

LAW N° 96-018

Establishing Petroleum Code

UNOFFICIAL TRANSLATION FROM THE FRENCH ORIGINAL

The National Assembly has adopted,

The President of the Republic of Madagascar, considering the decision n° 14-HCC/D.3 on 4 September 1996,

promulgates the Law the content of which is developed as follows:

HEADING 1

GENERAL PROVISIONS

Section 1

Application field

Art.1 - On the territory of the Republic of Madagascar, prospecting, research, exploration, exploitation activities, transformation and transportation of liquid, solid or gas hydrocarbons, as well as the fiscal and custom systems for these activities shall be governed by the provisions of the present Code.

Art.2 - A technical organism, expert and structured in the field of hydrocarbon shall be designated by decree to represent the State.

Art.3 - This Organism shall manage the national mining domain of hydrocarbons. For this purpose, it entrusts any operation of prospecting, research, exploration, exploitation, transformation and transportation in the national mining domain of hydrocarbon to a "Société nationale" which shall be in charge of all upstream hydrocarbon activities, either to it alone or in association with other oil companies which shall be placed under its control.

The establishment procedure, the legal system and the statutes of the "Société nationale" in charge of hydrocarbon upstream activities shall be specified by Law.

Art.4 - The technical organism, when operating, shall have free access to all documents and facilities belonging to Companies involved in hydrocarbon upstream activities. For this purpose, the technical organism shall delegate its representatives.

Art.5 - All deposits from solid, liquid or gaseous hydrocarbons located in the jurisdiction falling under the sovereignty of the Malagasy State may not, in any manner whatsoever, be privately acquired unless otherwise provided in the present Code.

Section 2

Definitions

Art.6 - In accordance with the present Code:

- "upstream activities" means all operations of prospecting, research, exploration, exploitation, transformation and transportation of liquid, solid or gaseous produced hydrocarbons.
- "national mining domain" means areas where the activities of prospecting, research and exploration, exploitation, transformation and transportation of hydrocarbons are carried out;
- "hydrocarbons" covers solid, liquid as well as gaseous hydrocarbons, unless otherwise specified;
- "Société nationale" means a national corporation responsible for the upstream activities relating to hydrocarbons;
- "territory of the Republic of Madagascar" means the territory on both land and water, the continental shelf and the Exclusive Economic Zone, as defined by national Law or international agreements expressly ratified by the Republic of Madagascar;
- "transformation" means the processing of solid and gaseous hydrocarbons into crude oil.
- "transportation" means the transportation of hydrocarbons by pipeline from the wellhead to the delivery point;

Section 3

Nature of property

Art.7 - The hydrocarbon deposits are fixed assets.

The buildings, machines equipment and materials permanently fixed in accordance with needs required for exploitation of the deposits, storage, transportation and transformation or crude products shall be also considered as assets.

Machines, equipment and materials directly used for exploitation of deposits shall be considered as assets in respect of their final use.

Art. 8 - All shares or interests in a company or an association carrying out upstream activities shall be movable assets.

Extracted materials, supplies and any other movable items shall also be movable assets.

HEADING II

MINING TITLE

Art.9 - Any upstream activities, concerning the national mining domain shall be subject to a mining title granted by the President of the Republic on the proposal of the technical organism, after taking into account the requested mining concession situation from the Ministry of Mines.

The type and duration of communication of all information from the Ministry of Mines shall be fixed by regulation.

As soon as the mining title is delivered, the technical organism shall inform the decentralised territorial Collectivity concerned.

Any Disputes which should arise from the overlaying of mining title for hydrocarbon and mining title for mineral substances shall be arranged through amicable settlement between the two licencees.

If a disagreement persists, the arbitration of dispute shall be committed to the care of a technical commission ability which members shall be determined by regulation.

Art. 10 - The terms and conditions of granting, withdrawal and cancellation of any mining title, the particular system to each, related rights and obligations thereof, their validity duration and regulations governing their renewal shall be fixed by regulation in considering particularly the environmental requirements.

Art. 11 - The mining title shall be granted to the "Société nationale " for any upstream activity within the national mining hydrocarbon domain.

However, in the event of a joint venture contract the said title should be jointly granted to the members of the association.

HEADING III

OIL CONTRACTS

Section 1

General provisions

Art. 12 - Any upstream activities within the national mining domain must only be undertaken by virtue of an oil contract with the "Société nationale".

Art.13 - Any type of contract frequently used in the international oil industry may be adopted in order to fix the rights and obligations related to upstream activities within the national mining domain, in particular that of production sharing contract and joint-venture association.

As long as necessary the "Société nationale", subject to the technical organism approval, may

enter into a production sharing contract with oil companies. In this case, the "Société nationale" may transfer to its co-contractor all or part of its rights and obligations related to a mining title of which it is the holder.

In the case of a joint-venture association, the contract shall be executed by the oil companies and the "Société nationale".

Art.14 - Any contract related to the "upstream" activities within the national mining domain shall be governed by malagasy law.

Art. 15 - Contract related to the national mining domain shall necessarily contain the following specifications, without these being limitative:

1. the structure of the partnership and the management charter;
2. the conduct of the exploration and exploitation activities;
3. the rules and procedure for decisions to carry out activities;
4. the modes to apply for the sole risk principle and its consequences on the contract;
5. the share percentage for the contracting parties in the event of a joint venture association;
6. the allocation of charges;
7. risks, perils and restrictions related to environment protection and economic and social constraints life shall be entirely supported by the companies that have entered into a contract with the "Société nationale" during the exploration phase through insurance;
8. the terms of reimbursement or recovery costs and expenses incurred by companies that have concluded an agreement with the "Société nationale" within oil activities, in case of exploitation;
9. the terms and conditions of financing the works;
10. the principle of production sharing. The co-contractor's share as remuneration shall be calculated on the basis of the ratio of the cumulative income and cumulative oil costs;
11. the valorization of produced hydrocarbons;
12. the audit right and account methods for settlement, if the contract is dissolved;
13. the methods for calling up capital for investments;
14. the methods for discharging bank guarantees;
15. the safeguard and rational development of deposits;
16. the optimum recovery of the potential reserves in hydrocarbons;
17. the additional exploitation of reserves which have been opened up, in particular, by the use of artificial recovery processes.

The contract shall also include any other points agreed between the parties concerning matters out of law or regulation.

Section 2

Contractors

Art.16 - No company may enter into an agreement with the "Société nationale" unless it proves that it has the technical and financial ability required to fulfil its undertakings.

Approval of the contract shall be promulgated by decree signed by the President of the Republic of Madagascar.

Art.17 - The activities of research, prospecting, exploration and exploitation of hydrocarbons may bear on all or part of a mining title.

Art.18 - The "Société nationale" may entrust to a company having concluded a contract relating to a mining title, its role of operator, prior to an authorization from the technical organism. This authorization shall not be refused without valid reason.

The company acting as operator shall resort in the first instance to malagasy resources and personnel, in the manner prescribed by regulation.

HEADING IV

RIGHTS AND OBLIGATIONS OF THE CONTRACTORS

Art.19 - In the case of Commercial Discovery of solid, liquid or gas hydrocarbons, each party of the contract shall take away, from the field or at the export point or at any other point agreed between the parties, the share of production to which it is entitled pursuant to the contract.

Art.20 - Any associated or unassociated gas may be used freely for oil operation needs, either to produce energy required for these operations, or to perform gas lift process, to maintain pressure and to operate secondary recovery.

Art.21 - With respect to an oil contract, the discovery of an unassociated field of natural gas might lead to commercial exploitation, this shall be submitted to technical and economic appraisal in view of its feasibility.

Depending on the results, and prior to engaging into development and exploitation activities, the "Société nationale" and the other contracting Party or parties shall study and fix the related conditions. Such conditions shall be established on the basis of the principles of the original contract as far as the liquid hydrocarbons, market evaluation and mutual interests of the parties , in particular those principles concerning the rights and obligations of the parties, the terms and conditions and

periods established for development and exploitation as well as the economic framework.

If the parties cannot reach an agreement over these conditions, they shall resort to the provisions of the contract related to the resolution of disputes.

The conditions then defined as agreed by parties shall be defined in a contract amendment.

Art.22 - Any discovery of mineral substances other than hydrocarbons shall be immediately reported to the technical organism, which must notify the Ministry of Mines. A detailed description of such discovery must appear in the periodical works progress reports.

Such said substances shall not come within the ambit of any oil contract.

Art.23 - Each signatory of an oil contract that has not agreed to finance supplementary work decided upon by its partners must comply to the terms and conditions expressed in the contract under the "sole risk" principle.

Art.24 - In any oil contract, the contracting party or parties shall:

1. contribute to the national effort to train the malagasy Employees in the hydrocarbon field, according to a program and a budget to be defined in the contract;
2. comply with labour and social security laws in effect;
3. contribute to the supply of hydrocarbons for the domestic demand from their share of production according to the principles expressed below:
 - a. the volume of supply referred to above shall consist of the total volume of the local market requirements in hydrocarbons minus the volume of hydrocarbons corresponding to the share of the "Société nationale" for whatever reason;
 - b. the volume of supply thus determined shall be divided between all the contracting companies other than the "Société nationale", operating within the national mining domain in proportion to the volume of hydrocarbons which they are entitled to;
 - c. any obligation of hydrocarbon supply above mentioned paragraph b) shall relate to a maximum of 50% of the volume of hydrocarbons which each of the contracting companies is entitled to;

Failure to comply with the obligations stipulated in this article shall be punishable by the penalties prescribed in article 75 of the present Code.

Art.25 - The contracting party must notify the technical organism within thirty (30) days of any change in the management of the company or the parent company. Such change shall not affect the obligations provided under the contract.

Otherwise, the new owner may not enjoy the assignor's rights.

Art.26 - A contracting party other than the "Société nationale", may, subject to the prior agreement from the technical organism, to transfer part or all of its rights and obligations resulting from a contract.

Nevertheless, a transfer by the contracting party above mentioned to an affiliated company shall be executed without authorization from the technical organism, subject to notification to the latter within a period of thirty (30) days from the transfer date.

The contracting party above referred wishing to transfer all or part of its profits-sharing interest must appeal in priority to the "Société nationale" if any, to its other associates and to third parties, the said contracting party shall be allowed to effect the transfer under the best terms.

Art.27 - On a duly established case of failure by one of the contracting parties to comply with the prescribed obligations under the present Code, its regulations pursuant thereto and the provisions of the contract, the technical organism may, upon termination of a specific period granted for compliance, either claim an indemnity against the amount of the bank guarantee referred to in article 39 hereinafter, or apply the penalties, depending on the circumstances, indicated at Heading X of the present Code or apply the clauses of the decree related to the mining title.

In any case, the technical organism shall be allowed to take all conservatory measures required.

Art.28 - The contracting companies, holders of a mining title, shall take the whole duration of their activities and on the expiry of the mining title, all measures for protection and preservation of the environment in conformity with the legislation and laws in force.

HEADING V

TRANSPORTATION OF HYDROCARBONS BY PIPELINE

Art.29 - For greater control and safety guarantee, the "Société nationale" shall determine the technical terms and conditions to manage hydrocarbon transportation from the deposits extracting point, the storage, processing, transformation, loading or delivery points.

However, it can transfer all or part of its rights for this to any other contractor within the framework of an oil contract.

Otherwise the "Société nationale" may into an association, through an oil contract, with any other company owing sufficient technical and financial capacity to perform transportation of hydrocarbons within the national territory.

Art.30 - If the construction of hydrocarbon transportation by pipeline is required in the framework of a contract of hydrocarbon exploitation, within the territory of the Republic of Madagascar, the Ministry in charge of Domains shall deliver the building authorization of such construction on request by the concerned parties at their costs and fixe by regulations the provisions and required modalities.

In the case of occupation of private fields, the "Société nationale" shall compensate the owner.

Art.31 - Should the holder of an authorization to transport hydrocarbons or its delegates contravene the provisions of this Code, the texts enacted thereunder, the laws and regulations relating

to public safety and national security, or the clauses contained in any contract executed under this Code, the technical organism shall issue notice to comply with such provisions or terms within two expended months, unless imperative public safety or national security requires immediate execution.

If the concerned party fails to comply with these instructions, it may be held liable under article 85 of the present Code.

HEADING VI

OFFSHORE HYDROCARBON RESOURCES

Art.32 - Without prejudice to the dispositions of the present Code and texts regulating hydrocarbons, the malagasy law and regulations shall apply to upstream activities within the malagasy offshore zones, in particular with regard to :

- facilities and devices as defined under article 33 hereafter;
- control of operations within security zones;
- maintenance of public order.

Art.33 - The facilities and devices used for upstream activities in offshore zone shall include without the list being limitative:

- platforms and annexes;
- exploration or exploitation devices and annexes;
- sea building that directly contribute to exploration or exploitation operations;
- transport facilities by pipeline;
- pipeline networks.

Art.34 - These facilities and devices mentioned in the above article shall be subject to international Conventions, texts and regulations relating to sea navigation and safeguard of environment, particularly to the 1990 International Convention for Prevention, fight and cooperation concerning hydrocarbons pollution.

Art.35 - A security zone shall be established around any facilities and devices to ensure their protection.

The restrictions required including aircraft flights over facilities shall be established by regulation.

Art.36 - The owner or operator of facilities or devices reposing on the sea bottom, or the person on board in charge of exploration, prospecting, research and exploitation activities, shall each be responsible, for their own part, for the facility and operation and constant maintenance in good order of its marine signal system.

In all cases, signal system costs shall be met by the owner or operator, as well as the costs of making off the security zones established around the facilities and devices.

If case of failure to comply with provisions defined in the first paragraph of the present article, without prejudice to any subsequent legal action, relevant authorities, after notice to comply has brought no effect, shall automatically take any necessary measures at the expense of the owner or the operator.

For purposes of ensuring that the foregoing obligations are in fact observed, the competent authorities shall have access to such facilities and devices as well as to their signalling equipment.

Art.37 - The owner or the operator thereof shall completely remove any installation and machine which have ceased to be used.

If necessary, they can be ordered to respect this obligation.

In the event of refusal or neglect, and the time limit allowed has passed, removal shall automatically be effected at their expense and risk.

In such case, the proprietor or the operator may be divested of their rights over the facilities and devices in question.

Art.38 - The owner or operator that has refused or neglected to comply with the provisions of the first paragraph of the previous article, within the notified period, shall be held liable at article 85 of the present Code.

HEADING VII

FINANCIAL DISPOSITIONS

Art.39 - The contracting companies of foreign origin shall, during the exploration phase, deposit a letter of guarantee from a first class bank, accepted by the "Banque Centrale de la République de Madagascar" covering the amount of the commitments to be undertaken in order to guarantee the respect of works commitments to which they are subject contractually.

Art.40 - During the exploration phase, the contracting companies of foreign origin shall deposit in a bank in Madagascar from foreign capital, the funds necessary to cover all their local needs.

Art.41 - The dispositions of the Contract on the subject shall be given full details on principles referred to articles 39 and 40 hereof.

Art.42 - Once of the exploitation of any hydrocarbon deposit has been declared commercial interest within the framework of a contract, the foreign contracting companies may hold, outside Madagascar, the sales revenue, resulting from their share of hydrocarbons.

However, the said companies shall deposit in a bank in Madagascar, from their capital outside Madagascar, the funds necessary to cover their whole local needs.

Art.43 - The "Société nationale" shall repatriate to the banks of Madagascar the revenue resulting from exportation of its share of hydrocarbons.

Art.44 - The foreign contracting parties shall not have the right to call on credit from Madagascar banks, nor to ask for loans to Companies or businesses operating in Madagascar, to

cover their local needs referred to in articles 40 and 42 hereof.

Art.45 - Any contracting company shall pay, as equity interest an amount equal to 1/2500 of global amount of minimum commitments of exploration works to be divided between all collective units concerned by the exploration mining title, valid for all exploration duration, payable at the beginning of the exploration works.

The terms and conditions relating to the collection this amount shall be fixed by law.

HEADING VIII

TAXATION AND CUSTOM PROVISIONS

Art.46 - Any company taking part in upstream activities within the national mining domain, in the framework of the present Code, shall be subject only to the taxation and customs provisions defined in this Heading.

Section 1

Taxation system

Art.47 - The companies referred to in article 46 above are subject, on account of their activities and the results thereof to:

- payment of royalty for each barrel produced
- payment of a direct tax on hydrocarbons
- tax system on common rights concerning the other taxes, levies and charges stipulated in "Code Général des Impôts", except stipulated in article 48 hereunder.

The royalty attribution to all entities having rights shall be defined by the Finance Laws.

Art.48 - The payment of a direct tax on hydrocarbons (IDH) shall be representative and discharged from tax on company profits (IBS) and from tax on revenue from capital (IRCM) and, contractual taxes on transfers (TST).

Art.49 - The royalty is based on the tax reference prices which shall be equal to the international market price at the export point minus the costs of transportation between the said export point and the delivery point.

Art.50 - The direct tax on hydrocarbons is calculated on the basis of the net results which the companies stipulated in article 46 above receive from the whole of their activities of exploration and exploitation, from hydrocarbon deposits within the initial mining exploration area, as well as the transportation of products on the territory of the Republic of Madagascar.

For this purpose, accounting procedure referred to in the above paragraph shall be carried out per calendar year in order to establish a result account and a Balance Sheet showing the results of such said operations as well as the assets and liabilities involved to obtain those results.

Art.51 - Any volumes of hydrocarbons directly used for production purposes or fed back into the field or lost during handling or unusable, as well as connected products shall be excluded from liability for payment of the royalty or the direct tax on hydrocarbons.

Art.52 - The rules governing the basis used for assessment and collection of the royalty and the direct tax due on hydrocarbons shall be established by the finance laws.

Art.53 - Individuals of foreign nationality working for and on behalf the contracting companies shall be subject to the common taxation law as regards to salary, fees, wages and other remuneration earned by them directly or indirectly, as a result of their activities within the territory of the Republic of Madagascar.

Section 2

Customs provisions

Art.54 - Materials, equipments and specific products used directly in performing hydrocarbon prospecting, research and exploration activities, shall be temporarily duty free for a period not exceeding that of the validity of the mining title permitting such operations.

Art.55 - Materials and equipment intended to be used for in the first establishment of hydrocarbons exploitation, processing and transportation units shall be duty free.

The Minister of Finance, acting on the recommendation of organisms and concerned departments, shall fix the modes by which the provisions of this article are to be implemented.

HEADING IX

APPLICABLE LAW AND DISPUTES

Art.56 - Activities relating to hydrocarbons within the national mining domain shall be governed by malagasy law

Malagasy law and the international principles of law generally agreed on the subject of hydrocarbons are also applicable to contracts entered into by the "Société nationale" and the foreign companies operating in the territory of the Republic of Madagascar.

Art.57 - Disputes arising from application of the present Code as well as infractions of its provisions shall be under the jurisdiction of malagasy authorities.

However, disputes arising when executing of contractual stipulations may be subject to a clause granting competence to an international arbitration body which will be designated in accordance with the terms and conditions expressed in the contracts.

Art.58 - Cases brought before national jurisdictions under the first paragraph of article 57 above are recorded and judged at priority.

Any appeal raised against a decision rendered by a court of first and last resort is considered urgent according to articles 38 and 63 of the law n°61-013 of 19th July 1961 pertaining to the creation of the Supreme Court. This appeal is directly referred to the Supreme Court sitting in bank, which, in the case of Cassation normally involving an adjournment, summons and rules on the merits in single judgement.

Art.59 - Any difference subject to agreement of the parties on arbitration must be preceded by

a conciliation procedure before a commission set up for the purpose.

Art.60 - The preliminary conciliation procedure is initiated by the most diligent party who shall notify the other party and simultaneously inform the technical organism, by means of registered letter with acknowledgement of receipt.

Art.61 - The preliminary application for conciliation consists of the litigation, the memorandum stating the grounds of the application and specifying the claims of the plaintiff and supporting documents.

Art.62 - Within fifteen (15) days of the date of receipt the registered letter, each party shall designate its conciliator and notify the nomination to the other party by registered letter with acknowledgement of receipt.

Within a period of fifteen (15) days, from the appointment of the second conciliator, both conciliators by mutual agreement, shall appoint a third one to chair the committee.

Art.63 - If no agreement can be reached between the conciliators of the two parties or if the defendant has not named a conciliator, the most diligent party shall have a period of thirty (30) days from the date of registering the disagreement, or at the expiry of the fifteen days period referred to article 62 above, to ask the presiding judge of the oldest Chambers in the Supreme Court, to nominate the third conciliator or a conciliator for the party which has failed to nominate one.

If the plaintiff fails to inform the other party of the appointment of its conciliator within the period and in accordance with the terms fixed above, he is considered to have waived the conciliation.

Art.64 - The conciliation procedure shall be held in Madagascar unless the parties decide otherwise.

Art.65 - The president of the committee can order any measures for investigation, require the parties to produce any documents, hear any witnesses, appoint any experts, decide on their assignment and fix a period for the filing of their report.

Unless agreed upon by the parties or by an unanimous decision by the committee, the conciliation recommendation shall be stated within a period of sixteen (60) days from the date of nominating the president conciliators.

Art.66 - The recommendation of committee shall be stated on the majority vote from the three conciliators.

The recommendation must be well-founded.

The conciliator who does not approve the recommendation may notify of its opinion to the parties.

Art.67 - Conciliation shall be considered to have failed if, thirty (30) days following the notification of the recommendation to the parties, each party shall not have notified the other party of its acceptance of the recommendation.

Conciliation shall also be considered to have failed if it was not constituted the committee within the period prescribed above.

Art.68 - Fees and expenses for the conciliation fixed by the president shall be compensated and assumed equally by the parties.

Art.69 - The most diligent party shall have a period of thirty (30) days from the conciliation date has failed to initiate the arbitration procedure.

Art.70 - Disputes which have not been resolved by the conciliation procedure described above, and all disputes concerning export sale contracts of hydrocarbons shall be subject, in the event of a dispute, to the arbitration of an ad hoc committee, comprised of three arbitrators, whose decision shall be rendered base on the procedure of the International Chamber of Commerce of Paris.

Each party shall appoint one arbitrator. The third arbitrator, the president, shall be nominated jointly by the two arbitrators.

If no agreement can be reached, the third arbitrator shall be appointed by the Executive President of the Supreme Court of the Republic of Madagascar from the list of arbitrators at the International Center for Settlement of Investment Disputes (ICSID).

The nationality may not be the same as that of the parties.

Art.71 - Malagasy law is the only law applicable to arbitration on the merits of the litigation.

Should malagasy texts be silent, the arbitration court will refer to general principle of law, internationally accepted practices and case-law applicable to the matter.

The language for the arbitration shall be the french language.

The place of arbitration shall be fixed in contract in a country other than the country of both parties.

Art.72 - The decision after arbitration shall be binding for the both parties. It shall be subject to the exequatur* of the courts of the place of arbitration and is not subject to any remedy.

Art.73 - The arbitration fees shall be supported by the losing party.

HEADING X

PROVISIONS RELATING TO INFRACTIONS AND PENALTIES

Art.74 - Infractions to the provisions of the present Code and texts taken for its application shall

be recorded in minutes written up either by sworn agents attached to the technical organism, or by officers belonging to the criminal investigation department, in accordance with the provision in the Code for penal procedure.

Are also the ability to record the infractions above mentioned:

- sworn agents of the Ministry of Mines
- Officers or subordinate officers in charge of state building or seacraft
- Commanders of state aircraft
- Officers of customs and indirect tax department
- Commanders of maritime zones and sub-zones

The statements recording these infractions shall be sent to the Attorney of the Republic for the purposes of prosecution and to the technical organism for information purposes.

The judgment of any infraction of the present Code may be rendered by the special economic chamber at the level courts of first instance and their sections, if not, by similiary competent chamber of jurisdiction.

Art.75 - Anyone engaged in the territory of the Repulbic of Madagascar, in activity of prospecting reseach, exploration, transformation or transportation of hydrocarbons, in violation of the provisions of the present Code and regulations thereunder for its application, or the conditions fixed by the mining title are not respected shall be punishable by imprisonment from 6 months to 5 years, and by a fine of 500,000,000 to 5,000,000,000 fmg, without prejudice to the confiscation of products and materials having served to commit the infraction without considering if they are belonging or not to the convicts.

Shall also be punished pursuant to the penalties above-listed, any infraction to the legislative or regular provisions concerning the exercise of administrative supervision, conservation of the deposits, security and statement of drilling and geophysical surveys, when such infraction shall effect public security or the security of people assigned in the of research and exploitation works.

Art.76 - Infractions of the provisions stipulated in article 35, paragraph 2 related of flight restriction over any security zone shall be punished pursuant to the penalties set forth on article 75 above.

Art.77 - When the activities of prospecting, research, exploration, exploitation, transformation or transportation of hydrocarbons are situated within malagasy offshore zones, no material likely to be confused with a navigation signal, or likely to interfere with the navigator's view of such signal can be implemented.

Any infraction of this present article shall be punishable by imprisonment from 2 months to 2 years and fine of 300 000 000 to 3 000 000 000 FMG or one of such penalties.

Art.78 - The person responsible for the conduct of exploration and exploitation operations on board of the facilities and devices referred to under Heading VI of the present Code shall, under pain of imprisonment from 2 mounths to 2 years and fine of 100 000 000 to 1,000 000 000 FMG, ensure that the maritime authority shows, on the operating permit for this purpose, the name and qualifications of each person whose presence on board shall be required under laws and regulations respecting the safety of human life at sea.

Art.79 - The owner or operator of the facilities or devices referred to in Heading VI of the present Code or the person on board these facilities and devices, and who is in charge of the progress works of exploration or exploitation shall be punishable by penalties indicated at article 78

above when an infraction has been committed internationally.

Any owner or operator of these facilities and devices who has not given to the person on board these facilities and devices, of the conduct of exploration and exploitation works, express orders to comply with the provisions the infraction of which is dealt with in the first paragraph of the present article, may be charged of having made infraction by omission and negligence.

Art.80 - Without prejudice to the application of laws and regulations concerning the crackdown on pollution of the sea by hydrocarbons at the facilities and devices indicated at Heading VI, any individual who, in the course of activities of prospecting, research, exploration, exploitation, transformation or transportation of hydrocarbons within malagasy maritime zones, has tipped out or allowed to escape into the sea from one of the facilities or devices indicated at Heading VI of the first paragraph of article 3 of the International Agreement for the prevention of marine pollution by hydrocarbons, signed in London on 12th May 1954, as defined in the first article of the first paragraph of the said agreement, shall be liable to the penalties prescribed under article 75 above.

Art.81 - Any infraction of the provisions made in article 36 shall be punishable with the penalties prescribed by the law and regulations governing maritime navigation.

Art.82 - International Conventions concerning marine pollution to which Madagascar is a signatory shall apply to the infractions dealt with this present Code.

Art.83 - When a statement establishing an infraction indicated at article 31 has been lodged, the suspension of hydrocarbons prospecting, research, exploration, exploitation, transformation or transportation operations may be ordered by the judge sitting in chambers, until the final decision by the public Ministry acting on request of technical organism.

The judge sitting in chambers shall rule after having heard the delinquent party duly summoned to appear within 48 hours.

Such order shall be forthwith enforceable notwithstanding any remedy.

On the establishment of the statement referred to in the first paragraph of the present article, the technical organism, in its role as supervision and control administrative, may also, if the judge in chambers has not yet handed down his decision, issue an order suspending operations. Copy of this decision shall be handed over to the Public Prosecution.

The supervision and control administrative authority shall take all necessary measures of correction to ensure the immediate enforcement of its decision.

The judge sitting in chambers may, at any time, after return to a normal situation, duly checked by the technical organism, automatically or on request either of the supervision and control administrative authority, or of the offender, make a decision on the withdrawal or the maintaining of the measures taken to ensure the suspension of operations.

The decision issued by the supervision and control administrative authority shall cease to have

effect as soon as the judge in chambers has stated.

The supervision and control administrative authority shall be informed of the legal decision and, where necessary, shall ensure its execution.

When no action has been taken, the Attorney of the Republic shall so inform the supervision and control administrative authority which, either automatically or on the request of the offender, shall cease the measures it had taken.

Art.84 - The continuation of prospecting, research, exploration, exploitation, transformation or transportation operations in the face of a judicial or administrative decision ordering the suspension shall be punishable by a term of imprisonment of between six (6) months to five (5) years and by a fine of 500 000 000 to 5 000 000 000 FMG or by only one of such penalties.

Art.85 - In the event of a violation of this Code or the regulations issued pursuant thereto, the competent court, where appropriate, may order either that any facilities and devices concerned be removed from their location or, that they must be made to conform with the requirements set out in the said Code or its regulations.

Penalties specified in the preceding article shall also apply in cases of failure to carry out, within the prescribed period, any order of the type referred to in the foregoing paragraph to remove structures or modify them to meet requirements.

If, at the expiry of the period fixed by the judicial order, the removal of the facilities or devices or the modifying of them to meet requirements, whichever the case may be, has not been effected or is not completed, the technical organism may of right carry out any works necessary for execution of the judicial order at the risk and expense of the delinquent party.

HEADING XI

TRANSACTIONS

Art.86 - All infractions of the dispositions of the present Code and texts taken for its application may be subject to transaction before or after judgment. The transaction before judgment shall suspend legal proceedings of all infractions. After final judgment, recourse should be made only on financial condemnation.

Written statement recording a noticed minor infraction and to undertake the transaction for final status, either before or after judgment, shall belong to the technical organism. It can however delegate its power conforming to regulation.

The delinquent who has applied for a transaction should send a copy of his application to the head of the Attorney of the Republic. The latter shall undertake only legal proceedings after having been informed by the technical organism about the refusal to transact or the failure of its transaction.

Art.87 - No transaction can be accepted without a written application for transaction from the delinquent, stamped at 10,000 Fmg and addressed to the technical organism. The latter shall consult the Ministry of Finances and the Ministry of Mines in order to issue a decision from competent authority.

The offender shall have a delay which shall be fixed by the law in application of the present Code, to transmit its application. After that delay, the transaction procedure shall be bypassed and the case shall be transferred to the courts of competent jurisdiction.

Art.88 - The request of transaction shall be suspensive of instruction of the case at the stage of the competent courts. If the transaction amount is not discharged within the period fixed by the law in application of the present Code, the transaction shall be bypassed and the proceedings shall be handed over to the courts of competent jurisdiction.

Art.89 - The terms and conditions the amount of transaction and its updating shall be specified in the texts enacted under the present Code.

Art.90 - The transaction profit shall not be granted in the following cases:

- recurrence of a violation
- refusal to visit, rebellion acts, acts of violence, insults, offenses and threats against the agents responsible for the recording of infractions.

Art.91 - The total result of agreed transactions, auction-sales, or final sentences delivered by Courts, will be, after deducting and eventual taxes of any kind, allocated, according to the terms specified by regulation.

HEADING XII

MISCELLANEOUS PROVISIONS

Art.92 - Notwithstanding the legislative provisions in effect, those holding mining titles for exploration and exploitation of hydrocarbons may occupy properties belonging to private persons or public property or property belonging to Decentralised local Authorities, subject to an agreement between the permit holder and the owner and/or the occupier.

Art.93 - Properties subject to the public property shall only be subject to management transfer.

At the request from the "Société nationale", or should this happen, from the joint venture association, holder of a valid mining title, and following permission from the technical organism, the State or the Decentralised Local Authority concerned shall delegate the management by decree from the Ministry of the Domains.

Property, the management of which has been so transferred shall retain status of independence from the public domain and remain non-distrainable, untransferable and imprescriptible. They shall not be registered in the estate of the beneficiary national company nor registered on the balance sheet.

Art.94 - The conditions of delimitation, occupancy and management transfer of these properties shall be fixed by regulation.

Art.95 - The terms and conditions relating to the determination and control of quantities produced within national mining domain and the terms and conditions of marketing the share of local domestic needs shall be fixed by regulation procedure.

HEADING XIII

PROVISIONAL DISPOSITIONS

Art.96 - Until the effectiveness of the setting up of the "Société nationale", the technical

organism shall be entitled to act on behalf of the "Société nationale".

HEADING XIV

FINAL DISPOSITIONS

Art. 97 Any dispositions contrary to the present Code in particular the amended law n° 80 001 of 6th June 1980 establishing the petroleum Code in Madagascar is and shall remain revoked.

Art. 98 Texts for application of the present Code shall be fixed by regulation.

Art.99 The present Code shall be published in the Official Gazette of the Republic.

It will be enforceable as a State law.

Antananarivo, September 4th, 1996

Albert ZAFY