

Validation of Mozambique
Draft Validation Report
Adam Smith International Independent Validator
30 June 2017

1. EXECUTIVE SUMMARY

On 2 June 2016, the Board agreed that Mozambique's Validation under the 2016 EITI Standard would commence on 1 January 2017. This draft validation report follows on from a quality assurance review of the International Secretariat's initial assessment. The Validator agrees with the International Secretariat's preliminary assessment that requirements 1.1, 1.2, 1.4, 2.2, 2.3, 4.2, 4.3, 4.4, 4.5, 4.6, 4.9, 5.1, 5.2, 6.1, 6.2, 6.3 and 7.1 have not been fully addressed in Mozambique. In addition, the Validator proposes that requirement 7.3 is downgraded to meaningful progress.

2. BACKGROUND

Economic growth in recent years in Mozambique has been driven by expansion of the oil, gas and mining sectors. However, Mozambique has been hit hard by the fall in gas and coal prices. The country's overall production is modest compared to the reserves of gas and minerals, and the value of total production nearly halved in 2014, compared to 2013. Both coal and gas production decreased significantly.

While estimates of gas reserves have grown (estimated to exceed 160 trillion cubic feet), uncertainty in LNG markets, high costs and delays in negotiating the fiscal regime have postponed investments. The only gas project in production phase is the Pande Temane gas field, and only 96 million GJ of gas, worth USD 100 million, was produced in 2014. Apart from the Coral South floating LNG operated by ENI, which received its Final Investment Decision in June of this year, the large off-shore fields are still in exploration phase, and gas companies are yet to take a final investment decision on building an LNG plant in northern Mozambique.

The country is currently going through an ongoing debt crisis, exacerbated by the discovery of hidden state-backed loans amounting to over USD 2 billion in 2016. An independent audit is currently looking into the loans, and a report is expected in the coming months. While not directly linked to the extractive sector, analysis of the loan crisis suggest that the parties involved viewed future income from oil and gas as increasing the likelihood that the loans would be repaid. The debt crisis is expected to have a negative impact on investment, although it does not appear that the debt situation will affect the investment decisions of the companies involved in the negotiations with the government on LNG development (Anadarko and ENI) and there seems to be continued interest in the project.

Low commodity prices are also reflecting negatively on the development of the mining sector, in which there has been a downturn in the past couple of years with many mining companies having left the country. Coal accounted for 65% of the value of total extractive production in 2014. The total value of the 1.8 tonnes of coking coal and 1.3 tonnes of thermic coal produced was roughly USD 330 million. The vast majority of the minerals produced were exported.

The laws for the petroleum and mining sectors ("*Lei 20 2014, Lei dos Petroleos*" – Petroleum Law and "*Lei 21 2014, Lei de Minas*" – Mining Law) were revised in 2014. The laws do not explicitly mention the EITI, although they make company disclosure of profits, payments to the state and social contributions mandatory, without specifying how these disclosures are to be made. The new legislation strengthens state participation in the hydrocarbon sector and creates opportunities for increased Mozambican participation. Foreign investors are required to be registered in a transparent jurisdiction where ownership can be confirmed but the government does not maintain a public register of beneficial owners. Many

mining and petroleum companies are listed on foreign exchanges, with restrictions on access to information regarding beneficial ownership.

Despite decreasing levels of production, Mozambique's EITI Reports show that extractive revenues have increased nearly ten-fold since 2011, and accounted for 27% of total government revenue in 2014. The gas sector contributed 90% of the over USD 1 billion total extractives revenue. This was mainly due to collection of capital gains tax payments, which constituted 71% of the revenues from the sector, and corporate income tax (19%). The value of gas royalties received in kind was USD 5 million.¹

The Government of Mozambique committed to implementing the EITI in 2008 and a multi-stakeholder group was formed in early 2009 to oversee EITI implementation. The country was accepted as an EITI candidate in February 2009, and became compliant with the 2011 EITI Rules in October 2012.

Some of the key issues in the sector that the EITI has the potential to address include ensuring that the state's participation in the sector is managed in a transparent and accountable manner, monitoring of legal provisions related to disclosure of contracts, subnational transfers to communities and local content, highlighting the necessary data to address transfer pricing and trade misinvoicing and ensuring a level playing field for companies and investors.

In line with the Validation Guide, the International Secretariat carried out the first phase of validation—initial data collection, stakeholder consultations, and preparation of their initial evaluation of progress against the EITI requirements (the "Initial Assessment"). Adam Smith International (ASI) was appointed as the independent Validator to evaluate whether the Secretariat's work was carried out in accordance with the Validation Guide. ASI's principal responsibilities as Validator are to review and amend the Initial Assessment, as needed, and to summarize its independent review in this Validation Report for submission to the Board through the Validation Committee.

1. Work Performed by the Independent Validator

The Secretariat's Initial Assessment was transmitted to ASI on 9th June, 2017. Our Validation Team undertook this phase of the Validation process through: (1) In-depth review and marking up of the EITI Assessment by each team member; (2) Detailed review and comments by the Multi-Stakeholder Specialist of Requirements 1 and the Civil Society Protocol; (3) Detailed review and comments by the Financial Specialist of Requirements 4, 5 and 6; (4) Consolidation of reviews and the production of this draft Validation Report, send to the International Secretariat on the 30th June.

2. Comments on the Limitations of the Validation

The Validator carefully reviewed the Secretariat's Initial Assessment and at this stage has two comments on the limitation of the validation process.

1.3 Civil Society Engagement. The Civil Society Protocol – which currently stands in a separate part of the EITI Standard- has been tacitly included within requirement 1.3, in terms of assessment regarding expression, operation, association, engagement and access to public decision-making. However, it is not clear how the EITI Board and the validator "apply" the tests of the Civil Society Protocol to requirement 1.3 (and how this impacts on the score for this requirement). More clarity needs to be provided here.

¹ Mozambique EITI Report 2014-13, <https://eiti.org/document/20132014-mozambique-eiti-report>

3.2 Production volumes and 3.3 Export volumes – the Standard does not require a strong burden of proof on the reliability of production volumes.

3. Comments on the International Secretariat’s Initial Assessment

The initial data collection, stakeholder consultations, and drafting of the Initial Assessment were generally undertaken by the International Secretariat in accordance with the 2016 Validation Guide. The data collection took place across three phases. Firstly, from January – April 2017, a desk review of the available documentation relating to the country’s compliance with the EITI Standard, including but not limited to:

- The EITI work plan and other planning documents such as budgets and communication plans;
- The multi-stakeholder group’s Terms of Reference, and minutes from multi-stakeholder group meetings;
- EITI Reports, and supplementary information such as summary reports and scoping studies;
- Communication materials;
- Annual progress reports; and
- Any other information of relevance to Validation.

Secondly, a country visit, which took place on 13-17 February 2017. All meetings took place in Maputo. The secretariat met with the multi-stakeholder group and its members, the IA and other key stakeholders, including stakeholder groups that are represented on, but not directly participating in, the multi-stakeholder group.

In addition to meeting with the MSG as a group, the Secretariat met with its constituent parts (government, companies and civil society) either individually or in constituency groups, with appropriate protocols to ensure that stakeholders were able to freely express their views and that requests for confidentiality are respected.

Finally, the International Secretariat prepared a report making an initial assessment of progress against requirements in accordance with the Validation Guide. The initial assessment did not include an overall assessment of compliance. The report was submitted to the Validator, with the National Coordinator (NC) also receiving a copy.

2. GENERAL COMMENTS

- **Progress in EITI Implementation**

At the early stages of EITI implementation in Mozambique government interest and commitment was strong, reflecting high expectations for the extractive industries potential to contribute to toward economic development. As commodity prices and the value of the Mozambican metical has declined in the last couple of years, government interest in the EITI process appears to have decreased at the same rate. However, at least part of the perception of a decline in interest in EITI can be explained by the recent transition to a new government administration and the merging of mineral resources and energy functions into one ministries.

While engagement by government and industry has fluctuated, strong civil society engagement in the process and useful analysis by civil society organisations highlight the opportunities to make the EITI more effective in Mozambique. The lack of vision for where the EITI should go appears to have resulted in the current funding crisis of the EITI process and national secretariat. Renewed government commitment will be key to take the process forward, and there are signs that the new administration and direction at the Ministry will be able to take ownership of the EITI if action is taken to address some of the issues raised in this preliminary assessment.

In the longer term, the key challenges ahead for EITI stakeholders will be to collaborate with government entities and companies to ensure comprehensive disclosure of information on extractives to help improve the management of the sector, making use of the process to address the priorities of government, industry and civils society, and making sure that the way the EITI is set up enables the necessary collaboration between stakeholder groups as well as coordination between government agencies. This will require that discussions and decisions take place on whether to institutionalise EITI, who to be represented on the multi-stakeholder group, and how to financially support the process.

- **Impact of EITI Implementation**








The EITI process - in particular the latest EITI Report covering 2013 and 2014 – has provided much useful information and has contributed to technical improvements to record keeping and revenue collection systems. The EITI has also contributed to placing transparency on the policy agenda and has, according to stakeholders, been important in ensuring that the petroleum and mining legal frameworks provide for transparency in payment information and full disclosure of contracts. EITI reporting has improved under the EITI Standard and timelier reporting makes EITI more relevant. The 2013-14 EITI Report did however fail to address some gaps in the previous reports, especially in the areas where it is most needed: state participation and the relationship between the state and state-owned enterprises.

The Independent Validator's Assessment of Compliance

Figure 1 – Validator's assessment

EITI Requirements		LEVEL OF PROGRESS				
		No	Inadequate	Meaningful	Satisfactory	Beyond
Categories	Requirements					
MSG oversight	Government engagement (#1.1)					
	Industry engagement (#1.2)					
	Civil society engagement (#1.3)					
	MSG governance (#1.4)					
	Work plan (#1.5)					
Licenses and contracts	Legal framework (#2.1)					
	License allocations (#2.2)					
	License register (#2.3)					
	Policy on contract disclosure (#2.4)					
	Beneficial ownership (#2.5)					
	State participation (#2.6)					
Monitoring production	Exploration data (#3.1)					
	Production data (#3.2)					
	Export data (#3.3)					
Revenue collection	Comprehensiveness (#4.1)					
	In-kind revenues (#4.2)					
	Barter agreements (#4.3)					
	Transportation revenues (#4.4)					
	SOE transactions (#4.5)					
	Direct subnational payments (#4.6)					
	Disaggregation (#4.7)					
	Data timeliness (#4.8)					
	Data quality (#4.9)					
Revenue allocation	Distribution of revenues (#5.1)					
	Subnational transfers (#5.2)					
	Revenue management and expenditures (#5.3)					
Socio-economic contribution	Mandatory social expenditures (#6.1.a)					
	Discretionary social expenditures (#6.1.b)					
	SOE quasi-fiscal expenditures (#6.2)					
	Economic contribution (#6.3)					
Outcomes and impact	Public debate (#7.1)					
	Data accessibility (#7.2)					
	Follow up on recommendations (#7.3)					
	Outcomes and impact of implementation (#7.4)					

Legend to the assessment card

	The country has made no progress in addressing the requirement. The broader objective of the requirement is in no way fulfilled.
	The country has made inadequate progress in meeting the requirement. Significant elements of the requirement are outstanding and the broader objective of the requirement is far from being fulfilled.
	The country has made progress in meeting the requirement. Significant elements of the requirement are being implemented and the broader objective of the requirement is being fulfilled.
	The country is compliant with the EITI requirement.
	The country has gone beyond the requirement.
	This requirement is only encouraged or recommended and should not be taken into account in assessing compliance.
	The MSG has demonstrated that this requirement is not applicable in the country.

3. DETAILED FINDINGS

This section highlights areas where the Validator disagrees with the findings of the Initial Assessment, requires further clarification, or wishes to further emphasise a specific issue.

1.5 Work plan

Requirement 1.5 (d) states that the work plan must 'identify domestic and external sources of funding and technical assistance where appropriate in order to ensure timely implementation of the agreed work plan'. As pointed out by International Secretariat in the initial assessment, the 2016-2018 work plan includes some activities that do not appear to have confirmed sources of funding, but which state that 'the MSG is committed to reach out to the available sources of funding (government, private sector and donors) to help secure funding for the activity'.

The Independent Validator notes that the lack of secure funding for the work plan and for EITI implementation generally moving forwards is a major concern. According to the initial assessment, World Bank funds, including for the national secretariat, came to an end in March 2017 and it is not clear what will take their place, although Canada, GIZ and UNDP are also cited as other donors of some aspects of the work plan. It may be that funding for the national secretariat and other activities included in the work plan has now been secured – but if not, then this remains a major concern.

2.1 Legal framework and fiscal regime:

Although section 3.1 (p42 onwards) of the EITI 2013-14 report provides an analysis of the Mozambique tax system at national and municipal level and includes a section on mining and hydrocarbons, there is no explicit discussion of the level of fiscal devolution, as required by the EITI Standard. The Independent Assessment does note that there is allocation to specific programs/regions (in section 7.2 of the EITI 2013-14 report). While relevant, this does not count as a summary description of the level of fiscal devolution, which in any case should appear in section 3.1 of the report.

2.4 Contract disclosures:

There is a lack of clarity in the 2014 Petroleum Law regarding the issue of whether addenda to the contracts (beyond the "main terms") will remain confidential. It is recommended that subsequent EITI reports in Mozambique clarify this issue. For mining, there is no clarity at policy level regarding whether mining contracts must be publicly available, nor whether they are standardised or subject to direct negotiation. However, the Mining Law of 2014 requires that contracts are published within 30 days of signing. Again, it is recommended that there is clarity on this issue in subsequent EITI reports. It is also noted that there are significant delays in the publication of mining contracts; for instance, the contracts of Jindal, Rubi Mining, and three contracts signed in 2014 are still not publicly available.

4.7 Level of disaggregation:

Provision 4.7 requires that EITI data is disaggregated by government entity, individual company and revenue stream. In addition, data should be disaggregated by project, consistent with the United States Securities and Exchange Commission and European Union rules.

However, the EITI Board recently clarified on March 8th, 2017 that project level reporting will be applicable "for all reports covering fiscal years ending on or after 31 December 2018.", not being therefore this type of reporting required for Mozambique's 2013-2014 EITI Report. The Independent Validator agrees with the International Secretariat's initial assessment that requirement 4.7 has achieved satisfactory progress.

7.3 Follow up on Recommendations:

We recommend that requirement 7.3 be downgraded to meaningful progress. More systematic follow-up by the MSG on the EITI Report recommendations is required.

4. RECOMMENDATIONS

The following are the Secretariat's overarching recommendations for improving EITI implementation in Mozambique, with the Validation Team's amendments, queries and additions are in italics.

- High-level government commitment to the EITI will be critical for its continued progress and impact. It is recommended that the government demonstrates commitment regarding its intention to implement EITI and to be fully, actively and effectively engaged in the EITI process. It is important that the government and MIREME is engaged on a regular basis, in particular at the MSG level, to maintain engagement by other stakeholder groups.
- The government and MIREME should consider making a decision with regards to whether and how to institutionalise the EITI in Mozambique, taking financial sustainability into account. This could include developing an action plan for the institutionalisation. Funding would need to be secured for the national secretariat.
- To strengthen implementation of EITI in Mozambique, each constituency should ensure that their representatives' attendance at MSG meetings is consistent and at sufficiently high level to allow the MSG to take decisions and follow up on agreed matters. The MSG is encouraged to use the refreshment of MSG membership as an opportunity to include broader set of government agencies in the MSG, ensure to appoint government members with the capacity to carry out their duties in terms of influences decision-making and properly informing their constituencies. The MSG might want to include relevant actors in the revised TORs, or the government might wish to establish mechanism for inter-agency coordination on issues related to extractive sector revenue and data collection and governance.
- The MSG is encouraged to help facilitate company participation in EITI. The ongoing institutionalisation review, e-reporting and other efforts to mainstream the EITI can provide opportunities for engaging industry in the process.
- Industry should establish a platform or use existing channels to disseminate EITI information to companies beyond the MSG, and should play an active role in setting objectives for EITI implementation in the country.
- The MSG may wish to ensure that laws and regulations governing the oil, gas and mining sectors are accessible from government websites, and to provide links to these in the EITI Report. Given comments made by stakeholders on the lack of enforcement of the laws, the MSG may wish to consider including activities in the work plan or tasking the Independent Administrator to review or provide commentary on the lack of enforcement of the laws and regulations governing the extractive sector.
- The MSG should ensure that the next EITI Report includes information on the process for transferring licenses and technical and financial criteria used. The MSG is encouraged to ensure that the next EITI Report refers to the resources and documents available from the INP websites. The MSG could also consider tasking the Independent Administrator to provide an evaluation of the licensing process and make recommendations for its improvement.
- The MSG should ensure that the next EITI Report includes a comprehensive overview of active hydrocarbon licenses/concessions, including date of application, date of award and duration of the license, or reference to where this information is accessible. The MSG is encouraged to collaborate

with Mining Cadastre regarding the Flexicadastre, using the EITI Report to highlight existing data and drawing attention to any gaps and inconsistencies. The MSG is also encouraged to consider opportunities to link cadastre data with other data, for example, on production, exports, tax payments and beneficial ownership. If these other data are collected in different systems and agencies, the MSG may wish to consider opportunities to harmonise data standards in line with international best practice.²

- The MSG is encouraged to continue monitoring contract disclosure in the extractive sectors, both through EITI reporting and work plan objectives and activities related to contract transparency.
- *It is recommended that subsequent EITI reports in Mozambique clarify the issue of what the “main terms” of petroleum contracts are that must be published. For the mining sector, it is recommended that there is clarity provided in future EITI reports regarding whether contracts must be publicly available and whether they are standardised or subject to direct negotiation.*
- The MSG and Independent Administrator should ensure that the next report clarifies the state's participation in the sector through other entities, such as IGEPE, and discloses i) an explanation of the prevailing rules and practices regarding the financial relationship between the government and state-owned enterprises (SOEs), e.g., the rules and practices governing transfers of funds between the SOE(s) and the state, retained earnings, reinvestment and third-party financing; ii) changes in the level of ownership during the reporting period; and iii) details of the terms attached to their equity stake, including level of responsibility to cover expenses at various phases of the project cycle. If the government and state governments have granted loans or loan guarantees to extractive companies, the details of such transactions should be disclosed. Where this information is already available, the report could refer to these sources of information.
- The MSG should consider discussing and documenting its definition of SOEs taking into account national laws and government structures. This could be particularly useful in light of ongoing reforms to the legal and regulatory frameworks applicable to SOEs.
- The MSG may wish to work with MIREME to encourage regular publication of data on resource reserves, volume of production, selling prices, exports and production costs.
- In the next EITI Report, the MSG should ensure that the rationale for setting the materiality threshold is clearly documented, and that full government disclosure is clearly presented by revenue stream. The MSG may also wish to review the materiality threshold, and list the revenue streams deemed immaterial in the final report, and not only in the inception report. The MSG might want to ensure that the absolute amounts of the revenues collected by the disaggregated by revenue stream are clearly presented.
- The next EITI Report should consistently and comprehensively describe the rules and practices regarding ENH's and MCG's management of revenue from the sale of in-kind gas. The revenues transferred to the treasury from the sale of in-kind gas royalties by MGC and ENH should be disaggregated by each of these companies. The revenue ENH receives from the marketing of these in-kind revenues to domestic buyers should be disclosed, unless considered immaterial by the MSG. The Independent Administrator should provide a clear opinion on the comprehensiveness of the reported data.
- The MSG should continue to investigate the tariffs and revenues received by ROMPCO, CMG and CFM, consider whether any revenues are material and whether to include these and other relevant information revenues in the next EITI Report. The MSG and MIREME should work with the relevant companies to ensure that the requested information is provided for the next EITI Report.
- The MSG should reach out to relevant government agencies and work with the Independent Administrator to obtain information about possible transactions between SOEs and government to ensure that this is covered in a comprehensive and clear manner.

² <https://openknowledge.worldbank.org/handle/10986/23779>

- The MSG should ensure that the next EITI Report documents whether direct payments from companies to provinces or municipalities exist, and whether these are material. If payments made by companies directly to sub-national levels of government are found material, these should be disclosed and reconciled. may wish to explicitly state whether direct payments from companies to provinces or municipalities specifically related to extractives activities exist, and whether these are considered material or not.
- The MSG may wish to work with MIREME and other government agencies to ensure more regular publication of payment information, as part of mainstreaming EITI disclosures.
- While the 2014-13 EITI Report makes reference to government agencies having been audited, the MSG should ensure that the next report includes a review of whether government agencies have been audited in accordance with the legislation and a review of company auditing practices and relevant regulations. The report should include a list of government entities and companies that did not provide the requested assurances. The MSG may wish to ensure that direct links to resources referred to in the report, such as public documents and reports, are included. The MSG should also agree the reporting templates used for the reconciliation and document the decision.
- The MSG should ensure that EITI Reports comprehensively addresses social expenditures and clarifies whether the funds allocated for training are disbursed from the Institutional Capacity Building Fund, and describes how Institutional Contribution payments are allocated. The MSG may also wish to consider including a description of the basis for selection of beneficiaries of the social fund.
- The MSG should consider whether there are any material quasi-fiscal expenditures by SOEs including ENH and EMEM, in accordance with EITI Requirement 2.6, and develop a reporting process with a view to achieving a level of transparency commensurate with other payments and revenue streams. The MSG should consider whether there are any material quasi-fiscal expenditures by SOEs, EMEM, in accordance with EITI Requirement 6.2, and develop a reporting process with a view to achieving a level of transparency commensurate with other payments and revenue streams.
- The MSG should ensure consistency in the figures provided on total government revenue from the sector, and that the next EITI Report indicates i) the size of the extractive sector in absolute terms and as % of GDP, ii) exports from the extractive industry in absolute terms, iii) employment in extractive sector as % of total employment. If any of this information is not available, the MSG should ensure that the report describes the efforts made to obtain the information. The MSG may also wish to consider including information on local content provisions and commentary on whether these have been applied with.
- To help ensure that the EITI can contribute more meaningfully to public debate and policy discussion on extractive sector management, the MSG should continue disseminating EITI data across the country and consider undertaking outreach activities strategically targeting media, parliament, industry and key extractive sector players.
- The MSG is encouraged to make EITI Reports available in a machine-readable and open data format.
- More systematic follow-up by the MSG on the EITI Report recommendations and ensuring that these highlight gaps identified through the reporting process could help ensure that the EITI could serve as a tool for improved extractive sector governance.
- The MSG should ensure that the plans for implementing the recommendations from Validation and EITI reporting, including the rationale for deciding not to implement a recommendation, are reflected in the 2016 Annual Progress Report, in accordance with the transitional arrangements to the 2016 EITI Standard.
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