

International Energy and Natural Resources

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This article reviews significant legal developments during 2017 in the field of international energy and natural resources law

I. Angola

A. REGISTRATION FORM FOR REGISTRY OF OILFIELD GOODS AND SERVICE PROVIDERS

For the purposes of including service providers in the Ministry of Petroleum's database, the Angolan Minister of Petroleum, by means of Order No. 29/17, approved template registration forms for access to tenders for the awarding of services contracts. The forms are also for companies that are parties to already-executed contracts that wish to have access to benefits set forth in the law.¹

B. DOWNSTREAM

During 2017, the Minister of Petroleum also approved, by executive decree, two important downstream statutes: (i) the Technical and Procedural Rules on Refining Activities² and (ii) the Technical Regulations for

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1. See Order no. 29/17, DIÁRIO DA REPÚBLICA [DDR], Série I, No. 16 (Jan. 27, 2017) (Angl.).

2. See Executive Decree No. 217/17, DDR, Série I, No. 57 (Apr. 10, 2017) (Angl.) [hereinafter Executive Decree No. 217/17].

Bunkering.³ The Technical and Procedural Rules on Refining Activities covers the design, construction, operation, and maintenance of refineries, including the relevant location and mandatory approvals, authorizations and licensing, and control and inspection of facilities and equipment.⁴ The Bunkering Regulations set forth the principles and rules governing the supply of marine fuels and lubricants to moored or anchored vessels, as well as to platforms and equipment for the exploitation of natural resources in inland and territorial waters, in the contiguous zone or in Angola's exclusive economic zone, by means of tankers, tanker trucks, and pipelines.⁵ Both statutes impose fines and additional penalties for breach of their provisions.

II. Bolivia

A. NEW REGULATION FOR RECOVERABLE COSTS FOR THE OIL AND GAS INDUSTRY

In August 2017, the Bolivian government issued a regulation⁶ setting out new conditions and requirements for *Yacimientos Petroliferos Fiscales Bolivianos* ("YPFB")⁷ approval and recognition of Reported Costs⁸ as Recoverable Costs⁹ for oil service contracts. The new regulation significantly changes the previous system.¹⁰

One of the most relevant changes under the regulation is the creation of a price band,¹¹ which requires costs to be within a minimum and maximum range based on unit prices.¹² To set the price band, YPFB will draft a price band proposal considering national and international oil industry prices, including historical prices and other data related to oil operations.¹³ YPFB may also require oil companies under services contracts with YPFB to

3. See Executive Decree No. 275/17, DDR, Série I, No. 72 (May 4, 2017) (Angl.) [hereinafter Executive Decree No. 275/17].

4. See Technical and Procedural Rules on Refining Activities attached to Executive Decree no. 217/17, of May 4, 2017, at arts. 1, 4.

5. Executive Decree No. 275/17, *supra* note 3.

6. See Decreto Supremo 3278 de Agosto 9, 2017 [Supreme Decree 3278 of Aug. 9, 2017], GACETA OFICIAL DEL ESTADO PLURINACIONAL DE BOLIVIA [G.O.] No. 985 (Bol.), <http://www.derechoteca.com/gacetabolivia/decreto-supremo-no-3278-del-09-de-agosto-de-2017> [hereinafter Supreme Decree 3278].

7. YPFB is the National Oil Company. *Id.* at art. 1.

8. Capital costs in a YPFB approved budget that are declared in cost reports. *Id.* at art. 3(i), (f).

9. Reported Costs that meet Supreme Decree No. 3278, Article 9 requirements. *Id.* at art. 3(h).

10. See Decreto Supremo 29504 de Abril 9, 2008 [Supreme Decree 29504 of Apr. 9, 2008], GACETA OFICIAL DEL ESTADO PLURINACIONAL DE BOLIVIA [G.O.] <https://www.lexivox.org/norms/BO-DS-29504.xhtml>.

11. See Supreme Decree 3278, *supra* note 6, art. 9.

12. See *id.* at art. 8.

13. See *id.* at art. 9.

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provide, among other things, supplier, operations, and investment information, both current and historical.¹⁴

The Hydrocarbons National Agency (“ANH”) will approve the price band, taking into consideration the YPFB proposal.¹⁵ Ultimately, YPFB will establish parameters based on the ANH approved price band, which YPFB will then use for the approval of oil companies’ Recoverable Costs.¹⁶

The Bolivian government implied that it is necessary to exert more supervision of the costs that oil companies incur under oil services contracts. The government stated that while oil companies’ operating costs are decreasing worldwide, the opposite occurs in Bolivia, where such costs are increasing in some cases.¹⁷

Oil companies have expressed concern that this regulation will affect legal certainty, which directly affects future investments in the sector that are essential to fulfill Bolivia’s commitments, including commitments under a gas sale contract with Brazil.¹⁸

B. BOLIVIAN LITHIUM COMPANY FORMED

In April 2017, *Empresa Pública Nacional Estratégica de Yacimientos de Litio Bolivianos* (“YLB”)¹⁹ was formed as a strategic national State company under the supervision of the Ministry of Energy.²⁰ According to the approved legislation, the new company’s mandate covers activities across the entire lithium resources production chain, including exploration, exploitation, installation, implementation, commissioning, industrialization, commercialization, and operation and administration of evaporitic resources and complexes of inorganic chemistry.²¹

The Bolivian State through YLB will develop the production phase of its evaporitic resources. YLB will also oversee the subsequent phases of semi-industrialization, industrialization, and waste processing, which may be carried out by joint ventures between national or foreign private companies

14. *Id.*

15. *Id.* at art.9, ¶ 3.

16. See Supreme Decree 3278, *supra* note 6, art. 9, ¶ 4.

17. See Clayton Benavides, *Gobierno Fijará con petroleras costos y precios ‘racionales’ [Government will set rational costs and prices with oil companies]*, CAMBIO (Bol.) (Aug. 27, 2017), <http://cambio.bo/?q=node/30908>.

18. See Ernesto Estremadoiro, *Control de Costos Preocupa a las Empresas [Oil companies concerned about cost control]*, EL DEBER (Bol.) (Aug. 24, 2017), <http://www.eldeber.com.bo/bolivia/Control-de-costos-preocupa-a-las-empresas-petroleras—20170824-0005.html>.

19. YLB is the Bolivian Lithium Company.

20. See Ley No. 928 de Abril 27, 2017 ley de la Empresa Pública Nacional Estratégica de Yacimientos de Litio Bolivianos [Law No. 928 of Apr. 27, 2017 of the National Strategic Public Company of Bolivian Lithium Deposits], ¶ 1, GACETA OFICIAL DEL ESTADO PLURINACIONAL DE BOLIVIA [G.O.] (Bol.), <http://www.derechoteca.com/gacetabolivia/ley-no-928-del-27-de-abril-de-2017/> [hereinafter Law No. 928].

21. See *id.* ¶ 2.

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and the Bolivian State, with the government always maintaining a majority stake through YLB.²²

YLB expects to complete construction of a potassium chloride factory in 2017 and begin operations in 2018 to reach production of 350 tons per year.²³ Also, the request for bids for the EPC (Engineering, Procurement, and Construction) contract for the industrial phase of a lithium carbonate production facility with a production capacity of 15,000 tons per year is expected to be awarded in 2017.²⁴

C. RATIFICATION OF AMENDMENT TO NUCLEAR MATERIAL CONVENTION

In February 2017, Bolivia ratified the Amendment to the Convention on the Physical Protection of Nuclear Material,²⁵ which is the only legally binding international agreement addressing the physical protection of nuclear material.²⁶ The President of the Chamber of Deputies described the ratification as a necessary means to protect the physical handling of nuclear material, as is done in all countries.²⁷

III. Burkina Faso

A. ELECTRICITY

In a decree dated May 26, 2017, the President of Burkina Faso enacted law No. 014-2017 regulating the energy sector (Energy Law).²⁸ As the country has suffered from power shortages and a substantial dependency on fossil fuels, the Energy Law was enacted in order to achieve Burkina Faso's

22. See *id.* ¶ 3.

23. YLB potassium chloride factory will begin production in 2018. See *Yacimientos de Litio Boliviano (YLB): planta de cloruro de potasio iniciaría producción en 2018 [Bolivian Lithium Company (YLB): potassium chloride plant would start production in 2018]* LATINO MINERIA (Bol.) (Sept. 11, 2017), <http://www.latinomineria.com/2017/09/yacimientos-de-litio-boliviano-ylb-planta-de-cloruro-de-potasio-iniciaria-produccion-en-2018/#>.

24. *Id.*

25. Ley No. 905 de Febrero 27, 2017 ratifica la “Enmienda de la Convención sobre Protección Física de Materiales Nucleares”, aprobada el 8 de julio de 2005 [Law No. 905 of Feb. 22, 2017 Ratifies the “Amendment to the Convention on the Physical Protection of Nuclear Material”, adopted on July 8, 2005], G.O. (Bol.), <http://www.derechoteca.com/gaceta-bolivia/ley-no-905-del-22-de-febrero-de-2017/>.

26. See *Convention on the Physical Protection of Nuclear Material*, INTERNATIONAL ATOMIC ENERGY AGENCY (IAEA), <https://www.iaea.org/publications/documents/conventions/convention-physical-protection-nuclear-material> (last visited Feb. 16, 2017).

27. See *Bolivia intent reforzar medidas de seguridad [Bolivia tries to reinforce security measures]*, LOS TIEMPOS (Bol.) (Jan. 18, 2017), <http://www.lostiempos.com/actualidad/nacional/20170118/bolivia-intenta-reforzar-medidas-seguridad>.

28. Loi No. 014-2017/AN [Law No. 014-2017/AN] (Apr. 20, 2017) (Burkina Faso) (regulating the energy sector, promulgated by Décret No. 2017/0383/PRES [Decree No. 2017/0383/PRES] (May 26, 2017)) [hereinafter Law No. 014-2017/AN].

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objective of eighty percent electrification by 2020, as expressed in the 2016-2020 National Plan for Economic and Social Development (“PNDES”).²⁹

The Energy Law regulates the entire energy sector excluding hydrocarbons. Ultimately, the Energy Law will allow the country to open up the energy sector by authorizing private entities to produce and sell electricity throughout the country. A more open market will be achieved by: (i) allowing eligible clients, as defined by their consumption or annual production levels, to be directly supplied by producers and to import electricity;³⁰ (ii) granting producers, self-producers, and eligible clients a right to access the power transmission network;³¹ and (iii) removing the single buyer system that *Société nationale d’électricité du Burkina Faso* (“SONABEL”) oversees.³² SONABEL, however, retains its monopoly over power transmission but not distribution.³³

Moreover, the Energy Law contains numerous innovations such as renewable energy promotion, self-generation, and energy efficiency. It also defines the mission of the energy regulator *Autorité de Régulation du Secteur de l’Energie*³⁴ and establishes a set of penalties for infringement of the new rules.³⁵

On October 26, 2017, the first set of implementing decrees were issued that pertained to the energy regulator’s powers,³⁶ the terms and conditions for issuing power generation licences,³⁷ and the specifications book defining the rights and obligations of all electricity producers.³⁸

B. MINING

Burkina Faso enacted a new mining code, Law 036-2015, in October 2015.³⁹ In 2017, the government issued several implementing decrees for the code. These decrees set out, among other things: (i) the conditions for granting, renewing, extending, waiving, and withdrawing mining rights and

29. See *National Plan for Economic and Social Development (PNDES) 2016-2020*, EA 2.5.2, p.43 (July 20, 2016) (Burkina Faso), http://www.finances.gov.bf/index.php?option=com_edocman&task=document.viewdoc&id=468&Itemid (providing for the increase in the share of renewable energy in total production from 6.4 percent in 2015 to thirty percent in 2020).

30. Law No. 014-2017/AN, *supra* note 28, arts. 5, 39, 51.

31. *Id.* at art. 38.

32. *Id.* at art. 94.

33. *Id.* at arts. 32, 44.

34. *Id.* at arts. 84-93.

35. Law No. 014-2017/AN, *supra* note 28, arts. 97-113.

36. Décret No. 2017-1016 [Decree No. 2017-1016] (Oct. 26, 2017) (Burkina Faso) (discussing the remit, organisation, and functioning of the energy regulatory authority).

37. Décret No. 2017-1012 [Decree No. 2017-1012] (Oct. 26, 2017) (Burkina Faso) (discussing the conditions and mode of granting power generation licenses and authorizations).

38. Décret No. 2017-1013 [Decree No. 2017-1013] (Oct. 26, 2017) (Burkina Faso) (adopting a specifications book applicable to power producers in Burkina Faso).

39. Loi No 036-2015 [Law No. 036-2015], JOURNAL OFFICIEL, No. 44 (Oct. 29, 2015) (enacting the mining code of Burkina Faso).

authorizations;⁴⁰ (ii) a model mining contract for the exploitation phase, replacing the models in effect since 2005;⁴¹ (iii) the amount of mining taxes and royalties;⁴² (iv) the organization and functioning of the Mining Fund for Local Development (*Fonds minier de développement local*) which will collect one percent of the turnover mining companies generate with exploration permits;⁴³ and (v) the organization and functioning of the Mine Rehabilitation and Closure Fund (*Fonds de réhabilitation et de fermeture des mines*).⁴⁴

Additionally, on May 18, 2017, the National Assembly enacted a law on the commercialization of gold and other precious substances.⁴⁵ The law regulates all transactions in these minerals.

IV. Cameroon

B. MINING

In December 2016, the Cameroon government adopted a new mining code,⁴⁶ replacing the previous version from July 29, 2010,⁴⁷ with the aim of promoting investment in the mining sector.⁴⁸ The Code sets out five types of mining title: (i) artisanal mining permits; (ii) semi-mechanized artisanal mining permits; (iii) exploration licenses; (iv) small-scale mining licenses; and (v) industrial mining licenses.⁴⁹

The mining code provides that the holder of any type of mining title must be a company formed under Cameroon law.⁵⁰ The code does not require a

40. Décret No. 2017-0036 du 26 janvier 2017, Gestion Des Titres Miniers et Autorisations [Decree No. 2017-0036 of Jan. 26, 2017, Management of Mining Titles and Authorizations] (Burkina Faso) (regulating mining rights and authorizations).

41. *Décret* No. 2017-0035 du 26 janvier 2017 [Decree No. 2017-0035 of Jan. 26, 2017] (Burkina Faso) (adopting a model mining convention and replacing Décret No. 2005-049 dated February 3, 2005 enacting standard models of mining convention).

42. *Décret* No. 2017-0023 du 23 janvier 2017 [Decree No. 2017-0023 of Jan. 23, 2017] (Burkina Faso) (setting mining taxes and royalties).

43. *Décret* No. 2017-0024 du 23 janvier 2017 [Decree No. 2017-0024 of Jan. 23, 2017] (Burkina Faso) (regulating the organization, functioning and financing of the Mining Fund for Local Development).

44. *Décret* No. 2017-0068 du 15 février 2017 [Decree No. 2017-0068 of Feb. 15, 2017] (Burkina Faso) (regulating the organization, functioning, and financing of the Mine Rehabilitation and Closure Fund).

45. *Loi* No. 028-2017 [Law No. 028-2017] (Burkina Faso) (May 18, 2017) (on the commercialization of gold and other precious substances).

46. *Loi* No. 2016/17 [Law No. 2016/17 dated Dec. 14, 2016] JOURNAL OFFICIEL DE LA RÉPUBLIQUE DU CAMEROUN [J.O.] [OFFICIAL JOURNAL OF THE REPUBLIC OF CAMEROON] (May 2017) (introducing a mining code) [hereinafter Law No. 2016/17].

47. *Loi* No. 2010/11 [Law No. 2010/11] (July 29, 2010) (Cameroon) (amending and supplementing certain provisions of Law No. 2001-1 of 16 April 2001 on the mining code).

48. Law No. 2016/17, *supra* note 46, art. 2. The Code does not cover hydrocarbons. *Id.* at art. 3(2).

49. *Id.* at art. 11.

50. *See id.* at art. 15(5).

competitive process to award mining titles;⁵¹ the award procedures are to be established by regulation,⁵² which at the time of writing has not been published.

The code entitles an exploration license holder to obtain an exploitation license—small-scale or industrial—subject to providing evidence of a deposit within the perimeter of the initial permit.⁵³ To obtain an exploitation license, the holder must enter into a mining agreement with the State.⁵⁴ The State will take up to ten percent of a mining company’s share capital in the case of a small-scale mining license holder,⁵⁵ and ten percent of a mining company’s share capital in the case of an industrial mining license holder.⁵⁶ In both cases the State may request an additional share capital interest.⁵⁷ The Minister of Mining must approve any direct or indirect transaction on a mining title.⁵⁸

The mining code’s additional noteworthy innovations include: (i) compliance with international commitments aimed at transparency, such as the Kimberly Process and the Extractive Industries Transparency Initiative, and an obligation to declare any payments made to the State;⁵⁹ (ii) further inclusion of local content requirements;⁶⁰ and (iii) stricter environmental obligations.⁶¹

V. China

A. RENEWABLE ENERGY

This past year brought notable developments in domestic energy production and use in China. While coal is still the country’s largest source of electricity,⁶² China’s National Energy Administration (“NEA”) began 2017 by issuing its thirteenth Five-Year Plan for Energy Development and

51. *See id.* at art. 16.

52. *See id.* at art. 17.

53. Law No. 2016/17, *supra* note 46, art. 46(1).

54. *Id.* at art. 44(1). A standard form mining agreement is to be defined by regulation, as yet unpublished. *Id.* at art. 44(3).

55. *Id.* at art. 54.

56. *Id.* at art. 58.

57. *Id.* at arts. 54, 58.

58. Law No. 2016/17, *supra* note 46, art. 36.

59. *Id.* at art. 142.

60. *Id.* at arts. 164-69.

61. *Id.* at arts. 135-40.

62. *China eyes greener energy mix by 2020*, CHINA DAILY (Jan. 6, 2017, 10:06), http://europe.chinadaily.com.cn/business/2017-01/06/content_27879603.htm.

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Renewable Energy Development.⁶³ Under this Plan, the NEA reportedly is halting progress on 103 new coal plants.⁶⁴

The NEA also announced that it would cap total domestic energy consumption at about 4.8 gigatons of coal equivalent (Gtce) by 2020, and it would invest an additional \$361 billion in renewable power generation.⁶⁵ Major projects are already underway, including the Longyangxia Dam Solar Complex. The Solar Complex, which is the world's largest solar farm and was built by the state-run Huanghe Hydropower Development Company, opened in February 2017 and has an 850 megawatt installed capacity.⁶⁶

B. NATIONAL CARBON TRADING SYSTEM

The Chinese National Development and Reform Commission (“NDRC”) is set to launch a new national carbon-trading system to reduce the country's impact on global warming.⁶⁷ The system is being designed to carry out the nation's commitments under the United Nations' 2009 climate change conference in Copenhagen.⁶⁸ It will be modeled, in part, on California's cap-and-trade program, as well as on the European Union's program.⁶⁹ The carbon trading system will cover three industries—coal-fired power plants, cement, and aluminum—but most other details on how it will be implemented are not yet public.⁷⁰

63. *China Issues Five-Year Plan*, THE STATE COUNCIL OF THE PEOPLE'S REPUBLIC OF CHINA (Jan. 5, 2017), http://english.gov.cn/policies/latest_releases/2017/01/05/content_281475533980163.htm.

64. Michael Forsythe, *China Cancels 103 Coal Plants, Mindful of Smog and Wasted Capacity*, N.Y. TIMES (Jan. 18, 2017), <https://www.nytimes.com/2017/01/18/world/asia/china-coal-power-plants-pollution.html>.

65. See *China eyes greener energy mix by 2020*, *supra* note 62. See also *China's Ambitious New Clean Energy Targets*, THE DIPLOMAT (Jan. 14, 2017), <https://thediplomat.com/2017/01/chinas-ambitious-new-clean-energy-targets/>.

66. Brian Kahn, *What 4 Million Solar Panels Looks Like from Space*, SCIENTIFIC AM. (Feb. 23, 2017), <https://www.scientificamerican.com/article/what-4-million-solar-panels-look-like-from-space/>.

67. See Zhu Lingqing, *China to launch carbon emissions market this year*, CHINA DAILY (Aug. 16, 2017), http://www.chinadaily.com.cn/business/2017-08/16/content_30686774.htm.

68. *China-U.S. Joint Presidential Statement on Climate Change*, THE STATE COUNCIL OF THE PEOPLE'S REPUBLIC OF CHINA (Sept. 26, 2015), http://en.ndrc.gov.cn/newsrelease/201509/t20150929_755626.html. (in establishing a national carbon market, China is following through on a joint pledge with the Obama Administration to support the 2016 Paris Agreement on Climate Change)

69. See Chris Buckley, *Xi Jinping Is Set for a Big Gamble With China's Carbon Trading Market*, N.Y. TIMES (June 23, 2017), <https://www.nytimes.com/2017/06/23/world/asia/china-cap-trade-carbon-greenhouse.html>; Debra Kahn, *China Is Preparing to Launch the World's Biggest Carbon Market*, SCIENTIFIC AM. (Aug. 14, 2017), <https://www.scientificamerican.com/article/china-is-preparing-to-launch-the-world-s-biggest-carbon-market>. (While China has piloted carbon-trading programs in Beijing, Shanghai, Hubei, and other localities, this will be the country's first attempt to institute a carbon market on a national scale.)

70. Buckley, *supra* note 69.

VI. Colombia

A. REGULATIONS FOR THE ALLOCATION OF AREAS AND CRITERIA FOR CONTRACTING HYDROCARBON EXPLORATION AND EXPLOITATION

Regulation 02/2017, enacted in May 2017, sets new rules for the allocation of oil and gas blocks.⁷¹ It moves block allocation from a biennial competitive bidding process to a system in which a proposal may be submitted at any time, triggering a competitive process for adjudication of the specific requested area.⁷² The rules also adopt new criteria for contracting hydrocarbon exploration and exploitation, as well as for objectively selecting contractors.⁷³

The National Hydrocarbons Agency is responsible for selecting areas for the development of hydrocarbon exploration and production activities.⁷⁴ Corporations that wish to be included in the Register of Interested Persons⁷⁵ or authorized to explore and exploit hydrocarbons in Colombia must prove that they have, among other requirements, adopted transparent practices and will contribute to sustainable development.⁷⁶

VII. Equatorial Guinea

By means of Order no. 2/2017, of January 30, 2017, the Minister of Transports replaced the rules in force since 1997 on registering vessels and granting authorizations to perform maritime activities, including cargo handling.⁷⁷ The order requires petroleum platforms and their owners, lessees, or operators to register in the National Register of Vessels and Maritime Companies and pay several fees.⁷⁸ Failure to comply with the new rules triggers the assessment of fines of up to fifteen million XAF.⁷⁹

71. Acuerdo No. 02 de 2017 [Agreement No. 02], AGENCIA NACIONAL DE HIDROCARBUROS [NATIONAL HYDROCARBONS AGENCY] (May 19, 2017), D.O. 50.238 (Colom.) <https://app.vlex.com/#/vid/679869825/download>.

72. *Id.* at art. 36.

73. *See id.* at art. 1.

74. *See id.* at art. 5.

75. *See id.* at arts. 12, 13 (registry required for companies interested in area assignment).

76. *See id.* at art. 27.

77. *See* Non-gazette version of Order no. 2/2017, of January 30, 2017.

78. *Id.* at arts. 6, 8.

79. *Id.* at art. 9.

VIII. Ghana

A. MARITIME BOUNDARY RULING FAVORS GHANA

On September 23, 2017, the International Tribunal for the Law of the Sea (“ITLOS” or “Tribunal”)⁸⁰ ruled in favor of Ghana in a long-running maritime boundary dispute between Ghana and the Republic of Côte d’Ivoire (“Côte d’Ivoire”).⁸¹ Ghana had carried out extensive oil exploration and commercial activities within the disputed area, including three significant oil fields, the Tweneboa, Enyira, and Ntome (“TEN”), that formed the bulk of Ghana’s prospecting and operational assets.⁸² Ghana claimed that these activities were within its maritime boundary, and after failed attempts to amicably settle the matter, Ghana commenced arbitration proceedings in 2014 under Annex VII to the United Nations Convention on the Law of the Sea (“UNCLOS”).⁸³

In an April 25, 2015 order (“Provisional Order”),⁸⁴ the Tribunal⁸⁵ denied Côte d’Ivoire’s request to suspend Ghana’s oil exploration and exploitation operations. It required, however, that Ghana “take all necessary steps” to prevent information resulting from its oil activities from being used to Côte d’Ivoire’s detriment, and it prohibited “new drilling” in the disputed area until the dispute was resolved.⁸⁶

The parties submitted different methods to delimit the disputed maritime boundary in February 2017 proceedings. At that time, Cote d’Ivoire also

80. *The Tribunal*, ITLOS, <https://www.itlos.org/the-tribunal/> (last visited Feb. 17, 2018). (ITLOS “is an independent judicial body established by the United Nations Convention on the Law of the Sea (UNCLOS) to adjudicate disputes arising out of the interpretation and application of the Convention.”).

81. Delimitation of the maritime boundary in the Atlantic Ocean (Ghana/Côte d’Ivoire), Case No. 23, Judgment of Sept. 23, 2017, ITLOS Rep. [] at ¶¶ 3, 5-7. https://www.itlos.org/fileadmin/itlos/documents/cases/case_no.23_merits/C23_Judgment_23.09.2017_corr.pdf [hereinafter Judgment of Sept. 23, 2017].

82. See *TEN Cluster*, SUBSEAIQ (July 2, 2014), http://www.subseaiq.com/data/Project.aspx?project_id=1038. (“The TEN Cluster Development consists of three discoveries in the Deepwater Tano Block, Tweneboa, Enyenra, and Ntomme, offshore Ghana in water depths ranging from 1,000 to 2,000 meters. Partners in the block include Tullow Oil plc (49.95 percent working interest and operator), Kosmos Energy (18 percent working interest), Anadarko (18 percent) Sabre Oil & Gas Holdings Ltd (4.05 percent working interest) and the Ghana National Petroleum Corporation (10 percent carried interest).”).

83. United Nations Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 397, Annex VII, http://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf.

84. Delimitation of the maritime boundary in the Atlantic Ocean (Ghana/Côte d’Ivoire), Case No. 23, Provisional Measures, Order of Apr. 24, 2015, ITLOS Rep. 146 [hereinafter Order of April 25, 2015].

85. Delimitation of the maritime boundary in the Atlantic Ocean (Ghana/Côte d’Ivoire), Case No. 23, Order of Jan. 12, 2015, ITLOS Rep. 122. (The arbitration proceeded with a special chamber of five judges as requested by the parties.)

86. Order of April 25, 2015, *supra* note 84, ¶ 108(1)(a)-(b).

alleged that Ghana's activities in the disputed area violated Cote d'Ivoire's sovereign rights, Article 83 of UNCLOS, and the Provisional Order.⁸⁷

1. *Jurisdiction of the Tribunal*

Procedurally, the court asserted its authority under the UNCLOS to delimit the maritime boundary between the parties in the territorial sea, EEZ, and on the continental shelf, both within and beyond 200 nautical miles (200 nm).⁸⁸

2. *Existence of a Tacit Agreement and Estoppel*

The court rejected Ghana's claim of a tacit agreement with Côte d'Ivoire for over fifty-two years⁸⁹ and Ghana's contention that its long exercise of rights through the grant of commercial rights estopped Côte d'Ivoire from objecting to a customary equidistance boundary in their territorial sea, EEZ, and the continental shelf both within and beyond 200nm.⁹⁰

3. *Delimitation of Maritime Boundary*

Having found no tacit agreement by custom or estoppel, the Tribunal proceeded to delimit the maritime boundary between the parties. The Tribunal ruled that absent compelling reasons such as the presence of complex geographical peculiarities (such as small islands), the equidistance/relevant circumstances-methodology, as opposed to an angle bisector methodology that Côte d'Ivoire advanced, was the methodology pertinent to delimit the disputed boundary.⁹¹ The established boundary was a strict equidistance based boundary,⁹² which favored Ghana.

4. *Violation of Côte d'Ivoire's Sovereign Rights*

The Tribunal further ruled that Ghana did not violate Côte d'Ivoire's sovereign rights.⁹³ Whether or not Ghana conducted activities in the disputed area that the Tribunal later delimited as Cote d'Ivoire's continental shelf, the delimitation itself gave Cote d'Ivoire entitlement priority; consequently, only activities after the delimitation could constitute a violation.⁹⁴

87. See Judgement of Sept. 23, 2017, *supra* note 81, ¶ 61 (Tribunal Registry's translation of Cote d'Ivoire's submission).

88. *Id.* ¶¶ 76-90.

89. *Id.* ¶ 228.

90. *Id.* ¶¶ 243-46.

91. See *Id.* ¶¶ 289, 323-24.

92. See Judgement of Sept. 23, 2017, *supra* note 81, ¶ 324.

93. See *id.* ¶¶ 592, 594.

94. See *id.*

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5. *Violation of Convention Art. 83*

Regarding Cote d'Ivoire's claim that Ghana violated Article 83 of UNCLOS by not negotiating in good faith to delimit the continental shelf between the two countries, the Tribunal found that Côte d'Ivoire failed to convincingly substantiate this claim.⁹⁵

6. *Violation of Provisional Measures*

The Tribunal disagreed with Côte d'Ivoire's claim that certain drilling activities in the disputed area by Ghana violated the Provisional Order⁹⁶ and required, among other things, that no "new drilling" take place in the disputed area until the dispute was resolved.⁹⁷ The Tribunal ruled that Ghana's drilling in pre-existing sites in the disputed area did not constitute new drilling.⁹⁸ The Tribunal also found that Ghana cooperated as the Provisional Order required despite some delay in providing certain information to Cote d'Ivoire.⁹⁹

Both parties have accepted the ruling.

IX. Grenada

A. INCENTIVES FOR HYDROCARBON EXPLORATION

In June 2017, the Grenada parliament passed the Hydrocarbon Exploration Incentives Act, 2017 (the "Act").¹⁰⁰ The Act provides incentives for oil and gas exploration—activity aimed at determining the existence, quantity, and quality of oil or natural gas deposits—in Grenada that involve an investment of over eighty million dollars.¹⁰¹ An exemption from customs duties applies to certain specified items, including machinery, used for oil and gas exploration covered by the Act.¹⁰² Non-resident individuals benefit from income tax exemptions on income from services provided for oil and gas exploration covered by the Act,¹⁰³ and no value added tax will be assessed on such services.¹⁰⁴ The Act also clarifies that non-resident non-domiciliary employees providing services for oil and gas exploration covered by the Act

95. *See id.* ¶¶ 604-05. The Tribunal also found that Ghana did not violate Article 83 by jeopardizing or hampering an agreement. *See id.* ¶¶ 633-34.

96. *See* Order of April 25, 2015, *supra* note 84, ¶ 108(1)(a).

97. Judgement of Sept. 23, 2017, *supra* note 81, ¶¶ 651-52.

98. *Id.*

99. *See id.* ¶¶ 653-657.

100. Hydrocarbon Exploration Incentives Act, No. [] of 2017 (Grenada), <http://www.nowgrenada.com/2017/06/grenada-approves-big-incentives-oil-explorers/> (last visited Mar. 25, 2018).

101. *See id.*

102. *See id.* at § 3.

103. *See id.* at § 4.

104. *See id.* at § 5.

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do not trigger National Insurance Act obligations.¹⁰⁵ To date, Grenada has not produced oil or natural gas; but in October 2017 the government confirmed natural gas discovery in its territorial waters and is waiting for test results to determine the quality of the finding.¹⁰⁶

B. ELECTRICITY SECTOR REFORM AND DISPUTE

The Grenada Parliament enacted the Electricity Supply Act, 2016 (“Electricity Supply Act”)¹⁰⁷ and the Public Utilities Regulatory Commission Act, 2016 (“Public Utilities Act”),¹⁰⁸ both of which became effective in August 2016 and significantly reformed the electricity sector.

As background, the Electricity Supply Act, 1994 coupled with a 1994 privatization agreement (“Privatization Agreement”) between Grenada Private Power Limited (“GPP”), its United States parent WRB Enterprises Inc. (“WRB”), and the Grenada government, set up the following: (i) GPP with fifty percent ownership of Grenlec, Grenada’s formerly state-owned electricity company, and a right to demand the repurchase of its shares in the event of unilateral action by the Grenada government that adversely impacts Grenlec or GPP’s interest as a shareholder;¹⁰⁹ and (ii) Grenlec with an exclusive license to generate, transmit, distribute, and sell electricity in Grenada until December 1, 2073.¹¹⁰

With the aim of liberalizing Grenada’s electricity market in part to take advantage of renewable energy sources, the Electricity Supply Act, among other things, repealed and replaced the Electricity Supply Act, 1994 and issued Grenlec a non-exclusive license to generate, transmit, and distribute electricity.¹¹¹ Also in furtherance of sector reform, the Public Utilities Act created the Public Utilities Regulatory Commission, which: (i) sets electricity rates that licensees can charge consumers; (ii) processes and enforces licenses to generate, distribute, or sell electricity; and (iii) manages consumer complaints.¹¹² This reform markedly departs from the Electricity Supply Act, 1994 regime.

105. See *id.* at § 6.

106. See *Grenada awaiting result on natural gas discovery*, JAMAICA OBSERVER, Oct. 18, 2017, http://www.jamaicaobserver.com/latestnews/Grenada_awaiting_result_on_natural_gas_discovery.

107. Electricity Supply Act, No. 19 of 2016.

108. Public Utilities Regulatory Commission Act, No. 20 of 2016.

109. See *Government Legislation Causes Repurchase of Grenlec Shares*, GRENLEC BLOG (Mar. 23, 2017), <http://grenlec.com/Blog/TabId/126/ArtMID/657/ArticleID/1139/Government-Legislation-Causes-repurchase-of-GRENLEC-Shares.aspx>; See also *Major Shareholder Submits Proposals Regarding Purchase of Shares in Grenlec*, PRIDE (Mar. 24, 2017), <http://pridenews.ca/2017/03/24/major-shareholder-submits-proposals-regarding-purchase-shares-grenlec/>.

110. Electricity Supply Act, No. 18 of 1994, § 3 (Grenada), <http://arec-grenada.org/mediapool/143/1432836/data/ESA.pdf>.

111. Electricity Supply Act, *supra* note 107.

112. Public Utilities Regulatory Commission Act, *supra* note 108.

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As a result of these reforms, on March 22, 2017, GPP submitted a formal demand to the Grenada government that it repurchase GPP's shares in Grenlec pursuant to the Privatization Agreement, on the basis that the 2016 legislation adversely impacts Grenlec and GPP's interest as a shareholder and violates the Agreement.¹¹³ Further, on May 15, 2017, the GPP and WRB filed a request for arbitration with the International Centre for Settlement of Investment Disputes ("ICSID"),¹¹⁴ seeking to enforce GPP's share repurchase rights pursuant to the Privatization Agreement. The ICSID tribunal was constituted on November 9, 2017.¹¹⁵

X. Mali

In December 2016, the Mali government adopted a law governing public-private partnerships ("PPP") in a bid to increase private sector participation in the delivery of services.¹¹⁶ As the PPP law also governs concession agreements, it seems reasonable to conclude that the new law will govern concession agreements in the energy sector. The PPP law also specifically identifies public companies acting as network operators (including those providing a public service relating to the production, transmission, and distribution of electricity and gas) as contracting entities subject to its provisions.¹¹⁷

PPPs are awarded through calls for tenders.¹¹⁸ But the law also provides for exceptional procedures, such as negotiated procedures and spontaneous applications.¹¹⁹ The decree implementing the PPP law was enacted in February 2017 and provides details on procurement rules and procedures.¹²⁰

Also in February 2017, a PPP Unit was established by decree as the national agency in charge of providing effective guidance regarding PPP projects.¹²¹ The Unit mainly ensures that the government departments or local authorities carrying out PPPs adhere to the applicable regulations, but it also provides risk analysis and a prior assessment of the needs and costs

113. *Major Shareholder Submits Proposals Regarding Purchase of Shares in Grenlec*, *supra* note 109.

114. Grenada Private Power Limited and WRB Enterprises, Inc. v. Grenada, ICSID Case No. ARB/17/13 (May 15, 2017), <https://icsid.worldbank.org/en/Pages/cases/casedetail.aspx?CaseNo=ARB/17/13>.

115. *Id.*

116. *Loi No. 2016-061 [Law No. 2016-061 Dec. 30, 2016]*, JOURNAL OFFICIEL DE LA RÉPUBLIQUE DU MALI [J.O. M.] [OFFICIAL JOURNAL OF THE REPUBLIC OF MALI], (Feb. 3, 2017) (regarding public-private partnerships in Mali) [hereinafter Law No. 2016-061].

117. *Id.* at art. 2 (providing the definitions of contracting entity and public company acting as network operator).

118. *Id.* at art. 13.

119. *Id.* at art. 14.

120. Décret No. 2017-0057/PM-RM [Decree No. 2017-0057/PM-RM dated Feb. 9, 2017], J.O.M. (Feb. 17, 2017) (establishing the conditions for the implementation of the law regarding public-private partnerships in Mali).

121. Décret No. 2017-0050/PM-RM [Decree No. 2017-0050/PM-RM dated Feb. 9, 2017], J.O.M. (Feb. 24, 2017) (creating the public-private partnerships unit, Journal Officiel de la République du Mali).

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related to these projects.¹²² A February 28, 2017 decree appointed the Unit members.¹²³

XI. Peru

A. MINING FORMALIZATION PROCESS

Legislative Decree No. 1336, adopted in January 2017, establishes detailed rules for formalizing artisanal and small-scale mining in Peru.¹²⁴ The formalization process is available to persons who are on the Comprehensive Register of Mining Formalization and who meet certain other requirements that the decree sets forth.¹²⁵ In addition, the decree creates the Instrument of Environmental Management and Auditing for the Formalization of Small-scale Mining and Artisanal Mining Activities, which contemplates that miners take corrective and preventative measures, and through which miners seeking formalization will adopt corrective and preventative environmental management measures.¹²⁶

B. MINING LAW REFORM

Legislative Decree No. 1320, enacted in January 2017, amends Articles 40 and 41 of the General Mining Law.¹²⁷ The amended Article 40 provides that in the event of non-compliance with minimum annual production requirements, a concessionaire shall pay a penalty based on a percentage of the minimum annual production required per year and per hectare granted.¹²⁸ The concession expires in the event that a concessionaire does not meet minimum production requirements at the end of the thirtieth year following the year the concession was granted.¹²⁹ The amended Article 41 provides that the concessionaire shall not pay a penalty if the concessionaire invests in the concession or its economic administrative unit at least ten

122. Law No. 2016-061, *supra* note 116, arts. 6-9.

123. Décret No. 2017-0183/PM-RM [Decree No. 2017-0183/PM-RM dated Feb. 28, 2017] J.O.M. (Mar. 17, 2017) (appointing the members of the public-private partnerships unit).

124. Presidente de la República del Perú [President of the Republic of Peru], Decreto Legislativo que establece disposiciones para el proceso de formalización minera integral [Legislative Decree establishing provisions for the comprehensive mining formalization process], art. 1, D.O. No. 13927, January 6, 2017 (Peru).

125. *See id.* at art. 3.

126. *See id.* at art. 6.

127. Presidente de la República del Perú [President of the Republic of Peru], Decreto Legislativo que modifica la Ley General de Minería cuyo texto único ordenado fue aprobado por Decreto Supremo No. 014-92-EM [Legislative Decree that modifies the General Mining Law whose single text was approved by Supreme Decree No. 014-92-EM], unique article, D.O. No. 13926, January 5, 2017 (Peru).

128. *See id.* at unique article (two percent from 11th year; five percent from expiration of 15th year; ten percent from expiration of twentieth year, all calculated from year following the year in which concession granted).

129. *See id.*

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times the amount of the applicable penalty.¹³⁰ Legislative Decree No. 1320 becomes effective as of January 1, 2019.¹³¹

XII. Timor-Leste

A. DOWNSTREAM

By means of Regulation No. 2/2016, the *Autoridade Nacional do Petróleo e Minerais* (“ANPM”) approved the Trading Activities Regulations (“Trading Regulations”) that set forth the principles, rules, and conditions to be complied with in the performance of trading activities involving fuels, biofuels, and lubricants in Timor-Leste.¹³² The Trading Regulations apply to all entities that trade or wish to trade fuel, biofuel, and lubricants in the country, irrespective of their nationality and nature.¹³³ The Trading Regulations include rules on registration, licensing, organization, and operation of trading activities, fees and duties, inspection, and offences.¹³⁴ Moreover, the Timor-Leste government also approved the exceptional and temporary licensing of the Port facilities to *Cement Timor Trading SA and Lai-Ara Unipessoal, Limitada* to import and store fuel for a one-year period effective as of April 25, 2017.¹³⁵

B. ELECTRICITY

By means of Ministerial Diploma No. 1/2017, of January 4, 2017, the Minister of Public Works, Transports and Communications approved electricity power connection and participation fees.¹³⁶ This statute includes, among others, provisions on the power rating and low voltage circuit breaker measurement, power change fees (for single-phase or three-phase energy meters), connection fees, and costs of technical equipment and electrical materials.¹³⁷

130. *See id.*

131. *See id.* at Disposición Complementaria Final Primera [First Final Supplementary Provision].

132. Regulamento No. 2/2016 de 28 de Dezembro de 2016 [Regulation No. 2/2016 of Dec. 20, 2016], JORNAL DA REPÚBLICA [JR] [JOURNAL OF THE REPUBLIC], Série I, No. 50, 819 (Timor-Leste), http://www.mj.gov.tl/jornal/public/docs/2016/serie_1/SERIE_I_NO_50_pdf.

133. *Id.* at art. 3.

134. *Id.* at arts. 4-19.

135. *See* Resolucao Do Governo No. 21/2017 de 10 de Maio [Government Resolution No 21/2017 of May 10, 2017], JR, Série I, no. 17B, 3 (Timor-Leste), http://www.mj.gov.tl/jornal/public/docs/2017/serie_1/SERIE_I_NO_17_B.pdf (providing retroactive effective date).

136. *See* Diploma Ministerial No. 1/2017 de 4 de Janeiro [Ministerial Diploma No. 1/2017 of Jan. 4, 2017] JR, Série I, no. 1, http://www.mj.gov.tl/jornal/public/docs/2017/serie_1/serie1_no1.pdf.

137. *Id.* at arts. 2-5.

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XIII. Tunisia

A. HYDROCARBONS

Law No. 2017-41 dated May 30, 2017¹³⁸ amends law No. 99-93 dated August 17, 1999.¹³⁹ In accordance with Tunisia Constitution Article 13,¹⁴⁰ adopted on January 26, 2014, law No. 2017-41 provides that specific agreements authorising hydrocarbon exploration and exploitation will now be approved by law and no longer by decree.¹⁴¹ Furthermore, prospection permit holders now have an exclusive right (instead of a preferential right) to have these permits converted into exploration permits if they have met their obligations under the specific agreement.¹⁴²

In June 2017, the energy minister, H ela Cheikhrouhou, announced to the press that Tunisia will apply the Extractive Industries Transparency Initiative (“EITI”) principles, although it will not join the EITI.¹⁴³ A working group consisting of government representatives, companies (public and private), and members of civil society was established on June 22, 2017,¹⁴⁴ primarily to prepare a reconciliation report on revenues and payments in line with annual EITI reports.

B. ELECTRICITY

All energy produced in Tunisia from renewable sources must be exclusively sold to and transported by the *Soci et  Tunisienne de l’ lectricit  et du gaz* (“STEG”), which holds a monopoly on electricity production and transmission.¹⁴⁵ Pursuant to law No. 2015-12¹⁴⁶ on renewable energies and

138. *Loi* No. 2017-41 du 30 mai 2017 [Law No. 2017-41 of May 30, 2017], 44 JOURNAL OFFICIEL DE LA R EPUBLIQUE TUNISIENNE [JORT] [OFFICIAL JOURNAL OF THE REPUBLIC OF TUNISIA] 1980, No. 44 (June 2, 2017), <http://www.legislation.tn/sites/default/files/news/tf2017411.pdf> (amending certain provisions of the hydrocarbon code) [hereinafter Law No. 2017-41].

139. *Loi* No. 99-93 du 17 auot 1999 [Law No. 99-93 of Aug. 17, 1999], 44 JORT (June 2, 2017).

140. TUNISIAN CONSTITUTION OF 2014, Jan. 26, 2014, art. 14.

141. Law No. 2017-41, *supra* note 139, art.1 (amending article 19.5 of law No. 99-93).

142. *Id.*

143. Hamza Marzouk, *Gouvernance – hydrocarbures: la Tunisie Applique Les Principes de l’ITIE [Governance – Hydrocarbons: Tunisia Applies the EITI Priciples]*, L’ECONOMISTE (June 22, 2017), <http://www.leconomistemaghreb.com/2017/06/22/tunisie-commence-a-appliquer-principes-de-litie/>.

144. *Tunisia Takes the First Step*, LA PRESSE (July 21, 2017) (Tunisia), <https://www.pressreader.com/tunisia/la-presse-tunisia/20170721/281552290916229>.

145. D cret-Loi No. du 3 avril 1962 [Decree Law No. 62-8 of Apr. 3, 1962], 18 JORT 363, arts. 1, 3, (Tunisia), <http://www.cnudst.rnrt.tn/jortsrc/1962/1962f/jo01862.pdf> (creating and organizing STEG).

146. *Loi* No. 2015-12 [Law No. 2015-12], 38 JORT 295 (May 11, 2015) (Tunisia), <http://www.cnudst.rnrt.tn/jortsrc/2015/2015f/jo0382015.pdf> (discussing the generation of electricity from renewable sources).

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its implementing decree No. 2016-1123,¹⁴⁷ templates for the agreements/specifications to be used with STEG for renewable projects (power purchase agreements,¹⁴⁸ transmission agreements,¹⁴⁹ and specifications relating to technical requirements for grid connection¹⁵⁰) were approved by ministerial orders on February 9, 2017.

The energy ministry launched a call for tenders on solar and wind projects on May 11, 2017.¹⁵¹ Each project, which cannot exceed an installed power capacity of 10MW (solar) and 30MW (wind), will be developed on the BOO model (build, own, and operate).¹⁵² The first application deadline for both solar and wind projects is November 15, 2017.¹⁵³ For wind projects, a second deadline is scheduled on August 15, 2018.¹⁵⁴

147. *Décret* No. 2016-1123 du 24 aout 2016 [Decree No. 2-16-1123 of Aug. 24, 2016], 71 JORT 2764 (Tunisia) (Aug. 30, 2017), <http://www.energymines.gov.tn/documents/decret1123-2016.pdf> (establishing the conditions and methods for developing projects for the generation and sale of electricity from renewable sources).

148. Arrêté de la ministre de l'énergie, des mines et des énergies renouvelables du 9 février 2017 [Order of the Minister of Energy, Mines, and Renewable Energies of February 9, 2017], No. 13 JORT 700 (Tunisia), <http://www.cnudst.rnrt.tn/jortsrc/2017/2017f/jo0132017.pdf> (approving the template for contracts to sell the electricity generated from renewable energies to STEG, subject to authorization) [hereinafter Order of Feb. 9].

149. *Id.* (approving the template for contracts on the transmission of electricity generated from renewable sources and purchase of the surplus by STEG).

150. Arrêté de la ministre de l'énergie, des mines et des énergies renouvelables du 9 février 2017 [Order of the Minister of Energy, Mines, and Renewable Energies of February 9, 2017], No. 13 JORT 694 (Tunisia), (approving the specifications book regarding the technical requirements for connecting and evacuating energy produced from renewable energy facilities, one for the low voltage grid and the other for the medium and high voltage grid).

151. *Tunisia Tenders 210 MW of Wind and Solar Power*, IPP JOURNAL (May 26, 2017), <http://www.ippjournal.com/news/tunisia-tenders-210-mw-of-wind-and-solar-power>.

152. *Id.*

153. *Id.*

154. *Call for Tenders For Electricity Production From Renewable Energies Under the Authorizations Regime, First Round*, RÉPUBLIQUE TUNISIENNE MINISTÈRE DE L'ÉNERGIE, DES MINES ET DES ÉNERGIES RENOUVELABLES, <http://www.energymines.gov.tn/autorisation.htm> (last visited Feb. 20, 2018).