

NATIONAL ASSEMBLY ^{1/}

Law No. __/2004

Preamble

The government of Sao Tome and Principe, through its executive, judiciary and legislative branches, is committed to holding and using the revenues from the oil resources of Sao Tome and Principe in accordance with the law and for the benefit of the people of Sao Tome and Principe.

Thus, in that spirit, in order to better protect and manage the revenues from the oil resources of Sao Tome and Principe in an open and transparent fashion and to assure that such resources are utilized for the development of Sao Tome and Principe in the critical sectors of health, education, and infrastructure, among others, this law is enacted to govern the collection and management of such revenues and receipts, to provide for their orderly transfer to the national budget, to assure their use for the priority national development objectives, and to provide for government accountability and public oversight of these activities.

Therefore, pursuant to Articles 97 and 98 of the Constitution of the Republic, the National Assembly sets forth as follows:

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This draft represents the result of a collaborative and interactive process with various authorities, both Santomean and international, and reflects our consultations with such authorities. This draft differs in certain aspects however from the bill of law submitted to the National Assembly of Sao Tome and Principe.

In preparing this draft, the Columbia Oil Advisory Group has considered and reflected to the extent consistent the comments received from H.E. President Fradique de Menezes, the president and other members of the *ad hoc* parliamentary oil commission, the Oil Cabinet, the United Nations Development Program and its special consultant at the Oil Cabinet, and the MDFM/PCD parliamentary coalition, as well as officials and individuals who expressed their views at the Seminar on Mechanisms of Oil Revenue Management which took place in Sao Tome and Principe on March 29 and 30, 2004. In addition, the group also took into account the laws and regulations in place in Sao Tome and Principe to the extent that such laws and regulations have been provided to the group.

OIL REVENUE MANAGEMENT LAW

TITLE I
GENERAL PROVISIONS

Chapter I
Definitions

Article 1
Definitions

For the purpose of this law, the terms listed in this article, whether used in the singular or in the plural, shall have the respective meanings ascribed to them hereunder:

- a) “Annual Funding Amount” shall mean the amount to be transferred out of the National Oil Account to the Treasury each calendar year pursuant to Article 9.
- b) “Approved Bank” shall mean any foreign bank, or its branches or agencies, which is rated A- or higher.
- c) “Approved Foreign Government” shall mean the government of any foreign country or any agency or instrumentality of such foreign government, which is rated AA- or higher.
- d) “Board” shall mean the board of the Joint Development Authority, as set forth in the Treaty.
- e) “Central Bank” shall mean the Central Bank of Sao Tome and Principe, as approved by Law No. 8/92, dated as of August 3, 1992.
- f) “Civil Society Organization” shall mean any non-governmental organization, community based organization, church, professional association, or labor union of Sao Tome and Principe.
- g) “Exclusive Economic Zone” shall mean the exclusive terrestrial and maritime area of Sao Tome and Principe under international law.
- h) “Expected Present Value of Future Oil Earnings” shall mean for any period the amount calculated pursuant to Article 11 of this law.
- i) “Extraordinary Oil Revenue” shall mean for the period after the commencement of Oil Production any signature bonus or other payment, including payments received from the Joint Development Authority, with respect to an area not already under production.
- j) “Field Development Program” shall mean the plan accepted and approved by the appropriate authority of any Person in the Joint Development Zone or the Exclusive Economic Zone to bring any oil discovery into commercial production.

- k) “Investment Committee” shall mean the committee organized and charged with the responsibilities as described in Article 6 of this law.
- l) “Joint Development Authority” shall mean the authority described and established as a joint development authority under the Treaty and for purposes thereof.
- m) “Joint Development Zone” shall mean the area of seabed and subsoil, together with the subjacent waters, described and established as a joint development zone under the Treaty.
- n) “Joint Ministerial Council” shall mean the joint ministerial council of the Joint Development Authority, as set forth in the Treaty.
- o) “LIBOR” shall mean, in relation to a particular period, the London Interbank Offered Rate, as published by the Wall Street Journal.
- p) “Long Term Real Rate of Return” has the meaning set out in paragraph 2 of Article 10 of this law.
- q) “National Budget” shall mean the national budget of Sao Tome and Principe in the terms of the applicable law.
- r) “National Oil Account” shall mean the account established pursuant to Article 4 of this Law.
- s) “National Petroleum Agency” shall mean the National Petroleum Agency as established in [Law No. [__], dated as of [___], 2004] [the respective law currently under the review of the National Assembly].
- t) “National Petroleum Council” shall mean the National Petroleum Council as established in [Law No. [__], dated as of [___], 2004] [the respective law currently under the review of the National Assembly].
- u) “Oil Production” shall mean the commercial production of oil or other hydrocarbons in the Joint Development Zone or in the Exclusive Economic Zone.
- v) “Oil Revenue” shall mean any payment or obligation of any Person payable to Sao Tome and Principe directly or indirectly relating to the oil resources of Sao Tome and Principe. It shall include but shall not be limited to:
 - i) Any and all distributions from the Joint Development Authority or otherwise arising out of, or in connection with, the Joint Development Zone,
 - ii) Exclusive Economic Zone revenues, consisting of, but not limited to:

- (A) Sao Tome and Principe's share of sale of crude oil and gas,
 - (B) Signature bonuses and production bonuses,
 - (C) Royalties,
 - (D) Rents,
 - (E) Proceeds from sale of asset,
 - (F) Taxes,
 - (G) Fees,
 - (H) Duties, and
 - (I) Return on investment,
- iii) Any and all revenues generated in connection with the commercial production of hydrocarbons, and
 - iv) Crude oil allocations received from any other nation.
- w) "Person" shall mean any individual or legal entity, whether national or foreign.
 - x) "Petroleum Oversight Committee" shall mean the independent committee that shall oversee the activities relating to the development and use of the oil resources of Sao Tome and Principe pursuant to Articles 21 and 22 hereof.
 - y) "Permanent Reserve" shall mean the sub-account of the National Oil Account described in Article 16 hereof.
 - z) "Population Adjusted Long Term Real Rate of Return" shall have the meaning set out in paragraph 2 of Article 10 of this law.
 - aa) "Public Information Office" shall mean the public information office described in Article 20 hereof.
 - bb) "Service Fee" shall mean any charge related to the management of the National Oil Account by the depository institution, advisory fee, audit fee, custodial fee, or similar charge for the maintenance of the National Oil Account. The expenses or any remuneration of the Investment Committee shall not be considered Service Fees.
 - cc) "State Administration" shall mean the direct and indirect public administration of Sao Tome and Principe, including all ministries, bodies, branches and offices, institutes, and departments, as well as all other central, regional and local branches of the state, all state agencies and

instrumentalities, and all entities controlled, wholly or in part, directly or indirectly, by the central, local, and regional public administrations.

- dd) “State Administration Official” shall mean any individual occupying a position in, employed by, or otherwise acting as an agent of the State Administration which shall include officers and directors of any entities controlled by Sao Tome and Principe or any subdivision thereof.
- ee) “Treasury Account” shall mean any account of the Treasury of Sao Tome and Principe.
- ff) “Treaty” shall mean the treaty dated as of August 21, 2001, between The Federal Republic of Nigeria and The Democratic Republic of Sao Tome and Principe regarding the joint development of petroleum and other resources, in respect of areas of the exclusive economic zone of each of the two states.

Chapter II **Preliminary Provisions**

Article 2 **State Proprietorship of Mineral Natural Resources**

1 – Subject to the provisions of the Treaty with respect to the Joint Development Zone, the state of Sao Tome and Principe is the sole proprietor of all of the liquid and gaseous hydrocarbons existing in its territory, both on and off shore, the latter including Sao Tome and Principe’s territorial sea, the archipelago waters, and superjacent coastal waters, out of the territorial sea, in the extension provided by law, pursuant to international law.

2 – The state of Sao Tome and Principe exercises its sovereignty over the entirety of its territory for purposes of any oil-related activities.

Article 3 **Scope of Application**

1 – All oil-related activity in the Exclusive Economic Zone, and to the extent applicable in the Joint Development Zone, shall be subject to the provisions of this law and related regulations.

2 – To the extent of any conflict between this law and any other law or regulation in effect as of the effective date of this law, the provisions of this law shall prevail.

TITLE II
THE NATIONAL OIL ACCOUNT

Chapter I
Creation and Management of the National Oil Account

Article 4
Creation of the National Oil Account

The Governor of the Central Bank shall establish an account with any international money center banking institution, as designated by the National Petroleum Council, that is capable, such as the United States Federal Reserve Bank and the Bank of International Settlements are, of:

- a) Receiving and holding cash balances on behalf of Sao Tome and Principe,
- b) Acting as the custodian itself or by agent of the holdings of such account, and
- c) Providing directly to the public such information as is required to be made public pursuant to this law.

Such account shall constitute the National Oil Account.

Article 5
Deposit of Oil Revenues into the National Oil Account

1 – All Oil Revenue monies owed to Sao Tome and Principe shall be directly deposited, by the Joint Development Authority, oil industry companies and any other payers or transferors whatsoever, into the National Oil Account. Oil Revenues due to Sao Tome and Principe shall only be deemed received when so deposited.

2 – The Governor of the Central Bank shall publicly post the instructions for making transfers into the National Oil Account.

3 – No monies other than Oil Revenue and earnings or other return on the investments of the National Oil Account shall be deposited in the National Oil Account.

Article 6
Investment of National Oil Account Funds

1 – Monies in the National Oil Account shall be invested in accordance with the instructions of the Governor of the Central Bank and, as of the commencement of Oil Production, the Investment Committee, subject to the limitations of this law.

2 – As of the commencement of Oil Production, there shall be established an Investment Committee, the members of which shall be the Governor of the Central Bank, who shall chair the Investment Committee, the Minister of Planning and Finance, a person appointed by the President of the Republic, and two persons appointed by the National Assembly. The persons appointed by the President of the Republic and the National Assembly shall be persons with significant financial and investment experience and may be persons who are not residents or citizens of Sao

Tome and Principe. The appointed members shall each serve a single four-year term commencing on the date of their appointment and such persons shall not be permitted to succeed themselves as appointed members of the Investment Committee. In the case of a vacancy, a new member shall be appointed within 30 days by the appropriate appointing authority for the remainder of the term in accordance with the provision above.

3 – Decisions of the Investment Committee shall depend upon the affirmative vote of no less than 3 of its members. The members of the Investment Committee, other than the Governor of the Central Bank and the Minister of Planning and Finance, shall be paid an honorarium to be fixed by the National Assembly and shall receive no other remuneration other than reimbursement of authorized expenses. The Investment Committee shall establish the internal operating rules of the Investment Committee, subject to the approval of the National Assembly and shall submit an annual budget to the National Assembly.

4 – The members of the Investment Committee shall act in a fiduciary capacity, and shall not have any financial interest, directly or indirectly, in any investment of the National Oil Account and shall not be a director, officer or employee of any entity in which National Oil Account funds are invested. Any conflict of interest of any member of the Investment Committee shall be promptly disclosed to the Investment Committee, the Central Bank, and the Public Information Office, and the person having the conflict shall, immediately dispose of the interest causing such conflict, paying any profits, direct or indirect, therefrom to the Treasury.

5 – The Investment Committee shall apply the “prudent investor” rule in the management and investment of the National Oil Account. The prudent investor rule as applied to the investments of the National Oil Account means that in making investments the Investment Committee shall exercise the judgment and care under the circumstances then prevailing that an institutional investor of ordinary prudence, discretion, and intelligence exercises in the management of large investments entrusted to it not in regard to speculation but in regard to the permanent disposition of funds, considering probable safety of capital as well as probable income.

6 – All funds and investments held in the National Oil Account shall be denominated in United States dollars, Euros or other currency similarly stable and convertible internationally. In no instance may funds in the National Oil Account be invested in domestic investments in Sao Tome and Principe or into investments controlled, directly or indirectly, wholly or in part, by any citizen of Sao Tome and Principe or Person resident therein.

7 – Prior to the commencement of Oil Production, all National Oil Account funds shall be held in:

- a) Cash bank deposits,
- b) Marketable direct obligations issued by, and securities issued or directly or fully and unconditionally guaranteed or insured by, any Approved Foreign Government; provided that the full faith and credit of such Approved Foreign Government is pledged in support thereof,
- c) Unrestricted United States of America and LIBOR certificates of deposit and time deposits, bankers’ acceptances and floating rate certificates of deposit issued or unconditionally guaranteed by an Approved Bank,

- d) Marketable direct obligations issued by, and securities issued or directly or fully and unconditionally guaranteed or insured by, any multilateral organization or issued by a government agency and unconditionally guaranteed by the government of any country that is a member of the Organization for Economic Co-operation and Development; provided that the full faith and credit of such Approved Foreign Government is pledged in support thereof; and provided further that such obligations are rated AA- or higher,
- e) Securities lending and repurchases, against adequate collateral, securities borrowing and reverse purchases of securities described in categories (b) and (d) above; provided that the amount of securities held at any time shall not exceed investment portfolio holdings in that currency; and provided further that the cash and securities involved in any individual securities loan/borrowing or repurchase/reverse repurchase transaction shall be in the same currency, or
- e) Investments in money market funds substantially all the assets of which are comprised of securities of the type described in any one or more of subparagraphs (a) through (d) above, but without regard to the maturity date of the underlying assets of any such money market fund.

8 – As from the commencement of Oil Production all National Oil Account funds, including the Permanent Reserve, shall be invested in accordance with investment policies established by the Investment Committee. Such policies shall be established separately for the Permanent Reserve, and the remaining holdings of the National Oil Account, and in each instance shall take account of the purpose of each reserve and the unrestricted funds. The Investment Committee shall prepare and review such investment policies no less frequently than once a year. The Governor of the Central Bank shall make public and communicate in writing to the National Assembly the investment policies and any change in investment policies.

9 – No later than [March 31] of each year, the Governor of the Central Bank shall make a public report to the government and the National Assembly setting out the current holdings of the National Oil Account, the investment policies applied in the prior year, the performance of the investments in the National Oil Account for such year including comparisons of such performance to appropriate market indices (“bench-marking”), and the investment policies currently in place. Such report shall be updated quarterly with respect to performance, benchmarking, and investment policies.

10 – No later than [June 30] of each year, the National Petroleum Agency shall forecast the expected payments into the National Oil Account for the following two calendar years. The National Petroleum Agency shall communicate in writing to the National Assembly, the Ministry of Planning and Finance, and the Public Information Office, its forecasts, the basis for such forecasts including the uncertainties attendant thereto, and an explanation for any changes from prior forecasts and the differences between its forecasts and the realized payments.

11 – No later than [July 31] of each year and before the elaboration of the national budget for the subsequent year by the Ministry of Planning and Finance, the Central Bank shall forecast the total balance, as of the end of the current calendar year and of the subsequent two calendar years, of the National Oil Account and its sub-account described in article 16. The Governor of

the Central Bank shall communicate in writing to the National Assembly, the Ministry of Planning and Finance, and the Public Information Office, its forecasts, the basis for such forecasts including the uncertainties attendant thereto, and an explanation for any changes from prior forecasts and the differences between its forecasts and the realized balances.

Article 7
Transfers from the National Oil Account

1 – Monies shall be transferred from the National Oil Account only by electronic transfer, and, other than the payment of Service Fees, only to a single Treasury Account of Sao Tome and Principe.

2 – Any transfer from the National Oil Account, other than Service Fees, shall be subject to, and made only upon, presentation, to the institution with which such account is opened and maintained, of an original executed copy of a transfer request and authorization document duly signed by the Prime Minister, the Governor of the Central Bank, and the President of the Republic, by which each of the Prime Minister, the Governor of the Central Bank, and the President of the Republic certifies that the amount of the requested transfer has been authorized pursuant to Articles 9 and 10 as well as all applicable provisions hereof. In no case shall a transfer be made from the National Oil Account if such transfer has been enjoined by an order of the Petroleum Oversight Committee pursuant to paragraph 5 of Article 22 unless such order has been annulled by either a court having jurisdiction to do so or by the National Assembly as provided in such article.

3 – Service Fees shall be paid pursuant to the instructions of the Governor of the Central Bank, and as from commencement of Oil Production as authorized by the Investment Committee.

Chapter II
No Liens or Encumbrances

Article 8
Prohibition of Liens and Encumbrances on National Oil Account Funds and Petroleum Reserves of Sao Tome and Principe; Limitation on Deficits

1 – It is forbidden for the State Administration and any State Administration Official to directly or indirectly create, incur, assume or permit to exist any pledges, security interests, liens or encumbrances whatsoever on or with respect to the National Oil Account, present or future Oil Revenues, or any petroleum resource of Sao Tome and Principe. Any attempt to do so shall be null and void, and shall not bind or produce any legal effect.

2 – [The prohibition contained in paragraph 1 above shall not apply to any lien arising in the course of investment of the assets of the National Oil Account as provided for in Article 6 above and securing a debt maturing not more than [one year] after the date on which such lien is initially incurred.]

3 – As of the receipt of the first Oil Revenue generated in connection with Oil Production and until Oil Production ceases, it is forbidden for the State Administration and any State Administration Official to undertake any borrowing to the extent that such borrowing would result in an increase in the total sovereign debt of Sao Tome and Principe as of the date of the

commencement of Oil Production. [This prohibition shall not apply to the debt of any specific purpose entity where such debt is solely secured by the revenues of such special purpose entity.]

TITLE III
EXPENDITURE OF NATIONAL OIL ACCOUNT FUNDS

Chapter I
Transfers from the National Oil Account to the Budget

Article 9
Annual Funding Amount

The Government shall include in the National Budget a proposed Annual Funding Amount consistent with the requirements of Article 10 to be transferred out of the National Oil Account to the Treasury for the expenditures set forth in Articles 12, 13 and 14 of this law. Subject to the limitations of Article 10, the Annual Funding Amount shall be approved by the National Assembly.

Chapter II
Restrictions on the Annual Funding Amount

Article 10
Determination and Limitation of the Annual Funding Amount

1 – The Annual Funding Amount for 2004 shall be [].

2 – Thereafter, the Annual Funding Amount shall be as set out in the National Budget as proposed by the Ministry of Finance and approved by National Assembly subject to the following limits:

- a) For each year beginning in 2005 through the first full calendar year after Oil Production commences, the Annual Funding Amount shall not exceed the greater of:
 - i) 20% of the estimated value of the National Oil Account on December 31, 2004, as estimated by the Governor of the Central Bank,
 - ii) 20% of the total estimated value of the National Oil Account as of the end of the immediately prior calendar year, as estimated by the Governor of the Central Bank, or
 - iii) for each calendar year after the date on which the appropriate authorities accept and approve the first Field Development Program, an amount equal to the total estimated value of the National Oil Account as of the end of the immediately prior year, as estimated by the Governor of the Central Bank, *divided* by the number of remaining years though the first full calendar year after the year in which Oil Production is expected to commence, as determined in the Field Development Program;

- b) For each calendar year beginning the second year after Oil Production commences, the Annual Funding Amount shall not exceed the lower of:
 - i) an amount equal to the sum of:
 - (A) the Population Adjusted Long-Term Real Rate of Return *multiplied* by the balance in the Permanent Reserve as of June 30 of the prior calendar year, and
 - (B) the Population Adjusted Long-Term Real Rate of Return *multiplied* by the Expected Present Value of Future Oil Earnings as of June 30 of the prior calendar year;
 - ii) an amount equal to the sum of:
 - (A) the Population Adjusted Long-Term Real Rate of Return *multiplied* by the balance in the Permanent Reserve as of June 30 of the prior calendar year, and
 - (B) the total balance in the unrestricted part of the National Oil Account as of June 30 of the prior calendar year

For purposes of this article, the Population Adjusted Long-Term Real Rate of Return shall be the Long-Term Real Rate of Return adjusted for domestic population growth in the 12-month period ending June 30 of the prior calendar year. The Long-Term Real Rate of Return shall be the expected real rate of return on a portfolio composed of assets in the proportion of those held in the Permanent Reserve during the period of measurement utilizing historical rates of total return for each class of assets adjusted for inflation, provided that in no case shall the Long-Term Real Rate of Return exceed five percent. The inflation adjustment shall utilize the rates of change of official price indexes of the currencies in which the portfolio of the Permanent Reserve is held. The Minister of Planning and Finance shall determine the Population Adjusted Long-Term Real Rate of Return on the basis of information provided by the Investment Committee and estimates of population growth as determined by the National Statistics Institute of Sao Tome and Principe.

3 – The budget as approved by the National Assembly shall set out which part of the Annual Funding Amount is to be paid out of the Permanent Reserve and which part shall be paid out of the unrestricted part of the National Oil Account, provided that the portion to be paid out of the Permanent Reserve may not exceed the limit set out in paragraphs 2(b)(i)(A) and 2(b)(ii)(A) of this Article. The Annual Funding Amount shall be paid out of the National Oil Account to the Treasury Account within the first 30 days of the year to which such Annual Funding Amount relates. The transfer order to the custodian of the National Oil Account shall be pursuant to an original executed document signed by the President, the Prime Minister, the Minister of Planning and Finance, and the Governor of the Central Bank certifying that such transfer has been authorized by the National Assembly and is in accordance with the provisions of this law.

**Article 11
Calculation of the Expected Present Value of Future Oil Earnings**

1 – To ensure the stability of the Annual Funding Amount [and consistency with the objectives set forth in Article 12 of this law,] the amount of the Oil Revenue to be transferred to the Treasury Account as part of the Annual Funding Amount shall be calculated using the Expected Present Value of Future Oil Earnings, as described below.

2 – Each year by June 30 the National Petroleum Agency shall determine and publish:

- a) The expected average future price of oil per barrel that will apply for the calculations. This estimate of the average future price shall be based on technical consultations with the World Bank, the International Monetary Fund, oil industry partners, and other experts. In no case shall the expected average price exceed the average international reference price of oil (adjusted for location and quality) during the preceding five years,
- b) The expected future sales of oil by or on behalf of Sao Tome and Principe. Expected future sales shall be based only on existing production facilities in already developed blocks and shall be consistent with the estimates of production by block operators, as filed in development plans with the National Petroleum Agency or the Joint Development Authority.
- c) The Expected Present Value of Future Oil Earning. This is estimated by taking the sum of revenues deposited in the National Oil Account during the twelve months ending on June 30 of the year in question, plus the expected revenue in all future years, with future earnings discounted by the Long Term Real Rate of Return. Expected future earnings shall be calculated utilizing the expected average future price of oil described in item (a) of this paragraph and the expected future sales of oil described in item (b) of this paragraph.

3 – The National Petroleum Agency shall and submit its calculations in writing to the Minister of Planning and Finance, the Governor of the Central Bank, the National Petroleum Counsel, the National Assembly, the Petroleum Oversight Committee and the Public Registry.

4 – Within 30 days of the National Petroleum Agency's submission of the calculations described in this article, the Petroleum Oversight Committee shall review these calculations and certify whether the calculations have been executed in accordance with the provisions of this law.

**Chapter III
Allocation of Annual Funding Amount**

**Article 12
Dedication of Annual Funding Amount to Priority Sectors**

[Eighty] percent of the amount resulting from the subtraction of the amounts, if any, committed to regional and direct distribution pursuant to Articles 13 and 14, from the Annual Funding Amount, shall be used pursuant to a national development plan and a poverty reduction strategy, should such a plan and strategy be in place at the time of such transfer. Should there not

be a national development plan and a poverty reduction strategy in place at that time, such portion of the Annual Funding Amount shall be used in the education, health and infrastructure sectors, as allocated by the Minister of Planning and Finance and approved by the National Assembly.

Article 13
Mandatory Transfers to the Autonomous Regional Government of Principe

1 – [Five] percent of the Annual Funding Amount shall be reserved and transferred to a separate Treasury Account subject to disbursement in accordance with the instructions of the Autonomous Regional Government of Principe. Such transfer shall be budgeted and reported as an expenditure in the national budget. The transfer shall be executed no later than the later of:

- a) 30 days after the withdrawal of the Annual Funding Amount from the National Oil Account, and
- b) The date on which the Ministry of Planning and Finance and the Public Information Office are provided with a duly passed budget by the Autonomous Regional Government of Principe for the expenditure of the amount to be transferred.

No allocation shall be made pursuant to this paragraph until the National Assembly has determined that the budgetary and accounting procedures of the Autonomous Regional Government of Principe are sufficient to manage and control the amount to be transferred and the Autonomous Region of Principe has presented to the National Assembly a regional development plan and a poverty reduction strategy.

2 – Any expenditures financed by transfers of the Annual Funding Amount pursuant to this article shall be subject to the same requirements of auditing and transparency as the expenditures of the central government, including but not limited to the requirements set forth in Titles IV, V, and VI herein.

3 – The provision of this article shall not be construed as prejudicial to any other responsibilities of the central government with respect to Principe Island, in particular but not limited to expenditures for development projects benefiting the general welfare.

[Article 14
Direct Distribution]

[Beginning the first year after commencement of Oil Production the Ministry of Planning and Finance may propose as part of the budget that a share no greater than [10] percent of the Annual Funding Amount be transferred in cash on a per capita basis to each adult citizen of Sao Tome and Principe domiciled therein, through direct distribution. The Ministry of Planning and Finance may propose as part of the budget that the distributions shall be taxed at the rate it sees fit. The National Assembly shall determine the method of distribution, any further conditions for eligibility to be a beneficiary, and any limitations or other conditions with respect to the use of amounts subject to direct distribution.]

Chapter IV
Reserve Funds

Article 15
[Reserved]

Article 16
Permanent Reserve

1 – Before the commencement of Oil Production, the Governor of the Central Bank shall create a sub-account of the National Oil Account, which shall constitute the Permanent Reserve. The transactions of the Permanent Reserve shall be effected only in accordance with the provisions of this article.

2 – Annually no later than January 31, as of the second year after Oil Production commences and after payment out of the National Oil Account of the Annual Funding Amount, the balance of the National Oil Account shall be transferred to the Permanent Reserve. After the commencement of Oil Production, any Extraordinary Oil Revenue received in the National Oil Account shall be transferred within 30 days of receipt to the Permanent Reserve.

3 – Annually no later than January 31, as of the second year after Oil Production commences, an amount not greater than the amount set forth in paragraph 2(b)(i)(A) and 2(b)(ii)(A) of article 10 of this law shall be transferred from the Permanent Reserve for payment of the Annual Funding Amount.

4 – Except for custodial charges or fees and expenses incurred in connection with the investments of the Permanent Reserve, no amount other than that provided for in paragraph 3 of this Article shall be transferred out of the Permanent Reserve.

5 – The Minister of Planning and Finance shall, upon submitting the proposal to the National Assembly, communicate in writing to the National Assembly, the Central Bank, and the Public Information Office, the proposed rate of withdrawal, an explanation for how the rate was determined, and a justification that it will safeguard the real per capita principal of the Permanent Reserve.

6 – Each calendar year before the elaboration of the national budget by the Ministry of Planning and Finance, the Central Bank shall forecast the expected income or increase in value of the Permanent Reserve which, subject to paragraph 6 of this article, would be available for transfer to the unrestricted part of the National Oil Account. The Governor of the Central Bank shall communicate in writing to the National Assembly, the Ministry of Planning and Finance, and the Public Information Office, its forecast and an explanation for its forecast.

TITLE IV
TRANSPARENCY

Chapter I
Mandatory Transparency

Article 17
Transparency as a Fundamental Principle

The management of Oil Revenues of Sao Tome and Principe shall be carried out, and the related duties of all involved parties shall be discharged, with the highest standard of transparency, and the State Administration shall take all necessary measures to ensure transparent mechanisms and free access to public information as provided for in this law.

Article 18
Information Subject to Transparency

1 – Unless otherwise specifically protected from disclosure by law, all information with respect to Oil Revenue, the National Oil Account, and the Permanent Reserve shall be made public.

2 – In that context:

- a) The Governor of the Central Bank shall make public by providing the Public Information Office with, and posting on the Internet, information regarding all holdings (valued in accordance with generally accepted internationally accounting practices), deposits, withdrawals, and other activity of the National Oil Account, including the identity of Persons paying into or receiving payments from the National Oil Account. Such information shall be updated, compiled and made public as frequently as practicable but in any case no less than monthly.
- b) The Minister of Planning and Finance shall make public by providing the Public Information Office with, and posting on the Internet, all budgets, including the budget of the Joint Development Authority. All budgets shall be made public before presentation to the National Assembly.
- c) The National Petroleum Agency shall make public by providing the Public Information Office with, and posting on the Internet, all audits, inspections, reports, financial reports, and similar documents with respect to the exploration and production of oil and other hydrocarbons from the Joint Development Zone and the Exclusive Economic Zone.
- d) The State Administration Official responsible for any contract having a value in excess of [\$1,000] or for any decision taken by the State Administration under this law or otherwise directly or indirectly relating to the oil resources and Oil Revenues of Sao Tome and Principe shall make public by providing to the Public Information Office and posting on the Internet such information within [10] days of the date of such decision or the execution of such contract.

3 – This article shall not require the disclosure of proprietary information, as determined by the laws of Sao Tome and Principe, provided that this shall not except from disclosure any contract or agreement with the State Administration or any financial information relating thereto,

4 – The provisions of this article are in addition to any other obligations imposed on the State Administration or any State Administration Official to make public information pursuant to this or any other law.

Chapter II **National Oil Account Auditing**

Article 19 **Mandatory Auditing**

1 – All deposits, holdings, withdrawals, and other activity of the National Oil Account shall be audited annually by the Auditor General, which shall address any irregularities. Any audit reports and opinions issued, and procedures initiated by, the Auditor General in connection with such audits shall be made public.

2 – Without prejudice to the auditing powers of the Auditor General, all deposits, holdings, withdrawals, and other activity of the National Oil Account shall also be audited annually within 90 days of end of each fiscal year, by an internationally recognized accounting firm selected by the Auditor General in consultation with the Public Oversight Committee. Upon completion, the audit along with any notes and observations of the auditors shall be provided to each of the Governor of the Central Bank, the Minister of Planning and Finance, the National Assembly in the person of its president, the President of the Republic, the Public Oversight Committee, and to the Public Information Office.

Chapter III **The Public Information Office**

Article 20 **Creation and Operation of the Public Information Office**

1 – The [National Library, though the national librarian,] [National Archives, through its director,] [Library of the National Assembly, though its most senior official,] shall establish a public information office as a special section thereof, where all information relating to this law and to the oil resources and Oil Revenues of Sao Tome and Principe shall be received, indexed, filed, kept, and made readily available to the public electronically through the Internet and in hard copy at this site. As part of its facilities, such office shall maintain an Internet site where Persons may post documents or other information required to be made public pursuant to this law. Such office shall constitute the Public Information Office.

2 –The head of the Public Information Office shall be nominated by the [President of the Republic] [Prime Minister] [Minister of Justice], and appointed and dismissed by the National Assembly. The head of the Public Information Office shall appear annually and testify before the National Assembly regarding the compliance of the authorities of Sao Tome and Principe with the information disclosure provisions of this law.

3 – The State Administration and each responsible State Administration Official shall file with the Public Information Office all documents and decisions required to be made public pursuant to this law.

4 – Any Person making:

- a) Any payment to the National Oil Account which constitutes Oil Revenue, or
- b) Any payment in excess of [US\$25,000.00] to the State Administration or any State Administration Official relating to the oil resources of Sao Tome and Principe or any contract relating thereto,

shall provide to the Public Information Office notice of such payment, the amount, the payee, and the reason for the payment within [10] days of such payment. Such information shall be compiled and made public by the Public Information Office within [10] days from receipt thereof. Any Person failing to provide such notice shall be subject to [penalty fines of up to [\$100] per day].

5 – The Public Information Office shall have the right to subpoena information from the relevant authorities should such authorities fail to timely and voluntarily submit to the Public Information Office any information due.

TITLE V
PUBLIC OVERSIGHT

Chapter I
Ensuring Public Oversight

Article 21
Establishment of Petroleum Oversight Committee

1 – The president of the National Assembly shall establish a Petroleum Oversight Committee to oversee the development and use of the oil resources of Sao Tome and Principe under the terms of this law. The Petroleum Oversight Committee shall have the right to take action in its own name before the courts of Sao Tome and Principe, the Auditor General or any other legally established body of the state. The powers of the Petroleum Oversight Committee, the interpretation thereof, shall be construed as broadly as necessary to give full effect to this law, and all organs of the state shall cooperate with the Petroleum Oversight Committee in the execution of its responsibilities.

2 – The mandate of Petroleum Oversight Committee shall include, among others:

- a) Monitoring the implementation of and compliance with the law, particularly the compliance by agencies and individuals with their obligations under this law and substantive conformity of budget and expenditures with the criteria established by the law. This shall include but not be limited to:
 - i) The obligations of the State Administration and any State Administration Official under the law concerning the flow of

funds from the National Oil Account in accordance with the conditions and procedures specified by law,

- ii) The obligations of the National Assembly and the executive branch to ensure that the budgets comply with the rules applicable to the Annual Funding Amount and with the limits applicable to the allocation of funds as provided by this law,
 - iii) The obligations of the State Administration and any State Administration Officials to make public all information required under the law, including but not limited to the obligations of the Ministry of Planning and Finance, the National Petroleum Agency, and the Governor of the Central Bank to make public the forecasts they are respectively charged with making under this law; and
 - iv) The conformity of budgets and expenditures to the requirements set forth in this law;
- b) Reviewing and, as necessary or appropriate, acting on the complaint of any citizen of Sao Tome and Principe or any Person domiciled therein regarding any action or any failure to act of the State Administration or any State Administration Official, in violation of the requirements of this law, or any other wrongdoing with respect to the Oil Revenue or oil resources of Sao Tome and Principe, and
- c) Such other tasks as may be assigned to it by law.

3 – The Petroleum Oversight Committee shall be composed of seven voting members and two non-voting members as follows:

- a) Two deputies selected by the National Assembly as follows: each member of the National Assembly shall cast one one-time vote for one of multiple candidates, and the two candidates who obtain the highest number of votes shall serve as members of the Petroleum Oversight Committee,
- b) Three members of civil society selected in accordance with paragraph 4, below,
- c) One member selected by the government of the Autonomous Region of Principe,
- d) One member selected by the President of the Republic; and
- e) Two non-voting members from the international community, one selected by the [_____] and one selected by the [United Nations Development Program].

4 – The three civil society members of the Petroleum Oversight Committee referred to in sub-paragraph (b) above shall be selected and shall serve as follows:

- a) The civil society members shall be selected from among individuals who are actively engaged in Civil Society Organizations. After the first term of the Petroleum Oversight Committee, the civil society members shall be selected by the Civil Society Organizations directly, according to procedures to be prescribed by the National Assembly. For the first term of the Petroleum Oversight Committee, the National Assembly shall elect the civil society members from a list of candidates nominated by Civil Society Organizations. Each member of the National Assembly shall cast one vote. The three candidates with the most votes shall serve as the civil society members.
- b) No person may be a civil society member if such person holds:
 - i) An elected office at the national level,
 - ii) A paid position in a political party,
 - iii) A paid position subject to the discretion of the President of the Republic, the Prime Minister or a cabinet member, or
 - iv) A position as a director or officer in a private company directly benefiting from oil extraction and production.

5 – The voting members of the Petroleum Oversight Committee shall each serve for a term of four years unless such member is disqualified pursuant to subparagraph (b) of paragraph 4 of this article in the case of a civil society member, or is no longer a deputy in the case of a National Assembly member. In the case of a vacancy, a new member shall be appointed for the remainder of the term in accordance with procedures provided above. Non-voting members serve at the discretion of the appointing authority.

6 – Decisions of the Petroleum Oversight Committee shall depend upon the affirmative vote of no less than 4 of its voting members. The voting members of the Petroleum Oversight Committee shall be paid an honorarium to be fixed by the legislature at a rate not to exceed 10 percent of the salary of a deputy of the National Assembly.

7 – The Petroleum Oversight Committee shall establish the internal operating rules of the Petroleum Oversight Committee, subject to the approval of the National Assembly. The Petroleum Oversight Committee will submit an annual budget to the National Assembly that includes provision for permanent staff with necessary skills for fulfilling the day-to-day obligations of the Petroleum Oversight Committee including accounting and administrative skills.

Article 22 Powers of the Petroleum Oversight Committee

1 – The Petroleum Oversight Committee shall have the power to initiate investigations on its own motion or upon complaint by any citizen of Sao Tome and Principe or any Person domiciled therein. The internal regulations of the Petroleum Oversight Committee shall fix the terms for initiating an investigation whether on its own motion or following a complaint.

2 – Any citizen of Sao Tome and Principe or any Person domiciled therein may request the Petroleum Oversight Committee in writing to investigate any claim of action or any failure to act of the State Administration or any State Administration Official, in violation of the requirements of this law, or any other wrong doing with respect to the Oil Revenue or oil resources of Sao Tome and Principe. The Petroleum Oversight Committee shall make a preliminary investigation of the complaint and shall, within [60] days as from the receipt of any such request, either:

- a) Take appropriate action to remedy the complaint, or
- b) Respond in writing explaining the results of the preliminary investigation and the reasons that no further action is being taken.

The complaint and any action or response of the Petroleum Oversight Committee including the basis for such action or response shall promptly be made public and be provided to the Public Information Office.

3 – In the exercise of its investigative powers, the Petroleum Oversight Committee shall have expansive powers, including the power:

- a) To conduct interviews in public or private;
- b) To compel testimony, documents, and other evidence from the State Administration, any State Administration Official, or any other person having information relevant to its investigation, and
- c) To review ^{2/}, *a priori* and *a posteriori*, from both a procedural and a substantive standpoint, any contracts that may be entered into with the State Administration with respect to the oil resources of Sao Tome and Principe.

4 – The Petroleum Oversight Committee shall have the power to bring an action before the courts of Sao Tome and Principe, the Auditor General, or any other entity with jurisdiction,

- a) To compel compliance with any order of the Petroleum Oversight Committee to produce documents, provide testimony, or otherwise provide evidence,
- b) To compel the State Administration or any State Administration Official to fulfill any obligation under this law,
- c) To enjoin any action by the State Administration or any State Administration Official in violation of the requirements of this law,
- d) To compel disgorgement of any benefit obtained by action or inaction in violation of this law, or

^{2/} [NOTE: The word we use here in Portuguese, “*analisar*”, means to review in the sense of analyzing; reading through and reflecting upon it. The term does not imply decision-making powers.]

- e) To enforce any exceptional order suspending the transfer of the Annual Funding Amount or any other monies from the National Oil Account as provided in paragraph 5 of this article.

5 – In exceptional circumstances where the Petroleum Oversight Committee finds a grave violation of this law, which the Petroleum Oversight Committee has determined cannot be effectively remedied otherwise, the Petroleum Oversight Committee may issue an order suspending the transfer of the Annual Funding Amount or any other monies from the National Oil Account until the Petroleum Oversight Committee determines that such violation has been remedied. Such an order may be nullified,

- a) by the Supreme Court if the Court determines that a grave violation has not occurred or that the violation may be remedied effectively otherwise, or
- b) by a vote of no less than three quarters of the members of the National Assembly.

Article 23 Access to Information

Any Person domiciled in Sao Tome and Principe or any citizen of Sao Tome and Principe, wherever domiciled, may request the State Administration to provide any information which is required to be made public pursuant to this law, and the State Administration and the responsible State Administration Official shall be required to provide such information within 15 days of such request. This obligation may be satisfied by providing such information to the Public Information Office and giving notice of such to the Person requesting the information.

Article 24 Private Right of Enforcement

1 – Any citizen of Sao Tome and Principe, wherever domiciled, any Civil Society Organization domiciled in Sao Tome and Principe, or, upon a showing of an adversely affected interest, any other Person has the right to bring an action before the courts of Sao Tome and Principe, the Auditor General, or any international body with jurisdiction to compel the State Administration or any State Administration Official to fulfill any obligation under this law or to enjoin any action in violation of the requirements of this law, or to seek disgorgement of any benefit not lawfully obtain. Any such party shall first submit a complaint to the Petroleum Oversight Committee under the terms of paragraph 2 of Article 22 of this law, and may join in any legal action initiated by the Petroleum Oversight Committee under the terms of subparagraph (a) of paragraph 2 and paragraph 4 of Article 22 of this law.

2 – If after [60] days, the Petroleum Oversight Committee has failed to respond or has determined to take no further action, any such party may proceed directly before the courts of Sao Tome and Principe, the Auditor General, or any relevant international body. The filing of a complaint and the [60] day waiting period may be waived by the court or other entity upon a showing of a justified fear of a grave and likely irreparable harm and upon a showing on summary evidence of a likelihood of a successful claim.

[3 – Any such party prevailing in such action shall be entitled to recovery from the State Administration or the responsible State Administration Official of its reasonable costs as determined by the body before which such action is brought.]

TITLE VI
PUBLIC INTEGRITY

Chapter I
Contracts

Article 25
Anti-Corruption Clause^{3/}

1 – Any contract or agreement with the State Administration having a value in excess of [US \$25,000.00],

- a) with respect to the oil resources of Sao Tome and Principe,
- b) with respect to the provision of services relating to the oil resources, or
- c) otherwise relating to the petroleum sector or its activities,

shall be awarded pursuant to competitive public tender pursuant to the law of Sao Tome and Principe.

2 – In the absence of procurement and public competitive tender laws in Sao Tome and Principe and only until such laws are promulgated or otherwise come into effect, any such contract or agreement shall be subject to approval by the National Petroleum Council or shall be awarded pursuant to a competitive public tender approved by the National Petroleum Council.

3 – All such contracts or agreements shall be made public by being provided to the Public Information Office, by the State Administration and by any Person that is a party to such contract or agreement, no later than [10] days prior to execution, excluding therefrom only proprietary information, which proprietary information shall not include financial terms.

4 – Any contract not made public and approved as provided herein shall be void.

5 – This article shall not relieve any party of any other obligation under law except to the extent that such obligation is inconsistent with the requirements of this article.

Chapter II
Public Integrity

Article 26
Bribery Prohibition

1 – Any person who, in order to obtain or retain an advantage in the course of business, directly or indirectly gives, offers or agrees to give or offer a loan, reward, advantage or benefit of

^{3/} [Needs to be coordinated with existing procurement practices.]

any kind to a State Administration Official or to any person for the benefit of such State Administration Official,

- a) As consideration for an act or omission by such State Administration Official in connection with the performance of such State Administration Official's duties or functions, or
- b) To induce such State Administration Official to use his or her position to influence any acts or decisions of the State Administration,

shall be subject to the sanctions set forth by criminal law[, subject to an increase of one half]. Any benefit received by the official, officer, or director shall be forfeited.

2 – This article shall not apply to small facilitation payments so long as such payments do not serve and are not intended to obtain or retain business or other improper advantage.

Article 27 Public Contracts

1 – Any contract or agreement with the State Administration having a value over [US \$25,000.00] shall contain the following provisions:

- a) “No loan, reward, advantage or benefit of any kind has been made to any State Administration Official or to any person for the benefit of such State Administration Official, as consideration for an act or omission by such State Administration Official in connection with the performance of such person's duties or functions or to induce such State Administration Official to use his or her position to influence any acts or decisions of the State Administration with respect to this Agreement. Any breach of this representation shall make this agreement voidable by the State Administration. For purposes of this provision, State Administration Official and State Administration shall have the meaning set out in Law [_____], dated as of [_____], 2004, in the law of Sao Tome and Principe.”
- b) “The effectiveness of this contract is subject to the full compliance with all applicable government procurement and competitive public bid procedures required pursuant to the law of Sao Tome and Principe.”
- c) “This contract shall be made public and a copy hereof shall be provided to the Public Information Office within 10 days from its execution”.

2 – If any of the above-described provisions is not expressly contained in any such contract or agreement, each such omitted provision shall be construed as if such omitted provision were contained in any such contract or agreement.

TITLE VII
JOINT DEVELOPMENT ZONE

Article 28
Application to the Joint Development Authority

1 – Without prejudice to the provisions of the Treaty, the provisions of this law shall be applicable to any interests of Sao Tome and Principe in the Joint Development Zone and shall be applicable to any State Administration Official, any citizen of Sao Tome and Principe employed with or contracted by the Joint Development Authority, any Joint Development Authority representative based in Sao Tome and Principe, or any person representing Sao Tome and Principe with respect to the Joint Development Authority and the Joint Development Zone.

2 – Every State Administration Official and every citizen of Sao Tome and Principe on the Joint Ministerial Council and the Board of the Joint Development Authority shall act so as to make applicable the provisions of this law to the activities of the Joint Development Authority, subject to any limitations under the Treaty.

3 – In particular, but without limitation, representatives of Sao Tome and Principe shall act so as to ensure that:

- a) All contracts of the Joint Development Authority, including procurement contracts, are made public,
- b) The accounts of the Joint Development Authority are audited and such audits are made public,
- c) The budget of the Joint Development Authority is made public in advance of approval by the Joint Ministerial Council,
- d) The budget of the Joint Development Authority is not approved without having first been approved by the government and the National Assembly, and
- e) The Joint Development Authority permits no encumbrances of any kind on the oil resources of the Joint Development Zone or the revenues under its control, subject to the provisions of Article 8 of this law.

4 – For purposes of transparency, the budget accounts of the Joint Development Authority shall be reflected in the budget accounts of Sao Tome and Principe to the extent that Sao Tome and Principe bears the burden of such expenditures.

TITLE VIII
FINAL PROVISIONS

Article 29
Amendment Quorum

Any amendment to this law shall be subject to the approval of the National Assembly by the favorable vote of no less than three quarters (3/4) of its members, and shall be null and void in the absence thereof.

Article 30
Sanctions for Violations

1 – Any violations or attempted violations of this law shall be subject to the sanctions provided for in the law of Sao Tome and Principe in general, and in this law in particular. Any sanction provided for in this law shall be applicable without prejudice, to the extent permitted by law, to any other sanctions that may be applicable under the law of Sao Tome and Principe.

2 – [Additional sanctions.]

Article 31
Effectiveness

This law shall become effective as prescribed by law.

National Assembly in Sao Tome, on [month] [day], 2004. – The President of the National Assembly, [name].

Enacted on [month] [day], 2004.

For publication.

The President of the Republic, *Fradique Bandeira Melo de Menezes*.