EITI International Secretariat **15 April 2019**

Validation of the Democratic Republic of Congo

Report on initial data collection

and stakeholder consultation

Abbreviations

ACE	Agence Congolaise de l'Environnement
ASADHO	L'Association Africaine de Défense des Droits de l'Homme
ASM	artisanal and small-scale mining
BCC	Banque Centrale du Congo
BCPSC	Bureau de Coordination et de Suivi du Programme Sino-Congolais
CAMI	Cadastre Minier
CdC	Cour des Comptes
CDF	Congolese Democratic Franc
CEEC	Centre d'Evaluation, d'Expertise et de Certification
CLS	Comités Locaux de Suivi
COMICO	Compagnie Minière Congolaise
COMINIÈRE SA	La Congolaise de l'exploitation minière
CRG	Congo Research Group
CTCPM	Cellule Technique de Coordination et Planification Minière
CTR	Comité Technique de suivi et d'évaluation des Réformes
DGDA	Direction Générale des Douanes et Accises
DGI	Direction Générale des Impôts
DGRAD	Direction Générale des Recettes Administratives, Judiciaires, Domaniales et de Participation
DPSB	Direction de la Préparation et du Suivi du Budget
DRC	Democratic Republic of Congo
DRHKAT	Direction Provinciale des Recettes du Haut-Katanga
DRKAT	Direction des Recettes du Katanga
DRLU	Direction Provinciale des Recettes du Lualaba
EITI	Extractive Industries Transparency Initiative
EPE	Entreprise du Portefeuille de l'Etat
ETD	Entités Territoriales Décentralisées
FEC	Fédération des Entreprises du Congo
GÉCAMINES SA	La Générales des Carrières et des Mines SA
IA	Independent Administrator
IGF	Inspection Générale des Finances
IMG	International Monetary Fund
INS	National Statistical Institute
INTOSAI	International Organization of Supreme Audit Institutions
IPIS	International Peace Information Service
JV	Joint Venture
MEDD	Ministère de l'Environnement et du Développement Durable
MIBA	Société Minière de Bakwanga
MIOC	Muanda International Oil Company
MSG	Multi-stakeholder Group
NRGI	Natural Resource Governance Institute
OHADA	Organisation pour l'Harmonisation en Afrique du Droit des Affaires
PERENCO	Compagnie pétrolière et gazière francaise
POM	Plateforme des Organisations de la Société Civile Intervenant dans le Secteur Minier
PSC	Production Sharing Contrat
RSC	Redevance suivi de change (exchange rate fees)

SACIM Sàrl	Société Anhui Congo d'Investissement Minier SàRL
SAEMAPE	Service d'Assistance et d'Encadrement des Mines Artisanales et de Petit Echelle
SAESSCAM	Services d'Assistance et d'Encadrement du Small-Scale mining
SAKIMA SA	Société Aurifère du Kivu et du Maniema SA
SCMK-Mn SA	Société Commerciale Minière de Kisenge Manganèse SA
SGH	Secrétariat Général des Hydrocarbures
SGRN	Synergie pour la Gouvernance des Ressources Naturelles
SICOMINES	Sino-Congolaise des Mines
SIMCO	Société Immobilière du Congo
SODIMICO SA	Société du Développement Industriel et Minier du Congo SA
SODIMIKA SA	Société de Développement Industriel et Minier du Katanga SA
SOE	State-Owned Entreprise
SOKIMO SA	Société Minière de Kilo Moto
SONAHYDROC	Société Nationale des Hydrocarbures du Congo

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Executive Summary

The Government of the Democratic Republic of the Congo (DRC) committed to implement the EITI on 17 March 2005, and issued a Prime Ministerial Decree in November 2005 creating the EITI National Committee (the multi-stakeholder group - MSG). The country was accepted as an EITI Candidate in February 2008. Following two Validations, the Democratic Republic of the Congo was declared compliant under the EITI Rules in July 2014. On 25 October 2016, the Board agreed that the country's Validation under the 2016 EITI Standard would commence on 1 July 2018. On 4 September 2018, the EITI Board agreed that the Democratic Republic of the Congo was eligible for an extension of its Validation deadline[1]. The Validation commenced on 1 October 2018.

This report presents the findings and initial assessment of the International Secretariat's data gathering and stakeholder consultations. The International Secretariat has followed the Validation Procedures and applied the Validation Guide in assessing the DRC's progress with the EITI Standard. As of 1 October 2018, the DRC EITI had not yet published a reconciliation report that covered the fiscal year 2016. The International Secretariat has therefore based its assessment of financial disclosures on the 2015 EITI Report, but has taken into account other publicly available information published before the start of Validation by the DRC EITI. This assessment therefore also takes into consideration data from 2016 and 2017, as well as disclosures by reporting government entities and companies.

The MSG has not yet reviewed the assessment nor has the Independent Validator guaranteed its quality , but the Secretariat's preliminary assessment is that 13 of the requirements of the EITI Standard have not been fully addressed in the DRC. Two of these are assessed as unmet with inadequate progress. The recommendations and suggested corrective actions identified through this process relate in particular to MSG governance (#1.4), license allocations (#2.2), license register (#2.3), state participation (#2.6), production data (#3.2), export data (#3.3), comprehensiveness (#4.1), SOE transactions (#4.5), direct subnational payments (#4.6), data quality (#4.9), distribution of revenues (#5.1), subnational transfers (#5.2), mandatory social expenditures (#6.1) and SOE quasi-fiscal expenditures (#6.2).

Overall conclusions

The EITI Standard is particularly relevant to the DRC's extractive industries. The requirements for multi-stakeholder dialogue on extractives governance are critical in a complex and fragmented industry that has traditionally been closed to public scrutiny. SOEs play a central role in the management of the extractive industry in the DRC. The need to clarify financial flows managed by state-owned enterprises (SOEs) goes to the very core of the legacy of opacity in the country's extractive industries. Contract transparency is particularly relevant to a sector where bespoke contracts have historically offered differing terms to investors. The need to clarify barter and infrastructure arrangements is of great significance to a sector where billions of dollars worth of minerals for infrastructure developments agreements have been concluded. In a country where extractives accounted for 98% of exports and 18% of the gross domestic

[1] EITI (September 2018), EITI Board Decision 2018-46/BC-256, accessed here in March 2019.

product (GDP) in 2016, the distribution of revenues at the local level is a key issue.

It is widely agreed that EITI implementation has had a significant impact in the DRC. Disclosure of EITI data has opened up key parts of the extractive industries to public oversight, including contractual terms awarded to some of the largest companies in the country, transactions between SOEs and the state and foreign investments in infrastructure works pledged in exchange for access to natural resources. EITI reporting has shed light on the sector's highly fragmented and complex fiscal regime, as well as the profile of the numerous companies operating in the DRC.

In addition, the EITI process has led government agencies and companies to improve their own data collection and reporting procedures, with online disclosures by the Ministry of Mines and the Ministry of Finance leading the way in providing timely data. While further efforts are crucial to ensure that the information disclosed is user-friendly to enable analysis by local stakeholders, stakeholders have gradually built a capacity to understand and monitor the sector through the EITI process.

The vibrant civil society constituency has supported the promotion of significant public debate on EITI-related topics through diverse means, including community radio shows and student initiatives. Despite a challenging environment, the EITI's multi-stakeholder platform has therefore provided a key channel for civil society to participate in discussions about the management of the sector and to have access to public decision-making.

The success of the multi-stakeholder approach has been most apparent in the EITI's contribution to regulatory reform. The addition of transparency provisions to the Mining Code and its implementing decree related to licensing, beneficial ownership and changes in government ownership was partly a result of a constructive dialogue among EITI stakeholders. Beyond pushing for legislative change, the EITI also contributed to monitoring the implementation of regulations, including in the disclosure of contracts and revenues managed by SOEs.

As transparency has grown through the EITI, so has the public realisation that implementation could yield even greater impacts. Gaps identified in EITI disclosures through reporting and Validation are fundamentally linked to weaknesses in government and company record keeping. Greater clarity on SOEs' group-level financial relations with the government have highlighted the need for more openness in SOEs' intra-group transactions, particularly in their joint-ventures with private investors. Openness in license management and production data has shed light on weaknesses in government oversight.

The identification of significant off-budget extractive revenues has highlighted the lack of public accountability in the management of these revenues. While there have been substantive efforts to clarify subnational revenue flows and companies' contributions to local development, the application of the regulatory framework in practice has been uneven at best. Moreover, transparency and accountability challenges differ from one subsector and extractives commodity to another.

The oversight of EITI implementation itself has also faced its own internal governance challenges. While industry and civil society engagement in EITI implementation has proven resilient in often challenging circumstances, the government needs to respect all constituencies involved in the EITI as equal partners and to exert adequate oversight over the governance of implementation, including financial management.

Given the ambitions linked to the EITI process and the remarkable engagement of all constituencies, the implementation of the EITI in the DRC should lead by example in terms of probity and adherence to the EITI's Code of Conduct and Civil Society Protocol.

By addressing gaps in data disclosures and multi-stakeholder governance, the DRC can make even greater use of EITI implementation to drive reforms in the governance of its extractive industries. Concerns around the comprehensiveness and reliability of data provided by both government and company systems continue to foster mistrust from civil society organisations, hampering efforts to move towards systematic disclosure of data. Ultimately, the EITI needs to address concerns from all stakeholders that revenues from the sector are still not benefitting citizens.

Clearly defining the EITI's mandate and scope, as well as its relation to national priorities, will be key to ensuring that the initiative has a meaningful and sustained impact. The watershed transition of political power between two administrations in January 2019 offers an opportunity for stakeholders to take stock of a decade of implementation to further deepen the EITI's impact on the broader governance of the extractive industries.

Recommendations

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

1. In accordance with Requirement 1.4, the industry constituency should agree to public nominations procedures ahead of MSG member selection and the DRC should renew the MSG's membership in line with statutory procedures. The DRC should update its internal governance rules to cover all provisions of Requirement 1.4.b and ensure that any deviations from the ToR in practice are properly codified. In accordance with Requirement 1.4.b.vi, the DRC must clarify the practice of per diems for attending EITI meetings or other payments to MSG members to ensure that it does not affect the governance of EITI implementation, or cause any conflict of interest.
2. In accordance with Requirement 2.2, the DRC is required to publicly disclose information about licenses awarded and transferred, including any non-trivial deviations from the applicable legal and regulatory framework and the detailed technical and financial criteria assessed. The DRC is encouraged to ensure the EITI works closely with the relevant ministries to also disclose information about pending applications. In the event of bidding rounds, the DRC is required to disclose the bid criteria, the full list of applicants and is encouraged to document the results of the process.
3. In accordance with Requirement 2.3, the DRC is required to maintain a publicly available register or cadastre system with timely and comprehensive information regarding all licenses held by extractive companies. The DRC should work closely with the Ministry of Hydrocarbons, the Hydrocarbon General Secretariat (SGH) and partners to ensure that a register of oil and gas licenses is publicly available. The CAMI is encouraged to improve the timeliness and comprehensiveness of data on its online cadastre, adding geographical coordinates where possible. It might also wish to make its data available in open data format.
4. In accordance with Requirement 2.6, the DRC should ensure that there is a publicly available and comprehensive list of extractives companies in which the government, or any SOE, holds equity,

and the existence of any change in the year under review and a description of the terms associated with the government's, or SOE's, equity should also be included. The DRC should ensure that the prevailing rules and practices regarding the financial relationship between the government and SOEs, e.g. the rules and practices governing transfers of funds between the SOE(s) and the state, retained earnings, reinvestment and third-party financing are publicly disclosed. The DRC should ensure that the terms of loans and loan guarantees provided by the state and SOEs to extractives companies are comprehensively disclosed in the public domain.

5. In accordance with Requirement 3.2, the DRC is required to publicly disclose production values by commodity, and where relevant by state/region, for all extractive commodities produced in the year under review. The DRC is encouraged to explore ways of using the EITI to roll out the new valuation methodology for extractives production agreed in May 2018 by all mining companies. It may wish to work closely with the Ministry of Mines to ensure that production data compiled by the Cellule Technique de Coordination et Planification Minière (CTCPM) is widely disseminated and compared with data disclosed by mining companies. The DRC is urged to ensure the EITI works closely with the SGH and the CHEVRON ODS, MIOC and TEIKOKU consortium to publicly disclose oil production values in future.
6. In accordance with Requirement 4.1, the DRC should ensure that all companies selected in the scope of reporting comprehensively report all material payment flows, and that decisions on the materiality of revenue flows are based on government unilateral disclosure of total extractives revenues, including those not statutorily-mandated, but nevertheless collected. The DRC should also ensure that full unilateral government disclosure of material revenues, including from non-material companies, is presented disaggregated by revenue flow rather than by company. The DRC may wish to consider revisiting its scoping and materiality decisions, potentially including a two-tiered approach for mid-sized and larger companies, to strike a balance between the comprehensiveness of disclosures and the quality of reporting. To strengthen implementation, the DRC is urged to reassess the existence of government in-kind revenues on an annual basis, with a view to publicly disclosing volumes collected, volumes sold and proceeds of sales per buyer once production commences within areas covered by oil and gas PSCs.
7. In accordance with Requirement 4.5, the DRC should ensure that the role of SOEs, including company payments to SOEs and transfers between SOEs and government entities, is comprehensively and publicly addressed. This should include the disclosure and reconciliation of all material transactions involving SOEs.
8. In accordance with Requirement 4.6, the DRC is encouraged to establish whether direct subnational payments are material. The DRC should clearly document the method behind selecting and reconciling revenue streams, building on improvements in the 2016 scoping study. Following changes in mining legislation in June 2018, the DRC is encouraged to work closely with provincial governments to systematically disclose timely and comprehensive information about payments of shares of mining royalties to relevant subnational governments.
9. In accordance with Requirement 4.9, the DRC should review the agreed quality assurances required from companies and government entities for their EITI reporting. The DRC may wish to ensure that data collection deadlines are established with a view to ensuring full adherence with the quality assurances agreed to for EITI reporting.
10. In accordance with Requirement 5.1, the DRC is required to explain the allocation of extractive revenues that are not recorded in the national budget, including revenues withheld by tax collecting agencies and SOEs. The DRC is encouraged to collaborate with the Ministry of Finance, the Ministry of Budget and SOEs to disclose the allocation of these revenues and provide references to financial reports where relevant. The DRC EITI is also encouraged to provide more

information about the "special accounts" to which the CAMI contributes.

11. In accordance with Requirement 5.2.a, the DRC should ensure that material subnational transfers in the extractive sector are publicly disclosed, highlighting discrepancies between subnational transfers in practice and calculations based on the revenue-sharing formula, disaggregated by province and Decentralised Territorial Entity (ETD). The DRC is encouraged to work closely with the Provincial Mining Divisions (*Divisions Provinciales des Mines*), the Ministry of Finance and the DGRAD to publicly disclose timely and comprehensive data about subnational transfers of mining royalties until the change in revenue-sharing in June 2018. In accordance with Requirement 5.2.b, the DRC is encouraged to ensure that any material discretionary or ad-hoc subnational transfers are also disclosed and, where possible, reconciled.
12. In accordance with Requirement 6.1, the DRC is required to disclose material mandatory social expenditures and, where possible, to reconcile them. The DRC is encouraged to pursue its EITI disclosures of voluntary social expenditures. Following legal reforms in the mining sector, the government may wish to explore opportunities for publicly disclosing social and environmental expenditures through routine government systems.
13. In accordance with Requirement 6.2, the DRC is required to disclose quasi-fiscal expenditures where state participation in the extractive sector gives rise to material revenue payments. The DRC should ensure close consultations with SOEs and the Ministry of Portfolio to ensure comprehensive EITI reporting of such expenditures and to develop a reporting process with a view to achieving a level of transparency commensurate with other payments and revenue streams, including SOE subsidiaries and joint-ventures.

Figure 1. Initial assessment card

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

	No progress. The country has made no progress in addressing the requirement. The broader objective of the requirement is in no way fulfilled.
	Inadequate progress. 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.
	Meaningful progress. 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.
	Satisfactory progress. All aspects of the requirement have been implemented and the broader objective of the requirement has been fulfilled.
	Beyond. 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.

Introduction

Brief recap of the sign-up phase

The Government of the DRC announced its commitment to the EITI Principles at the EITI conference in London on 17 March 2005[2]. In November 2005, a Prime Ministerial decree[3] created an EITI National Committee, which includes an Executive Committee (EC) and a Technical Secretariat, with the mandate to implement the EITI in the DRC. EITI implementation was officially launched on 19 January 2006 in a press conference held in Kinshasa[4]. The DRC was accepted as an EITI Candidate Country at the EITI Board meeting in Accra in February 2008. Following a first Validation in August 2011, the Board concluded that the DRC had made meaningful progress with EITI implementation but did not meet all EITI requirements.

Based on a second validation completed in April 2013, the EITI Board concluded that the DRC did not meet all requirements to achieve EITI Compliant status[5]. The Board suspended the DRC on 17 April 2013 and requested the implementation of corrective actions within a 12-month period. The DRC implemented the corrective actions and was subsequently declared compliant with the EITI Rules in July 2014.

Objectives for implementation and overall progress in implementing the work plan

On 25 July 2018, the MSG approved a triennial work plan for the period July 2018-July 2021. It was subsequently modified by the MSG technical working group on 21 August 2018.[6] For the first time, the work plan was not developed around the production of EITI reports. Rather, it was built around objectives for meaningful implementation which were discussed by EITI stakeholders during the self-assessment exercises held in November 2017 and March 2018. The overall objective underlying the triennial work plan was "*implementing the EITI with the aim to contribute to sustainable development in the DRC, through the responsible and transparent management of natural resources*". The expected outcome is that "*the proceeds of the exploitation of natural resources contribute significantly to improving the well-being of the current and future Congolese population*."[7] While activities were carried out accordingly between August and November 2018, presidential elections in December 2018 and the subsequent government transition slowed the pace of implementation.

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[2] The then Vice-President Jean Pierre Bemba led a high-level delegation to the conference in London and made the announcement on behalf of a transition government. Source: EITI DRC Validation Report, CAC 75, September 2010.
[3] Decree No. 05/160 of 18 November 2005, on the establishment and functioning of the EITI-DRC National Committee was subsequently updated and modified by decree No. 09/065 of 3 September 2007, decree No. 09/28 of 16 July 2009 and decree No. 12/005 of 28 April 2012. The rules governing the Executive Committee and the technical secretariat were adopted in September 2011.
[4] Transparence dans les industries extractives: la RDC confirme son engagement (Le Potentiel, 20.01.2006), http://www.congoforum.be/fr/nieuwsdetail.asp?subitem=1&newsid=4085&Actualiteit=selected (retrieved in December 2018).
[5] Decision made on a non-objection basis via Board Circular No. 147 of 11 April 2013 and Board Circular No. 148 of 18 April 2013 confirmed the decision. The Board decision is available on the EITI website at http://eiti.org/news/democratic-republic-congo-temporarily-suspended.
[6] DRC EITI (July 2018), MSG meeting minutes, 25 July 2018, https://drive.google.com/open?id=1LrXQ_k6AeGtGC7HYxEga5p6H1Hldkbap, accessed in December 2018.
[7] "Mettre en œuvre l'ITIE aux fins de contribuer au développement durable de la RDC, par une gestion responsable et transparente des ressources naturelles»; «Le produit de l'exploitation des ressources naturelles contribue de manière significative à l'amélioration du bien-être de la population congolaise, présente et à venir.» Translation by the International Secretariat.

History of EITI Reporting

The DRC EITI produced its first EITI report reconciling revenues received in 2007 from the mining sector in Katanga province in December 2009. Due to the ongoing conflict in the eastern provinces, the first EITI Report did not cover all companies operating in the DRC. The DRC published its 2008 and 2009 Reports seeking to cover all oil, gas and mining activities in the country in February 2012. The 2010 EITI Report was subsequently published in December 2012, disclosing for the first time the details of the cooperation agreement with the Government of the People's Republic of China, known as the "SICOMINES agreement".

Since then and before the start of Validation, the DRC EITI published reports covering the financial years 2013-2015, as well as a 2016 Contextual EITI Report in July 2018 and a Supplementary Contextual EITI Report in September 2018.[8] The 2016 reconciliation Report was subsequently published in December 2018, but in accordance with the Validation procedures, it was not taken into account for this assessment.

Summary of engagement by government, civil society and industry

The functioning of the MSG is governed by Decree 09/28 of 16 July 2009 on the creation, organisation and functioning of the National Committee of the EITI in the DRC, signed by the Prime Minister. Other key documents include the Internal Rules, agreed to in September 2011. Documents related to the nomination or replacement of MSG members are comprehensively published on the DRC EITI website.[9] On 26 September 2018, the MSG adopted a draft Decree modifying the 2009 Decree to improve the functioning of the MSG. At the start of Validation, that Decree had not yet been signed by the Prime Minister, Bruno Tshibala, and was therefore not enforced.[10] The Minister of Planning, Modeste Bahati Lukwebo, was the Chair of the MSG. A list of MSG members at the time of Validation is provided in Annex A.

Despite successive changes in government in 2016 and 2017, government engagement remained robust throughout the period under review. Industry and civil society representatives were equally engaged in the design and implementation of the EITI. Notably, the wider civil society constituency has been a key driver of EITI implementation, consistently working to ensure that EITI implementation reflected their priorities for natural resource governance.

Key features of the extractive industry

The DRC holds some of the world's most extensive deposits of copper, cobalt, coltan, diamonds, gold, silver,

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[8] The DRC EITI published a third document covering the year 2016 in December 2016, the 2016 Reconciliation EITI Report, that provided financial data. DRC EITI (September 2016), Rapport de conciliation 2016, https://drive.google.com/file/d/12yd-t97FOclmQYycz5vJQNgezV1BcVH9/view, accessed in February 2019.

[9] See the "Documentation" section on the main page of the website: DRC EITI, Documentation relative à la Validation, https://www.itierdc.net/validation-itie-rdc-2018/?preview_nonce=7cb73c16b1, accessed in December 2018. See Décret portant création de l'ITIE RDC, https://drive.google.com/open?id=0B1C1Aj5TqAgvcURibDFiX1RJRVU; Règlement intérieur de l'ITIE RDC, https://drive.google.com/open?id=0B1C1Aj5TqAgvakt6Y05EWjdPZWM; Ordonnance n.012/005 du 23 février 2012 portant nomination d'un coordonnateur du Secrétariat Technique du Comité National de l'ITIE RDC, https://drive.google.com/file/d/0B1C1Aj5TqAgvQ1ZTZld0SWJ3VEk/view.

[10] DRC EITI (September 2018), Projet de décret modifiant et complétant le Décret n°.09/28 du 16 juillet 2009 portant création, organisation et fonctionnement du CN-ITIE/RDC, https://drive.google.com/file/d/1Vi4bDQE8tPq9AwRNEL84mTshAZBHkV-H/view, accessed in December 2018.

tin, iron ore, zinc and oil.[11] Untapped mineral deposits are estimated to be worth up to USD24 trillion at current market prices.[12] The country is a leading exporter of minerals, accounting for 51% of the global production of cobalt, 17% of tantalum, 15% of coltan, 13% of diamonds, 6% of copper, 4% of refined cobalt and 2% of tin in 2015.[13] The DRC overtook Zambia as Africa's largest producer of copper in 2013.[14] The extractive industries have accounted for over 80% of the country's exports for several decades[15] and contributed 68.3% of government revenues in 2015.[16]

The resource-rich former Katanga Province, in the country's south-east, accounted for around 82% of the central government's extractives revenues in 2015.[17] While the country's current crude oil production is modest at around 25,000 barrels per day (bpd), based offshore and entirely exported[18] from the western port of Banana[19], the DRC has untapped potential both offshore and onshore, including in the eastern part, of approximately 7.2 million barrels of recoverable oil in 2016.[20] Crude oil production is dominated by PERENCO (*Compagnie pétrolière et gazière francaise*), although there has been exploration in new areas. There have been criticisms of oil exploration in protected areas of Virunga and Salonga[21].

Despite this mineral wealth, the DRC, with a population of around 80 million spread out over a land mass the same size as Western Europe[22], and ranks 176th of 189 countries in the United Nation's Human Development Index for 2018.[23] Two civil wars in the 1990s-2000s claimed over 5 million lives.[24] Access to mineral wealth was a key factor in the conflict. Privatisations in the mining sector coincided with a rebound in global commodity prices to yield significant inbound foreign direct investment in the country's mining sector, worth USD2.1bn in 2006 alone.[25] Mining investment was both through joint ventures with the DRC's SOEs, chief among them GÉCAMINES (*La Générale des carrières et des mines*) with over 38 mining joint

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[11] NRGI (October 2015), 'Country strategy note: Democratic Republic of Congo (DRC)', https://resourcegovernance.org/sites/default/files/documents/nrgi_drc-strategy_20160629.pdf, accessed in February 2019.
[12] Nik Stoop (July 2018), 'More legislation, more violence? The impact of Dodd-Frank in the DRC', https://journals.plos.org/plosone/article/file?id=10.1371/journal.pone.0201783&type=printable; UK Department for International Development (July 2018), 'DFID Democratic Republic of Congo (DRC) profile', https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/723135/Democratic-Republic-Congo-July-2018.pdf, both accessed in February 2019.
[13] U.S. Geological Survey (December 2017), 'The Mineral Industry of Congo (Kinshasa)', https://minerals.usgs.gov/minerals/pubs/country/2014/myb3-2014-cg.pdf, accessed in February 2019.
[14] NRGI (October 2015), op.cit., and Nik Stoop (July 2018), op.cit.
[15] KPMG (2017), 'DRC Economic Snapshot H2, 2017', https://home.kpmg/content/dam/kpmg/za/pdf/2017/12/DRC-2017H2.pdf, accessed in February 2019.
[16] Secure Livelihoods Research Consortium (July 2018), 'Mining minerals or mining the state? The practical norms governing mineral extraction in former Katanga, Democratic Republic of Congo', https://securelivelihoods.org/wp-content/uploads/Mining-minerals-or-mining-the-state-Claude-Iguma-final-online.pdf, accessed in February 2019.
[17] Secure Livelihoods Research Consortium (July 2018), op.cit.
[18] KPMG (2017), 'DRC Economic Snapshot H2, 2017', https://securelivelihoods.org/wp-content/uploads/Mining-minerals-or-mining-the-state-Claude-Iguma-final-online.pdf, accessed in February 2019.
[19] PwC (2018), 'Democratic Republic of Congo update', https://www.pwc.com/gx/en/transportation-logistics/publications/africa-infrastructure-investment/assets/drc.pdf, accessed in February 2019.
[20] NRGI (October 2015), 'Country strategy note: Democratic Republic of Congo (DRC)', https://resourcegovernance.org/sites/default/files/documents/nrgi_drc-strategy_20160629.pdf, accessed in February 2019.
[21] Oil rights threatening DRC's Salonga National Park , Global Witness February 2019. https://www.globalwitness.org/en/press-releases/oil-rights-salonga-national-park-could-be-null-and-void-global-witness-analysis-reveals/
[22] U.S. Department of State (July 2018), 'Integrated Country Strategy: Democratic Republic of the Congo', https://www.state.gov/documents/organization/284871.pdf, accessed in February 2019.
[23] United Nations Development Programme (2018), 'Human Development Reports: Congo (Democratic Republic of the)', http://hdr.undp.org/en/countries/profiles/COD, accessed in February 2019.
[24] NRGI (October 2015), op.cit.
[25] Secure Livelihoods Research Consortium (July 2018), op.cit.

ventures with private investors[26], as well as through conventional mining licenses.[27] The DRC is also strategically important for global mining companies, accounting for 19% of Glencore's copper output and 82% of its cobalt output globally in 2015.[28]

Over the past decade, the People's Republic of China has replaced the European Union as the DRC's main trading partner.[29] A minerals-for-infrastructure agreement between the Government of the DRC and Chinese SOEs in 2007, valued at between USD6 billion [30] and USD9 billion [31], was a watershed in the two country's economic relations. Exceeding the Government of the DRC's annual budget, the agreement consisted of public-use infrastructure, such as roads, railways, hospitals, schools and dams, as well as mine infrastructure, worth an estimated USD6.2 billion in exchange for mining rights.[32]

In 2015, Zijn Mining acquired a 49.5% stake in Kamoa Holding, which operates one of the largest copper mines in the country.[33] In 2016, U.S.-based Freeport McMoran sold its 54% interest in Tenke Fungurume copper mine, the DRC's single largest industrial mine, to China Molybdenum for USD2.65bn.[34] In 2018, China Nonferros Metal Mining Group Ltd. finalised an agreement with GÉCAMINES to exploit the Deziwa concession. The Deziwa SAS joint venture was hailed as a new type of agreement by the Government of DRC that holds 49% of its shares.[35]

While the DRC hosts an extensive industrial mining sector, particularly focused on copper and cobalt, there is also a significant informal sector, including artisanal and small-scale mining.[36] There were an estimated 800,000 artisanal diamond miners in 2014[37], out of a total of several million informal miners. Artisanal and small-scale miners are estimated to account for most of the country's diamond, niobium, tantalum, tin and tungsten production.[38] The United Nations Panel of Experts has estimated that some 98% of the DRC's gold production is smuggled out of the country, primarily through neighbouring Uganda.[39] Coltan, tin and tungsten (known as the '3Ts') and gold have been categorised as "conflict minerals" given the involvement of armed groups in their production in the DRC.[40] The U.S. Congress' enactment of Section 1502 of the Dodd-Frank Act in 2010 introduced disclosure requirements for US-listed companies sourcing these

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[26] NRGI (2017), '2017 Resource Governance Index: Democratic Republic of Congo (mining)', accessed here in February 2019.
[27] Secure Livelihoods Research Consortium (July 2018), op.cit.
[28] Bread for all, RAID and Fastenopfer (June 2014), 'PR or Progress? Glencore's Corporate Responsibility in the Democratic Republic of the Congo'. https://resourcegovernanceindex.org/system/documents/documents/000/000/134/original/Resource_Governance_Index_DRC_mining_profile_%28English%29.pdf?1502816516, accessed here in February 2019, p.7.
[29] CSS Analysis (February 2019), 'More Continuity than Change in the Congo', accessed here in February 2019.
[30] CSS Analysis (February 2019), op.cit.
[31] Congo Mines (2017), 'Rapport d'évaluation des impacts du projet Sicomines sur les droits humains', accessed here in February 2019.
[32] Global Witness (March 2011), 'China and Congo: Friends in Need', accessed here in February 2019.
[33] Ivahoe Mines, https://www.ivanhoemines.com/; Mining and Business Magazine (October 2018), 'Kamoa: Ivanhoe détient le plus grand projet de cuivre d'Arique à Kakula', https://www.miningandbusiness.com/actualite/kamoa-ivanhoe-detient-le-plus-grand-projet-de-cuivre-dafrique-a-kakula-103; Agence Ecofin (May 2017), 'RD Congo: Ivanhoe recoit un dernier paiement de USD 41,2 millions de la part de Zijn Mining', https://www.agenceecofin.com/cuivre/2405-47599-rd-congo-ivanhoe-recoit-un-dernier-paiement-de-41-2-millions-de-la-part-de-zijin-mining accessed in February 2019.
[34] Congressional Research Service (August 2018), 'Democratic Republic of Congo: Background and U.S. Relations', accessed here in February 2019.
[35] Congo Actuel (April 2018), 'Mine: la Gécamines scelle le projet minier « Deziwa » avec CNMC pour USD880 millions d'investissement', http://www.congoactuel.com/mine-la-gecamines-scelle-le-projet-minier-deziwa-avec-cnmc-pour-880-millions-usd-dinvestissement/, accessed in February 2019.
[36] Congressional Research Service (August 2018), op.cit.
[37] US Geological Survey (December 2017), op.cit.
[38] Ibid.
[39] The Carter Centre (November 2017), 'A State Affair: Privatizing Congo's Copper Sector', accessed here in February 2019.
[40] Nik Stoop (July 2018), 'More legislation, more violence? The impact of Dodd-Frank in the DRC', accessed here in February 2019.

minerals[41], leading to the establishment of two global coalitions[42] of electronic companies pledging to only buy minerals with clear responsible sourcing.[43]

According to the Natural Resource Governance Institute (NRGI) 2017 Resource Governance Index, the DRC's oil and gas sector was ranked 84th of 89 countries and its mining sector was ranked 75th of 89.[44] The main challenges identified relate to revenue management, oversight of SOEs and the enabling environment. Corruption probes have been launched against companies associated with Israeli businessman Dan Gertler, an investor in the DRC's mining sector closely associated with former President Joseph Kabila, in the U.S., Canada and the United Kingdom, and the U.S. Department of the Treasury imposed sanctions on Gertler-related companies in 2017.[45] The International Monetary Fund suspended its lending to the DRC in 2012 on concerns over lack of transparency in mining contracts.[46] Since then, a new Hydrocarbons Code was enacted in 2016 and a new Mining Code in 2018, while presidential elections brought a new administration led by President Félix Tshisekedi to power in January 2019.[47]

Explanation of the Validation process

Validation is an essential feature of the EITI implementation process. It is intended to provide all stakeholders with an impartial assessment of whether EITI implementation in a country is consistent with the provisions of the EITI Standard. It also addresses the impact of the EITI, the implementation of activities encouraged by the EITI Standard, lessons learnt in EITI implementation, any concerns stakeholders have expressed and recommendations for future implementation of the EITI.

The Validation process is outlined in chapter 4 of the EITI Standard[48]. It has four phases:

1. Preparation for Validation by the multi-stakeholder group (MSG).
2. Initial data collection and stakeholder consultation undertaken by the EITI International Secretariat.
3. Independent quality assurance by an independent Validator who reports directly the EITI Board
4. Board review.

The Validation Guide provides detailed guidance on assessing EITI Requirements, and more detailed Validation procedures, including a standardised procedure for data collection and stakeholder consultation by the EITI International Secretariat and standardised terms of reference for the Validator.

The Validation Guide includes a provision that: "Where the MSG wishes that validation pays particular attention to assessing certain objectives or activities in accordance with the MSG work plan, these should be outlined upon the request of the MSG". The DC EITI did not submit such a request.

In accordance with the Validation procedures, the International Secretariat's work on the initial data

[41] NRGI (October 2015), op.cit.
[42] The Electronic Industry Citizenship Coalition (EICC) and the Global e-Sustainable Initiative (GeSI).
[43] Nik Stoop (July 2018), op.cit.
[44] NRGI (2017), '2017 Resource Governance Index: Democratic Republic of Congo (oil and gas)',accessed here; and NRGI (2017), '2017 Resource Governance Index: Democratic Republic of Congo (mining)',accessed here; both accessed in February 2019.
[45] Congressional Research Service (August 2018), op.cit.
[46] Ibid.
[47] CSS Analysis (February 2019), op.cit.
[48] See also https://eiti.org/validation.

collection and stakeholder consultation was conducted in three phases:

1. Desk Review

Prior to visiting the country, the Secretariat conducted a detailed desk review of the available documentation relating to the country's compliance with the EITI Standard, including but not limited to the following:

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

In accordance with the Validation procedures, the Secretariat has not taken into account actions undertaken after the commencement of Validation.

2. Country visit

A country visit took place on 3-15 November 2018. Meetings took place in Kinshasa and Lubumbashi. The International 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. The list of stakeholders consulted are outlined in Annex D.

3. Reporting on progress against requirements

This report provides the International Secretariat with an initial assessment of progress against requirements, in accordance with the Validation Guide. It does not include an overall assessment of compliance.

The International Secretariat's team was comprised of Bady Baldé, Africa Regional Director; Sam Bartlett, Technical Director; Alex Gordy, Validation Director; Marianne Stigset, Communications Director; and Indra Thévoz, Policy and Country Officer.

Part I – MSG Oversight

1. Oversight of the EITI process

1.1 Overview

This section relates to stakeholder engagement and the environment for the implementation of EITI in a country, the governance and functioning of the multi-stakeholder group (MSG) and the EITI work plan.

1.2 Assessment

Government engagement in the EITI process (#1.1)

Documentation of progress

Public statement: High-level government officials have made regular public statements of support to the EITI, including President Joseph Kabila (2001-2019), Prime Minister Matata Ponyo (2012-2016) and the five successive Ministers sitting on the MSG, the president of the national assembly and members of parliament.[49] Then-President Joseph Kabila made several references to his government's commitment to the EITI in his annual address to the nation.[50] Then-Prime Minister Matata Ponyo repeatedly referred to the EITI in his speeches at the national assembly, on national television and abroad, and made the EITI a core pillar in the government strategy to reform the mining sector in the 2012-2016 period.[51]

His government adopted the Economic Governance Matrix to improve transparency, accountability and effective management of natural resources.[52] High-level government officials who chair MSG meetings, including Minister of Mines Martin Kabwelulu and Minister of Finance Henry Yaav, have made public statements of support to the EITI at national and international conferences.[53] Minister of Planning Bahati Lukwebo participated in the EITI conference on beneficial ownership in November 2018 held in Dakar,

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[49] EITI DRC, political commitment to implement the EITI https://www.itierdc.net/validation-itie-rdc-2018/?preview_nonce=7cb73c16b1 (retrieved in December 2018).

[50] Conference on Good Governance and Transparency in the Mining Sector of the DRC held on 30 and 31 January 2013 in Lubumbashi, http://occ.cd/bonne-gouvernance-et-transparence-miniere-le-president-kabila-veut-faire-des-mines-un-pilier-de-la-nouvelle-economie-congolaise/ (retrieved in December 2018).

[51] For example, Speech by Matata Ponyo on February 06, 2013, source VOA https://www.voaafrique.com/a/2222246.html; Speech by Matata Ponyo on 3 October 2013, published by All Africa https://fr.allafrica.com/stories/201310101478.html, and on 25 November 2016, published by La Cité Africaine, http://citaf.over-blog.com/2016/11/document-l-heritage-politique-et-economique-du-premier-ministre-matata-ponyo.html (retrieved in December 2018).

[52] This matrix was developed in collaboration with the World Bank and updated in March 2013, http://documents.worldbank.org/curated/en/568261468328577843/Congo-Democratic-Republic-of-Updated-economic-governance-matrix (retrieved in December 2018).

[53] A high-level government delegation attended successive EITI Global conferences in March 2011 in Paris, in May 2013 in Sydney and in February 2016 in Lima and reiterated their government's commitment.

where he reiterated his government's commitment to the EITI.

Senior leadership: Prime Minister Matata Ponyo was an EITI Champion from 2012 to 2016. President Kabila appointed the Minister of Planning, the Minister of Mines and the Minister of Environment and Sustainable Development as the MSG's Chair, first and second Vice-Chairs respectively.[54] A Ministerial decision appointed Minister of Planning Olivier Kamitatu as MSG Chair, Minister of Mines Martin Kabwelulu as first Vice-Chair and Minister of Environment José Endundo as second Vice-Chair on 5 October 2009.[55] Kamitatu was replaced by Celestin Vunabandi from 2012 to 2014, before being reappointed as Minister of Planning and MSG Chair from 2014 to 2015. Georges Wembi replaced Olivier Kamitatu as MSG Chair in 2015, and Bussa Lucien served briefly as MSG Chair in 2017 before being replaced by Modeste Bahati Lukwebo, who remained MSG Chair until January 2019.

Minister of Mines Martin Kabwelulu served as the MSG's first Vice Chair from 2009 to 2019. There is extensive evidence, including in MSG minutes, of both the Chair and the first Vice Chair having played a proactive role in leading EITI implementation during their respective tenures.[56] In addition to the MSG's Chair and Vice-Chair, the EITI national coordinator is also a high-level government official who leads EITI implementation on day-to-day basis. Professor Jeremy Mack Dumba was appointed as National Coordinator in February 2012 by presidential decree and played an active role in leading EITI implementation until his suspension by the MSG in October 2017.[57] However, his successor as national coordinator had only been appointed on an interim basis at the start of Validation (*see Requirement 1.4*).

Engagement: In addition to five Ministers[58], government representation on the MSG includes the Office of the President, the Office of the Prime Minister and both chambers of Parliament. A review of MSG attendance lists shows that four Ministers and the Vice Minister of Finance regularly attend MSG meetings in practice. Two senior advisors to the President and to the Prime Minister also attend MSG meetings regularly. MSG meeting minutes show that members of parliament are also actively engaged.[59] The government has passed legislation[60], including the March 2018 Mining Code, introducing mandatory EITI reporting requirements for mining companies. The September 2016 Hydrocarbon Code also includes mandatory disclosure provisions for oil and gas companies. Decree no. 011/26 of 20 May 2011 sets the obligation for the state to publish all contracts related to natural resources within 60 days of its signature (*see Requirement 2.4*).

Senior government officials have actively followed up with both companies and government entities to ensure full participation in EITI reporting, including through letters from Ministers instructing reporting

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[54] Legal and Regulatory documents on the EITI DRC website at https://www.itierdc.net/validation-itie-rdc-2018/?preview_nonce=7cb73c16b1. Decree no. 029 of 16 July 2009.
[55] Arrêté ministériel 029/CAB/MIN.Pl/2009 of 5 October 2009, on the nomination of MSG members.
[56] See DRC EITI, MSG minutes 2013-2018, http://www.itierdc.net/comite-executif/proces-verbaux-du-comite-executif/, accessed in January 2019.
[57] Ordonnance n. 012/005 of 28/02/2012.
[58] The Minister of Planning, the Minister of Mines, the Minister of Environment and Sustainable Development, https://www.cifor.org/partner/drc-ministry-of-environment-conservation-of-nature-and-tourism-mecnt/ the Minister of Finance and the Minister of Hydrocarbons are automatically appointed to the MSG, in accordance with Decree no. 029 of 16 July 2009, creating the MSG.
[59] MSG meeting minutes from 2014 to 2018 are published on the EITI DRC website https://www.itierdc.net/validation-itie-rdc-2018/?preview_nonce=7cb73c16b1
[60] EITI DRC divers publication https://www.itierdc.net/validation-itie-rdc-2018/?preview_nonce=7cb73c16b1

entities to submit data.[61] EITI focal points within each reporting government agency regularly attend MSG meetings as observers and ensure that their hierarchy is aware of the latest developments in EITI implementation. In May 2018, the DRC EITI national secretariat organised a workshop on systematic disclosures of EITI data through government systems. The well-attended meeting reflected the general willingness of government reporting entities to routinely disclose reliable and timely data through their systems, despite substantial logistical challenges.[62] It was followed by a similar workshop in November 2018, after the start of Validation (*see Requirement 4.1*).

There is also extensive evidence of the government's proactive follow-up on EITI recommendations to implement reforms, improving data reliability, publishing contracts in the oil, gas and mining sectors and establishing multi-stakeholder committees to draft government regulations in accordance with the adopted legislations (*see Requirement 7.3*). For example, the Minister of Finance issued letters to tax collecting entities instructing them to implement recommendations made by the General Finance Inspectorate (IGF), in the context of EITI reporting to improve revenue treatability and reduce the risk of corruption.[63]

The MSG mandated a multi-stakeholder committee to propose a methodology on how to calculate and monitor volumes and values of production and export, disaggregated by company, in 2015. The proposed methodology was piloted and adopted by the MSG on 31 May 2018 (*see Requirements 3.2 and 3.3*). Another multi-stakeholder committee was tasked with harmonising a definition of social payments that would be applicable to all oil, gas and mining companies. The committee proposed a methodology that was adopted on 9 March 2018 in a final declaration issued by the committee (*see Requirement 5.2*).

The government has provided the largest share of funding for EITI implementation since 2011 (*see Requirement 1.5*). Government funding for EITI implementation over the period 2012-2018 exceeded USD2 million a year on average. DRC EITI communication strategies and annual activity reports show the active participation of high-government officials in the dissemination of EITI reports and in public debates on issues raised by stakeholders in EITI reporting (*see requirement 7.1*).

Stakeholder views

Government officials noted that the government was still engaged after the previous Validation, but acknowledged that frequent changes of Prime Ministers between September 2016 to March 2018 had affected the government's engagement in the EITI. They noted that the government used to provide all necessary funding, but recent cuts in the national budget had affected the funding for EITI implementation. Members of Parliament noted that the Parliament had used EITI Reports in the past, but this practice was not done on a regular basis.

All stakeholders consulted emphasised that reporting entities were generally engaged and coordinated closely with the DRC EITI. Reporting entities upgraded their systems to comply with EITI reporting requirements and most had gone through a difficult transition process to be able to collect and disclose

[61] See letters from various Ministers to the reporting entities on EITI DRC regarding their political commitment to implement the EITI recommendations, https://www.itierdc.net/validation-itie-rdc-2018/?preview_nonce=7cb73c16b1 (retrieved in December 2018).
[62] DRC EITI (May 2018), Atelier de sensibilisation des entités de l'État à l'intégration de l'ITIE, Rapport https://drive.google.com/file/d/1N7cv9o7RSiVCbG3-kKXqfmLCvW8BrIgn/view et présentation PPT, https://docs.google.com/presentation/d/122Bj7mN2_K_ZWN_GD0-yvAnkss94LDTrpLVwmHYgWEw/edit, accessed in January 2019.
[63] Such documents are available on the DRC EITI website.

data in a timely manner. Representatives of government agencies highlighted that they were gradually transitioning from a manual process to computerised systems for all their record-keeping. Industry representatives noted the stark difference between government agencies in the mining sector and the hydrocarbon sector. The latter were considered to be often lagging behind in terms of transparency compared to the mining sector, despite the relatively small number of oil and gas companies.

Former MSG Chairs and members noted that despite the sometimes contentious debate between the three constituencies, MSG meetings had a transformative effect on their work, given the change in culture and practices within government agencies. Government officials on the MSG noted that they were working so that all citizens could understand how the sector was managed, not only in the framework of Validation, but to encourage a culture of transparency in the DRC.

Civil society representatives acknowledged the importance of high-level government participation on the MSG, but expressed frustrations with the pace and prioritisation in the implementation of recommendations. They noted that Ministers on the MSG had the ability to delay or obstruct reforms that would likely affect their interests. They gave the example of the Ministry of Environment and the Ministry of Hydrocarbons, which rarely implemented EITI recommendations. The Ministry of Mines was seen by civil society representatives as having the best track record in implementing EITI recommendations, followed by the Ministry of Finance. The line Ministry for SOEs, the Ministry of State Portfolio, had recently started implementing EITI recommendations.

Development partners noted that a ministerial-level presence on the MSG was necessary and had been positive at the beginning of the process, because it brought the necessary political legitimacy to the EITI process. However, they noted that the ponderous protocol had slowed down the process and that the level of debate during MSG meetings was overly dependent on the Chair's discretionary powers.

Initial assessment

The International Secretariat's initial assessment is that the DRC has made **satisfactory progress** in meeting this requirement. In addition to regular public statements of support from the government, five senior Ministers participate actively in the MSG. The Minister of Planning and the Minister of Mines, respectively the MSG's Chair and Vice Chair, have the authority to coordinate actions on the EITI across relevant ministries and government agencies. They have the confidence of all stakeholders and the ability to mobilise resources for EITI implementation. EITI focal points within government reporting entities work closely with the DRC EITI. The International Secretariat concludes that the government is fully, actively and effectively engaged in the implementation of the EITI.

To strengthen implementation, the DRC may wish to review EITI DRC governance documents to ensure that high-level political commitment to EITI implementation is consistently matched by full operational engagement.

Industry engagement in the EITI process (#1.2)

Documentation of progress

<u>Engagement</u>: Until March 2018, the Chamber of Mines was the main industry association that represented

the interests of the mining industry and coordinated its participation in the EITI process.[64] The ethical charter of the Chamber of Mines makes explicit reference to the EITI.[65] The Chamber of Mines is part of a larger industry association, the *Fédération des Entreprises du Congo (FEC*), or Business Federation of Congo, which includes all large- and medium-sized companies operating in the DRC. The Chamber of Mines played a key role in coordinating industry representation in the EITI process through an EITI commission within the Chamber of Mines, which relayed information about EITI activities to the wider constituency and applied peer pressure for companies to report.[66]

Industry representatives on the MSG are actively engaged in the EITI process. In addition to Chamber of Mines Chair Simon Tumawaku, mining companies are represented on the MSG by representatives from TENKE FUNGURUME MINING (TFM), and one of the largest mining projects in the country, and state-owned mining company GÉCAMINES. The oil and gas sector is represented on the MSG by PERENCO. A review of MSG minutes and attendance lists shows that industry MSG representatives often chair key committees and play an active role in MSG meetings, except for the representative of companies active in the forestry sector.[67]

Industry representatives also participate regularly in outreach activities, for example in Lubumbashi (*see Requirement 7.1*). Industry representatives from the wider constituency also worked closely with the DRC EITI on specific themes, such as devising a method for calculating production values in the mining sector (*see Requirement 3.2*), agreeing a definition of "project" (*see Requirement 4.7*) and adopting a common understanding of "social expenditures" in collaboration with civil society representatives (*see Requirement 6.1*).

Following the adoption of a new Mining Code in March 2018, seven mining companies left the Chamber of Mines in protest and created their own association.[68] ANGLO GOLD ASHANTI, GLENCORE, INTERNATIONAL CMOC, IVANHOE MINES, MMG, RANDGOLD RESOURCES and ZIJIN MINING GROUP and accused the FEC of not defending their interests in the negotiations with the government before the signature of a new Mining Code.

Enabling environment: The government has enacted legislation mandating companies' participation in the EITI process. Article 54 of the 2018 Mining Code requires companies to disclose information in accordance with EITI Requirements, and Article 311 sets penalties for contravening the Code's transparency provisions.[69] Similarly, Article 2 of the Hydrocarbon Code mandates oil and gas companies to adhere to the DRC's international commitments in terms of transparency.[70] Prior to the adoption of these laws, the government issued ministerial decisions and letters mandating companies to comply with EITI reporting

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[64] See Chamber of Mines website, http://chambredesminesrdc.com/, accessed in January 2019.
[65] The updated ethical charter was updated in 2015 http://chambredesminesrdc.com/wp-content/uploads/2016/01/Plaquette-Charte-de-l%C3%A9thique-anglais.pdf
[66] The General assembly of the Chamber of Mine and annual report make references to the EITI http://www.fec-rdc.com/index.php/actualites/26-actualite3/14-la-chambre-des-mines-de-la-fec-plaide-pour-un-code-minier-plus-attractif
[67] Yvonne Mballa chairs the Audit and Finance Committee, whereas Simon Tumawaku chairs the technical committee.
[68] See press release by the Minister of Mines at https://actualite.cd/2018/03/21/reglement-minier-le-ministre-des-mines-deplore-le-depart-de-la-fec-de-7-geants-miniers
[69] Mining Code signed in March 2018. https://eiti.org/sites/default/files/documents/j_o_ndeg_speicial_du_28_mars_2018_code_minier.pdf
[70] Law no. 2-16-28 of 12 October 2016 Hydrocarbon code at https://www.droit-afrique.com/uploads/Congo-Code-2016-Hydrocarbures.pdf

requirements.[71]

Stakeholder views

Government officials, who were consulted, believed that industry representatives were engaged in the EITI process primarily to defend their interests. They were of the opinion that companies had generally complied with reporting requirements, but that they had not done enough to disclose their beneficial owners. All stakeholders consulted highlighted that the participation of the Chamber of Mines had a positive impact on the EITI process. It held debates at a high level and encouraged other members of the Chamber to actively participate in the EITI process.

Many expressed concerns that fragmentation within the industry constituency might have a negative impact on the process, both in terms of representation within the MSG and of broader engagement. However, this new group has not functioned in practice and their representatives continue to attend meetings of the Chamber of Mines, including those related to the EITI.

Some government representatives and civil society organisations consulted noted that SOEs' participation was uneven and fluctuated over time depending on the companies' management. They highlighted that it was difficult to engage Chinese companies, while others deemed that Chinese companies generally complied with disclosure requirements in a timely manner. Industry representatives noted that they participated actively in the EITI process, because it helped them show that companies were paying what they were supposed to pay and demonstrated the specific levels of their production and exports, thereby addressing suspicions about their activities. In addition to industry representatives, EITI focal points in each reporting company helped to ensure that standards were followed in practice in their company.

Initial assessment

The International Secretariat's initial assessment is that the DRC has made **satisfactory progress** in meeting this requirement. Oil, gas and mining companies are fully, actively and effectively engaged in the EITI process. Extractives companies are required to disclose information by law and they generally comply with EITI reporting requirements. They also participate actively in the design, implementation, monitoring and evaluation of the EITI process through their active participation in MSG meetings. The Chamber of Mines promotes the EITI in its activities.

To strengthen implementation, the industry constituency is encouraged to ensure its sustained engagement in all aspects of EITI implementation regardless of the fragmentation of its industry association.

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[71] See the full list of letters on the EITI DRC website at http://www.itierdc.net/bibliographie/bibliographie_2016/

Civil society engagement in the EITI process (#1.3)[72]

Documentation of progress

For the purpose of this assessment, references to "civil society representatives" include civil society representatives who are substantively involved in the EITI process in the DRC, including but not limited to members of the MSG and representatives from the local media. References to the 'EITI process' in the context of the DRC include activities related to MSG meetings; CSO constituency side-meetings on the EITI, including interactions with MSG representatives in the production of EITI reports; the production of materials about EITI Reports and the implementation of the EITI Standard; activities led by the DRC EITI MSG and national secretariat and those related to the implementation of the EITI led by civil society organisations; and activities related to natural resource governance, understood as governance in the oil, gas, mining and forestry sectors.

The International Secretariat's understanding is that, for the purposes of Validation, the application of the Civil Society Protocol is limited to the oil, gas and mining sectors. Given that the MSG and other stakeholders had taken steps to cover the forestry sector in the past, the International Secretariat has noted some of the challenges in implementing the EITI in this sector. However, these findings are not considered in the overall assessment of compliance with the EITI Standard.

Although the revised civil society protocol came into force on 1 January 2015,[73] this assessment considers events and activities since the Validation of the DRC under the 2013 EITI Standard in July 2014 and the beginning of the first Validation under the 2016 EITI Standard on 1 October 2018.[74] The broader environment in which civil society organisations operate in the context of the DRC was considered. For example, the assessment includes references to indicators of civic space and reports by international organisations on issues addressed in the civil society protocol.

There is a wide range of civil society organisations substantially engaged in the EITI process in the DRC, including local NGOs and international NGOs. Local civil society organisations are organised in coalitions, networks and platforms. They include Publish What You Pay (PWYP), *l'Association Africaine de Défense des Droits de l'Homme* (ASADHO), *la Plateforme des Organisations de la société civile intervenant dans le secteur Minier* (POM), *la Ligue congolaise de lutte contre la corruption* (LICOCO), *le Centre National d'Appui au Développement et à la Participation populaire* (CENADEP), *la Commission épiscopale ad hoc pour les ressources naturelles* (CERN), *le Cadre de Concertation de la société Civile de l'Ituri sur les Ressources Naturelles* (Cdc/RN), *Femmes et Justice Économique* (FEJE) and *le Réseau Ressources Naturelles* (RRN-RDC) (*see Annex D: list of stakeholders consulted*). Activities are conducted throughout the country, including in

[72] The first Validation under the EITI Standard (Azerbaijan 2016) established a precedent for the Validation of requirement 1.3. The CSO protocol "operationalises" requirement 1.3. Each part of the CSO protocol speaks to specific parts of Requirement 1.3:
2.1 of the CSO protocol is intended to assess provisions 1.3(d), 1.3(e)(i), 1.3(e)(iv).
2.2 of the CSO protocol is intended to assess provisions 1.3.(b) and 1.3(c).
2.3 of the CSO protocol is intended to assess provision 1.3(e)(iii).
2.4 of the CSO protocol is intended to assess provisions 1.3.(a) and 1.3(e)(ii).
2.5 of the CSO protocol is intended to assess provision 1.3(d).
[73] Minutes of the 28th EITI Board Meeting, 14-15 October 2014, accessed here.
[74] Decision taken by Board Circular BC-256 on 4 September 2018 accessed on the EITI website here.

the cities of Kinshasa and Lubumbashi (ex-Katanga province), as well as in the oil-producing region of Kongo-Central and in the mining regions around the cities of Lualaba and Goma (*see Requirement 7.1*).

International NGOs work in partnership with local NGOs and conduct their own activities. The Carter Center launched an Extractive Industries Governance project in 2011, maintains the Congo Mines website,[75] conducts targeted research and provides trainings to local civil society organisations, such as POM. Other international organisations such as Global Witness or the Natural Resource Governance Institute, and regional NGOs, such as Open Society Initiative for Southern Africa (OSISA) and African Resources Watch (Afrewatch), also contribute to the implementation of the EITI, through financial and technical assistance of local organisations or analysis of the extractive sector (*see Requirement 7.1*).

The *Cadre de Concertation National de la Société Civile* (CCNSC-RDC), with support from the European Union, maintains an online directory that lists 829 organisations active throughout the country.[76] Many organisations listed are active in improving the social and economic conditions of their communities, as well as in areas as diverse as advancing democracy, fighting corruption, strengthening gender equality and improving the governance of natural resources. It represents the most complete directory mapping of existing CSOs in the DRC, even though other estimates of the number of active associations are much higher.[77] Radio is the main medium, with newspapers and television channels present in cities, including half a dozen government-owned ones. For the purpose of this assessment, we considered representatives from the media to be part of the wider civil society constituency.

Analysis from various international civil society and human rights organisations note that civil society is operating in a challenging context. For over two decades, the eastern DRC has been the stage of a protracted conflict sustained by local insurgencies, leading to over 5 million deaths and creating one of the world's largest humanitarian crisis.[78] The second largest United Nations peacekeeping mission, the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) (previously the United Nations Mission in the Democratic Republic of the Congo (MONUC)), has been stationed in the country since 1999 and has seen its mandate extended several times since 2010.[79]

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[75] The site http://congomines.org/ contains over 1,300 documents, including EITI reports, civil society comments on the draft reports and scoping studies and data on more than 100 mining companies operating in the DRC.

[76] These include the following categories: "ONGD/ASBL, syndicats, corporations, confessions religieuses, [et] ordre professionnel". The database also lists over 1500 partnerships with technical and financial partners. CCNSC-RDC, Index des organisations de la société civile, https://ccnsc-rdc.org/oscrdc/public/index.php?:nav=pub_osc::index, accessed in January 2019.

[77] The US Department of State referred to a statement by the Ministry of Justice in March 2016 that only 63 of more than 21,000 NGOs were formally registered in the country. Freedom House wrote about 2017 that there are approximately 5,000 registered NGOs in the DRC. Radio Okapi referred to a statement by the Minister of Justice Alexis Thambwe Mwanda in October 2017, who said that over 14,000 non-profit organisations existed in the DRC, in addition to 11,000 religious groups, 300 « établissements" and over 1,000 foreign non-profit organisations. US Department of State (2018), Country Reports on Human Rights Practices for 2017, DRC, https://www.state.gov/documents/organization/277231.pdf; Freedom House (2018), Country profile: DRC, https://freedomhouse.org/report/freedom-world/2018/congo-democratic-republic-kinshasa; Radio Okapi (October 2017), RDC: un projet de loi pour lutter contre «la prolifération des mouvements associatifs» https://www.radiookapi.net/2017/10/31/actualite/societe/rdc-un-projet-de-loi-pour-lutter-contre-la-proliferation-des-mouvements, accessed in January 2019.

[78] See Council on Foreign Relations (updated November 2018), The Eastern Congo, https://www.cfr.org/interactives/eastern-congo#!/?cid=soc-at-interactive-the_eastern_congo_infoguide-121015, accessed in January 2018. OCHA (October 2018), Apercu des besoins humanitaires, République démocratique du Congo, https://www.humanitarianresponse.info/en/operations/democratic-republic-congo/document/rd-congo-aper%C3%A7u-des-besoins-humanitaires-2018, accessed in January 2019.

[79] MONUSCO, Background, https://monusco.unmissions.org/en/background, accessed in January 2018. The United Nations Group of Expert on the

In addition, most external civic space monitors outline the deteriorating situation throughout the country since presidential elections were postponed in December 2016, after former President Kabila's two-term mandate expired. Human Rights Watch summarised developments in 2018 by stating that "*government officials and security forces carried out widespread repression and serious human rights violations against political opposition leaders and supporters, pro-democracy and human rights activists, journalists and peaceful protesters.*" [80] Such allegations echo strong concerns expressed by several United Nations Special Rapporteurs in 2016, and analyses by CIVICUS, the U.S. Department of State, Freedom House and the International Centre for Not-for-Profit Law (ICNL) for the past two years.[81]

Expression:
Article 23 of the Constitution guarantees freedom of expression and Article 24 guarantees freedom of the press and access to information.[82] Article 5 of the Law regulating the High Council for the Audio-visual and Communications (CSAC) provides for freedom of press and access to information.[83] However, Freedom House ranked press freedom in the DRC as "not free" with a stable score on civil liberties of 6/7[84] for the period under review (2014-2018). The NGO noted that the media frequently criticised the government and then-President Kabila himself, but that journalists risked criminal defamation suits, threats, detentions, arbitrary arrests and attacks.

The U.S. Department of State has listed 121 cases of attacks against the media documented by the local NGO Journalists in Danger (JED) for the period November 2016-October 2017, more than half of which were attributed to government security forces. Several radios were the subject of threats or attacks, including Radio Okapi,[85] hosted by the MONUSCO. There is no evidence that such restrictions were linked to EITI implementation or broader extractive industry governance issues.

There is some evidence of restrictions on freedom of expression linked to natural resource governance in at least two areas. Firstly, there were incidents of government backlash following the publication of reports by Global Witness in July 2017 and the Carter Center in November 2017 (*see Requirements 2.6 and 7.1*). Global Witness conducted a thorough review of EITI data and other public records, arguing that more than USD 750m in mining payments by companies to state entities was not remitted to the Treasury between

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DRC was also created by the United Nations Security Council following Resolution 1533 (2004) that sought to investigate the connection between the illegal exploitation of natural resources and trafficking in raw materials and arms in Eastern Congo. It has seen its mandate renewed since. See UN/S/RES/155(2004), https://undocs.org/S/RES/1533(2004); UN/S/2015/19, 12 January 2015, http://www.un.org/ga/search/view_doc.asp?symbol=S/2015/19; UN/S/2018/1133*, 18 December 2018, https://undocs.org/S/2018/1133, accessed in January 2019.

[80] Human Rights Watch (2019), World Report 2019, DRC, https://www.hrw.org/world-report/2019/country-chapters/democratic-republic-congo, accessed in January 2019.

[81] UNHCHR (December 2016), DRC: United Nations experts urge Government to lift "abusive" restrictions on protestors to head off violence, https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21048&LangID; CIVICUS (last updated December 2018), Democratic Republic of Congo, https://monitor.civicus.org/country/democratic-republic-congo/; U.S. Department of State (2018), op. cit.; Freedom House (2018), op. cit.; ICNL (last updated January 2019), Civic Freedom Monitor: DRC, http://www.icnl.org/research/monitor/congo_drc.html, accessed in January 2019.

[82] 2006 Constitution of the Democratic Republic of Congo, https://www.wipo.int/edocs/lexdocs/laws/fr/cd/cd001fr.pdf, accessed in January 2018.

[83] Law no.11/001 of 10 January 2011 on the composition, attributions and functioning of the High Council for the Audio-visual and Communications (CSAC), https://www.leganet.cd/Legislation/JO/2011/JOS.16.01.2011.Loi.11.001.pdf, accessed in January 2019.

[84] (1=Most Free, 7=Least Free), Freedom House DRC country report accessed at https://freedomhouse.org/report/freedom-world/2018/congo-democratic-republic-kinshasa

[85] See Radio Okapi, https://www.radiookapi.net/.

2013 and 2015.[86] EITI DRC immediately issued a press release distancing itself from the report, following a press conference that included Minister of Mines Martin Kabwelulu.[87] Similarly, the Carter Center published a report based on analysis of EITI data from 2007 to 2014 and other publicly-available data that was particularly critical of the main mining SOE, GÉCAMINES.[88]

A year later in November 2018, after the start of Validation, the government launched a media campaign against international NGOs such as Global Witness and the Carter Centre alleging that they were undermining Congolese sovereignty over its raw materials.[89] Local civil society groups, nonetheless, demanded and obtained that these reports be discussed by the MSG at its meeting on 9 May 2018[90], the first time SOEs' management of extractives revenues was discussed at an MSG meeting.

The MSG agreed to establish a special committee to investigate the issue further and make recommendations on how to address the issue, although this was not yet implemented in practice at the start of Validation. These reports called attention on SOEs governance and the MSG produced a special report on SOEs in July 2018, the 2016 Supplementary Contextual EITI Report, which addressed gaps in SOE reporting highlighted by international NGOs (*see Requirement 2.6*).

Secondly, investigations into politically-exposed persons' ties with the extractive sector appear to be sensitive. Following the publication of the Panama Papers in 2016,[91] the Minister of Communications Lambert Mende publicly warned journalists and media against naming Congolese citizens covered in the documents leak, threatening them with legal action.[92] In July 2017, the Pulitzer Center on Crisis Reporting and the Congo Research Group published the report "*All the President's Wealth: The Kabila Family Business*".[93] The report, extensively covered by foreign news agencies[94], documented the ownership of

[86] Global Witness (July 2017), Regime cash machine, How the Democratic Republic of Congo's booming mining exports are failing to benefit its people, https://www.globalwitness.org/en/campaigns/democratic-republic-congo/regime-cash-machine/.
[87] See: L'Actualité (July 2017), RDC: Le rapport Global Witness sur la disparition de USD 750 millions a une connotation politique (Martin Kabwelulu), https://actualite.cd/2017/07/24/rdc-le-rapport-de-global-witness-sur-la-disparition-de-750-millions-une-connotation. The national coordinator at the time, Professor Mack Dumba sent a protest letter to Global Witness in July 2017 .https://www.itierdc.net/2017/07/27/plus-de-750-millions-de-dollars-introuvables-au-tresor-public-de-2013-a-2015-selon-global-witness/.
[88] The Carter Center published A State Affair: Privatizing Congo's Copper Sector, which is the culmination of years of research on the contractual and financial practices of the Democratic Republic of Congo's state-owned mining company, GÉCAMINES, and its most important investment partners. https://www.cartercenter.org/news/pr/drc-110317.html
[89] Gécamines Publishes a Comprehensive Report in Response to Allegations From Certain NGOs, November 2018 https://www.prnewswire.com/news-releases/gecamines-publishes-a-comprehensive-report-in-response-to-allegations-from-certain-ngos-892072211.html and civil society reaction to the press release http://congomines.org/reports/1608-reaction-des-oscs-a-la-conference-de-presse-de-la-gecamines-sur-les-rapports-des-ongs.
[90] Minutes of MSG meeting of 9 May 2018. https://drive.google.com/file/d/1_FMFigMTj-grEHPiazwO3RGQ_In8J5ZQ/view
[91] See: International Consortium of Investigative Journalists, The Panama Papers, https://www.icij.org/investigations/panama-papers/, accessed in January 2019. The most high-profile revelations from the leak pointed to links between former President Joseph Kabila and Dan Gertler, allowing the latter to secure favourable deals in the mining and oil sectors, as well as shed light on the wealth amassed by close relatives of the former President. See: The Guardian (November 2017), The inside story of Glencore's hidden dealings in DRC, https://www.theguardian.com/business/2017/nov/05/the-inside-story-of-glencore-hidden-dealings-in-drc; Le Monde (March 2016), Panama Papers: Dan Gertler, roi du Congo et de l'offshore, https://www.lemonde.fr/afrique/article/2016/04/07/panama-papers-dan-gertler-roi-du-congo-et-de-l-offshore_4898097_3212.html; RFI (April 2016), RDC: des proches du président Kabila cite dans les "Panama Papers", http://www.rfi.fr/afrique/20160409-rdc-proches-president-joseph-kabila-panama-papers-jaynet-dan-gertler, accessed in January 2019.
[92] Ba Sango Ya Congo Kinshasa (August 2016), « Panama Papers »: Lambert Mende menace, met en garde et évoque des poursuites judiciaires contre les médias, https://www.sangoyacongo.com/2016/04/panama-papers-lambert-mende-menace-met.html; Le Congolais (April 2016), Panama Papers: Lambert Mende Lance des «Mises en garde» aux médias, https://www.lecongolais.cd/panama-papers-lambert-mende-lance-des-mises-en-garde-aux-medias/, accessed in January 2019.
[93] Pulitzer Center on Crisis Reporting and CRG (July 2017), All the President's Wealth: The Kabila Family Business, https://pulitzercenter.org/sites/default/files/all-the-presidents-wealth-eng.pdf, accessed in January 2019.
[94] See for example:TV5 Monde (July 2017), RD Congo: le clan Kabila osus le coup de nouvelles accusations,

significant assets in several sectors of the Congolese economy by close relatives of Kabila, including in mining companies active in the diamond and gold sector. While limited in coverage, several local online newspapers nonetheless relayed information published in the report[95], without evidence of reprisals against these entities.

In addition, there are concerns around the government's reaction to investigations by a network of international and local NGOs into the management of the forestry sector in April 2018. These CSOs alleged in February 2018 that Minister of Environment Amy Ambatobe had awarded forestry concessions to two companies, FODECO and SOMIFOR, two Chinese companies, despite a moratorium on forestry concessions in place since 2002 and the cancellations of these concessions by his predecessor Robert Bopolo in August 2016.[96] The Ministry of Environment held a press conference following the allegations, where then-Secretary General of the Ministry Benjamin Toirambe reportedly threatened to sue the CSOs that had put forward the allegations.[97]

While the forestry sector is not covered by EITI reporting in the years under review, the DRC EITI has repeatedly sought to integrate the forestry sector into EITI reporting, including by drafting a scoping study on the sector in 2015 (*see Requirement 6.3*)[98] and including a representative from a company active in the forestry sector on the MSG (*see Requirement 1.4*).[99] In addition, the facts outlined above involve at least one CSO that is substantially involved in the EITI, RRN, as well as the Minister of Environment, Amy Ambatobe, who sat on the MSG as representative of the government and Second Vice-President of the MSG since June 2017.[100] Despite this backlash, in April 2018, Greenpeace, five local NGOs and a member of parliament, Juvénal Munubo, announced that they would file a complaint in the justice system and in

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https://information.tv5monde.com/afrique/rd-congo-le-clan-kabila-sous-le-coup-de-nouvelles-accusations-182241. Prior to the publication of the Pulitzer Centre and CRG report, Bloomberg had published an article about its investigations into the ties of the former President's family in the economy, including the mining sector: Bloomberg (December 2016), With his family's fortune at stake, President Kabila digs in, https://www.bloomberg.com/news/features/2016-12-15/with-his-family-fortune-at-stake-congo-president-kabila-digs-in; accessed in January 2019.

[95] CongoVox (July 2017), Les richesses du Président – l'entreprise familiale des Kabila, http://www.congovox.com/les-richesses-du-pr%C3%A9sident-%E2%80%94-l%E2%80%99entreprise-familiale-des-kabila, which drew from an article published by Afrique La Tribune (July 2017), RDC: l'impressionnant cartel des Kabila qui règne sur l'économie du pays, https://afrique.latribune.fr/politique/2017-07-20/rdc-l-impressionnant-cartel-des-kabila-qui-regne-sur-l-economie-du-pays-744700.html; CongoVov (March 2018), La ruée vers l'or des Kabila, http://www.congovox.com/la-ru%C3%A9e-vers-lor-des-kabila, which drew from an article by Deutsche Welle (March 2018), La ruée vers l'or des Kabila, https://www.dw.com/fr/la-ru%C3%A9e-vers-lor-des-kabila/a-43065755; Sangi Ya Congo /July 2017), RDC: un nouveau rapport international accable le clan Kabila, https://www.sangoyacongo.com/2017/07/rdc-un-nouveau-rapport-international.html, which drew from an article published by Le Figaro (July 2018), RDC: un nouveau rapport international accable le clan Kabila, http://www.lefigaro.fr/international/2017/07/22/01003-20170722ARTFIG00059-rdc-un-nouveau-rapport-international-accable-le-clan-kabila.php, accessed in January 2019.

[96] Greenpeace Africa (February 2018), En violation de son propre moratoire, le gouvernement de RDC rétablit des concessions forestières illégales, https://www.greenpeace.org/archive-africa/fr/Presse/Le-gouvernement-de-RDC-retablit-des-concessions-forestieres-illegales-en-violation-de-son-propre-moratoire/, accessed in January 2019.

[97] An article published by 7sur7 described the press conference held on 5 September in Kinshasa where the Ministry of Environment apparatus rejected allegations from CSOs and threatened them with a lawsuit. The link to the article did not function anymore in January 2019, but was available in September 2018 and can be accessed using the Internet Archive tool. See: 7sur7 (September 2018), RDC: Gestion des forêts: accuse à tort selon lui, le minister de l'environnement promet de poursuivre en justive plusieurs ONGs (…), https://web.archive.org/web/20180908125021/http://7sur7.cd/new/rdc-gestion-des-forets-accuse-a-tort-selon-lui-le-ministre-de-lenvironnement-promet-de-poursuivre-en-justice-plusieurs-ongs-dont-greenpeace-ocean-cnceib/, accessed in January 2019.

[98] DRC EITI (November 2015), Rapport sur l'étude de cadrage du secteur forestier en RDC, https://itierdc.net/wp-content/uploads/2016/03/RAP10.pdf, accessed in January 2019.

[99] See DRC EITI (updated September 2018), Liste de présence des membres du Comité Exécutif de l'ITIE RDC, 2014-2018, https://drive.google.com/file/d/1vjPTjRP2L545pEig__4z3jxQNOFJfe2f/view accessed in January 2019.

[100] RRN was amongst the signatories of a letter on 7 March 2018: RRN et al. (March 2018), RE: Democratic Republic of Congo's proposed lifting of the moratorium on new industrial logging concessions, https://storage.googleapis.com/planet4-africa-stateless/2018/10/3dac763c-3dac763c-drc-moratorium-international-letter-07-mar-2018-1.pdf, accessed in January 2019.

parliament to cancel the two licenses that were issued.[101] There is no evidence that the threats from the Ministry of Environment were carried out and it appears that civil society carries out a robust debate on the management the forestry sector.

Despite these restrictions, there is no evidence that they have curbed civil society's ability to express its views on the EITI process. A review of MSG meeting minutes shows that civil society representatives express their views freely on the MSG, despite the attendance of high-level government officials. Prior to MSG meetings, civil society groups, both MSG members and non-members, review documents on the MSG's agenda and issue public statements. The latter are often critical of the government and set out recommendations and advocacy positions for their representatives on the MSG.[102]

Between 2014 to 2017, civil society representatives issued multiple press releases and letters to the Prime Minister and other relevant authorities demanding that the government adhere to its commitment to the EITI Principles. For example, in August 2015, the NGO ASADHO issued a letter to Prime Minister Ponyo asking the authorities to address issues likely to compromise achievements made by the EITI process, such as lack of transparency around government expenditures, pending litigations with mining companies and internal governance issues within the DRC EITI.[103]

In June 2018, representatives from 24 CSOs in ten provinces issued a declaration about EITI implementation in the DRC ahead of the start of Validation. Noting that the EITI process remained crucial to obtain extractives data despite administrative and financial challenges, they called on the government to pursue efforts to clarify the management of revenues by SOEs (*see Requirement 2.6*), the renewal of PERENCO's license in violation of the Hydrocarbons Code (*see Requirement 2.2*) and to disclose contracts in line with government policy (*see Requirement 2.4*).[104]

CSOs substantially involved in the EITI also issued statements beyond issues directly covered by the EITI Standard, publicly commenting on assessments of the environmental impact of extractives companies, the displacement of populations due to extractives activities, the infrastructure built under the SICOMINES agreement, beneficial ownership in the hydro-power sector and human rights violations in the artisanal and small-scale mining (ASM) sector (*see Requirement 7.1*).[105] Moreover, civil society representatives use the

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[101] AfriqueLaLibre (April 2018). RDC: campagne contre l'octroi de concessions forestières à des Chinois, https://afrique.lalibre.be/17955/rdc-campagne-contre-loctroi-de-concessions-forestieres-a-des-chinois/, accessed in January 2019.

[102] An extensive list of public declarations are available on the Congomine.org website http://congomines.org/search?utf8=%E2%9C%93&search=ITIE&theme=&type_document=&type_source=&province=

[103] Lettre de l' ASADHO au Premier Ministre sur la mise en œuvre de l'ITIE, August 2015, http://congomines.org/reports/804-lettre-de-l-asadho-au-premier-ministre-sur-la-mise-en-oeuvre-de-l-itie

[104] Réseau Sud Congo et al. (June 2018), Déclaration des organisations de la société civile impliquées dans la mise en œuvre de l'ITIE en RDC, http://congomines.org/system/attachments/assets/000/001/479/original/De%CC%81claration_sur_ITIE-RDC_CS_Juin_2018.pdf?1529935306, accessed in January 2019.

[105] See for example ADDH and ACAJ (janvier 2018), Pollution de l'environnement par l'entreprise KAMOTO COPPER COMPANY appartenant à la firme Glencore à Tshamundenda, http://congomines.org/system/attachments/assets/000/001/428/original/POLLUTION_A_TSHAMUNDENDA_par_KCC-__VF.pdf?1516275274; Afrewatch et al. (September 2018), Pas au courant, pas de courant, Analyse critique de la gouvernance du project hydroélectrique de Busanga, http://congomines.org/system/attachments/assets/000/001/507/original/Busanga_Sicohydro_Rapport_d'e%CC%81tude_092018.pdf?1536912427; ASADHO (March 2016), L'audit des infrastructures réalisées grâce à la convention de collaboration entre la RDC et le Groupement d'entreprises chinoises s'impose, http://congomines.org/system/attachments/assets/000/001/092/original/Communiqu%C3%A9_de_Presse_de_l'ASADHO.pdf?1458297384,

EITI process to promote public debate, for instance through trainings of journalists and the organisation of radio shows, public events, workshops and conferences *(see Requirement 7.1)*.

Operation: Article 37 of the Constitution guarantees freedom of association. Law 004/2001 of 20 July 2001 on General Provisions Applicable to Not-for-Profit Associations and Public Benefit Establishments, commonly known by its French acronym "ASBL", regulates the functioning of non-profit associations and organisations of public utilities in the DRC.[106] Article 39 provides tax exemptions for NGOs, after approval by the Ministry responsible for the organization's activities (associations are registered under the Ministry of Justice). Foreign NGOs require additional approval by the Presidency in order to operate in the DRC. The law provides for residence permits for foreign NGO workers and their families and simplified clearance procedures at the Congolese Customs Office. The law, however, is not supported by implementing regulations, which Congolese NGOs have therefore requested.[107]

CIVICUS and Freedom House noted that registering a CSO was an "extremely bureaucratic process" and "burdensome", albeit without providing specific examples of NGOs covering focused on extractives or governance issues whose registration was not successful in the end.[108] The ICNL reported in May 2018 that three draft legislative bills represented threats to civic space in the DRC, including a human rights defenders bill that would force any human rights defender, or those working on human rights, to register with the authorities, a counter-terrorism financing bill that would also target civil society and a bill amending the 2001 ASBL law.[109]

None of these bills had been signed into law at the start of Validation in October 2018, and they were withdrawn during the transition leading to the new parliament at the beginning of 2019. United Nations experts had been particularly critical of the bill amending the ASBL law at a session of the Human Rights Council in June 2018. They noted that the draft bill would require heavy administrative procedures to register CSOs and would introduce restrictions on access to funding, as part of the government's alleged wish to stifle dissenting voices.[110]

In 2016 and 2017, there were repeated instances of foreign CSOs being evicted from the DRC on the grounds of visa-related irregularities, being "undesirable" or on allegations of threatening national stability. Greenpeace, Global Witness, Human Rights Watch and the Congo Research Group[111] denied the government's claims. Representatives from Greenpeace and Global Witness called on the authorities to let them pursue the monitoring of the forestry sector without fears of intimidation or reprisals.[112]

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accessed in January 2019.
[106] Law No. 004/2001 of 20 July 2001 is commonly known as (ASBL Law), accessible at: http://www.leganet.cd/Legislation/Droit%20Public/loi0042001.20.07.2001.asbl.htm
[107] ICNL (2018), op. cit.
[108] CIVICUS (2018), op. cit.
[109] ICNL (2018), op. cit.
[110] UN News (June 2018), République démocratique du Congo: des experts de l'ONU demandent la révision du projet de loi sur les ONG https://news.un.org/fr/story/2018/06/1015681, accessed in January 2019.
[111] See CRG, About, http://congoresearchgroup.org/about/.
[112] Global Witness (July 2017), Global Witness employees expelled from DRC under false allegations, https://www.globalwitness.org/fr/press-releases/global-witness-employees-expelled-drc-under-false-allegations/; REUTERS (March 2017), Congo expels two Greepeace researchers

Despite these concerns, there is no evidence of legal, regulatory or administrative obstacles affecting the ability of civil society representatives to raise funds or to participate in the EITI process. All CSOs on the MSG have been duly registered and accredited. The ICNL estimated that about three quarters of organisations in the DRC receive funding from foreign sources. Local civil society organisations engaged in EITI implementation have access to foreign funding, including from the Catholic Organization for Relief and Development Aid (CORDAID), Department for International Development (DFID), the European Union, Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), United States Agency for International Development (USAID) and the World Bank.

__Association__: The right to freedom of peaceful assembly is guaranteed by the Constitution. International human rights organisations have been particularly concerned about restrictions to the right to peaceful demonstrations, for instance during demonstrations between December 2017 and February 2018. The use of excessive force by armed forces led to the deaths of demonstrators and restrictions led to the arrests of political activists.[113] Despite these alarming reports, none of the documented cases were linked to the EITI process or concerned CSOs substantially involved in the MSG.

There have been many reports of restrictions on access to the Internet that negatively affected civil society communication channels. Civil society groups generally use WhatsApp groups to organize and share information. However, these disruptions were applied to citizens in general and were linked to the electoral process, for example during frequent protests organised in 2017, rather than targeting CSOs substantially engaged in the EITI process.[114] There is no evidence that formal or informal communication channels between civil society MSG members and the wider civil society constituency have been restricted.

Civil society MSG representatives have not been restricted from engaging in outreach to broader civil society, including in regard to discussions about MSG representation and the EITI process. The Code of Conduct for civil society involved in the EITI was adopted in 2015 and implemented without the interference of government or companies.[115] Civil society MSG representatives regularly seek inputs and contributions

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investigating logging, https://www.hrw.org/news/2017/01/23/dr-congo-human-rights-watch-researcher-deported; HRW (January 2017), Democratic Republic of Congo: Human Rights Watch Researcher Deported, https://www.hrw.org/news/2017/01/23/dr-congo-human-rights-watch-researcher-deported; The Guardian (April 2016), U.S. researcher who linked soldiers to massacres expelled from the Democratic Republic of Congo, https://www.theguardian.com/world/2016/apr/09/democratic-republic-congo-massacre-army-us-researcher-jason-stearns-expelled, accessed in January 2019.

[113] The most high-profile deaths and arrests include Rossy Tshimanga Mukendi, a young activist, and Timothée Mbuya, a lawyer and the executive director of the NGO Justicia. A United Nations report found that between January 2017 and January 2018, at least 47 deaths took place in the context of demonstrations, concluding that “freedom of peaceful assembly was severely restricted and often violently repressed”. In October 2018, after the start of Validation, Amnesty International published a legal analysis of the country’s legislation on the right to freedom of peaceful assembly. Its analysis examined the lack of adequate legislation and policies to enforce the provisions in the Constitution. See Human Rights Watch (2019), World Report 2019: DRC country chapter, https://www.hrw.org/world-report/2019/country-chapters/democratic-republic-congo; CIVICUS (2018), op. cit.; Jeune Afrique (February 2018), Répression en RDC: retour sur la mort tragique de Rossy Mukendi, https://www.jeuneafrique.com/537335/societe/repression-en-rdc-retour-sur-la-mort-tragique-de-rossy-mukendi/; UN News (March 2018), Democratic Republic of the Congo: United Nations report finds 47 protestors killed, freedom of assembly curtailed by use of force, https://news.un.org/en/story/2018/03/1005581; Amnesty International (October 2018),DRC: legal analysis of DRC legislation on the right to freedom of peaceful assembly: How national legislation and policies fall short of international human rights standards, and the urgency to change the situation, https://www.amnesty.org/en/documents/afr62/9190/2018/en/, accessed in January 2019.

[114] See Freedom House (2018), op. cit.

[115] The civil society code of conduct includes: the rights and obligations of a CSO member of the MSG; the modalities around the election; mandate and replacement of CSO members; and conditions for being replaced as a CSO member. Several CSOs (January 2015), Code de la Société Civile, https://drive.google.com/file/d/1GXAjxcsJd7QufrazMQsjcQMqfl8azsV4/view, accessed in January 2019. See also: DRC EITI (updated in 2018), De la description des pratiques observées dans la désignation et le remplacement des membres du Comité Exécutif, https://www.itierdc.net/comite-executif-2/?preview_nonce=31381c8d90&preview=true, accessed in January 2019.

from CSOs that are not part of the MSG. For example, civil society groups in the Lualaba province held a workshop in August 2018 to assess the extent to which their recommendations had been taken into account in the 2016 contextual report.[116]

They listed all the recommendations made by civil society on a table that also indicated the level of follow-up on each item. After the evaluation, the authors made their own recommendations to the EITI national secretariat and MSG, and conveyed these messages through their representatives on the MSG. Similarly, in November 2018, a civil society group in the Ituri province (CdC/RN) reviewed the 2016 Supplementary EITI Report and issued its own report on a specific SOE operating in the province, *Société minière de Kilo-Moto* (SOKIMO) (*see Requirement 2.6*).[117]

These kinds of analyses are often compiled by another civil society group, POM, with support from the Carter Center in Lubumbashi, and subsequently shared with civil society representatives in Kinshasa. There is limited evidence of MSG representatives communicating the outcomes of MSG deliberations, although minutes of MSG meetings are published on the EITI DRC website and widely shared with civil society groups outside of the MSG.[118]

Engagement: Civil society representatives are able to fully contribute and provide substantive input to the EITI process. Evidence shows that the CSO constituency is proactive within the EITI process and collaborates effectively with the other two constituencies. Examples include evidence of input and advocacy related to key MSG deliberations on issues such as work plan objectives and activities (*see Requirement 1.5*), the scope of EITI reporting, approval of EITI Reports and evaluation of the impact of the EITI process (*see Requirement 7.4*).

Since its launch in 2006, the national Public What You Pay (PWYP) coalition has been a key driver of EITI process. Organisations that are members of the coalition have conducted activities focused on improving transparency in the mining sector through EITI reporting, dissemination and advocacy campaigns and impact assessments.[119] The Carter Center and its partners, including POM, are key drivers of the EITI process in the DRC and helped improve the quality of EITI reporting over the last five years.

In May 2016, for example, POM conducted a review of implementation of the work plan over 2015-2017[120] and noted that despite the high disbursement rate of the budget allocated to EITI implementation (98% in 2015), only 26% of the planned activities in 2015 had been implemented. They concluded that either most of the activities implemented by the EITI were not in the work plan, or that the issue warranted further

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[116] SC Memorandum on the Consideration of Recommendations to the EITI-DRC 2016 Context Report, August 2018. http://congomines.org/reports/1582-memorandum-de-le-sc-sur-la-prise-en-compte-des-recommandations-au-rapport-contextuel-itie-rdc-2016

[117] Cadre de Concertation de la Société Civile de l'Ituri sur les Ressources Naturelles cdc/RN cas de société minière de Kilo-Moto (SOKIMO)), November 2018, http://congomines.org/system/attachments/assets/000/001/529/original/CdC-RN_Rapport_d'analyse_des_rapports_sur_les_%C3%A9tats_financiers_des_EP_SOKIMO_Novembre_2018.pdf?1542789020

[118] http://www.itierdc.net/comite-executif/proces-verbaux-du-comite-executif/

[119] According to PWYP, 30 NGOs and associations are members of the national PWYP coalition, including ASADHO, l'Association africaine pour la défense des droits de l'homme, and Réseau Ressources Naturelles (RRN). See the full list of NGO members to the PWYP here, https://www.pwyp.org/pwyp_members/democratic-republic-of-congo/ accessed in January 2019.

[120] Evaluation of the 2015-2017 EITI-DRC work plan made by the Platform of Civil Society Organizations Involved in the Mining Sector (POM). http://congomines.org/system/attachments/assets/000/001/313/original/Pom_evaluation_du_plan_d'activit%C3%A9_ITIE_RDC.pdf?1507194961

investigation. This became the impetus for auditing the national secretariat and led to the suspension of the national coordinator (*see Requirement 1.4*).

There is extensive evidence on the Congo Mines website, maintained by the Carter Center, of CSOs conducting analyses, reviewing the scope of reporting, of draft EITI Reports and providing comments to the MSG and the IA on draft EITI Reports. For example, in December 2015, POM conducted a review of the scope and methodology of the 2014 EITI Report and identified "major issues that may seriously affect the quality of the final report".[121] These types of analysis and publications are routine in the DRC. Ahead of Validation, the DRC EITI built a comprehensive list of all EITI process-related material produced by CSOs on its website for the period 2014-2018.[122]

Civil society in the DRC has regularly conducted evaluations of the EITI process and issued declarations on DRC's adherence to the EITI Principles and Requirements. For example, in June 2016, the civil society constituency, led by PWYP, conducted a thorough review of EITI implementation and issued a long list of corrective actions.[123] It should be noted, however, that such assessments have become less frequent in the last two years.

A review of MSG meeting minutes and attendance records[124] shows that civil society representatives participate actively in MSG meetings, MSG working groups and other EITI events, and that their views are taken into account and reflected in meeting minutes, albeit not always in MSG decisions. The national coordinator of PWYP DRC Jean Claude Katende chairs the evaluation committee. Albert Kabuya of RRN, Nicole Bila of RENAD/SRGN, Jimmy Munguriek of Cdc/RN in Ituri and Jean Marie Kabanga of POM are also proactive members of the MSG representing civil society as of the start of Validation.

Civil society representatives use the EITI process to demand further investigations and accountability in the management of revenues from the extractive sector. For example, in a press release issued in March 2016, ASADHO called on the government to conduct audits on the implementation of the SICOMINES agreement (*See Requirement 4.3*). The press release highlighted the deterioration of infrastructure projects (roads and hospitals) built under the DRC-China agreement, which was considered to be faster than normal. This followed a previous advocacy campaign where civil society successfully lobbied for greater transparency in the implementation of the SICOMINES agreement.[125]

Access to public decision-making: Civil society has the ability to ensure that the EITI process contributes to the public debate and to influence public decision-making. Article 27 of the Constitution guarantees that every citizen has the right to address a petition to the authorities, which is required to respond within three months.

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[121] Memorandum of the POM to the Conciliator on the quality of the project of the EITI-DRC Report 2014, published in December 2015 and accessible on the Congomines.org website at, http://congomines.org/search?province=&search=POM&theme=&type_document=&type_source=&utf8=%E2%9C%93
[122] For a complete list of submission by civil society organizations, see list of publications on the EITI DRC website https://www.itierdc.net/bibliographie/
[123] Evaluation of the EITI process in the DRC by civil society organizations on 21-22 June 2016 https://www.itierdc.net/parties-prenantes/.
[124] Attendance at MSG meetings are published on the EITI DRC website https://drive.google.com/file/d/1vjPTjRP2L545pEig__4z3jxQNOFJfe2f/view
[125] ASADHO (February 2015), Infrastructures du projet Sicomines à Kinshasa: défis de la transparence, de la qualité et du respect des droits humains, http://congomines.org/reports/670-infrastructures-du-projet-sicomines-a-kinshasa-defis-de-la-transparence-de-la-qualite-et-du-respect-des-droits-humains, accessed in January 2019.

There is evidence that CSOs substantially engaged in the EITI process have access to public decision- making. Firstly, through the MSG, CSOs have direct access to high-level officials representing the government, including five Ministers and officials with direct access to the President and the Prime Minister, as well as to senior members of private companies and SOEs. This has helped ensure that concerns voiced by the civil society constituency, including steps related to broader reforms, are heard by policy-makers. Secondly, there is strong evidence that civil society representatives provided inputs in the drafting of legislation and effectively shaped government reforms.

Most recently, civil society representatives were closely involved in drafting amendments to the Mining Code. They provided extensive feedback on the Mining Code's implementing Decree, which was adopted in June 2018. In December 2017, CdC-RN issued a list of civil society proposals and amendments that were not adequately reflected in the first draft of the revised Mining Code discussed by the Parliament in 2017.[126] A detailed analysis issued in September 2018 by CORDAID described the key contributions of CSOs to the revision of the Mining Code.[127] It clearly showed that CSO proposals formed the basis for much of the parliamentary discussions and resulted in the introduction of meaningful changes in the Mining Code, including on strengthening transparency provisions and clarifying companies' corporate social responsibility obligations (*see Requirement 2.1*).

Stakeholder views

Civil society representatives provided a wide range of opinions on their own participation. Civil society representatives on the MSG consulted stated categorically during consultations in public that they had the freedom of expression, operation and association to participate in the EITI process. They argued that they participated actively and that they had access to decision-making, in accordance with the Civil Society Protocol. However, the wider CSO constituency did not have a unanimous position on these issues.

Some argued that there were no violations to the Civil Society Protocol, whereas others argued there were clear violations, including some claims that there were strong grounds to suspend the DRC. Many characterised civil society engagement in the EITI as "extraordinary", especially in overcoming multiple logistical challenges and barriers. It is important to note that stakeholder consultations took place in November 2018, immediately before the elections in December 2018, in an environment of political uncertainty.

Expression: A government official mentioned two cases of intimidation of CSOs, in alleged retaliation against statements opposing oil exploration in Virunga park and other protected areas, and against the award of forestry licenses by the Minister of Environment despite a moratorium on such awards. Another government official explained that civil society spoke freely, noting that while insults were not allowed in discussions, criticisms were never an issue. They noted that the government backed down if CSOs voiced their concerns, leading to collaboration in order to find a compromise. Industry representatives also concurred that CSOs were generally free to speak and act within the framework of the EITI. They cautioned

[126] Summary of the civil society proposals for amendments not included or incorrectly reworded in the draft legislation adopted by the National Assembly, December 2017, http://congomines.org/system/attachments/assets/000/001/427/original/RDC_Soci%C3%A9t%C3%A9_Civlie_R%C3%A9sum%C3%A9_des_amendements.pdf?1516274304.

[127] CORDAID (September 2018), Réforme de la législation minière de la République Démocratique du Congo: Regards sur la contribution des organisations de la société civile, http://congomines.org/reports/1626-revision-du-code-minier-regards-sur-la-contribution-de-la-societe-civile, accessed in January 2019.

against politicising the EITI process by both government and civil society.

Many civil society groups argued that a distinction should be made between human rights CSOs and those working on extractives. They highlighted the fact that the EITI provided civil society with an opportunity to address Ministers directly and raise concerns. Several civil society representatives noted that they faced no constraints in speaking out, repeatedly using the work done on the SICOMINES agreement as proof that they could express their views on a topic previously considered off limit for public discussion. Rather, they considered that they were particularly cautious about publishing stories on sensitive topics, in which cases they tended to require more evidence than in less sensitive cases.

Others highlighted that they had no problems debating sensitive topics, as long as the topic was not directly related to the Head of State or his family. They referred to the Pulitzer Center and the Congo Research Group investigation into the wealth of relatives of the former President and links to the mining sector, noting that local media were discouraged from sharing information about the report, which was discussed though social media but not in the print or broadcast media.

Notably, many civil society representatives noted that the EITI acted as an “umbrella organisation”, in the sense that the government could not attack something it was supporting. They agreed that this “protection” worked better the closer they were to Kinshasa, noting that those living in remote areas might be exposed to police brutality or intimidation by local governments.

Journalists outside Kinshasa confirmed that they were free to express their views, with freedom of expression generally improving and no restrictions in general. However, they highlighted that they had difficulties accessing the information they needed to conduct their work. Other CSOs noted that freedom of access to information had not improved over the years. Access to information and certain types of documents was difficult, for instance when government agencies required that documents only be consulted at their offices.

They noted that there was an active debate on social media on extractives governance issues. They highlighted the fact that financial information from companies was very difficult to obtain, apart from through EITI disclosures. Referring to the 2016 Supplementary EITI Report that included information on the financial statements of nine SOEs (*see Requirement 2.6*), they noted that only the EITI could access this kind of information. Information was available publicly in company filings for the largest companies, but not for SOEs and small- and mid-sized companies.

Many considered the government’s reaction to the publication of the Global Witness report to be a violation of the Civil Society Protocol. The government did not censor the report, but accused Global Witness of supporting a Western agenda against the Government. It can be noted that the publication of the report coincided with Western governments calling on former President Kabila to organise elections and hand over power following the end of his term in December 2016. Several CSOs engaged in EITI, which also worked in the governance of the forestry sector, mentioned the threats from Minister of Environment Amy Ambatobe following calls to cancel the licenses awarded despite the moratorium. They noted that they had also accused the Minister of embezzling part of the licensing fees. Although threats were not carried out, the CSOs consulted clearly considered this to be intimidation tactics to attempt to silence NGOs.

Operation: All stakeholders consulted agreed that there were no restrictions on disseminating information nationwide. Civil society representatives repeatedly highlighted that the draft law amending the 2001 ABSL Law risked limiting freedom of association and operations. There were contradictory views regarding the situation of civil society in the former Bas Congo region (now Kongo Central), where oil production is concentrated. Some argued that civil society groups in the Bas Congo province had received threats and alleged that the oil company PERENCO had provided logistical support to the arrests of certain activists. Others stated categorically that there had never been any threats against civil society in that region. There were reports of civil society being denied access to certain mining sites, potentially following the Amnesty International's campaign on child labour in the cobalt supply chain.[128] However, the circumstances of such denials remained unclear.

Association: All stakeholders consulted confirmed that they are able to communicate freely with each other, primarily by using social media platforms, such as Whatsapp.

Engagements: All stakeholders consulted believed that civil society was strongly engaged in the EITI process and that it provided the most significant contributions to the EITI process. Former government officials, who used to be on the MSG, noted that CSOs had to play a 'catalyst' role in order for the EITI to work, and that they did so effectively. The officials argued that civil society seemed to be more critical of the government than of companies, even though private companies could be subject to much stronger scrutiny.

A government official on the MSG noted that civil society participation had been "excellent". They highlighted civil society's impressive record in participating and attending MSG meetings, their substantive contributions in MSG meetings and their participation in technical working groups with crucial input to improve the quality of EITI reporting. Industry representatives agreed that civil society participated actively, even though their demands sometimes appeared unreasonable. However, they called for a strengthening of local communities' representation within the civil society constituency.

Civil society representatives considered that they had adequate capacity to participate in the EITI, noting that their activities were generally carried out with the support of foreign technical and financial partners. All stakeholders consulted also recognised the excellent work done by the Carter Center, GIZ and NRGI in building the capacities of local civil society. CSO representatives and donors noted that local CSOs had made substantial progress in being able to address complex issues in the sector, including analysing beneficial ownership data, data disclosed in contracts and information about SOEs' management of revenues.

Access to decision-making: Many stakeholders consulted highlighted civil society's savvy campaigning tactics and achievements, including changes to the Mining Code related to revenue allocations to local communities, as well as transparency provisions in the Mining Code's implementing Decree.

Initial assessment

The International Secretariat's initial assessment is that the DRC has made **satisfactory progress** in meeting this requirement. There are concerns that the *general context*, especially since 2016 and the delay in organising presidential elections, led to restrictions of civic space, particularly with regard to freedom of

[128] Amnesty International, Campagne «Mon smartphone est-il lié au travail des enfants», https://www.amnesty.org/fr/latest/campaigns/2016/06/drc-cobalt-child-labour/, accessed in January 2019.

expression, operation and association. Despite alarming reports, such threats were not linked to the EITI or broader natural resource governance issues, but rather to the electoral process. With regards to *freedom of expression*, publicly available evidence and stakeholder views points to limitations in at least three areas related to the EITI process: the management of revenues by SOEs, politically-exposed persons' link to the extractive sector and the award of licenses in the forestry sector and the management of revenues by SOEs. Nonetheless, there is no evidence that such limitations curbed civil society's ability to express its views on the EITI process, including on issues that are not directly covered by the EITI Standard. Moreover, findings related to the forestry sector are not considered in the overall assessment of compliance with the EITI Standard.

Regarding freedom of *operation*, there were legitimate concerns around the draft ASBL law, in addition to a wider context where the process for registering CSOs was allegedly bureaucratic and foreign CSOs were evicted from the DRC. However, there is no evidence of legal, regulatory or administrative obstacles affecting the ability of civil society representatives to raise funds or to participate in the EITI process.

In terms of freedom of *association*, none of the documented cases of restrictions on peaceful demonstrations and the Internet were linked to the EITI process of targeted CSOs substantially involved in the EITI process. In addition, CSOs represented in the MSG liaised with CSO representatives in several provinces around the DRC. All the stakeholders consulted highlighted the remarkable level of *engagement* demonstrated by CSOs substantially involved in the EITI process.

There is extensive evidence of CSOs' ability to fully contribute to and provide substantive input to EITI reporting, to engage with other constituencies, and use the EITI to demand further investigations and accountability in the management of revenues. Finally, CSOs have clear *access to decision-making*, including through direct access to policy-makers on the MSG and consultations in the process of revising sector legislation.

To strengthen implementation, the DRC is urged to ensure that there are no legal, regulatory or practical constraints for civil society to fully, actively and effectively engage in all aspects of EITI implementation, particularly in terms of freedom of expression, operation and association. The DRC is encouraged to ensure that any future legal or regulatory reforms do not constrain civil society's proactive engagement in the EITI process and natural resource governance.

MSG governance and functioning (#1.4)

Documentation of progress

The functioning of the MSG is governed by Decree 09/28 of 16 July 2009 on the creation, organisation and functioning of the National Committee of the EITI in the DRC, signed by the Prime Minister. Other key documents include Internal Rules, agreed in September 2011. Documents related to the nomination or replacement of MSG members are comprehensively published on the DRC EITI website.[129] On 26 September 2018, the MSG adopted a draft Decree modifying the 2009 Decree to improve the functioning of the MSG. At the start of Validation, that Decree had not yet been signed by the Prime Minister and was therefore not enforced.[130]

The MSG's oversight of EITI implementation was disrupted for most of 2017 due to an internal crisis in the governance of the DRC EITI, which led to the suspension of the National Coordinator Professor Jeremy Mack Dumba and the removal of CSO MSG representative Jacques Bakulu. In August 2017, the EITI Board was informed of allegations of financial mismanagement against the EITI DRC Technical Secretariat, with the EITI Board's Governance and Oversight Committee discussing the matter at its 5 October meeting.[131] Minutes from MSG meetings in 2016 and 2017 also describe the evolution of the situation.[132]

Allegations of mismanagement by several MSG members were made over the June-October 2016 period when, following a review of the DRC EITI work plan's implementation, CSO and industry representatives noted that many work plan activities had been carried out by the national secretariat without the MSG's approval. As a result of these allegations, the then-Minister of Planning and MSG Chair George Wembi recommended the creation of an Audit Committee by the MSG, which was established in November 2016 and chaired by industry MSG member Yvonne Mbala.

Ernst & Young was mandated by the Audit Committee to prepare an audit of the DRC EITI financial accounts and an operational review of the EITI DRC Technical Secretariat. The Ernst & Young reports, published in April 2017, highlighted serious gaps in financial management, including a total of USD217,052 in expenditures without supporting documents and several EITI activities carried out without mandate from the MSG. Ernst & Young concluded the audit with significant qualifications and made extensive recommendations, including calling for further investigations of specific irregularities.[133] The MSG's Audit Committee recommended corrective actions on that basis. Civil society MSG members called for the suspension of National Coordinator Dumba, on the basis that they no longer trusted him, as documented through several memos available on the DRC EITI website.[134] Following several MSG meetings, National

[129] See the "Documentation" section on the main page of the website: DRC EITI, Documentation relative à la Validation, https://www.itierdc.net/validation-itie-rdc-2018/?preview_nonce=7cb73c16b1, accessed in December 2018. See Décret portant création de l'ITIE RDC https://drive.google.com/open?id=0B1C1Aj5TqAgvcURibDFiX1RJRVU; Règlement intérieur de l'ITIE RDC, https://drive.google.com/open?id=0B1C1Aj5TqAgvakt6Y05EWjdPZWM; Ordonnance nº.012/005 du 23 février 2012 portant nomination d'un coordonnateur du Secrétariat Technique du Comité National de l'ITIE RDC, https://drive.google.com/file/d/0B1C1Aj5TqAgvQ1ZTZld0SWJ3VEk/view.

[130] DRC EITI (September 2018), Projet de décret modifiant et complétant le Décret n.09/28 du 16 juillet 2009 portant création, organisation et fonctionnement du CN-ITIE/RDC, https://drive.google.com/file/d/1Vi4bDQE8tPq9AwRNEL84mTshAZBHkV-H/view, accessed in December 2018.

[131] Board circular no.236 and Board circular no.237, August 2017. GOC internal document for information, 'EITI DRC – Allegations of financial mismanagement at the EITI DRC national secretariat', September 2018.

[132] EITI DRC, Minutes from MSG meetings, op. cit.

[133] Based on the audit, EY proposes recommendations highlighting the urgency to: establish clear oversight procedures at the financial and decision-making levels; update texts on the organisation and functioning of the MSG and national secretariat, as well as the procedures manual; ensure that activities are carried out according to the workplan; clarify procedures related to the management of financial and fixed assets; revise recruitment, management, training and assessment procedures of the national secretariat staff, focusing on division of tasks and needs assessments; form three technical sub-committees (Outreach, Training, and Drafting/evaluation of ToR); and regularly audit the national secretariat through an independent internal auditor, commissioned by the MSG. The audit reports are available on the DRC EITI website, see EY (April 2017), Rapport de l'auditeur indépendant sur les états financiers annuels de l'exercice clos le 31 décembre 2015, https://drive.google.com/file/d/0B1C1Aj5TqAgvWmVNRG9tTHdzam8/view; EY (April 2017), Lettre de recommandation, ITIE RDC, de l'exercice clos le 31 décembre 2015, https://drive.google.com/file/d/0B1C1Aj5TqAgvY3VhRkZQZlJxMlE/view, accessed in December 2018.

[134] See for example: Several CSOs (September 2017), Sauvons l'ITIE en RC! Mémorandum des personnalités engagées dans la mise en œuvre du processus ITIE en RDC, https://drive.google.com/open?id=1R7afdblDrU60syToTWxn3g-oy6yCl84S; ASADHO (August 2017), ITIE-RDC: Crise de

Coordinator Dumba was suspended and an interim (*ad interim*) National Coordinator, Marie Thérèse Holenn Agnong, was appointed by Ministerial decree in October 2017.[135] Although MSG meeting minutes highlight the lack of trust by some stakeholders on the MSG in the interim National Coordinator (*see also stakeholder views*), EITI implementation gradually resumed after the MSG's 31 October 2017 meeting.[136]

MSG composition and membership: Article 7 of the 2009 Decree codifies the MSG's composition, with a total of 16 members of which eight from government and four each from industry and civil society. Although the Decree has not been modified since 2009, the number of MSG members has increased in practice over time to a total of 19 members in 2017. The latest annual progress report (covering January 2017-June 2018) includes a list of MSG members for the period under review (*see Requirement 7.4 and Annex A*).[137] This includes ten members from the government, five from industry and four from civil society.

Article 6 of the MSG's Internal Rules state that the companies and CSO representatives are nominated by their own constituency. Minutes of the meeting where the nomination took place are required to be sent to the Committee. The 2009 Decree does not include an explicit open and transparent invitation to participate in the MSG, nor mention that the nomination process is required to be free from any suggestions or coercion. However, the DRC EITI published a document in September 2018 describing the process for developing procedures for the nomination and replacement of MSG members since the start of the DRC's EITI implementation. This document notes that the mandate of government representatives depends on the duration of their government position, while the mandate of the industry constituency lasts three years.

The CSO constituency has its own Code of Conduct adopted on 15 January 2015, which sets their rights and obligations, the duration of the mandate and modalities of their nomination, as well as the conditions for losing their status as MSG members.[138] Article 8 of the 2018 draft decree, not yet enacted at the time of Validation, notes that the procedure for the nomination of industry and CSO constituencies will be established in a protocol adopted by the MSG within three months of the Decree's signature. Article 9 notes that the mandate of industry and CSO representatives is limited to two years, renewable once.

The 2009 Decree does not include provisions on the replacement of MSG members or the duration of their mandate. Article 12 of the Internal Rules state that MSG membership is lost if constituencies decide to replace their representative, or if the representative resigns, dies or is sentenced to prison for a period

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confiance entre les membres du CE et le Coordonnateur National, https://drive.google.com/open?id=1-cf4w9ABPKXu9jEgXwlDaaZ8vKLGg2Zv; Several CSOs (June 2017), Proposition d'une feuille de route pour la mise en œuvre du processus ITIE en RDC de mi-septembre au 31 décembre 2017, https://drive.google.com/open?id=1MJWZkplf-Fa0pnDweYEygxfL4FwAR12j, accessed in December 2018.

[135] See DRC EITI (October 2017), MSG meeting minutes, 9 October 2017, https://drive.google.com/open?id=176XQAmI_Wm7rwERb8cNN3SQaz_JhrgO1; Arrëté n.013/CAB/MINET/PLAN/MBL/ELM/LOC/2017 portant désignation d'un Coordonnateur a.i. du ST du CN-ITIE-RDC, October 2017, https://drive.google.com/drive/u/2/folders/1Hx9AA3jUCatHg2RNzwX8zheS-uFa75AS?ogsrc=32, accessed in December 2018.

[136] The internal governance crisis also provided grounds for the DRC EITI to request an extension of the start of Validation to the EITI Board in June 2018. The Board agreed to the extension, see EITI Board (September 2018), Board decision 2018-46/BC-256, https://eiti.org/BD/2018-46a, accessed in December 2018.

[137] DRC EITI (July 2018), 2017-June 2018 Progress Report, https://drive.google.com/file/d/1Mp626dmUOpguNFXldaL1jbqaGOyT4P0v/view, accessed in December 2018.

[138] DRC EITI (September 2018), Description du processus de révision des textes de gouvernance et des pratiques observées dans la désignation et le remplacement des délégués des collèges au Comité Exécutif, https://drive.google.com/file/d/1vPZWBkXpZ3RswQDNf3dGWDVMQ9PQYyCH/view, accessed in December 2018.

longer than six months.

Civil society representation: Article 8 of the Decree and Article 6 of the Internal Rules require that CSO representatives on the MSG "*come from the most representative organisations, legally constituted and specialised in the management of natural resources and good governance*." The CSO Code of Conduct defines the procedures for electing CSO representatives on the MSG, which is open to any CSO signatory to the Code of Conduct and thus effectively open to all. The same four CSOs[139] elected to the MSG between 2009 and 2013 continued in their positions until the renewal of CSO MSG representation in June 2018.

Following elections in 2018, three new CSO MSG members joined the MSG alongside Jean Claude Katende and Albert Kabuya: Nicole Bila of RENAD/SGRN, Jimmy Munguriek of CdC-RN and Jean Marie Kabanga of POM. The four CSO MSG members consist of representatives of two NGOs focused on mining, one on oil and gas and one on forestry. Documentation reviewed suggests that the process for electing CSO MSG members was conducted in a fair, open and transparent manner both originally and in June 2018. The annexes to the MSG's 25 July 2018 meeting include the minutes of the civil society's election process.[140]

Industry representation: While the 2009 Decree defines four MSG members from industry, membership has expanded to five members in practice by 2017. In addition to the four representatives codified in the Decree, one each from public mining companies, private mining companies, oil and gas companies and the Chamber of Mines, an additional seat was added *de facto* for a representative from forestry companies. Based on Article 6 of the MSG's Internal Rules requiring industry representatives to be nominated by their own constituency, the Chamber of Mines of the Business Federation of Congo (FEC) has facilitated nominations of MSG representatives for mining companies, the hydrocarbons industry association (*Groupement des Explorateurs et Producteurs Pétroliers de la RDC* – GEPP) for oil and gas companies and the Forestry Industry Association (*Fédération des Industriels du Bois* – FIB) for forestry companies.

However, there is no evidence of clear and public nominations procedures within any of these three industry associations other than a September 2018 letter from the associations to the National Coordinator confirming that each of the three organisations was responsible for nominations.[141] The five industry MSG representatives[142] remained mostly the same over the period under review, with Yvonne Mbala, Kassongo Bin Nassor, Simon Tuma Waku and Robert Munganga regularly attending meetings.

Government representation: The government constituency comprises the following five Ministers: Minister of Planning Modeste Bahati Lukwebo, the Minister of Finance Henri Yav Mulang, represented by the Vice-Minister of Finance Jean-Félix Mukuna, the Minister of Mines Martin Kabwelulu, the Minister of Hydrocarbons Aimé Ngoy Mukena and the Minister of Environment Amy Ambatobe. In addition, the government is represented by a senior advisor to the President, the deputy director of the Prime Minister in charge of economic and financial issues, the deputy director of the Prime Minister in charge of legal and

[139] Jean-Claude Katende, Albert Kabuya, Jacques Bakulu and Joseph Bobia.
[140] DRC EITI (July 2018), Minutes of the MSG's 25 July 2018 meeting, https://drive.google.com/file/d/1NgWuXY12_L36Hq03wMFIG9X6boYp8cK3/view, accessed in February 2019.
[141] DRC EITI (September 2018), 'Mode de designation, nomination, duree des mandats des membres du Collège des Entreprises', https://drive.google.com/file/d/1G_Xqjtgdaa_pFFSaU7pJp3pPSfNBOEFy/view, accessed in February 2019.
[142] Robert Munganga, Simon Tuma-Waku, Yvonne Mbala, José Minga's and Kassongo Bin Nassor.

fiscal issues, a representative of the Senate and a representative of the National Assembly.

Government officials become automatically members of the MSG following their appointments to their respective functions. Changes of MSG members from the government have taken place following every government reshuffle, including in November 2016, April 2017 and June 2018, although the Minister of Mines Martin Kabwelulu remained an MSG member throughout.

Regional committees: Article 10 of the 2009 Decree mentions the creation of multi-stakeholder committees in the provinces, with the same tripartite composition as the national MSG, composed of stakeholders relevant in each province and chaired by the provincial governor. Their mandate was meant to support dissemination and data collection at the provincial level. While a number of these structures was originally created, they were closed in 2014 and replaced by the Lubumbashi antenna of the DRC EITI national secretariat.

Terms of reference: Article 6 of the Decree describes the mandate of the MSG to oversee EITI implementation. This includes overseeing the reconciliation process, recruiting the IA and ensuring broader adherence with the EITI Principles and criteria in the DRC. The MSG is also tasked with overseeing the work of the national secretariat. Article 4 of the Decree states that companies and CSOs collaborate with the National Committee (MSG) in the implementation of the EITI. While not yet approved at the time of Validation, the 2018 draft decree expands its codification of the MSG's roles and responsibilities. Article 3 of the 2018 draft decree expands the mandate of the MSG, emphasising its role in suggesting reforms to the government and ensuring that practices in the extractive sector are in line with international standards.

Article 6 details the tasks of the MSG, highlighting its role in supervising the financial and operational management of the process, drawing from recommendations from the Audit Committee. Article 12 clarifies the role of technical committees within the MSG. Their targeted work is expected to contribute to streamlining the MSG's decision-making process and ensure that all constituencies are engaged in the process. These committees include one on Governance and Monitoring, one on Finances and one on Audit.

Internal governance and procedures: Article 8 of the Internal Rules require the MSG to meet at least monthly, as convened by the MSG Chair, Vice-Chairs or an individual constituency. The agenda and work documents have to be sent at least eight days in advance. Article 10 of the Internal Rules provide for the MSG to meet without external observers. There are no specific provisions allowing any MSG member to table an issue for discussion. While not yet approved at the time of Validation, Article 11 of the 2018 draft Decree requires the MSG to meet at least once a month and in accordance with other meetings set in the annual work plan.

In practice, the MSG has met on average ten times a year over the 2014-2018 period, with periods of high frequencies of meetings, such as the three meetings in two months in 2017 amidst the DRC EITI's governance crisis. While documents are usually circulated in advance of meetings, with some exceptions, the regular financial reports from the national secretariat are only presented to the MSG on the day of the meeting.

While the 2009 Decree did not contain any provisions related to conflict of interest, Article 24 of the 2018 draft Decree, not yet enacted at the time of Validation, clarifies that the EITI Code of Conduct applies to all

MSG members and affiliated committees and working groups, as well as national secretariat staff. In addition, the Decree requires the National Coordinator, the Deputy National Coordinator and secretariat staff to respect the government's Code of Conduct for civil servants.

Decision-making: The 2011 Internal Rules require all MSG decisions to be taken by consensus, without provisions for voting in cases of lack of consensus. A review of MSG meeting minutes indicates that MSG decisions have always been taken by consensus during the 2014-2018 period, with discussions prolonged in cases where consensus could not be reached initially.

Record-keeping: Article 12 of the 2009 Decree requires the National Coordinator to be responsible for drafting minutes of MSG meetings. Article 10 of the Internal Rules require MSG meeting minutes to be signed by the MSG Chair and the National Coordinator and include a list of decisions taken at the meeting. Minutes of MSG Committee meeting are required to be signed by the Committee Chair and the National Coordinator, with a list of decisions taken at the meeting. In practice, minutes of all MSG and Committee meetings appear to have been drafted and agreed, published on the DRC EITI website. The minutes describe MSG discussions verbatim, identifying specific individuals.

Capacity of the MSG: There are no references to the capacity of MSG members in the 2009 Decree. In practice, review of MSG meeting minutes indicates that all MSG members appear to have the capacity to participate in technical discussions. Successive DRC EITI work plans include activities related to capacity-building for MSG members (*see Requirement 1.5*).

Per diems: Article 20 of the 2009 Decree states that members of the MSG and affiliated committees or working groups are entitled to receive "rights and privileges", understood as per diems, as set by the Ministries of Planning and Budget. However, there is no publicly-accessible document detailing the precise level of per diems. Article 23 of the 2018 draft Decree clarifies that members of EITI structures (the MSG and affiliated committees) do not receive salaries, but that they are entitled to per diems for attending meetings, with travel expenses both in-country and overseas reimbursed. The draft decree requires per diems and travel expenses levels to be set in the annual EITI work plan and budget. Anecdotal evidence suggests that per diems for MSG members can range from USD600 to USD1,000 per meeting, although these appear to have been reduced for CSO MSG members in 2018.

Attendance: Attendance lists of MSG meetings for the period 2014-May 2018 are available on the DRC EITI website.[143] They show regular attendance from all constituencies, including high-level officials. More than half of the members were regularly present, with the exception of the representative of forestry companies. Article 10 of the 2011 Internal Rules defines the rules for quorum at MSG meetings as the attendance of half of the members of each constituency. In practice, it appears that quorum was achieved at all meetings in the 2014-2018 period.

National secretariat: Article 12 of the 2009 Decree lists the roles and responsibilities of the national secretariat, which include operational implementing the work plan, drafting annual progress reports and supporting data collection and the reconciliation process. The Lubumbashi branch of the DRC EITI

[143] DRC EITI (June 2018), Listes de présence du Comité Exécutif de 2014-2018, https://drive.google.com/file/d/1vjPTjRP2L545pEig__4z3jxQNOFJfe2f/view, accessed in December 2018.

secretariat is responsible for supporting data collection from mining companies operating in the ex-Katanga Province and to lead dissemination and outreach in that province.

In practice, the national secretariat has grown to employ around 35 people in both Kinshasa and the Lubumbashi branch. For the 2016 EITI Report, the MSG tasked the national secretariat to draft the non-financial (contextual) sections of the report, as explained in the executive summary of the 2016 Contextual EITI Report. Repeated friction was reported among members of the MSG and the national secretariat during the DRC EITI governance crisis in 2017 (*see above*).

Stakeholder views

All stakeholders consulted agreed that the DRC EITI's internal governance challenges in 2017 had hampered EITI implementation, but that it had been necessary to resolve these longstanding issues. Despite some clear improvements in the management of the national secretariat, former government and CSO representatives noted that the credibility of the EITI remained undermined by the nomination process of the interim National Coordinator and sustained delays in recruiting a permanent National Coordinator through an open tender process. Some CSO representatives consulted praised the interim National Coordinator's leadership and support in resuming EITI implementation.

On the other hand, others believed that the EITI process had not collapsed primarily due to the active engagement of stakeholders, particularly CSOs, in the aftermath of the crisis. They lamented the fact that the process of reforming internal governance procedures and settling the recruitment of a permanent National Coordinator had not been fully completed. Some explained that the reason for these delays was due to the MSG's focus on preparing for Validation in the first six months of 2018, setting aside internal governance issues to ensure progress on EITI disclosures.

All stakeholders consulted highlighted that the MSG had agreed to a new draft Decree on EITI (the draft 2018 Decree) and they were waiting for the Prime Minister's official signature. They expressed hope that the new Decree would help address wider concerns from MSG members, such as those related to the National Secretariat's capacities to coordinate EITI implementation and delays in circulating documents ahead of MSG meetings.

Most stakeholders consulted agreed that the composition of the MSG was representative of the diversity of the actors involved in the EITI process. Donors noted that while the presence of five Ministers on the MSG strongly increased the credibility of the EITI process and its role in pushing for reforms in the sector, the process became exposed to the political environment to a considerable extent. CSO representatives noted that the media was not represented on the MSG and had been associated only to a very limited extent with the EITI process in general. Some CSOs noted that the media viewed itself as separate from the wider CSO constituency.

Some called for the DRC EITI to identify focal points within the media and provide them with training to enhance their use of EITI data, but also to include them as drivers of implementation. Industry representatives noted that companies were well represented within the MSG. They explained that the wider constituency was kept aware of the EITI process and could easily access documentation online. They noted that the constituency regularly met to discuss draft EITI documents. Former government representatives called for former MSG members and other formerly-active stakeholders to continue being included in implementation given that they remained useful sources of expertise for the EITI.

Industry and CSO representatives highlighted that they had developed strong links within the MSG and harmonised their views (*see Requirement 7.4*). They noted that this had been particularly evident in the process of revising the Mining Code, where discussions between MSG members had informed the consultations. They noted that it was understandably harder to build personal relationships with high-ranking officials from the government, but that the MSG had provided a forum for interaction for senior government officials.

On the nominations process, CSO representatives said that the renewal and replacement of MSG members was clear and transparent. The latest nominations had been the result of broad consultations in the western, central and eastern regions. They noted that former MSG members would stay for another 18-24 months to ensure the preservation of institutional memory. Industry representatives noted that the constituency had planned on renewing its members before the start of Validation (initially planned for 1 July 2018). However, the current industry MSG members explained that they stayed on to ensure continuity and help oversee the process of streamlining internal governance procedures.

The issue of per diems was raised repeatedly by the CSO constituency, with some calling for their complete removal. CSO representatives noted that per diems had already substantially decreased. CSO and industry representatives explained that they knew how much each member of their own constituency received, but did not have this information for the entire MSG. Former government representatives and CSOs highlighted that, generally speaking, the operational expenses of the DRC EITI were markedly high, despite efforts by the interim National Coordinator to reduce certain expenses.

All stakeholders consulted welcomed the monthly expenditure reports presented by the national secretariat. However, some representatives from government, industry, CSOs and donors noted that these reports should be more disaggregated to enable proper monitoring of expenses. Guidelines about per diems and national secretariat salaries were not publicly available and considered unreasonable by some stakeholders consulted. Several CSOs consulted expressed significant concerns about the implementation of these guidelines, with worries that expenditure of public funds was either unjustified or misappropriated as a result of EITI implementation.

Initial assessment

The International Secretariat's initial assessment is that the DRC has made **inadequate** progress towards meeting this requirement. The MSG includes adequate representation of each constituency, even though the process by which the industry constituency nominated their representatives is not clearly documented. The MSG's ToR outlines the roles and responsibilities of MSG members, and meeting records show that MSG members are generally carrying out their duties and responsibilities. There is evidence of outreach and coordination within each of the three broader constituencies represented on the MSG. The rules related to quorum and decision-making treat all three constituencies as equal partners and appear to be followed in practice.

However, pending enactment of the new EITI Decree drafted in 2018, the governance documents of the DRC EITI (namely the 2009 Decree and the 2011 Internal Rules) have not yet been updated with the transition to the EITI Standard in 2013. There are deviations from these governance documents in practice, such as in the composition of the MSG. While the ToR gives the MSG a mandate to approve work plans, to appoint the IA, approve the IA's ToR, EITI Reports and annual activity reports, it includes only cursory internal governance rules and procedures that do not extend to clear conflict of interest rules or a broader Code of Conduct. The lack of clarity on per diem practices is a significant concern, which could potentially lead to conflicts of interest.

The ambiguity related to internal governance came to a head during the internal governance crisis in the DRC EITI in 2016-2017, which could be interpreted as a violation of the global EITI Code of Conduct. Although the MSG's oversight of the national secretariat led to a temporary solution allowing EITI implementation to resume ahead of Validation, including the appointment of an ad interim National Coordinator and stricter oversight by the MSG of the DRC EITI's financial management, the internal governance of the EITI DRC remains precarious. Concerns that the appointment of the ad interim national coordinator did not adhere to the applicable rules, uncertainty in the management of day-to-day implementation and the risk of conflict of interests could undermine the credibility of the EITI.

In accordance with Requirement 1.4, the industry constituency should agree on public nominations procedures ahead of MSG member selection, and the DRC should renew the MSG's membership in line with statutory procedures. The DRC should update its internal governance rules to cover all provisions of Requirement 1.4.b and ensure that any deviations from the ToR in practice are properly codified. In accordance with Requirement 1.4.b.vi, the DRC must clarify the practice of per diems for attending EITI meetings or other payments to MSG members to ensure that it does not affect the governance of EITI implementation or cause any conflict of interest.

Work plan (#1.5)

Documentation of progress

Between January and March 2018, EITI implementation proceeded without an approved work plan due to the internal governance crisis that affected implementation between October 2016 and December 2017 (*see Requirement 1.4*). On 21 March 2018, the MSG adopted a temporary work plan covering the December 2017-June 2018 period, with the main objective of preparing for Validation that was initially due to start on 1 July 2018 (*see Executive summary*). That work plan had been discussed by stakeholders on 29 January-2 February 2018 at a workshop in Lubumbashi.[144]

On 25 July 2018, the MSG approved a triennial work plan for the July 2018-July 2021 period. It was subsequently modified by the technical working group (Groupe de Travail Technique - GTT) on 21 August 2018.[145] For the first time, the work plan was not developed around producing EITI Reports and organising

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[144] DRC EITI (March 2018), MSG meeting minutes, 16 March 2018, https://drive.google.com/open?id=16Ujc-uvysfRmuoTwu7u2tysHTIAol41t; DRC EITI (February 2018), Atelier de mise en commun des améliorations des parties prenantes au PT décembre 2017-juin 2018, https://drive.google.com/open?id=11qj5kdrk1nR8_BZWLiIwP6trjW1b0i3b; DRC EITI (March 2018), Plan de travail décembre 2017-juin 2018 axé sur la Validation, https://drive.google.com/file/d/1EcmBXCjLL5Qa88F1LxP5KdnpOFkZonC-/view accessed in December 2018.
[145] DRC EITI (July 2018), MSG meeting minutes, 25 July 2018, https://drive.google.com/open?id=1LrXQ_k6AeGtGC7HYxEga5p6H1Hldkbap, accessed in December 2018.

workshops with stakeholders. Rather, it was built around objectives for meaningful implementation discussed by EITI stakeholders during the self-assessment exercises held in November 2017 and March 2018.

The overall objective underlying the triennial work plan was "*Implementing the EITI with the aim to contribute to sustainable development in the DRC, through the responsible and transparent management of natural resources*". The expected outcome was that "*the proceeds from the exploitation of natural resources make a significant contribution to improving the well-being of the current and future Congolese population*."[146]

Publicly accessible work plan: The triennial work plan is publicly accessible on the DRC EITI website under three formats: as a narrative report, which explains the process for drafting and agreeing the document; as a log frame structured around objectives and activities; and as a log frame with specific indications of expenses covered by the budget.[147] As explained in the narrative report, the structure of the work plan was based on conclusions from the two self-assessments carried out in November 2017 and March 2018.

It was then submitted to stakeholders for comments, with a workshop held in Lubumbashi on 22 June 2018. On 29 June, the technical working group met to improve the draft work plan. The national secretariat is in charge of drafting an operational plan and TORs for each activity. The narrative version also includes a table analysing constraints and risks that might affect the implementation of the work plan, with corresponding risk-mitigating measures.

Objective for implementation: In addition to the main objective stated above, the work plan lists five strategic objectives: improving public accountability with regard to the extractives sector; improving the accountability of extractive companies in regard to their social responsibility; monitoring the implementation of reforms in the extractives sector; mainstreaming EITI best practices into government and corporate systems; and strengthening the DRC EITI at an institutional and technical level.

Measurable and time-bound activities: All activities established in the work plan are time-bound, distributed over three periods: July 2018-December 2019, January-December 2020 and January-June 2021. For each activity, the work plan sets expected results, indicators and source of verification, as well as the entities in charge of leading on the implementation of each activity. While the narrative report does not comment on upcoming revisions to the triennial work plan, previous practice for the period 2014-2017 shows that work plans are updated at least annually.

Activities aimed at addressing any capacity constraints: The work plan includes activities to strengthen the capacity of actors to use EITI data and promote debate about the sector, to strengthen the capacity of government agencies and companies to disclose comprehensive, reliable and timely data, and to

[146] «Mettre en œuvre l'ITIE aux fins de contribuer au développement durable de la RDC, par une gestion responsable et transparente des ressources naturelles»; « Le produit de l'exploitation des ressources naturelles contribue de manière significative à l'amélioration du bien-être de la population congolaise, présente et à venir». Translation by the International Secretariat.
[147] DRC EITI (July 2018), Plan triennial juillet 2018-juin 2021, https://drive.google.com/file/d/17CNS-g7yf7t3v7k1I0p-aypBmtyXZ70O/view; DRC EITI (July 2018), Cadre logique du Plan de travail triennal et cadre logique avec éléments budgétaires, https://drive.google.com/file/d/17CNS-g7yf7t3v7k1I0p-aypBmtyXZ70O/view, accessed in December 2018.

strengthen the capacity of public and private actors to monitor and implement reforms in the sector.

Activities related to the scope of EITI reporting: The work plan refers to key elements of EITI reporting, including social expenditures (both mandatory and voluntary), subnational payments and transfers, SOE transparency, beneficial ownership disclosures, data comprehensiveness and reliability. Objective four of the work plan also aims to strengthen systematic disclosures through government and corporate systems. Going beyond the minimum requirements of the EITI Standard, the work plan also includes incorporating the ASM and the forestry sectors in the scope of EITI reporting.

Activities aimed at addressing any legal or regulatory obstacles identified: The implementation of EITI principles and requirements was incorporated in the March 2018 version of the Mining Code (*see Requirement 2.1*). One of the specific objectives of the work plan is to ensure that the regulatory framework is implemented in practice.

Plans for implementing the recommendations from Validation and EITI reporting: The work plan includes activities to follow-up on recommendations from previous EITI Reports and self-assessment exercises. It also indicates that activities related to implementing corrective measures from Validation will be drafted as soon as Validation results are known.

Costings and funding sources, including domestic and external sources of funding and technical assistance: The work plan includes costing of each activity over the three years and an indication of whether costs should be covered by government or donor funding. Total costs for the three years amount to USD7.43 million.[148] The work plan notes that an audit of the DRC EITI will be conducted annually. A point to highlight is that at every MSG meeting the national secretariat presents a monthly summary of expenses. However, the level of details does not always allow the attribution of these costs to a specific activity.[149]

Stakeholder views

Industry and CSO representatives agreed that they had had an opportunity to comment on the draft work plan and that all stakeholders' comments had been taken into account. CSO representatives noted that the draft had to be significantly improved to ensure that objectives were aligned with national priorities and reflect all stakeholders' priorities. A former government official noted that the objective related to mainstreaming the EITI in government and corporate systems was too limited in scope for a triennial work plan (*see Requirement 4.1*).

Initial assessment

The International Secretariat's initial assessment is that the DRC has made **satisfactory** progress towards meeting this requirement. While the MSG only had a temporary work plan for the December 2017-June 2018 period, EITI implementation continued on the basis of the provisional work plan during this period. Interruptions in MSG oversight of EITI implementation in the 2016-2017 period are covered under Requirement 1.4. The July 2018-July 2021 triennial work plan reflects local stakeholders' concerns to make

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[148] Broken down by period: July 2018-December 2019: USD3,584,533; 2020: USD2,277,452.28; January-June 2021: USD1,572,452.
[149] See for example: DRC EITI (September 2018), MSG meeting documentation, 26 September 2018, https://drive.google.com/file/d/1RFN0KwRXg_owSCE05gvTTBig96kc-nIX/view, accessed in December 2018.

EITI implementation meaningful, aimed at making a demonstrable positive impact for the Congolese population of improved governance in the extractive sector.

The work plan is publicly accessible, produced in a timely manner and fully costed. It is aligned with national priorities and the views of EITI stakeholders. It includes activities to address the following issues: potential capacity constraints, the scope of EITI reporting, including strengthening routine disclosures through government and corporate systems, and any potential legal or regulatory obstacles to EITI implementation. It includes plans to implement recommendations from Validation and EITI reporting and for disclosing beneficial ownership information. In addition, it reflects the DRC EITI's plan to go beyond the minimum requirements of the Standard, including through broadening the scope of EITI reporting to the ASM and forestry sectors.

To strengthen implementation, the DRC may wish to include more targeted outcomes on mainstreaming EITI Requirements and principles through government and corporate systems. The DRC is encouraged to ensure that the EITI work plan's activities related to systematic disclosures are aligned with the work plans of relevant government entities and extractives companies.

Table 1. Summary of initial assessment: MSG oversight

EITI provisions	Summary of main findings	International Secretariat's initial assessment of progress with the EITI provisions
Government oversight of the EITI process (#1.1)	In addition to regular public statements of support from the government, five senior Ministers participate actively in the MSG. The Minister of Planning and the Minister of Mines, respectively the MSG's Chair and Vice Chair, have the authority to coordinate actions on the EITI across relevant ministries and government agencies. They have the confidence of all stakeholders and the ability to mobilise resources for EITI implementation. EITI focal points within government reporting entities work closely with the DRC EITI. The International Secretariat concludes that the government is fully, actively and effectively engaged in the implementation of the EITI.	Satisfactory
Company engagement (#1.2)	Oil, gas and mining companies are fully, actively and effectively engaged in the EITI process. Extractives companies are required to disclose information by law and they generally comply with EITI reporting requirements. They also participate actively in the design, implementation, monitoring and evaluation of the EITI process through their active participation in MSG meetings. The Chamber of Mines promotes the EITI in its activities.	Satisfactory
Civil society engagement (#1.3)	There are concerns that the *general context*, especially since 2016 and the delay in organising presidential elections, led to restrictions of civic space, particularly with regards to freedom of expression, operation and association. Despite alarming reports, such threats were not linked to the EITI or broader natural resource governance issues, but rather to the electoral process. With regards to *freedom of expression*, publicly available evidence and stakeholder views points to limitations in at least three areas related to the EITI process: the management of revenues by SOEs, politically-exposed persons' link to the	Satisfactory

	extractive sector, and the award of licenses in the forestry sector. Nonetheless, there is no evidence that such limitations curbed civil society's ability to express its views on the EITI process, including on issues that are not directly covered by the EITI Standard. Moreover, findings related to the forestry sector are not considered in the overall assessment of compliance with the EITI Standard. Regarding freedom of *operation*, there were legitimate concerns around the draft ASBL law, in addition to a wider context where the process for registering CSOs was allegedly bureaucratic and foreign CSOs were evicted from the DRC. However, there is no evidence of legal, regulatory or administrative obstacles affecting the ability of civil society representatives to raise funds or participate in the EITI process. In terms of freedom of *association*, none of the documented cases of restrictions to peaceful demonstrations and Internet were linked to the EITI process of targeted CSOs substantially involved in the EITI process. In addition, CSOs represented in the MSG liaised with CSO representatives in several provinces around the DRC. All stakeholders consulted highlighted the remarkable level of *engagement* demonstrated by CSOs substantially involved in the EITI process. There is extensive evidence of CSOs' ability to fully contribute to and provide substantive input to EITI reporting, engage with other constituencies, and use the EITI to demand further investigations and accountability in the management of revenues. Finally, CSOs have clear *access to decision making*, including through direct access to policy-makers on the MSG and consultations in the process of revising sector legislation.	
MSG governance and functioning (#1.4)	The MSG includes adequate representation of each constituency, even though the process by which the industry constituency nominates their representatives is not clearly documented. The MSG's ToR outlines the roles and responsibilities of MSG members, and meeting records show that MSG members are generally carrying	Inadequate

	out their duties and responsibilities. There is evidence of outreach and coordination within each of the three broader constituencies represented on the MSG. The rules related to quorum and decision-making treat all three constituencies as equal partners and appear to be followed in practice. However, pending enactment of the new EITI Decree drafted in 2018, the governance documents of the DRC EITI (namely the 2009 Decree and the 2011 Internal Rules) have not yet been updated with the transition to the EITI Standard in 2013. There are deviations from these governance documents in practice, such as in the composition of the MSG. While the ToR gives the MSG a mandate to approve work plans, to appoint the IA and approve the IA's ToR, EITI Reports and annual activity reports, it includes only cursory internal governance rules and procedures that do not extend to clear conflict of interest rules or a broader Code of Conduct. The lack of clarity on per diem practices is a significant concern, which could potentially lead to conflicts of interest. The ambiguity related to internal governance came to a head during the internal governance crisis in the DRC EITI in 2016-2017, which could be interpreted as a violation of the global EITI Code of Conduct. Although the MSG's oversight of the national secretariat led to a temporary solution allowing EITI implementation to resume ahead of Validation, including the appointment of an ad interim National Coordinator and stricter oversight by the MSG of the DRC EITI's financial management, the internal governance of EITI DRC remains precarious. Concerns that the appointment of the ad interim national coordinator did not adhere to the applicable rules, uncertainty in the management of day-to-day implementation and the risk of conflict of interests could undermine the credibility of the EITI.	
Work plan (#1.5)	While the MSG only had a temporary work plan for the December 2017-June 2018 period, EITI implementation continued on the basis of the provisional work plan during	Satisfactory

	this period. Interruptions in MSG oversight of EITI implementation in the 2016-2017 period are covered under Requirement 1.4. The July 2018-July 2021 triennial work plan reflects local stakeholders' concerns to make EITI implementation meaningful, aiming for a demonstrable positive impact for the Congolese population of improved governance in the extractive sector. The work plan is publicly accessible, produced in a timely manner and fully costed. It is aligned with national priorities and the views of EITI stakeholders. It includes activities to address the following: potential capacity constraints, the scope of EITI reporting, including strengthening routine disclosures through government and corporate systems, and any potential legal or regulatory obstacles to EITI implementation. It includes plans to implement recommendations from Validation and EITI reporting and for disclosing beneficial ownership information. In addition, it reflects the DRC EITI's plan to go beyond the minimum requirements of the Standard, including through broadening the scope of EITI reporting to the ASM and forestry sectors.	

Secretariat's recommendations:

1. To strengthen implementation, the DRC may wish to review EITI DRC governance documents to ensure that high-level political commitment to EITI implementation is consistently matched by full operational engagement.
2. To strengthen implementation, the industry constituency is encouraged to ensure its sustained engagement in all aspects of EITI implementation, regardless of the fragmentation of its industry association.
3. To strengthen implementation, the DRC is urged to ensure that there are no legal, regulatory or practical constraints for civil society to fully, actively, and effectively engage in all aspects of EITI implementation, particularly in terms of freedom of expression, operation and association. The DRC is encouraged to ensure that any future legal or regulatory reforms do not constrain civil society's proactive engagement in the EITI process and natural resource governance.
4. In accordance with Requirement 1.4, the industry constituency should agree on public nominations procedures ahead of MSG member selection, and the DRC should renew the MSG's membership in line with statutory procedures. The DRC should update its internal governance rules to cover all provisions of Requirement 1.4.b and ensure that any deviations from the ToR in practice are properly codified. In accordance with Requirement 1.4.b.vi, the DRC must clarify the practice of per diems for attending EITI meetings or other payments to MSG members to ensure that it does not affect the governance of EITI implementation or

cause any conflict of interest.

5. To strengthen implementation, the DRC may wish to include more targeted outcomes on mainstreaming EITI Requirements and principles through government and corporate systems. The DRC is encouraged to ensure that the EITI work plan's activities related to systematic disclosures are aligned with the work plans of relevant government entities and extractives companies.

Part II – EITI Disclosures

2. Award of contracts and licenses

2.1 Overview

This section provides details on the implementation of the EITI requirements related to the legal framework for the extractive sector, licensing activities, contracts, beneficial ownership and state participation.

2.2 Assessment

Legal framework (#2.1)

Documentation of progress

As the 2016 Contextual EITI Report notes, principles surrounding the management of natural resources in the DRC are established in Art. 9 of the 2006 Constitution modified in 2011.[150] For the first time, DRC EITI compiled a detailed list of applicable taxes and levies[151] in the extractive sector for industrial mining operators.[152] This table was compiled following recommendations from stakeholders during the March 2019 pre-Validation self-assessment workshop.[153] Previous EITI Reports provided a list of revenue streams, with less clarity about the fiscal base and tax rates. This innovation represents a significant effort in clarifying a fragmented fiscal regime, particularly in the mining sector.

Oil and gas

Systematic disclosures: The website of the Ministry of Hydrocarbons provides links to the 2015 Hydrocarbons Code, its 2016 Implementing Decree and eight presidential orders approving contracts or amendments, including a PSA between the State, COMICO and SONAHYDROC approved 1 February 2018.[154] A point to be noted is that hydrocarbon contracts enter into force only once they are approved by presidential order (*see Requirement 2.4*).[155] The responsibilities of government agencies are described in the Hydrocarbons Code.

[150] DRC EITI, 2016 Contextual Report, p.10. Constitution of 18 February 2016 modified by Law no. 11/002 of 20 January 2011, http://www.journalofficiel.cd/adm/uploads_jo/14fbf5f413899203486d5b618982ad12.pdf#nameddest=1, accessed in October 2018.
[151] It indicated the collecting entity; a detailed description of each revenue stream, its legal basis, fiscal base and tax rate; to which kind of company it applies to (oil company in exploration or production, mining company in exploration or production) and whether or not the revenue would be reconciled or unilaterally disclosed in the upcoming 2016 Financial reconciliation EITI Report.
[152] DRC EITI (June 2018) 'Tableau de description des flux', https://drive.google.com/file/d/18XmGsV90yDqCda6g3aD3rmFivPDnIMqV/view, accessed in October 2018.
[153] They had noted that previous EITI reporting did not provide sufficient information about the fiscal obligations of mining companies and about the level of fiscal devolution. DRC EITI, Self-assessment, op. cit.
[154] Ministry of Hydrocarbons, Legislation, http://hydrocarbures.gouv.cd/?-Legislation-, accessed in October 2018.
[155] Law no.15/012 of 1 August 2015, Art. 41.

EITI reporting: *Legal framework*: The 2015 EITI Report and the 2016 Contextual EITI Report provide links to the 2015 Hydrocarbons Code and its implementing decree.[156]

Government agencies' roles: The 2015 EITI Report and the 2016 Contextual EITI Report describe the role and responsibilities of the Ministry of Hydrocarbons, the Secretary General of Hydrocarbons and SONAHYDROC, previously known as COHYDRO (*see Requirement 2.6*).[157] More information about SONAHYDROC was available in the 2016 Supplementary Contextual EITI Report (*see Requirement 2.6*).[158]

Fiscal regime: The 2015 EITI Report includes an overview of the applicable fiscal regime in the oil sector.[159] The 2016 Contextual EITI Report clearly describes the general taxes and levies associated with service contracts and PSAs (*see Requirement 4.2*), the two options introduced by the 2015 Hydrocarbons Code. The report notes that this fiscal regime coexists with those established in the 11 August 1969 Convention on on-shore exploration and the 9 August 1969 Convention on off-shore exploration, which apply respectively to the PERENCO REP and LIREX association and the CHEVRON-ODS, MIOC and TEIKOKU association, up until the end of their validity. However, it notes that the CHEVRON-ODS, MIOC and TEIKOKU consortium was granted a renewal of its 1969 Convention in November 2017, which extended the validity of the concession to 2043.[160] This renewal contradicted provisions of the 2015 Hydrocarbons Code (*see Requirements 2.4 and 7.1*).[161]

Degree of fiscal devolution: The 2015 EITI Report did not comment on the level of fiscal devolution. The 2016 Contextual EITI Report lists the revenues that should be collected or transferred to local government units and provides links to the statutory laws and regulations. These include the Tax on mining and hydrocarbons concessions; other taxes and levies listed in Law no.13/001 of 23 February 2013; 10% of the revenues of the B category; and revenues from the National Equalisation Fund, which is made up of 10% of the total revenues of the A and B categories. The 2016 Contextual EITI Report notes the implementing regulation for the last two categories of revenues has not been issued to date. The report also confirms that implementing regulations for the Fund for Future Generations are also pending, three years after the enactment of the Hydrocarbons Code.[162]

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[156] Law no.15/012 of 1 August 2015, http://www.leganet.cd/Legislation/Droit%20economique/Code%20Minier/Loi.15.012.01.08.2015.html; Decree no.16/010 of 19 April 2016, https://drive.google.com/file/d/1qc9ADTsYzKpBJG7VtLPTocbme1UFf9BP/view, accessed in October 2018.
[157] Among others, the Ministry of Hydrocarbons grants prospection authorisations and allocates exploration and production rights, manages a database on the oil and gas sector and is in charge of annually publishing statistics on the production, payments and disclosed revenues on its website. The Secretary General is in charge of administrative and technical tasks, including maintaining the registry of hydrocarbons rights and compiling and dissemination documentation about the hydrocarbons sector. See: Statutes of the SONAHYDROC (November 2016), https://drive.google.com/file/d/1GBz3CGnuDl6fVG39m46pnvb6fOqzneNa/view, accessed in October 2018. DRC EITI, 2015 EITI Report, pp.33-34.
[158] Ibid,, pp.72-87; DRC EITI, 2016 Supplementary EITI Report, pp.60-64.
[159] 2015 EITI Report, pp.32-33.
[160] MIOC is a subsidiary of PERENCO. The DRC EITI website provides links to the amendment and presidential order. See Amendment no.8 (October 2017), and the Presidential order approving the renewal (November 2017), https://drive.google.com/file/d/1UbJivB7ntQmVAFVVPVvoo1vZorfnPGj3/view, accessed in October 2018. The amendment is also available on the Ministry of Hydrocarbons website, http://hydrocarbures.gouv.cd/IMG/pdf/avenant_no8_ala_convention_du_9_aout_1969.pdf.
[161] 2016 Contextual EITI Report, pp. 11-14.
[162] 2016 Contextual EITI Report, p.14, p.17. See Law no.13/001 of 23 February 2013, https://www.droitcongolais.info/files/11443_ordonnance_du_23_fevrier_2013_taxes_impo.pdf; Law no.1/011 of 13 July 2011, https://drive.google.com/file/d/1o1pXwAwAUiQP5lTfYmQlOkCB_IfsSsbq/view; Law no.16/028 of 8 November 2016, http://leganet.cd/Legislation/JO/2016/JOS.12.11.2016.pdf http://leganet.cd/Legislation/JO/2016/JOS.12.11.2016.pdf; Law no.15/012 of 1 August 2015, http://www.leganet.cd/Legislation/Droit%20economique/Code%20Minier/Loi.15.012.01.08.2015.html, accessed in October 2018.

Reforms: The 2016 Contextual EITI Report lists 13 innovations in the Hydrocarbons Code's 2016 Implementing Decree, including the harmonisation of the fiscal regime applicable to all operators.[163]

Mining

Systematic disclosures: The website of the Ministry of Mines provides comprehensive access to laws and regulations for the mining sector, including all ministerial orders published between 2007 and 2018.[164] The responsibilities of Government agencies are described in the Hydrocarbons Code.

EITI reporting: *Legal framework*: The DRC EITI website provides links to key legal and regulatory texts, including the June 2018 Implementing Decree of the Mining Code.[165] The 2015 EITI Report provides an overview of the legal framework for mining.[166] The 2016 Contextual EITI Report provides a list of laws and regulations in the mining sector. This report and the 2016 Supplementary Contextual EITI Report describe innovations in the 2018 Mining Code and its Implementing Decree. These include provisions related to the traceability of revenues and the sector's broader transparency, and fines for companies that fail to comply with these provisions.[167]

Title II *bis* of the implementing Decree on '*the transparency of mining activities, traceability and the certification of mineral substances*' includes language on the government's commitment to EITI implementation (*see Requirements 1.1 and 1.2*), companies' disclosure of revenues and beneficial owners (*see Requirements 2.5 and 4.1*), transparency in the award and transfer of licenses (*see Requirement 2.2*), disclosure of production and exports figures (*Requirement 3.2 and 3.3*), disclosure of contracts (*Requirement 2.4*), and publication of financial statements of companies and SOEs (*see Requirements 2.6 and 4.9*).

Government agencies' roles: The 2015 EITI Report describes the main roles and responsibilities of government agencies.[168] The 2016 Contextual EITI Report describes the roles of government entities at both central and local levels.[169] The roles of the eight SOEs active in the mining sector are described in more detail in the 2016 Supplementary EITI Report (*see Requirement 2.6*).[170]

Fiscal regime: The 2015 EITI Report provides an overview of the applicable fiscal regime.[171] The 2016 Contextual EITI Report lists the taxes and levies applicable in mining based on the 2018 Mining Code and common laws. It highlights certain revenue streams, such as the special tax on 'super-profits', and notes

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[163] 2016 Contextual EITI Report, p. 18.
[164] Ministry of Mines, Legislation, https://www.mines-rdc.cd/fr/; Ministerial Orders, https://www.mines-rdc.cd/fr/index.php/arretes-ministeriels/, accessed in October 2018.
[165] Decree no.038/2003 of 26 March 2003 on the implementing decree of the Mining code, as modified by decree no.18/024 of 8 June 2018, https://drive.google.com/file/d/16VAkR4oFVE-FvCZ6Nhmr2wODWl-_8G8S/view, accessed in October 2018.
[166] 2015 EITI Report, p.40.
[167] 2016 Contextual EITI Report, pp.19-20.
[168] 2015 EITI Report, pp.41-42.
[169] For example, it noted that the Prime Minister can declare a mineral substance 'strategic', that the Ministry of Mines allocates mining rights and that the mining cadaster manages mining and quarrying licenses under the supervision of its line Ministry. DRC EITI, 2016 Contextual EITI Report, pp. 24-27. 2016 Supplementary EITI Report, pp.64-65.
[170]Ibid, pp.72-87 and pp.1-60.
[171] 2015 EITI Report, pp.40-41.

that the new Mining Code abolished mining contracts.[172]

Degree of fiscal devolution: The 2016 Contextual EITI Report notes that the 2018 Mining Code clearly distinguished between revenues collected at the central level and the local level, the latter being listed in Art. 220 *bis*. Order no.13/001 of 13 February also establishes the nomenclature of revenue flows collected at the local level. The report also notes that the Provinces of Haut Katanga and Lualaba established local taxes applicable to mining operators, even though there were not authorised to do so by a Prime Ministerial Decree (*see Requirement 4.6*). The report also provides information about subnational transfers of shares of the mining royalty. The Mining Code created a Fund for Future Generations, funded by 10% of the mining royalty (see Requirement 5.2), although the report notes that its implementing decree has not yet been issued.[173]

Reforms: The 2016 Contextual EITI Report lists the innovations introduced by the new Mining Code, including the transfer of responsibility for the mining sector from the President to the Prime Minister, an increase in the state's equity in companies operating in the mining sector and the strengthening of criteria for awarding and transferring mining rights.[174]

Stakeholder views

All stakeholders consulted noted that the government faced challenges in its monitoring of tax payments in line with regulations, especially in the mining sector. Industry and CSO representatives commended the DRC EITI's efforts to clarify the fragmented fiscal regime through a comprehensive table. Industry representatives noted that the fiscal regime was clear for experts, but not easy to understand for most citizens. They noted that companies had no interest in contravening regulations, especially given the high potential fines, and recommended that state agents be better trained in administering the fiscal regime. CSO representatives noted that, while EITI reporting provided a good overview of the sector, its description of implementation in practice was too limited.

They recommended that future EITI reporting include comprehensive information about fiscal obligations and contractual exemptions, including joint ventures in which the state participated. A former government representative expressed reservations as to whether the table describing revenue streams was sufficiently user-friendly for the average citizen.

All stakeholders consulted acknowledged the key role played by DRC EITI and wider constituencies in including transparency language in the new Mining Code. They described in particular the strong engagement of CSOs in the drafting process of the implementing decree. Donors noted the government's ownership of the multi-stakeholder model promoted by the EITI throughout the revision process, which translated into a more consultative approach. Regarding the dispute between seven large mining companies and the government on the new Mining Code, an industry representative noted that the new code would help clarify certain issues, such as local content requirements, but that the cancellation of

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[172] 2016 Contextual report, pp. 22-23.
[173] 2016 Contextual EITI Report, pp.23-24, 60-63.
[174] Ibid, pp. 28-29.

stabilisation clauses had endangered investor confidence.

Several companies, including some of the largest ones operating in the DRC, expressed strong concerns about the cancellation of stabilisation clauses.[175] Others noted, however, that stabilisation clauses introduced by the 2002 Mining Code were not meant to last more than ten years and that most investors had benefitted from them long enough to offset the risk of their investments. Some CSO representatives noted that the companies' reactions had been disproportionate, and that the country's fiscal regime for mining remained one of the world's most attractive. CSO representatives noted that they had played a near-mediator role between companies and industries in clarifying the implementation of the cancellation of stabilisation clauses in the implementing decree.[176]

CSO representatives noted the opacity surrounding the forestry sector, including lack of clarity on the revision of the Forestry Code and around lifting the moratorium on awarding forestry concessions (*see Requirements 1.3, 2.2 and 3.1*).

Initial assessment

The International Secretariat's initial assessment is that the DRC has made **satisfactory** progress in meeting this requirement. Most laws and regulations applicable to the hydrocarbons and mining sector are publicly available online, including on the DRC EITI website. EITI reporting thoroughly describes the applicable legal and fiscal regime in both sectors, including the level of fiscal devolution, information about the roles and responsibilities of the relevant government agencies and the latest reforms as recently as June 2018.

For the first time, DRC EITI has compiled a detailed table of revenue streams applicable in the extractive sector, indicating the fiscal base and tax rates, with the aim of clarifying a complex fiscal regime, especially in the mining sector. In the secretariat's view, the DRC has made efforts to go **beyond** the minimum requirement by publicly describing the implementation of legal provisions in practice and in providing input to the development of new laws and regulations.

To strengthen implementation, the DRC is encouraged to continue publishing relevant laws and regulations on relevant government websites. The DRC may wish to ensure that information on all revenue streams published on the DRC EITI website is regularly updated in light of statutory reforms. The DRC, in collaboration with government representatives, is encouraged to further strengthen its use of EITI reporting to monitor the implementation of legal reforms in practice, including clarification of the fiscal obligations

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175 REUTERS (March 2018), 'Congo's Kabila signs into law new mining code', https://www.reuters.com/article/us-congo-mining/congos-kabila-signs-into-law-new-mining-code-idUSKCN1GL2MB; REUTERS (April 2018) 'Miners insist on rewrite of Congo mining code to protect exemptions', https://www.reuters.com/article/us-congo-mining-exclusive/exclusive-miners-insist-on-rewrite-of-congo-mining-code-to-protect-exemptions-idUSKCN1HC28U; BLOOMBERG (June 2018), 'Congo's miners face harsh new reality as mining law finalised', https://www.bloomberg.com/news/articles/2018-06-13/congo-s-miners-face-harsh-new-reality-as-mining-law-finalized; REUTERS (September 2018), 'Congo mines minister insists no compromise on new mining code', https://www.reuters.com/article/us-congo-mining/congo-mines-minister-insists-no-compromise-on-new-mining-code-idUSKCN1LS1PW, accessed in October 2018.

176 Some CSOs expressed concerns over the statement by former President Joseph Kabila that concerns would be addressed on a case-by-case basis: See Global Witness (March 2018), 'Le nouveau Code Minier de la République démocratique du Congo ouvre la porte à des affaires de corruption", https://www.globalwitness.org/fr/press-releases/le-nouveau-code-minier-de-la-république-démocratique-du-congo-ouvre-la-porte-à-des-affaires-de-corruption/.

and exemptions applicable to specific contracts.

License allocations (#2.2)

Documentation of progress

Oil and gas

Systematic disclosures: The website of the Ministry of Hydrocarbon provides copies of some, but not all, contracts (*see Requirement 2.4*), as well as eight ministerial orders and one decree approving the award of contracts.[177]

EITI reporting: The 2015 EITI Report confirms that no new licenses were awarded in 2015 but does not explicitly refer to any transfers.[178] The 2016 Contextual EITI Report confirms that no license was allocated in 2016, based on a letter sent to the EITI by the Hydrocarbons Secretary-General. The report clarifies that the extension of the exploration permit of Total E&P RDC in bloc III[179] and the renewal of the CHEVRON, PERENCO and TEIKOKU concessions took place in 2015 and 2017 respectively.

Award process: The 2015 EITI Report describes the process for awarding oil and gas rights, with more details about the direct application process.[180] The 2016 Contextual EITI Report refers to the relevant provisions of the Hydrocarbons Code and its implementing Decree and describes the award process for prospection, exploration and production rights, including an infographic of the process.[181] It notes that hydrocarbons exploration or production contracts become effective only once approved by Presidential Order, while the Minister of Hydrocarbons grants prospection rights.

Transfer process: The 2015 EITI Report describes the process for transferring exploration and production rights and for extending exploration (but not production) licenses. It provides the statutory period for which each type of license can be renewed and notes that the SOE holds a right-of-first-refusal in cases of partial or total license transfers.

Technical and financial criteria: The 2015 EITI Report notes that the model PSC contains provisions covering the transfer of oil and gas rights. The report notes that the IA was not able to find information on the assessment technical and financial criteria in license awards despite its review of available contracts.[182] Regarding the allocation of prospection rights, the 2016 Contextual EITI Report noted that the applicant

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[177] Ministry of Hydrocarbons, Legislation, http://hydrocarbures.gouv.cd/?-Legislation-, accessed in November 2018.
[178] Idem.
[179] Activities conducted by TOTAL E&P in Block III raised concerns by local and international NGOs about the potential impact on the nearby Virunga National Park. See for example: Save Virunga (February 2016), 'TOTAL conducting seismic testing on Congo oil block', https://savevirunga.com/mapping-oil-threat/block-iii-last-update/, accessed in October 2018. A similar outcry was prompted by allegations that exploration would start in the Salonga National Park, a UNESCO World Heritage Site. See Global Witness (May 2018), 'Not for sale: Congo's forests must be protected from the fossil fuels industry', https://www.globalwitness.org/fr/campaigns/oil-gas-and-mining/not-for-sale-salonga/, accessed. RFI (june 2018), 'RDC: vers l'extraction du pétrole des parcs naturels des Virunga et de la Salonga', accessed here in October 2018.
[180] 2015 EITI Report, pp.34-35.
[181] 2016 Contextual EITI Report, pp. 30-33.
[182] 2015 EITI Report, pp.34-35.

had to comply with a standard work programme and complete an environmental impact assessment. In terms of exploration or production license awards, the 2016 Contextual Report notes that the Minister of Hydrocarbons proposed a set of technical and financial criteria for approval by the Council of Ministers, albeit without commenting on the public accessibility of these criteria. The report does not comment on the selection of candidates for the 'restricted bidding process'. For the bidding process for exploration or production rights, the report notes that the list of bidders and the final selection is to be made available in the local and international press, in the Official Gazette and on the website of the Ministry of Hydrocarbons.

License awardee information: The 2016 Contextual EITI Report demonstrates that there was only one license transfer, and no new award, in the period primarily under review (2015). The 2016 Report provides the identity of the companies transferring and receiving the licenses - Total E&P on exploration bloc III[183] and the CHEVRON, PERENCO and TEIKOKU concession in 2015 and 2017 respectively. The 2016 Contextual EITI Report also confirms the award of a contract for the exploitation of methane gas in Lake Kivu in July 2017 to a consortium, following a bidding round launched in 2014 (*see assessment of Requirement 3.1*). The letter providing the list of selected candidates and the contract are published on the EITI DRC website.[184]

Non-trivial deviations: The 2015 EITI Report does not include particular information about the extension of the TOTAL E&P permit. A report by the *Cadre de concertation de la société civile de l'Ituri sur les ressources naturelles* on Block III of the Graben Albertine, however, notes that the permit had been renewed in 2012 and 2015, when it was stipulated that it could be renewed twice after a period of five years.[185] The 2016 Contextual EITI Report explains that the 2017 renewal of the license held by PERENCO was awarded in contradiction with the 2015 Hydrocarbons Code.

It notes that this renewal intervened six years before the expiry of the permit and did not comply with Art. 189 of the Law that stipulates that permits are to abide by the 2015 regime when renewed at the end of their expiry. The Amendment no.8 endorsing the renewal is available on the EITI DRC website. The report notes that the Supreme Court was consulted and approved the renewal, and that DRC EITI is seeking to obtain a copy.[186]

Comprehensiveness: The list of all active licenses is available online on the DRC EITI website, based on data from the SGH, and includes three authorisations for access to data, six exploration licenses and two

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[183] Activities conducted by TOTAL E&P in Block III raised concerns by local and international NGOs about the potential impact on the nearby Virunga National Park. See for example: Save Virunga (February 2016), 'TOTAL conducting seismic testing on Congo oil block', https://savevirunga.com/mapping-oil-threat/block-iii-last-update/, accessed in October 2018. A similar outcry was prompted by allegations that exploration would start in the Salonga National Park, a UNESCO World Heritage Site. See Global Witness (May 2018), 'Not for sale: Congo's forests must be protected from the fossil fuels industry', https://www.globalwitness.org/fr/campaigns/oil-gas-and-mining/not-for-sale-salonga/, accessed. RFI (june 2018), 'RDC: vers l'extraction du pétrole des parcs naturels des Virunga et de la Salonga', accessed here in October 2018.

[185] CDC/RN (March 2018), 'Manne cachée révélée du Bloc III de la Graben Albertine congolais, Rapport d'analyse des revenus fiscaux et parafiscaux du projet pétrolier sur le Bloc III du Graben Albertine congolais', http://congomines.org/system/attachments/assets/000/001/489/original/CdC_RN_MANNE_CACHEE_REVELEE_DANS_LE_BLOC_III_DE_GRABEN_ALBERTINE.pdf?1533279482, accessed in October 2018.
[186] 2016 Contextual EITI Report, p.12. Avenant n. 8 à la Convention du 9 août 1969 régissant l'exploration et l'exploitation des hydrocarbures dans la zone maritime de la RDC, November 2017, https://drive.google.com/file/d/1UbJivB7ntQmVAFVVPVvoo1vZorfnPGj3/view, accessed in October 2018.

production licenses. A summary of the ministerial *ordonnances* approving PSCs (except for one) is available in the 2016 Contextual EITI Report.[187] It is unclear whether there were pending requests for awards or transfers in the year 2016 and up until 2018.

Mining

Systematic disclosures: The Ministry of Mines' website provides links to all Ministerial orders ("arrêtés") in pdf format for the years 2007-2018. These include documents that approve awards and transfers of all license types. One of the most recent examples is a ministerial order from June 2018 granting a production permit (no.14246) to the SOE MIBA.[188] The document includes the permit's coordinates, commodities covered, date of application and duration, and corresponding fiscal obligations (*see Requirement 2.3*).

There are no particular concerns around comprehensiveness, with several thousand documents available, even though the database cannot be searched per license or company. In addition, the CAMI online mining cadastre also provides information about active licenses and transfers, as well as pending demands for both new licenses and transfers (see Requirement 2.3),[189] although there is a lack of clarity over the time lag and efficiency in mining cadastre updates in light of new awards.

EITI Reporting: Awards process: The 2015 EITI Report includes a description of the license award process, both for call for tenders and direct application.[190] The 2016 Contextual EITI Report describes the seven types of mining (including ASM) and quarrying rights that can be awarded and indicates their initial period of validity and possible duration of renewal.[191] It describes in detail the statutory process for the award of mining rights through a bidding process (including an infographic) and through direct application. It notes that awards effected through bidding applied to all reserves documented by the state.

It notes that the direct application requests should be addressed chronologically, on a first-come-first-served basis. The report provides the list of documents that should be included in the request, to which the beneficial owners of the applicant were added following enactment of the Mining Code's 2018 implementing decree (*see Requirement 2.5*). It describes in detail the assessment process, which starts maximum 20 days after receipt of the application, and the relevant government entities[192] involved. The report also describes the procedure for cancelling research, exploration and production licenses.

Transfers process: The 2015 EITI Report briefly describes the statutory rules for two types of transfers[193],

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[187] DRC EITI, Registre secteur des hydrocarbures, http://www.itierdc.net/carte-de-la-rdc-cliquable/registre-petrolier/, accessed in October 2018. 2016 Contextual EITI Report, pp.44-45.
[188] See Arrêté ministériel nº.0469 of 5 June 2018 portant octroi du permis d'exploitation n.14246, http://www.mines-rdc.cd/fr/wp-content/uploads/documents/Arretes/2018/A0469_2018.pdf?x72899, accessed in November 2018. It was transferred following the transformation of the permit no.11861 for MIBA SA.
[189] CAMI, Online mining cadastre, http://portals.flexicadastre.com/drc/en/, accessed in November 2018.
[190] 2015 EITI Report, pp.43-44.
[191] 'Permis de recherche, permis d'exploitation, permis d'exploitation et de rejets, permis d'exploitation de petite mine, autorisation de recherche de produits de carrière, autorisation d'exploitation de carrières permanentes et autorisation d'exploitation de carrières temporaires.' 2016 Contextual EITI Report, op. cit., pp. 41-44.
[192] the CAMI, the Directory of Mines, and the Congolese Agency for Environment (ANE) and other relevant agencies in charge of assessing environmental and social impact.
[193] 2015 EITI Report, p.45.

while the 2016 Contextual EITI Report describes in more details the different transfer procedures for mining licenses[194], similar to the license allocation procedures.

Technical and financial criteria: In the case of bidding for mining permits, an inter-ministerial commission is convened by the Minister of Mines to select the winning bid based on four criteria detailed in the 2015 EITI Report.[195] For direct applications, both awards and transfers, the report details the criteria assessed by the different government agencies in the granting of license applications.

License awardee information: The results of winning bids are required to be published in the Official Gazette and in local and international specialised media. In the case of direct application, the decision is published in the mining cadastre. The identity of license awardees is available in the CAMI and in the ministerial *arrêtés* published on the Ministry of Mines website. The 2015 EITI Report provides a summary table listing the number of active licenses by end of 2015, with reference to the CAMI database for more details.[196] The 2016 Contextual EITI Report notes that the CAMI website did not provide a downloadable list of active licenses and pending requests. The list of valid licenses was provided to the DRC EITI and published on its website (*see Requirement 2.3*).[197] The 2016 Contextual EITI Report provides the number of licenses awarded in 2016 and 2017, the number of valid licenses at the end of each year and the number of transfers during both years.

Non-trivial deviations: The 2015 EITI Report mentions a letter from the CAMI confirming the lack of non-trivial deviations in the award or transfer of mining rights in 2015, with all licenses awarded based on direct applications and not tender processes.[198] The 2016 Contextual EITI report does not comment on the existence of non-trivial deviations in awards and transfers in 2016 or 2017. The report does not clarify conditions around the transfer of production license 1284 by DEZITA INVESTMENTS SARL to GÉCAMINES, as part of a 5 April 2016 agreement between DEZITA INVESTMENTS SARL, GÉCAMINES and HIGHWIND PROPERTIES LIMITED:

Comprehensiveness: Both reports do not provide information about license awards in years prior to 2016. However, the ministerial *arrêtés* available on the Ministry of Mines website provide information about license awards and transfers for the period 2007-June 2018 (*see above*).

Commentary on efficiency: The reports do not comment on the efficiency of the license allocation procedure in either sectors.[199]

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[194] 'L'amodiation' and 'la mutation'. The latter can take place: 'par voie de cession, transmission ou par contrat d'option'.
[195] «Les offres déposées sont examinées promptement par une Commission Interministérielle dont les membres sont nommés et convoqués par le Ministre afin de sélectionner la meilleure offre. Celle-ci est sélectionnée sur la base des critères suivants :a) le programme des opérations proposées et des engagements des dépenses financières y afférentes ; b) les ressources financières et techniques disponibles de l'offrant ; c) l'expérience antérieure de l'offrant dans la conduite des opérations proposées ; et d) divers autres avantages socio-économiques pour l'Etat, la province et la communauté environnante, y compris le bonus de signature offert.» 2016 Contextual EITI Report, p.35.
[196] 2015 EITI Report, p.48.
[197] DRC EITI, Mining licenses registry, https://drive.google.com/file/d/1TZKAPqoixPB4O6qb_XH48EfDP-a2Wzi4/view, accessed in October 2018.
[198] 2015 EITI Report, p.44.
[199] Some CSOs have commented on risks related to license allocation and transfers. See for example LICOCO (2017), 'Rapport d'évaluation des risques de corruption dans l'attribution des droits miniers en RDC', http://transparency.org.au/tia/wp-content/uploads/2018/04/RAPPORT-NATIONAL-LICOCO-PRET-1.pdf, accessed in October 2018.

Stakeholder views

Government and industry representatives commended the work of the mining cadastre in providing publicly available information on mining licenses (*see Requirement 2.3*). Industry representatives considered that the process for requesting a license and getting approval was clear and relatively straightforward. Some representatives, however, expressed doubts about the level of qualifications of certain companies that had been awarded licenses in the past.

CSO representatives noted that there were concerns over the opacity in oil license awards in the run-up to elections, for instance in the renewal of PERENCO's exploration license. There were also civil society concerns over awards of mining rights through the sale of state assets, especially if contracts had not been made public (*see Requirements 2.4 and 2.6*). Stakeholders consulted expressed concerns that transfers of shares and the license transfer were not made in line with the statutory regulatory framework (*see Requirement 2.6*).[200] CSOs consulted welcomed legal reforms that introduced open tender processes for such transfers.

They noted concerns surrounding compliance with 'first-come-first-serve' procedures for mining rights awards, given that the mining cadastre was often temporarily closed to process pending applications. CSO representatives also expressed concerns around the sale of mining assets by SOEs, in particular GÉCAMINES. As an illustration, they noted the absence of a public tender for the sale of GÉCAMINES's rights within the METALKOL JV in 2016. GÉCAMINES representatives explained that the sale had been subject to "a restricted process with three applications, including METALKOL." Some noted that GÉCAMINES held over 100 mining licenses and was therefore in a position to act as a *de facto* mining cadastre, with risks of deviations from the regulatory framework.

Initial assessment

The International Secretariat's initial assessment is that the DRC has made **meaningful** progress towards meeting this requirement. The 2015 EITI Report addressed significant aspects of the Requirement but did not address the technical and financial criteria applied in the oil sector. The 2016 Contextual EITI Report provided descriptions of the statutory process for awarding or transferring licenses, particularly detailed for mining, including the technical and financial criteria. It provides information about licenses awarded or transferred in 2016 and 2017. However, both reporting and stakeholder views raised concerns about the comprehensiveness of disclosures regarding non-trivial deviations from the applicable legal and regulatory framework.

In accordance with Requirement 2.2, the DRC is required to publicly disclose information about licenses that are awarded and transferred, including any non-trivial deviations from the applicable legal and regulatory framework and the detailed technical and financial criteria assessed. The DRC is encouraged to ensure the EITI works closely with the relevant ministries to also disclose information about pending applications. In the event of bidding rounds, the DRC is required to disclose the bid criteria, the full list of applicants and is encouraged to document the results of the process.

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[200] See Protocole d'accord en date du 5 avril 2016, entre HIGHWIND PROPERTIES LIMITED, DEZITA INVESTMENTS SARL et GÉCAMINES, Annex 3, Acte de cession de droits miniers, https://drive.google.com/file/d/16W5nCJ7Qw3_aJTpHGvukCl3TyDe_3ipU/view, accessed in November 2018.

To strengthen implementation, the Ministry of Mines is encouraged to provide a list of all ministerial *arrêtés* granting awards and transfers of mining rights in open data format to facilitate data use. The CAMI is also encouraged to provide the option of downloading data about mining licenses in open data format. The Ministry of Hydrocarbons is encouraged to provide public access to all active contracts with references to licenses covered. The DRC may wish to expand its use of EITI reporting as an annual diagnostic of the efficiency of licensing allocation practices, with a view to publicly highlighting any risks of political interference.

License registers (#2.3)

Documentation of progress

Oil and gas

Systematic disclosures: The 2015 EITI Report notes that there was no existing public cadastre in the oil sector, although the relevant regulations require one to be accessible on certain conditions, including payment for administrative access.[201] As the 2016 Contextual EITI Report explains, the SGH maintains an internal and manual license registry, a copy of which was published on the EITI DRC website.[202] It includes the name of the operator and its tax identification number (TIN), license type, contract type, surface area, coordinates, dates of application, allocation and length, the existence of transfers in the year under review, the commodity(ies) covered and the regional location.

The report notes that there were missing data points for some licenses, including coordinates, dates of application and some TINs. As a summary, the report lists three requests for access to data, six exploration licenses and two production licenses active according to the SGH.[203] There are no concerns about the comprehensiveness of licenses held by material and non-material companies, given that EITI reporting includes all companies in the exploration and production phases.

Mining

Systematic disclosures: The CAMI was established by Decree no.068/2003 of 3 April 2003. Its prerogatives include maintaining the license registry and the geological map ("*carte des retombées minières*") using a publicly accessible national cadastre.[204] Its website is under construction and does not provide a list of active licenses and ongoing allocation or transfer requests in open data format (*see Requirement 2.2*).[205] The CAMI, however, hosts an online mining cadastre, FlexiCadastre, which offers free access. It was updated in March 2018, October 2018 and most recently on 19 November 2019. The actual frequency of updates is unclear, although the 2016 Contextual EITI Report states that it is updated three times a year.

The online cadastre provides the geospatial position of all active or inactive mining licenses, license number,

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[201] 2015 EITI Report, p.32.
[202] DRC EITI, Registre secteur des hydrocarbures, op. cit.
[203] 2016 Contextual EITI Report, pp.45-46.
[204] Decree no.068/2003 of 3 April 2003, http://www.leganet.cd/Legislation/Droit%20economique/Code%20Minier/D068.2003.03.04.2003.htm, accessed in October 2018.
[205] CAMI, website, https://cadastreminit.wixsite.com/cami, accessed in October 2018.

number of squares covered by a license, type of licence or whether it is a pending request, dates of application, award and expiry and commodities covered. The map also indicates the artisanal production zones, the protected zones and the forbidden zones. It is possible to search for a license by number or by operator. The 2016 Contextual EITI Report notes that the cadastre does not yet take into consideration newly created provinces following the decentralisation process started in 2015, and therefore provides the distribution of mining licenses per province based on the former structure.[206]

There are minor limitations to the online cadastre. The status of some licences is sometimes unclear, with no indication of whether the request for a transfer has been granted to a particular licence or whether it is still under review by the authorities.[207] Some dates of applications are missing, seemingly when the request was formulated before the year 2000, while some licenses categorised as awarded do not have award or expiry dates. While the cadastre does not provide precise geographical coordinates, users can zoom up to a scale of 2m, while coordinates for specific licenses are available in the ministerial *arrêtés* published on the Ministry of Mines website (*see Requirement 2.2*).[208]

The 2015 EITI Report provides an assessment of inconsistencies in the CAMI for licenses awarded in 2015.[209] The Ministry of Mines also publishes the list of mining operators active in the DRC, both online and annually, in hard copy. Its online portal is currently under construction but is planned to include all active mining licenses.[210]

EITI reporting: The CAMI shared its internal registry with the EITI DRC, which published the lists online for the year 2016 and 2017 (*see assessment of Requirement 2.2*).[211] For each license, this registry includes the name of the license owner, the fiscal identification number, the type, number and status of the licenses, the province and localisation, the dates of application, allocation and expiration and the commodities covered for all active mining licenses. The registry provides information about transfers that took place during the year under review, and also indicates the awardee and the date of request to the CAMI.

The 2015 EITI Report includes an assessment of inconsistencies in this data, such as the incorrect application or award dates.[212] The 2016 Contextual EITI Report provides a summary of these registries, by type of license and by type of transfer, and highlights that 2,426 licenses were active in 2016 compared to 2,855 in 2017.[213] There are no concerns about the lack of comprehensiveness regarding licenses held by material and non-material companies.

Stakeholder views

Government and industry representatives highlighted the importance of a publicly accessible online mining cadastre. Government representatives noted that the EITI had contributed to improving the coverage of data provided in the cadastre. They cited investors as key users of the online cadastre, while noting that it helped government agencies to monitor the sector, as well as CSOs and the Parliament to raise informed

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[206] 2016 Contextual EITI Report, op. cit., p. 44.
[207] The 2014 and 2015 EITI Report also noted that the online cadastre did not allow to see which company was transferring a license to another.
[208] Ministry if Mines, Arrêtés ministériels, op. cit.
[209] 2015 EITI Report, pp-101-102.
[210] Ministry of Mines, E-Mines/RDC, http://emine.ht2techinfo.cd/, accessed in November 2018.
[211] DRC EITI, Droits valides 2016-2017, https://drive.google.com/file/d/1TZKAPqoixPB4O6qb_XH48EfDP-a2Wzi4/view, accessed in October 2018.
[212] 2015 EITI Report, pp. 101-102.
[213] 2016 Contextual EITI Report, pp.44-45.

questions about the sector's management and actors.

Industry representatives commented that the cadastre was useful to identify the status of permits, to clarify the licenses held by other companies that they might be interested in doing business with, or to help with potential conflicts over areas covered by licenses. Government and industry representatives explained that the process for reporting the payment of license fees had been recently simplified to address previous gaps in communication between CAMI and DRGAD .

Stakeholders consulted did not express concerns about the overall comprehensiveness of information provided by the cadastre. However, CSO representatives highlighted limitations in the timeliness and reliability of data, citing inconsistencies in some data points, including for material companies. They questioned whether the issue was first and foremost a technical and financial one, acknowledging challenges in maintaining a cadastre for such as large and complex sector. Government and CSO representatives noted that progress in the hydrocarbons sector was not as advanced, with some concerns being highlighted over the perceived opacity in the management of the oil sector in spite of successive recommendations for reform over the years.

Initial assessment

The International Secretariat's initial assessment is that the DRC has made **meaningful** progress towards meeting this requirement. The Ministry of Mines maintains a publicly available register for mining licenses, broadly recognised by stakeholders as an essential tool. The 2016 Contextual EITI Report references and comments on the online cadastre, including minor inconsistencies in data and the lack of dates of application, award and duration for all licenses. The DRC EITI website also provides the list of all valid mining rights as of 31 December 2016 and 2017, including license holders, taxpayer number, type of permit, permit number, status, province, location, dates of application, award and expiry, commodity covered, squares, and potential transfers.

While the coordinates are not available on the online cadastre or the DRC website, they are available in individual ministerial *arrêtés* approving license awards or transfers published by the Ministry of Mines. There are no concerns over the overall comprehensiveness of licenses covered. The DRC does not hold a similar publicly available license register in the hydrocarbons sector. However, the DRC EITI website provides a summary of the register held by SGH. The 2016 Contextual EITI Report notes that data points were missing for some licenses, including coordinates and dates of application.

In accordance with Requirement 2.3, the DRC is required to maintain a publicly available register or cadastre system with timely and comprehensive information regarding all licenses held by extractive companies. The DRC should work closely with the Ministry of Hydrocarbons, the SGH and partners to ensure that a register of oil and gas licenses is publicly available. The CAMI is encouraged to improve the timeliness and comprehensiveness of data on its online cadastre, adding geographical coordinates where possible. It might also wish to make its data available in open data format.

Contract disclosures (#2.4)

Documentation of progress

Government policy: Decree no.011/26 of 20 May 2011 sets forth the obligation for the state to publish all contracts related to natural resources within 60 days of their signature. This policy is confirmed in Art. 7 *quatre* of the 2018 Mining Code and Art. 41 and 190 of the Hydrocarbons Code, with the term 'contract' encompassing the main contract text, annexes and amendments. The documents are required to be published in the Official Gazette, on the website of the relevant line Ministry, in specialised publications and in at least two widely disseminated public newspapers.[214] The 2018 Mining Code's implementing decree reinforced this policy, stipulating that all mining contracts, including their annexes and addendums, were to be published in the Official Gazette and on the CTCPM website.[215]

Actual practice: As the 2016 Contextual EITI Report notes, the pro-disclosure policy is not fully implemented in practice. Some contracts have not yet been made public, while the 60-day deadline has not been systematically respected. The 2016 Contextual EITI Report recommends to the Ministry of Mines, the Ministry of Hydrocarbons and the Ministry of Portfolio to strictly apply the government's policy. Working closely with civil society organisations, the EITI DRC compiled a list of all known active contracts in the mining sector as of March 2018 and May 2018.

The list, which is publicly accessible,[216] identified documents that had not been published and was transferred to the Ministry of Mines and SOEs to harmonise policy and practice. The report notes that GÉCAMINES provided six missing contract documents to DRC EITI following the publication of the list.[217] Previous efforts by CSOs to list missing contracts include a 2017 review of published contracts by POM.[218]

Accessibility: The Ministry of Hydrocarbons published 16 documents on its website, scanned in pdf format.[219] The Ministry of Mines' website hosts a ResourceContract platform for hydrocarbons and mining contracts in the DRC, on which 142 contracts and affiliated documents are published.[220] A summary of each document indicates the language, partner SOE where relevant, signature date, type of document and contract and affiliated resources. It also provides information about the parties[221] to the contract and lists associated permits and projects. A total of 82 documents are annotated with additional information. Documents can be downloaded in text or pdf format, and annotations can be downloaded in Excel format. The website lists nine documents for the 2016-2018 period, although it is unclear whether all contracts

[214] Decree no.011/26 of 20 May 20111 on the obligation of publishing all contracts related to natural resources, https://drive.google.com/file/d/1o9PK2Tw67DnEiV9lbkXf-xtSeFgikuVQ/view, accessed in October 2018.
[215] Decree no.18/024 of 8 June 2018, art. 25 ter. 2016 Supplementary EITI Report, p. 65.
[216] DRC EITI, List of non-published contracts, March 2018, https://drive.google.com/file/d/1ZZsDKEIDTLoRHe-9NJw34hG0yNV_BrtB/view, accessed in October 2018.
[217] 2016 Contextual EITI Report, op. cit., p. 47.
[218] POM (March 2017), 'État des lieux de la publication des contrats miniers en RDC', https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=2ahUKEwiTi9LfwtTfAhUSLFAKHUoLDhoQFjAAegQICRAB&url=http%3A%2F%2Fwww.pomrdc.org%2F2017%2F03%2F10%2Fetat-lieux-publication-contrats-miniers-rdc%2F&usg=AOvVaw3zTHGP1UEp6AQZI9V8DoOW, accessed in October 2018.
[219] Ministry of Hydrocarbons, Contracts, http://hydrocarbures.gouv.cd/?-Contrats-, accessed in October 2018.
[220] Ministry of Mines, Resource Contracts, https://www.mines-rdc.cd/resourcecontracts/, accessed in October 2018.
[221] Such as name, country of registration, address, and shareholders where available.

signed over that period are available.

Prior to the creation of the ResourceContracts portal hosted by the Ministry of Mines, DRC EITI sought to provide links to mining contracts on its website. It then took over hosting of the online portal, providing links to 16 key documents involving GÉCAMINES. This list includes key transactions and agreements involving the SOE, such as the sale of its shares to METALKOL in April 2016, the contract between GÉCAMINES and IVERLAND MINING CONGO SARL, and the sale of mining rights by GÉCAMINES to SICOMINES in the framework of the SICOMINES agreement (*see Requirement 4.3*).[222]

Regarding the hydrocarbons sector, the DRC EITI website also provides links to ten contracts, the eight amendments to the production agreement for PERENCO-REP SARL and LIREX and the eight amendments to the production agreement for CHEVRON-ODS, MIOC and TEIKOKU .[223] The website provides documents that have not been systematically disclosed on government websites. Beyond improving accessibility to contracts, DRC EITI and its stakeholders are also developing capacities for contract analysis, such as the SICOMINES agreement (*see Requirement 4.3*).

Stakeholder views

Stakeholders consulted acknowledged the government's commitment to contract transparency enshrined in legislation and operationalised through the line ministries' websites. Government and industry representatives noted that the publication of contracts helped manage expectations about their contribution to the sector, limited the likelihood of being required to make payments outside the fiscal regime and helped address allegations of opacity. All three constituencies highlighted the role of DRC EITI in advocating for and monitoring the policy's implementation. Government representatives noted progress by GÉCAMINES, which had provided six contracts upon request from DRC EITI.

However, CSO representatives believed that there were still key documents missing, such as an agreement between GÉCAMINES and AHIL explaining why the SOE collected '*pas de porte*' and '*royalties'* from KCC.[224] Government representatives noted the importance of including the Ministry of Portfolio in the disclosure of contracts, given that many of the missing documents involved SOEs, most notably GÉCAMINES. Industry representatives noted that collaboration with the national secretariat had led to the prompt publication of some key contracts.

CSO representatives highlighted limits in the practice of contract disclosure given the definition of 'contract' that excluded certain documents that defined material payments or were part of the decision to approve a deal. They cited examples including documents approving the payment of consultancy fees between GÉCAMINES and TFM in 2013;[225] documents clarifying the terms of the agreement between KCC and GÉCAMINES following the Kolwezi Tribunal decision in June 2018 requiring KCC to pay GÉCAMINES unpaid

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[222] DRC EITI, Mining contracts, https://www.itierdc.net/carte-de-la-rdc-cliquable/contrats-miniers/, accessed in October 2018.
[223] DRC EITI, Hydrocarbons contracts, https://www.itierdc.net/carte-de-la-rdc-cliquable/registre-petrolier/, accessed in October 2018.
[224] See Global Witness (November 2016), 'Congo signs over potential $880M of royalties in Glencore project to offshore company belonging to friend of Congolese president', https://www.globalwitness.org/en/press-releases/congo-signs-over-potential-880m-royalties-glencore-project-offshore-company-belonging-friend-congolese-president/, accessed in October 2018.
[225] See 2013 EITI Report, p.242.

dividends; [226] and the Supreme Court decision endorsing the renewal of the CHEVRON-ODS, MIOC and TEIKOKU production license in 2017.[227]

In addition to practical deviations in the implementation of the government's policy, representatives from all three constituencies highlighted gaps in local capacity to analyse contracts. They highlighted the importance of monitoring compliance with contractual obligations and determining whether the government (and by extension Congolese citizens) had signed a 'fair deal' with foreign companies. As noted in a NRGI blog about contract transparency in the DRC, efforts by a wider group of stakeholders, including the EITI, to advocate for key contracts' disclosure had already produced change. Agents in the Ministries of Mines and Hydrocarbons were responsible for monitoring the disclosure of contracts, while the legislative framework provided a conducive environment for implementing the government's policy.[228]

Initial assessment

The International Secretariat's initial assessment is that the DRC has made **satisfactory** progress towards meeting this requirement. The DRC has a clear policy for contract disclosure, with tangible efforts from the Ministry of Mines and the Ministry of Hydrocarbons to operationalize it in practice. In the Secretariat's view, the DRC has made efforts to go **beyond** the minimum requirements through the DRC EITI's efforts, together with broader constituencies particularly within civil society, to support the implementation of the government's pro-disclosure policy by identifying contractual documents not yet made publicly available.

To strengthen implementation, the DRC is encouraged to ensure that the government's contract disclosure policy is fully implemented in practice, leveraging collaboration with line ministries, the Ministry of Portfolio, and SOEs. The Ministries of Mines and of Hydrocarbons are encouraged to pursue their practice of disclosing contracts online. Partners and donors are encouraged to provide technical and financial support to stakeholders, particularly government and CSO representatives, to strengthen their capacity to analyse contracts and monitor compliance with contractual obligations.

Beneficial ownership disclosure (#2.5)

Documentation of progress

__Government's policy__: There are no references to beneficial ownership in laws and regulations governing the hydrocarbons sector. The 2018 Mining Code cites the disclosure of beneficial owners as one of the components of its definition of 'transparency'.[229] The Mining Code implementing Decree includes further

[226] The terms of deal are detailed in a news release by KCC, but the document itself is not publicly available. KATANGA MINING LIMITED (June 2018), 'Katanga Mining announces settlement of DRC legal dispute with Gécamines and agreement for the resolution of KCC capital deficiency', http://www.katangamining.com/media/news-releases/2018/2018-06-12.aspx. See also Radio Okapi (June 2018) 'Contentieux KCC: un accord trouvé entre Gécamines et Katanga Mining', https://www.radiookapi.net/2018/06/14/actualite/societe/contentieux-kcc-un-accord-trouve-entre-gecamines-et-katanga-mining, accessed here in November 2018. See Stakeholder views, Requirement 4.5.
[227] The 2016 Contextual EITI Report notes that DRC EITI will request the publication of the Supreme Court decision. 2016 Contextual EITI Report, p.12.
[228] NRGI (May 2018), 'Les progrès dans la divulgation des contrats extractifs en RDC', https://resourcegovernance.org/blog/les-progres-dans-la-divulgation-des-contrats-extractifs-en-rdc, accessed in October 2018.
[229] Law no.18/001 of 28 March 2018, op. cit., Art.1, alinéas 54bis.

provisions, although the scope of disclosures of beneficial ownership (BO) are somewhat ambiguous. For instance, it does not provide a clear definition of 'beneficial owner', nor clarify the frequency of BO disclosures by current mining rights owners, nor whether BO disclosures during license applications are required from all companies proposing to hold participating interests in the project or only the company applying for it.[230]

EITI reporting: At the time of writing, there is therefore no official definition of 'beneficial ownership' in Congolese legislation. The sole definition to date was agreed by DRC EITI in 2015, when it participated in a global EITI pilot on beneficial ownership disclosures.[231] The MSG agreed to a clear definition of 'beneficial owner', defining the types of revenues that the beneficial owner could collect, as well as the scope of the term 'effective control'. The MSG had also adopted a specific BO reporting template.[232] The DRC EITI adopted a beneficial ownership road map in January 2017[233], although its implementation was significantly delayed due to broader challenges in EITI implementation in 2017 (*see Requirement 1.4*).

With support from international CSOs,[234] the EITI DRC resumed implementation of the road map from 2018. The 2016 Contextual EITI Report lists outreach activities in Lubumbashi on 29-30 January 2018 and a workshop in Kinshasa on 28-29 March 2018 to identify challenges in BO disclosures and suggest reforms.[235] An EITI working group was formed in May 2018 to suggest an updated definition of 'beneficial ownership' and a legal and institutional framework. The adoption of the 2018 Mining Code's Implementing Decree, while encouraging, left gaps in addressing BO data comprehensiveness, reliability and accessibility (*see above*).

The working group agreed a final declaration in August 2018, including a draft Prime Minister decree to apply to the forestry, mining, oil and gas sectors. The updated definition adds a clear reference to politically

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[230] See Art.2. Transparence: ensemble de règles, mécanismes et pratiques rendant obligatoires les déclarations et les publications, de la part de l'État et des entreprises extractives, en particulier celles de l'industrie minière (…) la divulgation des propriétaires réels des actifs miniers (…). Art 25 ter, De la norme de transparence et de bonne gouvernance des activités minières : (…) les parties prenantes mettent en œuvre les mesures de transparence qui exigent notamment des services publics concernés ainsi que des titulaires des droits découlant du Code minier : (…) l'accès à l'information sur les propriétaires réels des entreprises titulaires des droits miniers sur le site web de la CTCPM. Art 25 quarter/ Déclaration du bénéficiaire réel ou propriétaire réel: Toute société titulaire de droits d'exploitation, toute entité de traitement, toute coopérative minière, tout comptoir agréé, ainsi que tout marché boursier exerçant ses activités en vertu des dispositions du Code minier déclare son ou ses propriétaires réels, conformément au formulaire publié par les parties prenantes en application du Décret du Premier Ministre visé à l'article 25 bis du présent Décret. Art.97: De l'établissement de la demande du Permis de Recherches: Le dossier de demande est établi et déposé en trois exemplaires, constitué chacun des pièces suivantes: (…) l'identité des sociétés affiliées du requérant et celle du propriétaire réel. Art.126 : Du formulaire de renouvellement du Permis de Recherches (…) le formulaire contient : la dénomination, l'adresse et les autres coordonnées du titulaire du Permis de Recherches et, le cas échéant, de son mandataire ainsi que l'identité du propriétaire réel (…). Art. 97: Establishing a request for a research permit: The application file (…) containing the following: (…) the identity of companies affiliated to the requesting entity and the beneficial owner.
[231] EITI (October 2015), 'Beneficial ownership pilot evaluation report', https://eiti.org/document/beneficial-ownership-pilot-evaluation-report, accessed in October 2018.
[232] 2016 Contextual Report, pp. 49-51.
[233] DRC EITI (December 2017), 'Beneficial ownership roadmap, revised', December 2017, https://drive.google.com/file/d/1cVRPfj4LL5GqLT3-rsx3Pe3gsCt7IHML/view, accessed in October 2018.
[234] NRGI, TCC and GW (August 2016), 'Mémo sur le processus de production de la feuille de route sur la divulgation de la propriété réelle RDC', http://congomines.org/reports/1185-memo-sur-le-processus-de-production-de-la-feuille-de-route-sur-la-divulgation-de-la-propriete-reelle-rdc, accessed in October 2018. NRGI (November 2016), 'Recommendations relatives à la divulgation de la propriété réelle dans le cadre de l'ITIE en République démocratique du Congo', https://resourcegovernance.org/sites/default/files/documents/congo-recommandations-relatives-q-la-divulgation-de-la-propriete-reelle.pdf, accessed in October 2018.
[235] See DRC EITI (April 2018), 'Atelier sur l'évaluation de la feuille de route pour la divulgation de la propriété réelle', http://www.itierdc.net/2018/04/09/atelier-sur-levaluation-de-la-feuille-de-route-pour-la-divulgation-de-la-propriete-reelle/, accessed in October 2018.

exposed persons and covers all corporate entities that apply for, or hold, rights in the extractives sector.[236]

Actual practice: Government systems do not disclose BO information for companies active in the hydrocarbons sector. The Ministry of Mines' E-Mines/RDC online portal, under construction during Validation, is expected to include information about legal and beneficial owners for all mining operators once launched.[237] The 2016 Contextual EITI Report noted that 21 of 126 material companies were not required to report, while 69 of the remaining 105 (or 65%) disclosed BO data. However, almost half the companies that disclosed BO data stated that they were listed on a stock exchange without indicating links to the required public filings.

The report notes that many companies did not distinguish between the legal and beneficial owner, reporting legal rather than physical entities. The report concludes that 90% of disclosures did not provide the required disaggregated data, highlighting disclosure gaps in the date of company acquisition, contact details, date of birth, national identification number and country of residence. The report recommends improvements in company reporting and strict implementation of the DRC EITI beneficial ownership road map.[238] The DRC EITI open data portal also provides BO information per reporting company.[239]

For the year 2015, the 2015 EITI Report provides information disclosed by material oil and mining companies. The report provides a list of all companies that had not provided details of their beneficial or legal owners. It noted that three oil companies had not disclosed their BO, four mining companies had not disclosed any information, 25 had disclosed only their legal ownership and 11 had disclosed partial information.[240]

Stakeholder views

All stakeholders consulted highlighted the importance of beneficial ownership disclosure in the DRC context, especially for CSOs. Some government and CSO representatives, however, considered that efforts to improve disclosures had stalled. They considered that the prize awarded to the DRC at the 2016 Lima Global Conference had been counterproductive by politicising the process.[241] Government representatives noted the importance for the DRC to maintain its leadership role in the area.

CSO representatives argued that the Congolese context required efforts beyond EITI Requirements to disclose beneficial owners of subcontractors, who were often linked to political elites. They drew attention to controversies surrounding the family of President Joseph Kabila's interests in the mining sector, as alleged in a Bloomberg report (*see Requirement 1.3*).[242] Industry representatives insisted that all foreign companies that had entered into joint venture agreements with SOEs systematically disclosed changes in ownership.

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[236] DRC EITI and NRGI (August 2018), 'Déclaration finale de la Commission d'actualisation de la définition de la propriété réelle et d'élaboration d'un projet de cadre légal et institutionnel', https://drive.google.com/file/d/123SydqL-3eaxBokGw4jp_GPhnbP_UlTr/view, accessed in October 2018.
[237] It listed over 1,200 mining operators in October 2018. Ministry of Mines, E-Mines, http://emine.ht2techinfo.cd/, accessed in October 2018.
[238] 2016 Contextual EITI Report, pp.50-52.
[239] See DRC EITI, Open data portal, op. cit.
[240] 2015 EITI Report, pp.57-59, 128-139.
[241] See EITI (February 2016), Winners of the 2016 EITI Chair Awards announced, https://eiti.org/news/winners-of-2016-eiti-chair-awards-announced, accessed in October 2018.
[242] Bloomberg (December 2016), op. cit.

All stakeholders consulted indicated challenges in data collection and data reliability. Industry representatives considered the reporting templates confusing and explained that their management was often reluctant to fill them out. Government, industry and CSO representatives expressed strong scepticism that companies would disclose their beneficial owners and highlighted capacity gaps to identify and investigate red flags. They pointed to reticence by some companies, particularly in the oil and gas sector, to disclose their beneficial owners.

CSO representatives recommended that publicly listed companies provide links directly to their company filings and disclose their ownership structure. Donors noted that the threshold for beneficial ownership disclosure could be lowered, arguing that 25% remained high compared to other EITI implementing countries. With regards to data accessibility, government representatives noted efforts from the Ministry of Mines to disclose beneficial owners online.

Initial assessment

Implementing countries are not yet required to address beneficial ownership and progress with this requirement does not yet have any implications for a country's EITI status. The DRC should be commended for the steps taken towards beneficial ownership transparency, including piloting beneficial ownership disclosure since 2015 and working to establish a legal and institutional framework for mining.

To strengthen implementation, the government is encouraged to build on the work by DRC EITI and CSOs to adopt a comprehensive legal and institutional framework for beneficial ownership disclosure in the extractive industries. It is recommended that the DRC strengthen its efforts to improve disclosures, particularly in the oil and gas sector, including through outreach to companies. The DRC is encouraged to further refine its EITI beneficial ownership reporting templates to adequately cover shareholding and company ownership structures.

The Ministry of Mines is encouraged to publish beneficial ownership information online in the short-term, as established by the 2018 Mining Code's implementing Decree, and to collaborate closely with the CAMI to ensure the comprehensiveness and timeliness of reported data. The government and CSOs may wish to strengthen their capacities to analyse beneficial ownership data with a view to identifying red flags.

State participation (#2.6)

Documentation of progress

Issues surrounding state participation in the DRC's extractive industries have generated substantial public debate, most notably GÉCAMINES (*see Requirement 7.1*). Other SOEs have also attracted public attention over their perceived lack of transparency in management of government revenues. There was particularly robust public debate within the DRC on this issue in 2017, following two key CSO reports "*A State Affair: Privatising Congo's Copper Sector*" by the Carter Centre and "*Regime cash machine: How the Democratic*

Republic of Congo's booming mining exports are failing to benefit its people" by Global Witness.[243]

While GÉCAMINES published a press release[244] in response, CSO representatives on the MSG insisted that these reports' conclusions and recommendations be discussed by the DRC EITI, not least given that both reports drew heavily on EITI data. On 9 May 2018, the MSG discussed the reports and agreed in principle on establishing a working group to investigate the issues therein.[245]

While the working group had not yet been created at the start of Validation, the MSG and national secretariat agreed to undertake specific work on SOE disclosures for 2016. For the first time, the Ministry of Portfolio provided the DRC EITI access to the 2016 financial statements of nine extractives SOEs[246]. While the DRC EITI could not publish these documents in full, the MSG contracted two consultants to analyse the financial statements to identify information relevant under EITI Requirements 2.6, 4.2, 4.5 and 6.2. The MSG published these findings in the 2016 Supplementary EITI Report, albeit limited by the fact that the financial statements were unaudited (*see Requirement 4.9*) and inconsistencies in the types of SOE documents provided.[247]

The assessment below is based on information in the 2015 EITI Report, albeit taking account the 2016 Contextual Report and the 2016 Supplementary EITI Report published prior to the start of Validation. Given the number of SOEs and the complexity of the sector, this assessment does not seek to comprehensively assess all data related to financial transactions involving extractive SOEs, but rather provides illustrative examples.

Materiality: The 2015 EITI Report and the 2016 Supplementary EITI Report list the applicable laws and regulations related to state participation in the extractive industries, all of which are publicly available on the Official Gazette website.[248] Based on a review of this framework, the MSG adopted a definition of SOEs for EITI reporting covering all companies majority-owned by the state, or SOEs engaged in extractives activities on behalf of the state.[249] The MSG thus included eight mining SOEs and one oil and gas SOE in the scope of the reporting, with a materiality threshold of zero (*see Requirement 4.1*).[250]

Both reports explain that these SOEs became commercial companies following the enactment of Law

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[243] TCC (November 2017), 'A State Affair: Privatising Congo's Copper Sector', https://www.cartercenter.org/news/pr/drc-110317.html; Global Witness (July 2017), 'Regime cash machine: How the Democratic Republic of Congo's booming mining exports are failing to benefit its people', https://www.globalwitness.org/en/campaigns/democratic-republic-congo/regime-cash-machine/, accessed in November 2018.

[244] The document could not be found online anymore at the time of writing. See GÉCAMINES, 'Communiqués de presse', https://www.gecamines.cd/commpressactu.html, accessed in December 2018.

[245] DRC EITI, PV du CE du 9 May 2018, May 2018, https://drive.google.com/file/d/1_FMFigMTj-grEHPiazwO3RGQ_In8J5ZQ/view, accessed in November 2018.

[246] COMINIÈRE, GÉCAMINES, MIBA, SACIM, SAKIMA, SCMK-MN, SODIMICO, SOKIMO and SONAHYDROC.

[247] See list of difficulties outlined by the two consultants: 2016 Supplementary Report, p.16.

[248] Journal officiel de la RDC, http://www.leganet.cd/JO.htm, accessed in November 2018.

[249] 2015 EITI Report, p.52; 2016 Supplementary EITI Report, pp.7-9. Original definition in French: "Toute Entreprise Publique (EP) du portefeuille de l'État dans laquelle l'État ou toute autre personne morale du droit public détient la totalité ou la majorité absolue du capital social et est engagée dans les activités extractives pour le compte de l'Etat". The State held the following shares in these companies in 2015 and 2016: COMINIÈRE 90%, GÉCAMINES 100%, MIBA 80%, SACIM 50%, SAKIMA 99%, SCMK-MN 100%, SODIMICO 100%, SOKIMO 100% and SONAHYDROC 100%. 2015 EITI Report, pp.53-54; 2016 Supplementary EITI Report, pp.82-83.

[250] For both 2015 and 2016, three SOEs were below the materiality threshold, but were included in the scope: SAKIMA, SODIMICO and SCMK-MN. 2015 EITI Report, p.37, 2016 Supplementary EITI Report, p.13.

08/007 of July 2008 on the transformation of public companies and Law 08/008 of July 2008 on the State's divestment from companies in its portfolio.[251] The 2016 Supplementary EITI Report provides a table with the profile of each SOE, including their capital structure, the public accessibility of their statutes, employment, number of licenses held and whether they produced extractives commodities.[252]

While the MSG appears to have considered all companies meeting their definition of SOE in the extractive industries, the status of SIMCO, a company owned 99% by GÉCAMINES and 1% by SCMK-MN, remains unclear. Whereas the 2015 EITI Report did not discuss SIMCO, the 2016 Supplementary EITI Report explained that it had not been considered an SOE since the 2013 EITI Report, given that it was not wholly or majority-owned by the state or a public law entity. It noted that SIMCO's real estate assets were transferred to GÉCAMINES in 2016.[253]

Financial relationship with government: In terms of *statutory* financial relations, the 2015 EITI Report lists the revenue streams[254] arising from the state's interests in extractives SOEs. The report describes in detail the statutory procedure for the sale of assets and shares held by SOEs.[255] Aside from these elements, the 2015 EITI Report did not provide a comprehensive description of the financial relations between SOEs and the government. The 2016 Supplementary EITI Report provides additional information by clearly summarising SOEs' financial relations with the government in the form of three types of potential payments.

The first consists of taxes and other levies applied to all extractives companies, with the report highlighting SAKIMA's bespoke fiscal regime in its agreement with BANRO[256], as well as dividends based on SOEs' annual profits. The second consists of revenues arising from the sale of mining or oil rights, required to be subject to open tender and reported annually to Parliament.[257] The third consists of shares of revenues collected by SOEs to be transferred to the Treasury, including 50% of '*pas de porte'* (akin to a signature bonus) and 50% of royalties.[258] The report notes that other payments arising from contractual obligations were collected by the SOE and not transferred to the Treasury (*see Requirement 4.5*), with a list of these revenues provided.[259]

This reveals that GÉCAMINES collected four revenue streams.[260] While the report clarifies the transfer of

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[251] Eight of them acquired the "Société anonyme" (SA) status, except for SACIM that acquired the "Société à Responsabilité Limitée" (SàRL) status. 2015 EITI Report, p.52; 2016 Supplementary Report, p.9. "Conformément au droit comptable OHADA et groupement d'intérêt économique». See OHADA, Acte uniforme révisé relatif au droit des sociétés commerciales et du groupement d'intérêt économique, January 2014, http://www.droit-afrique.com/upload/doc/ohada/Ohada-Acte-Uniforme-2014-Societes-commerciales-GIE.pdf, accessed in November 2018.
[252] 2016 Supplementary EITI Report, pp.82-83.
[253] Ibid, p.14.
[254] Dividends, reimbursement of invested capital, revenues from the sale of rights and revenues from the sale of SOEs.
[255] 2015 EITI Report, pp.53, 55-56.
[256] DRC, Banro, Sominki, [Sakima] - Twangiza, Mobale, Namoya, Lugushwa, Maniema - JVA Amend, 2002, Avenant n.1 à la Convention minière du 13 février 1997, 2002, https://www.mines-rdc.cd/resourcecontracts/contract/ocds-591adf-8811971883/view#/pdf, accessed in November 2018. See Art.14 : «La convention aura une durée de 30 ans à compter de la date de son entrée en vigueur.»
[257] This practice was confirmed by the 2018 Mining Code and its implementing Decree. See Decree no.18/024 of 8 June 2018, Art.25 septies: "Tout achat ou cession des parts ou d'un droit minier, appartenant à l'Etat, à la province ou à une entité territoriale décentralisée ou à une entreprise du portefeuille est soumis à un appel d'offres, conformément à la procédure prévue par la législation congolaise et par la pratique minière internationale en la matière.»
[258] The report does clarify that if a deposit was studied by a company belonging to the State, the company keeps 100 % of the "pas de porte".
[259] 2016 Supplementary EITI Report, pp.10-11.
[260] Ibid, pp.85-86. The four revenue streams collected specifically by GÉCAMINES were as follows: fonds versés à la GECAMINES pour vente de

funds from the SOEs to the government, it does not mention any statutory transfers of funds from the government to SOEs, either budgetary or otherwise. Neither the 2015 EITI Report nor the 2016 Supplementary EITI Report addresses the prevailing rules and practices regarding retained earnings, reinvestment and third-party financing. However, given that the reports confirm that the OHADA law on commercial companies govern the nine SOEs, it can be considered as implied that SOEs have the right to retain earnings, reinvest profits and secure third-party debt financing based on decisions of their general assemblies.[261]

In terms of the *practice* of SOEs' retained earnings, reinvestment and third-party financing, the 2015 EITI Report does not address these issues. While the 2016 Supplementary Report does not explicitly clarify SOEs' rights to retain earnings, reinvest in their operations or seek third-party financing, the report sought to document the practice through a review of SOEs' financial statements. It found that all but one SOE had neither retained earnings nor reinvested profits given that they were loss-making in the year under review (*see above*).

Regarding SACIM, the only SOE that recorded a profit in 2016, the report states that there was insufficient information in the financial statements to ascertain the allocation of profits, but notes that the increase in the SOE's assets was potentially related to reinvested profits.[262] The 2016 Supplementary Report identifies at least three SOEs[263] that had third-party financing in 2016.[264] SCMK-MN received funds from the provincial government of Katanga, from partner and mining company CLUMINCO SARL, and another entity that was not named. SODIMICO received USD100,000 and USD40,000 from its partners KICC and SODIMIKA, as advances on royalties.[265]

The report also listed loans that GÉCAMINES benefitted from. This list included loans from large mining companies MMG, RUASHI MINING and TFM, as well as a loan from the commodity trader TRAFIGURA. The report indicated the total value of loans, the deadline for repayment where available, interest rates[266] and guarantees provided by GÉCAMINES. Some of these loans, such as the ones from TFM and TRAFIGURA, were as high as LIBOR+6.5%, while some guarantees included future dividends and royalties.[267]

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scories; paiement contractuel sur seuil de production atteint (with TFM), frais de consultance (with TFM) and redevance supplémentaire sur les réserves additionnelles (with TFM).

[261] OHADA, op. cit., Art.142. «L'assemblée générale décide de l'affectation du résultat dans le respect des dispositions légales et statutaires. (…).»

[262] 2016 Supplementary EITI Report, p.27.

[263] The report explains that SCMK-MN received loans from the provincial government of Katanga, from partner and mining company CLUMINCO SàRL, and from another entity that was not named. It notes that SODIMICO received USD100,000 and USD40,000 from its partners KICC and SODIMIKA, as advances on royalties. It also lists third-party loans to GÉCAMINES, including loans from mining companies MMG, RUASHI MINING, and TFM, as well as a loan from commodity trader TRAFIGURA.

[264] Ibid, pp.35, 58.

[266] It should be noted that interest rates on some of these loans, such as the ones from TFM and TRAFIGURA, were as high as LIBOR+6.5 %,while some guarantees included future dividends and royalties.

[267] Idem, p.47. The report noted that the loan from RUASHI MINING had been totally reimbursed as of 31 December 2016. Other companies that lent money to GÉCAMINES included: CHINA NATIONAL OVERSEAS ENGINEERING CORPORATION (COVEC), which held shares within the COMMUS joint venture with GÉCAMINES, see DRC, GÉCAMINES, COVEC [COMMUS], Joint venture Agreement, 2005, https://www.mines-rdc.cd/resourcecontracts/contract/ocds-591adf-9773101959; KIPUSHI RESOURCES INTERNATIONAL LIMITED used to hold shares in the Kipushi project and saw its shares purchased by IVANHOE, see: IVANHOE MINES LTD., Kipushi Project 2017 Prefeasibility study, January 2018, https://www.ivanhoemines.com/site/assets/files/3678/kipushi-2017-pre-feasibility-study-january-2018.pdf; and COMIKA, a JV in which GECAMINES held 30 % of the shares, see CongoMines, COMIKA, http://congomines.org/drc_companies/183-compagnie-miniere-de-kambove, accessed in November 2018.

In terms of *common payments* to government by SOEs, EITI reporting of common taxes and levies paid by SOEs in the years under review (2015 and 2016), available in open format through the DRC EITI online portal, reflects the SOEs' compliance with statutory tax obligations in practice. The 2015 EITI Report provides aggregate reconciled figures for payments made by SOEs and for SOE revenues that were transferred to the Treasury.[268] The 2016 Supplementary Report provides each SOE's payments to government entities in 2016 based on their financial statements, and compared these with unilateral disclosures from SOEs' EITI reporting.

The comparison revealed significant differences in data, including in the level of disaggregation. It should be noted that most SOEs reported significant values for "*Other payments*" or "*Other taxes and levies*", without further explanation of these payments in some cases. The report, however, provided some explanations, for examples noting that part of GÉCAMINES's approximately USD88 million payments to the government were categorised as "*advances on fiscal payments*" to the Tax Department (DGI).[269] However, the basis for calculation of these advance payments and the tax concerned by these advance payments were not explained.

In terms of SOE dividends, the 2015 EITI Report shows that dividends paid to the Treasury in 2015 were collected by the DGRAD[270] The report provides aggregate figures for 2015 dividend payments[271] from all companies in which the government held equity.[272] The 2015 report notes that the revenue stream labelled 'contribution to the national budget' ("Contribution au budget de l'État") corresponds to an annual contribution to the national budget from some SOEs collected by DGRAD[273], and provides the value of these aggregate payments[274] in 2015[275], albeit without explaining the basis for this revenue stream. Information elsewhere in the report indicates that the Ministry of Portfolio calculates estimates of 'contributions to the national budget' for each SOE to ensure that it collects revenues from its equity in SOEs, irrespective of whether the SOE agrees to pay dividends.[276]

The 2016 Supplementary EITI Report sheds more light on the nature of the 'contributions to the national budget' from SOEs. Implying that the government was unlikely to receive dividends from SOEs given their consistent loss-making, the report explains that the government therefore decided on lump-sum payments from each SOE to ensure collection of some revenues, codified through a Ministry of Budget circular.[277] The report presents the value of 'contributions to the national budget' in 2016 from GÉCAMINES and SONAHYDROC.[278] Based on a review of SOEs' financial statements, the supplementary report provides an assessment of loss making in eight of the nine SOEs reviewed, and notes that SACIM was the only SOE to

[268] For example, GECAMINES USD21,798,528 VS USD13,590,698; SACIM: USD7,957,381 VS USD6,791,063. 2015 EITI Report, pp. 16-20.
[269] 2016 Supplementary EITI Report, see SACIM example p.31; GECAMINES example p.43.
[270] 2015 EITI Report, p.186.
[271] Amounting to USD15,836,665 in the oil and gas sector and only USD166,316 in the mining sector.
[272] 2015 EITI Report, p.76.
[273] Ibid, p.188.
[274] Amounting to USD379,923 in the oil and gas sector and USD226,009 in the mining sector.
[275] 2015 EITI Report, pp.70, 76.
[276] Ibid, p.62.
[277] 2016 Supplementary EITI Report, pp.11, 46.
[278] Ibid, pp.46, 62.

have recorded a profit in 2016 and declared dividends to the state.[279]

In terms of *sales of mining and oil and gas rights*, the lack of transparency around revenues arising from sales of state assets by SOEs has been one of the most contentious issues in the extractives sector. This issue was clearly highlighted in both the 2015 and 2016 EITI Reports. As the 2015 EITI Report noted, several divestments involving the SOE took place in 2015, for which the IA could not obtain sufficient information to assess compliance with statutory regulations on asset sales. Review of data from the CAMI shows that GÉCAMINES holds a significant number of mining licenses, especially in the former Katanga province.[280] In establishing joint ventures with private companies, GÉCAMINES transfers the rights attached to mining permits to these JVs. In selling some of these mining titles, revenues are paid to the SOE.

In terms of the *50% of 'pas de porte' and royalties*, the 2015 EITI Report notes that regulations on this issue had not been enforced in practice in 2015, explaining that the 50% of the two revenues[281] had not been paid to the Treasury.[282] One of the most controversial operations covered by the 2015 EITI Report was the sale of GÉCAMINES's right to receive *'pas de porte'* and royalties within the KCC JV to AFRICA HORIZONS INVESTMENT LIMITED (AHIL) for a total of USD83 million, as disclosed by KCC.[283]

This operation was part of a tripartite agreement between the three companies in January 2018, publicly available on the DRC EITI website.[284] However, the agreements between AHIL and GÉCAMINES itself containing the terms of the operation were still not publicly available at the start of Validation, as noted in the 2016 EITI Report (*see Requirement 2.4*). This operation raised significant questions in the media around the legality of GÉCAMINES' sale of '*pas de porte'* and royalty rights given the loss of revenues to the SOE and Treasury, as well as the value of payments to GÉCAMINES as part of the operation.

The NGO Global Witness and the international media have drawn attention to the fact that AHIL is an offshore company linked to the politically affiliated Fleurette Group.[285] The 2016 Supplementary EITI Report

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[279] Idem, pp.18, 22, 27, 31, 35, 43, 46-47, 55, 58, 63.
[280] A total of 111 permits in the former Katanga province in 2017, 104 in 2016. See DRC EITI, CAMI, Droits valides 2016-2017, https://drive.google.com/file/d/1TZKAPqoixPB4O6qb_XH48EfDP-a2Wzi4/view, accessed in November 2018. One of the key arguments of the November 2017 Carter Centre report on GECAMINES was that the SOE acted as a parallel mining cadastre. "(…) Gécamines has been able to maintain its privileged position throughout the last 15 years as a result of two factors. The first was a key clause in the [2002 Mining] code that provided that state-owned mining companies could retain their most valuable permits and sell them to other companies. These were the permits investors most wanted (…). In this way, Gécamines, rather than the Mining Ministry, remained the gatekeeper to the most desirable mining assets (…) Via a series of contracts with private investors, Gécamines gradually transferred the most valuable permits to joint venture companies in which it kept a minority stake. The second factor was the government's deliberate action to ensure that Gécamines retained and even expanded its portfolio of mining permits beyond the limits set forth in the Mining Code. (…) Gécamines has been permitted to systematically convert its research permits into exploitation permits (…) Gécamines holds approximately 100 exploitation permits while the legal limit is 50. In addition, Mining Registry data showed that the government ignored Gécamines' defaults on surface rent payments, which, according to the code, should have led to the withdrawal of those permits." TCC, November 2018, op. cit., pp.5-6. See also pp.21-29.
[281] Based on aggregate figures disclosed by companies amounting to USD40.7 million for pas de porte and USD97.7 million for royalties.
[282] 2015 EITI Report, p.98.
[283] Idem, pp.95-96.
[284] The document is available on the DRC EITI website: Accord tripartite sur les royalties entre la Générale des Carrières et des Mines SA, Africa Horizons Investment Limited et Kamoto Copper Company SA, 22 January 2015, https://drive.google.com/file/d/0B1C1Aj5TqAgvckpWRnJiZ0UxUDQ/view, accessed in November 2018.
[285] See Global Witness (November 2016), 'Congo signs over potential $880M of royalties in Glencore project to offshore company belonging to friend of Congolese President', https://www.globalwitness.org/en/press-releases/congo-signs-over-potential-880m-royalties-glencore-project-offshore-company-belonging-friend-congolese-president/, accessed in November 2018. The Fleurette Group published a response to the allegations in November 2016: Fleurette Group (November 2016), 'Statement re. KCC Royalties', https://www.prnewswire.com/news-releases/fleurette-group-statement-re-kcc-royalties-601252975.html, accessed in November 2018.

also concluded that regulations on '*pas de porte*' and royalties had not been enforced in practice in 2016, based on a review of the SOEs' financial statements. It used the example of GÉCAMINES, where advances on royalties of USD61.1 million were reported without indication of a 50% transfer to the Treasury.

The report also explains that GÉCAMINES had paid USD125 million of *pas de porte* to the Treasury in 2012, which was categorised in GÉCAMINES' financial statements as a government debt to the SOE (*see Requirement 4.3*).[286] The report cited another example in SODIMICO, which reported royalty payments to the EITI, but without reference to this payment in its financial statements, nor evidence that 50% of these royalties had been transferred to the Treasury.[287]

Government ownership: In *oil and gas*, the 2015 EITI Report indicates that the state holds direct shares in COHYDRO (formerly SONAHYDROC). The 2016 Contextual EITI Report indicates, however, indicates additional minority state equity interests (between 12.75% and 20%) in seven other oil companies, based on data from the Ministry of Portfolio.[288] The 2014 EITI Report had reported these direct minority shares.[289] In terms of SOE subsidiaries and joint ventures, the 2015 EITI Report provides a list of *indirect* participations in oil and gas through COHYDRO's equity interests in five companies, as part of contracts or PSAs.[290] The 2016 Supplementary EITI Report provided a similar overview, also indicating corresponding oil fields and the status of development (exploration/production).[291]

In *mining*, the 2015 EITI Report indicates that the state holds *direct* equity interests in eight SOEs, as well as minority interests (5%) in five mining companies.[292] The 2016 Contextual EITI Report indicates the same state equity interests in SOEs and direct state interests in mining companies and highlights that the state's equity in SAMIKA was increased from 99% in 2015 to 100% in 2016. For minority shares (5%) in mining companies, the 2016 Contextual EITI Report indicates shares in six new companies compared to 2015.[293] As the report clearly explains, these 5% were the result of transfers of mining research permits into production permits as per statutory regulations.

The report provides the list of mining companies whose PR was converted into PE in 2016 (and 2017), based on CAMI data. In terms of *SOEs' equity in mining companies*, the 2015 EITI Report lists shares held by mining SOEs in 40 companies. The majority of these interests are held by GÉCAMINES, with shares also held by COMINIÈRE, MIBA, SCMK-Mn, SODIMICO and SOKIMO. Even though SIMCO was not considered an SOE by the MSG, the report indicates its 5% shares held in KCC and 12% in SICOMINES alongside GÉCAMINES.[294]

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[286] The report included disclosures based on the financial statements, compared with unilateral disclosures for the year 2016 within the EITI, and included comments on each unclear transaction based on the additional information received from GÉCAMINES (annex 3, pp.88-92). 2016 Supplementary Report, pp.12, 44-45.
[287] Ibid, p.58.
[288] 2015 EITI Report, p. 53; 2016 Contextual Report, p.76. These companies are all oil companies: CAPRIKAT, FOXWELP, JAPECO, KINREX, SOCOREP, SOLICO and SOREPLICO.
[289] 2014 EITI Report, p.52.
[290] LIREX and KINREX through conventions; ENERGULF, ENI (SURESTREAM) and SURESTREAM and through PSAs. 2015 EITI Report, p.53.
[291] 2016 Contextual EITI Report, p.79.
[292] 2015 EITI Report, p.54. These companies are: AFRICAN MINERALS BARBADOS (KAMOA COPPER SA)-AMBL, FRONTIER SPRL, KGL SOMITURI, METALKOL and SEK.
[293] 2016 Supplementary Report, p.77. These additional mining companies are: ALPHAMIN BISIE, CHEMAF, CONGO MINERAL EXPLORATION, CROWN MINING, GOLD DRAGON RESOURCES DRC and MURUMBI MINERALS.
[294] Only SACIM and SAKIMA appear not to hold shares in joint ventures. 2015 EITI Report, pp.54-55.

The 2016 Supplementary EITI Report indicates the interests held by SOEs in mining companies, albeit without SIMCO's interests in KCC and SICOMINES. While it notes the development phase of each JV, it does not provide this information for a dozen JVs that are covered.[295]

Terms associated with state equity: The 2015 EITI Report does not describe the terms attached to the equity stake, including the government and SOEs' level of responsibility to cover expenses at various phases of the project cycle, e.g. full paid equity, free equity and carried interest, as per Requirement 2.6.b. The 2015 EITI Report mentions "*dividends to SOEs*" as a material revenue stream. Such payments were only made in the oil sector to COHYDRO, but none in the mining sector, even though GÉCAMINES held shares in some of the largest mining companies in the country, such as BOSS, KCC, KIBALI, METALKOL and TFM.

The dividend payments to the oil and gas SOE were unilaterally disclosed by SONAHYDROC in the 2016 Supplementary Report.[296] The absence of disclosed dividends from mining companies to mining SOEs raises key questions about the terms associated with SOEs' equity interests in extractives companies, particularly in the mining sector. EITI reporting has not yet allowed a full description of the functioning of each JV, including whether any profits had been allocated to other operations rather than being distributed to shareholders as dividends.

Ownership changes: In *oil and gas*, both the 2015 and 2016 EITI Reports do not clarify whether there were changes in direct state ownership of SOEs of state equity in oil and gas companies in 2015 or 2016. Nonetheless, they show that no changes took place in SOEs' equity interests in extractives companies in 2015 or 2016.

In *mining*, the 2015 EITI Report documents changes in state ownership of SOEs in the mining sector.[297] However, it does not comment on changes in SOE's equity interests in mining companies in 2015. The 2016 Contextual EITI Report documents changes in state ownership of SOEs and direct equity in mining companies[298], although it does not comment on changes in SOEs' equity interests in mining companies in 2016. For the state's direct minority interests (5%) in mining companies, the 2016 Contextual EITI Report indicates that the state held equity in six new companies compared to 2015.[299] As the report clearly explains, these additional 5% equity interests were the result of the conversion of mining research permits into production permits, as per statutory regulations. The report provides the list of mining companies whose PR was converted into PE in 2016 and 2017, based on CAMI data.[300]

The 2015 EITI Report described the sale of PE527 by GÉCAMINES to CMSK and subsequently to CDM. The IA noted that CDM had reported payments totalling USD52 million, but had not provided supporting documents for this payment, while GÉCAMINES had omitted that payment in its initial disclosures. The

[295] 2016 Supplementary EITI Report, pp.13-14.
[296] Ibid, Annex 2: Type de recettes perçues par les EPE en 2016 en USD, p.84.
[297] 2015 EITI Report, p.54.
[298] Ibid, pp.54-55.
[299] 2016 Supplementary Report, p.77. These additional mining companies are: ALPHAMIN BISIE, CHEMAF, CROWN MINING, GOLD DRAGON RESOURCES DRC, CONGO MINERAL EXPLORATION and MURUMBI MINERALS.
[300] As per Art.71c of the 2002 Mining Code. The report also noted that this share increased to 10 % under the 2018 Mining Code. Ibid, pp.77-78.

agreement that endorsed the sale is publicly available on the Ministry of Mine's website.[301] The 2015 EITI Report also mentioned the sale of PE658 of the JV CHABARA to MUMI, for which GÉCAMINES reported receiving USD100 million.

GÉCAMINES also collected revenues through the sale of its shares in joint-ventures. The example given in the 2015 EITI Report was the sale of its 40% interest in the SEK JV to its JV partner TIGER RESOURCES LIMITED in 2014. GÉCAMINES confirmed that this sale had not been widely publicised or subject to a tender process as per statutory regulations.[302]

The 2016 Supplementary EITI Report highlighted the sale of GÉCAMINES' interest in the METALKOL JV, for which GÉCAMINES reported receiving USD100 million, when its financial statements reported a higher figure of USD170 million. The report found that the sale was not subject to an open tender process, in contravention of applicable regulations. In addition, it notes that a 50% share of revenues from the sale of these assets should have been transferred to the Treasury and not withheld by GÉCAMINES, as per Law no.08/008 of 7 July 2008.[303]

Loans and guarantees: The 2015 EITI Report mentions that the MSG had adopted specific reporting templates to capture potential loans and loan guarantees to mining, oil and gas companies. It noted that only SACIM had reported a USD3 million loan from SODIMICO since 2011, with USD2.25 million of the loans still outstanding at the end of 2015. The report notes that several loan and guarantee arrangements had been identified in GÉCAMINES' 2015 financial statements. It included a loan contract with a GÉCAMINES JV for the earmarking of 50% of the JV's dividends to be used to reimburse the debt.[304]

The 2016 Supplementary EITI Report also mentioned the SODIMICO loan to SACIM, with a payment of USD500,000 in 2016.[305] The report also listed all the loan guarantees provided by GÉCAMINES to the mining companies it had contracted debt from as of 2016 (*see third-party financing above*). The 2015 and 2016 EITI Reports do not identify loans or loan guarantees provided by the state to mining, oil and gas companies.

Stakeholder views

All government representatives consulted believed that the DRC EITI's standalone report on SOEs, as part of the 2016 Supplementary Contextual Report, was a useful initiative and publicly disclosed key information for the first time. Despite some SOE representatives' allegations that they had not been consulted in preparing the 2016 Supplementary EITI Report, the report includes additional information sent by GÉCAMINES as clarifications to the draft.[306] SOE representatives noted that the 2016 Supplementary Contextual EITI Report contained mistakes with regard to the state's participation in the oil and gas sector, explaining that SONAHYDROC had purchased its equity in SURESTREAM and ENERGULF with its own funds and therefore did not own these shares on behalf of the state.

[301] 2015 EITI Report, p.96. See LA GENERALE DES CARRIERES ET DES MINES S.A-Congo Dongfang International Mining S.A.R.L,PE 527, Contrat de cession, 2015, https://www.mines-rdc.cd/resourcecontracts/contract/ocds-591adf-7159952315/view#/pdf, accessed in November 2018.
[302] 2015 EITI Report, p.97.
[303] 2016 Supplementary EITI Report, p.11.
[304] 2015 EITI Report, p.98.
[305] The report noted its lack of access to the loan agreement to understand its terms. 2016 Supplementary EITI Report, pp.28, 59.
[306] The national secretariat added information within the text and the original letter as an annex. See 2016 Supplementary EITI Report, Annex 3, pp.88-92.

However, government representatives consulted welcomed in particular the Ministry of Portfolio's decision to require the publication of all SOEs' audited financial statements. Some officials questioned the comprehensiveness and reliability of EITI data disclosed by SOEs. They noted, for instance, that the level of disaggregation of data in financial statements tended not to be sufficient for EITI reporting purposes. Several officials recommended that extractives SOEs be more closely associated with the EITI's work in order to help them improve both the quality of their disclosures and improve EITI reporting templates.

Several representatives expressed strong concerns about the fact that most SOEs were still operating even though they consistently reported losses. One government representative cited the example of MIBA, noting that the company itself lacked expertise and relied too heavily on diamond artisanal miners to develop the mining licenses it had received from the state. A former government official noted that even if dividends were collected by GÉCAMINES from JVs, these revenues would be offset by recurring losses. Several stakeholders from different constituencies recommended that SOEs involved in JVs should disclose intra-group financial transfers and the existence of dividends by JVs in which they held equity.

Representatives from the industry constituency noted that issues surrounding the government's management of SOEs had been debated at length within the MSG and amongst EITI stakeholders. They noted that the DRC could be proud of having produced a pioneering report and welcomed the constructive subsequent debate about oversight of extractives revenues. Industry representatives on the MSG emphasised in particular that the EITI process had substantially contributed to GÉCAMINES' public disclosures.

The EITI, in turn, was perceived less as an enforcement and policing body by SOEs, and increasingly as a partner in improving access to information and changing management attitudes towards the sector. All SOE representatives consulted agreed that EITI reporting had improved the ways in which they accounted for payments, archived receipts and communicated with other stakeholders. More broadly, it had substantially changed behaviours, bringing about a genuine concern for transparency on the part of SOEs.

CSO representatives noted that they had higher expectations for the review of financial statements than what had been accomplished in the 2016 Supplementary EITI Report. They noted that the supplementary report helped explain the financial relationship between the state and SOEs, but it did not fully clarify the nature and practice of key payments, such as SOEs' "*contributions to the national budget*". Yet they welcomed that the standalone report outlined issues of concern, including discrepancies between EITI data and data in SOEs' financial statements, as well as the management of government revenues by SOEs that systematically recorded operating losses. They called for the DRC EITI to closely monitor the level of follow-up by SOEs on the Ministry of Portfolio's injunction to publish their audited financial statements.

Many stakeholders consulted from all constituencies noted that the political influence in the management of SOEs had significantly hampered their effectiveness. They argued that the practice of political appointment of senior management of SOEs by presidential decree made the SOEs political entities rather than commercial enterprises.

Representatives from SOEs consulted explained that SOEs like SMCK-Mn and COMINIÈRE had received mining licenses from the state when they were originally created. These SOEs sought to attract private investors to develop their licenses by establishing joint ventures, but they also tried to develop their own exploration and production infrastructure. In the case of *SODIMICO*, SOE representatives explained that the

SOE had not been in production since 2003 and struggled to continue paying its 700 staff. It was explained that the SOE had received advances on royalties from two companies in 2016 to cover its expenses and only held a 1% share in SAKIMA at the state's request. They also noted that the loan from SODIMICO to state-owned SACIM had not been reimbursed long after the deadline for the loan's repayment.

Stakeholders expressed concerns at the high risk of corruption at the contracting phase, which had cost the government hundreds of millions over the life of the projects. Several highlighted a contract between Randgold and the Government of the DRC for the Kibali gold mine, signed in 2009 as an example. SOE representatives and government officials explained that, while the mine (SOKIMO) produced about 20 tons of gold per year, the SOE did not collect any royalties from this JV. According to industry representatives, the contractual clause related to the payment of a 2% royalty in compensation for the depletion of reserves was "miraculously" removed from the draft contract just before signature, representing annual losses of USD14 million in foregone government revenues.

Several stakeholders made allegations that bribes had been paid during the contract negotiation. They noted that as a result the reserves in the Kibali gold mine will be depleted without compensation to the state-owned company that discovered the reserves. They expressed frustrations that such irregularities are not sufficiently highlighted in EITI Reports for further investigations. SOKIMO has since argued for the renegotiation of the contract with its partner, Randgold, without success. SOE representatives explained that minor discrepancies between SOKIMO's financial statements and its EITI reporting could be explained by differences in the basis of accounting (accrual versus cash) and expressed frustration over their perceived lack of consultation before the 2016 Supplementary Contextual EITI Report was finalized. However, industry representatives noted that SOKIMO's senior management had instructed its staff not to attend EITI meetings.

With regards to GÉCAMINES, SOE representatives explained that the SOE's most valuable assets remained its large number of mining deposits and licenses. The SOE's objective was primarily to develop proven reserves and act as a credible partner for international companies by holding majority or equal shares in JVs, such as in the DEZIWA project. They called for revisions of all partnerships, given the lack of dividends from joint venture projects despite optimistic expectations in the original feasibility studies. They believed that aggressive tax optimisation by international companies had hindered the profitability of joint ventures.

They noted that specific contracts carried different fiscal obligations for extractive companies towards SOEs, such as the contract amendments agreed by GÉCAMINES with CHEMAF and IVERLAND, that had been correctly identified in the 2016 Supplementary EITI Report. Several SOE representatives deemed that the conversion of GÉCAMINES to a commercial company under the OHADA law had changed the nature of its relationship with the state. The state now played a role as the SOE's shareholder but had ceased to intervene in their management. GÉCAMINES representatives added that they were aiming to decrease GÉCAMINES' role as a provider of social services and increase the company's business capacities, with the oversight of international auditing firms conducting operational reviews.

One consequence of GÉCAMINES' struggle to secure foreign funding was the need for GÉCAMINES to secure loans from extractives companies, as covered in the 2016 Supplementary EITI Report. Third-party financing arrangements for GÉCAMINES JV have been contentious. In April 2018, GÉCAMINES sued KCC, a 25/75 joint venture between GÉCAMINES and GLENCORE-subsidiary KATANGA MINING, alleging that KCC had never paid any dividends given that it was heavily indebted to GLENCORE for a total of USD9 billion at what the

SOE alleged were excessively high interest rates.[307]

Several stakeholders consulted expressed concerns over the EITI's lack of categorisation of SIMCO as a *de facto* SOE, which would help clarify its role in the sector and its relations with the state. Industry and CSO representatives noted that EITI Reports had not shed light on the nature of SIMCO's operations and on its relationship with its mother company, GÉCAMINES. They explained that SIMCO had been created when the SICOMINES agreement was being developed. Under a previous law, GÉCAMINES could not hold more than a 20% share in a JV, and therefore needed a sister company to hold additional equity and increase its bargaining power in the JV.

SIMCO was thus created as a special purpose vehicle to hold additional equity in the JV, but was also mandated to manage GÉCAMINES' large real estate portfolio, which remains its main source of revenue. At the end of 2013, a change in GÉCAMINES' management led to the transfer of its real estate assets back to the SOE. As remuneration for SIMCO, the two companies agreed that GÉCAMINES would provide SIMCO with advances on future dividends from its participation in JVs. Several stakeholders noted that the conversion of GÉCAMINES into a company under the OHADA law meant that the SOE could hold as much equity in JVs as desired, thereby negating the need for SIMCO to hold additional equity.

Initial assessment

The International Secretariat's initial assessment is that the DRC has made **meaningful** progress in meeting this requirement. The 2015 EITI Report and the 2016 Supplementary EITI Report provide an assessment of the materiality of state participation in the mining, oil and gas sectors, and provide a comprehensive list of SOEs for EITI reporting purposes. While the reports describe the types of payments, both statutorily and in practice, made by SOEs to the government, they do not comprehensively describe SOEs' statutory rights to retain earnings, reinvest in their operations and seek third party (debt and equity) financing.

The 2016 Supplementary EITI Report provides extensive information on the practice of financial relations between nine material SOEs and the state in 2016, although certain stakeholders consulted raised concerns over the comprehensiveness and reliability of some SOEs' unaudited financial statements, on which this review was based.

The reports provide a comprehensive list of companies in which the state and SOEs hold equity, although the comprehensiveness of SOE equity interests in the mining sector is unclear. The reports do not clearly describe the terms associated with each state and SOE equity interest in extractives companies, including the government and SOE's level of responsibility to cover expenses at various phases of the project cycle, e.g. full-paid equity, free equity and carried interest.

The reports comment on changes in government direct equity in the extractives companies in the years under review, but do not systematically comment on changes in SOEs' ownership of equity interests in

[307] The dispute was settled in June 2018. See Jeune Afrique (April 2018), 'RDC: la Gécamines passe à l'offensive contre son partenaire Glencore', https://www.jeuneafrique.com/554811/economie/rdc-la-gecamines-passe-a-loffensive-contre-son-partenaire-glencore/; GLENCORE (June 2018), 'Katanga Mining announces settlement of DRC legal dispute with Gécamines and agreement for the resolution of KCC's capital deficiency', https://www.glencore.com/media-and-insights/news/katanga-mining-announces-settlement-of-drc-legal-dispute-with-gecamines; Bloomberg (June 2015), Gécamines says Glencore deal to yield billions for Congo State, https://www.bloomberg.com/news/articles/2018-06-15/gecamines-says-glencore-deal-to-yield-billions-for-congo-state, accessed in November 2018.

extractives companies. The reports, particularly the 2016 Supplementary EITI Report, provide information on loans and guarantees to extractives companies provided by SOEs, but not by the state, although the comprehensiveness of these disclosures is unclear.

While the DRC has made significant efforts to improve the transparency of financial relations between SOEs and the government, the Secretariat's view is that the broader objective of transparency in state participation is not yet fully achieved.

In accordance with Requirement 2.6, the DRC should ensure that there is a publicly-available and comprehensive list of extractives companies in which the government, or any SOE, holds equity, the existence of any change in the year under review, and a description of the terms associated with the government's, or SOE's, equity. The DRC should ensure that the prevailing rules and practices regarding the financial relationship between the government and state-owned enterprises, e.g. the rules and practices governing transfers of funds between the SOE(s) and the state, retained earnings, reinvestment and third-party financing, are publicly disclosed. The DRC should ensure that the terms of loans and loan guarantees provided by the state and SOEs to extractives companies are comprehensively disclosed in the public domain.

Table 2. Summary of initial assessment: Award of contracts and licenses

EITI provisions	Summary of main findings	International Secretariat's initial assessment of progress with the EITI provisions
Legal framework (#2.1)	Most laws and regulations applicable to the hydrocarbons and mining sector are publicly available online, including on the DRC EITI website. EITI reporting thoroughly describes the applicable legal and fiscal regime in both sectors, including the level of fiscal devolution, information about the roles and responsibilities of the relevant government agencies, and the latest reforms as recently as June 2018. For the first time, DRC EITI has compiled a detailed table of revenue streams applicable in the extractive sector, indicating the fiscal base and tax rates, with the aim of clarifying a complex fiscal regime, especially in the mining sector. In the secretariat's view, the DRC has made efforts to go beyond the minimum requirement by publicly describing the implementation of legal provisions in practice and in providing input to the development of new laws and regulations.	Satisfactory (beyond)
License allocations (#2.2)	The 2015 EITI Report addressed significant aspects of the Requirement but did not address the technical and financial criteria	Meaningful

	applied in the oil sector. The 2016 Contextual EITI Report provided descriptions of the statutory process for awarding or transferring licenses, particularly detailed for mining, including the technical and financial criteria. It provides information about licenses awarded or transferred in 2016 and 2017. There were, however, concerns raised through reporting and stakeholder views about the comprehensiveness of disclosures regarding non-trivial deviations from the applicable legal and regulatory framework.	
License registers (#2.3)	The Ministry of Mines maintains a publicly-available register for mining licenses, broadly recognised by stakeholders as an essential tool. The 2016 Contextual EITI Report references and comments on the online cadastre, including minor inconsistencies in data and the lack of dates of application, award and duration for all licenses. The DRC EITI website also provides the list of all valid mining rights as of 31 December 2016 and 2017, including license holders, taxpayer number, type of permit, permit number, status, province, location, dates of application, award and expiry, commodity covered, squares and potential transfers. While the coordinates are not available on the online cadastre or the DRC website, they are available in individual ministerial *arrêtés* approving license awards or transfers published by the Ministry of Mines. There are no concerns over the overall comprehensiveness of licenses covered. The DRC does not hold a similar publicly available license register in the hydrocarbons sector. However, the DRC EITI website provides a summary of the register held by SGH. The 2016 Contextual EITI Report notes that data points were missing for some licenses, including coordinates and dates of application.	Meaningful
Contract disclosures (#2.4)	The DRC has a clear policy for contract disclosure, with tangible efforts from the Ministry of Mines and the Ministry of Hydrocarbons to operationalise it in practice. In the Secretariat's view, the DRC has made efforts to go beyond the minimum requirements through the DRC EITI's efforts, together with broader constituencies	Satisfactory (beyond)

	particularly within civil society, to support the implementation of the government's pro-disclosure policy by identifying contractual documents not yet made publicly available.	
Beneficial ownership disclosure (#2.5)	Implementing countries are not yet required to address beneficial ownership, and progress with this requirement does not yet have any implications for a country's EITI status. The DRC should be commended for the steps taken towards beneficial ownership transparency, including piloting beneficial ownership disclosure since 2015 and working to establish a legal and institutional framework for mining.	
State-participation (#2.6)	The 2015 EITI Report and the 2016 Supplementary EITI Report provide an assessment of the materiality of state participation in the mining, oil and gas sectors, and provide a comprehensive list of SOEs for EITI reporting purposes. While the reports describe the types of payments, both statutory and in practice, made by SOEs to the government, they do not comprehensively describe SOEs' statutory rights to retain earnings, reinvest in their operations and seek third party (debt and equity) financing. The 2016 Supplementary EITI Report provides extensive information on the practice of financial relations between nine material SOEs and the state in 2016, although certain stakeholders consulted raised concerns over the comprehensiveness and reliability of some SOEs' (unaudited) financial statements, on which this review was based. The reports provide a comprehensive list of companies in which the state and SOEs hold equity, although the comprehensiveness of SOE equity interests in the mining sector is unclear. The reports do not clearly describe the terms associated with each state and SOE equity interest in extractives companies, including the government and SOE's level of responsibility to cover expenses at various phases of the project cycle, e.g. full-paid equity, free equity and carried interest. The reports comment on changes in government direct equity in extractives companies in the years under review, but do not systematically comment on changes in SOEs' ownership of	Meaningful

	equity interests in extractives companies. The reports, particularly the 2016 Supplementary EITI Report, provide information on loans and guarantees to extractive companies provided by SOEs, but not by the state, although the comprehensiveness of these disclosures is unclear. While the DRC has made significant efforts to improve the transparency of financial relations between SOEs and the government, the Secretariat's view is that the broader objective of transparency in state participation is not yet fully achieved.	

Secretariat's recommendations:

6. To strengthen implementation, the DRC is encouraged to continue publishing relevant laws and regulations on relevant government websites. The DRC may wish to ensure that information on all revenue streams published on the DRC EITI website is regularly updated in light of statutory reforms. The DRC, in collaboration with government representatives, is encouraged to further strengthen its use of EITI reporting to monitor the implementation of legal reforms in practice, including clarification of the fiscal obligations and exemptions applicable to specific contracts.
7. In accordance with Requirement 2.2, the DRC is required to publicly disclose information about licenses awarded and transferred, including any non-trivial deviations from the applicable legal and regulatory framework and the detailed technical and financial criteria assessed. The DRC is encouraged to ensure the EITI works closely with the relevant ministries to also disclose information about pending applications. In the event of bidding rounds, the DRC is required to disclose the bid criteria, the full list of applicants and is encouraged to document the results of the process. To strengthen implementation, the Ministry of Mines is encouraged to provide a list of all ministerial arrêtés granting awards and transfers of mining rights in open data format to facilitate data use. The CAMI is also encouraged to provide the option of downloading data about mining licenses in open data format. The Ministry of Hydrocarbons is encouraged to provide public access to all active contracts with references to licenses covered. The DRC may wish to expand its use of EITI reporting as an annual diagnostic of the efficiency of licensing allocation practices, with a view to publicly highlighting any risks of political interference.
8. In accordance with Requirement 2.3, the DRC is required to maintain a publicly available register or cadastre system with timely and comprehensive information regarding all licenses held by extractive companies. The DRC should work closely with the Ministry of Hydrocarbons, the SGH and partners to ensure that a register of oil and gas licenses is publicly available. The CAMI is encouraged to improve the timeliness and comprehensiveness of data on its online cadastre, adding geographical coordinates where possible. It might also wish to make its data available in open data format.
9. To strengthen implementation, the DRC is encouraged to ensure that the government's contract disclosure policy is fully implemented in practice, leveraging collaboration with line ministries, the Ministry of Portfolio and SOEs. The Ministries of Mines and of Hydrocarbons are encouraged to pursue their practice of disclosing contracts online. Partners and donors

are encouraged to provide technical and financial support to stakeholders, particularly government and CSO representatives, to strengthen their capacity to analyse contracts and monitor compliance with contractual obligations.

10. To strengthen implementation, the government is encouraged to build on the work of DRC EITI and CSOs to adopt a comprehensive legal and institutional framework for beneficial ownership disclosure in the extractive industries. It is recommended that the DRC strengthen its efforts to improve disclosures, particularly in the oil and gas sector, including through outreach to companies. The DRC is encouraged to further refine its EITI beneficial ownership reporting templates to adequately cover shareholding and company ownership structures. The Ministry of Mines is encouraged to publish beneficial ownership information online in the short-term, as established by the 2018 Mining Code's implementing Decree, and to collaborate closely with the CAMI to ensure the comprehensiveness and timeliness of reported data. The government and CSOs may wish to strengthen their capacities to analyse beneficial ownership data with a view to identifying red flags.
11. In accordance with Requirement 2.6, the DRC should ensure that there is a publicly-available and comprehensive list of extractives companies in which the government, or any SOE, holds equity, the existence of any change in the year under review, and a description of the terms associated with the government's or SOE's equity. The DRC should ensure that the prevailing rules and practices regarding the financial relationship between the government and state-owned enterprises, e.g. the rules and practices governing transfers of funds between the SOE(s) and the state, retained earnings, reinvestment and third-party financing are publicly disclosed. The DRC should ensure that the terms of loans and loan guarantees provided by the state and SOEs to extractives companies are comprehensively disclosed in the public domain.

3. Monitoring and production

3.1 Overview

This section provides details on the implementation of the EITI requirements related to exploration, production and exports.

3.2 Assessment

Overview of the extractive sector, including exploration activities (#3.1)

Documentation of progress

Oil and gas **Systematic disclosures**: The Ministry of Hydrocarbons website provides information about proven and estimated reserves, geological characteristics, although the frequency of updates is unclear.[308] The website of SONAHYDROC is not operational.[309] The EITI-DRC website's MAP-X portal provides the status of oil and gas concessions as of 2013.[310]

EITI reporting: The 2016 Contextual EITI Report notes that a single prospection activity took place in 2016, that two basins were open for exploration and that only the coastal areas hosted production activities. [311] The 2015 EITI Report provides an overview of existing oil fields with proven and estimated reserves, number of blocks, corresponding operators and state of the licenses. The report includes SGH's confirmation that no prospection project had been negotiated since 2010.[312]

Mining
Systematic disclosures: The Ministry of Mines publishes a list of mining operators active in the DRC, both on its website and in hard copy annually.[313] The Ministry's website provides reserves, by commodity for a dozen of the largest projects[314], and in total for gold and copper-cobalt in 2018. The online cadastre portal provides geological data.[315] Other public information sources for reserves and exploration activities include the GÉCAMINES website[316], reports from the largest companies[317][318], the Chamber of Mines annual

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308 Ministry of Hydrocarbons, Amont pétrolier, http://hydrocarbures.gouv.cd/?AMONT-PETROLIER-13, accessed in November 2018.
309 Site de la SONAHYDROC, Page d'accueil, https://www.sonahydroc.com/, accessed in November 2018.
310 Site de l'ITIE-RDC, Ressources naturelles, op. cit.
311 Prospection was led by SONAHYDROC on the Yema and Nganzi blocs, associated with SURESTREAM and SOGEMIP. The SGH noted that the Graben Albertine and Tanganyika basins and the Cuvette Centrale basin are still open for exploration. It also noted that ARIANA OIL and GAS and LEDYA OIL and GAS also obtained rights to data about the Yema and Nganzi fields. 2016 Contextual Report, pp.53-55.
312 2015 EITI Report, pp.30-32, 37.
313 Ministry of Mines, E-Mines/RDC, op. cit.
314 Some of the 36 mining sites listed are: BM, CHEMAF, COMILU, COMISA, COMMUS, GIR GOLD, KCC, METALKOL, MUMI, NAMOYA MINING, RUMI, SMCO and TFM. Estimates are not available for all of them. Ministry of Mines, E-Mines/RDC portal, Projets miniers, http://emine.ht2techinfo.cd/listprojet/, accessed in November 2018.
315 CAMI, DRC Mining Cadastre Portal, op. cit.
316 GÉCAMINES, 'Prospection et exploitation', http://www.gecamines.cd/prospection.html, accessed in April 2018.
317 For the Mutanda and Kibali mines for example, see Glencore, Resources and Reserves as of 31 December 2017, http://www.glencore.com/investors/reports-results/reserves-and-resources; Randgold Resources, Annual resource and reserve declaration as of 31 December 2017, http://www.randgoldresources.com/reserves-and-resources, accessed in October 2018.
318 See for example Randgold Resources (2018), 2017 Annual report Kibali gold mine,

report[319] and the CongoMines website.[320] The 2015 statistical report published by the national statistics institute (INS) and the Ministry of Planning provides a table of available minerals by province.[321] The *Services d'Assistance et d'encadrement du small-scale mining* (SAESSCAM) website includes an interactive map of ASM activities, mapping out sites and mineral substances.[322] The International Peace Information Service (IPIS) provides an interactive map of more than 2400 ASM sites in eastern DRC, with all data available for download in open format.[323] Both maps show that more than half of sites produce gold, with 3Ts and diamond also representing significant shares.

Due diligence checks carried out in mineral supply chains are not covered by the 2016 EITI Standard. However, the development of such guidelines and their implementation in the DRC constitute a key issue in the governance of the mining sector, both for local and international stakeholders. Pioneering work in the DRC has been done by the Organisation for Economic Cooperation and Development (OECD), ITRI Tin Supply Chain Initiative (ITSCI) and IPIS, in collaboration with *Service d'Assistance et d'Encadrement des Mines Artisanales et de Petit Echelle* (SAEMAPE) and *Centre d'Expertise, d'Evaluation et de Certification des Substances Minérales Précieuses et Semi-Précieuses de la République Démocratique du Congo* (CEEC), particularly on 3Ts and gold.[324]

The Ministry of Mines provides links to the 2016 due diligence reports for BANRO and METACHEM.[325] Attention around mineral supply chains in the cobalt sector has grown significantly in the past two years, following a global increase in demand for the mineral as a key component of lithium-ion batteries and reports on the use of child labour in its extraction. International, regional and corporate actors are developing their own frameworks for improving the traceability of cobalt.[326]

EITI reporting: The 2016 Contextual EITI Report notes that operators were not allowed to conduct prospection activities based on the revised Mining Code, which created a specialised government body to conduct prospecting and exploration activities in artisanal mining areas. The report includes CAMI's statement that it had not carried out prospection activities in the past six years. The 2016 Supplementary EITI Report describes prospection activities carried out by GÉCAMINES on five sites.[327] It also provides

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http://www.randgoldresources.com/sites/randgoldresources/files/Annual%20Report%202017_Kibali%20Gold%20Mine%20Report.pdf, accessed in October 2018.

[319] Chamber of Mines (2017), 2016 Annual Report, http://chambredesminesrdc.com/wp-content/uploads/2017/02/2016-Annual-Report-DRC-Chamber-of-Mines.pdf, accessed in October 2018.

[320] CongoMines, Maps, https://maps.congomines.org/#6.69/-8.205/27.488, accessed in October 2018.

[321] Ministère du Plan et Institut National de la Statistique (March 2017), Annuaire Statistique 2015, http://www.ins-rdc.org/sites/default/files/Annuaire%20statistique%202015%20Web.pdf, accessed in April 2018.

[322] This map was created by IPIS and funded by the PROMINES World Bank project. SAESSCAM, Webmapping application, http://www.saesscam.cd/SAESSCAM/Map/V4d/#-2.60560777080609/28.740234375/8/terrain,1,4,5/1,2,3,4,5,6,7,8,50less,50plus,500plus/, accessed in October 2018.

[323] IPIS (2019), Mapping artisanal mining areas and mineral supply chains in Eastern DRC, http://www.ipisresearch.be/mapping/webmapping/drcongo/v6/, accessed in January 2019.

[324] See for example: OECD (November 2015), Mineral supply chain and conflict links in Eastern DRC, http://www.oecd.org/corporate/mne/mineral-supply-chain-eastern-drc.htm, accessed in January 2015; ITSCI (2019), Quarterly status reports, https://www.itsci.org/status-report-public/, accessed in January 2019.

[325] See for example: BANRO CONGO MINING (2017), Rapport annuel 2016 de l'exercice du devoir de diligence de l'OCDE, https://www.mines-rdc.cd/fr/wp-content/uploads/documents/Rapport_annuel_2016_diligence_banro.pdf?x57237, accessed in January 2019.

[326] See for example: Responsible Cobalt Initiative (RCI) - Chinese Chamber of Commerce for Metals, Minerals & Chemicals (CCCMC) Importers & Exporters and the Organisation for Economic Co-operation and Development (OECD) (2016), http://www.respect.international/wp-content/uploads/2018/08/Responsible-Cobalt-Initiative-RCI.pdf, accessed in January 2019.

[327] 2016 Contextual EITI Report, pp.53-54. The certification of the first three sites indicated reserves of 699,710 tons of copper (tCU), 76,400 tons of

figures for total annual foreign direct investment in the 2007-2014 period and the share of FDI in the mining sector. The 2015 EITI Report highlights the DRC's high mining potential and the main areas of production.[328] The 2016 Contextual EITI Report provides production and export information about the artisanal and small-scale mining sector based on data from the Ministry of Mines and SAESSCAM provincial offices. The 2015 EITI Report listed the main areas of artisanal and small-scale mining.[329] In 2015, the EITI DRC published a scoping study on the ASM in the Eastern provinces, including a stakeholder mapping of relevant actors (*see Requirement 6.3*).[330]

Stakeholder views

Government representatives noted the importance of accessible and timely data about reserves, including to improve the country's attractiveness to investors. SOE representatives explained that they aimed to expand proven reserves in all the mining licenses it held. CSO representatives also highlighted the importance in building geological databases to improve the government's knowledge and management of the sector. Government and industry representatives highlighted overall positive trends in copper and cobalt production. Several industry representatives announced plans to develop their cobalt production and treatment capacities in the coming year to capitalise on improving global market trends.

Initial assessment

The International Secretariat's initial assessment is that the DRC has made **satisfactory** progress in meeting this requirement. The DRC's EITI reporting provides a comprehensive overview of the extractive industries, including significant exploration activities in both mining and oil and gas. The Ministry of Mines has taken steps to make geological data and information about mining operators publicly available through Its website.

To strengthen implementation, the DRC is encouraged to strengthen its efforts to systematically disclose information on the mining, oil and gas sectors, including significant exploration activities in accordance with Requirement 3.1, through routine government and company public disclosures. The DRC may wish to integrate its work on minerals supply chain due diligence with systematic disclosures of EITI data on the extractive industries.

Production data (#3.2)

Documentation of progress

Oil and gas

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cobalt (tCo) and 77,580 tons of zinc (tZn). 2016 Supplementary EITI Report, p. 41.

[328] 2015 EITI Report, p.39. 2014 EITI Report, pp. 39-42. The 2013 Report noted that DRC possesses 1,100 different types of minerals, 22 of which can be exploited economically. They are divided in seven main categories: cassiterite, rare metals, nickel-chrome, copper, precious or semi-precious stones, non-metallic metals and ferrous metals. 2013 EITI Report, p.35.

[329] 2015 EITI Report, op. cit., p.39.

[330] EITI DRC (July 2015), Rapport de l'auditeur indépendant sur l'étude de cadrage de la couverture de l'exploitation minière artisanale à l'Est de la République Démocratique du Congo, https://eiti.org/sites/default/files/documents/itie_rapaudind_cadragcouverexploitmin_estrdc_1.pdf, accessed in October 2018.

Systematic disclosures: There is no publicly available information on government websites about oil production volumes or values. The PERENCO website provides aggregate data for the company's production, noting a production volume of 22,500 barrels of oil per day in 2015.[331]

EITI reporting: The 2015 EITI Report and the 2016 Contextual EITI Report reconcile oil production volumes between company and government (SGH) disclosures, albeit with SGH data based on company self-reporting. The 2016 report recommends that SGH strengthen its data collection capacity to verify company self-reporting to improve the administration of royalties. The reports does not disclose production values.[332] The EITI Reports do not refer to any natural gas production (e.g. gas associated with oil produced) aside from stating that the DRC does not have any commercial gas production.

Mining sector

Systematic disclosures: The Ministry of Mines website publishes '*Mining Statistics Bulletins'*, with annual, monthly and quarterly production and exports data in the mining sector.[333] Data includes production volumes and export volumes and values (*see Requirement 3.3*). This data is compiled and harmonised by the *Cellule Technique de Coordination et de Planification Minière* (CTCPM) in consultation with relevant government departments. It includes graphs and tables comparing data over several years.[334] The files are available in pdf format for the years 2013-2017, as well as the first quarter of 2018. The Ministry is working on an online data portal to publish data in open data format.

Scans of documents compiled by the *Division Provinciale des Mines* of the ex-Katanga Province on industrial mining companies' contribution to the *redevance minière*, published on the CongoMines website, provide production volumes in tons for the copper-cobalt sector, disaggregated by type of product and grade (*see Requirements 4.1, 4.6 and 5.2*). The most recent document, published after the start of Validation, covers around 40 companies for the period July-October 2018.[335] Production data is available in the Central Bank of Congo (BCC) 2016 report, including narratives on the evolution of average mining and oil prices on the main stock exchanges from 2013 to 2016, including copper, tin, zinc, diamond, cobalt, coltan, gold, oil and silver.[336] The Chamber of Mines 2016 annual report also provides aggregate production figures by commodity for 2016.[337]

EITI reporting: The 2016 Contextual EITI Report provides production volumes by commodity in aggregate,

[331] PERENCO, DRC, http://www.perenco-drc.com/, accessed in November 2018.
[332] 2016 Contextual EITI Report, p.87; 2015 EITI Report, pP. 13, 86.
[333] It covers industrial, semi-industrial and artisanal production for diamonds, gold, cassiterite, coltan and wolframite, and non-ferrous metals such as copper and cobalt (including local sales for the latter two).
[334] Ministry of Mines, Mining Statistics, https://www.mines-rdc.cd/fr/index.php/statistique-miniers/, accessed in October 2018. See minutes from a meeting for the consolidation of statistics covering the year 2016: Ministry of Mines, Procès-verbal des travaux de la commission interministérielle d'harmonisation et de consolidation des statistiques minières, exercice 2016, http://www.prominesrdc.cd/fr/statistiques/STATISTIQUE_EXERCICE2016.pdf, accessed in November 2018.
[335] Division provinciale des Mines de l'ex-Katanga (November 2018), Statistiques des notes de débit relatives à la redevance minière du troisième trimestre 2018, http://congomines.org/reports/1599-statistiques-des-notes-de-debit-relatives-a-la-redevance-miniere-du-troisieme-trimestre2018, accessed in November 2018.
[336] BCC (June 2018), Bulletin mensuel d'informations statistiques, http://www.bcc.cd/downloads/pub/bulstat/bul_stat_juin_2018.pdf; BCC (2017), Rapport annuel 2016, http://www.bcc.cd/downloads/pub/rapann/rapport_annuel_2016.pdf, accessed in November 2018.
[337] Chamber of Mines (2017), 2016 annual report, http://chambredesminesrdc.com/wp-content/uploads/2017/02/2016-Annual-Report-DRC-Chamber-of-Mines.pdf, accessed in November 2018.

comparing data from 2015 and 2016.[338] It indicates the CTCPM as the source of data. The DRC EITI data portal provides production volumes by commodity and by month as reported by individual company, in pdf format.[339] Production values for 2016 are not available for all companies, with missing data for TFM or BOSS, among others. Annex 10 of the 2015 EITI Report discloses production volumes by company and commodity, with the grade indicated. The report highlights increases in the production of copper, cobalt, diamond and gold.[340] However, production values are not provided in the DRC's EITI Reports.

Stakeholders regularly discussed issues around the valuations of production in the mining sector, including for commodities such as copper and cobalt. During the March 2018 self-assessment workshop, a GÉCAMINES representative presented the SOE's method for calculating production and export values (*see Requirement 3.3*). He emphasised the significance of discrepancies between company and government disclosures in the 2012-2014 EITI Reports as an instance that led the EITI DRC establishing a working group on investigating discrepancies in December 2015 (*see Requirement 7.3*).

Recommendations drafted by the working group are available in detail in the 2015 EITI Report.[341] While the working group agreed on a general framework for disclosing production and export volumes, it did not find a solution to calculate production and export values, due to unspecified "specificities" of both commodities and companies. A SOE representative explained that GÉCAMINES used international spot prices (e.g. from London Metal Exchange discounted for quality, transport costs and terms of trade for valuations of copper, cobalt and zinc. [342]

Following discussions at the March 2018 self-assessment workshop, focal points from some of the largest mining companies (BOSS MINING, GÉCAMINES, METALKOL, MMG and RUASHI MINING) met in May 2018 to agree on a common methodology for calculating the value of production. They decided that production value would be declared at the total production cost.[343] The 2016 Supplementary EITI Report noted that this common methodology on production values was enshrined in Art. 25 of the 2018 Mining Code's implementing decree. The Code stipulated that the Ministry of Mines publish trimestral data on the volume, quality and value of production by commodity, as well as the supporting calculations.

Stakeholder views

Government representatives noted that CTCPM was given the mandate to centralise and harmonise mining production and export data three years ago. Industry representatives noted that the quality of data had markedly improved over recent years thanks to the CTCPM's work, strengthening collaboration between companies and the government. A government representative noted plans by the Ministry to improve its disclosures about the international market price of commodities, using data from the LME.

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[338] 2016 Contextual EITI Report, p.87.
[339] See for example DRC EITI, Portail de données, Statistiques de production de l'entreprise par produit, Gécamines, https://shared.eiti.org/_layouts/15/WopiFrame.aspx?sourcedoc=/Shared%20Documents/Countries/DRC/1%20Implementation/Mainstreaming/DRC%20Governement%20agencies%20systematic%20disclosures%20profile%20May-June%202018.xlsx&action=default, accessed in October 2018.
[340] 2015 EITI Report, pp. 65-66, 150-152.
[341] 2015 EITI Report, pp. 87-88.
[342] Robert Munganga (March 2018), Approche de calcul pour la valorisation de la production et des exportations, a soft copy was shared with the International Secretariat in March 2018.
[343] DRC EITI (May 2018), Atelier sur la méthode de calcul de la valeur et du volume de production et des exportations minières, https://drive.google.com/file/d/1jP-JAAkHRBpWbLkkCbBlVtsl-_FNKFuW/view, accessed in October 2018.

Government and industry representatives who were consulted noted challenges in the government's capacity to monitor production. Calculating both the value of production and the amounts of mining royalties per company proved particularly problematic. Companies noted they were required to provide at least monthly production data to the Ministry of Mines. Government representatives explained that while there were government agents placed in the largest industrial companies, there were still concerns around the reliability of figures they reported.

Government representatives said that SOEs should at least have the capacity of collecting data from JVs in which they held equity, especially the largest ones. Industry representatives noted that copies of sales agreements were provided to the DGRAD for tax purposes, but were not publicly disclosed.

Government representatives cited similar challenges in the oil and gas sector. They noted that they received monthly production figures from PERENCO, but that they lacked the capacity to verify them. They wondered whether the EITI could contribute to reporting on production costs, which they considered excessive.

Initial assessment

The International Secretariat's initial assessment is that the DRC has made **meaningful** progress towards meeting this requirement. Production volumes in aggregate and per commodity were disclosed through EITI reporting for 2015 and 2016, with some data available disaggregated by company. The Ministry of Mines website provides timely disclosure of production volumes for mineral commodities, in aggregate and per commodity and per month until the first half of 2018, with additional quality assurance provided through the reconciliation of company and government figures.

Data compiled by the *Division Provinciale des Mines* of ex-Katanga also provides mining production volumes disclosures by company and month until October 2018. Production volumes in the oil sector are available through EITI reporting for 2015 and 2016. There is no publicly available information about the valuation of production in either mining or oil and gas. However, stakeholders have taken steps through the EITI to agree a method for calculating the value of production in the mining sector. There were also encouraging regulatory changes introduced in 2018 and plans by the Ministry of Mines to improve reporting on international prices.

In accordance with Requirement 3.2, the DRC is required to publicly disclose production values by commodity, and where relevant by state/region, for all extractive commodities produced in the year under review. The DRC is encouraged to explore ways of using the EITI to roll out the new valuation methodology for extractives production agreed to in May 2018 by all mining companies. It may wish to work closely with the Ministry of Mines to ensure that production data compiled by the CTCPM is widely disseminated and compared with data disclosed by mining companies. The DRC is urged to ensure the EITI works closely with the SGH and the CHEVRON ODS, MIOC and TEIKOKU consortium to publicly disclose oil production values in the future.

Export data (#3.3)

Documentation of progress

Oil and gas

Systematic disclosures: The Ministry of Hydrocarbons website does not disclose oil export figures.

EITI reporting: The 2015 EITI Report and the 2016 Contextual EITI Report reconcile oil export volumes and values among disclosures for companies and SGH for four companies (LIREX, MIOC, PERENCOREP and TEIKOKU).[344] The report notes that SGH data is based on self-reporting by companies (*see Requirement 3.2*).

Mining

Systematic disclosures: The Ministry of Mines website publish *Mining Statistics Bulletins*, which disclose annual, quarterly and monthly production and exports data for mining (*see Requirement 3.2*).[345] The 2016 BCC report provides a table of export values for key extractives commodities (copper, cobalt, zinc, gold, diamond and crude oil) for 2015 and 2016, in absolute terms and as a percentage of total exports.[346]

EITI reporting: The 2016 Contextual EITI Report provides export volumes by commodity in aggregate, comparing 2015 and 2016 data. Annex 11 of the 2015 EITI Report provides the reconciliation of export volumes and values by company and commodity, based on company and Ministry of Mines reporting.[347] Information disclosed by the Ministry of Mines also includes deductions from mining royalties and mining royalty payments as reported by the largest companies, although not by some of the smaller operators (*see Requirement 5.2*).

The report discloses aggregate figures for export volumes by commodity and shows variations between 2014 and 2015. As explained for the valuation of production (*Requirement 3.2*), EITI stakeholders devised a calculation methodology for future reporting of production values in May 2018. For exports, the 2016 Contextual EITI Report explains that values are estimated based on the sales price.[348]

Stakeholder views

Stakeholders consulted raised similar concerns over the reliability of export data as for production data (*see Requirement 3.2*). Several stakeholders recommended that the DRC EITI improve company reporting templates for export values, adding precise explanations on the valuation methodology. Industry representatives noted that export data should be available by province.

Initial assessment

The International Secretariat's initial assessment is that the DRC has made **satisfactory** progress in meeting this requirement. The 2015 EITI Report provides export volumes and values for all extractive commodities

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[344] 2016 Contextual EITI Report, p.57. 2015 EITI Report, pp.13, 86.
[345] Ministry of Mines, Mining Statistics, https://www.mines-rdc.cd/fr/index.php/statistique-miniers/, accessed in October 2018.
[346] BCC (November 2017), Rapport annuel 2016, pp.121-122, http://www.bcc.cd/downloads/pub/rapann/rapport_annuel_2016.pdf, accessed in October 2018.
[347] 2015 EITI Report, pp.153-157.
[348] 2016 Contextual EITI Report, pp.59-60. 2015 EITI Report, pp.13, 153-157.

exported in 2015. While the lack of export values in the 2016 Contextual EITI Report is a concern, the government's efforts to agree to a consistent methodology for valuing mining commodity production and exports should ensure consistent disclosure of export values in the future. There is also some evidence of timely systematic disclosures of mining export volumes through the Ministry of Mines website in aggregate, per commodity and per month.

To strengthen implementation, the DRC is encouraged to ensure that export values are provided for each extractive commodity exported in the year under review, and, when relevant, disaggregated by state or region. The DRC is encouraged to explore ways of using EITI to roll out the valuation methodology for exports agreed to in May 2018 by all mining companies.

Table 3. Summary of initial assessment: Monitoring and production

EITI provisions	Summary of main findings	International Secretariat's initial assessment of progress with the EITI provisions
Overview of the extractive sector, including exploration activities (#3.1)	The DRC's EITI reporting provides a comprehensive overview of the extractive industries, including significant exploration activities in both mining and oil and gas. The Ministry of Mines has taken steps to make geological data and information about mining operators publicly available through Its website.	Satisfactory
Production data (#3.2)	Production volumes in aggregate and per commodity were disclosed through EITI reporting for 2015 and 2016, with some data available disaggregated by company. The Ministry of Mines website provides timely disclosure of production volumes for mineral commodities, in aggregate and per commodity and per month until the first half of 2018, with additional quality assurance provided through reconciliation of company and government figures. Data compiled by the *Division Provinciale des Mines* of ex-Katanga also provides mining production volumes disclosures by company and month until October 2018. Production volumes in the oil sector are available through EITI reporting for 2015 and 2016. There is no publicly available information about the valuation of production in either mining or oil and gas. However, stakeholders have taken steps through the EITI to agree to a method for calculating the value of production in the mining sector. There were also encouraging regulatory changes introduced in 2018 and plans by the Ministry of Mines to improve reporting on international prices.	Meaningful
Export data (#3.3)	The 2015 EITI Report provides export volumes and values for all extractive commodities exported in 2015. While the lack of export values in the 2016 Contextual EITI Report is a concern, the government's efforts to agree to a	Satisfactory

	consistent methodology for valuing mining commodity production and exports should ensure consistent disclosure of export values in the future. There is also some evidence of timely systematic disclosures of mining export volumes through the Ministry of Mines website, in aggregate, per commodity and per month.	

Secretariat's recommendations:

12. To strengthen implementation, the DRC is encouraged to strengthen its efforts to systematically disclose information on the mining, oil and gas sectors, including significant exploration activities, in accordance with Requirement 3.1, through routine government and company public disclosures. The DRC may wish to integrate its work on minerals supply chain due diligence with systematic disclosures of EITI data on the extractive industries.
13. In accordance with Requirement 3.2, the DRC is required to publicly disclose production values by commodity, and where relevant by state/region, for all extractive commodities produced in the year under review. The DRC is encouraged to explore ways of using the EITI to roll out the new valuation methodology for extractives production agreed in May 2018 by all mining companies. It may wish to work closely with the Ministry of Mines to ensure that production data compiled by the CTCPM is widely disseminated and compared with data disclosed by mining companies. The DRC is urged to ensure the EITI works closely with the SGH and the MIOC, TEIKOKU and CHEVRON ODS consortium to publicly disclose oil production values in the future.
14. To strengthen implementation, the DRC is encouraged to ensure that export values are provided for each extractive commodity exported in the year under review, and, when relevant, disaggregated by state or region. The DRC is encouraged to explore ways of using EITI to roll out the valuation methodology for exports agreed to in May 2018 by all mining companies.

4. Revenue collection

4.1 Overview

This section provides details on the implementation of the EITI requirements related to revenue transparency, including the comprehensiveness, quality and level of details disclosed. It also considers compliance with the EITI Requirements related to procedures for producing EITI Reports.

4.2 Assessment

Materiality (#4.1)

Documentation of progress

Systematic disclosures: The 2016 Supplementary EITI Report notes that the 2018 Mining Code's implementing Decree requires government agencies and SOEs that collect taxes and levies at the national and provincial levels to submit quarterly financial reports to the Ministry of Finance, with copies to the Ministry of Mines. This data is required to be published online by the Ministry of Finance within two weeks of receipt (*see below*). Companies and their subcontractors are also required to publicly disclose, on a quarterly basis, payments made to government agencies, local government units and for community development.[349]

The 2016 Supplementary EITI Report also references quarterly disclosure of revenues transferred to the Treasury on the Ministry of Finance website, compiling data from the main revenue-collecting agencies (DGI, DGDA and DGRAD). The last report published before the start of Validation dated from 31 August 2018 and covered the second quarter of 2018.[350] The three government agencies sent their own data monthly to the *Comité Technique de suivi et évaluation des Réformes* (CTR), which in turn compiles, harmonises and publishes this data.[351] The data is disaggregated by sector (hydrocarbons, mining and forestry), by revenue stream (a dozen each for DGI and DGDA, and over 40 for DGRAD) and by month, but not by individual taxpayer. The data includes payments from subcontractors and revenues from VAT, but does not cover revenues withheld by government agencies and SOEs from transfers to the Treasury.

[349] 2016 Supplementary EITI Report, pp.66-67: «Les revenus et paiements à faire figurer dans les rapports financiers relatifs aux activités minières mentionnées à l'article précédent sont: les impôts, droits et taxes spécifiques prévus par le Code minier et ses mesures d'application; les impôts, droits et taxes de droit commun; les revenus produits de la vente des parts sociales; les revenus provenant de la vente des produits miniers marchands; les revenus provenant du transport des produits miniers marchands; les paiements généralement quelconques effectués dans le cadre de l'activité minière.»
[350] Ministry of Finance (August 2018), Communiqué official no.004 du 31 août 2018, http://minfinrdc.com/minfin/wp-content/uploads/2018/09/COMMUNIQUE-OFFICIELN%C2%B0004-DU-31-AOUT-2018.pdf, accessed in November. Previous reports were published on 31 May and 23 March 2018. Ministry of Finance (May 2018), Communiqué officiel nº.003 du 31 mai 2018, http://minfinrdc.com/minfin/wp-content/uploads/2018/06/Communiqué-officeil-N°003-du-31-mai-2018.pdf; (March 2018), Communiqué officiel n.002 du 23 mars 2018, http://minfinrdc.com/minfin/wp-content/uploads/2018/03/Communiqu%C3%A9-officiel-n%C2%B0002-du-23-mars-2018.pdf. After the Start of Validation, the Ministry published another report in November 2018: Communiqué official nº.005 du 27 novembre 2018, http://minfinrdc.com/minfin/wp-content/uploads/2018/11/Communiqué-officiel-n°005.pdf.
[351] Examples of the reports transferred by the government agencies to the CTR were provided to the International Secretariat in May 2018. The templates used differ from one agency to another. National classification codes are used but not for all revenue streams. It seems that some revenue streams are collected by SOEs, but then disclosed through the DGRAD report.

Disclosures are available in pdf format from the second quarter of 2011 onwards. On average, reports are made available two months after the end of the quarter under review.[352] Initially published as provisional statistics, the data on revenues transferred to the Treasury is subject to an internal annual audit by the IGF (*see Requirement 4.9*). The revenue data is revised regularly and is only considered final following finalisation of audited accounts. A project to automate information-sharing between all revenue collecting government agencies, commercial banks and the central bank was underway during Validation (*see stakeholder views*).

EITI reporting: This assessment focuses on the latest financial reconciliation report published by the DRC EITI at the start of Validation, i.e. the 2015 EITI Report. As of 1 October 2018, the DRC EITI had published a scoping study for the fiscal year 2016. The assessment below highlights differences in the approach to scoping between 2015 and 2016, where applicable. Key documents used for the assessment were the 2015 scoping study, the 2015 EITI Report, the 2016 scoping study drafted by the DRC EITI Technical Secretariat and the IA's 2016 scoping study confirming the MSG's materiality decisions.[353]

Data in open format for 2015 (reconciled) and 2016 (non-reconciled at the start of Validation) can be downloaded from the DRC EITI online portal, although the IA expressed concerns about the reliability of information on this portal (*see below*). It should be noted that the DRC EITI completed scoping studies for the forestry and the ASM sectors in 2015 (*see Requirement 6.3*).[354]

Materiality threshold for revenue streams: The MSG selected revenue streams applicable specifically to the extractive sector according to sector regulations with a materiality threshold of zero. In addition, it included all taxes and levies applicable to all companies, with a materiality threshold of USD200000 in aggregate revenues based on government unilateral disclosures.[355] The 2015 EITI Report implies that the MSG adopted the same materiality threshold for revenues in both oil and gas and mining.

The 2015 EITI Report also provides a list of "*Other material revenue streams*". While it is important to list these revenue streams, the source of this information is unclear (unilateral government disclosures or company disclosures), and the basis for their categorisation as material is unclear. The basis for categorising payments in the oil sector by PERENCO and MIOC as material is also unclear, given that their value is below the materiality threshold for selecting revenue streams. Of the 13 revenue streams listed as "other material revenue streams" in the mining sector, two[356] were added to the list of material revenue streams. The report explains that a USD10.7 million payment by GÉCAMINES, representing 0.65 per cent of total extractives revenues, was not included in the scope of reconciliation given the lack of information provided

[352] Government agencies usually have ten days to transfer their reports to the CTR. The practice until the second half of 2018 (see stakeholder views under 4.1) was that DGRAD often transferred its data with a delay, given that it did not have a digitalized internal system to collect and process data.
[353] The 2016 scoping study by EY assesses the approach to materiality suggested by the DRC EITI. There are minor differences in data collected from government entities, but the report confirms the methodology adopted by the DRC EITI. The DRC EITI 2016 scoping study was useful to read in parallel, given that it included more detailed information about each company and revenue stream's relative contribution to the sector.
[354] DRC EITI (November 2015), Rapport sur l'étude de cadrage du secteur forestier en RDC, https://drive.google.com/file/d/0B1C1Aj5TqAgvakJ4aXpMUTBmSjQ/view; DRC EITI and PWC (July 2015), Rapport de l'auditeur indépendant sur l'étude de cadrage de la couverture de l'exploitation artisanale à l'Est de la République Démocratique du Congo, https://drive.google.com/file/d/0B1C1Aj5TqAgvbDFIdWRRVTlnZ1E/view, accessed in November 2018.
[355] 2015 scoping report, p. 39.
[356] Cession de titre de la Gécamines à CDM by CDM and Frais versés à la MIBA reclassés by SOGEWYZ.

by the company about the payment. On the other hand, the report explains that a USD3.78 million payment by TFM to the BCC was included in the scope of reconciliation. Although the remaining payments all amounted to more than USD200,000 per stream, they were all excluded from the scope of reconciliation, in some cases due to lack of information to verify the payments.[357] These tables raise questions about the comprehensiveness of scoping decisions in relation to the selection of material revenue streams, given that the reconciliation appears to have excluded large ad hoc payments by some of the largest mining companies, such as CDM and TFM, and large SOEs, such as GÉCAMINES.

For 2016, the MSG adopted the same approach, but using a lower materiality threshold of USD100,000 for the selection of taxes and levies applicable to all companies. A total of 58 revenue streams were selected for reconciliation, and two were unilaterally disclosed. The 2016 scoping study also lists 32 revenue streams excluded from the scope of reconciliation. The scoping study shows the relative contribution of each revenue stream in the oil and the mining sectors respectively. The study highlights the revenue streams that were included in the scope of reconciliation for the first time and revenues that were no longer included in 2016.[358]

Descriptions of material revenue streams: Annex 4 of the 2015 scoping report provides the list of revenue streams, organised by value and by sector.[359] The list of 69 material revenue streams is provided by collecting entity and organised by relative value. Annex 17 of the 2015 EITI Report provides a description of all material revenue streams, alongside the collecting government entity and type of company concerned.[360] The report did not provide information about the "FSR" revenue stream, which seems to correspond to "*Fonds Social de la République*".

Materiality threshold for companies: In o*il and gas*, the MSG decided to include all companies active in oil exploration or production with a *de facto* materiality threshold of zero in both the 2015 and 2016 EITI Reports.[361]

In *mining*, the MSG decided that the 2015 EITI Report first select companies based on a materiality threshold of USD200,000 in total payments to government. To this initial selection, it added all SOEs and SOEs' JVs regardless of the materiality of their payments, as well as companies that were included in previous EITI reconciliations.[362] For 2016, the MSG lowered the materiality threshold for selecting mining companies to USD100,000 in aggregate payments to government, to which it added all SOEs and SOEs' JVs but excluded companies that had ceased activities.[363]

Material companies: In o*il and gas*, the 2015 EITI Report covers 11 material companies including the sole SOE COHYDROC (now SONAHYDROC), five companies in production and five companies in exploration. The 2015 scoping study noted that the MSG had decided since the 2014 EITI Report that non-operator

357 2015 EITI Report, pp. 91-92.
358 DRC EITI, EY, 2016 scoping study, pp.12, 24-27.
359 2015 scoping report, pp.74-76.
360 2015 EITI Report, pp.28-29, 178-193.
361 Ibid, pp.8, 18.
362 DRC EITI, 2015 EITI Report, pp. 27-30.
363 DRC EITI, EY, 2016 scoping report, p. 8. DRC EITI, 2016 scoping report, pp. 11-14, 30, 31.

exploration partner companies (CAPRIKAT & FOXWELP, SEMLIKI and SOGEMIP) would be excluded from the scope of reconciliation given their lack of material payments to the government. The 2015 scoping study provides a table showing revenues by government agency and by value for the 11 material companies. The five largest taxpaying companies (MIOC, LIREX, TWIKOKU, PERENCO and ODS) accounted for over 80% of total oil and gas revenues. Two oil and gas companies - CABINDA GULF OIL COMPANY LTD. (*see Requirement 4.4*) and ENI (which ceased activities in September 2015) - were not included in the scope of reporting, although their payments were unilaterally disclosed by the government. The 11 companies were listed in Annex 1 of the 2015 EITI Report, including select[364] corporate details.[365]

There are instances of inconsistencies across data provided in the EITI Reports, scoping studies and the online data portal regarding the status of companies considered material. For example, the 2015 EITI Report lists the company ENERGULF as material, whereas the 2015 scoping study included the company CABINDA instead of ENERGULF.[366] Yet the open data portal does not list any payments from ENERGULF, while it indicates data for CABINDA that is both reconciled and unilaterally disclosed. The open data portal also lists other material companies[367], despite indicating that they made no payments for the year under review. While the lack of payments from these companies may be due to the fact that they are non-operator partners and thus did not make any payments to the government, this is not explained in the EITI Reports or scoping studies.

For 2016, the report lists ten companies[368] that were considered material, based on the same materiality threshold as for 2015. Two companies were excluded from the scope of reporting (CABINDA GULF OIL COMPANY LTD. and SOCO E&P), with their payments unilaterally disclosed by the government.[369] The scoping study shows that the four largest oil companies[370] in terms of payments to the government in 2016, accounted for 90.58 per cent of the sector.[371]

In *mining*, the 2015 EITI Report selects 86 material companies based on a materiality threshold of USD 2m in aggregate payments to government, based on unilateral government reporting. In addition, the MSG agreed to add three SOEs, two SOE JVs, 25 additional companies that had been included in the scope of the 2014 EITI Report, and SINO KATANGIN[372] to the scope of reporting, regardless of the materiality of their payments in 2015, raising the total to 117 material companies. The 2015 scoping study provides the aggregate value of payments for each of the 86 largest taxpaying companies, covering 99.64% of total government mining revenues. It shows that the four largest companies[373] in terms of payments to the government made the lion's share of payments. It shows that the 27 largest companies that made payments

[364] date of creation, the amount of their share capital, their fiscal identification number and contact address.
[365] SOGEMIP was a partner of SURESTREAM RDC and COHYDRO SA in the Yema/Matamba-Manzaki bloc; CAPRIKAT-FOXWELP is a partner of OIL OF DRC in blocs I and II of the Graben Albertine basin; SEMLIKI is a partner of TOTAL E&P RDC in the bloc III of the Graben Albertine basin. See 2014 EITI Report, p.36-37. 2015 scoping study, p.35. 2015 EITI Report, p.27, p.123.
[366] 2015 EITI Report, p.27; 2015 scoping study, p.35.
[367] TOTAL Distribution in the production phase, and ENERGULF, ENI RD Congo (which ceased activities in 2015), KINREX, Société du littoral congolais, Société de recherche et d'exploitation du littoral congolais in the exploration phase.
[368] COHYDRO, ENERGULF, LIREX, MIOC, ODS, OIL of DRC, PERENCOREP, SURESTREAM, TEIKOKU and TOTAL E&P.
[369] DRC EITI, EY, 2016 scoping study, p.19.
[370] LIREX, MIOC, PERENCOREP and TEIKOKU.
[371] DRC EITI, 2016 scoping study, p.23.
[372] With payments amounting to USD 199,416.
[373] KCC, MUMI, KIBALI and TFM.

of more than USD10 million accounted for 93.84% of the government's mining revenues in 2015. The 117 companies are listed with some of their corporate details[374] in Annex 1 of the 2015 EITI Report.[375]

It is unclear from the 2015 EITI Report and scoping study whether downstream mineral processing companies were included in the scope of reconciliation. The 2015 scoping study provides a list of 72 mineral processing companies[376] in the former provinces of Katanga, North Kivu, South Kivu, Maniema and Oriental Province[377], although this list is not provided in the 2015 EITI Report itself. It is unclear whether these processing plants held any licenses that gave rise to material payments to the government. While the revenue stream labelled "annual royalty for processing and/or treatment entities" ("*redevance annuelle pour les entités de traitement et/ou de transformation de toutes catégories et tailleries*") collected by DGRAD seems to only apply to processing companies, it was nonetheless included in the scope of reconciliation for 2015, following a recommendation in the 2014 EITI Report.[378]

For 2016, the MSG adopted the same approach to the scoping of companies, covering 99.99% of the sector. The 2016 scoping study shows that companies with total payments above USD1 million (47 companies) accounted for 99.01% of government mining revenues, while companies with total payments above USD5 million (26 companies) covered 91.38% of government revenues from the sector. The 2016 scoping study confirms that the MSG adopted a materiality threshold of USD100,000 in aggregate payments to the government, resulting in the selection of 115 material companies. The scoping study points out that 153 companies made payments below the materiality threshold and that five new JVs were created in 2016, including for the DEZIWA project (*see Requirement 2.6*).[379]

Material company reporting: At the start of Validation, the reconciliation of 2016 payments and revenues had not yet been completed.[380]

In *oil and gas*, the 2015 EITI Report confirms that all material oil companies except for one (SOCO E&P DRC) submitted reporting templates. The report includes a confirmation by the Ministry of Hydrocarbons that SOCO E&P DRC ceased activities in the DRC in September 2015 and the IA's assessment that the company's payments amounted to only 0.62% of total reconciled revenues.

In mining, the 2015 EITI Report states that 14 mining companies did not provide disclosures and provides the value of their payments to government, both in aggregate and per non-reporting company.[381] There are however inconsistencies in the 2015 EITI Report regarding the number of non-reporting companies, with one table listing 17 rather than 14 companies that did not report.[382] Annex 9 of the 2015 EITI Report

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[374] Including date of creation, the amount of their share capital, their fiscal identification number and contact address.
[375] 2015 scoping study, pp.35-38. 2015 EITI Report, pp.27, 124-127.
[376] In the copper-cobalt, tantalum ore, tin ore and gold sectors.
[377] 2015 scoping study, pp.91-93.
[378] Ibid, p.68; 2015 EITI Report, p.111.
[379] DRC EITI, EY, 2016 scoping report, p. 8. DRC EITI, 2016 scoping report, pp. 11-14, 30, 31.
[380] A draft 2016 reconciliation report was circulated by email to stakeholders for comments on 15 November 2018. The full report was published on the DRC EITI website on 30 December 2018. See DRC EITI (December 2018), 2016 Reconciliation EITI Report, https://drive.google.com/open?id=1dE6MUZz5BQm7VJKAD60vluJbxWUUpAcd.
[381] The 14 non-reporting mining companies accounted for a total of USD9.507 million or 0.54% of total reconciled revenues.
[382] Ibid, pp-71-75.

provides reasons for the 14 companies' non-reporting.[383] The two largest non-reporting companies were HUACHIN (USD4.30 million disclosed by government entities, or 0.26% of total non-reconciled revenues in the mining sector) and GROUPE BAZANO (USD2.24 million, or 0.14%).

The report confirms the IA's lack of assurances of the comprehensiveness of reconciled revenues for 2015 for three main reasons.[384] The IA expressed concerns about the comprehensiveness of revenues arising from operations involving SOEs, such as the sale of GÉCAMINES's mining rights and right to collect royalties from AHIL in the KCC JV (*see Requirements 2.6 and 4.5*).[385] The IA also expressed concerns about the reliability of data reported through the online data portal, noting inconsistencies in the data, although in the report's final version the DRC EITI secretariat explicitly stated that challenges in online data entry had been resolved and rejected the IA's claim that the online data portal was not reliable.[386] Finally, the IA expressed concerns due to inconsistencies in data from the mining cadastre, which was used as the basis for selecting material companies and payments (*see Requirement 2.3*).[387]

Material government entities: The 2015 EITI Report lists six government agencies, including the former Katanga Provincial Government (DRKAT), and nine SOEs considered material[388] based on their collection of material revenues and provided a list of revenues per government agency. The 2016 scoping study added a seventh national government entity to the scope of reporting, the BCC that collects 'exchange rate fees' ("*Redevance suivi de change (RSC)*"), as recommended in the 2015 scoping study.

Government reporting: The 2015 EITI Report confirms that all material government entities reported.[389]

Discrepancies: The 2015 EITI Report confirms the MSG's materiality threshold of USD1,000 per revenue stream and company for investigating discrepancies. Total final unreconciled discrepancies amounted to less than 1 per cent of reconciled revenues.[390] The results of reconciliation are provided for oil and gas, for mining, and in aggregate.[391]

In oil and gas, the 2015 EITI Report provides the detail of adjustments and unreconciled discrepancies by company on the one hand, and by government agency and revenue stream on the other[392] (pp.69-70).

In mining, the report provides a summary of reconciliation results by company, with disclosures by company, by government entity for revenues transferred to the Treasury and by SOE for revenues withheld by government agencies and final unreconciled discrepancies. It provides the detail of adjustments and

[383] 2015 EITI Report, p.21, pp-148-149.
[384] 2015 EITI Report, p.21.
[385] 2015 EITI Report, pp.95-98.
[386] DRC EITI (May 2017), Pre-final 2015 EITI Report with amendments from stakeholders, pp.95-98, https://drive.google.com/file/d/0B1C1Aj5TqAgvcHVfTks2dWZudDQ/view.
[387] 2015 EITI Report, p.102.
[388] DGI, DGRAD, DGDA, DRKAT, MEDD, SGH; COMINIÈRE, GÉCAMINES, MIBA, SACIM, SAKIMA, SCMK-MN, SODIMICO and SOKIMO. 2015 EITI Report, p.30; 2015 scoping study, p.48.
[389] 2015 EITI Report, p.21.
[390] 2015 EITI Report, p.21.
[391] Ibid, p.15.
[392] 2015 EITI Report, pp.69-70.

unreconciled discrepancies by company on the one hand, and by government agency and revenue stream on the other. The report provides a table of unresolved discrepancies by company and revenue stream, with supporting explanations.[393] The report reconciles payments made by extractive companies with revenues disclosed by seven SOEs, covering 25 companies' payments to GÉCAMINES (*see Requirement 4.5*).

Full government disclosure: The 2015 EITI Report lists aggregate revenues by collecting government entity likely for non-material companies, despite the report's statement that government entities disclosed these revenues unilaterally for "companies included in the 2015 scope" (which is considered a typo given the value of revenues reported).[394] The report lists 340 non-material mining companies for which unilateral government disclosures were provided. Full government disclosures are available through the online data portal, as well as in the publicly-accessible DRC EITI summary data for 2015.[395] For provincial authorities, the report provides data for DRKAT that is disaggregated by revenue flow, but only provides aggregate revenues for other provincial authorities, whose total extractives revenues amounted to only 0.01% of total revenues.[396]

At the start of Validation, full government disclosures for 2016 were available in the 2016 scoping study (by revenue stream and separately by company) and on the online data portal (by government entity, company and revenue stream).[397] The 2016 scoping study included unilateral disclosures for most provinces, noting that there were no significant extractive activities in the eight provinces that did not report.[398]

Stakeholder views

The MSG's March 2018 pre-Validation self-assessment highlighted that a number of companies and government entities had not disclosed all material revenue streams and that a number of provincial authorities had not disclosed all revenues unilaterally. Most stakeholders consulted did not raise particular concerns about the comprehensiveness of EITI reporting. Yet some CSO representatives expressed concerns about the comprehensiveness of reconciled EITI data and the EITI's ability to identify illegal payments. Citing revelations through the Panama Papers of payments by the hedge fund Och-Ziff Capital Management in the DRC, they noted that these payments had never been disclosed through the EITI.[399] They also mentioned allegations from Chinese company representatives that they were requested to make ad-hoc payments beyond statutory taxes and levies.

Some CSO representatives noted that they supported lower materiality thresholds, as was done in the 2016 scoping report, to ensure that EITI reporting was as comprehensive as possible. On the issue of material companies, several industry representatives explained that processing plants that had made large payments were included in the scope of reporting. All government and company EITI focal points consulted noted that their involvement in EITI reporting represented a significant amount of work, but had positively influenced the way they recorded payments, archived receipts and supporting documents, and reported

[393] Ibid, pp.16-20, 71-82.
[394] Ibid, p.91.
[395] See EITI, Open data portal, DRC, 2015, https://eiti.org/sites/default/files/spreadsheets/2015_drc_summary_data_en_san.xlsx
[396] 2015 EITI Report, p.42.
[397] DRC EITI, 2016 scoping study, pp.21-27.
[398] DRC EITI, EY, 2016 scoping study, p.10.
[399] See for reference The Guardian (November 2017), The inside story of Glencore's hidden dealings in the DRC, https://www.theguardian.com/business/2017/nov/05/the-inside-story-of-glencore-hidden-dealings-in-drc, accessed in November 2018.

on their activities (*see Requirement 7.4 and Impact analysis*).

All stakeholders consulted highlighted the complexity of the sector and challenges in disclosing taxes. Challenges mentioned by former government officials and government representatives included the following ones: government entities' limited capacity to monitor companies' self-assessments of their tax liabilities due to the fiscal regime's fragmentation; the multiplicity of government entities involved in tax collection and challenges in information-sharing; the large number of small mining companies that ceased activities soon after receiving licenses; payments made by one company on behalf of a consortium; high turnover in some companies' accounting and administrative staff; the lack of digitisation in some government entities' record-keeping, including at the provincial level; and loss of data related to the decentralisation process launched in 2015.

Several industry representatives highlighted the fragmentation of the fiscal regime for mining, with different taxes and levies applicable to different contracts. Some CSO representatives noted that there were clear weaknesses in the Congolese tax administration system, which provided incentives for large companies to keep profits in foreign currency offshore. Some government representatives, however, stated that the government had the capacity to monitor payments by companies and to prevent excessive tax deductions, for instance through verification of export invoices and assessments of discrepancies between the disclosures made by companies to the government and to its business partners.

Government representatives from tax collecting agencies highlighted a project supported by the French Development Agency (AFD) launched in November 2018, which aimed at developing an automatic information-sharing system between the Ministry of Finance, revenue-collecting agencies, commercial banks and the Central Bank of the Congo (BCC). One of the project consultants presented it at a DRC EITI mainstreaming workshop on 8 November[400], emphasising that the project sought to improve information-sharing across agencies and banks, strengthening the government's capacity to verify companies' actual compliance with their statutory fiscal obligations.

One of the project's outcomes will be the establishment of a "data warehouse" freely accessible online, allowing for downloadable data by company, revenue stream and sector. Pilot projects to connect regional authorities are planned in Bas Kongo, the former Katanga province and North Kivu. Despite resistance from some government entities, the MSG's discussions following the presentation showed significant interest in the tool as a means to integrate EITI data disclosures within routine government systems.[401]

The IA noted difficulties in comparing data entered in the online data portal due to inconsistencies in data entries by reporting entities. It noted that collaboration with larger companies that were used to the EITI was much easier than with smaller or new companies. It emphasised that the limited number of companies in the oil sector made reconciliation easier than in the much larger mining sector. It explained that access to supporting documents could prove difficult, especially given the requirement to report on a per-

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[400] DRC EITI (November 2018), Integration de l'ITIE dans les systèmes d'informations gouvernementaux et des entreprises, Atelier de sensibilisation des parties prenantes, https://drive.google.com/open?id=1zUVmb0fsHz2zxsfUnI5polCIGc7lCQHL, accessed in November 2018.
[401] See Contrat de désendettement et de développement, Appui à la gouvernance financière, https://c2d-rdc.com/secteur-3-gouvernance-financiere/, accessed in November 2018. A flyer describing the «Chaîne de la recette publique» project was shared with the International Secretariat in November 2018.

transaction basis or when documents were only available in paper format.

Several stakeholders consulted highlighted the MSG's scoping studies on the forestry and the ASM sectors. An industry representative noted that EITI reporting had not yet been extended to these sectors given the high cost of data collection and reconciliation when government revenues in these sectors remained limited. However, CSO representatives highlighted the importance of both sectors and the need to include them in future EITI reporting.

Initial assessment

The International Secretariat's assessment is that the DRC has made **meaningful** progress towards meeting this requirement. The 2015 EITI Report includes the MSG's definition of the materiality thresholds for payments and companies to be included in reconciliation based on payments to government, including a justification for the specific thresholds. However, while the MSG has adopted a quantitative approach to the assessment of materiality of both companies and revenues, the fragmented nature of the fiscal regime for mining and the existence of significant ad-hoc payments (particularly by SOEs and their JVs) raises concerns over the comprehensiveness of the scope of revenue streams reconciled.

All material government entities appear to have reported all revenues despite challenges in data collection and the government appears to have disclosed all extractives revenues, including from non-material companies. The companies that did not report are named and the value of their payments to the government is provided relative to government-reported revenues.

Despite the 2015 EITI Report's categorisation of payments from non-reporting companies as insignificant, challenges in data collection and concerns over government record-keeping meant that the IA could not provide assurances over the comprehensiveness of reconciled financial data. The challenges in demonstrating satisfactory progress in meeting Requirement 4.1 in the DRC are fundamentally linked to weaknesses in government record-keeping. It would be unreasonable to conclude that the MSG should be expected to resolve these before making materiality decisions.

The International Secretariat believes that given these restraints, the MSG and the IA have sought to follow a process that allows for a considerable amount of certainty regarding the comprehensiveness of data under the circumstances. At the same time, the IA has expressed concerns over the exclusion of certain extractives revenues collected by SOEs from the scope of reconciliation on the basis of unclear documentation and a lack of statutory basis for such revenues (*see Requirement 2.6*). While the 15 non-reporting companies' share of extractives revenues appears to be insignificant, there is scope for improving the MSG's follow-up with non-reporting entities to ensure that all material companies participate in EITI reporting. The International Secretariat's initial assessment is therefore that significant aspects of the requirement have been implemented and the broader objective of the requirement is being fulfilled.

In accordance with Requirement 4.1, the DRC should ensure that all companies selected in the scope of reporting comprehensively report all material payment flows, and that decisions on the materiality of revenue flows are based on the government's unilateral disclosure of total extractives revenues, including those not mandated by statute but nevertheless collected. The DRC should also ensure that full unilateral government disclosure of material revenues, including from non-material companies, is presented disaggregated by revenue flow rather than by company. The DRC may wish to consider revisiting its scoping and materiality decisions, potentially including a two-tiered approach for mid-sized and larger companies, to strike a balance between the comprehensiveness of disclosures and the quality of reporting.

In-kind revenues (#4.2)

Documentation of progress

Oil and gas

The 2015 EITI Report confirms the lack of in-kind revenues in the oil and gas sector. The 2015 Hydrocarbons Code introduced the PSC regime for oil and gas (*see Requirement 2.1*), which includes provisions for government revenues collected in-kind. The DRC EITI website lists six production-sharing contracts active in 2016 between SONAHYDROC and oil companies (*see Requirements 2.6 and 2.4*).[402] All corresponding activities remained in the exploration phase in 2016, while oil fields in the production phase were under concession agreements that did not give rise to in-kind revenues for the government.[403]

Mining

The 2015 EITI Report confirms the lack of in-kind revenues in the mining sector. GÉCAMINES announced on 3 December 2018 (after the start of Validation) that it had signed a production-sharing agreement for copper and cobalt deposits with HONGKONG EXCELLEN MINING INVESTMENT. This is the first agreement of its kind in the mining sector.[404]

Stakeholder views

Stakeholders did not have particular views on the issue of in-kind revenues. The MSG confirmed that Requirement 4.2 was not applicable in the DRC during the March 2018 self-assessment exercise.

Initial assessment

The International Secretariat's initial assessment is that Requirement 4.2 was **not applicable** to the DRC in 2016. The 2015 EITI Report confirmed there were no in-kind revenues in either mining or oil and gas, given that the oil and gas PSCs had not yet entered production in 2016.

To strengthen implementation, the DRC is urged to reassess the existence of government in-kind revenues on an annual basis, with a view to publicly disclosing volumes collected, volumes sold and proceeds of sales per buyer once production commences within areas covered by oil and gas PSCs.

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[402] The website also includes the PSC signed between SONAHYDROC and COMICO, approved in February 2018 (see Requirements 2.1 and 2.2). DRC EITI website, Registre, secteur des hydrocarbures, op. cit.

[403] The MIOC, TEIKOKU and CHEVRON ODS and the PERENCOREP and LIREX agreements are based on the concession regime. 2016 Supplementary EITI Report, p.60.

[404] See Reuters (December 2018), Congo state miner in production-sharing deal with Chinese firm, https://af.reuters.com/article/investingNews/idAFKBN1O30MM-OZABS?utm_source=%5BNewsletters%5D+The+Africa+Report&utm_campaign=95fcf4222c-EMAIL_CAMPAIGN_2016_12_12_COPY_01&utm_medium=email&utm_term=0_7ee2458fc1-95fcf4222c-340221753, accessed in December 2018.

Barter and infrastructure transactions (#4.3)

Documentation of progress

Infrastructure arrangement: The SICOMINES (*Sino-congolaise des mines*) agreement constitutes a set of agreements involving the provision of a package of loans for infrastructure works in exchange for mining licenses in the Lualaba province. The agreement is categorised as a government-to-government agreement in the DRC's EITI Reports, with the DRC represented by GÉCAMINES and China represented by a consortium of state-owned companies, including CREC and SINOHYDRO, financed by the China Exim Bank. The first agreement between the Government of DRC and SINOHYDRO was signed in April 2008, covering loans of a maximum of USD3 billion and infrastructure works of around USD3.25 billion.[405]

The infrastructure agreement has been a key focus of EITI reporting since the 2010 EITI Report, with the comprehensiveness of reporting improving significantly since the 2012 EITI Report. Based on EITI reporting, the International Secretariat review in June 2014 provided a summary of the agreement, describing the terms of the relevant agreements and contracts, the parties involved, the resources pledged by the state and the value of the balancing benefit stream.[406] Publicly-available documents related to the SICOMINES agreement include the statutes of the SICOMINES JV, amendments to the agreement in 2008 and 2009 and a contract specifying transfers of three[407] production licenses.[408]

The DRC EITI review of contracts that are not publicly available includes the JV agreement's Annex C, which contains the economic model (*see Requirement 2.4*). Following the signature of the SICOMINES agreement, the government enacted Law 14/005 on 11 February 2011 setting the fiscal, para-fiscal and non-fiscal terms applicable to public-private partnership projects. It aimed at developing similar agreements and to provide a legal framework to the SICOMINES agreement, with Articles 14 and 15 listing the fiscal exemptions for such agreements.[409] In 2013, the Carter Centre developed a diagram of the main actors and revenue

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[405] See DigitalCongo.net (November 2018), La SICOMINES a investi USD2.95 milliards en RDC en 2017, accessed in November 2018. The figure of USD 2.95 billion was given by Mr. Xu Yuanjie, economic advisor at the Embassy of the Republic of China in DRC.

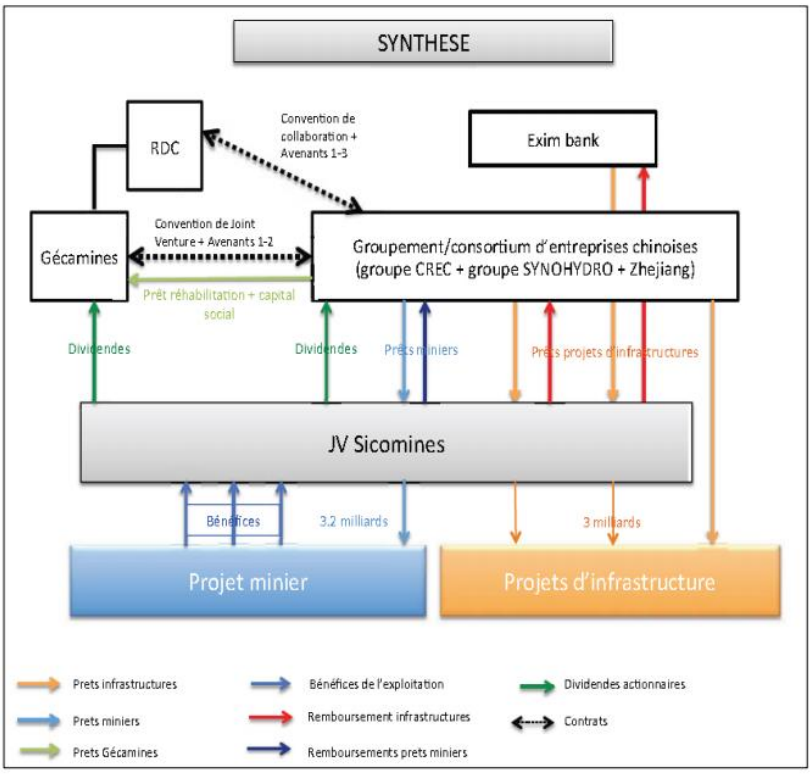
[406] Following this review, the EITI Board designated the DRC as EITI Compliant and lifted its suspension. The Board agreed that the DRC has addressed the remedial actions requirements to meet the requirements set out in the EITI Rules and particularly commended the work done by DRC EITI to address the SICOMINES agreement, in accordance with requirement 9f. EITI (June 014), Board paper 27-6-B, Secretariat Review: The Democratic Republic of Congo, https://eiti.org/sites/default/files/migrated_files/Board_paper_27-6-B_Secretariat%2520Review-DRC.pdf, accessed in November 2018, pp. 2, 13-16.

[407] 11599, 11229, 8841.

[408] See La Sino-congolaise des Mines (SICOMINES SARL) (December 2007), Acte constitutif et statuts, http://congomines.org/system/attachments/assets/000/000/275/original/B9-Sicomines-2007-StatutsConsortiumEntreprisesChinoises-Gecamines-Kalamba.pdf, accessed in November 2018;CMG, CRRD, DRC, GÉCAMINES, HUAYOU, SC, SH and SIMCO. JVA Amendment 2 of 22 April 2008, https://www.mines-rdc.cd/resourcecontracts/contract/ocds-591adf-4060184798/view#/pdf; DRC, CGR, SC, HUAYOU, JVA Amendment 3, 2009, https://www.mines-rdc.cd/resourcecontracts/contract/ocds-591adf-0344045224/view#/pdf; GECAMINES, SICOMINES SARL, L'amodiation partielle des droits attachés au permis d'exploitation (PE) 11599 pour l'érection d'un site des remblais, au permis d'exploitation (PE) 11229 pour l'installation d'une dynamitière et au permis d'exploitation (PE) 8841 pour le stockage de rejets, September 2014, https://drive.google.com/file/d/1JwQ0Ej1MFh7jjkKxms1kMgwqb9pzUz1D/view, accessed in November 2018.

[409] Loi n.14/005 du 11 février 2014 sur les conventions de collaboration et projets de coopération, accessed on the Congomines website, http://congomines.org/reports/657-loi-n-14-005-du-11-fevrier-2014-sur-les-conventions-de-collaboration-et-projets-de-cooperation, in November 2018. Art.14: Sans préjudice des avantages fiscaux, douaniers, non fiscaux accordés conformément aux lois et édits en vigueur ou en vertu de ceux-ci et hormis les impôts, droits, redevances et taxes visés à l'article 15 de la présente loi, les entreprises, groupements d'entreprises, sociétés, établissements ou entreprises créées en vertu des conventions de collaboration, qui exécutent la convention de collaboration et les conventions connexes, sont exonérés des impôts, droits, taxes, droits de douanes, redevances au niveau national, provincial et municipal, directs ou indirects, à l'intérieur, à l'import ou à l'export, payables en République Démocratique du Congo, pour autant qu'ils soient strictement liés à la convention de collaboration et aux projets de coopération.
Art. 15: Les exonérations visées à l'article 14 de la présente loi ne s'appliquent pas aux impôts, droits, redevances et taxes ci-après: 1. Redevances

streams involved, included in subsequent EITI Reports.



Source: Carter Centre (November 2013), Technical proposals, https://drive.google.com/file/d/1VMolHv8pzmrce6kMt8POJl81LU9Y_raw/view, accessed in November 2018.The 2015 EITI Report provides a description of the SICOMINES agreement similar to the one included in the 2013 and 2014 EITI Reports. It notes that GÉCAMINES owned 32 per cent of the JV, against 68 per cent owned by the consortium of Chinese companies, with no changes in shares since 2008. The 2016 Supplementary EITI Report clearly distinguishes between the framework collaboration agreement on the one hand, and the JV convention on the other. This included a detailed description, for the first time, of the modalities for reimbursement of the loans, set out in three phases. As the report notes, the third amendment to the collaboration convention modified the modalities for reimbursement established in the original convention.

It set out that operational revenues arising from the mining project would be earmarked, first, for the reimbursement of 'urgent' infrastructure works, second, for reimbursement of the mining investment and, third, for the reimbursement of other infrastructures. The report notes that SICOMINES is exempted from

pour les services rendus; 2. Redevance informatique; 3. Taxe de circulation routière; 4. Impôt sur le véhicule à l'exception des véhicules utilisés à l'exécution des travaux relatifs à la convention de collaboration et aux projets de coopération; 5. Impôt sur les bénéfices et profits à la fin du remboursement des financements ; 6. Impôt exceptionnel sur les rémunérations du personnel expatrié ; 7. Impôt sur les revenus locatifs ; 8. Impôt sur les revenus mobiliers à l'exception de celui frappant les intérêts des capitaux empruntés à des fins professionnelles en faveur des tiers prêteurs; 9. Taxe sur la valeur ajoutée; 10. Impôt professionnel sur les rémunérations ; 11. Droits superficiaires; 12. Redevance minière 13. Frais et paiements relatifs à la demande, à l'octroi, au transfert et à la cession des droits et titres miniers; 14. Royalties ; 15. Droits d'accises; 16. Marge distribuable; 17. Droit de participation de l'Etat; 18. Bonus prévus dans les secteurs des hydrocarbures et des mines; 19. Profit oil; 20. Pas de porte; 21. Redevances routières; 22. Droits, redevances et taxes des secteurs forestier, de l'eau et de l'électricité; 23. Droits, redevances et taxes du secteur de la télécommunication; 24. Droits, redevances et taxes relatifs à la protection de l'environnement ; et 25. Taxe pour l'obtention de la carte de travail pour étranger.

all taxes until all loan reimbursements have been made, but that it is expected to pay tax on revenues not allocated to loan reimbursements starting in the third (commercial) phase of the project. Regarding the payment of '*pas de porte*' in 2009 and 2012, the report notes that GÉCAMINES deemed in 2016 that USD125 million should be returned, as per the regulatory framework (*see Requirements 2.6 and 4.5*), when that amount was transferred directly to the Treasury.[410]

The 2016 Supplementary EITI Report lists guarantees provided by the Congolese government in line with the agreement. It assessed the question of whether Law 13/005 of 11 February 2014 ensured the stability of the fiscal regime for SICOMINES, particularly given the 2018 Mining Code's transition away from mining conventions, and concluded that the Law 13/005 was sufficient to stabilize fiscal terms for the SICOMINES agreement.[411]

<u>*Materiality*</u>: It appears based on the 2015 and 2016 scoping studies and EITI Reports that the MSG applied a *de facto* materiality of zero for revenues arising from the SICOMINES agreement. The 2015 and 2016 scoping studies list four revenue streams, for which specific reporting templates were designed:

Loans received from financial entities (Exim Bank or Consortium) for the mining investment.
Loans received from financial entities (Exim Bank or Consortium) for the infrastructure projects.
Payments to companies undertaking work related to the mining investment.
Payments to companies undertaking work related to infrastructures projects.

In terms of the value of revenues unilaterally disclosed by government agencies, the SICOMINES JV itself was listed as the 52nd largest taxpaying mining company in 2015 and 23rd in 2016.[412]

<u>*EITI reporting*</u>: In addition to explaining the key terms of the agreement, the EITI Reports covering 2011 onwards have disclosed payments made in relation to the SICOMINES mining project, associated infrastructure projects and interest accrued to the state.[413] The 2015 EITI Report provides unilateral disclosures of the four revenue streams associated with the SICOMINES project. For the first time, the disclosures related to payments to companies for infrastructure works included disaggregated information about the value of pledged infrastructure works and the cost of works completed as of 31 December 2015.[414]

The 2016 Supplementary EITI Report provides unilateral disclosure of aggregate funds received and disbursed for infrastructures and for the mining investment, with no funds received or disbursed for the mining investment in 2016. Annex 7 provides the revised template for unilateral disclosures given that the mining project entered the production phase in 2015. Annex 6 lists projects funded by the agreement,

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[410] 2016 Supplementary EITI Report, pp.44-45, 70-76, 93-95. GECAMINES representatives confirmed orally during stakeholder consultations that the payment of the USD125 million was "not an issue anymore". See Requirement 4.5.
[411] 2016 Supplementary EITI Report, pp.48-49.
[412] These amounts are after adjustments. The figure for 2016 was therefore made available after the start of Validation, in November 2018. See DRC EITI, Online data portal, op. cit.
[413] 2010 EITI Report, pp.108-111; 2011 EITI Report, pp.9-10; 2012 EITI Report, pp.56-57, 130-131, 180; 2013 EITI Report, pp.62, 106-107; 2014 EITI Report, pp.27-28, 99.
[414] 2015 EITI Report, pp.49-50.

specifying amounts spent in 2016 and 2017 as disclosed by the Office for Coordination and Monitoring of the Sino-Congolese Programme (BCPSC). The ACGT website provides annual reports up until 2017. Its 2017 annual report shows that the majority of ACGT funding since its creation in 2008 (a total of over USD 860.82 million until 2017) came from the SICOMINES agreement. The report describes 19 projects, including names of subcontractor companies and costs, illustrated with pictures. It notes the increase in monitoring missions on projects under development and lists studies carried out for planned projects.[415] The website also provides an overview of 27 projects funded by the SICOMINES agreement.[416] The BCPSC did not have a functional website during Validation.[417]

In addition to reporting on the payments and revenues arising from the SICOMINES agreement, some CSOs also published reports about the impact of the SICOMINES project and associated infrastructure on the environment and host communities.[418]

Stakeholder views

All stakeholders believed that the SICOMINES agreement used to be a topic regarded as "too sensitive" to be discussed in public. They commended the impact of EITI reporting, as the only source of publicly available information about the agreement, in clarifying terms of the agreement. They noted that the current level of disclosures had required significant cooperation between EITI stakeholders. CSO representatives explained that initial news about the SICOMINES agreement had generated high popular expectations, but that the high level of political involvement since the start had negatively affected transparency around the deal. All stakeholders consulted confirmed that the SICOMINES agreement was the only one of its kind in the DRC as of the commencement of Validation.

CSO representatives noted that the SICOMINES agreement remained a key topic of public debate, particularly given that it was the only mining project that seemed to currently be making profits. They noted the need for updates of both the diagram of the project developed by the Carter Centre in 2013 and reporting templates in light of the commencement of production. They emphasised the importance of understanding the planned period for the loans' repayment, the period defined for tax exemptions and the prospects for greater fiscal revenues from the project to meet citizens' demands for information.

They noted concerns over significant differences between the BCPSC's reporting on infrastructure developed and realities on the ground, as well as around differences between funding mobilised for infrastructures and the amounts actually spent. Several CSOs explained their view that, in the past few

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[415] ACGT (February 2017), Rapport annuel 2017, February 2017, http://www.acgt.cd/images/documents/rapports_annuels/R2017.pdf, accessed in November 2018, pp.4, 32, 34, 52-63.
[416] ACGT, Programme sino-congolais, http://www.acgt.cd/projets/programme-sino-congolais, accessed in November 2018.
[417] The CongoMines website provides an assessment by the BCPSC of the first five years of the SICOMINES agreement in May 2013. BCPSC, Projet de cooperation sino-congolais, Cinq ans au service de la reconstruction et de la modernisation de la RDC, May 2013, http://congomines.org/system/attachments/assets/000/000/480/original/BCPSC-2013-Bilan-5-ans-Programme-Sino-Congolais.pdf?1430928915, accessed in November 2018. CongoMines also provides links to the BCPSC foundational decree: Decrét n.08/018 du 26 août 2008 portant création, organisation et fonctionnement du Bureau de Coordination et de Suivi du Programme Sino-Congolais, http://congomines.org/reports/82-decret-creant-le-bureau-de-coordination-et-de-suivi-du-programme-sino-congolais-b-c-p-s-c, accessed in November 2018.
[418] See for example ASIBOG, IBGDH (December 2014), Défis de la protection des droits humains dans le volet minier de la collaboraiton entre la R.D. Congo et le groupement d'entreprises chinoises, http://congomines.org/system/attachments/assets/000/000/604/original/Rapport-d_C3_A9valuation-des-impacts-de-la-Sicomines-sur-les-droits-humains-_C3_A0-Kolwezi.pdf?1430929364; AFREWATCH (August 2018), The Sino-Congolaise des Mines facing the Challenge of the Millenum: how Sicomines deprived communities of their rights after polluting the environment, https://www.afrewatch.org/?q=article/sino-congolaise-des-mines-facing-challenge-millennium-how-sicomines-deprived-communities, accessed in November 2018.

years, the government had presented a list of projects to the BCPSC for funding through the SICOMINES agreement, which was not the same as the list of pre-agreed priority projects. CSO representatives also questioned whether the tax stabilisation clauses of the SICOMINES agreement insulated it from reforms in the 2018 Mining Code (*see above and Requirement 2.1*).

Initial assessment

The International Secretariat's initial assessment is that the DRC has made **satisfactory** progress in meeting this requirement. The DRC's EITI reporting since 2012 has disclosed terms of agreements involving the provision of loans and infrastructure works in full exchange for mining exploration or production concessions, through SICOMINES. The MSG and the IA have gained an understanding of the terms of the relevant agreements and contracts, the parties involved, the resources 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.

This understanding covers financial and in-kind operations within the DRC, not the terms of the financing arrangements between China Railway Group Limited (CREC), SINOHYDRO and China Exim Bank. The DRC's EITI Reports address these agreements, providing a level of detail and transparency commensurate with the disclosure and reconciliation of other payments and revenues streams. These disclosures were commended by stakeholders and contributed to promoting a debate around a key agreement.

To strengthen implementation, the DRC is encouraged to gain an understanding of all aspects of the terms of barter arrangements and infrastructure agreements, and to publicly disclose all contractual agreements relevant to such projects.

Transport revenues (#4.4)

Documentation of progress

The DRC's EITI reporting does not mention transport revenues in the mining sector. The 2015 EITI Report refers to fees arising from the transport of gas by pipeline from the province of Cabinda to a liquified natural gas factory in Soyo in Angola, through DRC territorial waters. These rights are described in a 2010 convention signed between the Cabinda Gulf Oil Company Ltd. (CABDOC)[419] and the Government of the DRC, published on the DRC EITI website.[420] It mentions the payment of USD4.3 million annually by CABDOC, indexed to the U.S. Consumer Price Index, to be transferred to the DRC Treasury (Art. 14.3.B).

It notes that an additional USD5 million would be paid out the year the ownership of the gas pipeline was transferred to SONANGOL, which took place in 2015. The 2015 EITI Report notes that DGRAD collected USD9,577 million in 2015, although the USD 200,000difference is not explained. While the MSG concludes

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[419] CABDOC is a Chevron subsidiary operating in Angola. See CHEVRON (2015), Angola Fact sheet, 2015, https://www.chevron.com/~/media/chevron/projects/documents/angolafactsheet, accessed in October 2018.
[420] Convention on the installation and operation of a gaz pipeline (…) CRX Project between the Democratic Republic of Congo and Cabinda Gulf Oil Company Limited, 7 October 2010, https://drive.google.com/file/d/1iii3G0iX7P0L9pZnb-ffw5gu3c8s2BCW/view, accessed in October 2018.

that the payment was material, the revenue stream was only disclosed unilaterally for 2015 as the report explains that CABDOC does not maintain local representation in the DRC.[421] The DRC's EITI reporting does not include any transportation companies in the scope of its reporting.

The 2016 scoping report mentions the payment of more than USD4.183 million by CABDOC to DGRAD. It notes that the revenue stream represented 3.83 per cent of total revenues in the oil sector, but recommended that it be unilaterally disclosed as in previous years.[422]

Stakeholder views

Company representatives noted that no transport revenues were collected specifically related to mineral commodities. A government representative mentioned that a draft law was being discussed at the provincial level for a flat-rate tax on trucks in mining regions as part of implementation of the 2018 Mining Code.

Initial assessment

The International Secretariat's initial assessment is that the DRC has made **satisfactory** progress in meeting this requirement. Material transport revenues in the oil and gas sector, linked to the pipeline of transportation from Angola, have been unilaterally disclosed in the DRC's EITI Reports. The convention determining the level of transport fees is publicly available and its terms described in the DRC's EITI Reports.

To strengthen implementation, the DRC is encouraged to assess the existence and materiality of transport revenues related to the transport of extractives commodities on an annual basis. The DRC should disclose details of all such material transport revenues, including tariff rates and volumes of transported commodities.

Transactions between SOEs and government (#4.5)

Documentation of progress

The 2015 EITI Report confirms that nine SOEs collected substantial revenues from the oil, gas and mining sectors on behalf of the government, as shareholders in joint-ventures and as a result of contractual obligations within these joint-ventures. The report provides a diagram to illustrate the specific revenue streams paid by companies to government entities, including SOEs, and the specific revenues subsequently transferred by SOEs to the government.[423] The report describes all revenue streams included in the scope of reconciliation, highlighting the 15 streams collected by SOEs and the specific SOE where relevant (*see Requirement 2.1*). The report clarifies the specific revenues collected and retained by SOEs (such as "*Dividendes versés aux entreprises publiques*") and the revenues collected by SOEs to be transferred to the

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[421] 2015 EITI Report, op. cit., pp.12, 15, 27, 38, 189.
[422] DRC EITI, 2016 scoping report, op. cit., p.25.
[423] 2015 EITI Report, pp.63-64.

Treasury in line with regulations.[424] The MSG did not appear to set a separate materiality threshold for SOE transactions (*see Requirement 4.1*).

The 2016 Contextual and Supplementary EITI Report further clarified the specific revenues collected by SOEs and the specific shares to be transferred to the Treasury per the regulations (*see Requirements 2.1, 2.6 and 5.1*).[425]

Companies payments to SOEs: The report reconciles payments made by extractives companies to seven SOEs, including 25 industrial companies to GÉCAMINES. The data is provided in aggregate per collecting SOE and disaggregated by company, collecting SOE and revenue stream, with significant discrepancies identified.[426] However, the report raises significant concerns over the comprehensiveness of disclosures of company payments to SOEs. The report notes that GÉCAMINES did not provide information about the sale of its mining rights and right to collect royalties from AHIL in the KCC JV (*see Requirements 2.6 and 4.1*). Revenues arising from that operation were therefore not taken into consideration. The IA also expressed concerns about the comprehensiveness of revenues arising from operations involving SOEs, in particular GÉCAMINES (*see Requirement 2.6*).

SOE transfers to government: The report reconciles SOE transfers to government entities disaggregated by SOE. The data is also provided for all mining SOEs in aggregate, per revenue stream.[427] The report also compares reconciled figures disclosed by SOEs and reconciled figures disclosed by the Treasury.[428] The report does not refer to any other ad hoc transfer by SOEs to other government entities.

Government transfers to SOEs: The 2015 EITI Report and the 2016 Reports do not discuss government transfers to SOEs. While government transfers to SOEs in the years 2015 and 2016 are not publicly disclosed, budget execution reports for the period January-September 2018 are publicly available on the Ministry of Budget website. The September 2018 budget report indicates "*Subsidies to portfolio companies and public entities*" for a value of USD3.42 million. Data is not disaggregated enough to determine whether any of these subsidies were paid to extractives SOEs specifically.[429]

Stakeholder views

Government representatives highlighted the lack of consistent remittances of SOE dividends to the government. Part of the explanation was that dividends collected from JVs might be offset by operational costs or the repayment of loans at the SOEs' group level. They also noted that potential dividends were received by SOEs net of other taxes and levies, thereby decreasing the total amounts paid by the JVs in which they were involved.

Industry representatives explained that "*contributions to the national budget*" were fixed amounts applicable to SOEs, to ensure that payments to the government were made even in the absence of

[424] Ibid, pp. 178-193.
[425] See 2016 Supplementary EITI Report, pp.84-86.
[426] 2015 EITI Report, pp.70, 71-77, 83-85.
[427] Ibid, pp.71-75, 77.
[428] Ibid, pp.16-20.
[429] See Ministry of Budget (September 2018), ESB des dépenses par titre et nature: exécution au 30 septembre 2018, http://www.budget.gouv.cd/2012/esb2018/esb_sept2018/global/esb_global_par_nature_sous_nature.pdf, accessed in November 2018.

dividends. “Advances on taxes” represented a similar type of payment, calculated by tax-collecting agencies to ensure that SOEs contributed to fiscal revenues. SOE representatives argued that the amount remained very high for SOEs like GÉCAMINES, given that the government expected high contributions to the national budget regardless of annual performance.

Some government and CSO representatives noted that the 2016 Supplementary EITI Report covering SOEs contained two important gaps to ensure the comprehensiveness of disclosures of such payments. First, the report did not comprehensively cover transfers of mining rights, which would not be mentioned in the SOE’s financial statements, but rather in annual management reports that were not publicly available. Second, the report fell short of explaining why certain transactions had been paid in advance by extractive companies to SOEs when contracts stated otherwise, one example being the METALKOL case.

Several government and CSO representatives raised concerns about two particular transactions mentioned in the 2016 Supplementary EITI Report. SOE representatives explained that the USD125 million “*pas de porte*” paid within the SICOMINES arrangement, which GÉCAMINES had previously categorised as a debt from the state, had subsequently been offset through other fiscal payments. Further explanations were included on this issue in the report after comments sent by GÉCAMINES. They also explained that the full USD170 million had been paid out by METALKOL in 2016 as compensation for asset sales by GÉCAMINES (*see Requirements 2.2 and 2.4*).

Initial assessment

The International Secretariat’s initial assessment is that the DRC has made **meaningful** progress in meeting this requirement. The 2015 EITI Report discloses and reconciles company payments to SOEs and SOE statutory transfers to the government, although both the report and stakeholder consultations raised significant concerns over the comprehensiveness of the reconciliation of company payments to SOEs. The report does not disclose or reconcile government transfers to SOEs, nor refer to any ad hoc SOE transfers to government entities other than the Treasury. Given the lack of a materiality threshold established for selecting SOE transactions for reconciliation, all such payments and transfers should have been comprehensively disclosed and reconciled.

In accordance with Requirement 4.5, the DRC should ensure that the role of SOEs, including company payments to SOEs and transfers between SOEs and government entities, is comprehensively and publicly addressed. This should include disclosure and reconciliation of all material transactions involving SOEs.

Subnational direct payments (#4.6)

Documentation of progress

The 2015 EITI Report notes that there were no direct subnational payments in the oil and gas sector.[430] The

[430] 2015 EITI Report, p.37.

MSG agreed that three direct subnational payments[431] in the mining sector would be considered material and reconciled.[432] It is unclear from the report whether there are any other types of direct subnational payments that are not specific to extractive companies, nor to their materiality in 2015 if applicable. The first two apply to mining companies in the production phase, while the third applies to mining companies both in the exploration and the production phase. All three revenue flows were collected by the former Katanga Provincial Government (DRKAT).

The report notes that the "Taxe sur concentrés (TC)" and "Taxe voiries et drainage (TVD)" were introduced by DRKAT in 2008. It notes that some stakeholders believed that these taxes had been created in contravention of the Mining Code and were introduced to compensate for gaps in subnational transfers of mining royalty to the provinces (*see Requirement 5.2*).[433] The report, however, mentions that the provinces were constitutionally entitled to create provincial taxes to contribute to their own budgets. It also explains that both taxes were cost-recoverable through deductions from the taxable base for profit tax ('*Impôt sur les bénéfices'*, IBP), amounting to USD32 million in foregone revenue for the Treasury in 2015.[434]

The 2015 scoping study confirms the lack of materiality threshold for the selection of extractives-specific revenue streams at the subnational level. It remains unclear from the report whether TVD was specific to that sector. The report notes that the *Equateur* and *Kasaï Occidental* local government had submitted reporting templates. [435] The scoping study, however, notes that direct payments collected by DRKAT amounted to 5.05% of total revenues in the mining sector based on unilateral disclosures, whereas other provinces represented 0.01%of the total.

On this basis, the MSG agreed to reconcile direct subnational payments to DRKAT and only to ensure unilateral company disclosure of payments to other provinces.[436] Based on disclosures by DRKAT, it is possible to calculate the share represented by each of the three revenue streams compared to total payments in the mining sector.[437] It appears that the *Impôt sur la superficie des concessions minières et des hydrocarbures* accounted for less than 0.01 per cent of total revenues in the mining sector, raising questions around its materiality. Reconciliation of direct subnational payments highlights a discrepancy of USD7.63 million for TVD, USD5.34 million for TC, and USD36,510 for the third revenue stream. Unilateral disclosures for 2015 disaggregated by revenue stream and government entity are also available in open data format

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[431] Taxe sur concentrés (TC), Taxe voiries et drainage (TVD), and Impôt sur la superficie des concessions minières et des hydrocarbures.
[432] The list of revenue streams also includes a Pré-financement contrat, collected by DRKAT. The report notes, however, that it represented advances on payments to DRKAT for TC and TVD and was therefore not considered separately. 2015 EITI Report, pp.29, 192.
[433] See also KPMG (May 2016), Examen des pratiques en matière d'application des taux et des modalités de répartition de la redevance minière entre le pouvoir central et les provinces en RDC, p.22, accessed here in November 2018.
[434] The report notes that both taxes used to be deductible from the tax base for calculating the mining royalty (redevance minière), but that they were excluded from deductible charge in 2013. DRC EITI, 2015 EITI Report, pp. 48, 63, 106.
[435] It should be noted that the DRC started a territorial and administrative decentralization process following the adoption of a law dividing the country into 26 provinces instead of 11. The law entered into force in June 2015. See Radio Okapi (January 2015), RDC: l'Assemblée nationale adopte la loi fixant les limites des nouvelles provinces', January 2015, https://www.radiookapi.net/actualite/2015/01/10/rdc-lassemblee-nationale-adopte-la-loi-fixant-les-limites-de-nouvelles-provinces ; Michel Luntumbue, GRIP, 'RDC: les enjeux du redécoupage territorial,' October 2016, https://www.grip.org/sites/grip.org/files/RAPPORTS/2016/Rapport_2016-10.pdf, accessed in October 2018.
[436] 2015 scoping study, pp.42, 48.
[437] TVD: 4.41%; T: 1.39%; Impôt sur la superficie des concessions minières et des hydrocarbures: less than 0.01%. Own calculations based on unilateral disclosures for DRKAT before adjustments. 2015 EITI Report, p.77.

on the DRC EITI open data portal.[438]

The 2016 scoping study provides more detailed information about the specific direct subnational payments considered material for the year 2016. It notes that all revenue flows specific to the extractive sectors would be selected, with a de facto materiality threshold of zero. In addition to the three revenue streams from 2015 collected by the *Direction des Recettes du Haut Katanga* (DRHKAT) and the *Direction des recettes du Lualaba* (DRLU)[439], the MSG agreed to add *Taxe de développement* paid by processing plants and collected by the *Division provinciale des mines du Nord Kivu.* The study provides unilateral disclosures by 15 provinces.[440]

It notes that only Haut-Katanga, Lualaba and Nord Kivu had provided information about significant revenues, whereas the remaining provinces either had no industrial extractive activity or collected revenues from the forestry sector. The study includes a table with the respective shares of each revenue stream[441] compared to total payments in the mining sector.[442] It is unclear whether the *Taxe de développement* constituted a direct subnational payment, given that it was collected by the provincial branch of the Ministry of Mines rather than a local government.

It is important to note that the 2018 Mining code and its implementing decree introduced changes in subnational transfers of mining royalties. Up to June 2018, mining royalties were paid to the central government and subsequently redistributed as subnational transfers according to a revenue-sharing mechanism (*see Requirement 5.2*). Since June 2018 however, royalty payments are to be made by companies directly to the following beneficiaries:

> 50% for central government, collected by DGRAD and transferred to the Treasury.
> 25% for the province where the mining activity takes place.
> 15% for the Decentralised Territorial Entity (ETD) where the mining activity takes place.
> 10% for the Mining Fund for future generations.[443]

The CongoMines website has been publishing monthly and annual debit notes for the mining royalties disaggregated by company since 2009, and including for the year 2017 and the first six months of 2018 (*see Requirement 5.2*). After the start of Validation, CongoMines published information on company payments of royalties, as per the new mechanism for direct payment, for the period July-October 2018.[444] This document does not confirm whether payments were effectively carried out, nor do they clarify to which province or which ETD payments should be made, or how payments are to be made to the Fund for future

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[438] DRC EITI, Global data, by revenue stream, 2015, http://itierdc-data.masiavuvu.fr/donnees-itie/, accessed in October 2018.
[439] Following the operationalisation of the decentralisation process, Katanga was divided into four provinces: Tanganyika, Haut-Lomami, Lualaba and Haut-Katanga. DRLU and DRHKAT represent the provincial authorities of the last two. See footnote no.101; see Radio Okapi (July 2017), Le Katanga officiellement démembré en quatre nouvelles provinces, July 2017, https://www.radiookapi.net/actualite/2015/07/16/le-katanga-officiellement-demembre-en-quatre-nouvelles-provinces, accessed in October 2017.
[440] Haut Katanga, Lualaba, Nord Kivu, Haut Uélé, Kinshasa, Maniema, Sud Kivu, Kongo central, Kasai, Bas Uélé, Tanganyika, Kasaï-Oriental, Kasaï-Central, Kwilu and Tshopo. No revenues were declared by Equateur, Ituri, Kwango, Lomami, Mai-Ndombe, Mongala, Nord-Ubangi, Tshuapa, Sankuru, and Sud-Ubangi. DRC EITI, 2016 scoping study, pp.16, 32-35.
[441] Respectively 6.18% for TVD, 4.99% for TC, 0.02% for Impôt sur la superficie des concessions minières et des hydrocarbures, and less than 0.01% for Taxe de développement.
[442] DRC EITI, 2016 scoping study, pp.22, 554-55.
[443] Law no.18/001 of 28 March 2018, Art. 242. Decree no.18/024 of 8 June 2018, op. cit., Art. 526 and 527.
[444] CongoMines, Division Provinciale des Mines du Katanga, Statistiques des notes de débit relatives à la redevance minière du troisième trimestre 2018, November 2018, http://congomines.org/reports/1599-statistiques-des-notes-de-debit-relatives-a-la-redevance-miniere-du-troisieme-trimestre2018, accessed in November 2018.

generations that has not yet been created. However, it provides detailed figures according to the revenue-sharing formula for each industrial mining company, including SOEs.

Stakeholder views

Government representatives noted that there were no more legal challenges with regard to taxes collected directly by provinces. Several mining industry stakeholders welcomed regulatory reforms to address challenges related to the transfer of shares of the mining royalties (*see Requirement 5.2*). they noted that the increase in taxes collected directly by provinces would help them better manage their budget and development. However, other industry representatives noted that the requirement to make four separate payments was more burdensome.

Some expressed uncertainty over which ETD would collect their payments, given that their mining activities covered several ETDs. Government officials noted that it was the responsibility of governors to clarify this issue. Other industry representatives noted that payments destined to the Fund for future generations were being accumulated in special accounts at the central bank, given that the Fund was not yet operational. Many stakeholders called for information on how provincial governments spent these revenues to be made available to the public, including through EITI reporting.

Initial assessment

The International Secretariat's initial assessment is that the DRC has made **meaningful** progress towards meeting this requirement. The DRC's 2015 EITI Report disclosed and reconciled direct subnational payments in mining to the former Katanga Provincial Government (DRKAT) in 2015. There is a lack of clarity surrounding the materiality of these payments, the existence of other types of direct subnational payments that are not extractives-specific, and revenues collected by other provincial authorities other than DRKAT. The 2016 scoping study partly addresses issues around the materiality of direct subnational payments, noting that no materiality threshold was applied to extractives-specific revenue streams. However, the scoping study provides unilateral disclosures of extractives-specific direct payments for nine of 26 provinces.

In accordance with Requirement 4.6, the DRC is encouraged to establish whether direct subnational payments are material. The DRC should clearly document the method behind selecting and reconciling revenue streams, building on improvements in the 2016 scoping study. Following changes in mining legislation in June 2018, the DRC is encouraged to work closely with provincial governments to systematically disclose timely and comprehensive information about payments of shares of mining royalties to relevant subnational governments.

Level of disaggregation (#4.7)

Documentation of progress

Systematic disclosures: The Ministry of Finance publishes monthly and trimestral revenues collected by DGDA, DGI and DGRAD, as reported to the CTR (*see Requirement 4.1*). The data is disaggregated by sector (mining, hydrocarbons and forestry), by collecting agency and by revenue stream, but not by company. The 2018 Mining Code introduced the concept of 'mining project' as a basis for disclosing production volumes and values, but remained silent on the reporting of financial data.

EITI reporting: The 2015 EITI Report provides data disaggregated by individual company, government entity and revenue stream. The DRC EITI held a workshop in April 2017 with experts to help delineate the concept of 'mining project'. Participants noted that many companies operating in the DRC, including JVs, only operated one project. They noted that some revenue streams, such as the profit tax, could not be disclosed by project. At another workshop in June 2017 the participants concluded that the DRC EITI had to agree to a definition of 'project' in the context of the DRC, organise a follow-up event with industry representatives and consider pilot project-level disclosures in the 2016 EITI Report.[445]

Stakeholder views

Industry representatives noted that disclosures for JVs were already done on a project-level, but that a clear definition of project and selection of revenue streams had to be agreed. Noting significant discrepancies between EITI data and company filings by companies listed on stock exchanges, several stakeholders questioned whether project-level reporting might help address some of them. CSO representatives welcomed project-level disclosures as a means to better assess the contribution of a particular project to the economy.

Initial assessment

The International Secretariat's initial assessment is that the DRC has made **satisfactory** progress in meeting this requirement. Reconciled 2015 financial data was disclosed by company, government entity and revenue stream. Stakeholders in the DRC have taken encouraging steps to disclose revenues by project.

To strengthen implementation, the DRC may wish to consider the extent to which it can make progress in implementing project-level EITI reporting of sector-specific levies and taxes 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. The Ministry of Finance is encouraged to provide publicly available information by project, government entity and by revenue stream in open data format.

Data timeliness (#4.8)

Documentation of progress

Systematic disclosures: The Ministry of Finance publishes monthly and quarterly reports on revenues collected by DGDA, DGI and DGRAD, approximately three months after the end of the quarter (*see Requirement 4.1*).[446] The DRC EITI completed a preliminary mapping of existing systematic disclosures, as well as 'mainstreaming profiles' for each government entities, highlighting potential gaps in timeliness, comprehensiveness and reliability for each data set.[447]

EITI reporting: There is evidence in the 2015 EITI Report and 2016 scoping study of the MSG's approval of

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[445] DRC EITI, 2017 APR, op. cit., pp. 12-13. DRC EITI (June 2017), Réunion d'échange sur la déclaration par projet minier et pétrolier, June 2017, https://www.itierdc.net/2017/06/08/reunion-dechange-sur-la-declaration-par-projet-minierpetrolier/, accessed in October 2018.
[446] For a description of systematic disclosures by the Ministry of Mines and the CAMI, see Requirements 2.1, 2.3, 2.4, 3.1, 3.2 and 3.2.
[447] See DRC EITI, Intégration de l'ITIE dans les systèmes d'informations gouvernementaux, réunion d'échanges ST, ITIE RDC et entités de l'État, mai 2018, https://docs.google.com/presentation/d/122Bj7mN2_K_ZWN_GD0-yvAnkss94LDTrpLVwmHYgWEw/edit#slide=id.p1; DRC EITI (November 2018), intégration de l'ITIE dans les systèmes d'informations gouvernementaux et des entreprises, Atelier de sensibilisation des parties prenantes, https://drive.google.com/file/d/1zUVmb0fsHz2zxsfUnI5polCIGc7lCQHL/view, accessed in November 2018.

the reporting period. The latest available reconciled financial data at the start of Validation covered 2015 and were published in December 2017. There have been efforts to shorten the time lag in production of EITI Reports, although broader EITI implementation challenges in the 2016-2018 period delayed the process for recruiting the IA for the 2016 EITI Report (*see Requirements 1.4 and 4.9*).

To improve the timeliness of disclosures, the MSG decided that the national secretariat would lead on data collection for the 2016 contextual report, including for 2017 data where possible. While not reconciled, the 2016 Contextual EITI Report includes unilateral disclosures on SOE transactions (*see Requirement 4.5*), subnational transfers (*see Requirement 5.2*) and social expenditures (*see Requirement 6.1*). 2016 unilateral disclosures by reporting entity are available online through the T/SL software on the DRC EITI website.[448]

Stakeholder views

All stakeholders consulted highlighted challenges in the timeliness of reporting as one of the main weaknesses of EITI data. Government and CSO representatives noted that outdated information was not useful to assess the implementation of reforms, prevented timely investigations and negatively impacted the EITI's role in fostering public debate.

Regarding systematic disclosures of EITI data in government systems, most government representatives expressed no disagreements with publishing more timely information through government systems. Several noted that they received almost daily information from companies for internal use. However, they highlighted the need for political direction to disclose such data to the public. They also requested templates for improving online disclosures, with one mentioning the EITI Mongolia data portal as a good example.[449] They also noted that data verification processes were time-consuming and could delay publications. Government tax collecting agencies mentioned an ongoing project that aimed to create a publicly-accessible data warehouse with revenue data from government agencies (*see Requirement 4.1*).[450]

Initial assessment

The International Secretariat's initial assessment is that the DRC has made **satisfactory** progress towards meeting this requirement. The 2015 EITI Report was published in December 2017, namely within two years of the end of the fiscal period covered. There is evidence of the MSG approving the reporting period in the 2015 EITI Report and the 2016 scoping study. The Ministry of Finance and the Ministry of Mines should be commended for taking steps to disclose timelier information on revenues through its routine systems.

To strengthen implementation, the DRC is encouraged to strengthen its efforts to ensure that EITI data is disclosed in a timelier manner, ideally within a year of the end of the fiscal year covered and through routine government and company systems. The DRC is encouraged to support the Ministry of Finance, the Ministry of Mines, the Ministry of Hydrocarbons, the Ministry of Portfolio and companies in publishing timely data through their own systems, building on progress made by the Ministries of Finance and Mines.

[448] DRC EITI, Online reporting entity disclosures, 2015 and 2016, http://itierdc-data.masiavuvu.fr/donnees-itie/, accessed in October 2018.
[449] See EITI Mongolia, E-reporting system, https://e-reporting.eitimongolia.mn/, accessed in November 2018.
[450] See Contrat de désendettement et de développement, Appui à la gouvernance financière, op. cit. A flyer describing the «Chaîne de la recette publique» project was shared with the International Secretariat in November 2018.

Data quality (#4.9)

Documentation of progress

Terms of Reference for the Independent Administrator: The IA's ToR for the 2015 EITI Report adhered to the standard ToR for IAs and the agreed upon procedure endorsed by the EITI Board. Minor modifications included references to the T/SL software as the key reporting tool and more precisions on the assurance methodology. The IA's ToR for the 2015 EITI Report were approved on 27 April 2016 and are publicly accessible.[451] The ToR for the 2016 EITI Report, adopted on 21 July 2017,[452] also follows the Board-approved template but includes provisions for the MSG's commissioning of the national secretariat to produce a "contextual information" report for the first time, while leaving reconciliation to the IA.[453] This decision was taken to decrease the cost of producing the EITI Report and to publish more timely non-financial data.[454]

Procurement of the IA: The procurement of the IA for the DRC's EITI Reports is undertaken in line with government procurement procedures. Following approval of the ToR for the 2015 EITI Report in April 2016, the MSG appointed Moore Stephens as the IA on a competitive tender basis in September 2016.[455]

Reporting templates: Draft-reporting templates were approved as part of the inception reports for 2015 and 2016, in November 2016 and July 2018 respectively.[456] The reporting templates cover all revenues and companies considered material. There is evidence of numerous outreach and training workshops for companies and government entities for the 2015 and 2016 EITI Reports throughout 2016, 2017 and 2018, led primarily by the national secretariat. These activities were carried out in several cities, including Goma, Kindu, Kinshasa, Lubumbashi and Mbuji-Mayi, and supported reporting entities in using the T/SL online software (see Requirement 7.1).[457]

Review of audit practices: The 2015 EITI Report provides a review of audit practices for public and private companies. The report describes the mandate of the *Cour des Comptes* (SAI) and explains that it had not been able to carry out its statutory audit reports due to its restructuring.[458] Annexes 7 and 8 of the 2015

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[451] DRC EITI (April 2016), TOR of the Independent Administrator, 2015 EITI Report, April 2016, https://drive.google.com/file/d/1ZEzBgl-tQ_7F3uYOjEt78zr93tJYwP54/view; DRC EITI, Minutes of 27 April 2016 MSG meeting, https://drive.google.com/file/d/1AjZnQUk5FKdvaupT2Bw9bKY9F4nqSfwy/view, accessed in November 2018.
[452] DRC EITI, Minutes of 21 July 2017 MSG meeting, https://drive.google.com/file/d/1AiSbi1KrT-bHZtL_d6vbNIbPotmCbZR0/view, accessed in November 2018.
[453] Requirements 2.1, 2.2, 2.3, 2.4, 2.5, 2.6, 3, 5.2, 6.1, 6.2 and 6.3. See DRC EITI, 2016 Contextual EITI Report, p.7.
[454] DRC EITI (May 2018), TOR of the Independent Administrator, 2016 EITI Report, https://drive.google.com/file/d/1NPPmSZZF09SsP6Q8VyQ7bWIdHn4kIqxY/view, accessed in November 2018. For details on the recruitment of the Independent Administrator, see DRC EITI (March 2018), Procès-verbal d'attribution du marché de recrutement d'un consultant administration independent chargé de la conciliation et de la production du rapport ITIE RDC 2016, https://drive.google.com/file/d/1D-JxwiVce5U_NhF2D6uuTAthuvb70NRU/view, accessed in November 2018.
[455] See DRC EITI, MSG Minutes, 16 September 2016, https://drive.google.com/file/d/19qjovet5fehc7dsvknm_dJy5647Okic4/view, accessed in November 2018.
[456] See 2015 scoping study; DRC EITI, EY, 2016 scoping study.
[457] See DRC EITI, Bibliography, MSG activities, years 2016, 2017, and 2018, https://www.itierdc.net/bibliographie/. For example: DRC EITI (July 2016), Rapport de mission, mise à niveau des entreprises du périmètre au logiciel TSL à Kindu et Goma, https://drive.google.com/file/d/1_ZX9U1KYKf6_EWrNtPV_5NlwaG3f3xqd/view, accessed in November 2018.
[458] 2015 EITI Report, pp.67-68. The 2016 Contextual EITI Report did not include a description of audit practices. The CdC and IGF website can be accessed http://www.courdescomptes.cd/publication.php and https://www.igf.gouv.cd/. The latest annual report published by the CdC covered 2015, http://www.courdescomptes.cd/doc/RAPPORT%20PUBLIC%20EXERICE%202015.pdf, accessed in November 2018. At the time of writing, it seemed that the IGF website had not been updated since 2015.

EITI Report present information on data certification per company, including the completion of financial statements for 2015 and their level of audit.[459] The report does not provide links to companies' audited financial statements, nor guidance for accessing them.

This review shows that SURESTREAM was the only material oil and gas company without audited financial statements. The report also notes that only two oil and gas companies (TOTAL and OIL OF DRC) reported having standalone audit reports for their 2015 accounts. The review also shows that 48 of the material mining companies did not have audited financial statements for 2015, with only a minority of companies indicating the existence of independently audited financial statements.

The 2016 Supplementary EITI Report, which focused specifically on SOEs (*see Requirements 2.6, 4.2, 4.5 and 6.2*), includes a summary table about auditing practices by SOEs, based on their 2016 financial statements.[460] The national secretariat was given access to these documents for the first time by the Ministry of Portfolio, but was asked to not publish them. EITI reporting therefore provided the first detailed review of auditing practices by SOEs. The table noted that nine SOEs were required to have an auditor based on the OHADA law. For the year 2016, five SOEs[461] did not have independently audited financial statements, one[462] had financial statements adopted by its general assembly, one[463] had financial statements audited by an external auditor and two[464] had independently audited financial statements. As a consequence, the Ministry of Portfolio issued an official letter in 2018 requiring that all nine SOEs publish audited financial statements (*see Requirement 7.4 and impact analysis)*

Assurance methodology: The 2015 EITI Report provides a description of the assurance methodology agreed by the MSG for EITI reporting.[465] The report includes the IA's recommendation for a review of the assurance methodology for the next reporting cycle, in order to require certification by an external auditor of reporting templates from companies and SOEs.[466] The report confirmed the application of international professional standards in the IA's work.[467] The 2016 scoping study describes a similar methodology for the 2016 reconciliation.[468]

Given delays in finalising the restructuring of the *Cour des Comptes* and applying audits to the extractive sector, the *Inspection Générale des Finances* (IGF) was asked to certify the reporting by government entities and companies within the EITI.[469] Reports by the IGF on its certification of EITI data are available online for

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[459] 2015 EITI Report, pp.144-148.
[460] 2016 Supplementary EITI Report, p.87.
[461] COMINIÈRE, GÉCAMINES, SAKIMA SOKIMO and SONAHYDROC.
[462] SCMK-Mn.
[463] SACIM.
[464] MIBA and SODIMICO.
[465] 2015 EITI Report, p.24.
[466] Ibid, p.100.
[467] Including the ISRS standard and the IFAC Code of Ethics. 2015 EITI Report, p.8.
[468] The report distinguishes between companies that are obliged to have a Commissaire aux comptes and those that do not. Government agencies are required to submit a reporting template signed by a manager or an authorised member of staff and certified by the IGF. DRC EITI, 2016 scoping study, pp.18-19.
[469] 2015 EITI Report, pp.67-68. The 2016 Contextual EITI Report did not include a description of audit practices. The CdC and IGF website can be accessed at http://www.courdescomptes.cd/publication.php and at https://www.igf.gouv.cd/. The latest annual report published by the CdC covered 2015, http://www.courdescomptes.cd/doc/RAPPORT%20PUBLIC%20EXERICE%202015.pdf, accessed in November 2018. At the time of writing, it seemed that the IGF website had not been updated since 2015.

the year under review.[470] These reports describe the IGF's methodology in certifying government EITI reporting, including the international standards on which this certification was based.

They also describe the process for collecting and registering taxes per government agency and the method used for certifying the EITI disclosures of each agency. The reports concluded that the methodology was adequate with regard to the type of audit conducted, allowing the IGF to conclude with reasonable assurance that revenues disclosed by tax collecting agencies were in compliance with international auditing standards and auditing best practices.

Confidentiality: While the 2015 EITI Report does not specifically refer to mechanisms for ensuring the confidentiality of information pre-reconciliation, its reference to International Standard on Related Services (ISRS) 4400 as the basis for the IA's work[471] implies that standard confidentiality mechanisms were put in place.

Reconciliation coverage: Based on the approach to materiality selected by the MSG, the target reconciliation coverage was 100% in oil and gas and 99.53% in mining. The final reconciliation coverage seems to be 99.5% in oil and gas and 93.3% in mining, based on information on the materiality of payments from non-reporting companies. The final reconciliation coverage was calculated on the basis of reconciled revenues compared to total extractives revenues.

Assurance omissions: Of the 10 oil and gas companies that reported, two[472] did not comply with the agreed assurance methodology, with combined payments to government of 0.42% of total reconciled oil and gas revenues. Of 103 mining companies that reported, nine did not comply with the required quality assurance, with combined payments to the government of 5.78% of total reconciled mining revenues.[473] Of these nine, CDM is listed as the ninth largest mining company based on unilateral government disclosures, with payments to the government of 1.82% of total mining revenues, and therefore a significant reporting entity. CDM was also highlighted by the IA as a company making a USD52 million payment to GÉCAMINES following the sale of a mining permit in 2015. CDM had not confirmed the payment with supporting documents and had been omitted by GÉCAMINES in its initial reporting.[474]

For government entities, the 2015 EITI Report noted that all but SGH provided disclosures signed by a member of their management, whereas only DGI and DGRAD provided reporting templates certified by IGF. For DGDA and DRKAT, the IA notes that it received certification letters that referred to different data than the one reviewed by the IA.[475] However, the report provides details about differences between EITI disclosures and IGF-certified disclosures by DGI and DGDA.[476] These findings raise concerns about the

[470] IGF (December 2016), Méthodologie de travail pour la certification des déclarations ITIE établies par les régies financières pour l'exercice 2015; and Certification IGF DRKAT, Certification IGF DGRAD, Certification IGF DGDA, https://drive.google.com/drive/u/0/folders/1yAOOpoAbGDX-8TCzScpzGz4kuKic9zek, accessed in December 2018.
[471] 2015 EITI Report, p.8.
[472] COHYDRO and SURESTREAM.
[473] 2015 EITI Report, p.22.
[474] Ibid, p.96.
[475] Ibid, p.22.
[476] Ibid, p. 177.

overall reliability of data for the year under review. It is possible to assess the materiality of revenues collected by government entities that did not provide the required quality assurances, based on the government's full unilateral disclosures.

Data reliability assessment: The IA concluded that the data provided in the report was reliable and credible.[477] However, given the gaps described above, the basis for the IA reaching this conclusion is unclear. With the aim of improving the reliability of EITI data, the 2015 EITI Report compared EITI data disclosures with CTR disclosures.[478] While the report did not provide an explanation for the discrepancies identified, stakeholder discussions in May 2018 noted that the main differences resided in the fact that CTR data included subcontractors and only covered revenues transferred to the Treasury (*see Requirement 7.2*).

Sourcing of information: The 2015 EITI Report mostly references the sources for non-financial data, except for certain annexes such as Annex 15.[479] The DRC EITI website provides a May 2017 version of the 2015 EITI Report, which clearly shows comments from stakeholders.[480] A specific characteristic of the EITI process in the DRC is the strong involvement of stakeholders in providing comments to draft reports *(see Requirements 1.3 and 7.1*). All documents and amendments provided by stakeholders are comprehensively archived at the national secretariat and publicly accessible on the DRC EITI website.[481]

Summary tables: Summary tables for 2015 were submitted to the International Secretariat and are accessible through the EITI's API.[482]

Recommendations: The 2015 EITI Report provides an overview of follow-up on past EITI recommendations and outlines 12 new recommendations on the basis of 2015.[483] The latter include recommendations for improving the governance of the sector, for example through strengthening reporting on revenues withheld by government entities and SOEs and asset sales, and for improving EITI reporting, for example through resolving issues with the T/SL software, or expanding the scope of reporting to more revenue streams.

The 2016 Contextual EITI Report comments on follow-up of past EITI recommendations, noting that a dedicated workshop was organised on 23 June 2018 in Lubumbashi (*see Requirement 7.3*). The workshop concluded that, of 17 past EITI recommendations, six had been fully implemented, ten were ongoing and one was no longer relevant given changes in the MSG's approach to systematic disclosures.[484]

Stakeholder views

Procurement of the IA: MSG members consulted did not express particular concerns about the IA for the 2015 EITI Report. Comments on the report itself and about potential misunderstandings by the IA were made available through the draft 2015 EITI Report with stakeholder amendments, available on the DRC EITI

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477 Ibid, p.22.
478 Ibid, p.88.
479 Ibid, p.176.
480 DRC EITI (May 2017), 2015 EITI Report with stakeholder amendments, https://drive.google.com/file/d/0B1C1Aj5TqAgvcHVfTks2dWZudDQ/view, accessed in November 2018.
481 DRC EITI, Bibliography, Stakeholder activities, https://www.itierdc.net/bibliographie/.
482 DRC EITI, 2015 Summary data file, https://eiti.org/sites/default/files/spreadsheets/2015_drc_summary_data_en_san.xlsx.
483 2015 EITI Report, pp.105-121.
484 2016 Contextual EITI Report, pp.86-87. DRC EITI (July 2018), Rapport de mission, Suivi des recommandations issues des rapports ITIE, https://drive.google.com/drive/u/1/folders/1cAsueIhKfyr6iUBQBXaRTKkKH3OIlgbc, accessed in November 2018.

website. On the IA for the 2016 EITI Report, MSG members and national secretariat staff expressed concerns over delays in adhering to the agreed time frames, partly due to lack of experience of the contracted company.

Audit practices: Public sector representatives noted that the *Cour des Comptes* had never undertaken a systematic audit of the extractives sector. It had once drafted a report about the award of mining licenses, but it was not publicly accessible. Its staff were being trained on auditing procedures as part of the institution's restructuring. Other government representatives explained that the IGF's work was not only to certify whether disclosures were reliable, but also to assess whether payments had been transferred to the Treasury.

The IGF's mandate included ensuring that internal auditing services were functioning correctly and to promote international standards, such as the International Organization of Supreme Audit Institutions (INTOSAI). The IGF was undertaking an audit of compliance with regulation of key tax-collecting agencies representing significant risks in order to help improve practices in the long term.

Some government and industry representatives stated that OHADA auditing requirements for private companies were very clear, but were applied unevenly in practice, especially for smaller companies and in the absence of enforced sanctions for non-compliance.

Audit practices of SOEs: Issues related to auditing practices for SOEs generated significant debate during stakeholder consultations. Government and industry representatives noted that all SOEs were obliged to audit their financial statements and to nominate an external auditor. Some suggested that several SOEs did not have audited financial statements, either because their general assemblies had not yet approved the documents before being sent to the Ministry of Portfolio, or because some SOEs encountered financial difficulties and could not pay for the audit in the required time frame.

Several SOE representatives disputed the findings of the 2016 Supplementary EITI Report, which covered SOEs. Some maintained that SOEs' financial statements had always been audited and that the DRC EITI had not had access to the right version of the SOEs' financial statements. Others noted that, since SOEs had become commercial companies under OHADA law, they were therefore required to nominate an auditor to review their financial statements. Others noted that they had not had an auditor every year, but that the issue had been resolved recently. Some CSO representatives noted that the auditing standards and practices of SOEs' should be reviewed to improve their accountability.

All stakeholders consulted agreed that the Ministry of Portfolio's injunction to publish audited financial statements following the EITI standalone report represented important progress. Some SOE representatives, however, argued that the 2016 Supplementary EITI Report had incorrectly stated that the financial statements were confidential. They explained that as soon as the financial statements were submitted to the line Ministry, they could be forwarded to Members of Parliament and other organizations requesting access, such as the EITI, and therefore could not be classified as confidential.

Representatives from one SOE questioned whether financial statements should be made available to the public, when these documents were primarily destined to the company's general assembly, investors and the government. Some SOE representatives noted that the injunction remained unclear in setting a time frame, framework and template for publication of SOEs' financial statements. They noted that many SOEs did not all have a website to publish such information, and that these disclosures would require approval from their respective management, regardless of the fact that the injunction came from the line Ministry.

Data reliability: On EITI data certification specifically, government representatives noted difficulties encountered by the IGF when reviewing documents from DGRAD and the provincial authorities, given the absence of digitised systems and the need to check archived documents in several decentralised offices (*see Requirement 4.1*). They also explained that there was no uniform way of registering transactions from one bank to another. They noted that many discrepancies arose from different accounting methods, the use of varying exchange rates or delays in registering transactions at the level of the Treasury.

Some government representatives lamented that the IA requested supporting documents that had already been requested by the IGF, making the IA's work redundant. However, industry representatives noted that the IGF was carrying out a necessary task in certifying government data and that its work had helped improve data quality significantly over the years.

Some CSO representatives expressed concerns about the reliability of EITI data and the government's capacity to audit government entities. They compared data provided by companies in the framework of EITI reporting with mandatory disclosures by companies domiciled in jurisdictions requiring such 'payments to government' reports. While they recognised that the templates for disclosing data varied between EITI and mandatory disclosures, they remained concerned about the level of discrepancies. They noted that concerns about the comprehensiveness of data also affected its reliability (*see Requirement 4.1*).

The IA noted that, as of November 2018, there remained two main discrepancies to resolve in the 2016 reconciliation. The first one related to discrepancies in the *redevance de suivi de change* (RSC), as disclosed by the central bank, which raised questions about whether these payments were transferred to the Treasury or withheld by the central bank. The second one related to payments to GECAMINES by METALKOL of USD170 million in the context of asset sales by GECAMINES (*see Requirements 2.6 and 4.5*).

Initial assessment

The International Secretariat's initial assessment is that the DRC has made **meaningful** progress towards meeting this requirement. The MSG oversaw the procurement of the IA, approved ToRs for the IA that were in line with the standard ToRs and approved reporting templates. Stakeholders did not express any concerns about the recruitment process and professionalism of the IA. The 2015 EITI Report includes an overview of statutory audit procedures and actual audit practices for 2015, and described the assurance methodology agreed by the MSG for the 2015 EITI Report.

The EITI Report clearly sourced data and provided an overview of follow-up on past recommendations as well as a new set of recommendations for 2016. Summary data files for the year under review were publicly accessible. However, while the report includes the IA's assessment that reconciled EITI data was comprehensive and reliable, the basis for this conclusion is unclear given significant gaps in company and government adherence to quality assurances agreed for EITI reporting. Several stakeholders consulted expressed concerns about data reliability.

Nonetheless, the 2015 EITI Report lists the names of reporting companies and government entities that did not adhere to the agreed quality assurances, and it is possible to assess the materiality of their payments based on data in the report. While significant aspects of Requirement 4.9 have been addressed, the Secretariat's view is that the broader objective of data reliability has yet to be fully achieved.

In accordance with Requirement 4.9, the DRC should review the agreed quality assurances required from companies and government entities for their EITI reporting. The DRC may wish to ensure that data collection deadlines are established with a view to ensuring full adherence with the quality assurances agreed to for EITI reporting.

Table 4. Summary of initial assessment: Revenue collection

EITI provisions	Summary of main findings	International Secretariat's initial assessment of progress with the EITI provisions
Comprehensiveness (#4.1)	The 2015 EITI Report includes the MSG's definition of the materiality thresholds for payments and companies to be included in reconciliation based on payments to government, including a justification for the specific thresholds. However, while the MSG has adopted a quantitative approach to the assessment of materiality of both companies and revenues, the fragmented nature of the fiscal regime for mining and the existence of significant ad-hoc payments (particularly by SOEs and their JVs) raises concerns over the comprehensiveness of the scope of revenue streams reconciled. All material government entities appear to have reported all revenues despite challenges in data collection and the government appears to have disclosed all extractives revenues, including from non-material companies. The companies that did not report are named and the value of their payments to government is provided relative to government-reported revenues. Despite the 2015 EITI Report's categorisation of payments from non-reporting companies as insignificant, challenges in data collection and concerns over government record-keeping meant that the IA could not provide assurances over the comprehensiveness of reconciled financial data. The challenges in demonstrating satisfactory progress in meeting Requirement 4.1 in the DRC are fundamentally linked to weaknesses in government record keeping. It would be unreasonable to conclude that the MSG should be expected to resolve these before making materiality decisions. The International Secretariat considers that given these restraints, the MSG and the IA have sought to follow a process that allows for a considerable amount of certainty under the circumstances. At the same time, the IA has expressed concerns over the exclusion of certain extractives revenues collected by SOEs from the scope of reconciliation on the basis of	Meaningful

	unclear documentation and a lack of statutory basis for such revenues (see Requirement 2.6). While the 15 non-reporting companies' share of extractives revenues appears to be insignificant, there is scope for improving the MSG's follow-up with non-reporting entities to ensure that all material companies participate in EITI reporting. The International Secretariat's initial assessment is therefore that significant aspects of the requirement have been implemented and the broader objective of the requirement is being fulfilled.	
In-kind revenues (#4.2)	The 2015 EITI Report confirmed there were no in-kind revenues in either mining or oil and gas, given that the oil and gas PSCs had not yet entered production in 2016.	Not applicable
Barter and infrastructure transactions (#4.3)	The DRC's EITI reporting since 2012 has disclosed terms of agreements involving the provision of loans and infrastructure works in full exchange for mining exploration or production concessions, through SICOMINES. The MSG and the IA have gained an understanding of the terms of the relevant agreements and contracts, the parties involved, the resources 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. This understanding covers financial and in-kind operations within DRC, not the terms of the financing arrangements between CREC, SINOHYDRO and China Exim Bank. The DRC's EITI Reports address these agreements, providing a level of detail and transparency commensurate with the disclosure and reconciliation of other payments and revenue streams. These disclosures were commended by stakeholders, contributing to promoting debate around a key agreement.	Satisfactory
Transport revenues (#4.4)	Material transport revenues in the oil and gas sector, linked to the transportation pipeline from Angola, have been unilaterally disclosed in the DRC's EITI Reports. The convention determining the level of transport fees is publicly available and its terms described in the DRC's EITI Reports.	Satisfactory

Transactions between SOEs and the government (#4.5)	The 2015 EITI Report discloses and reconciles company payments to SOEs and SOE statutory transfers to the government, although both the report and stakeholder consultations raised significant concerns over the comprehensiveness of the reconciliation of company payments to SOEs. The report does not disclose or reconcile government transfers to SOEs, nor refer to any ad hoc SOE transfers to government entities other than to the Treasury. Given the lack of a materiality threshold set for selecting SOE transactions for reconciliation, all such payments and transfers should have been comprehensively disclosed and reconciled.	Meaningful
Subnational direct payments (#4.6)	The DRC's 2015 EITI Report disclosed and reconciled direct subnational payments in mining to the former Katanga Provincial Government (DRKAT) in 2015. There is a lack of clarity surrounding the materiality of these payments, the existence of other types of direct subnational payments that are not extractives-specific, and revenues collected by other provincial authorities other than DRKAT. The 2016 scoping study partly addresses issues around the materiality of direct subnational payments, noting that no materiality threshold was applied to extractives-specific revenue streams and providing unilateral disclosures of extractives-specific direct payments for nine of 26 provinces.	Meaningful
Level of disaggregation (#4.7)	Reconciled 2015 financial data was disclosed by company, government entity and revenue stream. Stakeholders in the DRC have taken encouraging steps to disclose revenues by project.	Satisfactory
Data timeliness (#4.8)	The 2015 EITI Report was published in December 2017, namely within two years of the end of the fiscal period covered. There is evidence of the MSG approving the reporting period in the 2015 EITI Report and the 2016 scoping study. The Ministry of Finance and the Ministry of Mines should be commended for taking steps to disclose timelier information on revenues through its routine systems.	Satisfactory
Data quality (#4.9)	The MSG oversaw the procurement of the IA, approved ToRs for the IA that were in line with	Meaningful

	the standard ToRs and approved reporting templates. Stakeholders did not express any concerns about the recruitment process and professionalism of the IA. The 2015 EITI Report includes an overview of statutory audit procedures and actual audit practices for 2015. It also describes the assurance methodology agreed to by the MSG for the 2015 EITI Report. The EITI Report clearly sourced data and provided an overview of follow-up on past recommendations, as well as a new set of recommendations for 2016. Summary data files for the year under review were publicly accessible. However, while the report includes the IA's assessment that reconciled EITI data was comprehensive and reliable, the basis for this conclusion is unclear given significant gaps in company and government adherence to quality assurances agreed to for EITI reporting. Several stakeholders consulted expressed concerns about data reliability. Nonetheless, the 2015 EITI Report lists the names of reporting companies and government entities that did not adhere to the agreed quality assurances, and it is possible to assess the materiality of their payments based on data in the report. While significant aspects of Requirement 4.9 have been addressed, the Secretariat's view is that the broader objective of data reliability has yet to be fully achieved.	

Secretariat's recommendations:

15. In accordance with Requirement 4.1, the DRC should ensure that all companies selected in the scope of reporting comprehensively report all material payment flows and that decisions on the materiality of revenue flows are based on government unilateral disclosure of total extractives revenues, including those not statutorily-mandated but nevertheless collected. The DRC should also ensure that full unilateral government disclosure of material revenues, including from non-material companies, is presented disaggregated by revenue flow rather than by company. The DRC may wish to consider revisiting its scoping and materiality decisions, potentially including a two-tiered approach for mid-sized and larger companies, to strike a balance between the comprehensiveness of disclosures and the quality of reporting. To strengthen implementation, the DRC is urged to reassess the existence of government in-kind revenues on an annual basis, with a view to publicly disclosing volumes collected, volumes sold and proceeds of sales per buyer once production commences within areas covered by oil and gas PSCs.
16. To strengthen implementation, the DRC is encouraged to gain an understanding of all aspects of the terms of barter arrangements and infrastructure agreements and to publicly disclose all contractual agreements relevant to such projects.
17. To strengthen implementation, the DRC is encouraged to assess the existence and materiality

of transport revenues related to the transport of extractives commodities on an annual basis. The DRC should disclose details of all such material transport revenues, including tariff rates and volumes of transported commodities.

18. In accordance with Requirement 4.5, the DRC should ensure that the role of SOEs, including company payments to SOEs and transfers between SOEs and government entities, is comprehensively and publicly addressed. This should include disclosure and reconciliation of all material transactions involving SOEs.
19. In accordance with Requirement 4.6, the DRC is encouraged to establish whether direct subnational payments are material. The DRC should clearly document the method behind selecting and reconciling revenue streams, building on improvements in the 2016 scoping study. Following changes in mining legislation in June 2018, the DRC is encouraged to work closely with provincial governments to systematically disclose timely and comprehensive information about payments of shares of mining royalties to relevant subnational governments.
20. To strengthen implementation, the DRC may wish to consider the extent to which it can make progress in implementing project level EITI reporting of sector-specific levies and taxes 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. The Ministry of Finance is encouraged to provide publicly available information by project, government entity and by revenue stream in open data format.
21. To strengthen implementation, the DRC is encouraged to strengthen its efforts to ensure that EITI data is disclosed in a timelier manner, ideally within a year of the end of the fiscal year covered and through routine government and company systems. The DRC is encouraged to support the Ministry of Finance, the Ministry of Mines, the Ministry of Hydrocarbons, the Ministry of Portfolio and companies in publishing timely data through their own systems, building on progress made by the Ministries of Finance and Mines.
22. In accordance with Requirement 4.9, the DRC should review the agreed quality assurances required from companies and government entities for their EITI reporting. The DRC may wish to ensure that data collection deadlines are established with a view to ensuring full adherence with the quality assurances agreed to for EITI reporting.

5. Revenue management and distribution

5.1 Overview

This section provides details on the implementation of the EITI requirements related to revenue management and distribution.

5.2 Assessment

Distribution of revenues (#5.1)

Documentation of progress

The 2015 EITI Report describes the budget-making process (*see Requirement 5.3*). It explains that revenues that are "pre-affected to special accounts" are not recorded in the central or provincial government budgets, but are listed in annexes to the national budget law (Finance law) under "special accounts". The report also explains that revenues used by government entities as operational funds were not recorded in the national budget and were managed directly by these entities.[485]

The 2015 EITI Report provides diagrams illustrating which revenues were collected by key government entities, including SOEs, Tax Authority (DGI), the Revenue Department (DGRAD), Hydrocarbon General Secretariat (SGH), Ministry of Environment and Sustainable Development (MEDD), Customs and Excise Authority (DGDA) and the Provincial Directorate of Katanga's Revenue (DRKAT), for both the oil and mining sectors.[486] While a helpful overview of key revenue streams, these diagrams do not indicate the specific revenues collected by specific SOEs, the share of these revenues transferred to Treasury, nor the specific revenues withheld by government entities and not transferred to the Treasury.

The report shows that the extractive industries generated USD1.724 billion in government revenues, with USD1.178 billion (or 68.33%) transferred to the Treasury. The report provides the share of revenues not transferred to the Treasury (and not recorded in the national budget) that was withheld by SOEs and government entities (10.3% retained by SOEs, 10.3% as tax collecting agencies' retained earnings and 3.1% for other government entities[487]), the share of payments that were social payments (3.1%) and the share of payments (USD83.5 million) to AHIL as part of an operation involving GECAMINES and the KCC JV (4.%) (*See Requirements 2.6 and 4.5*).[488] Without claiming causality, there seems to be a correlation between EITI reporting over the past ten years and an increase in revenues transferred to the Treasury, going from less than USD 500m in 2007 to almost USD 2b in 2015.[489]

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[485] DRC EITI, 2015 EITI Report, p. 62.
[486] 2015 EITI Report, pp.61-64.
[487] Ibid, p.176; see Requirement 4.1.
[488] Ibid, p.10.
[489] See : EITI International Secretariat (June 2018), Impact of the EITI in the Democratic Republic of Congo, https://www.youtube.com/watch?v=pDn--4mil-0, accessed in January 2019.

While the 2016 Supplementary EITI Report provides an overview of nine SOEs' financial statements, including a cursory description of their allocation of retained earnings, the DRC's EITI Reports do not provide an explanation of the allocation of funds retained by tax collecting agencies, nor of funds retained by SOEs' JVs. The EITI Reports do not reference national or international revenue classification systems.

Stakeholder views

CSO representatives expressed concerns about the significant share of extractives revenues that were not transferred to the Treasury. Representatives from the main tax collecting agencies noted that the entities withheld 50 per cent of penalties to cover their administrative and operational costs. There were considerable and contrasting views on SOEs' retained earnings (*see Requirement 2.6*). A civil society representative called for further investigation into potential off-budget payments that were transferred to other accounts that the Treasury's at the Central Bank of Congo.

Initial assessment

The International Secretariat's initial assessment is that the DRC has made **meaningful** progress in meeting this requirement. The 2015 EITI Report indicates the specific extractives revenues that were recorded in the national budget and those retained by government entities and SOEs. While the report explains that significant extractives revenues were not transferred to Treasury or recorded in the government budget, the allocation of these revenues retained by government entities and SOEs remains unclear despite significant additional information in the 2016 Supplementary EITI Report on SOEs' retained earnings.

In accordance with Requirement 5.1, the DRC is required to explain the allocation of extractive revenues that are not recorded in the national budget, including revenues withheld by tax collecting agencies and SOEs. The DRC is encouraged to collaborate with the Ministry of Finance, the Ministry of Budget and SOEs to disclose the allocation of these revenues and provide references to financial reports where relevant. The DRC EITI is also encouraged to provide more information about the "special accounts" to which the CAMI contributes.

Subnational transfers (#5.2)

Documentation of progress

Statutory subnational transfers: Art.175 of the Constitution and the 2011 Finance Law stipulate that 40 per cent of central government revenues are destined to provinces and should be withheld at source, although these are general subnational transfers that are not extractives-specific. Articles 115 and 116 of the 2008 Law on the organisation of decentralised territorial entities (ETD) stipulates that ETD are entitled to 40 per cent of the share of national revenues allocated to provinces, based on their production capacity, size and population.[490] Art.181 of the Constitution and the 2011 Finance Law require provinces to benefit from the National Equalisation Fund, constituted by 10% of total revenues at national and provincial government levels. The 2016 Contextual EITI Report noted, however, that the Fund was never established by implementing decree.[491]

Oil and gas: The 2015 EITI Report does not refer to subnational transfers in oil and gas. At the MSG's March 2018 pre-Validation self-assessment, stakeholders clarified that such subnational transfers existed.[492] The 2016 Contextual EITI Report mentions that 10% of national government revenues should be transferred to provinces where oil production takes place as compensation for environmental damage, based on the 2011 Finance Law. The report notes that these transfers were never effective in the absence of implementing regulation.[493] However, the report does not clarify the value of subnational transfers that should have been executed in accordance with the revenue-sharing formula.

Mining: Art. 242 of the 2002 Mining Code provides the following revenue-sharing formula for mining royalties subnational transfers:

> 60% to remains with the central government.
> 25% to be transferred to an account owned by the province where the project is based;
> 15% to be transferred to an account owned by the city or territory where production takes place.

The 2016 Contextual EITI Report notes changes in the revenue-sharing formula following the modification of Art. 242 in the 2018 Mining Code, with companies expected to make distinct direct payments to DGRAD, provinces, ETD and the Fund for future generations from July 2018 onwards (*see Requirement 4.6*).

The DRC EITI has taken steps to try and clarify whether this revenue-sharing mechanism was applied in practice. It held a workshop in March 2015 on mining royalties, with the aim of clarifying the calculation of

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[490] «Art. 115, Les ETD ont droit à 40% de la part des recettes à caractère national allouées aux provinces. Art. 116, La répartition des ressources entre les ETD est fonction des critères de capacité de production, de la superficie et de la population. L'édit en détermine le mécanisme de répartition. » Loi organique n.08/016 du 7 octobre 2008 portant composition, organisation et fonctionnement des ETD et leurs rapports avec l'Etat et les Provinces, http://www.leganet.cd/Legislation/Droit%20Public/Administration.ter/L.08.16.17.10.2008.htm#TIVCII, accessed in November 2018.

[491] 2016 Contextual EITI Report, pp.14-15. See Constitution, modified in 2011, op. cit.; « Article 219/ Les recettes à caractère national sont constituées de deux catégories suivantes : Catégorie A: - les recettes administratives, judiciaires et domaniales collectées en province; - les recettes des impôts perçues à leur lieu de réalisation. Catégorie B: - les recettes administratives, judiciaires, domaniales et de participations collectées au niveau du pouvoir central; - les recettes de douanes et d'accises; - les recettes des impôts recouvrées sur les grandes entreprises; - les recettes des pétroliers producteurs. Article 222, Conformément à l'article 181 de la Constitution, les provinces bénéficient des ressources provenant de la Caisse nationale de péréquation dont le budget est alimenté à concurrence de dix pour cent de la totalité des recettes de catégorie A et B telle que définies à l'article 219 de la présente loi.»Loi des finances n.11/011 du 13 juillet 2011 relative aux finances publiques, http://www.budget.gouv.cd/2012/documents/lofip2011.pdf; Loi organique n.16/028 du 8 novembre 2016 portant organisation et fonctionnement de la Caisse national de péréquation, http://leganet.cd/Legislation/JO/2016/JOS.12.11.2016.pdf, accessed in November 2018

[492] DRC EITI (March 2018), Self-assessment, op. cit., p.13.

[493] «Article 221, Sans préjudice des dispositions de l'article 218 de la présente loi, la retenue de 40% sur les recettes de la catégorie B s'effectue, au profit des provinces, suivant leur capacité contributive et leur poids démographique au regard des modalités déterminées, conformément à un arrêté conjoint des ministres du pouvoir central ayant les finances et le budget dans leurs attributions respectives. S'agissant des recettes pétrolières inclues dans la catégorie B, une allocation de 10% de la part revenant aux provinces est attribuée à la province productrice à titre compensatoire pour réparer notamment les dommages d'environnement résultant de l'extraction.» Loi des finances n.11/011 du 13 juillet 2011 relative aux finances publiques, op. cit.

these subnational transfers (*see Requirements 3.2 and 3.3*) and the lack of implementation of the revenue-sharing mechanism in practice. Participants concluded that shares had not been transferred based on the relevant calculations between 2007 and 2013, but as a lump sum to the ex-Katanga province that was always significantly lower than the statutory 40%.[494] Following recommendations from the 2014 EITI Report, the MSG commissioned an independent study on transfers of royalties, published in May 2016. The study notes that Ministry of Finance data on subnational transfers only covers the ex-Katanga province and does not mention transfers to ETD. The study shows that five other provinces should have received subnational transfers of royalties but in practice did not do so. It provides figures and a graph comparing trends in total mining royalty revenues, the statutory share that should have been transferred to subnational governments in aggregate, and the value of aggregate transfers in practice.[495] The NGO *Cadre de Concertation de la société civile de l'Ituri sur les ressources naturelles* subsequently published its own analysis of the study with recommendations to further clarify the categorisation of royalties and their transfers in practice.[496]

The 2015 EITI Report notes that, in practice, the share of mining royalties for provinces was not withheld, but was allocated by the Ministry of Finance.[497] The report states that the MSG set a materiality threshold of zero for selecting extractives-specific revenue streams for reconciliation, which applied by extension to mining royalties. Considering only Ministry of Finance data on transfers to the ex-Katanga Provincial Government, the IA concludes that the revenue-sharing formula was not respected in practice, with only 7.4% (not 25%) of mining royalties effectively received by the Province.

It also highlighted the lack of transfers to DRKAT in the last quarter of 2015 and the lack of reference to the 15% that should have been transferred to the ETD. While the report does not explicitly reconcile Ministry of Finance data with DRKAT data, it notes that DRKAT had confirmed receipt of subnational transfers reported by the Ministry of Finance.

The report highlights discrepancies between the value of subnational transfers that should have been made based on the revenue-sharing formula and the actual subnational transfers to DRKAT in practice, which totalled USD40.64 million, although not for other subnational governments. The report notes that, according to stakeholders, the Province of Katanga established the TC and TVD direct subnational payments in contravention of the 2002 Mining Code, with the corresponding amount considered a compensation for the statutory subnational transfers of mining royalties that were not transferred in practice (*see Requirement 4.6*).[498]

The 2016 Contextual EITI Report highlights the importance of subnational transfer disclosures in promoting

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[494] DRC EITI (March 2015), Rapport de l'atelier sur la transparence des activités minières: cas de la redevance minière, https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=2ahUKEwjGyuL7yezdAhUKlIsKHS_8B_QQFjAAegQICRAC&url=http%3A%2F%2Fitierdc.net%2Fwp-content%2Fuploads%2F2016%2F03%2F26-03-2015-Rapport-de-latelier-sur-la-redevance-mini%25C3%25A8re-26032015.doc&usg=AOvVaw3Bo5LvTQ73zg2JalfyUF-A, accessed in November 2018.

[495] KPMG, op. cit. See DRC EITI (July 2016), Lancement de l'étude sur la redevance minière, July 2016, https://www.itierdc.net/2016/07/31/lancement-de-letude-sur-la-redevance-miniere/, accessed in November 2018.

[496] CdC/RN (October 2016), Analyse du rapport de KPMG sur la rétrocession de la redevance minière en RDC, October 2016, http://congomines.org/reports/1203-analyse-du-rapport-de-kmpg-sur-la-retrocession-de-la-redevance-miniere-en-republique-democratique-du-congo, accessed in November 2018.

[497] The redevance is declared by companies to the provincial division of the Ministry of Mines. DGRAD then collects the tax and remits 60% of the total to the Treasury, in accordance with the revenue sharing mechanism. The Ministry of Finance is in charge of the allocation of the remaining 60% to subnational governments. Based on stakeholder consultations in Lubumbashi, November 2018.

[498] 2015 EITI Report, pp.47-48.

public debate on the benefits of extractive industries for host communities. It adopts the same materiality approach as in the 2015 EITI Report. Based on BCC and Ministry of Finance disclosures, the report notes that only the Haut-Uélé (approximately USD226,400) and Haut-Katanga (approximately USD390,200) provinces were explicitly named as beneficiaries of subnational transfers. At the time of the report's publication, the BCC had not yet provided data disaggregated by province for the category of 'Other provinces', for which subnational transfers valued at around USD621,480 were reported. The report compares the amounts disclosed by the BCC and Ministry of Finance with amounts that should have been transferred according to the revenue-sharing formula and concludes that only 4.9% of notional subnational transfers were transferred in practice.

It notes that all provinces combined had received less in 2016 than the lump sum received by the ex-Katanga Provincial Government in 2015. The report does not clarify the existence of subnational transfers to the ETD. It does not mention any material discretionary or ad hoc transfers. The report noted changes in the revenue-sharing formula following the modification of Art.242 in the 2018 Mining Code, with companies expected to make distinct direct payments to DGRAD, the province, the ETD and the Fund for future generations from July 2018 onwards (*see Requirement 4.6*).

The CongoMines website has been publishing monthly and annually disbursement notes for mining royalties disaggregated by company since 2009. For the period before the enactment of the 2018 Mining Code and its implementing decree, these documents provide the amount of royalties paid per company in the ex-Katanga province only, with details about royalties collected per commodity.[499] These figures are the basis for calculating statutory shares of royalties to be transferred to provinces and ETD. After the start of Validation, CongoMines published disbursement notes by company as per the new mechanism for direct payment of the '*redevance minière'* for the period July-October 2018 (*see Requirement 4.6*).[500]

These documents do not confirm whether payments were effectively executed, the specific province or ETD to which payments should be made, nor how payments are to be made to the Fund for future generations when the Fund has not yet been created. However, they provide detailed figures according to the revenue-sharing formula for each industrial mining company, including SOEs.

Stakeholder views

Government and CSO representatives noted that there had always been public concerns around subnational transfers, given that they had never been paid out according to the statutory revenue-sharing formula. They highlighted the importance for local communities to be able to request their statutory shares from the central government, and subsequently from mining companies under the new system from July 2018 onwards. They noted that for years the Katanga Provincial Government (DRKAT) had received a lump-sum based on a flat rate that did not reflect increases in mining royalties collected, while transfers to ETD

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[499] See for example: Division Provinciale des Mines du Katanga (January 2018), Compilé des statistiques relatives à la redevance minière 2017, January 2018, http://congomines.org/system/attachments/assets/000/001/459/original/compilé_redevance_minière_2017.pdf?1521447795, accessed in November 2018.

[500] CongoMines (November 2018), Division Provinciale des Mines du Katanga, Statistiques des notes de débit relatives à la redevance minière du troisième trimestre 2018, http://congomines.org/system/attachments/assets/000/001/459/original/compilé_redevance_minière_2017.pdf?1521447795, accessed in November 2018.

had never been operationalised.

Government representatives explained that the Ministry of Mines' provincial division calculated the value of mining royalties to be paid by mining companies. They noted that the Ministry of Finance had the most reliable data on mining royalties (*see Requirement 4.6*). CSO representatives highlighted that EITI reporting adequately covered the regulations in place, but did not comprehensively report on their implementation in practice.

Initial assessment

The International Secretariat's initial assessment is that the DRC has made **meaningful** progress towards meeting this requirement. The DRC has taken steps, particularly since 2015, to improve EITI reporting of subnational transfers in the mining sector, providing a diagnostic tool and platform for debate for stakeholders. The 2015 EITI Report provides a description of the statutory rules on extractives revenue-sharing with local governments, disclosed discrepancies between the amount calculated in accordance with the revenue-sharing formula and the actual amount transferred for the ex-Katanga Provincial Government, and reconciled Ministry of Finance and ex-Katanga Provincial Government data.

However, it does not provide information about subnational transfers in the hydrocarbon sector, nor about the status of transfers to the other subnational government entities (e.g. decentralised territorial entities and Provincial Governments other than ex-Katanga). The 2016 Contextual Report discloses data about actual subnational transfers in 2016 and compared it to the notional value of subnational transfers according to the revenue-sharing formula, albeit not disaggregated by province. It also clarifies the status of subnational transfers in the oil and gas sector.

In accordance with Requirement 5.2.a, the DRC should ensure that material subnational transfers in the extractive sector are publicly disclosed, highlighting discrepancies between subnational transfers in practice and calculations based on the revenue-sharing formula, disaggregated by province and Decentralised Territorial Entity (ETD). The DRC is encouraged to work closely with the Provincial Mining Divisions (*Divisions Provinciales des Mines*), the Ministry of Finance and the DGRAD to publicly disclose timely and comprehensive data about subnational transfers of mining royalties until the change in revenue-sharing in June 2018. In accordance with Requirement 5.2.b, the DRC is encouraged to ensure that any material discretionary or ad-hoc subnational transfers are also disclosed and where possible reconciled.

Additional information on revenue management and expenditures (#5.3)

Documentation of progress

Systematic disclosures: The Ministry of Budget publishes key budget documents, such as the national budget law (Finance law), its annexes analysing revenues and expenditure projections, as well as projections for specific sectors including mining and hydrocarbons.[501] It published information about the

[501] Ministry of Budget, Finance law no.17/014 of 24 December 2017 for the year 2018,

draft finance law for 2019 in October 2018.[502] The *Cour des Comptes* website presents the institution's mission, although the latest available public accounts audit report covered 2015 at the commencement of Validation (*see Requirement 4.9*).[503]

EITI reporting: The 2015 EITI Report includes a description of the budget-making process (preparation, approval and execution) and relevant institutions at both national and provincial levels.[504] The 2016 Contextual EITI Report provides a similar description of the budget-making process at the national and provincial levels, and highlights the creation of Funds for future generations introduced by the 2015 Hydrocarbons Code and the 2018 Mining Code, noting that implementing decrees have not been adopted to establish these Funds.[505]

Stakeholder views

The stakeholders consulted highlighted the consistent gap between growing transparency in extractives revenues and a perceived lack of accountability on expenditures. They noted that while transparency in revenue collection had greatly improved partly due to EITI implementation (*see Impact analysis*), the government's management of natural resource revenues was perceived as being opaque. CSO representatives highlighted in particular the lack of clarity around the internal management of funds by SOEs, including for their operational costs. Several industry representatives raised the prospect of the EITI fulfilling more of a role in monitoring both collection and expenditures of extractive revenues.

Industry representatives noted that the Funds for future generations were based on the concept of sovereign wealth funds that were new to the DRC and called for these Funds to be closely monitored. During the MSG's pre-Validation self-assessment in March 2018, stakeholders noted that EITI reporting could further expand its coverage of the budget-making and execution process. They considered that the EITI could play a role in explaining the concept the single Treasury account, which made it impossible to track extractive revenues to specific expenditures.

http://www.budget.gouv.cd/2012/budget2018/loi_de_finances_2018.pdf; Annexe explicative des recettes du projet de loi des finances 2018, http://www.budget.gouv.cd/2012/budget2018/projet_2018/document_4_annexe_explicative_d_analyse_des_previsions_des_recettes_de_l_exercice_2018.pdf; Annexe explicative d'analyse des prévisions des dépenses du projet de loi des finances 2018, http://www.budget.gouv.cd/2012/budget2018/projet_2018/document_8_projets_annuels_de_performance_pap_des_secteurs_pilotes_pour_l_exercice_2018.pdf; (November 2018), Projets annuels de performance des secteurs pilotes pour l'exercice 2018, http://www.budget.gouv.cd/2012/budget2018/projet_2018/document_8_projets_annuels_de_performance_pap_des_secteurs_pilotes_pour_l_exercice_2018.pdf, accessed in November 2018.

[502] Ministry of Budget, Projet du Budget de l'Etat de l'exercice 2019, http://www.budget.gouv.cd/projet-2019/, accessed in November 2018. The State Department 2018 Fiscal Transparency Report recommended the following: "The Democratic Republic of the Congo's fiscal transparency would be improved by publishing budget documents within a reasonable period of time; specifically identifying allocations to state-owned enterprises in the budget and making audited financial statements publicly available for significant, large state-owned enterprises; making public more detail on audits of the government's special accounts; ensuring greater civilian oversight of military and intelligence budgets; and improving the overall reliability of budget information, specifically for expenditures to support executive offices. Fiscal transparency would further be improved by ensuring the procedures and criteria by which the national government awards contracts and licenses for natural resource extraction are specified in law, regulation, or other public documents and ensuring awarding agencies follow applicable laws and regulations in practice."State Department, 2018 Fiscal Transparency Report, DRC, https://www.state.gov/e/eb/ifd/oma/fiscaltransparency/285996.htm, accessed in October 2018. See also Requirements 2.6 and 4.9.

[503] Cour des Comptes (June 2017), Rapport public annuel, June 2017, http://www.courdescomptes.cd/doc/RAPPORT%20PUBLIC%20EXERICE%202015.pdf, accessed in November 2018.

[504] The report notes that tax collecting agencies have to report monthly to the Ministry of Finance on collected revenues. 2015 EITI Report, pp.60-63.

[505] 2016 Contextual EITI Report, pp.18, 25, 87-88.

Initial assessment

Reporting on revenue management and expenditures is encouraged, but not required by the EITI Standard and progress with this requirement will not have any implications for a country's EITI status. It is encouraging that the DRC provides public information on extractive revenues earmarked for specific funds and the budget-making process through both routine government systems and EITI reporting.

To strengthen implementation and in line with views of stakeholder consulted, the DRC is encouraged to publicly disclose timelier information on expenditures funded by extractives revenues. The DRC, and in particular the Ministry of Budget, is encouraged to publicly disclose information about budget assumptions and projected production, commodity prices and revenue forecasts for the extractive industries.

Table 5. Summary of initial assessment: Revenue management and distribution

EITI provisions	Summary of main findings	International Secretariat's initial assessment of progress with the EITI provisions
Distribution of revenues (#5.1)	The 2015 EITI Report indicates the specific extractives revenues that were recorded in the national budget and those retained by government entities and SOEs. While the report explains that significant extractives revenues were not transferred to the Treasury or recorded in the government budget, the allocation of these revenues retained by government entities and SOEs remains unclear despite significant additional information in the 2016 Supplementary EITI Report on SOEs' retained earnings.	Meaningful
Subnational transfers (#5.2)	The DRC has taken steps, particularly since 2015, to improve EITI reporting of subnational transfers in the mining sector, providing a diagnostic tool and platform for debate for stakeholders. The 2015 EITI Report provides a description of the statutory rules on extractives revenue-sharing with local governments, disclosed discrepancies between the amount calculated in accordance with the revenue-sharing formula and the actual amount transferred for the ex-Katanga Provincial Government, and reconciled Ministry of Finance and ex-Katanga Provincial Government data. However, it does not provide information about subnational transfers in the hydrocarbon sector, nor about the status of transfers to the other subnational government entities (e.g. decentralised territorial entities and Provincial Governments other than ex-Katanga). The 2016 Contextual Report discloses data about actual subnational transfers in 2016 and compared it to the notional value of subnational transfers according to the revenue-sharing formula, albeit not disaggregated by province. It also clarifies the status of subnational transfers in the oil and gas sector.	Meaningful
Information on revenue management and expenditures (#5.3)	Reporting on revenue management and expenditures is encouraged, but not required by the EITI Standard and progress with this requirement will not have any implications for a country's EITI status. It is encouraging that the DRC provides public information on extractive revenues earmarked for specific funds and the budget-making process	

	through both routine government systems and EITI reporting.	

Secretariat's recommendations:

23. In accordance with Requirement 5.1, the DRC is required to explain the allocation of extractive revenues that are not recorded in the national budget, including revenues withheld by tax collecting agencies and SOEs. The DRC is encouraged to collaborate with the Ministry of Finance, the Ministry of Budget and SOEs to disclose the allocation of these revenues and provide references to financial reports where relevant. The DRC EITI is also encouraged to provide more information about the "special accounts" to which the CAMI contributes.
24. In accordance with Requirement 5.2.a, the DRC should ensure that material subnational transfers in the extractive sector are publicly disclosed, highlighting discrepancies between subnational transfers in practice and calculations based on the revenue-sharing formula, disaggregated by province and the DRC is encouraged to work closely with the Provincial Mining Divisions (Divisions Provinciales des Mines), the Ministry of Finance and the DGRAD to publicly disclose timely and comprehensive data about subnational transfers of mining royalties until the change in revenue-sharing in June 2018. In accordance with Requirement 5.2.b, the DRC is encouraged to ensure that any material discretionary or ad-hoc subnational transfers are also disclosed and where possible reconciled.
25. To strengthen implementation and in line with views of stakeholder consulted, the DRC is encouraged to publicly disclose timelier information on expenditures funded by extractives revenues. The DRC, in particular the Ministry of Budget, is encouraged to publicly disclose information about budget assumptions and projected production, commodity prices and revenue forecasts for the extractive industries.

6. Social and economic spending

6.1 Overview

This section provides details on the implementation of the EITI requirements related to social and economic spending (SOE quasi-fiscal expenditures, social expenditures and contribution of the extractive sector to the economy).

6.2 Assessment

Social expenditures (#6.1)

Documentation of progress

Mandatory social expenditures: The 2015 EITI Report confirms that there were contractual obligations to undertake mandatory social expenditures in both oil and gas and mining in 2015.[506] In oil and gas, Art.5.3 of the model PSC requires companies to commit to social expenditures for each oil and gas block both at exploration and production phases, in line with a programme agreed with the Ministry of Hydrocarbons for the benefit of host communities.[507] In mining, the report notes that its review of mining contracts, such as TFM's, revealed provisions requiring social expenditures for the benefit of host communities.[508]

Reforms: The 2018 Mining Code and its implementing decree introduced provisions on mandatory social expenditures. Mining companies are required to spend 0.3% of their annual turnover on projects for community development. The management of these funds is ensured by a specialised body composed of 12 representatives, established by regulation.[509] The Code also requires that companies applying for mining or quarrying rights obtain approval of their Environmental and Social Management Plan (*Plan de Gestion Environnementale et Sociale*, PGES) and Environmental and Social impact study (*Etude d'Impact Environmental et Social*, EIES), commit in writing to comply with their work programme defining corporate social responsibility commitments.

They are required to publish a summary of these documents on their website, as is the Ministry of Mines, within 15 days of application. The Congolese Environment Agency (ACE) and the National Fund for Promotion and Social Services have the authority to monitor the implementation of environmental and social commitments. Art. 27 of the Mining Code requires the Ministry of Mines to sanction companies if notified of their non-compliance with their environmental and social commitments. However, the Mining

[506] 2015 EITI Report, pp.37,47.
[507] 2015 EITI Report, p.37.
[508] 2015 EITI Report, p.47.
[509] The committee is composed as follows: deux représentants des communautés locales ; deux représentants des organisations communautaires de base ; deux représentants du titulaire du droit minier; deux représentants de l'autorité administrative locale; deux représentants du Fonds National de Promotion et Service Social; deux représentants de la Direction de Protection de l'Environnement Minier. Law no. 18/001 of 28 March 2018, op. cit., Art.258bis. Decree no.18/024 of 8 June 2018, op. cit., Art. 414 series.

Code does not clarify the treatment of companies that received their licenses before its enactment.

EITI disclosures: The 2015 EITI Report provide aggregate and disaggregate figures for mandatory and voluntary social payments, in-cash and in-kind, for three oil companies and 22 mining companies.[510] For 2016, the MSG required companies to unilaterally disclose social expenditures with a *de facto* materiality threshold of zero.[511] The 2016 EITI Contextual Report provides figures for companies' mandatory and voluntary social expenditures, aggregated for the cash and in-kind payments, for four oil companies and 18 mining companies.

While it confirms that all social expenditures reported by oil and gas companies were all mandatory, it explains that social payments from only four of the 18 reporting mining companies were mandatory.[512] Disaggregated information, including the identity of the beneficiary, the description of the nature of the payment, the date of payment and the legal basis are available per company on the DRC EITI online portal.[513] The report does not comment on the reasons for other companies' lack of reporting of social payments, nor whether any non-reporting company was required to undertake mandatory social expenditures.

The report notes that improving the traceability of social expenditures has been difficult due to a lack of consensus about their nature and scope.[514] CSOs regularly discussed this issue within the EITI and formulated recommendations that were included in previous EITI Reports, including raising concerns over the low level of disclosures by material companies in both sectors.[515] In 2017, the DRC EITI conducted consultations with stakeholders that led to the creation of a commission consisting of representatives from companies and CSOs in January 2018. [516]

In March 2018, the commission published the DRC EITI's definition of 'social expenditures', as well as a repository listing all the different expenditures that should be categorised as such in the agriculture, education, governance, infrastructure, health and culture sectors.[517] A new reporting template for the disclosure of social expenditures is expected to be implemented for the 2017 EITI Report. Stakeholders met again on 18 September 2018[518] and agreed to the reconciliation of social expenditures was feasible based on company disclosures and reporting from Local Monitoring Committees (*Comités Locaux de Suivi*, CLS),

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[510] These disclosures included the identity of the beneficiary and legal basis. 2015 EITI Report, pp. 90, 163-170.
[511] DRC EITI, 2016 Scoping Report, p.36.
[512] 2016 Contextual EITI Report, pp. 63-64.
[513] DRC EITI, Logiciel T/SL, Données contextuelles par entité, http://itierdc-data.masiavuvu.fr/donnees-itie/, accessed in October 2018.
[514] CSOs had in the past expressed concerns about the type of expenses that companies could report as social expenditures, when these expenses did not seem to directly benefit local communities and included operational costs. See POM, Memo on the 2013 and 2014 EITI Reports, http://congomines.org/system/attachments/assets/000/001/151/original/POM-Mémo_Analyse_Rapports_ITIE_2013_et_2014_vrs_finale___20161606.pdf?1466150991, accessed in October 2018.
[515] See PWYP DRC (December 2017), La coalition PCQVP valide l'enquête sur les dépenses sociales, http://kin24.info/2018/01/09/rdc-coalition-pcqvp-valide-lenquete-depenses-sociales/, accessed in October 2018. OCEAN (December 2017), Contributions OCEAN au cadrage du Rapport ITIE 2016, http://congomines.org/reports/1413-contributions-d-ocean-au-cadrage-rapport-itie-2016, accessed in October 2018.
[516] DRC EITI (January 2018), Minutes from meeting on social expenditures, https://drive.google.com/file/d/13qQ577M8jkHekvimDyDLhp49vGb_1oyM/view, accessed in October 2018.
[517] "Any payment, in kind or in cash, mandatory or voluntary, carried out by a company or other, for the improvement of the living conditions of the community impacted or not by its activities, and which addresses the concerns stakeholders, except payments done for its staff and for itself, Is considered a 'social expenditure'." See EITI DRC (March 2018), Repository of social expenditures, https://drive.google.com/file/d/1mdOS_khrNvusgII3McM8by25SAxm1Gpg/view, accessed in October 2018.
[518] Supplementary 2016 EITI Report, pp.68-69.

together with the public institution expected to be created in line with the new regulations.

Stakeholders also noted that the DRC EITI would be the body responsible for reconciliation, while the ACE, *Le Fonds national de la promotion et du service social* (FNPSS) and the Directorate for the Protection of the Mining Environment (DPEM) would be responsible for monitoring the implementation of social and environmental commitments.[519]

Stakeholder views

Industry and CSO representatives commended the DRC EITI's efforts to improve the traceability of social expenditures. They noted that the EITI had provided a framework to address uncertainties over the definition of 'social expenditures' and public concerns over alleged inflation in the value of reported social expenditures. CSO representatives highlighted the small number of companies reporting social expenditures and questioned whether this was due to companies' poor understanding of the requirements of EITI reporting.

Industry representatives explained that they realised the importance of quantifying their contributions to local communities and to ensure that they were aligned with local needs. Stakeholders noted that the new EITI reporting templates for social expenditures in the 2017 EITI Report was more detailed and included a section on payments to subcontractors for social expenditures. Development partners consulted, however, noted that the debate around social expenditures had remained disconnected from a wider debate among donors on corporate social responsibility.

Stakeholders consulted noted that the new regulatory framework for mining took account of their preoccupations over inadequate oversight of companies' social expenditures. CSO representatives noted that the new Mining Code required all mining companies to disclose details of their mandatory social payments from 2018 onwards. Industry and CSO representatives highlighted the allocation and management of social expenditures remained a concern. They also expressed concerns about the creation of new government institutions for monitoring social and environmental commitments, which could prove a drain on government resources for limited results.

Initial assessment

The International Secretariat's initial assessment is that the DRC has made **meaningful** progress towards meeting this requirement. The DRC's EITI reporting has provided unilateral company disclosures of mandatory and voluntary social expenditures for 22 companies in 2016, disaggregated between cash and in-kind expenditures, with detailed information online about beneficiaries, nature, value and date of payments, and legal basis where applicable. Stakeholders have, however, expressed significant concerns about the comprehensiveness of disclosures of mandatory social expenditures given the low number of reporting companies. The reports covering the years 2015 and 2016 did not comment on the comprehensiveness of disclosures.

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[519] DRC EITI (September 2018), Atelier des parties prenantes sur la procédure de réconciliation, les mécanismes de suivi et de traçabilité des dépenses sociales effectuées par les entreprises extractives, https://drive.google.com/file/d/162BxCbskxYXxLFT5J4FJz2JzQq5mVmUq/view, accessed in October 2018.

The International Secretariat's assessment is that the underlining objective has therefore not been achieved, while recognising that the DRC EITI has taken important steps to improve disclosures in 2017 and 2018, leading to the publication of an agreed definition of mandatory social expenditures and updated EITI reporting templates for social expenditures. Stakeholders have agreed to reconcile mandatory social expenditures in future EITI reporting. The new Mining Code is expected to lead to improvements in the traceability of social expenditures in the mining sector.

In accordance with Requirement 6.1, the DRC is required to disclose material mandatory social expenditures and, where possible, to reconcile them. The DRC is encouraged to pursue its EITI disclosures of voluntary social expenditures. Following legal reforms in the mining sector, the government may wish to explore opportunities for publicly disclosing social and environmental expenditures through routine government systems.

SOE quasi fiscal expenditures (#6.2)

Documentation of progress

The 2015 EITI Report does not discuss quasi-fiscal expenditures, even though it includes them as a revenue stream to be disclosed by SOEs in their reporting templates.[520] The March 2018 pre-Validation self-assessment concluded that the MSG had not agreed to a definition of quasi-fiscal expenditures.

The 2016 Supplementary EITI Report has sought to identify quasi-fiscal expenditures through the analysis of the financial statements of nine SOEs. The report only identifies potential quasi-fiscal expenditures undertaken by SAKIMA, in which the SOE owned five power plants that supplied the local market. The report notes that the national electricity company, SNEL, was supposed to pay SAKIMA for the electricity supplied from the power plants, although no payment was made in practice.[521]

As of 1 October, the Ministry of Budget's website provides summaries of budget execution for the period January 2018-September 2018. These documents show that the DRC made large payments to reimburse domestic and international debts. However, the information is not sufficiently disaggregated to determine whether SOEs made any payments for national debt servicing.[522]

The International Secretariat's understanding is that there are at least three categories of expenditures that could be considered quasi-fiscal in the DRC context, including social payments that were approved by the SOE's board, discretionary payments to fulfil government functions that were not part of the SOE's mandate, and *ad hoc* requests from the government to undertake expenditures for public goods and services without reimbursement from the national budget.

[520] 2015 EITI Report, p.30.
[521] 2016 Supplementary EITI Report, pp.24-25.
[522] See for example Ministry of Budget (October 2018), Budget Execution by title and nature as of 30 September 2018, http://www.budget.gouv.cd/2012/esb2018/esb_sept2018/global/esb_global_par_nature_sous_nature.pdf; Situation à fin september 2018, https://www.budget.gouv.cd/budget-de-letat/execution/exercice-2018/esb-septembre-2018/, accessed in November 2018.

Stakeholder views

Government representatives noted that it was necessary to conduct outreach activities with SOEs to help them identify quasi-fiscal expenditures. Some industry representatives noted that EITI reporting had made it unlikely for the government to request funds from SOEs, given the threat that these *ad hoc* payments would be reported. Other representatives were not aware of any payment that could qualify as quasi-fiscal expenditures. Some CSO representatives argued that it was unlikely that SOEs did not undertake such expenditures, especially given the tense political environment that had prevailed since the end of 2016.

Initial assessment

The International Secretariat's initial assessment is that the DRC has made **inadequate** progress towards meeting this requirement. There is evidence of the DRC EITI taking steps to improve reporting about quasi-fiscal expenditures for 2016, based on a review of SOEs' financial statements. However, there are concerns that SOEs' *ad hoc* expenditures not registered in the national budget could be categorised as quasi-fiscal expenditures, as emphasised by the stakeholders consulted.

In accordance with Requirement 6.2, the DRC is required to disclose quasi-fiscal expenditures where state participation in the extractive sector gives rise to material revenue payments. The DRC should ensure close consultations with SOEs and the Ministry of Portfolio to ensure comprehensive EITI reporting of such expenditures and develop a reporting process with a view to achieving a level of transparency commensurate with other payments and revenue streams, including SOE subsidiaries and joint ventures.

Contribution of the extractive sector to the economy (#6.3)

Documentation of progress

Systematic disclosures: The central bank (BCC) publishes monthly statistics, which include GDP figures for the past seven years.[523] The Ministry of Mines website provides a May 2018 presentation on the mining sector's contribution to the economy and government revenues given .[524] The National Statistics Institute's (INS) latest available report covers 2015 and includes estimates about employment in the extractive industries disaggregated by gender and the contribution of extractives to GDP.[525]

EITI reporting: The 2015 EITI Report provides aggregate figures in absolute and relative terms for the contribution of the extractive industries to the economy.[526]

Share of GDP: The 2015 EITI Report provides the contribution of the extractives industries to total GDP in

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[523] BCC, Statistics bulletin, op. cit., p. 1.
[524] Ministry of Mines, Dona Kampata (May 2018), Exploitation minière pendant les dix dernières années et son impact sur le développement de la RDC, https://www.mines-rdc.cd/fr/index.php/2018/06/25/exploitation-miniere-pendant-les-dix-dernieres-annees-et-son-impact-sur-le-developpement-de-la-rdc/, accessed in November 2018.
[525] INS (2016), Annuaire statistique 2015, http://www.ins-rdc.org/sites/default/files/Annuaire%20statistique%202015%20Web.pdf, pp.282, 510, accessed in November 2018.
[526] 2015 EITI Report, pp. 13, 65-66, 140-143.

absolute and relative terms. Based on data from the BCC, the 2016 Contextual EITI Report provides the same figures for 2016.[527]

Government revenues: The 2015 EITI Report provides the share of extractives in total government revenues, in absolute and relative terms. The 2016 Contextual EITI Report provides the same figures for 2016.[528]

Exports: The 2015 EITI Report provides the share of extractives exports in total exports per commodity in absolute terms, and in absolute and relative terms for aggregate extractives exports.[529] The 2016 Contextual EITI Report includes the value of extractives exports in absolute terms (*see Requirement 3.3*). It also includes the value of exports in USD millions for 2015 and 2016 for crude oil, cassiterite, gold, diamonds, lead, zinc, cobalt and copper.

Employment: The 2015 EITI Report provides aggregate figures based on *Office National de l'Emploi* (ONEM) data, in absolute and relative terms, disaggregated by national and foreign employees. The report includes company reporting of data about employees and subcontractors in the oil sector, disaggregated between national and foreign employees, for which only one company (TOTAL) did not report. It provides companies' reporting of data about employees and subcontractors in the mining sector, disaggregated between national and foreign employees, for which seven companies did not report.[530]

The 2016 EITI Contextual Report provides data from the ONEM, which states that the extractives accounted for 11.07 per cent of total employment in 2016. The ONEM provides disaggregated figures for the employment of national and foreign employees, as well as by gender, in absolute and in relative terms. The report also provides a summary of companies' unilateral disclosures of employment figures per nationality, but not by gender, distinguishing between direct employees and subcontractor employees. The report explains that figures provided by the ONEM and companies' EITI reporting do not cover the same subsectors, and therefore cannot be directly compared.[531]

Location: Both reports list the regions hosting activities related to the copper-cobalt, gold, diamond, 3Ts (tin, tungsten and tantalum) and oil sectors (*see Requirements 3.1 and 3.2*).

Informal activities: The Supplementary 2016 Report provides more detailed information about production and exports in the artisanal and small-scale mining (ASM) sector based on the Ministry of Mines' 'Mining Statistics Bulletin' for 2017 and 2018 (*see Requirement 3.2 and 3.3*), including for diamonds, gold and the 3Ts. It also presents more disaggregated data from provincial authorities in Kasaï Oriential, Katanga, Kongo Central and Nord Kivu for 2016 and 2017. There is no harmonised template for these disclosures, which are disaggregated to different levels. For example, production data for 2016 and 2017 is provided by the *Centre d'Expertise, d'Evaluation et de Certification des substances minerals Précieuses et Semi-précieuses de la RDC* (CEEC) disaggregated by 'comptoir'. Additional data is provided by SAESSCAM, including the number of diggers, traders, cooperatives and digging sites. SAEMAPE also provides data about revenues collected on the sales of trader registrations in Katanga. The report aims to map out available data through government

[527] 2015 EITI Report, p.65; 2016 Contextual EITI Report, p. 66.
[528] 2016 Contextual EITI Report, op. cit., p. 67.
[529] 2015 EITI Report, p.66.
[530] Ibid, pp.66, 140-143.
[531] Ibid, pp.68-69.

entities. It concludes that data was spread out, incomplete and did not necessarily reflect reality. The report recommends a study to assess the actual significance of the ASM sector and to integrate it in the scope of EITI reporting.

The DRC EITI published a scoping report in 2015 on the ASM and forestry sectors, with the intention of extending the scope of reporting to both (*see Requirement 4.1*).[532] The ASM scoping study includes a stakeholder mapping of the informal and semi-informal ASM sector, an overview of the national and local revenue streams stemming from ASM, recommendations to the MSG for the inclusion of ASM in EITI reporting, and reporting templates for entities and individuals (merchants or traders, purchasing houses, processing entities, local and central authorities) that would be required to report.

The forestry report included recommendations for the MSG to add revenue streams, forestry companies, production and export volumes and subnational transfers to provinces in the scope of EITI reporting. Activities related to extending the scope of reporting to both subsectors are included in the 2018-2021 work plan.

Stakeholder views

Based on the MSG's March 2018 pre-Validation self-assessment, stakeholders agreed that the 2015 EITI Report provided satisfactory information about the extractive industries' contribution to the economy. However, they called for more efforts to clarify the ASM sector's contribution given its importance for the country and for disclosure of more detailed data about extractives employment.[533] On ASM, government representatives noted challenges in providing reliable data about the number of miners involved, not least given the seasonal nature of ASM activities.

On the extractive industries' contribution to the economy, some CSO representatives argued that the EITI Report did not provide adequate information and called for more details about the macroeconomic indicators used to determine the sector's contribution to GDP, with the recommendation that economists be associated to EITI implementation in this regard.

On employment data, industry representatives noted challenges in providing data about their employees and their subcontractors' employees. Given seasonal fluctuations in their workforces, they reported employment figures as of the year's end. Some CSO representatives questioned the existence of large discrepancies between data disclosed by companies. All CSO representatives consulted highlighted the importance of considering local content requirements in EITI reporting, especially in light of revisions in the 2018 Mining Code. They explained that, despite large mining activities taking place in the DRC, the sector's contribution to reducing poverty remained very low. They noted that the EITI should provide information on the added value of mineral exploitation and the actual benefits for the host populations, including in terms of employment.

Many stakeholders consulted underlined the potential of the ASM and forestry sectors as livelihood for the

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[532] DRC EITI (July 2015), Scoping report on ASM in the East of the DRC, https://eiti.org/document/scoping-study-on-asm-in-east-of-democratic-republic-of-congo, accessed in October 2018. DRC EITI (November 2015), Scoping report on the forestry sector, http://itierdc.net/wp-content/uploads/2016/03/RAP10.pdf, accessed in October 2018.
[533] DRC EITI (April 2018), Self-assessment exercise, op. cit.

population. Government representatives presented the challenges met by SAESSCAM and CEEC in their work on the ASM sector. They explained that political and even military interference were not uncommon for certain commodities, noting that access to small-scale mining sites proved difficult in certain areas and that companies behind production were often unknown. Government and CSO representatives also noted that much of the ASM sector remained informal, making it more difficult to estimate the contribution of the sector to the economy.

Referring to issues of traceability of minerals, some explained that it was unclear to what extent artisanal miners worked with industrial mining companies, with implicit risks that a share of artisanal production would be accounted for as industrial. On the forestry sector, many CSO representatives acknowledged that revenues collected were low compared to the mining one, but that it was the most opaque sector in the country. As such, they argued in favour of including the forestry sector in the next round of EITI reporting, focusing particularly on beneficial ownership data and licensing.

Initial assessment

The International Secretariat's initial assessment is that the DRC has made **satisfactory** progress towards meeting this requirement. The 2015 Report and the 2016 Contextual EITI Report disclose data on the extractive industries' contribution, in absolute and relative terms, to GDP, government revenues, exports and employment. The reports also list regions where production is concentrated. In the Secretariat's view, the DRC has also made efforts to capture the contribution of the informal sector by taking steps to map out available data on the ASM sector for key commodities and highlighting challenges in ASM data collection and disclosure. Despite these efforts, more work is needed for a comprehensive overview of the informal sector contribution to the economy.

To strengthen implementation, the DRC is encouraged to work with relevant government entities to ensure that information on informal, artisanal and small-scale mining is publicly disclosed in a timely manner. The DRC may wish to explore means of systematically disclosing data on the extractive industries' contribution to the economy through routine government disclosure systems.

Table 6. Summary of initial assessment: Social and economic spending

EITI provisions	Summary of main findings	International Secretariat's initial assessment of progress with the EITI provisions
Social expenditures (#6.1)	The DRC's EITI reporting has provided unilateral company disclosures of mandatory and voluntary social expenditures for 22 companies in 2016, disaggregated between cash and in-kind expenditures, with detailed information online about beneficiaries, nature, value and date of payments, and legal basis where applicable. Stakeholders have however expressed significant concerns about the comprehensiveness of disclosures of mandatory social expenditures given the low number of reporting companies. The reports covering the years 2015 and 2016 did not comment on the comprehensiveness of disclosures. The International Secretariat's assessment is that the underlining objective has therefore not been achieved, while recognising that the DRC EITI has taken important steps to improve disclosures in 2017 and 2018, leading to the publication of an agreed definition of mandatory social expenditures and updated EITI reporting templates for social expenditures. Stakeholders have agreed to reconcile mandatory social expenditures in future EITI reporting. The new Mining Code is expected to lead to improvements in the traceability of social expenditures in the mining sector.	Meaningful
SOE quasi-fiscal expenditures (#6.2)	There is evidence of the DRC EITI taking steps to improve reporting about quasi-fiscal expenditures for 2016, based on a review of SOEs' financial statements. However, there are concerns that SOEs' *ad hoc* expenditures not registered in the national budget could be categorised as quasi-fiscal expenditures, as emphasised by stakeholders consulted.	Inadequate
Contribution of the extractive sector to the economy (#6.3)	The 2015 Report and the 2016 Contextual EITI Report disclose data on the extractive industries' contribution, in absolute and relative terms, to GDP, government revenues, exports and employment. The reports also list regions where production is concentrated. In	Satisfactory

	the Secretariat's view, the DRC has also made efforts to capture the contribution of the informal sector by taking steps to map out available data on the ASM sector for key commodities and highlighting challenges in ASM data collection and disclosure. Despite these efforts, more work is needed for a comprehensive overview of the informal sector contribution to the economy.	

Secretariat's recommendations:

26. In accordance with Requirement 6.1, the DRC is required to disclose material mandatory social expenditures and, where possible, to reconcile them. The DRC is encouraged to pursue its EITI disclosures of voluntary social expenditures. Following legal reforms in the mining sector, the government may wish to explore opportunities for publicly disclosing social and environmental expenditures through routine government systems.
27. In accordance with Requirement 6.2, the DRC is required to disclose quasi-fiscal expenditures where state participation in the extractive sector gives rise to material revenue payments. The DRC should ensure close consultations with SOEs and the Ministry of Portfolio to ensure comprehensive EITI reporting of such expenditures and develop a reporting process with a view to achieving a level of transparency commensurate with other payments and revenue streams, including SOE subsidiaries and joint ventures.
28. To strengthen implementation, the DRC is encouraged to work with relevant government entities to ensure that information on informal, artisanal and small-scale mining is publicly disclosed in a timely manner. The DRC may wish to explore means of systematically disclosing data on the extractive industries' contribution to the economy through routine government disclosure systems.

Part III – Outcomes and Impact

7. Outcomes and Impact

7.1 Overview

This section assesses implementation of the EITI Requirements related to the outcomes and impact of the EITI process.

7.2 Assessment

Public debate (#7.1)

Documentation of progress

Comprehensibility: In addition to launching a searchable database of detailed information per company on the DRC EITI website[534], which has become a reference for researchers and civil society groups, the DRC EITI has published various EITI Reports targeting different user groups, including on artisanal mining.[535] The DRC EITI has published a comprehensive depository of contracts (*see Requirement 2.4*), a link to licensing information (*see Requirement 2.3*) and applicable laws and regulations (*see Requirement 2.1*).

Promotion: In collaboration with GIZ and PWYP, the DRC EITI has led an innovative campaign to increase access to information for different user groups and promote public debate. Recognising that radio remains the primary communication channel in the DRC for reaching the more than 68% of the population below 25 years of age[536], the DRC EITI developed a communication strategy in November 2014[537], which identified different user groups including CSOs, students and academics, parliamentarians, medias, companies and others. For each user group, the Secretariat developed activities in collaboration with partners such as GIZ and PWYP. With support from GIZ, PWYP DRC trained 147 journalists, who produced and broadcast 575 radio shows on the EITI between 2015 and 2016.[538]

Public accessibility: The DRC EITI, GIZ and PWYP undertook a wide range of activities to make EITI information publicly accessible, e.g. through the EITI DRC websites, social media, data portals and radio shows. DRC EITI has also published an open data policy[539] and promoted publication of information by

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[534] "Données ITIE" is an online searchable database of payments broken down by individual payments, and by company and collecting entity http://itierdc-data.masiavuvu.fr/donnees-itie/
[535] EITI DRC Reports https://www.itierdc.net/rapport-itie_2018/
[536] The median age is 16.8, http://www.youthpolicy.org/factsheets/country/congo-kinshasa/
[537] The Communication strategy for 2015, adopted in November 2014 http://www.itierdc.net/wp-content/uploads/2016/01/Plan-Strat%C3%A9gique-de-Communication.pdf
[538] Implication des Radios communautaires dans l'Initiative de Transparence des Industries Extractives, PCQVP, août 2016, http://www.congoforum.be/upldocs/21%20Rapport%20Implication%20des%20radios%20communautaires%20dans%20ITIE.pdf

[539] Open data policy published in December 2017 https://drive.google.com/file/d/1xI4WUpodhRQ97dTHif9gzwAt4nMnMcP-/view

government agencies in a user-friendly format.

<u>*Contribution to the public debate:*</u> The DRC EITI has undertaken a wide range of activities to promote public debate. The most innovative activities involve competitions, games and interactive radio shows, students model United Nations and outreach events ("*Tribune d'Expression Populaire" (TEP)'*), in which local communities can question the local authorities and companies' officials on various issues regarding the management of natural resources. In 2014 and 2015, PWYP organised six TEPs, including three in the province of Congo Central (Kimpese, Matadi and Muanda) and three in Katanga Province (Fungurume, Kolwezi and Lubumbashi).[540]

In 2015, the DRC EITI launched "Trophy Nkita", a student contest for dissertation papers on natural resource governance, with participation from students from three universities (University of Kinshasa, Protestant University of Congo and Catholic University of Congo). Following multiple debates in 2016, the panel of judges awarded Léopold Gerengbo of the Catholic University of Congo, the 2016 Nkita Trophy[541]. In 2017, GIZ organized a student competition based on a Model United Nations, in which students from Kinshasa, Lubumbashi and Bunia engaged in a multi-stakeholder role playing of the EITI (including representatives from government, companies and civil society).

Of particular significance, there is extensive evidence in MSG meeting minutes that public debate in the framework of the EITI has contributed to shaping government policy, such as in the drafting the new Mining Code and in developing implementing regulations (*see Requirement 2.1*). There is extensive evidence of local stakeholders using EITI data to shed light on issues central to the governance of the sector, including highly technical issues such as fiscal modelling of major mining projects,[542] the management of revenues by SOEs (*see Requirement 2.6*), the value-for-money of infrastructures built in the framework of the SICOMINES agreement (*see Requirement 4.3*) [543] or the transfer of shares of extractive revenues at the subnational level (*see Requirement 5.2*).[544] The launch of the local *Coalition for the Governance of Public Companies in the extractive sector* (COGEP) in 2018 is a telling illustration of the way local CSOs have taken forward the issues that arose through the EITI process.[545]

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[540] Implication des Radios communautaires dans l'Initiative de Transparence des Industries Extractives, PCQVP, août 2016, http://www.congoforum.be/upldocs/21%20Rapport%20Implication%20des%20radios%20communautaires%20dans%20ITIE.pdf
[541] EITI DRC November 2016, https://www.itierdc.net/2016/11/25/trophee-nkita-2016-meilleur-memoire-sur-la-bonne-gouvernance-remporte-par-letudiant-vincent-bompethi/
[542] Kibali Goldmines, Twanziga Mining, Banro Corporation, Frontier SA (ERG), KCC and Mutanda Mining.The Carter Center (February 2017), 'Améliorer la gouvernance des revenus des industries minières: leçons transversales des analyses fiscales et parafiscales de 5 projets miniers', https://drive.google.com/file/d/1L31s9IWADpcnH8miJL9wem3NbEUaR8dn/view, accessed in January 2019.
[543] In a press release issued in March 2016, ASADHO called on the government to conduct audits on the implementation of the SICOMINES agreement (*See Requirement 4.3*). The press release highlighted the deterioration of infrastructure projects (roads and hospitals) built under the DRC-China agreement, which was considered to be faster than normal. This followed a previous advocacy campaign where civil society successfully lobbied for greater transparency in the implementation of the SICOMINES agreement. ASADHO (February 2015), Infrastructures du projet Sicomines à Kinshasa: défis de la transparence, de la qualité et du respect des droits humains, http://congomines.org/reports/670-infrastructures-du-projet-sicomines-a-kinshasa-defis-de-la-transparence-de-la-qualite-et-du-respect-des-droits-humains, accessed in January 2019.
[544] CdC-RN (June 2016), Message de plaidoyer à son Excellence Monsieur le Premier Ministre, http://congomines.org/system/attachments/assets/000/001/160/original/Message_de_plaidoyer_du_CDC_au_premier_ministre.pdf?1467985429, accessed in January 2019.
[545] See for example COGEP (June 2018), 'Communiqué de presse sur le règlement du contentieux judiciaire entre KATANGA MINING LIMITED et la GÉCAMINES dans le dossier au sujet de la dissolution KCC', http://congomines.org/system/attachments/assets/000/001/513/original/Communiqu%C3%A9_de_presse__COGEP-14-06-2018_VF.pdf?1538996426, accessed in January 2019.

Stakeholder views

There was general agreement across all stakeholders consulted that the EITI had contributed in promoting a public debate, even though dissemination activities declined significantly in 2017-2018. Many stakeholders highlighted the SICOMINES agreement as an example where the EITI had contributed in informing public debate on a highly sensitive topic that used to be seen as "off-limits" to public debate. Journalists and students' use of EITI data was also highlighted as a key success story, in that they not only analysed data but also raised questions that helped inform the scope of future EITI reporting.

Civil society representatives argued that the DRC EITI could play more of a watchdog role by publishing critical analysis and formulating recommendations rather than just publishing highly-technical reports. They cautioned against the risk of EITI becoming a political tool, which could endanger its credibility. Many CSOs argued that the tenure of Minister Bahati Lukwebo as MSG Chair had become too political and risked endangering the EITI's credibility. They also argued that government officials were generally not interested in public debate, and they reluctantly agreed to discuss findings of EITI Reports following an exhaustive campaign by civil society representatives.

Civil society representatives and secretariat staff explained that media coverage of EITI was a function of available funding. The GIZ project remained a rare source of funding for trainings of journalists in local community radios, media campaigns and dissemination activities. Industry representatives explained that the EITI's outreach on radio shows had helped ensure that critiques from CSOs was based on data and facts, rather than conspiracy theories and unsubstantiated allegations.

Some journalists considered that early EITI Reports were too technical and explained that they did not understand the concrete nature of the process. They expressed frustrations with lack of information about how extractives revenues were being allocated and spent. They also explained that EITI Reports were still missing key data points such as certain commodity prices that were needed as context for current EITI figures. All journalists consulted lamented the MSG's lack of recognition of the key role played by the media in mediating between the EITI and the general public, while expressing frustration that the media was not directly represented on the MSG.

Development partners explained that EITI Reports were usually the only source of information with independently verified figures. They highlighted that SOE governance remained a sensitive topic. All stakeholders consulted agreed that there was a need to ensure that CSOs had the capacities to analyse and interpret quantitative data disclosed by government and industry.

Initial assessment

The International Secretariat's initial assessment is that the DRC has made **satisfactory** progress in meeting this requirement, with efforts to go **beyond** the minimum requirements. EITI Reports and thematic reports are comprehensible and actively promoted using innovative approaches of online publication, radio shows, students' competitions and townhall debates. EITI data is publicly accessible and has tangibly contributed to public debate and in shaping government policies and regulations on the extractive industries. In the Secretariat's view, the DRC EITI, with support from partners such as GIZ, has made efforts to go beyond the minimum requirements by developing interactive radio shows, model games for students and disseminations campaigns targeting key user groups, including local communities, parliamentarians, students and journalists.

To strengthen implementation and building on the online portals already established, the MSG is encouraged to promote data accessibility through targeted and thematic reporting of EITI data and to explore innovative ways of integrating and facilitating access to the growing volumes of EITI data being systematically disclosed through routine government and company systems. The MSG might also wish to strengthen links with the media and journalism community to further contribute to public debate. Stakeholders are encouraged to use EITI data to run fiscal models, either to estimate future government revenues, or to assess whether companies paid what they were supposed to pay over the life-cycle of their projects.

Data Accessibility (#7.2)

Documentation of progress

All EITI Reports are published in machine-readable format on the DRC EITI website. The 2016 Contextual EITI Report, the 2016 Supplementary EITI Report and the 2017-June 2018 APR are also available in Word format, making it easier for stakeholders to reuse data and develop their own dissemination tools. Both contextual and financial data is available for download in open data format from the DRC EITI data portal, using the T/SL software, for the years 2015-2016.[546] At the start of Validation, summary data files were available for the years 2007-2015.[547]

The 2015 EITI Report and the reports covering the year 2016 do not provide an explanation on how revenue streams correspond to the referencing system used by the government, such as the quarterly report published by the Ministry of Finance (*see Requirement 4.1*). However, the 2015 EITI Report compares EITI data for nine revenue streams with Ministry of Finance data (collected by the CTR), showing significant discrepancies both in the oil and mining sectors.[548] The report does not provide explanations about these differences. The 2018-2021 work plan includes activities aimed at strengthening the capacity of auditing and parliamentary stakeholders to use EITI data, and to strengthen the capacity of public and private actors to implement reforms in the sector, building on EITI reporting (*see Requirement 1.5*).[549]

Stakeholder views

Some CSO representatives praised efforts by the DRC EITI national secretariat to make data available in open format on the DRC EITI website. Despite technical difficulties with uploading and reconciling data through the T/SL software (*see Requirement 4.1*), CSO representatives noted that the portal was accessible and made data easier to analyse. Some government representatives expressed concerns about publishing data through government systems in open data format, arguing that data could easily be tampered with. CSO representatives noted that routine disclosures required a change in mentality and organisational culture, to which EITI reporting was incrementally contributing.

The DRC EITI held two workshops with EITI focal points within government agencies on how to improve systematic disclosures through government systems in 2018 (*see Requirement 4.1*). Consultations were

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[546] DRC EITI, Portail de données ITIE, http://itierdc-data.masiavuvu.fr/donnees-itie/, accessed in December 2018.
[547] EITI, Summary data files, DRC, https://drive.google.com/drive/folders/0B9Bl74fkjArzd2ZKWDVmUDNramc, accessed in December 2018.
[548] IBP, IPR/IER, Impôt mobilier, DTI, Redevance minière, Droits superficiaires, Marges distribuables, Royalties pétrolières et dividendes pétrolières. 2015 EITI Report, p. 88.
[549] DRC EITI (July 2018), June 2018-June 2021 work plan, op. cit.

conducted with key agencies following these workshops. CTR representatives explained that data from the tax collecting agencies and the Ministry of Finance differed from EITI data for two main reasons: unlike EITI data, it covered subcontractors active in the mining and oil and gas sectors; it also only took into consideration data that reached the Treasury, not showing revenues collected and withheld by government entities, such as SOEs. Government and CSO representatives called for more efforts to improve use of data by stakeholders. This would require training on how to use financial data, including financial modelling of specific projects (*see Requirement 2.1*).

Initial assessment

Requirement 7.2 encourages the EITI implementing countries to make EITI Reports accessible in open data formats. Such efforts are encouraged but not required, and are not assessed in determining compliance with the EITI Standard. The International Secretariat commends the efforts by the DRC EITI to make both contextual and financial data available in open format on the DRC EITI website, including through its open data portal, as well as compare EITI data with data from the Ministry of Finance.

To strengthen implementation, the DRC EITI is encouraged to lead efforts on increasing the accessibility and use of extractive sector data by stakeholders through capacity-building activities, including at the local level and in collaboration with the media. In partnership with the DRC EITI national secretariat, government agencies and companies are also encouraged to provide data about their activities and the sector through their own systems in an open data format.

Lessons Learned and follow-up on recommendations (#7.3)

Documentation of progress

The 2015 EITI Report included 12 new recommendations from the IA (*see Requirement 4.9*), including one on ensuring that previous recommendations were implemented. The report also assessed the level of progress against 22 recommendations from previous EITI Reports, noting that two had been fully implemented, one had not been addressed and the others partly addressed.[550] The 2016 Contextual EITI Report recommended that the Prime Minister adopt a decree setting up the National Equalisation Fund and Fund for Future Generations. The report also noted that some reforms arising from the Hydrocarbons Code had not yet been implemented and commented on the renewal of the MIOC, TEIKOKU and CHEVRON-ODS license. The report recommends that the Prime Minister publish the implementing decree of the 2018 Mining Code and adopts decrees for the creation of the National Equalisation Fund and the Fund for Future Generations. The implementing decree was made available on the DRC EITI in July 2018. The 2017 annual progress report shows that two-thirds of 17 recommendations had been implemented or were being carried out.[551]

<u>Follow-up</u>: Following the MSG's March 2018 pre-Validation self-assessment, stakeholders concluded that the DRC EITI had systematically taken steps to implement recommendations from EITI Reports, but that a formalised mechanism to monitor progress had not yet been established. However, there is evidence that the DRC EITI regularly assessed progress against recommendations through its annual progress report (*see*

[550] 2015 EITI Report, pp. 93-121.
[551] Ibid, p.22.

Requirement 7.4). There is also clear evidence of a consistent mechanism for follow-up on recommendations from EITI Reports by the DRC EITI national secretariat, which undertakes follow-up under a mandate from the MSG.

The DRC EITI secretariat organised at least one workshop in 2016 and one in 2018 to assess follow-up on recommendations and implementation of reforms, with a broad group of stakeholders beyond the MSG.[552] More significantly, review of the activities led by the national secretariat over the period 2014-2018 clearly shows that concrete actions have been taken to follow-up on recommendations regarding areas of key interest for stakeholders.

For example, the DRC EITI secretariat, under mandate from the MSG, commissioned targeted work on SOEs to clarify transactions around the sale of the state's assets (*see Requirements 2.6 and 4.5*) and led discussions between CSOs and companies to improve the traceability of social expenditures (*see Requirement 6.1*).[553] There is strong evidence that this follow-up led to more debate about the sector and contributed to regulatory reforms (*see Requirement 7.4*).

<u>*Discrepancies*</u>: The 2015 EITI Report presented the results of reconciliation, including reasons behind unresolved discrepancies.[554] There is evidence that the MSG regularly investigates discrepancies in close collaboration between the national secretariat and reporting government entities. Evidence points to particularly important work between the national secretariat, the IGF and tax collecting agencies, with efforts to improve the reliability of data and resolve certain discrepancies (*see Requirement 4.9*). Copies of all the letters sent to reporting entities by the Chair of the MSG or other high-level officials about unavailable data are available on the DRC EITI website.[555]

They illustrate the importance of the government's commitment to investigating discrepancies and improving disclosures. In preparation for the 2016 EITI Report, investigation of large discrepancies between GÉCAMINES and METALKOL disclosures about sale of assets totalling USD170 million in 2016.[556]

Stakeholder views

Government and industry representatives deemed that the DRC EITI systematically followed-up on recommendations from EITI reporting, especially for improving disclosures from reporting entities, and despite difficult circumstances and limited means. Some CSO representatives noted that the wider CSO constituency regularly made recommendations to improve EITI reporting, but that they had not been systematically taken into consideration, unlike recommendations formulated by IAs.

Some CSO representatives lamented the fact that the MSG's own recommendations for improving EITI reporting were seldom followed-up on. Donors noted that there was in general limited follow-up on EITI

[552] See DRC EITI (March 2016), Atelier sur le suivi des recommandations de l'Administrateur Indépendant et sur la compréhension du principe 4 de l'ITIE et du nouveau processus de Validation, https://drive.google.com/file/d/0B1C1Aj5TqAgvM2phMHVLaVl6WUk/view, accessed in December 2018.
[553] The DRC EITI website provides a comprehensive list of the activities led by the DRC EITI and the wider group of EITI stakeholders, categorised by year. See DRC EITI, Bibliography, 2014-2018, https://www.itierdc.net/bibliographie/.
[554] 2015 EITI Report, pp.78-82.
[555] See DRC EITI, Bibliography, op. cit., Autres documents sections.
[556] See for example the following article at, http://www.adiac-congo.com/content/industries-extractives-la-societe-metalkol-accusee-de-bloquer-la-publication-du-rapport-itie

recommendations, partly due to a lack of a formalised mechanism for follow-up other than the national secretariat's work.

All stakeholders consulted agreed, however, that follow-up on EITI recommendations had improved the quality of EITI data and increased its credibility, as well as contributed to regulatory reform (*see stakeholder views under Requirement 7.4*). All stakeholders consulted acknowledged the key role played by DRC EITI and the wider constituencies by including transparency language in the new Mining Code. They described in particular the strong engagement of CSOs in the drafting process of the implementing decree. Donors highlighted the government's support for the EITI's multi-stakeholder model throughout the regulatory revision process, which had yielded a more consultative approach.

Initial assessment

The International Secretariat's initial assessment is that the DRC has made **satisfactory** progress in meeting this requirement. There is strong evidence that the DRC EITI has taken steps to act upon lessons learned and considered recommendations resulting from EITI reporting, particularly on areas of key interests for stakeholders, such as contract transparency, state participation in the extractives and beneficial ownership.

The MSG has also sought to identify, investigate and address the causes of discrepancies in EITI reconciliation, building on strong ties between the DRC EITI and focal points within reporting entities and auditing institutions, as well as commitment from high-level officials to improve disclosures. As documented elsewhere in this initial assessment, follow-up on recommendations has contributed to improving debate on the sector and tangible reforms in both regulations and government systems.

To strengthen implementation, the DRC EITI is encouraged to ensure that recommendations from all stakeholders are taken into consideration and implemented. The DRC EITI may also wish to seek innovative ways of documenting and communicating the impact of follow-up on recommendations and investigation of discrepancies on the management of the extractive industries.

Outcomes and impact of implementation (#7.4)

Documentation of progress

The annual progress report for the period January 2017-June 2018 was discussed by stakeholders on 21 June 2018 at a workshop in Lubumbashi, approved by the MSG on 25 July 2018 and published on the DRC EITI website.[557] It documents the outcomes of EITI implementation and the MSG's efforts to move past the internal governance crisis that hampered implementation for most of 2017 (*see Requirement 1.4*), including a summary of activities undertaken in the previous year.[558]

[557] DRC EITI (July 2018), MSG meeting minutes, 25 July 2018, op. cit.; DRC EITI (July 2018), 2017-June 2018 Progress Report, https://drive.google.com/file/d/1Mp626dmUOpguNFXldaL1jbqaGOyT4P0v/view, accessed in December 2018.
[558] Ibid, pp.2-3.

The annual progress report builds on conclusions from the MSG's March 2018 pre-Validation self-assessment to assess progress made with meeting each EITI Requirement. It compares them with a new assessment by stakeholders in June 2018, with conclusions pointing to progress against several Requirements, including the legal and fiscal regime (Requirement 2.1), state participation (2.6) and subnational transfers (5.2).[559] The annual progress report also provides a summary of progress against meeting recommendations from previous EITI Reports. It notes that a workshop was held on 23 June 2018 in Lubumbashi to assess progress in detail. The summary shows that two-thirds of 17 recommendations had been implemented or were being carried out.[560]

The annual progress report also assesses progress against work plan objectives for the period under review, distinguishing between activities carried out, activities that were planned but not carried out, and those that were carried out without having been included in the work plan. For the first time, the 2017 annual progress report provides a detailed narrative account of the impact of implementation through specific activities.

Themes covered included project-level reporting, social expenditures, state participation and the sale of the state's assets, open data, beneficial ownership, contract transparency, license registries and production and export data. It shows that EITI implementation significantly contributed to identifying discrepancies between the regulatory framework and actual practice, while also contributing to public debates and a better understanding of the sector.[561]

The annual progress report includes examples of activities led by stakeholders, especially CSOs. Examples include debates organised with local communities in Kongo Central about the renewal of the PERENCO production license (*see Requirement 2.2*) and oil production levels, as well as broadcasts organised on community radios about extractives governance. The DRC EITI website includes a list of all the documents and ports of activities undertaken by stakeholders, as referenced in the annual progress report.[562]

The annual progress report provides a list of strengths and weaknesses of EITI implementation. The former include regular assessments of EITI implementation by stakeholders and use of EITI data by CSOs to generate debate about the sector. The latter include irregular MSG meetings and delays in implementing the work plan due to irregular disbursements of government funding.[563]

The annual progress report includes a table on implementation costs, showing that no funding was provided by donors for the period under review. Approximately USD1.9 million was received from the government. The annual progress report also presents the composition of the MSG for that period, highlighting changes in composition of the government constituency as a consequence of three major government changes, as

[559] Ibid, pp. 19-22.
[560] Ibid, p.22.
[561] Ibid, pp.3-7.
[562] Ibid, p.19. See for example DRC EITI (July 2018), Rapports d'activités des Parties Prenantes en 2018, https://drive.google.com/file/d/1Kp3LAdxGPu61odakBglbrmuEH2FkCE8A/view; DRC EITI (July 2018), Rapports d'activités des parties prenantes en 2017, https://drive.google.com/file/d/1W1znkBkUwR4NA230Z_-4fv5ZYsaUeKUR/view; DRC EITI (July 2018), Rapports de dissémination, https://drive.google.com/file/d/1BRMSGt1pedgZuu3aQT4ZxAZ3pwd4_MWG/view, accessed in December 2018.
[563] Ibid, p.23.

well as attendance at MSG meetings.[564]

In addition to annual progress reports, there is evidence that stakeholders regularly assess the impact of EITI implementation. Examples include a 2015 assessment by PWYP on the impact of the EITI in Kongo Central, Katanga and Kinshasa, as well a 2016 assessment of CSOs' contribution after 10 years of EITI implementation.[565] These assessments point out challenges related to the dissemination of EITI data nationwide and to ensuring that the EITI process remains inclusive, rather than a process led by and meant for so-called "elites". GIZ also published an impact evaluation study in September 2016[566], which included a case study on EITI's impact in the DRC.

Stakeholder views

Government and industry representatives consulted noted that all stakeholders were given the opportunity to comment extensively on the draft annual progress report and that comments had been taken into consideration. Some CSO representatives noted that the standard format used for annual progress reports did not fully capture the contribution of all stakeholders. They noted, however, that stakeholders regularly assessed EITI implementation and devised strategies to improve its impact.

All stakeholders consulted had strong views about the potential impact of a decade of EITI implementation (*see also Impact analysis*). Firstly, there was consensus that the EITI had improved relations between stakeholders. Stakeholders from government, industry and CSOs consulted highlighted that multi-stakeholder dialogue through the EITI process had built trust between stakeholders and contributed to harmonising viewpoints about the sector. Industry representatives noted that the relationship between companies and CSOs used to be very tense and had markedly improved thanks to the EITI. As a consequence, the EITI provided a forum where previously taboo topics could be discussed based on factual evidence rather than allegations (see *Requirement 7.1*).

Salient examples included the SICOMINES agreement (*see Requirement 4.3*), the financial relation between the State and SOEs (*see Requirement 2.6*), as well as the content of major contracts (*see Requirement 2.4*). Industry representatives also noted that the perception of companies operating in the mining sector had thereby improved, with constructive criticism formulated by CSOs.

Government and CSO representatives believed that the launch of similar multi-stakeholder structures at the provincial level and in other sectors illustrated the success of the EITI MSG model.[567] The process for revising the Mining Code also emphasised the importance of tripartite cooperation between government, industry and CSOs.

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[564] Ibid, pp.23-26.
[565] See PWYP DRC (August 2015), L'impact de l'ITIE en République Démocratique du Congo: «Neuf ans après, à quoi l'ITIE a-t-elle servi? », https://drive.google.com/file/d/1NgHExKD39z3IKU8dxsSsnrLFIanoIqWx/view; SARW (November 2016), 10 ans après sa mise en œuvre en RDC : l'ITIE possède un rapport détaillé de ses activités, https://drive.google.com/file/d/1Fq1VPDaNfv4I7I_wZxqmUTQiCcW92p4h/view, accessed in December 2018.
[566] Assessing the Effectiveness and Impact of the Extractive Industries Transparency Initiative (EITI), Published by GIZ, September 2016, https://eiti.org/sites/default/files/documents/eiti_impact_study_giz_2016.pdf

[567] Several stakeholders also mentioned Investissement Durable au Katanga (IDAK). See Chamber of Mines, FEC (2015), Responsabilité sociétale des entreprises du secteur minier industriel dans la région du Katanga, http://congomines.org/system/attachments/assets/000/001/185/original/Guide-Katangais-sur-la-RSE-Edition-2015.pdf?1473840019.

Secondly, representatives from all constituencies agreed that the EITI process had led to strengthening the capacities of government entities, companies and CSOs in addressing issues related to extractives governance. Government , CSO representatives and donors highlighted the role of EITI reporting in informing debates about the sector at the Council of Ministers and within parliamentary commissions, despite a decrease in parliamentary discussions in the lead-up to presidential elections. They noted that the government had been very receptive to the EITI process given the involvement of five Ministers, with the transparency agenda prioritised at the highest political level.

Similarly, government and CSO representatives acknowledged the strong impact the EITI had on changing the culture around reporting within government agencies, building institutional responsibility. They noted that EITI implementation had prompted these agencies to reveal their limitations in terms of revenue management and thereby question their functioning. This in turn led these entities to strengthen cross-agency collaboration, to learn from the reconciliation process to conduct fiscal checks, as well as improve the reliability of their data through recommendations from the IGF (*see Requirement 4.9*).

Stakeholders agreed that the EITI had heavily influenced routine disclosures of company payments by the Ministry of Finance (*see Requirement 4.1*) and of production and export data by the CTCPM (*see Requirements 3.2 and 3.3*). The discussion around mainstreaming the EITI process in government and corporate systems had also prompted the Ministry of Finance to launch a project to establish a data warehouse for tax collecting agencies (*see Requirement 4.1*).

Similarly, government and industry representatives noted that companies, including Chinese ones, used to not see an interest in participation in EITI reporting. EITI implementation had led them to strengthen their internal archiving and documentation practices. In addition to improving the perception of companies operating in the sector, some industry representatives explained that the probability of the government requesting ad-hoc, off the records payments from companies had decreased given that companies could "threaten" to report these payments through the EITI.

CSOs and donors consulted also described the emergence of specialised CSOs, with strong expertise and interest in the governance of natural resources, through the EITI process. Platforms had been established at the provincial level and they have created a solid network of organisations. Several lauded the support to capacity-building of local CSOs led by the Carter Centre and NRGI (*see Requirement 1.3*), mentioning the example of COGEP's nascent work on SOE transparency.

They noted that the fact that the EITI Standard followed the value chain helped CSOs know which areas to focus on and develop their skills. The fact that CSOs were empowered by the EITI led in turn to CSOs strongly contributing to the relevance and impact of implementation. CSOs also highlighted the participation of an increasing number of women in debates about natural resource governance as a key impact of the EITI. They praised the involvement of women, especially at the local level, and the commitment to develop their expertise, such as the FEJE network (*see Requirement 1.3*).

Thirdly, all stakeholders consulted highlighted the contribution of EITI implementation to regulatory reform, as well as monitoring the implementation of the legal and fiscal framework. This was closely linked to strengthening of the capacities of all constituencies described above. All stakeholders consulted cited the instrumental role of EITI stakeholders in reviewing the Mining Code in 2018, thereby including provisions mirroring language in the EITI Standard (such as on contract transparency and beneficial ownership disclosures) and general provisions about transparency (*see Requirement 2.1*).

EITI stakeholders were also pushing for more binding and innovative mechanisms to be put in place through the revision of the Mining and Hydrocarbons Codes, including on provisions regarding the monitoring of disbursements of social payments (*see Requirement 6.1*). Government representatives also noted the contribution of EITI reporting on shedding light on the fragmentation of the fiscal regime, which informed government-led fiscal reform (*see Requirement 2.1*), as well as gaps in the application of the legal and regulatory framework, such as on the distribution of revenues at the subnational level (*see Requirements 4.6 and 5.2*). Finally, government representatives argued that EITI reporting played a key role in increasing revenues to the Treasury, by highlighting revenues withheld by SOEs (*see Requirement 4.5*).

Despite consensus that the EITI process had had a positive and significant impact on transparency, most stakeholders consulted considered that the impact on the broader governance and management of the extractive industries had been limited. Industry and CSO representatives in particular argued that accountability in the sector could not be strengthened as long as the government did not have to report on the allocation of revenues and expenditures. Industry representatives called for the DRC EITI to take on the role of a watchdog for the sector, thereby becoming less exposed to political influence.

Several industry and CSO representatives argued that, even after a decade of implementation, the EITI remained a process led by and destined for elites and intellectuals. Looking at the broader picture, CSO representatives questioned the value of EITI implementation as long as extractives revenues failed to reach and benefit communities. Government and CSO representatives also lamented the fact that the scope of EITI reporting had not yet been extended to the ASM and forestry sectors, given the significance of these sectors for the economy and livelihoods of millions. Similarly, they noted that reporting on the environmental impact of the sector was crucial, including in terms of waste management issues. CSO representatives called for EITI reporting to be much more targeted by region, focusing for example on one commodity at the time (*see Requirement 7.1*). Some donors highlighted the need to better define the overarching objective of EITI implementation, including the meaning of the term “benefitting the population”.

Donors noted the limited impact of the EITI process in light of the level of human and financial resources invested to date. Some questioned the national secretariat’s high operational costs, including frequent travels by many staff members (*see Requirement 1.4*). They also highlighted limitations related to the EITI’s role in a wider debate about transparency and governance in the country in general. One noted that there was sometimes the impression of a disconnect between forums where all actors seemed to be “playing by the rules of transparency” and cooperating, on the one hand, and another world where “dirty deals” were settled, on the other hand.

Initial assessment

The International Secretariat’s initial assessment is that the DRC has made **satisfactory** progress in meeting this requirement. The 2017 annual progress report provides a detailed narrative account of the impact of EITI implementation in the period under review, highlighting its contribution to public debates and reforms in key areas such as state participation in the extractives and contract transparency. The annual progress report documents in detail the activities led by the MSG and EITI stakeholders. It includes an assessment of progress in meeting individual EITI Requirements, a summary of the progress made in implementing recommendations in previous EITI Reports, as well as an assessment of performance against work plan objectives.

Preparation of the 2017 annual progress report was subject to broad consultations with all constituencies and was approved by the MSG. In addition to the DRC EITI annual progress reports, stakeholders also regularly assess the impact of EITI implementation through other channels. There was consensus among stakeholders consulted that the EITI had significantly built trust between stakeholders, strengthened their capacity to monitor the extractive industries and contributed to substantial reforms. While there is strong evidence of the EITI's impact on transparency of the sector, stakeholders argued that its impact on improving the governance of the sector remained limited.

To strengthen implementation, the DRC is encouraged to conduct regular impact evaluations with a view of assessing whether underlining objectives of EITI implementation have been achieved, including whether improved transparency contributed to strengthening the accountability of both government agencies and companies.

Table 7. Summary of initial assessment: Outcomes and impact

EITI provisions	Summary of main findings	Validator's recommendation on compliance with the EITI provisions
Public debate (#7.1)	EITI Reports and thematic reports are comprehensible and actively promoted using innovative approaches of online publication, radio shows, students' competitions and townhall debates. EITI data is publicly accessible and has tangibly contributed to public debate and in shaping government policies and regulations on the extractive industries. In the Secretariat's view, the DRC EITI, with support from partners such as GIZ, has made efforts to go beyond the minimum requirements by developing interactive radio shows, model games for students and disseminations campaigns targeting key user groups, including local communities, parliamentarians, students and journalists.	Satisfactory (beyond)
Data accessibility (#7.2)	Requirement 7.2 encourages the EITI implementing countries to make EITI Reports accessible in open data formats. Such efforts are encouraged but not required, and they are not assessed in determining compliance with the EITI Standard. The International Secretariat commends the efforts by the DRC EITI to make both contextual and financial data available in open format on the DRC EITI website, including through its open data portal, as well as to compare EITI data with data from the Ministry of Finance.	
Lessons learned and follow up on recommendations (7.3)	There is strong evidence that the DRC EITI has taken steps to act upon lessons learned and considered recommendations resulting from EITI reporting, particularly on areas of key interests for stakeholders such as contract transparency, state participation in the extractives and beneficial ownership. The MSG has also sought to identify, investigate and address the causes of discrepancies in EITI reconciliation, building on strong ties between the DRC EITI and focal points within reporting entities and auditing institutions, as well as commitment from high-level officials to improve disclosures. As documented elsewhere in this initial assessment, follow-up on recommendations has contributed to improving the debate on the sector and to tangible reforms in both regulatory terms and in government systems.	Satisfactory
Outcomes and impact of implementation (#7.4)	The 2017 annual progress report provides a detailed narrative account of the impact of EITI implementation in the period under review, highlighting its contribution to public debates and reforms in key areas such as state participation in the extractives and in contract	Satisfactory

	transparency. The annual progress report documents in detail the activities led by the MSG and EITI stakeholders. It includes an assessment of progress in meeting individual EITI Requirements, a summary of the progress made in implementing recommendations in previous EITI Reports, as well as an assessment of performance against work plan objectives. Preparation of the 2017 annual progress report was subject to broad consultations with all constituencies and was approved by the MSG. In addition to the DRC EITI annual progress reports, stakeholders also regularly assess the impact of EITI implementation through other channels. There was consensus among the stakeholders consulted that the EITI had significantly built trust between stakeholders, strengthened their capacity to monitor the extractive industries and contributed to substantial reforms. While there is strong evidence of the EITI's impact on transparency in the sector, stakeholders argued that its impact on improving the governance of the sector remained limited.	

Secretariat's recommendations:

29. To strengthen implementation and building on the online portals already established, the MSG is encouraged to promote data accessibility through targeted and thematic reporting of EITI data and to explore innovative ways of integrating and facilitating access to the growing volumes of EITI data being systematically disclosed through routine government and company systems. The MSG might also wish to strengthen links with the media and journalism community in order to further contribute to the public debate. Stakeholders are encouraged to use EITI data to run fiscal models, either to estimate future government revenues or to assess whether companies paid what they were supposed to pay over the life-cycle of their projects.
30. To strengthen implementation, the DRC EITI is encouraged to lead efforts on increasing the accessibility and use of extractive sector data by stakeholders through capacity-building activities, including at the local level and in collaboration with the media. In partnership with the DRC EITI national secretariat, government agencies and companies are also encouraged to provide data about their activities and the sector through their own systems in an open data format.
31. To strengthen implementation, the DRC EITI is encouraged to ensure that recommendations from all stakeholders are taken into consideration and implemented. The DRC EITI may also wish to seek innovative ways of documenting and communicating the impact of follow-up on recommendations and investigation of discrepancies on the management of the extractive industries.
32. To strengthen implementation, the DRC is encouraged to conduct regular impact evaluations with a view of assessing whether underlining objectives of EITI implementation have been achieved, including whether improved transparency contributed to strengthening the accountability of both government agencies and companies.

8. Impact analysis (not to be considered in assessing compliance with the EITI provisions)

The EITI Standard is particularly relevant to the DRC's extractive industries. Requirements for multi-stakeholder dialogue on extractives governance are vitally important in an industry that has traditionally been closed to civil society oversight. The need to clarify financial flows managed by state-owned enterprises go to the very core of the legacy of opacity in the country's extractive industries. Contract transparency is particularly relevant to a sector where bespoke contracts have historically offered differing terms to investors. The need to clarify barter and infrastructure arrangements is of great significance to a sector where billion-dollar non-monetary agreements have been concluded. In a country where extractives amounted to 98 per cent of exports and 18 per cent of GDP in 2016, the question of how revenues are distributed at the local level is key.

Over a decade of EITI implementation shows that there is demand for multi-stakeholder oversight in the governance of the extractive industries. All stakeholders consulted during Validation expressed strong views about the EITI's potential impacts in the DRC. While opinions differed around the nature and extent of its impact, there was broad consensus around the key attributes of EITI implementation in the DRC – a dynamic combination of resilient engagement from all constituencies, in particular civil society, innovative reporting on key issues related to the sector's management and robust promotion to foster debate about extractives governance. The DRC EITI website, alongside the Carter Center's CongoMines website, extensively document this debate, and as such constitutes key tools for understanding the intricacies and challenges of the extractive industries.

The screenshot of late 2018 depicted through this initial assessment will not do justice to the work done by local stakeholders to improve the governance of the sector through the EITI, nor will it comprehensively reflect its shortcomings. However, the EITI's impact can be felt and documented on at least three levels.

The EITI contributed to building trust between different stakeholders that have not traditionally worked as a collective. The multi-stakeholder platform provided by the EITI helped to harmonise viewpoints and improve the reputation of both government agencies and companies, allowing civil society organisations to provide constructive criticism about the management of the sector.

The EITI reporting has created a lasting network between the MSG, the broader constituencies, the national secretariat and reporting entities, fostering interagency collaboration and exchanges between the country's different regions. Through this forum, previously off-limit topics were discussed for the first time. In addition to the much-discussed SICOMINES infrastructure agreement, the most recent example of robust discussion on sensitive topics is that related to the financial relationship between the state and SOEs. For the first time in 2018, civil society organisations tabled the issue for discussion at an MSG meeting.

The review of nine SOEs financial statements, published in September 2018, led the Ministry of Portfolio, the SOEs' line Ministry, to require the public disclosure of SOEs audited financial statements. Although scrutiny of SOEs' management of revenues was primarily initiated by international NGOs, such as Global Witness and the Carter Center, the promotion of public debate through the EITI reinforced local CSOs' desire to specialise in the area, leading to the formation of the *Coalition pour la Gouvernance des Entreprises Publiques du secteur extractif* (COGEP) to tackle the issue on their own terms.

The DRC EITI also represents an authoritative voice on beneficial ownership disclosures, in a context where discussing the link between politically-exposed persons and natural resources is seen as too sensitive to broach in public. Stakeholders have not only used the EITI to build capacity and promote debate on the topic, but have also succeeded in including beneficial ownership transparency provisions in the 2018 Mining Code and suggested related provisions in the oil and gas, mining and forestry sectors in a draft Decree.

Secondly, the EITI process contributed to building the capacity of each constituency to understand and monitor the sector. It had an impact on the organisational culture of government agencies and companies, changing the way they report on their activities, payments and revenues. The Ministry of Mines, CTCPM and CAMI websites are leading the way on systematically disclosing licensing, production and export data as well as extractives contracts. Over the past 18 months, the Ministry of Mines' website underwent impressive changes, drawing from the example of the Mongolia EITI online portal, to present more user-friendly and comprehensive data about operators, license awards and mining projects.

The DRC EITI website pioneered such efforts, providing an online open data portal for government agencies and companies to report revenues and payments disclosed under the EITI. Salient accounts from representatives of government agencies noted that the EITI reconciliation process and IGF auditing had strengthened their internal control systems, demonstrating that incremental change is possible within bureaucracies. All stakeholders consulted commended the emergence of a specialised group of CSOs, which has taken ownership of the EITI process.

Substantial technical work includes, for example, analysis by the NGO CdC-RN in the Ituri province of effective transfers of royalties to provinces and the governance of the SOKIMO SOE. The participation in EITI implementation of women through associations, such as FEJE and through one CSO and one industry representative on the MSG, are timid but encouraging signs that EITI implementation in the DRC is gradually paying closer attention to gender considerations. While the relationship with the media is a nascent and uneven one, it is also noteworthy that the EITI extended its reach to student associations, where innovative forms of multi-stakeholder dialogue are emerging.

Finally, the EITI process has pushed for the implementation of the legislative and regulatory framework in the extractives sector, thereby identifying gaps and needs for change that fed into reforms. The EITI contributed to a better understanding of the sector by shedding light on a complex and fragmented fiscal regime, and providing an overview of companies operating in the DRC.

EITI DRC also played a key role in developing government policies, including the drafting of the mining code, the hydrocarbon code and regulations. The EITI technical secretariat supports and monitor the implementation of the government's policy for the full disclosure of contracts within 60 days of their signature, thereby highlighting that key documents involving some of the largest joint-ventures are still not accessible to the public. Moreover, the role played by EITI stakeholders in the review of the Mining Code and its implementing regulation cannot be understated.

This includes improvements on the transparency of license awards and sale of state assets by SOEs, but also on issues of significance for local governments, such as direct subnational payments, transfers of shares of revenues initially collected at the central level, and social expenditures by companies. The EITI has provided a framework for consultations between CSO and industry representatives, who agreed to a list of payments that qualified as social expenditures and a template for future reporting.

Both the 2015 Hydrocarbons and the 2018 Mining Code contain provisions for multi-stakeholder follow-up on issues of local-level management of extractives revenues, which have been hailed as an important step by CSO representatives in ensuring that extractives have a positive impact on host communities.

Despite these achievements, stakeholders questioned whether the EITI had yet bridged the gap between transparency and accountability in the management of the extractive industries. As one donor consulted stated, there is an impression of a disconnect between forums where all actors seemed to be "playing by the rules of transparency" and cooperating, on the one hand, and another world where "dirty deals" were settled, on the other.

Stakeholders wondered whether the EITI truly led to changes in behaviours to improve the accountability of both the government and companies. Despite impressive efforts by all constituencies to increase extractives transparency, that alone is not enough to ensure that the development of DRC's natural resources benefits the country's citizens.

Moving towards systematic disclosures through government and company systems might provide more space for the DRC EITI to develop its role as an oversight body. Much analytical work, combined with political will, is required to understand the management of extractives revenues by government entities, the country's benefits from extractives deals and the outcomes for local populations anxious about their livelihood. Beyond topics strictly covered by the EITI Standard, there are also opportunities for the EITI to go further and address concerns around the management of the artisanal and small-scale mining and the forestry sectors.

Questions about the EITI's sustainability, both financially and institutionally, are legitimate. Moving towards systematic disclosures requires further capacity-building and effective reforms within agencies and companies themselves to address civil society concerns over the reliability of data not produced in a standalone EITI report.

Concerns around the MSG's internal governance and the management of funds by the national secretariat have to be addressed. The DRC EITI's reputation as a tool to fight corruption hinges on its leading by example in terms of probity and transparency. While an improved Decree was adopted by the MSG in 2018 and is pending signature by the authorities, the MSG should also reflect upon the future of EITI implementation and its relation to national priorities. The transition of political power between two administrations in January 2019 offers an opportunity for stakeholders to take stock of a decade of implementation to further deepen the EITI's impact on the broader governance of the extractive industries.

Annexes

Annex A. List of MSG members at the start of Validation

Members of the DRC EITI Executive Committee as of 1 October 2018:

Modeste Bahati Lukwebo, Minister of Plan and Chair of the MSG
Jean-Félix Mukuna, Vice-Ministre of Finance, representing Henri Yav Mulang, Minister of Finance
Martin Kabwelulu, Minister of Mines
Aimé Ngoy Mukena, Minister of Hydrocarbons
Amy Ambatove, Minister of Environment
Firmin Koto, representative of the Office of the President
Altesse Kupa Mutombo, Head of the Office of the Prime Minister in charge of economic and financial issues
Jean-Félix Kamanda, Head of the Office of the Prime Minister in charge of legal and fiscal issues
Innocent Nkongo, member of the Senate
Francois Nzekuye, member of the National Assembly

Robert Munganga, representative of public mining companies
Simon Tuma-Waku, representative of private mining companies
Yvonne Mbala, representative of oil companies
José Minga's, representative of forestry companies
Kassongo Bin Nassor, representative of the Chamber of Mines

Jean-Claude Katende, representative of CSOs working on the mining sector
Albert Kabuya, representative of CSOs working on the mining sector
Jean Marie Kabanga, representative of CSOs working on the mining sector
Nicole Bila, representative of CSOs working on the oil sector
Jimmy Mungurieke, representative of CSOs working on the forestry sector

Annex B. Cost of EITI implementation

Figures below are in USD.

2017

Funding	Budget	Income		Expenses	
		Amount	Executed	Amount	Executed
Government funding	2,407,494	1,910,411	79.35%	1,896,568	99.28%
Partners	0	0	100%	0	100%
Total	2,407,494	1,910,411	79.35%	1,896,568	99.28%

Source: DRC EITI (December 2017), 2016 Annual progress report, https://drive.google.com/file/d/0B1C1Aj5TqAgvb0NWWUJBVFNnSDg/view.

2016

Funding	Budget	Income		Expenses	
		Amount	Executed	Amount	Executed
Government funding	4,155,750	2,336,742	56.22%	2,336,742	100%
NRGI	15,528	15,528	100%	15,528	100%
Total	4,171,278	2,352,270	56.39%	2,352,270	100%

Source: DRC EITI (July 2018), 2017 Annual progress report, https://drive.google.com/file/d/1Mp626dmUOpguNFXldaL1jbqaGOyT4P0v/view

2015

Funding	Budget	Income		Expenses	
		Amount	Executed	Amount	Executed
Government funding	4,157,742	3,517,963	84.61%	3,462,517	98.42%
World Bank/MDTF	419,900	419,900	100%	361,707	86.14%
GIZ	0	314,116	-	314,116	100%
Total	4,577,642	4,251,979	93.21%	4,138,341	97.33%

Source: DRC EITI (December 2016), 2015 Annual progress report, https://drive.google.com/file/d/0B1C1Aj5TqAgvNzg5Z1RvUjVKVWs/view

Annex C - List of stakeholders consulted

Government

SEM AIME NGOY MUKENA	Ministre des Hydrocarbures	
SEM AMY AMBATOBE	Ministère ECNT	2ème V/Président
M. FIRMIN KOTO	Présidence	Conseiller Principal /Membre
MUKENDI KABONGO	Cour des comptes	Directeur d'audit
M.Oscar LUGENDO	Dircab à la Primat.	Membre
M. ALTESSE MUTOMBO	Dircab à la Primat.	Membre
SEM Amy Ambatobe	Min ECNT	Ministre EDD
BADIBANGA NGOYI	ENVIRONNEMENT	Conseiller
MONGU NZALI	Hydrocarbures	Conseiller
MONGU NZALI	HYDROCARBURES	Conseiller
Robert NZOMBA	CAB/MINES	Conseiller
GUDULE BWELA	CAB/MINES	Chargé de Comm
MBOKOLO ALEXIS	CTCPM/MINES	
LIEZBI BIENVENU	CAMI	CD/taxe
SHOMARI KIFULUKA	CAMI	CS/Droits et titres
NODIER ZAND	CAMI	CS/Info
NKULU KITUMBA	CEEC	CS Anti fraude
MBOYI KASINGA	CEEC	CS Juridique
UGENTHO NIERA	Conseil supérieur du portefeuille	Directeur
AUGUSTIN KABWE	CSP	Directeur d'audit
HUGUES TSHIUNZA	CTR	Expert
KILEMBELEMBE BOTHAS	DGDA	Inspecteur
SUKAKUMU MOPATI	DGDA	S/Directeur ai
BILONDA MUKUTA	DGI	Chef de bureau
MBOMBO BIKITA WEBE	DGI	Chargée d'Etudes
NAWEZI KABALE	DGI	Chef de bureau stat
KAMENA MBUTAKO	Division des mines	CB Etudes et Planif
NSANDJI KALONDA	Division des mines	CB Mines
LUTETE KINIUMBA	DGRAD	Receveur adjoint
KASONGO KABEYA	DGRAD	Receveur adjoint
BLAISE BWELE MIKASI	DGRAD	Chef de division
DJO KISENGA	DRAKAT	Chef de bureau
ERIC KAOMA	DRHKAT	Chef de division
MABELE MOSAMBA	IGF	Chef de service
MALUMBA MUNDADI	IGF	Inspecteur général
FUNDJI WATO	IGF	Inspecteur général
MIYAKUDI MAYIBA	IGF	Inspecteur général
KABONGO JUSTIN	IGF	Chef de brigade
KHONDE WILU	ONEC	Expert-Comptable
CELESTIN VUNABANDI		Président CE Honoraire
KASONGO NGOY YVES	SAEMAPE	Chargé de traçabilité
YOUSSOUF MUSIWA	SAEMAPE	Chargé des expl.

Industry

M. SIMON TUMA-WAKU	Entr. Min.Privées	Représentant /Membre
M. KASSONGO BIN NASSOR	CDM/FEC/TFM/CDM	Directeur TFM/GM Rel. Ext
JULIA SOFI	SOKIMO	Point focal
LUWERE KEBAL	SOKIMO	Directeur des participations
OSCAR LUBUYA	SONAHYDRO	Chargé de credd
ODETTE KATUNGU	SONAHYDRO	Exploration/production
NANOU NSUKU	FEC/CDM	Ass. Adm
MUKALENG BUKAS ALAIN	Gecamines	TRG
KAMUKOMBO WA MPOYO	Gecamines	PGP/GDP
KONJI KABILA MAMY REGINE	Gecamines	
BUYAMBA MUTAMBAY EMERY	Gecamines	BED
ILUNGA TUMBA	Gecamines	
DIUR KOJ JEAN MARC	Gecamines	
MAPANGA WALUKALABA	Gecamines	
MWAMBA MISAO	Cominière	DG
ROBERT MUYELA	COMINIERE	DAF
KIBEYA	Cominière	DT
FRANCINE KITOBO	TFM	Relation ext
KONGOLO KITALA	GROUPE BAZANO	
Fabrice BANG	MMG	
Jacques MWAIF	RUASHI MINING	
Jacques KAMENGA	Gecamines	DG
Deogracia NGELE	Gecamines	SG
Claude KABONDO	Gecamines	DFI
Valerien MATAMBA	Gecamines	DSI
KAFOUND A KAFOUND	Gecamines	TIE
MUNGANGA KUBONG	Gecamines	RDGK
Mamy KONJI KABILA	Gecamines	BED/ETU
Vaner NGOIE	Gecamines	DCO
KASEBA WA KATEBA	Gecamines	DCO
KILEFU MPUKA	SIMCO SAS	DG ai
MASELE MULUNDA	SIMCO SAS	Comptable
Patricia KIMANU	Cominière	SEC
Jean KATSHIWA	Groupe ERG	OPS ITIE
Popol WATSHIPA	Groupe ERG	OPS ITIE
Alain MUKALENG BUKAS	GCM	OPS GECAMINES
Timothée NYEMBO	CNMC HUACHIN	Point focal ITIE
ANITA MALU	RUBACO/RUBAMIN	Point focal ITIE
KABANGU MWEYEMA	RUASHI MINING	Assistant fiscal
Jean idy Ramazani	COMILU	DGA
Bedel Ilunga	SECAKAT	Comptable
Liange MBAO	MMR	Conseiller
André ILUNGA	SMCO	DGA
BOPE MIKOBI	COMIKA	Comptable
KATUNGU BANAMUHERE ODETTE	SONAHYDRO SA	Point focal

TSHISOLA KANGOA	SODIMICO	DG
AMSINI IYAO	SODIMICO	ADF
KAYUMBA NDALA	SODIMICO	Directeur de la division
Imelda KABULO	MMG Kinsevere	Point focal itie
Mankoma Banga	SHAMITUMBA	Comptable
Kongolo Kitala	SHAMITUMBA	Point focal itie
Kakez Mwaif	Ruashi mining	Point focal itie
Richard Kabangu	Ruashi mining	Assistant fiscal
Dede Kapend	KCC SA	TAX Manager
Fabrice Mbang	MMG Kinsevere	chargé conformité
MUNGANGA ROBERT	GECAMINES	Directeur/att/RDGK
KAMBA MUSAMPA PAUL	SONAHYDRO SA	Point focal

Civil Society

M. JEAN- CLAUDE KATENDE	PWYP / RC	Coordonnateur/Membre
M. ALBERT KABUYA	SC	Membre
M. JEAN MARIE KABANGA	POM/SC	Coordonnateur /Membre
M. JIMMY MUNGURIEKE	Délégue de la SC	Membre
Mme NICOLE BILA	Délégue de la SC	Membre
NYANGI TABU SANDRA	RTNC	Journaliste
MUTALA LUKUSA ISRAËL	7sur7.cd	Redacteur en chef
CELESTIN LUTETE	Indépendant	Journaliste
JEAN LOUIS MIASUEKAMA	AGM	Redacteur en chef
JEAN PIE N'DJODJI	Canal Kin TV	Journaliste
LAMBERT MUTEBWA	RTNC	Journaliste
CEDRICK DIYOMBO	Magazine Mines et indus	Journaliste
VEBEH KABAMBI	Dynamique Radio TV	Directeur des infos
JEAN MARIE KABANGA	POM	Coordonnateur
NICOLE BILA	RENAD	Coordonnatrice
JIMMY MUNGURIEK	CDC/RN	Sec Permanent
ALBERT KABUYA	PWYP/CENADEP	Chef de programme
JEAN CLAUDE KATENDE	ASADHO	Président
COCO MBANGU	CERN/CENCO	Secrétaiare Exécutif adj
LUHELU MARCEL	FEJE	Chargé des questions jur
ATADRA SCHOLA	FEJE	
JACQUES BAKULU	CEPECO	Coordonnateur
ERNEST MPARARO	LICOCO	Sec Exécutif
PERE JEAN LOMBO wa NSUNDA	ACDHOD	Coordonnateur
EVARISTE MBIOKA	CEDER	Coordinateur
KASS ALIDOR MUTEBA	OCEAN	Coordonnateur provincial
FLORENT MUSHA	CEC/POM	PCA
LONGA WEMBELO EMILE		
SABIN MANDE	RNN/KAT	Point focal ITIE
ELIE KADIMA	POM	chargé des prog
CELESTIN BEYA	groupe ERG	Point focal ITIE

EMILE LONGA	Observatoire africaine	chargé des prog
ARLETTE BASUA	OEARSE	Assistante transparence
NICOLE MANDESI	TCC	Officier de projet
SERGE KALONJI	RRN/OPED	Coordonnateur
FREDDY KITOKO	CJR/IDAK	Président
GREDOIRE MULAMBA	CDH/POM	Secrétaire général
JEAN KEBA	ASADHO/SC	Chargé de la ppp
MUBENGA MARCEL	NRESOURCES/RTNC	Editeur Directeur Général
GABRIELLE PERO	CENADEP	Chargée de programme
JARLINE KASSANDA	LICOCO	Chargée de programme
JEAN LOUIS MIASUEKAMA	AGM	Redacteur en chef
GEORGES BOKUNDU	SARW	Manager RDC
JUNIOR MUELA	DYJET	Coordon
ISHARA TCHINZUNGU	Etudiante Jeux ITIE	
DEZEN MERGE	Etudiante Jeux ITIE	
NSOLOLO TABITHA	Etudiante Jeux ITIE	
MUDIMBE ISABELLE	Etudiante Jeux ITIE	
BALOBU IYALA	Etudiante Jeux ITIE	
ADRIEN MWENYEMALI	Etudiante Jeux ITIE	
GLORIA LOFOLI	Etudiante Jeux ITIE	
TSIKU KHEME	II edition jeux	société civile
JACQUES VALLON	l'Empreintee/Hebdo	Editeur
NONO MUNON	Les Temps forts	Editeur
ALI BIAYI	l'Elite congolaise	Editeur
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ALI JEANNE JEANNE	RTCL	Camerawomen
NELLY KAKUDJI	Kananga info	Editrice
MBUYU MUKALAY	RTMwangaza	Redaf
SOUVENIR KABONGO	Mines et industries Magazine	Journaliste
COLIN DJUMA	Radio Okapi	Journaliste
JEEF MWINGAMBLE	Féderal hebdo	Editeur

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