



CENTRO DE INTEGRIDADE PÚBLICA
Anticorrupção - Transparência - Integridade

CONTRACTS IN THE GAS SECTOR ALLOW MANIPULATION OF TRANSFER PRICES

- Oil and gas research and production contracts signed after the legislation on transfer pricing was passed continue to allow companies to practise discrepant transfer prices, directly influencing taxation in the sector



Title: CONTRACTS IN THE GAS SECTOR ALLOW MANIPULATION OF TRANSFER PRICES

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Executive Summary

Mozambican legislation on transfer pricing, in force since December 2007, aims to guarantee fairness in transactions between related companies and to ensure fair taxation of Corporate Income Tax. (IRPC). The Transfer Pricing Regulation (RPT) was implemented to fill gaps in the legislation, allowing for a more structured approach.

However, contracts in the gas sector still violate transfer pricing regulations, allowing for differentiated prices for affiliated and non-affiliated companies. This persistent practice, even after 2007, represents a substantial risk to tax revenues. Furthermore, contractual addenda have increased the price discrepancy, reinforcing the violation of transfer pricing law.

Studies indicate that the practice of abusive transfer pricing has resulted in significant losses for the Mozambican state, especially in the gas and mining sectors. Projects such as Coral FLNG present commercial structures that facilitate price manipulation, further increasing the financial risks for the country. The company Sasol contributed negatively to the State, around 50 million dollars between 2004-2014, due to the use of abusive transfer prices.

Adapting old contracts to legislative changes has been complex and poses several challenges. The lack of review of old contracts raises concerns about compliance and transparency in the sector. In addition, confidentiality in mining contracts has been an obstacle to transparency, limiting public participation in the process. The lack of answers from sector regulators on questions raised in relation to transfer pricing brings about concerns in relation to transparency and accountability in the natural resources sector. The lack of cooperation and transparency highlights the need for additional measures to strengthen supervision and oversight of the sector.

The text recommends, in general, that the National Petroleum Institute (INP) carry out detailed audits to identify and correct any violations of transfer pricing rules. This is crucial to guarantee fairness in transactions and protect the country's tax revenues.

1. Introduction

In the extractive sector, royalties¹ and taxes on profit are generally based on the value of the resource transacted. Consequently, it is extremely important that any transaction involving the purchase and sale of natural resources is valued correctly. Given the frequency and scale of transactions between related parties, the potential risk to tax revenues can be high due to non-compliance with transfer pricing rule², especially considering the value of the resources extracted.³

However, despite the establishment of a legal framework in Mozambique, there is a persistent violation of the rules, allowing related companies to practise abusive transfer pricing. In the country, this risk is more evident, especially in the oil and gas sectors. It was observed that the eleven contracts signed between the government and companies in the sector, after the introduction of legislation on transfer pricing, allow for differentiated pricing when companies transfer goods, services or intellectual property between units or subsidiaries within the same company, directly affecting taxation and finances.

The implementation of transfer pricing legislation in Mozambique, as of December 2007, was a crucial measure to ensure fairness in transactions between related companies, as well as to guarantee full competition⁴ and fairness in the taxation of Corporate Income Tax (IRPC).

¹ Payments made based on the extraction or production of natural resources. A kind of tax on production.

² The transfer price is the price charged in a transaction between two entities that are part of the same economic group of companies.

³ OECD/IGF (2023). Determining the Price of Minerals: A Transfer Pricing Framework, IGF, Ottawa/OECD Publishing, Paris. Available at: <https://doi.org/10.1787/de6ec0c5-en>. Accessed on 09/04/2024.

⁴ CIP (November 2019). Visão Geral sobre os Preços de Transferência. [*Overview of Transfer Pricing*]. Issue No 10. Toru Nakamura, PhD. Available at: https://www.cipmoz.org/old_new/2019/11/01/visao-geral-sobre-os-precos-de-transferencia/. Accessed on 09/04/2024.

The issue of transfer pricing is enshrined in the Corporate Income Tax Code (CIRPC).⁵ Although this attributes competence to the Tax Authority to introduce corrections in the determination of taxable profit, the procedures to be observed were not clearly specified, which represented a serious gap in the legislation. The Transfer Pricing Regulation (RPT)⁶ was intended to fill these gaps.

The application of discrepant prices in transactions with related and unrelated companies is part of companies' strategies to reduce the project's tax revenue by underestimating the market value of the goods.⁷ It is estimated that only with Sasol Petroleum Temane (SPT) transactions, registered in Mozambique, and Sasol Petroleum International (SPI), registered and based in South Africa, the state has lost around 50 million dollars due to abusive transfer prices between the two companies in the period 2004-2014.⁸

The most common forms of underestimation are made through sales at reduced prices to an affiliated or related company, using advance sales or price protection or price hedging, or by inflating the costs of commercialising the goods.⁹

This practice could result in a loss of tax revenue for the state far in excess of the 50 million dollars mentioned from Sasol's operations. The lower prices charged in transactions with affiliated companies may lead to a lower tax base. Furthermore, this can distort competition in the market, benefiting affiliated companies to the detriment of non-affiliated ones and jeopardising tax justice.

In addition to the tax implications, transfer pricing discrepancies can affect transparency and confidence in the country's business environment, discouraging potential investors and damaging Mozambique's international reputation as an investment destination.¹⁰

This analysis focusses specifically on the challenges faced in adapting and complying with contracts entered into after the implementation of transfer pricing regulations, as well as the responses of regulatory entities to the issues raised. The text is the result of documentary analysis and interviews with key informants. To this end, concession contracts, relevant legislation, academic articles/reports and interviews with relevant authorities were analysed, including representatives of the National Institute of Mines (INAMI), the Ministry of Mineral Resources and Energy (MIREME) and the Tax Authority (AT).

The text is divided into seven parts. The introductory part (Introduction) sets the general context, followed by an analysis of contracts in the gas sector, which highlights violations of Transfer Pricing regulations. The third part deals with the immediate consequences of these violations, while part four discusses how contract addenda contribute to reinforcing the practice of discretionary pricing. The text continues in the fifth part by examining the issue of confidentiality in mining contracts and how this becomes an obstacle to transparency. Finally, in the sixth section, the lack of answers from the sector's regulators to the questions raised about transfer pricing stand out. The conclusion, in the seventh and final part, summarises the findings and highlights the importance of facing these challenges. At the end, is a list of documents consulted that provide additional references for a deeper understanding of the topic.

5 Law nr. 34/2007 of 31 December

6 Decree 70/2017 of 6 December.

7 Hubert, D (2017). *Muitas Maneiras de Perder um Bilhão - Como os Governos Não Conseguem Garantir uma Partilha Justa dos Recursos Naturais*. / [Many Ways to Lose a Billion - How Governments Fail to Ensure a Fair Share of Natural Resources]. Publish What You Pay. Available at: <https://cipmoz.org/wp-content/uploads/2020/05/PWYP-Report-ManyWaysToLoseABillion-PR-PRINT.pdf>. Access: 29/02/2023.

8 CIP (Outubro, 2017). *Inflação de custos e preços de transferência - Sasol continuará a enriquecer e o estado moçambicano a "vaca leiteira"*. / [Cost inflation and transfer prices - Sasol will continue to get richer and the Mozambican state the "cash cow"]. Inocência Mapiisse. Available at: <https://cipmoz.org/wp-content/uploads/2018/08/Texto-Sasol-FINAL-.pdf>. Accessed on 09/04/2024.

9 Idem.

10 CIP (Novembro 2019). *Visão Geral sobre os Preços de Transferência*. Edição No 10. Toru Nakamura, PhD. Disponível no site: https://www.cipmoz.org/old_new/2019/11/01/visao-geral-sobre-os-precos-de-transferencia/. Acesso 09/04/2024

2. Gas sector contracts violate Transfer Pricing Regulations

The main purpose of implementing transfer pricing legislation is to guarantee fairness in transactions between related companies, equating the prices charged in these operations with those applied in transactions between unrelated companies. In addition, the legal instrument aims to ensure full competition and fairness in the taxation of Corporate Income Tax (IRPC).¹¹

Despite the updated legal framework on the subject, it has been observed the existence of oil contracts concluded after 31 December 2007, that is, after the approval of the transfer pricing regulations, which continue to represent a high risk of abusive pricing practices and violate the transfer pricing regulation, by using differentiated prices in the sale of hydrocarbons to related and unrelated companies.

A total of 11 contracts, available on the website of the National Petroleum Institute (INP), illustrate this situation (Table 1 below). They set different prices for the sale of oil and gas, depending on whether the buyer is a related or unrelated company. This provision is practically the same as the signed before the introduction of transfer pricing legislation.

These 11 contracts, such as the Contract for “Offshore” Areas 3 and 6 in the Rovuma Basin, signed on 10 October 2008, establish that:

1. For sales to unrelated companies, the price is calculated based on the weighted average price of oil or gas delivered by the concessionaire during the month, adjusted by the actual costs incurred by the concessionaire.
2. For sales to related companies, the price is determined considering two factors: i) the weighted average price of oil or gas, as reported in “*S&P Global’s Platts Oilgram*”^{12 13}; and ii) a premium or discount based on quality and the cost of placing it on the market. They also establish that, if the government enters into an oil or gas purchase contract with the concessionaire, the price cannot exceed that charged to related companies.¹⁴

Based on the wording of the contracts, in the article referring to price determination (see example in Annex 1), it is possible to identify the existence of three potential risks related to transfer pricing in these contracts. The first relates to the practice of different prices between affiliated and non-affiliated companies. This can create a loophole for price manipulation for tax evasion purposes.

The second concerns the lack of transparency in the stipulated prices. The contracts mention the possibility of price adjustments based on criteria such as the quality of the crude oil and the costs of placing it on the market. These criteria are subjective and can be exploited to manipulate prices. The third refers to the special conditions for sales to the government. The contract provides for special conditions for sales of oil and gas to the government, including the requirement that prices do not exceed those practised in sales to affiliated companies.

In addition to potentially distorting prices and favouring certain parties, as far as public companies are concerned, this can also be interpreted as a form of hidden subsidies that distort market prices and competitive conditions, providing public companies with an advantage that is not available to private sector competitors. By favouring state companies over private sector, market efficiency is affected. It should be noted that some more recent oil contracts, such as those for areas Z5D, Z5C, A5B, A5A and PT5-C, have the difference of adding the Ministry of Economy and Finance (MEF) as one of the entities with autonomy to agree on the price that will be applied to the sale of natural gas and liquefied natural gas (LNG), both to affiliated companies. In previous contracts, this agreement was only between MIREME and the concessionaire.

The inclusion of the MEF implies a significant change. It indicates greater financial control and oversight, potentially increasing transparency and financial supervision. However, it could also result in more complex negotiations, with different pricing criteria and a more challenging negotiation dynamics between the parties involved. Therefore, although contracts provide guidelines for determining oil and gas sales prices, it is crucial to note that there are potential risks of manipulation that may not comply with tax regulations due to the practice of transfer pricing.

¹¹ Câmara de Comércio de Moçambique (2022). Manual Prático de Preços de Transferência. 2º Seminário Nacional de Preços de Transferência AT&C-CM. [Mozambique Chamber of Commerce (2022). Practical Manual on Transfer Pricing. 2nd National Seminar on Transfer Pricing AT&CCM].

¹² Platts Oilgram is a commodity price report, specifically focused on the oil market. It is published by S&P Global Platts, one of the leading sources of information and prices in the energy and commodities sector. The Platts Oilgram provides market analysis, up-to-date prices and information on oil market trends, including reference prices for different types of crude oil. This information is widely used by energy companies, investors and financial institutions to make decisions on business and strategies related to the oil market.

¹³ Link to S&P: <https://www.spglobal.com/commodityinsights/pt/products-services/oil/oilgram-price-report>

¹⁴ See example of Art. 10 of the contract between the Government and ENH for Búzi Block, signed on 31 October 2008, i.e., after RPT entered into force.

Table 1: List of companies in the hydrocarbons sector with contracts signed after 2007 and with differences in the application of prices between affiliated and non-affiliated companies

Nr. Ord	Contract	Date of Signature	Parties Involved
1	Contract for offshore areas 3 and 6 in the Rovuma Basin	10 October 2008	PC Mozambique (Rovuma Basin) Ltd ENH, E.P.
2	Contract for the Búzi Block	31 October 2008	ENH, E.P. Búzi Hydrocarbons
3	Contract for area "A" Onshore Mozambique Basin	21 September 2010	Sasol Petroleum Mozambique Exploration, Limitada ENH, E.P.
4	Addendum to the contract for area 1 "Off-shore" of the Rovuma Block	05 May 2017	Total E&P Mozambique Área 1 Limitada (Operator) Mitsui E&P Mozambique Área 1 Limitada ENH, E.P. BPRL Ventures Mozambique B.V. Beas Rovuma Energy Mozambique Limitada ONGC Videsh Limited PTTEP Mozambique Área 1 Limitada
5	Contract for area Z5D	08 October 2018	ExxonMobil RN Zambezi North PTE, LTD, ENH, E.P.
6	Contract for area Z5C	08 October 2018	Exxon Mobil RN Zambezi South PTE, LTD, ENH, E.P.
7	Contract for area A5B	08 October 2018	Exxon Mobil RN Angoche PTE, LTD, ENH, E.P.
8	Contract for area A5A	17 October 2018	Eni Mozambico S.p.A Sasol Petroleum Mozambique Exploration Limitada ENH, E.P.
9	Contract for area PT5-C	17 October 2018	Sasol Petroleum Mozambique Exploration ENH, E.P.
10	Contract for the Mazenga "Onshore" area	December 2018	ENH, E.P.
11	Supplementary Agreement II for Area 4 Off-shore of the Rovuma Block	09 de August 2019	Mozambique Rovuma Venture S.p.A, KG Mozambique LTD Galp Energia Rovuma B.V. ENH, E.P.

Source: INP

Box 1: Risks Associated with Transfer Pricing along the Value Chain

In general, the exploitation of natural resources involves the following phases: i) exploration; ii) development; and iii) production. In the modern world, multinational companies also engage in logistics and sales activities in the intermediate stage, as well as processing in the final phase. Considering these phases, the Organization for Economic Cooperation and Development (OECD) and the Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development (IGF) have established a framework of common transfer pricing risks along the mining value chain.

In this context, the OECD and IGF point out that although transfer pricing risks generally arise when there is a cross-border transaction between related parties, they also apply when there are domestic transactions between related parties. The main transfer pricing risks at the various stages of natural resource exploitation include:

1. **Exploitation** – transfer pricing risks arise from intra-group technical services or intra-group rental of specialised equipment (charging above a market price for the provision of the service and/or use of the equipment);
2. **Development** – at this stage, the risks may be: i) financing between related parties, such as debt between related parties, derivative instruments and other alternative financing structures; ii) intra-group services, such as technical services, management and expatriate worker services; iii) risks related to the use of specific technologies; iv) risks associated with the acquisition or rental of equipment; and v) risks related to purchases of consumables, such as diesel and tires;
3. **Production** – at this stage, the risks may be: i) transfer prices associated to sales to related parties, especially in offshore sales; and ii) use of intra-group sales and marketing entities, which may inappropriately charge service fees or commissions, price products incorrectly or receive undue discounts on the sales price;
4. **Processing, Logistics, Sales and Post-Production** – in these phases, the risks are the same as in the production phase with the following additions: i) transfer pricing risks arising from excessive charges at intra-group processing facilities; ii) risks associated with the transportation of minerals to different locations, including freight and insurance costs; iii) exchange rate risks arising from fluctuations in exchange rates during international transactions; and iv) inadequate transfer of rehabilitation and abandonment costs.

To mitigate these risks, it is important that countries adopt effective transfer pricing policies and practices, such as those recommended by the OECD, and that there is international cooperation to ensure transparency and tax justice in the exploitation of natural resources.

3. Direct Impact of Transfer Pricing

The Center for Public Integrity (CIP, 2017)¹⁵ has shown that the fact that the purchase and sale of gas from Pande and Temane takes place within the same group, Sasol, creates risks of distorted transfer prices, with Sasol registered in Mozambique (SPT) transferring the gains to Sasol Petroleum International (SPI), registered and based in South Africa. In this study, it was estimated that revenue losses for the Mozambican state amounted to around 50 million dollars, due to abusive transfer prices between SPT and SPI, over a period of 10 years of operations, i.e. between 2004 and 2014. In that study, it was noted that SPT sells gas to SPI at prices substantially below market prices, with an average difference of 5 dollars per GigaJouls.

In another study, CIP showed that the structure adopted by the Coral FLNG project consortium – area 4 of the Rovuma Basin, Campo Coral Sul – in order to accommodate LNG production, presented a risk of abusive transfer pricing, one of the techniques often used by companies in the extractive sector to illicitly transfer financial resources from the country where the project is located to the company itself. The study indicates that the risk derives from the commercial structure set up by the Coral South FLNG project consortium, as well as the FLNG financing structure¹⁶. Likewise, the guarantees of ENI, the parent company, may also represent a transfer pricing risk if it issues guarantees to its subsidiaries in Mozambique. Transfer pricing concerns stem mainly from the valuation of the guarantee.

The above analyses show that the possibility granted to concessionaires to apply differentiated prices for affiliated and non-affiliated companies, apart from clearly violating transfer pricing legislation in Mozambique, has an extremely negative impact on state finances.

4. Contract Addenda Reinforce Discretionary Pricing Practices

The contracts for areas 1 and 4 “Offshore” of the Rovuma Basin, signed on December 20, 2006, were the subject of addenda in 2017 and 2019. The expectation when making these changes was that they would be in line with the legal framework for transfer pricing already in force in the country on those dates. However, the exact opposite happened. The addenda ended up strengthening the practice of establishing differentiated prices for affiliated and non-affiliated companies.

Instead of adjusting the contracts to comply with transfer pricing regulations, the addenda merely extended the institution of different prices. For example, in the case of the addendum to the Area 1 contract, in addition to oil and natural gas, which were already included in the Concession Contracts for Exploration and Production (CCPPs), multiple alternative prices were added that the consortium could apply to the sale of natural gas to its affiliates. These actions represent a clear violation of transfer pricing legislation, approved by the same government that participated in the conclusion of the CCPPs and their addenda (see Annex 2, relevant excerpts from the addendum to the contract of Offshore Area 1 and the Second Supplementary Agreement to the Rovuma Basin Offshore Area 4 contract).

4.1 Challenges in Adapting Contracts to Transfer Pricing Rules

Mozambique faces the challenge of dealing with contracts concluded before the implementation of the transfer pricing legal framework that are not unique to Mozambique. Adapting old contracts to future legislative changes, such as the introduction of RPT, is complex. This complexity is due to the need to revise and modify already established contractual terms, the divergent interests of the parties involved, the financial and legal impact of the changes, the technical and legal complexity involved, the protracted negotiations and the potential operational and administrative impacts. These changes require a careful and collaborative approach to ensure compliance and fairness for all parties involved¹⁷.

In the specific case analysed in this text, four contracts were identified, available on the INP website, namely

¹⁵ CIP (Outubro, 2017). *Inflação de custos e preços de transferência - Sasol continuará a enriquecer e o estado moçambicano a “vacca leiteira”*. // [Cost inflation and transfer pricing - Sasol will continue to get richer and the Mozambican state the “cash cow”]. Inocência Mapiisse. Available at: <https://cipmoz.org/wp-content/uploads/2018/08/Texto-Sasol-FINAL-.pdf>. Accessed on: 09/04/2024

¹⁶ CIP (Setembro, 2019). *Preços de Transferência no Sector Extractivo como Mecanismo de Saída Ilícita de Capitais*. // [Transfer Pricing in the Extractive Sector as a Mechanism for Illicit Capital Outflows]. Issue No. 6. Inocência Mapiisse. Available at: https://www.cipmoz.org/old_new/2019/09/29/precos-de-transferencia-no-sector-extractivo-como-mecanismo-de-saida-ilicita-cde-capitais/. Accessed on : 09/04/2024

¹⁷ Costa, J. et al. (2023). *Complexidade e Contratos: enfoques teóricos e possibilidades metodológicas*. // Complexity and contracts: theoretical focus and possibilities]. 1. ed – Curitiba: IODA, 2023. 226p.: il.; 23cm. Available at: <https://codaip.com.br/wp-content/uploads/2023/10/Complexidade-e-contratos.pdf>. Accessed on 09/04/2024.

the contract signed on June 1, 2005, for blocks 16 and 19, the contract of December 20, 2006 for area 1 offshore of the Rovuma Basin, the contract of December 20, 2006 for area 4 offshore of the Rovuma Basin, and the contract of April 18, 2007 for the onshore area of the Rovuma Basin.

These contracts are not legally obliged to implement transfer pricing legislation, however, even if there are gaps in local transfer pricing legislation, the rules of the country where the related company is registered are also relevant. This may explain why some companies choose to register in places considered tax havens, such as Mauritius, where they can get around stricter disclosure requirements.

However, as this is a practice that promotes transparency and good governance of extractive resources, it was expected that contracts would be reviewed and adjusted to suit the new rules by means of addenda. However, even the contracts that were amended ended up reinforcing the violation of the aforementioned legal framework. (See Annex 3, example excerpt from the ENI East Africa S.p.A. contract).

4.2 Confidentiality in Mining Contracts: An Obstacle to Transparency

Mining contracts signed both before and after the implementation of the transfer pricing legal framework in Mozambique¹⁸ stipulate the use of market prices for both mineral sales to non-affiliates and affiliates, which is in line with transfer pricing legislation.

Among the contracts signed before the implementation of the regulation, there are only two examples. The contract with Highland African Mining Company, Lda, which came into force on December 23, 2002, and the contract with Kenmare Moma Mining, LTD, signed on January 21, 2002. Both contracts include clauses that determine the use of market prices for the sale of the ores produced.

As for the contracts signed after the implementation of the regulation, there are several examples, such as the contract with Capitol Resources, Lda, of December 2017, and the contract with Twigg Exploration and Mining, Limitada, signed on 04/07/2018, among others. These contracts also follow the same line, requiring the use of market prices in transactions with affiliated and non-affiliated companies. Nevertheless, it is important to note that although these contracts establish the use of market prices and require notification to the Ministry of Mineral Resources and Energy (MIREME) of sales to affiliated companies, as well as the possibility of adjusting prices if there is disagreement, they also impose confidentiality on the inspection and adjustment process. This means that the public does not have access to the information and cannot actively participate in the process of ensuring transparency in these procedures.

This lack of transparency can be a cause of concern, as it limits the public's ability to monitor and ensure fairness and justice in transactions related to the country's mineral resources. Public participation is essential to promote accountability and integrity in these extractive activities, and excessive confidentiality can undermine these efforts. It is therefore important to develop mechanisms to increase transparency and accountability in relation to mining contracts and mineral resource transactions in Mozambique.

5. Sector regulators without answers to questions raised about transfer pricing

Both the Ministry of Mineral Resources and Energy (MIREME) and the National Mining Institute (INAMI) were asked why mining contracts do not allow for public participation in the transfer pricing process. According to information provided by AT¹⁹, the Transfer Pricing Regime (RPT) is only applied to concessionaires who have contracts that determine this practice or for whom the contracts do not specify a formula for calculating the price of the product. If the contract establishes a formula, the AT is obliged to follow it, as the contract is considered a source of law. Although this may result in losses in revenue collection, the TA must comply with what is established in the concession contracts during their term. There is no distinction in treatment between companies whose contracts were signed before or after the introduction of transfer pricing legislation in Mozambique, as all contracts have fiscal stability during their term. With regard to Advance Pricing Contracts (APCs), AT stated that it has no involvement, as it acts autonomously, and that the signing of these contracts is the responsibility of the Ministries of Mineral Resources and Energy and Economy and Finance.

¹⁸ At least those available on the website of the National Mining Institute (INAMI).

¹⁹ Coordinator of the Unit of Taxation for the Extractive Industry at AT, Anibal Mbalango.

Although interviews were requested with INP and MIREME to answer all the questions raised throughout this research, by the time it was finished, these institutions had still not responded. We also requested the position of the Attorney General's Office, since violating the transfer pricing legislation in force in the country constitutes a public crime. Unfortunately, this authority has not commented on the matter.

The lack of response from INP and MIREME raises concerns about transparency and accountability in Mozambique's natural resources sector. As the entities responsible for managing and supervising the country's oil and mineral resources, the lack of clarification from these essential institutions undermines public confidence and raises questions about their effectiveness in ensuring regulatory compliance and transparency in concession contracts.

In addition, the absence of a response from the Attorney General's Office also gives rise to concerns about the legal system's ability to guarantee compliance with existing transfer pricing legislation and the accountability of the parties involved in the event of possible violations.

The lack of cooperation and transparency from government institutions highlights the pressing need for additional measures to strengthen supervision and oversight of the natural resources sector in Mozambique, ensuring regulatory compliance, tax fairness and transparency in transactions related to these vital resources for the country's development.

6. Conclusion

The detailed analysis of contracts and practices related to transfer pricing in Mozambique's extractive sector reveals a number of significant challenges and concerns. The implementation of transfer pricing legislation was a crucial step towards guaranteeing fairness in transactions between related companies, as well as ensuring fairness in taxation. However, several loopholes and violations persist, posing serious risks to the country's tax revenues and to transparency in the business environment.

Oil contracts, in particular, continue to feature abusive transfer pricing practices, with companies setting differentiated prices for sales to affiliated and non-affiliated companies. These price discrepancies not only harm state tax revenues, but also distort competition in the market and undermine investor confidence.

Furthermore, contract addenda, instead of adjusting contracts to comply with transfer pricing regulations, have ended up strengthening the practice of setting differential prices. This is a clear example of how companies' interests often prevail over regulatory standards. Confidentiality in mining contracts also represents an obstacle to transparency, limiting the public's ability to monitor and ensure fairness in transactions. The lack of clear and transparent responses from regulatory bodies such as INP, MIREME and PGR raises serious concerns about the effectiveness of the system in ensuring regulatory compliance and accountability.

6.1 Recommendations

Considering all of the above, the following is recommended:

To the National Petroleum Institute (INP): review oil contracts entered into after the implementation of transfer pricing regulations and carry out detailed audits to identify and correct any violations of transfer pricing rules;

To the Ministry of Mineral Resources and Energy (MIREME): work closely with the Tax Authority (AT) to develop clear transfer pricing guidelines to be included in contracts and correct the current situation. Review confidentiality clauses in mining contracts to increase transparency;

To the Tax Authority (AT): intensify inspections to ensure that companies comply with transfer pricing rules and the implementation of transparency and disclosure measures to increase the accountability of oil companies;

To the National Mining Institute (INAMI): to respond promptly to questions raised about the mining sector, specifically about transfer pricing in concession contracts; and

To the Attorney General's Office: to investigate and prosecute any violations of transfer pricing regulations and hold accountable the parties involved in abusive transfer pricing practices.

7. Documents Consulted

Câmara de Comércio de Moçambique (2022). Manual Prático de Preços de Transferência. 2º Seminário Nacional de Preços de Transferência // [Practical Manual on Transfer Pricing AT&CCM] 2nd National Seminar on Transfer Pricing AT&CCM.

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ANNEX 1: Exploration and production concession contract between the Government of Mozambique and ENH for the Búzi Block

<p style="text-align: center;">CONTRATO DE CONCESSÃO PARA PESQUISA E PRODUÇÃO</p> <p style="text-align: center;">ENTRE</p> <p style="text-align: center;">O GOVERNO DA REPÚBLICA DE MOÇAMBIQUE</p> <p style="text-align: center;">E</p> <p style="text-align: center;">EMPRESA NACIONAL DE HIDROCARBONETOS, EMPRESA PÚBLICA</p> <p style="text-align: center;">PARA</p> <p style="text-align: center;">BLOCO DE BÚZI REPÚBLICA DE MOÇAMBIQUE</p> 	<p style="text-align: center;">Artigo 10 Determinação do Valor do Petróleo</p> <p>10.1 O valor do Petróleo referido nos artigos 9 e 11 será, na medida em que tal Petróleo consista em Petróleo Bruto, determinado no final de cada mês civil, começando no mês civil em que tenha início a Produção Comercial de Petróleo Bruto. No caso de tal Petróleo consistir em Gás Natural, tal valor será determinado no final de cada mês civil, começando no mês em que tenha início a entrega comercial no Ponto de Entrega.</p> <p>10.2 O valor para cada qualidade de exportação individual de Petróleo Bruto será:</p> <p>a) no caso de vendas a Empresas não-Afiladas, o preço médio ponderado por barril no Ponto de Entrega de cada qualidade de exportação individual de Petróleo Bruto, apurado por referência aos preços FOB (com o significado definido nos INCOTERMS de 2000), a que esse Petróleo Bruto foi vendido pela Concessionária durante esse mês civil; ou</p> <p>b) se a Concessionária vender o Petróleo Bruto a um terceiro em condições diferentes das condições FOB (conforme definido nos Incoterms de 2000), para efeitos deste Contrato deverá ser aplicado um preço FOB calculado sob a forma líquida ("net-back"). O preço FOB calculado sob a forma líquida ("net-back") será estabelecido através da dedução ao preço acordado, os custos reais e directos incorridos pela Concessionária no cumprimento das obrigações decorrentes dos respectivos contratos de venda a que acrescem as obrigações inerentes aos termos de um contrato FOB;</p> <p>c) no caso de vendas a Empresas Afiladas, o preço que for acordado entre o MIREM e a Concessionária com base na adição conjunta dos dois factores seguintes:</p> <p>i) o preço médio ponderado FOB do mês civil para o Petróleo Bruto de classificação Brent, ou outra classificação apropriada do Petróleo Bruto para a produção e para o período em questão, ponderada basear-se-á nos dias de cada mês civil em que o preço</p>  <p style="text-align: right;">32</p>
<p>de fecho estiver cotado no relatório de cotações "Platts Oilgram". Serão ignorados os dias sem cotações de preço, como os feriados, os dias de descanso e feriados;</p> <p>ii) um prémio ou desconto sobre o preço do Petróleo Bruto de classificação Brent, ou qualquer outra classificação apropriada de Petróleo Bruto para a produção em questão, a determinar por referência à qualidade do Petróleo Bruto produzido a partir da Área do Contrato e o custo de colocação desse Petróleo Bruto no mercado.</p> <p>10.3 Nos casos em que o MIREM e a Concessionária não consigam acordar um preço nos termos da alínea c) do artigo 10.2, serão adoptados os seguintes procedimentos por forma a determinar o prémio ou desconto referidos no citado artigo:</p> <p>a) o MIREM e a Concessionária apresentarão um ao outro as suas avaliações do prémio ou desconto, juntamente com uma explicação dos factores-chave considerados na determinação do prémio ou desconto;</p> <p>b) se o prémio ou o desconto apresentados separadamente pelo MIREM e pela Concessionária estiverem, relativamente um ao outro, compreendidos no intervalo de 10 US \$ (dez Cêntimos dos Estados Unidos da América) por barril, cada um deles apresentará de novo ao outro, no 3º (terceiro) Dia Útil a contar da primeira troca de informação, um prémio ou desconto revisado;</p> <p>c) se o prémio ou o desconto apresentados separadamente pelo MIREM e pela Concessionária divergirem em mais de 10 US \$ (dez Cêntimos dos Estados Unidos da América) por barril, cada um deles apresentará de novo ao outro, no 3º (terceiro) Dia Útil a contar da primeira troca de informação, um prémio ou desconto revisado;</p> <p>d) se o prémio ou o desconto apresentados separadamente pelo MIREM e pela Concessionária na segunda troca de informação estiverem compreendidos, relativamente um ao outro, no intervalo de 10 US \$ (dez Cêntimos dos Estados Unidos da América) por barril, será estabelecida a média para efeitos de fixação do valor final do Petróleo Bruto.</p>  <p style="text-align: right;">33</p>	<p>e) se o prémio ou o desconto apresentados na segunda troca de informação divergirem em mais de 10 US \$ (dez Cêntimos dos Estados Unidos da América) por barril, a questão será submetida à decisão de um ponto único nos termos do artigo 30.5, o qual estabelecerá um preço com base nos critérios enunciados na alínea c) do artigo 10.2, mas sempre dentro dos limites estabelecidos pelas Partes nos termos da alínea d) do artigo 10.3.</p> <p>10.4 O valor calculado para o Gás Natural produzido a partir dos jazigos da Área do Contrato será:</p> <p>a) no caso de vendas a Empresas não-Afiladas, o preço médio ponderado por Gigajoule de Gás Natural de especificação comercial no Ponto de Entrega em que tal Gás Natural tenha sido entregue pela Concessionária durante esse mês civil, deverá ser o preço médio ponderado por Gigajoule de todo o restante Gás Natural de especificação comercial entregue durante o mesmo mês civil proveniente de jazigos sujeitos à jurisdição da República de Moçambique e a média ponderada de preços disponíveis afilados ou publicitados para combustíveis alternativos ao Gás Natural para consumidores industriais de grande dimensão, incluindo geradores eléctricos, no mercado onde os mesmos tenham sido entregues aos consumidores finais;</p> <p>b) no caso de vendas a Empresas Afiladas, o preço estipulado na alínea a) supra para vendas a Empresas não-Afiladas ou o preço acordado entre o MIREM e a Concessionária.</p> <p>10.5 No caso de o Governo celebrar com a Concessionária um Contrato comercial de Compra e Venda de Gás ou de Petróleo Bruto para a compra, pelo Governo, de Petróleo Bruto ou de Gás Natural à Concessionária, o preço de tais vendas não deverá exceder o preço do Petróleo Bruto ou do Gás Natural proveniente da Área do Contrato vendido a Empresas Afiladas, conforme estabelecido nos termos deste Artigo 10.</p>  <p style="text-align: right;">34</p>

ANNEX 2: Relevant excerpts on transfer pricing from the addendum to the area 1 "Offshore" contract

<p style="text-align: center;">Clausa 6 Determinação do Valor do GNL e do Gás Natural</p> <p>É eliminado o artigo 10.4 do Contrato e substituído pelo seguinte:</p> <p>10.4 O valor calculado para o Gás Natural produzido a partir de Depósitos de Petróleo da Área do Contrato para um mês civil será:</p> <p>a) No caso de vendas de Gás Natural (que não seja GNL) a Empresas não-Afiladas nesse mês civil, o preço obtido por Gigajoule desse Gás Natural no Ponto de Entrega aplicável, em conformidade com o contrato de venda relevante;</p> <p style="text-align: center;">x</p> <p>b) No caso de vendas de Gás Natural (que não seja GNL) a uma Concessionária ou a quaisquer Empresas Afiladas,</p> <p>i) o preço médio ponderado por Gigajoule de Gás Natural vendido durante esse mês civil para vendas a Empresas não-Afiladas, conforme estipulado na alínea a), <i>supra</i>; ou</p> <p>ii) quando não existam vendas a Empresas não-Afiladas nesse mês civil, o preço médio ponderado por Gigajoule de todas as outras vendas de Gás Natural com especificação comercial entregues durante o mesmo mês civil a partir de Depósitos de Petróleo sujeitos à jurisdição da República de Moçambique; ou</p> <p>iii) caso não existam outras vendas referidas nas sub-alíneas i) ou ii) desta alínea b) <i>supra</i>, o preço médio ponderado por Gigajoule dos preços alçados ou publicitados para combustíveis alternativos ao Gás Natural para consumidores industriais de grande dimensão, incluindo geradores elétricos, no mercado em que esse Gás Natural tenha sido entregue aos consumidores finais; ou</p> <p>iv) o preço acordado entre o MIREME e a Concessionária, caso exista, o qual prevalecerá sobre as determinações de valor estabelecidas nas sub-alíneas i) a iii) desta alínea b) <i>supra</i>;</p> <p>c) No caso de vendas de Gás Natural entregue como GNL num mês civil,</p> <p>i) no caso de vendas a Empresas não-Afiladas, o preço médio ponderado líquido de venda de GNL, expresso em Dólares dos Estados Unidos da América por milhão de unidades térmicas britânicas ("mmbtu"), calculado como sendo a receita total devida por todas as vendas de GNL entregues durante esse mês civil, menos o valor agregado das Deduções (de acordo com o Anexo "C" do presente Contrato) incorridas relativamente a essas vendas, dividida pelo volume total, em milhões de unidades térmicas britânicas ("mmbtu"), de GNL carregado durante o mês respeitante a essas vendas; e</p> <p>ii) no caso de vendas a uma Concessionária ou a quaisquer Empresas Afiladas, esse preço será aa) calculado da mesma forma que se encontra estipulada na sub-alínea i) da alínea c) <i>supra</i>, para as vendas a Empresas não-Afiladas, ou bb) o preço acordado entre o MIREME e a Concessionária.</p>	<p>5.2 Para efeitos do CCPP, o valor calculado para o Gás Natural produzido a partir de cada Emprego da Área 4 e entregue como GNL ou Gás Natural por Gasoduto deve ser calculado separadamente para efeitos de Imposto sobre a Produção de Petróleo e Petróleo Disponível, e num mês de calendário será:</p> <p>(a) no caso de vendas a Empresas não-Afiladas, igual à média ponderada dos preços de venda de Gás Natural Relevante em dólares dos Estados Unidos por MMBtu, calculado como Receitas Brutas recebidas em relação a todas as vendas a Empresas não-Afiladas de Gás Natural Relevante carregado como GNL ou entregue como Gás Natural por Gasoduto durante esse mês menos as Deduções aplicáveis (conforme definidas no Anexo 5 deste 2º Acordo Complementar da Área 4) incorridas relativamente a essas vendas, dividido pelo volume total, em MMBtu, de Gás Natural Relevante carregado como GNL ou entregue como Gás Natural por Gasoduto durante o mês em relação a tais vendas; e</p> <p>(b) no caso de vendas a Empresas Afiladas, a média ponderada do preço de venda de Gás Natural Relevante em dólares dos Estados Unidos por MMBtu, calculado como Receitas Brutas recebidas em relação a todas as vendas a Empresas Afiladas de Gás Natural Relevante carregado como GNL ou entregue como Gás Natural por Gasoduto durante esse mês menos as Deduções aplicáveis (conforme definidas no Anexo 5 deste 2º Acordo Complementar da Área 4) incorridas relativamente a essas vendas, dividido pelo volume total, em MMBtu, de Gás Natural Relevante carregado</p> <p style="text-align: right;">GNL ou entregue como Gás Natural por Gasoduto durante o mês em relação a tais vendas,</p> <p>sempre na condição de que não haverá dupla contagem das receitas ao abrigo deste 2º Acordo Complementar da Área 4 e/ou ao abrigo do CCPP e/ou ao abrigo do Acordo Complementar do Coral Sul celebrado entre as Partes em 1 de Junho de 2017.</p>
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ANNEX 3: Excerpt from the Eni Eas Africa S.p.A. contract.

Artigo 10
Determinação do Valor do Petróleo

10.1 O valor do Petróleo referido nos artigos 9 e 11 será, na medida em que tal Petróleo consista em Petróleo Bruto, determinado no final de cada mês civil, começando no mês civil em que tenha início a Produção Comercial de Petróleo Bruto. No caso de tal Petróleo consistir em Gás Natural, tal valor será determinado no final de cada mês civil, começando no mês em que tenha início a entrega comercial no Ponto de Entrega.

10.2 O valor para cada qualidade de exportação individual de Petróleo Bruto será:

- a) no caso de vendas a Empresas não-Afiladas, o preço médio ponderado por barril no Ponto de Entrega de cada qualidade de exportação individual de Petróleo Bruto, sendo os preços FOB com o significado definido nos Incoterms 2000, a que esse Petróleo Bruto foi vendido pela Concessionária durante esse mês civil; ou
- b) se a Concessionária vender o Petróleo Bruto a um terceiro em condições diferentes das condições FOB (conforme definido nos Incoterms de 2000) então, para efeitos deste Contrato, deverá ser aplicado um preço FOB calculado sob a forma líquida ("net-back"). O preço FOB calculado sob a forma líquida ("net-back") será estabelecido através da dedução ao preço acordado, os custos reais e directos incorridos pela Concessionária no cumprimento das obrigações decorrentes dos respectivos contratos de venda a que acresçam as obrigações inerentes aos termos de um contrato FOB
- c) no caso de vendas a Empresas Afiladas, o preço que for acordado entre o MIREM e a Concessionária com base na adição conjunta dos dois factores seguintes:
 - i) o preço médio ponderado FOB do mês civil para o Petróleo Bruto de classificação Brent, ou outra classificação apropriada de Petróleo Bruto para a produção e para o período em questão. A média ponderada basear-se-á nos

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dias de cada mês civil em que um preço de facto estiver cotado no relatório de cotações "Platts Oilgram". São ignorados os dias sem cotações de preços, como os de fim-de-semana e feriados;

- ii) um prémio ou desconto sobre o preço do Petróleo Bruto de classificação Brent, ou qualquer outra classificação apropriada de Petróleo Bruto para a produção em questão, a determinar por referência à qualidade do Petróleo Bruto produzido a partir de Área do Contrato e o custo de avaliação desse Petróleo Bruto no mercado.

10.3 Nos casos em que o MIREM e a Concessionária não consigam acordar um preço nos termos da alínea c) do artigo 10.2, serão adoptados os seguintes procedimentos por forma a determinar o prémio ou desconto referido no citado artigo:

- a) o MIREM e a Concessionária apresentarão um ao outro as suas avaliações do prémio ou desconto, juntamente com uma explicação dos factores-chave considerados na determinação do prémio ou desconto;
- b) se o prémio ou o desconto apresentados separadamente pelo MIREM e pela Concessionária estiverem, relativamente um ao outro, compreendidos no intervalo de 10 US ¢ (dez Cêntimos dos Estados Unidos da América) por barril, será calculada a média para efeitos de fixação do valor final do Petróleo Bruto;
- c) se o prémio ou o desconto apresentados separadamente pelo MIREM e pela Concessionária divergirem em mais de 10 US ¢ (dez Cêntimos dos Estados Unidos da América) por barril, cada um deles apresentará de novo ao outro, no 3º (terceiro) dia útil a contar da primeira troca de informação, um prémio ou desconto revisado;
- d) se o prémio ou o desconto apresentados separadamente pelo MIREM e pela Concessionária na segunda troca de informação estiverem compreendidos, relativamente um ao outro, no intervalo de 10 US ¢ (dez Cêntimos dos Estados Unidos da América) por barril, será calculada a média para efeitos de fixação do valor final do Petróleo Bruto;

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e) se o prémio ou o desconto apresentados na segunda troca de informação divergirem em mais de 10 US ¢ (dez Cêntimos dos Estados Unidos da América) por barril, a questão será submetida à decisão de um perito único nos termos do artigo 30.6, o qual estabelecerá um preço com base nos critérios enunciados na alínea c) do artigo 10.2, mas sempre dentro dos limites estabelecidos pelas Partes nos termos da alínea d) do artigo 10.3.

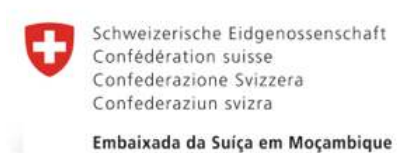
10.4 O valor calculado para o Gás Natural produzido a partir dos jazigos da Área do Contrato será:

- a) no caso de vendas a Empresas não-Afiladas, o preço médio ponderado por Gigajoule de Gás Natural de especificação comercial no Ponto de Entrega em que tal Gás Natural tenha sido entregue pela Concessionária durante esse mês civil, deverá ser o preço médio ponderado por Gigajoule de todo o restante Gás Natural de especificação comercial entregue durante o mesmo mês civil proveniente de jazigos sujeitos à jurisdição da República de Moçambique e a média ponderada de preços disponíveis afixados ou publicitados para combustíveis alternativos ao Gás Natural para consumidores industriais de grande dimensão, incluindo geradores eléctricos, no mercado onde os mesmos tenham sido entregues aos consumidores finais.
- b) no caso de vendas a Empresas Afiladas, o preço estipulado na alínea a) supra para vendas a Empresas não-Afiladas ou o preço acordado entre o MIREM e a Concessionária.

10.5 No caso de o Governo celebrar com a Concessionária um Contrato comercial de Compra e Venda de Gás e/ou de Petróleo Bruto para a compra, pelo Governo, de Petróleo Bruto e/ou de Gás Natural à Concessionária, o preço de tais vendas não deverá exceder o preço do Petróleo Bruto e/ou do Gás Natural proveniente da Área do Contrato vendido a Empresas Afiladas, conforme estabelecido nos termos deste Artigo 10.

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Partners:



Norwegian Embassy



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