



MEMORANDUM

TO: CESET
SUBJECT: Technical assistance in exploring the gaps and opportunities in the national legislation to propose an additional package of incentives to stimulate the operators in the off-grid sub-sector to adhere to the GESIS norm.
DATE: 02/05/2023
CC: Vanesa Broto

Executive Summary

This memo provides brief analysis and recommendations in exploring the gaps and opportunities in the Mozambican legislation to propose an additional package of incentives to stimulate the operators in the off-grid subsector to adhere to the Gender Equality and Social Inclusion Seal (GESIS). More specifically we have been asked to produce a detailed proposal package of fiscal and non-fiscal incentives aligned with each GESIS progression stage; a clear definition of pathways that the GESIS working group could follow for approval of the proposed package of incentives; definition of instrument(s) whereby the package of incentives will be approved, according to the law, and a list of different institutions that the GESIS working group should be engaged with and the kind of engagement according to its role in relation to incentives approval.

Upon analysing and reviewing the current policy and legal framework applicable to the energy sector, one easily reaches the conclusion that it does not provide gender and social inclusion promotion norms. Operators have no incentive to consider gender and social inclusion in the implementation of their project, hence the need to provide fiscal and non-fiscal incentives to ensure gender and social inclusion in off-grid energy projects.

In terms of fiscal incentives, specific tax rebate and fiscal incentives are necessary for the off-grid sub-sector to go beyond what the Investment legislation currently offer to investors that meet the 7,5 million Meticais (USD118,000) threshold, which is: i) Exemption from payment of customs duties and VAT on import of equipment (5 years); Reduction of rates applied for corporate income tax and (IRPC) and Personal Income Tax (IRPS) purposes (80% reduction of standard rate from the 1st to the 5th



tax years; 60% reduction from the 6th to 10th tax years; and 25% reduction from the 11th to the 15th tax years.

Other non-fiscal incentives include access to DUAT for gender and social inclusion projects; exemption from licensing requirements fees; more expats quotas; available financing on non-commercial terms etc.

For those proposed incentives to be materialized ARENE as the regulatory authority will play a key role, working with other key stakeholders such as Assembly of the Republic (Parliament) which has the constitutional mandate to enact fiscal and tax legislation including incentives; the Ministry of Economy and Finance, alongside the Ministry of Mineral Resources and Energy, which is the energy line ministry will together spearhead the proposal of fiscal and non-fiscal incentives for approval both in Parliament for the former and to the Government (Cabinet) on the latter; the Ministry of Land and Environment, plays a pivotal role on energy projects as they issue DUATs and environmental licenses for projects to be implemented; Ministry of Gender, Children and Social Action which caters for gender and social inclusion shall be considered as a key stakeholder; academia and civil society organisations. Beyond the Mozambique State's entities it is important to consider international and multilateral stakeholders which can provide funding for off-grid projects that subscribe to gender and social inclusion issues through GESIS.

Of note, it would be important to link GESIS's proposed incentives to project financing like what commercial banks and multilateral financing institutions do with Environmental, Social and Corporate Governance (ESG) and human rights at large.

For a more detailed analysis, please read the report below.



1. Introduction and Methodology

Access to energy is a human right. This fundamental human right leads to sustainable social and economic development, equality and social inclusion particularly if women are to be considered throughout the entire value chain.

As outlined in the GESIS White Paper, in the energy sector, gender equality requires safe and equal access to resources and opportunities but also, being treated fairly and with dignity and being able to actively participate in decision-making processes. It further concludes that gender equality also needs to consider equity issues, that is, the recognition that different people access opportunities in different circumstances. GESIS also recognises that additional investments may be required to achieve gender equality among disadvantaged groups which already lack access to basic energy resources and technologies.

It is against this backdrop that we have been asked to provide technical assistance in exploring the gaps and opportunities in the Mozambican legislation to propose an additional package of incentives to stimulate the operators in the off-grid subsector to adhere to the Gender Equality and Social Inclusion Seal (GESIS).

More specifically we have been asked to produce a detailed proposal package of fiscal and non-fiscal incentives aligned with each GESIS progression stage; a clear definition of pathways that the GESIS working group could follow for approval of the proposed package of incentives; definition of instrument(s) whereby the package of incentives will be approved, according to the law, and a list of different institutions that the GESIS working group should be engaged with and the kind of engagement according to its role in relation to incentives approval.

Given the tight deadline we have been given to initiate the work in terms of methodology we only used a desktop review process of the legal framework related to gender, fiscal, and non-fiscal incentives and review related documents. Studies on gender and social inclusion are easily available but we could not find those specific to the energy sector, particularly those which purportedly bring the perspective of operators or the private sector in general.

2. Legislation

For the purpose of this memorandum, we have consulted and analyzed the following legislation:



- Constitution of the Republic of Mozambique of 2004 as amended by Law No. 1/2018 of 12 June;
 - Law No. 12/2022 of 11 July, ("Electricity Law")
 - Law No. 11/2017 of 8 September, establish the Energy Regulatory Authority, ARENE;
 - Law No. 3/2012 of 23 January, amends the VAT Code;
 - Law No. 15/2011, of 10 August 2011 – the Law on Public-Private Partnerships (PPPs);
 - Law No. 4/2009 of 12 January, approves the Fiscal Benefits Code;
 - Law No. 32/2007 of 31 December, approves the VAT Code;
 - Law No. 2/2006 of 22 March, establishes the general principles and norms of the tax legal regime in Mozambique, applicable to all national or municipal taxable revenues;
 - Law No. 3/93 of 24 June, approves the Investment Law;
 - Decree No. 93/2021 of the 10th December, approves the Off-grid Electricity Access Regulation;
 - Decree No. 60/2021 of 18 August, approves the Regulation for Electrical Facilities;
 - Decree No. 20/2021 of 13 April, which amends the Investment Law Regulation;
 - Decree No. 58/2014 of 17 October, approves the Tax Regime for Renewable Projects ("REFIT");
 - Decree No. 51/2013 of 13 September, approves the Regulation for Powers Granted to Technicians Liable for Electric Installation of Particular Service;
 - Decree No.16/2012, of 4 June 2012 – the Regulations on the PPP Law;
 - Decree No. 56/2009, of 7 of October, which approves the Regulation for the Fiscal Benefits Code;
 - Decree No. 43/2009, of 21 August, which approves the Investment Law Regulation;
 - Decree No. 43/2005 of 29 November, grants EDM the mandate to manage the national grid;
 - Decree No. 42/2005 of 29 November, approves the Regulation that establishes norms related to the Planning, Financing, Building, Possession, Maintenance and Operation of Facilities aimed at Production, Transportation, Distribution and Commercialisation of electrical energy, as well as norms and its procedures related to global management, operations and development of the National Network of Electricity Transport;
 - Decree No. 43/2005 of 29 November, designates Electricidade de Moçambique, EP as the entity that will perform the public service of the Manager of the National Grid of Transport of Electricity;
 - Decree No. 44/2005 of 29 November, approves the Regulation for Distribution and Commercialisation of Natural Gas;
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- Decree No. 29/2003 of 23 June, approves the Tariff System for sale of electricity by Electricidade de Moçambique, EP;
- Decree No. 8/2000, of 20 April, approves the Regulation that establishes the legal powers and procedures for the granting, control and termination of concessions for production, transportation, distribution and commercialization of electrical energy, as well as its import and export;
- Decree No. 28/1995 of 17 July, approves the EDM's organic statutes;
- Resolution No. 9/2019 of 19 March, approves the organic statute of the Energy Regulatory Authority, ARENE;
- Resolution No. 69/2009 of 14 October, approves the Policy for New and Renewable Energies;
- Ministerial Diploma No. 184/2014, of 12 November, approves the National Grid Code;

We have also consulted the 2009 Policy for the Development of New and Renewable Energies and the Strategy for New and Renewable Energies Development 2011-2025 issued by the former Ministry of Energy of Mozambique.

3. General Overview of the Legal Framework

The 2004 Constitution of Mozambique, as amended, provides in its Article 36 that “[M]en and women shall be equal before the law in all spheres of political, economic, social and cultural life.” Article 122.1 of the same legal instrument further provides that “[T]he State shall promote, support and value the development of women, and shall encourage their growing role in society, in all spheres of the political, economic, social and cultural life of the country.” This means that despite the equality before the law, it is important that we acknowledge that women have lagged behind in terms of access to leadership, to resources and opportunities, hence the need to treat women differently in order to achieve such equality and equity.

Despite the above, the general tax legislation does not distinguish taxpayers by gender, being applicable to all irrespective of their gender. The same principle is applied to fiscal and tax benefits in general that are applicable to women and men equally without any distinction or favor.

If one zooms in on the general and specific electricity legislation will also reach the same conclusion that in Mozambique power project's developers or sponsors whether on or off-grid are treated the same. These are challenges that GESIS seeks to address by ensuring that women have a fair chance and are included in the entire value chain of off-grid projects and that they benefit entirely from them not just a mere consumer.

4. Policy and Fiscal Benefits or Incentives Legal Framework

4.1 Policy

Before we review the legislation, it is important to ascertain what goals in terms of policy did Mozambique has set out to achieve. If one reviews the Policy for the Development of New and Renewable Energies adopted in 2009, one learns that Mozambique aims to use the sector to achieve the Millennium Development Goals. More specifically in terms of equity it wishes to close the gap on the nature and dimension of energy services supplied between urban, peri-urban and rural areas. It also wants to promote a good standard of living for all; promote an even distribution of national revenues and promote policies that aim at fighting the economic and development asymmetries between different provinces of Mozambique.

For gender promotion, the 2009 Strategy for the Development of New and Renewable Energies defines the following strategy: establishing conditions that facilitate access, use and development of energy resources for the daily activities of women and men.

4.2 Investment Fiscal Benefits and Incentives

The legislation on investment, currently in force, is based on the principle of equal treatment between domestic and foreign investors who are both assigned the same rights, duties and obligations. However, this principle of equal treatment may be waived in cases of projects or national activities which by their nature and/or size merit special treatment and support by the Government of Mozambique.

Investment, whether domestic or foreign, should contribute to the economic and social development of Mozambique, as well as subordinate to the principles and objectives of economic policy of Mozambique and also to the provisions of other applicable legislation.

There are four type of investment incentives available in Mozambique, namely:

- (i) tax incentives;
- (ii) customs incentives;
- (iii) incentives related to the repatriation of capital invested and profits; and
- (iv) the protection/guarantees provided by the Mozambican State for private property and investments.

We note that the Fiscal Benefits Code sets out the tax and customs benefits to which qualifying investments are entitled. The following tables is a



summary of the generic and specific fiscal benefits available for investments carried out under the terms of the Investment Law:

Table 1: Table of generic fiscal benefits scheme

Exemption of Import Duties and VAT	Tax Credit (5 tax years)	Accelerated Depreciation	Deduction to taxable income Corporate Income Tax ("IRPC") or Personal Income Tax (IRPS) (5 years)	Deduction to tax income IRPC or IRPS (REP) (5 tax years)
On equipment, articles and accessories classified in class K of the Customs Scheduled	Corporate Income Tax ("IRPC") City of Maputo - 5% Other Provinces - 10%	50% increase in rate of depreciation for real new or rehabilitated real property industrial and agro-industrial equipment.	Costs Specialized equipment - up to 10% Professional training (TM) - up to 5% Training Specialized equipment - up to 10%	Expenses Construction and rehabilitation (green or brownfield projects) City of Maputo 110% Other Provinces 120% Purchasing work of art and other objects representing Mozambican culture - 50%

Table 2. Table of Specific Benefits scheme

Activity	Tax Incentives
Creation of basic infrastructures	Exemption from payment of customs duties and VAT on import of equipment (5 years)
	Reduction of rates applied for corporate income tax (IRPC) and Personal Income Tax (IRPS) purposes (80% reduction of standard rate from the 1st to the 5th tax years; 60% reduction from the 6th to 10th tax years; and 25% reduction from the 11th to the 15th tax years)
Commerce and industry in rural areas	Exemption from payment of customs duties and VAT on the import of goods which are essential for the development of the respective activity (5 years)
Transforming and assembly industry	Exemption from payment of customs duties on import of raw material and materials for industrial production (5 years)
Large scale projects (investments exceeding the	Exemption from payment of customs duties and VAT on import of construction material, machinery, equipment, accessories, parts and other goods (5 years)
	Tax credit per investment, as referred to in the table above

Activity	Tax Incentives
amount equivalent to 12.500.000.000MT, as well as investments in infrastructures of public domain carried out under concession contracts)	Accelerated depreciation rates, as referred to in the table above
	Incentives to modernization and use of new technologies, as referred to in the table above
Rapid Development Zones (ZRDs) (Zambezi valley, Niassa Province, Nacala District, Mozambique and Ibo Islands)	Exemption from payment of customs duties and VAT on import of goods
	Tax credit per investment for IRPC and IRPS purposes (20% of the value of the investment made)
	Possibility of deducting tax credit which has not been used in subsequent 5 years
	Incentives over professional training, as referred to in the table above
	Possibility of treating some particular expenses as tax costs
Developed in Industrial Free Zones (ZFI) and Special Economic Zones (ZEE)	Exemption from payment of customs duties and VAT on import of construction material, machinery, equipment, accessories, parts and other goods (5 years)
	Exemption for IRPC purposes during 10 or 5 tax years (ZFI), 5 or 3 tax years (ZEE) and reduction the standard rate in the subsequent fiscal exercises
	50% reduction of standard IRPC rate (32%) for the first 5 years for ZEE for services

The VAT legislation grants a 60% rebate on VAT for services provided in Civil Works for construction and maintenance of rural electrification infrastructures (see Law No. 3/2012 of 23 January).

For the purposes of qualifying for tax and fiscal benefits, including transferring profits abroad and re-exportable invested capital, the minimum value of foreign direct investment through the allocation of own capital is MZN 7,500,000 (seven million five hundred thousand meticaís or the equivalent of USD118,000) and the minimum value for annual exports of goods or services shall be increased to MZN 4,500,000 (four million five hundred thousand meticaís or the equivalent to USD70,000). For companies established outside Industrial Free Trade Zones, but that wish to benefit from the respective regime, the initial investment to be made in the first two years of activity is a minimum amount equivalent to MZN 75,000,000 (seventy-five million meticaís or the equivalent to USD1,18 million).

Tax and fiscal benefits are granted to foreign investors through an Investment Authorisation issued by the Agency for the Promotion of Investment & Exports (*Agência para a Promoção de Investimento e*



Exportações, I.P. – “APIEX”). However, for investments by Mozambican nationals below 4,500,000.00Mts (four million and five hundred thousand meticals or the equivalent to USD70,000) threshold the provincial Secretary of State may approve the project and grant the tax and fiscal benefits to the project. We believe that GMG and AESs will fall under this latter category.

Of note, none of the above tax and fiscal incentives aim at promoting gender and social inclusion in energy projects.

5. Package Proposal of fiscal and non-fiscal proposals aligned with GESIS

5.1 Fiscal proposals

In terms of fiscal proposals, as outlined above, the fiscal and tax legislation does not distinguish in terms of the taxpayer’s gender nor provides any incentive to operators in the off-grid energy sub-sector, hence the need to specifically establish a specific fiscal and tax regime to encourage operators to adopt gender friendly and social inclusion norms, namely:

- a) Reduction of waiving of Performance Bond which currently is 5% of the [CAPEX] investment for mini-grids;
- b) *Tax credit/rebates for project led by women, especially in positions of management or which train and employ more women;*
- c) Tax rebates, including income tax and VAT for the life of the project;

5.2 Non-fiscal proposals

- a) guaranteed land use right (DUAT) for off-grid energy project that will actively involve women in the project from management to the consumer of electricity;
 - b) exemption from DUAT fees;
 - c) exemption from licensing fees, including Investment Authorization and environmental licensing fees;
 - d) retain ownership of any carbon credits;
 - e) provide funding facilities for off-grid projects which consider partnership with local groups or with local groups represented in management of the projects;
 - f) grant more expat quotas beyond those provided by the Labour Law (10% for companies with up to 10 employees; 8% for enterprises with more than 10 up to 100 employees, and 5% for enterprises with more than 100 employees). Currently, in order to obtain a higher quota, the applicant shall apply for such quota within its investment authorization application and provide as much arguments as possible
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to justify that there are no Mozambican employees qualified for the positions required or that the number is so insufficient that the company has no other choice but to hire expats, which is a cumbersome process and it does not consider gender and social inclusion issues.

GESIS Seal & Indicators' Ranking

Seal Wave	Progression Stage	Fiscal Incentives	Non-fiscal Incentives	Observation
White	Adhesion	<ul style="list-style-type: none"> Commitment and acceptance to GESIS in order to enjoy additional fiscal benefits; GMG and AES Projects that have a CAPEX of less than 4,500,000.00Mts (nationals) (the equivalent to USD70,000) or 7,500,000.00Mts (foreign) (the equivalent to USD118,000) will enjoy the standard fiscal benefits granted by APIEX 	<ul style="list-style-type: none"> Commitment and acceptance to GESIS in order to enjoy additional non-fiscal benefits; provided funding facilities for off-grid project which consider partnership with local groups or with local groups represented in the management of the projects; 	<p>Tax and fiscal Benefits are to be granted to the Operators through an Authorisation of Investments by either the provincial Secretary of State or APIEX.</p> <p>Non-fiscal benefits are to be granted by ARENE and line Ministries on ARENE's request.</p>
Yellow	Initiate	<ul style="list-style-type: none"> Standard tax and fiscal benefits for the construction of basic infrastructures 	<ul style="list-style-type: none"> Guaranteed free suitable land use right (DUAT); Exempted from all Government fees on licensing the project; 	
Green	Practitioner	<ul style="list-style-type: none"> Reduction or waiving of Concession's Performance Bond which currently is 5% of the [CAPEX] investment for mini-grids; Tax credit per investment for IRPC and IRPS purposes (20% of the value of the investment made); Possibility of deducting tax credit which has not been used in subsequent 5 years; 10% Deduction to taxable income Corporate Income Tax ("IRPC") or Personal Income Tax (IRPS) (REP)(5 years); Exemption from payment of customs duties and VAT on import of equipment; Tax rebates, including income tax and VAT for the life for the first 5 years after commissioning. 	<ul style="list-style-type: none"> Exemption from annual Government fees on operating the project for the initial 5 years after commissioning the project; retain ownership of any carbon credits; 	
Blue	Advocate	<ul style="list-style-type: none"> Tax credit per investment for IRPC and IRPS purposes (50% of the value of the investment made); Possibility of deducting tax credit that has not been used in subsequent years; 50% Deduction to taxable income Corporate Income Tax ("IRPC") or Personal Income Tax (IRPS) (REP) for the life of the project; Exemption from payment of customs duties and VAT on import of equipment; Tax rebates, including income tax and VAT for the life of the project; 	<ul style="list-style-type: none"> Continuing exemption of licensing and Government annual fees; Free transfer of an investor's position without the need of prior authorisation by the entity that authorised the respective project. 	

6. Pathways that the GESIS working group could follow for approval of the proposed package of incentives

The first step is to compile and consolidate all the proposals. Separate fiscal from non-fiscal proposals. Identify the champions for each proposals. For fiscal proposals, ARENE will have to socialize them with the Tax Authority before presenting them to the MIREME and Council of Ministers so that it has the buy-in from the revenue collector.

For non-fiscal proposals, ARENE will again work with the key ministries



alongside the line ministry MIREME to ensure that they have an understanding and buy-in from Government before engaging with the private sector and civil society organisations.

Fiscal proposals shall be approved by Parliament, hence it is important that ARENE works with MIREME to ensure that the proposals are duly substantiated including the economic and developmental impact to be considered by Parliament before they consider approving them.

Because the Off-grid Electricity Access Regulation provides that Operator shall report to ARENE about its activities including the implementation of a Local Content Plan drafted and adopted based on the nature, size, location, category, and complexity of the project, this can be an entry point to include GESIS as part of the Local Content Plan.

7. Instruments for incentive package approvals

In order to include GESIS as a compliance issue, regardless of the rank, even if optional within the Concession Contract, the Electricity Law and the Off-grid Electricity Access Regulation will have to be amended to include such requirements. The Electricity Law may only be amended by Parliament, the entity which enacted the law while Off-grid Electricity Access Regulation may be amended by the Government (Cabinet).

Because fiscal incentives are to be approved by Parliament we would propose that the rates of rebates be approved within a range, with the task given to ARENE to consider which rate to grant depending of the GESIS ranking stage of the off-grid project. In other words, Parliament will approve the overall package available without being prescriptive, and leave to ARENE the discretion to decide on the range of incentives to be granted to a specific off-grid project.

8. Institutions that the GESIS working group shall engage

ARENE will lead this process and the following institutions are to be considered when introducing, championing and proposing a set of incentives to introduce GESIS for off-grid projects:

- a) MIREME;
 - b) Ministry of Gender, Children and Social Action;
 - c) Ministry of Economy and Finance;
 - d) Tax Authority;
 - e) Ministry of Land and Environment;
 - f) Ministry of Labour and Social Security;
 - g) Bank of Mozambique;
 - h) Provincial Governors and Secretary of States;
 - i) Local municipalities;
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- j) Council of Ministers (Cabinet);
- k) Assembly of the Republic (Parliament);

9. Conclusion & Recommendation

GESIS embodies a new philosophy to address gender and social exclusion, beyond the corporate social responsibility which just ticks the box and provides lip service to local communities without any tangible incentive for mutually beneficial social inclusion.

Women are in majority in Mozambique and are likely to suffer from lack of access to energy and they also bear the brunt of climate change's consequences. Therefore, it makes business and a social sense that energy projects in general and off-grid projects, in particular, will place women and local communities at the center of their development, and for this a package of fiscal and non-fiscal incentives will be key in ensuring that operators do so by adhering to GESIS's ranks throughout the life of their project.

It is paramount that electrification solutions, particularly off-grid projects which are quite often implemented in rural areas, must have a transformational impact on communities while generating positive social, environmental and financial returns for women.

These projects, through the proposed incentives, shall emphasize sustainable growth and capacity building through the training and employment of Mozambicans in general and women in particular. The operators will see value in implementing GESIS not only through incentive but also a real change in the lives of local people and the stability of their project.

Finally, for GESIS to succeed it is paramount that the regulatory framework shall be stable and clear to attract private sector and offer sponsors/developers the possibility of recovering their costs for implementing GESIS.

In situations where Operators access funding through project financing it will be paramount to ensure that financing entities include GESIS's incentives as requirement for funding.

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