**Validation of Republic of Congo**
Final Validation Report
Adam Smith International Independent Validator
18 December 2017

## 1. EXECUTIVE SUMMARY

The government of the Republic of Congo (ROC) committed to implement the EITI on 9 June 2004 in an official communiqué (République du Congo, 2004). The government conducted broad consultations with all stakeholders in September 2005 and issued Decree 2006-626 of October 2006 establishing the MSG. The first work plan was agreed by the MSG in December 2007 and Congo became a Candidate country implementing the EITI in February 2008 (EITI Board, 2008).

On 25 October 2016, the Board agreed that the ROC's Validation under the 2016 EITI Standard would commence on 1 April 2017 (EITI Board, 2016). This draft validation report follows on from a quality assurance review of the International Secretariat's initial assessment. The Validator agrees with the Secretariat's preliminary assessment that Congo has made satisfactory progress on 12 EITI Requirements, and 15 requirements of the EITI Standard have not been fully addressed in the ROC. Ten of these are unmet with meaningful progress, while, four are unmet with inadequate progress and one requirement is assessed as unmet with no progress. One unmet requirement (1.3) is also a "safeguard requirement" as per EITI Requirement 8.3c. The recommendations and suggested corrective actions identified through this process relate in particular to the comprehensiveness of reporting by both government and industry as well as state-owned enterprises, including quasi-fiscal expenditures, financial relations with government and level of state ownership and data quality and assurance."

## 2. BACKGROUND

The ROC holds sub-Saharan Africa's fifth-largest proven oil reserves, at 1.6bn barrels of crude oil (BP, 2016). The country also holds abundant reserves of between 1.7tn and 2.6tn cubic metres of natural gas, over 2bn metric tons of iron ore and, endowed with forests covering three fifths of its territory, a forestry sector that accounts for 10% of non-oil GDP and XAF 100bn a year in exports (African Development Bank, 2016). The ROC also holds deposits of coal, potash, uranium, magnesium, manganese, diamonds, silver, platinum, zinc, limestone and kaolin (US Geological Survey, 2015).

The ROC's economy remains dependent on crude oil, which accounted for 55% of GDP, 80% of exports and 22% of government revenues in 2016 (Lazard Asset Management, 2017). The country has ranked as sub-Saharan Africa's fourth-largest oil producer in the past decade. The country's oil production trended upwards from 247k bpd in 2005 to 314k bpd in 2010, before dipping to 277k bpd in 2015 before rebounding to 308k bpd in 2016 (BP, 2016) (EIA, 2017). As a result of declining international oil prices however, the ROC went from running a consistent fiscal surplus averaging 14% of GDP in 2005-2015 to a fiscal deficit of 12.6% of GDP in 2016 (Reuters, 2013) (Lazard Asset Management, 2017).

The structure of the oil and gas industry has evolved since the first commercial developments in the 1970s. Most of the ROC's oil and gas are now produced from offshore fields, while most of its natural gas is flared due to lack of gas aggregating infrastructure (US Geological Survey, 2015). The start of production at the deep-water Moho Bilondo oilfield in 2008 marked the shift in the ROC's oil production profile towards the deep-water offshore, generating a 24% year-on-year rise in national oil production in 2009 (Banque

Mondiale, 2012). France's Total and Italy's ENI are the two largest international oil companies operating in the ROC, accounting for three quarters of total oil production (EIA, 2017). The ROC exports crude oil mainly to the United States, Europe and China (Lazard Asset Management, 2017). While ENI has developed two gas-fired power plants, some 85% of the ROC's natural gas production is re-injected into oil-producing wells, vented or flared (EIA, 2017).

While oil production has trended downward since its 2010 peak, analysts including the IMF forecast oil production to rise significantly, to above 300k bpd, with the opening of several new projects from 2017 onwards. Total's Moho North project and ENI's Nene Marine 2 project started producing in 2016, while ENI's Litchendjili project aims to develop further natural gas supplies for the Côte-Matève gas-fired power plant (Lazard Asset Management, 2017) (Argus Direct, 2016). Chevron's Lianzi project, a unitised field between Angola and the ROC, also started producing in late 2015 (Chevron, 2015). The AfDB has quoted estimates that ROC's current proven oil reserves are sufficient to ensure production for 40 years at current levels (African Development Bank, 2016).

The government's Strategic Document for Poverty Reduction aims to diversify the economy, focusing amongst others on the mining and forestry sectors (Banque Mondiale, 2012), leveraging oil revenues for investment in energy and transport infrastructure. Major infrastructure plans include upgrades to the existing rail and road corridor between Pointe Noire and Brazzaville, special economic zones and domestic processing centres for the country's natural resources (African Development Bank, 2016). While the ROC has drawn in part on the past decade's fiscal reserves to fund ambitious infrastructure projects, China has also emerged as the ROC's single-largest external creditor, accounting for USD 2.6bn of the ROC's estimated USD 5bn in external debt (Lazard Asset Management, 2017) (AllAfrica, 2016). Yet structural changes have been limited in the past two decades according to the AfDB, which notes that while the oil and gas sector has generated spill-over effects in metal industries, drilling, seismic exploration and other services, it has had a more limited impact on other sectors like agriculture (African Development Bank, 2016).

Mining has emerged as a key focus for the government's economic diversification efforts. The ROC was reinstated to the Kimberly Process in 2007, after a suspension in 2004, with significant diamond exports resuming since then (Goldman, 2014). The government expects to attract investment to develop the country's sizable reserves of potash in Mengo, polymetals in Boko-Songho and iron ore in Nabeba, Zanaga, Avima and Mayoko (Banque Mondiale, 2012). Two projects have already been approved by government and ratified by parliament. The first, an iron ore project, was awarded to South Africa's DMC-Exxaro and is expected to start producing 7m metric tons a year from 2017. The second project was awarded to Australia's Sundance Resources for the Nabeba iron-ore mine and included associated rail and port infrastructure upgrades. However, due to lower international iron ore prices and challenges in raising financing, the project, originally expected to produce 35m metric tons annually from 2015, has since been delayed. Responsibility for construction of the rail and port infrastructure has been transferred to the Government of Cameroon and talks have opened with China Exim Bank for possible funding (Lazard Asset Management, 2017) (The Sydney Morning Herald, 2015). The ROC ranks 177 of 190 in the World Bank's 2016 Ease of Doing Business Index (World Bank, 2017).

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

### 1) Work Performed by the Independent Validator

The Secretariat's Initial Assessment was transmitted to ASI on 7th September, 2017. Our Validation Team undertook this phase of the Validation process through: (1) In-depth review and marking up of the EITI Assessment by each team member; (2) Detailed review and comments by the Multi-Stakeholder Specialist of Requirements 1 and the Civil Society Protocol; (3) Detailed review and comments by the Financial Specialist of Requirements 4, 5 and 6; (4) Consolidation of reviews and the production of this draft Validation Report, sent to the International Secretariat on the 25th September

### 2) Comments on the Limitations of the Validation

The Validator carefully reviewed the Secretariat's Initial Assessment and at this stage has no comments on the limitation of the validation process.

### 3) Comments on the International Secretariat's Initial Assessment

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

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

A country visit took place on 7-12 May 2017. All meetings took place in Brazzaville and Pointe Noire, Republic of Congo. The secretariat met with the multi-stakeholder group and its members, the Independent Administrator and other key stakeholders, including stakeholder groups that are represented on, but not directly participating in, the multi-stakeholder group. In addition to meeting with the MSG as a group, the Secretariat met with its constituent parts (government, companies and civil society) either individually or in constituency groups, with appropriate protocols to ensure that stakeholders are able to freely express their views and that requests for confidentially are respected.

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

## 3. GENERAL COMMENTS

- **Progress in EITI Implementation**

A key strength of the ROC's EITI implementation has been its pioneering disclosures related to sales of the state's in-kind oil revenues. Beyond the EITI reporting, quarterly reconciliations of sales of the state's in-kind revenues by the national oil company, SNPC, and remittances to the national Treasury by an independent audit firm, KPMG, represented important work. The Ministry of Finance and the EITI National Secretariat published these reports on their websites in accordance with EITI Requirements on oil sales by SOEs. However, as stakeholders began to use cargo-level sales data in their research and advocacy, particularly in 2015 with the publication of a Swiss NGO's report on alleged irregularities in the management of SNPC's domestic market allocations to the state-owned refinery, the government appears to have discontinued some of these disclosures (Berne Declaration, 2015). All quarterly oil sales report, previously available for 2012 and 2013, were taken down from the Ministry of Finance and EITI Congo websites.

While the government last renewed the MSG's legal mandate through decree in 2012, the expiry of members' term limits at the end of 2015 means that the EITI's oversight body lacked a clear legal mandate as the ROC's Validation commenced on 1 April 2017. Weak representation and coordination links between MSG members and their respective constituencies make new nominations for MSG members, through open and transparent processes, ever more urgent. A renewed membership of the MSG, empowered by Ministerial Decree, is needed to strengthen the body's oversight of formulation and implementation of the EITI workplan, EITI reporting and the national secretariat.

- **Impact of EITI Implementation**

The EITI Standard's requirements are almost all keenly pertinent to the ROC's challenges and ongoing reforms. Requirements related to license management are relevant in light of the country's history of opaque license allocations and transfers. Provisions related to clarifying the financial relations between the government and state-owned enterprises operating in the oil and gas sector, including quasi-fiscal expenditures, are important to addressing public demands for information about SNPC and its subsidiaries. The requirements related to barter and infrastructure provision may be relevant to oil-backed infrastructure projects like those under the framework agreement with the People's Republic of China. The ROC could also be using the EITI to clarify regulatory ambiguities, such as the non-operational subnational transfers of oil and gas royalties.

While the ROC is in the process of implementing reforms ranging from modernising its cadastral management system to strengthening its revenue management system and re-enforcing oversight of state-owned enterprises through the Ministry of Finance's recently-established Department of Public Portfolio, it does not appear to have used the EITI to its full potential. The country's decade of EITI reporting has highlighted challenges in the management of the extractive industries, but has not acted as an effective diagnostic tool to support reforms.

While to date the MSG has undertaken neither strategic discussions linking the EITI to national priorities for the extractive sector nor overseen the technical detail of reporting, EITI Congo has an opportunity to channel one of the key areas of public debate, over the management of oil and gas revenues, while ensuring the reliability of publicly-available data on its oil and gas industry. The ROC also has a chance to lead in developing international best practice in the reporting of state-owned oil sales by participating in the EITI's targeted effort at transparency in commodity trading, partly modelled on the ROC's own oil sales reporting up to 2013.

### The Independent Validator's Assessment of Compliance

*Figure 1 – Validator's assessment*

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

*Legend to the assessment card*

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

## 4. DETAILED FINDINGS

The Validator agrees with the findings of the Initial Assessment. Therefore there are no detailed findings on disagreements to report.

## 5. RECOMMENDATIONS

While the following report includes recommendations for specific improvements the MSG may wish to consider implementing, the following is a list of strategic recommendations that could help the Philippines make even greater use of the EITI as an instrument to support reforms.

- In accordance with Requirement 1.3, the Government of Congo should ensure that there is an enabling environment for civil society participation, and ensure that the rights of civil society substantively engaged in the EITI, including but not restricted to members of the multi-stakeholder group, are respected.
- In accordance with EITI Requirement 1.4, the government should renew the membership of the MSG in line with statutory documents. EITI Congo should review formalise and publish its per diem policy and set a reasonable amount in line with national practices. The MSG should ensure its TOR are in accordance with Requirement 1.4, publicly accessible, and implemented in practice.
- To strengthen implementation, EITI Congo may wish to ensure that the fiscal framework, the roles and responsibilities of key government entities and current or recent reforms in the mining, oil and gas sectors are clearly described in future EITI reporting. EITI Congo may wish to consider whether the EITI Congo website could provide a platform for updated information on the legal environment and fiscal framework.
- In accordance with EITI Requirement 2.2, EITI Congo should clearly define the number of mining, oil and gas licenses awarded and transferred in the year(s) under review, describe the statutory allocation and award procedures, including specific technical and financial criteria, and highlight any non-trivial deviations in practice. In addition, EITI Congo may wish to comment on the efficiency of the current license allocation and transfer system as a means of clarifying procedures and curbing non-trivial deviations.
- EITI Congo is required to maintain a publicly available register or cadastre system(s) with timely and comprehensive information in accordance with EITI Requirement 2.3. EITI Congo should ensure that future EITI Reports provide the dates of application and expiry, commodity(ies) covered and coordinates for all mining, oil and gas licenses held by material companies.
- To further strengthen implementation and prepare for full disclosure of beneficial ownership by 2020, it is recommended that EITI Congo considers piloting beneficial ownership reporting in the forthcoming EITI Report in order to increase awareness of beneficial ownership transparency and pilot beneficial ownership definitions and thresholds. EITI Reports must document the government's policy and multi-stakeholder group's discussion on disclosure of beneficial ownership. EITI Congo may also wish to conduct broader outreach to the companies on the objectives of beneficial ownership transparency, as well as hold conversations with government agencies on how to make such disclosures mandatory.
- In accordance with EITI Requirement 2.6, EITI Congo should ensure that future EITI Reports clarify the rules and practices governing financial relations between extractives SOEs and the government,

the level of and terms associated with state equity participation in the sector as well as a comprehensive overview of loans and guarantees extended by the state or SOEs to extractives companies in the year under review. EITI Congo may wish to consider the extent to which implementation of Article 15 of the March 2017 Transparency Law would support progress in meeting aspects of Requirement 2.6.

- To strengthen implementation, EITI Congo may wish to ensure that the description of the extractive industries in future EITI Reports includes a clear overview of significant exploration activities in the year under review.
- In accordance with EITI Requirement 3.2, EITI Congo should ensure that future EITI Reports provide production volumes and values for all minerals produced in the ROC in the year(s) under review. EITI Congo may also wish to consider the extent to which such information could be regularly disclosed on government websites as a means of complying with provisions requiring publication of more granular production data in Article 66 of the March 2017 Transparency Law.
- To strengthen implementation, EITI Congo may wish to ensure that future EITI Reports provide export volumes and values for all commodities exported in the year(s) under review, including artisanal-mined commodities like gold.
- To strengthen implementation, EITI Congo may wish to ensure that the materiality threshold for selecting companies in future EITI Reports ensures that all payments that could affect the comprehensiveness of EITI reporting be included in the scope of reconciliation. The MSG is invited to consider whether setting a quantitative materiality threshold for selecting companies would ensure these aims are met.
- In accordance with EITI Requirement 4.2, EITI Congo should ensure that future EITI Reports present information on the sale of the state's in-kind revenues disaggregated by buyer. The government is encouraged to reinstate the practice of publishing the Ministry of Finance's quarterly oil sales reports to ensure timelier compliance with Article 16 of the March 2017 Transparency Law and with Requirement 4.2 of the EITI Standard. The Validator notes the recent Public Eye report on a Swiss commodity trader in the Republic of Congo, and encourages the MSG to take steps to provide more transparency in the role of oil commodity trading in future.[1]
- In accordance with EITI Requirement 4.3, EITI Congo should assess the existence of any barter arrangements or infrastructure provisions during the scoping phase for its next EITI Report to ensure that reporting of the implementation of such agreements provides a level of detail and transparency commensurate with the disclosure and reconciliation of other payments and revenues streams. The MSG, together with the IA, should gain a full understanding of the terms of the relevant agreements and contracts, the parties involved, the resources which have been pledged by the state, the value of the balancing benefit stream (e.g. infrastructure works), and the materiality of these agreements relative to conventional contracts.
- To strengthen implementation, EITI Congo may wish to undertake outreach to SOCOTRAM with a view to engaging it in EITI implementation. Given the significant public debate surrounding the

[1] https://www.publiceye.ch/fileadmin/files/documents/Rohstoffe/PublicEye_Gunvor-in-Congo_report_2017_68p.pdf

Maritime Tax, the MSG could consider including SOCOTRAM in the scope of reporting and requesting the Independent Administrator to include in future EITI Reports in-depth analysis of SOCOTRAM's shareholder composition, as well as, clarification on the nature of payments of the Maritime Tax/Fee from ship-owners, further adding to the EITI's impact on public debate.

- In accordance with EITI Requirement 4.5, EITI Congo should undertake a comprehensive assessment of transactions between SOEs (SNPC and its subsidiaries) and oil and gas companies, as well as between SNPC's subsidiaries and government in its scoping of future EITI Reports. All SOEs collecting material revenues or making material payments to government should be included in future EITI reporting.
- To further strengthen implementation, the MSG may wish to consider the extent to which implementation of the March 2017 Transparency Law would enable it to make progress in implementing project-level EITI reporting ahead of the deadline for all EITI Reports covering fiscal periods ending on or after 31 December 2018, agreed by the EITI Board at its 36th meeting in Bogotá.
- To strengthen implementation, EITI Congo may wish to consider the extent to which it can leverage implementation of Article 63 of the March 2017 Transparency Law to ensure timelier disclosure of data required under the EITI Standard through routine government and company systems.
- In accordance with EITI Requirement 4.9, EITI Congo should ensure that summary data tables for all EITI Reports are prepared in a timely manner in line with requirements of the Board-approved IA's ToR. The MSG and the IA are encouraged to provide a more detailed account of audit and assurance practices of material companies and government entities, including SOEs with a view to formulating recommendations that strengthen government and company audit and assurance systems. They may also wish to revisit the quality assurance requested from government entities included in the scope of reporting.
- In accordance with EITI Requirement 5.1, EITI Congo should work with the IA in preparing the next EITI Report to clearly trace any mining, oil and gas revenues that are not recorded in the national budget and provide an explanation of the detailed allocation of these off-budget revenues.
- To strengthen implementation, EITI Congo is encouraged to assess the materiality of subnational transfers, provide the specific formula for calculating subnational transfers of extractives revenues to individual local governments, disclose any material subnational transfers in the year(s) under review and highlight any discrepancies between the transfer amount calculated in accordance with the relevant revenue-sharing formula and the actual amount that was transferred between the central government and each relevant subnational entity.
- To strengthen implementation, EITI Congo could consider including additional information on extractives revenues earmarked for specific purposes as well as on the budget-making and auditing process for government accounts in future EITI Reports.
- In accordance with EITI Requirement 6.1, EITI Congo should systematically categorise types of mandatory social expenditures mandated by law or contract and ensure that reporting of mandatory social expenditures in future EITI Reports be disaggregated between cash and in-kind expenditures, by type of payment and beneficiary, clarifying the name and function of any non-government (third-party) beneficiaries of mandatory social expenditures. The MSG may also wish to consider the feasibility of reconciling mandatory social expenditures.

- In accordance with EITI Requirement 6.2, EITI Congo should undertake a comprehensive review of all expenditures undertaken by extractives SOEs (and their subsidiaries) that could be considered quasi-fiscal. The MSG should develop a reporting process with a view to achieving a level of transparency commensurate with other payments and revenue streams, and should include SOE subsidiaries and joint ventures.
- In accordance with EITI Requirement 6.3, EITI Congo should ensure future EITI Report include employment figures for the mining, oil and gas sectors. The MSG may also wish to work with the Ministry of Finance, the national statistics agency (CNSEE), customs and the Ministry of Labour and Social Security to ensure that reporting of key information required by the EITI Standard on the extractive industries' share of GDP, revenues and exports is embedded in routine government disclosures.
- To improve accessibility of EITI disclosure, and in accordance with EITI Requirement 7.1, EITI Congo should resume its dissemination activities of all EITI disclosures, including the EITI Reports, the KPMG Reports and other useful materials that can contribute to a public debate on the EITI Congo website.
- To strengthen implementation, the MSG may wish to consider commissioning an independent impact evaluation study to better document the extent to which EITI Congo has contributed in changing behaviour and improving the management of the extractive sector for the benefit of all citizens.

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