



## **Advances and stagnation of transparency in the extractive industry in Mozambique**

**By Dionísio Nombora\***

### **1. Introduction**

Mozambique was admitted as a candidate country to the Extractive Industry Transparency Initiative (EITI) in May 2009. The accession of Mozambique to EITI is one of the positive steps towards ensuring greater transparency and accountability in the extractive sector, through the full and systematic publication of payments made by the companies and of public revenue from petroleum, gas and mining.

The implementation of the Mozambique Extractive Industries Transparency Initiative (MEITI) reached a high point with the publication of the first report in February 2011, referring to 2008, followed by the validation report in May 2011. On 16 August 2011, the EITI Board declared that Mozambique had made significant progress, but this same body decided to reject the candidature of our country because of the failure to comply with 6 of the 18 indicators that comprise the validation matrix and which must be complied with before the country can be considered EITI-compliant. It was in the interests of civil society in general, and of the Centre for Public Integrity (CIP) in particular, as one of the representatives of civil society on the MEITI Coordinating Committee, that the country should make the transition to a status of compliance with the rules of the initiative. The EITI Board renewed Mozambique's status as a candidate country for 18 months – that is, until 15 February 2013. By that date the country should have completed validation in accordance with the 2011 edition of the EITI rules.<sup>1</sup>

The second report reconciling payments made by and revenue received from the extractive industry in Mozambique has just been published. The report shows, among other matters, progress in coverage, with the inclusion of more companies and more

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<sup>1</sup> <http://eiti.org/Mozambique>.

payments, notably the Institutional Capacity Building and Social Projects Funds. The total tax paid by extractive industry companies in 2009 was 1.070 million Meticaís (about US\$ 40 million). 39% of this came from the mining sector and 61% from the hydrocarbon sector. This shows that the fiscal contribution of extractive industry companies was just 2.25% of the total revenue of the Mozambican state. This is a very low level, bearing in mind the strategic importance of the sector in the country's economy, and the non-renewable nature of the natural resources involved.

This document analyses the management model of the extractive sector in Mozambique, based on the second report of the Mozambique Extractive Industries Transparency Initiative (MEITI). The document raises questions about the commitment of companies in the sector to transparency in Mozambique. It calls into question the mechanisms for using and managing the funds for institutional capacity building and for social projects, as well as the feeble fiscal contribution of the sector in relation to GDP. Furthermore, the document draws attention to the need to legislate for EITI in order to ensure that it is compulsory for all mining and petroleum companies to participate in EITI, the need to advance with renegotiating and publishing contracts, and the need to create technical capacity in the government to undertake studies, monitoring and inspection of the extractive sector.

## **2. The selection of the reconciling company**

In order to produce the second report on EITI in Mozambique, the MEITI Secretariat launched an international tender to hire an independent firm. The services to be undertaken included: (i) collect, compare and reconcile the data on payments made by extractive and petroleum companies and the revenue received by the government during the 2009 financial year; (ii) determine the scope of the companies to be covered by the report, and (iii) hold a training seminar on how to fill out the model data gathering forms for the companies and government agencies.<sup>2</sup>

A total of 12 firms expressed an interest in participating in the tender, namely: MB Consulting (Mozambique), BKSC (Mozambique), Audiconta (Mozambique), Baetica (Mozambique), Deloitte (Mozambique), AH Consulting (Uganda), KPMG (Mozambique), Ernst & Young (Mozambique), SOFRESCO (France), MOORE STEPHENS LLP (England), BOAS & ASSOCIATES (Ghana) and SWEDISH GEOLOGICAL (Sweden).<sup>3</sup>

After forming the jury to assess the bids, the following companies were shortlisted: KPMG (Mozambique), Ernst & Young (Mozambique), SOFRESCO (France), MOORE STEPHENS LLP (England), BOAS & ASSOCIATES (Ghana) and SWEDISH GEOLOGICAL (Sweden).<sup>4</sup>

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<sup>2</sup> <http://www.itie-mozambique.org/download.pdf/>

<sup>3</sup> <http://www.itie-mozambique.org/informe.html>/ITIE Mozambique. Selection Report. July, 2011.

<sup>4</sup> Iniciativa de Transparência na Indústria Extractiva em Moçambique (2011). Informe sobre o Processo de Implementação da Iniciativa de Transparência na Indústria Extractiva (ITIE). Maputo /Ministry of Mineral Resources (Republic of Mozambique). Combined Evaluation Report. MEITI. September, 2011.

Once the bids of the shortlisted companies were assessed, the contract was awarded to Ernst & Young Mozambique. The contract was for USD 90,113.40 (ninety thousand, one hundred and thirteen US dollars and forty cents), without including VAT. Unlike what happened in the production of the first report, when a foreign company - Boas & Associates of Ghana – was hired, this time the Secretariat opted for a company based in Mozambique which meant a reduction of about 50% in the costs of producing the report.<sup>5</sup>

### **3. Methodology & materiality in the second EITI report**

#### ***Methodology***

Once the company (Ernst & Young Mozambique) was selected to reconcile the accounts, the phase of drawing up the report following. This covered several sequential stages, namely: (i) drawing up the scoping study, (II) holding the training and dissemination workshop, and (III) reconciling the data on payments for 2009 gathered from the various bodies concerned – the companies operating in the extractive industries and the state institutions. The objective of the scoping study was to lay the foundations for reconciling payments made by the taxpaying companies and the figures presented by the bodies in charge of collecting state revenue. This was done by defining which fees and taxes were to be considered, identifying the companies operating in the sector and defining the materiality threshold in order to select the companies to be included in the study.<sup>6</sup>

#### ***Materiality***

The question of materiality (which companies, which payments) is fundamental for ensuring that EITI is inclusive and wide-ranging in the implementing countries. Indeed, for Mozambique, the definition of materiality was a weighty element in the assessment of the country by the EITI Board. For the EITI Board, there was a lack of clarity in the definition of materiality, that is, the inclusion of all business units linked to the country's extractive sector, including small and medium companies, and the inclusion of all payments made in the sector. One of the points which showed the lack of clarity in the definition of materiality was the sharp reduction in the number of companies envisaged (from 23 to 6 companies) for the first MEITI report, referring to 2008.

Furthermore, this reduction was not explained in a timely fashion to the companies which remained outside the EITI report. A complete and public explanation was only given after the publication of the first report, which did not help give to a picture of greater seriousness to the process. Even though it was understandable, and although there were no public complaints, it was clear that communication was poor, and the misunderstandings persisted until after the publication of the reconciliation report.<sup>7</sup>

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<sup>5</sup> Note that in 2010 the tender was awarded to Boas & Associates for a sum equivalent to USD 180,000.00 (one hundred and eighty thousand US dollars).

<sup>6</sup> Ernest & Young (2011). ITIE Moçambique. Iniciativa de Transparência na Indústria Extractiva. *Scoping Study*. Maputo.

<sup>7</sup>Selemane, T & Nombora, D (2012). Reprovação da Candidatura de Moçambique: notas para debate. CIP Newsletter. Edição 13. Centro de Integridade Pública (CIP). Maputo.

As a result of the recommendations of civil society and of the EITI Board about the need for a clear definition of the type of payments and revenue (in order to ensure that all material payments derived from petroleum and mining made by the companies to the Government are supplied to the reconciler and included in the second EITI report), as well as the inclusion of the small and medium companies in the next reports, the MEITI Coordinating Committee selected 36 companies for the second report reconciling payments made and revenue received.

The selection of companies for the second MEITI report had different assumptions depending on the areas (mining and hydrocarbons) to be covered by the report. In the mining area, the materiality of the payments made in 2009 was taken as the assumption for selection. With this in mind, and in line with the recommendations of the EITI Board as well as of the Civil Society Platform for Natural Resources and the Extractive Industry in Mozambique, the sum of 500,000.00 MT was defined as the materiality threshold – unlike the criterion used for producing the first report, that is, taxpayers who paid in direct taxes no less than 1,500,000.00Mt, which led to a significant reduction in the number of companies initially envisaged (from 23 to 6 companies). When the materiality criterion of 500,000.00 MT was chosen, out of a universe of 96 companies 24 were chosen, as shown in the table below:

**Table 1:** Companies in the mining area

N.º	Name of Company	Product
1	RIO DOCE MOÇAMBIQUE, LDA RDMZ/ VALE	Coal
2	CIMENTOS DE MOÇAMBIQUE, SARL	Limestone
3	RIVERSDALE MOÇAMBIQUE, LDA	Coal
4	AP CAPITAL, LIMITADA	Phosphates and associated minerals
5	ROVUMA RESOURCE, LIMITADA	Base metals
6	OMEGACORP MINERAIS, LDA	Uranium
7	RIO TINTO MINING AND EXPLORATION LIMITED	Titanium minerals
8	CAPITOL DE RESOURCE, LDA	BME, Iron, PME
9	JSW NATURAL RESOURCES MOZAMBIQUE, LIMITADA	Coal, Iron, BME
10	AFRICA DRILLING COMPANY - AFRODRILL	BME
11	MINAS MOATIZE, LDA	Coal
12	ETA STAR MOZAMBIQUE, SA	Coal
13	TWIGG EXPLORATION & MINING, LIMITADA	BME
14	JSPL MOZAMBIQUE MINERAIS, LIMITADA	Mineral sands
15	HIGHLAND AFRICAN MINING COMPANY, LIMITADA	Tantalite
16	ACOSTERRAS MOÇAMBIQUE, LDA	Stone
17	MOZAMBIQUE MINERALS , LIMITED	Coal, Iron, BME
18	MANICA MINERALS (MOZ), LDA	BME
19	ESSAR MINAS DE MOÇAMBIQUE, LIMITADA	Coal

20	OPTI METAL TRADING MOÇAMBIQUE, LIMITADA	BME
21	GRINAKER MOÇAMBIQUE LDA	Sand
22	TANTALUM MINERAÇÃO E PROSPECÇÃO, LIMITADA	Tantalite
23	AFRIMINAS MINERAIS, LIMITADA	BME, Iron
24	KENMARE MOMA MINING, LIMITED	Heavy sands

**Source:** Ernst & Young (2012). ITIE Moçambique. Iniciativa de Transparência na Indústria Extractiva. Segundo Relatório de Reconciliação – ano de 2009. Maputo.

In the hydrocarbon area (gas and petroleum) 12 companies were selected, which is the majority of petroleum companies operating in Mozambique.

**Table 2:** Companies in the hydrocarbon area

N.º	Name of Company	Product
1	ANADARKO MOÇAMBIQUE ÁREA 1, LIMITADA	Petroleum/Gas
2	COMPANHIA MOÇAMBICANA DE HIDROCARBONETOS, SARL	Petroleum/Gas
3	D N O ASA	Petroleum
4	EMPRESA NACIONAL DE HIDROCARBONETOS - EP	Petroleum/Gas
5	ENI EAST AFRICA S.P.A	Gas
6	PETRONAS CARIGALI MOZAMBIQUE E & P, LTD	Petroleum
7	SASOL PETROLEUM SOFALA, LDA	Petroleum/Gas
8	SASOL PETROLEUM TEMANE, LDA	Gas
9	WENTWORTH MOÇAMBIQUE PETROLEOS, LDA	Petroleum
10	BUZI HIDROCARBONS	Gas
11	STA TOIL LTD	Petroleum
12	SASOL PETROLEUM MOÇAMBIQUE, LDA	Petroleum/Gas

**Source:** Ernst & Young (2012). ITIE Moçambique. Iniciativa de Transparência na Indústria Extractiva. Segundo Relatório de Reconciliação – ano de 2009. Maputo.

As for the type of payments, fiscal and non-fiscal payments that the companies made to the Mozambican state in 2009 were the subject of the second reconciliation report, namely: Personal Income Tax (IRPS); Corporation Tax (IRPC, which includes retention at source, payment by account, and final IRPC); Tax on mining/petroleum production (including payment in kind in the case of petroleum); Surface tax; Dividends paid to the state; Contribution to the Institutional Capacity Building Fund; Contribution to the Social Projects Fund; and Environmental Licences.

After the definition and approval of the materiality for the second report by the MEITI Coordinating Committee, Ernst & Young Mozambique sent the *reporting templates* to each of the selected companies and to the State institutions charged with collecting the taxes and other payments made by the companies, namely, the General Tax Directorate (DGI) and the National Petroleum Institute (INP). Of the 36 companies selected for the second report reconciling the payments made and revenue received in the extractive

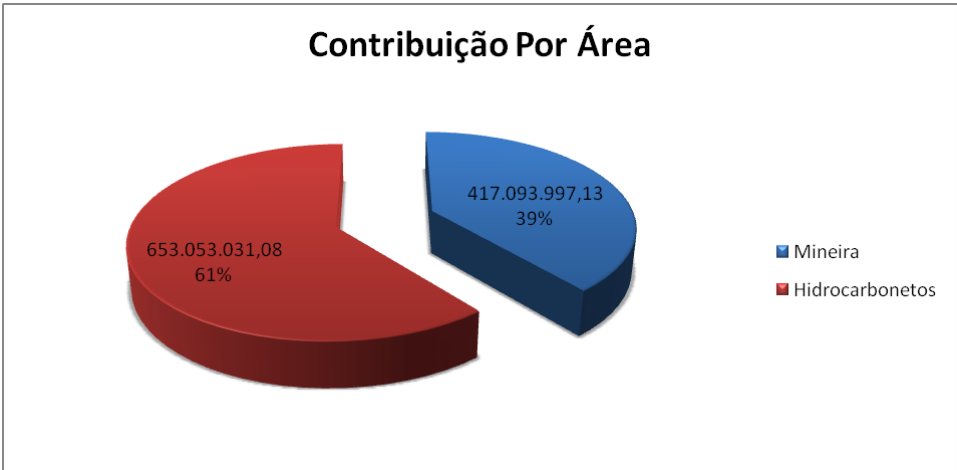
sector in 2009, only 31 replied to the survey. In percentage terms, that represents about 86% of the total number of companies selected.

#### 4. Main findings of MEITI second report

##### *Contribution of the companies selected*

The second reconciliation report concluded that in 2009, the 31 mining and hydrocarbon companies paid the State a total of 1,070 million meticaís, from taxes and non fiscal payments. The hydrocarbon area contributed more to tax revenue despite the smaller number of companies when compared to the mining area. The revenue from the hydrocarbon areas amounted to 61% of the total received from the companies who answered the survey, as the graph below shows.

**Graph 1:** Contribution by area



**Source:** Ernst & Young (2012). ITIE Moçambique. Iniciativa de Transparência na Indústria Extractiva. Segundo Relatório de Reconciliação – ano de 2009. Maputo.

##### *Amounts for each of the taxes*

The total amount paid by companies in the extractive industry in 2009 was 1,070 million Meticaís. Of this total, 39% came from the mining area and 61% from the hydrocarbon area. As for the composition of this total, the most significant sums came from Corporation Tax (IRPC), which constituted 51.3% of the total amount, followed by Personal Income Tax (IRPS), with 25.1%.

**Table 3:** Amount for each type of tax

Tax	Amount	%
Personal Income Tax (IRPS)	268,513,431.32	25.1
Corporation Tax - IRPC (Total)	549,263,437.59	51,3
<i>Retained at source</i>	454,194,875.35	42.4
<i>Payment by account</i>	94,814,471.72	8,9
<i>Final IRPC</i>	254,090.52	0.02
Tax on Mining/Petroleum Production	54,725,412.71	5.1
Surface Tax	15,864,287.93	1.5
Dividends Paid to the State	11,200,324.95	1.0
Institutional Capacity-building Fund	91,328,898.88	8.5
Contributions to the Social Projects Fund	67,675,154.83	6.3
Environmental Licences	11,576,080.00	1.1
<b>Total</b>	<b>1,070,147,028.21</b>	

**Source:** Ernst & Young (2012).ITIE Moçambique.Iniciativa de Transparência na Indústria Extractiva. Segundo Relatório de Reconciliação – ano de 2009. Maputo.

According to the report, the information declared by the companies in the templates and that reported by the State institutions shows a difference of 47,939,918.21 MT, which is equivalent to 4.65% of the amount declared by the state institutions. After reconciliation, the difference shrank to 625,221.06 MT or 0.06% of the total declared by the State institutions.

## 5. Main observations

### *Some companies did not reply to the survey*

According to the report, the deadline for replying to the *reporting template* (15 days) was not respected by the companies, with a few exceptions. It was also necessary to undertake regular follow-up so that some companies responded to the survey. Of the total of 36 companies selected for the second report on reconciling payments and revenue, only 31 replied to the survey, which is about 86% of the companies selected. The companies who did not reply to the survey represent less than 2.52% of the total revenue. According to the report, work was done to try to locate the 5 companies who did not respond and to contact their managements. Although some were located, it was not possible to obtain the information requested, while others are no longer operating in the country, as the following table shows.

**Table 4:** Companies which did not reply to the survey

N.º	Name of Company	Description
1	AP CAPITAL, LIMITADA	No titles / did not make information available
2	JSW NATURAL RESOURCES MOZAMBIQUE, LIMITADA	Has no organisational / financial structure in the country
3	AFRICA DRILLING COMPANY – AFRODRILL	Has no organisational / financial structure in the country
4	GRINAKER MOÇAMBIQUE, LDA	No titles / did not make information available
5	WENTWORTH MOÇAMBIQUE PETROLEOS, LDA	No longer operates in the country

**Source:** Ernst & Young (2012). ITIE Moçambique. Iniciativa de Transparência na Indústria Extractiva. Segundo Relatório de Reconciliação – ano de 2009. Maputo.

The fact that some companies did not provide the information requested invites us to make a profound reflection on the need to legislate the MEITI, as happens in other countries (Nigeria, Liberia, etc). The MEITI legislation would, among other aspects, make participation in EITI compulsory for all petroleum, gas and mining companies operating in the country, thus raising the level of transparency about payments and revenue from the extractive sector. Furthermore, the transformation of EITI into a law could confer greater commitment to transparency on the part of the companies and the State institutions and ensure the continuity and sustainability of EITI regardless of the will of the companies or of the political decision makers.<sup>8</sup>

### ***Inclusion of Information on the Institutional Capacity Building and Social Projects Funds***

Unlike the first report, which covered a limited range of payments, namely the licenses fee, the surface tax, royalties and corporation tax (IRPC), the second EITI report carries information on the sums channelled by the petroleum companies to the National Petroleum Institute (INP) for the institutional capacity building and social projects funds.

It is important to mention that since new impetus was given to hydrocarbon research and exploration through the approval of the Petroleum Law of 2001, millions of US dollars have been channelled to the government through the INP for use in the so-called “institutional capacity building and social projects funds”.<sup>9</sup>

For many years, a high level of secrecy prevailed about the sums paid by the petroleum companies to the institutional capacity building and social projects funds. The inclusion of these funds in the second MEITI reports shows a positive advance from the perspective of publishing all materially relevant payments in the MEITI reports, thus making the initiative more wide-ranging and relevant. However, despite this advance in

<sup>8</sup> [http://www.revenuewatch.org/sites/default/files/Liberia%20EITI%20Act\\_ENGLISH.pdf](http://www.revenuewatch.org/sites/default/files/Liberia%20EITI%20Act_ENGLISH.pdf)

<sup>9</sup> CIP (2011). Moçambique deve adoptar melhores práticas de gestão de recursos petrolíferos. *Nota de Imprensa nº10/2010*. Maputo.



publishing the amounts paid by the petroleum companies to these funds, it is urgent that the INP ends its secrecy about the mechanisms for using and managing these funds. The public should be informed about the mechanisms for using and managing the social projects fund, where the projects are carried out, and what their social and economic impact is. Since this is not an object of EITI, it should be made available pro-actively by the INP.

***The contribution of the extractive sector remains very low***

The report includes information on the taxes paid by 31 extractive industry companies, 20 of them active in mining and 11 in hydrocarbons. Total taxes paid by the extractive industry companies was 1,070 million Meticaís. Of this total, 39% comes from the mining area and 61% from the hydrocarbon area. In the mining area, the company that paid the highest sum in taxes was the Companhia Rio Doce Moçambique/Vale-Maputo, with a total amount of 157 million Meticaís. The companies in the hydrocarbon area which contributed most to state revenue were Sasol Petroleum Sofala Lda. and Anadarko Moçambique Área 1 Lda, with 248 and 204 million Meticaís respectively. These three companies contributed 57% of the total payments from the extractive industry.

With regard to the composition of the total amount of taxes paid, the most significant sums came from Corporation Tax (IRPC), which accounted for 51.3% of the total, followed by Personal Income Tax (IRPS), with 25.1%. The contributions to the institutional capacity building and social projects funds amounted to about 15% of the total, while the production and surface taxes are only 6.6% of the total.

The table below shows the impact these payments had on the total revenue collected by the Government in 2009. Comparing the payments reported by Ernst & Young with the data from the General State Accounts (CGE) of 2009, it can be seen that the total payments from extractive industry companies were equivalent to 2.25% of the Government's total revenue. In the most important categories of taxes, the payments amounted to 4.23% of total collection of IRPS, and 7.49% for IRPC.

**Table 5:** Contribution of extractive industry payments to State revenue

<b>EITI Report 2009</b>	<b>MZN m</b>	<b>%</b>
Mining area	417.1	39.0
Hydrocarbon area	653.0	61.0
Total extractive industry payments	1,070.1	100.0
<i>IRPS</i>	268.5	25.1
<i>IRPC</i>	549.3	51.3
<b>General State Accounts 2009</b>		
Total revenue	47,565.0	100.0
<i>IRPS</i>	6,341.5	13.3
<i>IRPC</i>	7,337.9	15.4
<b>Extractive industry payments/total</b>		<b>2.25</b>

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<b>revenue</b>	
<i>IRPS Extractive Industry/total IRPS</i>	<i>4.23</i>
<i>IRPC Extractive Industry/total IRPC</i>	<i>7.49</i>

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The CGE does not include any specific information on extractive industries, but in the Budgetary Execution Reports (REO) there is always a table containing information about the contribution of the Mega-projects to state revenue. The information included in the December 2010 REO (which includes final data for 2009) cannot be easily reconciled with the information in the EITI Report, because it uses different classifications (see Table 2a on page 10 of the Jan-Dec 2010 REO). For example, it is not clear what projects enter the category “Production of Energy” or “Other Mega-projects”. Counting only the revenue from the exploitation of petroleum and natural resources, the contribution of the extractive industry would be 0.07% of the total revenue. It would be desirable to find a common nomenclature in order to ensure the comparability of the reports.

Finally, it is important to note how the contribution of the payments by the extractive industry companies to total state revenue was just 2.25% although the production of these companies constitutes more than 5% of GDP, according to various sources. Discounting the taxes paid by the workers of these companies (IRPS), and the contributions to the institutional capacity building and social projects funds, the contribution made by these companies falls to 1.3%, a figure that may be considered very low in comparison with the strategic importance that the sector has in the country’s economy, and in relation to the non-renewable nature of the resources involved.

Taking into account the large reserves of minerals and gas that Mozambique possesses, fair taxation, without excessive fiscal benefits in the research and exploitation of these resources, would lead to greater economic and social benefits for the country and would help reduce external dependence, and improve the capacity of the state to provide goods and services to Mozambicans.

## **6. Other Important Matters**

### ***Renegotiation of contracts, and monitoring and inspecting the extractive industry***

According to Castel-Branco, “...in the short and medium term, the largest companies in the mineral-energy complex (including Mozal) have an annual tax potential lying idle (because of the fiscal benefits) which is higher than the annual General Budget Support. The mobilisation of this idle potential could increase the State Budget (OGE) by 25%-30% and, at the same time, reduce the direct foreign dependence of the OGE from 48% to 37%”.<sup>10</sup> Taking into account this analysis and the low contribution made by the extractive companies to the state coffers, judging from the two reports (2008 and 2009) of EITI in Mozambique, renegotiation of the contracts appears as one of the best options for altering the limited impact of the revenues from the extractive sector. It is crucial to

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<sup>10</sup> Castel-Branco, C. 2011. O que é que a ITIE faz bem e o que é que não faz? Uma proposta de agenda de trabalho sobre os recursos naturais em Moçambique. IESE. Maputo.

advance to the renegotiation of contracts and to define a fiscal regime favourable to the country.

It is urgent to establish technical capacity in the government to ensure the holding of studies, to monitor and inspect the extractive sector, particularly the operations of the companies, and to monitor and analyse the income declared by the companies in comparison with the laws of the market, in order to invert the current scenario in which the government is hostage to information from the companies regarding the quantities, quality, prices and other commercial technical details of the riches present in the Mozambican subsoil, as the first EITI report demonstrated and which we have been following.

### ***Publication of the contracts***

The second EITI report shows in evident form the need for opting for the transparency of contracts signed between the government and the companies that operate in the extractive sector. An expressive basis for this assertion is the institutional capacity building and social projects funds which are contributions of the petroleum companies channelled to the National Petroleum Institute (INP). According to the report, and to CIP research, these funds are established contractually, hence the publication of the contracts, and of all forms of payment established contractually, for public scrutiny, is crucial, making it possible to gauge to what extent the companies are paying what they ought to pay in accordance with the contract agreed with the state and, on the other hand, to what extent institutions such as the INP, the General Directorate of Taxes and other public institutions responsible for collecting revenue for the extractive industry, collect what they ought to receive, and publish what they receive in full. In addition to payments defined contractually, the publication of contracts allows access to information on local economic development, land use, and the rights of communities which, in many cases, are defined in the contracts.

The question of publishing contracts depends to a large extent on the will of the government. By way of example, the government of Liberia has signed a contract with Anadarko (which is also operating in Mozambique in the Rovuma Basin), which is public. Among other forms of payment and the fiscal regime, it clearly shows the distribution of the funds for institutional capacity building and for social projects and the forms and phases of payment. Anadarko pays the Government of Liberia USD 250,000 per year (two hundred and fifty thousand US dollars) during the exploration phase and 500,000 per year (five hundred thousand dollars) during the exploitation period for training programmes. In Mozambique, this would be the Institutional Capacity Building Fund channelled to the INP. In addition, Anadarko contributes USD 150,000 (one hundred and fifty thousand US dollars) to the University of Liberia. This sum is paid to Liberia's National Hydrocarbon Company to strengthen geology and mining engineering programmes and environmental studies. Furthermore, after the start of petroleum operations, the company channels funds to the Liberian National Hydrocarbon Company for social programmes (in Mozambique, this would be the Social Projects Fund), to the value of USD 250,000 (two hundred and fifty thousand US dollars) per year during the exploratory phase and USD 1,000,000.00 (a million dollars) during

the exploitation period.<sup>11</sup> This would be an example to inspire the Mozambican government to opt for publishing the contracts.

Civil society organisations in Mozambique have been putting pressure on the government to publish the contracts with the understanding that they establish the formulas and terms used to determine how the costs and the profits will be shared between the government and the companies. Hence public accessibility of the contracts would be important, in order to allow public scrutiny and assessment about the extent to which the non-renewable nature of the petroleum and mineral resources, and hence the need to generate more revenue to compensate the country for their exploitation, was taken into account when negotiating the contracts. The secrecy of extractive sector contracts in Mozambique makes it difficult to understand the nature and scope of the agreements signed between the government and the companies and, on the other hand, it compromises the effectiveness of accountability and of monitoring observance of the agreements.

In Mozambique one of the main arguments used by the apologists of contract secrecy is that the publication of contracts may frighten away the companies or create a climate of tension between the government and the companies, since the contracts contain strategic commercial information of the companies affecting their competitiveness. This argument has proved false and outdated with the appearance of several countries (including some who do not have much international reputation for transparency, accountability and corruption) who are de facto committed to transparency in the extractive sector, and are legislating to make it obligatory to publish all the contracts they have signed with the various companies (including some who operate in Mozambique) before and after the revision of the fiscal regimes and codes. We are referring to countries such as Liberia, Peru, East Timor, Ghana, Iraq, Democratic Republic of Congo, Niger, etc.<sup>12</sup> No company has decided to stop extracting or searching for precious mineral or petroleum resources because of this pro-transparency attitude on the part of the governments. Instead the governments of these countries have created an opportunity for greater trust and collaboration between the government, the companies and the citizens, reducing the climate of tension and suspicion that results from a lack of information.

In Mozambique, the government is testing the publication of contracts, In the final version of the draft Mining Law, in Article 26, we find the following statement: “...Without prejudice to the confidentiality of strategic commercial and competition information about the mining activity, the main terms of the mining contract may be published in the Boletim da República (the official gazette).” The introduction of contract transparency in the draft mining law, which is still under discussion, shows a progressive attitude in favour of transparency. However, the article raises some fundamental questions: what is “strategic commercial and competition information”?

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<sup>11</sup> [http://leiti.org.lr/content\\_maindoc.php?main=65&related=65](http://leiti.org.lr/content_maindoc.php?main=65&related=65)

<sup>12</sup> Liberia - [http://www.leiti.org.lr/content\\_maindoc.php?main=65&related=65](http://www.leiti.org.lr/content_maindoc.php?main=65&related=65), Peru - <http://www.perupetro.com.pe/relaciondecontratos>, Niger - <http://www.revenuewatch.org/news/new-niger-constitution-includes-landmark-transparency-measures>, Democratic Republic of Congo - [http://mines-rdc.cd/fr/index.php?option=com\\_content&view=article&id=92](http://mines-rdc.cd/fr/index.php?option=com_content&view=article&id=92), Iraqi Kurdistan - <http://www.platts.com/RSSFeedDetailedNews/RSSFeed/Oil/8365397>

What are the “main terms” of the mining contract? Will these main terms meet civil society’s demands for transparency? Will the term “may be published” make it obligatory, or does publication become a voluntary act? There must be clarity about these aspects, since the experience of other countries shows that the argument about the confidentiality of commercial and strategic information has been used by the apologists of secrecy to refuse to publish even what is not commercial such as, for example, fiscal considerations and provisions (that is, the tax regime), or information on local economic development, such as the question of social funds, etc.

### ***Making the MEITI reports more transparent: The case of the Research on the Fiscal Regime***

After the pressure from civil society organisations about the need to research the fiscal regime as part of producing the second report, the MEITI Coordinating Committee decided, on 8 December 2011, to circulate the draft of the questionnaire (drawn up by civil society) to guide the research on the publication of the fiscal regime for possible comments and later approval.

Research into the fiscal regime was also one of the decisions of the Coordinating Committee on 2 June 2011, which said: “... it was consensual that the companies should divulge the fiscal regime in the report if it was in their interest, and to this end research on the matter should be undertaken by the auditing company responsible for producing the second report.”<sup>13</sup>

On 19 December 2011, the last meeting of the year of the MEITI Coordinating Committee was held which, among other matters, approved the questionnaire for the research on the fiscal regime. However, from the questionnaire proposed by CIP and IESE the questions were reduced to just one: Is the company willing to publish, voluntarily, its fiscal regime in the next MEITI reports?<sup>14</sup> This means that, if the reply is “no”, that would be the end of the research. In its draft questionnaire, civil society, apart from seeking to discover the willingness of the companies to publish their fiscal regime, had questions that would oblige the companies to give reasons for their answers, which would give a broader understanding of to what extent the investors are in fact willing to promote practices of transparency in the countries where they invest.<sup>15</sup>

In the end, the research was held with the following question: “if the company had signed a contract with the Mozambican state which envisages a special regime or had any document which guarantees it some special fiscal regime, namely terms of authorisation of the investment project, would it be prepared to reveal this special fiscal regime in the next reconciliation report?” The second EITI report shows that, of the 31 companies considered in the report, 6 replied yes, 7 said no, 8 have no special fiscal regime and 10 companies chose not to answer. That was the research on publication of the fiscal regime. Is it useful, for purposes of transparency, to give information about the number of companies who answered “yes” or “no” and those who chose not to answer,

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<sup>13</sup> <http://www.itie-mozambique.org/actas.html> - Acta da Reunião do Comité de Coordenação do ITIE (Acta de 2 de Junho de 2011).

<sup>14</sup> <http://www.itie-mozambique.org/actas.html> - Acta da Reunião do Comité de Coordenação do ITIE (Acta de 19 de Dezembro de 2011).

<sup>15</sup> Nombora, D (2012). Desafios de transparência na indústria extractiva em Moçambique. CIP Newsletter. Edição 13. Centro de Integridade Pública (CIP). Maputo.

but without identifying the companies or giving the arguments on which they based their answers? If we are committed to promoting transparency, the secrecy about the companies which participated in the study on the fiscal regime makes no sense.

### ***Transmission of mining rights and titles. Taxation of capital gains and conflicts of interests***

The draft Mining Law under discussion states “...*the transmission in whole or in part of shareholdings or mining rights in investment projects in the mining sector shall be undertaken in the national territory and the announcement of a public share offer shall also be made in the media with the largest circulation in the national territory*”. This will make it possible to reverse the situation whereby mining titles for projects located in Mozambique are sold abroad without the knowledge of the Mozambican state. Furthermore, the state has committed itself to taxing capital gains, which will allow the broadening of the tax base. However, bearing in mind the scale of the revenues from taxing capital gains, it is crucial to reflect upon a possible introduction of them in the next MEITI reports.

On the other hand, the growing appetite of top-ranking public managers (ex-ministers, ministers, heads of strategic departments in the ministries, etc.) for the extractive industry in Mozambique raises a fundamental question: to what extent will integrity, exclusiveness and independence be guaranteed in taking decisions about taxing capital gains, including the businesses of the political elite?

## **7. Conclusions**

The exploitation of coal, heavy sands and gas under way in the country, and the recent discoveries of natural gas reserves in the Rovuma Basin (Cabo Delgado), can represent an enormous opportunity for developing the country’s economy and bringing prosperity to Mozambicans. But the impact of the extractive industry on the economy will largely depend on the government’s capacity to respond to the main challenges arising from the boom in the sector, and to guarantee transparency, accountability and inspection.

Mozambique’s decision to join the Extractive Industry Transparency Initiative (EITI) constituted an undertaking by the government to overturn the dark framework of lack of transparency and accountability in the extractive sector, moving instead to the full and systematic publication of payments and revenue from the extractive sector. However, EITI should be viewed as an opportunity to create a tripartite and plural space for profound changes in the governance of the extractive sector, ensuring the integrity, transparency and accountability necessary for better governance of the sector and hence to maximising the economic and social gains the country needs so much. It is crucial that EITI be implemented in line with the specific challenges of the country so that it becomes relevant, as has happened in other countries, rather than merely concentrating on payments and revenue so as to guarantee the passage to the status of an EITI-compliant country, and thus enhance Mozambique’s international reputation.

The government should not be afraid of extracting the maximum from EITI so as to harvest greater benefits from implementing the initiative in Mozambique and ensuring

that the extractive sector makes a significant contribution to state revenue, and that this is expressed in improving the living conditions of Mozambicans. Experience shows that the benefits of EITI – that is, the effective management of the extractive sector, the increase in state revenue, economic and social development and accountability - occur in the countries that implement programmes that go beyond the basic criteria (payments and revenues). It is thus urgent that the Government advance with legislation on EITI so as to confer greater commitment and transparency on the part of both companies and state institutions. Furthermore, the government should renegotiate and publish the contracts so as to alter the bleak picture characterised by the low contribution made by the mega-projects to state revenue, and the secrecy surrounding the contracts.

We think it pertinent and urgent to establish technical capacity in the government to undertake studies, monitoring and inspection of the extractive sector so as to reverse the current scenario in which the government is hostage to information from the companies concerning quantity, quality, price and other commercial technical details about the riches of the Mozambican subsoil, as the first EITI report showed. Furthermore, it is crucial and urgent to deal adequately with the conflicts of interest which are increasingly evident on the extractive sector.

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