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I. Introduction

This paper is about the role that may be envisioned for the courts in Angola with respect to the poor.[1] It analyses the factors that are necessary for getting social rights litigation successfully through the courts – and what kind of impediments that exist.

As of 2005, Angolan courts have not passed judgment in any single case that may be classified as a social litigation case, that is a court case that tries to settle a dispute that has to do with a perceived violation of social or economic rights – as defined by the Angolan Constitution of 1991 and the International Covenant on Social, Economic and Cultural Rights from 1966 (ratified by the Angolan Government in 1991).

In spite of rather wide constitutional guarantees of a large number of social, economic and cultural rights (see details in section IV), Angola is a highly unequal society where discrimination has been rampant in many spheres of social, political and economic life. Yet, the state has not been challenged with upholding these constitutional guarantees.[2] This paper tries to identify some of the conditions necessary for such cases to be introduced to courts and to be effectively ruled upon by judges. What obstacles would a poor litigant, whose rights had not been respected, be faced with? Would the case be likely to be brought to court – and if it were, would it be favourably received?

These are important questions to answer in a country where the vast majority of the population is poor and where the judiciary is in a phase of reconstruction – and hence in the process of gradually staking out a role for itself in cases that might help reduce the level of inequality. Given that the courts' capacity to deal with social litigation cases is at an infant stage in Angola, our paper may serve as a base-line for a later time-series analysis. It is also important to note at the outset that many of the points that we make in this paper are of a general character, that is, they address access to justice problems more broadly – not only those relating to social and economic rights. The analysis is based on secondary sources as well as a series of interviews with legal academics, lawyers, judges and NGO representatives carried out in Luanda in December 2002 and March-April 2004.

In the next part we map out the theoretical framework that structures the main analysis. To frame the empirical discussion, we proceed to give a brief historical overview of recent political developments and the extent of poverty in Angola (Part III). Part IV gives a brief analysis of the formal legal framework in Angola. In the fifth part we identify factors that encourage or discourage the poor from raising their disputes regarding social and economic rights in the Angolan justice system, and from receiving a favourable response from the courts. In the Conclusion we summarise our main findings.

[1] An earlier version of this paper was prepared for a workshop on "Institutional Development: The Case of the Angolan Parliament and the Judiciary", at Hotel Trópico, Luanda, 22 November, 2004, and the workshop "Courts and Social Transformation in New Democracies", at Universidad Torcuato Di Tella, Buenos Aires", 2-3 December, 2004.

[2] We have only looked at cases presented against the state, not against individuals. We do not exclude the possibility that there have been cases regarding social and economic rights presented to provincial courts in Angola, though no such cases were brought to our attention by jurists interviewed in Luanda from March-April 2004.

II. Understanding courts in social transformation

Some theories of democracy support a role for judges in social rights enforcement and others not. According to Roberto Gargarella, a conservative view, associated with the writings of Alexander Hamilton and Justice Marshall among others, maintains that "if judges want to be respectful of democracy, they have to guarantee the primacy of the Constitution. Given that the Constitution is hostile to social rights, it follows that judges have to invalidate all those norms that try to implement social rights". Further according to Gargarella, a second, more progressive view, associated with theorist like Frank Michelman, maintains that, "if judges want to be respectful of democracy, they need not to pre-empt democratic deliberation on crucial issues". Thus, if legislators do not want to implement social rights, judges should not force this through their judgements and thus overstep the powers of elected representatives.

The most common conclusion reached by critics of social rights, reflects Gargarella, is that "a due respect to democracy requires judges *not* to reinforce social rights" (emphasis ours).[3] Nevertheless, there is a widespread agreement among proponents of social rights that these rights should not be treated differently from other rights, such as civil or political rights. We will not enter the theoretical/normative discussion on what role constitutions should ascribe to judges or what powers judges should arrogate to themselves. Rather, by choosing an empirical focus, we look at what judges actually do – and what factors determine their actions,[4] as well as the behaviour of the other central agent in social litigation: the litigant herself.

The formal legal framework

We start with a brief comment on the formal legal framework. If the court system for several reasons cannot be *expected to* take on cases of social litigation, there is no reason to expect the poor to make the effort to bring such cases forward – even if they were able to do so. Factors that may determine whether courts may be expected to take on the cases in question are (i) existing legislation, (ii) legal and political culture, (iii) the existence of alternative bodies for dispute resolution, and (iv) the traditional responsibility for solving problems pertaining to the violation of the poor's social and economic rights.

The nature of the legal system and the legal culture in a country are decisive for whether or not courts as institutions (or judges as individuals) (a) have it in their mandate and/or (b) perceive it as their part of their function to pass judgments that may lead to social transformation. Following Gargarella, social transformation is here understood as "the altering of structured inequalities and power relations in societies in ways that reduce the weight of morally irrelevant factors" – such as socio-economic status/class, gender, race, religion or sexual orientation.[5] The main point here is to what extent courts provide a relevant channel where poor and marginalized groups can articulate rights-based claims that address these inequalities in substantive ways. Trying to reduce inequality and discrimination in a society has in most countries been the task of politicians and bureaucrats. For such matters to be relevant for the courts, they must usually operate in strict compliance with a

[3] See (Gargarella 2004).

[4] Note, however, that what judges actually do is conditioned by the role that is assigned to them, which is in turn a function of what the drafters of the constitution concerned think they ought to be doing. For example, a country may have a constitution that is based on a theory of democracy that suggests that judges ought to have a role in enforcing social rights, but may in practice not have vigorous social rights jurisprudence. One of the explanations for this might be that judges failed to accept the constitutional invitation to enforce social rights for various reasons, but it may also be that the constitution was based on an over-optimistic theoretical assessment of what judges can do, either in the abstract or in the context of the particular political and economic conditions pertaining in the country.

[5] Cited in (Gloppen 2003: 3).

constitutional framework.[6] Moreover, courts are bound by existing legislation. Third, they must pay attention to the limits of their jurisdiction. And finally, judges must perceive it as their role to take on such cases.

Analyzing courts in social transformation

Given the existing legal framework in a country, Siri Gloppen's theoretical framework developed to systematize factors that determine when and why courts are active in social transformation, that is, responsive to social rights litigation, may serve as a point of departure for our analysis of poor people's access to justice in Angola.[7] Gloppen's framework covers the entire process that a case has to go through, from the time it is presented to court until it is implemented. The process may conveniently be divided into four stages: (1) the willingness and ability of marginalized groups to bring social rights/transformation cases to court; (2) the courts' responsiveness to the case brought forward; (3) the capabilities of judges (which is closely linked to the responsiveness of the court); and, finally, (4) the judges' authority and the possibility of enforcing the decision in practical life. Each of these stages depends on a set of societal, cultural, institutional and judicial factors, as well as on the political context in the country.

We choose here to focus on the two first stages for the following reason: Because there are no empirical examples to draw on in the Angolan case, it is hard to make guesses as to how judges are likely to have responded to such cases or to say anything about how these cases are likely to have been enforced. In our analysis we therefore limit ourselves to treating, as systematically as possible, the factors that would enhance - or hinder - the possibility of a social litigation case making its way through the Angolan justice system – from the presentation of the case to court to a potential hearing in the court.

III. Recent political developments in Angola – a brief historical overview

In order to assess whether Angolan courts can be expected to play a positive role in social transformation, one must take into account the recent turbulent history of Angola in general and the short history of the Angolan legal system in particular. Angola is in many ways a country in a state of deep transformation. There has only been peace, in the meaning of absence of war, for less than three years. After two failures, the third peace agreement ended an almost 30-years-long civil war and was signed by the government party, the Movimento para a Libertacão de Angola (MPLA), and the opposition forces, União Nacional para a Indepêndencia Total de Angola (UNITA), in February 2002, upon the death of UNITA leader Jonas Savimbi. This has opened up the possibility for political stability and, in turn, institutional development.[8] How this window of opportunity will be used is still an open question.

The sitting government, headed by Eduardo dos Santos, is facing multiple challenges. Close to 30 years of civil war has clearly taken their toll on people, institutions, and infrastructure. In spite of being one of the richest countries in Africa in terms of natural resources, Angola is also considered one of the very poorest. Angola is the second largest oil exporter on the continent (after Nigeria)

[6] One can imagine a country where the constitution is silent on the role of courts in social and economic transformation, but where courts nevertheless take on such a role. One can also imagine a kind of mid-level example, like India, where the courts have gone further than the constitution prescribes. See (Sudarshan 2004)

[7] See (Gloppen 2004).

[8] This stands in contrast to the failed peace agreements of 1991 and 1994. See, for example, (Economist Intelligence Unit 2004: 2, 5). For an historical account of political development in Angola, see (Grobbelaar 2003; Tvedten 2003).

and the third largest exporter of diamonds (after South Africa and Botswana). Enormous sums of money are pumped into state coffers every day.[9] Nevertheless, very few of these resources have benefited the majority of Angolans. Out of the population of about 13.2 million, about 2 million were recorded as internally displaced people after the war ended in 2002. Although most of these people have now been resettled, they are facing particular hardships.[10] The rest of the population is not much better off: Although exact figures on poverty are disputed, there is a widespread consensus that the vast majority of people in Angola may be defined as poor. According to the UN Human Development Report 2002, about 60 per cent of the population of Angola lives in "extreme poverty".[11] According to the Government, "only" 28 per cent live in "extreme poverty" (under 0.76 USD per day) whereas 68 per cent live in poverty (under 1,70 USD per day).[12] Angola ranks as number 166 out of 177 countries on the Human Rights Index for 2003 (with Norway as number one and Sierra Leone as number 177).[13] Life expectancy at just over 40 years is the tenth lowest in the world. Infant mortality rates run at 154 per 1,000 live births – also among the most alarming in Africa. More than a quarter of all children born do not live beyond the age of five. There are no available statistics on literacy rates, but with a primary school enrolment rate of 30 per cent, one might expect these to be very low.[14] Due to the high levels of poverty, access to justice for the poor is a concern of significant magnitude. This problem is reinforced by the social and geographic structure of Angola: the elite is centred in the capital Luanda, where also the functioning courts are located, thus making the urban-rural divide very deep.

If Angola is to redistribute its oil wealth, and thus reduce poverty, serious changes must be made to the three branches of government. The country is currently in a phase where it is trying to build and strengthen its democratic institutions. Issues like constitutional reform, electoral reform, and law reform have been on the present government's agenda since Savimbi's death three years ago paved the way for the "normalisation" of Angola's developmental concerns.

Although the current government has signalled commitment to democratic development, there is reason for caution. There are still wide-spread human rights abuses and violation of basic freedoms, for which the government is responsible – especially in the north of the country.[15] Elections have been promised since Savimbi's death – officially scheduled for 2002, 2003, 2004, and 2005 respectively. Whether the government's latest promise to hold elections in 2006 will be kept, remains to be seen.[16] Constitutional reform, initially expected to be completed in 2004, is still ongoing.[17] Economic redistribution is another sore point. The state economy is based on oil revenue

[9] For data on oil production and other economic indicators, see (Economist Intelligence Unit 2004).
[10] The number of IDPs varies from source to source. A refugee expert reports 4.1 million IDPs living in camps or in urban areas throughout the country, and around 450,000 refugees living in neighbouring countries. See (Lari 2004: 1) The number of IDPs estimated by a UK Foreign and Commonwealth country report on Angola is at 4.5 million. Cited in (International Bar Association Human Rights Institute 2003: 15, fn. 10).
[11] (UNDP 2002).
[12] The estimates are based on 2001 figures (Angolan Government 2004).
[13] (UNDP 2003).
[14] The facts and figures in this section are mostly from 2002, taken from the statistical section in (UNDP 2003).
[15] See, for example, (Congo 2003; Human Rights Watch 2004; U.S. Department of State 2002; U.S. Department of State 2003). A lack of respect for human rights has also been reported consistently in monthly reports from the United Nations Human Rights Office in Angola.
[16] At the political level the discussion is reported to be on whether to hold the elections before or after the promulgation of a new constitution. According to a news report, after a heated argument between the majority and the opposition grouped around former UNITA rebels, an agreement was reached to hold elections before the revision of the Constitution. See Agencia Fidez at http://www.fides.org/eng/news/2005/0501/21_3952.html, accessed 10.02.05.
[17] The constitution of Angola dates back to the single party communist era. Although two rounds of constitutional amendments in March and September 1991 respectively formally changed Angola into a multiparty democracy with fundamental political rights and freedoms, the Constitution still contains remnants of single party rule. A Constitutional Commission was set down by the Parliament in 1998 to work out a new constitution aiming at further clarification of the separation of powers and the interdependence of the sovereign bodies of the state, as well as guaranteeing the principles of

rather than taxation, which means heavy state control of resources. The legacy of Marxism/one-party statism coupled with a concentration of economic and political power in the hands of a few, gives reasons to doubt the political will to ensure a more equal distribution of power and wealth. According to a recent report, more than four billion dollars in state oil revenue disappeared from Angolan government coffers from 1997-2002, roughly equal to the entire sum the government spent on all social programs in the same period.[18] The Angolan government has indeed on repeated occasions been criticised internationally for non-transparency and lack of accountability. In the Transparency International Corruption Perceptions Index of 2002, Angola was ranked 98th in the world (together with Madagascar and Paraguay), and just before Nigeria and Bangladesh, who were ranked the second-most and most corrupt respectively.[19] The Angolan government has also been criticised for attempting to influence judges. More specifically, the governing party, the MPLA, has been reported to attempt to influence judges, especially in the provinces in ways that have included financial inducements.[20] Experience from other countries indicates that reforming institutions and establishing democratic accountability is extremely difficult in settings with centralised power. The judiciary, which is often the weakest of the three state branches and therefore in urgent need of reform, is also the branch the executive frequently tries to wield control over in order to ensure support for political decisions.[21]

In such a context, is it reasonable to expect the courts to be an institutional voice for the poor? As suggested above, Angola may be defined as a base-line case in the sense that no case of social rights litigation has yet successfully been presented to and/or favourably treated by the courts. We propose that the two most important bottlenecks to access to justice for the poor (through the formal courts) are (1) people's lack of formal legal strategies and (2) the inability of courts to respond to claims – should they be presented. As the analysis in Part V will demonstrate, both of these bottlenecks are historically conditioned.

Before venturing into an analysis of marginalized groups' chances of bringing cases to court, we give a brief presentation of the formal legal framework in Angola to map out the legal factors necessary (but not sufficient) for judges to rule in matters of social litigation.

IV. Angola's formal legal framework

There are two (general) conditions that must be in place for a case to be heard by a court: First, the citizen must be able to sue (here: the state). Second, there must be appropriate laws/legislation on which judges can act.

In principle, the case law of the Angolan Supreme Court appears to allow citizens to sue the State for violations of the law. In the *Laurinda Hoygaard Case*, a woman successfully sued the Minister of Education for having wrongfully lost her position as a University rector to another person

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a democratic state based on the rule of law in Angola. For details, see (Amundsen 2004: 4) The Constitutional Commission had as of November 2004 not concluded its work.

[18]Human Rights Watch. 2005. Some Transparency, No Accountability: The Use of Oil Revenue in Angola and Its Impact on Human Rights Human Rights Watch, 2004, p. 1 [cited 10.02 2005]. Available from http://www.hrw.org/reports/2004/angola0104/. .

[19] Cited in (Grobbelaar 2003: 51). For a more detailed discussion of corruption in Angola and its impact on human rights, see Human Rights Watch. 2005. *Some Transparency, No Accountability: The Use of Oil Revenue in Angola and Its Impact on Human Rights* Human Rights Watch, 2004 [cited 10.02 2005]. Available from http://www.hrw.org/reports/2004/angola0104/.

[20] (International Bar Association Human Rights Institute 2003).

[21] For a theoretical argument on this, and its implications for executive dominated Latin American countries, see (Skaar 2002), Chapters 1 and 2.

appointed by the Minister. In this administrative case, the Supreme Court (first in one of the specialized courts, and later in the Supreme Courts plenary) upheld Hoygaard's right to hold the position she was rightfully elected to and also upheld her right to financial compensation for the damages suffered.[22] Hence, there is at least a potential for courts in Angola to hear cases brought against the state for the failure to guarantee social and economic rights.

As for existing legislation, constitutional guarantees of social and economic rights seem relatively comprehensive, whereas national legislation seems to be much less developed in these matters.

Formally, the 1991 Constitution of Angola (as amended in 1992) provides legal protection for many social and economic rights, such as:

- The right and duty to work; workers' right of fair remuneration, rest, holidays, protection and workplace hygiene and security; worker's right to freely choose his/her occupation (Article 46);
- Promotion of the State of the measures necessary to assure the exercise of the rights to health care, early childhood care, maternal health care, assistance for the disabled, the elderly and those incapable of working (Article 47);
- Promotion of the State of access by all to education, culture and sport (Article 49);
- Duty of the State to create the political, economic and cultural conditions necessary for citizens to enjoy effectively their rights and fulfil their duties (Article 50).[23]

Furthermore Article 21 recognizes the "integration into Angolan law of the rights embodied in the Universal Declaration of Human Rights, the African Charter of Human and People's Rights and other international instruments to which Angola is a party". The latter includes the International Covenant on Social, Economic and Cultural Rights from 1966 and several labour rights conventions.[24] Consequently, the Angolan government is constitutionally bound by international treaties guaranteeing a wide range of social and economic rights. More importantly, Article 43 makes all the legally established rights justiciable by stating the "Right of the citizen to take judicial action against all acts that violate rights established in the Constitutional Law or other legislation." This means that the government is not only bound by the Constitution and international legislation in social rights matters, but also by those rights that are stated in various national laws.

Legislation includes, for instance, the law on primary school education, which guarantees the right to free basic education. The responsibility of the courts in upholding these rights is stated in Article 121: "The courts shall guarantee and ensure compliance with the Constitutional Law, laws and other legal provisions in force, protection of the rights and legitimate interest of citizens and institutions, and shall decide on the legality of administrative acts". Finally, Article 36, paragraph 2, of the Constitution states that citizens should not be prevented from obtaining legal redress because they lack financial means (an important point to which we shall return in more detail later). From this we may conclude that the Angolan Constitution itself offers quite wide protection for social and economic rights, and that it is within the competence of the judges to rule in such cases.

[22] The Supreme Court ruled in 2003 that Hoygaard was entitled to a financial compensation, but had as of November 2004 not set the sum for the compensation. Until that is done, the judgement in the case remains non-public (and not available).

[23] From Constitutional Revision Law (Law 23/92 of 16 September 1992 (cited in UN Report: *Angola: The Post-War Challenges.* Common Country Assessment, 2002.) The amendments to the Constitutional Law were introduced in March 1991 through Law No. 12/91, as part of the Angola Peace Accords, signed on 31st May 1991.

[24] Labour rights conventions include Freedom of association and collective bargaining (Convention 87 and 98); Elimination of forced and compulsory labour (Convention 29 and 105); Elimination of discrimination in respect of employment and occupation (Convention 100 and 111) and Abolition of child labour (Convention 182). Cited in (UNDP 2003), Indicator 31.

However, there is uncertainty about how much weight the Constitution of Angola carries, especially with respect to guarantees of social and economic rights. Judges will, in general, not refer to the Constitution directly in their judgments on specific rights – they will need these rights to be specified and detailed in national law. It is unclear how developed national legislation on social and economic rights is in Angola. It is our impression that much of the existing laws are inherited from the colonial period under the Portuguese. Legislation is changing very rapidly, and it is hard to get insight into laws and Parliamentary debates on laws and proposed legislation.[25] What is clear, however, is that most legislation emanates from the Executive, not from the Parliament. According to a recent study, as much as 90 per cent of all legislation may originate in the Executive office, which means that the Parliament plays a very marginal role in Angola.[26] Evidence further suggests that there has been a tendency in recent laws (such as the Land Law and the law regulating NGO activity) to restrict the rights of citizens, rather than to give them more rights.[27] For instance, the new Land Law rushed through Parliament out of session in 2004 has been criticised for not taking into account *usufructus* or traditional property. This is envisioned to cause extensive problems and conflict over land, especially for the thousands of internally displaced people, ex-combatants and refugees who are in the process of returning to their areas of origin. For indigenous pastoral groups in southern Angola, under constant threat of eviction, the issue is reported to be particularly urgent.[28] The tendency toward even tighter presidential control and a tendency to restrict rights are rather disconcerting with respect to prospects for social rights to be respected and upheld by judges in Angola.

Likewise, the Government's failure to fulfil the constitutional provision for the establishment of a judicial protectorate, which according to Article 142 "shall be an independent public body, the purpose of which shall be to defend rights, freedoms and guarantees of citizens ensuring by informal means the justice and legality of the public administration," is also worrisome. According to the Constitution, citizens have the right to present complaints to this Judicial Protectorate. Although this body, as of November 2004, had not yet been established, it is important to be aware of its potential existence.

In sum, the legal framework in Angola gives citizens both legal protection of a wide range of social and economic rights as well as constitutional guarantees for the right to seek redress should these rights be violated. Yet, as in many developing countries, there is a wide gap between the constitutional rights given to people and the actual enforcement of such rights. The fact that the vast majority of Angolans live in abject poverty without access to education, adequate health facilities, or job opportunities suggests that these rights are being systematically violated, by omission if not by commission. In the next section, using Gloppen's theoretical framework, we systematically explore some of the factors that enhance – or, alternatively, hamper – access to justice for the poor, here defined as bringing social rights litigation to court. Note that although the focus is on a particular type of civil case, many of the arguments below pertain to the issue of access to justice more generally.

[25] In a UNDP sponsored seminar on "Justice and Law Reform in Angola" held in Luanda in May 2004, the quality of legislation, doctrine and national jurisprudence were mentioned as important areas for further study.
[26] See (Amundsen 2004).
[27] Information from authors' interview with Isabel Emerson, Country Director, National Democratic Institute (NDI), Luanda, 19.11.04.
[28] See (United Nations Office for the High Commissioner of Human Rights 2003: 8).

V. Why courts in Angola have failed to act as vehicles for social transformation

Marginalized groups' voice

In Angola, the vast majority of the people may be categorized as "marginalized" in the sense that they are poor and thus lack adequate resources. For this reason alone, it is important to know what kind of resources the poor actually possess and what chance they have of approaching the formal judicial system for recourse when their social and economic rights are violated. Three groups of factors may help explain why or why not the poor bring social litigation cases to court: (i) societal and cultural factors; (ii) institutional and judicial factors, and (iii) the political context.

The first and most pressing problem in Angola is that there is no tradition of using the formal court system. Angolans are reported to be rather sceptical with respect to the use of formal legal structures. Levels of trust in the formal legal system are generally low.[29] This may be partly due to lack of and/or negative experiences with the formal legal system. Historically, the vast majority of disputes have been settled *outside* the formal court system. With respect to informal ways of solving disputes, there is a plethora of legal cultures and norms in Angola. At present no serious comparative research has been done on this, although a couple of studies are underway.[30] Clearly, most people prefer to settle disputes through local dispute resolution structures, especially at the village level. Elders and prominent men in the local environment are entrusted with finding solutions to disputes. Where these efforts fail, people are known to approach the formal courts as a second instance of appeal. This is particularly true for people in Luanda, who are the only ones who have access to courts in any meaningful sense of the word (see discussion below).

The reason why people fail to use the formal legal system is complex, but may be summarized as a combination of the following: Up till 1975, during the period of colonial rule, the formal legal system was reserved mainly for Portuguese settlers and their descendants. Angolans had to find other ways of settling disputes and obtaining justice. The legacy from the colonial era discourages local people from using the formal legal system. Second, the protracted civil war involved a long period during which formal courts barely functioned at all. Third, the present nature of the formal court system discourages the poor from using it (a point to which we shall return in more detail below). Fourth, and linked to the previous point, the lack of a particular kinds of resources has made it difficult for the poor to turn to the courts for redress (another point to which we shall return in more detail below). In short, there are a number of *access barriers*, such as lack of information, physical access to courts, financial costs, language etc. Many of these problems are interlinked.

Since the majority of the people (especially in rural areas) live far from a court, there is scarce *knowledge* about the formal court system. One may assume that the further physical distance from a court, the less knowledge about the existence of the court and the procedures of bringing a case to court. There is also a problem regarding the general knowledge of what rights exist in the first place. Given the average low level of education and alarmingly high illiteracy rates, it is no surprise that people in general are not aware of the possibility of raising a court case over the violation of social or economic rights. A UN sponsored study attempting to measure the knowledge of human

[29] (Grobbelaar 2003: 50). See (Humanos/TROCAIRE and Procuradoria Geral da Repúblicana na Província de Luanda 2000/2001).

[30] One of the conclusions from a UNDP sponsored seminar on "Justice and Law Reform in Angola" held in Luanda in May 2004, was that there is a need to recognise the existence of customary law and to establish criteria to define and integrate customary law into the formal judicial system. See conference proceedings (Universidade Agostinho Neto 2003).

rights among the poor in Luanda in 2000 thorough a survey covering around 1500 respondents concluded that about 15 per cent of the population had no knowledge or concept of rights at all. The remaining 85 per cent had only "vague knowledge" of their rights, and did not know what to do in the case that their rights were violated.[31] Since this study was conducted, there have been some efforts at spreading information about human rights and the right to free legal aid through the radio and television. For instance, there are radio programmes that have sought to explain citizens' rights, where jurists are available to answer questions and explain the details of laws. These radio programmes are reported to have had a big impact in that they reach broad segments of the population. By contrast, television is a less efficient way of transmitting knowledge on rights since very few among the poor in Angola have access to television.[32]

In addition to the social and cultural factors mentioned above, there are also important *institutional and judicial barriers* that the poor have to overcome. One major problem in Angola is *physical access* to courts. Out of 168 municipal courts country wide, only 23 were working in 2003.[33] Outside Luanda, very few were operative, in the sense that the court was staffed by judges and had lawyers to present a case. For all practical purposes this means that only the population in Luanda has physical access to formal courts at the lowest level. At present, roughly a third of the population lives in Luanda.[34] This, in consequence, reduces significantly the poor's chances of gaining access to courts close to where they live. Travelling to the nearest court can be an impossible task for many since Angola is a huge country with vast distances and very poor infrastructure. Roads and bridges were largely destroyed during the war and rural areas are infested with land mines, which in turn makes travelling both difficult and risky.

If we for a moment assume that a poor person has physical access to a court and knows how to go about presenting a case, the next concern is likely to be *financial costs*. In spite of constitutional guarantees of costs not being a barrier to justice, bringing a case to court in Angola is not free of cost. The first problem is hiring a lawyer. The large majority of Angola's about 600 lawyers work in Luanda. There are barely any in the rural areas, meaning that a person who wants to take a case to court has slim chances of doing so unless she lives in the capital. The next problem is that of monetary cost. Substantial costs are involved at various stages of the litigation process. Legal fees vary widely. Up till 1996, the Government set legal fees. Now lawyers may charge anywhere from USD 100 to USD 2,000-3,000 for the same service. Divorce cases are charged up to USD 5,000, making divorce unaffordable for most people.[35] According to a recent report, recent updates on the fee tables for the Notary's Office and other judicial services have been increased to a point where "it is almost impossible for the common citizen to access them". The report further notes that "judicial cost fees are very high" and suggests that the Bar Association approves a minimum fee, so as to make costs more affordable and predictable for ordinary citizens.[36]

In the only known attempt to bring to court a complaint against the state regarding violations of social and economic rights in Angola, more specifically, the right to free education, the case failed due to the cost of bringing the case through court. In brief, an international non-governmental organisation (NGO), World Learning, has been providing a grant to an Angolan education coalition

[31] (Barragues 2000: 11). To the best of our knowledge, this is the only rights-based study carried out in Angola.
[32] See (Humanos/TROCAIRE and Procuradoria Geral da Repúblicana na Província de Luanda 2000/2001).
[33] (International Bar Association Human Rights Institute 2003: 4).
[34] Though data on population statistics is not readily available, the current (formal and informal) urban population of Luanda is estimated at 4 million people. This number is estimated to possibly increase to 5.1 million by 2010. See (Angola Press Agency (Luanda) 2005).
[35] Information taken from (International Bar Association Human Rights Institute 2003: 32).
[36] Cited in a final report from a seminar on Justice and Law Reform sponsored by the UNDP in Luanda in 2004, (Goncalves 2004: 24). The same report recommends the creation of a citizen's public defence service by the Angolan Bar Association, more specifically a Judiciary Assistance Institute (p. 27).

composed of ten Angolan NGOs. The education coalition hired a lawyer to discuss the possibility of taking the Ministry of Education to court over its failure to comply with the primary education law. This law states that all primary education up to grade six is free, that means no fees. However, according to World Learning, in practice this law is not being implemented. In order for children to have access to primary education, parents have been forced to pay a bribe to school directors and teachers. All the lawyers contacted by the Angolan education coalition to do the preparatory work for the planned court case had been asking for over USD 7,000, although the work was only estimated to take one month. This was beyond the coalition's financial capacity. The coalition next approached a number of donors to support this activity, but all requests were turned down. World Learning only had USD 3,000 to offer the coalition for this activity, which was not enough. As a result, the project was dropped. Evidence suggests that there are no other cases against the Angolan state concerning social rights in the courts at the moment.[37]

The USD 7,000 fee demanded by the lawyers approached by the educational coalition in Angola (supported by an international NGO) to prepare a case against the Ministry of Education is not uncommon. Ordinary Angolans, needless to say, are not likely to have the financial means necessary to hire a lawyer to take on a case. Even if they did, they may not have the financial means to ensure that the case is heard. Not only do lawyers demand high fees for their services. It is also costly to have the case taken through the court system. There is, further, widespread corruption in the Angolan justice system. This has, in part, to do with the fact that judges and functionaries are poorly paid.[38] Lawyers are often paid under the table. Court clerks and judges are paid to hear a case, and even more money is in turn required in order to have a case decided. There is also a practice of paying judicial tax. This applies to some cases, though not all (labour cases are exempted). For instance, in a divorce case the assets are divided, with 10 per cent going to the judge. A particular rule applies to cases that are appealed to the Supreme Court in Angola. In such cases the person has to pay a judicial tax of 10 per cent, which means 10 per cent of the monetary value of the issue in dispute goes to the court. If the person does not pay, the case stalls. Because many people are distrustful of decisions reached by judges in the municipal and provincial courts in general, a lot of cases are appealed to the Supreme Court. However, the 10 per cent judicial tax is definitely a factor that restricts access to justice for the poor. In sum, substantial amounts of money are needed to bring a case to court, and even more to have the case acted upon.[39]

Although the state has a constitutional duty to provide *free legal aid* to those who do not have sufficient economic means (Article 36, paragraph 2), there are several obstacles. First, as mentioned above, the vast part of the country does not have lawyers, which in practice means that legal aid is restricted to people living in the capital. Second, there is a chronic lack of educated lawyers, even in the capital. Third, a person who wishes to take a case to court has to present a certificate proving that he or she earns less than a certain minimum amount. This in itself is a significant hurdle for people who may not know how to read or write, and not be familiar with bureaucratic structures. The Bar Association of Angola (OAA) has offered legal aid to a number of people – frequently for free.[40] The state is supposed to reimburse lawyers, but according to the head of OAA, the state is extremely slow in these matters.[41] It is often easier for a lawyer to do it for free than to try to get

[37] The information was provided by Fern Teodoro and Anecleta Pereira, World Learning, in an interview with the authors in Luanda, 02.04.04. Followed up by email communication with Fern Toledo, 04.11.05.
[38] Corruption is a serious problem in all state sectors, mainly owing to the poor salaries paid to low-level officials. That there exists widespread corruption in the justice sector in Angola was confirmed by a number of informants interviewed in Luanda in March-April 2004. For a more thorough discussion, see also (Araújo 2004: 5).
[39] The information on judicial taxes and fees was provided by lawyer Paulette Lopes, private lawyer, in an interview with the authors in Luanda, 06.04.04.
[40] The laws regulating legal aid and the number of cases in which the lawyers pertaining to the Bar Association (OAA) have assisted are detailed in (Araújo 2004). Although Law 15/95 of 10 November states that salaries are to be paid annually to lawyers offering legal aid, this is not done in practice.
[41] Information from Raúl Araujo, OAA, in interview with authors in Luanda, 30.03.04.

reimbursed through the bureaucracy. To compensate for the lack of qualified lawyers providing free legal aid through the state system, there are a couple of NGOs in Angola that offer free legal services to those who need it most, such as World Learning and Associacão Justica, Paz e Democracia (AJPD). In spite of these efforts, there is still a widespread lack of free legal aid.[42]

According to Gloppen's theoretical framework, *language* may constitute a yet another potential obstacle to access to justice. Interestingly, this appears not to be a large problem in Angola, although one might have expected it to be since the formal courts in Angola operate in Portuguese. There are three large ethnic groups and a number of smaller groups, with clear linguistic distinctions.[43] Although it is unclear how many Angolans do not speak Portuguese, the figure is estimated at less than 20 per cent by a local NGO which works on access to justice issues. Importantly, almost everyone in Luanda – where the vast majority of courts are located – speak Portuguese. Non-speakers of Portuguese who need translators in courts are reported to find them, and the courts operating outside Luanda seem to have enough translators. It also appears that judges in the country side (read: provincial courts and a small number of municipal courts) speak at least some local native language.[44]

If we, for the sake of argument, assume that a poor person is aware of her rights, has decided to present a case to one of the Luanda courts, and further managed to find and pay a lawyer to bring the case forward, what are the factors that will determine whether or not the court will actually take on the case and give it a favourable hearing?

Courts' responsiveness

In Angola, the responsiveness of courts is not so much a function of the legal framework, the existence of legal strategies, or the existing legal culture as of the state of the justice system itself. Only parts of the formal justice system are actually functioning. The court system may, at best, be characterised as weak. The weak capacity of the Angolan courts is a problem that affects the treatment of all kinds of court cases, not only social rights litigation. Some of the following discussion is therefore of a general character.

The capacity of the courts is seriously limited by a lack of *human and technical resources*. This problem has historical roots: At independence in 1975, very few jurists (almost all of whom were educated in Portugal) stayed behind – there was only one judge, one prosecutor and about fifteen lawyers in the entire country.[45] The first law graduates from an Angolan university were produced only in 1984. Although there have been substantial improvements in the Angolan justice system in the last 20 years, there is still a great lack of qualified judges and lawyers. One or two judges often serve millions of people. An estimate in 2003 showed that Angola needed about 200 more judges.[46] Another problem is that the gender balance in the two professions is greatly skewed towards men.[47]

[42] For a discussion on free legal aid, see (Araújo 2004).
[43] The last consensus in Angola distinguishing ethnic affiliation was carried out in 1960. The largest ethnic group, the Ovimbundu then made up 37 per cent of the population, followed by the Mbundu (25 per cent), and the Bakongo (15 per cent). Other major ethno-linguistic groups are the Lunda-Chokwe (8 per cent) and Nanguela (7 per cent). There are also several smaller southern groups, such as Nyaneka, Owambo, and Herero. For more detailed information, see (Tvedten 2003: 106-109).
[44] The information on access for non-speakers of Portuguese to the formal court system is reported in (International Bar Association Human Rights Institute 2003: 61-62).
[45] (Marques Guedes 2003). Supplemented with interview material.
[46] (International Bar Association Human Rights Institute 2003: 38).
[47] This is likely to change in the future as women now represent about half of the students at the country's four law faculties.

In spite of reforms in 1988 which restructured the entire justice system and guaranteed the judiciary formal independence through Law No 18/88 on the 'Unified system of justice', much work remains before the judiciary becomes fully operational. In the three-tiered system (municipal courts, provincial courts, and the Supreme Court) administratively organised under the Ministry of Justice, the first level is barely functioning. As mentioned above, only 23 out of 168 municipal courts were reported to be operational in 2003. Two of those functioning were located in Luanda. The rest were concentrated in a few of the provinces. Consequently, people living in a majority of provinces in Angola do not have access to formal courts at the local/municipal level.[48] The government has expressed that it hopes to reopen two or three of its 145 closed municipal court houses a year – a process that might take half a century, according to one estimate.[49] As such, the prospect for the poor to access courts at the primary level seems rather slim.

Access to courts at the provincial level is significantly better, however. There are 19 provincial courts in Angola; one in each of the 18 provinces plus two in the province of Benguela (Benguela city and Lobito). The provincial courts are composed of *salas* (specialised courts). The two *salas* likely to deal with social litigation cases is the *sala* for Cível e Administrativeo (civil and administrative) and the *sala* for Labour relations. In practice, many cases are presented directly to the provincial courts rather than starting at the lowest level.

The Supreme Court is in operation, although only nine of its 16 judges have been appointed so far. It is a particular concern that the Constitutional Court, provisions for which exist in the 1992 constitutional revision, has never been established. This means that the Supreme Court is the guardian of the Constitution and the final arbiter in constitutional matters – including the upholding of social and economic rights. This in itself is not a problem. What is problematic, however, is that the Supreme Court has been criticised for being too close to the Government, and thus not fully independent. A prominent legal scholar concludes that the fact that the entire judicial pyramid is under the formal tutelage of the Ministry of Justice makes it "seriously unconstitutional".[50]

With respect to the possibility of seeking redress for violations of social and economic rights, it is a genuine concern that the Ombudsman's Office has not yet been established – in spite of Constitutional provisions. There is, however, another dispute resolution body through which people may present complaints, namely the Human Rights Commission, established by the executive and located in the National Assembly. The Commission works broadly on human rights and civil rights, offering advice on a wide range of issues, such as land issues, housing rights, violation of labour rights etc. It also offers free legal aid. The Commission handles around 200-300 cases per year, which is the overwhelming majority of the cases brought before it. Unresolved cases go the Supreme Court.[51] The Parliamentary Commission on Human Rights is supposed to handle cases that would otherwise be brought before the Ombudsman's Office. Although the Commission seems to be working quite well, it is worrisome that it is located within government structures and hence not operating independently. This may seriously reduce the likelihood of people bringing forward their grievances against the state.

The fact that only parts of the Angolan justice system are working has to do in part with the insufficient allocation of *financial resources* and in part with the lack of *human resources*. The judiciary has so far not been a priority item in the state budget. Before the Second Republic, which was constitutionally launched after the peace accords in 1991, less than one per cent of the state

[48] This has been confirmed by several studies. See for instance, (European Union 2002; Marques Guedes 2003; United Nations 2002).
[49] (International Bar Association Human Rights Institute 2003: 42).
[50] (Marques Guedes 2003).
[51] Information on the Human Rights Commission was given in an interview with Dr. Milton da Silva, President of the Human Rights Commission, in Luanda, 06.04.04.

budget per annum was allocated to the judiciary.[52] This had historical reasons: According to the head of the Angolan Bar Association (Ordem dos Advogados de Angola), the meagre resources allocated to the judiciary has in part to do with the fact that at independence, the state sectors in Angola were divided into "productive" and "non-productive". The government channelled state resources into the more "productive" parts, neglecting the "non-productive" sectors, which besides the judiciary also included the health and education sectors. Since the judiciary was subordinated to the executive, it was not considered necessary to strengthen the judiciary. Although the judiciary was guaranteed constitutional independence with the Second Republic in 1992, it was not given financial autonomy. For all practical purposes, therefore, the resource situation did not change much.[53]

As a direct consequence of the lack of financial resources allocated to the judicial sector, human resources are also scarce. There are still judges who are not adequately trained, especially at the municipal level. Several of the provincial courts lack personnel, especially prosecutors. There is also a great need for more qualified lawyers, particularly outside the capital. Training of court lawyers and judges, however, has improved in recent years. There are now four law schools in the country; one public and three private. The first one, Agostinho Neto, was established in 1984; the last one in 2002. 80 per cent of all law degrees in the country have been awarded by the Law Faculty at the Agostinho Neto University alone, but more diversity in education can be expected as the other law schools start producing graduates. The number of law students has increased rapidly over the last few years. Hence, when these students start graduating, the staff component in the judicial system is likely to improve substantially.[54]

Jurisprudential resources are also relatively scarce. There is definitely a problem with infrastructure. The lack of computers, office furniture, pens and paper etc. makes the everyday life of judges quite stressful – especially at the municipal and provincial levels. Another, more serious problem is the lack of written statements and judgements. Access to legal material is not easy, since it is not computerised. All Supreme Court judgements are written down and published in full text in legal magazines.[55] All these judgements are also collected in books. These books used to be published annually, but there seems to have been an interruption in that practice. The judgements are not distributed to the provincial courts automatically; only upon request.[56] It is problematic that the judgments passed by the highest court in the country are not easily available to judges out in the provinces, and even less at the municipal level.

VI. Tentative conclusions

In a country like Angola, which has been ravaged by civil war for decades and where the population has been used to not expecting much from the state in any area of rights protection, it is, perhaps not surprising that poor citizens have (so far) not taken the state to court over its failure to provide basic rights, such as health, education or housing.

In this explorative study we have tried to identify some of the structural conditions that must be in place for social rights litigation to be heard by courts along with a brief assessment of these factors.

[52] Figure based on report from European Union, cited in (Araújo 2004: 3).
[53] *Ibid*., pp. 3-4.
[54] Note, however, that having more law schools does not necessarily solve the problem of poor or inadequate training. See (Goncalves 2004: 45-46).
[55] Information given in an interview with Fern Teodoro, World Learning, in Luanda, 02.04.04. The most recent annual publication we came across during our fieldwork was from 1994.
[56] Information given in an interview with Vice President of the Supreme Court, Dr. Caetano de Sousa, in Luanda, 06.04.04.

We have also tried to comment more generally on the barriers to access to justice for poor people in post-war Angola, since the hurdles that the poor face in bringing social litigation cases to court are most likely very similar to those they would face if bringing other types of cases to court.

Our tentative conclusion is that the failure to implement social and economic rights in Angola is not primarily due to constitutional limitations, but rather due to the lack of resources among the poor as well as to lack of human and technical resources within the justice system itself.
Obviously, the lack of resources is a common problem in many developing countries. Yet, it is important to note that courts may be active even in weak states. What is peculiar to Angola is the existence of vast resources (which could, potentially have been spent to reduce poverty and boost the justice sector) alongside abject and wide-spread poverty. The gap between constitutional guarantees of rights and the implementation of these rights is therefore particularly wide. In spite of the rather bleak picture presented in this paper, there are some positive factors worth mentioning.

Our analysis has shown that several of the conditions necessary for judges to hear cases on social and economic rights in Angola are in fact present. First, citizens do have the de facto right to institute proceedings against the state. Second, the Angolan Constitution and the government's ratification of relevant human rights legislation provide (at least in theory) a favourable legal framework for judicial action in social transformation. This gives some reason for cautious optimism with respect to how the courts may act in the future.

Nevertheless, there are a series of obstacles to successful social rights litigation – and indeed, to access to justice more generally. Partly, this has to do with the national legal framework, where (to the extent that laws have given rights protection) there seems to be a tendency in national law revision towards less rather than more rights.[57] Importantly, the poor have, for a number of reasons, failed to take their grievances to court. The prime reason is, perhaps, that there has been no tradition for the poor of using the formal courts.[58] In addition, lack of faith in the judicial system, lack of knowledge about rights, lack of physical access, and high costs have acted as barriers for people taking cases to court.

A second set of explanatory factors lies with the court system itself. To the extent that the poor have the *de facto* right to bring social rights cases to court, there are a number of structural features of the Angolan justice system that make it unlikely that these cases are actually heard by the courts. The court system is far from fully operational, especially at the municipal level. The urban elite – rural poor divide coupled with the extremely underdeveloped and understaffed structures of formal justice in rural areas has made access to (formal) courts outside the capital virtually non-existent. Lack of trained personnel and financial resources make the courts slow, inefficient, and corrupt – and, as a result, not much trusted.

The problems pertaining to Angolan courts are largely a product of the country's recent brutal history – the end of colonialism followed by prolonged civil war. In the ensuing short period of peace, there have been encouraging signs of improvement in the justice sector. Nevertheless, much work still needs to be done in the areas of improving infrastructure and equipment, increase the salaries of judicial personnel (to attract good lawyers and judges, and also hopefully discourage corruption), improve the training of judges and functionaries, and carry out other necessary reforms

[57] Gloppen's theoretical framework mentions the nature of the legal system as a factor influencing when and how the voice of the poor is heard. It might have been useful to further stress the importance of national legislation detailing constitutional guarantees of various rights in order for these rights to have legal bearing in a society.
[58] A more systematic exploration of the connections between civil law and customary law would be useful. This is a concern raised by practitioners of law as well as academics in Angola. See, for example (Goncalves 2004).

of the judiciary.[59] To ensure this, the Government must prove that it is serious about strengthening the judiciary. Building well-functioning institutions along with educating people about their rights and removing some of the barriers to using the formal court system is urgent in order to improve access to justice for the poor in Angola, but it will take time. Before serious improvements haven take place, we may not expect the courts to act as vehicles to justice for the poor.

[59] The urgent need to reform the Angolan justice sector has been pointed out by various actors and been the topic for a number of conferences and seminars over the last couple of years. For recommendation as to what is needed in terms of reform, see, for instance, (European Union 2002; Goncalves 2004); International Bar Association Human Rights Institute 2003).

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SUMMARY

This paper is about the role that may be envisioned for the courts in Angola with respect to the poor. Looking at the period from 1992 – 2004, it analyses the factors that are necessary for getting social rights litigation successfully through the courts – and what kind of impediments that exist.

In spite of rather wide constitutional guarantees of a large number of social, economic and cultural rights, Angola is a highly unequal society where discrimination has been rampant in many spheres of social, political and economic life. Yet, the state has not been challenged with upholding these constitutional guarantees. This paper tries to identify some of the conditions necessary for such cases to be introduced to courts and to be effectively ruled upon by judges. What obstacles would a poor litigant, whose rights had not been respected, be faced with? Would the case be likely to be brought to court – and if it were, would it be favourably received?

The paper's tentative conclusion is that the failure to implement social and economic rights in Angola is not primarily due to constitutional limitations, but rather due to the lack of resources among the poor as well as to lack of human and technical resources within the justice system itself.

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