

Validation of the Republic of Congo

Report on initial data collection and stakeholder consultation

Abbreviations

AfDB	African Development Bank
AMD	Africa Mining Development
AOGC	Africa Oil and Gas Corporation
ARAP	Agence de Régulation de l'Aval Pétrolier
BEAC	Banque des États d'Afrique Centrale
BO	Beneficial ownership
Bpd	Barrels Per Day
CIT	Corporate Income Tax
CNOOC	China National Offshore Oil Corporation
CORAF	Congolaise de Raffinage
CSOs	Civil Society Organisations
DGID	Direction Générale des Impôts et des Domaines
DGDDI	Direction Générale des Douanes et des Droits Indirects
DGH	Direction Générale des Hydrocarbures
DGT	Direction Générale du Trésor
DRN	Direction des Ressources Naturelles
EITI	Extractive Industries Transparency Initiative
EU	European Union
GDP	Gross Domestic Product
GFS	Government Finance Statistics
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit
IMF	International Monetary Fund
MACC	Mines Aurifères et Carrières du Congo
MDTF	The World Bank's Multi-Donor Trust Fund
MEFDD	Ministère de l'Economie Forestière et du Développement Durable
MFBPP	Ministry of Finance, Budget and Public Portfolio
MSG	Multi-Stakeholder Group
NGO	Non-Governmental Organisation
PEP	Politically Exposed Person
PSC	Production-Sharing Contract
PWYP	Publish What You Pay
ROC	Republic of Congo
SADEMI	Société Africaine pour le Développement Minier
Scf	Standard cubic feet
SNPC	Société Nationale des Pétroles du Congo
SOCOMIP	Société congolaise des Mines et des Potasses
SOREMI	Société de Recherches et d'Exploitation Minières
SPM	Société des Potasses et des Mines
STP ITIE	Secrétariat Technique Permanent de l'ITIE
TFP	Technical and Financial Partners
ToR	Terms of Reference
UNDP	United Nations Development Programme
USD	United States Dollar
VAT	Value Added Tax

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Executive Summary

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

On 25 October 2016, the Board agreed that the ROC's Validation under the 2016 EITI Standard would commence on 1 April 2017 (EITI Board, 2016). This report presents the findings and initial assessment of the International Secretariat's data gathering and stakeholder consultations. The International Secretariat has followed the Validation Procedures¹ and applied the Validation Guide² in assessing the ROC's progress with the EITI Standard. While the assessment has not yet been reviewed by the MSG or been quality assured, the Secretariat's preliminary assessment is that Congo has made satisfactory progress on 12 EITI Requirements, and 15 requirements of the EITI Standard have not been fully addressed in the ROC. Ten of these are unmet with meaningful progress, while, four are unmet with inadequate progress and one requirement is assessed as unmet with no progress. One unmet requirement (1.3) is also a "safeguard requirement" as per EITI Requirement 8.3c. The recommendations and suggested corrective actions identified through this process relate in particular to the comprehensiveness of reporting by both government and industry as well as state-owned enterprises, including quasi-fiscal expenditures, financial relations with government and level of state ownership and data quality and assurance.

Overall conclusions

The ROC presents a highly relevant case for EITI implementation. The country is highly reliant on crude oil, accounting for roughly 70% of government revenues, 55% of GDP and 80% of exports in 2014.

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

¹ <https://beta.eiti.org/document/validation-procedures>

² <https://beta.eiti.org/document/validation-guide>

websites.

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

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

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

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

Recommendations

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

- In accordance with Requirement 1.3, the Government of Congo should ensure that there is an enabling environment for civil society participation, and ensure that the rights of civil society substantively engaged in the EITI, including but not restricted to members of the multi-stakeholder group, are respected.

- In accordance with EITI Requirement 1.4, the government should renew the membership of the MSG in line with statutory documents. EITI Congo should review formalise and publish its per diem policy and set a reasonable amount in line with national practices. The MSG should ensure its TOR are in accordance with Requirement 1.4, publicly accessible, and implemented in practice.
- To strengthen implementation, EITI Congo may wish to ensure that the fiscal framework, the roles and responsibilities of key government entities and current or recent reforms in the mining, oil and gas sectors are clearly described in future EITI reporting. EITI Congo may wish to consider whether the EITI Congo website could provide a platform for updated information on the legal environment and fiscal framework.
- In accordance with EITI Requirement 2.2, EITI Congo should clearly define the number of mining, oil and gas licenses awarded and transferred in the year(s) under review, describe the statutory allocation and award procedures, including specific technical and financial criteria, and highlight any non-trivial deviations in practice. In addition, EITI Congo may wish to comment on the efficiency of the current license allocation and transfer system as a means of clarifying procedures and curbing non-trivial deviations.
- EITI Congo is required to maintain a publicly available register or cadastre system(s) with timely and comprehensive information in accordance with EITI Requirement 2.3. EITI Congo should ensure that future EITI Reports provide the dates of application and expiry, commodity(ies) covered and coordinates for all mining, oil and gas licenses held by material companies.
- To further strengthen implementation and prepare for full disclosure of beneficial ownership by 2020, it is recommended that EITI Congo considers piloting beneficial ownership reporting in the forthcoming EITI Report in order to increase awareness of beneficial ownership transparency and pilot beneficial ownership definitions and thresholds. EITI Reports must document the government's policy and multi-stakeholder group's discussion on disclosure of beneficial ownership. EITI Congo may also wish to conduct broader outreach to the companies on the objectives of beneficial ownership transparency, as well as hold conversations with government agencies on how to make such disclosures mandatory.
- In accordance with EITI Requirement 2.6, EITI Congo should ensure that future EITI Reports clarify the rules and practices governing financial relations between extractives SOEs and the government, the level of and terms associated with state equity participation in the sector as well as a comprehensive overview of loans and guarantees extended by the state or SOEs to extractives companies in the year under review. EITI Congo may wish to consider the extent to which implementation of Article 15 of the March 2017 Transparency Law would support progress in meeting aspects of Requirement 2.6.
- To strengthen implementation, EITI Congo may wish to ensure that the description of the extractive industries in future EITI Reports includes a clear overview of significant exploration activities in the year under review.
- In accordance with EITI Requirement 3.2, EITI Congo should ensure that future EITI Reports provide production volumes and values for all minerals produced in the ROC in the year(s) under review. EITI Congo may also wish to consider the extent to which such information could be regularly disclosed on government websites as a means of complying with provisions requiring publication of more granular production data in Article 66 of the March 2017 Transparency Law.
- To strengthen implementation, EITI Congo may wish to ensure that future EITI Reports provide export volumes and values for all commodities exported in the year(s) under review, including artisanal-mined commodities like gold.







- To strengthen implementation, EITI Congo may wish to ensure that the materiality threshold for selecting companies in future EITI Reports ensures that all payments that could affect the comprehensiveness of EITI reporting be included in the scope of reconciliation. The MSG is invited to consider whether setting a quantitative materiality threshold for selecting companies would ensure these aims are met.
- In accordance with EITI Requirement 4.2, EITI Congo should ensure that future EITI Reports present information on the sale of the state's in-kind revenues disaggregated by buyer. The government is encouraged to reinstate the practice of publishing the Ministry of Finance's quarterly oil sales reports to ensure timelier compliance with Article 16 of the March 2017 Transparency Law and with Requirement 4.2 of the EITI Standard.
- In accordance with EITI Requirement 4.3, EITI Congo should assess the existence of any barter arrangements or infrastructure provisions during the scoping phase for its next EITI Report to ensure that reporting of the implementation of such agreements provides a level of detail and transparency commensurate with the disclosure and reconciliation of other payments and revenues streams. The MSG, together with the IA, should gain a full understanding of the terms of the relevant agreements and contracts, the parties involved, the resources which have been pledged by the state, the value of the balancing benefit stream (e.g. infrastructure works), and the materiality of these agreements relative to conventional contracts.
- To strengthen implementation, EITI Congo may wish to undertake outreach to SOCOTRAM with a view to engaging it in EITI implementation. Given the significant public debate surrounding the Maritime Tax, the MSG could consider including SOCOTRAM in the scope of reporting, further adding to the EITI's impact on public debate.
- In accordance with EITI Requirement 4.5, EITI Congo should undertake a comprehensive assessment of transactions between SOEs (SNPC and its subsidiaries) and oil and gas companies, as well as between SNPC's subsidiaries and government in its scoping of future EITI Reports. All SOEs collecting material revenues or making material payments to government should be included in future EITI reporting.
- To further strengthen implementation, the MSG may wish to consider the extent to which implementation of the March 2017 Transparency Law would enable it to make progress in implementing project-level EITI reporting ahead of the deadline for all EITI Reports covering fiscal periods ending on or after 31 December 2018, agreed by the EITI Board at its 36th meeting in Bogotá.
- To strengthen implementation, EITI Congo may wish to consider the extent to which it can leverage implementation of Article 63 of the March 2017 Transparency Law to ensure timelier disclosure of data required under the EITI Standard through routine government and company systems.
- In accordance with EITI Requirement 4.9, EITI Congo should ensure that summary data tables for all EITI Reports are prepared in a timely manner in line with requirements of the Board-approved IA's ToR. The MSG and the IA are encouraged to provide a more detailed account of audit and assurance practices of material companies and government entities, including SOEs with a view to formulating recommendations that strengthen government and company audit and assurance systems. They may also wish to revisit the quality assurance requested from government entities included in the scope of reporting.

- In accordance with EITI Requirement 5.1, EITI Congo should work with the IA in preparing the next EITI Report to clearly trace any mining, oil and gas revenues that are not recorded in the national budget and provide an explanation of the detailed allocation of these off-budget revenues.
- To strengthen implementation, EITI Congo is encouraged to assess the materiality of subnational transfers, provide the specific formula for calculating subnational transfers of extractives revenues to individual local governments, disclose any material subnational transfers in the year(s) under review and highlight any discrepancies between the transfer amount calculated in accordance with the relevant revenue-sharing formula and the actual amount that was transferred between the central government and each relevant subnational entity.
- To strengthen implementation, EITI Congo could consider including additional information on extractives revenues earmarked for specific purposes as well as on the budget-making and auditing process for government accounts in future EITI Reports.
- In accordance with EITI Requirement 6.1, EITI Congo should systematically categorise types of mandatory social expenditures mandated by law or contract and ensure that reporting of mandatory social expenditures in future EITI Reports be disaggregated between cash and in-kind expenditures, by type of payment and beneficiary, clarifying the name and function of any non-government (third-party) beneficiaries of mandatory social expenditures. The MSG may also wish to consider the feasibility of reconciling mandatory social expenditures.
- In accordance with EITI Requirement 6.2, EITI Congo should undertake a comprehensive review of all expenditures undertaken by extractives SOEs (and their subsidiaries) that could be considered quasi-fiscal. The MSG should develop a reporting process with a view to achieving a level of transparency commensurate with other payments and revenue streams, and should include SOE subsidiaries and joint ventures.
- In accordance with EITI Requirement 6.3, EITI Congo should ensure future EITI Report include employment figures for the mining, oil and gas sectors. The MSG may also wish to work with the Ministry of Finance, the national statistics agency (CNSEE), customs and the Ministry of Labour and Social Security to ensure that reporting of key information required by the EITI Standard on the extractive industries' share of GDP, revenues and exports is embedded in routine government disclosures.
- To improve accessibility of EITI disclosure, and in accordance with EITI Requirement 7.1, EITI Congo should resume its dissemination activities of all EITI disclosures, including the EITI Reports, the KPMG Reports and other useful materials that can contribute to a public debate on the EITI Congo website.
- To strengthen implementation, the MSG may wish to consider commissioning an independent impact evaluation study to better document the extent to which EITI Congo has contributed in changing behaviour and improving the management of the extractive sector for the benefit of all citizens.

Figure 1– initial assessment card

EITI Requirements		LEVEL OF PROGRESS				
		No progress	Inadequate	Meaningful	Satisfactory	Beyond
Categories	Requirements					
MSG oversight	Government engagement (#1.1)				■	
	Industry engagement (#1.2)				■	
	Civil society engagement (#1.3)			■		
	MSG governance (#1.4)		■			
	Work plan (#1.5)				■	
Licenses and contracts	Legal framework (#2.1)				■	
	License allocations (#2.2)		■			
	License register (#2.3)			■		
	Policy on contract disclosure (#2.4)				■	
	Beneficial ownership (#2.5)	■				
	State participation (#2.6)		■			
Monitoring production	Exploration data (#3.1)				■	
	Production data (#3.2)			■		
	Export data (#3.3)				■	
Revenue collection	Comprehensiveness (#4.1)				■	
	In-kind revenues (#4.2)			■		
	Barter agreements (#4.3)		■			
	Transportation revenues (#4.4)	■	■	■	■	■
	SOE transactions (#4.5)			■		
	Direct subnational payments (#4.6)	■	■	■	■	■
	Disaggregation (#4.7)				■	
	Data timeliness (#4.8)				■	
	Data quality (#4.9)			■		
Revenue allocation	Distribution of revenues (#5.1)			■		
	Subnational transfers (#5.2)	■	■	■	■	■
	Revenue management and expenditures (#5.3)	■	■	■	■	■
Socio-economic contribution	Mandatory social expenditures (#6.1.)			■		
	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. The country is compliant with the EITI requirement.
	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 Republic of Congo (ROC) was an early adopter of the EITI. On 9 June 2004, the Government of Congo formally announced its commitment to EITI implementation in an official communiqué (République du Congo, 2004). An official letter from the Minister of Economy, Finance and Budget to the Managing Director of the IMF on 10 June 2004 confirmed this commitment. However, progress was slow at this early stage of EITI implementation (CAC75, 2012), mostly due to the difficult relationship between the government and civil society groups. The government conducted broad consultations with all stakeholders in September 2005 and issued Decree 2006-626 of October 2006 establishing the MSG. The first work plan was agreed by the MSG in December 2007 and Congo became a candidate country implementing the EITI in February 2008 (EITI Board, 2008).

Objectives for implementation and overall progress in implementing the workplan

The 2017 EITI workplans includes objectives in line with national priorities and a detailed list of activities for each objective. For each activity, the work plan includes expected results, indicators of progress, capacity constraints, risks and the time frame for implementation. Annual progress reports show the level of progress with the implementation of activities set out in the previous work plans. For example, only 44% of the planned activities were completed on time in 2015. The 2017 work plan includes the following objectives:

- Consolidate the functioning of the EITI Implementing bodies (Executive Committee and Permanent Technical Secretariat), including revisiting and developing working documents and procedures;
- Improve stakeholders' knowledge in the extractive industries process, the accounting and tax practices of the extractive industries at the international level;
- Contribute to the development of a better institutional framework and the establishment of a better data management system for the extractive sector;
- Strengthen the quality of the data published in the EITI reports and a better external perception of the image of the EITI process in the Congo;
- Encourage a broad involvement of the populations in the implementation of the EITI and a good knowledge of its issues through communication and awareness-raising activities;
- Organize advocacy actions to mobilize financial resources for EITI implementation.

History of EITI Reporting

The ROC has published EITI Reports covering 11 fiscal periods from 2004 to 2014. The scope and quality of EITI reporting has improved gradually over time. The number of reporting companies have increased from 4 to 25 and the latest report includes unilateral disclosure from the government entities on revenues collected from the forestry sector. Ghelber & Gourdon, a law firm based in Paris, prepared the ROC's first

two EITI Reports covering 2004–2006 and 2007–2009.³ Moore Stephens prepared EITI Reports covering 2010 and 2011 and Fair Links produced the last three reports covering 2012 to 2014. In addition to the EITI Reports, KPMG prepares quarterly reports on the sale of crude oil by the national oil company SNPC, as part of an agreement with the IMF, since 2004. These reports became part of EITI reporting and were briefly made public following the adoption the 2013 EITI Standard, but are no longer accessible to the public.

Summary of engagement by government, civil society and industry

The MSG includes representatives from each constituency, but the process by which each constituency nominated their representatives remains unclear. The MSG is statutorily led by the Minister of Economy, Finance and Budget Calixte Ganongo, with two vice presidents from industry and civil society. Through regular participation in MSG meetings, funding for EITI implementation and reporting by government agencies, the Government of ROC has demonstrated that it is fully, actively and effectively engaged in the EITI process. Companies are similarly engaged at a senior level. Senior industry representatives from Chevron, ENI, Total and Perenco travel regularly from Pointe Noire to Brazzaville to attend MSG meetings. Despite the difficult environment, civil society are particularly engaged in the EITI process and play a leading role in the conception and implementation of the EITI process. Representatives from the civil society constituency attend MSG meetings regularly, conduct analysis of EITI Reports, produce communication materials and organise public events to inform citizens on issues related to the governance of the extractive industries.

Key features of the extractive industry

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

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

The structure of the oil and gas industry has evolved since the first commercial developments in the 1970s. Most of the ROC's oil and gas are now produced from offshore fields, while most of its natural gas is flared due to lack of gas aggregating infrastructure (US Geological Survey, 2015). The start of production

³ <https://eiti.org/republic-of-congo#eiti-reports-and-other-key-documents>

at the deep-water Moho Bilondo oilfield in 2008 marked the shift in the ROC's oil production profile towards the deep-water offshore, generating a 24% year-on-year rise in national oil production in 2009 (Banque Mondiale, 2012). France's Total and Italy's ENI are the two largest international oil companies operating in the ROC, accounting for three quarters of total oil production (EIA, 2017). The ROC exports crude oil mainly to the United States, Europe and China (Lazard Asset Management, 2017). While ENI has developed two gas-fired power plants, some 85% of the ROC's natural gas production is re-injected into oil-producing wells, vented or flared (EIA, 2017).

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

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

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

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, as well as any concerns stakeholders have expressed and recommendations for future implementation of the EITI.

The Validation process is outlined in chapter 4 of the EITI Standard⁴. 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 to 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 EITI Congo MSG did not request any issues for particular consideration.

In accordance with the Validation procedures, the International Secretariat’s work on the initial data 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 EITI work plan and other planning documents such as budgets and communication plans;
- The multi-stakeholder group’s Terms of Reference, and minutes from multi-stakeholder group meetings;
- EITI Reports, and supplementary information such as summary reports and scoping studies;
- Communication materials;
- Annual progress reports; and
- Any other information of relevance to Validation available online or provided by the EITI Congo Secretariat.

In accordance with the Validation procedures, the Secretariat has not taken into account actions

⁴ See also <https://eiti.org/validation>.

undertaken after the commencement of Validation.

2. Country visit

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

3. Reporting on progress against requirements

This report provides the International Secretariat 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 comprised: Bady Baldé, Regional Director for Francophone countries, Sam Bartlett, Technical Director, Alex Gordy, Validation Manager, Eddie Rich Deputy Head of the International Secretariat and Dyveke Rogan, Policy Director. Bady Baldé and Alex Gordy conducted stakeholder consultation and prepared the draft initial assessment. Sam Bartlett, Eddie Rich and Dyveke Rogan provided quality assurance.

Part I – MSG Oversight

1. Oversight of the EITI process

1.1 Overview

This section relates to stakeholder engagement and the environment for implementation of EITI in 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: The Government of the Republic of the Congo (ROC) announced its commitment to adhere to the EITI Principles on 9 June 2004 (République du Congo, 2004). The Minister of Economy, Finance and Budget Gilbert Ondongo wrote a letter to the Managing Director of the IMF on 10 June 2004 to confirm this decision. However, due to a difficult relationship between the government and civil society groups, progress was slow at this early stage of the EITI process in the ROC (CAC75, 2012). ROC became candidate country implementing the EITI in February 2008 (EITI Board, 2008). Mr Pierre Oba, Minister of Mining and Geology wrote to the EITI Board in March 2011 requesting the renewal of the ROC's candidate status. The Minister also declared at the EITI Global conference in Paris on 3 March 2011 that the political and financial commitment of the Government of the ROC to support and sustain the implementation of the EITI "remains unwavering" (Mr Pierre Oba, 2011). Following the ROC's successful Validation under the EITI Rules, President Sassou N'Gusso highlighted his country's compliance with the EITI Rules in a televised speech in August 2013 (Président de la République, 2013).

The ROC hosted the 29th EITI Board meeting in Brazzaville, from 13-15 April 2015. President Sassou N'Gusso met with Clare Short, Chair of the EITI Board, on 15 April 2015 and reiterated his government's commitment to improving transparency and accountability (Télé Congo, 2015). President Sassou N'Gusso highlighted EITI implementation as a major achievement during the presidential campaign in 2016. The Government of ROC also hosted a regional meeting of EITI National Coordinators in October 2016, where Minister of Communication and Media Thierry Lézin Mougalla delivered opening remarks on behalf of Minister of Finance Calixte NGanongo, who could not attend (ITIE-Congo, 2016).

Senior lead: The Government of ROC first issued Presidential Decree 2006-626 on 11 October 2006, which established a multi-stakeholder Executive Committee tasked with the mandate of implementing the EITI. Presidential Decree 2006-627 of 11 October 2006 created an advisory committee to the MSG. Both committees were chaired by the Minister of Economy, Finance and Budget. In addition to the Minister of Economy, Finance and Budget, Presidential Decree n° 2007-403 of 30 August 2007 appointed Hydrocarbon Advisor to the Minister of Finance Florent Michel Okoko as the MSG's Executive Chair to manage day-to-day implementation of the EITI. This institutional set-up was renewed through

Presidential Decree 2012-940 of 20 August 2012, which expanded the MSG's mandate and created a national secretariat, managed by the MSG's Executive Chair. As EITI National Coordinator Okoko represented EITI implementing countries in Central Africa on the EITI Board from 2007 to 2016. Former Director of Petroleum Taxation at the General Directorate of Taxes Séraphin Ndion was appointed Permanent Secretary of the EITI National Secretariat in April 2013 (Note de service 024/MEFPPPI-CAB of 5 April 2013).

Active engagement: Presidential Decree 2007-403 of 30 August 2007 and subsequent amendments nominated high-level government officials to participate in the MSG. The MSG is statutorily led by the Minister of Economy, Finance and Budget, with two vice presidents from industry and civil society. In practice, it is the advisor to the Minister, Mr Michel Okoko, who chairs the MSG. A Ministerial Decision (Arrete N°611 MEFPPPI-CAB of 4 December 2012) renewed the MSG's membership, which included seven high-level representatives from government agencies and two representatives from the national oil company (SNPC). The Ministry of Economy, Finance and Budget (MEFB), the Ministry of Hydrocarbon and Ministry of Mining and Geology (MMG) are all represented at a high-level in the MSG. Attendance at MSG meetings shows that the government is generally well represented at a high level on the MSG, but that participation in practice remains relatively weak compared to other constituencies (see Requirement 1.4). Government representatives from the ministries of finance and hydrocarbon participate more regularly than representatives from the Ministry of Mine. For example, the MMG representative on the MSG did not attend a single meeting in the 2013-2015 period.

The Government of ROC provided funding for all EITI activities in 2014 (USD 1.4m) and 2015 (USD 800 000). The projected cost is reported in the work plan and the actual budget is reported in the Annual progress report (APR) every year.

Prompted by the MSG, the government has appointed "EITI focal points" in key government agencies in mid-2015.⁵ In July 2015, the Treasury, Tax Department (DGI), Customs (DGD) and the MEFB each appointed two to three high-level officials to serve as EITI focal points in their respective agencies. These focal points' mandates appear limited to disclosing figures for EITI reporting and implementation of EITI recommendations in their respective agencies, rather than a broader coordination role.

According to minutes of MSG meetings and annual progress reports, a parliamentary committee requested that EITI Reports be published no later than 30 September each year to ensure that information on government revenues for the preceding fiscal period were available in a timely manner as a source of independently-verified information to support parliament's annual budget deliberations. This practice was followed in 2013 and 2014 but not in subsequent years, due to delays in the publication of the EITI Reports.

Following the MSG's lead in drafting a transparency bill and lobbying parliament for its adoption, President Sassou N'Guesso signed into law the Transparency Code on 9 March 2017 (Republique, 2017). The Transparency Code translates many EITI requirements into law and expands the EITI's reach into other sectors including forestry. Key EITI Requirements, such as contract transparency, SOE reporting,

⁵ Designation letters from DGI, DGT, DGDI of July and August 2015.

beneficial ownership disclosure, publication of production data, audit and reconciliation of government revenues, transparency of resource allocation and extra-budgetary spending, project-level reporting and open data are all covered in the Transparency Law, a major achievement for EITI Congo, and the law's implementation would embed transparency in government management of the extractive industries.

Stakeholder views

Government representatives confirmed that the Government of the ROC is committed to the EITI at a very high-level, including from President Denis Sassou Nguesso who mentions the EITI regularly in his speeches. Stakeholders noted that President Sassou Nguesso referred to the EITI regularly in public speeches during the 2016 presidential election campaign. Several ministers and senior government officials consulted confirmed the government's commitment to EITI, including expanding its scope to the forestry sector. A senior government official highlighted the government's unilateral disclosures on the forestry sector as an example of the government's commitment to expand the EITI's scope to areas relevant to national priorities and highlighted high expectations for the EITI as a tool to improve citizens' understanding of the forestry sector's economic contribution. Several senior government officials expressed hope that the EITI would help raise awareness of key governance issues, particularly in the forestry sector. Another senior government official who had followed EITI implementation over the past decade noted that the ROC's EITI implementation remained a high priority for the government. The MSG Chair explained that the Government would do whatever it took to comply with the EITI Standard. High-level SOE officials also noted their commitment to comply with the EITI Standard and highlighted their regular participation in MSG meetings. Several government representatives explained that government officials and focal points were instructed to comply with the EITI Standard through EITI Reporting.

Civil society representatives confirmed that the Government of ROC is committed to EITI implementation at a very high-level, but activists cautioned that this high-level political commitment was not always translated into government policy as local government officials and security forces were often unaware of how this government commitment translated into practice. Civil society representatives confirmed that they had received support from high-level government officials to resolve bottlenecks and disagreements with local authorities during EITI dissemination and outreach campaigns. Without providing specific dates, civil society representatives highlighted several instances where they received support from the MEFB to undertake dissemination activities that had been previously blocked by local authorities, who were unaware of the government commitment to give space for civil society as part of EITI implementation. Activists stated that as long as they explicitly stated that their activities fell within the EITI's remit, they were allowed to undertake those activities as a result of the government's high-level commitment. Civil society MSG members confirmed that Minister Ondongo chaired two MSG meetings in 2013 and 2014 and that Minister Nganogo met them twice since his appointment in April 2016.

All stakeholders met confirmed that EITI National Coordinator Michel Okoko has the authority and the freedom to coordinate EITI-related activities between various government agencies, companies and civil society. However, many stakeholders highlighted Okoko's limited capacities to mobilize resources for EITI implementation and his inability to diversify the source of funding for the EITI, which remains highly dependent on government funding.

Government officials also highlighted letters from the Minister of Economy, Finance and Budget to the relevant line ministries requesting the implementation of recommendations from previous EITI Reports

as examples of government commitment. These letters were issued in the June-August 2015 period. In 2013, Minister of Youth Anatole Collinet Makosso participated in a public debate with students on the EITI and the data from the EITI 2012 report.

Initial assessment

The International Secretariat's initial assessment is that the ROC has made satisfactory progress in meeting this requirement. The government has reiterated its commitment to the EITI on multiple occasions and a senior government official has been appointed to lead EITI implementation, actively participating in EITI deliberations. Through regular participation in MSG meetings, funding for EITI implementation and reporting by government agencies, the Government of ROC has demonstrated that it is fully, actively and effectively engaged in the EITI process. There is also evidence that government officials and the National Assembly have used EITI data to promote public debate and monitor government revenues and expenditures in the national budget, but this practice has tended to be ad-hoc, rather than formalised as a clear government policy. The government has also taken steps to resolve bottlenecks such as administrative barriers for dissemination activities at the local level, but local authorities' lack of awareness of the EITI remains a concern.

To strengthen implementation, the Government of ROC is encouraged to conduct outreach efforts to local authorities and line Ministries, to raise awareness on the EITI Principles and the government's engagement in implementation.

Industry engagement in the EITI process (#1.2)

Documentation of progress

Active engagement: Mining, oil and gas companies' representatives participate regularly in MSG meetings and most companies participate fully in the EITI reporting process. Following the appointment of the CEO of ENI Congo as Vice-President of the MSG by presidential decree (Decree n°2012-1123 of 25 October 2012), seven industry representatives were also appointed for three-year terms, renewable once, in December 2012. Ministerial decision 611 MEFPPPI-CAB of 4 December 2012 appointed senior industry representatives from five oil and gas companies⁶ and two mining companies.⁷ Analysis of MSG meeting minutes shows that companies consistently attend meetings and appear actively engaged in the EITI process, with the average participation rate for the eight industry MSG members slightly above 50% for the period 2013-2015 (see Annex A). These attendance rates show even more significant commitment when it is considered that many oil and gas executives, including from Chevron, ENI, Total and Perenco, are required to travel from Pointe Noire to Brazzaville to attend MSG meetings and do so regularly. A representative from Glencore subsidiary MPD Congo attends MSG meetings on behalf of the Federation of Mining Companies, which includes eight mining companies operating in the country. Ministerial Decision 611 MEFPPPI-CAB also appointed two representatives from the state-owned oil company SNPC, who participate regularly in MSG meetings. Although the SOE's representatives consider themselves part of the industry constituency, in practice SNPC appears closer to other government agencies represented in the MSG in the views expressed on the MSG. The industry constituency does not appear to have agreed

⁶ Total Congo, Chevron, Congorep, Maurel & Prom Congo and Murphy West Africa Ltd.

⁷ Congo Mining and MPD Congo.

a code of conduct or other ToR to structure its engagement in EITI implementation and institutionalise MSG members' responsibilities to the broader constituency of companies.

The number of reporting companies in the ROC's EITI Reports has increased over the years, albeit somewhat inconsistently, from four in 2004-2006 to 14 in 2007-2009, 15 in 2010, 17 in 2011, 21 in 2012, 25 in 2013 and 21 in 2014.⁸ In the 2014 EITI Report, eight of the 24 material oil and gas companies did not participate in EITI reporting, although three of these were not active in 2014, alongside five of ten material mining companies that also did not report.

Enabling environment: There do not appear to be any legal or regulatory obstacles to EITI reporting in the ROC and the government has enacted legal reforms to facilitate EITI implementation. Article 2 of the revised Hydrocarbons Code enacted in 2016 requires all oil and gas companies to comply with the ROC's laws and international commitments linked to improving the sector's governance and transparency (République du Congo, 2016). The March 2017 Transparency Code translates key EITI Requirements into national legislation, including contract transparency, SOE reporting, beneficial ownership disclosure, publication of production data, audit and reconciliation of government revenues, transparency of resource allocation and extra-budgetary spending, project-level reporting and open data. In some areas, the law goes beyond the minimum EITI Requirements by mandating reporting of production disaggregated by project and individual oilfield. Finally, ongoing revisions to the Mining Code are expected to refer to transparency and governance provisions in a similar way to the 2016 Hydrocarbons Code.

Stakeholder views

There was broad consensus in the MSG that companies are engaged in the EITI process, including in reporting as well as funding awareness raising and dissemination of the 2013 EITI Report. However, civil society representatives pointed out that companies' commitment to the EITI process declined considerably in 2015. They noted several cases of MSG meetings not being quorate due to insufficient representation from mining, oil and gas companies, albeit without providing specific meeting dates. Company representatives recognised that their participation in the EITI process in 2017 was significantly lower than in 2013, but explained this by several reasons, including cost-cutting measures due to declining oil prices, poor preparation of MSG meetings with agendas and working documents disseminated with insufficient advance notice, and tense MSG discussions between civil society and government representatives on issues that were not seen to concern companies. Several industry stakeholders noted that they found the preparation and chairing of MSG meetings inadequate. On the issue of cost-cutting, an industry representative noted that they had suggested conducting MSG meetings by teleconference, but that this had not yet been tried. Civil society representatives also argued that companies' commitment was weaker as a result of the MSG's poor internal governance. A government representative noted that companies did not provide funding to EITI implementation because they did not agree with the MSG's opaque per diem policy that was seen as excessively generous to civil society. Representatives from both industry and civil society constituencies highlighted that MSG meeting minutes were not regularly kept and circulated and considered that their concerns were often ignored by the MSG

⁸ See the ROC's EITI summary data tables here: <https://drive.google.com/drive/folders/0B9BI74fkjArzWm1pUzB1Y1J2ZjQ>

Chair (see Requirement 1.4).

Initial assessment

The International Secretariat's initial assessment is that the ROC has made satisfactory progress in meeting this requirement. Senior industry representatives, particularly in oil and gas, travel regularly from Pointe Noire to Brazzaville to attend MSG meetings, although the recent weakening of industry engagement with more junior proxies sent to MSG meetings is a concern. Companies participate both in EITI reporting and in dissemination and outreach activities. Industry representatives have considered providing funding to the EITI, although have decided against due to concerns over the EITI-Congo's internal governance challenges. There appears to be an enabling legal and regulatory environment for company participation in EITI implementation, including reporting, and companies appear fully, actively and effectively engaged.

To strengthen implementation, the MSG should consider holding teleconferences in addition to in person meetings to facilitate remote participation by companies (and civil society representatives) based in Pointe Noire. The industry constituency may also wish to consider agreeing a code of conduct or other ToR to structure its participation in EITI implementation and institutionalise MSG members' feedback mechanisms to the broader constituency.

Civil society engagement in the EITI process (#1.3)

Documentation of progress

The early phase of EITI implementation in the ROC (2004-2007) was characterised by multiple arrests and intimidation of the pioneering civil society activists who advocated for EITI implementation (CAC75, 2012). Mr Mounzeo and Mr Brice Makosso, both members of the PWYP coalition, were arrested on multiple occasions in 2006 on charges of defamation against President Sassou Nguesso, fraud and misappropriation of funds, although all charges were subsequently dropped for lack of evidence. International Civil society argued that their arrest was linked to their stand against corruption in the ROC's oil revenues (Globalwitness, 2006).

A compromise was reached in 2007 and allowed for the creation of a multi-stakeholder group. This compromise carved out a controlled space for civil society to undertake activities directly related to EITI implementation. Based on this compromise, the ROC achieved EITI Candidate status in February 2008⁹ and EITI Compliance status under the EITI Rules in 2012. More broadly, evidence suggests that the space for civil society to operate in the ROC deteriorated rapidly in the period leading up to the 2015 referendum to amend the constitution. The Constitution was amended in 2015 to remove age and term-limit restrictions on presidential candidates, allowing President Sassou Nguesso to run for a third term in 2016.

NGOs operating in ROC are mostly concentrated in Brazzaville and Pointe Noire. A mapping of non-state actors by the European Union in 2013 estimates that about 350 NGOs were active in human rights and governance issues (Gaudion, 2013). The study found that few NGOs had sufficient capacities to develop,

⁹ <https://eiti.org/document/4th-board-meeting>

manage and implement projects and mobilise funding. The eight NGOs represented in the MSG are among the few that are well-organised and have the capacities to raise funds for their activities.

Eight civil society representatives were appointed for three-year terms on the MSG, renewable once, by Ministerial Decision 611 MEFPPPI-CAB. The following NGOs were represented in the MSG:

- The Coalition for Peace and Human Rights (RPDH)¹⁰,
- The Justice and Peace Commission of the Catholic Church¹¹;
- The NIOSI foundation¹²;
- Support and Capacity Building Partnership (Centre d'échanges de partenariat, d'appui et de renforcement des capacités);
- The Coordination Committee of NGOs of the Congo (Comité de liaison des ONG du Congo);
- The National movement for the organization of transparent elections (Mouvement national pour l'organisation des élections transparentes);
- The Federation of youth and individualities of the Congo (Fédération nationale des jeunesses et individualités du Congo); and The Action for governance and community development (Action pour la gouvernance et le développement communautaire).

Expression: The 2015 Constitution guarantees freedom of speech and of the press, with Article 25 stating:

“every citizen has the right to express and to freely disseminate his opinion through speech, writing, the image or by any other means of communication. Freedom of information and communication is guaranteed. It is exercised in compliance with the law. Censorship is prohibited. Access to sources of information is free and protected under the conditions determined by law” (Journal Officiel de la République du Congo, 2015).

Yet it has been widely reported that the government’s respect for such freedoms is limited in practice. For example, Freedom House ranked the ROC’s press freedom as “partially free” for the period under review 2013 to 2016 (Freedom House, 2017). Other independent organisations, such as the Mo Ibrahim Foundation, and Reporters Without Borders highlight the practice of censorship and limits to freedom of expression for civil society that have become common even if not codified in official state policy (Reporters Without Borders, 2017) (Mo Ibrahim Foundation, 2016). For example, internet and text messaging services were cut in certain areas of the country in the days leading up to the constitutional referendum in 2015 (BBC, 2015). Radio France Internationale’s signal was also blocked for two days. Internet connections were also briefly suspended. These restrictions appear selective and specifically targeting certain media organisations that are deemed too critical to the regime.

Nonetheless, there is extensive evidence of civil society statements that are critical of the government’s management of the oil and gas sector, such as the campaign by local and international CSOs on the refinery CORAF’s sale of refined fuel to a private Swiss trader (Publiceye, 2015) (PWYP-Congo, 2015) (PWYP-Congo, 2016). Although there is evidence that the government discontinued the publication of

¹⁰ <http://www.rpdh-cg.org/rpdh>

¹¹ <https://cecongo.org/spip.php?article133>

¹² <https://pcpacongo.org/fondation-niosi/>

quarterly SNPC oil sales reports as a result of this CSO campaign, there is no evidence of direct reprisals against individuals in connection to the publication of the 2015 report into the CORAF.

However, there are also several examples of instances of censorship. Self-censorship of civil society activists that are substantially involved in EITI implementation cannot be ruled out, either. Civil society activists substantially engaged in the EITI but not represented in the MSG continue to face intimidations and sometimes arrests in retaliation to publication of information on issues that are considered off-limit by the government. On 15 March 2017, two Italian journalists, Luca Chianca and Paolo Palermo, who worked for the Italian TV channel RAI 3, were arrested in Pointe-Noire, and held for three days before being expelled from the country (Reporters Without Borders, 2017). According to Reporters without Borders (RST) the two journalists were arrested by the police while investigating allegations of corruptions involving President Sassou Nguesso's relatives active in the oil sector (Reporters Without Borders, 2017).

While these general constraints on freedom of expression have affected CSOs' public expressions on sensitive topics like crude oil sales, there is evidence from MSG meeting minutes and press releases that CSO MSG members have brought up sensitive topics like SNPC's financial relations, the CORAF crude allocations, the Chinese oil-for-infrastructure agreement during MSG meetings and outside those meetings.

Operation: Article 21 of the Constitution stipulates that the State recognizes and guarantees, under conditions laid down by law, the freedom of movement, association, assembly, procession and demonstration (Journal Officiel de la Republique du Congo, 2015). The 1901 French law¹³ governing the work of associations is also clear about the fact that NGOs activities are governed by a declarative regime and their activities are not subject to prior authorization to conduct their activities, including public assembly. Accordingly, civil society organisations operate freely and are not required to request prior permission from the authorities to carry out their activities. However, NGOs are required to seek authorization from the Ministry of Interior and Decentralization or from appropriate local officials, for the use of public space to hold public protests that could be denied on the ground of "preserving public order".

These incidences happened in the wider context of a constitutional referendum in 2015 and presidential election in April 2016. In the period leading up to the referendum, public protests were routinely banned. On several occasions in 2014, security forces violently dispersed gatherings, particularly among the political opposition, for alleged failure to obtain prior authorization (Freedom House, 2017). According to Freedom House 2015 Country Report, NGOs generally operate without interference, but they cannot challenge the ruling elite (Freedom House, 2015). Civil Society has not held public protests on EITI related issues, but civil society representatives in the MSG have issued public calls for the release of civil society activists that were not MSG members. For example PWYP-Congo called for the release of university professors and a NGO leader in 2014 (PWYP-Congo, 2014) (PWYP Congo, 2015).

With regard to access to funding, NGOs depends mostly on foreign funding to hire staff and implement

¹³ Loi du 1er juillet 1901 relative au contrat d'association <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006069570>

their activities (EU, 2014). With an estimated EUR 20m allocated to CSOs in the ROC in the 2007-2014 period, the European Union is the largest contributor to civil society activities in the ROC (EU, 2014). While civil society did not face legal or administrative restrictions on access to funding to conduct EITI related activities, an NGO bill adopted by parliament in 2016, but not signed into law by the President would significantly restrict the space for civil society and criminalize their activities under the pretence that they have received funding from abroad (RPDH, 2016).

Despite these general constraints on CSOs' operations, there is no evidence that CSOs have faced challenges in attending EITI activities and there is extensive evidence of their participation at MSG meetings and leading EITI outreach dissemination events. On the contrary, CSO MSG members' ability to participate in all EITI activities appears to be guaranteed by high-level political commitment to the EITI and does not seem to extend to activities outside the narrowly-defined scope of EITI implementation, such as public protests over oil and gas issues.

Association: Civil society representatives in the MSG can generally seek input and are not restricted from engaging other CSOs that are not part of the MSG. Through PWYP-Congo, civil society representatives in the MSG are able to coordinate their activities and circulates information through mailing list but there are no evidences that they have sought input from civil society outside the MSG on MSG deliberations. Similarly, there are no evidence of restriction of formal or informal communication channels between civil society MSG members and the wider civil society constituency. Civil society MSG representatives have not conducted outreach activities to broader civil society to discuss MSG representation, but this is not due to government restriction.

Engagement: Despite the constrained general environment, civil society appears particularly engaged in the EITI process. Representatives from the civil society constituency attend MSG meetings regularly, conduct analysis of EITI Reports, produce communication materials and organise public events to inform citizens on issues related to the governance of the extractive industries. Civil society representatives in the MSG regularly express their views related to EITI activities and highlight their concerns. In August 2015, PWYP Congo wrote a letter to the Minister of Economy, Finance and Budget and issued a press release expressing concerns on the "stagnation of the EITI process" and calling on the government to resume publication of EITI Reports, implement past EITI recommendations and explain the relationship of SNPC's subsidiary CORAF and Philia (PWYP Congo, 2015). There are numerous examples of civil society using EITI data, including PWYP Congo's review of EITI Reports and the national budget, publishing a report on government expenditure on public health in 2015 (PWYP Congo, 2015). This report and subsequent follow-up reports were widely disseminated and formed the basis of an advocacy campaign to improve allocation of oil revenues to benefit the poor (PWYP, 2016). PWYP Congo also published a study in 2011 that found that oil revenues did not have a positive impact on the poor (PWYP Congo, 2011).

Access to public decision-making: Civil society representatives participate actively in MSG meetings and their views are considered by government entities and the industry. The leader of the PWYP-Congo coalition Christian Mounzeo was appointed vice President of the MSG through Presidential Decree 2012-1123 of 25 October 2012. Mr Mounzeo and Mr Brice Makosso are among the activists who led the campaign for EITI implementation in Congo since its inception. They have both played a leading role in promoting transparency in the oil and gas sector at the national and international level through their

participation in the MSG in Congo and in the EITI International Board. Mr Mounzeo also represents civil society in the government led anti-corruption agency.

While civil society representatives in the MSG generally hold dissemination campaigns to promote public debate, without prior authorisation, there was at least one case of administrative barriers preventing CSOs from holding meetings related to the EITI process. On 26 March 2015, the RPDH issued a press release¹⁴ to report “obstructions” by local authorities in the Department of Bouenza. According to the RPDH press release, its delegation travelled to Nkayi on Thursday, 19 March 2015 for an EITI dissemination campaign and budget monitoring, targeting local administrative officials, NGOs, media and religious groups. The mayor of Nkayi, Mr. MANDOUNOU MAGANGA, issued a “categorical refusal” to hold the meeting on the grounds that the context was sensitive and did not lend itself to holding such an event. Despite a direct appeal from the Chair of the MSG to the most senior government official in the region, the activity was simply cancelled. A second incidence concerning public assembly of an EITI related event occurred in May 2016. The Catholic Church’s Commission Justice and Peace issued invitation letters to an international conference on transparency in mining, oil and gas in Africa to be held in Pointe Noire (Commission Diocésaine Justice et Paix Pointe Noire, 2016). The Commission Justice and Peace requested approval of invitation letters for international civil society coming from abroad for the purpose of obtaining visas to attend the conference. This request was first denied by the local office of the Direction of Surveillance of the territory (DST) but subsequently approved following the MSG Chair’s express request (Commission Diocésaine Justice et Paix Pointe Noire, 2016).

There is evidence that CSO can influence decisions such as the preparation and adoption of the new transparency law, but their campaigning on issues critical to the government has also had a backlash on transparency and caused the opposite of the intended effect. For examples, following the publication of a report by the Swiss NGO Berne Declaration (now Public Eye) on the financial relationship between the domestic refinery CORAF and a private Swiss-based oil-trading company Philia (Publiceye, 2015), PWYP Congo called on SNPC for clarification and publication of the CORAF-Philia contract (PWYP-Congo, 2015). The CORAF Report used EITI data to show that CORAF had not paid for the roughly 6m barrels of oil (worth USD 600m) supplied by SNPC annually and had run up a significant debt to the Treasury, despite CORAF’s sale of oil products to Philia (Publiceye, 2015). Civil society MSG members, PWYP-Congo in particular, have called for a judicial inquiry into revelations of the Panama Papers, in a press release on 21 April 2016 (PWYP-Congo, 2016). The government abruptly removed the quarterly SNPC crude oil sales reports from the EITI Congo and MEFB websites immediately after the publication of the CORAF report and no EITI Report was published in 2015-2016 until the 2014 EITI Report was finally produced in December 2016. Nonetheless publication of the report generated significant coverage in the international media, even if its coverage in the local press was limited.

Stakeholder views

Stakeholder consultations, driven by the individuals themselves, focused primarily on the issues of freedoms of expression and assembly, seen as the most significant challenges for civil society in the ROC. Stakeholders did not highlight significant concerns regarding association, engagement and access to

¹⁴ RPDH Press release of 26 March 2015, <http://www.rpdh-cg.org/news/2015/03/26/atteinte-aux-libertes-dassociation-et-de-reunion-au-congo-la-rpdh-interdite-de>

decision making in the civil society protocol.

Extensive consultations yielded widely contrasting views regarding civil society's ability to speak freely on any EITI-related issue. Civil society MSG representatives considered that they could speak freely in public about the EITI process, including at MSG meetings (considered public), through interviews with national and international media, during workshops, conferences and dissemination campaigns at the local level – albeit within limits. Interviews and debates on radio and television were routinely cited as CSO MSG members' preferred mode of communication. Civil society MSG members noted that the EITI acts as a "shield" of protection that allowed them to express critical views of the government, providing multiple examples of interviews on national television where they had used EITI data to criticise management of the oil sector. Some civil society representatives considered that their colleagues had gone too far in criticising the government in recent interviews and they were relieved to see that their colleagues had not faced reprisals for their actions thus far.

Civil society MSG members described an environment of fear and topics that are considered off-limits, explaining that they had to tread carefully and exercise their judgement on topics that could be considered off-limits for the government. As an example, civil society MSG members explained that they had issued calls for further investigation after the publication of the CORAF report but had received threats and intimidation from security forces. They also considered that local media's lack of coverage of the CORAF report other than the official government rebuttal, which went on to accuse local CSOs of "high treason" for "being complicit with foreign plots to overthrow the government". Civil society representatives noted that accusation of high treasons was often used by security forces to demonise their work and expose them to prosecution. Despite these challenges, CSO MSG members agreed that civil society enjoyed a unique space, within the EITI framework, to express their views.

However, civil society both on and off the MSG considered that activists outside the MSG were not as lucky as those on the MSG, even though their advocacy on oil and gas issues were substantially related to EITI issues. For examples, the lead authors of the CORAF report explained that they did not feel safe to travel to the ROC for their investigations for fear of reprisal. One international CSO that attended the EITI Board meeting in Brazzaville in April 2015 stated that he had taken special security precautions for the trip given his past work on oil and gas issues in the ROC. The arrest of Italian journalists investigating on similar issues in Pointe Noire in March 2017 was highlighted by several international and local CSOs as confirming those fears. Civil society actors outside the country explained that it was difficult to gather information on allegations of corruptions from civil society activists inside the country. Some activists explained that given the environment of fear and police brutalities, they did not contact stakeholders inside the country to avoid incriminating them by association and exposing innocent activists to reprisals.

Civil society MSG members confirmed the practice of self-censorship, which proved difficult to document in practice. MSG members agreed that there were topics on the management of the oil sector that were considered off-limits. Several civil society representatives noted that they could criticise the government at their own risk and peril. Despite the climate of fear, several CSO MSG members considered that they routinely tested the limits of government censorship by openly calling for investigation of allegations of corruptions at the CORAF refinery, widely considered a sensitive issue. Industry representatives noted that they would refrain from criticizing the government or giving the impression of pointing fingers, but considered civil society to be outspoken on EITI-related issues. The lack of a formal government policy

defining a list of “sensitive issues” was seen by several civil society representatives as creating fertile ground for self-censorship. Civil society MSG members confirmed that their analyses of EITI Reports were generally not made public. For example, civil society MSG members had prepared an analysis of the 2014 EITI Report following its publication, highlighting some weaknesses, but this analysis was not publicly accessible and its circulation was limited to MSG members and secretariat staff. Several CSO MSG members stated that government MSG members routinely blocked publication of documents such as civil society’s analysis of EITI Reports that they considered to be internal documents. However, MSG members insisted that civil society had the ability to disseminate the main finding of the 2014 EITI Report through interviews with local and international print and broadcast media.

Civil society activists outside the MSG, but substantially engaged in EITI noted that they faced strict restrictions on certain issues, given that any direct criticism of the President or his family was immediately assimilated with subversive activities, with unpredictable reprisals. Many civil society stakeholders expressed significant concerns about new NGO legislation adopted in the National Assembly in 2016, that would criminalise some civil society activities and impose restriction on access to foreign funding. The PWYP Congo coalition issued a detailed analysis of the bill, but it was unclear whether their concerns had been addressed as the final bill, adopted in parliament but not yet public given that it was still awaiting the President’s signature (PWYP-Congo, 2016). The bill’s status remains unclear despite extensive stakeholder consultations. Some civil society stakeholders expressed the fear that the bill could be signed into law by the President at any moment and that the government could be waiting for the outcomes of EITI Validation before enacting any such legislation. Others government and civil society stakeholders considered that the bill had been substantially amended prior to its adoption by the National Assembly. It was not possible for the International Secretariat to verify these claims about the status of the draft law on NGOs despite extensive consultations. Several CSOs did not have confidence in the judicial system and considered that they could not challenge the NGO law in court even if it demonstrably violated their constitutional rights. Civil society outside the MSG also explained that the compromise established a safe but limited space in which civil society could operate. Independent NGOs are under pressure from the government to toe the official line or remain within the boundaries allowed for the EITI. Many international stakeholders outside the country argued that civil society activists in ROC routinely practice self-censorship to avoid reprisals from the government. They argued that topics covered by civil society activities within the framework of the EITI, are limited to advocacy campaigns for more transparency and dissemination campaigns of EITI reports to local communities to avoid more sensitive topics at the central level. According to this view, civil society activists observe unwritten but strictly enforced rules by the domestic security service, the Direction Générale de la Surveillance du Territoire (DGST), to remain within the boundaries of the EITI. Many stakeholders outside the MSG also voiced concerns that this practice continued after the adoption of the new EITI Standard in 2013, including the Civil Society Protocol that calls for the protection of the fundamental rights of civil society representatives who are substantively involved in the EITI process, including but not limited to MSG members.

Initial assessment

The International Secretariat’s initial assessment is that the ROC has made meaningful progress in meeting this requirement. The government has established a safe space in which civil society MSG representatives can operate, express themselves freely and contribute to public debate. However, this controlled space for civil society is narrowly defined to MSG members and excludes important actors substantially engaged in the EITI process who are routinely exposed to intimidation, reprisal and censorship. In accordance with the assessment framework outlined in the civil society protocol,

provisions related to civil society participation are assessed each in turn.

Expression: While civil society representatives on the MSG can express themselves freely on topics deemed “linked” to the EITI, activists outside the MSG who promote transparency and accountability are routinely exposed to reprisals. There are also credible allegations of intimidation and reprisals for civil society actors and self-censorship is a concern. The International Secretariat concludes that civil society organisations cannot freely express their views related to natural resource governance and the practice of censorship and self-censorship is in violation of the civil society protocol 2.1, and requirements 1.3(d), 1.3(e)(i), 1.3(e)(iv).

Operation: The International Secretariat concludes that civil society can operate effectively in the context of the EITI.

Association: The International Secretariat did not find any violations of the civil society protocol with regard to freedom of association.

Engagement: The International Secretariat concludes that civil society actors are adequately engaged in the EITI process and can promote public debate within the boundaries allowed by the Government.

Access to public decision-making: There were reports of curbs on freedom of assembly in relation to public debate that were overcome through intervention from senior government officials. Several CSO MSG members reported two EITI-related events organised by civil society that were first temporarily barred by the security forces and local government officials, but subsequently authorised by the government after the intervention of high-level government officials including the MSG Chair. The International Secretariat concludes that civil society representatives have access to public decision-making and their views are considered by decision makers and the industry.

In accordance with Requirement 1.3, the Government of Congo should ensure that there is an enabling environment for civil society participation, and ensure that the rights of civil society substantively engaged in the EITI, including but not restricted to members of the multi-stakeholder group, are respected.

MSG governance and functioning (#1.4)

Documentation of progress

MSG composition and membership: Presidential Decree no. 2012-940 of 20 August 2012 established the institutional framework for EITI implementation in the ROC, with a multi-stakeholder Executive Committee and a technical permanent secretariat. Prior to this, EITI implementation was overseen by a consultative committee created in September 2007. The Executive Committee is led by two chairs from the government and two vice chairs representing civil society and companies respectively. In addition to its four-person leadership bureau, the EITI Executive Committee is composed of 21 members evenly divided between the three constituencies (Congo Actuel, 2017). Two representatives of the state-owned SNPC, which is part of both the government and industry constituencies, bringing the total number of MSG members to 27. MSG members are appointed for a three-year mandate renewable once, in line with Ministerial Decree 611 MEFPPPI-CAB of 4 December 2012. The most recent Ministerial Decision

designating MSG members was issued in December 2012 and the MSG has not been renewed since. Despite the expiration of their mandate in December 2015, the same MSG members continue to take part in the MSG in practice.

Civil society representation: The process for appointing and renewing civil society representatives is not codified anywhere other than the Presidential Decree and Ministerial Decision appointing them. Civil society representatives come from specialised NGOs and coalitions representing multiple NGOs such as PWYP, Commission Justice and Peace from the Catholic Church, Foundation NIOSI, the National Federation of Youth and the National Movement for Transparent Elections. Christian Mounzeo from PWYP is a vice-Chair of the MSG (see Requirement 1.3).

Industry representation: Similar to the civil society constituency, the process for appointing and renewing companies' representatives is not codified anywhere other than the Presidential Decree and Ministerial Decision appointing them. MSG members representing the industry include one representative each from Chevron Overseas Ltd, Congorep, Congo Mining, Glencore, Maurel & Prom Congo, Murphy Wes Africa Ltd. In practice a representative from ENI Congo and Total take turn as the vice Chair of the MSG.

Government representation: Presidential Decree 2012-1123 of 25 October 2012 reappointed the Minister of Economy, Finance, Planning, State Investments and Integration Gilbert Ondongo as the MSG Chair and Florent Michel Okoko as the MSG's Executive Chair. Minister of Economy, Finance and Budget Calixte Ganongo took over as Chair of the MSG following his appointment on 30 April 2016. In practice, MSG meetings are chaired by Executive Chair Okoko, who also manages the National Secretariat and oversees day-to-day implementation. EITI implementation in the Congo has been entirely funded by the government. The Minister of Finance Gilbert Ondongo confirmed the nomination of seven representatives from the government, including two government officials from the Ministry of Finance, two from the Ministry of Hydrocarbon, two from the Ministry of Mines and Geology and one representative of the ministry for industrial development and promotion of the private sector, through Ministerial Circular 611 MEFPPI-CAB of 4 December 2012.

Terms of reference: Presidential Decree 2012-940 of 20 August 2012 that established the Executive Committee also acts as its ToR. The Executive Committee has the mandate to oversee EITI implementation in the Congo under the supervision of the Minister of Finance (President de la Republique du Congo, 2012). According to the Presidential Decree, the Executive Committee is the organ of representation, orientation, supervision, decision, monitoring and evaluation of EITI implementation in Congo. The Executive committee's key responsibilities include approving the work plan and budget for EITI Congo as well as the scope of EITI reporting and reporting templates; hiring the independent administrator and approving the EITI Reports; and overseeing the work of the technical permanent secretariat and hiring of staff.

Representation: Nominations letters show that civil society and companies have appointed their own representatives in the Executive Committee, except for the two MSG vice-Chairs (representing PWYP and ENI Congo) that were nominated by Decree. At the sign-up phase in 2004-2007, the government undertook wide consultations to achieve broad representation on the MSG (CAC75, 2012). In 2012, civil society coordinated its nominations through PWYP and companies coordinated their nominations through the oil and gas industry association (AOPC) and the Federation of Mines. While representation

of different stakeholders appears adequate, it is unclear whether the government repeated outreach efforts to engage a diverse range of government stakeholders in the EITI process prior to nomination of MSG representatives in 2012. There have been relatively few changes in the MSG membership since December 2012. On 20 October 2014, civil society representative Désiré Iwangou was replaced by Bernard Mabounda. Both are representatives of the youth federation FENAJEICO (Fédération Nationale des Jeunesses et Individualités du Congo). Records show that Christian MOUNZEO, from PWYP, was reappointed by his organisation as vice chair of the MSG on 5 February 2013. There are no other public records of changes and renewals of MSG members.

Internal governance and procedures: Presidential Decree 2012-940 does not include internal governance rules such as quorum or voting rules. Meeting minutes show that the Executive Committee verifies whether it is quorate at the beginning of each meeting, but the minutes do not specify the rules followed to determine quorum.

Decision-making: The Executive Committee adopted rules of consensus for its decision-making in its Internal Rules.

Record-keeping: A review of MSG meeting minutes shows that the MSG held ten meetings in 2013, four in 2014, eight in 2015 and two in 2016. Most of these minutes are signed by the MSG Chair and published on the EITI Congo website. However, minutes for meetings held in 2016 were not publicly accessible, because they had not been signed by the Chair when Validation began in April 2017. The TOR for the MSG that has not been implemented in practice calls for the publication of signed Minutes within 10 days after each meeting.

Capacity of the MSG: MSG members appear to be high-level representatives of their respective organisations. The ROC having implemented the EITI for almost a decade, the MSG has developed strong capacities throughout the implementation process. Three MSG members (two from civil society and one from government) have been members of the EITI International Board.¹⁵ Successive annual EITI work plans have consistently included capacity building activities both for MSG members and their broader constituencies.

Per diems: Presidential Decree 2012-940 of 20 August 2012 states that MSG members are entitled to the payment of “a compensation at each session”, but does not specify eligibility criteria or the level of payments. The decree only states that “the amount of such compensation shall be set by the Minister of Finance” (President de la Republique du Congo, 2012). Despite the lack of a Ministerial Decision setting the level of per diems, there is evidence that per diems are paid in practice (through repeated mention of arrears in per diem payments at MSG meetings). Although information on the exact level of per diems is not public, stakeholders confirmed during consultations for Validation that each civil society and government representative received XAF 700 000 (roughly USD 1200) per person per meeting. In addition to this amount, travel costs (flights and accommodation) for CSO MSG members traveling from Pointe Noire to Brazzaville to attend MSG meetings were also paid by the EITI National Secretariat. Industry

¹⁵ Michel Okoko represented francophone implementing countries on the Board from 2007 to 2016, Christian Mounzeo represented civil society on the EITI International Board from 2007 to 2011 and Brice Makosso is currently serving as an alternate representing civil society on the 2016-2018 EITI Board.

representatives do not appear to receive per diems due to concern with their companies' compliance policies. While industry MSG members knew that per diems were paid, they were not aware of the exact amount. The National Secretariat, which pays per diems from government funds allocated to EITI implementation, and CSOs confirmed that it had accumulated arrears of XAF 90m (about USD 153 000) in outstanding per diem payments for an unspecified period, due to lack of liquidity.

Attendance: Analysis of MSG meeting attendance in 2013, 2014 and 2015 shows that participation from all three constituencies has declined year-on-year and has been uneven across constituencies. Analysis of MSG meeting attendance is included in Annex B. Despite being the largest group, government participation (48% on average) was the lowest, slightly lower than industry's (53% on average) and significantly lower than civil society's (77%). The government participation rate declined from 54% in 2013 to 30% in 2014 before edging up to 50% in 2015. This is due in part to government MSG members rarely sending alternates in cases of absence. Records show that the MSG member from the MMG did not attend a MSG meetings for three years, while other government representatives participated only once or twice in three years, without otherwise sending alternates. Industry representatives' attendance was slightly better than the government's, but their relatively lower participation may be due to their base in Pointe Noire and the impact of lower oil prices in 2015. Civil society representatives' participation has remained strongest, albeit on a declining trend from 88% in 2013 to 70% in 2015 that coincides with the emergence of arrears in per diem payments.

National Secretariat: The Technical Permanent Secretariat oversees day-to-day implementation of the EITI under the MSG's supervision, in accordance with the agreed work plan (President de la Republique du Congo, 2012). The secretariat assists the Executive Committee in the preparation of documents and meetings and manages financial and administrative resources allocated to EITI implementation. The Permanent Secretary is the head of the secretariat under the supervision of the President of the Executive Committee. Séraphin Ndion was appointed Permanent Secretary in April 2013 (Finance, 2013). The Presidential Decree that created the secretariat provides for six technical and administrative staff.

Stakeholder views

MSG members from all constituencies agreed that there are serious internal governance challenges that need to be addressed, including the lack of adequate record-keeping, deviations and lack of implementation of the MSG's Internal Rules and other governance documents, lack of renewal of the MSG membership, and an ad-hoc and opaque per diem policy.

Civil society and government representatives confirmed that each government and civil society MSG member was paid XAF 700 000 per meeting, while all stakeholders confirmed that industry MSG members did not receive any per diem. Civil society representatives complained that they had not received their per diems or session fees for recent MSG meetings. Government officials confirmed that government funds were used to pay per diems, commonly called "session fees", but the exact amount was unilaterally set by the chair of the MSG without a supporting Ministerial Decision. Industry representatives explained that they were aware of per diems being paid, but did not know the exact amount. They found that the amount of XAF 700 000 was excessively high even in the context of the ROC, where high per diems were a common practice. A government official admitted that the amount paid per session was higher than the national average, without providing specific figures. It is possible that the MSG per diem policy is three to four times higher than the national average, according to informal estimates by several stakeholders

consulted. For example, the US State Department's maximum daily rate for per diem allowance is set at USD 305 in 2017 (United State State Department Office of Allowances, 2017).

Initial assessment

The International Secretariat's initial assessment is that the ROC has made inadequate progress towards meeting this requirement. The MSG includes appropriate representation of each constituency, but the process by which each stakeholder group nominated their representatives remains unclear. It remains unclear whether all civil society representatives on the MSG are independent, operationally and in policy terms, from government. 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. However, evidence of outreach activities and coordination within constituency groups is lacking. The ToR also gives the MSG a mandate to approve work plans, to appoint the Independent Administrator including approval of the IA's ToR, EITI Reports and annual activity reports, but it does not include internal governance rules and procedures. The rules followed for quorum and decision making are unclear and not publicly accessible. The MSG's Internal Rules are not publicly available and do not appear to be followed in practice. The rules related to MSG membership terms have not been followed in practice, with no evidence of a renewal process following the end of current MSG members' terms in December 2015. Moreover, the MSG's per diem policy remains ad-hoc and opaque, which could lead to conflict of interest and potentially violate the EITI Code of Conduct.

In accordance with Requirement 1.4, the MSG should renew its membership in line with statutory procedures and the industry and civil society constituencies are encouraged to agree public nominations procedures ahead of MSG member selection. EITI Congo should formalise its per diem policy and ensure that it does not affect the governance of EITI implementation by being in line with national practice. The MSG should ensure its ToR are in accordance with Requirement 1.4, publicly accessible, and implemented in practice.

Workplan (#1.5)

Documentation of progress

The EITI Congo Executive Committee has adopted multi-year work plans for three-year periods as well as annual work plans. The first work plan for 2008-2010 was adopted in October 2007 and published in January 2008 (EITI-Congo, 2008). The second work plan for 2011-2013 was adopted in February 2011 and updated in October 2011. For the period 2014 to 2017, the Executive Committee has adopted annual work plans. The Executive Committee adopted the 2014 work plan on 27 December 2013 (EITI-Congo, 2013), the 2015 work plan in January 2015 (ITIE Congo, 2015) and the 2017 work plan in December 2016 (ITIE Congo, 2016).

Publicly accessible work plan: The Executive Committee regularly publishes the work plan on its website, but only the latest work plan, covering 2017, is publicly accessible on the EITI-Congo new website (ITIE Congo, 2016).

Objective for implementation: The 2017 work plan includes the following objectives, that reflect stakeholder's priorities:

- Consolidate the functioning of the EITI Implementing bodies (Executive Committee and Permanent Technical Secretariat), including revisiting and developing working documents and procedures;
- Improve stakeholders' knowledge in the extractive industries process, the accounting and tax practices of the extractive industries at the international level;
- Contribute to the development of a better institutional framework and the establishment of a better data management system for the extractive sector;
- Strengthen the quality of the data published in the EITI reports and a better external perception of the image of the EITI process in the Congo;
- Encourage a broad involvement of the populations in the implementation of the EITI and a good knowledge of its issues through communication and awareness-raising activities;
- Organize advocacy actions to mobilize financial resources for EITI implementation.

Measurable and time-bound activities: The work plan includes a detailed list of activities for each objective. For each activity, the work plan includes expected results, indicators of progress, capacity constraints, risks and time frame for implementation. The 2015 annual progress report shows that only 44% of the planned activities were completed on time. This performance is significantly lower than the 66% for the 2014 work plan. The Executive committee noted in its 2015 APR that this decline is due in part to lack of funding, but also the political environment ahead of the referendum to change the constitution.

Capacity constraints: The 2013, 2014, 2015, 2016 and 2017 work plans include capacity building activities for the MSG. These activities include trainings on fiscal regime applicable to the petroleum industry and trainings on the EITI Standard.

Scope of EITI reporting: Preparation of EITI reporting has been the main focus of all work plans published to date. The 2016 and 2017 work plans expanded the scope of EITI reporting to include the forestry sector.

Legal or regulatory obstacles: Early EITI work plans in the period 2008 to 2012 addressed legal and regulatory barriers, which was considered in the first Validation under the EITI Rules (CAC75, 2012). Subsequent work plans have focused on developing a transparency law, which was adopted by parliament in 2016 and signed into law by the President in March 2017.

Follow-up on EITI recommendations: The Executive Committee follows up on the implementation of recommendations made in previous reports. Progress in the implementation of these recommendation is reported in the annual progress reports. Several recommendations are reoccurring, such as the lack of full implementation of mining cadastre. The 2015 APR includes the following overview of the MSG's engagement with relevant government agencies on follow-up of EITI recommendations:

- encouraging the Ministry of Hydrocarbons and Mining to set up and/or update a real oil and mineral cadastre;

- encouraging the Ministry of Finance to formally adopt a tax nomenclature specific to the extractive sector in order to strengthen the monitoring of extractive revenues by the ROC government;
- ensuring the effective implementation of an oil, mining and gas information management system;
- inviting the Ministry of Finance to adopt texts requiring ship-owners to declare to the DGDDI, at each abduction, the amount of the maritime tax paid to SOCOTRAM. These amounts can then be declared by the DGDDI in the framework of EITI and reconciled with the data reported by the companies;
- integrating all new hydrocarbon and mining companies that have been granted exploration or prospecting permits into the scope of reconciliation;
- ensuring coverage by EITI Reports of all significant payments from the extractive sector.

Costings and funding: All work plans are fully costed and include a resource mobilisation plan. The estimated cost for the 2017 work plan amount to XAF 755 million (About USD 1.2 million). According to the resource mobilisation plan, the Government of ROC will provide 65% of the total budget and development partners and companies will fund the outstanding gap. There are also gaps between the projected budget in the work plan and the actual budget as reported in the APR following review by the finance committee of the MSG. For example, the projected cost of the 2014 work plan was XAF 1,5 billion (about USD 3 million), but the actual cost according to the APR for the same year was XAF 695 million (about USD 1,4 million), less than half of the projected cost. Despite this funding gap, 66% of planned activities were implemented and the MSG carried a credit to the 2015 period. A similar dynamic occurred in 2015. The work plan for 2015 projected total cost was XAF 872 million (USD 1.7 million), but the actual revenues and expenditures for 2015 total XAF 404 973 315 (about USD 800 000). Only 44% of the planned activities were implemented, which correspond to the available funding as a percentage of projected cost. The Government of the ROC provided the entire funding for both fiscal periods.

Stakeholder views

All stakeholders noted that they had been consulted in the preparation of the work plan. They explained that delays in the implementation of the 2015 and 2016 work plans were mainly due to the ongoing electoral period. Civil society representatives voiced concerns on the lack of oversight in the financial management of funds allocated to EITI implementation. They explained that the MSG Chair had absolute control of the financial management of EITI Congo resources and that this management was opaque and unaccountable to the MSG. Industry representatives and government officials voiced concerns on the management of the National Secretariat. Industry representatives explained that they had considered providing direct funding of activities in the work plans but decided against it due to the lack of clarity in the MSG's per diem policy (Requirement 1.4).

Initial assessment

The International Secretariat's initial assessment is that the ROC has made satisfactory progress towards meeting this requirement. EITI Congo work plans include objectives that reflect national priorities, such as the extension of the scope of EITI reporting to the forestry sector and the drafting of a transparency law. Work plan activities are measurable and time-bound, structured to achieve the agreed objective. The work plans also include activities aimed at addressing capacity constraints and activities aimed at embedding EITI reporting in government system through the Transparency Code.

Table 1 – Summary initial assessment table: 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)	The government is committed to the EITI and relevant government representatives are part of the MSG. Participation in MSG meetings is relatively low, but meetings are usually quorate.	Satisfactory progress
Company engagement (#1.2)	Companies are actively engaged in the design and implementation of the EITI, including MSG deliberations.	Satisfactory progress
Civil society engagement (#1.3)	Civil society is actively engaged in the EITI process, but the application of the civil society protocol, particularly as it relates to freedom of expression, is limited to civil society members on the MSG. This controlled space for civil society is narrowly defined to MSG members and excludes important actors substantially engaged in the EITI process who are routinely exposed to intimidation, reprisal and censorship.	Meaningful progress
MSG governance and functioning (#1.4)	The MSG includes relevant actors with adequate representation of key stakeholders, but the three-year mandate of MSG members (December 2012 to December 2015) has expired with no evidence of renewal. The MSG meets frequently, but there are gaps in attendance and record keeping. The MSG's TOR lacks clear procedures for decision making, internal governance and the per diem policy remains ad hoc, opaque and could lead to conflicts of interest.	Inadequate progress

Work plan (#1.5)	EITI Congo work plans include objectives that reflect national priorities, such as the extension of the scope of EITI reporting to the forestry sector and the drafting of a transparency law. Work plan activities are measurable and time-bound, structured to achieve the agreed objective. The work plans also include activities aimed at addressing capacity constraints and activities aimed at embedding EITI reporting in government system through the Transparency Code.	Satisfactory progress
<p>Secretariat's recommendations:</p> <ol style="list-style-type: none"> 1. In accordance with Requirement 1.3, the Government of Congo should ensure that there is an enabling environment for civil society participation, and ensure that the rights of civil society substantively engaged in the EITI, including but not restricted to members of the multi-stakeholder group, are respected. 2. In accordance with EITI Requirement 1.4, the government should renew the membership of the MSG in line with statutory documents. EITI Congo should review formalise and publish its per diem policy and set a reasonable amount in line with national practices. The MSG should ensure its TOR are in accordance with Requirement 1.4, publicly accessible, and implemented in practice. 		

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

Legal framework: For oil and gas, the 2014 EITI Report provides an overview of laws and regulations in the oil and gas sector (2014 EITI Report, pp.38-39), namely the Hydrocarbons Code, the model PSC and the Mining Code. For mining, the report provides an overview of the Mining Code, noting only that revisions to the law had been initiated in 2014 and were ongoing in 2016 without further details (2014 EITI Report, pp.48-49).

Government agencies: In oil and gas, the 2014 EITI Report provides a cursory overview of the Ministry of Hydrocarbons and state-owned SNPC (2014 EITI Report, pp.36-37), but does not describe any other government entity with jurisdiction in the oil and gas sector. The Report shows that under the Ministry of Hydrocarbon the Direction Générale des Hydrocarbures (DGH), collects revenues from the oil, gas and mining companies (p.69). Four other government agencies under the Ministry of Finance also collect revenues from the oil and gas sector: Direction Générale des Impôts et des Domaines (DGID), Direction des Ressources Naturelles (DRN), Direction Générale du Trésor (DGT), Direction Générale des Douanes et des Droits Indirects (DGDDI).

In mining, the report provides a cursory overview of the Ministry of Mines and Geology (2014 EITI Report, pp.48-49), although the description consists only of the IA stating that it “understands” that the Ministry was still tasked with implementing government policy in the mining sector. It also clarifies that there is no state participation in the mining sector (2014 EITI Report, p.48).

Fiscal regime: For oil and gas, the 2014 EITI Report provides an overview of the fiscal environment for oil and gas (2014 EITI Report, pp.40-42), including descriptions and rates of three taxes.¹⁶ It also refers to the “special customs regime” applicable but provides no information other than the fact it is regulated by a (unspecified) decree. It also provides an overview of sectoral taxes, including royalties, Profit Oil, bonus, diversified investment provisions and staff training contributions. For mining, the report describes the

¹⁶ Corporate income tax, real estate tax and tax on salaries.

fiscal environment for mining, including descriptions and rates of corporate income tax, contractors withholding tax and salary tax (2014 EITI Report, pp.49-50). It states that all mining equipment is exempt from customs duties and briefly describes sectoral levies including royalties and land tax, although it does not provide the exact royalty rates for specific minerals, noting that the rate varies according to minerals.

Degree of fiscal devolution: The 2014 EITI Report states that the fiscal regime is highly centralised in Congo, and that any direct subnational payments are “not significant” (2014 EITI Report, pp.40-42). However, the report states that there are subnational transfers linked to EI revenues (2014 EITI Report, p.43): Decree n°2000-186 of 12 August 2000 sets the rates and transfer rules for royalties, with two thirds of all royalties required to be allocated to local governments. The report explains that the recipient local governments and the split between local governments are defined by Ministerial Circular, although the report does not describe actual 2015 transfers and nor the formula for calculating subnational transfers in 2015. The report also states that, “to the IA’s knowledge”, there were no statutory subnational transfers associated with mining in 2014 (2014 EITI Report, p.51).

Reforms: While there is no reference to any reforms of the Petroleum Code or the regulatory framework for oil and gas, the 2014 EITI Report provides an overview of the Mining Code, noting only that revisions to the law had been initiated in 2014 and were ongoing in 2016, without further details (2014 EITI Report, pp.48-49).

Stakeholder views

All MSG members consulted expressed satisfaction at the comprehensiveness and reliability of the 2014 EITI Report’s description of key extractives laws, fiscal terms, regulatory government entities and reforms. However, several CSOs criticised the fact that the IA expressed no opinion on whether all extractives companies complied with contractual obligations and the general legal framework and fiscal environment, despite the MSG having included such a request in the ToR for the IA for the 2014 EITI Report. The CSOs highlighted the importance of such an assessment in the EITI Reports to assess whether the government was receiving the revenues it was entitled to.

Upon discussion, a government MSG representative explained that the unitized oil and gas block, governed by a bilateral government agreement between the ROC and Angola, was subject to Angolan fiscal terms because it was slightly lower than the ROC’s. However, the official explained that revenues were equally split between the two governments. The MSG had not discussed this legal and fiscal structure in preparing the 2014 EITI Report, according to the representative.

Another government representative explained that companies could sign a mining convention for both production and exploration licenses, highlighting that the tax advantages included in mining conventions could be beneficial for companies holding exploration licenses for areas with known resources that required further exploration for full appraisal.

All stakeholders consulted considered that statutory subnational transfers of two-thirds of royalties were not yet effective given the lack of a Ministerial circular implementing Decree n°2000-186. Several MSG members expressed concern that this had not been explicitly stated in the 2014 EITI Report, which seemed to imply that subnational royalty transfers were effective in practice (*see Requirement 5.2*).

However, all representatives consulted confirmed that there were no extractives-specific direct subnational payments in the ROC (*see Requirement 4.6*).

Extensive consultations with stakeholders from all three constituencies highlighted significant on-going and recent reforms in both mining and oil and gas sectors. Several government and civil society representatives confirmed that the Petroleum Code had been revised in 2016. Several government entities also noted that a new Mining Code had been finalised by government and submitted to Parliament, where it currently stood. One government representative highlighted the draft Mining Code's proposed restructuring of the Ministry of Mines and Geology, including the creation of a cadastral department. An industry representative expressed concern that the draft new Mining Code introduced the concept of Production-Sharing Contracts to the mining sector, which the representative considered more appropriate for the oil and gas sector than for mining.

Initial assessment

The International Secretariat's initial assessment is that the ROC has made satisfactory progress in meeting this requirement. The 2014 EITI Report provides an overview of the legal framework and fiscal regime in the mining, oil and gas sectors, including the relevant laws and regulations. However, the report lacks information on the roles and responsibilities of the relevant government agencies in the sector. The following agencies are involved in the extractive sector, DGH, DGID, DRN, DGT, and DGDDI, yet their respective roles are not described in detail in the report. The description of revenue flows show which government entity collects which revenues and most government agencies' role is limited to collecting taxes and revenue, except DGH, which also plays a regulatory role.

To strengthen implementation, the MSG may wish to ensure that the fiscal environment, roles and responsibilities of key government entities and current or recent reforms in the mining, oil and gas sectors are clearly described in future EITI reporting. EITI Congo may wish to consider whether the EITI Congo website may provide a platform for updated information on the legal environment and fiscal framework for the extractive industries.

License allocations (#2.2)

Documentation of progress

Awards/transfers: The 2014 EITI Report provides a list of active mining, oil and gas licenses Annex 1 (pp.96-108). The list shows that seven oil and gas production licenses¹⁷ and one mining production license¹⁸ were awarded in 2014. However, the Report does not explicitly state whether any mining, oil or gas licenses were awarded in 2014, other than clarifying that there was no competitive bidding round for oil and gas licenses in 2014 (2014 EITI Report, pp.39-40). The report does not mention any mining exploration license awarded in 2014. In terms of license transfers, the 2014 EITI Report states that there were no transfers of equity in oil and gas PSCs in 2014 aside from the purchase by Petroleum E&P of the

¹⁷ The Zatchi II, Loango II, Foukada II, Djambala II, Mwafi II, Kitina II and Néné-Banga production licenses were awarded in 2014, based on the timing of the decrees approving them.

¹⁸ The Zanaga mining convention was renewed by Decree 2014-443 on 12 August 2014.

equity of a company called Pilatus in the Ngoki exploration license in 2014 (2014 EITI Report, pp.45-46).

Award/transfer process: For oil and gas licenses, the 2014 EITI report describes the three types of oil and gas licenses and clarifies that oil and gas license are “usually” allocated through competitive bidding but can also be awarded on a discretionary basis (2014 EITI Report, pp.39-40). The process for awarding or transferring oil and gas licenses is not described beyond the fact that companies applying for licenses must be established under Congolese law and are required to conclude PSCs with the state. The report states that all oil and gas license transfers are subject to approval by the Ministry of Hydrocarbons (2014 EITI Report, pp.45-46), but does not describe the technical and financial criteria used for assessing license transfers, either in general or for the 2014 oil and gas equity transfer in particular. The report only states that license transfers are not liable to any specific taxes on the transaction or associated capital gains.

For mining licenses, the report describes the three types of mining licenses¹⁹ as well as the artisanal mining license (2014 EITI Report, pp.48-49). The process for mining license allocations or transfers is not described, beyond the fact that mining license applicants must be domiciled in Congo and must sign a contract with the state defining its duties and awarding the state a minimum of 10% in every mining production project. The technical and financial criteria assessed in mining license awards or transfers are not described.

Technical and financial criteria: The 2014 EITI Report does not provide an overview of technical and financial criteria assessed in the allocation or transfer of mining, oil or gas licenses.

License awardee information: The list of active mining, oil and gas licenses in Annex 1 (pp.96-108) provides the names of the awardees of the seven oil and gas production licenses²⁰ and one mining production license²¹ awarded (or renewed, in the case of the mining license) in 2014. However, it is unclear from the 2014 EITI Report whether any mining exploration licenses were awarded in 2014. The report also refers to Petroleum E&P’s acquisition of Pilatus’ equity stake in the Ngoki exploration license in 2014 (2014 EITI Report, pp.45-46).

Non-trivial deviations: The 2014 EITI Report neither explains the detailed statutory procedures for license allocations or transfers, nor highlights any deviations for awards and transfers in 2014.

Comprehensiveness: The 2014 EITI Report does not refer to information on licenses allocated prior or subsequent to 2014.

Bidding process: The 2014 EITI Report states that there was no competitive oil and gas block bidding round in 2014 (2014 EITI Report, pp.39-40) and does not refer to any competitive bidding process for awarding mining licenses.

¹⁹ Prospection, exploration and production mining licenses.

²⁰ The Zatchi II, Loango II, Foukada II, Djambala II, Mwafi II, Kitina II and Néné-Banga production licenses were awarded in 2014, based on the timing of the decrees approving them.

²¹ The Zanaga mining convention was renewed by Decree 2014-443 on 12 August 2014.

Commentary on efficiency: The 2014 EITI Report does not comment on the efficiency of the license allocations or transfers procedures.

Stakeholder views

Oil and gas: Several government representatives confirmed that seven oil and gas licenses were awarded on a discretionary basis (i.e. not through competitive bidding) in 2014, although the majority were exploration licenses converted into production licenses. A government MSG representative explained that all oil and gas licenses marked with a “II” represented conversions of old exploration licenses into production licenses (following negotiations) and thus that six²² of the seven oil and gas license allocations in 2014 were actually conversions of exploration licenses into production permits. The Ministry of Hydrocarbons website²³ shows that two oil and gas prospection licenses (Nanga II and Koli) were awarded in 2014, while eight exploration licenses (covering Ngolo, Mokelebembe, Mopongo, Kayo, Nanga II, Haute Mer B, Marine XIII and Sounda) and 11 production licenses (covering Lianzi, Moho Bilondo Phase 1bis et Moho Nord, Pointe-Indienne, Litchendjili, Néné Banga, Djambala II, Foukanda II, Kitina II, Loango II, Mwafi II and Zatchi II) were awarded in the 2012-2014 period, although the website does not disaggregate awards by individual year (e.g. 2014). ENI’s website confirms that the Italian major extended existing oil and gas contracts for Foukanda, Kitina, Mwafi and Djambala In July 2014 (ENI, 2015). Global Witness has confirmed that AOGC acquired “8-10%” of the Mwafi, Foukanda, Kitina and Djambala licences renewed in 2014 (Global Witness, 2015), as is visible from the list of oil and gas licenses provided in Annex 1. The NGO considers that a signature bonus of USD 22m should have been paid by ENI and AOGC as a result of these extensions (Global Witness, 2015). Global Witness has alleged that equity stakes in PSCs have been awarded to three companies (AOGC, Kontinent Congo and PetroCongo) by designated government officials without any competitive bidding process (Global Witness, 2015). An independent analyst considered that the transfer of equity in ENI blocks awarded in 2014 was suspicious, given the lack of legal requirements to force these transfers to local partners pending enactment of the new Petroleum Code in 2016.

With regards to oil and gas license (and equity) transfers in 2014, several government officials explained that there had been three transactions in 2014. These were Petroleum E&P’s acquisition of Pilatus’ stake in the Ngoki license, SOCO Congo BEX’s acquisition of PA Resources’ stake in the Haute Mer Profonde Sude license, and Kontinent Congo’s acquisition of 5% of SNPC’s stake in the Loango license (leaving SNPC with a 10% stake). A fourth planned transaction, Philia SA’s acquisition of Tullow Oil’s 11% stake in the Mboundi license, was proposed in 2014 but did not close. The official explained that all award and transfers were recorded in the Ministry of Hydrocarbons’ annual activity report, but that this was not available on the Ministry’s website.

Several CSOs considered that the explanation of license allocation procedures in the 2014 EITI Report marked an improvement over disclosures in the previous EITI Report, covering 2013. However several CSOs also stated that the 2014 EITI Report’s overview of license allocation procedures did not include a description of technical and financial criteria used in assessing applications, nor any commentary on the efficiency of license allocation procedures. A government representative explained that the new

²² The Zatchi II, Loango II, Foukanda II, Djambala II, Mwafi II, Kitina II oil and gas licenses.

²³ <http://www.congopetrole.fr/>

Hydrocarbons Code enacted in 2016 set clearer license allocation procedures, including awards both through competitive bidding and on a discretionary basis. While the 1994 Hydrocarbons Code did not include provisions for competitive bidding for oil and gas licenses according to the official, Decree 2008-15 of 11 February 2008 established procedures related to competitive bidding for oil and gas licenses (Présidence de la République du Congo, 2008). A government representative noted that it was possible to apply directly for a production license without first applying for an exploration license, since major oil and gas deposits were known in the ROC. However, the official noted that different application procedures applied for oil and gas exploration and production licenses. Another government MSG member explained that the technical and financial criteria for discretionary oil and gas license allocations prior to the 2016 Hydrocarbons Code depended on who was applying: majors like Total and ENI were already well known to the government, while new companies applying for licenses required more significant due diligence.

Regarding license transfers, a government MSG member noted that the transfer procedures were defined in Article 36 of the 1994 Hydrocarbons Code, with ministerial approval required only for transfers of controlling stakes in oil and gas licenses, not minority participations. According to this representative, the Ministry of Hydrocarbons undertook a “Public Use Study” (“Enquete d’Utilité Publique”) for any transfer of controlling stakes, which assessed the reasons for and cost of the transfer, although this was not described in the 1994 Hydrocarbons Code.

The Ministry of Hydrocarbons set up a dedicated website²⁴ for the 2016 oil and gas licensing round covering the “Bassins Côtier et de la Cuvette”, including the list of required documents and basic technical and financial criteria.²⁵ Several government officials noted that the PNGF (Pointe-Noire Grands Fonds) Sud production license had been awarded through competitive bidding in November 2016, following Total’s relinquishment of the license in June 2016 (Jeune Afrique, 2016).

According to a former (unnamed) Minister of Hydrocarbons quoted by the Berne Declaration (now Public Eye), “one does not engage in the oil sector in Congo without being associated with the presidential family; it’s impossible. The logic is simple: the rare public tenders are an illusion, destined to reassure the international community. But it’s all biased; the candidates do not have the same terms of reference” (Berne Declaration, 2015).

Mining: A government official noted that there had been several new mining exploration license awards in 2014. A government MSG member explained that mining license applications were managed on a first-come-first-served basis, with new applications normally processed within ten working days. The representative noted that several prospection licenses could be granted for the same area, while exploration and production licenses were exclusive to one license-holder. Exploration licenses were granted for an initial three years, renewable for two years twice, while mining conventions typically lasted 25 years according to the official.

Another government official explained that the technical and financial criteria for mining license awards were not clear under the 2005 Mining Code. In practice, according to this representative, the Ministry of

²⁴ <http://www.congolr2016.com/accueil>

²⁵ http://media.wix.com/ugd/f80303_cbf899a2c7fd448a9d8f51478bbbd210.pdf

Mines and Geology assessed applications for prospection and exploration licenses based on the CVs of the applying company's staff, at times calling due diligence meetings with the applicants. Meanwhile applicants for production licenses were required to submit feasibility studies. Several government representatives highlighted reforms in the management of license allocations in the draft new Mining Code being presented to Parliament, including the establishment of a dedicated cadastral department within the Ministry of Mines and Geology. One government official explained that while the technical and financial criteria for assessing mining license applications were not clearly defined in the 2005 Mining Code, the government's draft new Mining Code aimed to clarify the specific criteria. An industry representative expressed satisfaction at the simplicity of license allocation procedures mandated under the 2005 Mining Code, but also concern at the potential introduction of production-sharing contracts for mining under the proposed new code. Industry and government representatives confirmed that all mining prospection, exploration and production licenses were confirmed by Ministerial Decree and thus published in the official gazette (the Journal Officiel). A government representative noted that he was not aware of any deviations from statutory mining license allocation procedures in practice during the past decade.

Another government official explained that there were clear technical and financial criteria for assessing mining license transfers, which required the Ministry of Mines and Geology's approval. However, an industry representative explained that mining license transfers were not common in the ROC. Rather, most mergers and acquisitions took place at the international level, not between Congolese-incorporated entities, meaning that such transfers of beneficial (rather than legal) ownership did not require regulatory approval within the ROC.

Initial assessment

The International Secretariat's initial assessment is that the ROC has made inadequate progress towards meeting this requirement. The 2014 EITI Report lists one oil and gas license equity transfer, seven oil and gas license transfers and one mining license renewal in 2014, but provides only a cursory overview of the license allocation process. The report does not mention any mining exploration license awards in 2014, although stakeholder consultations highlighted the existence of several such awards in 2014. Detailed technical and financial criteria assessed during license awards and transfers are not described, nor are any deviations from statutory procedures for mining, oil and gas licenses awarded and transferred in 2014.

In accordance with Requirement 2.2, the MSG is required to disclose information related to the award or transfer of licenses pertaining to the companies covered in the EITI Report. This information should include the number of mining, oil and gas licenses awarded and transferred in the year covered by the Report, a description of the award procedures, including specific technical and financial criteria assessed, and highlight any non-trivial deviations in practice. In addition, EITI Congo may wish to comment on the efficiency of the current license allocation and transfer system as a means of clarifying procedures and curbing non-trivial deviations.

License registers (#2.3)

Documentation of progress

Licenses held by material companies: In oil and gas, Annex 1.1 of the 2014 EITI Report provides a list of

35 production licenses held by eight companies and 16 exploration licenses held by 14 companies (2014 EITI Report, pp.96-102). In mining, Annex 1.2 provides a list of 14 mining production licenses, covered by mining conventions, held by ten companies (2014 EITI Report, pp.103-104), but these licenses were still at the project development phase. Similar information was given in annex 1.3 for the forestry sector (pp.105-109). Information about 48 companies holding research permits and 17 companies holding prospection licenses were not disclosed (p.4 of the EITI Report).

License-holder names: Details of the eight companies holding 35 oil and gas production licenses and 14 companies holding 16 exploration oil and gas licenses provided in Annex 1.1 (2014 EITI Report, pp.96-102) include the name of operator, partners and respective equity stakes. The list of ten companies holding 14 mining production licenses listed in Annex 1.2 (2014 EITI Report, pp.103-104) includes the name of the operator, partners and respective equity stakes.

License coordinates: Although the EITI Report does not disclose the coordinates of licenses, it provides references to specific decrees of attribution of 48 out of 51 oil and gas licenses and all 14 mining licenses, which include the license coordinates in the decree's full text (available online). While the specific link to the decrees is not provided in the report, it is possible to locate the decrees on the official gazette (Journal Officiel) website.²⁶

Dates: Details of the 35 oil and gas production licenses, 16 exploration oil and gas licenses and 14 mining production licenses provided in Annex 1.1 (2014 EITI Report, pp.96-102) and Annex 1.2 (2014 EITI Report, pp.103-104) include the reference number of the decree awarding each permit (albeit for only 48 of the 51 oil and gas licenses), which includes the validity period, but the decree does not provide the dates of application

Commodity: Information on oil and gas licenses provided in Annex 1.1 (2014 EITI Report, pp.96-102) includes the quantities of oil produced by each license, and the details of the 14 mining licenses listed in Annex 1.2 (2014 EITI Report, pp.103-104) clearly indicate the mineral(s) covered.

Licenses held by non-material companies: The information on mining, oil and gas licenses in the 2014 EITI Report cover only licenses held by material companies (in the scope of reporting), namely oil and gas companies and mining production license-holders and members of the Federation of Mining. In addition to 10 mining companies that held production licenses, 48 mining companies held research permits and 17 mining companies held prospection licenses. The Report did not disclose information about these permits and licenses.

Public cadastre/register: The limits to the IA's work explained in Section 2.3 highlight only the "absence" of mining and petroleum cadastres, noting that while the IA secured copies of the license registers, they were not able to confirm these lists against updated mining and petroleum cadastres (2014 EITI Report, p.34).

²⁶ http://www.sgg.cg/rechercher_un_jo.asp

Stakeholder views

Several government representatives criticised the 2014 EITI Report's statement that there was no cadastre in the mining, oil and gas sectors, considering that it would be impossible for the government to manage licenses if it did not have a cadastral system, even if this was not yet accessible online.

Several government representatives confirmed that license coordinates and duration of licenses were included in the decrees awarding each mining, oil and gas license. However, several CSOs criticised the fact that the EITI Report only provided the names of decrees approving licenses, but did not provide guidance on how to access individual decrees (for instance through specific hyperlinks). The CSOs did not consider that the 2014 EITI Report provided sufficient information on license coordinates nor duration of licenses, even if these were ultimately accessible through the original decrees. The CSOs considered that the EITI Report did not sufficiently clarify what license information was public and what barriers existed to public access to specific information. However, several government and industry officials contested the idea that a document had to be available online to be considered publicly accessible, considering that the provision of specific decree numbers was sufficient to provide guidance on how to access it from the Journal Officiel website.

With regards to missing dates of application for mining, oil and gas licenses, several government representatives confirmed that dates of application for all licenses were available in hard copy from the Ministry of Hydrocarbons and the Ministry of Mines and Geology, given that these were included in the original letters sent by companies to start the application process. However, these officials explained that EITI Congo had never requested them to collect the dates of application for all licenses, which would have required the respective ministries to review all original application letters and digitise this information. While this would be time-consuming, according to the officials, there would be no technical or legal barriers to doing so.

Oil and gas: Several government officials expressed concern at the three missing decrees in the list of oil and gas licenses provided in annex to the 2014 EITI Report, considering that these decrees were publicly available. One government representative explained that the Lianzi unitized field operated by Chevron was not approved by a Decree of the ROC but rather by a Protocol of Agreement between Angola and the ROC, which had been published in the official gazette (Journal Officiel) on 26 July 2012, accessible online. With regards to the missing decree covering the Moho Nord field operated by Total, the official explained that this field would not have a dedicated decree given that it was part of the Moho Bilondo license awarded by Decree 2005-278, which had been listed in the 2014 EITI Report. Finally, with regards to the missing decree awarding the Marine IX license, the representative confirmed that the decree (Decree 2006-186 of 19 May 2006) was available online. In addition, the official noted that the decree awarding the Haute Mer C license listed in the 2014 EITI Report was actually modified by Decree 2003-252, which had not been explained in the report. The government official explained that the MSG requested a list of licenses from the Ministry of Hydrocarbons for every EITI Report, but that the IA did not consult with the Ministry in person to ensure the comprehensiveness of license information provided, nor to fill any gaps in the information provided.

A government representative explained that licenses in the oil and gas sector do not systematically cover both crude oil and natural gas, with a number of licenses covering either crude oil or natural gas exclusively. Thus, it was not possible to assume that all licenses listed in Annex 1.1 of the 2014 EITI

Report covered both oil and gas. While the Ministry of Hydrocarbons had detailed information on the commodity(ies) covered by all licenses, this information had never been requested by EITI Congo.

Several government representatives noted that while SNPC maintained a database of oil and gas licenses, it was the Ministry of Hydrocarbons that operated the oil and gas license cadastre. According to these officials, the Ministry of Hydrocarbons is currently working on plans to upgrade the oil and gas license cadastre, which they expected would eventually be available online, although funding for this project has yet to be secured.

Mining: While the current mining cadastre was described as “embryonic”, several government officials explained that the Ministry of Mines and Geology had been working on upgrading the cadastre. One government official provided a detailed update on the Ministry’s work on establishing a mining information geographic and documentation system (SIGD – Système d’information géographique et documentaire). This upgraded cadastral system, based on QGIS software, overlaid mining licenses with conservation areas, to avoid any overlap, which several senior government officials highlighted as a problem in the past. The government official described this work as “95% done”, given that the upgraded cadastre was now functional but not yet accessible online, given constraints in Internet connectivity. The Ministry also planned to eventually convert mining license coordinates from their current use of the spherical coordinate system to the UTM coordinate system, which is already used for oil and gas licenses, according to the official, although this would be a significant time-consuming project. The official noted that Brazil’s AsperBras company had prepared the cartography of mining licenses and trained Ministry staff, while Total had prepared eight mineral maps for the southern part of the country. The Ministry is also in discussions with the World Resources Institute regarding a project to establish an integrated land use map of the ROC, according to the official. A senior government official noted that the draft decree related to the integrated land use map was ready for the Council of Minister’s review.

One CSO expressed satisfaction at the coverage of mining licenses in the 2014 EITI Report, albeit highlighting the lack of dates of application and expiry. A government representative noted that the 2014 EITI Report did not disclose the over 40 mining exploration licenses active in 2014 that were not covered by mining conventions. Another government representative explained that all mining production licenses were awarded for a 25-year period, while prospection and exploration licenses were awarded for an initial three-year period, renewable for two years twice.

Initial assessment

The International Secretariat’s initial assessment is that the ROC has made meaningful progress towards meeting this requirement. The ROC did not have a publicly available register, but in accordance with Requirement 2.3 c, the 2014 EITI Report provides a detailed list of licenses for the oil, gas, and mining including references to attributions decrees, which are accessible on the official government website. However, the Report did not provide information about exploration and prospections permits held by 65 mining companies. References to three decrees approving production sharing agreements with Chevron (for the Lianzi license in the joint development zone with Angola), Total (for the Moho Nord license in Kouilou) and Ophir (for the Marine IX license in Kouilou) were also missing from the Report. The report provides licensing information for 35 companies operating in the forestry sector, but the International Secretariat did not assess the comprehensiveness of the disclosed information for the forestry sector.

In accordance with EITI Requirement 2.3 the ROC is required to maintain a publicly available register or cadastre system(s), including comprehensive information on licenses for all oil, gas and mining companies. In the interim the MSG should ensure that future EITI Reports provide the information set out under EITI Requirement 2.3.b for all oil and gas and mining companies.

Contract disclosures (#2.4)

Documentation of progress

Government policy: Sections 3.1.3.b and 3.2.3.b state that all oil, gas and mining contracts are approved by law and published in official gazette, the Journal Officiel (2014 EITI Report, pp.40, 49).²⁷ The 2013 EITI Report clarified that all contracts signed by the state with mining, oil and gas companies, including PSCs, were required to be published in the official gazette (Journal Officiel) and were therefore public documents (2013 EITI Report, p.25). Article 14 of the Transparency Law (10-2017) enacted in March 2017 further clarified government policy on contract disclosure by requiring all mining, oil and gas contracts to be published (République du Congo, 2017).

Actual practice: Section 3.1.3.b states that oil and gas contracts are public “in the sense of requirement 3.12 (of the 2013 EITI Standard)” (2014 EITI Report, p.40). It states that “some contracts” are available on the EITI Congo website²⁸ although the specific number of published contracts is not provided. Section 3.2.3.b states that, in practice, every signed mining contract is approved by Ministerial Decree and published in the Journal Officiel, but that only “some” of the contracts active in 2014 were published on the EITI Congo website (2014 EITI Report, p.49).

Accessibility: As above, Sections 3.1.3.b-3.2.3.b (2014 EITI Report, pp.40,49) indicate that “some” mining, oil and gas contracts are available on the EITI Congo website but do not clearly index the number of contracts that are publicly accessible nor highlight which contracts have not yet been published. A link is provided to the Journal Officiel²⁹ (2014 EITI Report, p.40) and the specific numbers are provided for 62 of the 65 mining, oil and gas licenses listed in Annexes 1.1-1.2 (2014 EITI Report, pp.96-104).

Stakeholder views

Several government and civil society stakeholders highlighted the significance of the March 2017 Transparency Law’s provision for the publication of all extractives contracts. There was consensus amongst all stakeholders consulted from the three constituencies that all licenses and extractives contracts were approved by Decree and that these were published in the Journal Officiel, which was available online. Several stakeholders explained that mining, oil and gas licenses and contracts were published in special editions of the Journal Officiel. Several government officials expressed satisfaction at the fact that the Journal Officiel was available online, in contrast to many of their regional peers. Upon extensive consultations, government representatives highlighted that the three missing Decree numbers in Annex 1.1 were in fact available from the Ministry of Hydrocarbons (*see Requirement 2.3*). However, several CSOs deplored the fact that neither the MSG nor the IA had undertaken a comprehensive review

²⁷ <http://www.sgg.cg/>

²⁸ <http://www.itie-congo.org/>

²⁹ <http://www.sgg.cg/>

of published contracts to confirm that all contracts had been published. However, they noted that they always received contracts upon request from the Ministry of Hydrocarbons. An industry representative stated that he had copies of all mining contracts, which had all been published in the Journal Officiel.

While several civil society stakeholders conceded that the 2014 EITI Report's statement on where contracts were published was unclear, all stakeholders consulted considered that the report stated that all contracts were published in the Journal Officiel and that the link to the website provided sufficient guidance on how to access published contracts.

A government representative explained that the Performance Contract between CORAF and the state was not a public document. Several CSOs also highlighted that none of the crude oil sales contracts signed by SNPC had ever been published, but expressed significant interest in seeing the full text of such agreements.

Initial assessment

The International Secretariat's initial assessment is that the ROC has made satisfactory progress towards meeting this requirement. The 2014 EITI Report implicitly clarified the government's policy on contract disclosure, which was later enshrined in the March 2017 Transparency Law, and states, albeit unclearly, that all contracts have been published in the Journal Officiel with a link to the general website.

To improve public accessibility of extractives contracts, the MSG may wish to categorise contracts published in the Journal Officiel and ensure that the EITI Congo website is regularly updated with all published extractives contracts.

Beneficial ownership disclosure (#2.5)

Documentation of progress

The 2014 EITI Report does not make reference to beneficial ownership nor disclose the legal owners of material companies.

Government policy: The 2014 EITI Report does not clarify government policy on disclosure of beneficial ownership of extractive companies. However, Article 66 of the March 2017 Transparency Law requires the state to disclose the identity of beneficial owners "and their associates" for all mining, oil, gas and forestry exploration or production licenses, although the definition of "associates" is not further clarified (République du Congo, 2017).

In terms of reforms to government policy on beneficial ownership disclosure, EITI Congo published its three-year roadmap (to 2020) for reporting the beneficial ownership of companies owning or bidding for extractives licenses in December 2016 (ITIE Congo, 2016). The MSG approved the roadmap at its 29 December 2016 meeting (ITIE Congo, 2016).

Actual practice: The 2014 EITI Report does not clarify actual practice related to beneficial ownership disclosure in the ROC.

Legal owners of material companies: The 2014 EITI Report does not clarify the legal owners of material companies. While Annexes 1.1-1.2 (2014 EITI Report, pp.96-104) provide the names of the mother companies of operators of all 65 mining, oil and gas licenses provided, as well as website links where relevant, it is unclear whether the mother companies hold 100% of the operating companies and the legal owners of joint venture partners are not indicated.

Stakeholder views

Several government and civil society stakeholders considered that the government's policy on beneficial ownership had effectively been clarified through the March 2017 Transparency Law. Several CSOs considered that the lack of information on beneficial ownership in the 2014 EITI Report was understandable given their impression that the EITI Requirement related to beneficial ownership disclosure had only been introduced with the 2016 EITI Standard, which had only been enacted subsequent to the MSG's approval of the ToR for the IA. However, these CSOs called for the inclusion of information on beneficial ownership in the next EITI Report, covering 2015, as well as an assessment of the level of implementation of the ROC's three-year beneficial ownership roadmap. Several CSOs were highly critical of what they considered to be a total lack of implementation of the three-year beneficial ownership roadmap in the five months since its approval.

Several CSOs highlighted the significant interest in beneficial ownership information among sections of the Congolese public, in part due to the Panama Papers revelations. One CSO called for the extension of beneficial ownership reporting beyond extractives companies to Congolese-incorporated companies that receive extractives revenues, such as the CEC SA company that operates the Djeno power plant for instance. One industry representative noted that companies already knew the beneficial owners of most license-holders, although he highlighted uncertainty over the ultimate ownership of some mining exploration licenses.

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. EITI Congo has agreed a three-year beneficial ownership roadmap and the March 2017 Transparency Law codifies government beneficial ownership policy, although the 2014 EITI Report does not explicitly address beneficial ownership.

To further strengthen implementation and prepare for full disclosure of beneficial ownership by 2020, it is recommended that the MSG considers piloting beneficial ownership reporting in the forthcoming EITI Report in order to increase awareness of beneficial ownership transparency and pilot beneficial ownership definitions and thresholds. The MSG is encouraged to consider the extent to which implementation of Article 66 of the March 2017 Transparency Law would support its efforts to achieve key aims of its beneficial ownership roadmap. The MSG may also wish to conduct broader outreach to the companies on the objectives of beneficial ownership transparency, as well as hold conversations with government agencies on how to make such disclosures mandatory.

State participation (#2.6)

Documentation of progress

Materiality: In the oil and gas sector, the 2014 EITI Report states that state-owned SNPC's stakes in 20 production and 12 exploration licenses gave rise to its collecting oil revenues both in kind and in cash, while paying dividends to the state in 2014 (2014 EITI Report, p.37). The state did not collect dividends from the oil and gas sector in 2014. According to the 2014 EITI Report, Congorep, which is 49% owned by SNPC, paid USD 71 million in dividends to SNPC (p.7). In 2014, SNPC held interests in 20 production licenses and in 12 research permits (2014 EITI Report p.36). The shareholders of each licence were disclosed in annex 1 of the Report (pp. 96-102). In mining, while Section 3.2.2 states that there is no state-owned enterprise operating in the mining sector (2014 EITI Report, p.48), Section 3.2.3.b explains that the state is statutorily entitled to a minimum of 10% participation in every mining project (2014 EITI Report, p.49), without describing the ownership structure of state equity in the mining sector. Annex 1.2 lists the six mining production licenses in which the government held stakes in 2014 (2014 EITI Report, pp.103-104). In practice the state did not receive any dividend from the mining sector in 2014, as all mining projects were at the project development phase.

Financial relationship with government: For oil and gas, Section 3.1.2 explains that SNPC is wholly-owned by government and incorporated as a public commercial and industrial legal entity with financial and management autonomy (2014 EITI Report, p.36). While the rules governing SNPC's retained earnings, reinvestments and third-party financing are not explicitly explained, SNPC's commercial legal status and the EITI Report's confirmation of its financial and management autonomy imply that its Board of Directors has full autonomy to agree its own rules. In addition to Act No. 1-98 of 23 April 1998 establishing the national oil company of the Congo, a convention between the state and the National Oil Company regulates the management of state assets and state participations in the hydrocarbons sector (2014 EITI Report, p.36). Article 9 of the new hydrocarbon code adopted in October 2016 states that mining titles are awarded exclusively to the national oil company (JOURNAL OFFICIEL DE LA REPUBLIQUE DU CONGO, 2016). Article 23 of the new hydrocarbon code also gives national oil companies the right to hold a mandatory minimum participation of 15% in any oil contract. The lack of dividends paid by SNPC to the state in 2014, evident in Table 19 (2014 EITI Report, p.76) implies that SNPC retains earnings in practice, although this is not explicitly stated. Section 3.1.2 describes SNPC's role as holding all state assets (held directly and indirectly), represent state interests in third-party negotiations and commercialises the state's share of production (from in-kind revenues and the state's stakes in the Yanga and Sendji concessions) (2014 EITI Report, pp.36-37). Section 3.1.2 describes SNPC's price setting mechanism for oil sales on a cargo-by-cargo basis.

While the MSG expressed its intent to "improve" the contextual information about SNPC and its refining subsidiary CORAF in its discussion of the IA's ToR for the 2014 EITI Report at its 7 August 2015 meeting (ITIE Congo, 2015), the information on the financial relationship between the state and SNPC (and its subsidiaries) in the 2014 EITI Report is similar to that in previous EITI Reports. While the 2014 EITI Report states that the CORAF is linked to the Congolese State through a Performance Contract signed in 2008 and amended in 2013, it does not provide any further details of the arrangement beyond reference to Article 1 of the CORAF's 15 March 2013 Performance Contract with the state.

Article 15 of the March 2017 Transparency Law states that relations between the government and SOEs

are governed by publicly-accessible dispositions preventing any confusion between state and SOE assets (République du Congo, 2017).

Government ownership: Section 3.1.2 states that SNPC is 100% owned by government (2014 EITI Report, pp.36-37). The 2014 EITI Report states that SNPC had five subsidiaries in 2014³⁰ (two subsidiaries operate upstream, two downstream and one is a subcontractor providing services to the industry, including logistics), although it only provides the level of SNPC ownership in the refinery CORAF (100%) (2014 EITI Report, p.37) and does not describe any of the SNPC subsidiaries' participation in third companies nor terms associated with state equity. In terms of SNPC's participation in oil and gas projects, while the 2014 EITI Report lists one production license (MKB) and one exploration license (Mayombe) in which SNPC is operator as well as 20 production licenses and 12 exploration licenses in which SNPC holds equity (2014 EITI Report, p.37), Annex 1.1 (2014 EITI Report, pp.96-102) provides a list of SNPC's equity stakes in 23 production licenses and in 15 exploration licenses.

Ownership changes: The 2014 EITI Report does not refer to any changes in ownership in any of SNPC's subsidiaries or other government stakes in the mining, oil or gas sectors in 2014.

Loans and guarantees: The 2014 EITI Report does not refer to any loans or guarantees from the government or any SOE, including SNPC, to any company operating in the mining, oil and gas sectors. While the 2014 EITI Report provides a general description of a framework infrastructure agreement with the Government of the People's Republic of China, backed by proceeds from the sale of the state's in-kind revenues, and two barter arrangements with ENI for the construction of two power plants repaid in-kind from the state's in-kind revenues (2014 EITI Report, p.42), it does not explicitly state whether the government or SNPC provided any form of guarantee for any of these three loans. However, in the case of the infrastructure agreement with China, the report states that a share of the state's profit oil is used as a guarantee against default on the loans (2014 EITI Report, p.42), without providing further details of the structure of the loan guarantee (e.g. tenor and terms). The 2014 EITI Report also describes the government's strict proscription of new oil pre-sales agreements (loans using oil production as collateral) in the 2014 national budget in line with the IMF programme and that the recourse to refinancing, postponement of repayment or restructuring of the loans is only possible if it does not increase the existing debt burden (2014 EITI Report, p.43).

The 2014 EITI Report also highlights transfers of 6.175m barrels from SNPC to the CORAF in 2014, valued at XAF 290bn (USD 587m), for which payment to the Treasury was not made (2014 EITI Report, pp.73, 79). However, the 2014 EITI Report does not clarify whether such in-kind transfers represented a form of subsidy or a loan from the government to CORAF. The 2013 EITI Report also showed 6 million barrels of oil deliveries by SNPC to the national oil refinery (CORAF) for an estimated value of 662 million USD (327 billion FCFA). The Report noted that CORAF did not pay the value of these deliveries to the treasury (page 54). The KPMG quarterly reports in 2013 on the sale of oil by SNPC and reconciliation of receipts with treasury also highlighted a similar amount as an outstanding claim from the treasury on CORAF.

³⁰ Société Nationale de Recherche Pétrolière (SONAREP), la Société de Forages Pétroliers (SFP), Integrated Logistics Services (ILOGS), la Congolaise de Raffinage (CORAF), SNPC-Distribution.

Stakeholder views

Mining: Several government officials confirmed that the state was entitled to a minimum 10% free-carry stake in all mining production license-holders and could purchase an additional 5%-15% stake on commercial terms depending on the terms of individual contracts. All stakeholders consulted confirmed that there was no SOE operating in the mining sector and that all stakes in mining projects were held directly by the MFBPP's Public Portfolio Department. Government and industry representatives confirmed that the terms associated with state equity in mining projects differed: the 10% free-carry stake was not transferrable and could not be diluted (in the case of capital increases for instance), while the additional 5%-15% stakes the state could elect to take were purely on commercial terms. An industry stakeholder explained that the state's 10% free-carry stake was statutory, but only became effective when the license-holding company established a share ownership plan ("plan d'actionariat").

Financial relations: Several CSOs expressed satisfaction at the description of the financial relations between SNPC and the government in the 2014 EITI Report, while others considered that it was not possible to understand the financial relations between SNPC, its subsidiaries and the government based only on the 2014 EITI Report. The IA confirmed that the 2014 EITI Report's description of financial relations between extractives SOEs and the government was based on reporting templates submitted by the MEFPP and SNPC, without additional investigations by the IA. All MSG members consulted confirmed that the MSG had discussed the issue of financial relations between SNPC and the state on several occasions and that CSOs considered this a particularly contentious issue. There was significant concern from all CSOs consulted regarding the lack of dividends paid by SNPC to the government in any of the years covered by the ROC's EITI Reports. The CSOs criticised the omission of any explanation for the lack of dividends in the 2014 EITI Report. However, a government official stated that SNPC had the right to retain earnings and not pay dividends to government. Several government representatives however explained that the SNPC Board of Directors was the entity responsible for deciding on annual dividends to the state, which implied full government oversight of such decisions given that the SNPC Board was entirely staffed with government representatives. One government representative explained that SNPC kept detailed records of all Board decisions, including those related to the payment of dividends, but that these were not public documents. The official also stated that SNPC submitted copies of their audited financial statements to the Commercial Court Register ("Greffé du Tribunal de Commerce") annually and that such records were considered public, although none of the CSOs consulted considered that the SNPC statements were accessible to the public, even if they had never requested copies from the register to date (*see Requirement 4.9*). Another government official stated that SNPC had been audited since 2003 and that the latest SNPC audited statements were for 2015. The IA expressed uncertainty over whether the IA had requested SNPC's audited financial statements and considered that this was not strictly required by the EITI Standard. All stakeholders confirmed that the IA had never requested copies of SNPC's audited financial statements in preparing EITI Reports. A development partner noted that the IMF had only recently received copies of SNPC's 2015 audited financial statements and that such reports were not considered public.

A government representative explained that SNPC was entitled to raise third-party funding and that it negotiated loans on behalf of its subsidiaries. There is evidence of third-party funding for SNPC, such as its

private placement of USD 1.5bn in in syndicated debt from a pool of lenders³¹ in July 2014 (Jeune Afrique, 2015). Another government official explained that the MFBPP had recently established a Public Portfolio Department to manage the government's direct stakes in SOEs, including in SNPC, but that this entity acted as a shareholder and did not intervene in the SOE's management. A third government official noted that the 2016 Petroleum Code had introduced a minimum 15% free carry stake for SNPC in all exploration license-holders and 25% in all production license-holders, where there had been no statutory minimum in the past.

Despite successive EITI Reports' reference to the Performance Contract linking CORAF to the state, several CSOs highlighted uncertainty over both statutory and actual financial relations between the CORAF and the state. They explained that the EITI Reports did not describe all aspects of the Performance Contract, which itself had never been disclosed. A government representative noted that it may be important to disclose the Performance Contract to the MSG to ensure better coverage in future EITI Reports.

The US Department of State has described the extent of SOEs' reporting as being dependent on the relative influence of the SOE. In the case of SNPC, it has noted that the corporate governance regulation that SOEs require non-state corporate directorship is not respected in the case of SNPC and that SNPC has not been well-monitored and continued to present transparency challenges (US Department of State, 2014). The State Department added that Congo committed itself through the Highly Indebted Poor Countries (HIPC) debt relief initiative completed in 2010 to bringing the internal controls and accounting system of SNPC up to international standards, including "taking steps to prevent conflicts of interests in the marketing of oil, requiring officials of SNPC to publicly declare and divest any interests in companies having a business relationship with SNPC, and implementing an anti-corruption action plan with international support and monitoring by the IMF" (US Department of State, 2014). Independent analysts have noted that progress in IMF-required reforms has been very slow and suffered persistent setbacks, with the SNPC and related downstream sectors (BTI, 2016). In 2012, the IMF described improved management of the oil sector, reflected in better performance by the two key national companies in the sector, SNPC and CORAF. The SNPC reforms included instituting analytical accounting, improving earnings results, and the government's adoption of an action plan for marketing Congolese oil in line with international standards (IMF, 2012). This came following allegations of significant abuse of SNPC's oil sales through a London-based trading subsidiary Cotrade and private oil companies such as Africa Oil & Gas Corporation (AOGC) and Sphynx Bermuda Ltd., allegedly linked to politically-exposed persons (Global Witness, 2015).

SNPC participations: All stakeholders consulted considered that the 2014 EITI Report provided a comprehensive list of SNPC subsidiaries, implying a complete list of companies in which SNPC held a majority (over 50%) stake. However, several government and civil society stakeholders highlighted that SNPC's joint-venture with Perenco, Congorep, in which it holds a 49% stake (US Geological Service, 2015), was not included in the list of SNPC participations listed in the 2014 EITI Report. A government official also noted that SNPC held stakes in other energy companies that were not involved in upstream oil and gas, such as in the CEC SA power generation company, a joint venture with ENI, although these were not disclosed in EITI Reports because they were not considered to be part of the extractive industries in the

³¹ Led by Ecobank Capital and including United Bank for Africa, African Finance Corporation, BGFI Bank and Development Bank of South Africa.

sense of the EITI Standard. Another government representative explained that while SNPC maintained a database of its equity stakes and participations in oil and gas projects, this centralised information was not publicly accessible.

As requested by the IMF, which had declared its management opaque and unaccountable, SNPC closed its London-based trading subsidiary Cotrade in 2009 (Berne Declaration, 2015). However, there is also evidence of three trading joint-ventures SNPC established in Hong Kong, in which it held 15% stakes alongside the Queensway Group's 85%: SNPC Asia Holding Ltd. and two of its subsidiaries SNPC Asia Development Ltd. and SNPC Asia Trading Ltd., which named the Congolese President's son Denis Christel Sassou Nguesso as director (Mailey, 2015). This information was initially made public as part of Congressional research into the Queensway group in 2009, drawing on a lawsuit alleging SNPC laundered oil revenues to keep funds from creditors in 2006-2007 (U.S.-China Economic & Security Review Commission, 2009). These were established in 2005 and there is evidence that this company was marked as a "live private company" until October 2015 according to the Hong Kong public register.³² More recently, there is evidence that SNPC opened an oil marketing office in Singapore to target Southeast Asian crude oil buyers in January 2015 (Reuters, 2015), although it is unclear whether this was incorporated as a separate subsidiary.

Several government representatives highlighted changes in SNPC's participation in oil and gas PSCs in 2014. In addition to SNPC selling a 5% stake in ENI's Loango II production license to Kontinent Congo SA on 4 June 2014 (leaving SNPC with a 10% stake), seven oil and gas production licenses had been awarded in 2014 to ENI, in which SNPC holds between 10% and 40% stakes.

Loans: A government representative explained that if a SNPC subsidiary like SONAREP became insolvent, the mother company would be responsible but not the government, since SNPC subsidiaries were not considered to form part of the public portfolio. However, the official noted that matters would be different if SNPC encountered financial difficulties for some reason, implying some level of at least implicit sovereign guarantee on SNPC debt.

Several government representatives noted that the Treasury considered arrears in payments by CORAF to the Treasury for over 6m barrels a year in crude oil allocations as a debt to government. One official explained that SNPC had recently met with CORAF to agree on a new structure of payments for oil allocations and stated that the CORAF would be treated like other buyers of Congolese crude oil in future. One CSO noted that a total of 24.136m barrels of oil had been transferred to CORAF in the 2011-2014 period, implying that CORAF had a debt of over XAF 1.2tn (USD 2.02bn) to the Treasury. CSOs like the Berne Declaration (now Public Eye) have also highlighted that the CORAF did not pay the Treasury any dividends in 2011-2013, despite receiving 4.5m barrels of crude oil from the state without paying for it and another 6m barrels of crude assigned to the CORAG going missing in 2011. It also identified USD 600m in crude oil transfers to CORAF in 2013 that were unpaid for. In total, the Berne Declaration tracked some 12% of Congo's total profit oil-state in the 2011-2013 period in outstanding payments by CORAF to the Treasury (Berne Declaration, 2015). An independent auditor explained that the absolute level of ROC's debt was unknown. None of the stakeholders consulted expressed any views on the terms of

³² <https://www.hkgbusiness.com/en/company/Snpc-Asia-Holding-Limited>

CORAF's debt to the government, including whether any form of interest would be charged on the accumulated debt.

Initial assessment

The International Secretariat's initial assessment is that the ROC has made inadequate progress in meeting this requirement. The 2014 EITI Report states that state participation gives rise to material revenues in oil and gas, not in mining. It describes the SOEs operating in oil and gas but does not appear to provide a comprehensive list of SNPC interests, nor clarify whether there were any changes in state ownership in any SOEs or their subsidiaries in 2014. The terms associated with state equity in the mining, oil and gas sectors are not described. While the financial relations between the government and SNPC are briefly described, the rules for retained earnings, reinvestment and third-party financing for all extractives companies in which the state holds majority stakes are not comprehensively disclosed, nor is there any discussion of any significant deviations in practice. While the 2014 EITI Report implies a sovereign guarantee on oil-backed infrastructure projects financed by China EXIM Bank and refers to unpaid arrears from the CORAF to the Treasury, the terms of such loans and guarantees are not described and it is unclear whether disclosures of loans and loan guarantees by the state and extractives SOEs are comprehensive.

To strengthen implementation in line with Requirement 2.6, the MSG must disclose the prevailing rules and practices regarding the financial relationship between the government and state-owned enterprises (SOEs), e.g., the rules and practices governing transfers of funds between the SOE(s) and the state, retained earnings, reinvestment and third-party financing. The MSG should ensure that future EITI Reports clarify the rules and practices governing financial relations between SNPC, its subsidiaries and the government, as well as a comprehensive overview of loans and guarantees extended by the state to SNPC or to extractives companies. The Government should consider publishing the performance contract between SNPC and CORAF and SNPC's audited financial statements. The MSG may wish to consider the extent to which implementation of Article 15 of the March 2017 Transparency Law would support progress in meeting aspects of Requirement 2.6.

Table 2- Summary initial assessment table: 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)	The 2014 EITI Report provides an overview of the legal framework and fiscal environment in the mining, oil and gas sectors, including the general degree of fiscal devolution. However, it does not clearly detail the functions of the different government entities in the sectors. The description of revenue flows shows which government entity (DGH, DGID, DRN, DGT, and DGDDI) collects which revenue stream and most government agencies' role is limited to collecting taxes and revenue, except DGH, which also plays a regulatory role.	Satisfactory progress
License allocations (#2.2)	The 2014 EITI Report lists one oil and gas license equity transfer, seven oil and gas license transfers and one mining license renewal in 2014, but provides only a cursory overview of the license allocation process. The report does not mention any mining exploration license awards in 2014, although stakeholder consultations highlighted the existence of several such awards in 2014. Detailed technical and financial criteria assessed during license awards and transfers are not described, nor are any deviations from statutory procedures for mining, oil and gas licenses awarded and transferred in 2014.	Inadequate progress
License registers (#2.3)	The 2014 EITI Report provides a list of mining, oil and gas licenses held by material companies, although it is unclear whether exploration licenses held by two material mining companies that are not members of the Federation of Mines were included. Information provided includes license-holder name and dates of award, as well as commodity covered for mining licenses but not for oil and gas. While dates of expiry and license coordinates are not provided in the 2014 EITI Report (nor guidance on how to access them), the report provides the Decree numbers for 62 of the 65 licenses covered in the 2014 EITI Report (albeit without guidance on	Meaningful progress

	<p>how to access individual Decrees), with license coordinates and dates of expiry accessible from the full text of the Decrees. However, the 2014 EITI Report does not provide dates of application for all licenses held by material companies, even though these are available in hard copy upon request from the line Ministries, nor guidance on how to access them. Licenses held by non-material companies are not covered and the 2014 EITI Report refers only generally to weaknesses in the license registers.</p>	
<p>Contract disclosures (#2.4)</p>	<p>The government's policy requires that all contracts signed by the state with mining, oil and gas companies, including PSCs to be published in the official gazette (Journal Officiel) and are therefore public documents. A new Transparency Law, has expanded the scope to include forestry contracts. In practice, contracts are published in the Journal Officiel with a link to the website of the Secretary General of the Government and some contracts are available on the EITI Congo website.</p>	<p>Satisfactory progress</p>
<p>Beneficial ownership disclosure (#2.5)</p>	<p>EITI Congo has agreed a three-year beneficial ownership roadmap and the March 2017 Transparency Law codifies government beneficial ownership policy, although the 2014 EITI Report does not explicitly address beneficial ownership.</p>	
<p>State-participation (#2.6)</p>	<p>The 2014 EITI Report clarifies that state participation gives rise to material revenues in oil and gas, not in mining. It describes the SOEs operating in oil and gas but does not appear to provide a comprehensive list of SNPC participations nor clarify whether there were any changes in state ownership in any SOEs or their subsidiaries in 2014. The terms associated with state equity in the mining, oil and gas sectors are not described. While the financial relations between the government and SNPC are briefly described, the rules for retained earnings, reinvestment and third-party financing for all extractives companies in which the state holds majority stakes are not comprehensively disclosed, nor are any significant deviations in practice. While the 2014 EITI Report implies a sovereign guarantee on oil-backed infrastructure projects financed by China EXIM</p>	<p>Inadequate progress</p>

	Bank and refers to unpaid arrears from the CORAF to the Treasury, the terms of such loans and guarantees are not described and it is unclear whether disclosures of loans and loan guarantees by the state and extractives SOEs are comprehensive.	
<p>Secretariat's recommendations:</p> <ul style="list-style-type: none"> • To strengthen implementation, EITI Congo may wish to ensure that the fiscal framework, roles and responsibilities of key government entities and current or recent reforms in the mining, oil and gas sectors are clearly described in future EITI reporting. EITI Congo may wish to consider whether the EITI Congo website may provide a platform for updated information on the legal environment and fiscal framework for the extractive industries. • To strengthen implementation, EITI Congo should clearly define the number of mining, oil and gas licenses awarded and transferred in the year(s) under review, describe the statutory allocation and award procedures, including specific technical and financial criteria assessed and their weightings, and highlight any non-trivial deviations in practice. In addition, EITI Congo may wish to comment on the efficiency of the current license allocation and transfer system as a means of clarifying procedures and curbing non-trivial deviations. • To strengthen implementation, EITI Congo should ensure that future EITI Reports provide the dates of application and expiry, commodity(ies) covered and coordinates for all mining, oil and gas licenses held by material companies. EITI Congo is encouraged to include information mandated under Requirement 2.3 is provided for all mining, oil and gas licenses active in the year(s) under review. EITI Congo may also wish to work with the Ministry of Hydrocarbons and the Ministry of Mines and Geology to ensure that ongoing work on upgrading the mining and petroleum cadastres addresses all provisions of Requirement 2.3. • To strengthen implementation, EITI Congo may wish to categorise contracts published in the Journal Officiel and republish them as standalone contracts on the EITI Congo website. • To further strengthen implementation and prepare for full disclosure of beneficial ownership by 2020, it is recommended that EITI Congo considers piloting beneficial ownership reporting in the forthcoming EITI Report in order to increase awareness of beneficial ownership transparency and pilot beneficial ownership definitions and thresholds. EITI Congo may also wish to conduct broader outreach to the companies on the objectives of beneficial ownership transparency, as well as hold conversations with government agencies on how to make such disclosures mandatory. • To strengthen implementation, EITI Congo should ensure that future EITI Reports clarify the rules and practices governing financial relations between extractives SOEs and the government, the level of and terms associated with state equity participation in the sector as well as a comprehensive overview of loans and guarantees extended by the state or SOEs to extractives companies in the year under review. EITI Congo may wish to consider the extent to which implementation of Article 15 of the March 2017 Transparency Law would support progress in meeting aspects of Requirement 2.6. 		

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

The 2014 EITI Report provides an overview of the oil and gas sector including reserves estimates and an overview of crude blends produced (2014 EITI Report, p.35). The main companies operating in oil and gas are described (2014 EITI Report, pp.44-46), as are plans for the construction of a second refinery (2014 EITI Report, p.38). An overview of the mining sector is provided, including reserves estimates, plans for first industrial mining production in 2021 and a cursory description of major ASM activities (2014 EITI Report, pp.47-48) as well as an overview of the main companies active in mining (2014 EITI Report, pp.52-53). The report also provides an overview of the forestry sector (2014 EITI Report, pp.54-61).

Exploration: While the 2014 EITI Report refers to new incentives for oil and gas exploration in 2014 (2014 EITI Report, p.35), significant oil and gas exploration activities in 2014 are not described. The report also provides a general forecast for earliest first industrial mining production (2014 EITI Report, pp.47-48), but does not provide an overview of significant mining exploration activities in 2014.

Stakeholder views

One CSO expressed satisfaction at the 2014 EITI Report's overview of the extractive industries and its description of significant exploration activities. Several government and industry stakeholders highlighted ongoing work on establishing a mining cartography of the ROC, undertaken by Brazil's AsperBras, and geological studies supported by France's Geological Society (Bureau de Recherches Géologiques et Minières – BRGM). Limited information on significant exploration activities is available on the Ministry of Hydrocarbons website.³³ There is evidence of advanced exploration work in the mining sector in 2014, including by Core Mining Congo SARL (US Geological Survey, 2017).

Initial assessment

The International Secretariat's initial assessment is that the ROC has made satisfactory progress towards meeting this requirement. The 2014 EITI Report provides an overview of the oil, gas and mining sector including reserves estimates, general forecast for earliest first industrial mining production, and an overview of ongoing projects in the oil gas sector. The International Secretariat concludes that all aspects of this requirement have been implemented and the underlining objectives have been achieved.

³³ www.mhc.cg

Production data (#3.2)

Documentation of progress

Production volumes: The 2014 EITI Report provides oil production volumes in 2014 (2014 EITI Report, p.45), including a breakdown by each of the four largest producers. While the report provides production volumes for diamonds from artisanal mining (2014 EITI Report, p.48), it states that no reliable production figures were available for gold, also from artisanal mining (2014 EITI Report, p.48) and does not provide natural gas production volumes. The Report states that production of crude is supplemented by the production of about 1.7 million barrels of oil equivalent of Liquefied Petroleum Gas (LPG) (p.35). The report also states that, “to the IA’s knowledge”, there was no industrial production of minerals in the ROC in 2014 (2014 EITI Report, p.47).

Production values: While the 2014 EITI Report does not provide the value of 2014 oil production, the average price of a barrel of oil is provided for 2014 as USD 95 (2014 EITI Report, p.73), allowing readers to calculate an estimate of 2014 oil production value. While the report provides production volumes for diamonds from artisanal mining, it does not provide diamond production value nor an average price of diamonds in 2014. However, based on the information provided on diamond export volumes and values provided (2014 EITI Report, p.53), it is possible to estimate diamond production volumes using the average export prices. The report does not provide either volumes or values of natural gas production in the ROC.

Location: The 2014 EITI Report provides an overview of the location of the main oil and gas production (2014 EITI Report, p.35) and of the main mineral deposits in the ROC (2014 EITI Report, p.47).

Stakeholder views

All stakeholders confirmed that there was no industrial mining production in 2014, although there was artisanal production of diamonds and gold. None of the stakeholders consulted had any figures or estimates of gold production in 2014. However, the US Geological Survey provides estimates of gold production (150 kg in 2014), diamond (53 163 carats in 2014) and volumes of natural gas produced in 2014 (226 610 thousand cubic meters) in the ROC (US Geological Survey, 2017). A government representative noted that the first industrial mining production started in early 2017, when Société de Recherche et d'Exploitation Minière (SOREMI) started producing copper.

There were divergent views between stakeholder groups regarding the reliability of the government’s official oil and gas production figures. A government representative highlighted the government’s checks and balances on oil and gas companies’ reported production, including regular quality checks and oversight of semi-annual flow meter recalibrations. However, several CSOs expressed significant dissatisfaction at the fact that the IA had not complied with clauses of its ToR requiring the 2014 EITI Report to present oil and gas production disaggregated by license and operator as well as each consortium partner’s share of production. The CSOs also criticised the 2014 EITI Report’s lack of production values for each commodity produced in the ROC. Nonetheless, one CSO praised the 2014 EITI Report’s inclusion of a figure for the ROC’s total 2014 oil production, which had not appeared in previous EITI Reports. Several CSOs also called for the reconciliation of oil production figures between company and government reporting in future EITI Reports. A government official confirmed that the government

did not regularly publish oil and gas production figures online, although it provided the World Bank and IMF with such figures semi-annually. Several government and civil society stakeholders highlighted the significance of the March 2017 Transparency Law's Article 66, which requires publication of mining, oil and gas production data disaggregated by individual license and field.

Initial assessment

The International Secretariat's initial assessment is that the ROC has made meaningful progress towards meeting this requirement. The 2014 EITI Report provides the 2014 production volumes for crude oil and it is possible to calculate the value of oil production based on the average oil price provided. While the 2014 EITI Report provides diamond production volumes but not values, it is possible to estimate the value of diamond production using the average diamond export price calculated from export figures provided. Finally, production volumes and values are not provided for natural gas. While natural gas production volumes and values in 2014 were relatively small (226,610 thousand cubic meters) according to USGS data for 2014, the significance of natural gas production for domestic electricity production means that this omission has a significant impact on meeting the broader objective of the requirement.

To strengthen implementation, the MSG should ensure that future EITI Reports provide production volumes and values for all minerals produced in the ROC in the year(s) under review. EITI Congo may also wish to consider the extent to which such information could be regularly disclosed on government websites as a means of complying with provisions requiring publication of more granular production data in Article 66 of the March 2017 Transparency Law (République du Congo, 2017).

Export data (#3.3)

Documentation of progress

Export volumes: The 2014 EITI Report provides 2014 crude oil export volumes and the number of cargo loadings³⁴, disaggregated by the five largest exporting companies, three main crude blends and two types of refined product³⁵ (2014 EITI Report, pp.46-47). While the report provides 2014 export volumes for diamonds³⁶, it states that the IA did not have sufficiently reliable information on gold exports (2014 EITI Report, p.53). While the report does not discuss exports of natural gas, there is evidence that the ROC does not export any natural gas (US Geological Survey, 2017).

Export values: The 2014 EITI Report provides the value 2014 oil exports, their share of total exports³⁷ and the general geographic split in oil exports³⁸ (2014 EITI Report, pp.46-47). The report also provides export values for diamonds³⁹ from artisanal and small scale (ASM) production (2014 EITI Report, p.53), but not for gold, which is also from the ASM sector.

Location: The 2014 EITI Report lists the two main oil export terminals of Djéno (onshore) and Yombo

³⁴ 114 cargo loadings totaling 84,200,000 barrels of crude oil in 2014.

³⁵ Butane and propane.

³⁶ 45,000 carats.

³⁷ XAF 3.8tn (USD 7.7bn), equivalent to 86% of total exports in 2014.

³⁸ 69% Asia and 19% Europe.

³⁹ XAF 530bn (USD 1bn).

(offshore) (2014 EITI Report, p.35) but does not describe the location of mineral exports.

Stakeholder views

A government official confirmed that the ROC exported modest quantities of gold every year, including in 2014. The official explained that gold and diamond exports were managed by the Ministry of Mines and Geology's certification department.

One CSO expressed dissatisfaction at the lack of disaggregation of crude oil exports by cargo in the 2014 EITI Report. The representative also questioned the export data disaggregated by operator (on pp.45-46 of the 2014 EITI Report), highlighting concerns that the largest producer in the ROC, Total E&P Congo, exported less than the second-largest producer, ENI Congo, in 2014. However, several government representatives considered the official export data included in the 2014 EITI Report to be accurate, noting the role of Veritas in verifying quantities of crude oil liftings. While all stakeholders confirmed that the KPMG quarterly reports on oil sales for 2014 had not yet been published, no particular technical or legal reason was cited for the interruption of these publications (*see Requirement 4.2*).

The Berne Declaration (now Public Eye) found that 12.2% of SNPC-traded oil (roughly 150k bpd) was allocated to the CORAF in the 2011-2013 period, which refines crude oil into butane gas, gasoline, fuel oil etc. While the CSO did not find information on the destination of CORAF's refined oil products, it quoted unnamed American sources that some gasoline and gasoil was destined for domestic consumption, while the rest (mainly fuel oil and naphtha) was exported (Berne Declaration, 2015). The CSO also found evidence of a 2013 deal to export CORAF-refined fuel oil through the Singapore-based subsidiary of oil trading company Philia (Berne Declaration, 2015).

Initial assessment

The International Secretariat's initial assessment is that the ROC has made satisfactory progress in meeting this requirement. The 2014 EITI Report provides export volumes and values for crude oil. The report also provides export volumes and value for diamonds from artisanal mining but not for gold, which is also produced in small quantities by artisanal miners.

To further strengthen implementation, the MSG may wish to ensure that future EITI Reports provide export volumes and values for all commodities exported in the year(s) under review, including artisanal-mined commodities like gold.

Table 3- Summary initial assessment table: 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 2014 EITI Report provides an overview of the mining, oil and gas sectors but does not provide a clear description of significant exploration activities undertaken in 2014.	Satisfactory progress
Production data (#3.2)	The 2014 EITI Report provides the 2014 production volumes for crude oil and it is possible to calculate the value of oil production based on the average oil price provided. While 2014 diamond production volumes are provided in the report, values are not. Finally, production volumes and values are not provided for natural gas.	Meaningful progress
Export data (#3.3)	The 2014 EITI Report provides export volumes and values for crude oil and diamonds, but not for gold from artisanal mining.	Satisfactory progress
<p>Secretariat's recommendations:</p> <ul style="list-style-type: none"> • To strengthen implementation, EITI Congo may wish to ensure that the description of the extractive industries in future EITI Reports includes a clear overview of significant exploration activities in the year under review. • To strengthen implementation, EITI Congo should ensure that future EITI Reports provide production volumes and values for all minerals produced in the ROC in the year(s) under review. EITI Congo may also wish to consider the extent to which such information could be regularly disclosed on government websites as a means of complying with provisions requiring publication of more granular production data in Article 66 of the March 2017 Transparency Law. • To further strengthen implementation, EITI Congo may wish to ensure that future EITI Reports provide export volumes and values for all commodities exported in the year(s) under review, including artisanal-mined commodities like gold. 		

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 detail 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

Materiality threshold for revenue streams: The 2014 EITI Report sets the materiality threshold at zero for the selection of material revenue streams, with all mining, oil and gas revenue streams in the Mining Code, Petroleum Code and Common Law included in the scope of reconciliation, and that reporting of any other payment of more than XAF 50m (around USD 100k) were also requested (2014 EITI Report, pp.14, 65, 67). However, it is stated that Maritime Tax and Social Expenditures were excluded from the scope or reconciliation since these payments were made directly to third parties without going through the Treasury (2014 EITI Report, pp.66-67). The coverage of the Maritime Tax is addressed a requirement 4.4 below. Social Expenditures are addressed at requirement 6.1

The report confirms that the MSG included all revenue flows included in the 2013 EITI Report as well as “any other revenue flow identified during the preliminary analysis work”, although Table 2 confirms that no new revenue flows were identified (2014 EITI Report, p.31). The report also states that material revenue flows in the 2014 EITI Report were in line with “generally-accepted international practice” (2014 EITI Report, p.14). It appears that all revenue flows listed in Requirement 4.1.b are covered in the scope of the 2014 EITI Report’s reconciliation. The report states only that the list of material revenue streams was shared with reporting entities and discussed with the MSG (2014 EITI Report, pp.14, 62), but does not explicitly state that the MSG approved the selection of material revenue streams.

Descriptions of material revenue streams: The 2014 EITI Report lists the 32 material revenue flows in oil and gas⁴⁰ (2014 EITI Report, pp.65-66) and the 13 in mining⁴¹ (2014 EITI Report, p.67), with descriptions of each flow provided in Annex 2 (pp.110-119).

Materiality threshold for companies: The MSG decided to include in the scope of the 2014 EITI Report all oil and gas companies in the 2013 EITI Report (21 companies) as well as all companies that were “newly registered in the [petroleum] cadastres” in 2014 (three new companies) (2014 EITI Report, p.31). Similarly, the MSG included in the scope of the 2014 EITI Report all mining companies that reported in 2013 as well as any new mining company registered in the mining cadastre (75 license-holders were

⁴⁰ A total of 33 oil and gas revenue flows were selected for reconciliation, including 9 in-kind revenue flows and 24 cash revenue flows (including other significant payments).

⁴¹ A total of 14 mining revenue flows were included in the scope of reconciliation based on Mining Code and Common Law revenues.

included in the scope of the 2014 Report) (2014 EITI Report, pp.31). However, mining companies were split into two categories for reconciliation or unilateral disclosures by government agencies: 10 companies that held production licenses were included for reconciliation; 48 mining companies holding a research permit and 17 companies holding prospection licenses were included for only unilateral disclosure by government agencies, bringing the total of mining companies included for unilateral disclosure to 65. The 2014 EITI Report confirms that all 24 oil and gas companies⁴² holding active licenses in 2014 (2014 EITI Report, pp.4-5) and all ten mining companies holding production licenses in 2014 (2014 EITI Report, p.5) were included in the scope of reporting, given the mining sector's "limited [economic] contribution". However, the 2014 EITI Report did not set a quantitative materiality threshold for selecting material companies for reporting, which resulted in three companies⁴³ that did not have any "activities" in the ROC in 2014 being selected for reporting (2014 EITI Report, p.72). These companies were included in the Report, because they had reported in previous EITI Reports.

Material companies: The 2014 EITI Report lists and names all 24 material oil and gas companies and all ten material mining companies (2014 EITI Report, pp.62,63).

Material company reporting: The 16 oil and gas companies collectively paid USD 1.6 billion accounting for 44.6% of total reported revenues (2014 EITI Report p. 7). These payments were reconciled with government revenues. Among these 16 companies, 10 oil and gas companies also delivered oil to SNPC as in-kind revenues to the states (2014 EITI Report page 7). The 2014 Report shows that 21 176 000 barrels of crude oil (in-kind revenues) valued at USD 2 billion (55% of reported revenues) were used by SNPC to repay multiple infrastructure projects (gas power plant, and projects built as part of a cooperation agreement with the Government of China) (pp.78-79). Table 16 lists the eight material oil and gas companies⁴⁴ that did not submit EITI reporting templates (2014 EITI Report, p.71). The 2014 EITI Report provides the value of combined payments from the eight non-reporting oil and gas companies in absolute terms⁴⁵ (USD 1.9 million) and relative to total oil and gas revenues (0.05%) disclosed by government⁴⁶ (2014 EITI Report, pp. 8,77). The report states that the IA did not consider these combined omissions material. The 2014 EITI Report notes that three of the eight non-reporting oil and gas companies⁴⁷ did not have any activities in 2014 and that the IA was not able to contact two companies⁴⁸ (2014 EITI Report, p.72). The absolute value of payments from each of the eight non-reporting oil and gas companies is provided in Annex 3 (2014 EITI Report, pp.139,145,147,156,158,160,162,164). Among the non-reporting companies, only two made payments that exceeded the materiality threshold of USD 100 000 for the reconciliation by revenues streams. Murphy West Africa paid USD 1 million (p.145) and Wing Wah paid USD 757 000 (p.164).

⁴² 12 production license-holders, 11 exploration license-holders and SNPC.

⁴³ PA Resources Congo, Pilatus and Ophir Congo.

⁴⁴ The eight non-reporting material oil and gas companies were: Murphy West Africa, Oryx Petroleum, PA Resources Congo, Dig Oil, Ophir Congo, Petroleum E&P Africa, Pilatus and Wing Wah.

⁴⁵ The combined payments from eight material non-reporting oil and gas companies, disclosed by government, amounted to XAF 979m (USD 1.983m).

⁴⁶ 0.1% of government-reported total oil and gas revenues and 0.3% of total government revenues excluding grants.

⁴⁷ PA Resources Congo, Pilatus and Ophir Congo.

⁴⁸ Murphy West Africa and Dig Oil.

Mining companies' payments of USD 6.5 million were relatively small in 2014, accounting for only 0.18% of total reported revenues by the government. The 10 mining companies holding production licenses were required to report, but only five reported payments of USD 1 million accounting for 0.05% of total reported revenues. Table 25 lists the five mining companies⁴⁹ that did not report (2014 EITI Report, p.81). Payments made by these five mining companies amount to USD 5 million or 0.14% of total reported revenues. The absolute value of payments from each of the five non-reporting mining companies is provided in Annex 3 (2014 EITI Report, pp.169,170,171,174,176). Among the five non-reporting mining companies, three made payments that exceeded the USD 100 000 materiality threshold for reconciliation by revenue stream. DMC Iron Congo paid USD 4.5 million in taxes and fees in 2014 (p.170), SOERMI paid USD 324 000 (p.174) and Congo mining paid USD 175 000 (p.176).

Material government entities: The 2014 EITI Report lists the five government entities receiving oil and gas revenues (2014 EITI Report, p.69) and the three government entities collecting mining revenues (2014 EITI Report, p.70).

Government reporting: The 2014 EITI Report clearly states that all government entities receiving mining, oil and gas revenues submitted reporting templates (2014 EITI Report, pp.5,9,71, 81-82).

Discrepancies: The 2014 EITI Report sets a materiality threshold for investigating cumulated discrepancies of 5% of total government extractives revenues (2014 EITI Report, p.32). The 2014 EITI Report provides the IA's assessment of the immateriality of discrepancies in reporting of companies and government entities given that they accounted for less than 5% of revenues reported by the government (2014 EITI Report, pp.7,10). The results of reconciliation of the five reporting mining companies' disclosures highlight a roughly 50% discrepancy between government and company disclosures, although when excluding "other significant payments" the IA does not consider unreconciled discrepancies as material since they are below 5% of total government-reporting revenues (2014 EITI Report, pp.7, 10, 83). The report further states that the non-material nature of discrepancies identified during reconciliation allows the IA to "reasonably" pronounce itself on the comprehensiveness of EITI reporting (2014 EITI Report, p.14). Annex 5 provides an investigation of the discrepancies, categorised under eight types of reasons (2014 EITI Report, pp.184-189).

Full government disclosure: The 2014 EITI Report confirms that government unilateral disclosure was provided for all companies that were not included in the scope of reconciliation (2014 EITI Report, pp.5, 32). All of the government's revenues from the 24 oil and gas companies included in the scope of reporting are provided, disaggregated by revenue stream (2014 EITI Report, pp.6, 75). In mining, government disclosed material revenues from the ten material mining companies (2014 EITI Report, pp.9,11) and from the 65 mining companies holding exploration licenses (2014 EITI Report, pp.12,85-86). These 65 mining companies collectively paid less than half a million US dollars (375 000), which is 0.01 of total revenues reported. Full government unilateral disclosure of revenues from 35 forestry companies is also provided, disaggregated by revenue stream (2014 EITI Report, p.13). The Report shows that the forestry sector contributed five times more in taxes and royalties than the mining companies. According to unilateral disclosure for these 35 companies in the forestry sector collectively paid USD 30 million in

⁴⁹ The five non-reporting material mining companies were: Core Mining Congo, DMC Iron Congo, Lulu Mining, Société de Recherche et d'Exploitation Minière (SOERMI) and Congo Mining.

taxes and royalties in 2014 (p.13).

Stakeholder views

All MSG members and secretariat staff consulted confirmed that the MSG approved the materiality threshold for selecting companies and revenue streams every year during the inception phase for the EITI Report. The IA expressed confidence at the methodological approach to ensuring the comprehensiveness of payments reconciled in the 2014 EITI Report, noting the IA's involvement in scoping and the decision to set the same USD 100k threshold for selecting revenues as in EU mandatory reporting requirements for extractives companies. Members of the MSG confirmed that a materiality threshold of zero had been used for the selection of government revenue streams defined under relevant sectoral and common laws. The IA noted the MSG's apparent disengagement from materiality decisions and confirmed that all of the IA's proposals had been accepted by the MSG. Several MSG members from all three constituencies explained that the MSG had adopted a qualitative rather than quantitative threshold for selecting material companies, with a threshold of zero for oil and gas companies. However, one CSO expressed concern at the exclusion from the scope of reporting of oil and gas companies that hold stakes in PSCs but are not operators, considering that they would be liable to pay taxes given their participation in PSCs. However, a government representative explained that the PSC operator paid taxes and levies on behalf of consortium partners and considered that the selection of material companies based on the oil and gas cadastre rather than their payments to government ensured the comprehensiveness of reconciliation.

The IA expressly stated in the Report (p.14) that he had received the requested information from the main companies operating in the country and concluded that payments made by non-reporting companies were not significant and he could "reasonably comment on the completeness of the EITI data". The IA also noted that there were no obstacles to selecting material companies on the basis of the government's unilateral disclosure of revenues for the year(s) under review, at the inception phase. Nonetheless the IA noted its "reasonable confidence" that all material companies and payments were included in the 2014 EITI Report's scope. Other stakeholders offered diverging views regarding the approach to selecting material mining companies. While several CSOs considered that the MSG had only included mining production license-holders, an industry representative explained that the MSG had selected all eight members of the Federation of Mines, regardless of whether they held exploration or production licenses, and the two production license-holders that were not members of the Federation.

Despite the lack of reporting by 13 companies, all CSO MSG members consulted considered that the 2014 EITI Report was comprehensive because they did not consider these non-reporting companies to be material. Nonetheless, one CSO expressed concern at the rising number of non-reporting companies, with the share of companies failing to participate in EITI reporting rising from 10% in 2012 to 14% in 2013 and 33% in 2014. Noting that EITI reporting is compulsory for all extractives companies operating in the ROC, the CSO called for the imposition of sanctions on non-reporting companies to halt this trend. Several CSOs also criticised the fact that many companies tended to report late, after the initial reporting deadlines, and considered that SNPC tended to be the latest.

One CSO highlighted that most reconciled discrepancies were due to human error, and could therefore easily be rectified, while the lion's share of unreconciled discrepancies were due to government reporting lower revenues than companies disclosed in payments. One CSO criticised the fact that the absolute value of discrepancies per company and revenue flow was not provided in the full text of the 2014 EITI Report

and that readers had to look at company-level reconciliation tables in annex to find such information. However, several government and civil society MSG members expressed concern at the consistent discrepancies in company payments to the Customs Department, which were always in the XAF 1bn-XAF 1.5bn range, which one CSO considered reflected corrupt practices. In addition, several CSOs raised questions about the exclusion of the Maritime Tax from the scope of reconciliation in the 2014 EITI Report, even if it was still unilaterally disclosed by companies, as well as at the temporary suspension of the tax in 2017, considering that the management of Maritime Tax revenues was opaque.

An independent analyst raised concerns over the comprehensiveness of the ROC's EITI reporting, given that the selection of material companies on the basis of the cadastre potentially omitted material payments from companies that did not hold licenses directly. While the 2014 EITI Report only disclosed signature bonus payments from Total E&P Congo and Philia SA, Global Witness has estimated that a signature bonus of USD 22m should have been paid by ENI and AOGC as a result of extensions of oil and gas contracts for Foukanda, Kitina, Mwafi and Djambala (ENI, 2015). (Global Witness, 2015). More broadly, the US Department of State has noted that, while EITI Reports show broadly matching company payments and government revenues, "it appears that the SNPC continues to substantially underreport revenues" (US Department of State, 2014).

Initial assessment

The International Secretariat's assessment is that the ROC has made satisfactory progress towards meeting this requirement. The MSG has agreed materiality thresholds for selecting companies and revenue streams, although the setting of a qualitative threshold for selecting companies means that companies that had ceased activities in 2014 were nevertheless included in the scope of reporting. The 2014 EITI Report lists and describes all material companies and revenue streams. While the materiality of revenues from non-reporting companies was collectively small, a number of companies made aggregate payments to government that exceeded the USD 100 000 materiality threshold for selecting revenue streams for reconciliation.⁵⁰ However, the materiality of payments from non-reporting companies is small, at 0.19% of government extractives revenue.⁵¹ While the level of participation from mining companies is a concern, with half of the material mining companies not reporting, the MSG's decision to include mining in the scope of EITI reporting was driven by future prospects rather than significant current revenues from the sector. Indeed, the ten material mining companies contributed less to government extractives revenues (0.18%) than the 35 forestry companies also covered in the 2014 EITI Report.

To strengthen implementation, the MSG may wish to ensure that the materiality threshold for selecting companies in future EITI Reports ensures that all payments that could affect the comprehensiveness of EITI reporting be included in the scope of reconciliation. The MSG is invited to consider whether setting a quantitative materiality threshold for selecting companies would ensure these aims are met. Finally, the MSG should ensure that future EITI Reports include the IA's assessment of the materiality of individual companies' omissions.

⁵⁰ Among the non-reporting oil and gas companies, Murphy West Africa paid USD 1 million (p.145) and Wing Wah paid USD 757 000 (p.164). Among the non-reporting mining companies, DMC Iron Congo paid USD 4.5 million in taxes and fees in 2014 (p.170), SOERMI paid USD 324 000 (p.174) and Congo mining paid USD 175 000 (p.176).

⁵¹ 0.05% for non-reporting oil and gas companies and 0.14% for non-reporting mining companies.

In-kind revenues (#4.2)

Documentation of progress

Materiality: The 2014 EITI Report clearly highlights the materiality of in-kind revenues. It states that royalties, set at 15% for crude oil and at a negotiated rate for natural gas, can be paid in cash or in kind, while Profit Oil (oil production net of Cost Oil and royalties) is split at contractual rates between operator and state and transferred in-kind to SNPC for commercialisation (2014 EITI Report, p.41). Above certain price thresholds, companies are also required to pay Super Profit Oil, calculated as the difference between net production value at fixed and market prices, in the same way as Profit Oil (2014 EITI Report, p.41). The diagram on Section 5.1.2 summarises in-kind revenue flows (2014 EITI Report, p.74).

Volumes collected: The 2014 EITI Report provides volumes of the state's in-kind revenues in 2014⁵² (2014 EITI Report, pp.73, 78-79). The results of reconciliation of in-kind payments by ten of the 13 oil and gas companies that made such payments in 2014 are also provided (2014 EITI Report, pp.5, 6, 72-74, 78-79).

Volumes sold: The 2014 EITI Report states that the state's in-kind revenues were not commercialised in their entirety in 2014 (2014 EITI Report, p.73). The report explains that three separate infrastructure agreements covered deductions from proceeds from the state's share of in-kind revenues in 2014: under two agreements with ENI covering power plant projects, deductions were made in-kind from the state's in-kind revenues and commercialised by ENI, while under an agreement with the People's Republic of China, SNPC deducted proceeds of the sale of the state's in-kind revenues to reimburse loans in cash (2014 EITI Report, pp.25-26,73). Several CSO MSG members have raised concerns over the structure of these infrastructure agreements, including at the MSG's 14 December 2016 meeting, although the MSG as a whole has considered that such questions should be investigated by the public following publication of the EITI Report, rather than in the EITI Report itself (ITIE Congo, 2016).

The report provides the volumes and values of crude oil that were sold by SNPC in 2014, with proceeds transferred to the Treasury⁵³ (2014 EITI Report, pp.73, 78-79), as well as the volumes and value of crude oil deducted by SNPC and used off-budget to reimburse loans under three infrastructure agreements⁵⁴ (2014 EITI Report, pp.73, 78-79). In addition, the report highlights the volumes and value of the state's in-kind revenues that were transferred to the CORAF refinery⁵⁵, for which no payment was identified (2014 EITI Report, pp.73, 78-79). Despite the lack of cash settlement for crude oil allocations to the CORAF, we understand that the Treasury considers this a debt and should thus be considered a form of commercialisation of the state's in-kind revenues. While the total volumes of the state's in-kind revenues that were sold in 2014 is not provided as an aggregate figure, it can be calculated by adding the three figures together. Finally, the 2014 EITI Report also provides the volumes of unsold (in 2014) crude oil stockpiled by SNPC⁵⁶ (2014 EITI Report, pp.73, 78-79).

⁵² 47,222,000 barrels of crude oil, valued at XAF 2.215tn (USD 4.5bn).

⁵³ 20,954,000 barrels of crude oil, worth XAF 634bn (USD 1.3bn).

⁵⁴ A total of 21,176,000 barrels of crude oil.

⁵⁵ 6,175,000 barrels of crude oil, worth XAF 290bn (USD 587m).

⁵⁶ A negative variation of 1,083,000 barrels in SNPC's crude oil stock is highlighted, the differences between in-kind revenues provided annually by operators and the in-kind revenues effectively sold by SNPC.

Sales proceeds: The 2014 EITI Report states that the proceeds from the sales of the state's in-kind revenues were "not systematically" transferred to the Treasury (2014 EITI Report, p.73). Diagram 2 in Section 4.4.1 shows that in-kind oil and gas revenue flows were transferred to the Treasury net of SNPC's deductions in cash from the proceeds of sales of the state's in-kind revenues to reimburse Chinese-funded infrastructure projects and deductions from the state's in-kind revenues transferred in kind to ENI (2014 EITI Report, p.66). The report provides the value of proceeds from the sale of the state's in-kind revenues that were transferred to the Treasury, the value of proceeds transferred off-budget to China Exim Bank escrow accounts, the value of in-kind deductions transferred to ENI, and the deemed value of transfers to the CORAF (2014 EITI Report, p.73, 78-79).

The information on sales of the state's in-kind revenues is not disaggregated by buyer. For 2012 and 2013, the MFBPP had published quarterly reports from KPMG with a one-year delay tracking the amount of oil collected by SNPC from PSC operators, the prices at which oil was sold and reconciling the value of proceeds disclosed by SNPC with those transferred to the Treasury (EITI, 2014) (RCS Global, 2015). Information on crude oil sales was disaggregated on a cargo-by-cargo basis, and thus by buyer, although the identity of buyers of SNPC crude oil was not disclosed. There is no evidence that KPMG quarterly reports were published for 2014 and the 2012-2013 quarterly reports that had been published on the websites of EITI Congo⁵⁷ and the MFBPP⁵⁸ appear to have been taken offline. The 2014 EITI Report confirms that these quarterly reports are not publicly available for 2014 (2014 EITI Report, pp.14,90). Nonetheless, Article 16 of the March 2017 Transparency Law introduces penalties (through the invalidation of transactions) for not publicly disclosing all sales of government property (République du Congo, 2017), which would include the state's in-kind oil revenues.

Discrepancies: The reconciliation of state in-kind revenue volumes highlights a discrepancy of 104k barrels in the reconciliation of royalties (out of a total of 12.96m barrels disclosed by the government) as well as 287k barrels in Profit Oil and Super Profit Oil (out of a total of 33.864m barrels disclosed by the government) (2014 EITI Report, pp.5, 6, 72-74). The results of reconciliation of commercialised Profit Oil-State between SNPC and the government do not reveal any discrepancies (2014 EITI Report, p.72).

Disaggregation: The results of reconciliation of the state's in-kind revenue are presented disaggregated by revenue stream and receiving government entity (2014 EITI Report, pp.78-79,186), but not by oil and gas company nor by buyer of the state's in-kind revenue sales.

Additional information: The 2014 EITI Report includes an additional layer of verification of in-kind revenues sold by SNPC (2014 EITI Report, pp.14, 90-91). It states that all in-kind oil revenues sold by SNPC were consistent with those reported in the Veritas report on SNPC sales for 2014. However, it also notes that the total contribution of the oil and gas sector to government revenues reported in the 2014 EITI Report was not consistent with figures included in the government's 2014 financial statements (TOFE - Tableau des Opérations Financières de l'Etat). In addition, it notes that reconciliation with the MFBPP's quarterly KPMG reports on crude oil sales revenues to the Treasury was not possible given that these were no longer publicly-available at the time of preparation of the EITI Report (2014 EITI Report,

⁵⁷ http://www.itie-congo.org/index.php?option=com_content&view=article&id=113&Itemid=130

⁵⁸ <http://www.finances.gouv.cg/fr/documentation>

pp.14,90).

The 2014 EITI Report also briefly describes the process for SNPC's selling of the state's in-kind revenues, with prices negotiated on per-cargo basis and proceeds of sales transferred to the Treasury's account at the regional central bank (BEAC), net of marketing and transport costs as well as SNPC's trading commission of 1.6% of the oil cargo's value (2014 EITI Report, pp.36-37).

Stakeholder views

There was consensus among MSG members consulted that the MFBPP's quarterly reports prepared by KPMG provided detailed cargo-by-cargo information even if it did not state the name of the buyer. MSG members consulted considered the MFBPP's quarterly reports prepared by KPMG to be complimentary to the ROC's EITI reporting. Many stakeholders from different constituencies expressed concerns about lack of publication of the 2014 KPMG reports and the removal of the 2013 KPMG reports from the public domain. Furthermore, KPMG stated in its 2013 quarterly reports that the objective of its mission included compliance with EITI Requirements 4.1.c, which later became Requirement 4.2 in the 2016 EITI Standard (KPMG, 2014) (KPMG, 2014) (KPMG, 2014) (KPMG, 2014). In the absence of the KPMG reports, EITI Reports do not provide sufficient level of details for the sale of in-kind revenues. The IA stated that it did not have the mandate to undertake any further analysis of SNPC's crude oil trades.

Several government representatives confirmed that KPMG had prepared quarterly oil sales reports for 2014, but that these had yet to be approved for publication. Stakeholders did not provide any explanation for the reasons why previously-published quarterly reports (up to 2013) had been taken offline, although stakeholders from all constituencies referred to 2015-2016 as a turbulent period. The publication of CORAF Report by the Berne Declaration (now Public Eye) in March 2015 was also highlighted by stakeholders from different constituencies as an important background to note. A senior government official explained that the current MFBPP website was new and therefore the transfer of previously published reports was taking time. None of the government stakeholders consulted, including at a senior level, saw any barriers to publishing all KPMG quarterly reports on the MFBPP website. There were differing views on how many quarterly reconciliation reports had ever been made public, with several government officials considering that such reports had been published for the entire 2003-2013 period while several CSOs considered that reports had only been published for 2012 and 2013 (a total of eight quarterly reports). Several representatives from civil society and development partners expressed significant concern at the lack of publication of these quarterly reports since June 2014, considering that this reflected a lack of transparency in SNPC. A government official explained that the MFBPP was in informal discussions with KPMG on restarting quarterly reconciliation reports for 2015 onwards, although these had yet to be finalised. An auditor explained that KPMG's reports were based on SNPC calculations provided but did not constitute an audit of such calculations. Rather, the quarterly reports reconciled production figures with Veritas verifications and transfers to the Treasury with Treasury receipts. The auditor explained that it had not been possible to reconcile KPMG quarterly reports with the government's financial statements (TOFE), given that they did not disaggregate crude oil sales by SNPC from total crude oil revenue. Several government representatives noted that SNPC had shared their oil sales calculations with KPMG for their quarterly reports, but never to the IA preparing EITI Reports.

Several stakeholders met expressed concern at the consistent declines in proceeds from the sale of the state's in-kind revenue to the Treasury in the past five EITI Reports, with volumes of state in-kind

revenue sold and transferred to the Treasury declining from 5.259m barrels in 2010 to 5.926m in 2011, 4.932m barrels in 2012, 62k barrels in 2013 and 46k barrels in 2014, based on EITI data. However, a government representative explained that the level of government's in-kind revenues had declined significantly in recent years due to lower international oil prices (since 2014), given that the state received less volumes when prices fell in line with the terms of the PSCs.

Several civil society stakeholders met also raised significant concerns over the valuation of crude oil sold by SNPC for the benefit of the Treasury and that of oil sold to pay back loans under the ROC-PRC agreement (directly to an escrow account at China Exim Bank). While roughly 21m barrels of crude oil were sold for XAF 634bn and subsequently transferred to the Treasury, the roughly 17.3m barrels commercialised for the benefit of China Exim Bank were sold at XAF 811bn. According to these representatives, this indicated that the share of the state's in-kind revenues that was commercialised for the benefit of the Treasury was sold at below the USD 95 average oil price described in the 2014 EITI Report. The CSOs linked this conundrum with the inconsistency between the XAF 1973bn in oil revenues recorded in the government's 2014 financial statements (TOFE) and the XAF 1797bn in oil revenues recorded in the 2014 EITI Report. The representatives expressed concern at the lack of explanation for such inconsistencies in the 2014 EITI Report. However, one government representative disputed the notion that there were inconsistencies in information on SNPC's oil sales in the 2014 EITI Report, considering that SNPC's oil cargos were sometimes sold up to one year in advance and that SNPC's oil was typically priced at a USD 3 per barrel discount on international prices. However, several CSOs contested this explanation, considering that the average spread of around USD 30 per barrel evident in the 2014 EITI Report could not be explained in such a way.

NRGI has written about the weak transparency in SNPC's buyer selection process and the absence of information about the companies' beneficial owners, which the CSO considers to have increased corruption risks (NRGI, 2016). One independent analyst explained that most of the crude oil sold by SNPC appeared to be sold to a single buying company, Orion Oil, and highlighted the importance of disclosing the names of buyers of the state's in-kind revenues. According to the analyst, one of Orion Oil's founders, Philippe Chironi, was named in the Panama Papers investigation (Le Monde, 2016) and convicted of laundering Congolese public funds in Switzerland in early 2017 (Africa Energy Intelligence, 2017). According to an (unnamed) head of commodity trade finance at a major Geneva-based bank quoted by the Berne Declaration (now Public Eye), "we have ceased all activities in crude exports from Congo-Brazzaville because there are no public tenders" (Berne Declaration, 2015)..

Initial assessment

The International Secretariat's initial assessment is that the ROC has made meaningful progress in meeting this requirement. The 2014 EITI Report reconciles the volumes collected by government with company payments of in-kind revenues and discloses volumes of the state's in-kind revenues sold by SNPC as well as the transfer of sales proceeds to the Treasury. However, the information on SNPC's sales of the government's in-kind revenues is not disaggregated by buyer as required in the EITI Standard, nor reconciled as encouraged where practically feasible.

To strengthen implementation, the MSG should ensure that future EITI Reports present information on the sale of the state's in-kind revenues disaggregated by buyer. The government is encouraged to reinstate the practice of publishing the MFBPP's quarterly oil sales reports to ensure timelier compliance

with Article 16 of the March 2017 Transparency Law and with Requirement 4.2 of the EITI Standard.

Barter and infrastructure transactions (#4.3)

Documentation of progress

The 2014 EITI Report states that no mining, oil and gas contract active in 2014 contained any barter arrangement or infrastructure provisions in line with Requirement 4.1.d of the 2013 Standard (2014 EITI Report, pp.42-43,50). However, the report also describes three agreements covering the reimbursement of infrastructure projects through deductions from the state's share of Profit Oil (2014 EITI Report, pp.42-43).

The first two arrangements appear to consist of barter type arrangements between the government and ENI. Under agreements signed in 2001 and 2007 respectively, the company developed a 50MW power plant in Djéno (Pointe Noire) and the 300MW CEC (Centrale Electrique du Congo) power plant in Pointe Noire to use associated gas from the M'Boundi oilfield (2014 EITI Report, p.42). It is clearly stated that these two power plant investments are reimbursed in-kind through SNPC's deductions from the state's in-kind revenues from the ENI-operated oilfield, which are sold by ENI with proceeds transferred to an escrow account to reimburse the projects (2014 EITI Report, p.42). While the 2014 EITI Report does not describe the terms of the investment agreement (such as loans, sovereign guarantee, etc.), it does disclose the volumes⁵⁹ transferred to ENI to cover both agreements and the value of proceeds of ENI's sales, although these are not reconciled.⁶⁰ However, the 2014 EITI Report does not provide the value of each of these two power plant projects nor assess the materiality of these agreements relative to conventional contracts.

The third agreement between the ROC and China provides less information and it is unclear from the 2014 EITI Report whether the agreement contains a barter component. The framework agreement covers unspecified infrastructure projects, although the report states that the IA was not able to find information on the signature date or content of the agreement (2014 EITI Report, p.42). However, it explains that SNPC deducts part of the state's in-kind revenues from all PSCs and sells it (to unspecified buyers), before transferring the proceeds of the sales to an escrow account at China Exim Bank for reimbursement of the loans (2014 EITI Report, p.42). The terms of the loans and value of infrastructure projects covered is not provided in the report. Given that it is unclear from the 2014 EITI Report whether the crude oil commercialised by SNPC was required to be sold to Chinese state-owned buyers, there is insufficient information to understand whether these infrastructure projects were tied to the sale of crude oil to specific buyers (which would amount to a barter component). However, the report states that roughly 37% of the state's in-kind revenues in 2014 were used to cover reimbursement of these projects (2014 EITI Report, pp.42-43) and provides the aggregate volumes of crude oil⁶¹ sold under this agreement and the value of proceeds⁶² transferred to the China Exim Bank escrow account (2014 EITI Report, p.73).

The 2014 EITI Report states that no new infrastructure agreements linked to oil revenues were signed in

⁵⁹ 3.878m barrels.

⁶⁰ XAF 182bn.

⁶¹ 17.298m barrels.

⁶² XAF 811bn (USD 1.6bn).

2014 and that the 2014 Budget reiterated the government's script proscription of any new oil pre-sales agreements (2014 EITI Report, p.43).

Stakeholder views

There was consensus among stakeholders consulted that none of the three infrastructure agreements described in the 2014 EITI Report were publicly accessible. Several government officials explained that government-to-government strategic framework agreements like the ROC-PRC agreement were never made public in any country, including in OECD countries like France, and that it was thus normal that the contract had not been made public in the ROC. However, all CSOs consulted expressed concern at the opacity of these agreements and called for disclosure of key terms, not least given the significant value of government oil revenues used to reimburse these projects. The CSOs considered these projects to be highly sensitive and several noted that the topic could be considered "taboo" (see *Requirement 1.3*).

Several stakeholders considered the level of detail in the description of the two power plant projects with ENI in the 2014 EITI Report to be insufficient to comply with provisions of Requirement 4.3. In particular, the CSOs criticised the lack of information on the value of these two investments, such as the value of the projects, timeframe for reimbursement and terms of the loan. Several CSOs also criticised the lack of disaggregation of the information on the reimbursement of the two power plant projects in the 2014 EITI Report. A number of CSOs highlighted the implications of Article 66 of the March 2017 Transparency Law, which requires disaggregation of information on a per-contract basis.

Several stakeholders raised concerns about how the lack of information on the ROC-PRC agreement hindered the MSG's ability to assess the materiality of the agreement under provisions of Requirement 4.3. Yet, although none of the stakeholders consulted had any familiarity with even general terms of the contract, the majority of MSG members consulted (including CSOs) considered that this agreement did not contain any barter-type provisions related to the exchange of physical crude oil for infrastructure. Several CSOs stated categorically that the ROC-PRC agreement did not involve the delivery of crude oil to Chinese state-owned buyers. All MSG members consulted explained that a description of the ROC-PRC agreement was included in the 2014 EITI Report in order to explain the significant deductions from proceeds of the sales of the state's in-kind revenues (under Requirement 4.2), not because this agreement was relevant under Requirement 4.3. Several CSOs noted that the issue of whether the ROC-PRC agreement constituted a barter had been discussed on the MSG in 2016, but considered that a government representative had halted the conversation by simply stating that it was not a barter.

Despite the terminology used in the 2014 EITI Report – that oil revenues were used as a "guarantee against default" on the infrastructure loans – stakeholders were uncertain whether the government had provided either an explicit or implicit sovereign guarantee for the ROC-PRC agreement. All CSO and media representatives consulted highlighted the opacity about the types of infrastructure projects developed under the agreement. Stakeholders confirmed that there was no comprehensive list of projects in the public domain, although several journalists noted that billboards at project sites provided project value estimates and identified the source of funding as China Exim Bank (although they said no journalist had yet tried to survey all active construction sites to build a list of China Exim Bank-funded projects). Several CSOs said they had been requesting information on these projects from the government for several years, unsuccessfully to date. Many journalists and CSOs voiced allegations of over-pricing of infrastructure projects in the ROC and called for more transparency on the costs of projects under the ROC-PRC

agreement. Several CSOs deplored the fact that the 2014 EITI Report did not include recommendations to the government to disclose key terms of the ROC-PRC agreement.

Initial assessment

The International Secretariat's initial assessment is that the ROC has made inadequate progress in meeting this requirement. Contrary to the IA's findings, the International Secretariat concludes that Requirement 4.3 is applicable to at least two of the three agreements described in the 2014 EITI Report covering the reimbursement of infrastructure projects through deductions from the state's share of Profit Oil. While the agreements with ENI involve the exchange of power plant infrastructure for crude oil, there is insufficient information in the public domain on the framework infrastructure agreement with the PR China to assess whether the agreement is relevant under Requirement 4.3. The 2014 EITI Report appears to describe two barter arrangements with ENI but does not provide a commensurate level of transparency with other contractual transfers covered in the 2014 EITI Report, as details on project values, terms of repayments and guarantee structure are lacking. Similarly, there is insufficient information on a framework infrastructure agreement backed by future oil sales proceeds between the ROC and China. Stakeholders argued that Requirement 4.3 is not applicable to these contracts, but did not provide sufficient information to demonstrate that Requirement 4.3 is not applicable.

To strengthen implementation in line with EITI Requirement 4.3, the MSG should assess the existence of any barter type arrangements or infrastructure provisions during the scoping phase for its next EITI Report to ensure that reporting of the implementation of such agreements provides a level of detail and transparency commensurate with the disclosure and reconciliation of other payments and revenues streams. The MSG, together with the IA, should gain a full understanding of the terms of the relevant agreements and contracts, the parties involved, the resources which have been pledged by the state, the value of the balancing benefit stream (e.g. infrastructure works), and the materiality of these agreements relative to conventional contracts.

Transport revenues (#4.4)

Documentation of progress

The 2014 EITI Report does not explicitly consider the existence of transportation payments, although it describes oil and gas companies' payment of a Maritime Tax not recorded in the national budget (2014 EITI Report, pp.65-66,120). There is evidence that the MSG assessed the materiality of the Maritime Tax given that it was included in the scope of unilateral reporting by oil and gas companies (2014 EITI Report, pp.65,77-78,114), although the MSG's materiality assessment is not explicitly described. The Maritime Tax is paid by ship-owners to a private company, Société Congolaise de Transport Maritime (SOCOTRAM), which holds a concession to collect the tax on oil and gas exports. This tax is then charged backed to oil and gas companies by the ship-owners (2014 EITI Report, p.66). The 2014 EITI Report provides the results of oil and gas companies' unilateral reporting of their Maritime Tax payments in aggregate (2014 EITI Report, pp.77-78) and disaggregated by company in Annex 1.3 (2014 EITI Report, pp.128-164). However, the 2014 EITI Report does not clarify the revenues collected by government as a result of the arrangement with SOCOTRAM.

Stakeholder views

Several CSOs considered that the issue of the Maritime Tax should be treated in line with Requirement 4.4 and did not consider that the 2014 EITI Report provided a level of detail commensurate with reporting of other payments. The PWYP Congo coalition issued a press release on 30 March 2017 highlighting concerns over SOCOTRAM's failure to remit the Maritime Tax to Treasury in 2014, which totalled USD 3.4m in the year under review, despite oil and gas companies claiming these payments as recoverable costs (PWYP Congo, 2017). All stakeholders conceded that the issue of the Maritime Tax was contentious, given that it had never been feasible for EITI Congo to undertake a reconciliation of company payments with SOCOTRAM receipts given that SOCOTRAM had always refused to participate in EITI reporting, considering itself beyond the scope of reporting. Several CSOs expressed concern over the structure of the arrangement with SOCOTRAM, questioning why a private company should receive such substantial revenues from the oil and gas sector without being transparent about its revenues. While the revenues collected by government under the arrangement with SOCOTRAM were not clear from the 2014 EITI Report, stakeholders confirmed that the government collected some revenue linked to the Maritime Tax. Several government and industry representatives highlighted the temporary suspension of the Maritime Tax and the launch of a government review in early 2017.

Initial assessment

The International Secretariat's initial assessment is that this requirement is not applicable to the ROC in the year under review. While there is evidence of the MSG's assessment of the materiality of the Maritime Tax as a form of transportation revenue, the Maritime Tax is a payment from oil and gas companies to a private company, which is not transferred to the treasury.

To strengthen implementation, the MSG may wish to undertake outreach to SOCOTRAM with a view to engaging it in EITI implementation. Given the significant public debate surrounding the Maritime Tax, the MSG could consider including SOCOTRAM in the scope of reporting, further adding to the EITI's impact on public debate.

Transactions between SOEs and government (#4.5)

Documentation of progress

In order to assess the disclosure of transactions between the SOEs and other companies in the oil and gas sector, it is necessary to first understand the existing flows between the SOEs and the companies involved in their projects.

The 2014 EITI Report describes payment of royalties (either in cash or in-kind) and Profit Oil/Super Profit Oil (in-kind) by oil and gas companies to SNPC, which commercialises in-kind revenues and transfers proceeds to the Treasury (2014 EITI Report, p.41). Diagram 5 summarises in-kind revenue flows (2014 EITI Report, p.74). The results of reconciliation of revenues collected by SNPC from companies is provided in aggregate (2014 EITI Report, p.120) and disaggregated by oil and gas company (2014 EITI Report, pp.128-164).

In terms of transactions between government and SOEs in the oil and gas sector, the 2014 EITI Report describes SNPC's commercialisation of the state's in-kind revenue (royalties, Profit Oil/Super Profit Oil)

and the transfer of proceeds to the Treasury (2014 EITI Report, p.41). Annex 3.1.2.1 presents the results of reconciliation of SNPC as a payer to the state (2014 EITI Report, p.128), including its transfers of royalties, in-kind Profit Oil/Super Profit Oil as well as the proceeds from the sale of the State's share of in-kind revenues (including both the share transferred to the Treasury and the share used to reimburse infrastructure projects). Two types of deductions from the state's share of in-kind revenues are described (2014 EITI Report, pp.66, 73), covering ENI's power plant projects and infrastructure agreements with China (*see Requirement 4.3*).

SNPC's subsequent transfer of crude oil sales proceeds, net of its marketing fees (1.6% of cargo price) and other duties (like Maritime Tax), to a Treasury account at the regional central bank (BEAC) (2014 EITI Report, pp.36-37). SNPC is required to report monthly to the MFBPP, Budget and Public Portfolio (MFBPP) and Ministry of Hydrocarbons on the conditions of its oil sales. The government's use of Veritas to verify crude oil export volumes and values and of KPMG to reconcile crude oil sales proceeds deposited at the Treasury is also described (2014 EITI Report, p.36).

The 2014 EITI Report also presents SNPC's other payments to government, although it appears that SNPC did not pay any dividend to government in 2014 (2014 EITI Report, pp.7,75-77).

There is no information on payments by the other four oil and gas SOEs (particularly CORAF) and the state. There is only evidence that reporting templates were sent to SNPC, but not its subsidiaries, for the 2014 EITI Report. The report only states that SNPC deducted 6,175,000 oil barrels⁶³ from the state's share of in-kind revenues in 2014, transferred to CORAF under the Performance Contract with the state, but the report states that it is unclear whether CORAF paid for these physical crude allocations (2014 EITI Report, p.73). The 2014 EITI Report does not detail any other ad hoc transfers between SOEs and government.

Stakeholder views

While MSG members consulted considered that the reporting templates for the 2014 EITI Report included all payments from oil and gas companies to SNPC and from SNPC to government, there was significant disagreement over whether SNPC had comprehensively disclosed all payments to government. All government and industry representatives consulted considered that all oil and gas company payments to SNPC had been disclosed. However, several CSOs questioned the lack of reporting of SNPC dividends to government in any of the ROC's EITI Reports to date, criticising the lack of explanation for the lack of dividend payments by SNPC over the years. Government officials explained that all decisions on dividends were taken by the SNPC Board of Directors, staffed entirely with government representatives. These representatives considered the explanation of SNPC's retained earnings (such as its trading commission on oil sales on behalf of the state) in the 2014 EITI Report to be sufficiently comprehensive (*see Requirement 2.6*). Several CSOs also expressed considerable concern over the declining levels of SNPC's remittances of state in-kind revenue to the Treasury in the 2010-2014 period. A government representative noted that production from the two SNPC-operated oilfields (Yanga and Sendji) had declined significantly in recent years (*see Requirement 4.2*).

Several CSOs called for greater clarity on payments between CORAF and oil and gas companies,

⁶³ Valued at XAF 290bn (USD 587m).

considering that the issue of CORAF's transactions with companies was insufficiently detailed in the 2014 EITI Report (nor in the KPMG quarterly oil sales reports up to 2013). All stakeholders consulted confirmed that annual allocations of over 6m barrels of crude oil by SNPC to the CORAF constituted a debt in arrear to the Treasury, as had been clarified in the 2013 EITI Report. Government officials explained that the CORAF would be treated like all other commercial buyers of SNPC crude oil in future (*see Requirement 2.6*).

Initial assessment

The International Secretariat's initial assessment is that the ROC has made meaningful progress in meeting this requirement. The 2014 EITI Report discloses SNPC's transactions with the government and the revenues collected by SNPC from material oil and gas companies. However, it is unclear whether the MSG has assessed the materiality of revenues collected by subsidiaries of SNPC and the 2014 EITI Report only briefly discloses one transaction between an SNPC subsidiary (CORAF) and government.

To strengthen implementation, the MSG should undertake a comprehensive assessment of transactions between SOEs (SNPC and its subsidiaries) and oil and gas companies, as well as between SNPC's subsidiaries and government in its scoping of future EITI Reports. All SOEs collecting material revenues or making material payments to government should be included in future EITI reporting.

Subnational direct payments (#4.6)

Documentation of progress

The 2014 EITI Report states that the tax system in the ROC is "highly centralised" and that direct subnational payments associated with mining, oil and gas are "not significant" (2014 EITI Report, pp.43, 51), although it does not describe the MSG's approach to assessing the materiality of direct subnational payments. The report does not detail any particular types of direct subnational payments associated with mining, oil and gas, nor their value in 2014.

Stakeholder views

All stakeholders consulted confirmed that there were no direct subnational payments levied on mining, oil and gas companies. They confirmed that the ROC operated a highly-centralised fiscal structure, with decentralised offices of the national revenue-collecting agencies collecting some levies, but all payments centralised at the national Treasury level.

Initial assessment

The International Secretariat's initial assessment is that this requirement is not applicable to the ROC in the period under review. While the 2014 EITI Report could be clearer in stating that direct subnational payments from extractives companies do not exist, the International Secretariat's understanding is that this is not applicable to the ROC in the period under review.

Level of disaggregation (#4.7)

Documentation of progress

The 2014 EITI Report confirms that government entities and companies were required to report the detail of their payments and revenues, disaggregated by payment and date and that reconciled data in the report is presented disaggregated by collecting entity, company and revenue flow (2014 EITI Report, p.70). The detail of reconciliation is presented per (oil and gas) receiving government entity (2014 EITI Report, pp.120-127) and per oil and gas company (2014 EITI Report, pp.128-164), per (mining) receiving government entity (2014 EITI Report, pp.165-167) and per mining company (2014 EITI Report, pp.168-177). All reconciled information is presented disaggregated by revenue flow.

Reconciled data is partially disaggregated by project, for production and in-kind revenues. Some of the big operators, ENI, Total and Perenco also publish their payments to ROC by project as part of EU reporting requirements. However, the MSG had discussed the desirability of disaggregating oil and gas production by oilfield, in addition to operator and company at its 18 November 2015 meeting (ITIE Congo, 2015). Article 66 of the March 2017 Transparency Law requires publication of all production and payments to government data disaggregated by license and individual oilfield (République du Congo, 2017).

Stakeholder views

Many CSOs consulted expressed significant satisfaction at provisions of the Transparency Law requiring disaggregation by project and oilfield, highlighting that implementation of the law would be crucial to ensure the usefulness and relevance of published data for local communities. Several government officials expressed satisfaction at the recent passage of the Transparency Law, noting the need for implementing decrees. However, several CSO and independent analysts criticised the lack of disaggregation in the government's financial statements (TOFE), which hindered the ability to reconcile data from EITI Reports with that in the government's budget execution report.

Initial assessment

The International Secretariat's initial assessment is that the ROC has made satisfactory progress in meeting this requirement. The 2014 EITI Report presents reconciled financial data disaggregated by receiving government entity, by company and by revenue stream.

To further strengthen implementation, the MSG may wish to consider the extent to which implementation of the March 2017 Transparency Law would enable it to make progress in implementing project-level EITI reporting ahead of the deadline for all EITI Reports covering fiscal periods ending on or after 31 December 2018, agreed by the EITI Board at its 36th meeting in Bogotá.

Data timeliness (#4.8)

Documentation of progress

Data in the 2014 EITI Report was published in December 2016, within two years of the end of the fiscal year. While the ROC had published EITI Reports covering fiscal-2012 in December 2013 and fiscal-2013 in December 2014 (i.e. with a one-year delay), the country did not publish EITI Reports for a two-year

period until December 2016.

The MSG approved the reporting period as 1 January – 31 December 2014 (2014 EITI Report, p.32). Reporting was on a cash accounting basis for both in-kind and cash revenues (2014 EITI Report, p.62). The MSG reviewed the draft 2014 EITI Report at its 14 December 2016 meeting, provided two weeks for members to review it and approved the final draft at its 29 December 2016 meeting (ITIE Congo, 2016) (ITIE Congo, 2016).

Article 63 of the Transparency Law requires publication of information and documents related to public finances covered by the March 2017 law (including extractives revenues) on the relevant government agencies' websites as soon as they become available (République du Congo, 2017).

Stakeholder views

All MSG members consulted were dissatisfied that they had fallen behind on the timeliness of the ROC's EITI reporting, but noted the importance of the broader socio-political context in the 2015-2016 period as a reason for the delay in reporting. Several government officials stated the government's intention to make up for lost time in 2017, with separate EITI Reports for 2015 and 2016 planned. However, several CSOs were critical of the late recruitment of the IA every year, considering that EITI Congo should not only publish several EITI Reports concurrently but also ensure that the IA takes sufficient time for data collection and consultations. These CSOs considered that the IA had taken insufficient time to undertake consultations with key stakeholders in preparing the 2014 EITI Report. In addition, these CSO MSG members considered that they had been left insufficient time to fully review the draft 2014 EITI Report in December 2016 (two weeks), and that they had not wanted to risk the ROC's suspension by the EITI Board for breaching the "two-year rule" by objecting to publication of the report without their comments being addressed (*see Requirement 1.4*). Nonetheless, all stakeholders consulted expressed satisfaction that the ROC had always published EITI data with less than a two-year delay.

Initial assessment

The International Secretariat's initial assessment is that the ROC has made satisfactory progress towards meeting this requirement. Although the timeliness of the ROC's EITI reporting has slipped since 2014, data in the ROC's EITI Reports has always been published within two years of the end of the fiscal period under review.

To further strengthen implementation, the MSG may wish to consider the extent to which it can leverage implementation of Article 63 of the March 2017 Transparency Law to ensure timelier disclosure of data required under the EITI Standard through routine government and company systems.

Data quality (#4.9)

Documentation of progress

Terms of Reference for the Independent Administrator: The MSG initially discussed the draft ToR for the 2014 EITI Report's IA at its 30 March and 7 August 2015 meetings (ITIE Congo, 2015) (ITIE Congo, 2015).

The ToR were revised by an ad hoc MSG working group⁶⁴ and approved at the MSG's 4 September 2015 meeting (ITIE Congo, 2015).

Appointment of the Independent Administrator (IA): The IA contracted for the 2014 EITI Report, Fairlinks, was originally contracted for the 2012 EITI Report in April 2013, following World Bank competitive procurement procedures under its Transparency and Governance Capacity Building Programme (ITIE Congo, 2013). The original contract with Fairlinks signed in June 2013 (ITIE Congo, 2013) stipulated that the contract could be extended for the 2013 EITI Report in case of satisfactory performance on the 2012 EITI Report (ITIE Congo, 2014). The MSG directed the National Secretariat to sign the contract with Fairlinks for the 2013 EITI Report in February 2014 (ITIE Congo, 2014). The MSG instructed the National Coordinator to contact Fairlinks to "sensitise" representatives of the company on preparing the 2014 EITI Report (ITIE Congo, 2015). The National Secretariat informed the MSG at its 18 November 2015 meeting that Fairlinks would be re-conducted for the 2014 EITI Report, subject to clearing arrears in payments for previous work (ITIE Congo, 2015). There is no evidence in MSG meeting minutes of when the contract for the 2014 EITI Report was signed and the International Secretariat did not receive a copy of the contract with the IA for the 2014 EITI Report (only draft ToR for the 2014 EITI Report).

Agreement on the reporting templates: The MSG initially agreed reporting templates for the 2011 EITI Report, which it agreed to use with minor modifications (adding "other significant payments" line) for the 2012 EITI Report at the MSG's 4 September 2013 meeting (ITIE Congo, 2013). There do not appear to have significant revisions to the reporting templates used in the 2013 EITI Report and the MSG agreed to re-use the same reporting templates for the 2014 EITI Report at the MSG's 7 August 2015 meeting, prior to the renewal of the IA's contract for the 2014 EITI Report (ITIE Congo, 2015).

Overview of IA's work: The 2014 EITI Report provided an overview of the IA's work, including documentary review, initial data collection, meetings with stakeholders, materiality analysis, reconciliation work, development of reporting templates, data collection and quality assurance procedures as well as limits of the work undertaken (2014 EITI Report, pp.30-34). The IA's introductory letter highlights the fact the IA's work was undertaken in line with IFAC's ISRS, ISRS 4400 and ISRS 4410, which "imply a high level of integrity, deontology, ethics and a high degree of rigour in procedures to ensure the pertinence, quality and objectivity of work undertaken" (2014 EITI Report, pp.2-3).

Review of audit practices: While the 2014 EITI Report provides a description of statutory audit procedures for *government entities* (2014 EITI Report, pp.43,51), it is only stated that the Court of Counts and Budgetary Discipline ("Cour des Comptes et de Discipline Budgétaire") (CCBD) undertakes audits of government entities and was thus included in the scope of EITI reporting. However, the CCBD's actual audit practices in 2014 are not described and the 2014 EITI Report does not provide any guidance on how to access any public CCBD audit reports.

⁶⁴ The working group to draft the ToR for the IA for the 2014 EITI Report were Florent Michel Okoko, Christian Mounzeo, Brice Aimée Georges Makosso, Samuel Nsikabaka, Sinibaguy-Mollet Bayi, Assen Ontsouon, Franck Siolo and Séraphin Ndion.

The 2014 EITI Report also briefly describes statutory audit procedures for mining, oil and gas *companies* (2014 EITI Report, pp.43-44,51), but only refers to the IA's "understanding" that all companies including SNPC are required to comply with OHADA standards and to employ internal auditors above a certain size.⁶⁵ However, the 2014 EITI Report does not state whether participating companies and government entities had their 2014 financial statements audited, nor any guidance on how to access any public company audited financial statements.

Assurance methodology: The 2014 EITI Report clearly describes the quality assurance procedures agreed for EITI reporting (2014 EITI Report, pp.33-34). Government entities were required to provide a signature by a high-level representative from each government entity attesting that data reported to the EITI was "exact and comprehensive and reflected all payments received in fiscal 2014." The report also states that government reporting templates were signed by CCBD (2014 EITI Report, p.88), although the substance of the CCBD's assurance is not explicitly stated in the 2014 EITI Report. Companies were required to provide a signature from a high-level company representative attesting to the same terms, as well as certification from an external auditor of all EITI disclosures, confirming that the auditor did not uncover any anomaly putting into question the comprehensiveness and reliability of EITI disclosures and that EITI disclosures were exact and comprehensive, reflecting payments made in fiscal 2014.

Confidentiality: The 2014 EITI Report does not describe any provisions related to ensuring the confidential treatment of EITI information and reporting prior to reconciliation.

Reconciliation coverage: The coverage of reconciliation is provided in the 2014 EITI Report. For oil and gas, the report included all oil and gas companies and all payments to government, meaning that 100% of oil and gas revenues were included in the scope of reconciliation. With 16 of the 24 material oil and gas companies reporting, the reconciliation coverage is provided as 99.9% of government oil and gas revenues (2014 EITI Report, p.7). For mining, the 2014 EITI Report provides the mining sector's share of total government revenues, at 0.1% of government revenues (XAF 3bn) (2014 EITI Report, p.9).

Assurance omissions: In terms of government adherence to quality assurance procedures, the 2014 EITI Report confirms that all government entities provided the required assurance for their reporting templates (2014 EITI Report, pp.5, 9, 71, 81). Compliance by companies was less complete, with only 14 of the 16 reporting oil and gas companies (2014 EITI Report, p.5) and only three of the five reporting mining companies (2014 EITI Report, p.9) providing the required certification from their external auditors, with the non-complying companies providing only sign-off from senior representatives. The details of reporting and quality assurance for each company is provided for oil and gas (2014 EITI Report, p.71) and mining (2014 EITI Report, p.81). While the 2014 EITI Report does not explicitly assess the materiality of payments from non-complying companies, stating only that "the main extractives companies" templates were certified by an external auditor (2014 EITI Report, p.14), it is possible to calculate the materiality of omissions as a share of total government revenues using the detail of government reporting of revenues from companies that did not provide the required quality assurance, provided in the detailed per-company reconciliation results in Annex 1.3 (pp.128-177).

⁶⁵ Larger than paid-up capital of XAF 125m, annual turnover of over XAF 250m and/or more than 50 staff.

Data reliability assessment: As part of the overview of findings from the 2014 EITI Report, the IA assures the “reasonable” comprehensiveness and reliability of the data in the EITI Report (2014 EITI Report, pp.90-91).

Regarding data reliability, the 2014 EITI Report includes the IA’s assessment that the EITI data was reliable given that government reporting templates were signed by high-level officials and that “the main extractives companies” templates were certified by an external auditor (2014 EITI Report, p.14). However, while the IA was able to confirm the consistency of SNPC’s reporting of in-kind oil revenues with the Veritas 2014 report, it was not able to compare receipts from the sale of the state’s in-kind revenues with the quarterly oil sales reports published by SNPC because these were no longer published (2014 EITI Report, p.14). The IA also noted that the figures in the 2014 EITI Report on the total contribution of the oil and gas sector to government revenues were not consistent with figures from the government’s 2014 financial statements (TOFE) (2014 EITI Report, p.14).

Sourcing of information: While most of the contextual information in the 2014 EITI Report appears consistently sourced, there are a number of data points such as the contribution of the extractives industries to government revenues (2014 EITI Report, p.89) that do not appear to be clearly sourced. In addition, a number of sources used for data are secondary sources (such as Global Data, USGS, IHS) rather than primary sources such as government or reporting companies (2014 EITI Report, p.30). It does not appear that stakeholders other than the IA included comments or opinions in the report.

Summary data: There is no evidence that the IA prepared summary tables of EITI data in line with provision 5.2 of the ToR for the 2014 EITI Report IA. However, EITI Congo appears to have prepared summary data tables for previous EITI Reports (up to 2013), available on the ROC page of the global EITI website⁶⁶ but not on the EITI Congo national website.⁶⁷

Past recommendations: Annex 4 of the 2014 EITI Report provides an overview of follow-up on ten past EITI recommendations, noting that four had not been initiated, one was ongoing and four were “taken into account”, implying that they had been completed (2014 EITI Report, pp.182-183). The report also notes that follow-up on past EITI recommendations by line ministries has been very limited and recommends that the MSG follow up more proactively with individual ministries about implementation of recommendations from the 2010-2014 EITI Reports (2014 EITI Report, pp.93).

Current recommendations: The 2014 EITI Report provides an overview of the seven principal conclusions, confirming the IA’s assessment of the comprehensiveness and reliability of data in the EITI Report (2014 EITI Report, pp.90-91). The 2014 EITI Report presents four recommendations for strengthening EITI reporting on the basis of the 2014 EITI Report, four other recommendations to the MSG for strengthening EITI reporting in future⁶⁸ (2014 EITI Report, pp.16-17) and the IA’s five key concluding recommendations

⁶⁶ <https://eiti.org/republic-of-congo#revenue-collection>

⁶⁷ <http://www.itie-congo.org/index.php/2015-12-18-10-43-14/rapport-itie>

⁶⁸ These recommendations include: the need to remobilize stakeholders for a more diligent and broader engagement in EITI reporting; establish modern cadastres for the oil and gas, mining and forestry sectors; adopt a fiscal nomenclature that specific to extractives revenues; and implement past EITI recommendations.

(2014 EITI Report, 92-94).

Stakeholder views

ToR and IA procurement: MSG members consulted confirmed that the MSG established a special ad-hoc sub-committee to draft the IA's ToR every year, although there were no records of their proceedings. Rather, the sub-committee presented the draft ToR to the MSG, which approved it. While all MSG members consulted considered that the ToR agreed for the 2014 EITI Report were in line with the Board-approved ToR, there were differing views about whether there were any deviations from the agreed ToR in practice. Whereas government and industry Board members considered that the IA's ToR had been followed in practice, several CSOs expressed significant frustration at the fact that the IA had not followed the ToR's provisions for presenting production data in the 2014 EITI Report disaggregated by oilfield. The CSOs considered that the IA had decided to omit this aspect of its ToR because it considered that this was "beyond the scope of the EITI". Several CSOs also called for the IA's ToR to require the reconciliation of production figures disclosed by government and companies, given their lack of confidence in official production statistics and the importance of such production figures for calculating companies' tax liabilities.

All MSG members consulted confirmed that Fairlinks had originally been contracted for the 2012 EITI Report, with an option to renew the contract for subsequent reports. The MSG had extended the contract for the 2013 EITI Report and, given the delay accumulated on launching procurement for the 2014 EITI Report, had simply renewed the IA's contract once again for both the 2014 and 2015 EITI Reports. MSG members confirmed that while the IA's contract had been extended for the 2014 and 2015 EITI Reports, the MSG had approved separate ToR for the two EITI Reports and considered that they could update the ToR for the 2015 EITI Report prior to data collection for the next report. However, while the MSG oversaw drafting of the IA's ToR, several CSO MSG members considered that the IA had only dealt with the National Coordinator in renewing its contract for the 2014 and 2015 EITI Reports. The CSOs considered that while the MSG had overseen the IA procurement process for the 2012 EITI Report, they considered that the National Secretariat had gradually taken over subsequent procurement and that the MSG had insufficient oversight of the procurement process for the 2014 EITI Report. Several CSOs considered that the fact the IA's contract had simply been renewed every year meant that the IA had little incentive to improve year after year. CSO MSG members consulted did not know the cost of the IA's contract for the 2014 EITI Report. The International Secretariat was not provided with information on the cost of any of the ROC's EITI Reports. Secretariat staff and MSG members noted that they intended to proceed with procurement by competitive tender for the IA for the 2016 EITI Report.

While all MSG members stated that the IA had considered the EITI Report to be its own, rather than EITI Congo's, there were differing views regarding whether this should be the case. All MSG members confirmed that the MSG had approved the 2014 EITI Report. However, several CSO MSG members considered that they had not been provided adequate opportunity to provide comments that were incorporated in the final 2014 EITI Report, given that they did not feel that they could delay publication of the 2014 EITI Report without risking the country's suspension. The CSO MSG members criticised the fact that the IA appeared to consider that the focus of the EITI was on reconciliation of financial data, rather than the non-financial information required under the EITI Standard. Thus, there was consensus on the MSG that the 2014 EITI Report represented the IA's opinion, not that of EITI Congo.

Reporting templates: All MSG members consulted confirmed that the IA had submitted draft reporting templates to the MSG for approval for the 2012 EITI Report, but had used the same reporting templates with very minor modifications and no standalone MSG approval in subsequent EITI Reports covering 2013 and 2014. Secretariat staff explained that the MSG had approved the reporting templates for the 2014 EITI Report as part of its approval of the 2014 inception report. Nonetheless, all stakeholders considered that the reporting templates were in line with provisions of the IA's ToR and the scope agreed for the 2014 EITI Report, although several CSO MSG members criticised the lack of request for companies to report their 2014 production, even if this had not been included in the 2014 EITI Report ToR.

Audit practices: In terms of *government* audit practices, several government stakeholders confirmed that the CCBD had completed its statutory audit of government accounts by the time of inception of the 2014 EITI Report, in late 2015. Government officials confirmed that the CCBD audits were normally finalised in July of the succeeding year, but that the CCBD reports are not published on any website but rather are submitted to Parliament and the MFBPP. Government officials considered that CCBD reports could be freely requested by anyone from Parliament or the MFBPP, while several CSOs considered that CCBD reports were not publicly accessible. Several government stakeholders consulted confirmed that the annual budget execution report (Loi de règlement des finances) was based on the CCBD report. However, all MSG members confirmed that neither the MSG nor the IA had requested a copy of the CCBD report for 2014 as part of the preparation for the 2014 EITI Report.

Several government stakeholders noted that significant efforts had been undertaken to produce the budget execution report on a timelier basis annually. The ROC's 2014 Public Expenditure and Financial Accountability (PEFA) Assessment noted the CCBD's reorganisation in 2005 and its subsequent capacity building in relation to monitoring budget execution. However, it highlighted significant capacity development needs with regards to its jurisdictional control of public accounts and its coordination with internal controllers like the Inspection General of Finance and Inspection General of State to improve the coverage of its controls and audits (République du Congo, 2014). A senior government official explained that while the IGF had right of oversight over all MFBPP accounts, it did not specifically audit oil and gas revenue flows to the Treasury given its capacity constraints and tended to focus on controlling expenditures. While the CCBD's annual audit is meant to be based on the IGF report, this was usually not the case according to several government representatives.

While several government representatives considered that the CCBD followed international standards in its annual audit of government revenues, in particularly INTOSAI, several CSOs expressed scepticism that the audits of government revenues were in line with international standards. One CSO considered that there were no international standards for government audits in the francophone world aside from the INTOSAI Lima Declaration. A CCBD representative explained that the CCBD had implemented International Federation of Accountants (IFAC)'s International Standard on Related Services (ISRS) 4400 since 2012 and that it planned to fully implement the ISA's 2008 standards by 2020. Under these reforms, the government was moving from cash-based to accrual-based accounting and the representative expected this transition to be effective by 2020.

With regards to extractives *companies'* audit practices, all stakeholders confirmed that all companies above a threshold (described in the 2014 EITI Report) are required to submit audited financial statements on an accrual-accounting basis to the Commercial Court Register and the MFBPP's Tax Department by 20

May of the subsequent year, in line with OHADA requirements. Several representatives from all three constituencies confirmed that they considered that all companies complied with this requirement, given the potential for sanctions from the Tax Department. However, there was disagreement over whether companies' audited financial statements were available from the Commercial Court Register (Greffé du Tribunal de Commerce). While several government officials considered that it was possible to consult companies' audited financial statements from the Commercial Court Register as well as from the Tax Department, none of the CSO and media representatives consulted considered that it was possible to access companies' reports in this manner. A representative of the Commercial Court Register confirmed that the companies' reports were not freely accessible to the public and the process for accessing audited financial statements remained unclear after extensive consultations. A government official noted ongoing reforms at the regional (CEMAC) level to digitise Commercial Court Register records, including companies' audited financial statements, although it was unclear whether these would be publicly accessible. Members of the MSG confirmed that the IA had not requested copies of material companies' audited financial statements in preparing the 2014 EITI Report. One CSO MSG member criticised the 2014 EITI Report's lack of commentary on whether all material companies had prepared audited financial statements for 2014 and its lack of guidance on how to access these. The IA considered that audit practices and standards should not be discussed by the MSG and that there was no need for a review of audit practices given that all companies were required to submit a letter from their external auditors. The IA emphasised that all companies were required to submit copies of their audited financial statement as part of EITI data collection, with the results clearly presented in the EITI Report.

Several government officials confirmed that SNPC was also required to comply with OHADA rules and that SNPC had undergone an annual external audit since 2003. The SNPC's latest audited financial statements were for 2015 and the company had been audited by EY, according to these representatives. MSG members consulted confirmed that the IA had never asked for copies of SNPC's audited financial statements for the year covered by EITI reporting. Several government officials also confirmed that KPMG had never received SNPC's audited financial statements in the course of preparing the quarterly oil sales reports. The IA expressed uncertainty over whether the IA had requested SNPC's audited financial statements and considered that this was not strictly required by the EITI Standard.

Quality assurance procedures: With regards to quality assurance of government reporting, MSG members and secretariat staff consulted noted that the IA had told the MSG that it was not necessary to include the CCBD in the reporting process for the 2014 EITI Report, in contrast to the 2012 and 2013 EITI Reports. The IA noted that it had imposed quality assurance procedures for EITI reporting on the MSG with no discussion, considering that standards for ensuring the quality of reporting should not be discussed by the MSG. Stakeholders emphasised that the CCBD was available to provide certification for government's EITI reporting templates, but that the MSG had deferred to the IA's professional opinion for ensuring the reliability of reporting for the 2014 EITI Report. Reporting government entities confirmed that they had never had any contact with the CCBD in relation to their EITI reporting. However, several reporting entities considered that the reporting of revenues disaggregated by transaction allowed for the detailed reconciliation of revenues. With regards to the certification of government reporting for the 2012 and 2013 EITI Reports, a government representative explained that the CCBD had simply checked whether government reporting was consistent with company reporting, but had not verified the underlying consistency of government reporting templates with their audited financial statements. The CCBD had never issued any qualifications to their certification of government EITI reporting templates, according to government representatives.

With regards to company reporting, all industry stakeholders considered that the quality assurance procedures provided sufficient assurances for the reliability of the underlying data, given that all main companies accounting for the overwhelming majority of extractives payments to government had provided the required certification from external auditors for the 2014 EITI Report. However, several company representatives expressed frustration at the delays in producing the 2014 EITI Report. Indeed, given that many companies included certification of their EITI reporting templates in their routine external audits (given that this did not represent an additional cost), companies were forced to use reporting templates from previous EITI Reports for the purposes of certification. For instance, several companies were using templates for the 2014 EITI Report as a basis for certification of their 2016 templates in early 2017. Several industry representatives recommended that reporting templates be consistent across years, or that the IA be procured within the first six months of the succeeding fiscal year.

None of the MSG members or secretariat staff consulted expressed any concerns over the confidential treatment of information pre-reconciliation, noting that all reporting templates were submitted directly to the IA without any interference from the secretariat or the MSG.

All MSG members consulted expressed confidence in the reliability of the reconciled data in EITI Reports. Several CSOs highlighted the importance of the reconciliation process for ensuring data reliability, noting that despite the lack of robust quality assurance procedures for government data, the reliability of company reporting was ensured through certification of industry templates by each company's external auditor. However, several CSOs expressed considerable concern about the lack of sourcing of some key data in the 2014 EITI Report.

Recommendations: There was consensus amongst MSG members consulted that the recommendations in EITI Congo Reports were those of the IA and did not necessarily represent the views of the MSG, despite the fact that the MSG had approved the EITI Reports. Several CSOs criticised certain recommendations of the 2014 EITI Report, in particular the suggestion that future EITI Congo Reports exclude the mining sector from the scope of reconciliation. While conceding that mining revenues were marginal compared to those from the oil and gas sector, these CSOs emphasised that the mining sector was less strictly overseen than the oil and gas sector. A government official considered the EITI recommendations useful but noted that they were only followed up on in general terms and rarely seemed to be implemented. However, another government official highlighted the ongoing implementation of key past EITI recommendations such as the implementation of an extractives-specific revenue classification system. Several CSOs also criticised the lack of consistent follow-up on past EITI recommendations, noting the IA's assessment of an "almost total lack" of implementation of past recommendations in the 2014 EITI Report (*see Requirement 7.3*).

Initial assessment

The MSG-approved ToR for the IA was in line with the Board-approved template and the recruitment of the IA was approved by the MSG. There were no significant deviations from the IA's ToR in practice, and the MSG approved the same reporting templates as previous years in its approval of the inception report. While the International Secretariat has concerns regarding the comprehensiveness of the review of audit and assurance procedures and practices prior to agreeing quality assurance for EITI reporting, with a description of procedures but not of practices in the 2014 EITI Report, there are no requirements in the Board-approved IA ToR for the detailed findings of the review of audit procedures and practices to be

included in the EITI Report itself. It is also a concern that the assurances required from government agencies has been given less attention in 2014 compared to the 2012-2013 EITI Reports. This potentially reduces the extent to which the EITI can be used as a catalyst for improving public-sector auditing practices. That said, the standard IA ToR gives the mandate to the MSG and IA to agree the assurances for EITI reporting, which was done in preparing the 2014 EITI Report. The largest material companies and government entities appear to have complied with the agreed quality assurance procedures and the IA concluded that the data presented in the report was “reasonably reliable”. However, there is no evidence that the IA or MSG prepared summary data tables for the 2014 EITI Report, which hampers the ROC’s open data efforts. Thus, the International Secretariat’s initial assessment is that the ROC has made meaningful progress towards meeting this requirement.

To strengthen implementation, EITI Congo should ensure that summary data tables for all EITI Reports are prepared in a timely manner in line with requirements of the Board-approved IA’s ToR. The MSG and the IA are encouraged to provide a more detailed account of audit and assurance practices of material companies and government entities, including SOEs with a view to formulating recommendations that strengthen government and company audit and assurance systems. They may also wish to revisit the quality assurance requested from government entities included in the scope of reporting.

Table 4- Summary initial assessment table: Revenue collection

EITI provisions	Summary of main findings	International Secretariat's initial assessment of progress with the EITI provisions
Comprehensiveness (#4.1)	The MSG has agreed materiality thresholds for selecting companies and revenue streams, although the setting of a qualitative threshold for selecting companies means that companies that had ceased activities in 2014 were nevertheless included in the scope of reporting. The 2014 EITI Report lists and describes all material companies and revenue streams. The materiality of revenues from non-reporting companies is assessed, although the netting out of discrepancies tends to under-estimate their cumulative value. Full government disclosure is provided.	Satisfactory progress
In-kind revenues (#4.2)	The 2014 EITI Report reconciles the volumes collected by government with company payments of in-kind revenues and discloses volumes of the state's in-kind revenues sold by SNPC as well as the transfer of sales proceeds to the Treasury. The information on SNPC's sales of the government's in-kind revenues is not disaggregated by buyer, nor reconciled.	Meaningful progress
Barter and infrastructure transactions (#4.3)	There is no evidence of the MSG's assessment of the materiality of barter arrangements described in the 2014 EITI Report. The 2014 EITI Report appears to describe two barter arrangements but does not provide sufficient detail on project values, terms of repayment or guarantee structure. There is insufficient information on a framework infrastructure agreement backed by future oil sales proceeds between the ROC and China to assess the applicability of Requirement 4.3 to this agreement.	Inadequate progress
Transport revenues (#4.4)	While there is evidence of the MSG's assessment of the materiality of the Maritime Tax (<i>see Requirement 4.1</i>), the Maritime Tax is a payment from oil and gas companies to a private company.	Not applicable

Transactions between SOEs and government (#4.5)	The 2014 EITI Report discloses SNPC's transactions with the government and the revenues collected by SNPC from material oil and gas companies. However, it is unclear whether the MSG has assessed the materiality of revenues collected by subsidiaries of SNPC and the 2014 EITI Report only briefly discloses one transaction between an SNPC subsidiary (CORAF) and government.	Meaningful progress
Subnational direct payments (#4.6)	While the 2014 EITI Report could be clearer in stating that direct subnational payments from extractives companies do not exist, the International Secretariat's understanding is that this is not applicable to the ROC in the period under review.	Not applicable
Level of disaggregation (#4.7)	The 2014 EITI Report presents reconciled financial data disaggregated by receiving government entity, by company and by revenue stream.	Satisfactory progress
Data timeliness (#4.8)	Although the timeliness of the ROC's EITI reporting has slipped since 2014, data in the ROC's EITI Reports has always been published within two years of the end of the fiscal period under review.	Satisfactory progress
Data quality (#4.9)	The MSG approved ToR for the IA in line with the Board-approved template and the recruitment of the IA. There were no significant deviations from the IA's ToR in practice, and the MSG approved the same reporting templates as previous years in its approval of the inception report. While there are concerns over the comprehensiveness of the review of audit and assurance procedures and practices, with a description of procedures but not of practices in the 2014 EITI Report, there are no requirements in the Board-approved IA ToR for the detailed findings of the review of audit procedures and practices to be included in the EITI Report itself. There are also concerns that the assurances required from government agencies has been given less attention in 2014 compared to the 2012-2013 EITI Reports. Yet while this trend is unfortunate in reducing the extent to which the EITI is used as a catalyst for improving public-sector auditing practices, the standard IA ToR gives the mandate to the MSG to agree with the IA the quality assurances for EITI reporting, which	Meaningful progress

	<p>was done in preparing the 2014 EITI Report. The largest material companies and government entities appear to have complied with the agreed quality assurance procedures and the IA concluded that the data presented in the report was “reasonably reliable”. However, there is no evidence that the IA or MSG prepared summary data tables for the 2014 EITI Report.</p>	
<p>Secretariat’s recommendations:</p> <ul style="list-style-type: none"> • To strengthen implementation, EITI Congo may wish to ensure that the materiality threshold for selecting companies in future EITI Reports ensures that all payments that could affect the comprehensiveness of EITI reporting be included in the scope of reconciliation. The MSG is invited to consider whether setting a quantitative materiality threshold for selecting companies would ensure these aims are met. Finally, the MSG should ensure that future EITI Reports include the IA’s assessment of the materiality of individual companies’ omissions. • To strengthen implementation, EITI Congo should ensure that future EITI Reports present information on the sale of the state’s in-kind revenues disaggregated by buyer. The government is encouraged to reinstate the practice of publishing the MFBPP’s quarterly oil sales reports to ensure timelier compliance with Article 16 of the March 2017 Transparency Law and with Requirement 4.2 of the EITI Standard. • To strengthen implementation, EITI Congo should assess the existence of any barter arrangements or infrastructure provisions during the scoping phase for its next EITI Report to ensure that reporting of the implementation of such agreements provides a level of detail and transparency commensurate with the disclosure and reconciliation of other payments and revenues streams. The MSG, together with the IA, should gain a full understanding of the terms of the relevant agreements and contracts, the parties involved, the resources which have been pledged by the state, the value of the balancing benefit stream (e.g. infrastructure works), and the materiality of these agreements relative to conventional contracts. • To strengthen implementation, the MSG may wish to undertake outreach to SOCOTRAM with a view to engaging it in EITI implementation. Given the significant public debate surrounding the Maritime Tax, the MSG could consider including SOCOTRAM in the scope of reporting, further adding to the EITI’s impact on public debate. • To strengthen implementation, EITI Congo should undertake a comprehensive assessment of transactions between SOEs (SNPC and its subsidiaries) and oil and gas companies, as well as between SNPC’s subsidiaries and government in its scoping of future EITI Reports. All SOEs collecting material revenues or making material payments to government should be included in future EITI reporting. • To further strengthen implementation, the MSG may wish to consider the extent to which implementation of the March 2017 Transparency Law would enable it to make progress in implementing project-level EITI reporting ahead of the deadline for all EITI Reports covering fiscal periods ending on or after 31 December 2018, agreed by the EITI Board at its 36th meeting in Bogotá. 		

- To further strengthen implementation, EITI Congo may wish to consider the extent to which it can leverage implementation of Article 63 of the March 2017 Transparency Law to ensure timelier disclosure of data required under the EITI Standard through routine government and company systems.
- To strengthen implementation, EITI Congo should ensure that summary data tables be prepared in a timely manner in line with requirements of the Board-approved IA's ToR. The MSG and the IA are encouraged to provide a more detailed account of audit and assurance practices of material companies and government entities, including SOEs with a view to formulating recommendations that strengthen government and company audit and assurance systems. They may also wish to revisit the quality assurance requested from government entities included in the scope of reporting.

3. 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

Off-budget revenues: The 2014 EITI Report provides a diagram showing that all mining revenues collected by government entities are recorded in the national budget (2014 EITI Report, p.68). In terms of oil and gas revenues, Diagram 2 shows that all oil and gas revenues flow to the central Treasury aside from Maritime Tax paid directly to state-owned SOCOTRAM, SNPC's deductions from proceeds of sales of the state's in-kind revenues to reimburse infrastructure projects and SNPC's deductions from royalties and Profit Oil state revenues for commercial infrastructure agreements (2014 EITI Report, p.66). While the 2014 EITI Report categorises such earmarked revenues as "indirect contributions to the national budget", it also confirms that they are not recorded in the annual budget nor in the government's financial statements (TOFE) (2014 EITI Report, p.15). The total value of government extractives revenues is provided, disaggregated between the oil and gas, mining and forestry sectors, as well as a line for "indirect contributions" (off-budget) oil and gas revenues (2014 EITI Report, pp.15, 89).

The 2014 EITI Report notes that a total of XAF 2bn (USD 4m) was paid by extractives companies to third-parties (either to parastatal entities or for social expenditures), unrecorded in the 2014 budget, of which oil companies accounted for XAF 1.9bn and mining companies for XAF 35m (2014 EITI Report, p.15). The vast majority of these third-party payments are to privately-owned SOCOTRAM in the form of *Maritime Tax*, described in Section 4.4.1 (2014 EITI Report, pp.65-66). While the value of companies' unilateral reporting of payments to SOCOTRAM is disclosed in aggregate (2014 EITI Report, p.78), and by company in Annex 1.2 (2014 EITI Report, pp.128-164), it is unclear from the 2014 EITI Report whether SOCOTRAM undertakes any payments to government entities (*see Requirement 4.4*).

In terms of SNPC's *off-budget deductions to reimburse oil-backed infrastructure projects* under agreements with ENI and China EXIM Bank, the 2014 EITI Report provides the aggregate volumes and value of sales proceeds of deductions from the state's in-kind revenues (2014 EITI Report, p.73). The general system of transfers to project-specific escrow accounts is also described. However, these off-budget earmarked revenues are disaggregated between each of the power plant projects developed by ENI, but not between each project funded by under the ROC-PRC agreement. The specific allocation of these off-budget funds is described only briefly for the ENI projects, but the report notes that the IA was unable to secure any information on the China EXIM Bank-funded infrastructure projects (2014 EITI Report, p.42).

Finally, the 2014 EITI Report highlights *transfers to the CORAF* of 6.175m barrels of oil under its

Performance Contract with the state, valued at XAF 290bn (USD 587m) but delivered directly from SNPC to CORAF without settlement (2014 EITI Report, p.73). The IA “understands” that the value of this in-kind transfer to the CORAF was not recorded as an expenditure in the national budget (2014 EITI Report, p.73). Diagram 5 summarises in-kind revenue flows (2014 EITI Report, p.74).

Revenue classification systems: The 2014 EITI Report does not specifically reference any national revenue classification systems or international data standards. However, as part of its recommendations in Section 7, the IA states generally that the ROC does not have an extractives-specific fiscal nomenclature (2014 EITI Report, p.93).

Stakeholder views

With regards to the Maritime Tax, MSG members from all three constituencies confirmed that these were paid to a private company, SOCOTRAM, and that it was unclear whether the government received any revenues under this agreement. While the Maritime Tax had been temporarily suspended in early 2017, according to these representatives, many oil and gas companies considered that they were eligible for the recovery of this cost given the tax stabilisation clauses of their original operating contracts. There was consensus that while the Maritime Tax was not recorded in the national budget, it was unclear whether any share of the Maritime Tax represented an off-budget revenue given the opacity of SOCOTRAM’s management of the revenue. Several government officials explained that this matter was being reviewed by a special government committee (*see Requirement 4.4*).

Several CSOs expressed concern over the fact that roughly half of the ROC’s revenues from the oil and gas sector in 2014 (XAF 993bn) were used to reimburse oil-backed infrastructure projects and were not pre-approved through the annual national budget. The CSOs highlighted that during four years when this matter was covered by EITI Reports (2011 to 2014), some 76m barrels of oil worth XAF 3.849tn had been used to cover infrastructure projects under the ROC-PRC agreement and commercial agreements such as the ENI power plant projects. In addition, these representatives considered that the rising levels of off-budget revenues, which grew from XAF 806bn in 2011 to XAF 993bn in 2014, was alarming. Several CSOs and development partners confirmed that these revenues were effectively off-budget, given that they were not pre-approved in the annual budget and were not recorded in the government’s financial statements (TOFE). A development partner explained that international institutions only became aware of the general oil-backed terms of the ROC-PRC agreement with the disclosures in the ROC’s EITI Reports. While the details of the allocation of such off-budget revenues were not contained in the ROC’s budget execution reports, the development partner considered that all transactions related to oil and gas revenues, including both cash and in-kind revenues, should have been included in the annual budget and budget execution reports. Several CSOs considered that there was insufficient information in the 2014 EITI Report on the allocation of off-budget revenues under the ROC-PRC agreement, given the lack of clarity on the terms of the loans (including amounts, tenor and rates) and types of infrastructure projects covered by the agreement.

With regards to SNPC’s annual crude oil allocations to the CORAF, a development partner confirmed that these allocations used to be recorded in the government’s financial statements (TOFE) in the past but that this was no longer the case. While the Treasury had recently recognised the build-up in arrears of payments from the CORAF to the Treasury for such crude oil allocations, the development partner considered that such crude oil allocations represented an implicit subsidy to the CORAF, which was not

recorded in the annual budget (and thus a quasi-fiscal expenditure).

Several CSOs also expressed concern at the IA's lack of explanation for the inconsistencies between oil and gas revenues reported in the 2014 EITI Report and those recorded in the government's financial statements (TOFE). An auditor explained that it had also not been possible to reconcile oil and gas revenues disclosed in the quarterly oil sales reports prepared by KPMG and those in the government's financial statements (TOFE), mainly because the statements (TOFE) did not disaggregate in-kind revenues commercialised by SNPC from other oil and gas related revenues paid in cash.

With regards to revenue classification systems, one government official noted that the government was currently introducing the CEMAC's regional revenue classification system from fiscal 2018 onwards, which the government expected would allow it to disaggregate an extractives-specific line in the government's financial statements (TOFE). The ROC's 2014 Public expenditure and financial accountability (PEFA) assessment noted that the ROC's budget classification system was in line with an older (pre-2008) version of the IMF's Government Financial Statistics (GFS) manual. However, the PEFA assessment also noted that this revenue classification system was not systematically used to present the budget, with budget execution reports only presented at a "very aggregated" level (République du Congo, 2014).

Initial assessment

The International Secretariat's initial assessment is that the ROC has made meaningful progress in meeting this requirement. The 2014 EITI Report describes three types of revenues related to oil and gas that are not recorded in the national budget. The report shows that significant revenues were off-budget and the resource allocation for these projects was not sufficiently described in the Report. Each type of off-budget allocation is described and the aggregate value of each type of allocated revenue in 2014 disclosed. However, it is unclear whether the private company collecting Maritime Tax revenues (SOCOTRAM) remits any proceeds from these payments to government. More significantly, the allocation of revenues to specific projects under the ROC-PRC framework agreement are not described in sufficient detail since the IA did not have access to even general terms of the agreement. This is a particular concern given that roughly 37% of the state's in-kind oil revenues were used off-budget for the reimbursement of these projects (*see Requirement 4.3*).

To strengthen implementation, EITI Congo should work with the IA in preparing the next EITI Report to clearly trace any mining, oil and gas revenues that are not recorded in the national budget and provide an explanation of the detailed allocation of these off-budget revenues.

Sub-national transfers (#5.2)

Documentation of progress

The 2014 EITI Report states that statutory subnational transfers of revenues existed in 2014 for oil and gas revenues, under provisions of Decree 2000-186 of 12 August 2000 (2014 EITI Report, p.43), but that, "to the IA's knowledge", there were no statutory subnational transfer mechanisms for mining revenues in 2014 (2014 EITI Report, p.51). While the rates and rules for the subnational transfer of oil and gas royalties are described, with two-thirds of royalties allocated to local governments, no further information is provided beyond the fact that the specific local government beneficiaries and the split

between their royalty allocations are supposed to be defined by Ministerial decision (2014 EITI Report, p.43). While the general split between central government and local governments is provided, the specific revenue-sharing formula for allocations to individual local governments in 2014 is not detailed. The actual subnational oil and gas transfers in 2014 are not disclosed, nor reconciled. The report does not refer to any ad hoc subnational transfers.

Stakeholder views

Extensive stakeholder consultations were required in order to clarify whether subnational transfers of oil and gas royalties were effective in 2014, although there was finally consensus amongst all stakeholders consulted that implementing regulations (in the form of Ministerial Circulars) had yet to be issued to operationalise statutory transfers established through Decree 2000-186. Several government and CSO representatives criticised the 2014 EITI Report's lack of explanation of whether subnational transfers of oil and gas revenues were effective in 2014 and deplored the lack of recommendations related to subnational transfers in successive EITI Reports. One CSO called for the inclusion of relevant local governments in the scope of reporting of subnational transfers in future EITI Reports, to highlight discrepancies between the theoretical subnational transfers and actual transfers in the year(s) under review. A senior government official noted that while it was possible for the MFBPP to issue a circular to operationalise subnational transfers, it was not considered that local governments had the necessary infrastructure (and checks and balances) in place to manage such funds at present. However, an independent analyst explained that, with all oil and gas production currently located in the southern-most department of Kouilou (which was considered a stronghold of the political opposition), the lack of effective subnational transfers represented a political decision since a single department would effectively be entitled to two-thirds of oil and gas royalties collected by the national government.

Representatives from all three constituencies also noted that companies were subject to 'la patente', which was collected by the central government (Tax Department) before being transferred to local governments. However, stakeholders confirmed that this levy was collected from all companies irrespective of their activities and that it thus did not constitute a form of subnational transfer of extractives revenues.

Initial assessment

The International Secretariat's initial assessment is that this requirement does not appear to be applicable to the ROC in 2014. The 2014 EITI Report describes the general system of subnational transfers of oil and gas royalties to host local governments. However, the International Secretariat understands that the statutory subnational transfers were not effective in 2014 due to the lack of implementing regulations. The report does not refer to any ad hoc subnational transfers.

To strengthen implementation, EITI Congo is encouraged to assess the materiality of subnational transfers, provide the specific formula for calculating subnational transfers of extractives revenues to individual local governments, disclose any material subnational transfers in the year(s) under review and highlight any discrepancies between the transfer amount calculated in accordance with the relevant revenue-sharing formula and the actual amount that was transferred between the central government and each relevant subnational entity.

Additional information on revenue management and expenditures (#5.3)

Documentation of progress

Earmarks: The 2014 EITI Report does not refer to any extractives revenues earmarked for specific regions, but does describe extractives revenues earmarked for reimbursement of infrastructure projects (see *Requirement 5.1*). The report provides the value of off-budget oil revenues used to reimburse infrastructure projects (2014 EITI Report, pp.15, 73-74, 89). A diagram summarising in-kind revenue flows is provided (2014 EITI Report, p.74). However, the report does not describe additional details of the agreements, particularly with China EXIM Bank (see *Requirement 4.3*).

Budgeting and auditing: While the 2014 EITI Report does not describe the budget-making process, the audit standards for government entities are briefly detailed (2014 EITI Report, pp.43, 51), albeit only to the extent that the CCBD undertakes public-sector audits and is thus responsible for auditing the accounts of government entities involved in EITI reporting.

Additional information: The 2014 EITI Report does not provide information on budget forecasts or projections, although it does include some information on the three crude oil blends produced in the Republic of the Congo (2014 EITI Report, p.25) (see *Requirement 3.2*).

Stakeholder views

Several CSOs criticised the lack of information on the budget-making process and actual public-sector audit procedures in the 2014 EITI Report, as well as the opacity surrounding earmarked oil revenues used off-budget to reimburse commercial and infrastructure loans. The CSOs called for more information on complimentary information to the budget process in future EITI Reports, including commodity price projections, outlook for extractives revenues and links to more information on these topics. Government officials provided significant additional information on auditing practices for government entities and related reforms (see *Requirement 4.9*). Independent analysts expect the Republic of the Congo's economy to remain dependent on the oil and gas sector over the medium term with annual increases in oil production of between 2% and 10%, while cement production is also expected to grow significantly by 2020 (US Geological Survey, 2017).

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. In the International Secretariat's view, EITI Congo has made only modest efforts to include additional information on earmarks of extractives revenues for off-budget infrastructure projects (see *Requirements 4.3 and 5.1*) and the budget-making and audit processes.

In order to strengthen implementation, EITI Congo could consider including additional information on extractives revenues earmarked for specific purposes as well as on the budget-making and auditing process for government accounts in future EITI Reports.

Table 5 - Summary initial assessment table: 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 2014 EITI Report provides describes three types of revenues related to oil and gas that are not recorded in the national budget. Each type of off-budget allocation is described and the aggregate value of each type of allocated revenue in 2014 disclosed. However, it is unclear whether the private company collecting Maritime Tax revenues (SOCOTRAM) remits any proceeds from these payments to government. More significantly, the allocation of revenues to specific projects under the ROC-PRC framework agreement are not described in sufficient detail since the IA did not have access to even general terms of the agreement. This is a particular concern given that roughly 37% of the state's in-kind oil revenues were used off-budget for the reimbursement of these projects (see <i>Requirement 4.3</i>).	Meaningful progress
Sub-national transfers (#5.2)	The 2014 EITI Report describes the general system of subnational transfers of oil and gas royalties to host local governments. However, the International Secretariat understands that the statutory subnational transfers were not effective in 2014 due to the lack of implementing regulations. The report does not refer to any ad hoc subnational transfers.	Not applicable
Information on revenue management and expenditures (#5.3)	EITI Congo has made only modest efforts to include additional information on earmarks of extractives revenues for off-budget infrastructure projects (see <i>Requirements 4.3 and 5.1</i>) and the budget-making and audit processes.	
<p>Initial conclusions and recommendations:</p> <ul style="list-style-type: none"> • To strengthen implementation, EITI Congo should work with the IA in preparing the next EITI Report to clearly trace any mining, oil and gas revenues that are not recorded in the national budget and provide an explanation of the detailed allocation of these off-budget revenues. • To strengthen implementation, EITI Congo is encouraged to assess the materiality of subnational transfers, provide the specific formula for calculating subnational transfers of extractives revenues to individual local governments, disclose any material subnational transfers in the year(s) under review and highlight any discrepancies between the transfer amount calculated in 		

accordance with the relevant revenue-sharing formula and the actual amount that was transferred between the central government and each relevant subnational entity.

- To strengthen implementation, EITI Congo could consider including additional information on extractives revenues earmarked for specific purposes as well as on the budget-making and auditing process for government accounts in future EITI Reports.

4. 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 2014 EITI Report refers to mandatory spending by oil and gas companies on workforce training, required under provisions of the 1994 Hydrocarbons Code on oil and gas exploration permits (2014 EITI Report, pp.41-42). The report only states that material oil and gas companies were required to unilaterally report their voluntary social expenditures (2014 EITI Report, pp.65-66) but does not explicitly state that they were required to report mandatory social expenditures. However, oil and gas companies reported USD 2 372 000 in mandatory social payments (2014 EITI Report, p.75).

In mining, the 2014 EITI Report states that mining companies are required to undertake mandatory social expenditures alongside their voluntary programmes (2014 EITI Report, p.67). Material mining companies were required to unilaterally report their social expenditures, disaggregated between mandatory and voluntary expenditures (2014 EITI Report, p.67). For the mining sector, mandatory social payments amounted to USD 16 000 (2014 EITI Report, p.82).

In-kind spending: The 2014 EITI Report does not explicitly state whether any mandatory social expenditures in the mining sector were provided in kind, rather in cash. The detail of reconciliation per mining company provided in annex (2014 EITI Report, pp.165-177) reveals that mining companies were not required to report whether mandatory social expenditures were provided in cash or in-kind. In oil and gas, the report states that oil and gas companies' mandatory spending on training is "paid" to third parties directly and tracked by the Ministry of Hydrocarbons (2014 EITI Report, pp.41-42), implying that training expenditure is provided in cash, although this is not explicitly stated.

Beneficiaries: The 2014 EITI Report does not specify the identity of beneficiaries of mandatory social expenditures in the mining sector and the detail of reconciliation per mining company provided in annex (2014 EITI Report, pp.165-177) shows that mining companies were not required to report the identity of beneficiaries of such mandatory social spending. Based on the diagram of mining payment flows (2014 EITI Report, pp.67-68), it appears that mandatory social expenditures in the mining sector are paid directly to "third parties incorporated under commercial law".

In terms of oil and gas companies' mandatory social expenditures on training, the report states that companies always pay training fees directly to third-parties(2014 EITI Report, pp.41-42), implying that

the beneficiaries of such expenditures are non-governmental parties, although this is not explicitly stated.

Voluntary social expenditures: The 2014 EITI Report confirms that mining, oil and gas companies undertake voluntary social expenditures directly to private third parties (2014 EITI Report, pp.65, 67). It provides companies' unilateral disclosures of aggregate voluntary social expenditures in oil and gas (2014 EITI Report, p.78), in mining (2014 EITI Report, p.84) and disaggregated by company in the annexes of per-company reconciliations (2014 EITI Report, pp.128-164, 168-177). However, reporting of voluntary social expenditures is not presented disaggregated by project.

Stakeholder views

With regards to mandatory social expenditures in the oil and gas sector, a government official explained that some oil and gas companies were required to make social expenditures in line with the terms of their PSCs, although such mandatory social expenditures varied depending on the terms of the individual contract. Several government and industry representatives stated that social expenditures were normally made in-kind by companies given that they preferred managing the execution of social projects themselves, rather than making cash payments. These stakeholders confirmed that mandatory social expenditures were usually not cost-recoverable. Members of the MSG consulted confirmed that oil and gas companies were not required to report details of their mandatory spending on workforce training in preparation of the 2014 EITI Report. Industry representatives argued that there are no mandatory social expenditures in the oil industry in practice aside from workforce training.

In terms of mandatory social expenditures by mining companies, an industry MSG member explained that production license-holders are required under the terms of their mining contracts to establish 10-15 year Social and Environmental Development Plans, which are updated every three years, and that exploration license-holders are required to undertake community development expenditures under the terms of the 2005 Mining Code. Several government and industry representatives noted that mandatory social expenditures could be made either in cash or in-kind, but that mining companies normally preferred to execute such expenditures in-kind to better track the implementation of agreed projects. An industry representative explained that mining companies also preferred executing mandatory social expenditures for the benefit of non-government entities to avoid accusations of making payments to government outside of contractual terms. The industry representative confirmed that while the reporting templates for the 2014 EITI Report required companies to disaggregate mandatory and voluntary social expenditures, they did not require disaggregation of cash from in-kind expenditures, nor the identification of any non-government beneficiary.

Initial assessment

The International Secretariat's initial assessment is that the ROC has made meaningful progress towards meeting this requirement. The 2014 EITI Report provides mandatory social expenditures by oil and gas companies, in the form of workforce training, but it does not show the identity of any non-government beneficiary. The report also discloses mining companies' payments of USD 16 000 in mandatory social payments, but does not specify whether these were in cash or in-kind. The nature of any in-kind expenditures and the identity of any non-government beneficiary was not disclosed. The 2014 EITI Report provides unilateral reporting of voluntary social expenditures, albeit only disaggregated by company.

To strengthen implementation, EITI Congo should systematically categorise types of mandatory social

expenditures mandated by law or contract and ensure that reporting of mandatory social expenditures in future EITI Reports be disaggregated between cash and in-kind expenditures, by type of payment and beneficiary, clarifying the name and function of any non-government (third-party) beneficiaries of mandatory social expenditures. The MSG may also wish to consider the feasibility of reconciling mandatory social expenditures.

SOE quasi fiscal expenditures (#6.2)

Documentation of progress

The 2014 EITI Report does not specifically refer to quasi-fiscal expenditures, but does describe arrangements involving the CORAF that do not appear to be recorded as subsidies in the annual budget and that represent non-commercial transfers to the state-owned refinery. The 2014 EITI Report describes allocations of crude oil, from the state's share of Profit Oil and private sales from some operators, to the CORAF and the refinery's role in selling refined products to the domestic market "at a subsidised price set by Decree" (2014 EITI Report, p.37). Given that the report refers to "Arrêté n°1 MHC/MEFB/MCCA/Portant révision des prix des produits pétroliers soumis à la structure des prix (14 janvier 2008)" it may be assumed that such downstream subsidies are included in the national budget, although this is not explicitly stated. The report also highlights SNPC's annual transfers of 6,175,000 barrels of oil worth XAF 290bn (USD 587m) from the state's Profit Oil to the CORAF under its Performance Contract with the state (2014 EITI Report, p.73). The IA "understands" that the value of this in-kind transfer to the CORAF was not recorded as a contribution to the national budget and that it is unclear whether CORAF paid for its domestic crude allocations (2014 EITI Report, pp.73, 78-79). However, the 2014 EITI Report does not explicitly state that such crude oil allocations to CORAF represent quasi-fiscal expenditures.

The 2013 EITI Report states that 6 million barrels of oil was deliveries by SNPC to the national oil refinery (CORAF) for an estimated value of 662 million USD (327 billion FCFA) (2013EITI Report, p.7). The Independent Administrator stated that these payments were not recorded in the state budget and not include in the TOFE 2013 (2013 EITI Report, p.54).

Stakeholder views

Stakeholders consulted (including from within individual constituencies) expressed widely different views on whether extractives SOEs undertook any type of quasi-fiscal expenditures. Consultations revealed the highly emotive nature of the issue of off-budget revenues and expenditures amongst different stakeholders, given the ROC's history of IMF support and concerns related to the issue of vulture funds hold ROC sovereign debt.

Extensive stakeholder consultations highlighted three possible types of quasi-fiscal expenditures, although stakeholders expressed no confidence on whether this represented a comprehensive of such expenditures. All MSG members consulted confirmed that the IA had never requested copies of SNPC's audited financial statements in preparing annual EITI Reports. Several senior government officials stated that only the IMF ever asked for SNPC's audited financial statements. Several government officials considered that SNPC's activities outside the oil and gas sector were beyond the scope of EITI reporting.

QFEs involving CORAF: With regards to SNPC's annual crude oil allocations of over 6m barrels to CORAF, several government officials stated that this represented a debt from CORAF to government, as the MFBPP recognised in the 2013 EITI Report, rather than a form of subsidy to the state-owned refinery. However, several CSOs and development partners considered that these allocations had been a form of off-budget state subsidy to CORAF since it was not being charged accrued interest for instance, and it was unclear if and when CORAF would clear the backlog of arrears. The Berne Declaration (now Public Eye) used data from EITI Reports and quarterly oil sales reports to calculate the value of crude oil transferred to CORAF but never paid for, as 12% of the state's Profit Oil in 2013, roughly 6m barrels worth USD 600m in 2012 and 2013 each (Berne Declaration, 2015). One government official noted that refineries worldwide were low-margin businesses – if they made profits at all – and noted the challenges in calculating effective profits (prix de revenue) for CORAF. The IA considered that state support for state-owned refineries was common in developing countries and did not consider SNPC allocations to the CORAF to be a significant issue for the ROC's EITI reporting. A senior government official explained that the SNPC had “recently” met with the CORAF to discuss the structuring of repayment for these arrears and had agreed that the CORAF would be treated like any other buyer of SNPC's crude in future.

With regards to the subsidy on CORAF refined product sales to the domestic market, government officials explained that they had considered liberalising the price of gas since 2006 but had not lifted the subsidy for fears of domestic unrest. A development partner noted that while the CORAF subsidies on refined product sales used to be recorded in the government's financial statements, this was no longer the case in recent years. A 2015 report on Philia by the Berne Declaration (now Public Eye) highlighted CORAF's exports of refined product in partnership with Philia and found several types of off-budget subsidies provided by CORAF to buyers of its crude oil, including allegedly abnormally long payment terms (within 60 days of B/L) (Berne Declaration, 2015).

Several MSG members confirmed that the Treasury had clarified in the 2013 EITI Report that the unpaid allocations of crude oil (from the state's in-kind revenues) to CORAF constituted a debt to the government and thus that allocations in 2014 represented a sale of part of the state's in-kind revenues to the CORAF. A government official explained that SNPC had recently met with CORAF to discuss the restructuring of payment of CORAF arrears to the Treasury and that CORAF would be treated like all other buyers of SNPC crude oil in future.

QFEs involving SNPC: The IA expressed uncertainty over whether the IA had requested SNPC's audited financial statements and considered that this was not strictly required by the EITI Standard. There is evidence of SNPC quasi-fiscal expenditures not directly related to the oil and gas sector, but backed by the state's in-kind oil revenues. The November 2016 audit of Equatorial Congo Airlines (ECAir) states that SNPC provided a guarantee on a XAF 30bn loan from BGFI Bank in 2014. While the audit report describes monthly repayments as being set at XAF 304.35m, it also states that BGFI Bank is entitled to deduct XAF 1bn a month from an SNPC-operated account holding oil sales proceeds in order to service the debt. The audit report notes that the difference of XAF 695.65bn should have been remitted by BGFI to ECAir accounts but that it was unable to determine whether this was the case (Ministère des Finances, du Budget et du Portefeuille Public, 2016, p. 20).

The SNPC also maintains a foundation, the *Fondation SNPC*, which appears to support public health and education initiatives. While there is no publicly-available information (online) on the Fondation SNPC's

budget or projects, it appears the charity provided XAF 102m to support UNICEF's fight against the Ebola virus in 2015 (Panapress, 2015) (Site du Gouvernement du Congo, 2015). However, several government officials consulted considered the Fondation SNPC's activities social expenditures rather than quasi-fiscal expenditures.

One government official explained that as a state-owned company, SNPC was also responsible for maintaining strategic national oil reserves, without receiving compensation from the national budget.

Off-budget repayment of loans: There was broad disagreement amongst different stakeholders consulted over whether SNPC's deductions from the state's in-kind revenues for the reimbursement of infrastructure projects – ENI's power plants (in-kind) and of infrastructure projects under the ROC-PRC framework agreement (in cash) – represented quasi-fiscal expenditures. There was a lack of clarity over whether the government had provided a sovereign guarantee for the framework agreement with the PRC. While several government officials considered that the infrastructure agreement expenditures were recorded in the government's budget execution report (as an aggregate figure), several CSOs and development partners considered that the agreements were off-budget revenue deductions and expenditures. One development partner stated that such off-budget oil revenue allocations should be considered quasi-fiscal until they are fully pre-approved in the annual budget and tracked through the budget execution report.

Initial assessment

The International Secretariat's initial assessment is that the ROC has made no progress towards meeting this requirement. The 2014 EITI Report does not refer to quasi-fiscal expenditures undertaken by SNPC or any of its subsidiaries and provides only limited information on transactions that could be considered quasi-fiscal expenditures. There is no evidence that the MSG or IA considered Requirement 6.2 in preparing the 2014 EITI Report. Yet, as the stakeholder section above reveals, there is good reason to believe that there are substantial QFEs.

To strengthen implementation, EITI Congo should undertake a comprehensive review of all expenditures undertaken by extractives SOEs (and their subsidiaries) that could be considered quasi-fiscal. The MSG should develop a reporting process with a view to achieving a level of transparency commensurate with other payments and revenue streams, and should include SOE subsidiaries and joint ventures.

Contribution of the extractive sector to the economy (#6.3)

Documentation of progress

Share of GDP: The 2014 EITI Report provides the oil and gas sector's relative share of GDP⁶⁹ in 2014 (2014 EITI Report, p.47) and states that the mining sector's value is too small to be calculated as part of GDP estimates (2014 EITI Report, p.53), providing only estimated forecasts of iron ore sector growth rates. Given that the absolute value of 2014 GDP is provided in footnote⁷⁰ (2014 EITI Report, p.47), it is possible

⁶⁹ 54%.

⁷⁰ USD 13,5bn (XAF 6,700bn).

to calculate the oil and gas sector's share of 2014 GDP in absolute, albeit only current, terms.

Government revenues: The report provides government revenues from oil and gas, mining and forestry sectors' in absolute terms, based on EITI reporting from material companies (2014 EITI Report, pp.15,79-80,89), but only a rough estimate⁷¹ of oil and gas revenues' contribution to the 2014 budget (2014 EITI Report, p.44). The report provides two contrasting figures for the value of oil and gas revenues, both in absolute terms and relative to total revenues, between the lower figure⁷² from EITI Reporting (2014 EITI Report, pp.7, 75-76) and the higher figure⁷³ from the government's budget execution report (TOFE) (2014 EITI Report, p.31). The report recommends an investigation of these discrepancies (2014 EITI Report, p.91), but does not seek to explain them itself. The 2014 EITI Report also provides the absolute and relative value of government mining revenues from the ten material mining companies included in EITI reporting (2014 EITI Report, pp.9, 82, 86-87).

Exports: The 2014 EITI Report provides the value of oil and gas exports in absolute terms and as a share of total exports⁷⁴ (2014 EITI Report, pp.46-47) alongside additional information like the split in destinations and volumes. The report also provides volumes and values of diamond exports⁷⁵ in 2014 (2014 EITI Report, p.53), but not of gold exports given the lack of "sufficiently formalised information" on ASM.

Employment: The 2014 EITI Report only provides information on employment in the forestry sector, not in mining, oil and gas.

Location: The 2014 EITI Report provides an overview of the major areas of oil and gas production (2014 EITI Report, p.35) and of the main mineral deposits (2014 EITI Report, pp.47-48).

Stakeholder views

Stakeholders consulted did not express any particular opinion on the macro-economic data included on the extractive industries in the 2014 EITI Report, beyond disagreement on whether oil-backed infrastructure projects were recorded in the national budget (*see Requirement 5.1*) and the availability of mineral export data (*see Requirement 3.3*). MSG members consulted confirmed that the IA had not reached out to the Ministry of Labour and Social Security nor the National Centre for Economic and Statistical Studies (Centre national de la statistique et des études économiques - CNSEE) to request relevant macro-economic data in preparing the 2014 EITI Report.

Initial assessment

The International Secretariat's initial assessment is that the ROC has made meaningful progress towards meeting this requirement. The 2014 EITI Report provides, in absolute and relative terms, the mining, oil and gas sectors' share of GDP, government revenues (albeit based on EITI reporting) and exports as well information on the location of production. However, the report does not provide information on

⁷¹ The 2014 EITI Report states that oil and gas revenues accounted for "around" 70% of total government revenues excluding grants in 2014, of which 30% was recorded in the national budget and 40% was allocated to reimbursement of infrastructure projects.

⁷² XAF 804bn, or 28% of total government revenues excluding grants of XAF 2.832tn (USD 1.6bn) in 2014.

⁷³ XAF 1.973tn (USD 3.995bn), or 70% of total government revenues excluding grants.

⁷⁴ XAF 3.8tn (USD 7.7bn), equivalent to 86% of total exports in 2014.

⁷⁵ 45,000 carats of diamonds, worth XAF 530bn (USD 1bn).

employment in the mining, oil and gas sectors nor estimates of informal gold exports.

To strengthen implementation, EITI Congo should ensure future EITI Report include employment figures for the mining, oil and gas sectors. The MSG may also wish to work with the MFBPP, the national statistics agency (CNSEE), customs and the Ministry of Labour and Social Security to ensure that reporting of key information required by the EITI Standard on the extractive industries' share of GDP, revenues and exports is embedded in routine government disclosures.

Table 6- Summary initial assessment table: 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 International Secretariat's initial assessment is that the ROC has made meaningful progress towards meeting this requirement. The 2014 EITI Report provides mandatory social expenditures by oil and gas companies, in the form of workforce training, but it does not show the identity of any non-government beneficiary. The report also discloses mining companies' payments of USD 16 000 in mandatory social payments, but does not specify whether these were in cash or in-kind. The nature of any in-kind expenditures and the identity of any non-government beneficiary was not disclosed. The 2014 EITI Report provides unilateral reporting of voluntary social expenditures, albeit only disaggregated by company.	Meaningful progress
SOE quasi fiscal expenditures (#6.2)	The 2014 EITI Report does not refer to quasi-fiscal expenditures undertaken by SNPC or any of its subsidiaries and provides only limited information on transactions that could be considered quasi-fiscal expenditures. There is no evidence that the MSG or IA considered Requirement 6.2 in preparing the 2014 EITI Report.	No progress
Contribution of the extractive sector to the economy (#6.3)	The 2014 EITI Report provides, in absolute and relative terms, the mining, oil and gas sectors' share of GDP, government revenues (albeit based on EITI reporting) and exports as well information on the location of production. However, the report does not provide information on employment in the mining, oil and gas sectors nor estimates of informal gold exports.	Meaningful progress
Initial conclusions and recommendations:		

- To strengthen implementation, EITI Congo should systematically categorise types of mandatory social expenditures mandated by law or contract and ensure that reporting of mandatory social expenditures in future EITI Reports be disaggregated between cash and in-kind expenditures, by type of payment and beneficiary, clarifying the name and function of any non-government (third-party) beneficiaries of mandatory social expenditures. The MSG may also wish to consider the feasibility of reconciling mandatory social expenditures.
- To strengthen implementation, EITI Congo should undertake a comprehensive review of all expenditures undertaken by extractives SOEs (and their subsidiaries) that could be considered quasi-fiscal. The MSG should develop a reporting process with a view to achieving a level of transparency commensurate with other payments and revenue streams, and should include SOE subsidiaries and joint ventures.
- To strengthen implementation, EITI Congo should ensure future EITI Report include employment figures for the mining, oil and gas sectors. The MSG may also wish to work with the MFBPP, the national statistics agency (CNSEE), customs and the Ministry of Labour and Social Security to ensure that reporting of key information required by the EITI Standard on the extractive industries' share of GDP, revenues and exports is embedded in routine government disclosures.

Part III – Outcomes and Impact

5. 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

Communications: Congo has published three EITI Reports covering 2012, 2013 and 2014 under the EITI Standard. The 2012 and 2013 Reports have been widely disseminated on online and on paper, but there was no evidence of dissemination of the 2014 Report published in December 2016. The 2013 EITI Report was published in September 2014 and used by a parliamentary committee for the adoption of the budget for the following year. The 2011 EITI Report was also used for similar purposes, but parliamentarians have discontinued the practice. A parliamentary committee (commission des finances) instructed EITI Congo to publish EITI Reports in a timely manner for review of previous government revenues before the review and approval of the state budget. The Congolese Army also took interest in EITI Reports in October 2013 (Depeche de Brazzaville no 1865 of 13 November 2013) and requested copies of the EITI Reports from the local national Secretariat. There is no evidence that the MSG has agreed an open data policy for EITI Congo.

Outreach: There have been extensive dissemination activities in 2014, but relatively fewer during the electoral period of 2015-2016. EITI Reports are only available in French, but civil society disseminates a simplified version to local communities. EITI-Congo maintains a website, where all EITI Reports and production sharing agreements are published. Dissemination activities include newsletters, interviews in the local newspapers, radio and television, meeting with stakeholders in Brazzaville and Pointe Noire. PWYP also undertake its own dissemination campaign toward local communities.

Stakeholder views

Civil society actors highlighted a long list of dissemination activities that took place in 2014. They explained that outreach activities slowed down considerably during the tense electoral period of 2015 and 2016. Following the elections in 2016, stakeholders have resumed their dissemination campaign and outreach to local communities.

Initial assessment

The International Secretariat's initial assessment is that the ROC has made meaningful progress in meeting this requirement. EITI disclosures, including the EITI Reports and the KPMG reports, EITI

newsletters and contracts and regulations on the EITI website were comprehensible, had been actively promoted in 2013 and 2014 and contributed to a public debate in 2014. However, no EITI Reports or KPMG report were published in 2015 and the 2014 EITI Reports published in December 2016 has not been widely disseminated. Dissemination activities of EITI disclosures also went down during the electoral period in 2015-2016. The MSG has not agreed a policy on the access, release and reuse of EITI data.

To improve accessibility of EITI disclosure, EITI Congo should resume its dissemination activities of all EITI disclosures, including the EITI Reports, the KPMG Reports and other useful materials that can contribute to a public debate on the EITI Congo website. The MSG should also agree an open data policy for EITI Congo.

Data Accessibility (#7.2)

Documentation of progress

The MSG work plans for 2013, 2014 and 2015 include activities for developing an online database that would eventually make all EITI reports machine readable. A service provider (SAP) was hired to design an interoperable database between government agencies that would be accessible to the public. This project was discontinued in 2015, due to “technical difficulties” and lack of funding (APR 2015, July 2016). ROC has not submitted the summary data for the 2015 Report published in December 2016. EITI Reports also repeatedly recommend improving the national revenue classification systems to improve revenue traceability, but this recommendation has yet to be fully implemented. Civil Society actors have also produced extensive materials in print, including summary EITI Reports and analysis of government expenditure on health and education aimed at improving public understanding of how the sector is managed and whether oil revenues are benefiting local communities.

Stakeholder views

Stakeholders explained that EITI activities were “disrupted” by the electoral period and caused considerable delays in the implementation of such projects. They admitted that lack of funding had also stalled the implementation of “nonessential activities”, i.e., they prioritise exclusively the production and dissemination of EITI Reports during the electoral period.

Initial assessment

Efforts have been made by the MSG to make EITI Reports machine readable, but this has yet to materialise in practice. Such efforts are encouraged, but not required in assessing compliance with the EITI Standard.

Lessons Learned and follow-up on recommendations (#7.3)

Documentation of progress

The 2016 APRs documents a thorough overview of progress against each recommendation.

These recommendations include:

- Harmonization of the nomenclature at the level of public accounting of revenues from the extractive industries. The MSG noted that this recommendation is in line with the CEMAC directive on budgetary harmonization but implementation is still pending.
- Implementation of an information system at the EITI. The MSG noted an agreement was signed with SAP but could not due to lack of funding. Alternative solutions are under consideration.
- Computerizing the system for processing extractive revenue data at the government level. The MSG noted that the Ministry of Finance has signed a service agreement with ORACLE in connection with this recommendation and a feasibility studies are underway.
- Establishment of an interconnected information system between the various government agencies. The MSG noted that there are plans to computerize all government agencies under the Ministry of Finance: SYSTAF, SIDERE and SYGMA projects. Interoperability of these systems remained a concern.
- Revision of the regulatory framework for the payment of customs duties. The MSG noted that within the customs office, a payment system has been established through the One-Stop Shop. This system is an important regulatory step forward and an approach to resolving the payment flow and revenue gaps in customs declarations.
- Establishing a structure for financial monitoring of social projects carried out by oil companies within the framework of the PSAs. The MSG noted that it had organised an advocacy campaign that has led to the new provisions on social expenditure in the new hydrocarbon code.
- Establishing a real cadastre system for oil, gas and mining. The MSG noted that the lack of progress in the implementation of this recommendation despite their repeated effort remains a concern.
- Appoint an EITI focal point in each jurisdiction and extractive entities (public and private). This recommendation has been fully implemented.

Stakeholder views

MSG members highlighted the recently adopted transparency law as a major achievement for EITI-Congo. They also noted the appointment of EITI focal points in the relevant government agencies as a positive development that would help embed EITI in government's systems. Civil society representatives also noted with satisfaction the suspension of the "maritime tax", a tax-deductible expense for oil companies that is paid to a private company but not transferred to the treasury. Civil society considered that the state is losing twice on this tax and that it out to be suspended until clear explanation can be given for its existence (PWYP-Congo, 2017). Many MSG members expressed frustrations in the slow progress for the implementation of reoccurring recommendations in EITI Reports, such as the modernisation of the cadastre system.

Initial assessment

The International Secretariat's initial assessment is that the ROC has made satisfactory progress in meeting this requirement. ROC has made significant progress in implementing recommendations made in EITI Reports. The MSG has also been thorough in taking steps to act upon lessons learned and monitoring progress with the implementation of recommendations in EITI Reports. Together with the IA significant efforts have been made to identify, investigate and address the causes of discrepancies in EITI reporting. The International Secretariat concludes that all aspects of this requirement have been implemented and the underlining objectives have been achieved.

Outcomes and impact of implementation (#7.4)

Documentation of progress

ROC has published Annual Progress Reports (APR) every year since 2013. These reports are typically in accordance with the EITI Requirements and Guidance Notes. The 2014 and 2015 APRs for examples contains all the information set out in Requirement 7.4 a.

The reports provide a detailed overview of activities undertaken in the previous year, it shows all activities from the workplan and document the level of progress in implementation of each activities. The APRs provides an overview of the implementation rate. The implementation rate of the 2014 workplan was 66% of planned activities. This ratio fell to 44% in 2015.

The APRs also include an assessment of progress with meeting and maintaining compliance with each EITI Requirement. The APRs for 2014 and 2015 provide an overview of the Executive committee's responses to and progress made in addressing the recommendations from reconciliation and Validation in accordance with Requirement 7.3.

The APRs include an assessment of progress with achieving the objectives set out in its work plan, but they do not include the impact and outcomes of the stated objectives.

The APRs include a narrative account of efforts to strengthen the impact of EITI implementation on natural resource governance, including the Executive Committee's effort to draft a transparency law and to extend the scope of EITI reporting to include forestry.

Stakeholder views

Stakeholders met highlighted that the process for producing the APR has been inclusive. MSG members confirmed that they have reviewed the APR and debated its content at multiple occasions before its final approval. Government officials and civil society representatives gave numerous examples of areas where EITI has had a tangible impact. Civil society actors noted the change in the culture for greater transparency. They confirmed that it is thanks to the EITI that they can request information from government agencies managing the sector and that therefore they consider EITI reporting as a critical element for the moralisation of the public sector. Industry representatives were less effusive on impact, but when met separately they noted that EITI has been enormously useful to them in having an independent verification of their payments to government and for communicating the oil industry contribution to the economy. They explained that they want to avoid giving impression of accusing the government of mismanagement and they felt like civil society is playing their role of demeaning transparency and accountability very well. They noted that they welcome civil society's push for more transparency especially from the government.

Initial assessment

The International Secretariat's initial assessment is that the ROC has made satisfactory progress in meeting this requirement. The MSG has produced annual progress reports for 2014 and 2015 that thoroughly document progress and outcomes of implementation. The APRs contain the information set

out in provision 7.4.a. Stakeholders views on the EITI process are also reflected in the APR, but further work is needed on the assessment of impact. The International Secretariat concludes that all aspects of this requirement have been implemented and the underlining objectives have been achieved.

The MSG may wish to consider commissioning an independent impact evaluation study to better document the extent to which EITI Congo has contributed in changing behaviour and improving the management of the extractive sector for the benefit of all citizens.

Table 7 - Summary initial assessment table: Outcomes and impact

EITI provisions	Summary of main findings	Validator's recommendation on compliance with the EITI provisions (to be completed for 'required' provisions)
Public debate (#7.1)	The MSG has taken steps to ensure that the 2012 and 2013 EITI report are comprehensible, actively promoted and publicly accessible. Through various dissemination methods, including, press interviews, newsletters and conferences, EITI-Congo has ensured that the EITI has also contributed to public debate. There is no evidence that the MSG agreed an open data policy for EITI Congo.	Meaningful progress
Data accessibility (#7.2)	EITI-Congo does not yet provide EITI data in open data formats, despite some effort to develop an online portal with SAP. However, mainstreaming transparency in government systems through the transparency law has been a major achievement for the MSG.	
Lessons learned and follow up on recommendations (7.3)	EITI-Congo has made significant progress in implementing recommendations made in EITI Reports. The MSG has been thorough in taking steps to act upon lessons learned and monitoring progress with the implementation of recommendations in EITI Reports. Together with the IA significant efforts have been made to identify, investigate and address the causes of discrepancies in EITI reporting.	Satisfactory progress
Outcomes and impact of implementation (#7.4)	EITI-Congo has produced annual progress reports for 2014 and 2015 that thoroughly document progress and outcomes of implementation. Further work on assessing impact should be considered.	Satisfactory progress
<p>Secretariat's recommendations:</p> <ul style="list-style-type: none"> To improve accessibility of EITI disclosure, EITI Congo should resume its dissemination activities of all EITI disclosures, including the EITI Reports, the KPMG Reports and other useful materials that can contribute to a public debate on the EITI Congo website. The MSG should also agree an open data policy for EITI Congo. 		

- The MSG may wish to consider commissioning an independent impact evaluation to better document the extent to which EITI Congo has contributed in changing behaviour and improving the management of the extractive sector for the benefit of all citizens.

6. Impact analysis (not to be considered in assessing compliance with the EITI provisions)

Documentation of progress

Impact: Despite a challenging environment, especially as it relates to space for civil society, EITI Congo has achieved some tangible results in improving the management of revenues from the oil and gas sector. These results include widening the scope of EITI reporting to bring transparency in the entire value chain of the extractive industries; creating the space for civil society to demand transparency and accountability and fostering debate on oil revenue allocation. Improvements of government systems to embed transparency and auditing practices in government agencies is also a by-product of EITI reporting.

Broader scope of EITI reporting has provided a trusted source of information to state and non-state actors

Over a decade of reporting, EITI Congo widened the scope of its reports from four oil and gas companies in 2004-2006 to 25 oil gas and mining companies in 2013. The 2014 EITI Report includes disclosures about the forestry sector contribution to the economy for the first time. Reported revenues have also increased over the years from USD 3 billion in 2006 to USD 5 billion in 2013. In the meantime, information disclosed in EITI Reports became more granular and more accurate, providing an independent and trusted source of information for oil revenues. As the quality of EITI Reports improved, state institutions, such as parliament and the military took interest in EITI Reports as a trusted source of information. Parliament began using EITI Reports in 2012, in its review of the national budget. The military, which remains one of the most powerful institution in the country also took interest in EITI Reports in 2013, as a verified source of information of the country's production of oil and revenues emanating from it. Record keeping in government agencies that are required to participate in EITI reporting has also improved over the years. Several government agencies, including agencies under the ministry of finance, the ministry of hydrocarbon and the minister of mining are implementing reforms to create and maintain databases that can provide more up-to-date and accurate information on licences, oil production, export and revenues. Contract transparency is mandated by law in the ROC and production sharing agreements are published on the EITI Congo website. EITI provides a unique space for space for civil society to demand transparency and accountability and fostering debate on oil revenue allocation

Following a tense relationship between civil society and the government at the early stage of the EITI process, a compromise was reached in 2007 and allowed for the creation of a multi-stakeholder group. This compromise carved out a controlled space for civil society to undertake activities directly related to EITI implementation, allowing civil society to use EITI reports, conduct studies, hold dissemination activities and debate sensitive topics such as SNPC's financial relationships with its subsidiaries and the state and the use of crude allocated to the national oil refinery for domestic consumption. Despite the constrained general environment, civil society appears particularly engaged in the EITI process. Representatives from the civil society constituency attend MSG meetings regularly, conduct analysis of EITI Reports, produce communication materials and organise public events to inform citizens on issues related to the governance of the extractive industries. Civil society representatives in the MSG regularly express their views related to EITI activities and highlight their concerns. In August 2015, for example, PWYP Congo wrote a letter to the Minister of Economy, Finance and Budget and issued a press release expressing concerns on the "stagnation of the EITI process" and calling on the government to resume

publication of EITI Reports, implement reforms recommended by EITI Reports. There are numerous examples of civil society using EITI data, including PWYP Congo's review of EITI Reports and the national budget, publishing a report on government expenditure on public health in 2015 (PWYP Congo, 2015). This report and subsequent follow-up reports were widely disseminated and formed the basis of an advocacy campaign to improve allocation of oil revenues to social programmes such as health, education and access to water (PWYP, 2016). Civil society continue to call for further investigations and accountability in the management of oil revenues. More recently, PWYP-Congo called for a judicial inquiry into revelations of the Panama Papers, in a press release on 21 April 2016 (PWYP-Congo, 2016).

Through the space afforded by the EITI process, civil society can influence government policy, such as the preparation and adoption of the new transparency law, but their campaigning for accountability has had limited effect on the government. *Sustainability:* The MSG led the process for drafting, lobbying parliament for the adoption of a transparency law that was signed by President Sassou N'Guesso on 9 March 2017. This law translates many EITI requirements into law and extend the reach of the EITI to other sectors including forestry. Key EITI Requirements, such as contract transparency, SOEs disclosure, BO disclosure, production data, audit and reconciliation of government revenues, transparency of resource allocation and extra budgetary spending, project level reporting and open data are all translated into law. The adoption of this law is a major achievement for EITI Congo and its implementation would embed transparency procedures in government systems. Article 2 of the revised Hydrocarbons Code enacted in 2016 requires all oil and gas companies to comply with the ROC's laws and international commitments linked to improving the sector's governance and transparency (République du Congo, 2016). The March 2017 Transparency Code translates key EITI Requirements into national legislation, including contract transparency, SOE reporting, beneficial ownership disclosure, publication of production data, audit and reconciliation of government revenues, transparency of resource allocation and extra-budgetary spending, project-level reporting and open data. In some areas, the law goes beyond the minimum EITI Requirements by mandating reporting of production disaggregated by project and individual oilfield. Finally, ongoing revisions to the Mining Code are expected to refer to transparency and governance provisions in a similar way to the 2016 Hydrocarbons Code.

Innovations and actions beyond EITI Provisions: The MSG decided to expand the scope of EITI Reporting to the forestry sector. The 2014 EITI Report provides unilateral disclosure from the relevant government agencies on the forestry sector's contribution to the economy. It is expected that future EITI reports will include reconciled information on fiscal revenues from companies that hold valid licenses for the exploitation and export of wood. . In addition to its annual EITI Reports, the Ministry of Finance also published quarterly reports on oil sales providing detailed information on the sale of oil by the national oil companies in the period 2013 and 2014. These reports include information on the sale of oil by SNPC by shipment and the corresponding transfers to the treasury.

Annexes

Annex A - List of MSG members

Government

SE ONDONGO Gilbert, Ministre MEFPPPI, Président
 OKOKO Florent Michel, MEFPPPI, Directeur du Suivi de l'Exploitation et de la Commercialisation des Ressources Naturelles, Président exécutif
 MALIE Paul, MEF
 MBAMA Jean, Directeur de la fiscalité pétrolière, MEF/DGID (Direction Générale des Impôts)
 MOUNTOU Jérôme, MHC (Ministère des Hydrocarbures)
 NDEKO Serge Marie Aimé, MHC
 DJAMA Joachim Marie, MMG (Ministère des Mines et de la Géologie)
 ITOUA Gilbert, Conseiller administratif et juridique, MMG
 SIOLO Franck, Conseiller juridique, MDIPSP (Ministère du Développement Industriel)

Industry

MABONA Georges Cassien, Maurel & Prom SA
 LAGER Florent, MPD Congo (Glencore)
 DECKOUS Florent, Congo Mining
 AKIERA Nyvia Faïda, SNPC (Société Nationale des Pétroles du Congo)
 OMINGA Raoul, SNPC
 IWOCHWITSCH Eric, CONGOREP/PERENCO
 BECUWE Olivier, Murphy Oil
 MOUNTHALT-TATU Katia, Chevron
 COSENTINO Luca, DG, ENI Congo, Deuxième vice-président exécutif

Civil Society

SINIBAGUY-MOLLET Bayi, CEPARC, coordonnateur
 OSSETE Eugène-André, CLONG (Comité de Liaison des ONG du Congo)
 ATONDI-MONMONDJO Lecas, Mouvement National pour l'organisation des Elections)
 MACKOSSO Brice, PWYP/CJP (Commission Justice et Paix de l'Eglise Catholique)
 NSIKABAKA Samuel, PWYP/Fondation NIOSI
 ASSEN-ONTSOUON Bozire Clovin, Actions pour la Gouvernance et le Développement Communautaire
 MOUNZEO Christian, PWYP, Premier vice-président exécutif
 IWANGOU Désiré, Coordonnateur, FENAJEICO (Fédération Nationale des Jeunes)
 MABOUNDA Bernard, FENAJEICO

Annex B – MSG meeting attendance

ITIE Congo B MSG meeting attendance chart																							
MSG meeting	01.02.2013	15.02.2013	27.03.2013	10.04.2013	10.05.2013	19.06.2013	04.09.2013	09.10.2013	18.12.2013	27.12.2013	29.01.2014	19.02.2014	17.04.2014	17.12.2014	28.01.2015	06.03.2015	30.03.2015	19.06.2015	07.08.2015	04.09.2015	18.11.2015	29.12.2015	
Government																							
<i>SE ONDONGO Gilbert, Ministre MEFPPPI, Président</i>	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0
<i>OKOKO Florent Michel, MEFPPPI, Directeur du Suivi de l'Exploitation et de la Commercialisation</i>	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
MALIE Paul, MEF	0	0	1	1	0	0	0	0	1	1	1	1	0	1	1	1	1	0	0	1	0	0	
MBAMA Jean, Directeur de la fiscalité pétrolière, MEF/DGID (Direction Générale des Impôts)	1	1	1	0	1	0	1	E	0	0	1	0	1	1	0	0	0	1	1	0	1	0	
MOUNTOU Jérôme, MHC (Ministère des Hydrocarbures)	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
NDEKO Serge Marie Aimé, MHC	0	0	0	1	0	1	0	0	0	0	0	0	0	0	1	1	0	0	0	0	0	0	
TCHITEMBO Jean Marcellin, MHC	n/	n/	n/	n/	n/	n/	n/	n/	1	1	n/	n/	n/	n/	n/	n/	n/	n/	n/	n/	n/	n/	
DJAMA Joachim Marie, MMG (Ministère des Mines et de la Géologie)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
ITOUA Gilbert, Conseiller administratif et juridique, MMG	0	0	1	1	1	0	0	1	1	1	0	0	0	1	0	1	0	1	0	0	1	1	
SIOLO Franck, Conseiller juridique, MDIPSP (Ministère du Développement Industriel)	1	1	1	1	1	1	1	E	1	1	0	0	1	0	1	1	1	0	1	1	1	0	
Industry																							
MABONA Georges Cassien, Maurel & Prom SA	r	r	0	r	0	0	0	1	r	r	1	r	r	r	1	0	1	0	0	r	r	1	
ELENGA MARTICE, Maurel & Prom SA	1	1	n/	1	n/	n/	n/	n/	1	1	n/	1	1	1	n/	n/	n/	n/	n/	1	1	n/	
LAGER Florent, MPD Congo (Glencore)	1	1	1	0	1	0	0	1	0	0	1	0	1	1	1	1	0	0	1	1	1	1	
DECKOUS Florent, Congo Mining	1	1	0	0	1	0	0	1	1	0	1	0	0	0	0	1	0	0	0	0	0	0	
AKIERA Nyvia Faïda, SNPC (Société Nationale des Pétroles du Congo)	1	0	0	1	0	1	1	1	1	0	0	0	1	1	0	1	1	0	1	1	1	1	
OMINGA Raoul, SNPC	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
DIKABOU Mesmin-Borgio, TOTAL EP	1	1	n/	n/	n/	n/	n/	n/	1	n/	n/	1	n/	1	1	1	1	n/	n/	n/	n/	n/	
JOUNY Olivier, TOTAL EP	n/	n/	n/	n/	n/	1	n/	1	n/	n/	n/	n/	n/	n/	n/	n/	n/	n/	n/	n/	n/	n/	
NISEKABAKA Audrey, TOTAL EP	n/	n/	n/	n/	n/	n/	n/	n/	n/	n/	n/	n/	n/	1	n/	n/	n/	n/	n/	n/	n/	n/	

Validation of the Republic of the Congo: Report on initial data collection and stakeholder consultation

AVERAGE:	2013	2014	2015	TOTAL:
Government	54 %	30 %	50 %	48 %
Industry	58 %	58 %	43 %	53 %
Civil Society	88 %	78 %	70 %	77 %

Government	2013 /10 meetings	2014/ 4 meetings	2015 / 8 meetings	TOTAL 22 meetings
Ministère des Finances	80 %	100 %	88 %	86 %
Ministeres des Hydrocarbures	40 %	0 %	25 %	27 %
Ministere des Mines	60 %	25 %	50 %	50 %
Ministère du Développement Industriel	90 %	25 %	75 %	73 %
Président, SE Gilbert ONDONGO, Ministre MEF	0 %	0 %	13 %	5 %
Président Executif, Michel OKOKO	100 %	100 %	100 %	100 %
AVERAGE				

Industry	2013	2014	2015	TOTAL
Maurel & Prom SA	60 %	100 %	63 %	68 %
MPD Congo (Glencore)	50 %	75 %	75 %	64 %
Congo Mining	50 %	25 %	13 %	32 %
SNPC	70 %	50 %	75 %	68 %
TOTAL EP	80 %	50 %	63 %	68 %
CONGOREP/PERENCO	60 %	25 %	13 %	36 %
Murphy Oil	60 %	50 %	0 %	36 %
Chevron	30 %	100 %	38 %	45 %
ENI Congo	60 %	50 %	50 %	55 %

Validation of the Republic of the Congo: Report on initial data collection and stakeholder consultation

Civil Society	2013	2014	2015	total
CEPARC	90 %	100 %	50 %	77 %
CLONG	100 %	75 %	38 %	73 %
Mouvement National pour l'organisation des Elections Transparentes	70 %	0 %	100 %	68 %
PWYP/CJP	90 %	75 %	63 %	77 %
PWYP/Fondation NIOSI	70 %	100 %	50 %	68 %
Actions pour la Gouvernance et le Développement Communautaire	90 %	75 %	88 %	86 %
PWYP	100 %	100 %	75 %	91 %
FENAJEICO	90 %	100 %	n/a	55 %
FENAJEICO	n/a	n/a	100 %	100 %

Annex C – Cost of EITI implementation

	2013	2014	2015	2016	Source of funding
Projected cost from the workplan		USD 3m	USD 1.7m		Government of ROC
Actual revenues		USD 1.4m	USD 800 000		Government of ROC
Ratio of actual budget to projected cost		46%	47%		
Ratio of implementation of planned activities		66%	44%		

Annex D - List of stakeholders consulted

Government

S.E. Calixte Ganongo, Ministre des Finances, du Budget et du Portefeuille Public.

Lydie Oboa Oworo, Directeur General du Portefeuille Public, Ministere des Finances, du Budget et du Portefeuille Public.

Elenga Pacome Pascal, Inspecteur General des Finance, Ministere des Finances, du Budget et du Portefeuille Public.

Blaise Pascal Makaya, Inspecteur General des Impots et Point focal ITIE, Direction Generale des Impots et des Domaines, Ministere des Finances, du Budget et du Portefeuille Public.

Jean Mbama, Directeur de la Fiscalité Pétroliere, Direction Generale des Impots et des Domaines, Ministere des Finances, du Budget et du Portefeuille Public.

Jules Roselli, Chef de service recouvrement, Direction Générale du Trésor, Ministere des Finances, du Budget et du Portefeuille Public.

Grace Atoulou, Collaborateur, Direction Générale du Trésor, Ministere des Finances, du Budget et du Portefeuille Public.

Blaise Pascal Makaya, Chef de service, DGID, Ministere des Finances, du Budget et du Portefeuille Public

Georges Tutuanga, Chef de service, DGDDI, Ministere des Finances, du Budget et du Portefeuille Public

Rigobert Comba, Chef de service, DGDDI, Ministere des Finances, du Budget et du Portefeuille Public

Jean Romuald Mountoula, Directeur de la recherche géologie, Ministère des Mines et de la Geologie

Edouard Akiaoue, Director mines et carriers, Ministère des Mines et de la Geologie

Serge Neko, Director General des Hydrocarbures, Ministere des Hydrocarbures

Jerome Mountou, Directeur General des Hydrocarbures, Ministere des Hydrocarbures

Abel Nguogna, Directeur de la Reglementation et de la Tarification; René Ngapela, Chef de Service Reglementation, Ministere des Hydrocarbures

Gyslain Clovis Nkodia, Chef de Service Tarification, Ministère des Hydrocarbures

Antonin Franklin Pambou, Chef de Service Production, Ministère des Hydrocarbures

S.E. Pierre Oba, Ministre des Mines et de la Géologie.

Gilbert Itoua, Conseiller du Ministre des Mines et de la Géologie.

Jean Pierre Ngassaki, Directeur de Cabinet du Ministre des Mines et de la Géologie.

Medard Prince Celeste Ndombi-Labondi, Attaché à la Géologie, Ministère des Mines

S.E. Madame Rosalie MATONDO, Ministre de l'Économie Forestière, du Développement durable et de l'Environnement ; Pierre Taty, Chief of Staff, Ministère de l'Économie Forestière, du Développement durable et de l'Environnement

Emmanuel Kamba, Conseiller à la Cour des Comptes et de Discipline Budgétaire

Maître Gaston Ifoko, Greffier Principal

Industry

Nyvia Faïda Akiera, Chef de département contrats, SNPC

Raoul Maixent Ominga, Directeur Général Adjoint, SNPC

Raïssa Chérelle Olessongo, Directrice de la Comptabilité, SNPC

Florent Lager, Administrateur Général Adjoint, MPD Congo SA (Glencore) et Vice Président de la Fédération des Mines

Alain Brice Boumpoutou, TOTAL E&P CONGO

Civil Society

Christian Mounzeo, MSG Vice-Chair and President of RPDH (PWYP)

Jean Aimé Brice Georges Mackosso, Commission Justice et Paix de l'Église Catholique (PWYP)

Samuel Nsikabaka, Fondation Niosi (PWYP)

Bozire Clovin Assen-Ontsouon, Action pour la Gouvernance et le Développement Communautaire

Lecos Atondi-Momondjo, Comité de liaison des ONG au Congo

Bayi Sinibaguy-Mollet, Centre d'Echanges de Partenariat, d'Appui et de renforcement des capacités

Georgine Pembet, RPDH

Jean Baptiste Mbandzoumouna, RPDH

Samuel Nsikabaka, Fondation Niosi (PWYP)

Didier Docko, CNDHP

Bernard Mabounda, FENAJEICO

Patrick Lewere, PROSAID

Maloumbi Mpassi-Massayo, RPDH/OAC

Leslye Ouamba, RPDH

Rosy Nitouambi, CEJP

Ikia Estani, CEJP

Marc Gueniat, Berne Declaration (Public Eye)

Marie Ange Kalenga, Forest governance campaigner (Congo Basin), FERN

Independent administrators

Anton Mélard de Feuarent, Fairlinks

Development partners

Guy Jenkinson, IMF

Media

M. Pandi Bounard, TeleCongo

Roxyl Aband, Animateur et producteur, TeleCongo

Kounga Kury, Journaliste, Congo Site

Fiacre Kombo, Journaliste, Les Depeches de Brazzaville

Armel Christian Zinga-Mioko, Chef de service news international, DRTV

Others

Jean-Yves Parant, President du Conseil d'Administration, KPMG RDC SA

Colin Tinto, independent consultant

Florent Michel Okoko, National Coordinator, EITI Congo, and Advisor to the Ministre des Finances, du Budget et du Portefeuille Public

Seraphinu Ndion, Permanent Secretary, EITI Congo

Beutch Carida, EITI Congo Secretariat

Dénange Perrys Moyikoli, EITI Congo Secretariat

Serge Banda, EITI Congo Secretariat

Christelle Daisy Nkougou, EITI Congo Secretariat

Taraise Ndoura-Pouhaut, EITI Congo Secretariat

Fiacre Fortuné Ilourou-Bongo, EITI Congo Secretariat

Fatou Kamara, EITI Congo Secretariat

Carole Makaya, EITI Congo Secretariat

Jerome Moutou, EITI Congo Secretariat

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