

1 PROCLAMATION No. 108/2000

A REVISED PROCLAMATION TO GOVERN PETROLEUM OPERATIONS

WHEREAS, the exploitation of Petroleum resources of the country will greatly contribute to the economic growth and welfare of the Eritrean nation;

WHEREAS, Petroleum Operations should be carried out in accordance with modern technology and sound principles of resource conservation and should provide a better knowledge of the Petroleum potential of the country;

WHEREAS, it is necessary to develop domestic expertise and Petroleum infrastructure by fostering the acquisition of Petroleum technology;

WHEREAS, to achieve these ends, it is essential to promulgate a special law on Petroleum Operations;

NOW, THEREFORE, the Government of Eritrea proclaims as follows:

1. Short Title

This Proclamation may be cited as the " Revised Petroleum Operations Proclamation No. 108/2000".

2. Definitions

For the purposes of this Proclamation:

- 1) "Contractor" means any Person with whom the Government establishes a Petroleum Agreement;
- 2) "Crude oil" means all hydrocarbons regardless of specific gravity which are produced in liquid state at atmospheric pressure at the well head or gas/ oil separator including asphalt and ozokerites or which are extracted from Natural Gas, including distillate and condensate;
- 3) "Government" means the Government of Eritrea and its administrative divisions, and all the officials in any capacity who conduct the business of or exercise authority within the Territory of Eritrea;
- 4) "Minister" or "Ministry" means the Minister of Energy and Mines and the Ministry of Energy and Mines respectively, or any successors in jurisdiction thereto;
- 5) "Natural Gas" shall mean all hydrocarbons which at atmospheric conditions of temperature and pressure are in a gaseous phase, including wet mineral gas, dry mineral gas, wet gas and residue gas remaining after the extraction, processing or separation of liquid hydrocarbons from wet gas, as well as non-hydrocarbon gas or gases produced in association with liquid or gaseous hydrocarbons;
- 6) "Person" means any natural or juridical person;
- 7) "Petroleum" shall mean all natural, organic substances composed of carbon and hydrogen called Petroleum, including Crude Oil and Natural Gas, and all other mineral substances, products, by-products and derivatives that are found in conjunction with the same;
- 8) "Petroleum Deposit " means an accumulation of Petroleum in a geological unit limited by the rock characteristics by structural or stratigraphic boundaries, contact surface between Petroleum and water in the formation, or a combination of these, so that all the Petroleum comprised is in pressure communication through liquid or gas;
- 9) "Petroleum Agreement" means a contract or other written arrangement between the Government and Contractor to conduct Petroleum Operations;
- 10) "Petroleum Operations" means Exploration Operations and Development and Production Operations, including without limitation, all operations related to , extraction, production, field separation, treatment (excluding refining), transportation, storage, sale or disposition of Petroleum to the delivery point, environmental protection, plugging wells and abandoning production facilities. The operations shall not include transportation beyond the Delivery Point, nor any process of refining or any handling of Petroleum which has been treated in a refinery or liquefaction plant or Natural Gas treatment plant;
- 11) "State" means the state of Eritrea;

- 12) "Subcontractor" means any Person with whom a Contractor establishes a contractual relationship for the provision of services required for performance under a Petroleum Agreement;
- 13) "Territory of Eritrea" means its land territory, internal waters, islands, archipelagic waters, territorial sea and its beds and subsoils, exclusive economic zone and continental shelf;

3. Scope

- 1) This proclamation shall govern Petroleum Operations carried out by a Contractor within the Territory of Eritrea.
- 2) Any agreement relating to Petroleum Operations entered into prior to the effective date of this Proclamation shall be governed by this Proclamation unless otherwise provided in the relevant Petroleum Agreement.
- 3) In addition to Petroleum, this Proclamation may apply to scientific research of the seabed and its subsoil and exploration for and exploitation of subsea natural resources other than Petroleum resources the implementation of which would need special agreements and arrangements.

4. Ownership of Petroleum

- 1) Ownership of Petroleum existing in its natural condition on, in and under the Territory of Eritrea is vested in the State.
- 2) 2) Ownership of Petroleum when produced shall be determined in accordance with the provisions of the applicable Petroleum Agreement.

5. Undertaking of Petroleum Operations

The Government may undertake Petroleum Operations through Contractors in accordance with a Petroleum Agreement.

6. The Minister to Represent the Government

- 1) For purposes of this Proclamation, the Minister shall represent the Government in its dealings with a Contractor and shall also be responsible for the effective implementation of this Proclamation.
- 2) The Minister may delegate in writing any of his powers under this Proclamation, except his powers to issue regulations or to sign or revoke a Petroleum Agreement.

7. Powers of the Minister

The Minister has the power to:

- 1) issue regulations necessary for the effective implementation of the provisions of this Proclamation;
- 2) ensure that a Contractor has the requisite financial resources, technical competence and professional skills necessary to fulfill his obligations under the applicable Petroleum Agreement;
- 3) prepare model Petroleum Agreements, including Production Sharing or Modern Concession agreements, which will serve as a basis for the negotiation of a Petroleum Agreement;
- 4) either by competitive bidding or, subject to the directives of the Ministerial Cabinet, by direct negotiation enter into:
 - a) an exclusive Petroleum Agreement which authorizes the Contractor to carry out Petroleum Operations in a particular area; or
 - b) a non-exclusive Petroleum Agreement which authorizes the Contractor to carry out geological and geophysical surveys in a particular area;
- 5) inspect and ensure that the activities of the Contractor are carried out in accordance with the provisions of the Petroleum Agreement; 4

- 6) in consultation with the appropriate Ministry arrange for the granting of permits to parties other than the Contractor for the exploration or production of minerals or natural resources other than Petroleum within an area subject to the Petroleum Agreement, provided that such exploration or production activities shall not unreasonably interfere with Petroleum Operations;
- 7) calculate, collect and audit:
 - a) royalties;
 - b) surface fees;
 - c) bonuses;
 - d) rentals or
 - e) any other payments;made or required to be made by Contractors pursuant to the Petroleum Agreement or any regulations issued under this Proclamation.

8. Matters to be dealt with by Directives

The Minister may determine by directives:

- 1) the method and procedure for inviting and evaluating bids for a Petroleum Agreement;
- 2) the form and content of applications to conduct Petroleum Operations;
- 3) the qualifications and experience for Persons applying to undertake Petroleum Operations; and
- 4) other similar matters.

9. Particulars in a Petroleum Agreement

Any Petroleum Agreement shall provide, inter alia, for the following particulars:

- 1) royalties, surface fees, bonuses, rentals and any other payments to the State, excluding taxes levied pursuant to the Income Tax laws of Eritrea;
- 2) safety requirements and programs and other matters related to the working conditions of employees engaged in Petroleum Operations;
- 3) minimum work obligations, minimum expenditures and periodic surrender of any area subject to a Petroleum Agreement;
- 4) rights and obligations of the Contractor;
- 5) the Minister's authority to inspect and control Petroleum Operations;
- 6) time, manner and content of reports and information to be submitted to the Minister;
- 7) procedures for assignment or transfer of rights or obligations of the Contractor under a Petroleum Agreement;
- 8) conditions for revocation or termination of Petroleum Agreements and procedures for the settlement of disputes;
- 9) the terms and conditions of State Participation in some or all phases of Petroleum Operations;
- 10) clause providing for the stabilization of the rights and obligations of the parties;
- 11) requirements relating to environmental protection;
- 12) disposal of assets;
- 13) access to property;
- 14) accounting procedures;
- 15) sanctions for failure by Contractor to fulfill obligations contained in a Petroleum Agreement;
- 16) manner of employment, rights and obligations and, in particular, the training, of Eritrean nationals; and
- 17) any other matters of relevance to the proper execution of Petroleum Operations.

10. Areas Precluded from Petroleum Operations

- 1) The Minister shall, in consultation with the appropriate state organs, determine the areas in which Petroleum Operations may not be permitted for reasons of national interest and security;

- 2) The determination made under sub-Article (1) of this Article shall be without prejudice to existing rights in such areas as established by a Petroleum agreement.

11. Duration of Petroleum Agreements

- 1) The periods under a Petroleum Agreement shall be:
 - a) up to two years for activities under non-exclusive Petroleum Agreements;
 - b) up to four years for exploration under exclusive Petroleum Agreements; and
 - c) up to twenty-five years for development and production under exclusive Petroleum Agreements.
- 2) The Minister may, where circumstances justify and on such terms and conditions as the Minister shall deem appropriate, grant or renew the initial periods set forth in sub-Article (1) of this Article for not more than:
 - a) two years for activities under non-exclusive Petroleum Agreements;
 - b) four years for exploration under exclusive Petroleum Agreements; and
 - c) ten years for development and production under exclusive Petroleum Agreements.
- 3) The Minister may grant an extension to the periods set forth in sub-Article (2) of this Article for the purpose of allowing a Contractor to complete drilling, logging, testing or plugging of any well which is actually being drilled, logged, tested or plugged at the expiry of the applicable period (or sub-period, if applicable under the relevant Petroleum Agreement) or for the completion of the appraisal program of a discovery.
- 4) In addition to the renewal and extension periods set forth above, the Minister may grant a further extension as may be necessary for purposes of evaluating a Natural Gas discovery.

12. Preferences and Training

A Contractor shall:

- 1) give preference to the employment of Eritrean nationals to the fullest extent possible; provided, such nationals have the required qualifications and experience;
- 2) give preference to domestic materials, products and services where such materials, products and services are readily available at competitive prices and are of comparable quality;
- 3) train Eritrean nationals in Petroleum Operations in accordance with the relevant Petroleum Agreement.

13. Transfer and Assignment

- 1) A Contractor may transfer, assign or otherwise dispose of all or any part of his rights, obligations and interests under a Petroleum Agreement only with the prior written consent of the Minister, which consent shall not be unreasonably withheld.
- 2) Subject to sub-Article (1) of this Article the terms and conditions of said transfer, assignment or disposal shall be governed by the provisions of the Petroleum Agreement.

14. Operating Standards

Contractors shall conduct Petroleum Operations in accordance with generally accepted international Petroleum industry standards and practices and in a manner which is compatible with the conservation of Petroleum and other resources and the protection of human life, property and the environment.

15. Disposal of Assets

The Contractor shall transfer or remove at no cost to the Government plants, appliances and installations in an area which is subject to surrender or termination pursuant to the terms of a Petroleum Agreement.

16. Access to Property

If a Contractor requires the use of property in connection with Petroleum Operations, the Government may acquire the rights or interests thereon necessary for said operations; provided that the Contractor shall pay fair compensation to the Person holding such rights or interests.

17. Protection of Historical Sites and other Minerals

A Contractor shall:

- 1) conduct Petroleum Operations in a manner designed to protect anthropological, archaeological and historical objects and sites;
- 2) notify the Minister, as soon as practicable, in the event of discovery of anthropological, archaeological or historical objects or sites or other minerals;
- 3) not remove from their locations, any anthropological, archaeological and historical objects or other minerals discovered, without the prior authorization of the Minister.
- 4) notify the Minister of the existence of any significant aquifer encountered in the course of Petroleum Operations and take all appropriate steps to enable the Government to complete the relevant well as a water well as long as it does not unreasonably interfere with Petroleum Operations.

18. Books and Records

- 1) A Contractor shall:
 - a) keep complete and accurate books of accounts on Petroleum Operations at the locations and in the manner prescribed in the relevant Petroleum Agreement;
 - b) annually submit to the Minister and other appropriate authorities financial statements, including balance sheets and profit and loss accounts, audited by a recognized, independent auditor acceptable to the Minister.
- 2) A Contractor shall keep records of his Petroleum Operations, including drilling, geophysical and geological data; and shall submit such data, reports and notices to the Minister in accordance with regulations issued by the Minister or, in the absence of such regulations, in accordance with the Petroleum Agreement.

19. Insurance and Indemnity

- 1) A Contractor shall, prior to commencing Petroleum Operations, obtain and, maintain in force workmen's compensation, property and third party liability insurance in such reasonable amounts and coverage as has been approved in writing by the Minister.
- 2) A Contractor shall indemnify, defend and save the Government harmless against all claims, losses and damage of any nature what so ever, including without limitation claims for loss of or damage to property, or death of or injury to Persons caused by, or resulting from, any operations conducted by, or on behalf of, the Contractor under the terms of the relevant Petroleum Agreement.

20. Supply of Domestic Market

- 1) The Minister may require the contractor in writing to supply Crude Oil, for domestic consumption, to the Government from the Contractor's share of production.
- 2) The price, quantity and any other relevant terms of said supply shall be specified in the Petroleum Agreement.

21. Exemption from Customs Duties and Levies

- 1) A Contractor and a Subcontractor shall be entitled to import into Eritrea any and all drilling, geological, geophysical, production, treating, processing, transportation and other machinery and equipment necessary in Petroleum Operations, including aircraft, vessels, vehicles and other transportation equipment and parts therefor (other than sedan car and fuel therefor), fuels chemicals, lubricants, films, seismic tapes, house trailers, office trailers, disassembled prefabricated structures and other materials necessary for Petroleum Operations free of import duties, taxes, levies and imposts of any kind.
- 2) Expatriate employees of a Contractor and a Subcontractor shall be entitled to import into Eritrea household goods and personal effects, including one sedan car, free of import duties, taxes, levies and imposts of any kind, in accordance with prevailing regulations.
- 3) All items imported under sub- Article (1) and (2) of this Article and taken out of Eritrea shall be exempt from export duties and other taxes levied on exports; provided, however, that if these items 9

are disposed of within Eritrea, the Contractor, Subcontractor or their expatriate employees, as the case may be, shall pay customs duties and levies in accordance with the applicable laws.

4) The Contractor shall be entitled to export Petroleum produced free of export duties, taxes or imposts of any kind.

5) The relevant Petroleum Agreement may include additional provisions concerning the matters addressed in this Article 21.

22. Royalties

1) A Contractor shall pay royalty for the Petroleum produced.

2) The Petroleum Agreement shall specify the rate of royalty and the method of payment.

23. Income Taxes and other Payments

1) A Contractor and a Subcontractor shall pay income tax in accordance with the applicable Income Tax laws of Eritrea.

2) The salaries and other benefits in cash or in kind of expatriate employees of a Contractor and a Subcontractor who spend more than ninety-two (92) days of the taxable year in Eritrea derived from activities carried out in Eritrea and required for performance under a Petroleum Agreement shall be subject to personal income tax under the income tax laws of Eritrea, except that their taxable income shall be subject to a flat rate of ten percent (10%).

3) A Contractor shall pay any additional payments, whether characterized as tax or otherwise, specified under any applicable Petroleum Agreement.

24. Exchange Regulations

1) Contractors and Subcontractors shall be subject to the applicable exchange control legislation and directives in effect from time to time in Eritrea; provided, however, that Contractors and Sub-contractors shall have the following rights after meeting all their respective payments and tax obligations under any applicable Petroleum Agreement and under the applicable Income Tax laws of Eritrea:

a) to retain or dispose of any fund outside Eritrea including such funds as may result from Petroleum Operations;

b) to pay foreign Subcontractors and expatriate employees of the Contractor outside Eritrea; provided, however, that such foreign Subcontractors and expatriate employees shall be required to bring into Eritrea such foreign exchange as required to meet payment of Eritrean tax and living expenses;

c) to export such funds as Contractors or Subcontractors shall have imported into Eritrea or derived from Petroleum Operations or the sale or lease of goods or performance of services under a Petroleum Agreement. 2) Contractors and Subcontractors shall make regular reports to the National Bank of Eritrea regarding all currency received, imported, remitted and maintained abroad. The manner of reporting shall be specified in the applicable Petroleum Agreement.

3) The relevant Petroleum Agreement may include additional provisions concerning the matters addressed in this Article 24.

25. Arbitration

1) Any dispute, controversy or claim between the Government and the Contractor arising out of, or relating to, the Petroleum Agreement or the interpretation, breach or termination thereof shall, to the extent possible, be resolved through negotiations.

2) In the event the dispute is not settled through negotiations, it shall be submitted to expert determination or to binding arbitration in accordance with the procedures specified in the Petroleum Agreement.

26. Applicable Law

Without prejudice to Article 25 of this Proclamation, all Petroleum Agreements and Petroleum Operations shall be governed by the laws of Eritrea.

27. Conflict With Other Laws

No laws or rules, whether written or customary, shall apply to matters expressly provided for in this Proclamation.

28. Repealed Laws

The Petroleum Operations Proclamation No. 40/1993 and other laws issued in accordance with it or to amend it or correct it are hereby repealed and replaced by this Proclamation.

29. Entry into force

This Proclamation shall enter into force on the date of its publication in the Gazette of Eritrean Laws.

Asmara, July 15/2000

Government of Eritrea 11