

The Mozambican Approach of the Oil and Gas Revenue Management

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Abstract: In this paper we intend to make a brief analysis of the tax revenue management regime Mozambique considering the relevance of such revenues from extractive industry, especially the oil and gas sector; since natural resources are finite and States are encouraged to exploit them in a sustainable way applying the revenues for the wellbeing of the community promoting the social and economic development for the current and future generation. The way each sovereign country deal with revenues managements differs and to have an idea of how African countries like Mozambique approach this matter will help to understand the challenges. The differences on the approaches are stated in the legal system of each country, some with specific provisions for oil and gas revenue managements, which includes the adoption of a Sovereign Wealth Fund, and others with no specific legal provisions than the common rules related to tax revenues managed by Tax Authorities, as it was in Mozambique until January 9, 2024 with the approval of the Law No. 1/2024, the Law of Sovereign Fund.

Keywords: extractive industry, tax revenue, Revenue management.

1. INTRODUCTION

Before getting into the analysis of the management of the revenue from the oil and gas sector it is worth to mention with Robin Boadway and Michael Keen that “Natural resources are a large part of the wealth of many countries, and the way in which their potential contribution to government revenues is managed can have a powerful impact – for good or ill – on their prosperity and economic development”¹. In fact, for many resource-rich developing countries extractive resources present an unparalleled economic opportunity to increase government revenue through effective taxation of the companies².

Studying revenue management from oil, gas, and mining economic activities as part of the Extractive Industry (EI) leads to consider that due to their extractive nature share broad economic principles for taxing despite having certain discerning features. One of the common features is the objective of maximizing revenues to the government. Cottarelli³ identified the following objectives for the extractive industry fiscal regime, noting that they are influenced by factors such as the country’s risk appetite and dependence on resource revenue:

- 1) Maximisation of the present value of net government revenues through the *levying of rent taxes*. Other priorities include employment, community and environmental issues.
- 2) Adequate capture of rent over the stages of an extractive project through resource taxes, while taking into cognisance that the *competitiveness of the tax system has a direct influence on the decision to invest*.

¹DANIEL, Philip, KEEN, Michael, and McPHERSON, Charles, *The Taxation of Petroleum and Minerals: Principles, Problems and Practice*, Hoboken: Taylor & Francis Group, 2010, P. 13.

²Krishen Mehta, Esther Shubert, Erika Dayle Siu. *Tax Justice and Global Inequality: Practical Solutions to Protect Developing Country Revenues*. Zed Books; 2020, P. 9. Accessed October 6, 2021. <https://search-ebscohost-com.uplib.idm.oclc.org/login.aspx?direct=true&db=nlebk&AN=2697851&site=ehostlive&scope=site>

³Apud RAMFOL, Roshelle, *Taxation of the Extractive Industry in the context of temporary International Fiscal Regimes: Lessons for South Africa*, op. cit, P. 82

- 3) Favouring *revenue generation early in the life of a project*. Risk to investors is minimized when revenue is deferred through lower royalty rates and accelerated depreciation.
- 4) *Flexibility in the capture of windfall rent* as the price of the commodity rises or production costs decrease and sharing of risks borne by the party capable of absorbing them.
- 5) *A simple system to administer and which the EI should be able to comply with*. Asymmetry of information can present an obstacle to tax compliance and may result in lost revenue due to the inability to counter tax avoidance schemes.

One particular note on revenues from extractive industry is that extractives are getting more and more important to Africa since, according to Mick Moore and others⁴, they are the contemporary equivalent of the exports of coca, coffee, cotton, groundnuts, palm oil, sisal and tobacco that played such a major role in the regional economy in last century, which explains their relevance to governments budgets of the resource rich countries, especially developing countries like Mozambique. This is also important to discuss because in general view from citizen from some African resource rich countries have the idea that governments are gathering taxes from poor citizens, but collecting little or even nothing from large extractive companies that seems to have much greater capacity to pay, meaning that African governments have been raising strikingly little direct revenue from extractive industry.⁵ But more than questions on little revenue from a profitable activity the question of management of the revenues is crucial for development of the community.

2. THE MOZAMBIKAN OIL AND GAS REVENUE MANAGEMENT

As a starting point for the approach to the theme presented above, it is important to take into account that after the adoption of Law No. 27/2014 of 23 September, which establishes the Specific Regime of Taxation and Tax Benefits of petroleum operations, Decree No. 32/2015 of December 31, the Regulation of the Specific Regime of Taxation and Tax Benefits of Petroleum Operations was published.

The above-mentioned Regulation deals with the procedures for the application of the Specific Regime for Taxation of oil operations, the mechanisms for sharing production, as well as the procedures for the enjoyment of tax benefits.

2.1. The Case of the Petroleum Production Tax (“IPP”)

Decree No. 32/2015, of 31 December discipline in more detail the “IPP”, whose tax base is the value of the oil produced. The constitution of the tax liability shall be considered to be verified from the time it enters the measuring station established in the concession contract, in such a way that it must be downstream of the processing station, in the event that it is natural gas, crude or condensed oil, or downstream of the liquefaction plant of liquifide natural gas⁶.

The value of the oil produced is determined on the basis of the weighted average prices at which it has been sold by the producer and his contractors in the month to which the tax to be settled corresponds. It is the taxable person who must settle the “IPP” by the tenth day of the month following the month following the production, this implies the completion of an official model declaration, as a preference the payment must be made in cash. In the meantime, the government does not rule out the possibility of the Government notifying the subject in such a way that the subject proceeds to the assessment of the tax in kind, consequently it will be paid by delivery of oil or gas⁷.

⁴Moore, Mick, et al. *Taxing Africa: Coercion, Reform and Development*, Bloomsbury Academic & Professional, 2018, P. 91. *ProQuest Ebook Central*, <https://ebookcentral-proquest-com.uplib.idm.oclc.org/lib/pretoria-ebooks/detail.action?docID=5434982>.

⁵Moore, Mick, et al. *Taxing Africa: Coercion, Reform and Development*, Bloomsbury Academic & Professional, 2018, P. 3. *ProQuest Ebook Central*, <https://ebookcentral-proquestcom.uplib.idm.oclc.org/lib/pretoria-ebooks/detail.action?docID=5434982>.

⁶See CORREIA, Josina; GULAMHUSSEN, Neylla (Julho 2016); Regime Específico de Tributação e de Benefícios Fiscais das Operações Petrolíferas; TTA Sociedade de Advogados, PLMJ International Legal Network: Think Global, Act Global; Moçambique, Visão Global, Experiência Local, News LEXTER available at https://www.tta-advogados.com/xms/files/2016/Newsletters/Regime_Especifico_de_Tributacao-Beneficios_Fiscais_das_Operacoes_Petroliferas.pdf accessed on 25 November 2021.

⁷See CORREIA, Josina; GULAMHUSSEN, Neylla (Julho 2016), Op. Cit.

Of paramount importance is to take into account that the taxable persons of the IPP, also have the obligation to pay the following taxes: (i) Personal Income Tax (“IRSPS”); (ii) Corporate Income Tax (IRSPC); (iii) Value Added Tax (“IVA”); and (iv) Tax charges.

2.2. Specificity of Income Tax Rules

The tax base is determined in a singular or individual way; whether this means that it is made by preference to the results obtained in the context of each concession contract area, and relates to each fiscal year. The determination of taxable profit is also carried out independently, in such a way that the tax obligations of each concession contract are fully independent of each concession contract – this is ring-fencing.

The determination of the amount of income tax on oil operations carried out during the fiscal year is made by applying the corporate income tax rate (“IRPC”) to the taxable income calculated in the path of Law No. 27/2014 of September 23 and the IRPC Code.

2.3. Declarative Obligations of the Oil Rights Company

Any company that holds petroleum rights and is domiciled in the national territory has an obligation to maintain an updated register of shareholders who meet requirements for co-ownership of the rights arising from oil operations, and to notify the Tax Authority of any changes related to such ownership, which occurred within or outside the national territory. Also in the list of the concessionaire’s obligations, there is the preparation and supply to the Tax Authority information related to the gains acquired by residents and non-residents in the national territory, for the purposes of taxation of capital gains, which is determined at the rate of 32%.

Failure to pay the tax due, by the non-resident beneficiary of capital gains, determines the assumption by the concessionaire that delayed oil operations have been transmitted and by the purchaser of such rights, the joint and several liability for the payment of the tax due, plus accrued interest, in accordance with the legally provided terms. It constitutes tax violation the non-fulfilment of these duties by the concessionaire, and incurs the corresponding sanction.

2.4. The Mozambique Tax Authority and Revenue Management

First of all it is important to mention that the Tax Authority was created by Law No. 1/2006, of March 22. Article 4 of that Law has as its epigraph “*Nature and attributions*”, of this legal precept, precisely in its nr. 1, it is noted that the entity concerned is an organ of the State Apparatus, with administrative autonomy, protected by the Ministry that oversees the area of Finance – the Ministry of Economy and Finance.

The Tax Authority, still in accordance with the article in question in no. 2, ensures the direction, coordination, control and strategic planning, as well as the management of activities related to the determination, collection and control of public revenues⁸. From this perspective, it is understood that, in general, revenues related to oil operations are covered by the Tax Authority.

The Tax Authority’s objectives are ensuring effectiveness, efficiency and fairness in the implementation of tax and customs policies, ensuring greater convenience for taxpayers in complying with tax obligations and creating greater detection capacity for tax non-compliance and evasion⁹. In order to achieve these objectives, the entity in question shall have the tasks assigned to it, and shall

⁸It should not be lost sight of the issue of public revenue swelled in particular in the case of Law No. 14/2020 of 23 December. In accordance with Article 26(1), all monetary and in-kind resources constitute public resources, whatever their source or nature, made available to the State, with the reservation slight of those in which the State is a mere temporary depositary. Still in the same article, in its paragraph 2, it is determined that no revenue can be established, entered in the Economic and Social Plan and State Budget or charged if not by virtue of the law. In turn, Law No. 1/2006 of 22 March, in article 14, deals with revenues, from which it follows that are revenues from the Tax Authority of Mozambique: a) those that result from the remuneration of services provided to other entities; b) those cleared in the sale of studies, works or editions promoted by Tax Authority; (c) the allocation of the State Budget in the amount corresponding to 1% of the amount of the tax revenue collected, in addition to the budgetary allocation allocated to the normal functioning of the intuition; and d) any other revenue allocated to you under the Law.

⁹See Article 3 of the Law no. 1/2006, of 22 March.

consist on¹⁰: (i) implement the tax and customs policy, directing and controlling the operation of its services; (ii) plan and monitor their activities and information systems; (iii) train and qualify human resources; and (iv) to develop studies and support the design of tax and customs policies.

The administration of the Tax Authority is done through an organic structure duly provided for in the law that creates the entity concerned. In accordance to article 6 (1) of Law No. 1/2006 of 22 March, it is possible to identify three bodies from which we start to roll: (i) Superior Tax Council; (ii) President of the Tax Authority; and (iii) The Governing Board;

The Superior Tax Council is the highest body of the Tax Authority and is composed of the President of the Tax Authority, who presides over it, and the General Directors of the Tax Authority. The Superior Tax Council ordinarily meets once every quarter and, extraordinarily, whenever the President convenes it, on his own initiative or at the request of the majority of its members¹¹.

The Superior Council of the Tax Authority has basically three competences, which consist of¹²: (i) proposing and preparing the definition of tax and customs policies; (ii) establish the general guidelines for the activity of the Tax Authority; and (iii) define the objectives and priorities of the activity of the Tax Authority.

Under the terms of no. 2 of article 6 of Law no. 1/2006 of 22 March, the President of the Tax Authority is appointed by deliberation of the Council of Ministers, after consultation with the Minister of Finance. In turn, article 8 of the same law establishes the powers of the President of the Authority, and they are as follows:¹³ (i) direct the Tax Authority and chair the Board of Directors; (ii) coordinate and guide the Tax Authority's internal management policy; (iii) represent the Tax Authority, actively and passively, including in court, being able to compromise, confess and withdraw in any litigation, in accordance with the law; (iv) act on behalf of the Tax Authority with national and international institutions; (v) convene the Board of Directors; (vi) exercise, under the terms of the law, disciplinary power in relation to the personnel of the Tax Authority; (vii) exercise the powers related to the purpose of the Tax Authority that are entrusted to it by law; (viii) perform the other functions that are entrusted to it by law and by the internal regulations of the Tax Authority or that are delegated to it; (ix) authorize the expenses of the Tax Authority; (x) exercise other powers and perform other acts necessary for the fulfilment of the duties of the Tax Authority that are not the responsibility of the other bodies.

Article 9 of Law No. 6/2006 of March 22 has the epigraph "*Directive Council*", and according to no. 3 of the aforementioned article, The Directive Council is the body of the Tax Authority that advises the President, and is the holder of a diversity of functions, of which we quote¹⁴: (i) consider proposals for internal regulations of the Tax Authority, as well as preliminary draft diplomas on the organization of the Tax Authority; (ii) analyse the Tax Authority's annual budget proposal to be submitted to the State Budget Subsystem; (iii) monitor revenue collection levels and prepare the respective annual report; (iv) pronounce on plans for the acquisition of goods and services, financial leasing or rental of movable property for the installation, equipment and operation of the Tax Authority; (v) pronounce on plans for the acquisition, leasing or leasing of real estate for the same purposes, prior to authorization from the Minister of Finance; (vi) analyse the proposals for contracts to be signed with third parties to provide services to the Tax Authority; (vii) monitor the management of human resources and assets of the Tax Authority; (viii) other attributions conferred by law.

The Directive Council is presided by the President of the Tax Authority and includes the General Directors of the Tax Authority, the Deputy General Directors of the General Directorates and the Directors of Central Services, who are part of the Tax Authority. Its meetings ordinarily take place twice a month and, extraordinarily, whenever the President convenes it, on his own initiative or at the request of the majority of its members¹⁵.

¹⁰See Article 4 (3), (a), (b), (c) and (d) of the Law no. 1/2006, of 22 March.

¹¹See Article 7 (1), of the Law no. 1/2006, of 22 March.

¹²See Article 7 (1), of the Law no. 1/2006, of 22 March.

¹³See Article 8 (1) (a), (b), (c), (d), (e), (f), (g), (h), (i) and (j), of the Law no. 1/2006, of 22 March.

¹⁴See Article 9 (3) (a), (b), (c), (d), (e), (f), (g), and (h), of the Law no. 1/2006, of 22 March.

¹⁵See Article 9 (1), Law no. 1/2006, of 22 March.

Most studies referring to taxation and development are unanimous in concluding that one of the essential constraints on the State's capacity with regard to collecting revenues in general and direct taxes in particular is the ineffective tax administration. It is in this perspective that some authors understand that a better administration of legislation relating to taxation is likely to increase revenue by a percentage equal to or greater than 30% and several States in Sub-Saharan Africa. Therefore, reinvigorating tax administration has been an important part of donor technical support to public sector reform in Africa over the past few years¹⁶.

It should be noted that in Mozambique, as in several other countries on the African continent, behind the creation of tax authorities there are several objectives, such as (i) increasing tax revenues, establishing a sustainable revenue base for enable the country to finance its recurrent and development expenditure needs; (ii) establish a tax regime endowed with transparency, efficiency and promoting economic development led by private investment and international trade¹⁷.

It is in this perspective that the following are the main functions of the tax authorities:(i) to carry out the assessment, collection and accounting of central government revenues; (ii) carry out the administration of the tax law; (iii) be an advisor to the government with regard to fiscal policy; (iv) promote tax compliance – almost – voluntary; (v) take care to promote the improvement of tax services; (vi) to combat fraud and tax evasion; and (vii) promote the production and publication of statistics¹⁸.

2.5. The Proposal to Create a Sovereign Fund

To address the issue of the management of revenue stemming from oil and gas in Mozambique, it is essential to bring up the notion of the term revenue, we will not make a doctrinal approach to this term but we will be able to help ourselves in a legal notion presented in Law No. 14/2020 of December 23, law that creates the State Financial Administration System (“SISTAFE”). In accordance with Article 26(1) of that law, “all monetary or in kind resources constitute public revenue, whatever their source or nature (. . .)”.

Already seen the concept of public revenue now it is important to associate it with the oil and gas sector, whether this means that in the context of oil and gas, revenue constitutes all monetary or in-kind resources resulting from oil operations – exploration and production of gas – made available to the State.

That said, it should be noted that in the recent past, one of the largest discoveries of natural gas in the Rovuma Basin occurred in Mozambique. This is a situation that makes Mozambique one of the potential destinations of international financial capital. After the great discovery, herein after all, Mozambique was becoming a potential and main recipient of Foreign Direct Investment (FDI) at the level of the African continent¹⁹.

“With the discovery of world-class natural gas reserves in the Rovuma basin, Mozambique has become one of the most important destinations of international financial capital, having been, in 2014, the largest recipient of Foreign Direct Investment (FDI) in Africa. That same year, Maputo hosted the Africa Rising Conference organized by the IMF, at which the institution's then Director-General, Christine Lagarde, said Mozambique would be the next “Qatar of Africa“.

¹⁶See FJELDSTAD, Odd-Helge; HEGGSTAD, Kari (2011), *The tax systems in Mozambique, Tanzania and Zambia: Capacity and Constraints*, Chr. Michelsen Institute(CMI), R. 2011:3, p. 28

¹⁷See FJELDSTAD, Odd-Helge; HEGGSTAD, Kari (2011), *The tax systems in Mozambique, Tanzania and Zambia: Capacity and Constraints*, Chr. Michelsen Institute(CMI), R. 2011:3, p. 28

¹⁸See FJELDSTAD, Odd-Helge; HEGGSTAD, Kari (2011), *The tax systems in Mozambique, Tanzania and Zambia: Capacity and Constraints*, Chr. Michelsen Institute(CMI), R. 2011:3, p. 29

¹⁹JANATO, Janato; SINÓIA, Dimas (24 de Novembro, 2020), *Propostas de Jovens para a melhoria do Fundo Soberano de Moçambique*, CDD – Centro para a Democracia e Desenvolvimento, Juventude, Número 13, Português, Maputo, p. 1 available at <https://cddmoz.org/wp-content/uploads/2020/11/Propostas-de-jovens-para-a-melhoria-d-a-proposta-do-Fundo-Soberano-de-Mo%C3%A7ambique.pdf> accessed on 25 November 2021.

With regard to Foreign Direct Investment, consideration is given to the financing made in Mozambique in 2017 by Total – French Petroleum – valued at 16 million U.S. dollars, this is an investment serves as a guarantee for investment in the natural gas project in Mozambique, and considered the largest investment of all time in the African continent. Now let us take a look at the nature and size of the investment²⁰:

“[. . .] Total, the French oil company that leads the Mozambique LNG consortium, has completed the financing of more than US\$16 billion that guarantees investment in the natural gas project in Mozambique, the largest Foreign Direct Investment (IDE) ever in Africa. With this confirmation that Mozambique’s largest LNG project (the total cost of investment is estimated at US\$23 million) and one of the most important in Africa, it will be a reality, there are prospects for the state to raise about US\$50 billion during the 25-year duration of the natural gas exploration contract. It is therefore a project with the potential to change Mozambique’s economy.”

In the meantime, such discoveries and subsequent investments drag with them risk factors that threaten the transformation of their investments into tangible benefits for the population masses and which, however, cannot be marginalised. On the one hand, Mozambique is classified as one of the largest sources of gas in the world, and on the other, its governance contributes to one of the worst in the world. This scenario occurs in the midst of an unfavourable macroeconomic environment, both domestically and internationally, especially with regard to the sharp fall in commodity prices on the international market, with no exception for natural gas. Associated with these facts, we also have the Covid19 pandemic which has brought non-positive effects on energy markets in different parts of the world. Regardless of these situations, the oil sector continues to be promising in Mozambique²¹.

The question that does not want to be silent is this: (i) Is the Government of Mozambique prepared to ensure that the benefits of hydrocarbon exploration and production are distributed fairly?

This is a question whose answer may not be encouraging, because Mozambique’s historical journey does not identify itself with the attributes of responsibility and transparency in the management of public funds. Looking at things from this perspective, it is logical to raise the hypothesis of misuse and abuse of funds arising from revenues related to oil activities.

The International Monetary Fund (IMF) has played a major role in departing in all ways the said misuse and abuse of funds by providing consultancy services to the Government of Mozambique on the creation of a Sovereign Fund. These are services of the utmost importance, especially when the development of Rovuma Basin projects brings with them new challenges closely linked to macroeconomic and financial management, as an example of the maximisation of gains from gas and oil revenues and the development of institutions with functionality and transparency²².

According to the Proposal for a Sovereign Fund Model for Mozambique, published by the Bank of Mozambique in September 2020²³:

“International experience shows that the creation of a Sovereign Fund (SF) has been one of the alternatives found by some countries rich in non-renewable natural resources for an adequate and transparent management of the revenues of non-renewable natural resources arising from their exploitation. In addition to minimising the macroeconomic impacts arising from excessive revenue input into the economy, the creation of a SF helps to discipline the use of revenues and create conditions for their sustainable management.”

²⁰NOVUNGA, Adriano; MACHAVA, Agostinho (26 de Julho de 2020), Fundo soberano para estabilizar a economia e catalizar a boa governação e transparência fiscal, Centro para o Desenvolvimento e Democracia (CDD), Desenvolvimento Review, Número 14, Português, Maputo, p. 1 e 2 available at <https://cddmoz.org/wp-content/uploads/2020/07/Fundo-soberano-para-estabilizar-a-economia-e-catalisar-a-boa-governacao-e-transparencia-fiscal.pdf> accessed on 25 November 2021.

²¹NOVUNGA, Adriano; MACHAVA, Agostinho (26 de Julho de 2020), Fundo soberano para estabilizar a economia e catalizar a boa governação e transparência fiscal, Centro para o Desenvolvimento e Democracia (CDD), Desenvolvimento Review, Número 14, Português, Maputo, p. 1 e 2 available at <https://cddmoz.org/wp-content/uploads/2020/07/Fundo-soberano-para-estabilizar-a-economia-e-catalisar-a-boa-governacao-e-transparencia-fiscal.pdf> accessed on 25 November 2021.

²²JANATO, Janato; SINÓIA, Dimas (24 de Novembro, 2020), *op. cit.* p. 1

²³Banco de Moçambique (Setembro/2020), Proposta de Modelo de Fundo Soberano para Moçambique, p. 1 available at https://macua.blogs.com/files/proposta-de-modelode-fundo-soberano_bm.pdf accessed on 26 November 2021.

However, it should be noted that for some African countries the experience of creating the Sovereign Fund is not good. Take as an example the case of Angola where the creation of the Sovereign Fund was not successful because of the poor allocation of the investment of its revenues²⁴.

In the specific case of Ghana, it should be noted that the difficulties in managing public and political expectations in relation to oil had negative repercussions on fiscal discipline and monetary independence outside the Petroleum Funds. From a general point of view, the Public Financial Management has a very weak historical trajectory, with no formal debt and expenditure rules or monetary policy independence, however, an exceptional situation exists when operating under the programs of the International Monetary Fund²⁵.

The Bank of Mozambique in partnership with the International Monetary Fund has made immeasurable efforts to support the Government in making the creation of a Sovereign Fund in Mozambique real, which led to the approval of the Law No. 1/2024, of January 9, the Law of Sovereign Fund. However, it should be noted that certain development partners are advocates of the idea that “(. . .) a revenue management scheme focused on savings, following Norway’s model lines that transfers wealth from current generations to future generations, would not be appropriate for Mozambique bearing in mind the current levels of poverty.”²⁶

Of course, the creation of a Sovereign Fund must have clear and precisely defined objectives²⁷. It is in this context that the Bank of Mozambique proposed that it have two objectives²⁸:

- 1) “**Accumulate savings** by maximizing the fund’s value with a view to ensuring that revenues from non-renewable natural resources are shared between several generations. This objective responds to the sovereign concern related to reconciling present needs with those of future generations.”
- 2) **Contribute to fiscal stabilization**, with a view to insulating the Budget and the economy from harmful taxes resulting from fluctuations in commodity prices in international markets.”

²⁴“It is thus unsurprising that the FSDEA’s activities since inception have not been independent. Most notably, the chairperson of the fund (former president Eduardo dos Santos’s son) appointed an asset management company owned by a friend to be the sole fund manager, without competitive tender. While the chairperson initially said this appointment was purely based on available domestic competencies and that they intended to hire additional managers, this never occurred. The 2017 Paradise Papers revealed that the fund has invested hundreds of millions of dollars in projects where this asset manager has personal interests, including many of the projects listed above. Although the Paradise Papers did not uncover anything technically illegal, considering the lenient FSDEA rules, it shows how SWFs (and especially development funds) can be set up to legally allow crony capitalism without oversight, rather than to encourage prudent, rules-based investments. Aside from the FSDEA, the two stabilisation funds have also been criticised for opaque use of funds and ultimately their inability to stabilise, given that they hold miniscule revenues compared to the share of oil revenue in the budget (the REFP held 4% of the national budget and the OPDA 1% of the national budget in 2014).” See MARKOWITZ, Chelsea (January 2020), Sovereign Wealth Funds in Africa: Taking Stock and Looking Forward, African Perspectives Global insights, South African Institute of International Affairs, Occasional Paper 304, p. 18 available at <https://media.africaportal.org/documents/Occasional-Paper-304-markowitz.pdf> accessed on 26 November 2021.

²⁵See MARKOWITZ, Chelsea (January 2020), Sovereign Wealth Funds in Africa: Taking Stock and Looking Forward, African Perspectives Global insights, South African Institute of International Affairs, Occasional Paper 304, p. 29 available at <https://media.africaportal.org/documents/Occasional-Paper-304-markowitz.pdf> accessed on 26 November 2021.

²⁶NOVUNGA, Adriano; MACHAVA, Agostinho (26 de Julho de 2020), *op. cit.* p. 3

²⁷Mozambique must take a lesson from the experience of other African countries in order not to make mistakes in defining the objectives of the Sovereign Fund. Angola is one of the African countries that did not need to define the objectives of its Sovereign Fund: “However, the FSDEA’s investment mandate is vague without a clear separation of objectives. As an example, its mandate includes stabilisation even though stabilisation is not an official investment objective and Angola already has separate stabilisation funds. The FSDEA Board of Directors is appointed by the president and the investment advisory board consists of government officials, and thus structural independence is limited. The FSDEA also does not have a code of conduct preventing conflict of interest. These factors all create a scenario ripe for loopholes and political manipulation.” In this context see: MARKOWITZ, Chelsea (January 2020), *op. cit.* p. 17

²⁸Banco de Moçambique (Setembro/2020), Proposta de Modelo de Fundo Soberano para Moçambique), *op. cit.* p. 2

The above-mentioned objectives were then established in the Law of Sovereign Fund, article 3. The first in paragraph b) and the second in paragraph a) and c). Taking into account the two objectives presented above, Moisés Siúta and João Mosca made interesting comments, according to which the objectives proposed for the Sovereign Fund are counterproductive for two reasons²⁹:

- 1) “The first is about the economy’s vulnerability to various shocks that, in the absence of context-adapted rules, can squander the SF’s savings. In the proposed SF model, the frequency with which economic shocks appear is almost completely ignored.”

In this first reason, the aforementioned authors raise the issue of the evolution of GDP per capita and the frequency of shocks with disastrous effects in the economic sphere, stating that the present century, since its beginnings, has been the scene of the occurrence of economic shocks and cyclones, connected in periods of five years or less, they (the authors mentioned) take as an example the five-year period 2000-2004, which was marked by cyclone Eline; the second, 2005 – 2009, by cyclones Favio and Jokwa, and by the international economic crisis, the next five years, 2015 – 2019, in turn this was marked by cyclone Dineo, the existence of public debt and terrorism in northern Mozambique; the negative effects of the latter were projected for the current five-year period, which, in turn, has also been a field of occurrence of negative phenomena, as is the case with the Covid-19 pandemic. As can be seen, it is a conjuncture of facts that calls into question the viability of the Sovereign Fund, in the sense that it can generate savings.

- 2) “The second reason is the historic deficit in the General State Budget, despite the increase in revenue. The argument that the infrastructure investment component is integrated into the GSB is also questionable because the resources can be canalized towards operating expenses, such as salaries and purchases of goods and services. (. . .) the evolution of public expenditure in the last decade (2010-2019) was characterized by a reduction in investment expenses and an increase in consumption/operating expenses. While investment expenses increased from about 44 billion to 72 billion Meticaís, operating expenses more than tripled, increasing from 59 billion to 196 billion Meticaís.”

The Bank of Mozambique went far with its proposal, in addition to proposing the objectives; it also proposed the governance structure that should be adopted and the respective composition (Governance Bodies that should make up the Sovereign Fund). Let’s see below³⁰:

- “**Assembleia da República (AR)** – highest authority, is responsible for approving the Law that establishes and regulates the functioning of the SF. It is the highest level of the SF’s governing structure. The Sovereign Fund of Mozambique belongs to all of Mozambique and, in its governance, will be represented by the Assembly of the Republic.”
- “**Minister of Economy and Finance** – acts on behalf of the Government. He is responsible for the overall management and setting of the SF’s investment policy. The Central Bank delegates operational management, within the legal framework approved by the AR.”
- “**Banco de Moçambique** – is the operational manager of the SF, responsible for implementing the investment policy. You may directly manage part of the Fund’s assets, and allocate another part to internal and external managers to be hired by you. For the rationalization of costs, the operational gestation of the SF should rely on the existing institutions, with the Bank of Mozambique, among the possible alternatives, being the entity that has specialized human capital in the area of foreign reserve management.”

On the one hand, with a view to ensuring the healthy functioning of the three entities mentioned above, it is proposed that the accounts, records and other documentation related to the Sovereign Fund be audited on a regular basis every six months by the services provided with competence in internal matters with regard to each of the entities involved. On the other hand, the accounts and operations of

²⁹MOSCA, João; SIÚTA (Novembro de 2020), Comentários sobre o Modelo de Fundo Proposto pelo Banco de Moçambique, Instituto de Estudos Sociais e Económicos (IESE), Observatório de Meio Rural (OMR), Destaque nº 110, p. 2 e 3 available at <https://www.iese.ac.mz/wp-content/uploads/2020/11/DR-110-Fundo-Soberano.pdf> accessed on 27 November 2021.

³⁰Banco de Moçambique (Setembro/2020), *op. cit.* p. 3

the Fund will be submitted to an external audit, or by another, their audit will be carried out annually by an independent external auditor, certified and contracted by the Ministry of Economy and Finance³¹.

The Assembly of the Republic will be responsible for delegating to the Administrative Court or other entity endowed with competence to carry out an annual audit to the Ministry of Economy and Finance, on all records of all operations and transactions related to the Fund.

In fact, the recently approved Law of Sovereign Fund foresees a governance structure of five (5) entities in article 17³²: a) The Assembly of the Republic; b) The Government; c) The Bank of Mozambique; d) The Supervisory Committee; e) The Consulting Council of Investment, each one with the following summarized roles:

- a) The Assembly of the Republic³³:
 - i. Monitoring the performance of the Sovereign Fund.
 - ii. Convene the Government, at the end of each fiscal year, to the presentation of the Sovereign Fund Annual Report and Accounts.
 - iii. Evaluate and approve the Sovereign Fund Annual Report and Accounts.
 - iv. Establish the “Supervisory Committee”.
- b) The Government³⁴:
 - i. Responsible for the overall management of the Sovereign Fund.
 - ii. Approve the Investment Policy of the Sovereign Fund.
 - iii. Establish the “Consulting Council of Investment”.
 - iv. Approve the management terms of the Agreement of Sovereign Fund with the Bank of Mozambique.
 - v. Approve the Annual Report of the Sovereign Fund within 60 days after the end of the fiscal year.
 - vi. Validate the selection of the independent auditor to audit the accounts of the Sovereign Fund.
 - vii. Submit to the Assembly of the Republic the final audit report.
- c) The Bank of Mozambique³⁵:
 - i. Operational manager of the Sovereign Fund.
 - ii. Manage the assets and other resources of the Sovereign Fund.
 - iii. Implement the investment policy approved by the Government.
 - iv. Inform the Government on the contracted external managers.
 - v. Prepare and submit every three months Investment Reports.
 - vi. Prepare and publish the Annual Accounts of the Sovereign Fund within 30 days after the end of the fiscal year.
- d) The Supervisory Committee³⁶:
 - i. The Sovereign Fund Supervisory Committee is the independent body and includes representatives from civil society, community, business, academia, professional orders and religious associations credible, suitable, and recognized merit and national coverage.

³¹Banco de Moçambique (Setembro/2020), *op. cit.* p. 3

³²Law No. 1/2024, of January 9, the Law of Sovereign Fund.

³³See article 18, Law No. 1/2024, of January 9, the Law of Sovereign Fund.

³⁴See article 19, Law No. 1/2024, of January 9, the Law of Sovereign Fund.

³⁵See article 20, Law No. 1/2024, of January 9, the Law of Sovereign Fund.

³⁶See article 21, 22 and 23 of the Law No. 1/2024, of January 9, the Law of Sovereign Fund.

- ii. Has the role to control and follow matters related to the revenues, including its allocation to the State Budget and Sovereign Fund.
 - iii. The Supervisory Committee also has the role to supervise the management of the Sovereign Fund.
 - iv. The Supervisory Committee reports to the Assembly of the Republic.
- e) The Consulting Council of Investment³⁷:
- i. The Consulting Council of Investment is a consulting body of the Government about issues related to the Investment Policy of the Sovereign Fund.
 - ii. The Government must consult with the Consulting Council of Investment before taking any decision regarding the Investment Policy of the Sovereign Fund.

With regard to the management and governance structure of the Sovereign Fund, there was a critical analysis according to which it was an essentially governmental management model that does not, therefore, include the participation of civil society organizations. With the inclusion of the Supervisory Committee with participation of the civil society, this critical analysis became irrelevant.

In accordance with the Sovereign Fund Model proposed, the Bank of Mozambique establishes that in the first two decades, 50% of the amount would be canalized to the Sovereign Fund and 50% to the State Budget and, from the 20th year, 80% of the amount would be canalized to the Sovereign Fund and 20% to the State Budget. On the other hand, the respective Proposal recommended that, as a way to guarantee a wise management of resources whose canalizing will go to the State Budget, the Ministry of Economy and Finance should design a medium-term strategy for the use of funds that will be channeled to the State Budget, which will safeguard the creation of a provision to deal with the occurrence of extraordinary events. In such a way that it will be incumbent upon the Assembly of the Republic to propose the Ordinary or Amending Budget and proceed with the definition of the use of the provisioned funds and other extraordinary income from the Fund³⁸.

If we look the result of the public discussions of the legislative process and final approval of the Law No. 1/1024, of January 9 the revenues shall be distributed as follows: 40% to the Sovereign Fund and 60% to the State Budget in the first 15 years. Then, from the sixteenth year, 50% to the Sovereign Fund and other 50% to the State Budget³⁹.

The Sovereign Fund Model Proposal presented by the Bank of Mozambique and approved by the Assembly of the Republic was based on several fundamentals, one of which is that the purpose of creating a Sovereign Fund is the management of revenues from non-renewable natural resources.

Basing the creation of the Sovereign Fund in this perspective is the same as limiting its useful life; such limitation extends to the investment capacity it can finance. The Sovereign Funds of other countries, with a history of success, with 50% of the assets of the Global Sovereign Fund, indicate that in addition to non-renewable resources - such as oil and gas-, the Sovereign Fund's revenues they are likely to be constituted by the foreign currency reserves that the country can collect as the economy picks up and accelerates through the exploration of gas and other non-renewable resources⁴⁰.

3. CONCLUSION

The legal system of Mozambique, which is recent particularly regarding oil and gas revenue management leads to the conclusion that as it happens in Ghana and other African Countries there is a legal instrument that specifically deals with issues related to the administration of oil and gas revenues, different from as it was before, a legal system with no specific legal framework dealing with such matters, consequently, the management of oil and gas revenues in those other countries are based on general instruments that are common to any other sources of revenue.

This means that the Mozambican Approach is that the Authority Tax of Mozambique is not the entity which collect and manage the oil and gas revenue, but the Bank of Mozambique under a specific Management Agreement of the Sovereign Fund with the aim to: a) support the economic and social

³⁷See article 24, Law No. 1/2024, of January 9, the Law of Sovereign Fund.

³⁸Banco de Moçambique (Setembro/2020), *op. cit.* p. 3

³⁹See article 8, Law No. 1/2024, of January 9, the Law of Sovereign Fund.

⁴⁰MOSCA, João; SIÚTA (Novembro de 2020), *op. cit.*, p. 7

development of the Country; b) accumulate savings for future generations and c) stabilize the State Budget. For this to be successful, in the first fifteen years of the Sovereign Fund 40% shall be canalized to the Sovereign Fund and other 60% to the State Budget; then, from the sixteenth year the distribution will be 50% to the Sovereign Fund and other 50% to the State Budget.

The success of this approach is yet to be accessed as is a new legal system similar to the one followed by other countries. For example, as Mosca and Siúta says, “*the Sovereign Funds of other countries, with a history of success, with 50% of the assets of the Global Sovereign Fund, indicate that in addition to non-renewable resources - such as oil and gas-, the Sovereign Fund’s revenues they are likely to be constituted by the foreign currency reserves that the country can collect as the economy picks up and accelerates through the exploration of gas and other non-renewable resources*”. This gives hope to the communities and future generation.

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