



# INDÚSTRIAS EXTRACTIVAS

CENTRO DE INTEGRIDADE PÚBLICA  
Anticorrupção - Transparência - Integridade

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## THE NATIONAL INSTITUTE OF PETROLEUM: A FAR CRY FROM BEING THE INDEPENDENT REGULATOR NEEDED FOR THE PETROLEUM SECTOR

Mozambique needs an Independent Regulatory Authority for the petroleum sector that has powers of supervision to guarantee that the benefits for the State are maximized, through the proper and even-handed oversight of the operations carried out by companies exploiting petroleum resources in the country. The National Petroleum Institute (Instituto Nacional de Petróleos, INP) is, at present, the regulator of the sector, but clearly with only nominal independence, resulting in actions that are excessively limited in scope.

The dynamics that are becoming present in the oil sector reinforce this need. Some of the dynamics of the sector are illustrated by the expansion of the Pande-Temane project, the implementation of the project for the production of light oil and natural gas from the Inhassoro and Temane fields; the production of liquefied natural gas from liquefaction plants at sea and on land probably as of 2021; as well as the hydrocarbons exploration and production projects to be implemented in the future as a result of the 5<sup>th</sup> licensing round launched in 2014.

Due to the INP's existing organizational structure, Mozambique has been suffering from significant revenue losses, a situation that may continue in the future. For example, the INP is happy with the South African multinational's proposal for self-financing of the project for the exploitation of oil and natural gas from Inhassoro and Temane<sup>1</sup>, which can facilitate the illicit financial flows by setting exaggerated interest rates, compared to those practiced in the market.

An independent regulatory authority with supervisory powers is meant to be active administratively by continuously monitoring activities, persons and documents with a view to preventing, detecting and prosecuting illicit or bad practices, remedying or avoiding disruption and maximizing the use of national resources. That is, a genuine intelligence activity in the collection, processing and validation of information.

These activities are critical to respond to the challenges facing the sector, especially in an attempt to maximize gains for the State and reduce negative social, environmental, and even political impacts, by ensuring that the State enters into business deals with the maximum integrity possible.

Experiences of a number of countries, including Mozambique, show that companies are using a range of tactics to reduce their tax burden, ranging from inflating costs and transfer prices, undervaluing the quality of natural resources, among others. Likewise, they manipulate the feasibility assumptions of the projects so that they are approved by the Government, and in the end, the results are detached from the reality that has been "sold". In order to address these challenges, the regulator should have other competencies and be de facto independent.

<sup>1</sup> <https://www.cipmoz.org/index.php/pt/industria-extractiva/826-plano-de-desenvolvimento-do-psa-da-sasol-e-problema-tico>.

At present, INP, which is the regulator of the oil sector in its current guise, is far from being the independent regulatory authority that the country needs to respond fully to existing and future challenges, for a number of reasons.

- First, the INP is subordinate to the entity that is appointed by the Council of Ministers (the Cabinet) to sign contracts, whoever the Minister is who oversees the petroleum sector. This situation results, on the one hand, in limited independence and, on the other, in conflicts of interest, in that the Minister may interfere with the work of the INP, bearing in mind that the Government is a very interested party in the projects. In fact, the INP ends up playing more a consulting and technical advisory role, both for MIREME and for the Council of Ministers, specifically in matters related to the oil sector.
- Second, the Petroleum Law (Law number 21/2014 of August 18)<sup>2</sup> declares the National Petroleum Institute to be *the regulatory entity responsible for the administration and promotion of petroleum operations, under the supervision of the Ministry of Petroleum and Gas, responsible for the guidelines for public and private sector participation in the exploration and exploitation of petroleum products and their derivatives.*

The organic statute of the INP<sup>3</sup> states that the competencies of the agency are:

- (i) Regulation and supervision of research, production and transportation activity in the petroleum sector, as well as the elaboration of development policies and norms for petroleum operations;
- (ii) Preservation of the public interest and the environment by establishing the necessary technical, economic and environmental conditions, promoting the adoption of practices that stimulate the efficient use of resources and the existence of adequate standards regarding quality of service and protection of the environment;
- (iii) Organization, maintenance and consolidation of the collection of information and technical data relating to the activities of the oil industry, the national oil reserves and the information produced;
- (iv) Mediation, conciliation and arbitration, when requested, and proceeding as agreed among the parties in the context of the legislation in force.

Its competencies are divided into five areas: (i) management of the National Petroleum Database; (ii) exploration activities, (iii) oil development, production and transport activities; (iv) safeguarding of operators' interests; and (v) administration, supervision, and regulation (see details in the text box).

Number 1 of Article 5 of the INP's organic statute -- which deals with inspections -- also states that the INP must, within the scope of its powers and duties, inspect the premises, buildings and facilities where petroleum operations are carried out, as well as scrutinize the execution of the petroleum operations and inspect all the assets, records and data held by the operator. It can be understood here that cost control is included.

However, neither the attributions nor the competencies of the INP provided for in its Organic Statute correspond to what is expected from an oil sector regulator, since, for example, in the exploration phase, the INP does not make a detailed assessment of the expected costs in order to determine whether they are reasonable, nor, after they are incurred, undertakes due certification to ensure that there is no cost inflating. Likewise, it is not known to what extent the INP's cost control methodology can allow the identification of intentional inflating of costs.

The case of the Pande-Temane natural gas production project is an example of INP's questionable work on cost control<sup>4</sup>.

Most recently, the Administrative Tribunal (Tribunal Administrativo, TA) in its report and opinion to the Overall Government Account (Conta Geral do Estado, CGE) of 2015 stated that the INP intends to develop procedures for monitoring costs along the entire oil operations value chain and to train its staff in this regard. At this moment, the regulator controls the costs on the basis of the "Revenue and Expenditure Reports", submitted by the concessionaires, which, after a technical evaluation, by the INP, pass the approval, at the negotiation stage of the Contract, when it simultaneously compares them with the rules established in Annex C of the Contract Model, where the Accounting and Financial Procedures of the Contract are established.

<sup>2</sup> Artigo 22, número 2

<sup>3</sup> <http://extwprlegs1.fao.org/docs/pdf/moz65483.pdf>

<sup>4</sup> [https://www.cipmoz.org/images/Documentos/Industria\\_Extrativa/SasoL\\_Continuara\\_a\\_enriquecer\\_e\\_o\\_Estado\\_Mocambicano\\_a\\_vaca\\_leiteira.pdf](https://www.cipmoz.org/images/Documentos/Industria_Extrativa/SasoL_Continuara_a_enriquecer_e_o_Estado_Mocambicano_a_vaca_leiteira.pdf)

The Administrative Tribunal, in its report and opinion on the CGE of 2014, stated that the INP had not yet issued any certification of compliance with the operating costs for the Projects (of Anadarko and ENI). And the reason given by the regulator is this: insufficient technical and human resources<sup>5</sup>.

In the context of development, it is not clear that the INP certifies neither the quality of the natural resource that is sold nor, above all, the sale price, which are important elements for the valuation of resources and for the calculation of government take. In case of discrepancies between the price used by the company and that of the market, it is not clear to what extent the INP has the power to recommend to the Tax Authority corrective actions.

Likewise, in addition to having sanctioning power, in case of infractions by operators in the petroleum sector, the INP does not have de facto binding authority, for example, to cancel and / or alter concessions and/or contracts. This body can only propose actions to the Government, which in turn may accept or reject the proposal.

To ensure that INP is, in fact, an Independent Regulatory Authority for the petroleum sector, there are a number of measures that must be taken urgently.

- (1) Withdraw the authority of the Ministry of Mineral Resources and Energy and ensure that the INP reports to Parliament.
- (2) The authority of the Ministry of Mineral Resources and Energy can be maintained if a regulator is wanted that only has a role of regulating and promoting the petroleum sector. In the interim, it is urgent to set up a de facto independent authority with supervisory and binding powers<sup>6</sup>.
- (3) Ensure the integration of all stakeholders in the Board of Directors in a transparent manner, removing any possible indication of political favors. This form of integration would be in line with Article 14 of the Basic Law on the Organization and Operation of Public Administration (Law number 7/2012, of February 8).
- (4) In order to ensure the safety of managers and inspectors in the performance of their duties, in strict compliance with the Law and in the interest of the State, it is important to guarantee their permanence during their mandate.
- (5) Finally, review the Organic Statute of the INP as well as the Petroleum Law.

#### Text Box: **INP Responsibilities**

##### **1. With respect to management of the National Petroleum Database**

- a) Organize the reception, classification and preservation of all documentation, samples and technical data obtained in carrying out petroleum operations;
- b) Manage and have available technical data on the sedimentary basins of Mozambique for the evaluation of prospective areas;
- c) Receive and compile information on the production and calculation of petroleum reserves;
- d) Monitor the technological evolution of the equipment and methods applied to the management of information and technical data related to petroleum operations;
- e) Promote studies aimed at the demarcation of blocks for the purposes of petroleum operations and services of geology and geophysics applied to the petroleum industry;
- f) Elaborate proposals and criteria for the availability of data to interested parties.

##### **2. With respect to Research:**

- a) Evaluate and update knowledge about the petroleum potential in the national territory;
- b) Develop actions to promote investment in petroleum prospecting and exploration of petroleum;
- c) Participate in the definition of contract areas, minimum work programs and expenditures to be negotiated under concession contracts;

5 file:///C:/Users/Fatima/Downloads/Cap%C3%ADtulo%2005%20-%20%20Execu%C3%A7ao%20do%20or%C3%A7amento%20da%20Receita.pdf

6 An opportunity may be to transform the Extractive Industry High Authority (Alta Autoridade da Indústria Extractiva, AAIE), created by the Mining Law (Law 20/2014, of August 18), into this Authority. The law presents some premises that can be exploited in this sense.

d) Supervise the performance of prospecting and exploration activities and the fulfillment of the work obligations of concession contract holders.

### **3. With respect to petroleum development, production and transport of petroleum:**

- a) Conduct studies on the development of the petroleum sector;
- b) Analyze and issue opinions on the development and demobilization plans submitted by the operators;
- c) Assess the activity reports submitted by operators;
- d) Ensure that petroleum operations are carried out in accordance with the legislation and approved development plans;
- e) Ensure that facilities are designed and constructed in accordance with the requirements of the legislation applicable to petroleum operations;
- f) Authorize the construction and start-up of facilities;
- g) Inspect regularly the equipment and method of petroleum measurement used by operators;
- h) Monitor the quantities of natural gas to be flared by operators and ensure that they are duly authorized in accordance with the legislation;
- i) Ensure compliance by operators of emergency and contingency, safety and environmental protection requirements;
- j) Promote and disseminate new technologies that guarantee the best exploitation and use of the natural resources inherent to the petroleum sector.

### **4. With respect to safeguarding operators' interests:**

- a) Establish a transparent, non-discriminatory and impartial procedure for the settlement of disputes between economic operators and third parties in matters within their competence, including matters relating to third party access to the gas and petroleum pipelines;
- b) Liaise with associations of operators and undertake studies and analyses that are deemed to be of interest;
- c) Provide, where appropriate, information of public interest, unless it is

### **5. With respect to administration, supervision and regulation:**

- a) Establish norms and procedures within the scope of its competencies;
- b) Guide the process of assigning rights for petroleum research, production, development and transportation;
- c) Standardize, approve and sanction the equipment to be used in petroleum sector operations;
- d) Propose draft legal instruments necessary for the operation of the petroleum sector, as well as give an opinion on draft legislation and regulations proposed by other agencies or entities;
- e) Regulate activities with respect to petroleum sector operations to ensure that they are developed to better serve and contribute to the socio-economic development of the country;
- f) Promote free competition, and prevent and take necessary measures against anti-competitive practices and abuses of dominant position;
- g) Implement, within its area of attributions, the national policy for the petroleum sector;
- h) Prepare and carry out public tenders for the award of concessions and the execution of other contracts inherent to petroleum operations;
- i) Issue opinions on the attribution, renewal and alteration of concessions for the operation of petroleum resources;
- j) Supervise the quality of the services provided by the economic agents involved in petroleum operations;
- k) Supervise compliance with the terms and obligations arising from concession agreements, as well as compliance with applicable legal and regulatory provisions;
- l) Disseminate the current regulatory framework, within the scope of its competence, and the rights and obligations of operators;
- m) Develop the necessary actions for declaring a public interest for the purposes of expropriation and administrative easement of the areas to carry out petroleum operations;
- n) Inspect and supervise the activities of the economic agents engaged in petroleum operations to ensure compliance with their respective legal and regulatory provisions, as well as the application of corresponding sanctions.



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