

Terms of Reference

The State-Owned Enterprise Sector of Mozambique and strengthening reporting on state participation by these companies and EITI

1. Context

It is widely recognised that most oil resources throughout the world are controlled by States through state-owned enterprises, commonly known as National Oil Companies. Many of these companies own and operate oil projects.

State participation is often used to guarantee additional government revenue (besides tax revenue), originating from extractive projects. This is often motivated by non-tax related aims, such as:

- maintaining direct government ownership of natural resources,
- ensuring the same level of information for government as for oil and gas companies;
- guaranteeing a place at the negotiations table;
- facilitating knowledge transfer.

EITI is a global standard that promotes transparency and accountability in the oil, gas and mining sectors.¹ The EITI Standard has introduced new requirements for drafting reports of state-owned enterprises, including:

- disclosure of financial transfers between the state-owned enterprises and other government entities,
- disclosure of income received on behalf of the government and spending on social services, public infrastructure or fuel subsidies.

The lessons learned in implementing these requirements show that although financial transactions related to state-owned enterprises have become more transparent, there is still a long way to go in obtaining greater transparency about the way that the state-owned enterprises operate, its structures of ownership and how to tackle corruption risks.

In Mozambique, state-owned enterprises play a crucial role in representing the state in oil, gas and mining projects. These companies include the *Empresa Nacional de Hidrocarbonetos* [National Hydrocarbon Company] (ENH, acronym in Portuguese), the *Companhia Moçambicana do Gasoduto* [Mozambique Gas Company] (CMG, acronym in Portuguese). The mining sector has the *Empresa Moçambicana de Exploração Mineira* [Mozambique Mining Exploration Company] (EMEM, acronym in Portuguese) and its affiliated companies such as Matola Gás Company.

The role of the mining sector has been less significant, although the Mozambique Mining Exploration Company has been established to undertake the exploration, production and marketing of mineral products and to develop mining projects in partnership with private enterprises.

¹ Additional information can be found here: <http://www.eiti.org>.

The rules related to the participation of the state-owned enterprise sector in oil, gas and mining sectors are complex, and the rules that govern these sectors are also not simple. The various laws that regulate the matter also differ in their definition of state-owned enterprises. The Government of Mozambique has made efforts to tackle this issue, having recently approved a new law to clarify the laws that regulate the state-owned enterprise sector (Law 3/2018). The Government has made various other efforts and commitments in order to increase transparency within the country.

The adhesion of Mozambique in 2009 to the EITI demonstrates the Government's interest in reinforcing mechanisms for good governance of the extractive resources in the country.

The second Validation of Mozambique in the EITI implementation process identified opportunities to improve transparency in relation to the participation of the state-owned enterprises in the oil, gas and mining sectors.² The International Monetary Fund and the World Bank shared recommendations relating to tax reporting by state-owned enterprises with the aim of strengthening public oversight of companies within the extractive industries.³ As part of the IMF Diagnostic Report on Transparency, Governance and Corruption, the government of Mozambique set itself an objective to strengthen SOE transparency through publishing, annually, (i) a complete list of entities comprising the SOEs and other public bodies, such as funds and institutes with financial risks indicators (ii) a link to the annual financial statements and (iii) the percentage of government share in corporations where the government is not the main shareholder.

2. Consultation Objectives

The consultation objective is to support EITI Mozambique in the collection and analysis of data relating to state participation in the extractive industries and the role of the state-owned enterprise sector, within the context of the EITI Requirements 2.6, 4.2, 4.5 and 6.2.

More specifically, the consultant should use information provided by the government and the state-owned enterprises and analyse the financial records of these companies, in order to:

1. explain the current rules and practices that govern the financial relations between the government and state-owned enterprises, review the regulations governing financial relations between SOEs and their subsidiaries, joint ventures and affiliates; and the changes resulting from the recent legislative reform relating to these companies (Law 3/2018);
2. map direct and indirect state participation in the extractive sector and analyse all operations and transactions undertaken by the state-owned enterprise sector during the period of study (2016-2019), including material company payments to SOEs, SOE transfers to government agencies and government transfers to SOEs in accordance with EITI Requirement 4.5;
3. determine the existence of quasi-fiscal expenditures and, where applicable, describe them, disclose them and produce a clear definition, in accordance with the definition in the IMF's Fiscal Transparency Manual and EITI Requirement 6.2;
4. provide recommendations about how to strengthen disclosures in the state-owned enterprise sector in relation to the extractive sector.

The consultant should present a consolidated report to EITI Mozambique for comments. This report will be published on the EITI Mozambique website.

² More details about the evaluation and the results of the EITI Validation in Mozambique are available here: <https://eiti.org/validation/mozambique/2017>

³ IMF 2017, Article IV - Consultation Press Release, Staff Report and Statement for the Republic of Mozambique: <https://www.imf.org/en/Publications/CR/Issues/2018/03/07/Republic-of-Mozambique-2018-Article-IV-Consultation-Press-Release-Staff-Report-and-Statement-45701>

3. Scope of Work

For the purposes of this study, a company from the state-owned enterprise sector is defined as a company which is partially or wholly owned by the State and which is involved in extractive activities in the name of the Government. The definitions of state-owned enterprises which exist in national laws and governmental structures should also be considered when determining the scope.

The consultant will undertake the following tasks:

- 1. Familiarise themselves with the EITI Requirements, particularly those relating to state participation and state-owned enterprises (EITI Requirements 2.6, 4.2, 4.5 and 6.2).** The EITI Mozambique National Secretariat and the EITI International Secretariat will be available to present and respond to questions related to the scope of the requirements.
- 2. Analyse the legal instruments that regulate the state-owned enterprise sector in relation to the oil, gas and mining sectors, the financial records prepared by state-owned enterprises, previous EITI reports and other relevant documents in order to:**
 - *Explain the current rules and practices that govern the financial relations between the government and the state-owned enterprise sector, in accordance with EITI Requirement 2.6.a:*
 - The consultant should identify the legal and regulatory instruments that regulate state participation in the extractive sector, as well as the rules and practices that govern the transfer of funds between state enterprises and the state itself, accumulated profits, reinvestment and third-party financing. This includes reviewing the new state-owned enterprise law (Law 3/2018) and its Regulation, and Decree 77/2017 that approves the procedures related to the issuance and management of public debt and guarantees by the State; and the implications this law has on the management of the oil, gas and mining state-owned enterprise sector.
 - The consultant should determine the extent to which the rules between the government and the state-owned enterprises are applied in practice throughout the period under investigation.
 - The consultant should also describe institutional mechanisms established to monitor operations of state-owned enterprises, explaining the relation between the companies and line ministries; and the specialized commissions that ensure compliance with good management and corporate governance practices, and the managing entity of the state business sector..
 - *Provide an overall vision of the extent of the government's participation and/or the state-owned enterprise sector in mining, oil and gas companies that operate in the country's oil, gas and mining sectors, in accordance with EITI Requirement 2.6.b:*
 - Based on the information available and obtained in consultation with the state-owned enterprises, the consultant should map state participation in the extractive sector, including information provided by subsidiaries, affiliates and joint ventures within the state-owned enterprise sector and any changes to the share of participation during the period under review.
 - The consultant should also provide information about the structure of shareholder participation, including the level of responsibility that the State or the state-owned enterprise has in covering expenses at the varying stages of the project cycle, for example full-paid equity, free equity or carried interest. This information could include how the state or the state-owned enterprise has financed its obligations.
 - The consultant should describe the regulatory framework for issuing government and state-owned enterprises loans and loan guarantees to mining, oil and gas companies that

operate in the country. The consultant should also identify any existing loans and loan guarantees and, where necessary, provide details about these transactions.

- The consultant should analyse the extent to which SOEs disclose their audited financial statements or the main financial items where financial statements are not available.
 - *Analyse sales of the state's share of production or other revenues collected in kind in accordance with EITI Requirement 4.2:*
 - The consultant should analyse the sale of the state's share of production or other revenues collected in kind. This includes assessing the volumes received and sold, the revenues received from the sales and the revenues transferred to the state from the proceeds of the sale. This should include, where possible, any payments (in cash or in-kind) related to swap agreements and resource-backed loans.
 - The consultant should, where possible, describe the process of selecting buying companies.
 - *Analyse all operations and transactions undertaken by the state-owned enterprise sector during the reporting period, in accordance with EITI Requirement 4.5:*
 - The consultant should analyse all operations involving assets held by the state-owned enterprise sector, contractual transactions and other asset transfers.
 - The consultant should detail payments that the state-owned enterprise sector received from oil and mining companies and the transfers between state companies and other state entities during the period covered by the report.
 - *Determine the existence of quasi-fiscal expenditures and describe them, in accordance with EITI Requirement 6.2:*
 - The consultant should use the IMF Manual on Fiscal Transparency⁴ and consult the state-owned enterprise sector, relevant ministers, including the Ministry of Economy and Finance to determine the existence of quasi-fiscal expenditures. These may include structures through which the state-owned enterprise sector performs social spending, such as paying for social services, public infrastructure, subsidies (including subsidised lending) and national debt services, that fall outside the national budget process.
- 3. Review the official rules for audits and assurance processes that the state-owned enterprise sector employs in practice**, in accordance with EITI Requirement 4.9(a). The consultant should examine the relevant laws and regulation, any planned reforms or reforms underway and if these procedures are aligned with international standards. The consultant should also comment on the existence of procedures for parliamentary oversight of the financial accounting of the state-owned enterprise sector, the existence of rules to ensure that audit reports are publicly accessible and the de facto practice.
- 4. The Coordination Committee can also decide, in accordance with global good practice reflected in the EITI Standard 2019, that the consultant should include information and comments for example about the rules and practices related to operational and capital expenditure of the state-owned enterprise sector, procurement and subcontracting, and corporate governance (for example the composition and selection of the Board of Directors, the Directors' mandate and codes of conduct, etc.).**

⁴ <https://www.imf.org/external/np/pp/2007/eng/051507m.pdf>

5. **Present a preliminary report to receive comments from the EITI International Secretariat and the Coordination Committee.** The EITI Mozambique Secretariat should ensure consistency between the information contained in the financial records and the information already shared in previous EITI Reports and highlight and discrepancies.
6. **After collecting comments and discussing, the final report should be presented to the Coordination Committee (CC) for approval. Under the coordination of the National Secretariat, the Consultant should send the final report with recommendations to the EITI International Secretariat and to the Coordination Committee.** The final report should include a summary of the results and recommendations. **The consultant should also present a summarised report (short version).** The final report and summary should be presented in both Portuguese and English.

4. Results and timeline

The task is expected to start on XXX. The task should be concluded by XXX. A total duration of 45 days is expected to undertake the task. The proposed timeline is set out below:

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| Signing of contract | By TBC |
| Gain familiarity with the EITI Standard. | 1 day |
| Review legal documentation, financial reports of state-owned enterprises and that reported in previous EITI Mozambique reports. | 7 days |
| Analyse the reviewed information and consultations as necessary. | 15 days |
| Deliver preliminary report for comments by EITI Mozambique and the International Secretariat. | 17 days (Period of 2 one week for comments, 2 days to analyse comments) |
| Workshop with the Coordination Committee and stakeholders to discuss the preliminary results. | 1-2 days |
| Present final report. | In accordance with the date agreed with the consultant |

5. Consultant qualifications:

The consultant should be a prominent firm or individual(s) that EITI Mozambique consider to be credible, trustworthy and technically competent.

The consultant must demonstrate:

- at least 10 years' proven experience in financial accounting and auditing of the state-owned enterprise sector for extractive industries in Mozambique. Knowledge of EITI Standard is an advantage.
- experience and knowledge of corporate governance and transparency in business sector and extractive sector enterprises.

- experience of similar jobs in the past. Prior experience of EITI is not necessary but would be advantageous.

To ensure quality and independence in the undertaking, the consultant must, in their technical and financial proposals, disclose any potential or actual conflicts of interest, together with a comment about how they may be avoided.

6. Bidding procedure

The consultant shall be selected after a selection process based on quality and cost, in accordance with Decree 5/2016 of 8 March 2016.

The consultants should send:

- a **technical proposal**, outlining: (a) consultancy/consultants experience, (b) the methodology and work plan proposed in relation to the terms of reference (ToR) and (c) qualifications and skills of main experts involved. The technical proposal should **not** include any financial information. The technical proposals that include financial information shall be considered in breach of the instructions and excluded.
- a **financial proposal**, clearly indicating the total proposed value, that **includes** all applicable taxes. The financial proposal should clearly differentiate between the rates and other possible reimbursable expenses. The daily rate for consultants should be clearly indicated.

The proposals should be submitted by e-mail to skasimova@eiti.org, by 27 October 2020.

8. Administrative support

The support provided to the consultant during the task and all other logistical and administrative criteria shall be specified in the contract.

9. Relevant sources

The EITI and transparency relating to state participation:

- EITI Standard (Requirements 2.6, 4.2, 4.5 and 6.2): <https://eiti.org/document/standard>
- EITI page about state-owned enterprises: <https://eiti.org/role-of-stateowned-enterprises>
- EITI Guidance Note number 18 about state-owned enterprises: <https://eiti.org/GN18>
- EITI page on commodity trading: <https://eiti.org/commodity-trading>
- EITI Guidance Note number 26 on the sale of oil by state-owned enterprises: <https://eiti.org/GN26>

EITI Mozambique:

- EITI Mozambique 2017-18 Report: <https://eiti.org/document/>
- EITI Mozambique 2015-16 Report: <https://eiti.org/document/mozambique-eiti-2015-2016-report>
- EITI Mozambique 2013-14 Report: <https://eiti.org/document/20132014-mozambique-eiti-report>
- EITI Validation Documentation: <https://eiti.org/validation/mozambique/2017>

Other relevant links:

OECD Guidelines on corporate governance of state-owned enterprises

<http://www.oecd.org/corporate/guidelines-corporate-governance-SOEs.htm>

Transparency International 10 anticorruption principles for state-owned enterprises:

<https://www.transparency.org/view/publication/8077>

IMF April 2020 Fiscal Monitor, Chapter 3 on State Owned Enterprises

<https://www.imf.org/en/Publications/FM/Issues/2020/04/06/fiscal-monitor-april-2020#Chapter%203>

Upstream Oil, Gas and Mining SOE Governance Challenges, commissioned by EITI

<https://eiti.org/document/upstream-oil-gas-mining-soe-governance-challenges>

State participation and state-owned enterprises: roles, benefits and challenges, published by NRG:

https://resourcegovernance.org/sites/default/files/nrgi_State-Participation-and-SOEs.pdf

Guide to extractive sector state-owned enterprise disclosures, published by NRG:

<https://resourcegovernance.org/analysis-tools/publications/guide-to-extractive-sector-state-owned-enterprise-disclosures>

The State's Engagement in Business in Mozambique, published by USAID:

<https://s3.amazonaws.com/rgi-documents/ad0c8c4bd01a3c1e20175614419124d1a24379b2.pdf>