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## Institutional reform and pockets of effectiveness in the Mozambique gas sector

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**SECO WORKING PAPER 2022: 2**

**Institutional Reform  
and Pockets of  
Effectiveness in the  
Mozambique Gas  
Sector**

**José Jaime Macuane,  
Lars Buur,  
Padil Salimo**

## SECO WORKING PAPER 2022: 2

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## ABSTRACT

Given the increasing importance of gas in the Mozambican economy, the success of institutional reforms is key to the country's economic prospects of benefiting positively from the expected gas bonanza. In this paper we analyze the performance of the new institutional reforms (NIA) in Mozambique, specifically the replication of the so-called Norwegian Model of oil governance, and the conditions of the emergence and persistence of pockets of effectiveness in the sector, taking into account the political context, especially the regime survival. Our analytical framework is based on political settlement analysis and pockets of effectiveness (PoEs) theory. Based on two case studies from the sector – the National Petroleum Institute and the Tax Authority (the Extractive Industries Tax Unit) – we analyze the performance of the institutional reforms and the conditions for the emergence and persistence of PoEs in the gas sector, as one of the strategies for regime survival. From our analysis we conclude that, whilst external dependence on development aid and foreign direct investment is important, internal political dynamics, particularly intra-ruling-elite competition, explain the performance of the institutional reforms and the emergence and persistence of PoEs in the sector as a regime survival strategy.

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# **Institutional Reform and Pockets of Effectiveness in the Mozambique Gas Sector**

**José Jaime Macuane, Lars Buur and Padil Salimo**

## **1. INTRODUCTION**

Since 2010 Mozambique has discovered sizeable natural gas reserves in the Rovuma basin in the northern province of Cabo Delgado, now totalling an estimated 170 trillion cubic feet (tcf). With these resources, the country is poised to become one of the world's largest exporters of natural gas. One concession in Area 1 is led by Total, and the other, in Area 4, is jointly led by Eni and ExxonMobil. A floating liquefied natural gas (FLNG) plant is already being built for Area 4, and a large onshore-liquefied natural gas (LNG) is planned for Area 1. The country's total gas reserves are currently estimated at 277 tcf and expected state revenues over the lifetime of these projects are estimated at US\$ 96 billion (Banco de Moçambique, 2020). Thus, gas revenues are seen as an opportunity to transform the Mozambican economy. In this regard, institutional reforms, and particularly institutional performance in the governance of the gas sector, play an important role. The country's dependence on external aid and investments, after the demise of the socialist regime introduced after independence in 1975, has shaped institutional arrangements in Mozambique's oil and gas sector.<sup>1</sup> The different factors shaping the emergence of these arrangements, partly in line with the international practices and partly in response to the domestic political and economic situation, have impacted on their performance over time.

Until the late 1980s, one of the legacies of the socialist period was an oil and gas sector governance structure that blurred the lines between the regulatory and commercial roles. In the 1990s, as the industry evolved and the country needed to keep up with international trends, pressures for the separation of the regulatory and commercial roles arose as part of the sector new institutional arrangements (NIA). This has required transparency and accountable governance of the sector, in line with the more usual governance reforms demanded by international financial institutions and donors, especially Norway, with its close attention to the extractive sectors.<sup>2</sup> Institutional reforms were also influenced by the experience of exploitation of the Pande and Temane gas fields in the 2000s by the South African company SASOL, which, while providing some much needed revenues for the state, mostly benefitted the ruling elites (see Salimo et al. 2020). Additional reforms were implemented in the fiscal regime, which demanded more specialization in the revenue administration. However, whilst in some case the reforms resulted in the emergence of organizations that proved effective in some areas of their mandates, i.e. as 'pocket of effectiveness'

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<sup>1</sup> In this paper, the terms 'oil & gas', 'gas' and 'petroleum' will be used interchangeably to refer to the hydrocarbon sector. Gas will be used more, since this is the main commodity being exploited in the country.

<sup>2</sup> Interviews with key government officials in the petroleum sector, April 2018.

(PoEs), they did not always result in good institutional performance to ensure that the natural resources bonanza could contribute to the country's economy and overall regime stability. Thus, exploring the underlying causes of these mixed results is important to understanding the circumstances in which sector institutional reforms can perform better.

The objective of this paper is twofold: (i) firstly, it will discuss the performance of the new institutional arrangements (NIA) reforms in the oil sector, taking into account the political context; (ii) secondly, it will analyze the circumstances in which institutional reforms in the sector can lead to the emergence and persistence of so-called 'pockets of effectiveness' (PoEs). The idea of using the concept of PoEs to understand institutional performance and the results of the NIA reforms is important, given that, amidst the prevailing ineffectiveness of the public sector and the failure of public-sector reforms in developing countries, institutional reforms might realistically achieve results in only some areas or organizations at best (Roll, Introduction, 2014a). We thus intend to explore the conditions under which those reforms have succeeded in specific 'pocket' of relative effectiveness, taking into consideration the political situation in the country.

A common definition of PoEs is that they are organizations that are relatively effective in carrying out their functions and in serving some conception of the 'public good', despite operating in an environment in which most agencies are generally considered ineffective and subject to serious corruption, patronage or political capture (Leonard, 2010; Roll, 2014a; 2014b). Organizations are considered effective if they succeed in doing what they are mandated to do. They can either become PoEs, as an outcome of deliberate political decisions and top-down actions or emerge from bottom-up action within the administrative system as niches within the bureaucracy (Roll, 2014b). Four criteria identify organizations as PoEs: a) relative effectiveness in providing the public goods or services as defined in the organization's official mandate; b) the capacity to provide the good or service throughout the country; c) public goods or service delivery aligned with the human rights principles and laws of the country concerned; and d) period of persistence of at least five years (ibid.).

Our analysis is based on a political economy approach, with a particular emphasis on the political settlement framework. By 'political settlement' is meant the "interdependent combination of a structure of power and institutions at the level of a society that is mutually 'compatible' and also 'sustainable' in terms of economic and political viability" (Khan, 2010, p. 20). For further discussion of our political settlement approach, we refer to Macuane et al. (2018, pp. 420-423); Buur et al (2020, p. 919, 923, 925) and Salimo et al (2020, pp. 1220-1221).

In this paper we look at two case studies that have resulted from the institutional reforms in the gas sector and the extractive industries more generally – the National Petroleum Institute (INP)<sup>3</sup> and the Extractive Industry Tax Unit (EITU) at the Mozambique Tax Authority (TA). We use the PoE perspective and the political settlement approach (PSA) to understand the emergence and

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<sup>3</sup> We will use the Portuguese initials INP for the sake of easy identification.



potential persistence of relatively effective organizations in the context of a normally ineffective public sector.

### **1.1. The Argument**

Our main argument is that a combination of factors, such as external dependence, a political settlement with high intra-elite competition and a relative concentration of power in one faction, coupled with an elite that is constantly faced with systemic vulnerabilities (regime legitimacy and political instability, external dependence, intra-elite factionalism), explains the dynamics of the emergence of PoEs and the variable performance of the gas sector's new institutional arrangements.

This set-up allowed PoEs to emerge with variable capacities and performances as instruments of the ruling elite's patronage strategies and competition, but formally aligned with international best practices in order to attract investments. However, given the growing importance of the gas sector in the economy and as the main source of revenues for the state and of rents for the ruling elite, sustaining PoEs' performance under these circumstances might prove much more difficult. In part it is due to the materiality (the size of the reserves) of the resources and to the reduction in alternative sources of revenues and rents.

### **1.2. Methodology and Organization of the Paper**

The paper is based on desk and bibliographical reviews, combined with empirical data on the oil and gas sector, having as its focus two organizations, as already noted: The Tax Authority (TA) and the National Petroleum Institute (INP). Empirical data were collected in the period from 2017 to 2020 from twenty interviews with key informants, such as the sector's donors, international financial institutions and consultants, representatives and members of the PoEs being analyzed here, government agencies and sector projects, civil-society activists involved in extractive industries, and members of parliament involved in the enactment of the relevant legislation. Other sources included documentary and literature reviews.

The INP, the oil and gas sector regulator, was created as part of the reforms in the gas sector to unbundle the regulatory, commercial and policy functions. Whilst ideally, we would have chosen the National Hydrocarbons Company (ENH), a commercial entity, in our research (see Salimo et al., 2020), we did not see any evidence of it emerging as a PoE. Consequently, it would not provide the sufficient elements for our analysis. As an alternative, we chose as our second case study the Tax Authority (TA), which was created in 2006 as part of much broader tax reforms and is increasingly playing a role in the gas sector. The creation of the Extractive Industries Tax Unit (EITU) in 2017, resulting from reforms to strengthen the fiscal component of the extractive industries, in which gas is becoming the main commodity, make the unit a good case study for our analysis.

This combination of a regulatory body and a fiscal entity in the oil sector as cases studies is relevant to understanding the incentives for improving performance in this area as part of the Mozambican

political settlement. Whilst one provides the elements with which to analyze the implementation of the sector policies, the other provides their outcomes, specifically related to rents and revenues, which are key to both external (donors and multinational companies) and internal (ruling elites) actors for regime survival and the country's development strategies. In this sense, these two case studies can shed light on the dynamics, and particularly the incentives, for institutional reform and performance in the oil sector.

Following this introduction, the paper consists of another four sections. Section 2 presents a brief literature review and the analytical framework. Section 3 briefly discusses the political settlement in Mozambique, followed by a historical analysis of the institutional reform of the oil and gas sector. The two examples of potential PoEs and their dynamics are presented in section 4, followed by an analysis of their effectiveness and performance in the context of the country's political settlement. Concluding notes are presented in section 5.

## **2. LITERATURE REVIEW AND ANALYTICAL FRAMEWORK: POCKETS OF EFFECTIVENESS AND POLITICAL SETTLEMENT**

### **2.1. The Dynamics of PoEs: a Literature Review**

As is now widely accepted, effective state agencies and institutions are not easily created in developing countries like Mozambique, which tend to be characterized by poor or weak formal institutions and economies combined with clientelist politics. Nonetheless such countries might still have public organizations capable of achieving their mandates: what we, following Roll (2014a), denominate 'pockets of effectiveness' (PoEs)

In the case of oil governance, the 'Norwegian Model' is often referred to a model in which the commercial, policy and regulatory functions are parcelled out between a National Oil Company (NOC), a ministry and a regulatory agency (Thurber et al., 2011). While this model of the 'separation of functions' has been adopted in many countries, including Mozambique, its effectiveness is variable, and factors such as political competition, the nature of the political system and institutional capacity were pointed out as the key to their success or otherwise (Thurber et al., 2011). In Norway, for example, this arrangement is seen as having ensured the long-term successful performance of its oil industry. In countries like Nigeria, where a similar formal organization was adopted, the sector's organizational capacity proved unable to perform these functions efficiently, mostly because those in power were not interested in the emergence of an autonomous regulator that could potentially undermine the flow of oil revenues and rents, they need to distribute among their relatives and associates (see Thurber et al., 2010)

From a political economy perspective, a key feature of organizations, that are effective in promoting the public good as PoEs, is that they emerge and are sustained when they produce outcomes that are politically important for the ruling elite (Whitfield et al., 2015). This argument is captured in the PSA (Khan, 2010; 2018) and in the analysis of some experiences of PoEs in the oil sector.

Political settlement perspectives argue that the emergence and persistence of PoEs are contingent on the types of political settlement that underpin regime survival (Hickey, 2019). In this vein, Hickey (2019, p. 37) argues that PoEs can emerge and persist as part of a broader state-building strategy when power is concentrated and elites are dominant and perceive themselves to be under systemic vulnerability. When elites are dominant and lack the threat of systemic vulnerability, PoEs can emerge and be sustained as part of a strategy of patronage-based regime survival (Hickey 2019). Alternatively, Mohan (2019) suggests that PoEs may emerge as a consequence of considerations going beyond the interest of the ruling elite in rents to include a concern with people, development ideologies and even international reputations. Along the same lines, the theory of ‘Effective States and Inclusive Development’ (ESID) argues that the ‘capacity and commitment to deliver development is shaped by the interaction between the political settlement and specific policy domains, with ideas playing an important role within each one’ (ESID, 2018, p. 5).

Experiences of the oil sector in diverse cases such as Suriname (Hout, 2014), the oil-rich Gulf autocracies (Hertog, 2014) and sub-Saharan Africa (ESID, 2018) suggest that POEs can emerge and persist in situations predominantly of patronage politics and intra-elite competition when: (i) their leadership combines technical and political credentials and is aligned with the ruling elite’s broader ideas of development; (ii) when it is possible to create capacities without political pressure if the oil sector is not the most important source of revenues and rents for the ruling elites; (iii) when there is a consensus on the importance of the oil sector within the elite and the existence of a unified command structure to ensure the creation of PoEs and their autonomy from fragmented political interests; and (iv) when the materiality – size, types of reserves, spatial locations and costs of the discoveries – influences the dynamics of deal-making in the sector, with implications for institutional performance.

This brief literature review shows that various elements are important for the emergence and persistence of PoEs in contexts of political patronage and clientelism similar to those in Mozambique.

It is against this backdrop that we define the analytical framework of the paper.

## **2.2. Analytical Framework: PoEs and Political Settlement**

We use a combination of the PoE perspective and the PSA to analyze the dynamics of the emergence and persistence of organizations that can be considered PoEs in the gas sector, having as background the country political settlement.

According to Roll (2014c, p. 201), when an organization is established, there are some founding features that are critical for its transformation into a PoE, namely a strong legal mandate, combined with a certain degree of autonomy and the generation of a performance-oriented organizational culture. Roll further argues that during their life cycle, organizations have different performance levels in trying to remain effective, and that there are turning points or periods of time in which either they turn into PoEs or degenerate into regular and ineffective organizations (Roll, 2014b).

In the PSA, we adopt an enhanced version that goes beyond the focus on ruling elites' concern with regime survival to include the role of ideas and external actors (see Hickey et al., 2015). In this regard, we analyze elite competition and the dispersal of power and its implications to regime vulnerability along three dimensions: (i) the vertical, that is, the distribution of power among elite factions of the ruling elite; (ii) the horizontal, which analyzes the distribution of power between the ruling coalition and other organizations or factions, and the relative strength of the excluded factions in the distribution of resources; (iii) the economic, related to resources to finance the regime and ensure its survival (Khan, 2010). As cross-cutting elements, we analyze the set of ideas underlying the political settlement – the idea of national unity (Buur and Salimo, 2018; Macuane et al., 2018; Buur et al., 2020) and the country's dependence on external resources – that underpins the importance of donors and multinational companies (MNC).

Applying the PoE framework to a sector that is in ongoing transformation has analytical limitations because of its continuous organizational changes. Thus, application of the definitional criteria of PoEs as outlined by Roll (2014a; 2014b) to our two case studies must also take into account the fluidity of the ongoing dynamics of institutional building in the sector.

### **3. POLITICAL SETTLEMENT AND INSTITUTIONAL REFORMS IN THE OIL AND GAS SECTOR IN MOZAMBIQUE**

To understand the dynamics of institutional reform and performance in the petroleum sector in Mozambique, it is important to contextualize them in terms of the country's political settlement and its relations with external actors.

#### **3.1. Mozambique's Political Settlement**

After its independence from Portugal in 1975, following a liberation struggle led by the Front of Liberation of Mozambique (Frelimo), Mozambique adopted a single-party socialist regime. The post-independence civil war (1976-1992), between the Frelimo Government and the apartheid-backed Mozambique National Resistance (Renamo), formally ended in 1992 with the signing of a general peace agreement (GPA).

Whilst Frelimo remained in power since independence, over the years, elements of systemic vulnerability loomed over it. The causes can be identified with reference to the three dimensions of the political settlement.

The foci of vulnerability for the economic dimension are related to: i) high poverty rates, currently at 46.1%; ii) high levels of inequality, with a Gini coefficient of 0.47 (Ministry of Economy and Finance, 2016); and iii) the fiscal crisis, stemming from very high levels of public debt after part of the ruling elite embarked on a strategy of taking out fraudulent loans totalling US\$ 2.2 billion, only revealed in 2016 and known as the hidden-debt scandal, to fund three public companies and expenditures linked to the security sector.

In the horizontal dimension, systemic vulnerability takes the form of constant challenges to Frelimo's power and to the actions of excluded groups that are increasingly threatening regime stability. Frelimo's power has been challenged by its closest political adversary, Renamo, through military action after 1976 and electorally since 1994. In the military arena, Renamo returned to war in 2013 and forced peace talks that led to the negotiation of a decentralization package, adopted in 2018, and a new process of disarmament, demobilization and reintegration (DDR) in 2019. In this year, an armed Renamo splinter group emerged contesting the DDR, challenging the agreement with the government and threatening the regime stability. Besides, since October 2017, an armed Islamic insurgency has perpetrated attacks on public targets and civilians, threatening to establish an Islamic state in the province of Cabo Delgado, the location of the biggest gas reserves to be discovered so far. In the electoral arena, despite Frelimo victories since 1994, political competition has been increasing, and in the local elections of 2018 the opposition won in a number of municipalities, increasing decentralized power from five municipals out of 33 in 2003 to ten out of 53 in 2018. In the general elections of 2019, the opposition fared less well, but widespread fraud favouring Frelimo was reported by national and international electoral observers from the registration process to the vote count. Elections are frequently contested on the grounds of the manipulation of results (Commonwealth Observer Group, 2019), which also threatens the regime's legitimacy.

Finally, in the vertical dimension intra-elite competition is increasing and, on some occasions, has reached levels of rupture. To counter the potential centrifugal forces stemming from the regional and ethnic diversity of Frelimo's membership, the ideology of national unity has been used as a foundational idea of Frelimo's politics and state-building strategies (Macuane et al, 2018). Party and country leadership successions are based on these foundations. For example, after successive Frelimo and country presidents came from the south of the country – Samora Machel (1975-1986), Joaquim Chissano (1986-2005) and Armando Guebuza (2005-2015) – it was tacitly agreed that the next President should come from the north (ibid.). This favored the election of compromise candidate Filipe Nyusi in 2014, who initiated his first presidential term in 2015 and his second and last in 2020. Following this logic, the next president must come from the centre of the country.

Still in the vertical dimension, in a context of patronage and clientelist politics, the leadership successions of the ruling party and of the country have implications for the distribution of benefits and access to resources and control in some economic and policy areas (Salimo et al, 2020; Cortez, 2018; Macuane et al, 2018). However, historically, it is clear that control of economic opportunities by the ruling faction does not necessarily cease after a leader ends his term in office, as evidenced by the business networks controlled by former presidents' families in Mozambique (Cortez, 2018). With at least three powerful political leaders within Frelimo still active and influencing politics – the two former presidents Chissano and Guebuza and the incumbent Nyusi – competition between factions of the ruling coalition is high. The co-existence of different leadership factions has not been peaceful. Under the leadership of President Nyusi, some Guebuza faction members, including his son, were implicated in the hidden debt scandal and imprisoned. Nyusi also embarked on direct confrontation with the son of former President Machel, Samora

Machel Jr., when Frelimo's leadership manipulated internal party rules and used the Frelimo-dominated National Electoral Commission to block his candidacy as Mayor of the capital city Maputo in the 2018 local elections. Lately, in his public appearances, Guebuza has been critical of Nyusi's leadership. Both Guebuza's and Samora's attitudes towards the incumbent leader are unusual in a highly disciplined party like Frelimo. These examples show the level of competition and the increasingly difficult relations among the factions within the ruling elite. As it will be explained, intra-elite competition has implications for how the reforms have evolved in the petroleum sector.

### **3.2. The Petroleum Sector in Mozambique**

According to the National Petroleum Institute (INP),<sup>4</sup> early explorations for hydrocarbons in Mozambique date back to 1904, but further exploration was only resumed in 1948 by international oil companies (IOCs), mostly onshore, but with some activity offshore, which resulted in the discoveries in the Pande, Buzi and Temane fields in the 1960s. Due to political instability, exploration activity declined from the 1970s to the early 1990s, when the GPA was signed.

In 1996 Sasol acquired the rights to explore the Pande and Temane fields from Enron and Arco respectively, which had taken over these two concessions earlier in the 1990s.<sup>5</sup> In 1998 and 2000 the government of Mozambique signed agreements with Sasol and the Mozambican NOC National Hydrocarbons Company (ENH) giving them access to the two gas fields and granting them pipeline rights in Mozambique. Sasol eventually expanded the gas reserves to an estimated 5.504 tcf with new discoveries in the Pande–Temane Block and the Inhassoro Gas Field. Another landmark in gas exploration in Mozambique was the discovery from 2010 onwards of sizeable gas reserves in the Rovuma basin in the north of the country by the American company Anadarko and the Italian company ENI, reserves totalling an estimated 170 TCF.<sup>6</sup> Anadarko's operations were eventually taken over by Total in a deal concluded in 2019.

The increasing importance of gas since the 1980s has required institutional reforms to keep up with the demands of the actors operating in the sector.

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<sup>4</sup> See INP's homepage: <http://www.inp.gov.mz/pt/Pesquisa-Producao/Historial-da-Pesquisa-de-Hidrocarbonetos-em-Mocambique>, accessed 30 April 2019.

<sup>5</sup> See Project Finance & Guarantees Group (2005), 'World Bank provides enclave IBRD guarantee to cross-border gas Project', December 2005: [http://siteresources.worldbank.org/INTGUARANTEES/Resources/PFG\\_Note\\_South\\_African\\_Regional\\_Gas\\_Pipeline.pdf](http://siteresources.worldbank.org/INTGUARANTEES/Resources/PFG_Note_South_African_Regional_Gas_Pipeline.pdf); accessed 29 June 2018.

<sup>6</sup> See INP's homepage: <http://www.inp.gov.mz/pt/Pesquisa-Producao/Descobertas-na-Bacia-do-Rovuma/Historia-das-Descobertas-na-Bacia-Sedimentar-do-Rovuma>, accessed on 30 April 2019.

### 3.3. Institutional Reforms in the Gas Sector

Three sets of institutional reforms were implemented in the gas sector focusing on its governance through the separation of the commercial, regulatory and policy functions, improvements to accountability, and reforms of the fiscal regime. The different interests of the actors involved in the reforms explain the performance of the institutional arrangements created with the reforms.

Following reforms in the hydrocarbon sector initiated in the 1970s, after the independence, Mozambique created the National Hydrocarbons Company (ENH)<sup>7</sup> under Law 3/1981. ENH brought together the commercial, regulatory, and concessionary roles relating to the petroleum sector. During the 1990s, the World Bank and Norwegian Petroleum Development (NPD) advocated reforms to Mozambique's petroleum sector, including its management and governance. International 'partners' all urged the government to separate the regulatory and commercial functions and to increase efficiency and transparency in the sector's management.

As part of the reforms, in 1994 the government led by Alberto Chissano created the National Directorate for Coal and Hydrocarbons (DNCH) as part of the Ministry of Energy and Mineral Resources in an attempt to remove the regulatory function from ENH. This would thus keep the NOC focused specifically on its commercial role, while DNCH was formally intended to take over the regulatory function. However, further changes were necessary to make the separation of functions effective.

The first major change came in 2001, when the country adopted a new Petroleum Law (Law 3/2001).<sup>8</sup> The regulatory function was then transferred to the National Petroleum Institute (INP)<sup>9</sup>, created in 2004 under Decree 25/2004.<sup>10</sup> Interviews<sup>11</sup> suggest that the INP emerged in 2004 as the regulator because the government wanted to determine what such reforms would mean in practice for deal-making and its ability to secure deals that benefitted not only Mozambique generally but its ruling elite specifically. The deal with SASOL illustrates how these dynamics occurred (see Salimo et al. 2020).

From the gas discoveries of 2010 onwards, the process of reforms has been driving development partners in collaboration with the government, as well as the foreign investors trying to get favourable deals. The increasing importance of gas to the country's development prospects spurred the interest and intervention of other actors, as a series of civil-society organizations emerged as key public interlocutors, as well as the Parliament. However, the incentives of these actors varied and did not necessarily favor the strengthening of the sector's institutions.

In Parliament, support for the sector reforms was stimulated by the fact that different factions of the ruling party controlled the legislative and executive branches. Thus, on the one hand, the

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<sup>7</sup> The Portuguese abbreviation of *Empresa Nacional de Hidrocarbonetos*.

<sup>8</sup> Petroleum Law, Law 3/2001 of 21 February 2001.

<sup>9</sup> Instituto Nacional de Petróleo (INP) in Portuguese.

<sup>10</sup> Decree 25/2004 of 20 August, which created the National Institute of Petroleum.

<sup>11</sup> Interviews at MIREME, NPI and ENH, April and August 2018.

government, led by President Armando Guebuza (2005-2015) during the crucial years of discovering and beginning to develop the gas reserves, was pushing for reforms to benefit Mozambique, that is, favorable conditions for investing companies with potential benefits for key Frelimo factions tried to make deals to push investments through fast. On the other hand, Parliament, dominated by the faction of former President Joaquim Chissano (1986-2005), in an alliance with civil-society organizations, favored the creation of more checks and balances in the sector.<sup>12</sup>

It was in this context that in 2009 Mozambique adhered to the Extractive Industries Transparency Initiative (EITI), with its focus on governance and especially accountability related to revenues. Within this context, the idea emerged of an institution with a potential oversight function in the sector. Accordingly, the High Authority for the Extractive Industries (HAEI) was created under the Mining and Petroleum Laws (20/2014 and 21/2014, respectively) with the task of controlling and overseeing the petroleum and other extractive industry activities, including taking over some of the regulatory roles currently under the INP mandate. The establishment of the HAEI has been delayed, as will be explained, due to factional competition.

When the country started producing its reports under the EITI, government weaknesses in respect of revenue collection and overall sector governance became more evident. This fuelled pressures from civil society for a reform of the fiscal regime to reduce the benefits to the companies, whilst the latter started pushing for a more stable fiscal regime to reduce the risks to their investments.

Changes to the fiscal regime came in 2014 with the petroleum operations tax regime and benefits Law (27/2014), later revised with the inclusion of a fiscal stability clause for investments in 2017 (Law 14/2017). The threshold for projects to benefit from fiscal stability was set at an investment of US\$ 100 million. This was relatively low for this industry, due to its level of capital expenditure, as in Mozambique megaprojects were defined as a minimum of US\$ 500 million in investment. Apart from the different taxes, a profit-sharing mechanism (r-factor) and fees (Ministério de Economia e Finanças, 2018), the fiscal regime also includes a cost-recovery element of up to 60% of the costs per annum, subject to certification of the expenses by the INP.

Therefore, the institutional reforms in the extractive sector generally and in the petroleum sector especially went beyond the separation of the commercial, regulatory and policy functions to include changes to the fiscal regime as well as part of the overall accountability agenda. At the organizational level, this implied the strengthening of the INP and included increasing the capacity of the Mozambican Tax Authority to collect revenues, which resulted in the creation of the Extractive Industries Tax Unit (EITU) in 2017. Furthermore, the Administrative Court, the country's auditor general, increased its capacity to audit and oversee public institutions linked to natural resource revenues, including those related to the gas sector, namely INP and the Tax Authority.<sup>13</sup>

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<sup>12</sup> Interview with a civil society activist, June 2020.

<sup>13</sup> As a result of the reforms, several other institutions have played a role, but their responsibilities are specifically related to issues that are marginal but complementary to those directly related to petroleum activities.



The table below shows the main state institutions and public bodies in the petroleum sector in Mozambique and their key roles.

**Table 1. Institutions of the Petroleum Sector and their Role**

Institutions	Role	Responsibility
<b>Government</b>	Ensures the implementation of petroleum operations policy, approves regulations and prepares legislative proposals	<ul style="list-style-type: none"> <li>• Enacting regulations for petroleum operations</li> <li>• Regulating and approving concession contracts and their execution, except the concession for reconnaissance</li> <li>• Approving development plans</li> <li>• Approval of transfer of rights, interests and obligations in a concession contract</li> <li>• Guarantees financing of the ENH to stabilize its participation in the petroleum business</li> </ul>
<b>Ministry overseeing the petroleum sector (MIREME)</b>	Policy development, implementation and coordination	<ul style="list-style-type: none"> <li>• The minister overseeing the petroleum sector enters concession contracts for purposes of reconnaissance</li> </ul>
<b>INP</b>	Regulatory functions for upstream, downstream and midstream operations	<ul style="list-style-type: none"> <li>• Negotiation of concession contracts and hydrocarbon project development contracts</li> <li>• Administration and promotion of petroleum activities</li> <li>• Providing guidelines for public and private sector's participation in prospecting and exploration</li> <li>• Organization and administration of awards for concessions contracts</li> <li>• Control of costs for recovery and taxation purposes</li> </ul>
<b>ENH</b>	Commercial function and representing the state in petroleum operations	<ul style="list-style-type: none"> <li>• Participation in the prospecting, exploration, production, refining, transport, storing and commercialization of oil and gas and their derivatives, LNG and GTL</li> <li>• Management of the oil and gas allocated for domestic purposes</li> <li>• Monitoring of recoverable costs in the projects it operates as a member of the consortium and the representative of the state interests</li> </ul>
<b>Higher Authority for Extractive Industries</b>	Controls petroleum activities	<ul style="list-style-type: none"> <li>• Not provided</li> </ul>
<b>Tax Authority</b>	Ensures the collection of fiscal revenues in the petroleum sector	<ul style="list-style-type: none"> <li>• Control of costs for cost recovery purposes by companies</li> <li>• Collecting taxes related to capital gains, income and corporate taxes</li> </ul>
<b>Administrative Tribunal</b>	Ensures the approval of concession contracts and audit-related revenues	<ul style="list-style-type: none"> <li>• Approves oil and gas contracts</li> <li>• Audits revenue collection</li> <li>• Analyzes reporting on production, sales and related revenues collected by relevant authorities</li> </ul>

Source: Authors, based on the sector legislation

In conclusion here, the NIA reforms were stimulated more by the needs of specific investments and external actors than by the ruling elites. The latter were much more concerned with their particular interests and were enmeshed in the competition between different factions. Thus, the

possible existence of PoEs in the sector came from a combination of external pressures, elite competition and internal bureaucratic dynamics, as we will discuss in the next section.

#### **4. THE NATIONAL PETROLEUM INSTITUTE AND THE TAX AUTHORITY AS POE'S IN THE CONTEXT OF THE GAS SECTOR**

This section will look at the drivers and results of the petroleum sector reforms in the context of two agencies: INP and the Tax Authority (TA). The key question is to what extent PoEs emerged and, since this is an ongoing process, are likely to persist, in the context of the country's political settlement. We will use the elements of a POE discussed above, namely the legal mandate and organizational autonomy, combined with its effectiveness in fulfilling its mandate, and the persistence of the good performance of the organization for at least five years. These elements are analyzed against the backdrop of the three PSA dimensions identified earlier – economic, vertical and horizontal.

##### **4.1. The National Petroleum Institute (INP)**

The INP has the founding features of a PoE, namely administrative and financial autonomy, and autonomy in assets management (patrimonial), which means that in principle it is formally protected from political pressure. It also has the elements of organizational strength, such as a strong legal mandate as the sector regulator and staff deployment rules favoring the recruitment and retention of staff to ensure its technical capacity, including with financial incentives. However, there are nuances to the legal elements that have implications for its autonomy and organizational strength.

The INP's mandate includes clear functions in the areas of the exploration, development, production and transportation of oil products (Decree 25/2004, article 4), amongst them the coordination of the public bidding process for the concessions and other operations, participating in contract negotiations, supervising production operations and certifying the companies' costs for revenue collection purposes under the existing fiscal regime.

This mandate is carried out by a technical management and staff operating with rules that mix elements fostering organizational autonomy but also some level of political control. In this regard, the INP is managed by a Management Board ('Conselho de Administração') with a minimum of three and a maximum of five board members, including the CEO. While Decree 25/2004 provides that the Management Board's members should be technicians with relevant experience in the area, the appointment process is political, thus allowing some room for the government and the sector minister to make their influences felt. Moreover, the agency falls under the tutelage of the Minister of Mineral Resources and Energy (MIREME), who proposes the INP's CEO for appointment by the Cabinet, the Council of Ministers, and appoints the board members, who can also be proposed by the CEO.

When the INP was created in 2004, the national director of the now extinguished DNCH, Arsénio Mabote, became the CEO of INP, where he stayed until 2015. He was then replaced by the current CEO, Carlos Zacarias, who had been working in the sector for decades and since 2008 had been INP’s exploration manager. Therefore, INP has historically had a technocratic leadership with considerable experience of the sector.

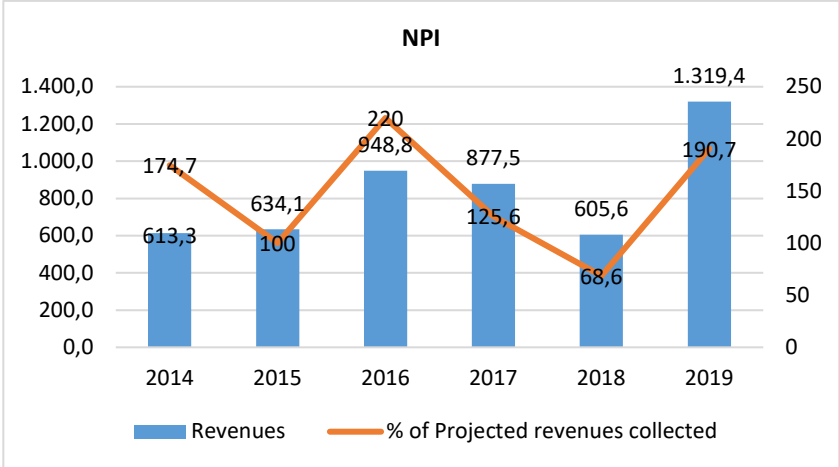
As just noted, the process of INP staff recruitment is in principle meritocratic. In 2019 the organization had a staff of 84 people, 58 (69%) of whom have higher education degrees: PhDs (2), Master’s (18) and BA/Honours (38).<sup>14</sup> This is above the average level of qualification of the public sector, only 22.7% of whose staff have higher education (Ministério da Administração Estatal e Função Pública, 2018).<sup>15</sup>

As a regulator, the organization is entitled to collect revenues from oil and gas operations ranging from concessions to contracting during the production phase. In principle this contributes to its relative financial autonomy. Some of the revenues collected from the extractive companies go to capacity-building, including a contribution to its continuous learning and development.

While many formal aspects qualify the INP has a PoE, the reality, in terms of practice and performance in the pursuance of its mandate, is more nuanced. The question is to what extent the available resources have been used.

Generally, the INP has a good performance in collecting revenues that are important for its financial autonomy and capacity development. The figure below shows how the collection of revenues has evolved, having been higher than projected.

**Figure 1. NPI Own Revenues Collected 2014-2019, 10<sup>6</sup> MZN**



Source: Public Accounts Report, 2014-2019 (Republic of Mozambique, 2015, 2016, 2017, 2018, 2019, 2020) (USD - MZN Average Exchange Ratios: 2014 -31; 2015 - 38.3; 2016 – 73; 2017 - 63.3; 2018 – 60.7; 2019 – 62.48 [Source: Bank of Mozambique]; and for 2017 - <https://www.investing.com/currencies/usd-mzn-historical-data>).

<sup>14</sup> As of September 2019.

<sup>15</sup> Data from 2017.

As a consequence of increasing revenue collection, INP's working conditions have improved lately, including its relocation to its new offices in a new building funded by its own resources. Creating technical capacity has been more challenging, though. A Norwegian-funded report from 2013 pointed out that, due to the demands on its limited human resources, staff felt overstretched by having to respond to many simultaneous demands (ILPI, 2013). The same situation was still prevalent in 2018, when a government-commissioned study pointed to the shortfall of expertise within the INP amidst increasing activities in the gas sector (MIREME, 2018). These capacity gaps are being filled with consultants and external technical assistance, although they are not used effectively. Through the World Bank-funded Mining and Gas Technical Assistance Programme (MAGTAP), the government hired a former Trinidad and Tobago minister and OPEC executive to support key institutions in the sector. It also hired a consultant to train the sector in the auditing of companies in relation to the calculation of recoverable costs (República de Moçambique, 2018, p. 9). NPD technical assistance has been another potential source of capacity, with technicians allocated to key departments. Different sources mentioned that this technical assistance is being underused. It is also a question to what extent hiring consultants is sustainable, since it is expensive and leaves little improved capacity behind when the contract is over.

With respect to the fulfilment of the various aspects of its mandate, INP has different capacities, with a mixed performance and learning process. We look at some of the INP's key functions, namely organizing the bidding process for concessions, supervision of production operations and operational oversight.

Regarding the *bidding process for concessions*, Mozambique is in its fifth licensing round of concessions, and its performance in this area is considered good by the EITI (EITI, 2019), and also according to the Resource Governance Index (RGI).<sup>16</sup> This performance is attributed to good survey knowledge, good pre- and post-licensing practices, and rules and practices on contract disclosure. Generally, actors involved in capacity-building in the gas sector point out that this has so far been one of the INP's relative success stories.<sup>17</sup> Concerning *contract negotiation*, its capacities received mixed assessments from our interviewees. Some point to a complete weakness and a lack of specialization and capacities far below the counterparts with whom it has to negotiate, which can rely on strong legal and technical teams. Others pointed out that the INP's capacity has evolved over time, from a low level of competence, but still below what is necessary. Although the INP plays an important role in the negotiations, it is not the only institution involved. Several other government institutions are also involved, depending on the issue being negotiated, such as MIREME, the Ministry of Finance, the Central Bank, the Tax Authority, etc. However, because capacity within the country is limited, oil- and gas-related deals have generally been negotiated with the support of foreign experts mostly provided by developing partners with knowledge of the industry, the NPD being the main example. In recent years, foreign consultancy companies

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<sup>16</sup> See <https://www.resourcegovernanceindex.org/country-profiles/MOZ/oil-gas>. Accessed 10 December 2019.

<sup>17</sup> Interview with key informant, Maputo, October 2018.

specializing in oil and gas have also been contracted to provide support in the negotiations with IOCs.

Regarding the *supervision of production operations*, the INP has been criticized for not being able to access the relevant information as part of its oversight role, while the ENH, the key state institution in the management of the gas royalties, is considered to be too weak to challenge ruling elite interests over the control of royalties.<sup>18</sup> The Board's validation of the 2015-2016 EITI report (EITI, 2019) assesses the monitoring of production positively, but this assessment is only based on the availability of data and does not include an evaluation of the capacities to deal with potential asymmetries of information. In fact, the same document considers the level of engagement of the investing companies in the EITI process still to be weak. It also questions the reliance on company data and negatively assesses the disclosure of information of the state-owned enterprises' transactions and participation by their subsidiaries, suggesting that its role as the regulator is not being fulfilled. Moreover, the Resource Governance Index (RGI) of 2017 shows that the level of implementation of legislation for the sector is low. Indeed, Mozambique has a score of -18, which represents a high level of discrepancy between the legal framework and its implementation and enforcement (NRGI/Natural Resources Governance Institute, 2019a).

In the area of *operational oversight* for revenue collection, the certification of costs of the Rovuma and Sasol (in 2019) projects that began in April 2018 (Tribunal Administrativo, 2018) was possible only because services were hired with funding from the MAGTAP as part of its support plan for the sector. Cost certification first took place after the Administrative Tribunal's had repeatedly recommended that the INP fulfil its mandate to provide information allowing a proper assessment of costs for the company's cost-recovery claims. The costs of certification are high, and according to an industry source, the number of people allocated to the department responsible for this area is too low for this task to be carried out, as the department is also involved in other activities.<sup>19</sup> Buying services can be necessary, at least in the short-term, but it does not necessarily improve in-house capacity. INP's overreliance on this kind of technical support poses a risk to its effectiveness.

The INP has some of the features of a PoE, among them formal bureaucratic autonomy and formal insulation from political interference and rent-seeking disputes, in part because rent distribution is now located in the ENH (see Salimo et al. 2020). This is partially favored by the fact that the sector is highly specialized and requires capital-intensive investments, rendering ineffective direct control by or interference from local elites (who are undercapitalized, with limited capacity to participate financially in the sector, but overly politicized), since this might scare off external investors. The INP is improving part of its capacity, but it still has a problem common to public-sector organizations, namely relying on expensive technical assistance that is underused. Similarly,

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<sup>18</sup> Interview with a former sector government official, Maputo, October 2018.

<sup>19</sup> Interview with a senior official at INP, Maputo, September 2019.

key sector informants suggested that the INP lacks a strong strategic vision and has only a weak commitment to fulfilling its core mandate.

#### **4.2. The Tax Authority and the Extractive Industries Tax Unit**

Tax legislation reforms started with the introduction of value-added tax (VAT) in 1999 and subsequently of income (IRPS) and corporate (IRPC) taxes in 2002. In 2007 legislation regarding the extractive industries, namely the mining and the oil and gas tax regimes, was enacted, with revisions in 2014 and 2017, to reflect the booming gas sector. Reforms were also implemented in tax administration, which led to the creation of the Mozambique Tax Authority (TA) in 2006, resulting in the merger of the customs and the internal tax administration into a single revenue authority. As a response to the natural resources boom, the Extractive Industries Tax Unit (EITU) was created in 2017 as a TA department (Karkare and Macuane, 2017) directly subordinated to the TA president. In the still to be approved proposal of the TA organic statute, the audit functions of the EITU will be allocated to a General Directorate for Auditing, which will concentrate the TA's audit functions in this unit. The EITU was established inside the TA with the formal aim of ensuring the payment of tax revenues by the extractive industries, especially the sizeable mining and gas projects.

Like the INP, the TA has statutory administrative, financial, and patrimonial autonomy. It is also a performance-oriented organization. In fact, it is amongst the few organizations in the public sector with a performance-based payment system for its staff, inherited from the system pioneered in the customs as part of the sector's reforms in the 1990s and 2000s. TA staff salaries are among the highest in Mozambique's public service. Staffing has, nonetheless, still been a problem. From 2012 until 2019 the TA was not authorized by the government to hire people to replace its ageing staff, which posed problems with its capacity.<sup>20</sup> At its creation in 2017, the EITU was given a staff establishment plan of 18 that eventually expanded to 30 people. However, until recently the unit has remained understaffed, with only 16 of its positions occupied.<sup>21</sup> Among its difficulties is a lack of resources even to carry out its monitoring work for the projects under its jurisdiction.

The TA's first President was Rosário Fernandes, appointed in 2006, who, despite being an outsider to the tax administration system, is a respected technocratic economist and is known for his long public service and high level of integrity. Rosário was replaced by Amélia Muendane in 2015, during Nyusi's first term of office. Muendane is also an economist with a career in the National Statistics Board (Instituto Nacional de Estatísticas/INE), and she defines herself as a fiscal expert with more than two decades of experience.<sup>22</sup> During Guebuza's second term, Muendane was Deputy Minister of Planning and Development (2011-2014), and in the Nyusi administration she

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<sup>20</sup> Interview of Amélia Muendane to the Newspaper "Canal de Moçambique", 29 July 2020

<sup>21</sup> As per March 2020.

<sup>22</sup> See interview with the Newspaper Canal de Moçambique, 29 July 2020.

was first appointed Deputy Minister of Economy and Finance and then the TA's president, both in 2015. She also acted as Frelimo's finance secretary.

Both TA leaders thus far can be considered technocrats with some political clout, and both are Frelimo party members. Her closer link to the party makes Muendane more politicized. Top managerial positions in the TA during Rosário's tenure were occupied by staff with experience of the sector. In the current term, accusations of nepotism have systematically surfaced in the media, especially following reshufflings or changes of managers, suggesting that the performance-oriented culture of the TA is being undermined.

Donors, particularly the World Bank, which through the MAGTAP had a fund specifically for the EITU, the Swiss Development Cooperation, the UK's Foreign, Commonwealth and Development Office, and Sweden and Norway supported and provided technical assistance to tackle the weak capacity of the TA generally and the EITU in the extractive sector. However, donors supporting the TA encountered resistance to the absorption of technical assistance at different moments in time, despite the TA's repeated requests for support in order to strengthen its capacity. For example, at various points Sweden and Norway had to withdraw their permanent technical assistance to the TA because they faced resistance from within the institution, with top-level TA management explicitly adopting the position that this modality of support would no longer be accepted.<sup>23</sup> The International Monetary Fund (IMF) has been providing technical assistance and training to the TA to strengthen its capacity for revenue forecasting, tax administration and fiscal regime design and evaluation. IMF technical assistance was more readily accepted by the TA, apparently for being more technical, more intermittent and less "intrusive" than that of other donors.<sup>24</sup> However, until recently the IMF has identified existing challenges, among them problems in accessing data and the weak capacity of the EITU to perform its mandate and maximize revenue collection in the extractives (Aisen, 2018).

The intricacies involved in absorbing and using donors' technical assistance suggest that strengthening the TA and EITU has not been an easy process, and there is great concern over practices that endanger its autonomy or that involve the disclosure of information relevant for taxation purposes. This suggests that tax administration is regarded not only as a technical issue, but also as a political one. This sensitivity tends to be higher when dealing with information related to revenues from natural resources. To some extent the management of these revenues has been controlled politically, including with the direct involvement of the President in the process. We will return to this point below.

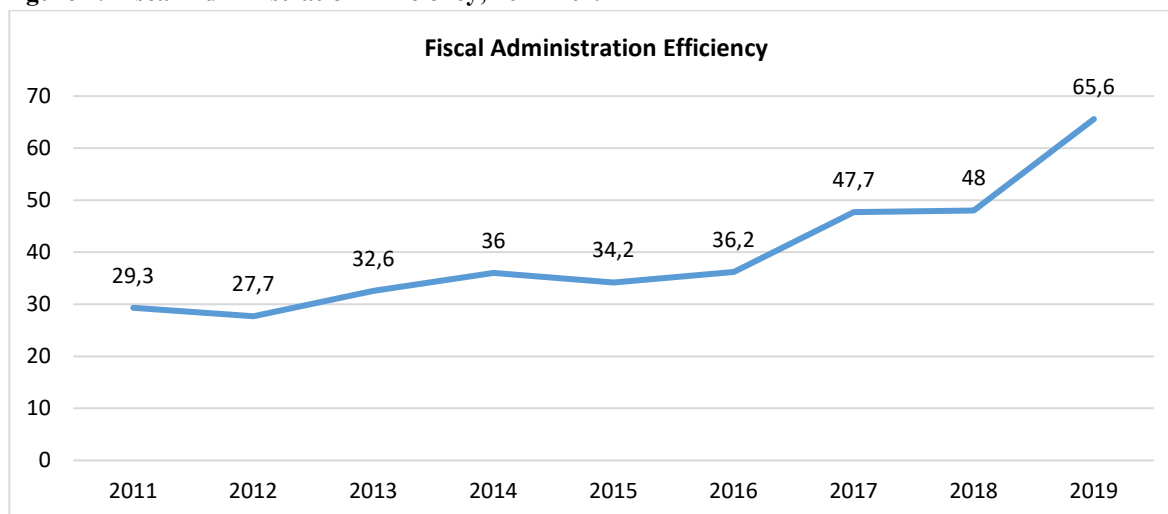
Generally, the TA has features of a PoE that can be empirically verified in its performance. One of the performance indicators is the efficiency of the fiscal administration, which measures the revenues collected per monetary unit (in this case the metical) spent in running the TA.

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<sup>23</sup> Interviews with key informants, Maputo, August/July 2018.

<sup>24</sup> Interviews with key informants, Maputo August/July 2018.

**Figure 2. Fiscal Administration Efficiency, 2011-2019**

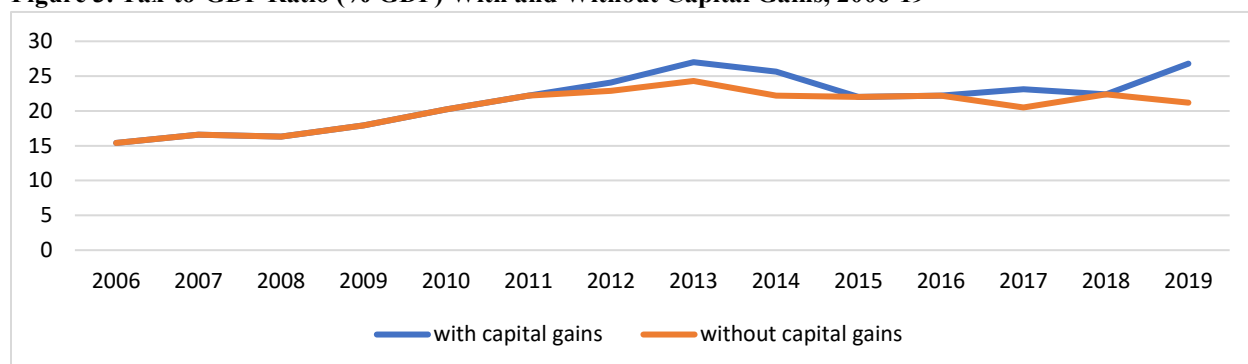


Source: Tribunal Administrativo, 2017, 2018 CGE 2017; ATM, 2017, 2018.

As the data from 2011 to 2019 in Figure 2 above show, apart from a slight decrease in 2012 and 2015, generally fiscal administrative efficiency has been improving. The steady increase from 2018 to 2019 is due to the extra capital gains of US\$ 880 million of the Total takeover of the Anadarko Concession in 2019. However, even without capital gains taxes (CGT), tax administration efficiency is still increasing, from MZN 48.00 to 51.91.

Reform of the tax legislation and the creation of the TA generally boosted tax collection. The tax-to-GDP ratio, which measures the tax collection as a percentage of GDP, has more than doubled since the 1990s (see Figure 3), rising from 10.8% in 1998 to more than 16% in 2008 (KfW, 2009), and in the period of 2008 to 2014 from 16.3% to 29.2% (including CGT) or 25.8% (excluding CGT). From 2015 to 2018, when the secret debt crisis severely undermined the economy, the fiscal ratio fell to levels close to those of 2012/13, even when CGT are included.

**Figure 3. Tax-to-GDP Ratio (% GDP) With and Without Capital Gains, 2006-19**



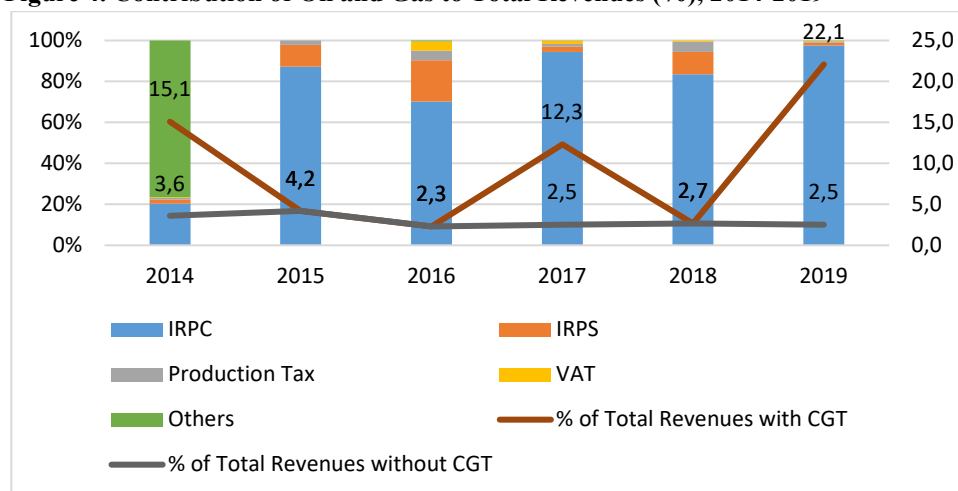
Sources: Tax Authority Strategic Plan 2015-2019; State General Account (CGE) 2016 to 2019.



Currently, Mozambique’s fiscal ratio is among the highest for a low-income country and is comparable to some middle-income countries, such as Kosovo and Albania (Karkare and Macuane, 2017).

The results of the tax reforms in the gas sector have been more modest. Figure 4 below presents the evolution of the contributions of oil and gas to total revenues in 2014-2019.

**Figure 4. Contribution of Oil and Gas to Total Revenues (%), 2014-2019**



Source: Public Accounts Reports 2014, 2015, 2016, 2017, 2018, 2019. IRPC: corporate income tax; IRPS: individual income tax; VAT: Value Added Tax

It can be seen that the overall contribution of oil and gas to total revenues has fluctuated. The steady increase from 2.3% to 12.3% from 2016 to 2017 and from 2.7% to 22.1% in 2018 and 2019 is due to payments of capital gain taxes in 2017 and 2019. Without these, the contribution of oil and gas revenues to total revenues fluctuated less and ranged from 2.3% to 4.2% between 2014 and 2019. Between 2016 and 2019 the variation was even lower, suggesting that there has not been any particular improvement in revenue collection when capital gains are excluded.

It can be argued that the Rovuma gas projects are yet not in their production phase, but there are other reasons for this performance. A point repeatedly made by the Administrative Court is the discrepancy of information between companies and government entities on production, revenues, royalty gas provided in-kind to local companies (especially Matola Gas Company) and taxes collected (Tribunal Administrativo, 2017; 2018; 2019). Some explanations can be found in the revenue collection performance assessments of the EITI reports, which identify some critical areas, namely the reliability of companies’ financial data, the lack of information on the transactions between the ENH and its subsidiaries, and non-disclosure of information about government revenues (EITI, 2019).

The other explanation is political. Tax reforms, despite their focus on efficiency, founded on the high incentive among the elites to boost revenue collection, either to reduce dependency from donors (Karkare and Macuane, 2017) or to mobilize rents in a context of competitive clientelism, had their impact undermined or, at best, mitigated by the elites’ particularistic interests. For

example, even under the leadership of Rosário, which was considered more technocratic, the TA, especially the Customs, continued to provide opportunities for rent-seeking to political groups, including opposition political parties and the ruling party, which continued importing goods fraudulently (Nhamire and Mabunda, 2014; CIP, 2016). In the case of the gas sector, the last two presidents, Guebuza and Nyusi, have been directly involved in the negotiations over the payment of CGT with multinationals. One example is the 2013 ENI's \$4.2 billion sale of a 20% stake in Area 4 of Rovuma Basin to the China National Petroleum Corporation (CNPC). The company entered into direct negotiations with the then President Guebuza instead of the TA, which resulted in the reduction of its taxes to \$400 million and the mooted construction of a gas-powered electricity plant that was never actually built (Macuane et al. 2018).<sup>25</sup> In 2014 the TA released a communication with a narrative based on the argument that a 32% rate was paid, taking into consideration the length of time the asset was held (Frühauf, 2014). This also demonstrated how the capital gain was and should be calculated based on exploration costs.<sup>26</sup>

ExxonMobil's decision to buy a stake in ENI's gas fields in Mozambique in 2017 is another example. The deal included a payment of \$2.8 billion subject to a contractual adjustment before the closing date.<sup>27</sup> In the end the deal saw capital gains tax release up to US\$ 350 million in taxes. The Centre for Public Integrity (CIP) challenged the calculations and suggested that the deductions were too high, as the Mozambican tax authorities only calculated the capital gains tax (CGT) at 32% or US\$ 1.1 billion, that is, at less than half the value of the business due to exploration and other costs (CIP, 2017). In a statement, the TA explained that, although the CGT is 32%, it has been applied to only 50% of the gain after deducting costs and investments made in the exploration phase.<sup>28</sup> We are not able to determine whether the calculations are correct or whether Nyusi made use of his executive power in this case. Nyusi's involvement was more evident in Total's takeover of the Anadarko share in Area 1 of the Rovuma field that resulted in the payment of a CGT of US\$ 880 million in 2019. The President went further to declare promptly that the revenues collected would be used to fund the general elections of October 2019, to cover the fiscal deficit of the expenditure incurred after the Kenneth and Idai cyclones had hit the country, and to pay the state's arrears with the private companies. Given the examples here presented, it is clear that political involvement in the CGT is high, extending to bypassing the TA, which suggests that the political leadership's willingness to control these revenues is high.

Nonetheless, a remarkable element is the untransparent use of natural resources revenues. EITI reports have indicated opaqueness in the management of revenues, including the 2.75% allocated

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<sup>25</sup> See also <https://mozambiqueiningpost.com/2015/03/17/on-dw-africa-analysts-call-for-investigation-into-charges-eni-and-guebuza/> (accessed 22 June 2018).

<sup>26</sup> Interview with the General Coordinator of EITU, Maputo October 2018.

<sup>27</sup> See [https://www.eni.com/en\\_IT/media/2017/12/eni-completes-sale-of-25-interest-in-mozambique-area-4-to-exxonmobil](https://www.eni.com/en_IT/media/2017/12/eni-completes-sale-of-25-interest-in-mozambique-area-4-to-exxonmobil); <https://www.ft.com/content/397fdb30-04bc-11e7-aa5b-6bb07f5c8e12>

<sup>28</sup> Autoridade Tributária. Comunicado de Imprensa No. 01/2017. [http://www.open.ac.uk/technology/mozambique/sites/www.open.ac.uk.technology.mozambique/files/files/Comunicado%20ENI\\_18\\_03\\_17\\_hoje.pdf](http://www.open.ac.uk/technology/mozambique/sites/www.open.ac.uk.technology.mozambique/files/files/Comunicado%20ENI_18_03_17_hoje.pdf)

to the communities where the gas projects are (EITI, 2019). The Resource Governance Index (RGI) rates Mozambique's revenue management at 42 out of 100 points, which means it is poor (NRGI, 2019b). All this is happening amidst public discussions about how and when to use the revenues from the extractives. This issue has not been consensual in the ruling elite and in civil society, with some defending the creation of a Sovereign Wealth Fund (SWF) and others the use of these resources to fund the country's recurrent budget deficits (Nuvunga and Machava, 2020). A proposal for an SWF was presented in September 2020 and is currently being debated publicly (Banco de Moçambique, 2020).

In sum, one could justifiably classify the TA in Mozambique as a PoE, at least in a substantial part of its existence since its creation and when compared with the rest of the public sector. The TA was supported politically because it mattered to the ruling elite over time, it had some autonomy and a mostly technical staff and management, and it became efficient. But the picture is more nuanced since the TA continued to be subject to the rent-seeking of the political and ruling elites. In the case of the gas sector, the collection of sizeable revenues, as from the CGT, was clearly controlled by the top political leadership, even bypassing the TA. The use of gas revenues has been both opaque and based on short-term thinking.

#### **4.3. What Explains the Performance of Institutional Reforms and the Dynamics of PoEs in the Gas Sector?**

The idea of national unity that underpins the division of power and competition within the ruling elite and the country's external dependence explain institutional choice and performance in the Mozambican gas sector.

The task of preserving national unity, embodied in the succession game within Frelimo, transformed the political settlement from the dominant party during Chissano's term to competitive clientelism in the later stages of Guebuza's term, with increasing factionalism under Nyusi. The existence of a regular succession in the ruling coalition's leadership contributed to the creation of powerful factions constantly jostling for power and seeking rents to pursue patronage politics. In the case of the gas sector, institutional reforms were embraced to the extent that they could be absorbed and integrated by the different factions of the ruling elite.

The networks of two Frelimo leaders have been involved over time in the gas sector. Chissano's and Guebuza's allies are involved in Sasol's Pande-Temane Gas midstream (pipeline) and downstream (gas distribution and energy generation) projects (Salimo et al., 2020). The SASOL deal was made during President Chissano's last term, which allowed his faction to ensure disproportionate benefits in the gas value chain. When President Guebuza took over in 2005, the first phase of the SASOL deal had already ended, and most of the business opportunities were controlled by the Chissano faction. Guebuza's interests were instead accommodated during the second phase of the Sasol project, when domestic gas was used to generate electricity (ibid.).

Initially, with fewer opportunities in the Executive after Guebuza's ascent to power, Chissano's faction moved to control the Parliament. It was in that period that the INP launched the fourth bid,

in 2009, that led to the discoveries of the Rovuma gas. The fifth bid was launched in 2014, still under the presidency of Guebuza. When the ensuing revision of legislation of the petroleum sector began, it was Chissano's faction that controlled the Parliament. It was in this context that the Higher Authority for the Extractive Industries was created in legislation for the extractive sector enacted in 2014, purportedly to counter Guebuza's faction from taking over the opportunities presented by the Rovuma field's gas. This led to a standstill in the process, and neither the higher authority was operationalized nor the takeover of opportunities in the gas sector was completed. The undercapitalized political *cum* economic elite was not able to invest alone in the gas exploration and development.

The most realistic opportunity for accessing benefits in the gas sector is through the ENH, which by law is granted an equity participation of 15% to 25% in all hydrocarbon projects in joint ventures with mostly international investors. This would be a potential entry point for the participation of the local political elites. Their participation in public enterprises in the gas sector had already been attempted when the Mozambique Hydrocarbons Company (CMH), a subsidiary of ENH that participates in the SASOL projects, publicly listed 10% of its stakes (Salimo et al., 2020).

However, after the debt crisis, the space the ruling elite had to control and access opportunities in the sector was reduced, since the ENH is also struggling to mobilize resources to participate in the gas projects. ENH's indebtedness accounts for 90% of the external public debt of state-owned enterprises and poses considerable fiscal risks (Mapisse, 2020). Thus, currently, the national elites' involvement in the Rovuma gas sector upstream is uncertain, and the debate has shifted to discussions about local content, which is facing a deadlock over issues such as the definition of local companies and their percentage of participation in the extractives' projects. It has also experienced some resistance from the MNCs and their internal allies.<sup>29</sup>

In this context, where intra-ruling elite competition is intense, there have so far not been the incentives to strengthen the institutions of the sector; rather, the different factions in charge over time were more concerned to ensure their positions and benefits in the sector and to create checks on each other's power and influence. Therefore, it can be argued that, hypothetically, whilst some of the institutions that were created in this process have some of the features of PoEs – such as statutory autonomy from political management, a combination of technical and political leadership, meritocracy and financial self-reliance – their performance was undermined by the political dynamics described above. Some of the capacity that was created in both INP and TA was targeted much more at creating the conditions for attracting foreign investment, and securing revenues, either as a source of rents or as a way of securing the resources to replace the dwindling

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<sup>29</sup> See Interviews with the Head of Local Content of the National Business Association (CTA) [https://macua.blogs.com/moambique\\_para\\_todos/2019/02/h%C3%A1-um-l%C3%B3bi-contra-a-lei-do-conte%C3%BAdo-local-em-mo%C3%A7ambique.html](https://macua.blogs.com/moambique_para_todos/2019/02/h%C3%A1-um-l%C3%B3bi-contra-a-lei-do-conte%C3%BAdo-local-em-mo%C3%A7ambique.html), and <https://www.rfi.fr/pt/mocambique/20190823-lei-de-conteudo-local-tem-de-ser-atractiva-para-o-investimento>; and <https://www.africaintelligence.fr/petrole-et-gaz-strategies-etat/2020/07/16/contenu-local--total-eni-et-exxonmobil-font-de-la-resistance,109243877-ar1>.

development aid resources. This can explain delays in the creation of capacity and the mixed performance of these two entities. In the case of the TA, political interference in the collection of CGT shows that autonomy can be limited or conditional, depending on the level of rents at stake. The opaqueness and lack of a strategic vision in the use of gas revenues means that they are channelled through the ordinary mechanisms that the ruling elite and its factions use to access rents, like the state budget.

## 5. CONCLUSION

The objective of this paper was twofold: to discuss the performance of the new institutional arrangements (NIA) in the gas sector, and to analyze the conditions under which institutional reforms have led to the emergence and persistence of PoEs in Mozambique.

Based on the elements presented in the previous sections, there are three aspects that explain the performance of institutional reforms and the emergence and persistence of PoEs in the Mozambican gas sector.

The first concerns the systemic vulnerabilities stemming from intra-ruling elite competition (vertical dimension) and the increasing competition of external forces outside the ruling elite (horizontal dimension). Factionalism is increasing within the ruling elite, and the current ruling faction is, said to be in its last mandate. This is supposed to end in 2024, one year after the FLNG production is presently scheduled to commence, when another faction, probably from the centre region, will take over. Under the fiscal regime, the country will not be receiving a considerable share of these resources at this stage, not, indeed, for the first ten years. Nonetheless, there is still room for the ruling faction to secure some benefits for its members and allies to ensure that its power continues beyond the term of the current leadership. This creates the conditions for potentially even more intra-ruling-elite competition and provides an even greater incentive for clientelist politics. This may also lead to the political neglect of those organizations that were originally built to be PoEs, which are creating their capacities as a result of a mixture of external actors, international pressure and internal bureaucratic dynamics. At the same time, systemic vulnerability along the horizontal dimension of the political settlement is increasing due to harsher electoral challenges, the risks of social unrest and even the increasing opposition to the state through armed insurgency and the regime's overall legitimacy crisis. As the gas sector is the most promising source of revenues that can be mobilized to thwart these systemic vulnerabilities, it would be reasonable to expect the ruling elites to promote the emergence of PoEs and to consolidate those that already exist but that have been neglected so far, due to the predominance of factional interests.

The second aspect, revisiting Hickey's proposition, is related to regime survival, and has two points. Firstly, the competitive clientelist political settlement in conditions of systemic vulnerability have contributed to the emergence of institutions intended to play a role as arbiter and provider of checks to the power of the different actors and factions in extractives generally

and the petroleum sector in particular. However, the existence of checks on the power of competing factions can lead either to a standstill or to the neglect of the creation of capacity. In this regard, PoEs have emerged and strengthened some of their capacities in part as a result of the elite's interests, and in part as a result of internal bureaucratic dynamics, in the sense of the existence of a culture of performance. Secondly, competitive clientelism, even in conditions of systemic vulnerability, is contributing to neglect in creating the conditions for the persistence of PoEs in the absence of external pressure. Even under these conditions, organizations with the organizational strength (i.e. mandate and capacities) to be PoEs, like INP and TA, were not entirely consolidated as such, but rather presented differences in performance in the areas of their mandates in order to accommodate the different interests.

In the cases, where creating PoEs strengthened internal actors' positions and ensured the distribution of benefits, PoEs emerged. This is the case with the TA, where thwarting donor influence was important in strengthening revenue collection because it was compatible with the clientelist interests of the ruling elites. In the case of gas, where the emergence and consolidation of PoEs could undermine factional interests, the emergence and consolidation of effective organizations would be possible as a result of intra-ruling-elite competition and the incentives for creating checks and balances in respect of each faction's power. It was in this context that governance reforms in the extractives sector were supported by Chissano's faction, which was in conflict with the ruling Guebuza's faction. This made possible the creation of the HAEI, which had the potential to improve accountability in the sector. However, its establishment was delayed because it was not in the ruling faction's best interest, since the latter has preferred to control the negotiations and the flow of resources directly, as the persistent examples of the president's direct involvement in the negotiations over capital gains taxes show.

The third aspect is gas materiality and its importance for revenues and access to rents, which can potentially create different incentives to create and sustain PoEs. Given the increasing pressures of MNCs and importance of the gas sector to the ruling elite, the question that remains unanswered is what capacities are needed to address the competing interests from the point of view of the regime's survival and how this will influence the capacity of the existing institutions, the creation of new ones or the potential existence and persistence of the PoEs. The decision to sustain PoEs in the gas sector, aligned with the broader public good, will depend on the ruling elite's perception of the need to secure revenues for regime survival in a context of a decline in other sources of rents, such as development aid, and increasing intra-ruling-elite competition and the vulnerability of the regime.

The contribution of this study to the understanding of the performance of the NIA reform is that, in situations of competitive clientelism, the ideas embodied by these reforms will be used selectively depending on their relevance to the competing factions and to overall systemic stability. In a context of the short-term horizons of the ruling factions, stemming from high levels of competition within the ruling coalition, those reforms that directly affect the availability of rents that the ruling elite factions can use will be favored more.

With respect to how PoEs emerge and persist as effective organizations, this study suggests that, in the context of competitive clientelism, even when there is systemic vulnerability, competing factions can stall the progress or transformation of organizations into PoEs. In the case of the existence of powerful factions contesting power, the short-term horizons of the ruling faction and their lesser capacity to implement policies can limit the emerging and persistence of PoEs. As the case of Mozambique suggests, organizations designed as PoEs (like the INP and TA) can have selective performance in those areas that are not the object of disputes within ruling-elite factions, and which do not change the balance of power dramatically. This type of mitigated form of PoEs, with conditional and variable performance, can also help address issues of regime survival in the short term.

Thus, the success of best practice reforms in the oil sector, like the NIA, and the emergence and persistence of PoEs, even in the context of external dependence and systemic vulnerability as in Mozambique, can be contingent on the interest and level of competition within the ruling elites.

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