

MINISTRY OF FINANCE AND BUDGET

REPUBLIC OF CONGO
Unity * Labour * Progress

CABINET

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Brazzaville, 8 June 2020

***The Minister of Finance and Budget
Chair of the National Committee of the
Extractive Industries Transparency Initiative (EITI)***

to

Madam Chair of the EITI International Board

Madam Chair

Kindly find enclosed the response of the EITI National Committee to the EITI International Secretariat's preliminary assessment report of the second validation of Congo.

The Government of the Republic of Congo remains committed to its pledges and considers EITI implementation as a priority in its action on the management of resources produced by the extractive industries.

We thank the EITI International Secretariat for the work done and for the open collaboration with the various members of our Multi-Stakeholder Group and our committee's permanent secretariat.

We remain committed to providing any information to complement the document enclosed.

We remain, Madam Chair, yours most sincerely

**On behalf of the Minister of Finance and Budget
Chair of the EITI National Committee absent on mission
The Minister-Delegate to the Minister of Finance and Budget responsible for the
budget**

Ludovic Ngatse

EITI-CONGO NATIONAL COMMITTEE

Second validation of the Republic of Congo: Response to the draft assessment report of the EITI International Secretariat

Validation of the Republic of Congo Response of the National Committee to the preliminary assessment by the EITI International Secretariat

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COMMENTS ON THE DRAFT REPORT OF THE SECOND EITI VALIDATION OF THE REPUBLIC OF CONGO

Foreword

After analysing the draft validation report, the constituencies of the EITI-Congo National Committee believe that overall, the International Secretariat's assessment is consistent with the description of progress and the opinions of stakeholders. We therefore essentially applaud the quality of the work done and the relevance of the recommendations.

We do, however, need to mention the inconsistencies arising from certain facts described and raised in the Secretariat's conclusions that seem to be out of step with the description of progress and the views of stakeholders, regarding certain requirements.

II. Comments on the Requirements

A reading of this draft EITI-Congo validation report leads us to make the following observations in relation to the various corrective actions.

Corrective action 1: Civil society engagement (1.3)

At the first validation, of 2018, the Board had made conclusions on restrictions on the civic space related to self-censorship. In particular, the Board had made the following recommendation:

In accordance with Requirement 1.3, the Government of Congo should ensure that there is an enabling environment for civil society participation and that its representations are able to participate in public debate related to the EITI Process and express their opinions throughout the process without constraint, coercion or reprisals.

As part of the present assessment on freedom of expression, the focus of the evaluator was on the **ability of CSOs to participate in public debate around the EITI Process and to freely express opinions on the EITI process without constraint, coercion or reprisals**, as stipulated in the Civil Society Protocol. One can, then, read the following answers to the questions posed to stakeholders consulted:

Question One: *Are representations of civil society able to speak freely of the EITI process in public, including, for example, in meetings of the Multi-Stakeholder Group, at events held under the auspices of EITI – including for the promulgation of EITI Reports – public events, in the media, etc.*

- To this question, the International Secretariat, on the basis of the evidence examined, found and recognised that the answer is "Yes".¹

Question Two: *Specific practices, including the opinions of the various stakeholders or substantive evidence provided by independent third parties, indicate that self-censorship or a voluntary restriction on the part of civil-society representatives was put in place as part of the EITI Process, for fear of*

¹ Preliminary validation report, pp. 4 and 5.

reprisals and, whether this is so or not, these obstacles have affected the dissemination of information by civil-society representatives and public comments on the EITI Process.

- To this question, the International Secretariat. wrote the following: *"There is no indication of new government pressure on civil society, taking into account its engagement in EITI implementation: there is no published evidence of reprisals against CSOs publicly criticising government management of the extractive industries or the governance of natural resources in general. However, the evidence that is publicly available indicates that civil-society members of the Multi-Stakeholder Group raised "sensitive" subjects in the period 2018-2019, not only at meetings, but also through communications published in the media, such as in interviews, press releases and advocacy documents made public. These "sensitive" subjects discussed in public statements cover the financial management of the SNPC and its relations with the government, unpaid crude-oil transfers to the CORAF refinery, the Chinese framework agreement on infrastructure, the pre-financing agreements with commodity traders, the management of oil and gas revenues not transferred to the Public Treasury, the maritime tax and allegations of embezzlement by persons with links to the government. These statements were made by civil-society members of the Multi-Stakeholder Group, but there is also evidence of similar public statements by non-member CSOs on possible malpractices committed by politically-exposed persons."*²

The International Secretariat went on to say: *"Consulted in particular on the existence of 'taboo' subjects and the degree of self-censorship in relation to EITI, representatives of national civil society said that it had not been an obstacle to their free expression on all matters related to the EITI Standard. The national CSOs interviewed did not mention any 'taboo' subjects in relation to the extractive industries or the governance of natural resources that they would not be allowed to discuss in public. While national CSOs acknowledged the general existence of obstacles to freedom of expression, operation and assembly, especially on issues related to politics, human rights and, specifically, members of the family of President Sassou Nguesso, they did not say that these issues had anything to do with implementation of the EITI and, therefore, that the provisions of the Protocol on civil-society engagement had been violated in this respect."*³

And in terms of conclusion on the civic space, the draft report said, notably: **"The International Secretariat concludes in its preliminary assessment that notwithstanding reports of self-censorship of civil society in general on matters related to human rights and politics, there is sufficient evidence to suggest that it has been able to freely express its opinions on issues related to EITI and the governance of natural resources during the period 2017-2019, in accordance with paragraph 2.1 of the Protocol on Civil Society and with Requirements 1.3(d), 1.3(e)(i) and 1.3(e)(iv) of the EITI Standard."**⁴

This conclusion of the Secretariat seems surprising on two counts:

- Firstly, it puts points of view of local civil society in opposition to those of international organisations.

² Draft report, p. 17

³ Draft report, p. 18

⁴ Draft report, p. 27

- And secondly, it places centre-stage a well-known debate in EITI circles on the assessment of the civic space to be evaluated in the strict sense of participation and involvement in the EITI, or of the civic space taken generally.

In support of its opinion, the Secretariat went into detail on press freedom and the inability of the local press to cover scandals highlighted by international organisations. The report presents cases of self-censorship by one organisation, OCDH, in relation to human rights activity, and also to the burglary of the RPDH office, concluding that these events had an impact of freedom of expression. Now, quite rightly, the report shows that OCDH took on at local level both Global Witness reports on the acquisition of a building by a politically-exposed person and **called for the lifting of parliamentary immunity of the person concerned.**⁵ Then, OCDH brought a legal action for acts of corruption further to the Global Witness report. (Internet links) In respect of human rights in general and still in relation to OCDH, this organisation has published several reports on the human-rights situation during the period covered by the report. It even played a leading role in the **so-called "Chacona Affair"**, involving the death in custody of several persons in a police cell in Brazzaville in unexplained circumstances. Thanks to this accusation, moreover, and to the lobbying conducted, a trial took place in Brazzaville. (Internet links)

Other civil-society organisations spoke freely during the period. Indeed, further outreach and dissemination activities were conducted by civil society in relation to their respective programmes and projects, within the framework of EITI and in the general monitoring of the governance of natural resources. It is, moreover, thanks to civil society, especially the **Publish What You Pay Coalition, RPDH, CDJP, OCDH**⁶ and others, that outreach was effective and measurable in every département of the country. This awareness raising essentially covered EITI, budget monitoring in the context of the extractive industries, governance of the forestry sector and the environment, and monitoring the Redd+ process.

Missions to raise awareness about the management of natural resources have been undertaken unhindered in the field by several other non-MSG NGOs (**CDHD, ODDHC**).⁷ CSOs, particularly RPDH and CDJP, have held outreach meetings in every département of the Republic of Congo. Administrative obstacles were observed or experienced in two of the country's 12 départements. These obstacles were subsequently overcome and the meetings did finally take place.

This being so, could one possibly conclude on the basis of these few cases that CSOs do not freely participate in public dissemination and awareness activities related to EITI? Furthermore, it seems inconceivable to note the decisive, or even driving, role played by civil society in the EITI Process in Congo and to conclude that it does not actively engage in public dissemination and awareness activities, when it is civil society that initiated and implemented most of these.

In practice, we believe that the evidence of civil society's free and independent participation in EITI dissemination and awareness activities greatly outweighs the limitations experienced. The

⁵ www.ocdh-brazza.org

"Press release of 11 October 2019"

⁶ www.ocdh-brazza.com

- Forest and Extractive Industries Transparency Initiative
- Civil society in the front line on forest protection
- Report of the working meeting with the consultative councils of the Forestry Management Units (UFA) of Pokola and Ngombe
- Report of the strategic meeting of CSOs working in good forest governance
- Natural resources and rights of forest communities (outreach programme)

⁷ www.cdhd-congo.org

- Support for good governance of natural areas and transparency in the management of extractive resources ODDHC (activity reports, 2017, 2018)

weaknesses found in outreach and dissemination are not due to the obstacles or limitations mentioned above, but rather to the weakness of the Committee's financial resources for implementation and to human-capacity weakness in some cases.

The report mentions the participation of a gendarme in a meeting organised by a community neighbouring an oil-extraction operation as having led to self-censorship. We believe that this was misinterpreted by a foreign partner. The gendarme mentioned owed his presence only to the fact that he had been invited by the head of the community, and not to one from his own superior. His presence at that community meeting had not been ordered by any Congolese authority. The meeting in question was for the village's heads of district, heads of sector and other entities. The head of the village, acting at the request of the Justice and Peace Commission to hold the meeting, had not received any notification of particular exceptions with regard to persons who should not attend it. Whatever the case, the report provides indubitable evidence of the meeting actually taking place, in the presence of or with the participation of the gendarme. It is unfortunate that this unexceptional fact should be considered in the validation report as an incident that led to self-censorship.

Moreover, apart from the meeting initiated by the World Bank between civil society and the Ministry of the Interior to very-rightly consider civic space issues and the initiatives needed to ensure the independence of civil society in its capacity as a recognised stakeholder in the monitoring of public affairs, the RPDH organised a workshop in late 2019 for outreach and advocacy on the urgency of establishing a law to protect human-rights defenders and whistleblowers. This meeting, organised in partnership with the National Human Rights Commission, enabled participants from civil society and government to reflect on matters around the restriction of the civic space and the necessity of providing by legal means protection with the capacity to help civil society to work in safety and independently on the monitoring and evaluation of public affairs.⁸

Regarding the operation of civil society, the report particularly highlights the following: **"The International Secretariat concludes that, while civil society may operate effectively for everything related to EITI, in terms of registration and access to funding, it seems that ad hoc restrictions have been placed on the organisation's freedom to organize EITI public dissemination and outreach events, resulting from administrative and practical obstacles imposed, particularly by representatives of local governments."**⁹

The report does not offer any evidence on who was behind the prohibition or obstruction of EITI public dissemination and outreach events. It is recommended practice to document this incident, citing the name of the organisation, the place of the meeting and the administrative authority that obstructed the holding of the activity. Similarly, the report mentions a meeting that was initially prohibited by a local authority and later authorised again by central government thanks to the intervention of the EITI National Coordinator. This incident dates from 16 December 2016 and regards the Pointe-Noire Justice and Peace Commission, which was launching a campaign for access to electricity for communities neighbouring oil installations in the district of Hinda. Our view is that this incident had already been documented during the first validation and could not be re-used during the second validation to prove the restriction of the civic space. Whatever the case, to our knowledge and essentially, the Congolese Publish What You Pay Coalition and its member organisations conduct EITI dissemination and outreach activities. Furthermore, the report clearly shows that PWYP organised meetings in the 12 départements of the Republic of Congo, encountering no specific obstacles limiting its ability to act.

The report documents the creation of the Civil Society Consultative Committee as an organ to control civil-society organisations. We believe, however, that to implement the EITI and, in particular, to renew

⁸ REPORT OF OUTREACH AND ADVOCACY WORKSHOP FOR IMPROVED LEGAL PROTECTION FOR HUMAN RIGHTS DEFENDERS

⁹ Draft report, p. 27

the Multi-Stakeholder Group, the government approached Christian Mounzeo, National Coordinator of the Publish What You Pay Coalition and representing civil society in the Multi-Stakeholder Group and not the aforementioned institution for the appointment of members of the civil society constituency. One can, therefore, conclude on this subject that the presence of the Consultative Committee had no impact on the independent work done by civil society organizations in the context of the extractive industries.

In addition, the initial assessment of the Secretariat should be conducted in accordance with the recommendations of the EITI Board, which requires freedom of action for society in the context of the EITI Process. In drawing the conclusion that civil society was not free in the field of human rights and politics, the report was attempting to form an opinion through an overall assessment of the civic space in the Republic of Congo. It should be noted that the report made absolutely no mention of the existence of civil-society campaigns working directly on such political issues as the **"Turn the Page"** campaign, which clearly states as its priority the goal of democratic changeover of power, or the **Human Rights and Democracy Platform**. That said, the civic space should be analysed through the prism of Congolese civil society by documenting specific achievements in the implementation of the EITI, and not in light of the admittedly very-weak democratic space in the country.

Consequently, this conclusion is not consistent with civil society's successful engagement and organisation of outreach meetings about the EITI Process and natural resources (forestry sector). Given the actions conducted and issues addressed, civil society actors, whether EITI Process stakeholders or not, believe that they have not practised self-censorship because of the acts of intimidation and reprisals observed. The following link is one of the examples of freedom of expression enjoyed by civil society on natural resources issues during this period.¹⁶

Overall, the free participation of civil society in EITI dissemination and outreach activities is satisfactory. The small number of administrative and practical limitations observed have not, in fact hampered the ability of civil society to freely participate in public dissemination and outreach activities related to the EITI.

Nevertheless, to avoid constraints in other sectors (human rights, politics, etc.) developing self-censorship likely to affect the EITI Process, the government is encouraged to remove all obstacles and take the measures needed to guarantee freedom of expression, association, participation and operation in other sectors (political, human rights, etc.).

In light of these comments on Requirement 1.3, the Multi-Stakeholder Group asks the International Secretariat to reclassify the "Meaningful progress" to "Satisfactory progress".

Corrective action 2: Requirement 1.4: Multi-Stakeholder Group oversight

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.

The first validation concluded that the Republic of Congo had not made sufficient progress on compliance with this requirement:

¹⁶ Enter the words: "grand débat osc congo" into the YouTube search box to access various public debates held by civil society.

- The process for the appointment of delegates from each stakeholder constituency still needed to be clarified (need to clarify whether all representatives of civil society in the MSG were independent of the government, both operationally and politically).
- Lack of evidence of outreach and coordination activities within each constituency.

As part of this validation, the International Secretariat concluded in its draft assessment that: ***"The corrective action for the oversight that the Multi-Stakeholder Group is required to exercise has been partially implemented, and the country has made inadequate progress under Requirement 1.4; nevertheless, a significant improvement has been observed."***

The International Secretariat made an objective analysis of implementation of this action. Nonetheless, the EITI-Congo National Committee noted that many of the corrective actions for this requirement recommended in the previous validation have been implemented, albeit belatedly:

- The government has been asked to renew the members of the MSG. The government has done this, in accordance with the applicable internal rules of procedure, through the publication of various legal texts relating thereto (decrees, order).¹¹
- The Multi-Stakeholder Group was asked to "formalise and publish its policy on per diems and set a reasonable amount consistent with international custom and practice". The government issued an order¹² setting the per diems for attending meetings of the EITI.
- The MSG was asked to establish terms of reference in accordance with Requirement 1.4 of the EITI Standard. The EITI-Congo National Committee, during its second session, adopted these terms of reference, the draft of which had already been prepared by the National Secretariat. The ad hoc working group considered that it was the responsibility of the new EITI-Congo National Committee to approve and publicly disclose the ToRs. As the Covid-19 crisis did not allow the new National Committee to carry out its activities on schedule, it was finally on 8 June that these terms of reference were adopted.

It was also found during the previous validation that the Republic of Congo had not made sufficient progress on the following requirement:

- The process for the appointment of delegates from each stakeholder constituency still needed to be clarified (need to clarify whether all representatives of civil society in the MSG were independent of the government, both operationally and politically).
- Lack of evidence of outreach and coordination activities within each constituency.

During this validation, the Secretariat noted that the process for the appointment of delegates from each stakeholder group had been clarified with the publication of the mechanisms for civil-society appointments. It was also necessary to clarify whether all the civil-society representatives in the MSG

¹¹ Decree No. 2019-383 of 27 December 2019 establishing the creation, powers, organisation and operation of the National Committee for implementation of the Extractive Industries Transparency Initiative

- Decree No. 2019 of 28 December 2019 appointing the members of the bureau of the National Committee for implementation of the Extractive Industries Transparency Initiative
- Decree No. 2019-394 of 28 December 2019, appointing the permanent secretary of the National Committee for implementation of the Extractive Industries Transparency Initiative
- Order No. 5382 MFB-CAB appointing members of the executive committee of the National Council for implementation of the Extractive Industries Transparency Initiative

¹² Order No. 5410 MFB-CAB setting the amounts of session per diems for members of the National Committee for implementation of the Extractive Industries Transparency Initiative

were independent of the government, both operationally and politically. The present assessment enabled the International Secretariat to note that the civil-society representatives on the MSG were independent of the government, both operationally and politically.

Even so, it should be recognised that outreach and coordination activities within each constituency were not sufficient or efficient. It is true that the MSG did not hold its meetings in accordance with its rules of procedure and work plans for eight ordinary meetings per year. It should be noted that the MSG and the Ad hoc Committee set up were able to hold six meetings in 2018 and five in 2019.

The weakness of the Secretariat described in the report explains the late availability of the minutes of the said meetings. The emails attached and the minutes attest to the meetings having been held.

Despite these weaknesses, the Ad hoc Committee and the Permanent Secretariat have, with the assistance of the World Bank through the PRISP project and the Information Systems Directorate of the Ministry of Finance, conducted a number of activities that are essential to the EITI:

- The establishment of SYSCORE, on the initiative of the Permanent Secretariat
- Working session on the IMF missions that led to the inclusion of certain EITI recommendations into the IMF programme
- Training of members of the Executive Committee
- Outreach to the media, civil-society stakeholders, academics and students on the EITI Process

Indeed, in the context of the impact of the difficult situation of the Congolese economy on the financing of the activities of EITI Congo during the assessment period, the MSG sought and received from the World Bank part of the financing of activities included in the work plan. The weakening of the financial contribution of the State was already impacting the publication of EITI reports, dissemination and other activities related to corrective measures.

In an emergency situation concerning preparation for the second validation, the rigorous procedures for the availability of lines held by the World Bank for the availability of budget lines and burdens external to the MSG also contributed to the delay in respect of expected outcomes (EITI Reports 2016-2017 and 2018, grouped dissemination of EITI reports).

Given this description, we believe that significant efforts have been made.

Consequently and in accordance with the reality as of now, the conclusion for this measure should be reclassified as follows: **"The corrective action for the oversight that the Multi-Stakeholder Group is required to exercise has been partially implemented, and the country has made meaningful progress under Requirement 1.4; nevertheless, a significant improvement has been observed."**

Corrective action 3: License allocations (2.2) See response document from Mines, and from the Hydrocarbons Ministry (pending)

In accordance with EITI Requirement 2.2, EITI Congo should clearly define the number of mining, oil and gas licenses awarded and transferred in the year(s) under review, describe the statutory allocation and award procedures, including specific technical and financial criteria, and highlight any non-trivial deviations in practice. In addition, EITI Congo may wish to comment on the efficiency of the current

license allocation and transfer system as a means of clarifying procedures and curbing non-trivial deviations.

The EITI-Congo National Committee recognises that the International Secretariat. has made an objective analysis on the basis of the information available to it. However, the information on license allocations in the period from 2019 to 2020 will be placed on line to enable citizens to access it easily.

Also, the Ministry of Mines and Geology has provided the National Committee with the following comments, which have been reviewed and adopted:

Page	Statement in draft report	Comment	Observation
42§ 1	<p>Corrective action 3: License allocations (2.2)</p> <p>Progress since Validation</p> <p><u>Allocations/transfers:</u> In the mining sector, the 2017 EITI Report provides inconsistent information on the number and identities of the beneficiaries of mining licenses <u>allocated</u> in 2017. In the full report, reference is made to five minerals concessions (one production, four exploration) allocated in 2017 (p. 103). While the register of mining concessions published in annexes 5, 6 and 9 of the report contains a list of 14 exploration licenses, one production license and three mining agreements for which the date of allocation is shown as 2017 (pp. 213, 216, 219), all these exploration licenses, except four, are renewals according to the register and not new awards. Two of the mining exploration licenses listed as new allocations in the full report (p. 103) appear as renewals in the register of license register in annex 6 (p. 216). The Independent Administrator explained that there was an error in the report (p. 216) because the Mayeye license, described as a renewal, was in fact a new allocation. He said that while the Bondjodjouala gold-mining license was a renewal, that</p>	<p>In 2017, 13 exploration licenses were allocated or renewed. Of which:</p> <ul style="list-style-type: none"> • 4 licenses were allocated • 9 were renewed 	<p>See Ministry of Mines document of 15 May 2020</p>

	<p>for the diamond mine of the same name (Bondjodjouala) was a new allocation. The three mining agreements marked as being newly allocated in 2017 in the register of licenses in annex 9 (p. 219) are not included in the full report. This being so, the Independent Administrator stated that these agreements were for mining-production licenses awarded in previous years (before 2017) and that he had not, therefore, taken significant deviations into account in his assessment. He added that the conclusion of a mining agreement was automatic after the grant of a production license and that there could not be major deviations in this, except for the fact of the procedure taking some time.</p> <p>The distinction having been made between mergers and acquisitions of companies holding licenses, on the one hand, and transfers in the true sense of the word of licenses on the other hand, the report shows that there were no transfers of mining licenses in 2017 (p. 105).</p>		
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Corrective action 5: Requirement 2.6: State participation

On this requirement, we highlight the issues that have remained unanswered to date and for which clarification is needed.

In accordance with EITI Requirement 2.6, EITI Congo should ensure that future EITI Reports clarify the rules and practices governing financial relations between extractives SOEs and the government, the level of and terms associated with state equity participation in the sector as well as a comprehensive overview of loans and guarantees extended by the state or SOEs to extractives companies in the year under review. EITI Congo may wish to consider the extent to which implementation of Article 15 of the March 2017 Transparency Law would support progress in meeting aspects of Requirement 2.6.

The National Committee has considered the comments of the SNPC on this requirement. The analysis of the International Secretariat is objective. However, it was found that some of its content appeared to be inconsistent. The table below presents the comments of SNPC adopted by the National Committee. It should be noted that some information will be completed online.

Page	Statement in draft report	Comment	Observation
Corrective action 5: State participation (2.6)			

42§ 1	<p><u>Financial relations with the state :</u> Considering the financial part as laid down by <u>law</u>, the report briefly presents the turnover of SNPC, its purpose and its missions, its mode of governance (pp. 41, 55-56), in accordance with its special status confirmed by a decree of November 2017. Financial relations between the SNPC and the state, according to the law establishing it, are briefly described (pp. 41, 56-57), reflecting its freedom to determine its own dividends (pp. 57-58, 120) that consist of a share of the profits from its commercial operation ('Equity Cost' and 'Profit Oil') (p. 120). However, the report does not explicitly state whether SNPC is legally entitled to retain its earnings and reinvest them in its business, although that seems implicit (pp. 57, 120). It is explained that the general meeting of the SNPC approves the level of dividends (p. 57) in accordance with OHADA (Organisation for the Harmonization of Corporate Law in Africa) commercial law, which means that it approves the level of retained earnings and reinvestments, on the recommendation of its board of directors. Reference is made to the enactment of new articles of association of SNPC in November 2017 (adopted by Decree 2017-420), replacing the old articles which date from 2010 (p. 55), but the report does not explain the reforms introduced by these new articles of association. According to the 2017 SNPC articles of association, which do not seem to</p>	<p>SNPC has absolutely no freedom to "determine its own dividends". The dividend statement and the decision to distribute dividends are under the responsibility of various corporate bodies of SNPC (Board of Directors and General Meeting), subject to the application of rules on the constitution of dividends and particularly the realisation of profits. Contrary to what is stated in the preliminary validation report, dividends do not consist of a share of profits based on Equity Cost and Profit Oil, as these are only a mode of remuneration of the SNPC share in different licenses. Dividends are calculated on the profits generated by all SNPC business activities. Article 1 of the OHADA Uniform Act on Commercial Companies and the Economic Interest Group states that "Any commercial company, including one in which a State or a legal person under public law is associated, whose head office is located in the territory of one of the States-Parties to the Treaty on the Harmonisation of Business Law in Africa, shall be subject to the provisions of this Uniform Act."</p>	<p>We emphasise the need to ensure that the Independent Administrator's team has competences in the field of hydrocarbons and, in particular, regulations specifically applicable to domestic oil companies.</p>
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	<p>be available on government websites, but which are published on the Facebook page Info de Brazzaville 242, the board of directors is able to determine dividends, retained earnings and reinvestments; furthermore, SNPC has the right to obtain funding (that is, to borrow) from third parties (articles 7, 38 and 45).</p>		
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42§ 1	Reference is made to the enactment of new articles of association of SNPC in November 2017 (adopted by Decree 2017-420), replacing the old articles which date from 2010 (p. 55), but the report does not explain the reforms introduced by these new articles of association. According to the 2017 SNPC articles of association, which do not seem to be available on government websites, but which are published on the Facebook page Info de Brazzaville 242	If one enters "statuts de la Société Nationales des Pétroles du Congo" into the Google search engine, one is taken directly to the website of the Ministry of the Economy or to the website of the Official Journal of the Republic of Congo.	If one enters "statuts de la Société Nationales des Pétroles du Congo" into the Google search engine, one is taken directly to the website of the Ministry of the Economy or to the website of the Official Journal of the Republic of Congo.
42§ 1	The board of directors is able to determine dividends, retained earnings and reinvestment; in addition, SNPC has the right to obtain funding (that is, to borrow) from third parties (articles 7, 38 and 45).	The right to borrow is granted to any company, including state-controlled entities of an industrial and commercial nature (EPIC).	Errors or omissions excepted, no provision prohibits publicly-owned companies from borrowing from financial institutions.
42§ 2	"The 2017 EITI Report does not say why SNPC is not required to pay corporate income tax on its profits for 2017, its financial statements showing a dividend-amount of \$140 million for this year. The consultation report under article IV, published in January 2020 by the IMF (after the start of validation), raises the question of whether SNPC benefits from a special tax regime, since there is no record of payment of corporate income tax for the years 2013-2015 and 2017, even though it made "considerable profits" in those financial years.	SNPC is subject to the payment of corporation tax under the conditions provided by the regulations in force. In this regard, SNPC applies, in particular, article 172, paragraph 2, which states that "In the production-sharing contract, corporation tax is paid at a flat withholding rate by handing its share of profit oil to the State." SNPC does not, therefore, enjoy and special regime, but pays corporate income tax in accordance with the regime applicable to all producing companies operating in the Republic of Congo.	We invite the International Secretariat to consult the Hydrocarbons Code in force in Congo to verify our statement.

42§3	<p>"The report describes the sources of income retained by SNPC, including a commission of 1.6% on the price of each load sold, drawn from state income in kind (pp. 57, 120), and the share of cost oil (available net balance of production) and profit oil received according to the SNPC's commercial holdings in oil and gas projects (pp. 56, 156 and annex 12). It is explained in the report that the SNPC share of development and operations expenditure under its participation in oil and gas projects may be taken care of by the operators (p. 59), which demonstrates that it is allowed to seek funding from third parties."</p>	<p>The carry trade is a classic mechanism that certain oil companies in the world use in accordance with the different laws applicable to them. In Congo, this possibility is recognised by the Hydrocarbons Code and is seen in some contracts of association.</p> <p>In the case of the carry trade, it is not the operator alone that advances the funds on behalf of SNPC, but the entire contractor (operator and other partners as appropriate).</p>	<p>To understand these subtleties, it is necessary to become imbued in the oil environment and, in particular, the carry trade rules in Congo, which also mirror those existing in other countries.</p>
42 §4	<p>"The report notes the unique method of financing the operating expenses for the Yanga et Sendji concession, which predates the production-sharing contract (CPP) regime in the Republic of Congo (p. 54). Under the agreement, the contracting consortium finances the entire share of the 15% of project costs corresponding to SNPC and is reimbursed through deductions in kind on the state's profit oil (p. 54). The volumes deducted from the state's profit oil are valued at the budget oil price ("tax price") (pp. 12-13, 54)."</p>	<p>In 2017, SNPC was not a member of the Yanga-Sendji partnership. We recall that the list of SNPC participation in licenses is on pages 52 and 53 of the 2017 EITI Congo Report and that this information can be verified at the Ministry of Hydrocarbons and operator of Yanga-Sendji.</p>	<p>Errors and omissions excepted, no page of the Report indicates that SNPC has interests in Yanga-Sendji. It is simply mentioned that it sells Yanga-Sendji crude under the marketing mandate assigned to it by the state. We see once again the confusion between SNPC's own business activities and those that arise from a mandate assigned by the state.</p>

42 §5	<p>"The report explains the obligations of SNPC in regard of auditing and verification of accounts and provides a link to SNPC's audited financial statements for 2017¹ (p. 58), which are published on the Ministry of Finance Internet website along with those of 2016². The terms of governance of SNPC are also described in the report, including the composition of its board of directors with nine members, six of whom are from the government, with details given on the appointment process (p. 56)."</p>	<p>While some directors of SNPC represent the different ministries in connection with the activities of this company, they are not "from the government" as stated in the draft validation report. No minister sits on the Board of Directors or General Meeting of SNPC.</p>	<p>There is a decree that prohibits ministers from sitting on boards of directors.</p>
43§2	<p>"On a practical level in 2017, with regard to financial relations, both in terms of the SNPC report and after the Independent Administrator's review of the state-owned enterprise's financial statements, it is seen that no dividend was paid to the state for the financial year in question (p. 58). Although SNPC's audited financial statements for 2018 give a figure of \$140 million in dividends distributed by SNPC in 2017, an industry-representative consulted said that this was an unclear point in the audit report and that these dividends had been agreed but not paid in 2017.</p>	<p>The payment of dividends is subject to the rules in force in the Republic of Congo and, in particular, the OHADA Uniform Act on Commercial Companies and the Economic Interest Group. As in most company law, including in Europe, the dividends for year N are recognised during the year N+1 after approval of the relevant accounts. In this case, in the course of several exchanges with the EITI International Secretariat, SNPC said that these were dividends that were recognised and not paid to the state.</p>	<p>See OHADA Uniform Act on Commercial Companies and the Economic Interest Group</p>

43§3	<p>"The government loan to SNPC is properly recorded in the report (p. 58). It is noted that SNPC has not yet begun to repay this loan and its current value was \$5 million in 2017: in all events, this is what emerges from the Independent Administrator's review of SNPC's financial statements (p. 56). SNPC assured the IA that it had not received commission on the sale of income in kind to the state in 2017 (p. 56), although the report indicates total revenues from commissions of \$12 million, according to its financial statements for 2017 (p. 55). It is reported that the SNPC Board of Directors decided to retain \$19 million of income in 2017 (p. 57) without distributing this sum, but no reinvestment value has been specified so far. That said, SNPC's financial statements for 2017 do give the value of its reinvestments in 2017 on an accrual-accounting basis."</p>	<p>These are amounts stated by SNPC, not received by it.</p>	<p>This is a debt obligation that SNPC possesses towards the state.</p>
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44§1	<p>"This CSO criticised the fact that no comment was made in the 2017 EITI Report on the matter of whether execution of the CORAF performance contract was in accordance with contractual stipulations. An industry representative consulted on this point explained that SNPC's financial statements available to the public were only those of the SNPC Holding group, and not those consolidated for the entire group. These are not made publicly available."</p>	<p>SNPC confirms that only its financial statements are published online.</p>	
44§2	<p>"Regarding third-party financing to SNPC, the report states that it had contracted a \$2.5-billion debt in late 2017 with several operators (Wing Wah, New Age, ENI, Chevron, TEP Congo), which had in this way financed their share of the development and operating costs of four oil and gas projects (pp. 58-59, 239-240). The report therefore demonstrates SNPC's practice, which sometimes uses third-party financing (fundraising), in this case from private oil and gas companies."</p>	<p>SNPC has not, strictly speaking, "contracted debt". It has simply exercised a right granted to it by law to ask other members of the contractor (operator and other partners if applicable) to pre-finance its share in oil work. This use of pre-financing is common in the international oil industry, particularly with regard to domestic oil companies. It is not particular to Congo.</p>	<p>See applicable oil legislation in Congo.</p>
44§2	<p>"Citing the example of the HauteMer production-sharing contract, the report explains that SNPC's debt repayment to the operator is calculated on the basis of the Banque de France official interest rate plus a 0.5% 3-month LIBOR premium.</p>	<p>The rate mentioned in the draft validation report is that in existence at the time of the signing of the Joint Operating Agreement (JOA) in 1989. Since 1 September 1993, the base rate is the 3-month LIBOR plus 2.5.</p>	<p>See applicable oil legislation in Congo. This JOA was the subject of several amendments.</p>

44§2	The report shows SNPC having a total outstanding debt of \$2.5 billion to five operators in late 2017 (pp. 239-240). Several civil-society stakeholders consulted expressed their concern over the types of expenditures of the oil and gas companies that would be recoverable, noting that the various PSCs define the actual types of costs."	All the costs incurred by the contractors, including operators and SNPC, are subject to audit by the General Directorate of Hydrocarbons through mechanisms that are clearly defined in the Hydrocarbons Code and production sharing contracts.	See the Hydrocarbons Code and production-sharing contracts.
44§2	"Various stakeholders referred in this regard to the Global Witness report of January 2020, which contains questions about the types of recoverable costs, highlighting that this exacerbated SNPC's need to use third-party financing to honour its part of fundraising. A civil-society representative noted that an audit of costs (oil and gas) had been included in the memorandum for the allocation of the ECF by the IMF."	The use of third-party financing by the state-owned company forms part of its strategy approved by its governing bodies. Production-sharing contracts contain clauses relating to audits of the costs incurred by the members of the contractor.	Audits are conducted regularly and oil contracts contain clauses relating thereto.
44§2	"Many civil-society stakeholders expressed doubts about the specific regulation or contractual terms that enabled SNPC to use third-party financing to cover its share of the fundraising under certain production sharing contracts."	Errors or omissions excepted, there is no document prohibiting SNPC from using third-party financing; on the contrary, most companies in the oil sector use this type of financing, given the magnitude of the costs to be financed.	See relevant practice in the oil industry.

44§2	<p>"In this regard, a development partner confirmed this this SNPC debt was not covered by a global sovereign guarantee and, consequently, was not considered a form of sovereign debt. Several industry and government representatives confirmed that SNPC's debt to third-party oil and gas operators (to finance its fundraising share in four contracts) represented a corporate debt, not a sovereign debt."</p>	<p>We confirm that the pre-financing of the SNPC share in oil licenses is not a sovereign debt and that the repayment of the sums advanced will be by drawing on the cost-oil share due to SNPC in the licenses in question.</p>	<p>See discount of sovereign debt by IMF</p>
44§3	<p>"The 2017 EITI Report does not specify whether SNPC benefits from funding (loans) from commercial banks. However, its audited financial statements for 2017 show \$3 billion under "other liabilities" in 2017, which may indicate that it has sought additional funding from other third parties. The nature of this debt is barely detailed in both its 2017 financial statements and EITI Report."</p>	<p>Like any entity with business activities, SNPC may use financing from third parties such as banks.</p>	
45§1	<p>"The report also includes the volume and estimated value (at budgetary oil price) of the deductions from the state's share of profit oil, in reimbursement of the financing by Total E&P. Congo and ENI of the SNPC share (15%) of the operating costs of the Yanga et Sendji concession (p. 138)."</p>	<p>As stated in paragraph 6 above, SNPC was not part of the Yanga-Sendji Association in 2017.</p>	

45§1	"The report also includes the volume and estimated value (at budgetary oil price) of the deductions from the state's share of profit oil, in reimbursement of the financing by Total E&P. Congo and ENI of the SNPC share (15%) of the operating costs of the Yanga et Sendji concession (p. 138)."	As stated in paragraph 6 above, SNPC was not part of the Yanga-Sendji Association in 2017.	
45§4	"The entire capital of SNPC is effectively owned by the state (p. 55) and the terms of this public ownership are explained (pp. 56-58). In addition, SNPC holds a 49% stake in CONGOREP, an upstream hydrocarbons enterprise (p. 59). But the terms of this holding are not detailed in either the 2017 EITI Report or the SNPC Internet website."	The terms of this holding obey the same rules as any limited company established in the Republic of Congo or OHADA.	See the OHADA Uniform Act on corporate law.
45§4	Regarding the SNPC's subsidiaries, the report states that five companies ⁴ operate upstream and five downstream ⁵ (p. 60). Here too, however, neither the 2017 EITI Report nor the SNPC Internet website ⁶ give any detail on the modalities of these investments, in particular in the five upstream subsidiaries or their financial relations.	SNPC reported owning five subsidiaries, not 10. Two of them operate in the downstream oil sector (CORAF and SNPC Distribution) and three in the upstream sector (SONAREP, ILOGS and SFP). All these subsidiaries are limited companies governed by the rules of the OHADA Uniform Act on Commercial Companies and the Economic Interest Group.	Page 56 of the 2017 EITI Congo Report clearly states that SNPC only possessed five subsidiaries in 2017, all operating in the non-extractive sector. Moreover, subsidiaries and holdings should not be confused, as seems to be occurring in the draft validation report.

46§4	A declaration is also made regarding a state guarantee for the infrastructure contract made with ENI, guaranteeing repayment of ENI's investment costs for the construction of the Congo Power Station (CEC, p. 65) without, however, stating the conditions thereof.	We think that this paragraph should not be included in this part dedicated to implementation of Requirement 2.6, because it aims to clarify the relations between state-owned companies and the state. ENI, however, is not a state-owned company and SNPC is not a party to the CEC.	
46§6	There is no mention of a state or SNPC loan or guarantee in favour of an extractive company. A civil-society representative noted that the government had given an assurance that it had not granted any official guarantee on oil- or gas-related loans, noting that according to its audited 2017 financial statements, SNPC granted loans to unidentified third parties that do not seem to have been repaid to date.	The loans were mainly granted to SNPC subsidiaries.	
51§4	The SNPC's right to a marketing commission of 1.6% on the price of each sale of the state's income in kind is reported (p. 120) but there are inconsistencies between the SNPC EITI disclosure, which states that it did not receive this commission in 2017 (p. 55) and its financial statements, which report that it received \$11,777,139 in commissions for the sales of the state's income in kind (p. 56).	The commission due to SNPC was simply recognised in its 2017 financial statements. This is a claim against the state, not to be confused with a payment.	This is a simple recognition as required by the relevant accounting rules.

67§4	<p>It is interesting to note that the report declares the social expenditures made by the SNPC Foundation (p. 60) without, however, specifying if they are in application of a legal or contractual stipulation (if they are, in fact, mandatory). Several representatives of civil society and the government explained in this regard that these expenditures of the SNPC Foundation were simply voluntary, in the absence of any legal or contractual requirement on it.</p>	<p>Like any corporate foundation, the SNPC Foundation carries out work for the public good; there is, therefore, not legal or contractual obligation on it to do this work.</p>	
67§4	<p>It is interesting to note that the report declares the social expenditures made by the SNPC Foundation (p. 60) without, however, specifying if they are in application of a legal or contractual stipulation (if they are, in fact, mandatory). Several representatives of civil society and the government explained in this regard that these expenditures of the SNPC Foundation were simply voluntary, in the absence of any legal or contractual requirement on it.</p>	<p>Like any corporate foundation, the SNPC Foundation carries out work for the public good; there is, therefore, not legal or contractual obligation on it to do this work.</p>	

Corrective action 8: Requirement 4.3: Supply of goods

The analysis of the International Secretariat is objective. The EITI-Congo National Committee has agreed to provide additional information on the mechanisms of these agreements with China, with traders and with ENI for the Congo Power Station.

It should be noted that these agreements are not bartering. Regarding China, Congo markets its loads and the proceeds are paid into an escrow account at Eximbank of China to guarantee repayment for infrastructure constructed by China in Congo. For greater detail, the government will publish the explanatory notes to these mechanisms and the related reports.

This information will cover:

1	Agreements on the Congo Power Station (CEC) and budgetary treatment
2	Agreements with China on funding repayments for infrastructure projects
3	Pre-financing agreements with commodity traders
4	Budgetary treatment of repayments of commitments to China and commodity traders
5	CORAF transfers – Legal framework, financing and budgetary treatment
6	Allocation of revenues from extractive industries (TOF)
7	Publication of KPMG reports
8	Allocations of payments made by Total E & P. Congo and HEMLA to the Deposits and Guarantees Funds in two commercial banks (BGFI and ECOBANK) on instructions of the government.

Corrective action 11: Requirement 5.1: Distribution of extractive industry revenues

In accordance with Requirement 5.1, EITI Congo should, with the Independent Administrator, work on preparation of the next EITI Report in such a way as to report, in full transparency, on all revenues from the extractive sector (mining, oil and gas) that are not recorded in the national budget, explaining the precise allocation of these off-budget revenues.

The validation report has correctly described the assessment elements for this requirement. Nevertheless, we believe that as the assessment was made on the basis of the 2017 EITI report, while the period under consideration is from 2017 to 2019, it would have been worthwhile to take account of developments in the execution of the budget beyond the 2017 financial year. In the statement of conclusions¹³ from the meeting of civil society with the Minister of Finance on the draft 2017 EITI Report, civil society had clarified its position regarding off-budget expenditure, saying that as the income used to repay infrastructure works, the Congo Power Station and pre-financing is not included

¹³ Working session of 7 November 2019 with the Minister of Finance

in the budget, this income should be considered as being off-budget. The Minister of Finance considered that this discussion was no longer necessary since in the consolidated financial operations table of the state (TOFE) and the 2018 Finance Act, these revenues are properly allocated and are clearly shown. In the 2020 Finance Act, 1045 billion FCFA were provided to meet cash expenses, of which 601 billion FCFA¹⁴ were for the repayment of loans to traders, China, and other oil-backed loans.

Based on information and explanations provided by the Minister of Finance that stated that this income and expenditure was included in the budget from the moment that they are recorded in the TOFE, we believe that revenue allocation is now clear.

We consequently believe that the Republic of Congo has made satisfactory progress under Requirement 5.1. Even so, the government should ensure that it clarifies the nomenclature and classification of income and expenditure to avoid confusion.

More clearly, we consider this requirement as having been achieved, since the information that was not available in the 2017 budget is available in the 2018 budget, and certainly in that of 2019 and 2020. While the EITI Report does not provide all this information the assessment could have considered the other government disclosures.

- In the 2017 budget, the distribution of revenues was not clearly stated.
- In the 2018 TOFE, this information does appear (also check the situation in the 2019 and 2020 budget and in the 2019 TOFE).

Corrective action 12: Social expenditure (6.1)

In accordance with Requirement 6.1, EITI Congo must systematically categorise the types of mandatory social expenditure required by law or contract, and ensure that in future EITI reports, the declaration of these mandatory social expenditures is broken down to distinguish between spending in cash and in kind, also by type of payment and beneficiary, giving the name and function of non-governmental (third-party) beneficiaries. The MSG may also consider the possibility of conducting a reconciliation of mandatory social expenditures.

The National Committee agreed that social expenditures made by companies in the 2017 financial year were voluntary. The comments of the following mining companies were reviewed and adopted by the National Committee.

Comments by AGA MPD Congo – EITI-Congo mining sector representative

1. General remarks

As repeatedly stated, the representatives of the mining sector on the EITI committee are surprised by the rather negative tone of this draft report when it seems to us that, as members of the EITI committee since 2012, significant progress has been made by the Republic of Congo. It seems that the rapporteurs should also take account of the very difficult economic situation that the Republic of Congo has experienced since the fall in commodities prices in 2015.

¹⁴ Law No. 42-2019 of 30 December 2019 establishing the 2020 Finance Act, article 21, p. 10

It should be noted that despite this very difficult context, meetings of the EITI committee have been held assiduously and most members have continued to work and meet at a time when company (and state, also) budgets related to EITI activities have been considerably reduced due to the crisis.

Despite this context of economic crisis since 2015, all private-sector stakeholders have continued to mobilise to advance the EITI Process. As an operator, we wish to recall the importance of the EITI Process, which is closely followed by investors, and the suspension of the Republic of Congo from this process could have significant negative impacts on current investments, especially in our mining sector, in full development.

It seems also that many of the misunderstandings raised in the draft validation report are related to errors or inaccuracies on the part of the Independent Administrator in the 2017 EITI Report, which did not always take account of comments made by mining companies. While the 2017 Report is the Committee's report and we must take responsibility for the outcome, it seems appropriate, as we see it, not to sanction the Republic of Congo on the basis of a 2017 EITI Report that was prepared to a very tight timescale.

2. Specific observations

Page	Statement in draft report	Comment	Observation
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<p>pp. 34 and 35, progress since validation</p>	<p><i>Allocations/transfers: In the mining sector, the 2017 EITI Report provides inconsistent information on the number and identities of the beneficiaries of mining licenses allocated in 2017. In the full report, reference is made to five minerals concessions (one production, four exploration) allocated in 2017 (p. 103). While the register of mining concessions published in annexes 5, 6 and 9 of the report contains a list of 14 exploration licenses, one production license and three mining agreements for which the date of allocation is shown as 2017 (pp. 213, 216, 219), all these exploration licenses, except four, are renewals according to the register and not new awards.</i></p> <p><i>Two of the mining exploration licenses listed as new allocations in the full report (p. 103) appear as renewals in the register of license register in annex 6 (p. 216). The Independent Administrator explained that there was an error in the report (p. 216) because the Mayeye license, described as a renewal, was in fact a new allocation. He said that while the Bondjodjouala gold-mining license was a renewal, that for the diamond mine of the same name (Bondjodjouala) was a new allocation. The three mining agreements marked as being newly allocated in 2017 in the register of licenses in annex 9 (p. 219) are not included in the full report. This being so, the Independent Administrator stated that these agreements were for mining-production licenses awarded in previous years (before</i></p>	<p>On several occasions during preparation of the report, the Federation of Solid Mines (FedMines) told the Independent Administrator that the Congo Iron company (Nadeba project) <u>did not obtain its mining agreement in 2017, but in 2014, and this agreement was ratified in parliament in 2016.</u></p> <p>In accordance with the Mining Code, when a mining operating license is awarded, a mining operation agreement is negotiated and signed with the state. This agreement is then submitted to parliament for ratification. By way of reminder, operating licenses are issued for 25 years, just like all mining agreements, which too are valid for 25 years.</p> <p>In the Republic of Congo, there are 14 operating licenses that were in force in 2017. Following the research and studies carried out since 2008 by the mining companies, the Ministry of Mines and Geology had granted 14 operating licenses to 12 mining companies, nine of which are members of the Federation of Solid Mines of the Congo (FedMines). FedMines currently has ten members (nine in 2017; Luluyan des Mines joined in 2018). Nine members hold</p>	<p>See list of mining licenses attached.</p>
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	<p><i>2017) and that he had not, therefore, taken significant deviations into account in his assessment.</i></p>	<p>an operating license; the tenth member is GenMin (iron) which is in the exploration stage.</p> <p>In accordance with the Mining Code, the Ministry of Mines and Geology played a role of promoter of the sector, to ensure the harmonious development of the country, and was able to support investors to exploit world-class deposits. This was crowned in 2017 by the start of mining production in the Republic of Congo.</p> <p>Even so, there is a need to remain vigilant, as the mining sector remains very fragile. Other large-scale projects will start, on condition that constraints are overcome, that operators are supported and that arrangements are made for all administrations to work in line with the Ministry of Mines strategy.</p> <p>Industrial-scale mining production began in 2017. As of 2020, there are three mining companies in production: Soremi, Lulu and Sapro.</p> <p>In 2017, only Soremi and Lulu had started their first production. This commencement of industrial production, given that the Republic of Congo had not seen industrial mining production since the</p>	
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		<p>1970s, is to be welcomed and valued.</p> <p>The Independent Administrator's report does not sufficiently note this point, even though it is a great success for the country in general and for the Ministry of Mines and Geology in particular, which has been supporting operators for over ten years.</p>	
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<p>p. 48</p>	<p><i>The 2017 EITI Report makes no reference to the production of lead, aluminium, and phosphate, even though they are among the materials exported in the 2016 EITI Report. One of the recommendations in the report was to do with the lack of data on volumes and values of artisanal gold production and production from quarrying (p. 185). Several industry representatives consulted explained that industrial production of lead and zinc had only begun in late 2017 and for that reason, the first commercial sales in 2018 will be covered in the 2018 EITI Report. The Independent Administrator reported that he had simply included the production data that the government and companies had given him, without performing additional research.</i></p>	<p>The Republic of Congo does not yet produce potash (Cominco project, not yet in production). Similarly, there are no bauxite reserves in the Republic of Congo, so it is surprising to find that aluminium production was recorded in 2016.</p> <p>Regarding lead, the Soremi company is expected to start commercial production in 2021, but industrial production had not yet begun in 2017.</p>	<p>The 2016 report contained errors that will be corrected in future reports.</p>
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<p>p. 66</p>	<p>With regard to <i>mining</i>, the 2017 EITI Report states that "some" mining contracts include an annual contribution to a community development fund and a contribution for strengthening local skills (p. 113). This fund is overseen by an independent committee composed of five representatives appointed by the government and another five by the mining company in question. The expected start of production of "some mining companies" is expected to "test the operation of these provisions"; furthermore, the report indicates the amount of the contribution promised by the mining companies involved, the first being MPD Congo in the community development fund and the second, Soremi, in local skills development (p.113). Nevertheless, while both mining companies are committed to paying mandatory social contributions to the two funds in 2017, it seems by implication that they have not disbursed for the year in question. The report suggests that these contributions have been made in cash and not in kind, while not stating the identities of immediate beneficiaries of the two funds (pp. 113, 146).</p>	<p>The MPD Congo agreement, in its article 18, stipulates that, "<u><i>MPD Congo will contribute annually starting from the year following the date of commercial production to a fund formed as a non-profit association or the 'community fund' foundation.</i></u>"</p> <p>All mining companies in Congo have this clause and Soremi started production only in 2017. Soremi's contribution is payable, therefore, only from 2018 onward.</p> <p>Regarding MPD Congo, this company has not started production and <u>therefore has no obligation to contribute to the community fund.</u></p> <p><u>This being so, the report should be amended and the statement that MPD Congo and Soremi have not fulfilled their obligations should be removed.</u></p> <p>The Independent Administrator confused the mandatory community fund with the community contributions that <u>MPD Congo make on a voluntary basis</u> (see 2017 EITI disclosure – flow 13, <u>non-</u></p>	<p>On several occasions, regarding both MPD Congo and Soremi, comments have been forwarded to the Independent Administrator during preparation of the 2017 report on his misinterpretation and misunderstanding of community development funds.</p> <p>MPD Congo has no obligation to contribute to the community fund as it has not yet entered production.</p> <p>It is the payment of allowances to health centre staff and volunteer teachers that is done in cash on a contractual basis and supported by receipts. (See, for example, the contract governing Léfoutou Health Centre and examples of monthly receipts from health-centre staff and teachers.)</p> <p><u>MPD Congo has constant compliance checks on all payments, and allowing doubts to remain in this way may seriously damage the reputation of our company and group.</u></p>
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		<p>mandatory community contributions), such as:</p> <p>Payment of additional allowances to staff of Léfoutou Health Centre, which was created by MPD Congo in 2015.</p> <p>Purchase of medicines for the Health Centre</p> <p>Payment of allowances to volunteer teachers in eight schools in eight villages in the project area that have been restored by MPD Congo.</p>	
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p. 67	It also includes the unilateral declaration of voluntary social expenditure for one oil and gas company and one mining company (pp. 145-146, 248-249). They were also made in cash with a description of the payment and the identities of the beneficiaries for Total E & P Congo, but not for MPD Congo (pp. 248-249).	<p><u>This sentence seems to indicate that MPD Congo lacks transparency, which is not acceptable when account is taken of transparency procedures and rules.</u></p> <p>All expenditure was recorded and listed in detail. The beneficiaries of the non-mandatory community contributions who are, as indicated previously, the teachers in the schools and the staff of the health centre, are identified by name and the amounts detailed (see supporting documents attached).</p>	<p>The supporting documents were forwarded to the Independent Administrator, who did not take them into account.</p> <p>This sentence should be deleted from the final report, as it does not reflect reality and <u>discredits companies engaged in the EITI Process, such as MPD Congo since 2012.</u></p>
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Regarding SNPC, the comments in the table below were also adopted.

Page	Statement in draft report	Comment	Observation
Corrective action 12: Social expenditure (6.1) SNPC			

68§ 2	<p><i>In accordance with Requirement 6.1, the Republic of Congo must ensure that the legal or contractual basis for mandatory social expenditures is disclosed and public. In particular, future reports should clarify whether social expenditures by the SNPC Foundation are mandatory under the law or a contractual term, or voluntary.</i></p>	<p>The legal and contractual basis is published, since the production-sharing contract requires the contractor to carry out social projects.</p> <p>Moreover, social projects undertaken from each contractor's obligation to participate in the development of local content through social projects must not be confused with the freedom accorded to every company, including oil companies, to do charitable works.</p>	<p>This obligation is included in each PSC. The nature and amount of the social project under the PSC is mutually agreed between Congo and the contractor.</p>
69§ 2	<p>In the hydrocarbons sector, the report presents the unilateral disclosure of three items of spending of the SNPC Foundation in 2017 that are classified as quasi-fiscal (p. 61). These are the construction of the Ouesso technical school and payment of the "municipalisation balances" for Madingou and Bouenza (p. 61). However, the report does not specify the origin of these quasi-fiscal expenditures and does not cite, for example, the ministerial order instructing the SNPC Foundation to make these expenditures. Several government and industry representatives consulted said that these three items of expenditure were incorrectly described as quasi-fiscal expenditure as they were, in fact discretionary social expenditure.</p>	<p>The SNPC Foundation regularly conducts social works and in 2017, it continued actions identified in its programme of activities.</p> <p>We believe that these are social works that should be classified as such.</p>	<p>We do not understand why this spending was classified as "quasi-fiscal" and have already made this point to the EITI International Secretariat.</p>

The 2017 EITI Report contains a brief, general description of mandatory social expenditures made under law or the contract between the extractive industries and the state. Companies that have made expenditure of this kind have also disclosed it. The social expenditure of the SNPC is not mandatory,

but discretionary. From the moment that the creation of its foundation was not contractual, its spending within this framework cannot be contractual. Companies that have not declared social expenditures are assumed to be those that have not made social expenditure.

We consequently believe that the Republic of Congo has made satisfactory progress under Requirement 6.1. Nonetheless, it should ensure that the National Social Security Fund (CNSS) is able to participate in the reconciliation process for greater transparency over the level of social contributions made by companies, and that all government entities that receive social expenditures are also involved in the reconciliation exercise.

Requirement 6.2: Quasi-fiscal expenditures

To address this requirement, the following needs to be considered:

- **The definition of quasi-fiscal expenditure is that of the IMF and accepted by all stakeholders.**
- **The situation is similar to that already addressed under corrective action 11, Requirement 5.1: the reforms of 2018 introducing the recognition of government commitments (CORAF, CEC, TRADERS, CHINA) not stated in the TOFE in 2017. This procedure is now the one contained in the Finance Acts 2019 and 2020, which remain documents within the context of the period of validation ending 30 December 2019.**
- **The spending of the SNPC Foundation is discretionary, and not quasi-fiscal, expenditure. (Social and environmental responsibility)**

This fact leads us to ask the evaluators to consider that the progress made by the Republic of Congo under the heading of categorisation of quasi-fiscal expenditure is satisfactory.

Exclusive conclusion

In light of the inconsistencies and observations raised above, the EITI-Congo National Committee wishes to point out that the significant efforts made by the Republic of Congo do not seem to have been assessed accordingly. Most important of these are the Government of the Congo's accession to the EITI and the oversight by EITI Congo.

In a difficult economic context, the Government and MSG oversight have managed 26 corrective actions; work to implement these actions was carried out in the course of the second validation.

This is an opportunity to thank our development partners, including the World Bank due to their very significant financial support for EITI-Congo for the execution of major activities that have resulted in the updating of the EITI reports and in the various improvements found by validators in the latest EITI-Congo reports.

The EITI-Congo National Committee wishes to thank the EITI International Secretariat for its help through its support, assistance and leadership that has truly guided EITI-Congo through to achieving the series of improvements presented in the various conclusions in the draft report.

The Government of the Republic of Congo remains determined to improve its relationship with civil society, to make arrangements for free, independent actions and to maintain the progress of EITI implementation and the March 2017 Transparency Code.

Independent sources, including EITI-Congo, now possess information about Congo, including that information held by partners of Congo (such as the IMF).

Thus, in view of our analysis of the draft report sent to us by the International Secretariat, and in view of those discrepancies mentioned, the EITI-Congo National Committee proposes the assessment shown below, which does not overshadow the context in which the work was done.

Annex: Proposed assessment of level of progress

Requirements of the 2016 Standard		Progress level
Category	Requirement	
1. Oversight by MSG	1. Civil society engagement (<i>Requirement 1.3</i>)	Satisfactory
	2. Oversight by the MSG (<i>Requirement 1.4</i>)	Satisfactory
2. Licenses and contracts	3. License allocations (<i>Requirement 2.2</i>)	Meaningful
	4. State participation (<i>Requirement 2.6</i>)	Satisfactory
4. Revenue collection	5. Goods exchange or barter agreements, the granting of financing by traders (<i>Requirement 4.3</i>)	Meaningful
5. Revenue allocations	6. Distribution of revenues (<i>Requirement 5.1</i>)	Satisfactory
6. Social and economic contribution	7. Social expenditure (<i>Requirement 6.1</i>)	Satisfactory
	8. Quasi-fiscal expenditure (<i>Requirement 6.2</i>)	Satisfactory
7. Outcomes and impact	9. Public debate (<i>Requirement 7.1</i>)	Meaningful

III The inconsistent items in the draft report

Reading this draft report of the EITI International Secretariat regarding the assessment of EITI implementation in the Republic of Congo has allowed the EITI-Congo National Committee to note the different inconsistencies that we have listed, non-exhaustively, in the following table.

Page	Statement in draft report	Comment		Observation
I. Executive Summary				
3§1	The following period, 2017-2019, was marked by relative political stability that the stakeholders consulted described as a mid-term lull, before the presidential elections of 2021.	Relative political stability described as a mid-term lull, envisaging probable instability in 2021.		The validation exercise should be carefully circumscribed. The introduction of 2021 is not relevant and seems tendentious.

3§2	<p>Even if there are differences of opinion among stakeholders on the classification of certain oil or gas revenues into the quasi-fiscal category</p>	<p>Differences have persisted on the information about the categorisation of revenues from the exploitation of hydrocarbons for the year 2017.</p>	<p>The categorisation of revenues now accepted by stakeholders is on the basis of quasi-fiscal defined by the IMF.</p>	<p>There is no reason to mention the differences mentioned. In a multi-stakeholder setting, the principle of consensus takes precedence and is always advocated. The differences highlighted by contradictory statements in the MSG can be resolved by capacity building.</p> <p>It should be noted that today, the various reforms implemented have led to a new classification of oil revenues. Thus, the revenues mentioned are included in the TOFE 2018 and 2018 Finance Act, published in 2017, the 2019 Finance Act, published in 2018, and the 2020 Finance Act, published in 2019.</p>
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3§2	<p>The new rise in oil prices in comparison with 2014-2017, together with the start or production by ENI and Total for the Nené Marine and Moho Nord projects respectively, have led to an economic rebound after the contraction of 2016-2017, to achieve a growth rate projected by the IMF at 4%.</p>	<p>The IMF shows an economic recovery for the Republic of Congo in 2019.</p>		<p>To be more relevant, present also the context of the funding of bodies such as the EITI-Congo Executive Committee, which receive contributions from state budgets. Implementation of structural reform measures have, nevertheless, had an impact on the operations of state bodies such as EITI-Congo.</p> <p>It should also be noted that the contractual provisions for the oilfields mentioned with respect to prices and output drive 70% of the cost recoveries that are profitable to both companies and the state.</p>
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4§	<p>Compared to the facts mentioned on this page</p> <p>It was only latterly that the government enacted three new decrees institutionalising the EITI, on the eve of the second validation, that is, on 28 December 2019. For most of the period 2017-2019, the EITI-Congo Multi-Stakeholder Group, called the "National Committee", only operated occasionally.</p>	<p>The enactment of a law or decree is a sovereign prerogative of the President of the Republic and must be done in accordance with very specific constitutional constraints.</p> <p>The word 'latterly' is only justified if the context of space and time is specified; if not, it could be considered as a judgement on the prerogative of the President of the Republic.</p>		<p>The following orders were published:</p> <p>Order No. 5382 MFB-CAB of 19 March 2020 appointing the members of the Executive Committee of the National Council for Implementation of EITI</p> <p>Order No. 5381 MFB-CAB of 19 March 2020 organising the permanent secretariat of the National Council for implementation of EITI</p> <p>Order No. 5410 MFB-CAB of 23 March 2020 setting members' per diems for attending sessions of the National Committee for implementation of EITI</p>
<p>II. Background: Effectiveness and impact of EITI implementation</p>				

4§2	<p>The accent placed by EITI-Congo on improving disclosures was not accompanied by attention at the same level on better multi-stakeholder oversight of EITI implementation, nor by monitoring of its outcomes and impact.</p>	<p>In addition to disclosure, the MSG should, for implementation of the EITI, improve oversight and the monitoring of results and impact, among other things.</p>	<p>The standard does not require objectives to be aligned with national priorities, instead requiring objectives for EITI implementation to be set in phase with the EITI Principles and reflecting the national priorities of the extractive industries. See EITI Standard, Requirement 1.5a.</p>	<p>We recall that the primary objective is implementation of the EITI according to the initiative's Standard and, especially, compliance with its requirements.</p> <p>Against this background, we do not understand the statements of "has not seized the opportunity that presented itself to align objectives...in support of national priorities. The Standard itself imposes no requirement to make this a priority.</p> <p>The annual plan was agreed to follow these recommendations, taking into account the economic context that had been made difficult by declining financial resources.</p> <p>We also recall that this level of objectives was not included in the validation measures.</p>
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11§1	<p>However, these reforms have been driven more by the government than by the Multi-Stakeholder Group, with the effect of less-significant disclosures on the part of the oil, gas, mining and forestry companies (particularly abroad, in Europe and in Canada).</p>	<p>Let us remember that the Congo EITI reports contain recommendations that are generally intended for the government.</p> <p>Their regular monitoring by the MSG has had a direct or indirect impact on the reforms mentioned.</p>		<p>See the letter from the Minister on monitoring the recommendations mentioned in the reports and various reports.</p>
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11§2	<p>EITI-Congo has contributed to the development of the SYSCORE electronic disclosure platform. Established by the Finance Ministry, this will enable companies and government to present their payment disclosures online (for reconciliation purposes). This tool will enable them to present their EITI reports on a timelier manner, as well as enabling them to make faster disclosures if they are published, as planned, on this sort of transparency portal.</p>	<p>The SYSCORE project was initiated by the MSG in consultation with the Information Systems Division (DSI) of the Ministry of Finance and Budget.</p> <p>The objective remains that of systematic disclosure and the regular updating of contextual information.</p>		<p>See letter of invitation to working sessions involving EITI and DSI technicians.</p> <p>Finally, the solution proposed today was realised through two projects: SYSPACE and SYSCORE, the first of which was issued by the EITI-Congo MSG.</p> <p>Regarding the SYSCORE information system, we would like to understand the statement "this sort of transparency portal". Language suiting a piece of work that has been valued would be more appropriate.</p>
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11§2	<i>"That said, the Multi-Stakeholder Group having subcontracted most data disclosures and reports to the Independent Administrator, this was a lost opportunity because it was not possible to more-effectively use the process of preparing EITI reports to build consensus on certain technical aspects and to support evidence-based debate."</i>	Work assigned or subcontracted to the Independent Administrator was done in strict compliance with the Standard. The various scoping studies were the subject of discussion in the Executive Committee before adoption. Thus, no opportunity was missed.		The goal was to establish terms of reference that were accepted by all and reviewed by the International Secretariat, and to have a report that met the requirements of said terms of reference.
11§2	<i>EITI reports have identified discrepancies in calculations of crude-oil prices due to the application of different exchange rates by the international oil companies and the government.</i>			This is incorrect, because the price of crude oil is not calculated depending on the exchange rate. It is given in dollars and neither international companies nor the government have any influence over this, which is dependent on market forces. The exchange rate comes into play in the calculation of receipts into the public treasury, because the currency used is the CFA franc.

11§2	<p><i>However, these reforms have been driven more by the government than by the Multi-Stakeholder Group, with the effect of less-significant disclosures on the part of the oil, gas, mining and forestry companies (particularly abroad, in Europe and in Canada).</i></p>	<p>It is important to remember that reforms are driven by the Government as part of its programme of action. The MSG verifies reports and publishes their conclusions and recommendations and so far, has no special rights over disclosures made abroad, in Europe or Canada, as its primary objective is the Congolese citizen.</p>		<p>It is important to point out that in the new decree, the MSG is able to challenge an authorised institution to suggest a specific action arising from the conclusions and recommendations of the EITI Report.</p>
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Final statement of the EITI National Executive Committee in the Republic of Congo

This Monday 8 June 2020, the EITI National Executive Committee held a meeting with five items on the agenda:

- 1) Verification of attendance**
- 2) Minutes of the last meeting of the National Committee**
- 3) Examination of the preliminary assessment report of the EITI International Secretariat**
- 4) Adoption of the EITI rules of procedure**
- 5) AOB: the beneficial ownership roadmap**

The meeting being quorate and the presence confirmed of all stakeholders, the examination of the minutes showed that this agenda item was an addition made at that moment, and the consensus was to consider it at the next meeting.

The Executive Director of the EITI International Secretariat was in discussion early in the session with the Executive Committee of the EITI National Committee. The representatives of the government reaffirmed the willingness of the Republic of Congo to consider this initiative as a priority in the management of resources generated by the extractive industries. The Executive Director confirmed the willingness of the International Secretariat to help the National Committee in implementation of the EITI Standard.

Concerning the report, observations and explanations have been provided, through multiple exchanges, in order to meet the corrective actions.

After intense constructive exchanges and various comments by all stakeholders, the response document commenting on the preliminary assessment report of the EITI International Secretariat was adopted.

It is planned to provide the International Secretariat with substantial additional documentary evidence in coming days.

The rules of procedure, after amendments made at the previous session, were adopted.

This session, chaired by the Minister attached to the Ministry of Finance and Budget, Mr Ludovic Gatse, accompanied by the Minister of Mines and Geology, Mr Pierre Oba, ended at 13:40, having opened at 10:30.

It was agreed to hold a working meeting before 15 June 2020 between civil society, the permanent secretariat and Minister Gatse, to take stock of developments on implementation of the EITI and corrective actions.

Brazzaville, 8 June 2020

The Executive Committee of the EITI National Committee