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EITI Implementation, natural resources management and urgency of renegotiating and publishing the contracts with mega-projects:

The case of Mozambique

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1. Introduction

Implementation of the Extractive Industry's Transparency Initiative (EITI) in Mozambique has shown a series of problems of organisation and transparency in the way in which Mozambique manages and uses revenue from extractive industries. Among the problems there stand out the significant differences between the fiscal contribution made by the companies chosen to take part in this process and what the Government says it has received from these companies.

Furthermore, the fiscal contribution of the six companies in 2008 was derisory, as a result of the lack, on the Government's part, of appropriate instruments to ensure the valuation of the mineral resources granted to the companies, as well as the excessive fiscal benefits offered to the extracting companies.

The asymmetry of information between the companies and the state is also blatant. The companies hold more and better information on the quantity, quality, price and other technical and commercial details about the wealth present in various countries without the governments of those countries possessing this information. This is also the situation of Mozambique.

A fourth problem concerns the lack of transparency about the benefits in kind received by the state. Society has no information about the management and destination of the payments made in kind to the Government, such as the case of the 2,528,854 GJ of natural gas paid by Sasol in 2008.

One of the great challenges that the government must overcome in order to be more transparent in this area is to end the secrecy surrounding the contracts it signs with multinational companies. EITI implementation should go beyond the basic criteria of the Initiative and take into consideration the specific needs of Mozambique. EITI is a starting point from which prospects, strategies and specific solutions (which go beyond the publication of payments and receipts) can be identified, in order to respond to the main challenges of governance and management of the extractive sector in Mozambique. In line with this, it is urgent to look at the need to publish the contracts signed between the government and the companies.

The purpose of this document is to analyse the management model of the extractive sector in Mozambique, taking as its basis the first EITI report. The document questions the lack of transparency of the contracts signed between the government and the companies, and advocates the need to renegotiate the contracts signed before the updating of the Fiscal Benefits Code. The document also brings experiences of contract transparency in Liberia and East Timor, as well as contract renegotiation in Liberia. This is a contribution to inspire the Government of Mozambique (GoM) to follow the same path: that of placing the national public interest above private interests.

Saturday, 14 May 2011, was to be the deadline for Mozambique to see whether its candidature to be considered as a country compliant with the Extractive Industries Transparency Initiative is accepted or not. The most likely scenario is that the country passes the test with some recommendations for improving particular aspects of implementation, two years after the Government undertook to become part of the club of countries who publish the payments and receipts from the extractive industries, in the EITI format, on 15 May 2009.

But the Coordinating Committee thought there were questions to be clarified in the validation report sent to Oslo. It therefore requested an extension of the deadline, to allow these questions to be cleared up.

Neighbouring Tanzania also had 14 May as the deadline for its candidature as a country that is EITI compliant. The deadline for Zambia was 15 May.

2. From the reconciliation of the accounts to validation

When it became an EITI candidate country in May 2009, Mozambique chose to follow all the procedures prescribed by the International Secretariat of the Initiative, based in Oslo, to become a “compliant country” (international jargon used to refer to countries that implement EITI principles). This involved setting up a tripartite group (Government, Civil Society and Companies), called the Coordinating Committee, and establishing a management body (Executive Secretariat) charged with the day-to-day running of the entire process. The country then moved to launch international tenders to select an auditing firm that would be charged with reconciling the payments declared by the companies with the revenue that the government declares it has received.

The tender procedures (expression of interest, assessment of the competing bids, selection, negotiating and signing of the contract) took two (2) months. The announcements were published in the daily paper Notícias, and on the websites of the Ministry of Mineral Resources (MIREM), of the International Secretariat of the Initiative and of the United Nations Development Business (UNDB).

The following consultancy companies responded to the announcement of the tender to select the auditor: i) MB Consulting, ii) Infinity Consulting, iii) Verdi Consulting and iv) Messrs Boas & Associates.

2.1 Selection criteria

As the good practices of the Initiative determine, the selection procedure took the following criteria into account: experience on work of reconciling data and producing reports; a professional team with skilled experience; coordination between the consultant (consultancy company) and other internationally renowned firms, and (taking the official national lan-

guage into account) mastery of the Portuguese language and good knowledge of English.

After assessment of the technical bids (which had a weight of 70%) and the financial bids (with a weight of 30%) presented by the bidders, the following final point scores were given: MB Consulting (54.6625), Infinity Consulting (77.1625), Verdi Consulting (65.5750) and Messrs Boas & Associates (83.3375). The last-named thus won the tender.

The production of the reconciliation report (EITI report) cost USD180,000.00 (one hundred and eighty thousand US dollars).

For the case of the tender for the Validator the request for expressions of interest was sent by electronic mail to the 14 companies accredited by the International EITI.

For the selection of the validation company, the following companies put in bids: Adam Smith International, Coffey International Development, Good Corporation and the Hart Group. Since all these companies are accredited by the EITI International Secretariat (an indispensable condition for selecting a validator through a tender), the criterion that was taken into consideration was that of the cheapest proposal, and Adam Smith International was selected. It is important to mention that the Validation Report cost USD 47,925.00 (forty seven thousand, nine hundred and twenty five US dollars).

We attempted, without success, to obtain from the EITI Secretariat in Maputo the financial bids presented by the companies competing both for the Reconciliation and for the Validation. Since this process is about Transparency, it should never be impossible to obtain this type of information.

3. First EITI Report: methodology and main conclusions

After the company charged with reconciling the accounts was chosen, the production of the first EITI report began, with the design of files (templates) to be completed by the companies and by the relevant government agencies. This process was accompanied by defining the eligibility criteria for the extractive companies to be covered. Thus in an initial phase, the following criteria were established:

- Only payments and receipts from taxpayers that have reports and accounts already audited in accordance with internationally accepted auditing standards will be covered;
- Mining and petroleum companies that have organised accounts and are in the production phase should be covered;
- Taxpayers with total payments of direct taxes not less than 1,500,000.00 Mt (one million and five hundred thousand meticaís) are eligible for the first report;
- Artisanal and unregistered (illegal) mining operators are excluded;
- Only direct payments, in money, made by the companies to the government are

taken into account for purposes of reconciliation.

Taking into account the type of EITI report chosen to be implemented in Mozambique (reconciliation + analysis of discrepancies), it was decided that during the reconciliation of the accounts any discrepancies eventually discovered would be ascertained and analysed, and that the Coordinating Committee would undertake this task. This is based on the principle that guides the production of EITI reconciliation reports, according to which the correction, explanation of discrepancies and the consequent civil or criminal administrative proceedings are in the hands of the national EITI implementation authorities.

From 23 to 6 companies covered by the first report

The production of the first report was marked by poor communication. Misunderstandings were created on the part both of the companies and of the government agencies since, in an initial phase, the following list of 23 (twenty three) companies was published, creating among them the expectation that they would be covered.

Table 1: List of companies initially listed for purposes of the first EITI report

COMPANIES		COMPANIES	
1	Empresa Nacional de Hidrocarbonetos	13	Highland African M. Company
2	Companhia Moç. de Hidrocarbonetos	14	Osho Gremach Mining
3	ROMPCO – Republic of Moz. Pipeline Company	15	Vale Moçambique
4	Sasol Petroleum Temane (SPT)	16	Tantalum Mineração e Prospeção
5	Anadarko Mocambique	17	Minas Moatize
6	Statoil	18	Rio Tinto
7	Buzi – Hydrocarbons	19	JSPL Mozambique Minerals
8	DNO Asa Mocambique	20	Zambezi Energy Corporation
9	ENI East Africa SPA	21	Kenmare Moma Mining (Mauritius)
10	PC Mozambique R. Basin (Petronas)	22	Artumas
11	Cimentos de Mocambique	23	Riversdale
12	MIMOC - Minerais Industriais		

Source: Chilenge, B (2011). Report on the Extractive Industries Transparency Initiative (EITI). Communication presented at the workshop launching the first EITI report. Nampula.

But later the criterion was adopted that only taxpayers who have paid direct taxes not less than 1,500,000.00 Mt (one million, five hundred thousand meticais) would be eligible. The initial list of 23 companies was reduced to six, two petroleum and four mining companies, as shown in the table below:

Table 2: Effective list of companies covered by the 1st EITI report

MINING COMPANIES		PETROLEUM COMPANIES	
1	Vale Moçambique	1	Companhia Moç. De Hidrocarbonetos
2	Kenmare Moma Mining	2	Sasol Petroleum Temane
3	Highland African Mining CO.		
4	Rio Tinto		

Source: Chilenge, B (2011). Report on the Extractive Industries Transparency Initiative (EITI). Communication presented at the workshop launching the first EITI report. Nampula.

This fact (the switch from a list of 23 to one of 6 companies) was never clearly explained to the companies that were kept out. A complete and public explanation was only given after the publication of the first report, which did not contribute to giving the process an image of greater seriousness. Even though the decision is understandable, and although there were no public complaints, it was clear that there was poor communication and the misunderstandings persisted until after the publication of the reconciliation report.

A further question that was never clear was which companies would be included – that is, whether the report would cover non-extractive companies such as Mozal and Hidroelétrica de Cahora Bassa (HCB). This question was discussed at length in a seminar defining the scope of EITI held in May 2010, in Maputo, and the idea prevailed that only extractive industries would be covered by the first report. It was also based on this that the initial list of 23 companies (table 1) was drawn up. But later it was highly questionable why Mozal had been excluded, and CMH (Companhia Moçambicana de Hidrocarbonetos) included, since neither of them are extractive, although CMH is directly linked to the mega-project for the extraction of natural gas in Inhambane. This apparent lack of clarity was also questioned by the validation team.

4. What the reconciliation report says

The team of auditors who produced the report reached the conclusion that, in 2008, the six selected companies paid the government a total of 203,975,224.00 MT, referring to taxes and other fiscal contributions. Breaking this sum down in percentage terms, 61% comes from the payment of royalties, 35% from the payment of taxes on company profits, 3% from surface taxes, and 1% from the payment of licences fees.

Table 3 – Payments by Extractive Industry Companies - 2008

COMPANY	Licence fees	Surface tax	Royalties	Corporation tax (IRPC)	Dividends	Total
Vale Moçambique	1.330.000,00	4.889700,00				6.219.700,00

HAMC (Highland African Mining Co)		278.549,00	1.151.372,00	100.000,00		1.529.921,00
Rio Tinto		723.962,00				723.962,00
Kenmare Moma Mauritius	325.576,00	795.385,00	6.649.864,00			7.770.825,00
Companhia Moç. De Hidrocarbonetos				72.055.606,00		72.055.606,00
Sasol Petroleum Temane LTD			115.575.210,00	100.000,00		115.675.210,00
Total	1.655.576,00	6.687.596,00	123.376.446,00	72.255.606,00		203.975.224,00

Source: Chilenge, B (2011). Report on the Extractive Industries Transparency Initiative (EITI). Communication presented at the workshop launching the first EITI report. Nampula.

Table 4- Government revenue from extractive industries – 2008

NUIT	COMPANY	Licence fees	Surface tax	Royalties	Corporation tax (IRPC)	Dividends	Total
400134081	Vale Moçambique	0	0	0	0	0	0
400095914	HAMC (Highland African Mining Co)	0	0	0	0	0	0
400079781	Rio Tinto	0	1.661.662,00	0	0	0	1.661.662,00
400099812	Kenmare Moma Mauritius	0	0	0	0	0	0
400102961	Companhia Moç. Hidrocarbonetos	0	0	0	0	0	0
400077142	Sasol Petroleum Temane LTD	0	0	90.638.006,00	0	0	90.638.006,00
	Total	0	1.661.662,00	90.638.006,00	0	0	92.299.668,00

Source: Chilenge, B (2011). Report on the Extractive Industries Transparency Initiative (EITI). Communication presented at the workshop launching the first EITI report. Nampula.

Table 5 – Reconciliation of payments by extractive industries and government revenue – 2008

Source of benefit	Payment by the companies (A)	Received by the Government (B)	Differences (A – B)
Processing and Licence Fees	1.655.576,00	0,00	1.655.576,00
Surface tax	6.687.596,00	1.661.662,00	5.025.934,00
Tax on Production	123.376.446,00	90.638.006,00	32.738.440,00
Corporation Tax (IRPC)	72.255.606,00	0,00	72.255.606,00
Dividends	0,00	0,00	0,00
Total	203.975.224,00	92.299.668,00	111.675.556,00

Source: Chilenge, B (2011). Report on the Extractive Industries Transparency Initiative (EITI). Communication presented at the workshop launching the first EITI report. Nampula.

Discrepancies: from 112 to 5 million meticaís, and then?

Tables 3, 4 and 5 shows the results ascertained by the auditing company which checked the accounts of the companies and of the Government (General Tax Directorate, DGI). After receiving and rechecking the results of the report, the Coordination Committee noted two crucial aspects:

- First, that there had been a difference of methodology in the presentation of the data from some companies and that of the DGI. The companies concerned were: Kenmare Moma Mining, Companhia Moçambicana de Hidrocarbonetos and Sasol Petroleum Temane, which did not conform to the January-December period. These companies had provided information, based on the year the facts subject to taxation took place, and not the real period of payment. That is, they took into account their own special taxation regime, and not the civil year.
- Second, the divergences noted in Corporation Tax (IRPC) paid by: (i) Highland African Mining and Sasol Petroleum Temane, derive from the fact that the payments declared by the companies included the Special Account Payments, determined on the basis of the volume of sales, and not taxes on profits properly speaking; and (ii) Companhia Moçambicana de Hidrocarbonetos, derives from the fact that the company adopted an exceptional taxation regime, and counted the payments made in

2007, which for the company fall into the 2008 financial year (which runs from July 2007 to June 2008). It did not report the payments made in the second half of 2008.

When the data were rechecked, and taking into account the aspects mentioned above, the following results were obtained:

Table 6: Reconciliation of payments by the extractive industries and revenue received by the government – 2008

Source of benefit	Payment by the companies	Received by the Government	Differences
	(A)	(B)	(A – B)
Processing and Licence Fees	1.655.576,00	0,00	1.655.576,00
Surface tax	6.687.596,00	5.674.742,00	1.012.854,00
Tax on Production	98.439.244,00	95.883.146,87	2.556.097,13
Corporation Tax (IRPC)	70.378.721,73	71.058.470,14	-679.748,41
Dividends	0,00	0,00	0,00
Total	177.161.137,73	172.616.359,01	4.544.778,72

Source: Chilenge, B (2011). Report on the Extractive Industries Transparency Initiative (EITI). Communication presented at the workshop launching the first EITI report. Nampula.

Table 6 above shows that the Government had declared that it received less than the value declared by the companies – a discrepancy of 111,675,556.00 MT. After the figures were rechecked, with the findings presented above, the difference between the value paid by the companies and that received by the government fell to 4,544,778.72 MT. The Coordinating Committee is still investigating the whereabouts of the sum that remains missing. But the major question raised is: and then? What will happen? Are the other national public bodies (Police, Attorney-General's Office, Assembly of the Republic, Administrative Tribunal, etc.) following the EITI process? If the Coordinating Committee fails to ascertain the whereabouts of more than four million meticaais that are still missing, who will answer for this?

5. Main conclusions to be drawn from the first report

Two major conclusions from the first ITIE report have already been indicated by the analysis of IESE, Castel-Branco (2011), namely: i) the fiscal contribution of the six companies in 2008 [and up to now] is derisory, less than 1% of the State Budget, and ii) the government does not have instruments of its own to know the quality and quantity of minerals extrac-

ted, the sales price (particularly on futures markets), operational costs, etc. All the information in the hands of the state is provided by the companies, and there is no independent verification mechanism.

5.1 Valuation of the mineral resources granted

According to article 7 of Law no. 11/2007 of 27 June, “the value of the quantity of mineral product extracted is determined by taking as the base the value of the sale made, when the mineral product extracted has been sold in the month that corresponds to the tax to be paid. As for the mineral product extracted in this month, but not sold, it is assessed in accordance with the price of the last sale made by the taxpayer”. On the other hand, the same article states that “if there are no sales, the market price should be taken as the base for determining the value of the quantity of mineral product extracted”, which leads one to conclude that the market price is only used in the last resort.

By acting in this way, the Government, through incapacity or incompetence, is granting important powers over non-renewable strategic resources to the extractive companies. As Castel-Branco (2011) notes, the Mozambican state loses twice: with the (unnecessary) fiscal incentives that it gives to multinationals, and with the under-valuation of wealth. Since the value of the mineral resources is based on the sales value declared by the extracting companies, the latter has full freedom to define the value, that is, the price of the mineral resources, and consequently to influence the profit tax and the royalties.

Taking into consideration the great quantity of minerals that Mozambique has, particularly coal, fair tax revenues and royalties from this sector would represent greater economic benefits for the country and would help the Government improve the provision of goods and services to Mozambicans, but unfortunately this is not the case. In this framework of the valuation of mineral products, the companies operating in Mozambique can sell the minerals to subsidiary/associated companies at a price lower than the market price, in a strategy designed to minimise the fiscal costs (profits tax and royalties) of the company within the country. It is thus urgent that the Government define strategies and efficient and effective mechanisms for tight monitoring of the sales made in this sector, assuring that the sales take the market prices into account.

5.2 Production bonus and lack of transparency in capital depreciation

The report reveals that the sum referring to the production bonus in the petroleum sector is indicated in the contracts signed by the Government and the companies. Although this type of revenue is not considered in the 2008 reconciliation, attention should be given to the fallacious argument of the Government (Ministry of Mineral Resources, MIREM), that there is no need to publish the contracts with the mega-projects because to understand how they work it is enough to know/read the legislation in force.

Furthermore, the report argues that the way in which depreciation or capital allowance

is granted, is not defined transparently and the temporal horizon for capital allowance is granted from contract to contract. The MIREM argument about this has been “that’s in the past, now we have a Model Contract”.

But the question remains: what about the contracts that were signed earlier? As it happens, the first EITI report dealt with companies whose contracts are under the former regime (before 2007). And how can Mozambicans have information about how much companies should pay as a production bonus as well as information on the capital allowance, if these are indicated in contracts that are secret?

5.3 Asymmetry of information between the companies and the state

Many developing countries that are rich in natural resources always face the problem of institutional weakness and of the low technical and technological level needed for relating to the powerful and highly skilled multinationals who exploit natural/mineral resources across the globe. In this context, the companies hold more and better information on the quantity, quality, prices and other technical and commercial details on the wealth present in various countries, without the governments of those countries possessing such information. Because of this, negotiations with these multinationals are always a risk for states.

Mozambique is not an exception. As the EITI report notes, the operational costs of extracting minerals and hydrocarbons are determined exclusively by the mining companies. This grants very important powers to the companies. In this context, where the operational costs are determined by the companies, they are able to inflate them as a strategic way of minimising taxes on profits, thus reducing the capacity of the state to collect revenue.

5.4. Lack of transparency about benefits in kind

This kind of flow of benefits is normally made through the payment of royalties or part of the production to the host Government, as indicated in the contract that each company signs. But in Mozambique these contracts are not public. This is one more reason why the contracts should be published.

Furthermore, it is necessary to guarantee that society is informed about the management and destination of the payments made in kind to the Government, such as the case of the 2,528,854 GJ of natural gas paid by Sasol in 2008. What was done with this amount of gas? And what is done with other payments in kind? Where do they go?

5.5 Adopt more wide-ranging transparency: publish all contracts

The implementation of EITI in Mozambique is a very important step in improving transparency and accountability in the management of natural resources. However, implemen-

tation of this initiative must be seen as a start towards adopting more wide-ranging mechanisms of transparency. This makes the Initiative relevant while at the same time it will increasingly serve the interests of the nation in making use of natural resources for its own benefit.

In this context, if Mozambique wants to improve the governance of natural resources, it should consider implementation of EITI that goes beyond the basic criteria of the initiative and takes into account the specific needs of Mozambique. EITI is a starting point from which prospects, strategies and specific solutions (which go beyond the publication of what has been paid and received) can be identified to respond to the main challenges of governance and management of the extractive sector in Mozambique.

It is thus urgent to look at the need to publish the contracts signed between the government and the companies, the need to renegotiate contracts signed before the updating of the fiscal benefits code, the regulating of the 2007 fiscal legislation, conflicts of interest, the inclusion of the forestry and fisheries sectors, and a more systematised treatment of environmental and social questions.

The contracts set out the terms, conditions and mutual responsibilities applicable to exploration and exploitation of natural resources. The GoM makes a model contract available and this availability has been used as an argument for not publishing the contracts, since, according to the government (Ministry of Mineral Resources), "...the model contracts for the mega-projects stipulate what the companies should pay the state, and the duties of the state to the companies".

But this is not true, and there is no guarantee that all the contracts signed so far are in line with the model contract. Furthermore, we must say that this model contract, as the name itself implies, is a simple template, without any data of public utility. It is thus irrelevant when used as a justification for maintaining the secrecy of what are public businesses.

The publication of contracts is the practice in some countries which, like Mozambique, are poor and which have joined EITI. Some examples are Liberia and East Timor. Like Mozambique, Liberia went through a fratricidal civil war, but today it is an eloquent example of a nation concerned with the good governance of natural resources, paying special attention to contract transparency . Through the website we mention below, the government of Liberia makes available, for its own citizens, and for the entire world, the 49 contracts it has signed with various companies:

http://www.leiti.org.lr/content_maindoc.php?main=65&related=65

Of the 49 contracts made available at least two (2) were signed with companies that also operate in Mozambique. They are the Anadarko Petroleum Corporation, which is present in the Rovuma Basin, in northern Mozambique, where it is exploring for oil and gas, and BHP Billiton, the majority shareholder in the mega-project of the Mozal aluminium smelter, located in Beluluane, in the south of the country.

In the Democratic Republic of East Timor, all the contracts are public and are available

on the following website: <http://www.laohamutuk.org/Oil/PSCs/10PSCs.htm>. Some of the companies that operate there are also in Mozambique, such as, for example, the Italian oil company ENI which is undertaking exploration in area 4 of the Rovuma Basin. .

With the publication of the contracts, citizens will come to know the real fiscal and non-fiscal obligations of the companies and will be able to monitor the gains and losses of the state in each natural/mineral resource deal, since the contracts provide the formulas and terms used in determining how the costs and profits will be shared. Contract transparency is thus an essential condition for ensuring socio-political and macro-economic stability, which are much more important than any stability of a judicial-legal nature. No society that is socially and politically unstable will be interested in any judicial-legal stability.

6. Renegotiation of contracts

Until about a year ago, the question of the need for the government to renegotiate the contracts with the mega-projects was a discussion restricted to some academics, researchers and a few Mozambican civil society organisations. But later the question began to be broached by the World Bank, the International Monetary Fund (IMF), internationally renowned economists and, in a timid and contradictory way, by some members of the Government.

In March 2010, during the seminar on “reforms and future economic policies”, held in Namaacha, the World Bank and the IMF suggested to the government that it renegotiate the contracts with the mega-projects.

In October 2010, the Oxford University economist and professor, Paul Collier, was in Maputo. Among various matters that he mentioned in his Maputo lecture, he suggested that the government should collect more taxes from the mega-projects. In the same month, a Norwegian tax expert, Odd-Helge Fjeldstad, who has collaborated with the Mozambican Tax Authority, was in Maputo through the Norwegian Embassy. Among the various recommendations he made was the need for the Mozambican government to renegotiate the contracts with the mega-projects, arguing that “what keeps the mega-projects here is not fiscal exemptions”.

In January 2011, the Government invited the economist Jeffrey Sachs to the country to give lectures on Mozambique and the global economy. Sachs, who is an advisor to the United Nations Secretary-General, argued that the Mozambican government needs to renegotiate the contracts with the mega-projects under way in the country in order to allow a better share-out of the benefits resulting from these projects.

Contrary to the position of the World Bank, the IMF and internationally renowned economists, the government, through the Minister of Planning and Development, Aiuba Cuereineia, in timid fashion argued that “... the government cannot always be revising the legislation of the contracts that it has with the companies, because this could create problems of nervousness and stress with regard to other investors”¹. In a further development, Aiuba

¹ Savana, 18 February 2011

Cuereneia guaranteed that the current contracts with the mega-projects “are sustainable and are responding effectively to the needs of the country”². This position against renegotiating the contracts was also shared by the Minister of Mineral Resources, Esperança Bias³.

But the anti-renegotiation vision of the government, does not only clash with the position of Mozambican civil society, of the World Bank, of the IMF and of internationally renowned economists – it is also opposed by the progressive Governor of the Bank of Mozambique, Ernesto Gove, who is in favour of renegotiation. For Ernesto Gove “... it is necessary for the contracts with the mega-projects to be renegotiated, and the country has the economic and social conditions for doing so”. For Gove “... in investment everybody must win, otherwise social tensions are created”⁴.

Renegotiating the contracts is now a current talk throughout the country with a consensus that is becoming general: the Mozambican government should renegotiate the contracts with the mega-projects.

Furthermore, the Complementary Bill on Public-Private Partnerships (PPPs), Large Scale Projects (PGD) and Business Concessions (CEs), under analysis in the Assembly of the Republic, envisages, in article 36, paragraph 2, the renegotiation of contracts through mutual agreement between the contracting parties. However, the renegotiation should always be in the perspective of adjusting the contracts to new realities, safeguarding national interests. Care should be taken with calls for renegotiation which “should be the initiative of the taxpayers”.

There is a genuine doubt as to “whether it is possible to renegotiate the contracts with the mega-projects”. That is because it is not known whether any country has done this. Here is one of several examples.

6.1 The case of Mittal Steel Holding NV in Liberia⁵

On 17 August 2005, the National Transitional Government of Liberia (which was in power from 14 October 2003 to January 2006) entered into a mining agreement with the world's largest steel company, Mittal Steel, to exploit an extensive deposit of iron ore. This agreement was to lead Mittal Steel to invest around 900 million US dollars over 25 years. Apparently, this was the deal that would lever the development of Liberia. But since the Liberian government had ceded important sovereign rights to that multinational company, in terms of tax and customs exemptions, and complete control of the entire area of the concession – almost creating a State within a State – the contract did not bring the benefits that were expected by the Liberian people. Under that contract, even the Liberian state could be prevented from relying on its own Constitution.

2 Canal de Moçambique, 2 February 2011.

3 Canal de Moçambique, 2 February 2011.

4 Canal de Moçambique, 2 February 2011.

5 In *Global Witness: A State within a State. The inequitable Mineral Development Agreement between the Government of Liberia and Mittal Steel Holding NV.*

The contract envisaged the transfer of two major Liberian public assets – the port of Buchanan and the rail infrastructure between Yekepa and the port of Buchanan - to the concessionary company. The Liberian government and others would only have permission to use these installations if there was spare capacity, at Mittal's discretion, and for a cost. This transfer would prevent the Liberian government from generating revenue that it greatly needed for the economic and social development of the country, and to guarantee access to foreign markets, a fundamental condition for the development of the local communities in the area.

Furthermore, the agreement had restrictive stabilisation clauses with long term consequences. These could severely limit Liberia's ability to fulfill its obligations not only during that period, but also in the future. When the government of the current President of Liberia, Ellen Johnson Sirleaf, took office, it decided to review all the contracts signed by the previous transitional government and all the contracts were reviewed based on a sovereign government decision. No company ran away from Liberia because they all wanted and still want the abundant natural and mineral resources which that territory – like Mozambique - possesses.

7. EITI History and its timetable in Mozambique

EITI was initially launched by the former British Prime Minister, Tony Blair, at the World Summit on Sustainable Development held in September 2002 in Johannesburg. Later it took off at an inaugural conference in London, in June 2003. The initiative has the political support of the international community and of multilateral organisations such as the IMF and the World Bank. Accession to EITI is voluntary.

EITI seeks to strengthen the management of natural resources, and ensure greater transparency and responsibility in the extractive sector, through the full publication of payments made by the companies and of public revenue from petroleum, gas and mining.

The table below follows the itinerary of Mozambique on the path of this initiative.

Table 7: Calendar of the EITI implementation in Mozambique

- **May 2008** – CIP holds in Maputo the first national seminar on EITI, with the participation of the government, companies and the International Secretary, Jonas Moberg. On this occasion, the Government, through MIREM, announced its willingness to accede to EITI.
- **October 2008** – The Government organises in Maputo the seminar to launch EITI. An ad-hoc coordinating committee is set up, and the first work plan and its budget are approved.

- **April 2009** – The definitive Coordinating Committee is set up; a request for accession is sent to the International Secretariat in Oslo.
- **May 2009** – Mozambique is accepted as an EITI candidate country.
- **October 2009** – The President of the Republic, Armando Guebuza, makes a public declaration of support for EITI.
- **February 2010** – The plan and budget are updated: their deadlines required adjustment due to the delays caused by the 2009 general elections.
- **May 2010** – The EITI Executive Secretariat is set up (the technical body in charge of the day-to-day implementation of the initiative).
- **June 2010** – Members of the Coordinating Committee and the Secretariat make a study visit to Ghana and Liberia with the purpose of gathering experiences from those two countries.
- **Between July and October 2010** – Funding agreements are signed with the World Bank and with the African Development Bank (ADB).
- **October 2010** – The auditing company (Messrs Boas & Associates) is recruited through an international public tender to produce the first EITI report. In the same month an international public tender is launched to recruit the company charged with producing the Mozambique validation report.
- **October 2010** – The second seminar to publicise the initiative, focused on the companies, is held in Beira.
- **February 2011** – The first EITI report is launched in the city of Nampula. The civil society platform on natural resources holds a meeting to reflect on the report.
- **April 2011** – The validation team sends its final report to the Oslo International Secretariat.

8. Conclusions

EITI implementation in Mozambique is an extremely important step in improving transparency and accountability in the management of natural resources. But the implementation of this initiative must be seen as a starting point (and not as an end in itself), through which mechanisms and strategies can be defined (which go beyond the publication of payments and receipts) to respond to the specific challenges of the governance and management of the extractive sector in Mozambique.

It is thus urgent that the Government define strategies and mechanisms conducive to efficient and effective monitoring of the extractive sector. It is urgent that the Government build up its own capacity to reverse the current picture in which it is the companies that possess more and better information on the quantity, quality, prices and other technical and commercial details on the wealth present in Mozambique. It is also urgent to regulate the 2007 fiscal legislation, ensure adequate treatment of conflicts of interest, include the forestry and fisheries sectors within the Mozambique Extractive Industries' Transparency Initiative (MEITI), and provide more systematised treatment of environmental and social issues..

If the government wants to improve the management of extractive resources, it should consider that they belong to the state and hence to the people. In line with this, the people should have access to the contracts, which is already a reality in some countries, such as Liberia and East Timor, which publish the contracts on government websites, including contracts with companies that also operate in Mozambique, namely the Anadarko Petroleum Corporation, BHP Billiton and the Italian company ENI. Furthermore, there is an urgent need to renegotiate the contracts signed before the updating of the fiscal benefits code.

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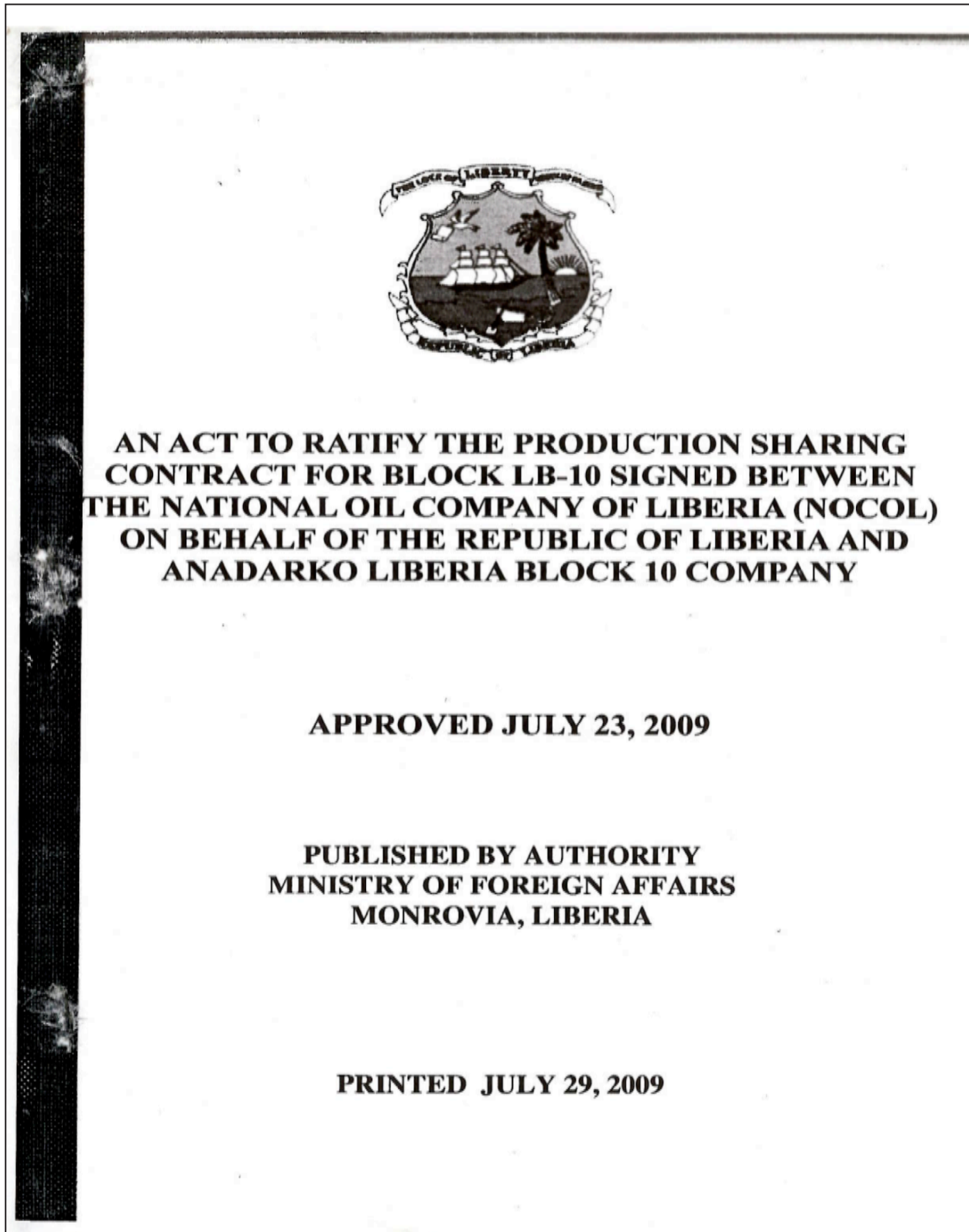
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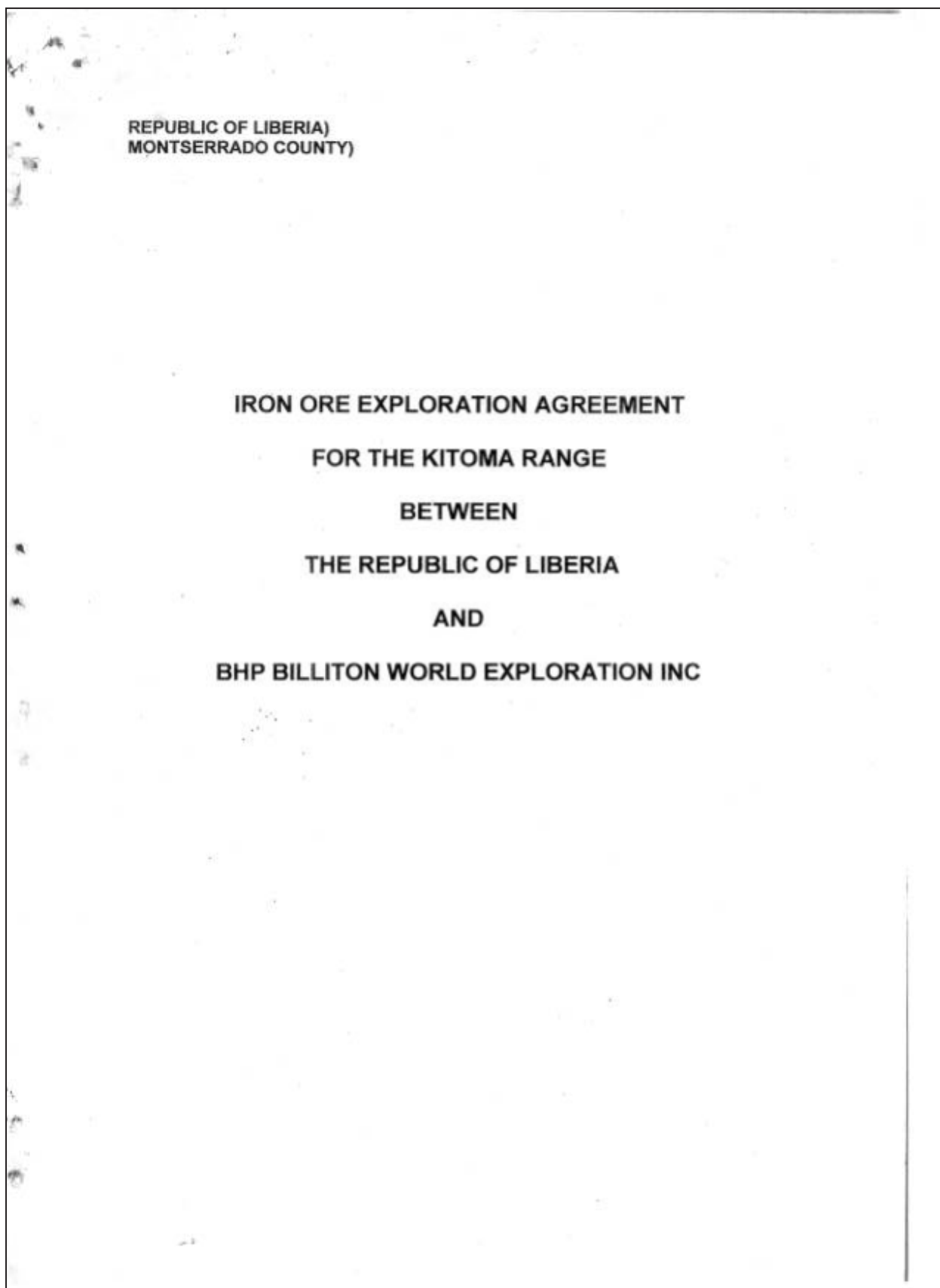
10. Appendices

Appendix 1: *Excerpt from the cover sheet of the contract between the Government of Liberia and Anadarko Petroleum Corporation for the exploration and exploitation of Hydrocarbons*



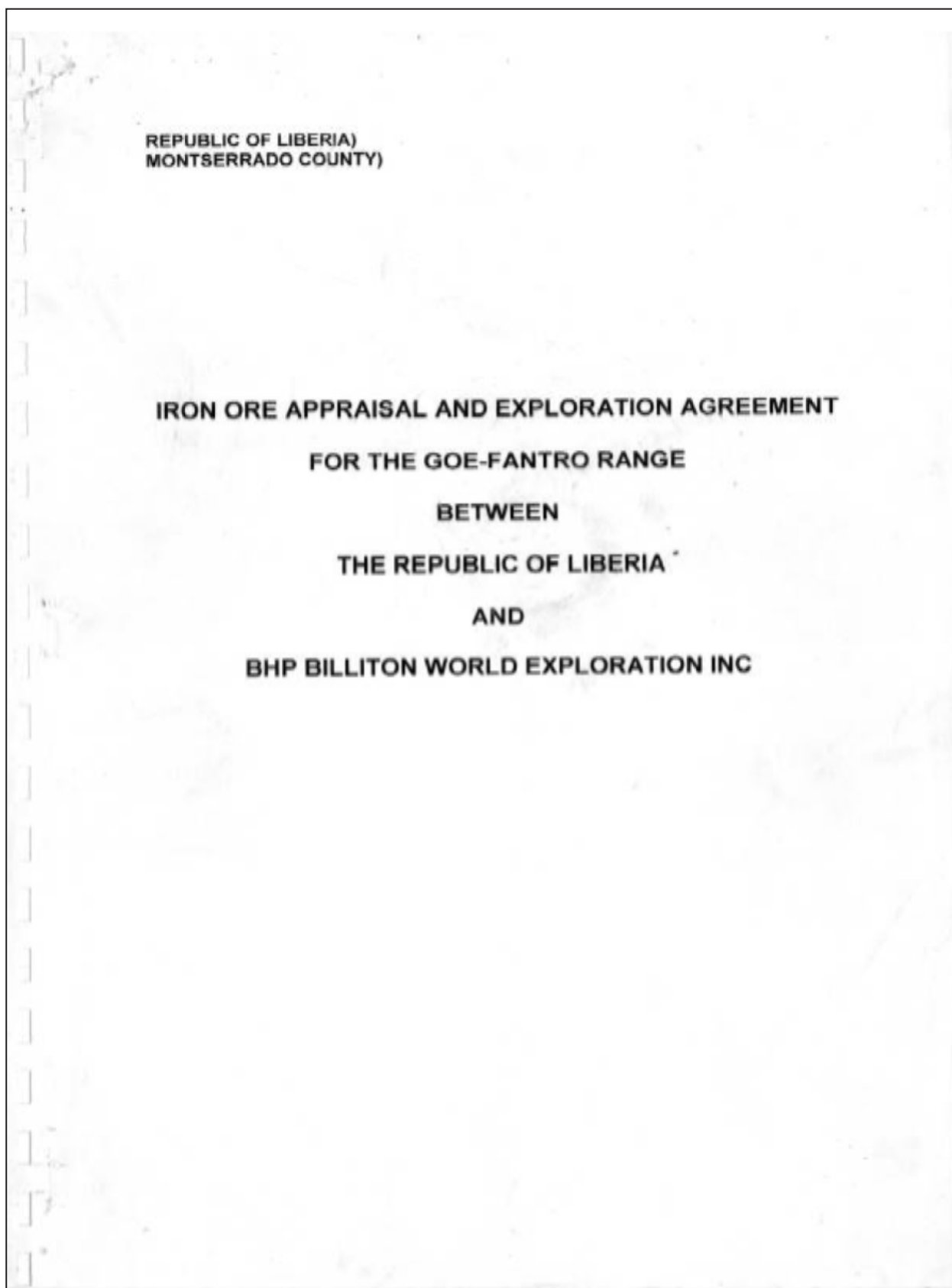
Source: <http://www.leiti.org.lr/doc/anact.pdf>

Appendix 2: *Excerpt from the cover sheet of the contract between the Government of Liberia and BHP Billiton for the exploitation of iron ore (Kitoma)*



Source: <http://www.leiti.org.lr/doc/bbwe.pdf>

Appendix 3: *Excerpt from the cover sheet of the contract between the Government of Liberia and BHP Billiton for the exploration and exploitation of iron ore (Goe-Fantro)*



Source: <http://www.leiti.org.lr/doc/bbwe2.pdf>

Appendix 4: *Excerpt from the cover sheet of the contract between the Government of East Timor and ENI for the exploitation of petroleum*

Production Sharing Contract
S-06-01
under the Petroleum Act
for
Contract Area A

3 November 2006

This Agreement is a Production Sharing Contract made under the Petroleum Act

BETWEEN

the Ministry of Natural Resources, Minerals and Energy Policy, acting on behalf of the Democratic Republic of Timor-Leste (the "Ministry")

AND

Eni Timor Leste S.p.A (the "Contractor") (each referred to individually as a "Party" or collectively as the "Parties").

CIP is a Mozambican civil society organization working on Governance, focused on State Budget, Extractive Economy, Transparency and Anti-Corruption. It uses tools such as research, social accountability, monitoring, public awareness and investigative journalism.

Through research, monitoring, advocacy and public awareness, the extractive Industries' program aims to promote transparency, accountability and sound management around the extractive industries' value chain. With transparency, accountability and sound management, CIP believes that extractive industries can lead to economic, social and sustainable development that Mozambique needs.

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