bought

59. Corte Suprema de Justicia [C.S.J.] [Supreme Court], 10 mayo 2012, "Comunidad Agrícola Los Huasco Altinos c. Comisión de Evaluación III Región de Atacama," Rol de la causa: 2211-2012 (Chile).

60. Resolución No. 232, Octubre 2, 2012, D.O. (Chile).

61. Corte de Apelaciones de Copiapó [Court of Appeals of Copiapó], 22 noviembre 2013, Rol de la causa: 151-2013 (Chile).

62. Decreto No. 40, Octubre 30, 2012, D.O. (Chile).

63. Decreto No. 74, Agosto 15, 2013, REGISTRO OFICIAL [R.O.] (Chile), available at <http://decretos.cege.gob.ec/decretos/download.ashx?TY=D&ID=6318>.

64. Resolución del Pleno de la Asamblea Nacional, Octubre 4, 2013 (Ecuador), available at <http://www.asambleanacional.gob.ec/tramite-sobre-bloques-31-y-43-en-el-yasuni.html>; see CONSTITUCIÓN DE LA REPÚBLICA DEL ECUADOR art. 407 (stating, "[t]he exploitation of non-renewable resources is forbidden in protected areas and zones declared as intangibles, including forest exploitation. By exception, those resources can be exploited following a reasoned petition from the Presidency of the Republic and declaration of national interest from the National Assembly, that if considered necessary can call for a referendum on the matter"), available at http://www.asambleanacional.gob.ec/documentos/constitucion_de_bolsillo.pdf.

65. UNESCO-MAB Biosphere Reserves Directory: Yasuni, U.N. EDUC., SCI. AND CULTURAL ORG., <http://unesco.org/mabdb/br/brdir/directory/biores.asp?code=ECU+02&mode=all> (last visited Mar. 26, 2014).

66. Rafael Correa Pone Fin a la Iniciativa Yasuni ITT [Rafael Correa Ends the Yasuni ITT Initiative], DIARIO EL UNIVERSO (Aug. 15, 2013, 8:17 PM), <http://www.eluniverso.com/noticias/2013/08/15/nota/1294861/rafael-correa-pone-fin-iniciativa-yasuni-itt>.

67. Resolución del Pleno de la Asamblea Nacional, art. 3.1-2, Octubre 4, 2013 (Ecuador), available at <http://www.asambleanacional.gob.ec/tramite-sobre-bloques-31-y-43-en-el-yasuni.html>.

68. Rafael Correa Pone Fin a la Iniciativa Yasuni ITT, *supra* note 66; cf., e.g., Julia Henrichmann, *Protección del Parque Nacional Yasuni: ¿Bendición o Maldición?* [Protection of Yasuni National Park: A Blessing or a Curse?], SOSTENIBILIDAD SEMANA, <http://sostenibilidad.semana.com/hablando-verde/tendencias/articulo/proteccion-del-parque-nacional-yasuni-bendicion-maldicion/29002>, (last visited Mar. 27, 2014).

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Texaco in 2001, must pay from \$18 billion to the lower amount of \$9.5 billion.⁶⁹ Also in November, Ecuador asked the Permanent Court of Arbitration at The Hague to dismiss the case brought by Chevron against Ecuador, a case in which the tribunal already issued a partial award.⁷⁰ Among the related lawsuits in the United States, a federal appeals court granted Ecuador access to documents that Chevron sought to protect from being used in a foreign proceeding⁷¹ and a federal district court heard closing arguments in a civil racketeering case related to the Ecuadorian judgment.⁷² Chevron asserted that remediation is the responsibility of state-owned oil company Petroecuador under a 1995 agreement between Petroecuador and Texaco at the conclusion of an oil-producing consortium.⁷³

B. MINING

The government enacted a new Mining Act in July⁷⁴ that is anticipated to spur small and medium-scale mining ventures.⁷⁵ The law seeks to boost exploration and foreign investment, particularly in copper, gold, and silver, by reducing administrative and financial burdens.⁷⁶ Although environmental and water use permits are still required, most other permits have been replaced by sworn declarations by the mining companies.⁷⁷ The law also establishes new maximum royalty rates, delays a previous windfall tax to allow companies to recover investment, and makes clear that revocation will result in the uncompensated forfeiture of mining equipment and goods to the government.⁷⁸ It also outlines penalties for environmental violations and imposes increased penalties for illegal mining.⁷⁹

69. See generally Corte Nacional De Justicia [Supreme Court], noviembre 12, 2013, *Chevron v. Aguinda*, No. 174-2012 (Ecuador).

70. Press Release, Republic of Ecuador Attorney Gen., Ecuador Requests Stay of Arbitration Proceeding Known as Chevron III (Nov. 15, 2013), available at http://www.pge.gob.ec/es/documentos/doc_download/702-english-version-chevron-iii.html; see generally *Chevron Corp. & Texaco Petroleum Co. v. Republic of Ecuador*, No. 2009-23 (U.S.-Ecuador) (Perm. Ct. Arb. 2009), available at http://www.pca-cpa.org/showpage.asp?pag_id=1408.

71. *In re Application of the Republic of Ecuador: Diego Garcia Carrion*, No. 12-1402, (10th Cir. Nov. 13, 2013), available at <http://www.ca10.uscourts.gov/opinions/12/12-1402.pdf>.

72. *Chevron v. Donziger*, 786 F. Supp. 2d 581, 625 (S.D.N.Y. 2011).

73. Press Release, Chevron Welcomes Petroecuador Clean-up Announcement (Dec. 16, 2011), available at http://www.chevron.com/chevron/pressreleases/article/12162011_chevronwelcomespetroecuadorcleanupannouncement.news.

74. Modifica Ley de Minería No. 37, Julio 12, 2013, REGISTRO OFICIAL [R.O.], SEGUNDO SUPLEMENTO (Ecuador) (replacing Ley de Minería, Enero 29, 2009).

75. Eduardo Garcia, *Ecuador Congress OKs Law to Ease Mining Investment Terms*, THOMSON REUTERS (June 13, 2013, 6:32 PM), <http://www.reuters.com/article/2013/06/13/ecuador-mining-idUSL2N0EP1BJ20130613>.

76. *Id.* Modifica Ley de Minería No. 37, art. 18, Julio 12, 2013, REGISTRO OFICIAL [R.O.], SEGUNDO SUPLEMENTO (Ecuador) (replacing Ley de Minería, Enero 29, 2009).

77. Modifica Ley de Minería No. 37, art. 3, Julio 12, 2013, REGISTRO OFICIAL [R.O.], SEGUNDO SUPLEMENTO (Ecuador) (replacing Ley de Minería, Enero 29, 2009).

78. *Id.* arts. 18, 20.

79. *Id.* art. 17.

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VI. Equatorial Guinea

The Ministry of Mines, Industry, and Energy enacted regulations for the Hydrocarbons Law of 2006,⁸⁰ announced the ratification of eight Production Sharing Contracts that were signed in December 2012,⁸¹ and signed Memorandums of Understanding on cooperation in the mining and hydrocarbons sectors with the Republic of Ivory Coast⁸² and the Republic of Guinea,⁸³ as well as an amendment to a similar Memorandum of Understanding with the Republic of Ghana.⁸⁴ The Ministry intends these actions, particularly the new petroleum regulations, to signify an “aggressive policy” for offshore and onshore oil and gas development.⁸⁵ The regulations, effective as of September 2013, cover awards of petroleum contracts, duration and phases of contracts, development and production plans, safety standards, environmental protections, liability, local requirements, inspections, transportation, storage, state entitlements, and abandonment.⁸⁶

VII. Gabon

Exports of raw and processed minerals are a growth area in Gabon, with excellent mining prospects in iron, gold, manganese, and rare earth minerals. The Ministry of Industry and Mines saw major reforms in 2013, including the restructuring of the former Directorate General of Mines and Geology into two new entities, (a) the Directorate for Mining Titles and Operation⁸⁷ and (b) the Directorate General for Geology and Mining Research.⁸⁸ The government also continued to prioritize efforts to modernize its Mining Code, last updated in 2000 and governing the rights for exploration, mining, and extraction of minerals.⁸⁹ The new Mining Code is anticipated in 2014 and promises to promote

80. Ministerial Order No. 4/2103, Petroleum Regulations of the Republic of Equatorial Guinea (June 20, 2013) (Eq. Guinea), *available at* http://www.equatorialoil.com/Petroleum_Regulations_English.pdf.

81. Press Release, Republic of Eq. Guinea Ministry of Mines, Indus., & Energy, Ratification of Production Sharing Contracts (Apr. 10, 2013), *available at* http://www.equatorialoil.com/html/press_release12.html#RP-April-10-13.

82. Press Release, Republic of Eq. Guinea Ministry of Mines, Indus., & Energy, Signature of Memorandum of Understanding Between the Republic of the Equatorial Guinea and the Republic of Ivory Coast (Nov. 12, 2013), *available at* http://www.equatorialoil.com/html/press_release12.html#PR-12-11-13.

83. Press Release, Republic of Eq. Guinea Ministry of Mines, Indus., & Energy, Signature of Memorandum of Understanding Between the Republic of the Equatorial Guinea and the Republic of Guinea (Aug. 26, 2013), *available at* http://www.equatorialoil.com/html/press_release12.html#PR-Aug27-13-2.

84. Press Release, Republic of Eq. Guinea Ministry of Mines, Indus., & Energy, Signature of Amendment to Memorandum of Understanding Between the Republic of the Equatorial Guinea and the Republic of Ghana (Aug. 26, 2013), *available at* http://www.equatorialoil.com/html/press_release12.html#PR-Aug-27-13-1.

85. Press Release, Ministry of Mines, Indus., & Energy, Ratification of Production Sharing Contracts, *supra* note 81.

86. *See generally* Ministerial Order No. 4/2103, Petroleum Regulations of the Republic of Equatorial Guinea (June 20, 2013) (Eq. Guinea), *available at* http://www.equatorialoil.com/Petroleum_Regulations_English.pdf.

87. *See* Décret N. 0605/PR/MIM, du 25 juin 2013, J.O., 165-(1447-1454) de 8 au 15.7.2013 (Gabon).

88. *See* Ordonnance N. 020/PR/2013, du 28 février 2013, J.O., 157-(1373-1378) de 8 au 15.5.2013 (Gabon).

89. Régis Immongual, *Présentation du Projet de Budget 2014 à l'Assemblée Nationale* [Presentation of the 2014 Budget to the National Assembly], MINISTRY OF MINES, INDUSTRY & TOURISM (Nov. 4, 2013), *available at* <http://www.mines.gouv.ga/object.getObject.do?id=746>.

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good governance, transparency, respect for human rights, environmental protections, and involvement by civil society and local communities.⁹⁰ Further, the government adopted provisions related to sustainable development, as inspired by the principles adopted during the 1992 Earth Summit.⁹¹

VIII. Mozambique

The Council of Ministers awarded a concession for the construction of a 175 MW gas-fired power station in Ressano Garcia⁹² and approved an amendment to the terms and conditions of a concession awarded in 2010 for a 350 MW gas-fired power station in Ressano Garcia.⁹³ The Council of Ministers also approved a statute establishing new rules “governing the production, importation, reception, storage, handling, distribution, trading, transportation, exportation and re-exportation of petroleum products.”⁹⁴ Some relevant changes introduced by the statute affect (a) the transfer of petroleum facilities; (b) the maintenance of permanent reserves of petroleum products in the country; (c) the supply to rigs, vessels, and other equipment employed in the prospecting, exploration, and production of natural resources in national territory; and (d) the reporting duties in different situations capable of threatening security of supply and/or the operation of facilities.⁹⁵

The Council of Ministers authorized the Ministry of Transportation to negotiate a public-private partnership, under a concession regime, for the construction, operation, and management of maritime terminals in Pemba and Palma to provide “logistic and port support to petroleum operations.”⁹⁶

Within the scope of the Maputo city natural gas distribution project, the Council of Ministers approved . . . the terms of the pipeline concession contract for the transportation of natural gas from Matola to Maputo to be entered into with the relevant concessionaire, ENH—Empresa Nacional de Hidrocarbonetos, EP.⁹⁷

90. See Regis Immongual, Minister of Indus. & Mines, Investment Opportunities in the Mining Sector of Gabon (Nov. 29, 2012), available at http://www.dmassocs.com/sites/default/files/Regis%20Immongault%20-%20Minister%20of%20mines_0.pdf.

91. Ordonnance N. 020/PR/2013, du 28 février 2013, J.O., 157-(1373-1378) de 8 au 15.5.2013 (Gabon); see also *Gabon Legal News*, MIRANDA CORREIA AMENDEIRA & ASSOC. 1 (Sept. 2013), available at http://www.mirandalawfirm.com/uploadedfiles/20130930_ceede9.pdf.

92. Decreto No. 47/2012, de 28 de Dezembro de 2012, BOLETIM DA REPÚBLICA [B.R.] I Série—Número 52, 6th Suplemento, de 28.12.2012 (Mozam.).

93. Decreto No. 46/2012, de 28 de Dezembro de 2012, BOLETIM DA REPÚBLICA [B.R.] I Série—Número 52, 6th Suplemento, de 28.12.2012 (Mozam.); see also *Mozambique Legal News*, MIRANDA CORREIA AMENDEIRA & ASSOC. 2 (Nov. 2012–Jan. 2013), available at http://www.mirandalawfirm.com/uploadedfiles/20130313_c82f07.pdf.

94. See generally Decreto No. 45/2012, de 28 de Dezembro de 2012, BOLETIM DA REPÚBLICA [B.R.] I Série—Número 52, 6th Suplemento, de 28.12.2012 (Mozam); see also *Mozambique Legal News*, supra note 93, at 1.

95. See generally Decreto No. 45/2012, de 28 de Dezembro de 2012, BOLETIM DA REPÚBLICA [B.R.] I Série—Número 52, 6th Suplemento, de 28.12.2012 (Mozam); see also *Mozambique Legal News*, supra note 93, at 1.

96. Resolução No. 18/2013, de 23 de Abril de 2013, BOLETIM DA REPÚBLICA [B.R.] I Série—Número 32, Suplemento, de 23.04.2013 (Mozam.); see also *Mozambique Legal News*, supra note 93, at 1.

97. See generally Decreto No. 30/2013, de 12 de Julho de 2013, BOLETIM DA REPÚBLICA [B.R.] I Série—Número 56, de 12.07.2013 (Mozam.); see also *Mozambique Legal News*, MIRANDA CORREIA AMENDEIRA & ASSOC. 1 (May–July 2013), available at http://www.mirandalawfirm.com/uploadedfiles/20130830_43a8f4.pdf.

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IX. Nigeria

A. OIL AND GAS

The government's lack of progress to enact anticipated legislative reforms and its increased focus on local ownership contributed to a climate of continued legal, regulatory, and financial uncertainty in the oil and gas sector. The legislative reform to overhaul the governance structures, fiscal regimes, and licensing and leasing procedures stalled in the National Assembly.⁹⁸ Aimed at improving accountability and increasing transparency to combat corruption, the Petroleum Industry Bill (PIB) would provide comprehensive reform as well as impose new penalties for gas flaring⁹⁹ and create a new Petroleum Technology Development Fund.¹⁰⁰ Multinational oil and gas companies are concerned that the PIB's tax provisions could "halt investments" and make new deep water and several onshore projects unprofitable.¹⁰¹ Further, the government signaled that new leases and renewals are on hold until the new law is enacted.¹⁰² The government restricted the lone leasing round in 2013 to domestic entities and imposed a local content requirement.¹⁰³

In early 2013, an ongoing legal dispute between Shell and Nigeria's Bodo community for oil spills in the Niger Delta from 2004 to 2007 resulted in a favorable ruling for the local community from a Dutch court.¹⁰⁴ The parties failed to reach a settlement in a related legal dispute between the parties brought in a U.K. court.¹⁰⁵ The local community sought remedies in foreign courts due to the lack of available remedies in Nigeria.¹⁰⁶

Despite Nigeria's rank among the top oil producing countries with the highest number of oil spills,¹⁰⁷ the National Assembly failed to enact legislation sought by the regulator in 2013 to allow it to impose stronger financial penalties for oil spills and to order companies to cease operations.¹⁰⁸ Companies expressed concern with the bill's penalties for spills

98. Petroleum Industry Bill 2012, H.B. 0 (2012), available at <http://www.nassnig.org/nass/legislation.php?id=1279>.

99. *Id.* art. 201.

100. *Id.* art. 73.

101. Obafemi Oredain, *Nigeria's Petroleum Industry Bill Could Become Law by Mid-2013*, E&P (Nov. 21, 2012), available at http://www.epmag.com/Technology-Regulations/Nigerias-Petroleum-Industry-Bill-Become-Law-Mid-2013_109986.

102. Chika Amanze-Nwachuku & Ejiofor Alike, *Oil Majors Lose Bid for Lease Renewal*, THIS DAY LIVE (Feb. 27, 2013), available at <http://www.thisdaylive.com/articles/oil-majors-lose-bid-for-lease-renewal/140728/>.

103. *Guidelines for the Allocation and Operation of Marginal Fields 2013*, MINISTRY OF PETROLEUM RESOURCES (Nov. 2013), art. 6.5(iv-v), (vii), (ix), available at <http://dprnigeria.org.ng/guidelines-for-farmout-and-operation-of-marginal-fields-2013/>; cf. Joe Brock, *Analysis: Oil Majors to Stay Onshore Nigeria Despite Grumbles*, THOMSON REUTERS (Aug. 8, 2013, 10:35 AM), <http://www.reuters.com/article/2013/08/08/us-nigeria-oil-analysis-idUSBRE9770DN20130808>.

104. *Dutch Judgements on Shell's Liability*, ASSER INST. (Jan. 30, 2013), http://www.asser.nl/default.aspx?site_id=7&level1=12218&level2=12255&level3=13072.

105. *Oil Spills: Bodo Residents Reject Shell Settlement*, VANGUARD (Sept. 14, 2013, 1:49 PM), <http://www.vanguardngr.com/2013/09/oil-spills-bodo-residents-reject-shell-settlement/>.

106. John Vidal, *Shell Nigeria Oil Spill '60 Times Bigger than it Claimed'*, THE GUARDIAN (Apr. 23, 2012, 12:46 PM), <http://www.theguardian.com/environment/2012/apr/23/shell-nigeria-oil-spill-bigger>.

107. Egufe Yafugborhi, *Oil Spill in Nigeria Among Highest Globally—NOSDRA*, VANGUARD (Aug. 20, 2013, 12:00 AM), <http://www.vanguardngr.com/2013/08/oil-spill-in-nigeria-among-highest-globally-nosdra/>.

108. See Act No. 15 of 2006 (2013), amended by National Oil Spill Detection Agency (NOSDRA) Act 2006, S.B. 155 (2013); see also Yinka Oni, *Oil Spill: NOSDRA Tasks NASS on Quick Passage of Enforcement Bill*, TO-

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beyond their control, particularly given the frequent oil spills caused by sabotage and theft.¹⁰⁹

B. ELECTRICITY

This year, Nigeria privatized its electric industry when it handed over the Power Holding Company of Nigeria to successor companies.¹¹⁰ To assist with the transition, the Nigerian Electricity Regulatory Commission released interim rules applying to the energy produced and delivered, as well as associated services.¹¹¹ The transition to a competitive market poses significant challenges, as well as opportunities for private investments, improved policy and regulatory practices, and expanded grid and off-grid electricity projects.

X. Portugal

The Portuguese parliament enacted a statute setting the rules for penalties in the electricity and natural gas markets.¹¹² This statute also amended the bylaws of the Energy Services Regulatory Authority (ERSE), which is responsible for conducting and handing down final decisions in administrative infraction proceedings.¹¹³ Under the new rules, ERSE may decide not to assess fines or, given the circumstances and the public interest to be protected, decide on a reduction of up to 50 percent of the amount of the fine to be assessed, provided that the offender fully and continuously cooperates with the decision.¹¹⁴

XI. Russia

A. OIL AND GAS

Significant changes came into effect in 2013 governing the allocation of subsoil licenses for sites of federal importance, including those on the continental shelf, under the sea, and in the territorial waters of the Russian Federation.¹¹⁵ Such licenses must now be awarded

DAY'S TELEGRAPH (Nov. 6, 2013), available at <http://telegraphng.com/2013/11/oil-spill-nosdra-tasks-nass-quick-passage-enforcement-bill/>.

109. Kolawole Daniel-Abuja, *IOCs Seek Fair Deal in NOSDRA Amendment Bill*, NIGERIAN TRIBUNE (June 24, 2013, 11:00 PM), <http://www.tribune.com.ng/news2013/index.php/en/business-package/2012-10-29-11-35-35/tribune-business/item/15068-iocs-seek-fair-deal-in-nosdra-amendment-bill.html>.

110. *VP Hands Over Electricity Distribution to Private Investors*, VANGUARD (Nov. 1, 2013, 8:33 PM), <http://www.vanguardngr.com/2013/11/vp-hands-electricity-distribution-private-investor/>.

111. Nigerian Elec. Reg. Comm'n, Rules for the Interim Period Between Completion of Privatisation and the Start of the Transitional Electricity Market 2013 (Dec. 2013), available at <http://www.nercng.org/index.php/document-library/Tariff-Charges—and—Market-Rules/>.

112. Lei. No. 9/2103, de 28 de Janeiro de 2013, D.R. 523-537, (Port.), available at <https://dre.pt/pdf1sdip/2013/01/01900/0052300537.pdf>.

113. *Id.* arts. 1-2.

114. *Id.* art. 40.

115. Federal'nyj Zakon ot 30 Dekabrâ 2012 G. N 323-FZ O Vnesenii Izmenenij v Zakon Rossijskoj Federacii O Nedrah I Ordell'nye Zakonodatel'nye Akty Rossijskoj Federacii [Federal Law of the Russian Federation on Amendments to the Subsoil Law and Certain Other Legislative Acts of the Russian Federation], SOBRANIE ZAKONODATEL'STVA ROSSISKOJ FEDERATSII [SZ RF] [Russian Federation Collection of Legislation] 2012, No. 53, Item 7648, art 1.

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through auctions to the highest bidders.¹¹⁶ Competent regional and federal authorities administer the auctions and oversee the licensing process.¹¹⁷

A new law designed to reduce emissions from the flaring of gas associated with petroleum extraction became effective in January 2013.¹¹⁸ The law encourages environmental responsibility through incentives for improved gas processing and imposes increased financial penalties for excessive discharges produced by flaring in excess of maximum legal limits.¹¹⁹ During the law's first year of implementation, charges for excessive emissions of associated petroleum gas, also known as flare gas, increased twelve times. The rate will increase to twenty-five times the 2012 rates in 2014. Producers are entitled to deduct certain expenses from emissions fees for the implementation of projects using associated petroleum gas.¹²⁰ The government aims to increase the petroleum industry's utilization of associated petroleum gas to 95 percent through the implementation of this new law.¹²¹

B. SUBSIDY TERM FOR CONCESSIONAIRES

In July 2013, Federal Law No. 181-FZ came into effect, amending provisions of the Russian Budget Code pertaining to subsidy grants for concessionaires.¹²² Generally, subsidy grants to legal entities may not exceed the three-year duration of the budget obligation limit.¹²³ Under the new law, subject to the approval of relevant executive authorities, subsidies may be granted for periods specified in concession agreements that can exceed the three-year budget obligation limit.¹²⁴ This should provide an additional incentive for investors in the oil and gas and mineral extraction industries.

C. RENEWABLE ENERGY

On May 28, 2013, the government approved a new law aimed at promoting clean energy production in the Russian Federation.¹²⁵ The new law establishes a mechanism for

116. *Id.*

117. *Id.*

118. *Postanovlenie Rossijskoj Federacii na Osobennosti Rasceta Platy za Vybrosy Zagrāznāuših Vesestv, Voznikauših v Processe Gorenija na Fakelnyh Ustanovkah i (ili) Rasseivaemaā Poputnogo Neftānogo Gaza, SOBRANIE ZAKONODATEL'STVA ROSSIJSKOJ FEDERATSII [SZ RF] [Russian Federation Collection of Legislation] No. 47, punkt 6499 [Resolution of the Russian Federation on Particularities of Calculating Payments for Emissions of Polluting Substances Arising in the Process of Burning on Flare Units and (or) Dissipating of Associated Gas, SZ RF 2012, No. 47, Item 6499] § 5 [hereinafter Resolution No. 47].*

119. *Id.*; *see also* Press Release, ScanEx RDC, A Balance of Interests, Associated Petroleum Gas 2013 International Conference Results (Apr. 10, 2013), <http://press.scanex.ru/index.php/en/news/item/3847-png2013>.

120. Resolution No. 47, *supra* note 118; Press Release, ScanEx RDC, *supra* note 119.

121. *Russia Oil Firms Face Heavy Fines for Gas Flaring*, THOMSON REUTERS (June 16, 2012), <http://www.reuters.com/article/2012/06/16/russia-oil-flaring-idUSL5E8HG33G20120616>.

122. *Federal'nyj Zakon O Vnesenii Izmenenij V Stat'i 78 I 78.1 Būd_etnogo Kodeksa Rossijskoj Federacii V Casti Predostavleniā Grantov [Federal Law of the Russian Federation on Amendments to Articles 78 and 78.1 of the Budget Code of the Russian Federation Relating to Granting Subsidies]*, SOBRANIE ZAKONODATEL'STVA ROSSIJSKOJ FEDERATSII [SZ RF] [Russian Federation Collection of Legislation] 2013, No. 27, Item 3473.

123. *Id.*

124. *Id.* art. 1.

125. *Resolution of the Russian Federation on the Mechanism for the Promotion of Renewable Energy on the Wholesale Electricity and Capacity Market*, SOBRANIE ZAKONODATEL'STVA ROSSIJSKOJ FEDERATSII [SZ RF] [Russian Federation Collection of Legislation] 2013, No. 23.

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supporting the use of renewable energy sources for power generation through the wholesale market for generation capacity.¹²⁶ Underlying the scheme is a capacity supply agreement, which allows renewable energy investors to benefit from regulated capacity prices for a period of fifteen years.¹²⁷ Investment projects for each type of renewable energy source covered by the scheme, including wind, solar, and small hydropower, will be competitively selected on an annual basis by the Administrator of the Trading System.¹²⁸ Developers of the selected projects will then be entitled to sign capacity supply agreements.¹²⁹ The goal of this competitive process is “to select projects up to a certain maximum amount of MW installed renewable energy capacity for each year.”¹³⁰

Also on May 28, 2013, the Russian government issued a decree establishing a policy framework for increasing efficiency in the electricity sector by expanding the use of energy from renewable sources through the year 2020.¹³¹ The decree describes comprehensive activities to stimulate the use of energy from renewable sources and outlines the main goals, directions, and guidelines for state authorities to follow in promoting enhanced reliance on energy from renewable sources.¹³² It also identifies new capacity targets for each type of renewable energy source.¹³³

XII. Ukraine

Ukraine continued to expand, privatize, and modernize its energy sector in 2013, to conform to the requirements of the European Energy Community.¹³⁴

A. OIL AND GAS

Looking to decrease dependence on Russian gas imports¹³⁵ and vulnerability to disrupted or decreased flow in the gas pipelines from Russia to Europe through the country,¹³⁶ Ukraine signed new production-sharing and operating agreements with Shell and

126. *Id.*

127. INT’L FINANCE CORP., RUSSIA’S NEW CAPACITY-BASED RENEWABLE ENERGY SUPPORT SCHEME: AN ANALYSIS OF DECREE NO. 449 14 (2013), available at http://www.ifc.org/wps/wcm/connect/ec3c148040c76e01ad4bd5d948a4a50/Energy+Support+Scheme_Eng.pdf?MOD=AJPERES.

128. *Id.* at 7.

129. *Id.*

130. *Id.*

131. Postanovlenie Pravitel’stva Rossijskoj Federacii o Vnesenii Izmenenij v Osnovnye Napravleniia Gosudarstvennoj Politiki po Povysheniü Energoëffektivnosti v Elektroenergetike na Osnove Ispol’zovaniia Vozobnovlaemyh Istochnikov Ènergii na Period do 2020 Goda [Decree of the Russian Federation on Amendments to Main Directions of the Governmental Policy on Increasing Energy Efficiency in Electricity Sector based on the Use of Renewable Energy Sources for the Period until 2020], SOBRANIE ZAKONODATEL’SITVA ROSSISKOI FEDERATSII [SZ RF] [Russian Federation Collection of Legislation] 2013, No. 23, Item 2931.

132. See generally *id.*

133. *Id.*

134. See generally Energy Community Treaty, Oct. 25, 2005, 2006 O.J. (L 198) 18 (Ukraine acceded to the Treaty on Feb. 1, 2011).

135. *Gazprom: Reverse-Flow Woes*, ECONOMIST (Nov. 5, 2013, 4:20 PM), <http://www.economist.com/blogs/schumpeter/2013/11/gazprom/>.

136. Henning Gloystein & Michael Kahn, *South East Europe at Biggest Risk of Ukraine-Russia Gas Row*, THOMSON REUTERS (Nov. 12, 2013), <http://www.reuters.com/article/2013/11/12/energy-gas-europe-idUSL5N0IX3VN20131112>.

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Nadra Yuzivska LLC for unconventional gas extraction in eastern Ukraine¹³⁷ and a production-sharing agreement with Chevron Ukraine and Nadra Oleska for shale gas development in western Ukraine.¹³⁸ Ukraine also began importing gas from Germany through Hungary and Slovakia and from Poland and Hungary.¹³⁹

B. PRIVATIZATION

Energy sector privatization efforts picked up speed in 2013. Ukraine's Cabinet of Ministers approved the transfer of shares in thirty-nine regional gas supply companies (Oblgas companies) for privatization.¹⁴⁰ In the electricity sector, privatization of regional electricity supply companies (Oblenergo companies) is proceeding under a scheme permitting the sale of entire blocks of state-owned shares; the government is not reserving controlling interests in the companies.¹⁴¹ The Cabinet of Ministers also approved the privatization of three combined heat and power stations in Crimea¹⁴² and forty-two coal mines.¹⁴³

To conform with the EU Internal Market in Electricity Directive,¹⁴⁴ the Ukrainian legislature passed a law on Operating Principles of the Electricity Market,¹⁴⁵ which the President signed into law on November 26, 2013. It aims to create greater transparency and to foster competition.¹⁴⁶

137. Stanley Reed, *Royal Dutch Shell to Drill for Natural Gas in Ukraine*, N.Y. TIMES, Jan. 25, 2013, at B7, available at http://www.nytimes.com/2013/01/25/business/global/ukraine-signs-drilling-deal-with-shell-for-shale-gas.html?_r=0.

138. Neil Buckley, *Ukraine's Shale Gas Lures Western Companies*, FIN. TIMES (Nov. 14, 2013), <http://www.ft.com/cms/s/0/abe8802a-4d0c-11e3-9f40-00144feabdc0.html>; *Chevron Signed Ukraine's Oleska Shale Gas PSA*, OIL MARKET (June 11, 2013), <http://www.oilmarket-magazine.com/eng/shownews.phtml?id=544>.

139. *Ukraine Imports Record Amount of Gas from the EU*, PRNEWSWIRE (May 16, 2013), <http://prnewswire.com/news-releases/Ukraine-imports-record-amount-of-gas-from-the-eu-207680391.html>.

140. *FDMU Opriludnivo Perelik Mi skgaziv, so Gotuutsa do Privatizacii* [MFI Issued a List of Gorgaza Preparing for Privatization], RBK-UKRAINE (July 18, 2013), <http://www.rbc.ua/ukr/top/show/fgiu-obnarodoval-per-echen-gorgazov-gotovyashchih-sya-k-privatizatsii-18072013175500>; Emily A. Wisnosky et al., *International Energy and Natural Resources Law*, 46 INT'L L. 305, 317 (2012) (discussing the process of privatizing Oblgas companies).

141. DIXI GRP., WEEKLY ANALYTICAL REPORT (July 15–21, 2013), available at http://ua-energy.org/upload/files/Weekly15_07_21_07_ENG.pdf.

142. Kabinet Mini stiv Ukraini Rozporaad_ennâ Pro aatverd_ennâ Planu Privatizacii Ci lisnih Majnovih Kompleksiv Strukturnih Pidrozdiliv Der_avnogo Pi dpriemstva Krimski Generuici Sistemi [Resolution of the Cabinet Ministers of Ukraine on Approval of the Privatization Plan of Integral Property Complexes of Structural Subdivisions of the State Enterprise Crimean Generating System], No. 163, available at <http://zakon2.rada.gov.ua/laws/show/596-2013-%D1%80>.

143. Fond Der_avnogo Majna Ukraini Nakaz [Order of State Property Fund] No. 2212, app. 1 (Sept. 6, 2013), available at http://www.spfu.gov.ua/_layouts/SPFUSiteDefinition/RegulationsDetails.aspx?ID=3178.

144. Council Directive 2003/54, 2003 O.J. (L 176) 37 (EC).

145. Proekt Zakonu pro Zasadi Funkcionuvannâ Rinku Električnoï Energii Ukraini [Draft Law on Operating Principles of the Electricity Market of Ukraine], Official Gazette No. 0916 (Oct. 24, 2013), available at http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=45062.

146. *Id.* art. 3.

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C. RENEWABLE ENERGY

The Parliament passed important amendments to Ukraine's renewable energy legislation in November 2012.¹⁴⁷ The law became effective in 2013, with several provisions that will take effect between 2014 and 2024.¹⁴⁸ The new law introduces feed-in tariffs for electricity produced from biogas, reduces feed-in tariffs for new solar plants, and differentiates feed-in tariffs for hydropower plants depending on their capacity.¹⁴⁹ The law amends the local content requirement for goods and services to provide for fixed percentages of component elements that need to be sourced locally for each type of alternative energy source.¹⁵⁰

XIII. United States

A. OIL AND GAS

Experiencing a surge in oil and gas outputs and on track to become a net energy exporter, the United States pursued continued growth in offshore and onshore drilling, particularly for hydraulic fracturing operations.¹⁵¹ Offshore developments include three oil and gas lease sales in the Gulf of Mexico,¹⁵² ongoing improved safety regulations in response to the Deepwater Horizon incident,¹⁵³ civil and criminal cases and settlements related to Deepwater Horizon,¹⁵⁴ and the continuation of the planning process for additional lease sales in the Gulf of Mexico and Alaska's Chukchi Sea.¹⁵⁵ Anticipating in-

147. Pro Vnesenná Zmín do Zakonu Ukraïni pro Elektroenergetiku Sodo Stimulúvanná Virobnictva Elektroenergii z AlTernativnih D_ereľ Energii [Amending the Law of Ukraine "on Electricity" to Stimulate the Production of Electricity from Alternative Energy Sources], Official Gazette No. 5485-VI (Nov. 20, 2012), available at <http://zakon3.rada.gov.ua/laws/show/5485-17>.

148. *Id.*

149. *Id.* arts. 1, 4.

150. *Id.* art. 5.

151. *Cf., e.g., U.S. Surges Past Saudis to Become World's Top Oil Supplier—PIRA*, THOMSON REUTERS (Oct. 15, 2013), <http://www.reuters.com/article/2013/10/15/us-oil-pira-idUSL1N0151IX20131015>.

152. U.S. DEP'T OF THE INTERIOR, BUREAU OF OCEAN ENERGY MGMT., ANNUAL PROGRESS REPORT ON THE OUTER CONTINENTAL SHELF (OCS) OIL AND GAS LEASING PROGRAM 2012–2017 5 (Oct. 2013), available at <http://www.boem.gov/Five-Year-Program-Annual-Progress-Report-2013/> [hereinafter OCS OIL AND GAS LEASING PROGRAM 2012–2017].

153. Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Revisions to Safety and Environmental Management Systems, 78 Fed. Reg. 20423 (Apr. 5, 2013) (to be codified at 30 C.F.R. pt. 250); Safety and Environmental Management System Requirements for Vessels on the U.S. Outer Continental Shelf, 78 Fed. Reg. 55230 (Sept. 10, 2013) (to be codified at 33 C.F.R. pts. 140–47).

154. *See generally Pending Criminal Division Cases: United States v. BP Exploration and Production, Inc., Court Docket Number: 2:12-cr-00292-SSV-DEK*, U.S. DEPARTMENT OF JUST., <http://www.justice.gov/criminal/vns/caseup/bpexploration.html> (last visited Mar. 27, 2014); *United States v. Mix*, No. 12-cr-00171, 2013 WL 5588317 (E.D. La. 2013); *MDL-2179 Oil Spill by the Oil Rig "Deepwater Horizon": Current Developments*, U.S. DISTRICT CT., E. DISTRICT OF LA. (Feb. 13, 2014), <http://www.laed.uscourts.gov/OilSpill/OilSpill.htm>.

155. OCS OIL AND GAS LEASING PROGRAM 2012–2017, *supra* note 152, at 5; Outer Continental Shelf (OCS), Alaska OCS Region, Chukchi Sea Planning Area, Proposed Oil and Gas Lease Sale 237, 78 Fed. Reg. 59715 (Sept. 27, 2013), *extended by* 78 Fed. Reg. 68471 (Nov. 14, 2013).

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creased drilling in the Arctic, the United States and other Arctic nations signed a multilateral agreement on oil spill preparedness and response.¹⁵⁶

Onshore, the Keystone XL pipeline connecting Canadian oil fields with Texas refineries faces ongoing delays and court challenges.¹⁵⁷ Hydraulic fracturing drilling, or fracking, continues to face a patchwork of federal and state laws and regulations. At the federal level, regulators pursued increased oversight on several topics, including air, water, waste, chemicals, and worker safety.¹⁵⁸ At the state level, a study of thirty-one states with actual or potential fracking activities found “regulatory heterogeneity.”¹⁵⁹ States continued to create fracking laws and regulations.¹⁶⁰ Localities saw fracking moratoriums approved and rejected by voters.¹⁶¹

B. TRANSPARENCY AND DISCLOSURE LAWS

New Securities and Exchange Commission (SEC) disclosure rules require public companies to report information related to conflict minerals and mine safety as mandated by sections 1502 and 1503 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.¹⁶² The first disclosure reports for conflict minerals, covering 2013, are due in May 2014.¹⁶³ The SEC is revising the disclosure rule under section 1504, as applicable to government payments by resource extraction issuers engaged in the commercial development of oil, gas, and mineral resources, after a federal district court invalidated the rule.¹⁶⁴

156. Agreement on Cooperation on Marine Oil Pollution Preparedness and Response in the Arctic, May 15, 2013, *available at* <http://www.arctic-council.org/eppr/agreement-on-cooperation-on-marine-oil-pollution-preparedness-and-response-in-the-arctic/>.

157. Rebecca Penty, *TransCanada Delays Keystone XL Start to 2016*, HYDROCARBON PROCESSING (Nov. 20, 2013), <http://www.hydrocarbonprocessing.com/Article/3280852/TransCanada-delays-Keystone-XL-start-to-2016.html>; *see, e.g.*, *Sierra Club v. United States Army Corps of Engineers*, No. 13-cv-1239, n.13 (D.D.C. Nov. 13, 2013), *available at* https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2013cv1239-49.

158. Sam Boxerman et al., *Don't Believe the Hype: Federal Agencies Are "All over" Hydraulic Fracturing*, LEGAL BACKGROUNDER (Wash. Legal Found., Washington D.C.), Nov. 15, 2013, *available at* http://www.wlf.org/upload/legalstudies/legalbackgrounder/111513LB_Boxerman.pdf; *Shale and Hydraulic Fracturing Report*, SIDLEY AUSTIN LLP, <http://hydraulicfracturingreport.sidley.com> (last visited Mar. 27, 2014) (providing ongoing legal updates).

159. Alan Krupnick et al., *A Review of Shale Gas Regulations by State*, CENTER FOR ENERGY ECON. AND POLICY (2013), http://www.rff.org/centers/energy_economics_and_policy/Pages/Shale_Maps.aspx.

160. *See, e.g.*, 2013 Cal. Stat. SB 4 (Sept. 20, 2013); CAL. DEP'T OF CONSERVATION, NOTICE TO OPERATORS: INTERIM WRITTEN NOTICE AND CERTIFICATION OF COMPLIANCE TO ADDRESS MANDATES OF SENATE BILL 4 (Nov. 20, 2013), *available at* http://www.conservation.ca.gov/dog/for_operators/Documents/NTO%2011-20-13%20Form%20Inst.pdf.

161. *See, e.g.*, Joe Eaton, *Results Mixed on Colorado and Ohio Fracking Ban Initiatives*, NAT'L GEOGRAPHIC DAILY NEWS (Nov. 6, 2013), <http://news.nationalgeographic.com/news/energy/2013/11/131105-colorado-ohio-fracking-ban-election-results/>.

162. *Specialized Corporate Disclosure*, U.S. SEC. & EXCH. COMM'N, <http://www.sec.gov/spotlight/dodd-frank/speccorpdisclosure.shtml> (last visited Mar. 27, 2014).

163. Conflict Minerals, SEC Final Rule, 17 CFR §§ 240, 249b, Release No. 34-67716 (2012), *available at* <http://www.sec.gov/rules/final/2012/34-67716.pdf>.

164. Sarah N. Lynch, *SEC Won't Appeal Ruling vs Disclosing Payments Abroad*, THOMSON REUTERS (Sept. 3, 2013), <http://www.reuters.com/article/2013/09/03/us-sec-resource-extraction-idUSBRE9820Z820130903>.

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C. RENEWABLE ENERGY

Among the federal incentives and government programs that promote renewable energy, the President's Climate Action Plan directed the government to accelerate permitting for wind, solar, geothermal, and other renewable projects on public lands and to provide loan guarantees to support investments in innovative clean-energy technologies.¹⁶⁵ Two federal laws, enacted in 2013, made it easier to develop small hydroelectric power projects.¹⁶⁶ Congress also extended, once again, the renewable energy investment tax credit and expanded the production tax credit to include projects that began construction in 2013.¹⁶⁷ The future of state renewable energy mandates looked uncertain as lawsuits challenged their constitutionality.¹⁶⁸

165. EXEC. OFFICE OF THE PRESIDENT, THE PRESIDENT'S CLIMATE ACTION PLAN 7-9 (June 2013), *available at* <http://whitehouse.gov/sites/default/files/image/president27climateactionplan.pdf>.

166. Hydropower Regulatory Efficiency Act of 2013, Pub. L. No. 113-23, 127 Stat. 493 (enacted Aug. 9, 2013); Bureau of Reclamation Small Conduit Hydropower Development and Rural Jobs Act, Pub. L. No. 113-24, 127 Stat. 498 (enacted Aug. 9, 2013).

167. American Taxpayer Relief Act of 2012, Pub. L. No. 112-240, 126 Stat. 2313, Sec. 407 (enacted Jan. 2, 2013, and extending the Renewable Electricity Production Tax Credit and Business Investment Tax Credit); *cf.* Database of State Incentives for Renewables & Efficiency (DSIRE), <http://www.dsireusa.org> (last visited Mar. 26, 2014) (maintained by the U.S. Department of Energy and the North Carolina Solar Center).

168. *See generally, e.g.*, *Am. Tradition Inst. v. Colorado*, No. 11-cv-00859-WJM-KLM, 2011 WL 3705108 (D. Colo., filed Apr. 2011); *cf. Illinois Commerce Comm'n v. FERC*, 721 F.3d 764, 776 (7th Cir. 2013) (discussing the Commerce Clause in dicta).

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