



Public Letter

Hon. Esperança Bias,
Minister of Mineral Resources,
Republic of Mozambique

Maputo, May 22, 2013

This year, 2013, is of unprecedented importance in ensuring good governance of the extractive sector in Mozambique. We are worried that the Government of Mozambique is falling short in its commitment to transparency.

At the EITI Global Conference, Mozambique will be welcomed as a compliant country in reporting and reconciling revenue payments made by extractive sector companies. Everyone accepts that transparency is an essential component of good governance. But transparency means more than publishing revenue payments.

In the consultation process on reforms to the EITI, Mozambique voted for mandatory contract disclosure to be a “requirement” for all EITI countries. We are surprised and disappointed to find, in the recent publication of new draft laws on the mining and petroleum sector, that there is no commitment to mandatory contract disclosure at all. Why would you advocate for contract disclosure inside the EITI, but not do it yourself?

Your current position seems to be that you will publish the “principal terms” of the contracts. OpenOil’s experience in analysing petroleum contracts shows that it is impossible to understand the implications of contract terms for government revenue without seeing all of the relevant clauses.

To illustrate this point, we append to this letter, a series of questions (indicative not exhaustive)

that we consider vital to fully understanding the implications of these EPCC contracts for government revenue. This is information that citizens of Mozambique have the right to know.

There is a clear global trend towards mandatory disclosure of extractive sector contracts. From the Sydney Global Conference onwards, EITI will encourage all countries to disclose contracts. The current revision to the mining and petroleum laws provides an ideal opportunity to demonstrate Mozambique’s commitment to transparency. The alternative is to pass laws that will already be out-of-date before they are even signed.

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A Review of Mozambique's Model Exploration and Production Concession Contract

4th Licensing Round - 2010

Following is a list of questions of vital public interest formed by a reading of the model contract of the 4th licensing round, which closed in 2010 with an award of the Lower Zambesi area to the Norwegian company DNO. But the questions pertain to all oil and gas agreements Mozambique has signed so far with international companies.

CONFIDENTIALITY

Could the minister confirm that the terms of these contracts allow the Government to place all contracts in the public domain immediately, since clause 23 enjoins confidentiality on both parties "except as authorised by applicable law"? Since the applicable law (clause 31.1) is that of the Republic of Mozambique, the government has the contractual right to be transparent.

KEY FINANCIAL TERMS

- **Royalties:** Could the minister confirm that the 6% of natural gas and 10% of crude oil referred to as the Petroleum Production Tax (clause 11.5.a) is effectively a royalty for all contracts since 2007, since it seems to be levied unconditionally and before Disposable Oil is calculated.
- **State Participation:** Could the minister clarify the situation with regard to possible state participation in the project by a state-owned company? Clause 9.13 stipulates various conditions under which a State Participating Interest might evolve, such as the 'soft carry' of costs for that percentage stake being reimbursable to the Contractor as Petroleum Costs – but the contract does not specify what percentage the State Interest might be, or

when in the lifetime of the project a decision to take it up might be made.

- **Cost Recovery Ceiling:** Could the minister provide the percentage specified in clause 9.5 as the maximum percentage of Disposable Petroleum every year? This clearly has an impact on how soon the government of Mozambique might expect sizeable revenue flows from projects governed by this contract.
- **Valuation:** Could the minister disclose whether there have been disagreements over valuation of Petroleum under this contract (clause 10.3) that caused an expert to be appointed to adjudicate? Or whether this has ever happened under similar valuation clauses in Mozambique's other petroleum contracts?
- **Profit Splits:** Could the minister specify the rate of profit splits applied to the Contractor and the State at different R factors from 0 to 3? Does the ministry have any estimate for when the different R-factor thresholds might be reached in the lifetime of this project, and the same for other projects under similar R-factor profit share arrangements?
- **Economic Equilibrium:** Could the minister confirm that clause 11.9 is effectively an economic equilibrium clause? Since it guarantees adjustments to the contract to offer "the same economic benefits as it would have obtained if the change in the law had not been effected", can the minister specify whether an assessment of such benefits under the current project has been agreed between the Parties, and if so, how has it been specified? (For example by Internal Rate of Return?). If such an assessment has not

been agreed between the Parties now, does the government have its own analysis of the economic benefits to the Contractor so that in the event of new legislation affecting that, it is able to make its own proposal as to what changes would be needed in the contract to restore the existing economic benefits to the Contractor?

- **Production Bonuses:** Could the minister specify what bonuses are due to be paid at the start of commercial production, at 25,000 barrels of oil a day equivalent (BOE) production? And also, could he clarify whether the text intends increments of bonus every additional 25,000 BOE or every 50,000 BOE (since both are mentioned in the text, one apparently in error).

NON-FINANCIAL TERMS

- **Training:** Clause 18.3 states “The Concessionaire shall co-operate with MIREM in giving a mutually agreed number of Government employees the opportunity to participate in training activities”. Could the minister specify how many employees that is? Could the minister also clarify how much money has been agreed for training programs during the Exploration Period (clause 18.6)?
- **Institutional Support:** Could the minister clarify how much money the contract specifies (clause 18.5) the Concessionaire will pay to support Government entities involved in Petroleum Operations? To which institutions are these sums paid, have these sums in fact been paid, and who keeps a record of those payments?
- **Social Projects:** Could the minister specify how much money the contract specifies (clause 18.6) to be spent on social projects in areas where Petroleum is produced? Is there a list of such areas by

administrative district for this and other contracts with similar clauses?

- **Environmental Protection:** Clauses 28.2 and 28.3 specify that the Contractor shall prevent environmental damage “in accordance with accepted standards in the international petroleum industry” and “in accordance with Good Oilfield Practices”. Could the minister specify what such accepted standards are, and provide a definition for “Good Oilfield Practices” which despite being referenced six times in this contract is not included in the article of definitions? Could the minister further clarify whether any specific environmental reporting standards, such as those of the Global Reporting Initiative or IPIECA, have been agreed?
- **Environmental Impact Study:** Clause 28.6 specifies that the Contractor will conduct a baseline study of the state of the environment in the concession area and the potential impact of Petroleum Operations? Can the minister confirm that a study has been carried out, and if so has it been made available to the public?
- **Arbitration:** Could the minister specify what the seat of arbitration under ICSID rules would be if the two parties had a significant dispute they could not solve themselves?