Extractive Industries Transparency Initiative

EITI International Secretariat

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Second Validation of the Republic of Congo:

Draft assessment by the EITI International Secretariat

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1. Executive summary

The Republic of Congo's EITI implementation has evolved in a different political and economic context since the period covered by country's first Validation under the EITI Standard, 2013 to April 2017. The 2017-2019 period was marked by relative political stability, in what stakeholders consulted considered a mid-term lull ahead of Presidential elections in 2021. After two years of negotiations, which included the restructuring of the country's sovereign debt to China, the conclusion of a USD 449m extended credit facility (ECF) with the International Monetary Fund (IMF) in July 2019 helped stabilise the economy. Higher oil prices than in 2014-2017, combined with the start of production at ENI's Nené Marine and Total's Moho Nord, helped economic growth rebound from contractions in 2016-2017 to projected 4% growth in 2019 according to the IMF.[1]

References to the EITI in the IMF's ECF agreement and as a condition of the donor-funded Central African Forest Initiative (CAFI) has helped ensure that the Congolese Government has maintained its political commitment to the EITI. The 2016 and 2017 EITI Reports, published in February and December 2019 respectively, saw improvements in disclosures related to mining, forestry, oil and gas license management, state participation, sales of the state's oil and distribution of extractives revenues. The government's new disclosures as conditions of negotiations with the IMF, including the audited (group-level, not consolidated) financial statements of the national oil company SNPC (*Société Nationale des Pétroles du Congo*) for the years 2012-2018, supported these improvements in EITI reporting. While there remain differences of opinion between stakeholders on the categorisation of certain oil and gas revenues as quasi-fiscal, the Republic of Congo's EITI reporting has gradually improved transparency in the management of some 60% of its oil and gas revenues that are not transferred to the Treasury (in 2017). Although the Republic of Congo's landmark Transparency Code was enacted in March 2017 and includes transparency provisions that in some cases go beyond requirements of the EITI Standard, it has yet to be fully implemented as of the start of 2020.

The categorisation of oil and gas revenues as recorded, or not, in the national budget continued to cause disagreement between stakeholders in preparing the 2016 and 2017 EITI Reports. While the 2017 EITI Report found that around 60% of oil and gas revenues were not transferred to the Treasury and were not recorded in the government's balance sheet (*Tableau des opérations financières de l'État* – TOFE) in 2017, there were starkly contrasting views over whether this implied they were considered off-budget and used to finance quasi-fiscal expenditures. Despite this disagreement, reforms implemented as a condition of negotiations with the IMF on the ECF in 2018 led to the recording of these deductions from government revenues in the government's balance sheet (TOFE) from 2018 onwards.

The EITI Congo's focus on improving EITI disclosures has not been matched by commensurate attention to improving the multi-stakeholder oversight of EITI implementation, nor on the EITI's outcomes and impact. While the government belatedly enacted three new Government Decrees institutionalising the EITI the day before the start of the second Validation, on 28 December 2019, the EITI Congo multi-stakeholder group (MSG), the *Comité national*, operated on an ad hoc basis for most of the 2017-2019 period. The terms of MSG members effectively expired in December 2015, with the nomination of new representatives in late 2019 that was still pending official appointment through a Government Order that had not been issued yet at the start of the second Validation. The MSG has met infrequently during this period, with most EITI work carried out through the MSG's ad hoc working groups. Despite evidence of use of EITI data by some representatives of the three constituencies,

[1] IMF website, Republic of Congo country page, accessed here in February 2020.

there is little evidence of efforts by EITI Congo as a whole to undertake dissemination and outreach efforts, in part due to funding constraints. Follow-up on EITI recommendations and assessment of outcomes and impact of EITI have been hampered by weaknesses in the MSG's oversight of implementation.

There is evidence that civil society has played an active role in most aspects of EITI implementation in the 2017-2019 period, despite challenges in the MSG's functioning. Civil society has used the EITI Congo infrastructure both as a channel for public expression critical of oil and gas sector management and as leverage for punctual improvements in broader civic space, including the withdrawal of a draft law introducing government constraints on non-government organisations (NGOs) and the release of several political and civil rights activists members of the *Ras-le-Bol* movement in 2018. Despite consensus among civil society stakeholders consulted over broader constraints on general freedom of expression and operation in the Republic of Congo, opinions differed significantly between national and international civil society on whether such constraints impacted civil society's engagement in EITI implementation. It is difficult to determine the extent to which broader restrictions have affected EITI implementation, given that the civil society constituency plays a driving role in implementation through their advocacy and campaigning, active engagement on the MSG and use of EITI data. The assessment of adherence to the civil society protocol requires a judgement call on the impact of broader civic space restrictions on civil society's ability to engage in EITI. The Secretariat's preliminary assessment is that there have been improvements in the environment for civil society's participation in EITI implementation, even if administrative and practical constraints appear to constrain some aspects of civil society's engagement in EITI-related outreach and dissemination activities. While self-censorship as a consequence of such practical constraints on civil society's operations is difficult to rule out, publicly-accessible evidence suggests that civil society members both on and off the MSG have been able to speak out publicly on all issues covered by the EITI Standard, including on issues previously considered "off-limits" in the period reviewed by the first Validation.

The Secretariat's preliminary assessment is that the Republic of Congo has fully addressed six of the 15 corrective actions and has made "satisfactory progress" on the corresponding requirements of the EITI Standard. The outstanding gaps relate to civil society engagement (*Requirement 1.3*), MSG oversight (*Requirement 1.4*), license allocations (*Requirement 2.2*), state participation (*Requirement 2.6*), barter agreements (*Requirement 4.3*), distribution of revenues (*Requirement 5.1*), social expenditures (*Requirement 6.1*), quasi-fiscal expenditures (*Requirement 6.2*), and public debate (*Requirement 7.1*).

The draft assessment was sent to the multi-stakeholder group (MSG) on 14 April 2020. Following comments from the MSG expected on 5 May 2020, the assessment will be finalised for consideration by the EITI Board.

2. Scorecard

EITI Requirements		Level of progress					
The Republic of Congo second Validation scorecard							
Categories	Requirements	No progress	Inadequate	Meaningful	Satisfactory	Beyond	Direction of Progress
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 & 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 & impact of implementation (#7.4)				■		=

Legend to the assessment card

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	No progress. All or nearly all aspects of the requirement remain outstanding and the broader objective of the requirement is not fulfilled.
	Inadequate progress. Significant aspects of the requirement have not been implemented and the broader objective of the requirement is far from fulfilled.
	Meaningful progress. Significant aspects of the requirement have been implemented and the broader objective of the requirement is being fulfilled.
	Satisfactory progress. All aspects of the requirement have been implemented and the broader objective of the requirement has been fulfilled.
	Beyond. The country has gone beyond the requirement.
	This requirement is only encouraged or recommended and should not be taken into account in assessing compliance.
	The MSG has demonstrated that this requirement is not applicable in the country.

3. Background

The Republic of Congo joined the EITI in 2004 and became compliant with the EITI Rules in 2012. The Republic of Congo's first Validation under the EITI Standard concluded in June 2018. The EITI Board found that the Republic of Congo had made 'meaningful progress' in implementing the EITI Standard.[2] Fifteen corrective actions were identified by the Board, to be assessed in a second Validation commencing on 29 December 2019.

The Republic of Congo's second Validation commenced on 29 December 2019. The EITI International Secretariat has assessed the progress made in addressing the 15 corrective actions established by the EITI Board following the Republic of Congo's first Validation in 2017.[3] The 15 corrective actions relate to:

1. Civil society engagement (Requirement 1.3)
2. MSG oversight (Requirement 1.4)
3. License allocations (Requirement 2.2)
4. License registers (Requirement 2.3)
5. State participation (Requirement 2.6)
6. Production data (Requirement 3.2)
7. In-kind revenues (Requirement 4.2)
8. Barter and infrastructure provisions (Requirement 4.3)
9. Transactions related to state-owned enterprises (Requirement 4.5)
10. Data quality (Requirement 4.9)
11. Distribution of extractive industry revenues (Requirement 5.1)
12. Social expenditures (Requirement 6.1)
13. Quasi-fiscal expenditures (Requirement 6.2)
14. Economic contribution (Requirement 6.3)
15. Public debate (Requirement 7.1)

[2] EITI (2016), '2016 EITI Standard', available at: https://eiti.org/document/eiti-standard-requirements-2016
[3] EITI (June 2018), 'Board decision 2018-34/BM-40/BP-40-6-C: The Board agreed that the Republic of Congo has made meaningful progress in implementing the 2016 Standard', accessed here.

The Republic of Congo has undertaken a number of activities to address the corrective actions:

- The MSG met three times in 2017, once in 2018 and four times in 2019, based on MSG meeting minutes published on the EITI Congo website.[4]
- On 12 June 2018, the MSG discussed the Ministry of Finance and Budget's development of a new extractive revenues reconciliation system (SYSCORE), that would function as an e-reporting system for extractives payments and revenues.[5]
- On 22 June 2018, Minister of Interior, Decentralisation and Territorial Administration Charles Nganfouomo chaired a meeting of the MSG to discuss the recommendations of the Republic of Congo's first Validation under the EITI Standard.[6]
- On 25 October 2018, the civil society constituency agreed Terms of Reference for procedures to nominate and replace the constituency's MSG members.[7]
- On 19 December 2018, the MSG approved and published the 2017 annual progress report.[8]
- In December 2018, the MSG approved and published the 2017 annual progress report.[9]
- On 7 January 2019, the MSG approved the inception report for its 2016 and 2017 EITI Reports.[10]
- On 19 February 2019, the Republic of Congo published its 2016 EITI Report.[11]
- In mid-2019, the Ministry of Hydrocarbons launched the country's first online oil and gas cadastral portal, developed by the Revenue Development Foundation (RDF).[12]
- On 5-11 October 2019, the EITI International Secretariat undertook a pre-Validation and implementation support mission to Brazzaville and Pointe Noire.
- On 15 November 2019, the MSG approved Terms of Reference for dissemination workshops for the 2016 and 2017 EITI Reports.[13]
- On 18 December 2019, the MSG updated and adopted its 2020 EITI work plan, published on the EITI Congo website.[14]
- On 18 December 2019, the MSG approved and published the 2018 annual progress report.[15]
- On 23 December 2019, the Republic of Congo published its 2017 EITI Report.[16]
- On 23 December 2019, the MSG approved the inception report for its 2018 EITI Report.[17]
- On 27-28 December 2019, the government issued three new Government Decrees institutionalising the EITI and MSG, appointing the MSG Chair and Vice-Chairs and nominating the Permanent Secretary of EITI Congo.[18]

Section 5 addresses progress on each of the corrective actions. The assessment covers the corrective actions established by the Board and the associated requirements in the EITI Standard. The assessment follows the guidance outlined in the Validation Guide.[19] In the course of undertaking this

[4] ITIE Congo website, 'MSG meeting minutes' section, accessed here in January 2020.
[5] ITIE Congo (June 2018), 'L'ITIE-Congo présente le logiciel Syscore aux partenaires', accessed here in January 2020.
[6] ITIE Congo (June 2018), 'Atelier national d'appropriation des recommandations du Rapport de validation de l'ITIE Congo', accessed here in January 2020.
[7] ITIE Congo (October 2018), 'Termes de reférence: procédures de désignation et de remplacement des members de la société civile au Comité national de l'ITIE', accessed here in January 2020.
[8] ITIE Congo (December 2018), '2017 annual progress report', accessed here in January 2020.
[9] ITIE Congo (December 2018), '2017 annual progress report', accessed here in January 2020.
[10] ITIE Congo (January 2019), '2016-2017 inception report', accessed here in January 2020.
[11] ITIE Congo (February 2019), '2016 EITI Report', accessed here in December 2019.
[12] Republic of Congo Ministry of Hydrocarbons online repository, accessed here in January 2020.
[13] ITIE Congo (November 2019), 'Termes de reference: ateliers de diffusion des Rapports ITIE 2016 et 2017', accessed here in January 2020.
[14] ITIE Congo (December 2019), EITI Congo 2020 work plan, accessed here in January 2020.
[15] ITIE Congo (December 2019), '2018 annual progress report', accessed here in January 2020.
[16] ITIE Congo (December 2019), '2017 EITI Report', accessed here in January 2020.
[17] ITIE Congo (December 2019), '2018 inception report', accessed here in January 2020.
[18] ITIE Congo (December 2019), 'L'ITIE Congo se dote de nouveaux textes organiques', accessed here in January 2020.
[19] EITI (2019), 'EITI Validation Guide', available at: https://eiti.org/document/eiti-validation-guide

assessment, the International Secretariat has also considered whether there is a need to review additional requirements, i.e. those assessed as "satisfactory progress" or "beyond" in the 2016 Validation. In particular, the Secretariat reviewed possible back-sliding in the 2017 EITI Report on requirements related to transport revenues (Requirement 4.4). While the assessment of Requirement 4.4 requires a judgement call, on balance the Secretariat's view is that evidence suggests that Requirement 4.4 remained not applicable in the period under review in this Validation. In addition, the International Secretariat reviewed progress on requirements 1.5, 7.3 and 7.4. It concluded that progress continued to be "satisfactory progress" on these requirements despite the lack of evidence of MSG approval in meeting minutes (a gap covered under Requirement 1.4). While the remaining requirements have not been comprehensively assessed, in the Secretariat's view there is no evidence to suggest progress has fallen below the required standard and no additional issues that warrant consideration by the EITI Board.

4. Effectiveness and impact of EITI implementation

Impact and effectiveness

National EITI objectives: The objectives for EITI Congo's successive annual work plans have tended to be narrowly focused on EITI implementation in accordance with International standards rather than addressing specific national priorities. Successive EITI work plans for 2017, 2018-2019 and, subsequent to the commencement of Validation, 2020, have missed the opportunity of aligning strategic objectives for EITI implementation that support national priorities for the reform of extractive industries' management. Nonetheless, the objectives of the successive EITI work plans have been aligned with the 2017 Transparency Code, which effectively institutionalised transparency requirements aligned with the EITI Standard in national legislation. The focus on data disclosures and reporting has not been matched by commensurate attention to broader outreach, consultations and dissemination of EITI findings that relate directly to issues of relevance to public debate.

Impact of EITI: The Republic of Congo's implementation has achieved objectives of its annual EITI work plans to a certain extent, given that these have related to the mechanics of EITI reporting rather than supporting broader national priorities for the economically dominant oil and gas industry, as well as the strategically important mining and forestry sectors. The EITI Congo's own assessment of impact in the latest (2018) annual progress report highlights as impacts the development of a robust database on the contribution of the extractive industries to the economy that allows for further public debate, while noting challenges in assessing the EITI's broader impact on citizens' living standards. Nonetheless, EITI implementation has yielded some tangible impacts beyond the stated objectives in several distinct areas.

While weak in its effective oversight of implementation, the MSG has provided a key channel for gradually building some level of dialogue between civil society, industry and government. Given that disclosure requirements of the EITI Standard are uniquely relevant to the Republic of Congo, there has been robust MSG debate on issues such as crude oil sales, the national oil company's financial management, sovereign loan agreements with China and commodity traders, driven primarily by civil society. Yet with the MSG contracting out most of the data disclosures and reporting to the Independent Administrator, it is a missed opportunity that the process of preparing EITI disclosures is not used more effectively to build consensus on technical aspects of disclosures and support an evidence-based debate.

The process of EITI implementation has led to several tangible reforms in the administration of government bureaucracy. Record-keeping has generally improved as a result of the EITI, with KPMG quarterly reports on sales of government oil more regularly published on the EITI Congo website for instance. An online petroleum cadastre was launched in 2019 with all active licenses and contracts in the oil and gas sector. The online official gazette (‘*journal officiel*’) provides a solid basis for building systematic disclosures of legal and fiscal environment. Yet these reforms have tended to be driven by government rather than the MSG, with weaker disclosures (in foreign jurisdictions like Europe and Canada) from oil and gas, mining and forestry companies.

At the level of public finance management reform, the EITI’s impact cannot be disassociated from the broader environment of the IMF extended credit facility negotiations. However, EITI reporting has been instrumental in “shining the light in the right places”. It has helped identify discrepancies in crude oil price calculations due to the use of different exchange rate by IOCs and the government. EITI reporting has led to the CORAF and Treasury recognising crude oil allocations to the CORAF refinery as a debt to Treasury. Follow up on these findings has consisted more of an ad hoc approach rather than a concerted strategy by EITI Congo.

Progress on systematic disclosures should free up some of the MSG’s capacity to focus on more analysis and debate. EITI Congo helped develop the Ministry of Finance’s SYSCORE e-reporting platform, which should enable both companies and government to submit their reporting of extractives payments online (for reconciliation). This should enable timelier EITI reporting by companies and governments, but should also lead to timelier disclosures if integrated into some form of transparency portal as planned.

At the local level, there has been some use of EITI data by a handful of CSOs in communities hosting oil and gas activities. For instance, the information on the cost of developing and operating the CEC integrated power project, and the value of reimbursements, was useful for local communities to question the high cost of electricity in Pointe Noire. However, these activities appear to have been limited to a handful of CSOs’ outreach efforts, rather than more systematic efforts by EITI Congo in collaboration with the three constituencies.

There is evidence that the EITI’s civil society protocol has been leveraged to an unprecedented extent to gradually expand some aspects of civic space in the Republic of Congo. Civil society has used the prospects of Validation of adherence to the civil society protocol in their successful opposition in 2017 to draft legislation that would have reformed the 1901 Law on Associations and that would have introduced new curbs on civil society organisations’ registration, access to funding and advocacy. In 2018, the civil society protocol was explicitly invoked in CSOs’ dialogue with government to ensure the release of 23 political and civil rights activists that were not engaged in EITI implementation.

These various impacts have not been foreseen in successive annual EITI Congo work plans nor recorded in the different annual progress reports. They appear to have been incidental, driven by particular stakeholders’ initiatives seizing opportunities as they arose, rather than a concerted strategy by EITI Congo. It would be timely for the Republic of Congo to draw more systematic conclusions on the outcomes and impacts of EITI implementation after a decade of EITI implementation.

Prospects for greater EITI impact: There are clear opportunities to strengthen the impact of EITI implementation, building on an assessment of impact to date. Aligning the objectives of EITI with national priorities such as increasing the economic impact of the extractive industries, strengthening the government’s domestic revenue mobilisation and diversifying the economy would help maximise the use of EITI as a tool for supporting reforms.

Drawing on ten years of fiscal data on the oil and gas sector, EITI Congo could develop a range of public-access analytical tools that would foster a more evidence-based public debate. Cargo-level data on oil sales in EITI Reports and KPMG quarterly government oil sales reports could be used to model the impact of commodity price fluctuations on oil exports and revenues. Open financial models of oil and gas contracts published on the Finance Ministry website could help manage public expectations about the various economic contributions of oil and gas projects. The transition towards systematic disclosures, building on the Ministry of Finance's SYSCORE project, should allow for timelier analysis to help inform public policy-making.

The extension of EITI reporting to mining and forestry has gradually led to a new level of transparency to licensing, payments and oversight to the sectors. Although still of only marginal, but growing, economic importance, mining and forestry are of strategic importance to the government's economic diversification strategy. There is scope to enhance the use of EITI as a means of engaging a broader range of stakeholders in these more fragmented industries (in comparison with oil and gas), with a view to strengthening multi-stakeholder oversight of these sectors.

The Republic of Congo has already transposed, and in some cases exceeded, transparency provisions in line with requirements of the EITI Standard into national legislation through the 2017 Transparency Code. While its implementation has been delayed, the Transparency Code provides for multi-stakeholder council similar in nature to the EITI Congo's. Minister of Justice Aimé Wilfrid Bininga already recognised the EITI's key role during the Parliament debate in relation to the Commission for Transparency and Accountability in April 2019, ahead of the issuance of Decree 2019-365 in December 2019 that established the Commission in line with the 2017 Transparency Code. Building on the EITI Congo's experience and focusing on complementarities could help ensure that implementation of the Transparency Code helps enhance their combined impact on improvements in broader natural resource governance.

Innovations beyond EITI Requirements: The Republic of Congo's EITI implementation has been innovative in several distinct ways. EITI disclosures have gradually expanded to more granular data in the oil and gas sector, providing in the latest EITI Reports (covering 2016 and 2017) information on oil and gas companies' costs per licence in 2017 and per oil field in 2016 as well as data on all oil and gas companies' oil exports disaggregated by cargo. While these efforts have gone beyond the strict requirements of the EITI Standard, it has addressed issues of interest both to public debate and policy-making.

The Republic of Congo's EITI Reports have also expanded to include the forestry sector in the scope of disclosures. This EITI reporting has led to the first public disclosures to date on licensing, production, exports, payments and revenues from a sector historically (pre-oil) dominant in the country's economy. As a conditionality of support under Congo's agreement with the CAFI multi-donor trust fund for rainforest preservation, EITI Congo's work will be key for the country's preservation and sustainable timber production efforts going forward. The MSG has an opportunity to expand its focus from the disclosure of information towards more active outreach and dissemination of key data with a view to strengthening citizen oversight.

Sustainability

The EITI is institutionalised through Presidential Decree (most recently Presidential Decree 2019-383) in the Republic of Congo, which ensures sufficient legal and institutional basis for implementation. The Ministry of Finance's efforts to establish online reporting platforms provide a basis to transition towards systematic disclosures, which would enhance the sustainability of the EITI's transparency and accountability mechanism. Integration of the EITI with implementation of the 2017 Transparency Code will be important for long term sustainability of transparent and accountable management of the extractive industries. Adequate capacity-building efforts will be required to ensure that those driving these processes, MSG members in particular, are sufficiently abreast of all aspects of EITI implementation.

5. Review of corrective actions

As set out in the Board decision on the Republic of Congo's first Validation, the EITI Board agreed 15 corrective actions.[20] The Secretariat's assessment below discusses whether the corrective actions have been sufficiently addressed. The assessments are based on the 2018-2019 and 2020 Congo EITI work plan, the 2016 and 2017 EITI Reports, the 2018 annual progress report and minutes of the MSG's meetings from April 2017 to December 2019, alongside various documents submitted by the national secretariat to the International Secretariat, e-mail correspondence, and stakeholder consultations (in-person and via skype).

5.1 Corrective action 1: Civil society engagement (#1.3)

In accordance with Requirement 1.3, the Government of Congo should ensure that there is an enabling environment for civil society participation, and that civil society representatives are able to engage in public debate related to the EITI process and express opinions about the EITI process without restraint, coercion or reprisal.

Findings from the first Validation

The first Validation found that the Republic of Congo had made meaningful progress on Requirement 1.3 on civil society engagement. The Board noted that despite the constrained general environment, civil society appeared particularly engaged in the EITI process. Representatives from the civil society constituency attended MSG meetings regularly, conducted analysis of EITI Reports, produced communication materials and organised public events to inform citizens on issues related to the governance of the extractive industries. Civil society representatives in the MSG regularly expressed their views related to EITI activities and highlighted their concerns, but self-censorship was also common practice to avoid reprisals. Cases of intimidation and arrest of journalists substantially engaged in the EITI process remained a concern.

However, this controlled space for civil society was narrowly defined to MSG members and excluded important actors substantially engaged in the EITI process who were 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 were assessed each in turn.

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

Operation: Validation concluded that civil society could operate effectively in the context of the EITI.

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

[20] EITI (June 2018), 'Board decision 2018-34/BM-40/BP-40-6-C: The Board agreed that the Republic of Congo has made meaningful progress in implementing the 2016 Standard', accessed here.

Engagement: Validation concluded that civil society actors were adequately engaged in the EITI process and could 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. Validation concluded that civil society representatives had access to public decision-making and their views were considered by decision-makers and industry.

Methodology

The Civil Society Protocol focuses on: (1) civil society representatives', defined as: "civil society representatives who are substantively involved in the EITI process, including but not limited to members of the multi-stakeholder group" and (2) the 'EITI process', defined as: "activities related to preparing for EITI sign-up; MSG meetings; CSO constituency side-meetings on EITI, including interactions with MSG representatives; producing EITI Reports; producing materials or conducting analysis on EITI Reports; expressing views related to EITI activities; and expressing views related to natural resource governance".

In the first Validation, the Secretariat identified issues related to expression and self-censorship. The previous assessment concluded that there was a clear linkage in term of CSO representatives substantively engaged in the EITI process and issues that were directly linked to the EITI process, such as special agreements. In accordance with 2.6 of the Protocol, "for contextual purposes, the EITI Board will review the broader environment in which the EITI operates for example by reference to indicators or other types of assessments".

The assessment of self-censorship is particularly challenging. In some case, stakeholders report self-censorship as part of stakeholder consultations. However, in environments where freedom of expression is a concern, civil society representatives may face barriers in openly discussing these issues. Speaking about self-censorship may expose civil society representatives to harassment and repercussions. When exploring these issues, the Secretariat seeks to ensure that these issues are treated thoroughly, without contributing to or exacerbating potential risks to civil society representatives. The Secretariat meets with the MSG's constituent parts (government, companies and civil society) individually and in constituency groups. Requests for confidentially are respected. When considering whether self-censorship is a concern, wider concerns about self-censorship and freedom of expression are noted. However, in accordance with the civil society protocol, the focus is on identifying specific examples or instances where civil society representatives who are substantively involved in the EITI process faces constraints in expressing themselves freely in relation to the EITI process. In cases where self-censorship is not identified by stakeholders directly, the Secretariat examines whether it is likely to be a significant factor. To do so, the Secretariat makes an assessment of the issues one would expect to see discussed in an environment where there is freedom of expression. Where there are gaps in expected engagement on issues related to EITI implementation, the Secretariat explores why this might be the case. This could be related to capacity constraints, to competing priorities, to self-censorship, or a combination of these factors.

Progress since Validation

The political and economic context in the Republic of Congo has changed in the period under review in this second Validation, from the commencement of the Republic of Congo's first Validation in April

2017 to December 2019. The 2017-2019 period was marked by relative political stability, pending Presidential elections scheduled for 2021. The Republic of Congo's ranking in international NGO rankings of civic space has nonetheless remained unchanged in the 2017-2019 period. The broader civic space environment in which the EITI is implemented remains challenging, according to these international indicators. Documentary evidence does not indicate restrictions specific to civil society's engagement in EITI implementation. The national Publish What You Pay (PWYP) coalition's public pronouncements on the issue of civic space related to EITI have focused on the need to ensure operational and policy independence of civil society organisations engaged in EITI and the need for civil society dialogue with the government on implementation of the IMF programme, while ensuring that CSOs are able to "*work freely without pressure or obstacles to their work*".[21]

High-level government officials have reiterated the government's commitment to ensuring an enabling environment for civil society participation in all aspects of EITI implementation on several occasions. These included statements at a MSG meeting on 22 June 2018 on the findings from the Republic of Congo's first Validation, chaired by Minister of Interior, Decentralisation and Territorial Administration Charles Nganfouomo[22] and by Prime Minister Clément Mouamba at the EITI Global Conference in June 2019 in Paris.[23] However, there have been no dedicated discussions of possible constraints on civil society at MSG meetings, likely in part a reflection of the MSG's weaknesses in the 2017-2019 period (see *Requirement 1.4*). Administrative delays and barriers to the holding of public events related to EITI appear to have been overcome in some cases by leveraging the influence of EITI Congo National Coordinator Michel Okoko. There is also evidence that the EITI has led to some broadening of broader civic space in the period under review. There have been at least two documented instances where the EITI's civil society protocol was successfully leveraged by CSOs engaged in the EITI to ensure that draft legislation imposing new statutory curbs on CSOs' operations was not enacted in 2017 and to ensure the release of arrested civil society activists not engaged in EITI implementation. However, stakeholder views on the existence of constraints on civil society's ability to fully engage in all aspects of EITI implementation related to self-censorship, operational constraints and barriers to freedom of association were split, including within the civil society constituency.

Expression: The 2015 Constitution guarantees freedom of speech and of the press (Article 25), although international rankings of civic space have reported that the government's respect for such freedoms is limited in practice. Freedom House's ranking of the Republic of Congo has remained "not free", at 6/7, from 2017[24] to 2019[25], with its assessment of press freedom remaining "partly free" and civil liberties "not free" (5/7) in this period. The US Department of State's annual human rights report on the Republic of Congo has highlighted similar challenges in its 2017[26] and 2018[27] editions. Amnesty International's 2017/2018 review of the Republic of Congo highlighted restrictions on freedom of expression.[28] The 2019 Freedom in the World ranking noted reports of government surveillance of electronic communications and occasional arrests of those speaking out against the

[21] Publiez Ce Que Vous Payez Coalition Congolaise (September 2019), 'Note de position n°3 sur l'Accord FMI-Congo: Observations sur les mesures de Transparence liées à la Facilité Elargie de Crédit (FEC)", accessed here in February 2020.
[22] ITIE Congo (June 2018), 'Atelier national d'appropriation des recommandations du Rapport de validation de l'ITIE Congo', accessed here in February 2020.
[23] EITI (June 2019), 'EITI Global Conference: Prime Minister H.E. Clément Mouamba, Republic of Congo', accessed here in February 2020.
[24] Freedom House (2017), 'Freedom in the World 2017: Republic of Congo', accessed here in February 2020.
[25] Freedom House (2019), 'Freedom in the World 2019: Republic of Congo', accessed here in February 2020.
[26] US Department of State (2018), Country Reports on Human Rights Practices for 2017: Republic of Congo', accessed here in February 2020.
[27] US Department of State (2019), 'Country Reports on Human Rights Practices for 2018: Republic of Congo', accessed here in February 2020.
[28] Amnesty International (2018), 'Congo 2017/2018', accessed here in February 2020.

government.[29] The country's ranking in the Reporters without Borders' (RSF) Freedom of the Press rankings dropped four levels to 117th of 180 countries between the 2017 and 2019 editions.[30]

The incidents highlighted in these international reviews of civic space are not directly related to EITI implementation or natural resource governance, but reflect broader concerns over self-censorship and intimidation. Amnesty International[31] and Reporters Without Borders (RSF)[32] have highlighted the practice of self-censorship and limits to freedom of expression for civil society and the media, including reports of the judicial police's summoning of Talassa newspaper editor Ghys Fortuné Dombé Bemba over publication of a statement by a domestic armed group[33] and of the media regulator CSLC's (*Conseil supérieur de la liberté de communication*) alleged intimidation of editorial staff at the newspaper Manager Horizon in August 2019 through an official reprimand for publishing an investigation of alleged financial mismanagement at the National Civil Aviation Agency (ANAC).[34] RSF notes on its Congo page that self-censorship remains a "permanent" challenge for journalists that are intimidated and scared of criticising authorities, with most media owned by individuals close to the political authorities.[35] Despite constitutional provisions protecting freedom of expression in all communications and prohibiting censorship, the US State Department's 2017 and 2018 reports on human rights note risks of (unspecified) reprisals for individuals criticizing the government.[36] However, the 2017 and 2018 human rights reports highlighted greater space in online media for critical discussion of government policies compared to 2016.[37] The two reports however highlighted incidents of alleged intimidation of media, including non-lethal force against journalists reporting on "sensitive" events, official and anonymous phone calls warning journalists against coverage of events deemed "politically-sensitive" and pressure on news outlets not to cover certain issues.[38] The reports highlighted the practice of self-censorship by "many journalists and editors" who promoted the editorial views of their media's owners, with two media activities suspended in 2018 by the media regulator CSLC for publishing unverified or misleading information related to issues other than natural resource governance.[39] A 2019 report on human rights by local CSO OCDH (*Observatoire Congolais des Droits de l'Homme*) describes several cases of direct or indirect intimidations of journalists in 2017-2018, related to public expressions critical of Government Ministers not related with the EITI process[40].

There is no indication of any new government constraints on the environment for civil society's engagement in EITI implementation. There is no publicly-available evidence of reprisals against CSOs expressing public views critical of the government's management of the extractive industries or broader natural resource governance. Publicly-available evidence suggests that civil society MSG members have brought up "sensitive" topics in the 2018-2019 period both during MSG meetings and in public communications such as media interviews, press releases and public advocacy notes. These "sensitive" topics covered in public pronouncements include SNPC's financial management and relations with the government, unpaid crude oil transfers to the CORAF refinery, the Chinese

[29] Freedom House (2019), 'Freedom in the World 2019: Republic of Congo', accessed here in February 2020.
[30] Reporters without Borders website, Freedom of the Press rankings, accessed here in February 2020.
[31] Amnesty International (November 2018), 'Congo : l'opposition politique sous pression', accessed here in February 2020.
[32] Reporters without Borders website, Republic of Congo webpage, accessed here in February 2020.
[33] Amnesty International (2018), 'Congo 2017/2018', accessed here in February 2020.
[34] Reporters without Borders (August 2019), 'Media regulator threatens Brazzaville weekly with closure', accessed here in February 2020; and CIVICUS (September 2019), 'NATIONAL MEDIA REGULATOR THREATENS WEEKLY OVER PUBLICATIONS ON ALLEGED CORRUPTION', accessed here in February 2020.
[35] Reporters without Borders website, Congo-Brazzaville country page, accessed here in February 2020.
[36] US Department of State (2019), accessed here in February 2020, p.13.
[37] US Department of State (2018), accessed here in February 2020, p.12; and US Department of State (2019), accessed here in February 2020, p.14.
[38] US Department of State (2018), accessed here in February 2020, pp.12-13; and US Department of State (2019), accessed here in February 2020, p.14.
[39] US Department of State (2019), accessed here in February 2020, p.15.
[40] Observatoire Congolais des droits de l'homme (OCDH) (2019), 'Rapport annuel 2019 : droits de l'Homme au Congo-Brazzaville', accessed here in February 2020, pp.65-67.

infrastructure framework agreement, pre-financing agreements with commodity traders, the management of oil and gas revenues not transferred to the Treasury, the maritime tax and allegations of financial embezzlement by individuals associated with the government.[41] While these pronouncements were made by civil society MSG members, there is some evidence of public expression by CSOs outside of the MSG on allegations of embezzlement of public funds by politically-exposed persons. Following an August 2019 Global Witness report on embezzlement of Ministry of Hydrocarbons funds by politically-exposed persons, the OCDH (*Observatoire Congolais des Droits de l'Homme*), a CSO not directly represented on the MSG, issued a joint press release with the CSO platform for the respect of human rights and democracy on 17 August 2019 calling for a waiver of parliamentary immunity of two members of Parliament referenced in the Global Witness report. They made this request to President Sassou Nguesso, as part of a plea for a parliamentary inquiry and judicial investigation into the issue. None of the stakeholders consulted had observed any reprisal following this press release, which was interpreted as a sign of growing freedom of expression.

Opinions of stakeholders consulted were split over whether incidents of self-censorship and reprisals for expression related to issues such as human rights, political opposition and non-extractives corruption had an impact on CSOs' ability to express themselves on EITI-related issues or on broader natural resource governance. All government and industry stakeholders consulted considered that there were no constraints on CSOs' ability to express themselves publicly on any issue related to EITI and natural resource governance. The views of civil society stakeholders consulted were split on this issue, broadly between international NGOs and national CSOs based in the Republic of Congo. Whereas the MSG's meeting on 22 June 2018 on the findings from the Republic of Congo's first Validation, chaired by Minister of Interior, Decentralisation and Territorial Administration Charles Nganfouomo, noted that the freedom of expression afforded to CSOs on the MSG did not extend to other CSOs working on governance issues not directly represented on the MSG[42], opinions of CSOs consulted in early 2020 varied on the extent of freedom of expression by non-MSG member CSOs on issues related to EITI and natural resource governance.

When discussing the existence of « no-go » topics and the extent of self-censorship on EITI-related issues, national civil society considered that they could express themselves freely on all issues related to the EITI Standard. National CSOs consulted did not identify any 'no go' topics related to the extractive industries or natural resource governance that they could not raise in public. While national CSOs acknowledged broader constraints on expression, operation and association, in particular about issues related to politics, human rights and, in particular, members of President Sassou Nguesso's family, they did not consider these issues to be related to EITI implementation and thus did not consider the civil society protocol's provisions on expression to have been breached. Several stakeholders from both domestic and international civil society confirmed that there was self-censorship in relation to criticising the country's President and family, with at least one direct anecdote of an oral warning from a government official to avoid such criticism that was interpreted as a threat. However, opinions differed over whether such self-censorship affected civil society to fully

[41] See for instance Publiez Ce Que Vous Payez Coalition Congolaise (September 2019), 'Note de position n°3 sur l'Accord FMI-Congo : Observations sur les mesures de Transparence liées à la Facilité Elargie de Crédit (FEC)", accessed here in February 2020; Publiez Ce Que Vous Payez Coalition Congolaise (July 2019), 'Note de position : ACCORD CONGO-FMI DU 11 JUILLET 2019 : Passer enfin des réformes cosmétiques à une gouvernance ouverte et des résultats !', accessed here in February 2020; Publiez Ce Que Vous Payez Coalition Congolaise (May 2019), 'Note de position : Appel à plus de Transparence sur le rééchelonnement de la dette chinoise', accessed here in February 2020; Publiez Ce Que Vous Payez Coalition Congolaise (Avril 2019), 'Note de position: De l'urgence de stopper le cercle vicieux de l'endettement du Congo-Brazzaville', accessed here in February 2020; Publiez Ce Que Vous Payez Coalition Congolaise (Mars 2019), 'Note de position PWYP Congo : RAPPORT ITIE CONGO 2016', accessed here in February 2020; Publiez Ce Que Vous Payez Coalition Congolaise (September 2017), 'PUBLIEZ CE QUE VOUS PAYEZ - CONGO DEMANDE L'OUVERTURE D'UNE ENQUÊTE À LA SUITE DES RÉVÉLATIONS DU RAPPORT DE PUBLIC EYE', accessed here in February 2020; Publiez Ce Que Vous Payez Coalition Congolaise (September 2017), 'INSCRIRE LA TRANSPARENCE, LA REDEVABILITÉ ET LA LUTTE CONTRE LA CORRUPTION DANS LES PRIORITÉS DU PARTENARIAT AVEC LE FMI', accessed here in February 2020; Secours Catholique Caritas France (April 2019), 'BRICE MACKOSSO, LE POIL À GRATTER DU RÉGIME CONGOLAIS', accessed here in February 2020.

[42] ITIE Congo (June 2018), 'Atelier national d'appropriation des recommandations du Rapport de validation de l'ITIE Congo', accessed here in February 2020.

engage in EITI implementation. Several national CSOs considered that it was still possible to use the EITI to publicly discuss oil and gas issues, even if politically-exposed persons had been named in a series of international NGO investigations alleging corruption in Congo's oil and gas sector. All national civil society organisations consulted considered that they could express themselves freely on all issues they considered covered by the EITI Standard. Many civil society representatives confirmed that despite broader constraints on expression and association on issues they did not consider related to the EITI, such as human rights and politics, they considered that the situation had improved since the period 2016-2017 at the time of constitutional changes and presidential elections, allowing national CSOs to engage in more public advocacy work with authorities than before. On the other hand, they all noted the creation of a framework of dialogue and collaboration on CSOs activities led by the Ministry of Justice in 2019 and the establishment of the Civil Society Consultative Council by Act No. 32-2017 of 7 August 2017, funded by the public budget.[43] These two events were interpreted by many of the civil society organisations consulted as a mean for the Government to monitor and exercise closer oversight of civil society organisations' activities. Presidential Decree 2019-383 allocates one MSG seat within the government constituency to the Civil Society Consultative Council.[44]

Many international CSO representatives disagreed sharply and considered that broader civic space could not be dissociated from the environment for civil society's engagement in EITI implementation, and listed any corruption investigation as a topic that could trigger government retaliation. Several international CSOs emphasised the severity of alleged broader human rights abuses as a key context for CSOs' expression on natural resource governance issues. Other international CSOs emphasised the lack of broader discussion of Congolese oil and gas scandals in the national press beyond MSG member PWYP Congo's "no tes de position" and a handful of articles attacking the authors' motives. The international news stories mentioned repeatedly in consultations included Swiss anti-corruption court rulings involving commodity trader Gunvor in Congo in August 2018[45] and October 2019[46], civil society investigations into allegations of irregularities in oil and gas license transfers to ENI[47], Total[48] and SOCO[49], and an international NGO report in August 2019 on allegations of embezzlement by politically-exposed persons of USD 50m in Ministry of Hydrocarbons funds earmarked for a geological mapping project.[50] Most stakeholders consulted knew of these international events and allegations. Several stakeholders from all constituencies noted that other factors beyond potential self-censorship could explain the lack of significant analysis of the international press reports in the national media, including technical and financial capacity constraints of local media. Several CSOs emphasised the ownership of media by individuals close to the political authorities was a factor in the printed press not covering such events in detail.

Some international CSOs provided anecdotal evidence of what was interpreted as intimidation and cause for self-censorship of CSOs engaged in EITI at certain public events in the regions, including the presence of uniformed police at public events organised by national CSOs in oil producing regions (*see Operation below*). Several international CSOs consulted considered that Congolese CSOs practiced self-censorship on certain topics related to the oil sector that involved politically-exposed persons. There is documentary evidence of allegations of intimidation of Congolese CSOs, albeit not directly related to their work on EITI issues specifically. A press release by the international NGO FERN focused

[43] Journal official de la République du Congo, "Loi organique n°32-2017 du 7 août 2017déterminant l'organisation, la composition et le fonctionemment du Conseil Consultatif de la Société civile et des organisations non-gouvernementales", accessed here in March 2020.
[44] Décret n°2019-383 du 27 décembre 2019 portant création, attribution, organisation et fonctionnement du comité national de l'Initiative pour la Transparence dans les Industries Extractives, accessed here in February 2020.
[45] Bloomberg (August 2018), 'Ex-Gunvor Oil Trader Found Guilty of Bribing African Officials', accessed here in February 2020.
[46] Le Temps (October 2019), 'Amende pour Gunvor dans une affaire de corruption', accessed here in February 2020 and Financial Times (October 2019), 'Gunvor pays almost $100m to settle Africa corruption case', accessed here in February 2020.
[47] Global Witness (October 2019), 'The spotlight sharpens', accessed here in February 2020.
[48] Global Witness (December 2018), 'Bailouts and bad business in Brazzaville', accessed here in February 2020.
[49] Global Witness (February 2019), 'A dud deal', accessed here in February 2020.
[50] Global Witness (August 2019), 'Sassou-Nguesso's laundromat: a Congolese state affair – Part II', accessed here in February 2020.

on forestry issues in May 2019[51] denounced the direct intimidation against its local partner, the human rights NGO OCDH that also works on issues of natural resources governance, through oral threats, ad hoc convocations by authorities, the direct intrusion into their offices by some security forces and the ban on the NGO's representatives being able to travel to an international UN conference on human rights due to lack of payments of social security contributions.

Operation: The establishment of civil society organisations continues to be governed by the regime of declaration (rather than authorisation) in the 1901 French law on associations[52] as in the first Validation, amidst constitutional guarantees of freedom of movement, association, assembly, procession and demonstration (Article 21). The draft law on associations that had been adopted by Parliament in 2016 and was awaiting promulgation by the President at the time of the first Validation in 2017 has since been voided. While the bill would have criminalized some civil society activities and restricted their access to foreign funding[53], the lack of presidential assent to the draft law led to its annulment.[54] Several domestic and international CSOs considered that this was a direct impact of the first Validation, given PWYP Congo's proactive advocacy on the risks of the draft law during the first Validation process (from April 2017 to June 2018).

All CSOs engaged directly and indirectly in EITI implementation appear duly registered and do not appear to face restrictions on access to international funding, as confirmed in stakeholder consultations. There is evidence that CSOs have been able to access foreign funds to support their participation in EITI implementation, for instance the funding of PWYP Coalition and the Justice and Peace Commission's (Commission Justice et Paix) dissemination of the 2016 EITI Report in May and June 2019 and a local content workshop in December 2018. While several CSOs consulted highlighted funding constraints for their EITI work, including coordination within the civil society constituency, there was consensus that these funding challenges were not due to government legal or administrative constraints on access to funding but rather to the availability of such funding in the first place.

With regards to holding meetings and disseminating information, the 1901 French law on associations[55] confirms that CSOs are not required to seek prior authorization to conduct their activities, including public assembly and dissemination of information. However, NGOs are required to seek authorization from the Ministry of Interior, Decentralization and Territorial Administration or from relevant local officials for the use of public space to hold public assemblies and demonstrations. Both Amnesty International and the US Department of State's human rights reports note that such authorisations can be denied on the grounds of "preserving public order".[56] The US State Department report concludes that there are restrictions on freedoms of assembly and association, despite constitutional guarantees.[57]

National CSOs consulted explained that they were able to hold public meetings in private spaces without prior authorisation from the government. They explained that they did not tend to hold public demonstrations in public spaces in relation to EITI or natural resource governance issues. They noted that the authorities tended to be reticent to authorise public demonstrations on issues related to human rights or politics, given the potential for unrest, but they did not consider this to affect their

[51] FERN (May 2019), 'Les acteurs de la société civile victimes d'intimidations en République du Congo', accessed here in February 2020.
[52] Loi du 1er juillet 1901 relative au contrat d'association, accessed here in February 2020.
[53] RPDH (June 2016), 'ANALYSE ET COMMUNIQUÉ DE PRESSE - SUR LA PROPOSITION CONGOLAISE SUR LE RÉGIME DES ASSOCIATIONS ET ONGS', accessed here in February 2020.
[54] Freedom House (May 2019), 'Freedoms Under Threat: The Spread of Anti-NGO Measures in Africa', accessed here in February 2020, pp.3,16.
[55] Loi du 1er juillet 1901 relative au contrat d'association, accessed here in February 2020.
[56] See Amnesty International (March 2018), 'Congo-Brazzaville: Torture and arbitrary detentions of dozens of people put freedom of expression under severe strain', accessed here in February 2020; and US Department of State (2019), Country Reports on Human Rights Practices for 2018: Republic of Congo', accessed here in February 2020.
[57] US Department of State (2019), accessed here in February 2020.

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dissemination and outreach activities related to EITI as these were held on private property. However, some CSOs highlighted instances of practical challenges in the organisation of some dissemination and outreach events on private property in the 2017-2019 period, which in some cases appear to have been overcome through intervention by the EITI Congo national coordinator. Several CSOs have highlighted several instances in 2017-2018 when initial bans on EITI-related outreach and dissemination events by local governments were overturned after EITI Congo National Coordinator Michel Okoko's direct intervention with the local government head (Préfet), although civil society and government stakeholders consulted did not have records or recollections of the specific dates and details of these events.

While several development partners and international NGOs confirmed the presence of police forces at some CSO outreach events related to promoting host communities' rights and to dissemination of EITI data, for instance at a PWYP Congo organised event in August 2019, they confirmed that this had not prevented these activities from taking place. However, they considered that the police presence was interpreted as a form of intimidation that affected attendees' freedom of expression and encouraged their self-censorship. Some CSOs consulted noted that traditional local authorities in some communities now required that CSOs seek explicit authorisation from the local government head (Préfet) before holding public events in their communities. During the MSG's meeting on the findings from the Republic of Congo's first Validation in June 2018, chaired by Minister of Interior, Decentralisation and Territorial Administration Charles Nganfouomo, CSOs called for more training of local authorities about the mandate of CSOs to carry out dissemination and outreach activities related to EITI and natural resource governance.[58] There is no evidence such awareness raising of local authorities has taken place in the 2018-2019 period, although there is evidence of EITI Congo National Coordinator Michel Okoko's intervention at the level of individual local government heads (Préfets), to overcome administrative barriers to specific EITI outreach activities once alerted by civil society MSG members.

Several CSOs consulted noted incidents of burglaries of certain Congolese NGOs' offices. Beyond the intrusions in the OCDH offices highlighted in the international NGO FERN's May 2019 press release[59], a March 2018 press release[60] by Transparency International raised concerns over the break-in and vandalization of the offices of its Congolese affiliate RPDH (Rencontre pour la Paix et les Droits de l'Homme) on 8 March 2018. A subsequent RPDH press release[61] on the incident questioned the incident's categorisation as a robbery, noting that the intruders only stole electronical devices containing data and that no witness in the area provided testimony. While several national CSOs considered that this event was a simple burglary, several international CSOs considered that the intrusion had been staged by authorities seeking to intimidate RPDH, leading to self-censorship. Some international CSOs and development partners shared other instances of intrusion and robberies in the offices of local CSOs working on human rights or the forestry sector. Some international CSOs emphasised the lack of any investigation by judicial authorities into these incidents, despite calls for official government follow-up by the local NGOs involved.

There have been no reported incidents of arrests of CSOs focused on EITI or natural resource governance in the 2017-2018 period. However, there have been arrests of CSOs engaging in public demonstrations on political issues, including the arrest of 23 activists from the "Ras-le-bol" civic and social rights collective in Brazzaville and Pointe-Noire in May 2018 on charges of "association with

[58] ITIE Congo (June 2018), 'Atelier national d'appropriation des recommandations du Rapport de validation de l'ITIE Congo', accessed here in February 2020.
[59] FERN (May 2019), 'Les acteurs de la société civile victimes d'intimidations en République du Congo', accessed here in February 2020.
[60] Transparency International (March 2018), 'Transparency International condemns intimidation of its national chapter in Republic of the Congo', accessed here in February 2020.
[61] OCDH & RPDH (March 2018), 'Communiqué de presse conjoint', accessed here in February 2020.

criminals and participation in a unauthorised demonstrations".[62] Following a meeting between PWYP Congo and Prime Minister Clément Mouamba on 30 May 2018, where the CSO argued that the arrests contravened the EITI's civil society protocol, the activists were released without charges.[63] There was consensus among stakeholders consulted, including from government and civil society, that PWYP Congo's leverage from the ongoing first EITI Validation, with an EITI Board decision looming in late June 2018, was key to ensuring the release of the "Ras-le-bol" activists. National CSOs consulted confirmed that they did not consider the activists to be stakeholders substantially involved in EITI nor engaged in EITI activities at the time of their arrest, but highlighted this incident as an example of the successful use of the EITI to broaden civic space beyond issues directly related to natural resource governance. However, national and international press articles indicate that five activists from the civic rights and youth NGOs "Ras-le-bol", the "Youth and Awareness Association of Congo" (*Association Jeunesse en Eveil du Congo* - AJEC) and "Hope Embodied" (*Incarneurs d'Espoir*) were arrested in December 2019.[64]

<u>*Association:*</u> Despite constitutional guarantees of freedom of association (Article 29), international rankings of civic space like the US Department of State's 2018 human rights report[65] and the 2019 Freedom in the World ranking[66] highlight restrictions on freedom of association in practice. The 2019 Freedom in the World ranking in particular notes reports of government surveillance of electronic communications. Opinions were split between different stakeholders consulted over whether such curbs on broader freedom of association impacted CSOs' ability to freely associate in relation to all aspects of EITI implementation. Several international CSOs consulted considered that government surveillance and general curbs on freedom of association could not be dissociated from EITI implementation, primarily by encouraging self-censorship (*see Expression above*), although they did not cite anecdotal evidence about specific instances of restrictions on freedom of association in relation to EITI. None of the national CSOs consulted considered that these broader constraints, which they recognised and confirmed, had impacted their association in relation to EITI in practice.

Despite the renewal of civil society members of the MSG in 2019 (*see Requirement 1.4*), the same CSOs engaged in EITI implementation in the period covered by the first Validation have remained engaged in EITI in the 2017-2019 period. However, a number of new civil society coalitions have been established since 2016, which have been included in coordination on EITI related issues such as debt, forestry, women lawyers and youth entrepreneurship. These included the Congo Debt and Development Platform (*Plateforme Dette et Développement*), the Sustainable Forestry Management Platform (*Plateforme pour la Gestion Durable des Forêts*), the Human Rights Platform (*Plateforme des droits de l'homme*), the Association of Women Lawyers (*Association des Femmes Juristes*), the Aid for Development Platform (*Plateforme Aide au Développement*), a media trade union and the Young Business Forum (*Forum des jeunes entreprises*).

Evidence suggests that civil society representatives on the MSG can generally seek input from other CSOs and are not restricted from engaging other CSOs that are not part of the MSG. Through PWYP Congo and more broadly through other networks engaging in EITI, civil society representatives on the

[62] Amnesty International (May 2018), 'Congo-Brazzaville. Les autorités doivent libérer les militants du mouvement Ras-le-bol et mettre un terme au harcèlement des acteurs de la société civile', accessed here in February 2020; and Immigration and Refugee Board of Canada (April 2019), 'Republic of the Congo: Treatment of political opponents by the authorities (2015-April 2019)', accessed here in February 2020.
[63] Publiez Ce Que Vous Payez Coalition Congolaise (June 2018), 'Communiqué de presse: Garantir un environnement propice à l'action de la société civile dans le suivi des politiques publiques', accessed here in February 2020; Amnesty International (2018), 'Congo: l'opposition politique sous pression', accessed here in February 2020, p.9.
[64] RFI (February 2020), 'Congo-B: des ONG exigent la libération de cinq activistes de mouvements citoyens', accessed here in February 2020; ACAT France (February 2020), 'DÉTENTION ARBITRAIRE DE CINQ JEUNES ACTIVISTES CONGOLAIS', accessed here in February 2020; and RFI (December 2019), 'Congo-Brazza: le mouvement Ras-le-bol dénonce la détention d'un de ses militants', accessed here in February 2020.
[65] US Department of State (2019), accessed here in February 2020.
[66] Freedom House (2019), 'Freedom in the World 2019: Republic of Congo', accessed here in February 2020.

MSG are able to coordinate their activities and circulate information through mailing lists, as confirmed through stakeholder consultations. Civil society MSG representatives have conducted outreach activities to broader civil society to discuss MSG representation, from October 2018 to October 2019. PWYP Congo initiated a call for expressions of interest for the renewal of the constituency's MSG representation, disseminated through the civil society coalitions listed above, with a view to expanding the types of CSOs engaged in EITI to those working on the forestry sector.

Several civil society stakeholders consulted not directly represented on the MSG however noted that they did not receive consistent updates on EITI activities from their MSG representatives. Beyond the outreach to the broader constituency on the issue of renewing the constituency's MSG representation, there is only sparse documentary evidence of civil society MSG members' outreach to the broader constituency on issues discussed within the MSG. There is evidence of three constituency coordination meetings in Brazzaville in 2019 organised by AGODEC, whose representative sits on the MSG, including a workshop on 20 July 2019 involving 18 non-MSG member CSOs focused on awareness-raising on EITI and the findings from the first Validation, and one meeting on 5 November 2019 to agree civil society's comments on the draft 2017 EITI Report. Another outreach meeting towards CSOs working on the forestry sector has been organised on the 13 August 2019, with support of some international partners.[67] Several CSOs consulted explained that weaknesses in the constituency's coordination on EITI was due to both financial constraints and scepticism between CSOs about possible leaks of information to the authorities.

<u>*Engagement:*</u> Documentary evidence and stakeholder consultations indicate that civil society engagement in all aspects of EITI implementation has not declined since the period reviewed in the first Validation. Civil society representatives attend MSG meetings regularly, conduct analysis of EITI Reports, produce communication materials and organise some public events to inform citizens on EITI data and natural resource governance. The head of the PWYP Congo coalition, Christian Mounzeo, was reappointed as MSG Vice-Chair through Presidential Decree 2019-393 of 28 December 2019 (*see Requirement 1.4*). Civil society representatives on the MSG regularly express their views during EITI activities, including highlighting concerns about issues related to natural resource governance such as the management of maritime tax payments by oil and gas companies. The minutes of MSG meetings indicate that CSOs were particularly active in discussions related to the Independent administrator's selection and Terms of Reference as well as draft EITI Reports. Civil society MSG members also appear to have been the drivers of key developments such as the creation of dedicated MSG working groups on corrective actions from Validation and MSG renewal. There is also evidence of civil society engagement in different aspects of EITI implementation in public fora, including a March 2019 PWYP Congo press release expressing criticism of aspects of the 2016 EITI Report[68], a November 2019 meeting organised by AGODEC to coordinate civil society comments on the draft EITI Report, various PWYP Congo press releases and broadcast media interviews (on Vox TV, RFI, etc.) drawing on EITI data. AGODEC published a report in October 2017 about the collection and management of oil revenues in the country.[69] The PWYP Congo coalition undertook dissemination of findings of the 2016 EITI Report, together with their health budget monitoring activities, reaching a total of 444 people across 12 departments in the May-June 2019 period. Civil society MSG members have also participated in the EITI Congo press conferences launching EITI Reports, most recently in December 2019 for the 2017 EITI Report. They also organised two workshops to disseminate the findings of the 2017 Report targeting CSOs and students in Brazzaville, in December 2019, in accordance with the EITI Congo ToR for the dissemination of the 2017-2017 EITI Reports (*see Requirement 7.1*). There was consensus among stakeholders consulted that civil society was actively

[67] Group of 23 Congolese CSOs (13 August 2019), « Communiqué final sanctionnant l'atelier de validation de la note sur l'Initiative de Transparence des Industries Extractives et des Forêts », consulted here in February 2020.
[68] Rencontre pour la paix et les droits de l'homme (RPDH) (March 2019), 'Note de position : Rapport ITIE Congo 2016', accessed here in February 2020.
[69] AGODEC (October 2017), « Observation sur les recettes pétrolières de la République du Congo », accessed here in February 2020.

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engaged in all aspects of EITI implementation in the 2017-2019 period, with several civil society stakeholders noting that CSOs had used the EITI as a means of achieving their objectives, for instance in obtaining more information on the management of oil and gas revenues not transferred to the Treasury. Several stakeholders considered that civil society was a driving force for EITI implementation. With respect to their capacity, representatives from other constituencies and development partners generally considered that the CSOs had the technical capacity to participate in EITI implementation, but that the responsibility usually fell to a few organisations given financial and technical capacity constraints for many members of the broader civil society constituency.

Access to public decision-making: There is evidence that civil society representatives are able to provide input both to EITI-related activities and broader public policy-making. Review of MSG meeting minutes made available during Validation indicates that civil society representatives are outspoken in MSG meetings and have consistently attended all meetings of the MSG's ad hoc working groups, which played a key role in the 2017-2018 period when the MSG met only intermittently. It appears that civil society organisations have been the key driver in outreach and dissemination during this period (*see Requirement 7.1*). Civil society representatives both on and off the MSG have conducted public outreach, dissemination and advocacy activities on issues related to EITI implementation in the 2017-2019 period. The PWYP Congo coalition published five advocacy notes in this period on sovereign debt levels[70], on the IMF's extended credit facility and links to the EITI process[71], on the outlook for oil and gas production and potential environmental impact of oil activities in Congo Basin Forest. Civil society representatives on the MSG have also had access to high-level government officials through the EITI process, including at the MSG's meeting on the findings from the first Validation in June 2018, chaired by Minister of Interior, Decentralisation and Territorial Administration Charles Nganfouomo[72] and at a meeting of PWYP Congo at the Prime Minister's office about the maritime tax in October 2019, as well as during meetings of the international EITI such as EITI Chair Helen Clark's meeting with Prime Minister Clément Mouamba on 19 June 2019 and EITI International Secretariat staff meetings with Minister of Finance Calixte Nganongo, Minister of Hydrocarbons Jean-Marc Thystère-Tchicaya, Minister of Mines Pierre Oba and Minister of the Forest Economy Rosalie Safou-Matondo during an implementation support mission to Brazzaville in October 2019. Civil society representatives attended these meetings and expressed their views, including about the need for adherence to the civil society protocol.

Evidence suggests that civil society has channels for providing input to public decision-making, including providing input to the drafting of the Transparency Code enacted in March 2017 and follow-up meetings to advocate for its implementation with both MPs and the government officials in 2017-2019. One of the conditions of the IMF's extended credit facility concerns the establishment of a separate Commission for Transparency and Accountability in Public Financial Management that includes representatives from civil society. This Commission was established with Presidential Decree 2019-385 on 10 December 2019, with two civil society members including the MSG member from the Debt and Development Platform (*Plateforme Dette et Développement*). Stakeholder consultations also confirmed regular consultations between civil society representatives and development partners, including the IMF.

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[70] Publiez Ce Que Vous Payez (PCQVP) - Coalition congolaise (May 2019), 'Appel à plus de transparence sur le rééchelonnement de la dette choinoise', accessed here in February 2020; and Publiez Ce Que Vous Payez (PCQVP) - Coalition congolaise (April 2019), 'De l'urgence de stopper le cercle vicieux de l'endettement du Congo-Brazzaville', accessed here in February 2020.
[71] Publiez Ce Que Vous Payez (PCQVP) - Coalition congolaise (July 2019), 'Accord Congo-FMI du 11 juillet 2019 : passer enfin des réformes cosmétiques à une gouvernance ouverte et des résultats !', accessed here in February 2020; and PCQVP – Coalition congolaise (September 2019), 'Note de position n°3 sur l'accord FMI-Congo: observations sur les mesures de transparence liées à la facilité élargie de crédit (FEC)', accessed here in February 2020.
[72] ITIE Congo (June 2018), 'Atelier national d'appropriation des recommandations du Rapport de validation de l'ITIE Congo', accessed here in February 2020.

Several CSOs consulted considered that they could engage in more advocacy work in the 2017-2019 period, in terms of access to Members of Parliament and government officials. However, several CSOs complained that their advocacy work was hampered by a lack of access to government document such as draft legislation. Several CSOs considered that the lack of public access to government reports sent to Parliament in mid-2019 on special agreements such as the China infrastructure agreement and the pre-financing arrangements with commodity traders was an illustrative example of constraints on CSOs' access to information that was considered key to civil society oversight of and input to of the development of public policies. Several international CSOs consulted noted that they had not received responses from government representatives on questions about the management of the extractive industries, despite their attempts to establish a dialogue.

Secretariat's Assessment

The International Secretariat's preliminary assessment is that the corrective action on civil society has been partly addressed and that the Republic of Congo has made meaningful progress with considerable improvements on Requirement 1.3. While the assessment of adherence to the civil society protocol requires a judgement call on the impact of broader civic space restrictions on civil society's ability to engage in EITI, the Secretariat's preliminary assessment is that there have been improvements in the environment for civil society's participation in EITI implementation, even if administrative and practical constraints appear to constrain some aspects of civil society's engagement in EITI-related outreach and dissemination activities. While self-censorship as a consequence of such practical constraints on civil society's operations is difficult to rule out, publicly-accessible evidence suggests that civil society members both on and off the MSG have been able to speak out publicly on issues previously considered off-limits in the first Validation.

In accordance with the assessment framework outlined in the civil society protocol, provisions related to civil society participation are assessed each in turn covering both the environment for civil society engagement as well as civil society's use of this space to be fully, actively and effectively engaged in all aspects of EITI implementation.

Expression: The broader environment for civil society expression in the Republic of Congo continues to be assessed as constrained in international rankings of civic space, given allegations of self-censorship and intimidation of both media and civil society organisations. Yet evidence and stakeholder consultations suggest that civil society representatives on the MSG can express themselves freely on topics that they deemed linked to the EITI. There is a clear divide in opinions between different civil society stakeholders on the extent to which broader constraints on expression affected civil society's ability to freely express themselves during EITI-related outreach and dissemination activities. Several CSOs considered that stakeholders both on and off the MSG were able to freely express critical views at public events related to EITI, noting documented instances of public criticisms of the government's management of the oil and gas sector at public gatherings, in press releases and in the media. Other CSOs considered that instances of alleged intimidation, linked to burglaries, to the presence of police forces at public gatherings related to EITI and ad hoc requirements to seek prior approval for public meetings on private property, effectively forced civil society to practice self-censorship in relation to issues they deemed related to EITI implementation, such as allegations of corruption involving politically-exposed persons in relation to some pre-financing agreements and oil licences awards. Most stakeholders consulted highlighted technical and financial capacity constraints within civil society as another potential factor in limiting public expression on these issues. Nonetheless, there is publicly-available documentary evidence of public expression by CSOs both on and off the MSG on issues previously considered "off-limits", including on the involvement of politically-exposed persons in alleged corruption in the oil and gas sector, crude oil sales and sovereign debt arrangements involving the China infrastructure agreement and pre-financing agreements with commodity traders. While there is little evidence of civil society's public expression on allegations of corruption in the Congolese oil and gas sector in international NGO research and foreign judicial investigations in the 2017-2019 period, the issues raised by these investigations have been discussed from a technical perspective within the MSG and in PWYP Congo press releases. The International Secretariat concludes in its preliminary assessment that, despite evidence of broader self-censorship on issues related to human rights and politics, there is sufficient evidence to suggest that civil society has been able to freely express their views related to EITI-related issues and natural resource governance in the 2017-2019 period in accordance with provision 2.1 of the civil society protocol and Requirements 1.3(d), 1.3(e)(i), 1.3(e)(iv) of the EITI Standard.

Operation: The International Secretariat concludes that, while civil society can operate effectively in the context of the EITI in terms of registration and access to financing, there appears to have been ad hoc constraints on its freedom to organise public EITI dissemination and outreach events due to administrative and practical barriers imposed by local government representatives in particular. However, the EITI civil society protocol and the prospect of Validation were instrumental to civil society's successful opposition in 2017 to the attempted enactment of a new law on associations that would have restricted civil society's registration, advocacy and access to foreign funding. The civil society protocol was also invoked to ensure the release of arrested political activists in 2018. Opinions of stakeholders consulted were split over whether these ad hoc restrictions represented actions of over-zealous local government officials or constituted coordinated attempts by the national government to impose restrictions on civil society's ability to hold public EITI-related events. There is evidence that some local government officials have required civil society to seek prior authorisation to hold public EITI-related events on private property, in contrast to provisions of the Constitution and the 1901 Law on associations. There is also anecdotal evidence of police forces attending certain EITI-related public events. Nonetheless, the EITI has been used as a means of lifting some administrative and practical restrictions on certain EITI-related public events. Thus, it appears that interventions by EITI Congo National Coordinator Michel Okoko with local government officials were instrumental in allowing specific EITI dissemination and outreach events to take place. However, the government's commitment to hold capacity-building activities to consistently reduce local governments' administrative and practical barriers to EITI events have not been implemented to date. The International Secretariat concludes in its preliminary assessment that *de facto* administrative and practical constraints have hampered civil society's ability to engage freely in public EITI dissemination and outreach events, in violation of the provision 2.2 of the civil society protocol and Requirements 1.3 b) and 1.3 c) of the EITI Standard.

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

Engagement: The International Secretariat concludes in its preliminary assessment that civil society actors are adequately engaged in all aspects of EITI implementation despite the ad hoc constraints on their freedom of operation cited above.

Access to public decision-making: The International Secretariat concludes in its preliminary assessment that civil society representatives have access to decision-makers and can influence public policies, despite some constraints in their access to information.

In accordance with Requirement 1.3, the Government of Congo should ensure that there is an enabling environment for civil society participation in the EITI process, and ensure that the rights of civil society and media substantively engaged in the EITI, including but not restricted to members of the multi-stakeholder group, are respected. The Government of Congo should ensure that there are no

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de facto administrative or practical barriers from any tier of government on civil society's ability to freely organise public EITI-related dissemination and outreach activities. The government is encouraged to consider the extent to which capacity-building and outreach activities to local government officials could ensure that civil society is consistently able to hold dissemination and outreach events without the presence of security forces and without prior approval, in accordance with provisions of the Constitution and the 1901 Law on associations. The civil society constituency is encouraged to explore alternative channels, including from development partners and international civil society, for developing its technical and financial capacities to fully engage in all aspects of EITI implementation, including use and analysis of EITI data.

5.2 Corrective action 2: MSG oversight (#1.4)

In accordance with 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.

Findings from the first Validation

The first Validation found that the Republic of Congo had made inadequate progress towards meeting this requirement. The MSG included appropriate representation of each constituency, but the process by which each stakeholder group nominated their representatives remained unclear. It was unclear whether all civil society representatives on the MSG were independent, operationally and in policy terms, from government. The MSG's ToR outlined the roles and responsibilities of MSG members and meeting records show that MSG members were generally carrying out their duties and responsibilities. However, evidence of outreach activities and coordination within constituency groups was lacking. The ToR also gave 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 did not include internal governance rules and procedures. The rules followed for quorum and decision-making were unclear and not publicly accessible. The MSG's Internal Rules were not publicly available and did not appear to be followed in practice. The rules related to MSG membership terms had 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 remained ad-hoc and opaque, which could lead to conflict of interest and potentially violate the EITI Code of Conduct.

Progress since Validation

The Government's General Secretariat issued three Presidential Decrees related to EITI implementation two days before the commencement of the second Validation. Presidential Decree 2019-383 on 27 December 2019 updated the institutionalisation of EITI Congo and covered the role and functions of the MSG.[73] Presidential Decrees 2019-393[74] and 2019-394[75] on 28 December 2019 nominated two of the four Vice-Chairs (from industry and civil society respectively) on the one hand and the EITI Congo Permanent Secretary on the other hand, respectively. However, the Ministry of Finance Decree nominating the new MSG members had not been issued as of the commencement of Validation (nor by March 2020). The assessment of the MSG's oversight is thus based on the new

[73] Décret n°2019-383 du 27 décembre 2019 portant création, attribution, organisation et fonctionnement du Comité national de l'Initiative pour la Transparence dans les Industries Extractives, accessed here in February 2020.
[74] Décret n°2019-393 du 28 décembre 2019 portant nomination des membres du bureau du Comité national de mise en oeuvre de l'Initiative pour la Transparence dans les Industries Extractives, accessed here in February 2020.
[75] Décret n°2019-394 du 28 décembre 2019 portant nomination du Secrétaire permanent du Comité national de mise en oeuvre de l'Initiative pour la Transparence dans les Industries Extractives, accessed here

rules related to the MSG's nomination and Terms of Reference (ToR) as well as the practice of the MSG's oversight in the 2017-2019 period, which was based on previous procedures already reviewed in the first Validation.

<u>*MSG composition and membership*</u>: The renewal of MSG membership was not completed as of the commencement of Validation, with Presidential Decree 2019-393 only appointing the MSG's Chair and Vice-Chairs on 28 December 2019.[76] Thus, MSG members whose mandate expired in December 2015 continued to hold these functions in the 2017-2019 period reviewed in this Validation. Article 7 of Presidential Decree 2019-393 confirms that MSG members are appointed by Order (Arrêté) of the Minister of Finance, upon proposals from the respective constituencies.[77] In addition to a six-person leadership bureau, the EITI Executive Committee is composed of a total of 41 members, including 14 from government, 10 from Industry and 11 from civil society. Presidential Decree 2019-383 requires representation at the level of Director General level for government and industry (Articles 6 and 24).

Civil society representation: Presidential Decree 2019-393[78] allocates nine MSG seats to civil society, without criteria or naming of organisations other than requiring CSOs to have a focus on the extractive industries and allocating two MSG seats to media representatives. The process for renewing civil society's MSG representation first started in October 2018, following a letter from the EITI Congo Chair, the Minister of Finance Calixte Nganongo, to the civil society MSG Vice-Chair Christian Mounzeo requesting that the constituency nominate new MSG representatives. The civil society constituency appears to have agreed guidelines (ToR) for the nomination and replacement of their MSG representatives dated 25 October 2018, which are published on the EITI Congo website.[79] While the document does not clarify the process for agreeing these guidelines, several CSOs consulted stated that the drafting of these guidelines had been consultative within the broader constituency. The guidelines name PWYP Congo as the organisation tasked with coordinating the MSG nominations for civil society, given that it is referenced as "*the most active and representative coalition*" on EITI-related issues. The guidelines are in accordance with Requirements 1.4.a.ii, codifying requirements for the civil society nomination process to be driven by the constituency, conducted in an open and transparent manner, be independent and free from any suggestion of coercion, and that civil society MSG members be operationally, and in policy terms, independent of government and/or companies. The guidelines codify term limits of three years, renewable once, and rules for the replacement of MSG members in case of incapacity.

There is no publicly-accessible documentation of the actual process followed for nominating civil society representatives to the MSG ahead of the formal renewal in December 2019. Minutes of the MSG's 15 May 2019 meeting reflect a request from a civil society MSG member from a youth association (Bernard Mabounda) on the actual process followed for renewal of MSG members in practice.[80] Consultations with civil society stakeholders confirmed that the call for nominations to the MSG was announced ahead of time, through a PWYP Congo-initiated call for expressions of interest through the various civil society coalitions working on extractives-related issues including the Debt and Development Platform (*Plateforme Dette et Développement*), the Human Rights Platform (*Plateforme droits de l'homme*), the Sustainable Forestry Management Platform (*Plateforme pour la Gestion Durable des Forêts*), the Association of Women Lawyers (*Association des Femmes Juristes*), the Aid for Development Platform (*Plateforme Aide au Développement*), a media trade union and the Young Entrepreneurship Forum (*Forum des jeunes entreprises*).

[76] Décret n°2019-393, accessed here in February 2020.
[77] Décret n°2019-393, accessed here in February 2020.
[78] Décret n°2019-393, accessed here in February 2020.
[79] ITIE Congo (October 2018), 'Termes de reference : procédures de désignation et de remplacement des members de la société civile au Comité national de l'ITIE', accessed here in February 2020.
[80] ITIE Congo (May 2019), 'Compte-rendu de la session du 15 mai 2019', accessed here in February 2020.

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There is some evidence of coordination within the civil society constituency on agreeing common positions on issues such as feedback on draft EITI Reports and the MSG nomination process. Through PWYP Congo, civil society MSG members have coordinated their activities and circulated information through mailing lists, although there is little evidence that MSG members have canvassed the views of the broader constituency on MSG deliberations aside from two coordination meetings organised by AGODEC with Brazzaville-based CSOs on 20 July and 5 November 2019 (*see Requirement 1.3*).

Industry representation: There is no evidence that the industry constituency agreed guidelines or procedures for the nomination of their MSG representatives since the first Validation (in the 2017-2019 period). The process for appointing and renewing companies' representatives is not codified anywhere other than in Article 6 of Presidential Decree 2019-383, which sets out criteria to select the four oil companies (including one from the state-owned enterprise), three mining companies and three forestry companies, which are required to be the most "important" ones in the country.[81] Beyond these government-mandated criteria, the industry constituency does not appear to have agreed any guidelines to structure its engagement in EITI. The International Secretariat did not receive any documentation related to the procedure for selecting new industry MSG members in practice. Several stakeholders consulted noted that the term "important" referred to companies accounting for the largest share of production in their respective sectors, implying that companies engaged only in exploration were not likely to be represented aside from the mining sector, where the majority of companies were still at the exploration stage. One industry representative consulted explained that the mining industry sub-constituency agreed their MSG representation via email circular by consensus, given the low number of company representatives who had time to devote to EITI. There is no publicly-available evidence of coordination within the industry constituency aside from mining companies' outreach to their sub-constituency, discussed at two MSG meetings in 2019. Outreach to forestry companies appears to have been driven entirely by the EITI Congo secretariat, rather than the industry constituency itself. One mining industry representative noted that the MSG members kept their sub-constituency informed of EITI-related developments via email. Several industry representatives consulted expressed concerns over the timing of data collection and the format of some reporting templates, noting that these concerns were usually conveyed to the IA during data collection rather than fed into the MSG's deliberations during the inception phase of annual EITI reporting.

Government representation: Article 6 of Presidential Decree 2019-383 allocates 14 MSG seats for government, alongside the Minister of Finance as MSG Chair and the Ministers of Mines and Hydrocarbons as two Vice-Chairs.[82] The formal appointment of new government MSG members was still pending at the commencement of Validation (and in March 2020).

Terms of Reference: Presidential Decree 2019-383 codifies the MSG's duties and responsibilities in line with Requirement 1.4, but provides little clarity on the rules related to the MSG's internal governance. For the period under review (2017-2019), the MSG continued to be governed by Presidential Decree 2012-940 of 20 August 2012 and the MSG's internal rules, which were reviewed as part of the first Validation. Minutes of MSG meetings show that MSG members generally carry out their duties and responsibilities, including approval of the selection of the IA and its ToR, approval of scoping studies, draft EITI Reports and planning of outreach activities.

Internal governance and procedures: While the 2012 and 2019 Presidential Decrees institutionalising the EITI do not include provisions related to internal governance, the MSG's internal rules[83] (*règlement intérieur*) dated December 2014 appears to have only been published on the EITI Congo in late 2019. There appears to have been some deviations from the internal rules in practice in the 2017-2019 period. While the internal rules mandate the MSG to meet monthly, MSG meeting minutes available

[81] Décret n°2019-383, accessed here in February 2020.
[82] Décret n°2019-383, accessed here in February 2020.
[83] ITIE Congo (December 2014), 'Règlement intérieur', accessed here in February 2020.

on the EITI Congo website and stakeholder consultations indicated that the MSG met only three times in 2017, once in 2018 and four times in 2019.[84] Whereas notice of meetings and related documents were required to be sent at least five days prior to meetings – and two days in exceptional circumstances – under Article 11 of the 2012 Decree, consultations with stakeholders from various constituencies indicated that notices and documents were regularly sent at very short notice, which presented particular challenges for industry and civil society stakeholders based in Pointe Noire. Article 10 of Presidential Decree 2019-383 requires notice and circulation of documents at least seven days before meetings.

Given the few MSG meetings during the period under the review, the MSG established working groups to follow-up of corrective measures and oversee the renewal of MSG membership. While the establishment of these working groups is noted in meeting minutes, the working group's output is not explicitly recorded in MSG meeting minutes. While the MSG meeting minutes do not allow a detailed review of attendance, there was a relatively even balance between constituencies in interventions recorded by name in the minutes, even if government recorded input is less frequent.

Together with its internal rules (agreed in 2014 and published in 2019), the MSG appears to have agreed a set of financial management procedures (*règlement financier*), although there is no evidence that it is available online. According to the document, the MSG is responsible for adopting the budget (article 4), executing the budget (article 5) and approving the financial report (article 9). Several MSG members consulted mentioned that the rules were not followed in practise, particularly in relation to the MSG's approval of the financial report, and that the financial audit of EITI Congo requested by some MSG members had not been undertaken to date.

Decision-making: Quorum is defined as the presence of two thirds of MSG members. Meeting minutes indicate that the MSG confirmed quorum at the start of every meeting in the 2017-2019 period. Article 9 of the MSG's 2014 internal rules require all MSG decisions to be taken by consensus. Consultations with MSG members confirmed that all decisions had been taken by consensus in the period under review, as the MSG continued discussions until consensus was reached.

Record-keeping: Minutes of seven MSG meetings held since April 2017 are available on the EITI Congo website.[85] One MSG member complained about the delay for approving MSG minutes, noting that it hindered MSG members' accountability towards their broader constituencies. Stakeholder consultations confirmed that the Internal Rules' requirement for the publication of signed minutes within 10 days of the meeting was not followed in practice. Indeed, there is no evidence in MSG meeting minutes of the MSG's approval of the 2020 work plan or of the 2018 annual progress report, which hinders the ability to assess the level of consultations involved in work planning and in the assessment of the EITI's impact after twelve years of implementation.

Capacity of the MSG: MSG members appear to be high-level representatives of their respective organisations. Three MSG members (two from civil society and one from government) have been members of the EITI International Board. A specific capacity-building plan for MSG members was developed but is not publicly available, with no indication of the issue being debated by the MSG.

Per diem policy: The MSG's internal rules[86] (*règlement intérieur*) published in late 2019 codify under Article 19 that the MSG's per diem policy is set in Article 10 of Decree 2012-940 of 20 August 2012. However, Article 10 of Decree 2012-940 published in the official gazette (*journal officiel*) only states that funding for EITI implementation comes from state subsidies and support from development

[84] ITIE Congo website, MSG meeting minutes section, accessed here in February 2020.
[85] ITIE Congo website, MSG meeting minutes section, accessed here in February 2020.
[86] ITIE Congo (December 2014), 'Règlement interieur', accessed here in February 2020.

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partners, but does not codify the MSG's per diem policy.[87] Presidential Decree 2019-393 of 28 December 2019 states that the mandates of MSG do not give rise to per diems payments, although there is a provision that allows the MSG to decide per diem payment, with the level of payment codified through order (arrêté) of the Minister of Finance. The Decree sets out the possibility of transport reimbursement for MSG's participants upon justification (Article 11). Several MSG members consulted explained that the MSG had discussed and agreed a per diem rate that would align the MSG's per diem practice with national regulations in 2019, although the Ministry of Finance Order had not been yet issued at the start of the Validation. Information on actual per diem payments in the 2017-2019 period does not appear to be publicly accessible. One industry stakeholder noted that his company representative on the MSG did not take per diem payments for reasons of corporate policy. Several MSG members consulted noted significant arears (of over a year) in per diem payments. One stakeholder implied that the level of per diem payments could cause conflicts of interest in MSG members not wishing to be replaced.

Secretariat's Assessment

The International Secretariat's preliminary assessment is that the corrective action on MSG oversight has been partly addressed and that the Republic of Congo has made inadequate progress with considerable improvements on Requirement 1.4. While the Presidential Decree institutionalising the EITI in the Republic of Congo and providing the main lines of the MSG's ToR was updated right before the commencement of Validation on 27 December 2019, in the 2017-2019 period under review the MSG's governance documents remained the same 2012 Presidential Decree and 2014 Internal Rules as those reviewed during the first Validation. Indeed the 2014 Internal Rules only appear to have been published in late 2019, although the financial management rules agreed in the same period had not yet been published at the commencement of Validation. There continued to be non-trivial deviations from the MSG's ToR in practice in the period under review, not least in the low frequency of MSG meetings and short notice of meetings. In terms of representation, the December 2019 Presidential Decree establishes a balance between constituencies, even if MSG members in 2017-2019 remained those whose term expired in December 2015 (reviewed in the first Validation). While the procedures for nominating MSG representatives from civil society, but not industry, were codified and published, there is no available documentation of the actual process followed in practice in selecting MSG members ahead of a renewal expected to be codified in a Ministry of Finance Order (arrêté) pending as of March 2020. The per diem policy and practice remain unclear and are not clearly documented on the EITI Congo website, even if the International Secretariat understands that significant arrears in payment have built up.

In accordance with Requirement 1.4.a, the Republic of Congo should ensure that every constituency is adequately represented on the MSG pursuant to open and transparent nomination procedures that ensure MSG members from civil society, industry and government are independent of each other in both policy and operational terms. In accordance with Requirement 1.4.b, the Republic of Congo should ensure that any non-trivial deviations from its ToR, including both the Decree institutionalising the EITI and the MSG's own Internal Rules, are properly codified and do not weaken the MSG's effective oversight of all aspects of EITI implementation. The status of arrears and future payments of per diems should be clarified, with levels of payments to MSG members regularly published in accordance with Requirement 1.4.b.vii, to allay any concerns of conflict of interest in MSG membership. To strengthen implementation, the Republic of Congo is encouraged to consider the extent to which it could replicate the model of tripartite consultations of the MSG in other channels of government and company transparency and accountability mechanisms, while ensuring alignment

[87] Journal Officiel de la République du Congo (August 2012), 'Journal official n. 34 de la 54e annee, Jeudi 23 août 2012', accessed here in February 2020.

between the work of different multi-stakeholder channels such as the newly established (multi-stakeholder) Transparency and Accountability Committees established by the March 2017 Transparency Code and under the IMF's extended credit facility respectively.

5.3 Corrective action 3: License allocations (#2.2)

In accordance with 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.

Findings from the first Validation

The first Validation found that the Republic of Congo had made inadequate progress towards meeting this requirement. The 2014 EITI Report listed one oil and gas license equity transfer, seven oil and gas license transfers and one mining license renewal in 2014, but provided only a cursory overview of the license allocation process. The report did 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 were not described, nor were any deviations from statutory procedures for mining, oil and gas licenses awarded and transferred in 2014.

Progress since Validation

Awards/transfers: For ***mining***, the 2017 EITI Report provides inconsistent information on the number and identity of mining license awards in 2017. The full text of the report lists five mining licenses[88] (one for production, four for exploration) awarded in 2017 (p.103[89]). While the mining license register published in Annexes 5, 6 and 9 provides a list of 14 mining exploration licenses, one mining production license and three mining conventions whose date of award is marked as 2017 (pp. 213, 216, 219), all but four of these exploration licenses[90] are marked as renewals, rather than new awards. However, two of the mining exploration licenses[91] listed as new awards in the full text of the report (p.103) are marked as renewals in the license register in Annex 6 (p.216). The IA explained that there was a typo in the report (p.216), where the Mayéyé license was marked as a renewal when it was in fact a new award. The IA clarified that while the Bondjodjouala gold mining license was a license renewal, the Bondjodjouala diamond license was a new award. The three mining conventions[92] marked as awarded in 2017 in the license register in Annex 9 (p.219) are not highlighted in the full text of the report. The IA explained that these conventions related to mining production licenses awarded in previous years (prior to 2017) and thus the IA had not taken these into account in its assessment of non-trivial deviations. However, the IA considered that the conclusion of a mining convention was automatic following the award of a production license and that there could be no non-trivial deviations aside from the process taking an certain length of time.

[88] The mining licenses for Dougou (production license), Mayéyé, Etiouk-Mayé, Loaka-Or and Bondjodjouala.
[89] Page number references to the 2017 EITI Report refer to printed page numbers, not Adobe Acrobat (PDF) page numbers.
[90] The mining licenses for Etiouk-Mayé, Poungou, Loaka-Or and Bondjodjouala.
[91] The mining licenses for Mayéyé and Bondjodjouala are marked as new awards in the full text of the report (p.103), but as renewals in the license register in Annex 5 (p.216).
[92] The mining concessions awarded in 2017 relate to the Kola Dougou (Kouilou), Mboukoumassi (Kouilou) and Nebada (Sangha) projects.

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Distinguishing between mergers and acquisitions of companies holding licenses and license transfers themselves, the report confirms that there were no transfers of mining licenses in 2017 (p.105).

For ***oil and gas***, the 2017 EITI Report describes the award of three new blocks[93] following the conclusion of the Congo License Round 1, although it clarifies that the Decrees awarding these blocks were only issued subsequent to 2017 (two were concluded in 2018 and one is still pending) (p.50). It is confirmed that oil and gas license awards are only effective from the date of publication of the Decree awarding the license in the official gazette (‘*Journal officiel*’) (p.49). The report also highlights the award of six production licenses[94] in 2017, although it clarifies that these are production licenses awarded within three existing exploration licenses at the request of the operator and are thus classified as “extensions” rather than new awards (p.51). Finally, the report describes the award of three production licenses[95] to a consortium of Perenco and HEMLA in 2017 following the previous Total-ENI consortium’s renunciation of these blocks in late 2014 and a competitive tender process concluded in 2017 (pp.51-52). However, several government officials consulted explained that this section of the 2017 EITI Report was incorrect and that the three production licenses awarded to Perenco and HEMLA in 2017 had been awarded through direct negotiations, given the need for a swift reallocation of these licenses in order to maintain production.

The report notes the Hydrocarbons Department (DGH) assurances that there were no transfers of participating interests in oil and gas blocks in 2017 (p.52).

Award/transfer process: For ***mining***, the report describes the five types of mining licenses and the standard mining convention (p.101). For awards, the report provides a brief description of the general process for awarding each of the five types of mining licenses, based on ‘first come, first served’ (p.102). For transfers, the report describes the general process for transferring mining licenses (p. 104-105).

For ***oil and gas***, the report describes the three types of oil and gas licences (p.47). For awards, the report provides a brief description of the general process for awarding each of the three types of oil and gas licenses (pp.48-49). While the report refers once to the award of oil and gas licenses through direct negotiations (p.48), the description of license awards focuses on awards through licensing rounds (pp.48-49), not on awards through direct negotiations. While the description of the three oil and gas licenses awarded in 2017 indicates that they were based on a competitive tender (p.51), consultations with government officials confirmed that they were awarded through direct negotiations in accordance with provisions of the Hydrocarbons Code.

For transfers, the report provides a general description of the process for transferring participating interests in oil and gas licenses (p.52). The report notes the introduction of a 10% capital gains tax on transfers of participating interests in oil and gas blocks (p.52).

Technical and financial criteria: For ***mining***, the report notes that the Mining Code requires that applicants for mining license awards have the required technical and financial capacities (p.103), but does not define the specific criteria assessed for mining license awards. The report does not clarify whether any technical and financial criteria are assessed for transfers of participating interests in oil and gas licenses (pp.104-105). Despite the lack of clarity on the existence of any set technical and financial criteria within the relevant legislation or regulations, the report describes the specific technical and financial criteria assessed in the award of four mining exploration licenses and one

[93] Marine XX, Marine XXI and Marine XXVII.
[94] Lideka, Loubana and Viodo production licenses on the Ex Marine XI exploration license; Minsala and Nkala on the Ex Marine XII exploration license; and Mengo-Kundi-Bindi production license on the Ex Kouilou exploration license.
[95] Tchibouela II, Tchendo II and Tchibeli-Litanzi II.

mining production license awarded in 2017 (pp.103-104), criteria that vary from one application to the other.

For ***oil and gas***, the report lists the technical and financial criteria assessed for awards of oil and gas blocks through licensing rounds (p.48-49), albeit without providing the weighting of each criteria. The link to the first (2016) licensing round website[96] is no longer available to provide more information on blocks, bid criteria and bid evaluation procedures (p.50). Nonetheless, the report provides a list of general technical and financial criteria assessed in awards through licensing round (pp.48-49). The technical and financial criteria assessed in license awards through direct negotiations are not clearly described in the report. Several government and civil society representatives consulted expressed surprise that this information had not been included in the 2017 EITI Report, given the Hydrocarbons Department's agreement to disclose the detail of technical and financial criteria assessed in oil and gas license awards following the International Secretariat's implementation support mission to the Republic of Congo in October 2019. However, several government officials consulted confirmed that the same technical and financial criteria applied to oil and gas license awards through direct negotiations as in competitive tenders, in accordance with Decree 2008-15 that codified the procedure for awarding oil and gas licenses. Decree 2008-15 is publicly-available in the official gazette (*journal officiel*) number 50-7 of 14 February 2008 and confirms that applicants are required to provide a presentation of the applicant company, which is required to include the company's paid-up capital, shareholding, "experience in the petroleum sector", human and technical capacities, balance sheets and accounts for the three previous years as well as a presentation of pending disputes and related financial risks.[97]

For transfers, the report only refers to the assessment of technical and financial capacities of companies receiving a license or participating interest therein (p.52), albeit without describing the specific criteria or their weightings. It is unclear from the 2017 EITI Report and publicly-available sources whether the same technical and financial criteria apply for transfers of licenses or of participating interests in PSC consortia as for the original license awards. However, the report confirms that there were no transfers of participating interests in oil and gas PSCs in 2017 (p.52).

License awardee information: For ***mining***, despite the inconsistent information on the number of license awards in 2017, the report provides the identity of companies receiving mining licenses in 2017 (pp.103,213-216,219). The report confirms that there were no transfers of mining licenses in 2017 (p.105).

For ***oil and gas***, the report provides the names of companies receiving the three licenses awarded, including names and participating interests of the operators and partners (pp.51,208,210). The report confirms that there were no transfers of participating interests in oil and gas licenses in 2017 (p.52).

Non-trivial deviations: For ***mining***, the report includes the IA's assessment that there were no non-trivial deviations from statutory procedures in the award of five mining licenses in 2017, based on the IA's review of the Mining Directorate's notes to the Minister of Mines and Geology on these license applications (pp.103-104).

For ***oil and gas***, the report notes that the IA was not able to assess the existence of any non-trivial deviations from statutory procedures in the award of the three licenses in 2017, given that it was not provided copies of documents on which the awards were based (p.52). A senior government official consulted stated that the award of the three oil and gas licenses granted through direct negotiation in 2017 was completed in accordance with statutory regulations and that the licenses were awarded to companies that were already operating in the Republic of Congo (Perenco and HEMLA) given that they

[96] Congo First Licensing Round website, accessed here.
[97] Journal officiel de la 50ème année numéro 07 (February 2008), 'Décret n° 2008–15 du 11 février 2008 fixant la procédure d'attribution des titres miniers d'hydrocarbures liquides ou gazeux', accessed here in March 2020.

had already demonstrated their technical and financial capacities to operate oil and gas licenses in the country. In written comments, one CSO expressed significant concern over the lack of access by the IA to documents on the award of these three licenses and considered that the IA should have included a recommendation related to improving transparency of oil and gas license awards in the 2017 EITI Report. Several civil society stakeholders consulted noted a history of deviations from statutory procedures in transfers of participating interests in oil and gas PSC consortia, highlighted for instance in a February 2019 investigation by Global Witness that noted non-trivial deviations from statutory procedures in the June 2018 sale of SOCO International Plc's operating interest in the Marine XI oil and gas block to Coastal Energy Congo.[98] These stakeholders expressed concern over an alleged history of granting oil and gas licenses (or participating interests in PSC consortia) to companies with no proven technical or financial expertise or experience.

Comprehensiveness: For ***mining***, the report only refers to license awards in the year under review.

For ***oil and gas***, the report covers awards of licenses both in 2017 and in 2018, as a consequence of the conclusion of Congo's first Licensing Round (p.p.51).

Bidding process: For ***mining***, the report confirms that all mining license awards were based on "first come first served", not competitive bidding (p.102).

For ***oil and gas***, the report confirms that the three licenses awarded to the Perenco-HEMLA consortium in 2017 were based on a competitive tender (p.51). The report lists the technical and financial criteria assessed for oil and gas bidding rounds (p.48-49), albeit without providing the weighting of each criteria. While the full list of bidders and bid criteria for the three licenses awarded in 2017 are not disclosed in the report, several government officials consulted explained that 2017 EITI Report was incorrect and that the three production licenses awarded to Perenco and HEMLA in 2017 had been awarded through direct negotiations.

Commentary on efficiency: The report does not comment on the efficiency of license allocation in either ***mining*** or ***oil and gas***.

Secretariat's Assessment

The International Secretariat's preliminary assessment is that the corrective action on license allocations has been partly addressed and that the Republic of Congo has made meaningful progress on Requirement 2.2. The 2017 EITI Report provides information on mining, oil and gas licenses awarded in 2017, although there is contradictory information on the number of mining license awards in 2017 within the report, and confirms the lack of license transfers. The report incorrectly states that the three oil and gas licenses awarded in 2017 were awarded through competitive tender, as confirmed in stakeholder consultations. The report provides an overview of the process for awarding and transferring licenses, including the statutory technical and financial criteria for oil and gas license awards through competitive tender (not through direct negotiations) but only the technical and financial criteria assessed in practice in the mining license awards in 2017. However, the decree codifying the evidence required of applicants' technical and financial capacities for oil and gas license awards (through tender or direct negotiations) is publicly-accessible through the official gazette (*journal officiel*). While the report notes the Mining Code's reference to assessments of the technical and financial criteria of mining license applicants, it is unclear whether these statutory criteria are codified in regulation or in administrative practices. The existence and nature of such criteria for license transfers is unclear for both mining and oil and gas. The report lists the companies that

[98] Global Witness (February 2019), 'A dud deal: how SOCO dumped Congo oil block in contentious Africa exit', accessed here in February 2020.

received licenses in 2017, but only provides an assessment of non-trivial deviations from statutory procedures for licenses in mining, not in oil and gas. While a senior government official consulted stated that the awards of three oil and gas licenses in 2017 was in accordance with statutory regulations, this view was not publicly-disclosed in documentation nor approved by the MSG at the commencement of Validation.

In accordance with Requirement 2.2.a, the Republic of Congo should ensure public disclosure of a description of the technical and financial criteria assessed in license transfers in the mining and oil and gas sectors, as well as an assessment by the MSG of any material deviations from the applicable legal and regulatory framework governing license awards and transfers for all contract and license awards and transfers during the accounting period covered by the most recent EITI disclosures, including for companies whose payments fall below the agreed materiality threshold. The Republic of Congo may wish to use EITI reporting to disclose commentary on the efficiency and effectiveness of licensing procedures. The Republic of Congo is invited to consider the extent to which information on the process for awarding and transferring mining, oil and gas licenses in practice could be systematically disclosed as a means of complying with Article 14 of the March 2017 Transparency Code (Law 10-2017).[99]

5.4 Corrective action 4: License register(s) (#2.3)

EITI Congo is required to maintain a publicly available register or cadastre system(s) with timely and comprehensive information in accordance with 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.

Findings from the first Validation

The first Validation found that the Republic of Congo had made meaningful progress towards meeting this requirement. The Republic of Congo did not have a publicly available register, but in accordance with Requirement 2.3 c, the 2014 EITI Report provided a detailed list of licenses for the oil, gas, and mining including references to attributions decrees, which were 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.

Progress since Validation

For ***mining***, the 2017 EITI Report provides the total number of mining licenses active at the end of 2017, including 61 exploration licenses and 15 production licenses (p.105). Annexes 5 and 6 provide copies of the license register for mining production licenses (p.213) and exploration licenses (pp.214-216). This includes all information required under Requirement 2.3.b aside license coordinates. However, given that the relevant decree numbers are provided for each of the licenses, it is possible to locate the Decree awarding each license in the official gazette[100] ('*journal officiel*'), from which the license coordinates are publicly accessible. The IA confirmed that all relevant decrees had been published in the official gazette. After the commencement of the Validation, the Forestry atlas launched on-line in March 2020 by the Ministry of the Forest Economy discloses a list of 200 mining

[99] Republic of Congo (March 2017), 'Code de la Transparence', accessed here in January 2020.
[100] Secrétariat Général du Gouvernement, Journal Officiel portal, accessed here in February 2020.

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licences with all information listed under Requirement 2.3.b, including coordinates presented in an interactive map use interface[101]. However, review of these 200 mining licenses indicates that certain mining licences[102] that were active in 2017 are missing from the Forestry Atlas.

Annex 9 on mining conventions (p.219) provides the status of mining conventions for 11 projects, which is a smaller number of projects than the 15 production licences listed in the Annex 5.

The information on licenses in Annexes 5 and 6 appears to cover all active mining licenses in 2017. Mining industry stakeholders consulted considered the information on mining licenses in the 2017 EITI Report to be comprehensive. The report notes that there is no provision in the Mining Code requiring a public mining license register (p.105). However, it describes ongoing reforms to establish a public mining cadastre, with two firms contracted for this work (Asperbras and BRGM) and training of staff at a newly-established Mining Cadastre Department following a 2018 Decree (p.105).

For ***oil and gas***, the 2017 EITI Report provides the total number of oil and gas active licences at the end of 2017, including 12 exploration licences and 31 production licences (p.53). Annexes 3 and 4 provide a copy of the register of oil and gas production licenses (pp.208-211) and exploration licenses (p.212). The report describes and provides a link to the Hydrocarbons Department (DGH)'s online oil and gas cadastre[103] developed in 2018, which includes name of licences holders, dates of application, award and expiry, license coordinates, and commodity covered for a total of 49 licenses (as of January 2020). Both the license register in Annexes 3 and 4 of the 2017 EITI Report and the online cadastre cover all active licenses, aside from the unitized field of Lianzi held by Chevron and involving the Republics of Congo and Angola. However, the Decrees amending the agreement for the Lianzi field (the unitized field bringing together prospects 14 k in Angola and A-IMI in Congo) are available online[104], and provide the names of operator and partners, their participating interests, the dates of award and expiry, the commodities covered and the license coordinates, although the date of application for the original block does not appear to be accessible online. A government stakeholder consulted explained that the Lianzi unitized field had been created through an inter-governmental agreement between the Republic of Congo and Angola, with the initial memorandum of understanding between the two countries codified in the Republic of Congo's Decree 2002-172 of 14 March 2002 and the unitized Lianzi field created through Decree 2008-157 of 25 June 2008. The official noted that there was no date of application for this license aside from the start of inter-governmental negotiations. This was confirmed by the IA.

Secretariat's Assessment

The International Secretariat's preliminary assessment is that the corrective action on license register(s) has been addressed and that the Republic of Congo has made satisfactory progress on Requirement 2.3. The 2017 EITI Report provides copies of the license registers for mining and oil and gas, which provide most of the information listed under Requirement 2.3.b. The online oil and gas cadastre provides all information listed under Requirement 2.3.b for all active licenses aside from the unitized Lianzi field that straddles the maritime boundary between Congo and Angola, although all information is available for Decrees awarding and amending the Lianzi agreement aside from the date of application for the original contract. The Secretariat considers the lack of a single date of application to be a marginal gap of insignificant importance. While the 2017 EITI Report does not provide coordinates for mining licenses, the Decree numbers provided allow users to locate the coordinates of specific licenses from the Decrees awarding them, accessible on the official gazette

[101] Republic of Congo (March 2020), Forestry atlas, accessed here in March 2020
[102] E.g. the Mboukoumassi license held by Luyuan des Mines.
[103] Republic of Congo Hydrocarbons Ministry Online Repository, accessed here.
[104] See for instance Décret n° 2008-157 of 25 June 2008, accessed here.

website. Despite the lack of explanation of the discrepancies between 11 mining conventions and 15 mining production licenses, the Secretariat understands that the information on active mining conventions and production licenses in the report was comprehensive as of the end of 2017.

To strengthen implementation, the Republic of Congo is required to maintain a publicly available register or cadastre system(s) covering all active mining licenses, including the license-holder names, dates of application, award and expiry, commodity(ies) covered and coordinates. Where such registers or cadastres do not exist or are incomplete, any gaps in the publicly available information should be disclosed and efforts strengthen these systems documented. The Republic of Congo is invited to consider the extent to which comprehensive information on mining, oil and gas licenses could be systematically disclosed as a means of complying with Article 14 of the March 2017 Transparency Code (Law 10-2017).

5.5 Corrective action 5: State participation (#2.6)

In accordance with 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.

Findings from the first Validation

The first Validation found that the Republic of Congo had made inadequate progress in meeting this requirement. The 2014 EITI Report stated that state participation gave rise to material revenues in oil and gas, not in mining. It described the SOEs operating in oil and gas but did 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 were not described. While the financial relations between the government and SNPC were briefly described, the rules for retained earnings, reinvestment and third-party financing for all extractives companies in which the state holds majority stakes were not comprehensively disclosed, nor was there any discussion of any significant deviations in practice. While the 2014 EITI Report implied a sovereign guarantee on oil-backed infrastructure projects financed by China EXIM Bank and referred to unpaid arrears from the CORAF to the Treasury, the terms of such loans and guarantees were not described and it was unclear whether disclosures of loans and loan guarantees by the state and extractives SOEs were comprehensive.

Progress since Validation

For ***mining***, the 2017 EITI Report describes the state's statutory entitlement to 10% equity in all production license-holding companies, with the modalities to be negotiated as part of the shareholder agreement (p.106). The report lists the six mining companies in which the state holds direct equity interests of 10%-15% (p. 106) but confirms that none of these equity interests gave rise to any dividend payments in 2017 (p.167). The report confirms that there were no SOEs operating in the mining sector in 2017 (p.106). The report states that there was no change in state participation in mining in 2017, according to information the IA was provided, and notes that the state had not yet taken its free equity interest in companies holding new mining production licenses awarded in 2017 (p.106). The report does not refer to any loans or guarantees provided by the state to any company in the mining sector.

Materiality: For ***oil and gas***, the 2017 EITI Report confirms that there is only one SOE in the oil and gas sector, SNPC (p.55). The materiality of SNPC's payments and transfers to government is demonstrated with figures for 2017 (p.11).

With regards to the status of the SOCOTRAM, one of the entities responsible for collecting Maritime Tax payments from oil and gas companies, the report confirms that the state is only a minority shareholder (45%) in the company, which is incorporated as a private commercial entity (p.71).

Financial relations with government: In terms of statutory financial relations, the report briefly describes SNPC's statutory revenues, responsibilities, governance and mission (pp.41,55-56) in the context of its status renewed by a November 2017 decree. The SNPC's statutory financial relations with government are briefly described (pp. 41 and 56-57), including ability to agree its own dividends (pp.57-58,120), which consist of a share of profits based on its commercial operation (Equity Cost and Profit Oil) (p.120). However, the report does not explicitly state whether SNPC is statutorily allowed to retain earnings and reinvest in its operations, although this is implied (pp.57,120). The report explains that SNPC's general assembly approves the level of dividends in line with OHADA commercial law (p.57), which implies that the general assembly approves the level of retained earnings and reinvestments, upon the recommendation of SNPC's Board of Directors. The report notes the enactment of SNPC's new statutes in November 2017 (through Decree 2017-420), replacing the company's old statutes from 2010 (p.55), but does not describe reforms implemented in these new statutes. The 2017 SNPC statutes, which do not appear accessible from government websites[105] but have been published on the Brazzaville Info 242 Facebook page[106], confirm that the SNPC's Board of Directors has the right to agree the company's dividends, retained earnings and reinvestments and notes that SNPC has the right to seek third-party (debt) financing (Articles 7, 38 and 45).

It is unclear from the 2017 EITI Report why SNPC was not required to pay any corporate income tax on its 2017 profits, despite SNPC's financial statements reporting a figure of USD 140m in dividends related to 2017. The January 2020 Article IV consultation report published by the IMF (after the commencement of Validation) raises questions over whether SNPC benefits from a special tax regime given the lack of corporate income tax payments in 2013-2015 and 2017, despite SNPC recording "considerable profits" during this period.[107]

The report describes the sources of SNPC's retained revenue, including a 1.6% commission on the price of each cargo sold of the government's in-kind revenues (pp.57,120) as well as the share of Cost Oil and Profit Oil received in line with SNPC's commercial participating interests in oil and gas projects (pp.56,146 and Annex 12). The report explains that SNPC's share of development and operational expenditures as part of its participation in oil and gas projects can be carried by the operators (p.59), thereby demonstrating that SNPC is allowed to seek third-party financing.

The report describes the unique form of financing of operational expenditures on the Yanga and Sendji concession, which predates the PSC regime in the Republic of Congo (p.54). Under the agreement, the contracting consortium finances all of SNPC's 15% share of costs for the project and is reimbursed through in-kind deductions from the state's Profit Oil (p.54). The volumes deducted from the state's Profit Oil are valued at the budget oil price ('*prix fiscal*') (pp.12-13,54).

[105] The 2017 SNPC statues are not published on the SNPC website and the International Secretariat was not able to locate the specific edition of the official gazette (*journal officiel*) in which these statutes were published, without the corresponding number of the official gazette (*journal officiel*), e.g. the 9 November 2017 edition (here) and 16 November 2017 edition (here).
[106] The only version which appeared publicly-accessible is on Brazzaville Info 242 Facebook page, 'Statuts de la société nationale des pétroles du Congo (SNPC)', accessed here in February 2020.
[107] IMF (January 2020), 'Republic of Congo: Staff report for the 2019 Article IV consultation', accessed here in March 2020, p.56.

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The report describes SNPC's statutory audit and assurance practices and provides a link to SNPC's 2017 audited financial statements[108] (p.58), which are published on the Ministry of Finance website alongside those for 2016.[109] Details of SNPC's governance are described in the report, including the Board of Director's composition with nine members, including six from the government, and a description of the nomination process (p.56).

One industry representative consulted expressed frustration at the IA's confusion of SNPC's twin mandates (on behalf of the state and on its own account) in the 2017 EITI Report. The stakeholder considered that the lack of clear distinction between these two mandates in the report led to confusion and stated that SNPC's only mandate on behalf of the state was to market and sell the state's in-kind revenues on its behalf. On the other hand, the representative noted that all participating interests in oil and gas contracts were held on SNPC's own account, in contrast to the 2017 EITI Report's statement (p.54). In written comments to the International Secretariat, one CSO raised questions over the statutory rights of SNPC to contract debt on behalf of the state, in the form of pre-financing agreements with commodity traders. Given the value of these loans, the CSO considered that a recommendation for more transparency in SNPC's ability to contract debt on behalf of the state should have been included in the 2017 EITI Report. The CSO also raised concerns over the lack of description of the CORAF performance contract with the state, despite reference in the 2017 EITI Report to the IA having access to the performance contract.

In terms of financial relations in practice in 2017, the report confirms the lack of dividends paid by SNPC to the state in 2017, based both on SNPC's reporting and the IA's review of SNPC's 2017 financial statements (p.58). Although SNPC's 2018 audited financial statements provide a figure of USD 140m in SNPC dividends distributed in 2017[110], an industry representative consulted said that this was a case of unclear language in the financial statements and that these dividends had been agreed but not paid in 2017. The representative stated that the 2017 EITI Report's statement about a lack of dividend payments in 2017 was in fact correct (in contrast to other errors about SNPC's operations in the EITI Report). Several civil society representatives consulted expressed concern over the lack of dividend payments from SNPC in recent years, questioning the company's financial management as a result. However, several government officials consulted explained that lower oil and gas prices and the need for SNPC to reinvest in its operations explained the lack of dividend payments.

The state's loan to SNPC is described in the report (p.58). The report notes that SNPC did not undertake reimbursement of its loan from the state in 2017 and that the value of the outstanding loan was USD 5m in 2017, based on the IA's review of SNPC's financial statements (p.56). The report refers to SNPC's assurances to the IA that it had not received commissions on the sale of the government's in-kind revenue in 2017 (p.56), although the report cites evidence in SNPC's 2017 financial statements indicating total revenues of such commissions of USD 12m (p.55). The report states that SNPC's board decided to retain revenues worth USD 19m in 2017 (p.57), although it does not provide the value of SNPC's reinvestments in 2017. However, SNPC's 2017 financial statements provide the value of the SOE's reinvestments in 2017, on an accrual accounting basis. Several civil society stakeholders consulted welcomed the publication of SNPC's audited financial statements, although one civil society representative noted that additional explanations of SNPC's loans to its subsidiaries and third-parties listed in the 2017 financial statements should have been included to explain why and to whom SNPC was providing loans that did not appear to have been repaid. A development partner noted that SNPC's financial statements did not appear to consolidate the

[108] Société Nationale des Pétroles du Congo (December 2018), 'Rapport Général des Commissaires aux comptes sur les états financiers annuels et Spécial sur les conventions réglementées - Exercice clos le 31 décembre 2017', accessed here in January 2020.
[109] Société Nationale des Pétroles du Congo (November 2017), 'Rapport Général des Commissaires aux comptes sur les états financiers annuels et Spécial sur les conventions réglementées - Exercice clos le 31 décembre 2016', accessed here in January 2020
[110] Société Nationale des Pétroles du Congo (October 2019), 'Rapport Général des Commissaires aux comptes sur les états financiers annuels et Spécial sur les conventions réglementées - Exercice clos le 31 décembre 2018', accessed here in January 2020, p.53.

operations of all subsidiaries, joint-ventures or affiliates in which SNPC held equity. For instance, SNPC's financial statements did not cover the CORAF refinery, in which SNPC holds 100% equity, and noted that the financial statements of subsidiaries such as the CORAF were not publicly accessible. In written comments to the International Secretariat, one CSO raised concerns over the lack of evidence of the outstanding debt from CORAF in the consolidated financial statements of SNPC. The CSO criticised the lack of assessment in the 2017 EITI Report of whether the implementation of the CORAF performance contract was in line with the contractual terms. One industry representative consulted explained that the SNPC financial statements that were publicly accessible were only the SNPC Holding Group's financial statements, not the group's consolidated financial statements. The group's consolidated financial statements were not accessible to the public.

With regards to SNPC's third-party financing in practice in 2017, the report states that SNPC had incurred a debt totalling USD 2.5 bn as of the end of 2017 to operators (involving Wing Wah, New Age, ENI, Chevron, TEP Congo), which had financed its share of development and operational costs on four oil and gas projects (p.58-59,239-240). The report describes the practice of third-party financing of SNPC's share of cash calls by private oil and gas companies. Using the example of the Haute-Mer PSC, the report explains that the reimbursement of SNPC's debt to the operator is calculated based on the official Bank of France interest rate with a premium of 0.5% of LIBOR 3 months. In addition, the operator is given oversight of the advance bank account reflecting SNPC's share of expenditures, with interest charged on the outstanding balance (p.59). The report provides the total value of SNPC's outstanding debt (USD 2.5bn) to five operators[111] at the end of 2017 (pp.239-240). Several civil society stakeholders consulted expressed concern over the types of oil and gas company expenses that were cost recoverable, noting that the individual PSCs defined the types of costs that were recoverable. Many stakeholders cited a January 2020 report by Global Witness[112] that raised concerns over the types of costs that were claimed for cost recovery, noting that this exacerbated SNPC's need to resort to third-party financing to cover its share of cash calls. One civil society representative noted that the audit of oil and gas costs had been included in the memorandum for the IMF's ECF. Several civil society stakeholders noted uncertainty over the specific regulations or contractual clauses that allowed SNPC to resort to third-party financing of its share of cash calls on specific PSCs. While the January 2020 report by Global Witness[113] raised concerns about the reasons why SNPC's debt to IOCs for the financing of its share of costs under specific PSCs was not included in sovereign debt statistics, a development partner confirmed that SNPC's debt was not covered by a blanket sovereign guarantee and was thus not considered a form of sovereign debt. Several industry and government representatives consulted confirmed that SNPC's debt to oil and gas operators for the third-party financing of its share of cash calls in four oil and gas contracts represented the company's corporate debt, not a form of sovereign debt.

It is unclear from the 2017 EITI Report whether SNPC has any third-party financing (loans) from commercial banks. However, SNPC's 2017 audited financial statements indicate that the SOE had USD 3bn in "other debt" as of 2017[114], which could indicate additional third-party financing. The nature of this third-party debt is not further explained either in SNPC's 2017 financial statements or the 2017 EITI Report.

The report provides the volume and estimated value (at the budget oil price) of 2017 deductions from the government's Profit Oil in reimbursement of Total E&P Congo and ENI's financing of SNPC's 15% share of operational costs for the Yanga and Sendji concession (p.138).

[111] Wing Wah, New Age, ENI, Chevron, TEPCongo.
[112] Global Witness (January 2020), 'Rigged: where has Republic of Congo's oil money gone', accessed here in February 2020.
[113] Global Witness (January 2020), 'Rigged: where has Republic of Congo's oil money gone', accessed here in February 2020.
[114] Société Nationale des Pétroles du Congo (December 2018), 'Etats financiers annuels SNPC 2017', accessed here in January 2020, p.11.

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The role of the SNPC Foundation ('*Fondation SNPC*') is briefly described, with XAF 549m in 2017 expenditures that are partly categorised as quasi-fiscal (p.60-61).

Government ownership: The report describes the state's statutory entitlement to acquire equity shares in oil and gas companies but confirms that the state did not hold equity interests in any oil and gas companies (aside from SNPC) as of end 2017 (p.55).

The report confirms that the state owns 100% of SNPC's equity (p.55) and describes the terms associated with the state's equity in SNPC (pp.56-58). It confirms that SNPC holds equity interests in only one upstream oil and gas company, namely 49% in CONGOREP (p.59). However, the terms associated with SNPC's equity in CONGOREP are not described either in the 2017 EITI Report or on SNPC's corporate website.[115] In terms of SNPC's subsidiaries, the report lists its interests in five subsidiaries[116], operating in the upstream oil and gas sector, and its interests in five downstream subsidiaries[117] (p.60). However, neither the 2017 EITI Report nor SNPC's corporate website[118] describe the terms associated to SNPC's equity interests in the five upstream subsidiaries, nor details regarding the financial relations between these subsidiaries and SNPC. Nonetheless, several government and industry stakeholders consulted confirmed that SNPC's equity in the five subsidiaries and CONGOREP was held on purely commercial terms given that these companies were incorporated as joint-stock companies (*sociétés anonymes*) under OHADA law. They also noted that the five SNPC subsidiaries operating in the upstream oil and gas sector were not considered "extractives" companies given that they did not hold interests in licenses or contracts, but rather provided oil and gas services such as drilling, logistics and trading. Several civil society representatives noted uncertainty over the terms associated with SNPC's equity in its five upstream subsidiaries, including SNPC's responsibility for covering expenses at various stages of the business cycle, and considered that this should be clarified in future EITI reporting.

The report explains that the state is entitled to receive, through its national oil company (SNPC), a minimum of 15% interest in each oil and gas contract that cannot be transferred (p.54). However, several government and industry representatives consulted stated that this minimum 15% interest in oil and gas contracts was reserved for SNPC for its own account, not on behalf of the state. These stakeholders referred to Article 23 of the 2016 Hydrocarbons Code (Law 2016-28), which states that the national oil company(ies) are entitled to the minimum 15% interest in oil and gas contracts, which was confirmed in independent review of the legislation.[119] The report lists SNPC's participating interests in 31 oil and gas contracts, which vary from 10% to 60% (p.58-59). While the terms associated with SNPC's participating interest in each contract are not explicitly described, the report notes that the terms of SNPC's participation in each contract are defined in each production sharing contract (p.59). However, the provisions for SNPC's minimum 15% interest to be carried by other members of the consortium (*pro rata* in line with their interests) until the production license is awarded (p.52). Several government and industry representatives consulted confirmed that SNPC's additional equity in addition to the statutory minimum 15% in eight contracts[120] was held on the same basis as the minimum 15% participating interest. In contrast, one civil society stakeholder consulted considered that any participating interest beyond the 15% carried interest to which SNPC was statutorily entitled had been acquired by SNPC on commercial terms, as fully-paid equity, but that this had not been explained in the 2017 EITI Report.

[115] SNPC website, accessed here in February 2020.
[116] SONAREP (80%), SFP (65%), ILOGS (80%), SCP (35%) and SCLOG (10%).
[117] CORAF (100%), SNPC Trading Pte Ltd (100%), SNPC D (90%) SNAT (20%) and SOCOGAZ SA (30%).
[118] SNPC website, accessed here in February 2020.
[119] Loi n. 2016 - 28 du 12 octobre 2016, Code des hydrocarbures de la République du Congo, accessed here in March 2020.
[120] Ex - Marine VII (Kitina II), Ex - Marine VI (Djamballa II), Ex - Marine VI (Foukanda II), KOUILOU (Kouakouala), KOUILOU (M'boundi), TILAPIA (Tilapia), Ex MARINE VI (Mwafi II) and MENGO-KUNDJI-BINDI (Kundji).

Ownership changes: There is no information on changes in ownership in any of SNPC's shareholding in extractives companies, although the government's sole stake in SNPC, SNPC's interests in CONGOREP and its ten subsidiaries, and SNPC's interests in the 31 oil and gas contracts at the end of 2017 (pp.55,58-60) appear to remain unchanged from previous years.

Loans and guarantees: The report confirms the lack of subsidy from the state to SNPC in 2017 (p.58) and describes the one loan from the state to SNPC outstanding in 2017 (p.58). The report provides the annual interest rate and the amount of the loan outstanding in 2017, including presumably both principle and accrued interest, but not the original value of the government loan. It does confirm that SNPC has not reimbursed this loan since its inception.

The report also describes a state guarantee on the infrastructure arrangement with ENI, whereby the government has guaranteed the reimbursement of ENI's investment costs for the CEC power plant (p.65), although the terms of this loan guarantee are not further described.

The report states that the delivery of barrels to the CORAF refinery on the state profit oil should be considered as a loan, in accordance with the 2008 performance contract (amended in 2013) to which the IA had access (p.57). The volumes and estimated value of crude oil (retained on the state's share of Profit Oil) transfers to CORAF in 2017 are provided (USD 243m), alongside confirmation from both SNPC and the government that CORAF had not yet settled these payments to the Treasury to date (p.57). However, the report does not provide the value of total outstanding debt from CORAF to the state, nor the key terms of the loan.

The report does not refer to any loan or guarantee from the government or SNPC to any extractives company. One civil society representative noted government assurances that there was no official government guarantee on oil and gas loans, but noted evidence in SNPC's 2017 audited financial statements of its loans to unidentified third parties, that did not seem to have been repaid to date. A development partner noted uncertainty over the identity of parties involved in the roughly USD 483m in "other loans" from SNPC in the 2018 financial statements[121], which could constitute SNPC loans to government entities or to domestic oil and gas companies although the partner expressed unease at drawing conclusions without further explanations. A government official consulted stated that these could not represent either guarantees or loans to private oil and gas companies as the SNPC was barred from lending to non-affiliated companies. The IA noted that it had not inquired about this issue.

Secretariat's Assessment

<u>The International Secretariat's preliminary assessment is that the corrective action on state participation has been partly addressed and that the Republic of Congo has made meaningful progress on Requirement 2.6.</u> The 2017 EITI Report confirms the lack of SOE in the mining sector but describes the rules and practice related to the state's statutory entitlement to free equity in mining production license-holders. In oil and gas, the report demonstrates the materiality of the SOE's (SNPC) revenues and payments to government, and provides a description of the statutory financial relations between SNPC and the state. The report's description of the practice of SNPC's financial relations is a improvement on EITI reporting to date, covering the SOE's lack of dividends, retained earnings and third-party financing by oil and gas operators, although the report does not describe in sufficient detail the statutory financial relations between SNPC and the government nor provide analysis of the change in SNPC's statutes in November 2017. It does not comprehensively describe SNPC's reinvestments in 2017 despite aggregate information being accessible in the SOE's publicly-accessible audited 2017 financial statements. The report describes SNPC's interests in upstream oil and gas companies,

[121] This uncertainty is also highlighted in Global Witness (January 2020), 'Rigged: where has Republic of Congo's oil money gone', accessed here in February 2020, p.7.

subsidiaries and projects, but does not consistently provide the terms associated with SNPC's equity in each. While stakeholder consultations clarified that SNPC's equity in its subsidiaries was held on purely commercial terms and that SNPC's participating interests in oil and gas contracts was held on its own account (not the state's, as stated in the EITI Report) with costs carried by the operator during the development phase, this information was not clearly provided in the 2017 EITI Report. The state's lending to SNPC and to CORAF is described, including key terms for loans to SNPC but not to CORAF. The report does not refer to any other state loans or guarantees to mining, oil and gas projects aside from a state guarantee on ENI's CEC power plant project, which is not further described. However, the comprehensiveness of the report's description of loans and guarantees is unclear, given evidence of SNPC's lending to third-parties in its audited 2017 financial statements that is not further explained.

In accordance with Requirement 2.6, the Republic of Congo should ensure public disclosure of the prevailing rules and practices regarding the financial relationship between the government and SOEs, including disclosures of transfers, retained earnings, reinvestment and third-party financing related to SOE joint ventures and subsidiaries. The Republic of Congo should disclose details regarding the terms attached to SNPC's equity stakes in extractives companies and projects, including their level of responsibility for covering expenses at various phases of the project cycle, e.g. full-paid equity, free equity or carried interest. Where there have been changes in the level of government and SNPC ownership during the EITI reporting period, the government and SNPC are expected to disclose the terms of the transaction, including details regarding valuation and revenues. To strengthen implementation as encouraged under Requirement 2.6.c, the Republic of Congo is encouraged to describe the rules and practices related to SNPC's operating and capital expenditures, procurement, subcontracting and corporate governance, e.g. composition and appointment of the Board of Directors, Board's mandate and code of conduct. The Republic of Congo is invited to consider the extent to which information on the rules and practices related to the financial relations between extractives SOEs (SNPC in particular) and the state could be systematically disclosed as a means of complying with Articles 15, 48 and 66 of the March 2017 Transparency Code (Law 10-2017).

5.6 Corrective action 6: Production data (#3.2)

In accordance with Requirement 3.2, EITI Congo should ensure that future EITI Reports provide production volumes and values for all minerals produced in the Republic of Congo 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.

Findings from the first Validation

The first Validation found that the Republic of Congo had made meaningful progress towards meeting this requirement. The 2014 EITI Report provided the 2014 production volumes for crude oil and it was possible to calculate the value of oil production based on the average oil price provided. While the 2014 EITI Report provided diamond production volumes but not values, it was possible to estimate the value of diamond production using the average diamond export price calculated from export figures provided. Finally, production volumes and values were 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 was considered by the Board to mean that this omission had a significant impact on meeting the broader objective of the requirement.

Progress since Validation

For ***mining***, the report provides the 2017 production volumes for artisanal-mined diamonds (p.111), for artisanal-mined gold (p.111) and copper (p.131), sourced from the Mining Department (DGM). The corresponding production values for all three minerals are provided, albeit without disclosing the basis for calculating them (p.131). The report provides production volumes for sandstone and limestone, albeit without the corresponding value (p.131). Production volumes are also presented per operator for copper, limestone and sandstone (p.131).

There is no reference in the 2017 EITI Report to the production of lead, aluminium and phosphate production, despite these being reported as exported in the 2016 EITI Report. One of the report's recommendations highlights the lack of data on volumes and values for artisanal gold and quarrying production (p.185). Several industry representatives consulted explained that industrial lead and zinc production had only commenced in late 2017, with first commercial production in 2018 expected to be covered in the 2018 EITI Report. The IA noted that it had simply included the production data it had been provided by government and companies without additional investigation.

For ***oil and gas***, the report provides 2017 production volumes and values for oil, gas, condensate, LPG (pp.37,125) and production volumes per operator (p.125), fields and blocks (pp.126-127) and type of oil (p.126), all sourced from Hydrocarbons Department (DGH).

Location: None of the report's production figures are provided by region.

Secretariat's Assessment

The International Secretariat's preliminary assessment is that the corrective action on production data has been addressed and that the Republic of Congo has made satisfactory progress on Requirement 3.2. The 2017 EITI Report provides production volumes and values for each extractives commodity it produced in 2017 aside from production values for certain quarrying products such as sandstone and limestone. However, these quarrying products were not within the scope of operations of material mining companies in the 2017 EITI Report.

To strengthen implementation, the Republic of Congo is encouraged to ensure public systematic disclosure of timely production volumes and values by commodity. This data could be further disaggregated by region, company or project, and include sources and the methods for calculating production volumes and values. The Republic of Congo is invited to consider the extent to which information on production volumes and values for each extractives commodity could be systematically disclosed as a means of complying with Article 66 of the March 2017 Transparency Code (Law 10-2017).

5.7 Corrective action 7: In-kind revenues (#4.2)

In accordance with Requirement 4.2, EITI Congo should ensure that future EITI Reports present information on the sale of the state's in-kind revenues disaggregated by buyer. The government is encouraged to reinstate the practice of publishing the Ministry of Finance's quarterly oil sales reports to ensure timelier compliance with Article 16 of the March 2017 Transparency Law and with Requirement 4.2 of the EITI Standard. The Validator notes the recent Public Eye report[122] on a Swiss commodity trader in the Republic of Congo, and encourages the MSG to take steps to provide more transparency in the role of oil commodity trading in future.

[122] Public Eye (September 2017), 'Gunvor au Congo', accessed here in February 2020.

Findings from the first Validation

The first Validation found that the Republic of Congo had made meaningful progress in meeting this requirement. The 2014 EITI Report reconciled 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 was not disaggregated by buyer as required in the EITI Standard, nor reconciled as encouraged where practically feasible.

Progress since Validation

Materiality: For ***mining***, the 2017 EITI Report does not explicitly address the issue of in-kind revenues, the overview of the fiscal regime for mining implies that all government mining revenues are collected in cash (pp.99-100).

For ***oil and gas***, the report explains the state's in-kind revenues in the oil and gas sector is collected by SNPC (pp.41) and demonstrates the materiality of the state's in-kind revenues (pp.10-11,139).

Volumes collected: The report provides the volumes of crude oil collected by the government as in-kind revenue for royalty ('*redevance minière proportionnelle*'), 'Profit Oil, Super Profit Oil, Excess Oil' and "Yanga and Sendji 15%" in 2017, disaggregated by company and revenue stream (p.137). Total government in-kind revenues were 26 875 191 barrels, or 27% of total production in 2017.

The report also provides the volumes of deductions from the government's in-kind revenues, which consist of:

- ENI's deductions from the state's in-kind revenues as reimbursement for the investment and operation of the CEC power plant (pp.137-138), totalling 2,563,978 barrels for operational costs and to 2,052,000 barrels for investment costs.
- Total and ENI's deductions from the state's in-kind revenues for the reimbursement of their advances of the operational costs for the Yanga and Sendji field, totalling 603 329 barrels (pp.54,138).
- The report describes the arrangement whereby Total handles marketing and sales of the state's in-kind royalty (RMP) entitlement from the Nkossa/Nsoko production contract as a form of deduction from the state's in-kind revenues (p.138). While this is an alternative marketing arrangement for a share of the state's in-kind revenues, its net effect is to reduce the volumes of the state's in-kind revenues that can be marketed and sold by SNPC on behalf of the state.
- The report describes the arrangement whereby SNPC deducts a share from the state's in-kind revenues for delivery to the domestic refinery CORAF (p.138), although it clarifies that the refinery is expected to settle payment for these deliveries and that the lack of payment to date is considered as a loan (p.57). Thus, the SNPC deliveries to the CORAF should be treated as a form of sale to the domestic market, rather than a form of deduction from the state's in-kind revenues that is transferred as a subsidy to the refinery.

The report provides figures for the government's entitlements to in-kind revenues and its actual in-kind revenues in 2017 net of in-kind deductions from ENI and Total described above (p.138). However, the report also deducts the SNPC deliveries to CORAF from the state's in-kind revenues available for sale, leading to final volumes available for sale of 15,777,840 barrels in 2017 (p.138).

Volumes sold: The report provides the aggregate volumes of the state's in-kind revenues that were sold in 2017, highlighting a discrepancy (1,584,255 barrels) between volumes available for sale and those actually sold (p.138). Net of the 1,442,553 barrels retained by SNPC as stock, this yields a final discrepancy between volumes available for sale and volumes sold or retained as stock of 141,702 barrels (p.138). The volumes of the state's in-kind revenues that were sold in 2017 are presented disaggregated by cargo (p.140).

However, in addition to the 14,193,585 barrels sold by SNPC on behalf of the state, the Secretariat considers that the 5,164,538 barrels transferred to the CORAF in 2017 should be considered a form of sale of the state's in-kind revenues, given the report's description of the lack of payment for these transfers as a debt to the state (p.57).

Sales proceeds: The report presents the value of proceeds of the sale of the state's in-kind revenues disaggregated by cargo (p.140) and in aggregate (pp.139,140). The identity of buyers, destination country, crude oil blend, cargo reference number and shipping date are provided for each cargo. The transfer of the proceeds of these sales is described, including the 46% of proceeds that were transferred to the escrow account guaranteeing China's infrastructure projects in Congo, the 41% transferred to traders in reimbursement of pre-financing arrangements, and the 13% transferred to the Treasury (p.139).

The report also describes the arrangement for Total EP Congo to market and sell a share of the state's in-kind revenues, namely the royalty (RMP) revenues from the Nkossa/Nsoko license (pp.65-66). The price-setting mechanism is described as set in quarterly meetings between the government and Total EP Congo (p.66). This represents an alternative marketing arrangement for this share of the state's in-kind revenues. The report provides the volumes of the state's in-kind revenues that were sold by Total in 2017 and the proceeds of those sales, including the value of proceeds net of the Maritime Tax deduction that were transferred to the Treasury (pp.66,138). The report confirms that Total did not retain any commission for these sales in 2017 (p.65) and that the sole buyer for these sales was TOTSA, Total's trading arm (p.66). The report presents Total's sales of this share of the state's in-kind revenues, disaggregated by petroleum product type and by month, with the unit price included (p.241).

Additional information: The report provides cargo-level information on the sale of the state's in-kind revenues (p.140), including type of product, unit price per barrel, volumes sold, cargo date and reference. The sales of the state's in-kind revenues are not reconciled with reporting by buyers. However, the pricing mechanism and buyer selection process for SNPC's sales of the state's in-kind revenues is not described. However, a comparison of cargo-level sales data for the state's in-kind revenues (p.140) and for international oil companies' equity oil sales (pp.227-231) appear to indicate similar pricing of cargos.

While the report describes SNPC's statutory entitlement to a 1.6% marketing commission on the price of each sale of the state's in-kind revenues (p.120), it notes inconsistencies between SNPC's EITI reporting, which stated that the SOE had not collected such commissions in 2017 (p.55), and SNPC's 2017 audited financial statements, which indicate that the SOE collected commission for the sale of the state's in-kind revenues of USD 11,777,139 (p.56).

The report makes efforts to go beyond the minimum of Requirement 4.2 by including cargo-level disclosures of international oil companies' sales of equity oil (pp.227-231). This information includes name of exporting company, shipping date, cargo volume, crude oil blend, unit price, cargo value, and buying entity.

The report also provides the volumes and values of SNPC's share of Profit Oil (equivalent to its Equity Oil) from the oil and gas projects in which it holds a participating interest, both in aggregate (p.145) and disaggregated by transaction (pp.232-234). This share of SNPC's in-kind revenues appears to be marketed and sold by the operator on each project, with proceeds transferred to SNPC in cash.

There was consensus among stakeholders consulted that the 2017 EITI Report marked a net improvement in coverage of the sale of the state's in-kind revenues. Several stakeholders from government and civil society noted with satisfaction the disclosure of cargo-level data on all oil and gas exports from the Republic of Congo, including oil and gas companies' equity oil sales. Several civil society stakeholders called for EITI reporting to provide more analysis in comparing the realised cargo-level sales prices with the "*prix fiscal*" (fiscal price) for oil set by the government. There was consensus among stakeholders consulted that the quarterly oil sales reports prepared by KPMG had not yet been published for 2017 (as of early 2020), although reports covering some of the period 2009-2016 had been published on the EITI Congo website.[123] In written comments to the International Secretariat, one CSO criticised the lack of publication of KPMG quarterly oil sales reports for 2017-2018 despite the government's commitment to do so.

Secretariat's Assessment

<u>The International Secretariat's preliminary assessment is that the corrective action on in-kind revenues has been addressed and that the Republic of Congo has made satisfactory progress on Requirement 4.2, with efforts to go beyond the minimum aspects required by the EITI Standard.</u> The 2017 EITI Report provides the volumes of the state's in-kind revenues that were collected, the volumes actually sold and the proceeds of the sales, disaggregated (but not reconciled) by buyer and y cargo. This includes sales of the state's in-kind revenues handled by SNPC as well as those under the alternative marketing arrangement with Total EP Congo on the Nkossa/Nsoko field. The report provides information on the deductions from the state's in-kind revenues prior to marketing and the management of proceeds of the sales, including deductions from the proceeds of sales prior to their transfer to the Treasury to reimburse China-financed infrastructure and pre-financing arrangement with traders. The disclosures thus include in-kind payments that are part of the reimbursement of pre-financing arrangements with traders. The MSG has made efforts to go beyond the minimum aspects of Requirement 4.2 by including unilateral government disclosures of cargo-level disclosures of all oil and gas companies' sales of their equity oil.

To strengthen implementation, the Republic of Congo is encouraged to ensure public disclosure of the nature of the contracts for sale of the state's in-kind revenues (e.g. spot or term contracts). The Republic of Congo may also wish to disclose a description of the process for selecting the buying companies, the technical and financial criteria used to make the selection, the list of selected buying companies, any material deviations from the applicable legal and regulatory framework governing the selection of buying companies, and the related sales agreements. Companies buying oil and gas from the state, including SNPC, are encouraged to disclose volumes received from the state or SNPC and payments made for the purchase of oil and gas. Where there are concerns related to data reliability and where practically feasible, the Republic of Congo should consider further efforts to address any gaps, inconsistencies and irregularities in the information disclosed. The Republic of Congo is invited to consider the extent to which information on the sale of the state's in-kind revenues could be systematically disclosed as a means of complying with Article 16 of the March 2017 Transparency Code (Law 10-2017).

[123] ITIE Congo, 'Rapport KPMG', accessed here in February 2020.

5.8 Corrective action 8: Barter and infrastructure arrangements (#4.3)

In accordance with 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.

Findings from the first Validation

The first Validation found that the Republic of Congo had made inadequate progress in meeting this requirement. Contrary to the IA's findings, Validation concluded that Requirement 4.3 was 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 involved the exchange of power plant infrastructure for crude oil, there was insufficient information in the public domain on the framework infrastructure agreement with the PR China to assess whether the agreement was relevant under Requirement 4.3. The 2014 EITI Report appeared to describe two barter arrangements with ENI but did 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 were lacking. Similarly, there was insufficient information on a framework infrastructure agreement backed by future oil sales proceeds between the Republic of Congo and China. Stakeholders argued that Requirement 4.3 was not applicable to these contracts, but did not provide sufficient information to demonstrate that Requirement 4.3 was not applicable.

Progress since Validation

For ***mining***, the 2017 EITI Report notes that the IA did not find any legal or contractual provisions related to barter arrangements or infrastructure provisions (p.106).

For **oil and gas**, the report describes one infrastructure arrangement that it categorises as a form of barter arrangement and infrastructure provision (pp.62-65). It also describes two other types of arrangements, involving China-financed infrastructure and pre-financing arrangements with traders, which it does not categorise as barter-type arrangements.

With regards to the project described as a barter-type infrastructure arrangement, the report describes a 2007 agreement between the government and ENI Congo for the development of the CEC integrated power project. The report includes a description of the two benefits streams, including ENI's development and operation of the integrated CEC (Centrale Électrique du Congo) power project on the one hand and on the other hand the state's granting of operator rights to ENI on the Marine XII license as well as deductions from the state's in-kind revenues of 171,000 barrels a month from July 2010 to the full reimbursement of the CEC investment costs (pp.62-63). A development partner noted that the term "barter" had negative connotations but agreed that the agreement consisted of the reimbursement of ENI's development and operation of the CEC project in exchange for an oil and gas license and deductions from its in-kind payments to government, in line with Requirement 4.3's definition of infrastructure provisions in barter-type arrangements. The 2017 EITI Report confirms that the CEC project costs were fully reimbursed as of the final lifting by ENI on 20 January 2019 (p.65). The investment costs for the CEC project include four key costs, including the development costs for the CEC power plant, the rehabilitation of the Pointe Noire-Brazzaville transmission line, the extension of the electricity distribution network in Pointe Noire and the development of the M'Boundi gas gathering system. The investment cost of the CEC integrated project is provided as USD 1.57bn (p.62), although the report notes that an 18% interest rate was applied to the financing of the CEC project's construction (p.65). The report provides the value of ENI's liftings of the state's in-kind revenues in 2017 (totalling 2.052m barrels valued at USD 108.2m), the value of cumulative total liftings by ENI since July 2010 in reimbursement of the investment as well as the value of investment costs outstanding as of end of 2017 (p.63). The deductions from the state's in-kind revenues are presented disaggregated between investment costs and operational costs, on a monthly basis (pp.137-138). The annual volumes and values of ENI's deductions from the state's in-kind revenues in reimbursement of the CEC investment costs since 2010 are provided, disaggregated by year and by each of the four CEC project components reimbursed (p.64).

With regards to the framework government-to-government infrastructure agreement with China, the report explains that a share of the proceeds of sales of the state's in-kind revenues is used as a guarantee against default in the reimbursement of China's financing of infrastructure projects (p.66). The report explains that these sales proceeds are not tied to the sale of the state's in-kind revenues to a particular party (p.66). It is explained that the sales proceeds are deposited in an escrow account, in which the government is required to maintain a balance equivalent to at least 20% of the value of the total outstanding debt to China (pp.66-67). However, the figures provided in the report for total volumes of the state's in-kind revenues sold to reimburse the China infrastructure loans (6,248,442 barrels) are exactly the same as the figures provided for the combined volumes sold in seven cargos to two Chinese traders[124], both of which are state-owned enterprises in China, in 2017 (p.140). The report's explanation that sales of the state's in-kind revenues transferred to the escrow account in reimbursement of the Chinese infrastructure loans were not tied to specific buyers implies that these are off-budget earmarked revenues rather than barter-type arrangements (*see Requirement 5.1*). There were starkly contrasting views among different stakeholders consulted over whether or not the sales of the state's in-kind revenues to reimburse the Chinese loans were tied to oil sales to specific buyers. Several stakeholders from different constituencies noted that most exports of the Djéno oil blend were destined to the US and Asian markets, given that its heavier and sourer characteristics were most suited for refineries in those jurisdictions. A government official reiterated the 2017 EITI Report's statement that these oil sales were not linked to specific buyers and could be sold to any buyer. In contrast, several civil society representatives alleged that there was a separate agreement between the Congolese and Chinese Governments covering crude oil sales to specific buyers, but noted that this separate agreement had not been publicly acknowledged or disclosed by government to date. A development partner shared the understanding that reimbursement for the Chinese loans was valued in US Dollar terms, but that the modalities of repayment of these loans was tied to physical delivery of crude oil to specific buyers, with the conversion of the cash value of loans to crude oil volumes calculated using prevailing oil prices. While there were different opinions as to whether the reimbursement of the Chinese loans was tied to physical oil deliveries to Chinese buyers, there was consensus among stakeholders consulted that the MSG had not been given access to key documents related to the Chinese infrastructure agreement, nor a summary of their key terms. Some civil society representatives noted that a summary of the terms of this agreement had been submitted to Parliament in line with an IMF condition, but noted that this report had not been publicly disclosed nor made available to the MSG or IA.

Although the report notes that the IA was not provided with the details and nature of the infrastructure projects financed by China nor the details of the agreement (including value, timeframe and repayment modalities), it quotes figures from the government's 2018 report on governance and corruption related to the date of signature of the framework agreement (1 June 2006), the estimated

[124] UNIPEC and Zhenhua Oil Co. Ltd.

value of concessional loans at inception (USD 1.6bn) and as of end 2017 (USD 2.9bn), the loan denomination (USD), the loan tenor (20 years, including a five-year grace period) and interest rate (0.25%) (p.66). The report provides the identity of the Chinese lenders (China Exim Bank, China Development Bank, and Weihai International Economic Technical Corporation (WIETC) (p.66), but does not provide the breakdown in loans between the three lenders. The report also quotes the description in the IMF's July 2019 report (n. 19/244) of the restructuring of the China infrastructure loan in April 2019, which restructured payment for one third of the loan over three years and the other two thirds over a 15-year timeframe, at an interest rate of 1.7% (p.67). The report provides the volumes and values of the state's in-kind revenues that were sold and transferred to the escrow account in China in 2017, equivalent to 23.25% of the state's in-kind revenues in 2017 (pp.66,139).

With regards to the pre-financing agreements with traders, the report provides a cursory description of pre-financing arrangements with commodity traders, albeit noting that the IA was not provided with details of these pre-financing agreements (such as loan value, interest rate, tenor, repayment modalities, and the value of outstanding loans as of the end of 2017 (p.67). The report names the three commodity traders involved in these pre-financing agreements in 2017 (Trafigura, Glencore and Orion Oil) (p.67). The report states that a share of the proceeds from the sale of the state's in-kind revenues is earmarked for the reimbursement of these pre-financing agreements, and provides the value of repayments in 2017 (USD 302,392,594), equivalent to 19.31% of total government extractives revenues that year (p.67). The IA confirmed that it was only provided aggregate data on reimbursements to traders. The report does not state whether the sales of a share of the state's in-kind revenues earmarked for reimbursement of the pre-financing agreements are tied to specific buyers. A review of cargo-level data on SNPC's sales of the state's in-kind revenues indicates that Trafigura and Glencore received a total of seven cargos valued at a total of USD 254.6m (p.140), around USD 47.8m less than the value of total 2017 repayments under the pre-financing agreements in 2017 provided in the report. There is insufficient information in the report to assess whether the pre-financing agreements constitute a form of barter-type arrangement, given the uncertainty in the report over whether the pre-financing agreements involve the provision of loans in exchange for the physical delivery of crude oil to specific parties.

The IMF's July 2019 Debt Sustainability Analysis provides disaggregated figures on the value of pre-financing arrangements, involving Trafigura (USD 1.092bn), Glencore (USD 806m) and Orion Oil (USD 250m) respectively in 2017.[125] However, the analysis does not provide more information on the repayment modalities for these loans. The IMF's January 2020 report on the 2019 Article IV consultation provides the value of outstanding arrears as of end-2017 in payment to the three commodity traders, valued at XAF 19.8bn (USD 34.085m) for Trafigura, XAF 2.7bn (USD 4.648m) for Glencore and XAF 0 for Orion Oil.[126]

In written comments to the International Secretariat, one CSO considered that SNPC had contracted debt from commodity traders on behalf of the state and that it had allocated these loans either to the state or to other investments. However, the CSO's comments did not refer to any specific documentary evidence for this observation. The IMF's January 2020 report on the 2019 Article IV consultation confirms that the debt from oil-backed pre-financing arrangements with commodity traders was contracted by SNPC and guaranteed by the central government.[127]

There were different opinions over the categorisation of pre-financing agreements among stakeholders consulted. One civil society stakeholder noted that the terms "pre-payment", "pre-financing" and "oil-backed loans" were used interchangeably by different stakeholders. Several civil

[125] IMF (July 2019), 'Republic of Congo : Staff Report-Press Release; Staff Report; Debt Sustainability Analysis, and Statement by the Executive Director for the Republic of Congo', accessed here in February 2020, Table 8 p.45.
[126] IMF (January 2020), 'Republic of Congo: Staff report for the 2019 Article IV consultation', accessed here in March 2020, p.39.
[127] *Ibid*, p.56.

society representatives highlighted national CSOs' public advocacy for greater transparency in these pre-financing agreements. A government official and several civil society stakeholders noted that the government's view that it would not disclose details of the pre-financing agreements before their restructuring, which was still being negotiated in the first quarter of 2020, was completed. A development partner's understanding of the pre-financing arrangements was that traders were contracted to market a share of the government's in-kind revenues and could withhold a share of the proceeds in repayment of the pre-financing loans. However, the partner could not confirm whether there was any evidence of the traders transferring any share of the proceeds of these sales to the Treasury, either in 2017 or subsequently. Several stakeholders noted that the government had recently suspended deliveries of crude oil to traders involved in pre-financing agreements, apparently pending the outcome of negotiations to restructure the pre-financing agreements.

In written comments, one CSO noted the gaps in coverage of the China infrastructure agreements and the pre-financing arrangements with traders in the 2017 EITI Report (including lack of information on use of these funds and loan terms such as tenor and interest rates) and criticised the lack of recommendations for more transparency in these agreements in the EITI Report.

Secretariat's Assessment

The International Secretariat's preliminary assessment is that the corrective action on barter and infrastructure arrangements has been partly addressed and that the Republic of Congo has made meaningful progress on Requirement 4.3. The 2017 EITI Report describes a barter-type infrastructure arrangement involving ENI's development and management of the CEC integrated power project in Pointe Noire, including the terms of the relevant agreements and contracts, the parties involved, the resources which have been pledged by the state, and the value of the balancing benefit stream. The report describes two other types of arrangements that it does not categorise as barter-type arrangements. The first consists of the use of a share of the proceeds from the sale of the state's in-kind revenues to reimburse the cost of infrastructure projects funded under the framework government-to-government agreement with China. While the report states that the sales of the state's in-kind revenues under this agreement are not tied to specific buyers, the report's cargo-level data on sales of the state's in-kind revenues indicates that two Chinese state-owned commodity traders received cargos with volumes equivalent to those described as sold to reimburse the cost of the Chinese-funded infrastructure projects in 2017. The second arrangement consists of repayment of pre-financing agreements from the proceeds of the sale of a share of the state's in-kind revenues. There is insufficient information in the report to assess whether the pre-financing agreements constitute a form of barter-type arrangement, given the uncertainty in the report over whether the pre-financing agreements involve loans in exchange for the physical delivery of crude oil to specific parties.

In accordance with Requirement 4.3, the Republic of Congo is required to consider whether there are any agreements, or sets of agreements involving the provision of goods and services (including loans, grants and infrastructure works), in full or partial exchange for oil, gas or mining exploration or production concessions or physical delivery of such commodities. This could include arrangements in which there is physical delivery of crude oil to specific buyers in reimbursement of loans or the provision of infrastructure works. To be able to do so, the multi-stakeholder group and the Independent Administrator need to 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. Where the multi-stakeholder group concludes that these agreements are material, the multi-stakeholder group is required to ensure that EITI implementation addresses these agreements and disclosures provide a level of detail and disaggregation commensurate with the other payments and revenue streams. The multi-stakeholder group is required to agree a procedure to address data quality and assurance of the information set out above, in accordance with Requirement 4.9. The Republic of Congo is invited to consider the extent to which information on barter and infrastructure arrangements could be systematically disclosed as a means of complying with Article 66 of the March 2017 Transparency Code (Law 10-2017).

5.9 Corrective action 9: SOE transactions (#4.5)

In accordance with 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.

Findings from the first Validation

The first Validation found that the Republic of Congo had made meaningful progress in meeting this requirement. The 2014 EITI Report disclosed SNPC's transactions with the government and the revenues collected by SNPC from material oil and gas companies. However, it was unclear whether the MSG had assessed the materiality of revenues collected by subsidiaries of SNPC and the 2014 EITI Report only briefly disclosed one transaction between an SNPC subsidiary (CORAF) and government.

Progress since Validation

For ***mining***, the 2017 EITI Report confirms the lack of state-owned enterprises in the mining sector (p.106) and that none of the state's equity interests in mining production license-holders gave rise to any dividend payments in 2017 (p.167).

For ***oil and gas***, the report discloses and reconciles company payments to SNPC. It presents the reconciliation results for material oil and gas company in-kind payments to SNPC, disaggregated by company and revenue stream (pp.256-268). The results of reconciliation of CONGOREP's dividend payment to SNPC in 2017 are also presented (pp.59,145,257).

In terms of SNPC transfers to the government, the report confirms the lack of dividend payment by SNPC to the Treasury in 2017, based on both the company's reporting and a review of its 2017 audited financial statements (pp.58,255).

With regards to SNPC's marketing and sale of the state's in-kind revenues, the report provides unilateral SNPC disclosures of the total value of proceeds of these sales and the results of reconciliation of the value of transfers related to these proceeds to the Treasury, equivalent to 13% of total proceeds from the sale of the state's in-kind revenues (pp.13,56,139,151). While the report provides some inconsistent information on the value of SNPC's transfers to the Treasury for the proceeds of the sale of the state's in-kind revenues, with one section of the report providing a figure of XAF 67,809,531,156 (p.56), all other sections of the report indicate that the reconciled figure was in fact XAF 66,107,753,953 (pp.13,139,151). The Secretariat understands from stakeholder consultations that the first figure represents a typo.

In terms of SNPC's transfers to other accounts, the report provides SNPC's unilateral disclosures of the management of the proceeds from the sale of the state's in-kind revenues, including the value of its transfers to the escrow account guaranteeing the China-funded infrastructure projects on the one hand and in reimbursement of pre-financing agreements with three commodity traders (pp.10,13,66-67,139).

In terms of government transfers to SNPC, the report states that no subsidy has been granted to SNPC and describes the terms of a state loan to SNPC that was not reimbursed in 2017 (p.58).

In terms of government transfers to SNPC's subsidiaries, the report provides the volumes of crude oil deducted by SNPC from the state's in-kind revenues and transferred to the domestic refinery CORAF (p.138). The report confirms the lack of payment for these deliveries and the categorisation of these unpaid arrears as a loan from the state to the CORAF (p.57) (*see Requirement 4.2*).

Secretariat's Assessment

The International Secretariat's preliminary assessment is that the corrective action on SOE transactions has been addressed and that the Republic of Congo has made satisfactory progress on Requirement 4.5. The 2017 EITI Report comprehensively addresses the role of SOEs, including comprehensive and reliable disclosures of material company payments to SNPC and SNPC transfers to the Treasury. The lack of government transfers to SNPC in 2017 is confirmed. The report provides the volumes of the state's crude oil that were transferred to SNPC's subsidiary CORAF in 2017 and confirms the lack of payment for these deliveries, categorised as a loan from the state to CORAF. While the report only provides SNPC's unilateral disclosures of transfers of a share of the proceeds from the sale of the state's in-kind revenues in reimbursement of China-funded infrastructure loans and of pre-financing agreements with commodity traders, the Secretariat considers that these accounts do not represent government accounts and that weaknesses in reporting on the two loan agreements is covered under Requirement 4.3.

To strengthen implementation, the Republic of Congo is encouraged to ensure public systematic disclosures of material company payments to SNPC, SNPC transfers to government agencies and government transfers to SNPC on an annual basis. The Republic of Congo is invited to consider the extent to which information on the allocation of extractives revenues not recorded in the national budget could be systematically disclosed as a means of complying with Articles 15 and 66 of the March 2017 Transparency Code (Law 10-2017).

5.10 Corrective action 10: Data reliability (#4.9)

In accordance with 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.

Findings from the first Validation

The first Validation found that the Republic of Congo has made meaningful progress towards meeting this requirement. 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 first Validation had 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 were considered to be 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 was also a concern that the assurances required from government agencies had been given less attention in 2014 compared to the 2012-2013 EITI Reports. This potentially reduced the extent to which the EITI could be used as a catalyst for improving public-sector auditing practices. That said, the standard IA ToR was considered to give 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 appeared 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 was no evidence that the IA or MSG prepared summary data tables for the 2014 EITI Report, which hampered the Republic of Congo's open data efforts.

Progress since Validation

The MSG-approved ToR for the IA for the 2017 EITI Report were in line with the Board-approved template and the recruitment of the IA (BDO UK) was approved by the MSG. There do not appear to have been any significant deviations from the IA's ToR in practice. The MSG approved the reporting templates as part of its approval of the inception report. There was consensus among stakeholders consulted, including MSG members, that the MSG had confidence in the professionalism and ethics of the IA for the 2017 EITI Report. Several stakeholders expressed disappointment over the delays in the Republic of Congo's EITI reporting, with the 2017 EITI Report published two years after the end of the fiscal period covered, but noted plans to ensure timelier reporting in 2020, with plans to publish the 2018 EITI Report in the second quarter and the 2019 EITI Report by the end of the year.

<u>Review of audit practices</u>: The 2017 EITI Report provides an overview of statutory audit and assurance procedures for extractives companies, SOEs and government entities (pp.122-123). For companies, the report describes statutory audit and assurance procedures (p.122) but does not clarify whether all material companies in the scope of 2017 reporting had audited financial statements for the year under review.

The report describes SNPC's statutory audit and assurance practices (pp.58,122) and provides a link to SNPC's 2017 audited financial statements[128] (p.58), which are published on the Ministry of Finance website alongside those for 2016[129] (p.122).

The report provides a review of statutory audit and assurance procedures for government entities (pp.122-123), but notes that the Supreme Audit Institution's (*Cour des Comptes et de Discipline Budgétaire - CCDB*) audits of 2016 and 2017 public accounts had not yet been finalised as of the publication of the 2017 EITI Report (p.123).

While the report describes the key aspects of the 2017 Transparency Code (p.124), it does not provide an update on the status of the Code's implementation.

<u>Assurance methodology</u>: The report describes the quality assurances agreed for EITI reporting (p.26). Companies were required to provide management sign-off and certification from an external auditor for their reporting templates (p.26). Government entities were required to provide management sign-off for their reporting templates (p.26). Supporting documentation was required for all reporting templates, including the detail of payments by transaction and, for companies, either a copy of their

[128] Société Nationale des Pétroles du Congo (December 2018), 'Etats financiers SNPC 2017', accessed here in January 2020.
[129] Société Nationale des Pétroles du Congo (November 2017), 'Etats financiers SNPC 2016', accessed here in January 2020

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audited 2017 financial statements or a letter attesting that their financial statements were audited in 2017 (p.26). The IA's methodology and work are described (pp.25-27).

Confidentiality: The IA's mechanism for preserving the confidentiality of information pre-reconciliation is described (p.27).

Reconciliation coverage: The report provides the target reconciliation coverage in line with materiality decisions of 100% in oil and gas and 95.1% in mining (p.28). Based on the report's assessment of the materiality of payments from non-reporting companies (0.01% of total extractives revenues in oil and gas and 0.03% in mining) (p.21), it is possible to calculate the final reconciliation coverage.

Assurance omissions: The report notes that 13 of the 29 reporting companies did not provide certification from their external auditors for their reporting templates and lists their names (p.22). The value of each non-complying company's payments to government is provided, totalling 0.33% of total government extractives revenues for the non-complying mining, oil and gas companies. The report confirms that all reporting government entities adhered to the agreed quality assurance procedures for their EITI reporting (p.22).

Data reliability assessment: The report provides the IA's assessment of the comprehensiveness (p.21) and reliability (p.22) of the reconciled financial data, given the low value of payments from non-reporting and non-complying companies.

Sourcing of information: The contextual information in the report is clearly sourced, although there are some gaps in sourcing of information in certain annexes to the report (e.g. Annex 14,pp.239-240). There do not appear to be any comments from stakeholders other than the IA.

Summary tables: While EITI summary data has been prepared for the period 2013-2016, these were being finalised for online publication at the commencement of the second Validation. The EITI Congo national secretariat submitted a draft of summary data for the 2017 EITI Report to the International Secretariat for review in January 2020, a few weeks after the report's publication. The Secretariat considers this delay reasonable in light of the 2017 EITI Report's publication right before the commencement of the second Validation.

Recommendations: The report provides a review of follow-up on ten recommendations from previous EITI Reports (pp.192-200) and a set of seven recommendations on the basis of the 2017 EITI reporting cycle (pp.184-191).

Secretariat's Assessment

The International Secretariat's preliminary assessment is that the corrective action on data reliability has been addressed and that the Republic of Congo has made satisfactory progress on Requirement 4.9. The MSG approved ToR for the IA in line with the Board-approved template as well as the recruitment of the IA. There were no significant deviations from the IA's ToR in practice, and the MSG approved the reporting templates. The 2017 EITI Report provides a review of statutory audit and assurance procedures, but only described audit practices for SNPC and government entities, not extractives companies. The report describes robust quality assurance procedures for EITI reporting and provides an assessment of compliance with these procedures in practice, including an assessment of the materiality of payments from non-complying companies. The report includes the IA's assessment that the reconciled financial data is comprehensive and reliable, as well as a review of follow-up on ten past EITI recommendations and a set of seven new recommendations based on the 2017 EITI Report. While the MSG prepared summary data for the 2017 EITI Report only in January

2020, after the commencement of Validation, the Secretariat considers this delay reasonable in light of the 2017 EITI Report's publication right before the commencement of the second Validation.

To strengthen implementation, the Republic of Congo is encouraged to use EITI reporting as an annual diagnostic of extractive companies and government entities' audit and assurance practices, with a view to transitioning towards companies and government's systematic disclosures of comprehensive and reliable data, including on payments and revenues, required under the EITI Standard. The Republic of Congo is encouraged to consider ways of systematically publishing the audited financial statements of extractives companies, SOEs and government entities through routine disclosure systems.

5.11 Corrective action 11: Distribution of extractive industry revenues (#5.1)

In accordance with 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.

Findings from the first Validation

The first Validation found that the Republic of Congo had made meaningful progress in meeting this requirement. The 2014 EITI Report described three types of revenues related to oil and gas that are not recorded in the national budget. The report showed 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 was described and the aggregate value of each type of allocated revenue in 2014 disclosed. However, it was unclear whether the private company collecting Maritime Tax revenues (SOCOTRAM) remitted any proceeds from these payments to government. More significantly, the allocation of revenues to specific projects under the ROC-PRC framework agreement were not described in sufficient detail since the IA did not have access to even general terms of the agreement. This was 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*).

Progress since Validation

The 2017 EITI Report confirms that public finances are managed based on the principle of the single Treasury account (p.120). Diagrams of payment flows in the mining, oil and gas, and forestry sectors are provided (pp.45,83,100).

For ***mining***, the report notes that all revenues are collected by the Tax Office (DGID), Treasury (DGT) and Customs (DGDDI) (p.121). It is implied in the report that all of these revenues are recorded in the national budget in line with the single Treasury account principle (p.120).

For ***oil and gas***, the report presents information in Table 2 indicating that 40.83% of oil and gas revenues are transferred to the Treasury (p.11). The affectations of other revenues are listed as earmarked oil and gas revenues transferred to the Chinese infrastructure escrow account (p.66-67), repayments to traders under pre-financing agreements (pp.10,67), SNPC's internal revenues (proceeds of the sales of its equity oil and dividends from its joint ventures) (pp.11,145), payments by two oil and gas companies to the "deposit and guarantee fund" at two banks at the government's request (p.19,51-52,145), social and quasi-fiscal expenditures (combined) (pp.11-12,145-146), and "other material payments" (pp.146-147). While the 2017 EITI Report does not refer to the government's balance sheet for 2017 (*Tableau des opérations financières de l'Etat – TOFE*), a review of the 2017 budget execution report accessible from the Ministry of Economy, Industry and the Public

Portfolio website does not appear to include the revenue streams listed in the report as not transferred to the Treasury.[130] Analysis of the government's 2018 balance sheet (TOFE)[131] indicates that the reimbursements for the CEC project and other deductions (believed to cover reimbursements of Chinese loans and pre-financing agreements with traders) as well as oil transfers to the CORAF refinery were included in the government's 2018 TOFE as of the 2018 budget.

With regards to the allocation of revenues earmarked for off-budget reimbursement of Chinese infrastructure loans, while the report provides the aggregate value of transfers to the escrow account in reimbursements for the loans (p.11,66-67,139), it also notes that the IA was not provided with information on the details of Chinese infrastructure projects funded nor of the government-to-government framework agreement, e.g. value investments and types of infrastructure projects funded, tenor, repayment modalities, nor interest rate (p.66-67). While the report categorises these revenues are off-budget, it does not classify the expenditures funded by these off-budget revenues as quasi-fiscal (see *Requirement 6.2*).

With regards to the allocation of revenues earmarked for off-budget reimbursement of pre-financing agreements with traders, the report provides the value of reimbursements under these arrangements in 2017 (pp.10,67), but highlights that the IA was not provided with information on the terms of the pre-financing agreements (value, tenor, interest rate, repayment modalities, outstanding balance) (p.67). While the report categorises these revenues are off-budget, it does not classify the expenditures funded by these off-budget revenues as quasi-fiscal (see *Requirement 6.2*).

With regards to the allocation of SNPC's revenues, while the report indicates that these represent government revenues not recorded in the national budget (p.10), the details of SNPC's sources of revenues indicates that these consist of Equity Oil revenues and dividends from SNPC's equity in CONGOREP (p.145). Thus, these revenues can be considered SNPC's commercial revenues rather than government revenues. While the report only provides a cursory explanation of SNPC's management of revenues (pp.55-56), the company's 2017 audited financial statements referenced in the report (p.58) provide an overview of SNPC's expenditures in 2017.[132]

With regards to the allocation of two oil and gas companies' payments to the "deposit and guarantee fund" at two commercial banks, the report explains that the two companies' (Total and HEMLA) payments to the fund were not reconciled with Treasury reporting, although the payments were made to the two commercial bank accounts (at Ecobank and BGFI) at the government's request (pp.19,52). The payments are described as being related to the Southern Sector licenses (ex-PNGF), namely Tchibouela II, Tchendo II and Tchibeli-Litanzi II, which expired in end 2014 and was re-awarded to a new consortium in 2015 (p.51). The payments represented additional tax payments for the period 2015-2016 in light of the fiscal regime under the new PSC signed in 2015, above the payments made under the previous PSC's fiscal regime (pp.51-52). A third oil and gas company's (Perenco) payment in relation to this tax regularisation is disclosed (p.52), although this payment was made to the Treasury and is thus recorded in the national budget. The allocation of the two oil and gas companies' payments to the "deposit and guarantee fund" at the two commercial banks is not described in the report.

With regards to the allocation of social and quasi-fiscal expenditures, the report provides the value of these expenditures reported by companies both combined and disaggregated between social and quasi-fiscal expenditures (pp.10-11,145). The report describes the types of social expenditures undertaken by SNPC (pp.60-61) and private companies (pp.89,242-250). However, given that mandatory and voluntary social expenditures are not considered government revenues, the

[130] République du Congo (28 December 2018), 'Loi n. 39-2018 portant loi de règlement du budget de l'Etat exercice 2017', accessed here in January 2020.
[131] Ministère des Finances et du Budget website, 'TOFE au 31.12.18', accessed here in February 2020.
[132] Société Nationale des Pétroles du Congo (December 2018), 'Etats financiers SNPC 2017', accessed here in January 2020.

Secretariat does not consider these social expenditures to be types of off-budget revenues (*see Requirement 6.1*). With regards to quasi-fiscal expenditures, the report provides the value and a description of SNPC's three types of quasi-fiscal expenditures in 2017 (p.61).

In addition to the extractives revenues listed as off-budget above, the report also lists in-kind deductions from the state's in-kind revenues that do not appear in the 2017 budget execution report[133] but are nevertheless not categorised as off-budget revenues in the 2017 EITI Report.

The report describes the agreement with ENI for the reimbursement of the CEC integrated power project, through deductions by ENI from the state's in-kind revenues (pp.62-65). The volumes and estimated value of ENI's deductions from the state's in-kind revenues under this arrangement are provided (pp.63,65,137-138), alongside an explanation of the integrated project and its key terms (pp.62-63,65) (*see Requirement 4.3*).

The report also describes deductions from the state's in-kind crude oil revenues as transfers to the CORAF refinery, including volumes and estimated values of 2017 transfers (pp.13,57,138). The report confirms that there was no payment for these deliveries in 2017 and explains that the IA's review of the 2008 performance contract and the MSG's deliberations concluded that the lack of payment by CORAF represented a debt to the state, rather than a form of state subsidy to the refinery (p.57). The report does not provide information on the CORAF's use of these crude oil transfers and the CORAF's annual report and audited financial statements do not appear to be publicly accessible.

The report does not seem to refer to national or international revenue classification systems.

There were different opinions among stakeholders consulted over what constituted revenues and expenditures that were recorded in the national budget. Several government officials rejected the notion that extractives revenues that were not recorded in the government's balance sheet (TOFE) should be considered off-budget, since other government documents (such as the EITI Report, in their opinion) provided information on their allocations. However, several civil society representatives considered that oil and gas revenues that were not transferred to the Treasury and not accounted for in the government's balance sheet (TOFE) should be considered outside the normal budgetary mechanisms and thus off-budget. A development partner explained that the cash and in-kind deductions from government oil and gas revenues under the agreements with ENI for CEC, with CORAF, the Chinese infrastructure agreement and pre-financing agreements with traders were now recorded in the government's balance sheet (TOFE) and the budget execution report since 2018, given that this was a pre-condition for concluding the ECF with the IMF. This is confirmed in a review of the government's 2018 balance sheet (TOFE).[134]

Secretariat's Assessment

The International Secretariat's preliminary assessment is that the corrective action on distribution of extractive industry revenues has been partly addressed and that the Republic of Congo has made meaningful progress *with considerable improvements* on Requirement 5.1. The 2017 EITI Report confirms that all mining revenues are recorded in the national budget and lists specific oil and gas revenues accounting for 58.17% of 2017 oil and gas revenues that are not recorded in the national budget. The Secretariat's view is that two of the revenues identified as off-budget in the report – SNPC's internal revenues and oil and gas companies' social expenditures – do not represent government extractives revenues. However, the report does not categorise the two types of in-kind

[133] République du Congo (28 December 2018), 'Loi n. 39-2018 portant loi de règlement du budget de l'Etat exercice 2017', accessed here in January 2020.
[134] Ministère des Finances et du Budget website, 'TOFE au 31.12.18', accessed here in February 2020.

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deductions from the state's Profit Oil (for reimbursement of ENI's funding of the CEC integrated power project and for crude oil transfers to the CORAF refinery) as off-budget revenues, even though it clearly describes the nature and volumes of these deductions. There is no evidence of these oil and gas revenues in the 2017 budget execution report or the government's 2017 balance sheet (TOFE), although they do appear in its balance sheets (TOFE) from 2018 onwards. While the report provides a general description of the allocation of most off-budget oil and gas revenues, it highlights that the IA was not provided access to the details of the agreement related to China's infrastructure loans or the pre-financing agreements with commodity traders. Of equal concern, the report does not explain the allocation of two oil and gas companies' payments to "deposit and guarantee funds" held at two commercial banks, which were made at the government's direction.

In accordance with Requirement 5.1, the Republic of Congo should ensure that an explanation of the allocation of extractives revenues, whether cash or in kind, that are not recorded in the national budget is publicly disclosed, with links provided to relevant financial reports as applicable. The Republic of Congo is invited to consider the extent to which information on the allocation of extractives revenues not recorded in the national budget could be systematically disclosed as a means of complying with Articles 12 and 46 of the March 2017 Transparency Code (Law 10-2017).

5.12 Corrective action 12: Social expenditures (#6.1)

In accordance with 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.

Findings from the first Validation

The first Validation found that the Republic of Congo had made meaningful progress towards meeting this requirement. The 2014 EITI Report provided mandatory social expenditures by oil and gas companies, in the form of workforce training, but it did not show the identity of any non-government beneficiary. The report also disclosed mining companies' payments of USD 16 000 in mandatory social payments, but did 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 provided unilateral reporting of voluntary social expenditures, albeit only disaggregated by company.

Progress since Validation

For ***mining***, the 2017 EITI Report explains that "some" mining contracts mandate an annual contribution to the community development fund and a contribution to the development of local skills (p.113). The fund is overseen by an independent committee composed of five representatives each from government and the mining company. While the report notes that the planned start of production of "some mining companies" is expected to "test the functioning of these provisions", it also provides the value of one mining company's (MPD Congo) contributions to the community development fund and one mining company's (SOREMI) contribution to the development of local skills (p.113). It is thus implied that, while the two mining companies undertook mandatory social contributions to the two funds in 2017, these were not yet disbursed in the year under review. The report implies that these contributions were made in cash, not in kind, and the identity of the immediate beneficiaries of these contributions (the two respective funds) is provided (pp.113,146).

However, elsewhere the report presents two mining companies' (Sintoukola Potash and SOREMI) unilateral disclosures of their mandatory social expenditures in 2017, which are presented as distinct from SOREMI's contributions to local skills development (XAF 10m) (p.146). The basis for the categorisation of these two mining companies' social expenditures as mandatory is unclear from the report, which does not describe the legal or contractual basis for these expenditures. The detail of both companies' mandatory social expenditures in Annex 16 indicates that one company's (SOREMI) mandatory social payments are in fact social security contributions to the National Social Security Fund (*Caisse Nationale de Sécurité Sociale*) (p.243), which should not be considered as mandatory social expenditures. Several industry representatives explained that SOREMI had originally reported these CNSS contributions as payments to government, but that the IA had subsequently reclassified them as forms of mandatory social expenditures. There was ultimately consensus among industry representatives consulted and the IA that CNSS contributions represented social security contributions (on behalf of employees), not mandatory social expenditures. They explained that the reconciliation of companies' reporting of CNSS contributions with government reporting of revenues consistently created significant discrepancies in consecutive EITI Reports, given gaps in government reporting of CNSS contribution receipts.

The second company's (Sintoukola Potash) reporting of mandatory social expenditures consist of payments to the Conkouati National Park in Kouilou (p.243). While the report confirms that these payments are made in cash and provides the identity of the beneficiary (p.243), a description of the reasons for these payments (and their legal or contractual basis) is not provided. Consultations with industry representatives confirmed that all mining production license-holders that had reached the production phase were required to make contributions to national parks, which in many cases had not yet been created.

It is unclear from the EITI Report whether reporting of mandatory social expenditures by these three mining companies was comprehensive of all material mining companies' mandatory social expenditures in 2017 given that a total of 14 material mining companies are listed as holding production licenses (p.34). Industry stakeholders consulted explained that, while 14 companies held mining production licenses in 2017, only three of these had reached the production stage and were thus required to undertake these mandatory social expenditures in practice. They considered the 2017 EITI Report's coverage of three mining companies' mandatory social expenditures to be comprehensive, although they noted that one company that was not member of the mining industry association (*Fédération des Mines*), the Chinese company LULU, had commenced production in late 2017 but had not submitted a reporting template for 2017.

For ***oil and gas***, the report notes that the IA's review of "some" PSCs did not reveal any contractual clauses requiring companies to undertake social expenditures, but it states that standalone agreements covering social projects are concluded between the state and oil and gas companies (p.72). The detail of disclosures of four oil and gas companies' unilateral disclosures of mandatory social expenditures in Annex 16 only provide the contractual basis for one of the five mandatory social expenditures reported by Total E&P Congo for 2017, while the legal or contractual basis of the other four mandatory social expenditures is not provided (p.242). However, one of these four types of expenditures consists of one oil and gas company's (Petro Kouilou) reporting of social security contributions to the National Social Security Fund (*Caisse Nationale de Sécurité Sociale*) (p.242), which should not be considered as mandatory social expenditures. There also appears to be a typo in the name of one company undertaking mandatory social expenditures in 2017, named Total ENI Congo (p.242) rather than ENI Congo as is correctly indicated in the body of the report (p.146).

While the report describes social expenditures undertaken by the SNPC foundation (Fondation SNPC) (p.60), it does not clarify whether there is a legal or contractual basis for these expenditures (i.e. whether they are mandatory). Several civil society and government representatives confirmed that the SNPC foundation's spending consisted only of voluntary social expenditures, given the lack of legal or contractual obligations to undertake such expenditures.

The unilateral disclosures of mandatory social expenditures of four oil and gas companies are presented in aggregate (pp.145-146) and disaggregated by type of expenditure and company (p.242). The report confirms that these expenditures were all made in cash (pp.145-146). The detail of these expenditures provides the identity of the beneficiary(ies) and their location, but only provides a dates of expenditures for four of the five expenditures (p.242).

The report provides the value, description and date of SNPC's five types of social expenditures in 2017 undertaken through the SNPC foundation (Fondation SNPC) (pp.60-61). In addition, the report only provides the location of the beneficiary of each social expenditure (p.61), without clarifying the identity and function of the beneficiaries.

The report also provides unilateral disclosures of one oil and gas company's and one mining company's voluntary social expenditures (pp.145-146,248-249). The information includes confirmation that these expenditures were made in cash, a description of the payment and the identity of beneficiaries for Total E&P Congo, but not for MPD Congo (pp.248-249).

Secretariat's Assessment

The International Secretariat's preliminary assessment is that the corrective action on social expenditures has been partly addressed and that the Republic of Congo has made meaningful progress with considerable improvements on Requirement 6.1. While the 2017 EITI Report provides a cursory and general description of social expenditures mandated by law or the contract with the government that governs the extractive investment, the legal or contractual basis for mandatory social expenditures reported is unclear from the report. It is also unclear whether the SNPC foundation's social expenditures are mandatory or voluntary, although there was consensus among stakeholders consulted that such social expenditures were purely voluntary. Nevertheless, the report presents mining, oil and gas companies' unilateral disclosures of social expenditures categorised as mandatory, although it is unclear whether the small number of companies reporting such payments is comprehensive of all mandatory social expenditures undertaken in 2017, particularly in the oil and gas sector. Two companies' contributions to the National Social Security Fund have been misclassified as forms of mandatory social expenditures. The report confirms that all mandatory social expenditures were made in cash, but provides descriptions of the expenditures and the identity of the beneficiary for only some, not all, of the mandatory social expenditures reported. The report also provides two material companies' disclosures of voluntary social expenditures (one in mining, one in oil and gas).

In accordance with Requirement 6.1, the Republic of Congo should ensure that the legal or contractual basis for mandatory social expenditures is publicly disclosed. In particular, future disclosures should clarify whether social expenditures by the SNPC foundation are mandated by law or contract, or are voluntary. The Republic of Congo should ensure that public disclosures of mandatory social expenditures include descriptions of the payments and the identity and functions of any non-government beneficiaries. These disclosures should be comprehensive of all material mandatory social expenditures undertaken by all companies included in the scope of reporting.

5.13 Corrective action 13: Quasi-fiscal expenditures (#6.2)

In accordance with 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.

Findings from the first Validation

The first Validation found that the Republic of Congo had made no progress towards meeting this requirement. The 2014 EITI Report did not refer to quasi-fiscal expenditures undertaken by SNPC or any of its subsidiaries and provided only limited information on transactions that could be considered quasi-fiscal expenditures. There was no evidence that the MSG or IA considered Requirement 6.2 in preparing the 2014 EITI Report. Yet, as the stakeholder consultations for the first Validation revealed, there was good reason to believe that there were substantial QFEs.

Progress since Validation

For ***mining***, while the 2017 EITI Report does not refer to the MSG's assessment of quasi-fiscal expenditures in the mining sector, the report does confirm that there were no SOEs operating in mining in 2017 (p.106).

For ***oil and gas***, the report presents unilateral disclosures of three expenditures by the SNPC foundation (Fondation SNPC) in 2017 that are categorised as quasi-fiscal (p.61). These consist of the construction of the Ouesso technical board high school, payment for the Madingou "municipalisation residue" and payment for the Bouenza "municipalisation residue" (p.61). However, the report does not refer to the basis for these quasi-fiscal expenditures, such as the government order directing the SNPC foundation to undertake these expenditures. Several government and industry representatives consulted considered that these three expenditures had been badly categorised as quasi-fiscal expenditures, as they represented in fact forms of voluntary social expenditures.

The report does not mention any other quasi-fiscal expenditures and there is no evidence that the MSG considered the detail of expenditures by SNPC or its subsidiaries, aside from the SNPC foundation, in its scoping of quasi-fiscal expenditures. However, the report states that only 40.83% of extractives revenues were transferred to the Treasury (p.141). It describes the allocation of oil and gas revenues not transferred to the Treasury, albeit without sufficient consideration of their potentially quasi-fiscal nature. There was a fundamental difference of opinion among stakeholders consulted over whether expenditures funded by oil and gas revenues not transferred to the Treasury represented quasi-fiscal expenditures, similar to the disagreement over what is considered to be off-budget revenues in the Congolese context (*see Requirement 5.1*). Several government officials explained the government's view that expenditures funded by extractives revenues not transferred to the Treasury were not quasi-fiscal, given their view that they were adequately recorded in other government publications, such as the EITI Report that they considered a government publication. Several civil society stakeholders consulted considered that these expenditures should be considered outside the normal budgetary process and thus quasi-fiscal.

With regards to <u>transfers of a share of the state's in-kind revenue to the CORAF refinery</u>, the report provides the volumes and estimated value of 2017 transfers to CORAF (pp.13,57,138) but refers to the MSG's categorisation of the lack of payment for these deliveries as a state loan to CORAF rather than a form of subsidy, based on the IA's review of CORAF's performance contract with the state (p.57). While this categorisation would seem to imply that the transfers to CORAF do not represent a form of off-budget subsidy, these deductions from the state's oil and gas revenues and transfers to CORAF were not recorded in the national budget in 2017 (*see Requirement 5.1*). The lack of information on the terms of the state loan to CORAF in the 2017 EITI Report means that there is insufficient information in the report to understand whether the terms of the loan were below market rates and thus whether there was any subsidised component to the state's loan to CORAF. Several civil society representatives considered that the crude oil transfers to the CORAF refinery represented a de facto subsidy to the domestic refinery, given that the loans should not have continued to be rolled over after several years since the 2008 CORAF performance contract did not include clauses for the extension of loans to the CORAF. A government official conceded that the unpaid loans to the CORAF, in the form of unpaid crude oil transfers, represented a de facto subsidy but contested their categorisation as quasi-fiscal expenditures given the government's view that they were recorded in government documents other than the budget and TOFE for 2017.

With regards to pre-financing agreements with traders, the report explains that a share of proceeds from the sale of the state's in-kind revenues is earmarked to reimburse pre-financing agreements with three commodity traders (p.67) and that these deductions are not recorded in the national budget (*see Requirement 5.1*). The value of repayments to the commodity traders in 2017 is provided (pp.13,67). However, the report notes that the IA was not provided with details of these agreements (p.67) and it is unclear from the report whether the pre-financing agreements involved loans from commodity traders to the Republic of Congo. Thus, there is insufficient information in the report to conclude whether the off-budget deductions of proceeds from the sale of the state's in-kind revenues under the three pre-financing arrangements represents a form of off-budget reimbursement of sovereign debt.

With regards to the repayment of ENI's CEC integrated power project, the report describes the in-kind deductions from the state's in-kind revenues by ENI in reimbursement of the investment and operational costs of the CEC project, composed of four components (pp.62-65). The arrangement is properly categorised as a former of barter-type infrastructure agreement (*see Requirement 4.3*) that was not recorded in the national budget in 2017 (*see Requirement 5.1*). The volumes and estimated values of ENI's deductions from the state's in-kind revenues in 2017 (pp.63,65,137-138). The report explains that the CEC project was transferred to the government's ownership in 2015, through a company in which ENI holds a 20% interest (p.62). However, the deductions by ENI in reimbursement of its investment and costs continued until 20 January 2019 (p.62). It can thus be inferred that ENI's in-kind deductions in 2017 represented an off-budget repayment for a public infrastructure work. In particular, a civil society representative considered that ENI's in-kind deductions in repayment of the CEC project's operating costs should be considered a quasi-fiscal subsidy to the power plant given that government revenues were used to reimburse the power plant's operations.

With regards to the repayment of Chinese infrastructure loans, the report describes the deductions from the proceeds of the state's in-kind revenues in reimbursement for Chinese-funded infrastructure projects (pp.66-67). The report confirms that these reimbursements were not recorded in the national budget in 2017 (*see Requirement 5.1*). The report provides the aggregate volumes sold and value of proceeds from SNPC's sales of the government's in-kind oil revenues that is transferred to an escrow account as guarantees for infrastructure projects (pp.10,66,139). However, the report notes that the IA was not provided with information on the details of infrastructure projects funded by the Chinese loans nor of the government-to-government framework agreement (p.66-67) (*see Requirement 4.3*).

The 2017 budget execution report[135] does not list these earmarked revenues and repayments, although the government's 2018 balance sheet (TOFE) does record them (*see Requirement 5.1*).

Secretariat's Assessment

The International Secretariat's preliminary assessment is that the corrective action on quasi-fiscal expenditures has been partly addressed and that the Republic of Congo has made inadequate progress on Requirement 6.2. This requirement does not appear to be applicable in the mining sector. The 2017 EITI Report lists three quasi-fiscal expenditures by the SNPC foundation totalling XAF 354m (around USD 601,864) on the one hand, but identifies some 58.17% of extractives revenues, equivalent to XAF 504.57bn (around USD 857.86m), that were not transferred to the Treasury in 2017. The report describes the allocation of oil and gas revenues not transferred to the Treasury (see Requirement 5.1), at least three of which appear to be forms of off-budget repayment of sovereign debt and infrastructure works. It remains unclear whether the off-budget deductions from the sale of the state's in-kind revenues could be considered quasi-fiscal, such as repayments for the CEC integrated power project, or for the pre-financing agreements with traders and for the Chinese infrastructure loans, or a form of fiscal leakages. However, the lack of sufficient information on the latter two deductions at the MSG's disposal (*see Requirement 4.3*) constrains the ability to properly categorise these arrangements.

In accordance with Requirement 6.2, the Republic of Congo should undertake a comprehensive review of all expenditures funded by extractives revenues that are not transferred to the Treasury that could be considered quasi-fiscal or otherwise. 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. The Government is encouraged to explain the statutory framework for the annual transfer of crude oil to CORAF, setting out clearly whether this represents a form of subsidy, and the annual value of the subsidy if applicable. The MSG may wish to take the IMF's definition of quasi-fiscal expenditures into account when considering whether expenditures are considered quasi-fiscal. The Republic of Congo is invited to consider the extent to which information on quasi-fiscal expenditures could be systematically disclosed as a means of complying with Articles 6, 31, 32 and 33 of the March 2017 Transparency Code (Law 10-2017).

5.14 Corrective action 14: Economic contribution (#6.3)

In accordance with 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.

Findings from the first Validation

The first Validation found that the Republic of Congo had made meaningful progress towards meeting this requirement. The 2014 EITI Report provided, 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 did not provide information on employment in the mining, oil and gas sectors nor estimates of informal gold exports.

[135] République du Congo (28 December 2018), 'Loi n. 39-2018 portant loi de règlement du budget de l'Etat exercice 2017', accessed here in January 2020.

Progress since Validation

The 2017 EITI Report provides, in relative and absolute terms, the extractive industries' 2017 contribution to GDP (p.148), government revenues (p.148), exports (p.148), employment (p.140) and the location of extractive activities (pp.36-37,94-96,206,213). The employment figures are based on EITI reporting and are quite low (7215), provided disaggregated by company, short-term/permanent and national/foreign (pp.251-253).

While the report does not explicitly cover the artisanal and small-scale mining (ASM) sector's contribution to GDP, it provides estimates of the volumes and values of ASM production in 2017 (pp.15,111,131) and a recommendation for the Mining Department (DGM) to undertake a full diagnostic of the gold and diamond sector (p.23).

Secretariat's Assessment

The International Secretariat's preliminary assessment is that the corrective action on economic contribution has been addressed and that the Republic of Congo has made satisfactory progress on Requirement 6.3. The 2017 EITI Report provides, in relative and absolute terms, the extractive industries' 2017 contribution to GDP, government revenues, exports, employment and the location of extractive activities. There is some coverage of artisanal mining production.

To strengthen implementation, the Republic of Congo is encouraged to ensure public systematic disclosures of information on the extractive industries' contribution to the economy, with a view to informing public debate and decision-making.

5.15 Corrective action 15: Public debate (#7.1)

To improve accessibility of EITI disclosure, and in accordance with 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.

Findings from the first Validation

The first Validation found that the Republic of Congo had 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 had not been widely disseminated. Dissemination activities of EITI disclosures also went down during the electoral period in 2015-2016. The MSG had not agreed a policy on the access, release and reuse of EITI data.

Progress since Validation

The 2016 and 2017 EITI Reports were published on 19 February 2019[136] and 27 December 2019[137] respectively. The EITI Congo website publishes a wide range of relevant reports, including the KPMG quarterly oil sales reports for much of 2009-2016.[138] The website also publishes the main pieces of legislation related to the extractive sector and links to the Finance Ministry website where most oil,

[136] ITIE Congo website, 'Rapport ITIE exercice 2016 de la République du Congo', accessed here in February 2020.
[137] ITIE Congo website, 'Rapport ITIE exercice 2017 de la République du Congo', accessed here in February 2020.
[138] ITIE Congo website, 'Rapports KPMG', accessed here in February 2020.

gas and mining contracts are disclosed. There is little evidence of social media activity on the EITI Congo's Facebook page[139] since 2017.

There appear to have been few dissemination and outreach events organised by the MSG aside from the annual press conference to launch the EITI Report chaired by the Minister of Finance. The EITI Report launch press conferences has led to some media coverage both for the 2016 Report[140] (e.g. in Vox[141]) and the 2017 Report (e.g. in Le Chemin, Vox[142]). While the MSG has lagged in dissemination activities, the PWYP coalition has led most efforts in disseminating findings of the 2016 EITI Report, albeit without documentary evidence of all meetings nor specific communication tools. The PWYP Coalition has also integrated EITI findings in their health budget monitoring activities across 12 departments, reaching a total of 444 persons in May and June 2019.

Terms of Reference for the dissemination of the 2016 and 2017 EITI Reports have been agreed and published on the EITI Congo website[143] in November 2019, but have only been partly implemented as of the start of Validation, considering the delay in the receipt of a grant from the World Bank. The ToR cover eight workshops targeting different constituencies, to be held in Brazzaville and to be carried out by civil society organisations. Three workshops have been held in Brazzaville totalling a number of 130 participants from media on 21 December 2019, from civil society organisations on 23 December and from universities, mainly students, on 27 December 2019.

There has been significant use of EITI Congo's data and findings internationally, including in a series of international NGO reports critical of the government's management of the extractive industries to international development partners such as the International Monetary Fund and the World Bank. Within the Republic of Congo, documentary evidence of use of EITI data is limited to PWYP Congo position papers and press releases as well as media coverage of the publication of the EITI Report as a whole, rather than individual findings.

The MSG had agreed a policy on the access, release and reuse of EITI data in December 2016[144], although there is little evidence to date of its implementation in practice on the EITI Congo website, even if the International Secretariat understands that there are plans to enhance systematic disclosures that could be integrated into the EITI Congo website. The Ministry of Finance's EITI-related SYSCORE project[145], which will not integrate into its SYSPACE public finance management system[146] yet in the first stage, should ensure that data on extractive revenues data is collected from both companies and public authorities through an e-reporting platform, on which a transparency portal could be developed.

Secretariat's Assessment

The International Secretariat's preliminary assessment is that the corrective action related to public debate has not been addressed and that the Republic of Congo has made meaningful progress on Requirement 7.1. While the 2016 and 2017 EITI Reports have been published since the first Validation, there has been little concerted effort towards outreach and dissemination by the MSG or national secretariat beyond a press conference to launch the annual EITI Report. Terms of Reference

[139] ITIE Congo Facebook page, accessed here.
[140] Ministère des Finances et du Budget (February 2019), 'ITIE-Congo – Publication du rapport 2016', accessed here in February 2020.
[141] Vox.cg (February 2019), 'L'ITIE relève la faible contribution des industries extractives en 2016', accessed here in February 2020.
[142] Vox.cg (December 2019), 'Plus de 12 milliards d'écart dans les recettes pétrolières, selon l'ITIE', accessed here in February 2020.
[143] ITIE Congo (November 2019), 'Termes de reference: ateliers de diffusion des Rapports ITIE 2016 et 2017 à Brazzaville' accessed here in February 2020.
[144] ITIE Congo (December 2016), 'Politique des données ouvertes de l'ITIE Congo', accessed here in February 2020.
[145] Ministère des Finances et du Budget (June 2018), 'Projet: banque de donnees sectorielle et l'informatisation du processus de collecte d'information ITIE-Congo', accessed here in February 2020.
[146] Ministry of Finance of the Republic of Congo, SYSPACE, accessed here (in beta version).

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for dissemination of the 2016 and 2017 EITI Reports in Brazzaville have been agreed, but partly implemented at the start of Validation. In addition to EITI Reports and MSG documentation, the EITI Congo website publishes other relevant reports such as the KPMG quarterly oil sales reports (albeit with some gaps). Yet plans to integrate an open data section of the website are pending the launch of the SYSCORE e-reporting platform hosted by the Ministry of Finance.

In accordance with Requirement 7.1, the Republic of Congo must ensure that government and company disclosures comprehensible, actively promoted, publicly accessible and contributes to public debate. The Republic of Congo should ensure that the information is widely accessible and distributed, that outreach events, whether organised by government, civil society or companies, are undertaken to spread awareness of and facilitate dialogue about governance of extractive resources, building on EITI disclosures across the country in a socially inclusive manner.

6. Requirements assessed as satisfactory in 1st Validation

In the course of undertaking this assessment, the International Secretariat has also considered whether there is a need to review additional requirements, i.e. those assessed as “satisfactory progress” or “beyond” in the first Validation. In particular, the Secretariat reviewed possible back-sliding in the 2017 EITI Report on requirements related to transport revenues (Requirement 4.4). While the assessment of Requirement 4.4 requires a judgement call, on balance the Secretariat’s view is that evidence suggests that Requirement 4.4 remained not applicable in the period under review in this Validation. In addition, the International Secretariat reviewed progress on requirements 1.5, 7.3 and 7.4. It concluded that progress continued to be “satisfactory progress” on these requirements despite the lack of evidence of MSG approval in meeting minutes (a gap covered under Requirement 1.4). While the other requirements have not been comprehensively assessed, in the Secretariat’s view there is no evidence to suggest progress has fallen below the required standard and no additional issues that warrant consideration by the EITI Board.

6.1 Assessment of transport revenues (#4.4)

Findings from the first Validation

The first Validation found that this requirement was not applicable to the Republic of Congo in the year under review. While there was evidence of the MSG’s assessment of the materiality of the Maritime Tax as a form of transportation revenue, the Maritime Tax was a payment from oil and gas companies to a private company, which was not transferred to the treasury.

Recommendation: 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.

Progress since Validation

The 2017 EITI Report states that the IA did not identify any material government revenues related to the transport of extractives commodities (p.67). However, it explains that maritime traffic rights are paid by foreign shipowners to two Congolese entities, Société Congolaise de Transports Maritimes (SOCOTRAM) and the Conseil Congolais des Chargeurs (Congolese Council of Shippers). The foreign shipowners subsequently invoice these maritime traffic rights to the oil and gas operators, who are themselves reimbursed for these payments through deductions from the state’s in-kind revenues or the oil and gas companies' tax liabilities, given their entitlement to tax stabilisation (p.67). However, the report notes that SOCOTRAM and the Conseil Congolais des Chargeurs do not understand the basis on which oil and gas companies deduct their payments of maritime traffic rights from their in-kind payments to government or tax liabilities (p.71).

The report describes the statutory provisions for these maritime traffic rights, in accordance with Decree n. 98-39 of 29 January 1998 and the Ministry of Transport, Civil Aviation and Commercial Shipping Order (*Arrêté*) n. 6719 (pp.67-68). These provisions state that the government is entitled to 40% of the maritime traffic rights payments, with the balance available to any Congolese shipowners, although the government is entitled to decide the attribution of these revenues by Order (*Arrêté*) of the Ministry of Transport, Civil Aviation and Commercial Shipping. Article 7 of Decree n. 98-39 requires the entity paying the maritime traffic rights to pay a participation fee (commission) to the Commercial Shipping Department (*Direction Générale de la Marine Marchande*), which plays the role of the Conseil Congolais des Chargeurs on an interim basis. The same article requires that shipowners involved in the international maritime transportation of oil and gas, minerals and timber pay royalties at least 40% of the maritime traffic rights to national shipowners (pp.67-68). However, the report states that SOCOTRAM subsequently transfers the 40% royalty on maritime traffic rights to foreign shipowners while the Commercial Shipping Department (on behalf of the Conseil Congolais des Chargeurs) transfers the 60% participation fee (commission) to foreign shipowners (p.71). A diagram of the flow of funds related to maritime traffic rights is provided (p.70).

However, the report states that neither SOCOTRAM nor the Conseil Congolais des Chargeurs represents a government entity (p.71). SOCOTRAM is described as a private national shipowner company, not a government entity, as confirmed in a Paris appeals court ruling on 23 May 2002 (p.71). The Conseil Congolais des Chargeurs is described as a public industrial and commercial establishment that has financial autonomy (p.71), implying that the MSG does not categorise it as a government entity.

The report also argues that the royalties and participation fee on maritime traffic rights do not represent taxes but rather a form of shipowner commissions or counterparty to the acquisition of Congolese maritime traffic rights (p.71). It clarifies the MSG's conception that these maritime traffic rights are paid by shipowners and not by oil and gas companies who are considered as shippers in this transaction (p.71). It notes that maritime traffic rights regulations apply to shipowners and operators, not on companies undertaking oil and gas exploration and production as such (p.71). There were different views about the inclusion of the maritime tax in the scope of EITI reporting. Several government officials stated categorically that these payments should not be considered a form of tax, but rather the payments of maritime rights by those using Congolese maritime waters. Several civil society representatives noted the civil society constituency's consistent request to ensure reconciliation of the maritime tax in EITI Reports, even if they had only been successful in securing unilateral company reporting of their payments. Several stakeholders from government and civil society noted that the government had suspended the maritime tax as of November 2019, given criticisms that the oil and gas companies' payments of maritime tax was being claimed as a recoverable cost under the terms of the PSCs.

The report provides the rates for the participation fee (commission) paid to the Conseil Congolais des Chargeurs and for the 40% royalties paid to the SOCOTRAM, as a national shipowner (p.68).

The report confirms that oil and gas companies were asked to report details of their deductions from in-kind payments to the state or their tax liabilities to offset their Maritime Tax payments as part of the 2017 reporting templates (p.67). Three companies' unilateral disclosures of their 2017 deductions to offset their Maritime Tax payments are presented, disaggregated by company (pp.71,138,257,260,265).

The report concludes that the payments of maritime traffic rights to SOCOTRAM and the Conseil Congolais des Chargeurs are remitted to foreign shipowners and are not considered transport revenues in accordance with Requirement 4.4 (pp.67,71).

Secretariat's Assessment

Statutorily, the state is entitled to a share of maritime traffic rights on international mineral, oil and gas shipments from the country, which is however in practice collected by two entities that the MSG does not consider to be part of the government. The first Validation concluded that this requirement was not applicable in the year under review. The assessment of the applicability of Requirement 4.4 in the Republic of Congo requires a judgement call. On balance, the Secretariat continues to consider that Requirement 4.4 was not applicable in the Republic of Congo in 2017. While the state is statutorily entitled to receive a share of maritime traffic rights related to the transport of oil and gas exports from the country, payments in practice do not flow to the single Treasury account or the accounts of a government entity or state-owned enterprise. Rather, the payments are collected by two entities that the MSG has not categorised as government entities and subsequently reimbursed through deductions from oil and gas companies' in-kind payments to government, or off-set against the oil and gas companies' future tax liabilities. While the report confirms the MSG's view that the payments for maritime traffic rights (labelled "Maritime Tax") do not constitute transport revenues in accordance with Requirement 4.4, it nonetheless provides applicable rates and three oil and gas companies' unilateral disclosures of their deductions from their payments to government in compensation for their "Maritime Tax" payments to SOCOTRAM and the Conseil Congolais des Chargeurs.

To strengthen implementation in light of the significant public attention on this issue, the Republic of Congo is encouraged to clarify the statutory basis for the "maritime tax" to determine whether it is indeed a tax that should be collected and transferred to the state treasury, or a cost-recoverable fee paid by oil and gas companies. If the payment can be characterised as a government revenue, then the MSG is required to ensure comprehensive disclosures of oil and gas companies' payments to the relevant entities (SOCOTRAM and Conseil Congolais des Chargeurs) and subsequent transfers to the Treasury or management by the relevant entities.

7. Conclusion

Having reviewed the steps taken by the Republic of Congo to address the 15 corrective actions requested by the EITI Board as of the commencement of its second Validation (29 December 2019), it can be reasonably concluded that six of the 15 corrective actions have been fully addressed and that the Republic of Congo has made satisfactory progress on the corresponding requirements of the EITI Standard. The outstanding gaps relate to civil society engagement (*Requirement 1.3*), MSG oversight (*Requirement 1.4*), license allocations (*Requirement 2.2*), state participation (*Requirement 2.6*), barter agreements (*Requirement 4.3*), distribution of revenues (*Requirement 5.1*), social expenditures (*Requirement 6.1*), quasi-fiscal expenditures (*Requirement 6.2*), and public debate (*Requirement 7.1*).

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