

FULL DISCLOSURE OF EXTRACTIVE SECTOR CONTRACTS: A Next Step for Good Governance of Mozambique's Natural Resources

The terms under which Mozambique allows international mining and petroleum companies to operate are currently contained in confidential contracts.

It is in the interests of the Government, companies and, most of all, Mozambican citizens that this information be publicly available. Contract transparency increases public trust in the government's stewardship of natural resources, reduces tax avoidance thereby increasing

government revenue, and creates a level playing field for national and international companies.

Many resource rich countries place extractive sector contracts in the public domain including: Afghanistan, Bahrain, Bolivia, Colombia, Congo-Brazzaville, the Democratic Republic of Congo, Ghana, Guinea, Liberia, Niger, Peru, Sao Tome and Principe, Timor-Leste and the United States.

What are the Main Elements of Contract Disclosure?

	What it Means	Why it is Important
A Scanned Copy	A scanned version of the contract governing each extractive sector project (80-130 pages) signed and initialed on each page	As contracts have the force of law, disclosure requires providing access to the legally binding version
With Annexes	All annexes to the contract are included, as are all ancillary contracts that directly affect the core terms	Core terms are often placed in Annexes and can fundamentally change the nature of the deal; the same is true for associated contracts such as "pricing agreements"
Without Redaction	There is a clear international trend against "blacking out" of supposedly sensitive information allowing for the entire contract to be in the public domain.	A growing body of opinion, from developing countries and extractive companies, rejects the idea that these contracts contain commercially sensitive information that should not be in the public domain.
On single website	All disclosed contracts should be available on a single government web-site	There is a difference between being "public" and being "accessible."

Good practice in the extractive sector means publishing the main contract between the government and the company following signature.

Revisions Required to Draft Laws on Mining and Petroleum

The Government of Mozambique has indicated their support for contract disclosure within the Extractive Industry Transparency Initiative. But this approach to contract transparency is not reflected in the draft laws for the petroleum and mining sector currently awaiting Parliamentary approval.

The contract transparency clauses in the two laws should be amended to explicitly provide for scanned copies of the contracts, including annexes, to be published without redactions on a government website. With these modest changes, Mozambique would take the next important step in promoting effective stewardship of the country's natural resource endowment.

Disclosure Means Publishing the Actual Contract

Contract disclosure means that the full text of the Host Country Agreement (and any annexes or related contracts that directly affect the terms of the main contract) is easily available to the public. It means publishing scanned copies of the final contract, signed by the parties, for each extractive project.

Publishing the Principal Terms is Insufficient

Publishing excerpts from the contract may be useful in some contexts, but it should not be confused with contract transparency. First, to understand the full fiscal implications it is necessary to see the entire contract. Second, there are many important dimensions to these contracts beyond the fiscal terms that should be public

including: provisions on the environment, social impact assessment and monitoring, community investment commitments, provisions on national training and employment, and local purchasing requirements etc.

Annexes and Supplementary Contracts Must be Included

Contract disclosure requires that the main contract, and all other documents that directly affect the core terms of that contract, be disclosed. As annexes often contain provisions that fundamentally affect the core terms (i.e. cost recovery provisions for Exploration and Production Concessions Contracts) they must be included in contract disclosure. In some cases, related documents such as Sales Agreements that determine the price paid for resources must also be disclosed.

No Exemptions for Commercial Confidentiality are Needed

Many countries currently require mandatory contract disclosure with no exemptions. As there have been no difficulties with full contract disclosure in countries where no exemptions are allowed, the case for redaction has been seriously weakened. Mining companies increasingly agree that there is no commercially sensitive information in the main contracts that establish the terms for exploration and production. If there are specific places where such a conflict does exist, the public interest in transparency should take precedence over commercial sensitivities.

Contracts Should be Available on a Single Government Website

It is not uncommon for documents formally in the public domain to be all but inaccessible to the public. The objective of contract disclosure is to create a level playing field by making access easy for all constituencies. There have been references to using Mozambique's "cadastre" for contract disclosure but this is inadequate,

as the information is available only through 2 computer terminals in the lobby of the Ministry (2,500kms away for CSOs working on natural gas in Pemba) and access depends on a registration process. Good practice in transparency is for all scanned copies of the signed contracts to be made available on a single government website.

Draft Provisions in Mining and Petroleum Laws

The intentions of the Government on contract disclosure are not entirely clear, given the vague wording in the draft mining and petroleum laws.

The reference in the draft mining law to publication in the National Gazette with broad exemptions for commercial confidentiality implies that many details will remain confidential.

Similarly, the draft Petroleum Law indicates that only the “main terms” of the concession contract will be published rather than the full contract. The text is drawn directly from the Public Private Partnership law (Article 23, Law 15/2011). This suggests that the government draws no distinction between the petroleum sector and other large-scale project; a conclusion inconsistent with the worldwide movement to greater transparency in the extractive sector.

The Mozambican Minister of Mines indicated at a global EITI conference in Sydney that Mozambique had “published” two recent contracts in the coal sector. To date, the only information in the public domain is what has been published in the National Gazette. The table on the following page illustrates the profound difference between the actual disclosure of contracts and the publishing of some terms in the Gazette.

Main Messages:

- Full contract disclosure is part of good governance in the extractive sector.
- Contract disclosure is not about releasing a summary of the main terms; it means having scanned copies of the signed contract,

Article 7 – Draft Mining Law

(3) Both the mining titles and the mining contract are **published in National Gazette (Boletim da República)**, prejudice to the **safeguarding of confidentiality on commercially and competitive strategic information** relating to the competitiveness of mining activity, enclosed in the mining contract.

(4) By commercially and competitive strategic information relating to the competitiveness of mining activity it is meant **all information of a commercial nature** that once made public, may bring negative consequences to the finance and assets for the investment.

Article 12 – Draft Petroleum Law

(2) Without prejudice to the safeguarding of confidentiality on commercially and competitive strategic information of petroleum operations, the main contract, is subject to the issuance of previous oversight provided by the competent authority for that effect, as well as the **publication of the main terms of the concession contract.**

(unofficial translations)

with annexes and with no redactions, on a single government website.

- Commercial confidentiality is not a barrier to contract disclosure; it is now common practice with no negative commercial implications.
- There is no government rationale for confidential contracts, and while some companies may prefer confidentiality, this commercial interests is outweighed by the public interest in transparency
- By amending the disclosure provisions in these new laws, Mozambique has the opportunity to keep pace with evolving good practice in the extractive sector.

Comparing Disclosure of “Contracts” and Disclosure of “Terms”

Table of Contents of an actual mining contract. 60-130 Pages in Public Domain	Publication of “terms” of Mina de Revúboè contract in the Gazette 10 Paragraphs in Public Domain
<p>Mining Contract: Table of Contents</p> <p>Preâmbulo</p> <p>Cláusula 1: Definições e Interpretação</p> <p>Cláusula 2: Âmbito</p> <p>Cláusula 3: Representações e Garantias</p> <p>Cláusula 4: Concessão de Direitos de Prospecção</p> <p>Cláusula 5: Área de Concessão</p> <p>Cláusula 6: Prazo e Fase de Contracto</p> <p>Cláusula 7: Fase de Prospecção e Pesquisa</p> <p>Cláusula 8: Fase de Desenvolvimento</p> <p>Cláusula 9: Fase de Exploração Mineira</p> <p>Cláusula 10: Fase de Recuperação e Encerramento</p> <p>Cláusula 11: Disposições Capacitantes</p> <p>Cláusula 12: Diretos e Obrigações das Partes</p> <p>Cláusula 13: Método de Operação</p> <p>Cláusula 14: Financiamento</p> <p>Cláusula 15: Questões Fiscais</p> <p>Cláusula 16: Oferta de Participação Social a Entidades Nacionais</p> <p>Cláusula 17: Regime Cambial</p> <p>Cláusula 18: Emprego de Pessoal</p> <p>Cláusula 19: Desenvolvimento Comunitário</p> <p>Cláusula 20: Informação, Dados Minerais e Relatórios</p> <p>Cláusula 21: Vendas e Valor de Produto Minério</p> <p>Cláusula 22: Bens e Equipamentos</p> <p>Cláusula 23: Infra- Estruturas e Acesso Público</p> <p>Cláusula 24: Meio Ambiente, Reabilitação e Proteção Contra Perdas e Desperdícios</p> <p>Cláusula 25: Confidencialidade</p> <p>Cláusula 26: Força Maior</p> <p>Cláusula 27: Cessão da Posição Contratual</p> <p>Cláusula 28: Término</p> <p>Cláusula 29: Consulta, Arbitragem e Perito Independente</p> <p>Cláusula 30: Expropriação</p> <p>Cláusula 31: Lei Aplicável e Fórum</p> <p>Cláusula 32: Disposições Gerais</p> <p>Cláusula 33: Notificações</p> <p>Cláusula 34: Anticorrupção</p> <p>Cláusula 35: Língua</p> <p>Anexo A: Coordenadas</p> <p>Anexo B: Lista de Aprovações</p> <p>Anexo C: Inventário de Bens da Concessão</p> <p>Anexo D: Cálculo do Preço do Minerais</p> <p>Anexo E: Principais Termos, Leis e Regulamentos</p> <p>Anexo F: Metodológica de Reassentamento da Populações</p>	<p>Resolução n.º 10/2013</p> <p>de 4 de Abril</p> <p>Tornandó-se necessário atribuir direitos para a realização das actividades mineiras, na Mina de Revúboè, numa área de 3.860 hectares, ao abrigo do n.º 1 do artigo 25 da Lei n.º 14/2002, de 26 de Junho, Lei de Minas, o Conselho de Ministros determina:</p> <p>Artigo 1. São aprovados os termos do Contrato Mineiro, para a Mina de Carvão de Revúboè, a celebrar com a empresa Minas de Revúboè, Lda na qualidade de Concessionário Mineiro.</p> <p>Art. 2. 1. Nos termos do Contrato Mineiro, o Conselho de Ministros confere ao titular:</p> <p>a) O direito exclusivo de realizar actividades mineiras na área da concessão a céu aberto ou através de lavra subterrânea, relativamente ao carvão, minerais associados a partir de um ou mais depósitos de carvão, no subsolo, dentro dos limites da área de contrato;</p> <p>b) O direito de minerar, processar, transportar, armazenar e comercializar os produtos minerais nos termos do presente Contrato Mineira.</p> <p>2: Os direitos conferidos ao Concessionário Mineiro estão sujeitos à legislação aplicável e aos termos e condições estabelecidos no contrato Mineiro.</p> <p>Art. 3. A Concessão é atribuída por um período inicial de vinte e cinco anos a partir da data efectiva do Contrato Mineiro, sujeita às condições constantes do Plano de Lavra aprovado pelo Governo.</p> <p>Art. 4. É delegada ao Ministro dos Recursos Minerais competência para assinar o respectivo Contrato Mineiro em representação do Governo da República de Moçambique.</p> <p>Art. 5. Compete à Ministra que superintende a área dos Recursos Minerais apreciar e aprovar as matérias a serem submetidas pelo Concessionário Mineiro, nos termos da Concessão e do Contrato Mineiro.</p> <p>Aprovado pelo Conselho de Ministros, aos 26 de Março de 2013.</p> <p>Publique-se.</p> <p>O Primeiro-Ministro, <i>Alberto Clementino António Vaquina.</i></p>

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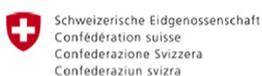
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