

PETROLEUM LAW Nº 3 /2001 OF 21 FEBRUARY

PREAMBLE

Petroleum resources are assets whose proper exploitation can contribute significantly to national development.

The experience gained in the implementation of Law no. 3/81 of 3 October which regulates petroleum operations, as well as the significant developments which have occurred in the petroleum market and in the current Mozambican economic system giving recognition to the important role that private enterprise plays in the realisation of investments, requires the adoption of a legal framework that both ensures greater competitiveness in the petroleum sector and guarantees the protection of the rights and assets of participants in Petroleum Operations.

In these terms, pursuant to the provisions of Article 135.1 of the Constitution, the Assembly of the Republic determines:

CHAPTER I

GENERAL PROVISIONS

ARTICLE 1

(DEFINITIONS)

For the purposes of this Law, the following terms and expressions shall have the meaning indicated as follows, unless the context in which used requires a different meaning:

- a) "**Development and Production Area**" - a part of the Contract Area which following a commercial Discovery has been delineated according to the terms of the Exploration and Production Contract;
- b) "**Contract Area**" - the area within which the holder of an Exploration and Production right is authorised to explore for, to develop and to produce Petroleum;
- c) "**Block**" - part of a sedimentary basin, formed by a vertical prism of undetermined depth with a polygonal surface defined by the vertices of its geographical co-ordinates, in which petroleum exploration and production activities are conducted;
- d) "**Good Oilfield Practice**" - all those practices that are generally accepted in the international Petroleum industry as good, safe, environmentally friendly, economic and efficient in exploring for and producing Petroleum;
- e) "**Petroleum Deposit**" - a separate accumulation of Petroleum in a geological unit limited by rock characteristics, structural or stratigraphic boundaries, contact surfaces between Petroleum and water in the formation, or a combination of these, so that all Petroleum comprised is in pressure communication through liquid or gas;
- f) "**Discovery**" - the first Petroleum encountered in a reservoir or geological structure by drilling that is recoverable at the surface by conventional Petroleum industry methods;
- g) "**Commercial Discovery**" - a discovery of Petroleum which, under conditions including the market price, enables a return on an investment in the development and production;
- h) "**Development**" - the building and installation of installations for Production and transportation of Petroleum, including the drilling of production wells;

- i) **"Natural Gas"** - all hydrocarbons which are in a gaseous state under normal atmospheric conditions, including wet gas, dry gas and residue gas remaining after the extraction of liquid hydrocarbons;
- j) **"Associated Natural Gas"** - Natural Gas which exists in a reservoir in solution with Crude Oil, including what is commonly known as gas-cap gas which overlies and is in contact with Crude Oil;
- k) **"Petroleum Operations"** - all or any of the activities related to Exploration, Development, Production, separation and treatment, storage, transportation and sale or delivery of Petroleum to the point of export, or to the agreed supply point in the Republic of Mozambique, and includes Natural Gas processing operations and the closure of all concluded activities;
- l) **"Mozambican Person"** - any juristic person established and registered pursuant to Mozambican legislation, with its headquarters in Moçambique and having at least 50% of its share capital held by national citizens or by Mozambican public or private companies or institutions.
- m) **"Petroleum"** - Crude Oil or Natural Gas, or other hydrocarbons produced or capable of being produced from Crude Oil, Natural Gas, oil shales or tar sands;
- n) **"Crude Oil"** - crude mineral oil, asphalt, ozocerite and all kinds of hydrocarbons and bitumens, both in solid and in liquid form, in their natural state or obtained from Natural Gas by condensation or extraction, but does not include coal, or any substance that may be extracted from coal;
- o) **"Decommissioning Plan"** - a plan for the closure of Petroleum Operations including the removal and disposal of all installations.
- p) **"Development Plan"** - a plan for the Development and Production of Petroleum discovered in a Contract Area prepared in accordance with this

Law and the relevant provisions in the Regulations for Petroleum Operations and the Exploration and Production Contract covering that Contract Area;

- q) **"Oil Pipeline or Gas Pipeline Development Plan"** - a plan for the construction and operation of an Oil Pipeline or Gas Pipeline System comprising the pipelines, valve stations, pump stations, compressor stations and associated installations required for the purpose of transportation of Petroleum;
- r) **"Oil Pipeline or Gas Pipeline System"**- the pipeline(s) including valve stations, pump stations, compressor stations and associated installations built for the purpose of Transportation of Petroleum;

ARTICLE 2

(SCOPE OF APPLICATION)

1. This Law applies to Petroleum Operations.
2. The scope of this Law excludes the refining of Petroleum, its industrial utilisation as well as the distribution and sale of Petroleum Products.

ARTICLE 3

(PURPOSE)

This law establishes the regime for the granting of rights for the conduct of Petroleum Operations in the Republic of Mozambique.

ARTICLE 4

(ROLE OF THE STATE)

1. The State, including State institutions and entities have a definitive role in promoting the exploitation of the existing potential in such a way as to provide access to the benefits of petroleum production and contribute to the social and economic development of the country.
2. Through its actions, the State shall try to stimulate investments in Petroleum Operations.

ARTICLE 5

(REQUIREMENTS FOR THE EXERCISE OF ACTIVITY)

1. Petroleum exploration, development and production activities shall be carried out under a concession that results from a public tender, simultaneous negotiation or direct negotiation.
2. The granting of rights for the activities referred to in the preceding clause shall always respect national interests in respect of defence, navigation, research and conservation of marine resources and the environment in general.
3. The Council of Ministers is authorised to regulate the modalities for the concessions referred to in clause 1.

CHAPTER II

OWNERSHIP AND CONTROL OF PETROLEUM RESOURCES

ARTICLE 6

(OWNERSHIP OF PETROLEUM RESOURCES)

All petroleum resources in situ as natural resources in the soil and the subsoil, in interior waters and in the territorial sea, on the continental shelf, and in the exclusive economic zone are the property of the State.

ARTICLE 7

(ADMINISTRATION OF PETROLEUM OPERATIONS)

The Council of Ministers has the authority to ensure the implementation of the policy for Petroleum Operations including the formulation of proposals for the necessary legislation.

ARTICLE 8

(PARTICIPATION OF THE STATE)

1. The State reserves to itself the right to participate in Petroleum Operations in which any legal person is involved.
2. The participation of the State may occur during any phase of Petroleum Operations or during the construction and operation of a gas or petroleum pipeline in accordance with the terms and conditions to be established by contract.

CHAPTER III

PETROLEUM OPERATIONS

ARTICLE 9

(SUBJECTS)

1. Mozambican and foreign individuals, collective persons and companies who demonstrate that they have the technical competency and adequate financial resources for the effective conduct of Petroleum Operations may be holders of the right to conduct Petroleum Operations.
2. Mozambican juristic persons have a preferential right in the granting of Blocks.
3. Foreign juristic persons who associate with Mozambican juristic persons shall also enjoy the preferential right referred to in the preceding clause.

ARTICLE 10

(AUTHORITIES)

The Council of Ministers has the authority to:

- a) approve the execution of Exploration and Production Contracts and Gas Pipeline and Oil Pipeline Contracts.
- b) approve Development Plans and any material amendments thereto prepared by holders of Petroleum Exploration and Production rights;
- c) define the authorities with regard to the execution of other contracts subject to this Law;

- d) define the authorities with regard to the authorisation of the transfer of rights and possible amendments of contracts;
- e) exercise such other authority that is attributed by this Law and other applicable legislation.

ARTICLE 11

(TYPES OF CONTRACTS)

The conduct of Petroleum Operations is subject to the prior execution of a Contract which may include;

- (a) Reconnaissance;
- (b) Exploration and Production;
- (c) Oil Pipeline or Gas Pipeline.

ARTICLE 12

(RECONNAISSANCE CONTRACTS)

1. A reconnaissance contract gives the right to conduct preliminary research work and assessment operations in the area subject to the contract through *air-borne*, terrestrial and other surveys including geophysical, geo-chemical, palaeontological, geological and topographical studies.
2. A reconnaissance contract is executed on a basis of exclusivity for a maximum two-year period and permits the drilling of wells to a depth of 100 metres below the surface or the bottom of the sea.
3. The holder of a reconnaissance right shall have a preferential right to execute an Exploration and Production Contract provided that, six months prior to the expiry of the reconnaissance right, the holder requests and executes an Exploration and Production Contract.

ARTICLE 13

(EXPLORATION AND PRODUCTION CONTRACT)

1. An Exploration and Production Contract gives an exclusive right to conduct Petroleum Exploration and Production as well as the non-exclusive right to construct and operate Oil Pipeline or Gas Pipeline Systems for the purposes of transporting Crude Oil or Natural Gas produced from the Contract area, except where access to an existing Oil Pipeline or Gas Pipeline System is available on reasonable commercial terms.
2. Except if additional time is needed to complete the operations to assess a Discovery, the exclusive Exploration and Production right shall not exceed eight years and shall be subject to the provisions concerning the abandonment of contract areas.
3. In the event of a Discovery, the holder of an Exploration and Production right may maintain the exclusive right to complete the operations initiated within a specified area for the assessment or determination of the commercial value of a Discovery for an additional period of two years or, in the case of a unassociated Natural Gas Discovery, for an additional period not to exceed eight years.
4. The holder of an Exploration and Production right may, in accordance with the Development Plan approved by the Council of Ministers, maintain the exclusive right to develop and produce Petroleum in the Development and Production Area for a period not to exceed thirty years dating from the date of approval of the Development Plan.

ARTICLE 14

(OIL PIPELINE OR GAS PIPELINE CONTRACT)

1. An Oil Pipeline or a Gas Pipeline Contract grants the right to construct and operate an Oil Pipeline or a Gas Pipeline for the purpose of transporting Crude Oil or Natural Gas in those cases that such are not covered by an Exploration and Production Contract.
2. An Oil Pipeline or Gas Pipeline Contract shall be accompanied by the related Development Plan which is an integral part of the Contract.

ARTICLE 15

(UNITISATION)

A Petroleum Deposit which is located partly in one Contract Area and partly in another Contract Area shall be developed and operated jointly pursuant to a unitisation agreement which shall be submitted for approval by the competent entity.

ARTICLE 16

(FLARING OF NATURAL GAS)

1. The flaring of Natural Gas shall only be permitted on terms to be defined by the Government provided that it is demonstrated in the Development Plan or in a special application that all the alternative methods for the disposal of the Natural Gas would prevent the commercial development of the deposit.
2. An authorisation shall not be required when the flaring of Natural Gas is performed for the purpose of testing or verification of the installations or for safety reasons.

ARTICLE 17

(OBLIGATIONS OF A HOLDER OF A RECONNAISSANCE, EXPLORATION AND PRODUCTION
OR OIL PIPELINE OR GAS PIPELINE RIGHT)

A holder of a reconnaissance, Exploration and Production or Oil Pipeline or Gas Pipeline right is obliged, mutatis mutandis, to:

- a) conduct Petroleum Operations in accordance with the terms of this Law, the Regulations for Petroleum Operations as well as other applicable legislation and Good Oilfield Practices;
- b) report any Discovery within the Contract Area to the competent entity.
- c) In the event of a commercial discovery, prepare and submit to the competent entity, in accordance with the Regulations for Petroleum Operations, a Development Plan for the Petroleum Deposit;
- d) Prepare and submit the Development Plan as well as any subsequent material amendment thereto, for prior approval;
- e) Submit a Decommissioning Plan to the competent entity, not later than two years before the planned termination of Production,;
- f) Compensate the injured parties for any losses or damages resulting from the conduct of the Petroleum Operations as provided by Law;
- g) Give preference to Mozambican products and services whenever they are competitive in terms of price and comparable in terms of quality and supply.

- h) When the national interest so requires, give preference to the State in the acquisition of Petroleum produced in the Contract Area in accordance with terms to be regulated.

ARTICLE 18

(THIRD PARTY ACCESS TO OIL PIPELINES OR GAS PIPELINES)

1. The holder of an Oil Pipeline right or a Gas Pipeline right or the holder of an Exploration and Production right has the obligation to transport, without any discrimination and on reasonable commercial terms, the Petroleum of third parties, provided that:
 - a) there is capacity available in the Pipeline System;
 - b) there are no unsolvable technical problems that prevent the utilisation of the Oil Pipeline or Gas Pipeline System to satisfy third party requirements;
2. If the available capacity of the Oil Pipeline or Gas Pipeline System is insufficient to accommodate third party requirements, the holders of an Oil Pipeline or Gas Pipeline right or an Exploration and Production right shall be obliged to increase the capacity of the Oil Pipeline or Gas Pipeline System in order that the third party requirements can be satisfied on commercially reasonable terms, provided that:
 - a) such expansion shall not have an adverse impact on the technical integrity and the safe operations of the Oil Pipeline or Gas Pipeline System .
 - b) **The** third parties have sufficient funds to support the cost of the increase **in** capacity.

3. Whenever there is a dispute concerning the commercially reasonable terms for the transport of Petroleum by an Oil Pipeline or Gas Pipeline System, uncommitted capacity or a proposed increase of capacity, the dispute shall be submitted for arbitration or to the competent judicial authorities as provided by law.

ARTICLE 19

(OWNERSHIP OF DATA)

1. All data obtained pursuant to any Contract provided for under this Law is the property of the Mozambican State.
2. The terms and conditions for the exercise of rights in respect of data shall be established in the respective contract and by regulation.

CHAPTER IV

LAND AND THE ENVIRONMENT

ARTICLE 20

(USE AND BENEFIT OF LAND AND RIGHTS OF WAY)

1. Land use and benefit for the purpose of conducting Petroleum Operations is regulated by the legislation on land use and benefit, without prejudice to the following provisions.
2. For the purpose of conducting Petroleum Operations, the duration of the right of use and benefit of the land shall be the same as the duration of the Contract.

3. The lands where installations are located, and a strip of land, to be defined by regulation, surrounding those installations, are considered to be a zone of partial protection in accordance with the legislation on land use and benefit.
4. The holder of a right to conduct Petroleum Operations who, by virtue of the exercise of Petroleum Operation rights in the Contract Area, causes damage to crops, soils, building and improvements or requires the relocation of the legal users or occupants of the land within the respective Contract Area, has the obligation to compensate the holders of title to the assets and the persons relocated.
5. Subject to the payment of the compensation that are due, the holder of the right to conduct Petroleum Operations may require the right of way in accordance with the legislation in force, in order to have access to the locations where Petroleum Operations are conducted.

ARTICLE 21

(ACCESS TO ZONES SUBJECT TO MARITIME JURISDICTION)

The access to Petroleum Operations sites located in interior waters, the territorial sea, the continental shelf, the exclusive economic zone and in other zones subject to maritime jurisdiction is regulated by the Law 4/96 of 4 January and other applicable legislation.

ARTICLE 22

(INSPECTION)

1. The State may inspect sites, including buildings and installations, where Petroleum Operations are being conducted.

2. The Government may designate an independent entity or a commission created for this purpose, to carry out the inspection.
3. The terms and conditions pursuant to which the inspection is carried out shall be established by regulation.

ARTICLE 23

(ENVIRONMENTAL PROTECTION AND SAFETY)

1. 1. In addition to carrying out their Operations in accordance with Good Oilfield Practice, all holders of Exploration and Production rights shall conduct Petroleum Operations in accordance with environmental and other applicable legislation as well as the respective Contracts in order to:
 - a) ensure that there is no ecological damage or destruction caused by Petroleum Operations, but where unavoidable, ensure that measures for protection of the environment are in accordance with internationally acceptable standards. For this purpose, the holder of a right shall prepare and submit to the relevant authorities for approval an environmental impact assessment, including environmental impact mitigation measures;
 - b) control the flow and prevent the escape or loss of Petroleum discovered or produced within the Contract Area;
 - c) avoid damage to Petroleum reservoirs;
 - d) avoid destruction to land, the water table, trees, crops, buildings or other infrastructure and goods;
 - e) clean up the sites after the closure of Petroleum Operations and comply with the environmental restoration requirements;

- f) ensure the safety of personnel in the planning and conduct of Petroleum Operations, and take preventive measures if their physical safety would be at risk;
 - g) Report to the competent entity regarding the amounts of operational and accidental discharge, leakage and waste resulting from Petroleum Operations.
2. A holder of a right under this Law shall act in a secure and effective manner when conducting Petroleum Operations in order to guarantee the disposal of polluted water and waste oil in accordance with approved methods, as well as the safe plugging of all boreholes and wells before these are abandoned.

CHAPTER V

FISCAL REGIME

ARTICLE 24

(GENERAL PRINCIPLES)

1. Individual and collective persons who are holders of a right to conduct Petroleum Operations are subject to the payment of the following fiscal impositions:
- a) The taxes provided for in the Income Tax Code;
 - b) Royalty
 - c) Value Added Tax and the tax on specific consumption owed on the operations conducted;
 - d) Property Contribution and the Property Transfer Tax (SISA) as established in accordance with the law;

- e) Customs duties established in the Customs Duty Schedule;
 - f) Municipal taxes due; and
 - g) Other taxes and fees established by law.
2. The Council of Ministers is authorised to establish in the special fiscal regime the methods of taxation, the rates and the fiscal and customs benefits applicable to petroleum exploration, development and production activities and modify where necessary for these activities the provisions of the Income Tax Code.
 3. The Council of Ministers has the authority to inventory the income derived from Petroleum Operations and to publish it periodically.

ARTICLE 25

(ROYALTY)

1. Royalty is applicable to petroleum produced in the Republic of Moçambique. The producer has the obligation to pay the royalty.
2. The holder of an Exploration and Production right shall pay a royalty on Petroleum produced from the Development and Production Area, according to rates between 2% and 15% to be established by Decree of the Council of Ministers.
3. The collection of Royalty shall be in kind or in cash at the option of the Council of Ministers.
4. Where the royalty is paid in cash, it shall be calculated according to the agreed contract prices in the case of Natural Gas and on the basis of international prices in the case of Crude Oil.

CHAPTER VI

TRANSITORY AND FINAL PROVISIONS

ARTICLE 26

(EXISTING CONTRACTS)

Any contract made under Law 3/81 of 3 October relative to Exploration and Production of Petroleum remains valid and shall be regulated by this Law with regard to those provisions that do not contradict the contractual clauses.

ARTICLE 27

(RESOLUTION OF DISPUTES)

1. Any disputes arising from the interpretation and application of this Law, the Regulations for Petroleum Operations and the terms and conditions of contracts shall in the first instance be attempted resolved by means of negotiation.
2. If the dispute cannot be resolved by agreement, the question may be submitted to arbitration or to the competent judicial authority.
3. Arbitration between the State of Mozambique and foreign investors shall be conducted in accordance with:
 - a) Law 11/99 of 12 July which governs arbitration, conciliation and mediation as alternative methods of conflict resolution.
 - b) the rules of the International Centre for the Settlement of Disputes between States and Nationals of other States (ICSID), adopted in Washington on 15 March 1965, or pursuant to the Convention on the Settlement of Disputes between States and Nationals of other States;

- c) the rules set out in the ICSID Additional Facility adopted on 27 September 1978 by the Administrative Council at the International Centre for Settlement of Investment Disputes between States and Nationals of other States, whenever the foreign entity does not meet the requirements provided for in Article 25 of the Convention; or
- d) The rules of such other international instances of recognised standing as agreed by the parties to the contracts referred to in this Law, provided that the parties have expressly defined in the contract the conditions for implementation including the method for the designation of the arbitrators and the time limit within which the decision must be made.

ARTICLE 28

(REGULATIONS FOR PETROLEUM OPERATIONS)

1. The Council of Ministers shall approve under this Law Regulations for Petroleum Operations which shall include among other matters, the following:
 - a) modality, terms and conditions of Contracts;
 - b) Petroleum Operations practices including resource management, safety, health and environmental protection;
 - c) submission of plans, reports, data, samples, information and accounts by holders of rights as provided for in the respective contracts;
 - d) utilisation of Oil Pipeline and Gas Pipeline Systems;

2. The Regulations for Petroleum Operations shall be approved within a period of one hundred and eighty (180) days from entry into force of this Law.

ARTICLE 29

(AUTHORITY TO REGULATE)

The Council of Ministers is given the authority to regulate this Law.

ARTICLE 30

(REVOCATION)

Law 3/81 of 3 October 1981 and any other legislation contrary to this Law are revoked.

ARTICLE 31

(ENTRY IN FORCE)

This Law enters into force 30 days after publication in the Boletim da República.

Approved by the Assembly of the Republic on 21 December 2000.

The President of the Assembly of the Republic, Eduardo Joaquim Mulémbwè

Promulgated on 21 February 2001

Published

The President of the Republic, Joaquim Alberto Chissano