



GOVERNMENT REVISIONS TO THE PETROLEUM LAW: No Consultation – No Transparency

Introduction

The Government is revising Mozambique's Petroleum Law. The process has been going on for more than one year. The draft Law was approved by the Council of Ministers on 9 April 2013 and will now be sent to Parliament.

There is no doubt that Mozambique's Petroleum Law needs updating. The current version was enacted in 2001, long before the natural gas discoveries in the Rovuma Basin or the prospects of the liquid natural gas (LNG) production.

Unfortunately the process was flawed and so is the content.

Changes in the Petroleum

What will be different in the new Law? Here are some highlights:

Liquid Natural Gas: the old Petroleum Law made no mention to Liquid Natural Gas (LNG). It was drafted in the hopes that oil would be found. The Law now incorporates LNG and creates a new "Facility Concession Contract" and "Facilities Development Plan" to cover the construction and operation of gas liquefaction plants.

Competition for Concessions?: Under the 2001 Law, there was an option to grant concessions based on direct negotiations with the

petroleum company. This option was removed in versions of the Law disseminated for public comment. This guarantee of a competitive process has, in fact, been highlighted as one of the significant improvements in the new Law. However, the final version of the Law reinserts the option of "simultaneous or direct" negotiations in Article 5 and now remains essentially unchanged from the 2001 Law. The prospect of allocating concessions through non-competitive processes, and the associated risks of preferential treatment and corrupt practices, remain in place.



Corporate Ownership: Where applicants for the right to conduct petroleum operations are corporations, the Law imposes two new requirements. First, it requires that all corporations sharing in a concession contract be registered in a jurisdiction where the government can independently verify their ownership,

management and control as well as their tax situation. Second, it requires that they identify their shareholders and the relative proportion of shares that each hold. While this information must be provided to the government as part of the application, there is no indication that it will be made public.

Transfer of Petroleum Rights: Government approval is now explicitly required for all transfers of petroleum rights. This provision is linked to the government's decision to tax capital gains when concession rights are sold, though there is no explicit mention of the capital gains tax or the relevant rate.

Purchase of Goods and Services: The final version of the Law includes a new section on the Purchase of Goods and Services. Among the new provisions is the requirement that companies give preference to local goods and services where they are equal in quality and availability and where the price including taxes is not more than 10% higher.

Environment and Communities: Protection of the environment and the interests of local communities are mentioned, but mostly in reference to future regulations. There is a commitment to channel a "percentage" of government income generated by petroleum operations towards the development of communities in the area, but no specific rate is included.

Civil Society Demands

The new Law is an important step in preparing the sector for the changes to come – particularly the production of LNG in the Rovuma Basin. It responds to government priorities and company interests. But it does not respond to the demands of civil society.

As the importance of the extractive industries in Mozambique has grown, so too have the calls from civil society for transparent governance

and open debate, fair payment for the sale of Mozambique's natural heritage, and the protection of the basic rights of Mozambican citizens. In response to the draft Petroleum Law, civil society called for a series of measures that have not been included:

Transparency: Publishing revenue payments through the provisions of the EITI ensure that government receives what companies pay. But it says nothing about how much companies should have paid. Emerging best practice is for the automatic publication of all contracts, ensuring a level playing field for investors and reducing the risks of corruption. The list of license holders for all concessions should be public, including the identification of individual shareholders. State-owned enterprises must publish annual reports with audited financial statements, documenting revenues received and how they were spent.

Conflict of Interest: The state is both a regulator of the sector and a commercial partner in petroleum production – roles that must be managed by different arms of government. Licensing, for example, must be separated from monitoring and enforcement. Conflicts of interest must be addressed at the personal level as well: no individual from the government side should be allowed to have a financial interest in the sector.

Limit Discretionary Powers of the Council of Ministers: To meet international best practice, the Petroleum Sector should be managed by clear, publicly accessible, laws and regulations. This creates a level playing field and reduces the risks of preferential treatment for particular companies. The new Petroleum Law, like the old one, grants broad authority to the Council of Ministers (now changed to "Government") to regulate, approve and define how the sector will operate. In fact, the range of explicit authorities has increased from five in the 2001

Law to fifteen in the new Law. The broadening of these powers suggests that the management of the sector in the future will continue to be based on non-transparent decision-making.

Accountability for Misconduct: Government laws and regulations to protect the rights of Mozambicans are inadequate. Regulations on issues ranging from involuntary resettlement to health and safety standards need to be strengthened. Penalties for non-compliance need to be increased to ensure that they create a genuine disincentive rather than being little more than a cost of doing business. And liability must be extended beyond the local subsidiaries of multi-national companies to include the parent company itself.

A “Fair” Deal: Mozambique’s petroleum sector has been managed through vague public laws and detailed, confidential contracts. The creation of a Facility Concession Contract for LNG plants extends this practice and places even more important information outside the public domain. The financial terms that determine the split between company and government revenue should be incorporated into law including not only the royalty payments and income tax but also the more significant terms of the production sharing agreement. The new Law removes all reference to the fiscal regime (formerly Chapter V) that would govern the Petroleum sector. In fact, this makes little practical difference as the 2001 Law said only that the Council of Ministers had the authority to establish a “special fiscal regime.”

Next Steps and New Documents

Much is left undone in the Petroleum Law about to be enacted. The regulation of the sector is not limited to the Law before Cabinet. There are three other legal documents currently being written which will define the terms for companies exploring and producing

petroleum in Mozambique.

First, there are the detailed Petroleum Regulations that are due to come into effect within 180 days of the passing of the new Law. Many of the important details will be in these 50 pages rather than the 14 pages that comprise the Law. This is the document that will spell out key issues including contract confidentiality, the flaring of natural gas, health and safety standards and environmental and social impact assessment.

Second, there are indications that a new fiscal regime being developed for both the petroleum and the mining sectors, updating terms on royalty percentages and taxes rates that have been in place since 2007. This Law will determine what proportion of the profit goes to the government and what proportion to the company. The IMF has been working with the government for more than one year. The legislation is due to be approved by Parliament in October.

Finally, a new model Exploration and Production Concession Contracts is being prepared for the 5th Licensing Round for petroleum concessions. These are the documents on which companies bid for the right to particular concessions. It is the terms in these contracts, rather than the public laws and regulations that determine what companies will actually pay.

The table below shows the how the Petroleum Law, Petroleum Regulations, Petroleum Fiscal Regime and Model EPC Contracts have evolved over time. It illustrates that 2013 will be by far the most important year in setting terms for the sector.

The lack of meaningful public consultation on the Petroleum Law, and the lack of engagement with civil society demands are illustrative of a larger problem. Three other important legal documents governing the regulation

of Mozambique's burgeoning petroleum sector will come into effect in 2013. Yet for these other documents, no public drafts exist and no public consultations have been held.

There is still time for a genuine public discussion and debate. That is, if the government actually wants to hear from the people.

Table 1: Four Generations of Petroleum Regulation in Mozambique

	First Generation	Second Generation	Third Generation	Fourth Generation
Petroleum Law	Law 3/1981	Law 3/2001		New Law /2013
Petroleum Regulations		Decree 19/2004		New Decree /2013
General Investment Law	Law 3/1993			
Code of Fiscal Benefits	Decree 12/1993	Decree 16/2002		
Petroleum Fiscal Law				New Law /2013
Petroleum Royalties		Decree 19/2004	Law 12/2007 Decree 4/2008	
Petroleum Tax Incentives			Law 13/2007	
Model EPC Contract	1 st Round (2000)	2 nd Round (2005)	3 rd Round (2007) 4 th Round (2009)	5 th Round (2013)

FICHA TÉCNICA

Autor: Adriano Nuvunga; **Edição:** Centro de Integridade Pública - CIP; **Layout and Design:** Nelton Gemo; | **Tiragem:** 300 copies | **Endereço:** Rua Frente de Libertação de Moçambique, nº 354, Maputo - Mozambique

Tel.: +258 21 492335, **Cel.:** +258 82 301 6391, **Fax:** 258 21 492340 | **Caixa Postal:** 3266
E-mail: cip@cip.org.mz
Website: www.cip.org.mz;
Registo N°: 020/GABINFO-Dez/2007

Parceiros

