

VALIDATION OF
THE EXTRACTIVE INDUSTRIES
TRANSPARENCY INITIATIVE
IN NIGER

August 2010

Report to the National Consultation Committee

EITI Niger

Compiled by Hart Nurse Ltd

ACKNOWLEDGEMENTS

Hart Group would like to thank all the members of the National Consultation Committee for their support and for the highly informative individual and group meetings in Niamey, during which clear opinions were expressed. Mr. Abdoul Aziz Askia, the Permanent Secretary, and his staff made us particularly welcome and our meetings were open and transparent. We would like to thank them for their time and for the work they carried out.

During this mission, H.E. the Prime Minister and H.E. the Minister for the Economy and Finance spared us their time to reiterate the government's support for the EITI. The Minister for Mines and Energy, whom we were unable to meet in Niamey, met with Mr. John Cole-Baker during the SIM conference in Dakar in April 2010, shortly before our first mission to Niamey. The Minister reiterated Niger's commitment to pursuing the EITI process.

We would also like to thank all members of the National Consultation Committee (government, company and civil society organisation representatives) and the Independent Administrator, who gave of their time during our two visits to Niamey, and whose names are listed in Appendix 1 to this report.

ABBREVIATIONS AND ACRONYMS

The following is a list of the abbreviations used in the text:

NCC	National Consultation Committee (CNC in French)
EITI	Extractive Industries Transparency Initiative
EITI Board	EITI Board
MDTF	The World Bank's Multi-Donor Trust Fund
NGO	Non-Governmental Organisation
CSO	Civil Society Organisation
UNDP	United Nations Development Programme
TFP	Technical and Financial Partners
PS	EITI Niger Permanent Secretariat
EU	European Union

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1 INTRODUCTION

1.1 Foreword

This report presents the conclusions of the Validation mission for the Extractive Industries Transparency Initiative (EITI) in Niger, conducted from 10th to 14th May 2010. An additional mission took place from 17th to 22nd August 2010, following feedback on the draft report from the EITI International Validation Committee.

The report is structured as follows:

- Chapter 1 introduces the report and provides a summary of the EITI Validation process, the extractive industry sectors in Niger and the EITI itself
- Chapter 2 describes the Work Plan and the progress made by Niger in implementing the EITI
- Chapter 3 gives the Validator's assessment of each indicator as listed in the EITI Validation Grid
- Chapter 4 provides an overall assessment of Niger's status with regard to the EITI
- Chapter 5 presents the Validator's recommendations.

The Appendices comprise:

- A list of the stakeholders consulted
- The company self-evaluation forms
- The companies included in the EITI Report 2005-2006
- The Work Plan 2008-2010
- Correspondence between the Prime Minister of Niger and the President of the EITI.

1.2 The EITI Validation Process

Validation is the process adopted by the EITI Board to determine the compliance of a candidate country or member country.

The Validation process comprises:

- The appointment of a Validator
- Preparation of a working visit to the country
- A validation visit, culminating in a written report
- Consideration of the Validation Report by the National Consultation Committee, which should result in the report's adoption
- Presentation of the Validator's report to the International Secretariat, following which the EITI Board decides whether the country is compliant or not
- Publication of the Validation Report and action by the National Consultation Committee with regard to its conclusions.

The main objective of the working visit to the country is to provide an independent assessment of the country's progress in EITI implementation on the basis of evidence from the stakeholders, and to make recommendations aimed at helping to improve or ensure the future sustainability of the EITI.

However, the final decision on a country's compliance is taken by the EITI Board.

Given that Niger has been accepted as a Candidate Country, it is deemed to have met the sign-up criteria. Nevertheless, this validation includes a discussion of all indicators, including sign-up indicators.

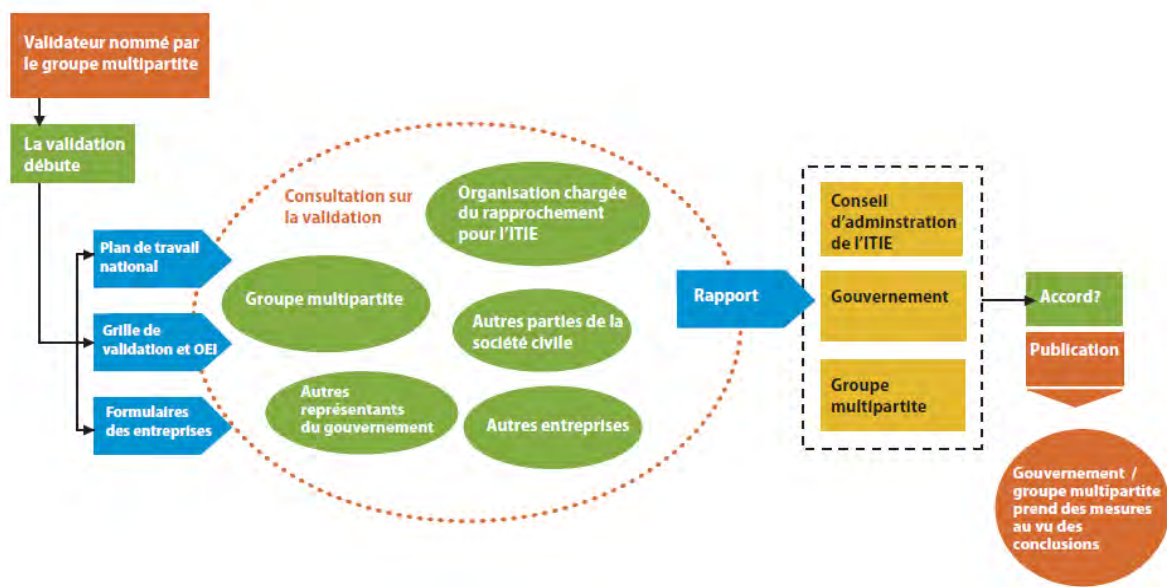
1.3 Approach to the Validation and Activities

The Validation Team comprised Mr. John Cole-Baker and Mr. David Quinn.

The approach and methodology adopted were as set out in the EITI Validation Guide (September 2009). They were based on:

- A review of documentation (in the office)
- Meetings with members of the National Consultation Committee and other stakeholder representatives
- Self-evaluation forms sent to extractive industry companies operating in Niger.

This process is illustrated by the Validation flow chart below, taken from the Validation Guide.



A list of all people met during this validation exercise can be found in Appendix 1 to this report.

The first validation mission to Niamey took place from 10th to 14th May 2010. Following this mission, a draft report was written and submitted to the EITI Validation Committee. Following submission of this report and the subsequent feedback from the Validation Committee, the NCC held a number of meetings and we were provided with additional information via the PS. The NCC asked us to include this information in the final report. This final version therefore contains certain amendments.

A second validation mission took place from 17th to 21st August 2010 to discuss the new information and finalise the report. During this mission, working sessions took place with a working group appointed by the NCC at their meetings on 13th and 16th August 2010. At these sessions, we were able to review our conclusions based on the additional information provided. We were also able to confirm that the NCC has taken our observations and the comments of the EITI Validation Committee on board.

1.4 The Extractive Industries in Niger

1.4.1 BACKGROUND

According to statistics from the UN (United Nations Human Development Index), Niger is one of the poorest countries in the world. Its economy is based on agriculture (subsistence), livestock farming and mining. The country's uranium reserves are some of the largest in the world. The economy is dominated by agriculture, livestock farming and informal market sectors, which create little formal employment^{1,2}.

As a result, around 80% of the population depends on the agriculture and livestock farming sectors. The livestock sector alone (camels, goats, sheep and cattle) creates around 14% of GDP. Only 15% of Niger's land mass is available for agriculture, and this is to be found primarily in the south of the country, along the border with Nigeria. The rainy season is susceptible to climate variations, exposing the country to agricultural production problems and forcing it to rely on imports of subsistence products.

Against this backdrop, the mining sector is extremely important for bringing currency into the country. In 2006, uranium and gold exports accounted for some 55.4% and 13.6% of foreign currency revenues respectively, as compared to 14.7% for livestock farming and 9.9% for agricultural products.

The government's policy has been to actively encourage international private investment, which it sees as a key driver of economic growth and development. In cooperation with the United Nations Development Programme (UNDP), it has made coordinated efforts to revive the private sector. The Investment Code (1997 and 2000), the Oil Code (1992 and 2007) and the Mining Code (1993) have all been amended.

In political terms, Niger currently has a transitional government led by the Supreme Council for the Restoration of Democracy, a military regime which took power following the coup d'état on 18th February 2010. The new authorities have declared a commitment to organise elections and return power to civilian hands in the first quarter of 2011.

1.4.2 MINING SECTOR

The primary mineral mined in Niger is uranium. During the 1970s, uranium exports enabled Niger to achieve rapid economic growth. With the 1980s came a fall in demand for uranium and the economy entered a period of stagnation. The French nuclear company AREVA controls the two companies that mine uranium (at the COMINAK underground mine and the SOMAIR open-cast mine). The price of uranium has increased substantially following growth in demand since 2007.

There are known exploitable gold deposits in the Liptako region, between the Niger River and the border with Burkina Faso. These deposits have long been worked on a small-scale basis by prospectors. The first industrial mine, the Samira Hill Gold Mine, opened in October 2004. The operating company, the Société des Mines du Liptako (SML), is 40% owned by the Canadian company SEMAFO Inc., 40% by the Canadian company Etruscan, and 20% by the Niger government.

Since 2007, the government has issued more than 100 exploration licences to French, Chinese, Canadian, Australian, Indian, South African and US companies, mostly for gold and uranium.

¹ US State Department Background Note

² World Bank Country Brief

Two exploration companies have appeared: the Société des Mines d’Azelick (SOMINA) with the support of a Chinese partner, and the Société d’Imouraren with the support of the AREVA group. The latter holds one of the largest uranium reserves in the world.

The state-run company SONICHAR (Société Nigérienne de Charbon) mines coal at Tchirozerine (to the north of Agadez) in order to supply electricity to the mining companies in the north of the country (SOMAIR and COMINAK). However, a substantial coal reserve has been discovered in the Tahoua region.

Other minerals identified in Niger include phosphates, iron, limestone and gypsum.

In total, 40 active companies were considered for the 2005-2006 period.

1.4.3 OIL SECTOR

Niger has oil potential. The Agadem block to the north of Lake Chad has estimated reserves of around 300 million barrels.

On 2nd June 2008, Niger signed its first production-sharing contract with the Chinese company CNODC to exploit the Agadem oil reserve. There are also plans to build an oil refinery with a capacity of 20,000 barrels per day.

Two companies were active during 2005 and 2006. However, neither of these companies was in production at the time.

1.5 EITI Implementation in Niger

In a meeting on 11th March 2005, Niger’s Council of Ministers, ~~chaired by H.E. Mamadou Tandja, President of the Republic and Head of State,~~ took the decision to sign up to the EITI. This decision was made public at the Lancaster House Conference in London on 17th March 2005 and was followed by an official workshop to launch the initiative on 6th and 7th September 2006, attended by representatives from international institutions, companies and civil society organisations.

This commitment was reiterated on 30th August 2007, 30th March 2009 and 17th August 2009. Following the changes that took place on 18th February 2010, the new transitional government declared its intention to support the EITI. On 11th May 2010, during a meeting with Mr. Ari Malla, Director of the Prime Minister’s Office, we were informed of the authorities’ desire to ratify the Initiative in order to hold future governments to its continued implementation. This message was confirmed by the Minister for the Economy and Finance during a meeting on 13th May and by H.E. the Prime Minister during a meeting on 14th May 2010.

Niger’s commitment has been reiterated in public on several occasions: on 28th August 2007 (declaration by H.E. the Prime Minister), on 30th March 2009 (declaration by H.E. the Prime Minister) and on 17th August 2009.

Niger was accepted as a Candidate Country on 27th September 2007. The country was to embark on a process to obtain validation by 9th March 2010. Following a request made to the EITI Board on 3rd March 2010, Niger was granted an extension in a letter from the EITI President dated 29th April 2010, which stipulated that a Validation Report must now be submitted by 9th September 2010. The conditions for this extension were accepted in a letter from H.E. the Prime Minister to the EITI President, Ref. 152/CAP/PM/SP/ITE, dated 3rd May 2010.

Order 0073/PM of 04/07/05, amended and extended by Order 192/PM of 10th August 2007, sets out the EITI implementation arrangements in Niger. The system comprises the following three structures:

- An Interministerial Committee, chaired by the Prime Minister, which is responsible for implementation strategy and monitoring
- A National Consultation Committee (NCC) (the Multi-stakeholder Group (MSG) specified in the EITI documents), which manages the EITI in Niger, chaired by the Minister for Mines and Energy
- A Permanent Secretariat, which is responsible for EITI implementation in Niger. The Permanent Secretary and Coordinator is Mr. Abdoul Aziz Askia, who serves as central point of contact. Order 192/PM of 10/08/07 replaces the name 'Steering Group' used in Order 0073/PM of 04/07/05.

The NCC relies on the work of three sub-committees:

- The Collection and Auditing sub-committee, responsible for supervising the collection, reconciliation and verification of data on revenues generated by the extractive sector
- The Communications sub-committee, responsible for publishing and communicating results
- The Capacity Building sub-committee, which is responsible for building capacity to support the process and to ensure that the information generated by the EITI in Niger is fully understood and correctly used.

Order 0073/PM of 04/07/05 stipulates that the Steering Group (now the Permanent Secretariat) should be funded from the government budget.

The Permanent Secretariat has autonomy over both financial and technical management. The PS has sole responsibility for managing the funds available to it.

According to the figures provided by the Permanent Secretariat, government grants for the PS and its expenditure to date are as follows:

GOVERNMENT GRANTS IN CFA FRANCS

	2007	2008	2009	2010
FORECAST	20,000,000	20,000,000	20,000,000	19,980,000
ACTUAL	20,000,000	20,000,000	50,000,000	11,500,000

Actual expenditure in 2009 includes funding for the Validation process, from government counterpart funds.

Actual expenditure for 2010 is up to 25/05/2010.

An Independent Administrator, CCII (Cabinet d'Expertise Comptable Ibrahim Issoufou), was appointed by letter, Ref. 150/2009/PRDSM/CPG.OHJNG-TWM, dated 21st April 2009, following an international competitive bidding process in line with the procedure applicable to projects financed by the European Development Fund (EDF).

Hart Group was appointed as Validator on 31st March 2010, following an international competitive bidding process and in accordance with the procedure defined by the EITI International Secretariat.

1.6 Civil Society Relations

Civil society's participation in the EITI process is of crucial importance in the context of the EITI's principles and sign-up criteria.

Civil society has nine representatives on the NCC (including CSOs and representatives from the Bar Association, the private press and unions). On 16th August 2009, NCC members representing civil society organisations announced the suspension of their involvement in the EITI following the harassment of certain activists involved in a good governance and transparency campaign in Niger. One of the reasons behind this suspension was the arrest and detention of Mr. Marou Amadou, a member of the Network of Organisations for Transparency and Budgetary Analysis (Réseau des Organisations pour la Transparence et l'Analyse Budgétaire – ROTAB), which is the coalition that represents the "Publish What You Pay" (PWYP) organisation, and Mr. Wada Mamane, a member of Transparency International, Niger Section (ANLC).

Following the pre-trial release of Mr. Marou Amadou and Mr. Wada Mama, the NCC members representing civil society announced, on 28th September 2009, that they would resume their participation in the NCC.

We met members of civil society who stated their firm commitment to supporting the EITI. They emphasised that the above events were not related to the EITI's activities. Our meeting with H.E. the Prime Minister took place in the presence of a representative of each stakeholder: government, companies and civil society. The running of the NCC and civil society's involvement in it form part of the assessment of Niger's compliance with the EITI process, specifically in relation to Indicators 5 and 6 of the Validation Grid.

1.7 Company Implementation

There are currently only three companies actively mining minerals in Niger: COMINAK and SOMAIR (uranium) and SML (gold). A fourth company, SONICHAR, mines coal in order to supply electricity to mining companies. The NCC decided not to include this company in its scope, as it is primarily considered an electricity supplier. The NCC's reasons for this decision are explained later in this report.

For the period 2005-2006 (the subject of the first EITI Report), 17 mining exploration and four oil exploration licences were also included.

The three companies in production have supported the EITI from the outset and are represented on the NCC. A number of other companies have also participated in the EITI. However, due to the expansion of the sector, ongoing efforts will be required to secure their full involvement.

The three companies currently undertaking exploration activities agreed to meet us in person and subsequently reaffirmed their support for the EITI.

Since the first EITI Report was drawn up, covering the years 2005 and 2006, a significant number of mining exploration companies have begun working in Niger, and there are also several other companies who are no longer active in the country. The companies contacted during the validation process were those currently represented in Niger.

2 PROGRESS MEASURED AGAINST THE WORK PLAN OBJECTIVES

Niger published a public statement of its intention to sign up to the EITI on 17th March 2005, following a decision taken by a meeting of the Council of Ministers on 11th March 2005. The key institutions for process management were put in place in Niger during 2005, as described in Chapter 1.5 .

According to Order 073/PM of 4th July 2005, the National Consultation Committee is made up of 33 members representing the following structures:

- Government: 20 members (including the president: the Minister for Mines and Energy, the National Assembly, the Audit Office, the Supreme Court and other constitutional bodies)
- Civil society: 6 members
- Others: 4 members (one representative of the Bar Association, one representative of the Niger Chamber of Commerce, Industry and Crafts (CCAIAN), one representative of the private media and one representative of the state-owned media)
- Private mining sector: 3 members

There were no oil companies in the production phase when the NCC was set up, nor during the period covered by the first EITI Report.

A fully-costed EITI Niger priority Work Plan 2008–2010 was adopted on 30th August 2007, revised on 30th October 2008 and published both in the state-owned press and private press, plus some CSO newsletters.

Progress to date:

- a Work Plan has been drawn up
- an Independent Administrator has been appointed
- Independent Administrator's Report for the years 2005 and 2006 has been adopted
- the Independent Administrator's Report has been disseminated
- training sessions have been organised for civil society and government representatives
- a website has been created
- a communication strategy has been drawn up

The EITI Niger Priority Work Plan has four components:

- Component No. 1: To identify, produce and make available the necessary tools for EITI implementation in Niger
- Component No. 2: To strengthen the capacity of government representatives and civil society members in the field of communications and in areas related to the extractive industry
- Component No. 3: Preparation, publication and dissemination of EITI Niger reports
- Component No. 4: Validation of EITI Niger

In our opinion, the Work Plan is well-presented. It covers:

- The Activities
- The Expected Outcomes
- The Indicators
- The Validation Resources
- The Institutional Level of Responsibility and
- Other Participants.

Each activity is budgeted and its source of funding identified.

However, we raised the following issues:

- Order 073/PM of 4th July 2005 describes the NCC's responsibilities. The NCC defined the composition and appointments for the three sub-committees at the committee session on 26th September 2007. There are, however, no minutes for the sessions of these sub-committees and we were therefore unable to verify their actions. The NCC explained that the sub-committees carried out technical preparatory work in advance and that they submitted this work to them for assessment and adoption.
- In our opinion the budgets allocated to some activities, such as the creation of the first report and capacity-building activities, are insufficient.
- The activities are planned by quarter but the budget is allocated for the whole period of the Plan and not by year. The statement of expenditure (under or over budget) is therefore difficult to identify and the funds required for any given year are not obvious.
- There is no procedure for the regular updating of the Plan either in terms of monitoring outcomes or progress. The Work Plan for 2010 has been adopted but plans have not yet been produced for subsequent years. The PS informed us that the secretariat updates the Plan periodically, particularly in relation to partner support.

The revised Plan, which includes activities from the end of 2008 and 2009 and the start of 2010, as included in Appendix 4, is analysed below.

2.1 COMPONENT NO. 1: TO IDENTIFY, PRODUCE AND MAKE AVAILABLE THE NECESSARY TOOLS FOR EITI IMPLEMENTATION IN NIGER

The production of a Priority Work Plan, its adoption and the mobilisation of the financial resources for its implementation have been achieved.

There has been some delay in the activities aimed at producing and adopting a communications strategy. Mr. Boubacar Soumaré, the Communications expert within the Permanent Secretariat, is currently actively engaged in implementing the communications strategy. A website has been created.

The section related to the running of the Permanent Secretariat is underway and seems, thus far, to be sufficiently funded.

The report template (reporting template) has been prepared and adopted (see Section 3.9).

In conclusion, the necessary tools for implementing the EITI are in place.

2.2 COMPONENT NO. 2: TO STRENGTHEN THE CAPACITY OF GOVERNMENT REPRESENTATIVES AND CIVIL SOCIETY MEMBERS IN THE FIELD OF COMMUNICATIONS AND IN AREAS RELATED TO THE EXTRACTIVE INDUSTRY

This component has by and large not been implemented and the activities have been rescheduled for 2010.

Two workshops were organised on 18th-19th June 2010 and 23rd-24th July 2010, focusing on a range of themes designed to improve understanding of the extractive industry cycle, including research, exploration, mining and revenue accounting.

It is important that these delays are discussed within the NCC and a realistic programme proposed.

2.3 COMPONENT NO. 3: PREPARATION, PUBLICATION AND DISSEMINATION OF EITI NIGER REPORTS

The activities relating to production of the first EITI Report for 2005 and 2006 did indeed take place, but with several months' delay (the report was adopted in August 2009, despite being scheduled for May 2009). Such a delay is not unusual; given that this was the first report, there are lessons to be learned.

A summary of the report's outcomes, amended following additional input from the Permanent Secretariat, was published in November 2009 (scheduled for June 2009) and was widely disseminated.

The launch of the competitive bidding process for the second EITI Report was planned for August 2009. The Terms of Reference are currently being prepared and drafting of these terms had not been completed when we visited in May. During the August mission, we were informed that Expressions of Interest had been received for the Independent Administrator services, following publication of a call for bids in the national and international press. The bid request and adjudication process will follow the rules and procedures of the World Bank. It should be noted that the budget anticipated for this activity was increased following the programme review. The budget for preparing and disseminating the report is now \$90,000. This is the result of the lessons learned from the first report, for which the budget was insufficient, as explained in section 3.8.

The activities for this component are underway, albeit with some delays. It is important that these delays are discussed by the NCC and the activities rescheduled.

Niger was accepted as a Candidate Country on 27th September 2007 and published an EITI Report for 2005/2006. In order to comply with EITI Criterion No. 1, which requires that payments and revenues are "regularly published to a wide audience", subsequent reports will need to be produced urgently so that they can be published and disseminated (see recommendations in Chapter 5.2).

2.4 COMPONENT NO. 4: VALIDATION OF EITI NIGER

The launch of the Validator competitive bid process was due to place in June 2009, with the Validation taking place from November to December 2009 in order to try to keep to the deadline of 3rd March 2010.

The deadline for validation of Niger's compliance with the EITI was 9th March 2010. On 3rd March 2010, H.E. the Prime Minister of Niger sent a letter requesting an extension of the validation deadline citing, among other things, the political crisis in the country. The EITI Board agreed to H.E. the Prime Minister's request on 29th April 2010 by means of a letter signed by the EITI President. The conditions for this extension were accepted in a letter from H.E. the Prime Minister to the EITI President, Ref. 152/CAB/PM/SP/ITE, dated 3rd May 2010.

The timetable was amended as follows:

Final Validation Report to the EITI Secretariat	9th July 2010
Validation deadline	9th September 2010
Consideration by the EITI Board	October 2010

(see the letter from the EITI President and the response from H.E. the Prime Minister – Appendix 5)

The Validation process is underway, the current aim being to keep to this amended timetable, following the EITI Board's agreement.

2.5 SUMMARY

Niger has published a fully-costed Country Work Plan, containing measurable targets and a timetable for implementation of the EITI. EITI presentation workshops have been held.

The Plan includes capacity-building activities (government, private sector and civil society) through appropriate training. We have not seen an assessment of the capacity constraints, and despite the workshops that have been held, this component has not been achieved.

The other components have been or are in the process of being achieved. The budgets for these actions have been set and the government and PS need to ensure that the necessary funding is provided.

The budget for the Work Plan is not, however, commensurate with the activities planned, and there is no evidence of progress monitoring. No Plan has yet been developed for future activities beyond 2010.

3 PROGRESS AGAINST THE VALIDATION GRID INDICATORS

3.1 INDICATOR 1: Has the government issued an unequivocal public statement of its intention to implement EITI?

Progress

In a meeting on 11th March 2005, Niger's Council of Ministers, chaired by H.E. Mamadou Tandja, President of the Republic and Head of State, took the decision to sign up to the EITI. This decision was made public at the Lancaster House Conference in London on 17th March 2005. This commitment was reiterated on 30th August 2007, 30th March 2009 and 17th August 2009. Following the change of government on 1st March 2010, the transitional government repeated its intention to support the EITI. On 11th May, Mr. Ari Malla, Director of the Prime Minister's Office, informed us of the authorities' desire to ratify the Initiative in order to hold future governments to its continued implementation. This message was confirmed by the Minister for the Economy and Finance during a meeting on 13th May 2010 and by H.E. the Prime Minister during a meeting on 14th May 2010.

This decision was followed by an official initiative launch workshop on 6th and 7th September 2006 involving representatives from the government, international institutions, extractive industries and civil society organisations.

At the end of these workshops, a statement was published reiterating the support of the three stakeholders (government, civil society and extractive industries) for the EITI's principles and criteria. This statement was a public announcement of the EITI Niger institutional structure and the key points of the implementation plan.

Stakeholder views

In a full session of the NCC on 11th May 2010, the stakeholders unanimously confirmed that the Government of Niger was supporting EITI implementation.

This opinion was repeated during meetings with the stakeholders and was reinforced by H.E. the Prime Minister and the Minister for the Economy and Finance during meetings that we held with them. Furthermore, the above-mentioned letters of 3rd March 2010 and 3rd May 2010 demonstrated the importance given to the EITI by the authorities in Niger.

The possibility of establishing an EITI Law to ratify the process was raised in order to ensure the continuity of the initiative under future governments. This idea was proposed by the Bar Association representative, among others.

Validator's assessment

Niger is compliant with this indicator.

3.2 INDICATOR 2. Has the government committed to work with civil society and companies on EITI implementation?

Progress

A commitment to work with civil society was made during the initiative launch workshop on 6th and 7th September 2006. The institutional mechanism created by Order 0073/PM of 4th July 2005, amended and expanded by order 192/PM on 10th August 2007 includes a National Consultation Committee comprising representatives from the government, civil society organisations and extractive industries.

The National Consultation Committee comprises the following members: 20 representatives of the government (including the Minister for Mines and Energy, the state-owned press and the Chamber of Commerce); 3 representatives of extractive industry companies currently in production; and 8 representatives of civil society organisations (NGOs and civil society associations, the Bar and the private press). Each structure appoints its own representatives.

In August 2009, the civil society organisation representatives suspended their involvement in the EITI after the arrest of two of their activists. This situation has now been resolved as explained in Section 1.6.

Stakeholder views

All the stakeholders agree that the parties are working together to support the EITI.

Validator's assessment

Niger is compliant with this indicator.

3.3 INDICATOR 3. Has the government appointed a senior individual to lead on EITI implementation?

Progress

Implementation is in fact the responsibility of three bodies:

- An Interministerial Committee, chaired by the Prime Minister, which is responsible for defining the broad political and strategic directions and for supervising implementation and the impact of EITI implementation on sustainable development and poverty reduction in Niger
- A National Consultation Committee (NCC) (the Multi-stakeholder Group (MSG) specified in the EITI documents), which manages the EITI in Niger, chaired by the Minister for Mines and Energy
- A Permanent Secretariat (the name given in Order 192/PM of 10/08/07 replaces the term 'Steering Group' used in Order 0073/PM of 04/07/05); the Permanent Secretary and Coordinator is Mr. Abdoul Aziz Askia, a Public Works and Mines Engineer who holds the position of Technical Advisor to the Prime Minister.

These people are all highly senior officials.

Stakeholder views

The members of the National Consultation Committee expressed their unanimous satisfaction with the appointment of the above-mentioned senior officials.

Validator's assessment

The NCC has, for the most part, been chaired by the Director of the Prime Minister's Office, by delegation of the Minister for Mines and Energy.

Niger is compliant with this indicator.

3.4 INDICATOR 4. Has a fully costed Country Work Plan been published and made widely available, containing measurable targets, a timetable for implementation and an assessment of capacity constraints (government, private sector and civil society)?

Purpose: The Country Work Plan is the foundation of the country Validation process. The sixth EITI criterion requires that a Work Plan be produced that is agreed with key EITI stakeholders and is publicly available.

Evidence: To give this indicator a tick, the Validator is expected to see evidence that the Work Plan has been agreed with key stakeholders and that it contains:

- measurable targets;
- a timetable for implementation;
- an assessment of potential capacity constraints;
- how the government will ensure the multi-stakeholder nature of EITI, particularly in terms of the involvement of civil society;
- a timetable for Validation during the stage at which a country is a Candidate. This should reflect country needs, but should take place once every two years;
- the Work Plan should also elaborate on how the government will pay for validation.

The Validator will need to assess progress on the implementation of the EITI against these targets and timetables, and assess whether a country has acted on the identified capacity constraints.

A key element in the country Validation process will be whether the timetable for implementation is being followed. If the timetable is not being met, the Validator – based on evidence from key stakeholders and others – will need to determine whether delays in meeting the timetable are reasonable. If unreasonable, the Validator will need to consider whether to recommend that the country be de-listed from the list of Candidate countries.

Progress

A Work Plan was adopted on 30th August 2007, revised on 30th October 2008 and published in the state-owned press (e.g. Le Sahel of 10th December 2008), private newspapers and some CSO newsletters. It has been publicly presented to members of the government, the TFPs and civil society.

This plan was discussed by the National Consultation Committee on Tuesday 21st August 2007 and adopted after amendments following the committee's consultations. The minutes of the second meeting of the EITI Niger Interministerial Committee, held on 27th August 2007, bear witness to the adoption of this Plan. The Plan was subsequently amended and updated and, at a meeting of the NCC on 21st November 2008, a more detailed plan was adopted. The government organised EITI presentation workshops (e.g. EITI Niger launch workshop on 6th and 7th September 2006). However, the training component has not been achieved within the scheduled deadlines

The Priority Work Plan 2008–2010 was presented to the representatives of various embassies and institutions on 5th December 2008. The Priority Work Plan 2008-2010 (which includes the initial Work Plan 2007 at an estimated cost of 323 million CFA Francs) had an initial estimated cost of 404 million CFA Francs. The only sources of funding for this Work Plan were from the government of Niger and the EU.

In terms of financial capacity constraints, there was therefore a substantial gap to overcome to secure the initial funding.

However, the TFPs stepped in to fill this gap, with additional support from the MDTF Grant, UNDP and the French Embassy:

- Government grant: 60 million CFA Francs
- UNDP: 60 million CFA Francs
- MDTF: 122.5 million CFA Francs
- France/Niger funding agreement: 90 million CFA Francs

This Plan forms Appendix 4 to this report. It is well-presented in terms of activities, expected outcomes, indicators, validation resources, institutional level of responsibility and the list of other participants. The deadlines are given by quarter. The budgets are given by activity and are not broken down by year. The source of each budget is noted.

With reference to the evidence given above and in Chapter 2 of this report, a document from the Prime Minister's Office dated October 2009, drawn up by the EITI Permanent Secretary and entitled: "Priority capacity-building programmes", proposes the organisation of training workshops for the following purposes:

- To improve the work of the EITI - data collection, auditing and publication of results
- To improve understanding of these results and how they are used
- More generally, to improve the quality of discussions about how best to use the wealth created by the mining sector to drive economic growth and to help achieve sustainable development and reduce poverty
- To contribute to the validation process in Niger.

The programme began with two workshops on 18th-19th June 2010 and 23rd-24th July 2010, focusing on a range of themes designed to improve understanding of the extractive industry cycle, including research, exploration, mining and revenue accounting. The country's TFP representatives (World Bank, UNDP and French Embassy) participated in all of these workshops and Mrs. Brigitte Bocoum from the World Bank participated in the workshop on 23rd-24th July 2010.

A Priority Work Plan for EITI Niger: a road map for validation as a Compliant Country in 2010 was also produced in February 2010. For the reasons given in the letter requesting an extension of the validation deadline, and repeated below, the execution of this plan was delayed. The government does, however, want to achieve the objectives set within a reasonable timeframe.

In terms of the political crisis, the civil society battle to restore democracy resulted in the arrest of certain activists and the subsequent suspension of CSO participation in EITI implementation (from 16th August 2009). This caused a delay in the adoption of the first report by the NCC.

It should also be noted that funding from the Niger/France agreement was suspended as a result of this situation.

The political crisis led to delays in the signing of the Validator contract, which was not completed until 31st March 2010 following the military coup d'état on 18th February 2010.

The new authorities have expressed their support for the continuation of the EITI process.

However, the military coup d'état on 18th February 2010 resulted in the suspension of World Bank funding (MDTF Grant). This funding was made available again in March 2010.

The publication of the second EITI Report was scheduled for October 2009. However, this was delayed in part due to political events. The report was initially planned to cover the years 2007-2008. It was extended to include 2009 following the delay associated with the above-mentioned circumstances. In terms of progress, a call for Expressions of Interest has been launched and several responses have been received. The work will be funded by the World Bank, and the World Bank bidding and adjudication processes will be used. The report is expected in December 2010.

Stakeholder views

All the stakeholders represented on the National Consultation Committee confirmed that the Work Plan had been adopted.

The civil society representatives have held a number of workshops and presentations to disseminate information on the EITI, including the Work Plan (for example, during the presentation of the Priority Work Plan 2008-2010 to the TFPs on 5th December 2008, which was the subject of several articles in the press). During our meeting with civil society representatives, we were informed of their intention to identify capacity-building needs to facilitate the implementation of this part of the Plan.

The mining company representatives consulted also expressed a need for better management of the Work Plan, by updating the Plan and revising the deadlines as activities are executed.

Validator's assessment

As indicated previously in this report, the Work Plan could be better monitored in the future so that it becomes a more effective tool for ongoing process management. This aspect deserves further consideration in the following areas:

- An annual budget must be set for each activity to make it easier to monitor
- A regular, systematic monitoring system should be created to ensure that targets and deadlines are achieved
- As a plan has been drawn up to cover several years, a regular update process should be introduced.

The political crisis has undoubtedly had an impact on Work Plan implementation, as explained above. From our discussions with stakeholders, it became clear that the process encountered major difficulties in the second half of 2009. Furthermore, the coup d'état in February 2010 resulted in the suspension of World Bank funding. However, the transitional government expressed its full support for the EITI and funding resumed. This bodes well for the future implementation of the initiative.

In conclusion, a fully costed Work Plan has indeed been made widely available. We can confirm that some progress has been made in implementing the activities in this plan.

Niger is compliant with this indicator.

3.5 INDICATOR 5. Has the government established a multi-stakeholder group to oversee EITI implementation?

Purpose: Implementation of the EITI should be overseen by a group comprising all appropriate stakeholders, including – but not limited to – the private sector, civil society (including independent civil society groups and other civil society, such as the media and parliamentarians) and relevant government ministries (including government leads). The group should agree clear, public terms of reference (ToRs). These ToRs should at least include: endorsement of the Country Work Plan – following revisions where necessary; choosing an auditor to undertake audits where data submitted for reconciliation by companies or the government are not already based on data audited to international standards; choosing an organisation to undertake the reconciliation; and other areas as noted in the Validation Grid.

Evidence: To give this indicator a tick, the Validator is expected to see evidence that a multi-stakeholder group has been formed, that it comprises the appropriate stakeholders and that its terms of reference fit the purpose. Evidence should include:

- o stakeholder assessments where these have been carried out;
- o information on the membership of the multi-stakeholder group:
 - Was the invitation to participate in the group open and transparent?
 - Are stakeholders adequately represented? (This does not mean stakeholders have to be equally represented.)
 - Do stakeholders feel that they are adequately represented?
 - Do stakeholders feel they can operate as part of the committee
 - including by liaising with their constituency groups and other stakeholders – free of undue influence or coercion?
 - Are civil society members of the group operationally, and in policy terms, independent of government and/or the private sector?
 - Where group members have changed, has there been any suggestion of coercion or an attempt to include members that will not challenge the status quo?
 - Do group members have sufficient capacity to carry out duties?
- o Do the ToRs give the committee a say over the implementation of the EITI? These ToRs should at least include:
 - endorsement of the Country Work Plan – following revisions where necessary;
 - choosing an auditor to undertake audits where data submitted for reconciliation by companies or the government are not already based on data audited to international standards; choosing an organisation to undertake the reconciliation; and, other areas as noted in the Validation Grid.
- o Are senior government officials represented on the committee?

Progress

The multi-stakeholder group in Niger is called the “National Consultation Committee”.

Order 0073/PM of 4th July 2005, amended and extended by Order 192/PM of 10th August 2007, sets out the EITI implementation arrangements in Niger. The system comprises the following structures:

- An Interministerial Committee, chaired by the Prime Minister, which is responsible for implementation strategy and monitoring
- A National Consultation Committee (NCC) (the Multi-stakeholder Group (MSG) specified in the EITI documents), which manages the EITI in Niger, chaired by the Minister for Mines and Energy
- A Permanent Secretariat, which is responsible for EITI implementation in Niger. The Permanent Secretary and Coordinator is Mr. Abdoul Aziz Askia, who serves as central point of contact. Order 192/PM of 10/08/07 replaces the name ‘Steering Group’ used in Order 0073/PM of 04/07/05.

The NCC was officially created in December 2006. It relies on the work of three sub-committees, the mandates for which were approved in a meeting of the NCC on 14th August 2007:

- The Collection and Auditing sub-committee, responsible for supervising the collection, reconciliation and verification of data on revenues generated by the extractive sector
- The Communications sub-committee, responsible for publishing and communicating results
- The Capacity Building sub-committee, which is responsible for building capacity to support the process and to ensure that the information generated by the EITI in Niger is fully understood and correctly used.

Apart from minutes of the first meetings, the sub-committees have not maintained records of their activities. This constitutes a breach of the procedures and means that there is a lack of evidence with regard to their responsibilities.

The sub-committees receive mandates from the NCC to undertake preparatory technical work and submit their work at full sessions of the NCC.

With regard to evidence relating to this indicator:

- We have not seen a stakeholder assessment report following Niger's announcement that it wished to sign up to the EITI. However, the stakeholders have confirmed that the three pillars (government, companies and civil society) are appropriately represented.
- With regard to information on the multi-stakeholder group members:
 - The members representing the government are drawn from departments involved in the sector
 - The members representing companies come from companies in production (one representative per company)
 - Until 2010, mining and oil exploration companies were not represented on the NCC. However, at a meeting on 4th May 2010, plans were put in place for their participation (one or two representatives)
 - The civil society representatives are drawn from the main CSOs in Niger. The appointed representatives comprise members of the Publish What You Pay coalition (ROTAB PWYP Niger) and Transparency International (ANLC) and therefore have links with international groups. The NCC members representing CSOs are appointed by their organisations and, in operational and political terms, are independent of the government and private sector.

- All stakeholders expressed their belief that they are able to operate as part of the committee free of undue influence or coercion. As indicated in section 3.6, the civil society members provide a link with their regional representative bodies, free of influence or coercion.
- We did not observe any attempted coercion in the NCC member nomination process, and no such attempt was reported by the stakeholders.
- The National Consultation Committee has responsibility for implementing the EITI. No internal regulations have been produced but a document setting out the composition and mandates of the sub-committees was discussed, amended and adopted at a meeting of the NCC on 14/08/07. Order 0073/PM of 04/07/05 defines the responsibilities of the implementing bodies.
- Order 0073/PM appoints the Minister for Mines as President of the National Consultation Committee. The representatives from government institutions such as the Ministry for the Economy and Finance (including the Customs Department), hold quite high positions and are thus able to effectively communicate the NCC's decisions to their respective departments and also report back any concerns from these departments.
- In the absence of the Minister for Mines and Energy, the task of chairing the NCC has, for the most part, been delegated to the Director of the Prime Minister's Office.

There are six CSO representatives, plus representatives of the private press and the Bar Association, accounting for a total of 8/31, or more than a quarter of NCC members.

The CSO members confirmed that they have no complaints about their ability to participate freely in the NCC's work and that they are also able to continue their representation activities throughout the country, demonstrating their full independence.

As the CSOs are represented on the NCC on an institutional basis, there has been no change in this respect, and the same appointed representatives sit on the committee. The same applies to the companies. There have therefore been no changes of representative liable to call the independence of the NCC into question.

The actions and responsibilities of the National Consultation Committee and of the Permanent Secretariat are described in the Work Plan 2008–2010 and the Work Plan 2010, and are in part supported by the government budget. It will be important for the government to provide funding for this committee's activities and, indeed, all activities that are required to support the initiative, in order to reassure the stakeholders of the continuity of EITI actions in Niger.

Stakeholder views

All interested parties are of the opinion that the National Consultation Committee is effectively fulfilling its tasks. We raised the issue of a lack of internal regulations for the NCC and of a better definition of the sub-committees. The stakeholders unanimously agreed that Order 0073/PM of 04/07/05 adequately defined the NCC's responsibilities and that the NCC functioned satisfactorily, its composition and mandate having been discussed in the NCC.

The CSO representatives on the NCC stated the need for more thorough training to enable them better to fulfil their roles on the NCC. This training is included in the Work Plan.

Validator's assessment

In general, the NCC functions well. However, as already highlighted, we believe that it is necessary to improve the procedures for the sub-committees, which carry out a large part of the NCC's work. Although the work mandated to these sub-committees is discussed in full sessions of the NCC, it would be beneficial to draw up and publish reports on this work.

The civil society representatives expressed a need for training. This need also exists for the government representatives. The Work Plan includes training activities, and training programmes have been initiated. As discussed in Section 3.8, funding represents the major obstacle to implementation of this activity.

The NCC has been created and is representative. All stakeholders (government, extractive industries and civil society) are represented. The NCC members work together in harmony and are fully independent. It may be beneficial to review the representation of the different stakeholders from time to time to ensure that it is appropriate. In future, for example, the oil sector will need to be represented.

Niger is compliant with this indicator.

3.6 INDICATOR 6. Is civil society engaged in the process?

Purpose: This indicator reinforces Indicator 5. The EITI Criteria require that civil society be actively engaged as a participant in the design, monitoring and evaluation of the process, and that it contributes to public debate. To achieve this, EITI implementation will need to engage widely with civil society. This can be through the multi-stakeholder group, or in addition to the multi-stakeholder group.

Evidence: To give this indicator a tick, the Validator will need to see evidence that the government, and the EITI multi-stakeholder group where appropriate, have sought to engage civil society stakeholders in the process of implementation of the EITI. Evidence should include:

- o outreach by the multi-stakeholder group to wider civil society groups, including communications (media, website, letters) with civil society groups and/or coalitions (e.g. a local Publish What You Pay coalition), informing them of the government's commitment to implement EITI, and the central role of companies and civil society;
- o actions to address capacity constraints affecting civil society participation whether undertaken by government, civil society or companies;
- o civil society groups involved in EITI should be operationally, and in policy terms, independent of government and/or the private sector;
- o civil society groups involved in EITI are free to express opinions on EITI without undue restraint or coercion.

Progress

As previously described (Indicator 5), civil society has been involved in implementing this initiative from the start.

Civil society was present at the launch workshop and participates in the meetings of the National Consultation Committee. It is involved in the preparation and adoption of documents. Outside of the consultation framework, civil society has been very active in organising seminars and publishing articles on the extractive

industries. Examples can be found in the “Transparency” newsletter of the Publish What You Pay coalition, dated 4th October 2007.

The suspension of CSO members' participation in the NCC in August 2009 caused problems; however this is no longer an issue, as explained in Section 1.6. Civil society is well represented within the NCC and its members are free to express their opinions without coercion. The fact that the "Transparency" newsletter of 16th December 2009 includes a summary of the first EITI Report demonstrates that civil society is fully involved in the process.

Members of the civil society organisations also explained that they travel to the regions affected by extractive industry sector activities to raise awareness about the work of the EITI among the local people in their own language.

The multi-stakeholder group is conducting outreach activities with wider groups through the delivery of workshops. These activities are organised by all stakeholders.

It emerged during our discussions with the stakeholders that the opportunity for dialogue between civil society and the companies on the NCC has resulted in a better understanding between the parties. As a result, the EITI's outreach activities have improved and civil society has gained a better understanding of mining activities.

During our meeting with H.E. the Prime Minister, it became clear that the GREN representative (civil society) and the Prime Minister know each other and get on well. This was a clear demonstration of the ongoing dialogue between civil society representatives and government representatives.

Stakeholder views

The National Consultation Committee members representing civil society, along with the other Group members, consider that civil society is adequately represented. We raised the issue of the representativeness of members and their links with associations or communities in the regions affected by mining. The civil society representatives explained, during a specific meeting with us on 12th May 2010, that the organisations in question have contacts throughout the country and use these to disseminate details of the EITI's work.

The organisations represented include:

- The Niger anti-Corruption Association (Association Nigérienne de Lutte contre la Corruption – ANLC), which is linked to Transparency International and has representatives in the communities and partners in the villages
- The Niger Human Rights Association (Association Nigérienne pour la Défense des Droits de l'Homme – ANDDH), which has a good presence in the regions: in Arlit, Agades and others
- CCOAD : the consultative body for NGOs and development associations in Niger, which groups together 22 NGO networks and collectives
- The Equality and Quality Coalition against the high cost of living in Niger (Coalition Equité Qualité contre la vie chère au Niger)
- ROTAB, which forms part of the Publish What You Pay coalition (PWYP) and
- GREN, which groups together associations in the mining regions.

It is interesting to note that these civil society associations and organisations fund their own communications and do not wish to receive funding from the government or companies in order to maintain their independence.

The NCC stressed the importance of civil society's involvement in its work, pointing to the fact that the suspension of civil society participation in the NCC following the arrest of two activists in 2009 had a substantial impact on the validation process preparation activities. The adoption of the first EITI Report was

delayed, and could only be completed once civil society had resumed its participation. The funding agreement with France was also suspended during this period.

At present, all parties agree that civil society can now express itself without fear of retribution. The civil society representatives noted that this was not, however, always possible under the previous government.

The civil society spokespersons felt that the Initiative was a first step towards good governance, an aspect that is of importance to civil society in general.

Validator's assessment

Niger is compliant with this indicator. However, due to the fact that a transitional government is currently in place, the country will need to continue demonstrating that civil society's freedom of expression is recognised and accepted.

3.7 INDICATOR 7: Are companies engaged in the process?

Purpose: This indicator reinforces Indicator 5. EITI implementation requires that companies are actively engaged in implementation and that all companies report under the EITI. To achieve this, EITI implementation will need to engage widely with oil, gas and mining companies. This can be through the multi-stakeholder group, or in addition to the multi-stakeholder group.

Evidence: To give this indicator a tick, the Validator will need to see evidence that the government, and the EITI multi-stakeholder group where appropriate, have sought to engage companies (oil, gas and mining) in the implementation of the EITI. Evidence should include:

- o outreach by the multi-stakeholder group to oil, gas and mining companies, including communications (media, website, letters) informing them of the government's commitment to implement EITI, and the central role of companies;
- o actions to address capacity constraints affecting companies, whether undertaken by government, civil society or companies.

Progress

The mining companies in production were present at the launch workshop and participate regularly in National Consultation Committee meetings. They are therefore involved in the preparation and adoption of documents.

The Minister for Mines and Energy supplied a list of the mining and oil companies operating in Niger during the period covered by the first EITI Report to the EITI Permanent Secretariat. The Director of the Prime Minister's Office wrote to all these companies (with the exception of SONICHAR: see comment below) asking them to send the EITI Permanent Secretariat reports of payments made to the Niger Government in 2005, 2006 and 2007. The three main operating companies have published their statements of support, appointed senior EITI officers and are participating actively in the work of the NCC. They responded rapidly to requests for reports.

The list of companies covered by the first report complies with the materiality threshold of 10 million CFA Francs. As a result, any companies that fell below this threshold were not included in this report. These companies accounted for 90% of revenue during the period concerned and are members of the EITI. Section 3.9 includes a discussion of this materiality threshold. The threshold was set following an analysis of annual revenues over a period of 10 years and represents one thousandth of the annual revenue generated by extractive industries.

It should be noted that all company reports (even those for companies that fell below the threshold) were sent to the independent expert as part of the collection and reconciliation process. The majority of these were mining exploration companies. Given their type of activity and the insignificance of these financial streams to government bodies, which fell below the NCC-defined materiality threshold, they were not included within the scope of the first EITI Report. A review of the materiality threshold and scope of the EITI are planned for future reports.

In order to prepare future reports and widen communications, the PS organised a meeting with oil and mining exploration companies on 4th May 2010.

Stakeholder views

The mining companies feel that there is well-established support from the producing companies, and this is confirmed by letters from the companies to the Permanent Secretariat. We held meetings with these companies and they actively support the EITI.

We were unable to meet representatives of the two mining exploration companies. One "junior" representative of an exploration company with head offices in Australia feared that his senior management would not understand why the company had to spend its time answering requests for figures. During a meeting with another exploration company operating in Niger, the MD appeared not to understand the role of the Validator. However, following an explanation, he seemed to gain a better understanding of the initiative. His colleague, who had attended the meeting with mining companies on 4th May 2010, had a better grasp of the process.

We asked why SONICHAR was not included within the scope of the EITI's first report. This company mines coal to supply a factory producing electricity for the mining companies. Given that the company's purpose is to provide electricity, it was not included within the scope of the first report. Furthermore, it does not pay any revenues covered by the mandatory streams in Area 1 (royalties, fixed rights and dividends). During our meetings with the NCC, it became clear that this decision had been approved by the NCC. However, following lively discussions within the NCC when we raised this issue, there will be further consideration of whether this company should be included or not in the future.

The Independent Administrator's report confirms that SONICHAR does not pay any mining royalties and that it did not earn any taxable profits during the period covered by the first report. We can therefore conclude that the impact on the report was negligible. In future, the NCC will assess the option of including SONICHAR in the scope of the report.

Validator's assessment

The government and the PS have made active efforts to involve mining and oil companies in the EITI process. The companies in production, which account for 90% of revenue, voluntarily report their payments and actively support the EITI. Furthermore, all companies are required to report direct payments from mining revenues, including exploration companies. Indirect payments (Area 2: licence fees, customs duties, stamp duties, VAT, ICP deducted at source, etc.) are perhaps more difficult to report for smaller companies. The PS has organised a meeting with companies undertaking exploration activities, and these companies should now be in a position to report their payments in the future. There are no longer any obstacles to company participation in the EITI, except perhaps for those companies that do not have a permanent presence in Niger.

The self-evaluation forms have been sent to the companies. The response rate among exploration companies is disappointing (see Section 3.19). This implies that the SP will need to make even greater efforts with these companies, the number of which has grown since the first report was written.

Niger is compliant with this indicator.

3.8 INDICATOR 8: Did the government remove any obstacles to EITI implementation?

Purpose: Where legal, regulatory or other obstacles to EITI implementation exist, it will be necessary for the government to remove these. Common obstacles include confidentiality clauses in government and company contracts and conflicting government departmental remits.

Evidence: To give this indicator a tick, the Validator should see evidence that the government has removed any obstacles. This might involve following a proactive assessment of obstacles, or through reactive action to remove obstacles as they arise. There is no one way of dealing with this issue – countries will have various legal frameworks and other agreements that may affect implementation, and will have to respond to these in different ways. The sort of evidence the Validator will want to see could include:

- o a review of the legal framework;
- o an assessment of obstacles in the legal and regulatory framework that may affect implementation of the EITI;
- o proposed or enacted legal or regulatory changes designed to enable transparency;
- o waiver of confidentiality clauses in contracts between the government and companies to permit the disclosure of revenues;
- o direct communications with, e.g., companies, allowing greater transparency;
- o Memoranda of Understanding setting out agreed transparency standards and expectations between government and companies.

Progress

The government independently took the commitment to sign up to the EITI. The mechanism necessary for its implementation, and the NCC in particular, serve as a framework for dialogue between the stakeholders and as a context for the prevention and resolution of potential conflicts. The Director of the Prime Minister's Office wrote to all mining and oil companies operating in Niger (with the exception of SONICHAR) asking them to send the EITI Permanent Secretariat reports of payments made to the Niger Government in 2005, 2006 and 2007. There was also correspondence with the Minister for the Economy and Finance and the Minister for Mines and Energy, requesting that these ministries ask their various departments to send a report of the revenues received from operators in the extractive industries over this same period to the EITI Permanent Secretariat.

An analysis of this issue also requires an understanding of the possible obstacles to EITI implementation. These obstacles could include:

- Confidentiality clauses in contracts/agreements with the government
- The availability of funding for EITI activities
- A lack of legislation requiring companies to sign up to the EITI.

The legal and regulatory framework in Niger is very clear with regard to payments to be made and taxes and duties due. The Mining Agreement cannot contradict the law; instead it complements the law by ensuring that the parties understand each other's responsibilities. All parties are agreed that there are no confidentiality clauses that could form an obstacle to EITI implementation. In actual fact, the figures requested are already declared in activity reports required by the Mining Code.

Niger's Oil Code is also clear and transparent: the financial streams covered also include a signature bonus. The sector is still relatively young in Niger and the NCC will need to ensure that this situation does not change.

No study into possible obstacles has been conducted to date. However, in our opinion this reflects the NCC's opinion that there are no significant obstacles.

During our meeting with the Minister for the Economy and Finance, we suggested a potential obstacle to EITI implementation: the need to build the capacities of government executives and civil society members to provide a better understanding of the figures and resources available. The minister recognised that these aspects must be considered in the future. During our second mission, we were able to confirm that four training sessions had already been held and the NCC assured us that more such sessions would be held in the future.

EITI activity funding should not be an obstacle as the decree establishing the EITI structures stipulates that the operating budget for the Steering Group (now the Permanent Secretariat) is to come from the national budget. However, we were informed that the availability of funding had been a constraint, for example in the choice of Independent Administrator to produce the first EITI Report. Furthermore, the Independent Administrator himself commented that the fees were not adequate for the limited work he had undertaken. We were informed that the budget set aside for the second report is \$90,000 and that the work will be funded by the World Bank MDTF.

Another example of budgetary constraint is the fact that, although the website was launched in December 2008, there has been subsequent downtime through lack of funding. We also note that the website address has not been widely disseminated in Niger (for example, it is not included in the summary of the first EITI Report) or elsewhere (for example, there is no link to the website from the main EITI website). A combination of insufficient website publicity and site downtime are likely to have limited the effectiveness of this method of information dissemination. During our second mission to Niger, we learned that efforts are underway to secure the identity of the site through submission to search engines (Google, Yahoo and Bing).

If the government is to demonstrate its commitment then it needs to make a public statement to the effect that adequate funding will be available to ensure the long-term future of EITI implementation.

Stakeholder views

All the stakeholders agree that there are currently no obstacles to EITI implementation in Niger.

The press reported that during a meeting between the head of the junta in power in Niamey, squadron leader Salou Djibo, the country's various trade unions, and the Chair of the Group for Reflection and Action on the Extractive Industries in Niger (GREN) and member of the NCC, Salissou Oubandoma, the latter called in particular for a review of all mining contracts previously signed by Niger. According to a statement available on the Internet³, Mr. Oubandoma expressed the opinion that, "We have been kept in the dark and exploited over the uranium issue for 40 years, we have suffered pollution for 40 years and we have raised this issue whenever necessary since 2006". During our meetings with Mr. Oubandoma, he stated his concerns but mentioned no obstacles related to the Mining Code. In our opinion, EITI implementation has provided an opportunity for the representatives of civil society and companies in production to come together and engage in discussion. We can therefore confirm that EITI implementation has provided a framework for dialogue and discussion between individuals and groups who, previously, treated each other with hostility.

³ Africa Online

The NCC members apparently support a change in the law to guarantee the long-term future of the EITI, either by promoting the adoption of a framework law (as suggested by the Bar Association representative on the NCC) or by another means.

Validator's assessment

There are no legal obstacles to EITI implementation in Niger. It is important to remember that the Mining Code and Mining and Oil Agreements require the reporting of the streams covered by Area 1 (mining royalties, fixed rights, surface royalties, dividends and training contributions) and that the government is a compulsory shareholder in all companies in production. The government is therefore already aware of all payments to be reported.

The need to build the capacities of certain government executives and civil society members has been recognised and training activities are included in the Work Plan. These training activities have already begun.

The NCC assured us that the funding constraints encountered at the outset have been overcome with TFP support for the government's efforts and that, as agreed, the government will gradually take full financial responsibility for funding the initiative. Research is currently ongoing into a sustainable government funding mechanism.

Preparations for selecting the Independent Administrator to produce the report for 2007, 2008 and 2009 are underway and a call for expressions of interest has been launched to appoint the Independent Administrator. This report will be funded by the World Bank.

Niger is compliant with this indicator.

3.9 INDICATOR 9: Have reporting templates been agreed?

Purpose: Reporting templates are central to the process of disclosure and reconciliation, and the production of the final EITI Report. The templates will define which revenue streams are included in company and government disclosures. The templates will need to be agreed by the multi-stakeholder group. The EITI Criteria require that “all material oil, gas and mining payments to government” and “all material revenues received by governments from oil, gas and mining companies” are published. EITI templates will therefore need to define by agreement of the multi-stakeholder group what these material payments and revenues comprise, and what constitutes “material”. It will also be necessary for the multi-stakeholder group to define the time periods covered by reporting. A revenue stream is material if its omission or misstatement could materially affect the final EITI Report.

It is commonly recognised that the following revenue streams should be included:

- o host government’s production entitlement;
- o national state owned company production entitlement;
- o profits taxes;
- o royalties;
- o dividends;
- o bonuses (such as signature, discovery, production);
- o licence fees, rental fees, entry fees and other considerations for licences and/or concessions;
- o profit oil;
- o other significant benefits to government as agreed by the multi-stakeholder group.

Evidence: To give this indicator a tick, the Validator will need to see evidence that the multi-stakeholder group was consulted in the development of the templates, that wider constituencies had the opportunity to comment, and that the multi-stakeholder group agreed the final templates. This could include the following evidence:

- o draft templates provided to the multi-stakeholder group;
- o multi-stakeholder group minutes of template discussions;
- o communications to wider stakeholders (e.g. companies) regarding the design of the templates;
- o arrangement to enable stakeholders to understand the issues involved;
- o a statement by the multi-stakeholder group that they agreed the templates, including all revenue streams to be included.

Progress

The Collection and Reconciliation sub-committee met for the first time on 26th September 2007. During this session, discussions took place concerning the reporting templates and the ToRs for the Independent Administrator. The sub-committee continued to exchange opinions on the templates by e-mail, and one of the sub-committee members showed us these exchanges. We were therefore able to confirm that the templates were discussed in detail before being finalised.

The reporting templates were subsequently presented and discussed at a meeting between members of the Collection and Reconciliation sub-committee and the extractive industries on Thursday 13th March 2008. The Permanent Secretary informed us that the templates were validated by the NCC during its session on 10th June 2008 but that the relevant minutes are unavailable. The templates were further discussed at a meeting of the NCC on 23rd June 2009 during the presentation of the Independent Administrator's provisional report and amendments were made to reflect the reality in Niger.

Stakeholder views

During our meetings on 18th and 19th July 2010, the NCC confirmed that the financial streams were decided by the Collection and Reconciliation sub-committee and that the majority of the discussions had taken place in writing (e-mail). The streams are divided into two areas:

- Area 1: mining royalties, surface royalties, fixed rights, dividends and training contributions
- Area 2: property tax, licence fees, customs duties, stamp duties, VAT, ICP deducted at source, etc.

The materiality threshold was set following an analysis of mining revenues paid to the Ministry for Mines and Energy over a period of 10 years. These revenues represent around 10 billion CFA Francs per year, and the materiality threshold was therefore set at 10 million CFA Francs, or one thousandth of annual revenues. In the NCC's opinion, this threshold is reasonable compared with the overall amount of revenue per year.

The Independent Administrator's ToRs, which stipulate the types of revenue, reporting templates, areas, period, currency and materiality threshold, were drawn up in conjunction with a Consultant funded by the European Union. These ToRs were approved by the NCC in June 2008.

During our second visit, the members of the NCC once again confirmed that they were satisfied with the templates and that the reason for the materiality threshold had been explained.

Validator's assessment

The reporting templates were included in the Independent Administrator's ToRs. These templates are based on the templates in the EITI Sourcebook (although the majority of these templates are designed for the oil and gas sectors and are not entirely suited to the mining sector). The templates were produced by the Collection and Reconciliation sub-committee. We were informed that e-mail discussions formed the basis of the majority of discussions about the templates and that the work was presented at a full session of the NCC. The minutes of this meeting state that the templates were presented to the extractive industry companies for comment and discussion on Thursday 13th March 2008. The government and civil society representatives were also present at this meeting.

The templates themselves are appropriate and contain all the necessary elements. The various totals listed under "Area 1" - i.e. those payments stipulated by Niger's mining and oil laws - must in any case be reported to the Ministry for Mines and Energy. These payments represent direct revenues from mining and no discussion is required about their inclusion.

The revenues included under "Area 2" are payments made by all companies operating in Niger and cover taxes and duties payable under Niger's current taxation and customs laws.

The significance (or materiality) threshold for these payments has been set at 10 million CFA Francs. The reason for this level is explained above. The Independent Administrator confirmed that this amount represents one thousandth of total revenue in the sector, and on this basis he believes that this is a suitable level. We believe that this argument is valid for the first report. However, in future the NCC will need to

consider the significance of regional revenues and ensure that, where regional payments/revenues are substantial in comparison with total income in the region, such payments are considered materially significant.

During our missions to Niamey, we were able to confirm that the stakeholders approve the content of the templates. During our second mission to Niamey, we were informed that the ToRs for the next report will not contain a materiality threshold. In our opinion, the NCC will need to define the meaning of the term "material", as this question will undoubtedly be raised during the creation of the next EITI Report. In any case, the definition of "material" is of central importance to the EITI criteria (see Sourcebook). In our opinion, it should be included in the Independent Administrator's ToRs.

On this basis, and in light of the additional information we received about stream definitions and the materiality threshold during our second validation mission, Niger is compliant with this indicator.



3.10 INDICATOR 10: Is the multi-stakeholder group content with the organisation appointed to reconcile figures?

Purpose: An organisation will need to be appointed to receive the disclosed company and government figures, to reconcile these figures, and to produce the final EITI Report. This organisation is variously known as an administrator, reconciler, or auditor. It is vital that this role is performed by an organisation that is perceived by stakeholders to be credible, trustworthy, and technically capable.

Evidence: To give this indicator a tick, the Validator will need to see evidence that the multi-stakeholder group were content with the organisation appointed to reconcile figures. This could include the following evidence:

- o TORs agreed by the multi-stakeholder group;
- o transparent liaison with the EITI Secretariat and Board to identify potential Validators;
- o agreement by the multi-stakeholder group on the final choice of organisation.

Progress

The “Collection and Reconciliation” sub-committee is responsible for considering and adopting the Terms of Reference for reconciliation. The ToRs were adopted at a meeting of the sub-committee on 8th April 2008. It is noted in the minutes of this meeting and in other correspondence related to the adoption of the ToRs that it seemed difficult to achieve a quorum within this sub-committee. However, we were informed that e-mail exchanges formed the basis for the majority of discussions on this issue. During our second visit to Niamey, we were able to inspect these e-mails and the minutes of the sub-committee meeting on 26th September 2007, at which the ToRs were on the agenda. We have not seen the minutes of the NCC's discussions on this issue, or those regarding the full-session approval of the ToRs, as these minutes could not be located. Nevertheless, at a full session of the NCC on 11th May 2010, a civil society representative confirmed that the ToRs had been discussed by the NCC on several occasions.

Notification of a competitive bidding process was published in the national newspapers and in the newspaper Jeune Afrique. Seven firms responded to the bidding process, including one from outside Niger. The contract was funded by the European Union in the context its support for Niger's mining sector: the Programme to Strengthen and Diversify the Republic of Niger's Mining Sector – 8 ACP NIR 054. The procedures stipulated by the EDF were followed in awarding this contract.

The firm selected to carry out the reconciliation exercise was pre-selected (from six bids, including one from outside Niger) by a bid analysis committee in accordance with EDF procedures and the government procurement code, and this decision was ratified by the NCC based on the firm's qualities, skills and credibility.

The NCC informed us that the stakeholders looked at the issue of conflict of interest in particular and there was unanimous agreement on the selection of the Niger-based firm.

CCII were informed that they had been awarded the contract by letter, Ref. 150/2009/PRDSM/CPG.OH.JNB-TWM, dated 21st April 2009. The NCC approved the choice of Independent Administrator at its session on 28th April 2009 and the successful bidder, CCII, was presented to the NCC on 5th May 2009.

For the preparation of the second report, the NCC published a call for expressions of interest in the Jeune Afrique newspaper, the Niger daily newspaper Le Sahel and the ROTAB (PWYP) newsletter. Twenty (20) bids were received, including thirteen (13) from firms outside Niger.

Stakeholder views

The NCC informed us that the Independent Administrator selection procedure for the first report was based on a DAO competitive bidding process that complied with EDF procedures and the government procurement code.

With regard to the Terms of Reference, a number of e-mail discussions took place and the ToRs were eventually validated by the NCC. In this respect, we were reminded that the sub-committees are sub-divisions of the NCC and that they only meet to discuss technical preparation issues for formal NCC meetings. Decisions are made in full-session meetings of the NCC.

During our first session with the NCC, we questioned the reliability of using a Niger-based firm and raised the possibility of associated impartiality issues. The opinion expressed supported the involvement of a Niger-based firm, due to the fact that such a firm was likely to be familiar with the sector and the country. During a meeting at his offices, the Director of Public Accounts indicated that he had no concerns over CCII's abilities and stated that they were honest and open in their discussions. However, it is also clear that budgetary concerns influenced the choice of a Niger-based firm.

During the NCC meeting on 23rd June 2009, civil society members raised the issue of the independence of a Niger-based administrator in light of EITI principles. The minutes of this meeting indicate that this question had been raised by the EITI in Berlin and that the question remains open within the organisation. According to the NCC, the selection of a Niger-based firm does not raise any issues, as the only important factors are the service provider's skill and the quality of work provided, based on the principle of open competition.

Validator's assessment

We have not seen the minutes of the meeting at which the National Consultation Committee approved the ToRs although, as stated above, they were examined by a sub-committee. The minutes of the NCC meeting on 28th April 2009 indicate that the selection of CCII was ratified. The letter sent to CCII informing it of the contract award was dated 21st April 2009.

The fact that a competitive bidding process was used, and that the analysis of the technical and financial bids complied with the EDF adjudication procedures and government procurement code, provides reassurance that the process was transparent.

Niger is compliant with this indicator.

3.11 INDICATOR 11: Has the government ensured that all companies will report?

Purpose: The EITI Criteria require that all companies – public (state owned), private, foreign and domestic – report payments to the government, according to agreed templates, to the organisation appointed to reconcile disclosed figures.

The government will need to take all reasonable steps to ensure that all companies do report. This might include the use of voluntary agreements, regulation or legislation. It is recognised that there might be good (albeit exceptional) reasons why some companies cannot be made to report in the short term. In this situation, government must demonstrate that they have taken appropriate steps to bring these companies in to the reporting process in the medium term, and that these steps are acceptable to other companies.

Evidence: To give this indicator a tick, the Validator will need to see evidence that the government has done one of the following:

- o introduced/amended legislation making it mandatory that companies report as per the EITI Criteria and the agreed reporting templates;
- o negotiated agreements (such as Memoranda of Understanding and waiver of confidentiality clauses under production sharing agreements) with all companies to ensure reporting as per the EITI Criteria and the agreed reporting templates;
- o where companies are not participating, the government is taking generally recognised (by other stakeholders) steps to ensure that these companies report by an agreed (with stakeholders) date.

Progress

On 13th March 2008, during a meeting with the extractive industry companies, the Director of the Prime Minister's Office informed these companies about the EITI. He requested (via official letter Ref. 250/DIRCAB/PM/SP/ITIE, dated 3rd April 2008) the cooperation of the companies and asked them to submit their payment reports based on a provisional EITI template and to send a signed copy of the report to the Permanent Secretariat. A reminder (Ref. 260/DIRCAB/PM/SP/ITIE, dated 10th April 2008) was sent to those who had not yet submitted their reports. The reporting companies were determined based on the Mines Department's annual list for the year 2008. The reports covered streams for the years 2005, 2006 and 2007. The list of companies is attached to the letters. We were informed that this list is complete.

All the companies with significant payments submitted reports (in particular, SOMAIR, COMINAK and SML). Those companies that did not report (PETRONAS, Vergene, North Atlantic Resources and Rio Tinto) were no longer operating in Niger during the collection process. The government did, however, report payments received from these companies.

All the company reports were made available to the Independent Administrator.

More generally, the Mining and Oil Codes require companies to communicate their financial statements to the relevant government departments and there is therefore no need to put specific agreements in place. Furthermore, the government is a shareholder in all companies in production and therefore receives a copy of these companies' accounts.

Letter Ref. 394/DIRCAB/PM/SP/ITIE, dated 6th April 2009, requested that the companies send their figures for 2008, in anticipation of producing a subsequent report.

Stakeholder views

We were informed that the Ministry for the Economy and Finance strictly regulates the payment of various taxes and duties and the deadlines for these payments.

With regard to the possible enactment of an "EITI Law", civil society believed that a change in the law would be a good thing, and the companies agreed. It would be useful to discuss this at a future NCC meeting in order to make recommendations to the government.

Validator's assessment

The government has contacted all mining and oil companies (whether in production or exploration) to request payment reports. The law requires companies to provide their financial statements to the relevant government departments for tax purposes and the information required for the EITI is the same. All the companies that we met, including the producing companies, had willingly filled in the EITI templates and had already provided reports for 2007, 2008 and 2009.

Niger is compliant with this indicator.

3.12 INDICATOR 12: Has the government ensured that company reports are based on audited accounts to international standards?

Purpose: The EITI Criteria require that all data disclosed by companies is based on data drawn from accounts which have been audited to international standards. This is a vital component of EITI implementation.

Evidence: To give this indicator a tick, the Validator will need to see evidence that the government has taken steps to ensure that data submitted by companies is audited to international standards. This could include the following evidence:

- o government passes legislation requiring figures to be submitted to international standards;
- o government amends existing audit standards to ensure that they are to international standards, and requires companies to operate to these;
- o government agrees an MoU with all companies whereby companies agree to ensure that submitted figures are to international standards;
- o companies voluntarily commit to submit figures audited to international standards;
- o where companies are not submitting figures audited to international standards, the government has agreed a plan with the company (including SOE) to achieve international standards against a fixed time-line;
- o where figures submitted for reconciliation are not to audited standards, the multi-stakeholder group is content with the agreed way of addressing this.

Progress

The Mining Code requires mining companies in the country to “produce detailed accounts in accordance with the current accounting plan in Niger, accompanied by supporting evidence enabling their accuracy to be verified” and “to have these financial statements audited annually at their own cost by a recognised firm of accountants authorised to practise in Niger”.

The Oil Code requires the Contractor (the oil company) and the government to agree on an accounting plan that is “in accordance with the accounting rules, principles and methods set out in OHADA’s [Organisation for the Harmonisation of Business Law in Africa] SYSCOA [West African Accounting Standards] accounting plan and with generally accepted accounting practices in the international oil industry, provided the latter do not contradict the SYSCOA accounting plan”.

In line with OHADA’s Uniform Act adopted on 17th April 1997 relating to commercial companies and economic interest groups, the law in Niger requires companies to have their accounts audited and certified to international standards by an external auditor. OHADA does not stipulate that the audit must comply with International Auditing Standards, as published by the International Auditing and Assurance Standards Board, which is part of the International Federation of Accountants (IFAC). Niger is not a member of IFAC.

The mining companies in production in the country form part of larger international groups and they are accustomed to preparing financial reports for parent companies that are audited to international standards. These companies are therefore able to provide assurances in this regard. Privately-owned companies

currently undertaking exploration could, however, have more difficulty than larger companies in providing a separate audit.

With regard to the period covered by the first report, there were no specific agreements with the companies requiring confirmation that the EITI Reports were based on accounts audited to international standards. The Independent Administrator has stated that he neither requested nor examined certified accounts, nor requested confirmation that the reports were made on the basis of audited accounts, although the Independent Administrator's Terms of Reference do specify that the reports must be based on audited figures.

The issue of audited accounts was discussed at the NCC meeting on 23rd June 2009. The PS/EITI confirmed that the audit issue was crucial and expressed the opinion that the audit performed by the auditors to SYSCOA/OHADA standards represents an audit to international standards. Civil society invited the companies to provide the Independent Administrator with the auditors' reports and the companies present confirmed that their reports were based on certified accounts. They also confirmed the availability of these certification reports. It should be noted that, following a request from the Independent Administrator, SML provided him with their auditor's report and that the other companies in production (COMINAK and SOMAIR) mentioned that their certified accounts were available.

Stakeholder views

The companies in production (COMINAK, SOMAIR and SML) have their accounts audited at the end of the financial year and certified by external, internationally reputable auditors (KPMG, Deloitte, etc.) They have agreed in the future to have these figures certified by the auditors and/or their Board. Furthermore, the companies that belong to the AREVA group (COMINAK and SOMAIR) have introduced an internal system that requires EITI reports to be signed by three senior individuals: the Managing Director, the Auditor General and the company's EITI lead.

The members of the NCC are clearly convinced that SYSCOA/OHADA is an international standard applicable in Africa, and in West Africa (WAEMU) in particular, of which Niger is a member. The accounts of the companies in production are drawn up in accordance with this standard. Company account certification is a legal requirement in Niger.

In light of the discussions within the NCC and the willingness of the companies currently involved to comply with this indicator, the NCC is satisfied that the figures were adequately audited. Furthermore, following the meetings held during our first visit, the NCC members carried out their own investigations into this issue to ensure that the SYSCOA/OHADA standards produce adequately certified accounts.

Validator's assessment

In Niger, there is no requirement for companies to prepare accounts audited to international standards as stipulated by the International Auditing and Assurance Board (IAASB), which is part of the International Federation of Accountants (IFAC), an international body with 140 members worldwide. The government has not taken action to ensure that the auditing standards that apply to company accounts comply with these international auditing standards. Furthermore, the government has not introduced a protocol by which companies submit figures that comply with these international standards.

The companies that submitted reports during the EITI reconciliation exercise did not have their figures audited and the government has no plans to make this compulsory.

The NCC has debated this issue for some time, both during discussions on the first Independent Administrator's report and subsequently. During our second visit, the NCC working group and the full-session NCC meeting discussed the impact of preparing accounts under the SYSCOA/OHADA system. Discussions also

focused on the measures undertaken by the country's major companies to have their accounts audited to a standard with which the main international shareholders and auditors were satisfied.

Despite the fact that this indicator requires the government to ensure that company reports are based on accounts audited to international standards, we are satisfied that the NCC has fully considered the nature of the company reports and has conducted in-depth discussion on the issues underlying the figures presented. In our opinion, although this issue has not been fully resolved in Niger, progress has been made.

On this basis, Niger is compliant with this indicator.

Further clarification of the EITI requirements in this area would be welcome, and we recommend that the NCC consider its opinion on the issues raised by this indicator during the assessment of each EITI Report.

3.13 INDICATOR 13: Has the government ensured that government reports are based on audited accounts to international standards?

Purpose: EITI criteria require that all data disclosed by the government is audited to international standards.

Evidence: To give this indicator a tick, the Validator will need to see evidence that the government has taken steps to ensure that data submitted is audited to international standards. This could include the following:

- o government passes legislation requiring figures to be submitted to international standards;
- o government amends existing audit standards to ensure they are to international standards, and ensures compliance with these;
- o where figures submitted for reconciliation are not to audited standards, the multi-stakeholder group is content with the agreed way of addressing this.

Progress

Verification of government accounts in Niger is subject to the principle of a separation of powers, which requires that the government submit its budget for the consideration and approval of the National Assembly before it can be enacted by the President of the Republic by means of a Finance Law or Budget Review Act.

Audit Office certification is required for the Budget Review Act to be adopted by Parliament and for the government to be able to implement its budget. The Audit Office was set up on the recommendation of the European Union, Niger's primary development partner, in order to secure direct, non-targeted budgetary funding. This funding accounts for 63% of the current tenth EDF national indicative programme. The members of the Audit Office are all sworn, senior magistrates.

Implementation of the annual budget is first verified by the Audit Office which, once satisfied with its consistency, produces a certificate of compliance. An advisor from the Audit Office presents the Draft Budget Review Act to the National Assembly for consideration and approval before this law is enacted by the President of the Republic. This exercise is in itself a kind of audit of the government accounts which is, in the NCC's opinion, universally accepted. However, it should be noted that some less significant EITI streams are not specifically separated out in the accounts, which are aggregated.

At a meeting on 23rd June 2009, the NCC considered the issue of government account certification. Following a question from a civil society member, the PS/EITI explained that this issue was a cause for concern at government level. He asked the Independent Administrator to take the Budget Review Act into account by rephrasing his assessment of data quality verification.

The Budget Review Act for 2005 was enacted by means of Law No. 2007-27 of 3rd December 2007 and the Act for 2006 was enacted by means of Law No. 2008-43 of 24th November 2008. These laws are published in the Official Journal.

Stakeholder views

All parties were familiar with the Budget Review Act, although the exact process is not universally understood. The stakeholders did not have an informed understanding of the reliability of the government funding regulation procedures designed to ensure that accounts are verified. One of the NCC members representing the government was of the opinion that budget approval and implementation by the National Assembly was not sufficient to provide the assurances required by this indicator.

The NCC expressed its confidence in the Audit Office's reports and is therefore content with the way of addressing this issue. The NCC expressed the opinion that the way in which this indicator is defined does not reflect the reality in Niger.

Validator's assessment

In light of the difficulty in certifying the government's accounts to international standards, it would perhaps be useful to revise this indicator.

We recommend that, for future reports, the NCC should – after appropriate training – review how to apply this indicator. This could involve introducing a verification procedure carried out by a senior, sworn Independent Administrator.

Although the NCC expressed its satisfaction regarding the way in which the government's reports are handled, we feel there has not been enough informed debate on this issue. We can confirm that, during a meeting with the NCC on 19th August 2010 on our second mission to Niger, the issue of government report certification was discussed by several NCC members. As a result of this discussion, we suggested that a draft procedure be drawn up to improve confidence in government reports for the EITI.

Based on the way in which this indicator is defined, Niger is not compliant with this indicator.

3.14 INDICATOR 14: Were all material oil, gas and mining payments by companies to government (“payments”) disclosed to the organisation contracted to reconcile figures and produce the EITI Report?

Progress

The PS collected company payment reports before the Independent Administrator was appointed. This approach served to accelerate the collection process. Furthermore, because the government regularly requests such reports, this approach is likely to ensure that figures are reported promptly after the end of the financial year concerned.

The PS informed us that all reports from extractive industry companies were submitted to the Independent Administrator (CCII) by means of the reporting template, including reports by exploration companies. However, the Independent Administrator's remit was to focus only on revenues of 10 million CFA Francs or more, as this was the materiality threshold set by the NCC. During the years in question, there were no oil or gas-producing companies.

The EITI Report 2005-2006 for Niger raises two questions in particular:

- i. Were all payments referred to in the Indicator reported to the Independent Administrator?
- ii. Was the process independent and transparent?

The NCC has concluded that all the payments were disclosed to the independent Administrator. In his report, the Independent Administrator only included payments above the materiality threshold set by the NCC. As mentioned above, SONICHAR was excluded from the scope of this report. Our comments on this omission can be found in Section 3.7. The NCC is going to review its decision to exclude SONICHAR for future reports.

With regard to the independence of the process, the ToRs specify that the Independent Administrator shall himself be responsible for data collection and will need to “*communicate with all stakeholders and obtain the necessary information.*” As explained above, the actual process followed was different. The reports were collected by the PS, following the letters sent by the Prime Minister's Office (see Section 3.7). Additional information and clarification requests were sent by the PS.

In the minutes of the NCC meeting of 5th May 2009, it was reported that CCII had expressed a wish to communicate with the companies for the purposes of data collection. In response, the PS/EITI specified that data collection was the responsibility of the EITI Permanent Secretariat, through the sub-committee for Collection and Reconciliation, which establishes, among other things, the categories of revenue to be considered and the frequency of the Report. Where absolutely necessary, the PS/EITI assured CCII that it would facilitate access to the companies to speed up the task. Nevertheless, it was decided that the PS/EITI and CCII would agree “appropriate steps to ensure the ethical nature of the mission, out of strict respect for the confidentiality of documents and the independence of all structures concerned”. The PS/EITI also reassured the participants of its willingness to find a solution to all of CCII's requests.

In a meeting of the NCC on 23rd June 2009, it was noted that “the PS/EITI did not consider it appropriate to facilitate direct relations between CCII and the reporting entities, given that this prerogative was devolved to the Collection committee”. This is consistent with what the CCII told us - that the firm had for the most part informed the PS of any issues arising, and the PS had attempted to resolve these issues.

The Independent Administrator informed us that he had only been in direct contact with one of the companies concerned, and that he had met the Ministry for Mines Statistics Department and the Hydrocarbons Department to seek explanations concerning government shareholdings. All other contact was made through the intermediary of the Permanent Secretariat.

The data collection aspect of the EITI Report compilation process did not comply with the Sourcebook or ToRs, as the Permanent Secretariat carried out the data collection process on behalf of the Independent Administrator. However, we were informed of the NCC's desire for the Independent Administrator to carry out his task via the intermediary of the Permanent Secretariat. In the NCC's opinion, the Independent Administrator was free to meet the government divisions and reporting companies concerned if he so wished. In reality, the Independent Administrator only visited two mining companies to request additional clarifications.

Stakeholder views

The National Consultation Committee informed us that the PS/EITI did not believe that it was necessary to facilitate direct contact between CCII and the reporting entities. However, this did not prevent the Independent Administrator from making direct contact with the reporting bodies if he so wished. The fact that additional information requests were made through the PS/EITI was solely to facilitate the exchange of information. Furthermore, the NCC reminded us that the Independent Administrator had visited the Ministry for Mines and Energy. During this visit, he had been given access to the Mining Agreements, which contain details of the payments that companies are required to make to the government.

The stakeholders that we met were satisfied with the information provided for the 2005 and 2006 reports. Certain stakeholders, however, noted that some payments made in the regions could not be reconciled. These figures related to payments made to decentralised departments of the Ministry for the Economy and Finance in Tillabéry and Arlit (departments located in mining areas). It was not possible to reconcile these payments due to delays in revenue reporting by these decentralised structures. The PS carried out additional work to resolve the issue of reconciliation of these payments (see Sections 3.15 and 3.17). This work was subsequently approved by the NCC. The amounts in question were not significant (less than one thousandth of annual revenue).

We examined these issues during the second validation mission, initially at an NCC-appointed working committee following two full sessions on 13th and 16th August 2010, where the Validation Committee's comments on the draft report were discussed, and subsequently at a full session on 19th August 2010. The NCC members were satisfied that the Independent Administrator had received all payment reports and believed that he was able to verify these declarations with total freedom.

Validator's assessment

The Independent Administrator's report for 2005 and 2006 indicates discrepancies between the companies' and the government's reports. The Independent Administrator prepared an initial summary of the streams identified. The published version contains modifications based on additional work carried out by the PS, resulting in more comprehensive data reconciliation (see Section 3.17). This summary can be understood by a non-expert audience.

SONICHAR, which mines coal to supply electricity to mining companies, was excluded from the scope of the 2005-2006 report. As indicated in section 3.7 of this report, we believe that the exclusion of SONICHAR from the first report did not have an impact. The mining companies' subcontractors were also excluded from the scope of the report. An assessment should be made as to whether the reports of these subcontractors are covered by the scope of the EITI in Niger.

During our second mission to Niamey, we were able to inspect the company report documents and assess the extent of the information supplied to the Independent Administrator.

The report produced for 2005-2006, the government's information collection work and the dissemination of the Independent Administrator's results are all promising. Despite the fact that the Independent Administrator

did not visit two of the mining companies, we believe that he received faithful reports of all payments made by companies to the government and was able to prepare a reliable report that reflects reality.

We recommend that, for future reports, the Independent Administrator should visit the reporting entities in person, where deemed necessary, to obtain all the information he needs, in order to ensure the independence of his report.

Niger is compliant with this indicator.

3.15 INDICATOR 15: Were all material oil, gas and mining revenues received by the government (“revenues”) disclosed to the organisation contracted to reconcile figures and produce the EITI Report?

Progress

The PS collected government agency revenue reports before the Independent Administrator was appointed. This approach served to accelerate the collection process. Furthermore, because the government regularly requests such reports, this approach ensures that the figures are collected promptly after the end of the financial year concerned.

The PS informed us that all reports made by government entities via the reporting template were sent to the Independent Expert. However, the Independent Administrator's remit was to focus only on revenues of 10 million CFA Francs or more, as this was the materiality threshold set by the NCC. The Independent Administrator met with the Ministry for Mines Statistics Department and the Hydrocarbons Department to seek explanations concerning government shareholdings. He informed us that, during this visit, he was able to inspect the Mining Agreements, which detail the various payments due from companies.

The PS provided us with correspondence between the Director of the Prime Minister's Office and the Ministries in question concerning revenue disclosure requests, for 2005 and 2006 and for subsequent years. However, the discrepancies identified by the Independent Administrator included the fact that the Area 2 revenues declared by some government entities were incomplete. This was due to the fact that certain decentralised departments of the Ministry for the Economy and Finance in Tillabéry and Arlit (departments located in mining areas) were not identified. The PS/EITI subsequently carried out further work which resolved a large number of these discrepancies (see also Section 3.17).

During our second validation mission to Niamey, we had the opportunity to inspect a summary of revenues from fixed rights and surface royalties from all extractive industry companies for the years 2005 to 2007. This summary, which was prepared by the Administrative and Financial Affairs Department of the Ministry for Mines and Energy, provided us with an assurance that all revenue reports collected (both above and below the materiality threshold) were made available to the Independent Administrator. We were able to confirm that all the companies that had made payments above the materiality threshold set by the NCC were included in the Independent Administrator's report. We were also able to inspect the computerised records prepared by the Customs Department.

Stakeholder views

The National Consultation Committee is satisfied that the figures presented by the government include all material revenues.

Validator's assessment


The Independent Administrator's report for 2005 and 2006 indicates the discrepancies identified between the companies' and the government's reports.

We were able to verify the amounts reported by the extractive industry companies and confirm that all the companies that had made payments above the materiality threshold set by the NCC were included in the Independent Administrator's report.

The Independent Administrator visited the Ministry for Mines to inspect the Mining Agreements and revenue reports. We can confirm that revenues from mining companies and oil companies will now be recorded separately and that these records will be signed by the registrar before being disseminated.

We can also confirm that the Independent Administrator commented on the fact that some revenues were not sent to him. These revenues correspond to payments made to the above-mentioned decentralised departments of the Ministry for the Economy and Finance (departments located in mining areas). We are able to confirm that the PS has successfully carried out additional work to clarify these revenues.

Niger is compliant with this indicator.



3.16 INDICATOR 16: Was the multi-stakeholder group content that the organisation which was contracted to reconcile the company and government figures did so satisfactorily?

Progress

NCC members indicated that the local firm chosen, according to European Commission procedures, has extensive auditing experience and that its experts have a very good understanding of mining issues. We were told that the NCC approved the Independent Administrator's report without major reservations, specifically at its meetings on 23rd June 2009, 12th August 2009 and 6th October 2009.

The comments concerning the report collection and verification methodologies expressed in 3.14 and 3.15 also apply to this indicator.

Stakeholder views

A discussion on the independence of the local firm was initiated by civil society during the NCC meeting of 23rd June 2009. No negative opinion was forthcoming with regard to CCII's capacity, however. All stakeholders stated their satisfaction that Niger had produced its first EITI Report and said that they had made an effort to disseminate this report as widely as possible.

Validator's assessment

Niger is compliant with this indicator.

3.17 INDICATOR 17: Did the EITI Report identify discrepancies and make recommendations for actions to be taken?

Progress

The EITI Report clearly identified discrepancies and recommendations were made.

The discrepancies identified in the report stem from the following aspects:

- The reports from some government institutions did not include all revenues paid by the companies included in the data collection exercise for the 2005–2006 period. This relates to taxes for Area 2, particularly taxes due from staff, customs duties and VAT
- Some discrepancies are due to a time lag between the year of payment and the year of encashment (application of the rule of cash basis accounting)
- Global reports (failure to take into account payments made by companies directly to the regions).

The PS carried out additional work in this area, as explained in the summary of the first EITI Report (available online). As a result of this work, it was discovered that the majority of the discrepancies related to a failure to take into account decentralised departments of the Ministry for the Economy and Finance (departments located in mining areas) and a failure to allow for different accounting periods (overlap between years). This work is described below in the summary of results.

The Independent Administrator made a number of recommendations and comments. Among other things, the Independent Administrator noted that the materiality threshold of 10 million CFA Francs seems appropriate, as it represents around one thousandth of the total sector contribution.

The recommendations focus, among other things, on:

- strict adherence to the reporting templates, particularly the completion of all sections
- more information on the reports explaining who is responsible for completing them
- Report monitoring: implementation of the Ministry for Mines and Energy's standards with regard to mining company audits, in particular monitoring of the tax base for the various taxes.

The other recommendations focused in particular on the data collection mechanisms.

The discrepancies identified in Area 1 and 2 streams for 2005 are positive, i.e. the government declared more than the companies. The discrepancy for 2006 is negative. The PS carried out additional work to redress this issue, to ensure that the discrepancies are justifiable and to avoid unnecessary debate and controversy.

The payment/revenue reports contained in the Independent Administrator's report, and the corresponding figures, are given below for information purposes.

	Companies	Government	discrepancy
	(In billion CFA Francs)		
2005			
Independent Adm. Report	7.885	7.806	0.079
PS/EITI corrected report	7.925	7.836	0.089
2006			
Independent Adm. Report	12.161	12.012	0.149
PS/EITI corrected report	12.189	12.112	0.077

Explanation of discrepancies: the majority of these discrepancies relate to Area 2 streams

- Government reports are included (for absent companies)
- Overlap between years
- Reports from decentralised government entities (Tillabéry and Arlit).

Stakeholder views

The minutes of the NCC's meetings indicate that the Independent Administrator's report, conclusions and recommendations were discussed during the sessions of 23rd June 2009 and 12th August 2009.

During meetings with the stakeholders, a unanimous opinion was expressed that the Independent Administrator had clearly identified the discrepancies, and that the conclusions and recommendations were accepted by the NCC.

Validator's assessment

Niger is compliant with this indicator.

3.18 INDICATOR 18: Was the EITI Report made publicly available in a way that was publicly accessible, comprehensive and comprehensible?

Purpose: The EITI is ultimately fully implemented when the EITI Report is made public and is widely disseminated and openly discussed by a broad range of stakeholders. The EITI Criteria require that the Report is publicly available in a way that is publicly accessible, comprehensive and comprehensible.

Evidence: To give this indicator a tick, the Validator will need to see evidence that the government has ensured that the Report was made publicly available in ways that are consistent with the EITI Criteria, including by:

- o producing paper copies of the Report, which are distributed to a wide range of key stakeholders, including civil society, companies, the media and others;
- o making the Report available on-line, and publicising its web location to key stakeholders;
- o ensuring that the Report is comprehensive and includes all information gathered as part of the Validation process and all recommendations for improvement;
- o ensuring that the Report is comprehensible, including by ensuring that it is written in a clear, accessible style and in appropriate languages;
- o ensuring that outreach events – whether organised by government, civil society or companies – are undertaken to spread awareness of the Report.

Progress

The Independent Administrator prepared a summary report that was presented at a meeting of the NCC on 12th August 2009.

A summary was published, and we can confirm that this summary provides the overall results of CCII's report, as well as detailed figures that have been amended from those contained in CCII's report and its summary. CCII did not have the opportunity to review this amended summary. The summary clearly states (and the PS confirmed) that the PS undertook additional work that enabled the figures to be updated and the discrepancies reduced. As a result of this additional work, it was discovered that the majority of the discrepancies related to a failure to take into account decentralised departments of the Ministry for the Economy and Finance and a failure to allow for different accounting periods (overlap between years). This summary was published in the local newspapers (the government's daily paper and CSO newsletters), around 1,500 copies were printed, and presentation campaigns were held in the country to disseminate this summary, particularly in mining and oil-producing regions, in February and March 2010. Local-language workshops also took place.

During the last session of the National Consultation Committee, from 29th July to 12th August, some 60 copies of the summary of the first report were sent to advisors.

The report, and in particular the summary, are comprehensible and the payment/revenue reports are broken down by company (and therefore disaggregated).

The report summary was published in the press (Le Sahel Dimanche on 6th November 2009), where aggregated payments and revenues were commented on and disaggregated tables published. The article

mentions that the report was prepared by CCII. The “Transparency” newsletter of Publish What You Pay, Niger, and the GREN Information Newsletter also reported on the publication of the first EITI Report.

A poster was published and widely disseminated, in two large formats. We can confirm that it was displayed at the entrance to the meeting room and library of the Association Nigérienne des Droits de l’Homme (ANDDH). The civil society representatives confirmed that this poster had been widely displayed in all regions.

The report and its summary are available on the website (www.itieniger.ne).

Stakeholder views

The stakeholders are all agreed that the dissemination efforts have been productive.

In particular, civil society members described the important face-to-face contact that has taken place at community level, where public events have taken place in local languages.

Validator’s assessment

There have been significant efforts to disseminate the report in Niger. The production of posters complements the efforts of all stakeholders and is a commendable initiative. The posters, leaflets and brochures prepared by the NCC provide a comprehensive and comprehensible summary.

Niger is compliant with this indicator.

3.19 How have oil, gas and mining companies supported EITI implementation?

Purpose: In accordance with the EITI Principles and Criteria, all companies operating in the relevant sectors in countries implementing the EITI have to disclose material payments to the government in accordance with agreed reporting templates and to support EITI implementation. This includes: expressing public support for the Initiative; taking part in, or supporting, the multi-stakeholder process; disclosing agreed data, which is audited to international standards; and cooperating with the Validator where they have queries over Company Forms.

Evidence: This indicator does not require the Validator to provide an overall assessment. The Validator should provide a written assessment in the EITI Validation Report based on the self assessed Company Forms (below) which each company is required to complete. Where companies do not fill in forms, the Validator should note this in the final Report. In addition, the Validator should include in the final report any relevant information on the company concerned that is already in the public domain. The company should be given the opportunity to check this information. As well as using the forms to summarise company performance in the EITI Report, the forms should be publicly available and a table collating company responses should be included in the EITI Report. The Validator should contact all the companies required to fill in forms

at the start of the Validation, inform them of the requirement to complete the form and request that the forms be returned to the Validator. In addition, the Validator should ask companies to comment on lessons learnt and best practice. Companies will have two ways of providing such comments:

- o companies can use the space provided on the self assessment forms, or
- o companies can provide verbal evidence to the Validator where issues the company wishes to note are of a sensitive nature. The Validator will summarise anonymised lessons and experiences in the Validation Report. The self-assessment form should be filled in, in the first instance by the company, as follows:

Country-level:

- o Each oil, gas or mining company active in the country being validated should complete a country-level Company Form as a self-assessment and should submit it to the Validator.
- o The national Validator will collate responses and may contact companies if they have additional questions or require further supporting information. Companies should respond positively to such requests.
- o Companies should make forms for each country of operation publicly available on their external websites

International level:

- o Companies that have made international commitments to support the EITI should fill in an international-level self-assessment form.
- o The international Company Form should be completed by each company and this should be sent to the EITI Secretariat who will put it on the EITI website.
- o Companies should also provide clear endorsement of the EITI on their website.

Progress

The companies in production support the EITI as it gives them a way of interacting with the communities and enables them to respond to questions that have been raised about their widely misunderstood practices for several years. There is less certainty over the enthusiasm of the exploration companies, but the PS and the NCC must continue to keep them informed of the objectives and implementation of the EITI.

The main mining companies in production in Niger are represented on the NCC. These representatives are senior executives who play an active role in the NCC's activities.

The updated list of extractive industry companies, prepared by the Mining Division of the Ministry for Mines, contains a total of 49 companies. Having inspected this list, and in light of information provided by the PS, we can confirm that only 31 of these companies are actually represented in Niger. The SP sent self-evaluation forms to these 31 companies. The list is included in Appendix 2, which also contains details of the companies included in the 2005-2006 report, of which two are no longer active in Niger.

We can also confirm that, in several cases, the same group is recorded more than once and/or two companies are represented by the same entity in Niger. As a result, the total number of responses expected to these self-evaluation forms was 26.

We recorded a total of 9 responses, all from companies currently in production.

In the NCC's opinion, the majority of exploration companies undertake exploration work via their representatives in Niger. These representatives are forced to contact their company's headquarters to answer any questions that do not relate to field work.

Validator's assessment

The responses from those companies that returned their self-evaluation forms are analysed in the table below.

Company	Question (National Form)					Remarks
	1	2	3	4	5	
COMINAK	Yes	Yes	Yes	No	Yes	
SOMAÏR	Yes	Yes	Yes	Yes	Yes	
SML	Yes	Yes	Yes	Yes	Yes	
AREVA-NC-Niger	Yes	Yes	Yes	No	No	Mining exploration company
Orezone Resources Inc.	No	No	Yes	Yes	Yes	Mining exploration company
Trendfield Holdings SA ¹	Yes	Yes	No	No	No	Reporting templates not submitted. Mining exploration company
Niger Mining Services SARL ¹	Yes	Yes	Yes	Yes	Yes	Mining exploration company
Delta Exploration Inc. ¹	Yes	Yes	Yes	Yes	Yes	Mining exploration company
Island Arc Exploration Corp. ¹	Yes	Yes	Yes	Yes	Yes	Mining exploration company

Note 1: These companies were not present in Niger in 2005 and 2006.

Despite the poor response rate, it is encouraging to note that the companies in production expressed their support for the EITI. COMINAK and SOMAÏR provided additional details relating to the various indicators and, in particular, confirmed that their accounts are audited by internationally reputable auditors.

Some companies that returned their self-evaluation forms noted that they were undertaking exploration.

The results of this exercise confirm that additional efforts are required to encourage exploration companies to participate.

3.20 What steps have been taken to act on lessons learnt, address discrepancies and ensure that EITI implementation is sustainable?

Purpose: The production and dissemination of an EITI Report is not the end of implementation of the EITI. The value comes from the process as much as the product, and it is vital that lessons learnt in implementation are acted upon, that discrepancies identified in the EITI Report are addressed and that EITI implementation is on a stable, sustainable footing.

Evidence: The Validator should see evidence that a review mechanism has been established that takes account of the purpose outlined above. The Validator should comment on this in the Validation Report.

Progress

At this point, it is worth recalling our main assessments of EITI implementation in Niger and commenting on past and future actions. We have indicated that the budget for funding the first EITI Report was insufficient. We have also indicated that the scope of future reports could be enlarged, which is likely to result in higher production costs. To ensure the long-term sustainability of the EITI, the government needs to take measures to secure long-term funding of the Independent Administrator's work. We were informed that such measures are in progress.

The Independent Administrator's ToRs were adopted by the NCC but the process was not compliant. Once adopted, the conditions established in the ToRs need to be upheld. The NCC accepted these comments and stated that the new Independent Administrator will be instructed to undertake more verification activities.

The Work Plan has been amended and a new Plan for 2010 adopted. There is, however, no clearly-defined monitoring mechanism to date. This issue was discussed with the NCC, which took note of this concern.

Stakeholder views

The NCC provided us with details of the following actions, which have either already been implemented or are planned.

- 1) Collection

A computerised mining and oil revenue system will be introduced at the Permanent Secretariat to collect government and extractive industry reports in real time. This inter-connected network will provide the necessary confidentiality and security guarantees, will facilitate exchanges between reporting entities and will provide a mechanism for discrepancies to be corrected quickly. This computerised system is currently close to completion and will be launched soon.

- 2) Funding

The Permanent Secretariat is looking into ways of introducing a long-term EITI funding mechanism. The PS is also considering making improvements to the legal framework that underlies the process and reviewing the institutional system to guarantee the long-term sustainability of the EITI.

- 3) Capacity building

Implementation of the capacity building programme has begun.

On 18th and 19th June 2010, the Permanent Secretariat organised a capacity building workshop for NCC members, designed to improve their understanding of the extractive industry cycle.

On 22nd and 23rd June 2010, the Permanent Secretariat organised a capacity building workshop for NCC members, which focused on good governance and transparency in the extractive industry sector, focusing in particular on the exploration, investment and accounting cycle.

- 4) Communication

A communication strategy has been created to improve the visibility of the EITI. A website has been created (www.itieniger.ne) and outreach activities have been carried out by CSOs in local languages to disseminate EITI information to a wider audience.

Validator's assessment

During our second visit to Niamey, we were able to review our comments on EITI implementation in Niger, both at an NCC working committee meeting and at a full-session meeting of the NCC. Following these discussions, we gained a better understanding of the opinions of the NCC and stakeholders, and also clarified our own opinions about the preparation of the first EITI Report. As a result of these discussions, we have revised some of the conclusions expressed in our draft report.

We believe that this Validation exercise has provided an opportunity for NCC members and the PS to review their methods and practices, both in terms of EITI implementation and, more importantly, in relation to the preparation of future reports.

We suggested that the Work Plan should be used more effectively as a management tool, and we believe that this document should form part of a monitoring mechanism.

4 VALIDATION GRID

The following table gives a summary assessment of Niger's compliance with the indicators:

Indicator		Compliant?
SIGN-UP		
1.	Has the government issued an unequivocal public statement of its intention to implement EITI?	✓
2.	Has the government committed to work with civil society and companies on EITI implementation?	✓
3.	Has the government appointed a senior individual to lead on EITI implementation?	✓
4.	Has a fully costed Country Work Plan been published and made widely available, containing measurable targets, a timetable for implementation and an assessment of capacity constraints (government, private sector and civil society)?	✓
PREPARATION		
5.	Has the government established a multi-stakeholder group to oversee EITI implementation?	✓
6.	Is civil society engaged in the process?	✓
7.	Are companies engaged in the process?	✓
8.	Did the government remove any obstacles to EITI implementation?	✓
9.	Have reporting templates been agreed?	✓
10.	Is the multi-stakeholder group content with the organisation appointed to reconcile figures?	✓
11.	Has the government ensured that all companies will report?	✓
12.	Has the government ensured that company reports are based on audited accounts to international standards?	✓
13.	Has the government ensured that government reports are based on audited accounts to international standards?	x
DISCLOSURE		
14.	Were all material oil, gas and mining payments by companies to government ("payments") disclosed to the organisation contracted to reconcile figures and produce the EITI Report?	✓

Indicator		Compliant?
15.	Were all material oil, gas and mining revenues received by the government (“revenues”) disclosed to the organisation contracted to reconcile figures and produce the EITI Report?	✓
16.	Was the multi-stakeholder group content that the organisation which was contracted to reconcile the company and government figures did so satisfactorily?	✓
17.	Did the EITI Report identify discrepancies and make recommendations for actions to be taken?	✓
DISSEMINATION		
18.	Was the EITI Report made publicly available in a way that was publicly accessible, comprehensive and comprehensible?	✓
19.	How have oil, gas and mining companies supported EITI implementation?	N/A
20.	What steps have been taken to act on lessons learnt, address discrepancies and ensure that EITI implementation is sustainable?	N/A

5 CONCLUSIONS AND RECOMMENDATIONS

5.1 Validator's Conclusions on EITI Implementation in Niger

Niger has made significant progress in EITI implementation, for example:

- i. public EITI sign up declaration and the production and publication of a Work Plan for EITI implementation
- ii. establishment of a multi-stakeholder group with appropriate stakeholder representation
- iii. active dialogue between the main participants – government, companies and civil society
- iv. appointment of an Independent Administrator
- v. production, publication and dissemination of the country's first EITI Report for 2005 and 2006
- vi. publication of EITI activities in Niger
- vii. capacity building
- viii. communication strategy, website
- ix. computerised EITI revenue management system
- x. Independent Administrator selection procedure for the 2007, 2008 and 2009 report.

One aspect that could give rise to concerns among stakeholders and independent observers is the political landscape in Niger. In August 2009, civil society representatives suspended their participation in the EITI because of events that certainly had no direct link with the Initiative but which were clearly indicative of the pressure being exerted on the population not to criticise those in power. All stakeholders confirmed that, under the current transitional government, freedom of expression is now guaranteed. H.E. the Prime Minister and H.E. the Minister for the Economy and Finance also informed us that the transitional government intended to ratify initiatives such as the EITI in order to ensure their long-term continuation.

In terms of specific progress, our opinions on compliance with the indicators are detailed in the Validation Grid above. However, we do have comments with regard to some of the indicators.

The Work Plan is well-designed and has been revised. We suggest, however, that it should be viewed as a management tool and, for this reason, the PS should make regular presentations on compliance with deadlines and targets to sessions of the NCC. Achievements and failures could therefore be identified (and published) in order to help the Interministerial Committee in its monitoring activities and the PS in its management tasks.

Civil society representatives believe that the establishment of the EITI is an important step towards good governance and they are participating enthusiastically, despite the events of August 2009. We can confirm that the EITI framework is serving to improve contact, and therefore understanding, between the stakeholders.

The companies in production support the EITI as it gives them a way of interacting with the communities and enables them to respond to questions that have been raised about their widely misunderstood practices for several years. There is less certainty over the enthusiasm of the exploration companies, but the PS and the NCC must continue to keep them informed of the objectives and implementation of the EITI.

In terms of obstacles to EITI implementation, the legislative environment does not pose any particular problems. However, Niger should consider revising the EITI institutional system to ensure its long-term sustainability.

Finally, the EITI's sustainability also depends on the availability of adequate funding. The decree that sets out the EITI implementation structures in Niger stipulates that the Permanent Secretariat's running costs will be covered by the government budget, which confirms the government's commitment.

We have expressed reservations with regard to the Independent Administrator selection process and the methodology used for collecting and verifying the figures. The stakeholders must consider whether, in the future, a small local firm will be able to act with sufficient independence. The Independent Administrator must be able to visit companies and government agencies, as he deems necessary, to verify the figures and question the appropriate officials. The Independent Administrator will also need to ensure that EITI payment/revenue reports are appropriately certified and based on accounts audited to international standards.

The NCC, the PS and the Independent Administrator have learned lessons from the production of the first EITI Report covering the years 2005 and 2006. All the stakeholders, including the Interministerial Committee, must now demonstrate how these lessons will be taken into account in future reports and in the dissemination of the EITI's activities to the entire population of Niger.

We can confirm that the EITI Report published by Niger for 2005 and 2006 was adopted in 2009. The Independent Administrator selection process for the EITI report covering the years 2007, 2008 and 2009 is underway, and the publication deadline for this report is December 2010.

We can conclude that Niger is close to achieving compliance and that the failures identified in this report are, for the most part, the result of procedural problems. These procedures can be improved by drawing on the lessons learned from the preparation of the first EITI Report.

In light of the substantial progress made in EITI implementation, the government's commitment to support the process and the active participation of companies and civil society, it is our recommendation that Niger be declared a Compliant Country.

Finally, as Niger is currently governed by a transitional authority, we recommend that Validation be confirmed within two years, at least one year after the newly-elected government takes office.

5.2 Recommendations for future EITI actions in Niger

We recommend that the following actions are taken:

A. Strategic direction

The Interministerial Committee has responsibility, issued by decree, for defining the broad political and strategic directions of the EITI and for assessing the impact of EITI implementation on sustainable development. We recommend that this committee draft Niger's intentions under the EITI, including an explanation of the sources of funding for implementation, and approve a new Country Work Plan for 2011-2013, to be prepared by the National Consultation Committee and with the aim of putting this strategy into practice. This Plan will then need to be confirmed by the Interministerial Committee following the elections scheduled for the first quarter of 2011.

B. Implementation and monitoring

The National Consultation Committee will need to ensure the following:

- i. That a Country Work Plan for 2011–2013 is produced, following a similar format to the existing plan but with a budget for each programme and each year

- ii. That funding is available well in advance for each year's activities, bearing in mind that budget forecasts will need to be reviewed as progress is made
- iii. That it approves the expenditure incurred for the previous year in good time each year
- iv. That the progress of activities is monitored and measured against the Work Plan
- v. That each year's plan and actual progress in relation to targets are regularly published and disseminated.

We also recommend that stakeholder representation be reviewed from time to time to ensure that it remains up to date.

Sub-committee member appointments should also be reviewed periodically; it may also be useful to draft member selection criteria and processes.

Minutes of these sub-committee sessions should henceforth be written up and published.

C. Capacity building

The Work Plan includes training activities. These activities should be implemented as far as possible. It is important to secure long-term funding for these activities.

The necessary capacity building areas should be identified, wherever they have not yet been defined. The Country Work Plan for 2011-2013 should include the results of this study and set out a training programme designed to build capacity in these areas.

D. Obstacles to implementation

We recommend that the National Consultation Committee conduct an analysis of companies likely to form part of the EITI and define potential obstacles that may arise in the future, such as the entry of new players onto the market who may not be as supportive of the initiative as those currently operating in Niger. If necessary, the NCC should consider revising the EITI institutional system.

E. EITI Reports

- i. The Independent Administrator will need to have whatever right of access he deems necessary to visit the companies and government agencies to verify the figures and question the appropriate officials
- ii. Look further into the possibility of widening the scope of future EITI reports, for example to include SONICHAR, SNC, exploration companies and subcontractors
- iii. Reports for future years should be drafted quickly, with the aim of preparing the report for the current year and the next year. The materiality threshold that applies to the report should be reviewed and justified on a regular basis.
- iv. The recommendations made in CCI's report should be discussed and, if approved, the necessary actions should be incorporated into the Country Work Plan. These recommendations should be taken into consideration in the future when producing the Terms of Reference.
- v. Verification standards for government reports must be taken into consideration in the context of the EITI Criteria.

F. Audit environment

- i. In light of the accounting and audit standards in Niger, the National Consultation Committee will need to ensure that international accounting and audit standards are applied
- ii. Verification procedures for government revenue reports should be clarified and, where appropriate, the audit standard explained.

G. Communications

- i. The results of the current communication strategy will need to be analysed and, where appropriate, the strategy will need to be amended to further improve its scope
- ii. The website will need to communicate information relating to the EITI and the activities of the National Consultation Committee and Interministerial Committee on a regular basis. The PS should regularly contact companies or bodies that may not always be up to date with these activities and suggest that they visit the website.
- iii. Exploration companies should continue to be involved, along with any subcontracting companies, to improve their understanding of the EITI. For example, they could be kept up to date via a regular email and sent reminders encouraging them to visit the website.

H. Other

There is currently no association of mining (or oil) companies in Niger. Such an association would be beneficial to EITI implementation and would help to disseminate information among extractive industry companies. In the meantime, we feel that the companies represented on the NCC should increase their efforts to communicate information on the EITI to other extractive industry companies in Niger.

APPENDIX 1 – PEOPLE CONTACTED

NAME	STRUCTURE	COMMENTS
MINISTRIES		
H.E. Mr. Mahamadou Danda	Prime Minister	Meeting at the Prime Minister's Office
Mr. Mamane Malam Annou	Minister for the Economy and Finance	Meeting at the Ministry
Mr. Souleymane Mamadou Abba	Minister for Mines and Energy	Met by Mr. Cole-Baker in Dakar
Mr. Ari Malla	Director of the Prime Minister's Office	Meeting at the Prime Minister's Office
Mr. Jaime Ibrahim Mayaki	Special Advisor, Ministry for the Economy and Finance	Meeting at the Ministry
GOVERNMENT		
Mr. Kamayé Zabeirou	Ministry for the Economy and Finance	NCC and individually
Mr. Boubacar Issoufou	Ministry for the Economy and Finance	NCC (2 nd mission)
Mr. Harou Abass	Ministry for Mines and Energy / Mines Department	NCC
Mr. Boubacar Nalado	Ministry for Mines and Energy / Hydrocarbons Department	NCC
Mrs. Alfari Zara	Statistics Director at the Ministry for Mines and Energy	NCC
Mr. Boubé Mamane	Technical advisor, Ministry for Education	NCC
Mr. Zabeirou Rabo	Technical advisor, Ministry for Justice	NCC
COMPANIES		
Mr. Moussa Harouna	SML S.A.	NCC and individually
Mr. Hama Souleymane	SOMAIR	NCC and individually
Mr. Tiémoko Adamou	COMINAK	NCC and individually
Mr. Hervé Le Goff	COMINAK: Auditor General	Meeting at their offices
Issoufa Ambalam Idi and Rabe Ranaou	Taurian Resources	Meeting at their offices
Boubacar Manou	International Uranium	Meeting
CIVIL SOCIETY		
Mr. Bozari Boubacar	Coalition Equité Qualité	NCC and in a meeting with civil society
Mr. Khalid Ikhiri	Civil society (ANDDH)	NCC and in a meeting with civil society
Mr. Kané Illa	Private press	NCC
Mrs. Bagnan Aissata Fall	President of the Association Nigérienne de lutte contre la corruption/Transparency International (ANLC/TI)	NCC and in a meeting with civil society
Mr. Oubandoma Salissou	Groupe de Réflexion sur les Industries Extractives (GREN)	NCC and in a meeting with civil society
Mr. Ali Idrissa	Réseau des Organisations pour la Transparence et l'Analyse Budgétaire (ROTAB/PWYP)	NCC and in a meeting with civil society
Mrs. Chaibou Amina	Chambre de Concertation des Organisations et Associations de Développement (CCOAD)	NCC and in a meeting with civil society
OTHER		
Mr. Omar Diallo	State-owned press: Office de Radio Télévision du Niger (ORTN)	NCC

Mr. Marc Le Bihan	Lawyer	NCC and at his offices
Mr. Moussa Dantia	Chambre de Commerce d'Agriculture d'Industrie, et d'Artisanat du Niger (CCAIAN)	NCC
PARTNER		
Mr. Nicolas Groper	Cooperation and cultural action advisors	Meeting at the French Embassy
Mr. Pierre Poli		
PERMANENT SECRETARIAT		
Mr. Abdoul Aziz Askia	PS/EITI/OFF/PM/Permanent Secretary	Various meetings during the mission to Niamey
Mr. Ari Koura Mahamadou	PS/EITI/Operational Assistant	
Mr. Boubacar Soumaré	PS/EITI/Communications Advisor	
Mr. Boubou Souley	PS/EITI/IT Expert	
INDEPENDENT ADMINISTRATOR		
Mr. Ibrahim Issoufou	CCII, Firm of Chartered Accountants	Independent Administrator/Expert for the EITI Report 2005-2006

APPENDIX 2 – SELF-EVALUATION FORMS

Company		Companies included in the EITI report				EITI company self-evaluation forms	
		2005 Report		2006 Report			
		Included	Reports received	Included	Reports received	Sent ²	Received
1	COMINAK	•	•	•	•	•	•
2	SOMAÏR	•	•	•	•	•	•
3	SML	•	•	•	•	•	•
4	AREVA-NC-Niger	•	•	•	•	•	•
5	St. Jude Resources Ltd.	•	•	•	•	•	
6	CNPC – Niger Petroleum ¹	•	•	•	•		
7	Vergene	•	•				
8	Orezone Resources Inc.	•	•	•	•	•	•
9	Petronas Carigali ¹	•	•				
10	SIPEX Niger ¹			•	•		
11	Northwestern Mineral Ventures Inc.			•	•	•	
12	North Atlantic Resources/Selier Energy Niger SARL			•	•	•	
13	Rio Tinto Mining Exploration Ltd.			•	•		
14	Trendfield Holdings SA					•	•
15	Niger Mining Services SARL					•	•
16	Delta Exploration Inc.					•	•
17	Island Arc Exploration Corp.					•	•
18	African Uranium SARL (Brinkley Mining Plc)					•	
19	Afri Resources					•	
20	Agadez Ltd.						
21	AGMDC (African Geomin Mining Corporation)					•	
22	American Technologies Inc. Petroleum						
23	Atepa Group Russia					•	
24	Bayswater Uranium Corp.						
25	Caracal Gold Burkina						
26	CNUC (SOMINA)					•	
27	Commodities Investment						

	Ltd.(COJ)						
28	Compagnie Générale des Matières Nucléaires (Areva Nc – Succursale Areva Nc-Niger)					See AREVA-NC-Niger	
29	Cooper Minerals Inc.						
30	Constelor Pan African Resources LLC						
31	FARN SA.						
32	Global Uranium Corp.					•	
33	Goviex Niger Holdings Ltd.					c/o Trendfield Holdings SA	
34	Indo Energie Ltd.						
35	Liptako Ltd.					•	
36	Longview Capital Partners Inc.						
37	Maradi Mining Ltd,						
38	Mohan Energy Corporation Pvt Ltd.						
39	Mohan Export Pvt Ltd.					•	
40	Niger Resources Inc.					•	
41	Niger Uranium Inc.					•	
42	Oklo Uranium Ltd.						
43	River Universal Trading						
44	Sahel Mining (Pty) Ltd.						
45	Sanu Resources					•	
46	Semafo – Niger SA.					See SML	
47	SNCA					•	
48	Southampton Ventures Inc.						
49	Taurian Resources Pvt. Ltd.					•	
50	Trendfield Gold Mining Ltd.					c/o Trendfield Holdings SA	
51	UraMin Inc.					•	
52	Uranium International					•	

List taken from an existing table

Note 1: The following companies are no longer present in Niger: CNPC – Niger Petroleum, Petronas Carigali and SIPEX Niger.

Note 2: The companies that were not sent self-evaluation forms are not represented in Niger, or their address in Niger was incorrect.

APPENDIX 3 – COMPANIES INCLUDED IN THE EXERCISE FOR 2005–2006

<u>2005</u>	<u>2006</u>
Cominak	Cominak
SOMAÏR	SOMAÏR
SML SA	SML SA
Areva NC Niger	Areva NC Niger
St Jude Resources Limited	St Jude Resources Limited
Orezone Resources Inc	Orezone Resources Inc
Vergene Capital Corporation (Greencastle Resources Limited)	Northwestern Mineral Ventures Inc (Now NWT Uranium Corp)
Petronas Carigali Niger Exploration & Production Ltd	
 	North Atlantic Resources Ltd
 	Rio Tinto Mining Exploration Limited
CNPC Niger Petroleum	CNPC Niger Petroleum

APPENDIX 4 – WORK PLAN 2008-2010

APPENDIX 5 – EITI SECRETARIAT/NIGER CORRESPONDENCE