

Request for adapted implementation: São Tomé and Príncipe

For decision

For discussion

For information

Recommendation:

The Secretariat recommends that the Implementation Committee recommends that the Board accepts the São Tomé and Príncipe (STP) EITI National Committee's request for adapted implementation with respect to reconciliation of revenues and disclosure of contextual information related to the Nigeria- São Tomé and Príncipe Joint Development Zone (JDZ). The Secretariat also recommends that the Implementation Committee recommends that the Board accept the proposal of STP EITI to be exempted in presenting an Annual Progress Report (APR) and cover impact and progress in the EITI reports.

The application was made because the Government of São Tomé and Príncipe and the National Committee do not have the legal authority to compel the Joint Development Authority (JDA), or companies operating in the JDZ that are based in another country, to participate in the EITI process. This is a repeated request having been made for the 2015-16 report and was accepted by the Board.

REQUEST FOR ADAPTED IMPLEMENTATION – SÃO TOMÉ AND PRÍNCIPE

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1 Recommendation

The Secretariat recommends that the Implementation Committee makes the following recommendation to the Board:

The EITI Board accepts the São Tomé and Príncipe EITI National Committee’s request for adapted implementation with respect to reconciliation of revenues and disclosure of contextual information related to the Nigeria- São Tomé and Príncipe Joint Development Zone. The request is accepted

concerning the 2017 and 2018 EITI Reports. In line with the request, the EITI Board expects the National Committee and the Government of São Tomé and Príncipe to continue their efforts to ensure full disclosure of information required by the EITI Standard by the Joint Development Authority and by the companies operating in the Joint Development Zone.

The EITI Standard allows for adapted implementation “where the country faces exceptional circumstances that necessitate deviation from the implementation requirements” (Requirement 8.1). In taking this decision, the EITI Board recognises São Tomé and Príncipe’s concern that the Government of São Tomé and Príncipe and the National Committee do not have the legal authority to compel the Joint Development Authority, or companies operating in the Joint Development Zone that are based in another country, to participate in the EITI process.

In line with the request for adapted implementation, the Board requires that the Government of São Tomé and Príncipe and the National Committee continue their efforts to engage the Joint Development Authority and the companies making material payments to the Joint Development Authority in São Tomé and Príncipe’s EITI reporting process and seek to ensure full disclosure of both revenues and contextual data in line with the EITI Standard. Where comprehensive information is not obtained from these entities, the National Committee is expected to include links to other publicly available sources of information. The National Committee’s efforts to involve the Joint Development Authority and companies operating in the Joint Development Zone should be assessed in Validation.

Companies operating in the Joint Development Zone that are registered in São Tomé and Príncipe are not included in the scope of adapted implementation and the National Committee is required to ensure that they fully comply with EITI Requirements. It is also a requirement that there continues to be full unilateral disclosure of any revenues received by the Government of São Tomé and Príncipe from the Joint Development Authority and any other information related to the Joint Development Zone that can be obtained from a Santomean government entity in accordance with the EITI Standard.

In addition, the Board requests that the National Committee takes steps to ensure that EITI Reports include an assessment of the comprehensiveness of the information, particularly with respect to information related to the Joint Development Zone. The Board also recommends that the National Committee takes steps to strengthen collaboration with Nigeria EITI through the Nigeria-São Tomé and Príncipe EITI sub-committee to find a sustainable solution for ensuring transparency in the Joint Development Zone.

2 Background

2.1. Extractive industries in São Tomé and Príncipe

São Tomé and Príncipe is an island state located in the Gulf of Guinea. To date, the results of petroleum exploration have been disappointing and there is no extractive production. Oil exploration is taking place in two distinct maritime zones. In 2001, a Joint Development Zone (JDZ) was established with Nigeria in an

effort to address a maritime dispute between the two countries. In the Abuja Treaty, the countries agreed that Nigeria would be entitled to 60% and São Tomé and Príncipe 40% of all revenue and costs related to the zone. A Joint Development Authority (JDA) was established to manage the JDZ. The JDA is an independent entity based in Abuja, Nigeria that is accountable to a Joint Ministerial Council and has two Executive Directors from each country. The Council appoints one of the Executive Directors to act as Chairman.

São Tomé and Príncipe also has an offshore Exclusive Economic Zone it fully controls. The first licensing round for exploration rights in the Exclusive Economic Zone was held in 2010. It has not attracted the same interest as the JDZ did in the mid-2000s, but seven blocks have been awarded. Oranto has conducted seismic studies and the results are being analysed. In 2015, new actors entered the zone: Kosmos acquired rights to Block 11 from EHRC, and Galp announced in October that it had reached agreement on exploration in Block 6 of São Tomé and Príncipe's oil revenue between 2003 and 2014, USD 51 million derived from the JDZ and USD 9 million from the Exclusive Economic Zone. However, the latest revenues from the JDZ were transferred to the Government of São Tomé and Príncipe in 2007.¹

Despite the recessive climate that has been felt since the end of 2014, São Tomé and Príncipe has focused on gradually making its Exclusive Economic Zone more attractive, synonymous with this attractiveness being the arrival of two new players of the sector in the country, namely Galp Energia and Kosmos Energy.²

As referred to in the STP EITI reports, the oil industry's contribution to the tax system and to the collection of revenue exclusively of a tax nature has been practically nil over the years, given the production inactivity both in the EEZ and in the JDZ.³ Thus all revenue the JDA has collected to date was generated in 2003-2005.

2.2. EITI in São Tomé and Príncipe and the Joint Development Zone

São Tomé and Príncipe published its first EITI Reports covering 2003-2013 in December 2014. Two separate reports were published covering the Exclusive Economic Zone and the JDZ, respectively. The JDZ report was not comprehensive as the JDA did not provide all requested license data. Additionally, only 66% of material payments were reconciled as a number of companies did not submit information. The 2014 São Tomé and Príncipe EITI Report was published in October 2015. The report documents no material payments related to the JDZ in 2014. The JDA collaborated in the production of the report by providing information on, for example, its own budget and expenditure and recent developments in the zone. The 2014 Report was not able to fill all the gaps regarding license data.

¹ https://eiti.org/files/STP_EITI_REPORT_FOR_EEZ_2014.pdf

² 2015 EITI Report. Accessed 3 January 2019. Available at: https://eiti.org/sites/default/files/documents/eiti_relatorio_2015_english_version_final.pdf

³ 2015 EITI Report. Accessed 3 January 2019. Available at: https://eiti.org/sites/default/files/documents/eiti_relatorio_2015_english_version_final.pdf

The 2014 São Tomé and Príncipe EITI Report was published in December 2017. The report documents oil revenues to the tune of USD 2.3 m from the EEZ. The total amounts paid by the operators in the EEZ in the year 2015, including social projects and training grants stands at USD 4.1m. There was no flow from the JDZ to São Tomé and Príncipe in 2015, as confirmed by the JDA and the Central Bank of São Tomé and Príncipe, the amounts received in the NOA are entirely related to the revenues of operators of the EEZ of STP.⁴

However, the Nigeria EITI 2016 oil and gas report shows total financial flows in 2015 to NSPJDA as USD 1.7m received as Signature Bonus for the new Production Sharing Contract (PSC) for JDZ Block-1, paid by PAPIS Energy Solutions Signature (USD 636,200) and Equator Hydrocarbons Limited (USD 1.0m).⁵ While total flow to NSTJDA in 2016 was USD 482,945 for concession rental and social expenditure.

The São Tomé and Príncipe Pilot Validation assessment conducted by the International Secretariat in November 2015 found that despite the fact that no commercially viable oil discoveries had been made, there was continued interest in ensuring that the public understood the outlook for the sector, and in embedding transparency in government systems. Government, industry and CSOs were found to be united in their view that the EITI process was useful, indeed essential in São Tomé and Príncipe. The assessment noted that one of the impacts stakeholders had highlighted was that EITI had increased public understanding about the management of the JDZ and informed discussion about revisiting its management.

3 Relevant rules and precedents

Requirement 8.1 of the EITI Standard outlines the scope for multi-stakeholder groups (MSGs) to request “adapted implementation” of the EITI Standard:

Should the multi-stakeholder group conclude that it faces exceptional circumstances that necessitate deviation from the implementation requirements, it must seek prior EITI Board approval for adapted implementation. The request must be endorsed by the multi-stakeholder group and reflected in the workplan. The request should explain the rationale for the adapted implementation.

The EITI Board will only consider allowing adaptations in exceptional circumstances. In considering such requests, the EITI Board will place a priority on the need for comparable treatment between countries and ensuring that the EITI Principles are upheld, including ensuring that the EITI process is sufficiently inclusive, and that the EITI Report is comprehensive, reliable and will contribute to public debate.

This provision recognises that implementing countries may face a wide range of constitutional and practical

⁴ 2015 EITI Report. Accessed 3 January 2019. Available at:

https://eiti.org/sites/default/files/documents/eiti_relatorio_2015_english_version_final.pdf

⁵ 2015 NEITI Oil and Gas Report. Accessed 3 January 2019. Available at:

<http://www.neiti.gov.ng/phocadownload/Updated%202015%20Oil%20and%20Gas%20report3.pdf>

challenges in disclosing information about extractive industry activities that are not fully controlled by the implementing state. The provision highlights the need to ensure that “the EITI Principles are upheld, including ensuring that the EITI process is sufficiently inclusive, and that the EITI Report is comprehensive, reliable and will contribute to public debate”.

An adapted implementation request submitted by the National EITI Committee of São Tomé and Príncipe as regards to revenue reconciliation and the dissemination of contextual information related to the Nigeria-São Tomé e Príncipe Joint Development Zone for the 2015-2016 reporting year was approved on 23 February 2016 by the EITI board. The Santomean case in that the exceptional circumstance was caused by a situation where extractive activities and information related to them was not fully controlled by the government of Sao Tome and Principe. The reasons for the adapted implementation that was approved by the Board have not changed for tax years 2017 and 2018.

4 Overview of the São Tomé and Príncipe request for adapted implementation

The first adapted implementation request, which was for the 2015-2016 reporting year for JDZ stated that *“the National Committee requests that the possible lack of comprehensive information on the JDZ in future EITI Reports should not be held against São Tomé and Príncipe in Validation. The request argued that the Government and the National Committee are not able to oblige the JDA or the companies which operate in the JDZ that are based outside São Tomé and Príncipe to submit information for EITI Reports. The request states that the National Committee will continue to make all efforts to include contextual information on the JDZ and to reconcile the payments made by companies operating within the JDZ to the JDA as well as payments made by the JDA to the Government of Sao Tomé and Príncipe.*

The request stated that despites efforts made, it was not possible to obtain all the required information regarding the JDZ for the 2003-2013 and 2014 EITI Reports. This was due to the exceptional legal status of the JDZ, which limits the possibility of interventions by the participating states. The request acknowledges that the challenges could be overcome through dialogue with the Nigerian government and states that the Government of São Tomé will raise the issue in the upcoming meetings of the Joint Ministerial Council and in the revision of its legal framework”.

The circumstance that led to the implementation request above has not changed, thus the National Committee, in its 29th Meeting, held on 25 September 2018, decided to submit an adapted implementation request to the EITI Governing Board to seek for extension to the approved adapted implementation for the tax years 2017 and 2018.

As stated in the minutes of meeting, the MSG reaffirmed its commitment on maintaining all the efforts to obtain the information on the JDZ and encouraged the National Secretariat to promote more exchanges with NEITI for this purpose. National Committee and the Government of São Tomé and Príncipe agreed to continue making efforts to ensure the full dissemination of information by the Joint Development Authority and by the companies that operate in the Nigeria-São Tomé and Príncipe Joint Development Zone. A commitment had been taken to strengthen a partnership with the JDA and NEITI and be reflected in the

2019 work plan. In light of the above, São Tomé and Príncipe EITI has sought the help of the International secretariat to facilitate a meeting with Nigeria EITI to agree to continuously disseminate information in the JDZ in accordance with the 2016 EITI standard.

The National Committee also notes that the current phase of development of the oil industry in São Tomé e Príncipe, together with the challenges of financing certain actions, require the adjustment in the implementation and simplification of some related processes. That despite an increasing interest by the major oil companies, the monetary sum generated within the industry has not been significant, as revenue has been confined to bonuses of social project signing and financing. Thus, the National Petroleum Account that receives revenue from the oil and gas sector which is domiciled in the USA and managed by the CBN of STP has registered a significant drop in relation to the last EITI Report. The amount allocated to the National Petroleum Account has been only just over USD 2m. 20% of revenue from the account goes into the budget each year.

The National Committee is also requesting for adapted implementation which exempts the obligation of presenting an Annual Progress Report, until there is significant development underway in the extractive sector to justify it. The National Committee proposes that references to the country's progress in implementation and the promotion of public debate be included in EITI reports as a way of monitoring EITI action impact.

5 Assessment of the São Tomé and Príncipe request for adapted implementation

The Secretariat has assessed the São Tomé and Príncipe EITI National Committee's request for adapted implementation in accordance with requirement 8.1 Table 1 addresses five aspects or criteria cited in Requirement 8.1 of the EITI Standard.

Table 1 – Assessment of the Santomean request for adapted implementation

Criteria	Secretariat's Assessment
1. The request must be endorsed by the multi-stakeholder group and reflected in the workplan.	<p>The request was from the whole MSG and is signed by its Chair, Minister of Finance and Public Administration, Américo de Oliveira Ramos. The International Secretariat has confirmed that it was agreed by the MSG through their 25 September 2018 minutes of meeting.</p> <p>The current São Tomé and Príncipe workplan does not make specific reference to the adaptation. The workplan is presently being updated.</p>
2. Must seek prior EITI Board	The application has been made in advance of future São Tomé and

approval.	Príncipe EITI Reporting based on current experience.
<p>3. The request should “explain the rationale for the adapted implementation”, and the “exceptional circumstances that necessitate deviation from the implementation requirements”.</p>	<p>The previous request provides an account of the challenges and efforts associated with complying with requirements 3 and 4 regarding the JDZ. The rationale behind the request is clear as legal and practical barriers prevent the National Committee from being able to guarantee that information is obtained from entities that are not exclusively under the authority of the Government of São Tomé and Príncipe. The suggested approach is in line with what can be feasibly expected from the National Committee.</p> <p>The circumstances are exceptional in that the JDZ does technically not form a part of São Tomé and Príncipe’s sovereign territory and the JDA that controls the zone is not fully under the control of the Santomean government. The request notes that due to the independent status of the JDA interference by the two governments is limited and difficult to execute. The Government of São Tomé and Príncipe appoints two of the four Executive Directors of the JDA and exercise its influence in the Joint Ministerial Council. However, the Secretariat’s assessment is that the suggested approach sufficiently safeguards EITI Principles, while recognising the exceptional challenges.</p> <p>The current request seeks for extension of the already approved adapted implementation request. The São Tomé e Príncipe EITI has pointed that the circumstance that led to the earlier adapted implementation request has not changed and that the National Committee will continue to make efforts towards ensuring the full dissemination of information by the Joint Development Authority and by the companies that operate in the Nigeria-São Tomé and Príncipe Joint Development Zone, as required by the EITI Standard.</p>
<p>4. The need for comparable treatment between countries.</p>	<p>The Secretariat’s view is that by approving São Tomé and Príncipe’s request for adapted implementation, the EITI Board would strengthen comparable treatment between countries. As noted in the assessment under criteria 3 of this table, the arrangement under which the JDZ is managed is exceptional and by recognising the restrictions this creates, the EITI Board would set São Tomé and Príncipe in a situation comparable with that of other countries. The EITI Board may wish to communicate its decision on the request to Nigeria in order to ensure comparable treatment between São Tomé and Príncipe and Nigeria.</p>

	As per requirement 4.1, the 2017 and 2018 EITI Reports should identify any “any gaps or weaknesses in reporting ... and an assessment of whether this is likely to have had material impact on the comprehensiveness of the report”.
5. Ensuring that the EITI Principles are upheld, including ensuring that the EITI process is sufficiently inclusive, and that the EITI Report is comprehensive, reliable and will contribute to public debate.	<p>The Secretariat’s view is that the proposed approach is pragmatic and sufficient for ensuring that EITI Principles are upheld. The fact that the request states that efforts are made by the National Committee to ensure that comprehensive information is obtained from the JDA and companies operating in the JDZ demonstrates the National Committee’s commitment to the principles.</p> <p>Based on discussions with the National Secretariat, the International Secretariat’s assessment is that the National Committee is committed to upholding high standards of transparency and continuing to include information from actors in the JDZ in São Tomé and Príncipe’s EITI Reports to the extent that the companies and the JDA make it available to the Committee.</p> <p>It is noteworthy that the significance of the Exclusive Economic Zone has increased since São Tomé and Príncipe was readmitted as EITI candidate in 2012. The National Committee will continue to be required to ensure full disclosure of information related to the Exclusive Economic Zone as required by the EITI Standard.</p>

6 Conclusion

The Secretariat recommends that the Implementation Committee recommends that the Board accepts the São Tomé and Príncipe (STP) EITI National Committee’s request for adapted implementation with respect to reconciliation of revenues and disclosure of contextual information related to the Nigeria- São Tomé and Príncipe Joint Development Zone (JDZ). The application was made because the Government of São Tomé and Príncipe and the National Committee do not have the legal authority to compel the Joint Development Authority (JDA), or companies operating in the JDZ that are based in another country, to participate in the EITI process. This is a repeated request having been made for the 2015-16 report and was accepted by the Board. The Secretariat also recommends that the Implementation Committee recommends that the Board accept the proposal of STP EITI to be exempted from presenting an Annual Progress Report (APR) and cover impact and progress in the EITI reports.

Annex A – Request for adapted implementation (translated) – 2017/2018

DEMOCRATIC REPUBLIC [Coat of Arms] OF SÃO TOMÉ AND PRÍNCIPE

Unit - Discipline -Work**MINISTRY OF FINANCE, COMMERCE AND THE BLUE ECONOMY****MINISTER'S OFFICE**Dear Mr **President****EITI Governing Board**

Skippergata 22

0154 Oslo Norway

Subject: **Adapted implementation request**

Dear Mr. President, our regards.

On 23 February 2016 the EITI Governing Board accepted the adapted implementation request submitted by the National EITI Committee of São Tomé and Príncipe as regards revenue reconciliation and the dissemination of contextual information related to the Nigeria-São Tomé e Príncipe Joint Development Area.

The request accepted by the Council covered the 2015 and 2016 EITI Reports. In accordance with the request, the parties agreed that the National Committee and the Government of São Tomé and Príncipe would continue to make efforts to ensure the full dissemination of information by the Joint Development Authority and by the companies that operate in the Nigeria-São Tomé and Príncipe Joint Development Zone, as required by the EITI Standard.

Having received the classification of meaningful progress in its second validation in 2018, the EITI National Committee started to draft its 4th EITI Report in October 2018, covering the 2016 and 2017 tax years.

The National Committee, in its 29th Meeting, held on 25 September 2018, decided to submit an adapted implementation request to the EITI Governing Board and instructed the Permanent Secretariat to submit said request. The request intends to obtain an extension to the adapted implementation for the tax years 2017 and 2018, which are not covered in the one currently accepted.

However, the National Committee continues to make efforts to obtain information as regards the activities in the Joint Development Zone with Nigeria, with cooperation with NEITI and with the Joint Authority being permanently on the agenda to this effect.

The National Committee understands that the current phase of development of the oil industry in São Tomé e Príncipe, together with the challenges of financing certain actions, require the adjustment in the implementation and simplification of some related processes. Despite an increasing interest by oil companies, namely the main majors, the monetary sum generated with industry has not been very significant, as revenue has been confined to bonuses of social project signing and financing. The National Petroleum Account has registered a significant drop as, in accordance with the last EITI Report relating to 2016, the amount allocated to the National Petroleum Account has

been only 2,051,984.00 US dollars, corresponding to 20% the amount existing on 31 December 2015.

For this purpose, we are approaching you to request for an extension to the adapted implementation according to Requirement 8.1. of the 2016 EITI Standard, that an extension of the adapted implementation which exempts the obligation of presenting an Annual Progress Report, until the developments underway in the extractive sector so justify. The National Committee proposes that references to the country's progress in implementation and the promotion of public debate be included in EITI reports as a way of monitoring EITI action impact.

With nothing else to address, we take this opportunity to thank you for your time and send our best regards.

São Tomé, 21 November 2018

Yours sincerely,



Américo de Oliveira dos Ramos
Ministro das Finanças Comércio e Economia Azul
Presidente do Comité Nacional de EITI

[Minister of Finance, Commerce and the Blue Economy, President of the EITI National Committee]

Annex B – Request for adapted implementation (Original) – 2017/2018


REPÚBLICA DEMOCRÁTICA DE SÃO TOMÉ E PRÍNCIPE
Unidade – Disciplina – Trabalho
MINISTÉRIO DAS FINANÇAS, COMÉRCIO E ECONOMIA AZUL
GABINETE DO MINISTRO

Exmo. Senhor
Presidente
Conselho de Administração de EITI
Skippergata 22
0154 Oslo
Noruega

Assunto: **Pedido de implementação adaptada**

Excelentíssimo senhor Presidente,

Os nossos cumprimentos.

Em 23 de fevereiro de 2016 o Conselho de Administração de EITI aceitou o pedido de implementação adaptada solicitado pelo Comité Nacional de EITI de São Tomé e Príncipe no que se referia à reconciliação de receitas e à divulgação de informação contextual relacionada com a Zona de Desenvolvimento Conjunto Nigéria-São Tomé e Príncipe.

A solicitação aceite pelo Conselho recaiu sobre os Relatórios da EITI de 2015 e 2016. De acordo com a solicitação, ficou acordado entre as partes que o Comité Nacional e o Governo de São Tomé e Príncipe continuasse a envidar esforços para assegurar a divulgação completa das informações exigidas pelo Padrão da EITI pela Autoridade Conjunta de Desenvolvimento e pelas empresas que operam na referida Zona Conjunto de Desenvolvimento Nigéria-São Tomé e Príncipe.

Classificado em 2018, na sua segunda validação, com progresso significativo o Comité Nacional de EITI iniciou em outubro de 2018 a elaboração do seu 4º Relatório de EITI, compreendendo os anos fiscais de 2016 e 2017.

O Comité Nacional, na sua 29ª Reunião, realizada no dia 25 de setembro de 2018, decidiu sobre solicitação de implementação adaptada ao Conselho de Administração de EITI e instruiu o Secretariado Permanente no sentido de submeter tal solicitação. Tal solicitação pretende a obtenção do alargamento da implementação adaptada para os anos fiscais de 2017 e 2018, não abrangidos na aceitação que ainda vigora.

Largo das Alfândegas, CP N° 168, São Tomé, São Tomé e Príncipe
Telefones: +239 2223285/2221083/2224172 Fax: +239 2222182 Website: min-financas.st


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Não obstante, o Comité Nacional continua a envidar esforços no sentido de obter informações decorrentes das atividades na Zona de Exploração Conjunta com a Nigéria, tendo permanentemente em agenda cooperação com a NEITI e com a Autoridade Conjunta para o efeito.

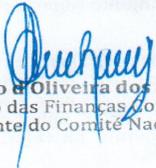
O Comité Nacional entende que a presente fase de desenvolvimento da indústria petrolífera em São Tomé e Príncipe, aliado aos desafios de financiamento de certas ações, requer reajuste na implementação e simplificação de alguns processos afins. Apesar de um crescente interesse por parte das empresas petrolíferas, nomeadamente as principais majors, não tem sido muito significativo o montante pecuniário gerado com a indústria, sendo que as receitas se têm cingido a bónus de assinatura e financiamento de projetos sociais. A Conta Nacional do Petróleo tem registado significativo decréscimo sendo que, de acordo com o último Relatório EITI referente ao ano fiscal de 2016, o montante alocado para a Conta Nacional do Petróleo ter sido apenas de 2.051.984,00 Dólares americanos, correspondendo a 20% do montante existente a 31 de dezembro de 2015.

Para o efeito, vimos desta forma solicitar a Vossa Exa. a possibilidade de, ao abrigo do Requisito 8.1. da Norma de EITI de 2016, ser concedida uma prorrogação de implementação adaptada extensiva à não obrigação de apresentação do Relatório Anual de Progresso, até que os desenvolvimentos em curso no sector extrativo assim justifique. O Comité Nacional propõe inclusão em relatórios EITI referências sobre o progresso de implementação do país e promoção de debate público como forma de monitorar o impacto das ações de EITI.

Sem mais assunto, e aproveitando para agradecer pela atenção que de vossa parte temos vindo a merecer, renovamos os votos de nossos calorosos cumprimentos.

São Tomé, 21 de novembro de 2018

Atentamente,


Américo de Oliveira dos Ramos
Ministro das Finanças, Comércio e Economia Azul
Presidente do Comité Nacional de EITI

Annex C – Request for adapted implementation (translated) – 2015/2016

DEMOCRATIC REPUBLIC [emblem] OF SÃO TOMÉ AND PRÍNCIPE

(Unity-Discipline-Work)

MINISTRY OF FINANCE AND PUBLIC ADMINISTRATION
OFFICE OF THE MINISTER

Clare Short
Chair
EITI Board
0251 Oslo
Norway

Ref. 40/GM/2015
São Tomé, 20 January 2016

Subject: **Request for adapted implementation of EITI**

Madam,

As you know, São Tomé and Príncipe signed-up to the Extractive Industries Transparency Initiative and was accepted as a candidate country in the 25th EITI International Board Meeting on 26 October 2012.

Our sign-up forms part of the journey which our country began with its manifestation of interest in following the EITI principles as stated in the Abuja Declaration of 26 June 2004, signed between the Heads of State of Nigeria and São Tomé and Príncipe for the management of a joint petroleum and non-petroleum resources exploration zone by the two states.

In line with São Tomé and Príncipe's engagement in the implementation of the EITI, the country must present the respective EITI reports based on the reconciliation of payments and revenues made to the government both in the Exclusive Economic Zone (EEZ) as well as in the Joint Development Zone (JDZ) with Nigeria in which São Tomé and Príncipe holds 40% of petroleum exploration against the 60% held by Nigeria.

For the total fulfilment of these objectives, a structure linking the EITI Nigeria and EITI São Tomé and Príncipe was created: The EITI Nigeria/STP subcommittee, which is composed of representatives of the National Committees of both countries, of the oil companies which operate in the JDZ and the Joint Authority for the Nigeria/STP JDZ. The subcommittee has the task of establishing contacts and taking decisions which allow the gathering of the necessary data and information for the production of the EITI reports of the JDZ.

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São Tomé and Príncipe's first EITI report was drawn up on the basis of information gathered in the EEZ and in the JDZ and resulted in two documents: the São Tomé and Príncipe EITI report and the Nigeria/STP JDZ EITI report. This report covered a period of 10 years between 2003 and 2013 as a way of producing better information on the oil sector, taking into consideration that the revenues collected by the government consisted of signing bonuses from the bids on the oil blocks and from the social obligations of the companies.

São Tomé and Príncipe's second report, submitted on 2 October 2015, covered the year 2014 and was an update of

the first report, in light of the gaps in the latter as regards information from the Joint Development Zone with Nigeria. Despite the existence of a subcommittee and of the efforts made by the STP EITI National Committee, it was not possible to obtain all the information necessary to produce a report which duly covered the JDZ. We would like to assure you that all the efforts were made, both by the São Tomé and Príncipe government and by the independent administrator in terms of obtaining information from companies operating in the JDZ.

The difficulties in obtaining information in the Joint Development Zone with Nigeria were also caused by the legal structure specifically defined for this area of jurisdiction between the two states. The JDZ is, in legal terms, an autonomous body of Nigeria and São Tomé and Príncipe, and the involvement of the governments of these countries is limited and difficult to carry out. The Joint Development Authority, which manages the JDZ, is a body with its own legal identity in international law and is independent from the internal legislation of each stakeholder state, a fact which hinders any obligations of either state.

The government of São Tomé and Príncipe understands that overcoming these difficulties could be achieved via dialogue with the Nigerian government in the sense of facilitating the disposal of the institutions and the companies headquartered in Nigeria as to provision of the necessary information for the production of future reports. For this purpose, the government has already shown its express desire to proceed to a revision of the legal framework of the Joint Development Authority as a way to improve its function, in accordance with the interests of the country.

Due to the experience acquired by the STP EITI since the beginning of the country's candidature, the National Committee believes that the challenge in the creation of reports on the JDZ requires increased efforts. Equally, the National Committee recognises that it is very important for São Tomé and Príncipe, that the JDZ with Nigeria is covered by the EITI reports, it being an issue of significant interest and public debate within the country. It is also important to highlight that, given that the JDZ is an important area of interest in petroleum resources and natural gas, it is important that efforts are continued in terms of it being covered by the EITI reports.

We believe that the progress made with the publication of the second EITI report is significant. This report, over and above being considerably improved in relation to the one which preceded it, both in terms of its scope, as well as in the reliability of the information therein, also contains important information of the costs of the Nigeria-São Tomé and Príncipe Joint Authority and a comparison between said costs and the costs of the São Tomé and Príncipe management of the Exclusive Economic Zone. This information is fundamental to promoting debate on the need for more rigorous management of oil-based resources. This fact, linked with a greater participation of civil society in the debate, places São Tomé and Príncipe in a position to fulfil EITI Requirement 6.

We consider the improvements demonstrated in the 2nd report to be a starting point for an increased engagement and greater involvement of the stakeholders in the country's candidature process.

Another important aspect to bear in mind are the developments in play in the oil sector as regards São Tomé and Príncipe's Exclusive Economic Zone. Between 2011 and the present time, seven blocks were adjudicated and five production-sharing contracts were signed and there is a growing interest by companies in São Tomé and Príncipe's EEZ.

The São Tomé and Príncipe EITI National Committee advocates the progress which the country's candidature process has seen since the submission to the International Secretariat of its candidature. The Committee is equally conscious that much still has to be done for the country to reach a satisfactory state of fulfilment of all the EITI requirements.

It should be pointed out that the pre-validation mission carried out by the International Secretariat in November 2015, for which I take the opportunity to offer my praise and thanks, can be linked to the progress recorded in the promotion of transparency in São Tomé and Príncipe. The mission noted considerable progress in the function of public institutions and civil society involved in the process. The resulting report of this mission made important recommendations which were welcomed and which will be considered by the National Committee and, at the same time, encourages us to overcome the weaknesses detected.

Bearing in mind that the country is in the process of validation, and that certain constraints have been identified as regards the Joint Development Zone with Nigeria, I, in my capacity as member of the government of São Tomé and Príncipe and President of the EITI National Committee, am taking this opportunity to provide the Board of the Extractive Industries Transparency Initiative with the following information:

The São Tomé and Príncipe EITI National Committee intends to make a request to the Board for an adapted implementation of the Initiative under the following auspices:

São Tomé and Príncipe continues to be completely committed and will continue to in its efforts to include the Joint Development Zone with Nigeria in its EITI reports, giving continuity to the initial objectives of its sign-up to the Initiative. However, we ask the EITI Board to please consider not penalising the country for not be able to include information on the JDZ in future reports, given the aforementioned constraints, bearing in mind that we are not in a position to oblige the Joint Authority with Nigeria, nor the companies which operate in the Joint Development Zone to present the data and information necessary for the creation of the reports.

The National Committee will continue, however, to make all efforts to include contextual information on the JDZ and reconcile the payments made by companies operating within the JDZ to the Joint Authority as well as payments made by the Joint Authority to the STP government.

As part of this request, São Tomé and Príncipe hopes that the EITI Board can consider that the absence of information on the JDZ not prevent São Tomé and Príncipe's validation as a Compliant Country.

The government of São Tomé and Príncipe has done its very utmost to overcome the difficulties encountered up until now in the implementation of the EITI. The STP EITI National Committee has given the Independent Administrator all opportunities and used all methods at its disposal to ensure information has been facilitated for the creation of the reports. A specific intervention will be agreed by the President of the National Committee in the Joint Ministerial Council in the coming meetings of this body of the Joint Development Authority, as a way of overcoming the difficulties encountered up until now.

The government of São Tomé and Príncipe aims to review the legal framework for the functioning both of the National Petroleum Agency as well as its participation in the Joint Development Zone (JDZ) with Nigeria. We hope that significant developments as to the decision-making process on the JDZ with Nigeria will result from this revision of the legal framework.

The scope of these objectives places the country in a better position to demand and obtain the necessary information for the creation of more comprehensive reports with more reliable information.

Given that it is an extremely important issue for the county, the government will set an agenda for discussion in the Nigeria- São Tomé and Príncipe Joint Ministerial Council regarding the need for the institutions of both countries to act in accordance with the Abuja Declaration of 2004. In this context, the Joint Development Authority, as the manager of the joint development zone between the two countries, should be called upon to assume both the principles and the spirit of the Abuja Declaration. The government of São Tomé and Príncipe will act to guarantee the creation of conditions to ensure transparency in the JDZ.

Ending our request, I would like to reaffirm the engagement of the government of São Tomé and Príncipe to the EITI candidature process, and that it is conscious that our sign-up to the Initiative has allowed us to improve the image of our country and created conditions for the promotion of investment in our economy. The candidature process has equally stimulated an important

debate amongst the institutions involved and within civil society in the country. The publication of the EITI reports and their dissemination throughout the population has contributed towards stimulating a fruitful and enlightening dialogue between the government authorities and the population, placing transparency on the agenda of São Tomé and Príncipe both in terms of the extractive industries as well as in other sectors.

The São Tomé and Príncipe government reiterates its declaration to commit to the EITI principles and commits to continue to develop all efforts to create mechanisms which promote the production of more comprehensive reports for the Joint Development Zone with Nigeria. The STP EITI National Committee, taking into consideration that efforts made up to now have been for the purpose of São Tomé and Príncipe becoming a EITI Compliant Country, and in its conviction for the need to improve future EITI reports, is hereby requesting the EITI Board to please consider an adapted implementation, in accordance with EITI Requirement 1.5, allowing São Tomé and Príncipe to improve future EITI reports for the Joint Development Zone with Nigeria.

The STP EITI National Committee awaits what it hopes will be a favourable decision from the Board.

Please accept my best wishes.

Yours sincerely,

[signature]

Américo de Oliveira Ramos

Minister of Finance and Public Administration and President of the EITI National Committee

Annex D – Request for adapted implementation (Original) – 2015/2016

REPÚBLICA DEMOCRÁTICA  DE S. TOMÉ E PRÍNCIPE
(Unidade-Disciplina-Trabalho)
MINISTÉRIO DAS FINANÇAS E DA ADMINISTRAÇÃO PÚBLICA
GABINETE DO MINISTRO

SE Clare Short
Presidente
Conselho de Administração do ITIE
0251 Oslo
Noruega

Ref. 40/GM/2015
São Tomé, 20 de Janeiro de 2016

Assunto: Solicitação de implementação adaptada de ITIE

Excelência,

Como é do vosso conhecimento, São Tomé e Príncipe aderiu a Iniciativa para a Transparência das Indústrias Extractivas e foi aceite como país candidato na 25ª Reunião do Conselho de Administração de EITI, a 26 de Outubro de 2012.

Esta adesão é parte de um percurso que o país iniciou com a manifestação de interesse de seguimento dos princípios de EITI expresso na Declaração de Abuja de 26 de Junho de 2004, assinada entre os Chefes de Estado da Nigéria e de São Tomé e Príncipe para a gestão de uma zona de exploração conjunta de recursos petrolíferos e não petrolíferos entre os dois estados.

De acordo com o engajamento de São Tomé e Príncipe na implementação da EITI, o país deveria apresentar os respectivos relatórios de EITI com base na reconciliação das receitas e dos pagamentos efectuados ao Governo tanto na Zona Económica Exclusiva (ZEE) como na Zona de Desenvolvimento Conjunto (ZDC) com a Nigéria, em que São Tomé e Príncipe partilha este país 40% de exploração de recursos petrolíferos contra 60% da Nigéria.

Para o cabal cumprimento destes objectivos, uma estrutura de ligação entre a EITI Nigéria e EITI São Tomé e Príncipe foi criada: o Subcomité EITI Nigéria/STP, composto pelos representantes dos Comités Nacionais de ambos os países, empresas petrolíferas que operam na ZDC e a Autoridade Conjunta para a ZDC Nigéria/STP. O Subcomité tem a tarefa de estabelecer contactos e produzir decisões que permitam recolha de informações e dados necessários para produção dos relatórios de ITIE na ZDC.

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O 1º Relatório de EITI de São Tomé e Príncipe foi desenvolvido com base nas informações recolhidas na ZEE e na ZDC, tendo resultado em dois documentos: o Relatório de EITI de São Tomé e Príncipe e o Relatório de EITI para a ZDC Nigéria/STP. Este relatório abrangeu um período de 10 anos, entre 2003 e 2013, como forma de produzir melhor informação sobre o sector petrolífero e tomando em consideração que as receitas arrecadadas pelo Governo se resumiam a bónus de assinatura resultantes de licitações de blocos petrolíferos e obrigações sociais das empresas.

O 2º Relatório de EITI de São Tomé e Príncipe, submetido a 2 de Outubro de 2015, compreendeu o ano de 2014 e fez uma actualização do 1º Relatório, tendo em conta as lacunas apresentadas pelo primeiro relativamente às informações provenientes da Zona de Desenvolvimento Conjunto com a Nigéria. Apesar da existência de um subcomité, e dos esforços consentidos pelo Comité Nacional de EITI-STP, não foi possível obter todas as informações necessárias a produção de um relatório devidamente abrangente para a ZDC. Gostaríamos de assegurar que todos os esforços foram feitos, tanto pelo Governo santomense como pelo administrador independente, no sentido de se obter as informações de empresas operadoras na ZDC.

As dificuldades de se obter informações na Zona de Desenvolvimento Conjunto com a Nigéria se prendem igualmente com a estrutura legal especificamente definida para esta área de jurisdição entre dois estados. A ZDC é uma entidade autónoma, em termos legais, da Nigéria e de São Tomé e Príncipe, sendo que a interferência dos governos é limitada e de difícil execução. A Autoridade de Desenvolvimento Conjunto, que faz a gestão da ZDC, é uma entidade com personalidade jurídica própria à luz do Direito Internacional e independente das legislações internas de cada estado-parte, facto que dificulta qualquer obrigação à cada um dos estados.

O Governo de São Tomé e Príncipe entende que a superação destas dificuldades poderá ser atingida através de diálogo com o Governo da Nigéria, no sentido de facilitar a disponibilidade das instituições e das empresas sedeadas na Nigéria em fornecer as informações necessárias a produção de futuros relatórios. Para o efeito já existe por parte do Governo intensão expressa de se proceder a uma revisão do enquadramento legal da Autoridade de Desenvolvimento Conjunto como forma de melhorar o seu funcionamento de acordo com os interesses do país.

De acordo com a experiência adquirida pela EITI-STP desde o início da candidatura do país, o Comité Nacional considera que o desafio de elaboração de relatórios sobre a ZDC requer esforço acrescido. Igualmente, o Comité Nacional reconhece que para São Tomé e Príncipe é muito importante que a ZDC com a Nigéria seja coberta pelos relatórios de EITI, tratando-se de uma área de grande interesse e debate público no país. É também importante realçar que, sendo a ZDC uma importante área de interesse de recursos petrolíferos e de gás natural, é importante que se continue os esforços no sentido de sua cobertura pelos relatórios de EITI.

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Consideramos importantes os progressos obtidos com a publicação do 2º Relatório de EITI. Este relatório, para além de trazer melhoria considerável em relação ao anterior, tanto a nível de abrangência como na fiabilidade das informações, traz informações importantes sobre os custos com a Autoridade Conjunta Nigéria-STP e uma comparação entre tais custos e os custos de São Tomé e Príncipe com a gestão da Zona Económica Exclusiva. Estas informações são fundamentais para a promoção de um debate sobre a necessidade de uma gestão mais criteriosa dos recursos provenientes do petróleo. Este facto, aliado a uma maior participação da sociedade civil no debate coloca São Tomé e Príncipe em condições de cumprir com o Requisito 6 de EITI.

As melhorias apresentadas pelo 2º Relatório são consideradas, para nós, um ponto de partida para um crescente engajamento e maior envolvimento das partes interessadas no processo de candidatura do país.

Outro aspecto importante a ter em conta são os desenvolvimentos em curso no sector petrolífero referentes a Zona Económica Exclusiva de São Tomé e Príncipe. Entre 2011 e presente data foram adjudicados sete blocos e assinados cinco contratos de partilha de produção e é crescente o interesse de companhias na ZEE de São Tomé e Príncipe.

O Comité Nacional de EITI de São Tomé e Príncipe advoga a evolução que o processo de candidatura do país tem conhecido desde a submissão ao Secretariado Internacional da sua candidatura. O Comité está, igualmente consciente de que muito ainda há a fazer para que o país atinja um satisfatório estado de cumprimento de todos os requisitos exigidos pela EITI.

De realçar que a missão de pré-validação efectuada pelo Secretariado Internacional em Novembro de 2015, à qual aproveitou a ocasião de saudar e agradecer, pode tomar contacto com os progressos registados na promoção da transparência em São Tomé e Príncipe. A missão constatou uma evolução considerável no funcionamento de instituições públicas e de sociedade civil implicadas no processo. O relatório resultante desta missão faz recomendações importantes que foram acolhidas e serão consideradas pelo Comité Nacional, ao mesmo tempo nos encoraja a superar as fraquezas detectadas.

Tendo em conta que o país está em processo de validação, e que certos constrangimentos identificados relativos a Zona de Desenvolvimento Conjunto com a Nigéria, na qualidade de membro do Governo de São Tomé e Príncipe e Presidente do Comité Nacional de EITI, venho por este meio trazer ao Conselho de Administração da Iniciativa para a Transparência das Indústrias Extractivas a seguinte informação:

O Comité Nacional de EITI de São Tomé e Príncipe pretende solicitar ao Conselho de Administração uma implementação adaptada da Iniciativa nos seguintes moldes:

São Tomé e Príncipe continua inteiramente comprometido e continuará a envidar todos os esforços no sentido de incluir a Zona de Desenvolvimento Conjunto com a Nigéria nos relatórios de EITI, dando continuidade aos objectivos iniciais da sua adesão a Iniciativa. No

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entanto, solicitamos ao Conselho de Administração da EITI que considere que, devidos os constrangimentos acima referidos, o país não seja penalizado por não conseguir incluir nos relatórios futuros informações provenientes da ZDC, tendo em conta que não nos é possível obrigar a Autoridade Conjunta com a Nigéria nem as empresas que operam na Zona de Desenvolvimento Conjunto que apresentem dados e informações necessárias a elaboração dos relatórios.

O Comité Nacional continuará, no entanto, a envidar esforços para incluir as informações contextuais sobre a ZDC e proceder a reconciliação dos pagamentos feitos pelas empresas que operam na ZDC a Autoridade Conjunta bem como os pagamentos efectuados pela Autoridade Conjunta ao Governo de STP.

Com esta solicitação São Tomé e Príncipe pretende que o Conselho de Administração da EITI considere que ausência de informações sobre a ZDC nos futuros relatórios não impeça que São Tomé e Príncipe venha ser validado como País Cumpridor.

O Governo de São Tomé e Príncipe não tem poupado esforços no sentido de superar as dificuldades até agora encontradas na implementação da EITI. O Comité Nacional de EITI-STP tem facultado ao Administrador Independente todas as possibilidades e usado os meios ao seu alcance para que as informações sejam facultadas para elaboração dos relatórios. Uma intervenção mais específica será consentida pelo Presidente do Comité Nacional no Conselho Ministerial Conjunto nas próximas reuniões deste órgão da Autoridade de Desenvolvimento Conjunto, como forma de ultrapassar as dificuldades até agora encontradas.

O Governo de São Tomé e Príncipe pretende rever o quadro legal de funcionamento tanto da Agência Nacional do Petróleo como da sua participação na Zona de Desenvolvimento Conjunto (ZDC) com a Nigéria. Com esta revisão do quadro legal são esperados importantes desenvolvimentos para o processo de decisão sobre a ZDC com a Nigéria.

O alcance destes objectivos colocam o país em melhor posição de exigir e obter informações necessárias a elaboração de relatórios mais abrangentes e com informações mais fiáveis.

Tratando-se de uma questão extremamente importante para o país, o Governo irá colocar em agenda para discussão no Conselho Ministerial Conjunto Nigéria-São Tomé e Príncipe a necessidade das instituições de ambos os países agirem em conformidade com a Declaração de Abuja de 2004. Neste contexto, a Autoridade de Desenvolvimento Conjunto, enquanto gestora da zona de desenvolvimento conjunto entre os dois países, deverá ser chamada a assumir os princípios e o espírito da Declaração de Abuja. O Governo de São Tomé e Príncipe actuará no sentido de garantir que as condições sejam criadas para se assegurar a transparência na ZDC.

Para finalizar o nosso pedido, gostaria de reafirmar o engajamento do Governo de São Tomé e Príncipe no processo de candidatura a EITI, consciente de que a adesão a Iniciativa tem permitido melhorar a imagem do país e criado condições para promoção de investimentos na nossa economia. Igualmente, o processo de candidatura tem promovido um importante



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debate a nível das instituições envolvidas e da sociedade civil do país. A publicação dos relatórios de EITI e a sua disseminação para as populações tem contribuído para promover um diálogo esclarecedor e frutífero entre as autoridades governamentais e as populações, colocando na agenda de São Tomé e Príncipe a transparência tanto para a indústria extractiva como para outros sectores.

O Governo de São Tomé e Príncipe reassume a sua declaração de compromisso com os princípios de EITI e se compromete em continuar a desenvolver todos os esforços no sentido de criar mecanismos que favoreçam a produção de relatórios mais abrangentes para a Zona de Desenvolvimento Conjunto com a Nigéria.

O Comité Nacional de EITI-STP, tomando em consideração que os esforços até hoje empreendidos são no sentido de que São Tomé e Príncipe se torne País Cumpridor da EITI, e estando convicto da necessidade de se melhorar os próximos relatórios de EITI, vem desta forma solicitar ao Conselho de Administração da EITI a possibilidade de considerar para o país uma implementação adaptada de acordo com o Requisito 1.5 da EITI, permitindo que São Tomé e Príncipe venha a melhorar os próximos relatórios de EITI para a Zona de Desenvolvimento Conjunto com a Nigéria.

O Comité Nacional de EITI-STP aguarda com expectativa uma decisão favorável do Conselho de Administração.

Aceite Sua Excelência os protestos da minha mais alta consideração.

Cordialmente,



Américo de Oliveira Ramos
Ministro das Finanças e Administração Pública e Presidente do Comité Nacional de EITI