

Analysis of Legal Framework in Mozambique in the Context of the LNG Projects



Presented by Dr. Hilmar Zeissig & Taciana Lopes

November 13th 2014

Objectives of the study

- Assist in the interpretation of Mozambique's current legal framework in the context of LNG projects
- Provide a basis for informed discussion and negotiation between stakeholders and the public in general
- Contribute to the creation of a modern and competitive regulatory oil & gas regime for Mozambique that is consistent with international best practices

Core Tasks

- Perform analysis of the current legal situation of the LNG projects: and how all the relevant laws and contracts interact
- Make recommendations for Oil & Gas Regulation and the LNG industry, namely for international health, safety and environmental standards to be referenced in regulations and contracts

Dr. Hilmar Zeissig

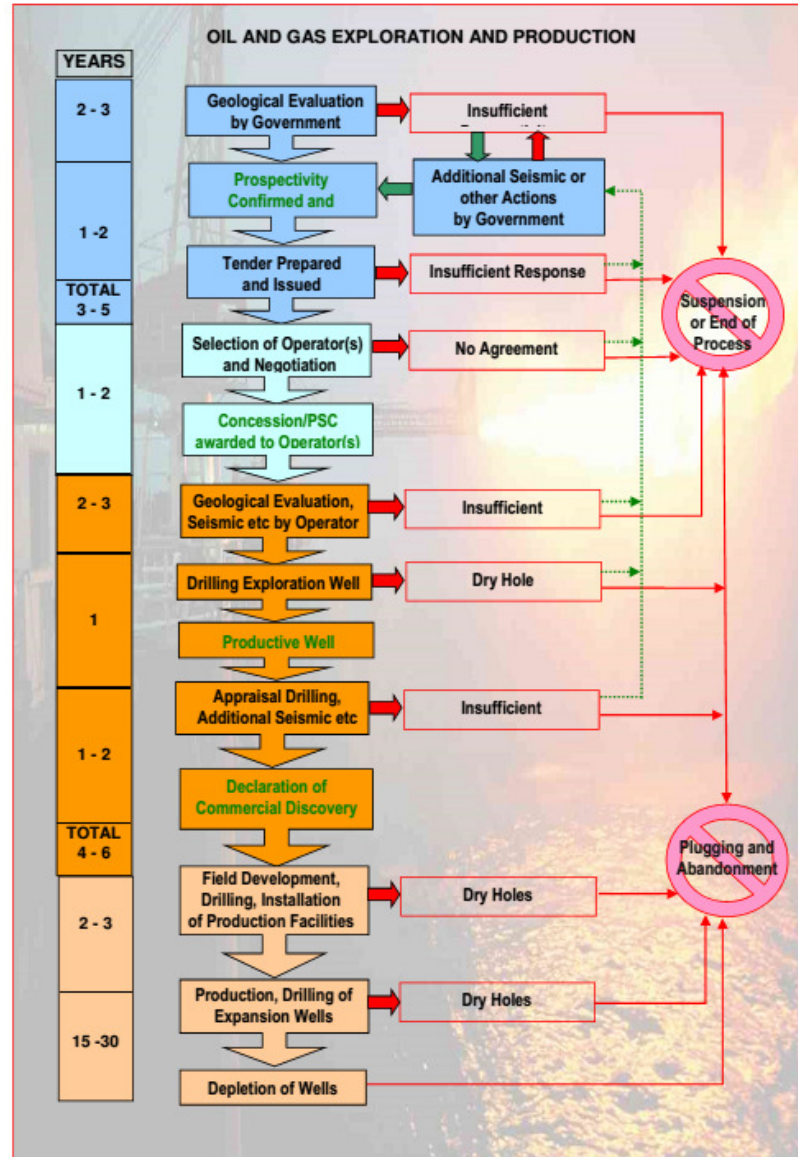
- 1970-1973: Lawyer & Chief Negotiator for DEMINEX German State Oil & Gas Co.
- 1973-1995: CEO of oil & gas exploration and production companies in Peru, Egypt and USA – onshore & offshore.
- Since 1982: President of Houston International Business Corp. - Lead Consultant for petroleum and mining sector reform, drafting laws, safety and environmental regulations, training of regulatory officials in 45 countries (including Burundi, Kenya, Madagascar, Malawi, Tanzania, Uganda).
- Most recent upstream petroleum regulatory projects: Afghanistan, Cameroon, Central African Rep, Equatorial Guinea, Gabon, Honduras, Jordan, Chad, Republic of Congo.

Taciana Peão Lopes

- Mozambican Lawyer with 16 years of experience in Public and Administrative Law.
- 2002-2004: Researcher at the Center for Juridical and Judiciary Training in Mozambique (Ministry of Justice)
- 2004-2011: Lawyer and Partner at Monteiro, Graça e Associados and Couto, Graça e Associados.
- 2011-2012: Head of the Energy, Natural Resources and Infrastructure Department at Couto, Graça & Associados, representing some of the major oil&gas players in Mozambique (Sasol, ENH, ENI, Mitsui).
- 2014: World Bank Consultant for Instituto Geológico Mineiro (Mirem).

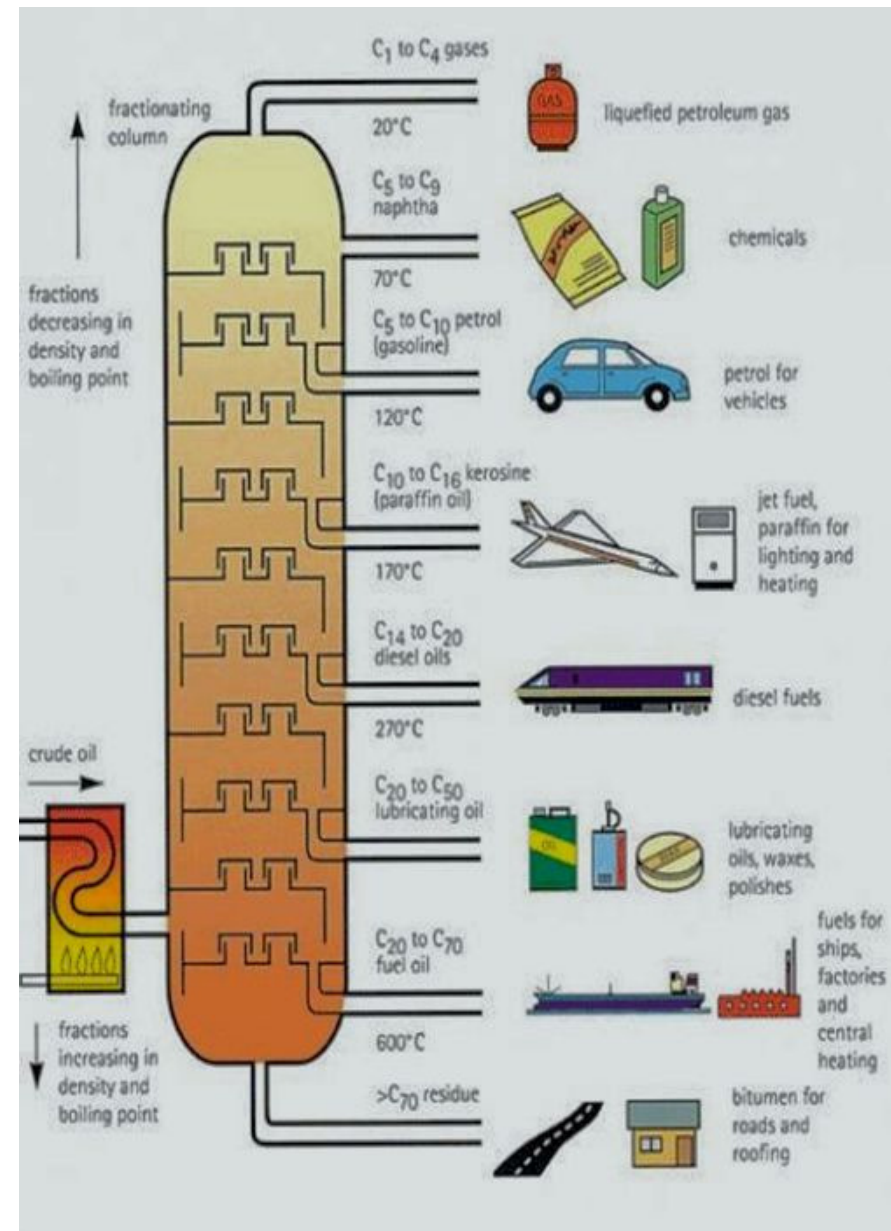
Implementation of the LNG Project: a complex process





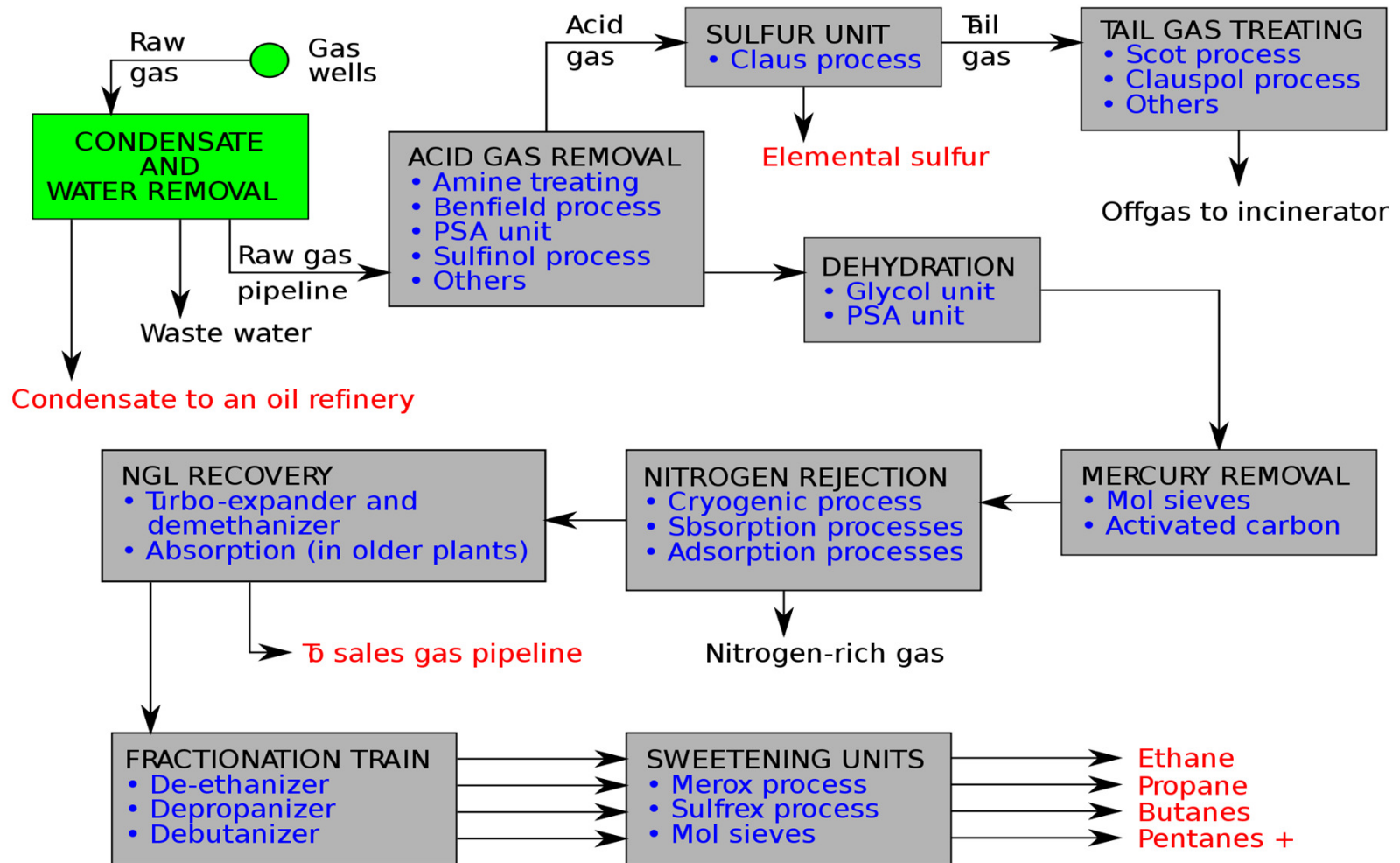
Petroleum Products Refining and Typical Use

- There are other products and byproducts from refining.
- **Natural gas**
 - No refining
 - Distributed by urban pipeline or as compressed natural gas (CNG).

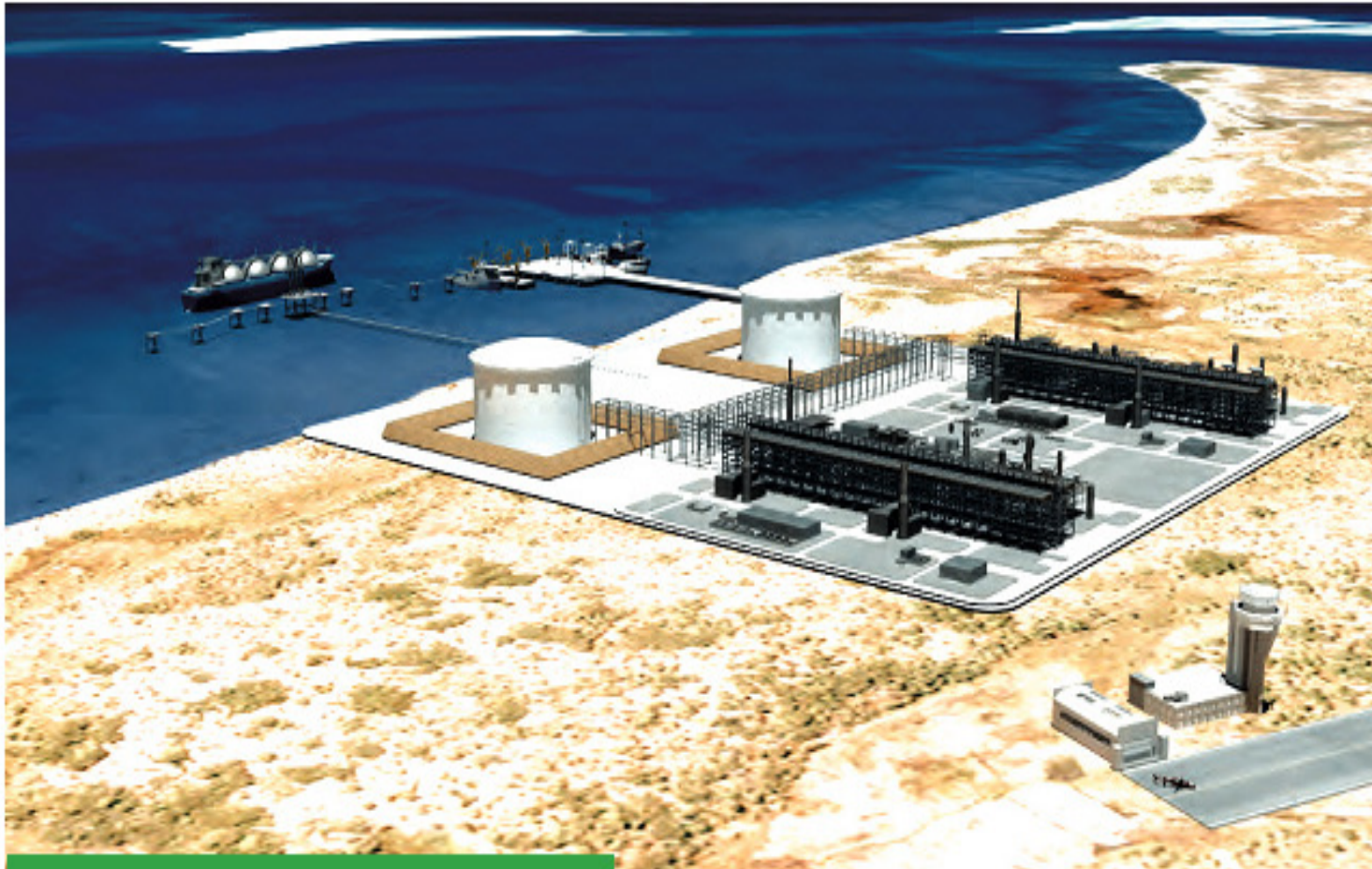




Natural Gas Processing



LNG Liquefaction Plant

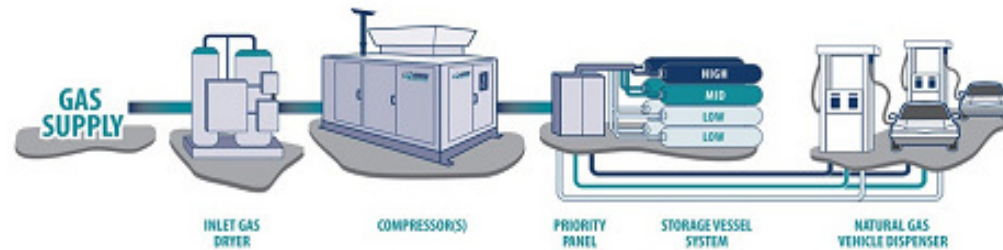


<http://www.anadarko.com/>



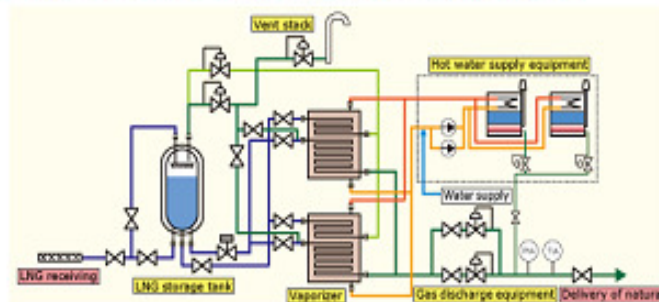
Natural Gas for Transportation

CNG Station



- USA: 602 public access CNG filling stations and 633 private access stations.
- CNG and LNG public access stations expanding rapidly.
- By 2015 federal and many state agencies shall purchase NGVs.
- In 2014 railroad CSX will be testing trains running on LNG or diesel.
- CNG delivered by pipeline, LNG by tanker trucks.
- Modern NGVs can run on CNG/LPG or gasoline.
- Higher upfront cost of Natural Gas Vehicles (NGV).
- 1 gal CNG is \$2.00 cheaper than diesel, LNG is \$1.00 cheaper.
- Tax incentive and rebates for NGV in many states.

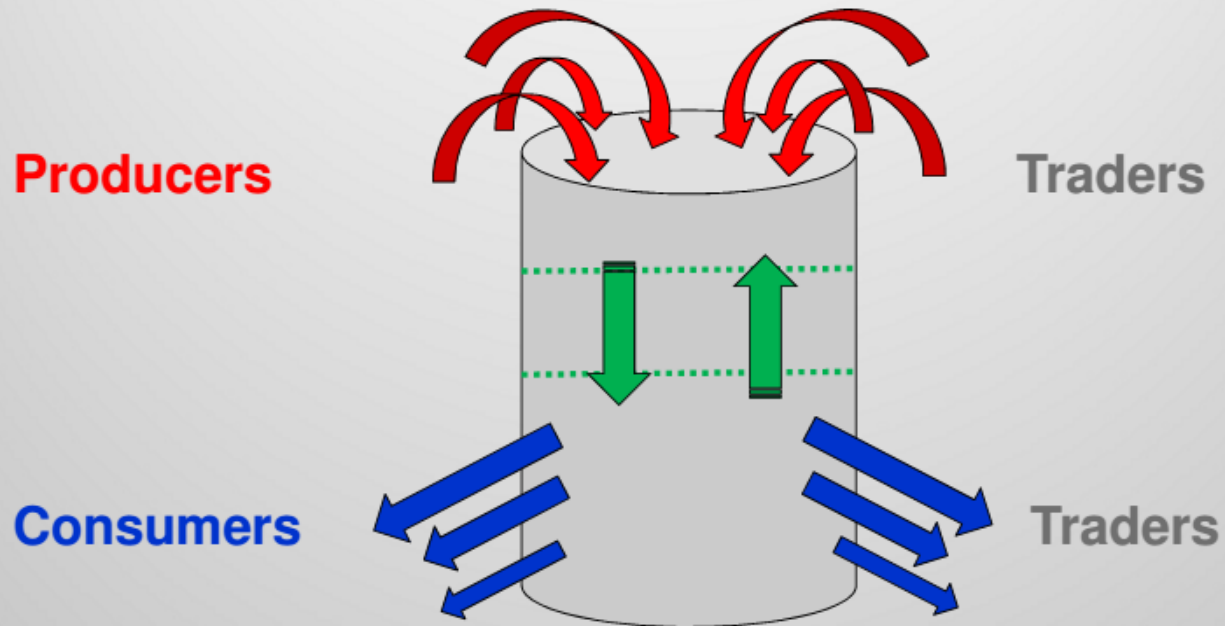
LNG Station





World Petroleum Market

No individual government or company can control the market



The exciting times that we are living ...

From the discoveries in the Rovuma Basin to the establishment of a legal framework for LNG in Mozambique



BOLETIM DA REPÚBLICA

PUBLICAÇÃO OFICIAL DA REPÚBLICA DE MOÇAMBIQUE

Major issues under discussion

- Initial discussions: the review of the Petroleum Law and the choice of the legal instrument to regulate LNG activities
- The administrative nature of concession agreements in respect to the natural resources and impacts from the investors perspective
- Limits imposed to the State: principles of legality, transparency, justice, good faith, equal treatment ...

Legislative framework vs. Contractual regime

Flexibility

The negotiation of a contract allows the government to adapt its requirements and its rights to suit the particular features of each project, and the characteristics of each party

Certainty

Flexibility can result in more uncertainty for investors when starting the negotiation process

Complexity

If important provisions are contained in a contract, instead of legislation, any variations in the deal may cause complexity for regulators as they monitor the implementation of each project

Costs

Legislation can be time-consuming to draft and to change, a more complete legal framework can significantly reduce the time and cost involved in negotiating each contract

Transparency

Legislation is a far more transparent and democratic way to regulate extractive projects, so long as the commercial aspects of the deal are kept between the Government and the Concessionaire

Methodology of Modern Petroleum Legislation

1) The law itself should be short, simple, concise and define political concepts, institutional structure, ground rules and general mandates, the monitoring and enforcement system, dispute resolution, authority to issue implementing regulations and revocation of previous legislation.

2) Administrative procedures to implement the law and provide objective criteria for its enforcement in order to safeguard the government's interests, but also to protect the investors and the citizen in general, should be defined by a general and various special regulations, including transitory regulation of a new law.

Draft regulations should be prepared together with the last draft of the law and submitted with it the legislators.

3) Technical details, mainly for the protection of public health, safety and environment (HSE) should not be included in the law or regulations, but be covered, wherever possible, by references to national and/or international standards.

Modular Legal Framework

- All rights and obligations for the participants in a well-defined economic activity and the respective government functions are governed by the sector specific laws and regulations.
- Matters of general importance across all or part of the economy, such as those relating to taxation, environmental protection, labour, health and security, are covered by general laws and regulations, sometimes including specific provisions for certain sectors.
- This modularity increases transparency and accountability, facilitates compliance, reduces administrative costs, bureaucratic discretion and ensures “regulatory security” to attract domestic and foreign investments.

Principles of Upstream Oil & Gas Legislation

- Provide the government with flexibility to structure competitive deals attracting technically and financially qualified domestic and foreign investors for the benefit of the country; keeping in mind that:
 - natural resources are finite and non-renewable.
 - government's financial, human and structural resources are limited
 - private investment is the engine for development ;
 - local input and participation in policy formulation are crucial and indispensable;
 - sustainability requires efficient protection of health, safety and environment;
 - authority comes with accountability, and rights involve obligations.
 - people's understanding of governmental policies is indispensable, and
 - the interests of tribal and other local communities should be adequately considered.

- Rules must be clear and non-discretionary to ensure efficient enforcement and avoid corruption.

Mozambique's Constitution of 1990/2004



- Constitutional mandates for control and exploitation of natural resources are very modern and more detailed than in most other countries.
- They include clear definitions of
 - the role of the State,
 - specific reference of the importance of the private sector,
 - promotion of knowledge and valorization of natural resources,
 - protection of the environment and the ecological balance,
 - rational use of natural resources and
 - balanced socio-economic development.

The New Petroleum Law No. 21/2014

- Under aspects of legislative methodology the new law has deteriorated in compared with the last drafts which were short and well worded.
- Additions are not well drafted, sometimes overlapping, duplicating and even in contradiction with the original text, disregard basic rules of regulatory drafting by ignoring definitions etc.
- Many changes are not legally binding provisions, but rather declarations of political or socio-economic concepts.
- They introduce undefined criteria for potential government intervention and repercussions, leaving unreasonable room for discretion, delays, abuse and corruption.
- Important are references to LNG which are rarely found in these general petroleum laws.

Scope and Application of the Petroleum Law

- Applies to “UPSTREAM” oil & gas, exploration, production and delivery to the point of sale or export.
- Applies to “MIDSTREAM”, especially processing plants for LNG with the related infrastructure, such as pipelines, storage and terminal facilities.
- Does not apply to “DOWNSTREAM” refining, other processing, transportation, storage, import, export and distribution of refined petroleum products, including LPG (Art. 3 (3)).
- Seems to apply to use of natural gas and LNG for energy generation or industrial use acc.to definition of “*Petroleum Operations*”.
- No provisions for “DOWNSTREAM” use of:
 - natural gas as fuel in households or commercial establishments (city gas);
 - burning of CNG and LNG in vehicles.

ENABLING LAW (“EL”)

PURPOSE

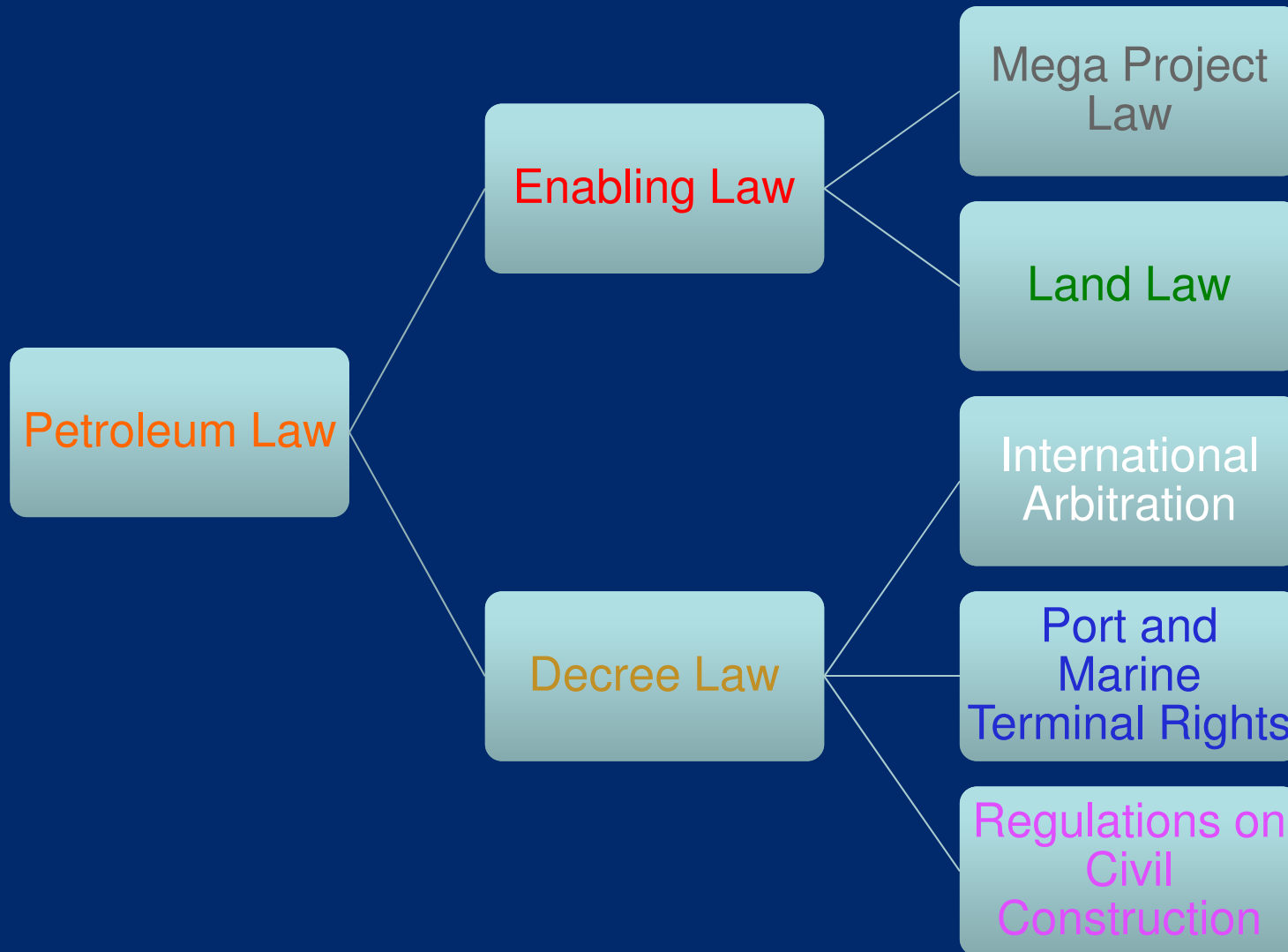
- To enable the development of the design, construction, installation, ownership, financing, operation, maintenance and use of wells, facilities and appurtenant equipment, whether onshore or offshore, to extract, process, liquefy, deliver and sell natural gas from deposits in Areas 1 and 4 of the Rovuma Basin
- To authorize the Government to approve a Decree Law establishing a special legal and contractual regime for the LNG Rovuma Basin Project

SCOPE: the creation of Special Regimes

- Land rights
- Stabilization of the Fiscal Regime and Powers of the Government to unilaterally amend contracts, namely the EPCCs
- International Arbitration
- Application of the Mega Project Law
- Exchange Control rules
- LNG international maritime terminal and airport
- Procurement issues
- Customs and other incentives and exemptions
- Labor issues
- Security package
- Competition

THE IMPACT OF THE NEW LEGISLATION ON PREVIOUS LAWS

- The scope of the legislative powers granted pursuant to the EL shall not be understood as giving powers to derogate other Laws in force in the Republic of Mozambique
- Mozambican legislation shall be subsidiary to the special legal regime to be established by the Decree Law
- Potential overlaps and inconsistency with existing legislation concerning environment, construction, land use, resettlement, maritime and other matters. Contrary to sound legislative practice, Art. 71 simply revokes Law 3/2001 and “any other legislation contrary to this Law” without any specification



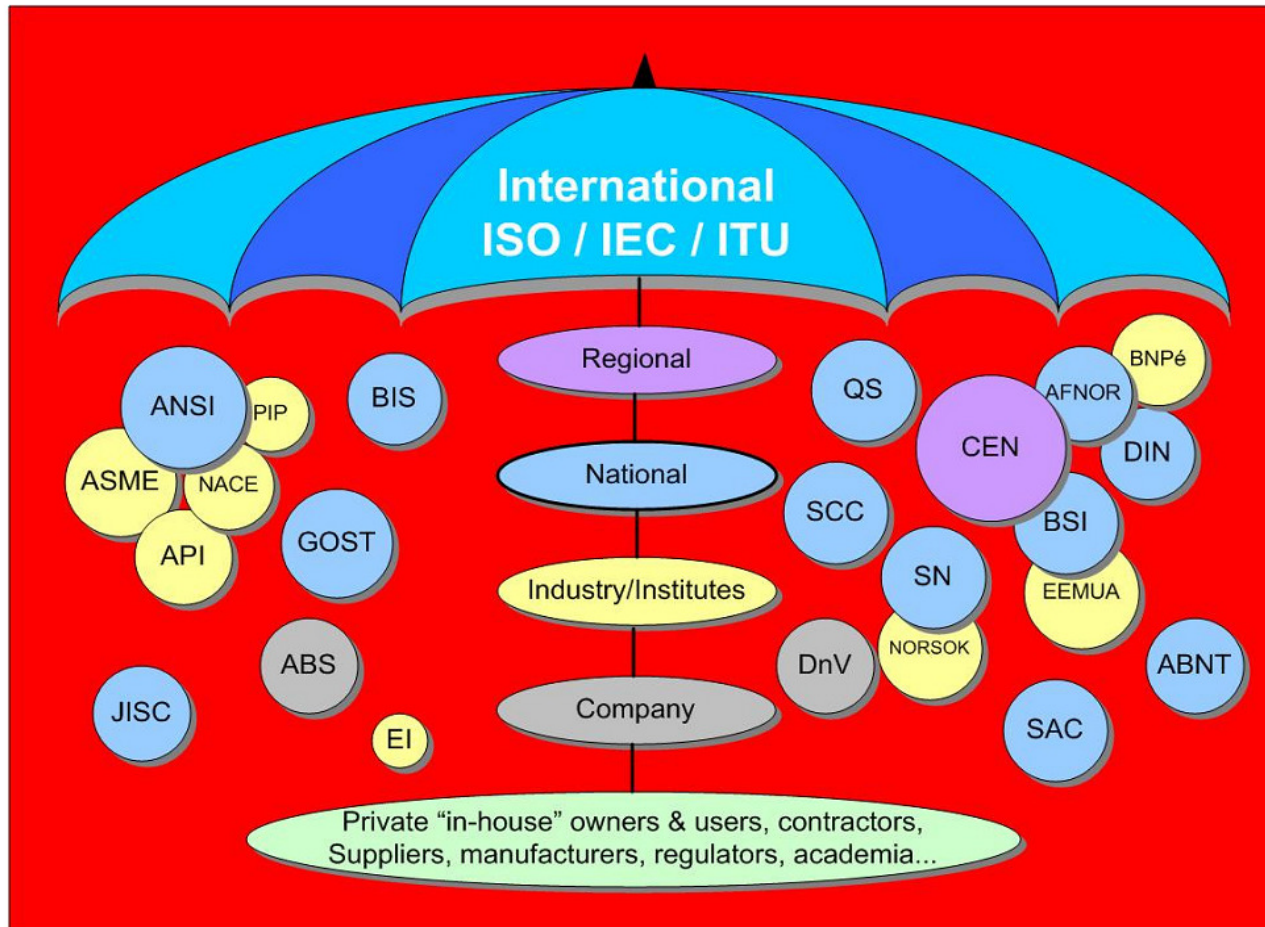
International Health, Safety and Environmental Standards

- Oil and gas industry operates all around the world with the same equipment, installations, operational methods and processing technology.
- Requirements for the protection of HSE are based on international standards (IS).
- By ISO rules, standards are voluntary until made compulsory by Regulation.



Global Standardization System

International Standardization Organization (ISO)
 International Electrotechnical Commission (IEC)
 International Telecommunication Union (ITU)



HSE Standards in Mozambique's Oil & Gas Sector

- No references to HSE standards in petroleum legislation and concession contracts.
- Documents only general statements like *“operations shall be conducted according to good petroleum industry practice”*.
- Since 1993 Mozambique has the National Institute of Normalization and Quality (INNOQ) under the Ministry of Industry and Trade as an autonomous body and a corresponding member of ISO.
- Acc. to Decreto No. 71/2013, INNOQ is in charge of “normalization”, but no specific reference is made to IS.

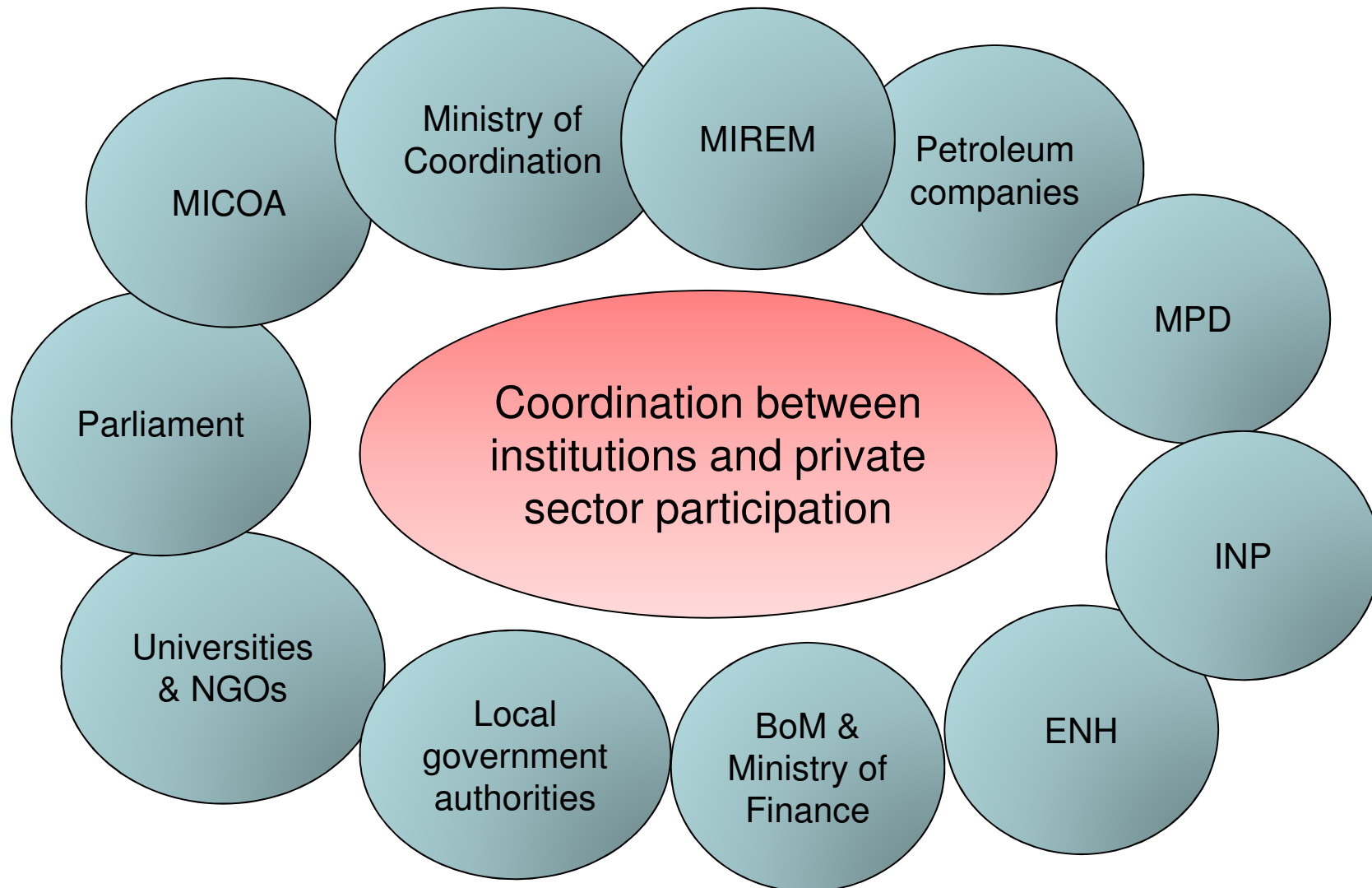
Methods of Adoption or Agreed Application of IS

- INNOQ adopts the most important IS for the O&G sector as national standards.
- Until formally adopted, IS can be made applicable in Mozambique by specific reference:
 - in regulations under the new Petroleum Law and others;
 - In concession agreements, making them mandatory for operators and regulators;
 - In tender documents making them mandatory upon contract awards;
 - as conditions of construction, transport, environmental and other licenses.
- The application of IS is crucial to complete the regulatory framework for the sector in general, but particularly urgent for the LNG project.

Institutional Coordination

- Multiple laws applicable to the petroleum sector create separate, sometimes overlapping institutional responsibilities for negotiations, licensing, enforcement etc.
- Present legislation does not provide for “**single window**” nor for “**administrative silence**”.
- No other mechanism for inter-institutional coordination to ensure policy coherence , administrative efficiency of services and economies of scale.
- Some informal Steering Committees have been established, but typically for policy matters and without private sector participation.

Coordination & Cooperation



Regulatory Security

- **“Regulatory Security”** is an important incentive for high-risk investors and operators.
- Recent sector legislation has created a complex, regulatory framework and a problematic level of uncertainty for regulators, investors and operators, among others, due to
 - undefined criteria for potential government intervention;
 - discretionary provisions leaving unreasonable room for delays, abuse and corruption;
 - unusual time limits in stability clauses for fiscal benefits;
 - contradictory conditions for access to international arbitration.

Pending Regulations under the New Petroleum Law

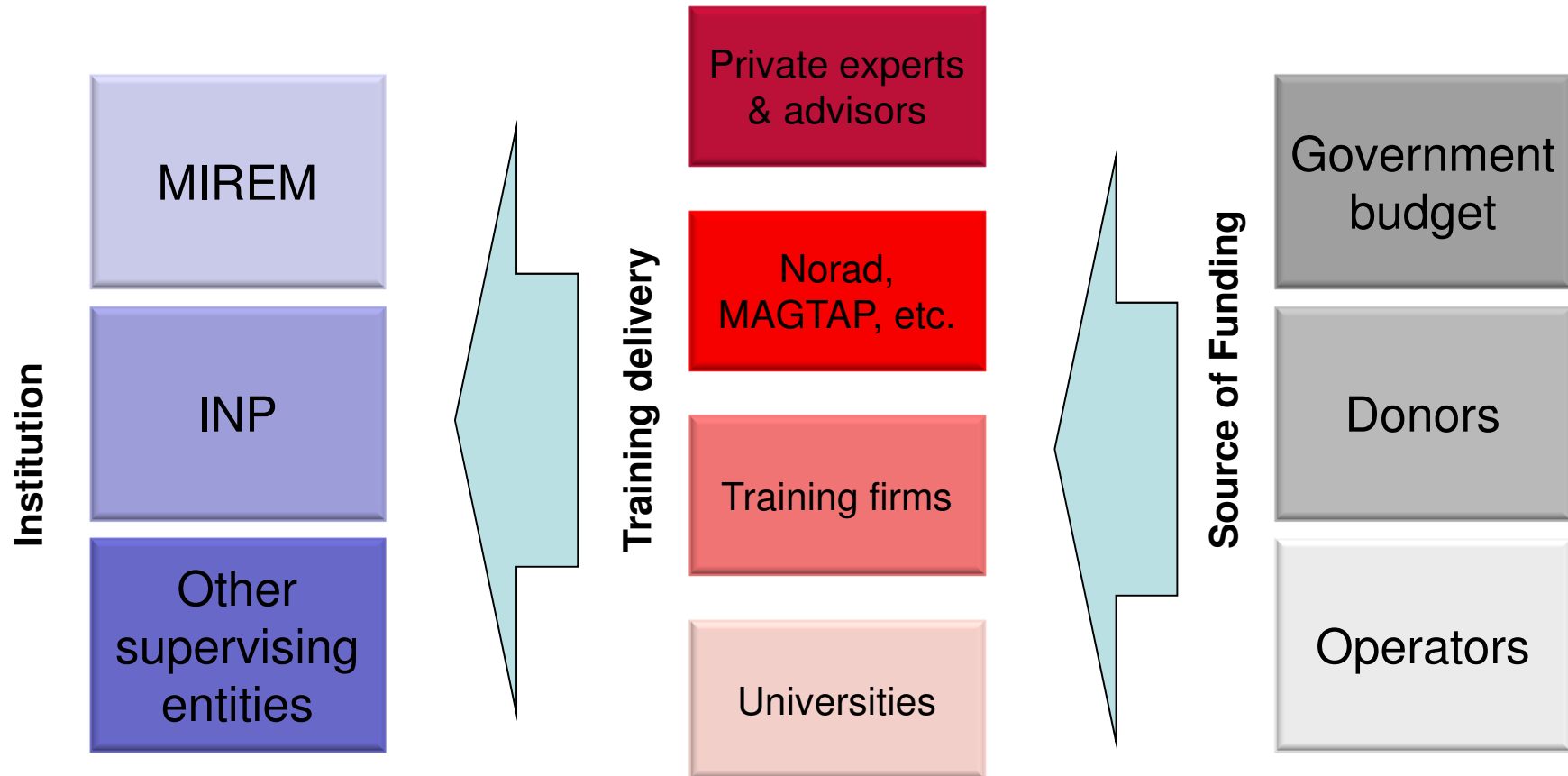
- Most of the problems with the new legislation can be resolved through carefully drafted, comprehensive regulations based on international experience.
- Different from the Decree/Law, the deadline for regulations has no legal consequences. **Government should take sufficient time for their drafting.**
- The Decree/Law and the final agreements with Anadarko/ENI will establish important precedence which should be considered in the regulations for future industrial and infrastructure projects.

Additional Issues to be Covered by Regulations

- Local Content
- Nationality of subcontractors
- Transparency and other EITI requirements
- Telecommunication
- Insurance & Reinsurance
- Land & resettlement
- Workers' protection & other labor issues
- Expatriate quotas & work permits
- Security & emergency planning
- Foreign exchange & other financial matters
- Application of accepted international accounting standards
- Import/export, customs procedures & exonerations
- Port administration & other maritime matters

Institutional Capacity Building

Even the best laws and regulations can be ineffective if the people responsible for their application and enforcement do not have the adequate capacity level



Muito Obrigado!

Dr. Hilmar Zeissig: hibcmail@gmail.com

Taciana Peao Lopes: tpeaolopes@gmail.com