EITI International Secretariat

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Validation of the Democratic Republic of the Congo

Final assessment of progress in implementing the EITI Standard

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Contents

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Acronyms

ACGT	Agence Congolaise des Grands Travaux
AFE	Government collecting agency (Agence Financière de l'Etat)
BCC	Central Bank of the Congo
BCPSC	Bureau de Coordination et de Suivi du Programme Sino-Congolais
CAMI	Cadastre Minier
CDF	Franc Congolais (Congolese Democratic Franc)
CE	Comité Exécutif
CEEC	Centre d'Evaluation, d'Expertise et de Certification
CGEA	Commissariat Général à l'Energie Atomique
CPP	Contrat de Partage de Production
COREF	Comité d'Orientation de la Réforme des Finances Publiques
CTCPM	Cellule Technique de Coordination et de Planification Minière
CTR	Comité Technique de suivi et évaluation des Réformes
DGDA	Direction Générale des Douanes et Accises
DGI	Direction Générale des Impôts
DGRAD	Direction Générale des Recettes Administratives, Judiciaires, Domaniales et de Participation
DPSB	Direction de la Préparation et du Suivi du Budget
DRHKAT	Direction Provinciale des Recettes du Haut-Katanga
DRLU	Direction Provinciale des Recettes du Lualaba
DRP	Direction des Recettes Provinciales
EIES	Social and environmental impact study
EP	State-owned Enterprise (Entreprise Publique)
ETD	Entités Territoriales Décentralisés
FOMIN	Fonds Miniers pour les Générations Futures
Gécamines	Générale des Carrières et des Mines
IBP	Impôt sur les Bénéfices et Profits
IGF	Inspection Générale des Finances
INS	Institut National des Statistiques
INSS	Institut National de Sécurité Sociale
EITI	Extractive Industries Transparency Initiative
JV	Joint-Venture (Contrat d'association/ de partenariat)
MEDD	Ministère de l'Environnement et Développement Durable
MSG	Multi-Stakeholder Group of the EITI
NIF	Fiscal identifying number
OCC	Office Congolais de Contrôle
OHADA	Organisation pour l'Harmonisation en Afrique du Droit des Affaires
ONEM	Office National de l'Emploi
PE	Permis d'Exploitation
PEPM	Permis d'Exploitation de Petite Mine
PER	Permis d'Exploitation des Rejets
PGES	Plan de Gestion Environnemental et Social
PR	Permis de Recherche
SACIM	Société Anhui Congo d'Investissement Minière
SAEMAPE	Service d'Assistance et d'encadrement de l'exploitation Minière à Petite échelle
SAKIMA	Société Aurifère du Kivu et de Maniema
SGH	Secrétariat Général des Hydrocarbures
SICOMINES	Sino-congolaise des Mines

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Executive summary

This draft Validation report presents the findings of the International Secretariat's Validation of the Democratic Republic of the Congo, which commenced on 1 January 2022. The period under review in this Validation is from October 2018 to January 2022. The draft report was finalised for review by the multi-stakeholder group (MSG) on 24 May 2022. Following comments from the MSG expected on 21 June 2022, the Validation report will be finalised for consideration by the EITI Board. Civil society organisations involved in the EITI process also produced their own analysis of the draft Validation report and provided comments to complement those of the MSG. The assessment suggests that the DRC has exceeded three EITI Requirements, fully met 17, mostly met nine and partly met one requirement.

Key achievements

- The DRC has broadened civil society engagement in EITI implementation and reinvigorated the EITI process after a period of institutional turmoil. Stakeholders consulted indicated that the EITI now provides a space for civil society to freely discuss topics related to the extractive industries. All constituencies on the MSG appear to represent their broader constituencies and are actively engaged in all aspects of implementation. This has helped strengthen the position of the EITI as a credible and competent partner, particularly for government institutions and also for companies.

- Despite some outstanding gaps, the DRC EITI has advanced disclosures on the extractive industries on several fronts, notably on the activities of state-owned enterprises (SOEs)' and their financial relationship with the state, on the implementation of fiscal devolution introduced by the 2018 Mining Code and on the disclosure of the resource-backed infrastructure agreement such as SICOMINES. In addition to traditional EITI Reporting, the DRC EITI has published six thematic studies covering many aspects of the extractive value chain covered by the EITI Standard for the period 2018-July 2020, from license awards to expenditures funded by extractive revenues.

- There is general agreement among stakeholders that disclosures both of DRC EITI and other government sources have stimulated public debate nationally. EITI data is publicly accessible and has tangibly contributed to public debate, and contributed to the shaping of government policies and regulations on the extractive industries. Many stakeholders highlighted the publication of documents such as Gécamines' audited financial statements and the SICOMINES resource-backed infrastructure agreement as examples of how the EITI had contributed to informing public debate on politically sensitive topics that had previously been considered as "off-limit" in public debate. Journalists and students' use of EITI data was also highlighted as a key success story, these actors not only analysed data but also raised questions that helped inform the scope of future EITI reporting, including on subnational transfers related to the Future Generation Mining Fund (FOMIN).

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Areas for development

- While civil society is fully engaged, concerns have been raised over possible retribution for criticising the existing natural resource governance practices, although these concerns do not appear to have impacted civil society's engagement in the EITI process. There is room for the MSG to strengthen its mechanisms for responding to allegations of constraints on citizen scrutiny of the management of the extractive industries, including in systematically documenting allegations as well as the MSG's response to such allegations. Further strategic recommendations are provided in Annex A.

- The granularity of the DRC EITI reporting remains limited at the project level due to the lack of a definition of a project under the EITI Standard. *De facto*, only companies holding a single license are reporting on a project basis. There is no agreement on which revenue streams should be reported on a project basis, despite mapping exercises being conducted. There is room for the MSG to further their efforts in ensuring the reporting of revenues at a project level, which could potentially address issues such as transfer pricing and tax evasion.

- Building on DRC's successes in disclosing through EITI-hosted open data portals and key financial and non-financial information required by the EITI Standard, there is scope for further work to strengthen relevant government agencies and companies' ownership of the disclosure of key extractive data. Currently, this information is only disclosed through EITI reporting. The information includes production data, government extractive revenues, and the regular publication of audited financial statements (with the exception of the Gécamines, which already publishes them on its website).

Progress in implementation

EITI Validation assesses countries against three components – "Stakeholder engagement", "Transparency" and "Outcomes and impact".

Stakeholder engagement

Despite the COVID-19 pandemic and some constraints in broader civic space identified in international NGOs' rankings of civic space in the DRC, the three constituencies of government, civil society and extractive companies appear actively engaged in all aspects of EITI implementation, with appropriate stakeholders from each constituency represented on the MSG. The three constituencies have now institutionalised their EITI engagement as demonstrated in the ongoing renewal of civil society MSG representatives. Each constituency appears to be functioning in an efficient and dynamic manner, maintaining regular communication with non-MSG members. In particular, the civil society constituency regularly engages with stakeholders from various organisations outside of those directly participating in the EITI process. The three constituencies appear to have adapted their communication and coordination methods during the COVID-19 pandemic, allowing them to uphold a high pace and quality of EITI implementation. In the context of broad-based demand and interest for information on the extractive sector, stakeholders engaged in the EITI are considered authoritative sources of information and reliable technical partners for stakeholders including government entities, industry associations and researchers. However, there are concerns about broader constraints on civic space related to

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freedom of expression related to specific mining companies. The general context, including a number of cases discussed in consultations, have been documented in Annex A. The MSG has piloted a mechanism for regular monitoring of allegations of any constraints on civil society engagement within extractive industry governance. The civil society constituency conducted a workshop in November 2021 to assess allegations of restrictions or intimidation, during the workshop several stakeholders highlighted the EITI's role in enabling civil society's engagement on extractives industry governance in the DRC.

Transparency

The DRC EITI has played a key role in disclosing new information to the public (such as licensing information, SOE financial relations and subnational payments), either through EITI Reports or through thematic studies. Since the first Validation concluded in 2019, both the mining and petroleum license cadastres have been improved. An additional report on the direct payment of the mining royalty's share to the municipalities and regions, included in the 2018 Mining Code, and a comprehensive review of the audited financial statements of all SOE's have been conducted. This report includes key recommendations emerging from the study. New areas of the 2019 EITI Standard such as project level reporting or beneficial ownership are yet to be fully implemented. In many areas, DRC EITI has gone beyond the mapping of existing disclosures to conduct a diagnostic of current practices, such as disclosing the value of direct subnational payments that should have been transferred to local governments, or the review through an independent study of the infrastructure contract SICOMINES. DRC EITI regularly fulfils the strong public demand for EITI data on the large and complex national mining sector. This creates opportunities for DRC EITI to expand its coverage of areas of increasing public interest such as on the environmental impact or artisanal mining and local content contribution to the extractive industries. The amount of data published may however represent a challenge for the average citizen, when facing multiple sources of information on difficult topics. This could encourage DRC EITI to act as a centralised repository for data on the extractive industries to facilitate the understanding of the public, by compiling various sources from Ministries, companies and the multiple EITI Reports. By strengthening its transition towards open-format disclosures of EITI data, DRC EITI has the potential to deliver greater impact by cross-referencing or linking the already existing publications to other government or company data disclosure systems. The introduction of online declaration and certification systems such as the software ISIS-SYNERGIES will help DRC to increase the reliability of the growing financial data reported and increase the timeliness of the disclosures.

Outcomes and impact

While the COVID-19 pandemic slowed the pace of EITI data collection and dissemination, DRC EITI stakeholders have contributed to policy dialogue and reform on a wide range of critical issues relevant to the extractive industries in the country. Building on EITI Reports as well as thematic reports, DRC EITI has provided many inputs to the development of government decrees, the operationalisation of local development funds and strengthening the monitoring of the mining and oil and gas SOEs activity. These publications have publicised a large amount of previously unpublished data such as the acknowledgement of the advance tax payments ("*Avances fiscales*") made by the GECAMINES to the Ministry of Finance[1], or the publication of

[1] https://www.lorientlejour.com/article/1284865/qui-a-perdu-les-millions-du-fisc-congolais-.html (in French)

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the full agreement between the Democratic Republic of Congo and the consortium of Chinese companies called the SICOMINES project. Following the latter, a commission has been created by the country's Presidency to analyse and monitor the recent developments of this project, with the participation of the National Coordinator. Stakeholders from various constituencies unanimously acknowledged that the EITI process allows the public to compare the legal framework with the current practices, such as license allocations, or the review of audited financial statements of the SOEs of the extractive sector. It also led to concrete changes, such as the systematic publication of its audited financial statements by the Gécamines on its own website. There is evidence of use of EITI data by researchers, and strong cooperation between government institutions such as the Ministry of Hydrocarbons and the MSG.

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Validation scorecard

Component & module	EITI Requirement	Progress	Score	
Outcomes and impact		**Very high**	**95.5/100**	
Extra points	Effectiveness and sustainability indicators		3.5	-
Outcomes and impact	Work plan (#1.5)	Fully met	90	=
	Public debate (#7.1)	Exceeded	100	=
	Data accessibility and open data (#7.2)	Fully met	90	-
	Recommendations from EITI (#7.3)	Fully met	90	=
	Outcomes & impact (#7.4)	Fully met	90	=
Stakeholder engagement		**Moderate**	**82.5/100**	
Multi-stakeholder oversight	Government engagement (#1.1)	Fully met	90	=
	Industry engagement (#1.2)	Fully met	90	=
	Civil society engagement (#1.3)	Fully met	90	=
	MSG governance (#1.4)	Mostly met	60	↑
Transparency		**Moderate**	**78/100**	
Overview of the extractive industries	Exploration data (#3.1)	Fully met	90	=
	Economic contribution (#6.3)	Fully met	90	=
Legal and fiscal framework	Legal framework (#2.1)	Exceeded	100	=
	Contracts (#2.4)	Fully met	90	-
	Environmental impact (#6.4)	Not assessed	-	-
Licenses	Contract and license allocations (#2.2)	Mostly met	75	=
	License register (#2.3)	Fully met	90	↑
Ownership	Beneficial ownership (#2.5)	Partly met	30	-
State participation	State participation (#2.6)	Mostly met	75	↑
	In-kind revenues (#4.2)	Not applicable	-	=
	SOE transactions (#4.5)	Fully met	90	↑
	SOE quasi-fiscal expenditures (#6.2)	Mostly met	60	↑
Production and exports	Production data (#3.2)	Fully met	90	↑
	Export data (#3.3)	Fully met	90	=
Revenue collection	Comprehensiveness (#4.1)	Fully met	90	↑
	Barter agreements (#4.3)	Fully met	90	=
	Transportation revenues (#4.4)	Fully met	90	=
	Disaggregation (#4.7)	Mostly met	60	-
	Data timeliness (#4.8)	Exceeded	100	↑
	Data quality (#4.9)	Mostly met	60	=
Revenue management	Distribution of revenues (#5.1)	Mostly met	60	=
	Revenue management & expenditures (#5.3)	Not assessed	-	-
Subnational contributions	Direct subnational payments (#4.6)	Mostly met	60	↓
	Subnational transfers (#5.2)	Not applicable	-	↑
	Social and environmental expenditures (#6.1)	Mostly met	60	=
Overall score		**High**	**85.5/100**	

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How EITI Validation scores work

Component and overall score

The three components of EITI Validation – “Transparency”, “Stakeholder engagement” and “Outcomes and impact” – each receive a score out of 100. The overall score represents an average of the component scores.

Assessment of EITI Requirements

Validation assesses the extent to which each EITI Requirement is met, using five categories. The component score is an average of the points awarded for each requirement that falls within the component.

- **Exceeded** (100 points): All aspects of the requirement, including “expected”, “encouraged” and “recommended” aspects, have been implemented and the broader objective of the requirement has been fulfilled through systematic disclosures in government and company systems.
- **Fully met** (90 points): The broader objective of the requirement has been fulfilled, and all required aspects of the requirement have been addressed.
- **Mostly met** (60 points): Significant aspects of the requirement have been implemented, and the broader objective of the requirement is mostly fulfilled.
- **Partly met** (30 points): Significant aspects of the requirement have not been implemented, and the broader objective of the requirement is not fulfilled.
- **Not met** (0 points): All or nearly all aspects of the requirement remain outstanding, and the broader objective of the requirement is far from fulfilled.
- **Not assessed**: Disclosures are encouraged, but not required and thus not considered in the score.
- **Not applicable**: The MSG has demonstrated that the requirement doesn’t apply.

Where the evidence does not clearly suggest a certain assessment, stakeholder views on the issue diverge, or the multi-stakeholder group disagrees with the Secretariat’s assessment, the situation is described in the assessment.

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1. Effectiveness and sustainability indicators

The country is awarded 0, 0.5 or 1 point for each of the five indicators. The points are added to the component score on Outcomes and impact.

1.1 National relevance of EITI implementation

This indicator considers the extent to which EITI implementation in the DRC addresses nationally relevant extractive sector challenges and risks.

The objectives of DRC EITI work plan broadly align with national priorities articulated in the government's national strategic development plan, specifically on the agenda for improving governance in the management of natural resources, state-owned enterprises and public finance, as well as on the anti-corruption agenda. The MSG has also selected topics of public interest to increase the understanding of specific topics beyond the minimum requirements of the EITI standard. The report on royalties identified significant discrepancies and major gaps in the national and subnational legislation and provided specific recommendations to address the issues. The SICOMINES report, in the context of willingness displayed by the President of the Republic to revise the contracts, presented key new elements that were not publicly available, like Rider No.4, which changed the principles and schedule of profit distribution. The increased transparency induced by the disclosure under the core Report and the reports on SOEs responds to the expectations from the technical and financial partners of the country. Stakeholders welcome the transparency dynamic implemented by the EITI in DRC. Not only are the transparency provisions in the Mining Code seen as a strong legislative support for the EITI to develop and perpetuate, but the public debate induced by the core and the thematic reports are considered as a major outcome.

The Secretariat's initial assessment is that 1 additional point be added on outcomes and impact for this indicator.

1.2 Systematic disclosures of extractive industry data

This indicator considers the extent to which extractive sector data in the DRC is disclosed systematically through routine government and corporate reporting.

The DRC systematically discloses a significant amount of information required by the EITI Standard in both the mining and the hydrocarbon sectors through government entities like the mining cadastre (CAMI), the office of the Ministry of Mines in charge of planning and coordination (CTCPM), the Ministry of Mines and the Ministry of Hydrocarbons. The EITI DRC has supported the two ministries in the redesign of their websites for a better adaptation to the needs of the public. The website of the Ministry of Mines now contains, for example, updated, accessible and user-friendly access to sectoral legislation or to the list of mining operators, who are also searchable by category, tax regime, or industry among other criteria. The comprehensiveness of disclosures remains to be improved, but beneficial owners are listed by name, the mining projects are presented, as well as contracts, statistics and tax and non-tax data are also provided. The DRC

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EITI's workplan dedicates specific activities to systematic disclosures, and stakeholders indicated that a project – the automatic data sharing of information from the government's tax collection software (ISYS-Regie) to the DRC EITI's dematerialized declaration system (TS/L) – was planned and started in 2022. Stakeholders have not mentioned any other reforms underway in the areas covered by the EITI Standard. Disclosure of the information required by the EITI Standard on the websites of SOEs and private companies generally remains limited to major SOEs websites like Gecamines' or Cominieres' disclosing extractive contracts.

The Secretariat's initial assessment is that 0.5 additional points be added to the score on outcomes and impact for this indicator.

1.3 Environment for citizen participation in extractive industry governance

This indicator considers the extent to which there is an enabling environment for citizen participation in extractive sector governance, including participation by affected communities.

There is no evidence that the DRC EITI has reviewed policies and practices regarding citizen participation in the country. However, during the period under review, the DRC EITI's action contributed extensively to provide citizens a forum for public participation: significant outreach and consultation efforts were made towards civil society, local communities affected by extractive industries, and other stakeholders in the capital city and in the regions. The multiple meetings, workshops and debates were organized by the DRC EITI primarily, but also by civil society organizations and extractive companies. They covered multiple topics, like Gecamines, which is the largest mining SOE in the country, civil society participation in the EITI process, report dissemination, among others. According to stakeholders consulted, EITI implementation has largely contributed to increase understanding of the extractive sector by local communities. Legislation in the DRC generally allows and encourages citizen participation. An example among others is the IDAK-IDAKI events ("Investissements Durables au Katanga" and "Investissements Durables au Kivu" (IDAKI) where opportunity is given to representatives of civil society, local and national government and mining companies to discuss current challenges facing the mining sector and find solutions together.

Some stakeholders expressed concerns about civic space in the governance of extractive resources. Some isolated cases of harassment, intimidation or threat of civil society members who covered extractive topics in the period under review have raised questions around restrictions in the broader civic space. Stakeholders from civil society have indicated, however, that this situation did not affect civil society's ability to fully and effectively participate in all aspects of EITI implementation, including use of EITI data, as detailed in Annex A. Stakeholders consulted did not express concerns that any technical and financial capacity constraints could prevent them from engaging in the EITI in the longer term. While there is anecdotal evidence that EITI implementation has helped broaden civic space in relation to extractive industry governance, this is weighed against broader fragility in civic space in the DRC.

The Secretariat's initial assessment is that zero additional points be added to the score on outcomes and impact for this indicator.

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1.4 Accessibility and use of extractive industry data

This indicator considers the extent to which extractive sector data in DRC is accessible and used for analysis, research and advocacy.

The DRC EITI website contains data in different formats, including full open format. This is the case for the payments made by extractive companies (Requirements 4.1, 4.6) as well as some general and contextual information (Requirements 2.5, 3.2, 3.3, 6.3, 6.4). Data is updated when an EITI Report is available for most disclosures. All contracts are available and searchable on both the Ministry of Mines website and resourcecontracts.org; they are disclosed in PDF and in text format, and key clauses are sometimes highlighted in the margin to respond to the stakeholders' needs. The participation of public and private companies, as well as that of revenue authorities at national and sub-national levels in the EITI disclosure process is now considered as an effective and regular instrument of accountability expected by all stakeholders. There is evidence that stakeholders including press, academic and oversight actors in addition to civil society, use the available data provided on the extractive sector. Advocacy and analysis work by civil society often relies on data published by the EITI: this is the case for example for the Makuta ya Maendeleo Consortium and their work on the inconsistencies of royalty payments, a topic of high interest for host communities. This subject, along with the information on SICOMINES or on the mining funds for future generations (FOMIN) has been widely debated following publication of EITI Reports, both at the national and subnational level, during dedicated events, in the medias or in notes prepared by the civil society.

The Secretariat's initial assessment is that 1 additional points be added to the score on outcomes and impact for this indicator.

1.5 EITI-related changes to extractive industry policy and practice

This indicator considers the extent to which EITI has informed changes in extractive sector policies and practices. Major legislative changes occurred a few months before the period under review. This is the case for the 2018 Mining Code which has made transparency mandatory in the extractive sector, explicitly citing the EITI. According to stakeholders, the implementation of the EITI Standard in the country was reinforced in practice by this revised legislation. During the period under review, the EITI DRC has either prepared, examined or approved draft legislations too. The Council of Ministers have approved an important order that addresses issues raised by the EITI: it is the 2021 inter-ministerial order approving the handbook for the management of the 0.3% of turnover endowment that mining companies must pay to contribute to community projects. There is evidence of the DRC EITI contributing to other ongoing reforms that have yet to be finalised, including the decree on the EITI DRC's status, the decree on the formal engagement of the government to implement the EITI Standard, the decree on beneficial ownership and the much-expected inter-ministerial order setting modalities for collection, distribution and management of the subnational governments' 15% royalties. Government control entities like the General Inspection for Finances (IGF), or the Anti-Corruption Agency (APLC) have been trained to use the EITI data, and it was mentioned during consultations that they actually do in their respective work. The thematic reports prepared by the DRC EITI have been important sources of reflection for the whole extractive sector and the government. The weaknesses identified by the thematic report on royalties led to draft the inter-ministerial order on royalties. Not only had the

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findings and recommendations on SICOMINES, the Sino-Congolese mining project, largely contributed to the public debate on this barter agreement, but they also led the President of the Republic to include the EITI DRC's National Coordinator in a commission in charge of improving the outcomes of the Sino-Congolese partnership. However, there is less available evidence of changes in company policies, practices or systems that are attributable to the EITI in the period under review, aside from greater openness from as the SOE Gécamines, which have started regularly publishing financial statements due to EITI implementation.

The Secretariat proposes that 1 additional point be added to the score on Outcomes and impact for this indicator.

2. Outcomes and impact

This component assesses EITI Requirements 7 and 1.5, which relate to progress in addressing national priorities and public debate.

Progress by requirement and corrective actions

The detailed assessment of progress in addressing each EITI Requirement or corrective action is available from the data collection templates referenced in annex to this report.

EITI Requirement / past corrective action and assessment	Summary of progress in addressing the EITI Requirement
Work plan (Requirement #1.5) *Fully met*	The objective of Requirement 1.5 is to ensure that the annual planning for EITI implementation supports implementation of national priorities for the extractive industries while laying out realistic activities that are the outcome of consultations with the broader government, industry and civil society constituencies. The Secretariat's assessment is that this objective has been fulfilled and that Requirement 1.5 is fully met. The DRC's 2022 work plan is the latest operational update of the 2021-2023 three-year work plan. It is available on EITI DRC's website. The general objective is *"to implement the EITI in order to ensure the sustainable development of the DRC, through a responsible and transparent management of natural resources."* The three-year workplan includes a logical framework and a narrative part which explains the process how it has been adopted. Both documents have dedicated a strategic axis as well as a specific outcome to *"strengthening the accountability of public institutions and extractive industries through systematic and regular disclosures of information on each link of the EITI value chain"*. Beyond the EITI specific issues, stakeholders ensured that national priorities linked to the management of natural resources are reflected in the work plans. In particular three strategic axes of the three-year plan, maintained in the 2022 work plan, align with government objectives mentioned in the National Strategic Development Plan and the Government Programme.

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	Stakeholders indicated that they have been widely consulted during the update process. The Technical Secretariat has prepared a draft work plan after having identified the activities which had not been implemented, which were being implemented and which had been implemented. In addition to a mailing list of more than 200 people from and beyond the MSG constituencies, the draft was submitted to stakeholders organised in geographical pools (Kinshasa, Haut Katanga, Lualaba, Sud Kivu, Ituri and Kongo Central) in order to seek views and improve the document. The 2022 workplan contains measurable, time-bound activities which are associated with estimated costs of implementation. The timetable for work plan activities appears aligned with deadlines for EITI reporting and Validation. Reporting timelines are considered, as the preparation of the 2020 and 2021 reports are planned in 2022.The funding source, when it is already agreed, is mentioned too. The document includes activities designed to improve capacity (for supreme audit institutions for example); to strengthen systematic disclosure (like the adoption of a roadmap); to address legal and regulatory obstacles to implementation (like the adoption by the Prime Minister, of the decree on the governance of the National Committee); to reinforce contracts and beneficial ownership disclosure. It does not include activities specifically linked to revenue management and expenditure, discretionary social expenditures, and ad-hoc sub-national transfers, but stakeholders consulted considered that these issues were to be addressed within EITI Reports. Recommendations from the previous Validation and different reports have been compiled by the Technical Secretariat and transformed into suggestions of activities within the draft work plan to be approved by the Executive Committee. However, there is no evidence that the MSG has undertaken any efforts to link the work plan to a monitoring framework.
Public debate (Requirement #7.1) *Exceeded*	The objective of the requirement to enable evidence-based public debate on extractive industry governance through active communication of relevant data to key stakeholders in ways that are accessible and reflect stakeholders' needs, has been exceeded. Several stakeholders consulted from the different constituencies considered that the objective had been fully met in the period under review. The Secretariat's assessment is that all aspects of Requirement 7.1, including the encouraged aspects, have been addressed and that the objective of the requirement has been exceeded. The EITI Reports are comprehensible and accessible on DRC EITI's website. The multiple sources of data – the 2018-2020 EITI Report and the thematic reports – may confuse some readers who may need to be explained where to find which information. However, the Technical Secretariat has prepared contextualised and localized summaries, adapted to the interests of different target audiences. They have also elaborated infographics and innovated through the dissemination grids they have used to ensure common understanding of the reports. Stakeholders have indicated that French is widely understood in the different provinces, so the supporting documents are in this language, but discussions and explanations are often in local language.

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	In DRC, dissemination is firstly entrusted to civil society organizations, although there is documented evidence of government and company engagement in EITI outreach and dissemination efforts. Civil society have undertaken major efforts, taking actively into account the inclusion of the population through specific workshops and debates for women, female journalists, young people within citizens' movements in different provinces. The workshops are generally well covered by the national or local press. The Publish What You Pay (PWYP) coalition in the DRC have provided specific train-the-trainer workshop sessions to Congolese NGOs so that they are able to train community radio journalists, maximizing a ripple effect of the EITI local public debate. The data provided in the EITI Reports is also widely used by all stakeholders. For example, the IDAK-IDAKI (Sustainable Development in Katanga, Sustainable Development in Kivu) multistakeholder platforms, at the provincial level, used the EITI reports as a supporting document for their debates about the mining royalties and the Mining Fund (FOMIN) – which are considered by stakeholders as priority topics – in 2021. Companies, like the Gécamines in a 100-page reaction to NGOs and CSOs to their criticism, also regularly cite the data they have provided in the EITI Reports. In 2021, the Ministry of Mines organized a major multistakeholder national conference on the mining sector ("les états généraux du secteur minier"), during which EITI data was extensively referred to. The EITI in DRC has undertaken active communication, outreach and dissemination efforts to enable evidence-based public debate on the extractive industry governance, in line with the objective of the requirement despite the COVID-19 pandemic, which has constituted an obstacle to more dissemination activities. However, available evidence indicates that the MSG and DRC EITI Secretariat have made proactive efforts to overcome constraints related to the pandemic and adapted the DRC EITI outreach efforts. Contact was maintained, however, through the website and through National Secretariat's WhatsApp group named "Les Amis de l'ITIE RDC" (DRC EITI's friends).More than 150 people are members and receive daily news from the DRC EITI, with the ability to comment, to debate or to add information of public interest regarding the extractive sector.
Data accessibility and open data (Requirement #7.2) *Fully met*	The objective of this requirement is to enable the broader use and analysis of information on the extractive industries, through the publication of information in open data and interoperable formats. Stakeholders consulted did not express particular views on progress towards this objective. The Secretariat's assessment is that this objective is fulfilled given that the majority of data in the DRC's EITI reporting is published in open format that has stimulated the broader use of this data in research, analysis and advocacy. Thus, the Secretariat's assessment is that Requirement 7.2 is fully met, although not yet exceeded given the lack of publication of some EITI data in open format. The DRC EITI has completed a summary data file for each year under review. The DRC EITI website provides a link to the open data policy adopted in 2017, which covers the terms of access, release and interoperability. The

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	website also indicates that its content can be freely reused, with a recommendation to have the source mentioned. The DRC EITI website contains data in different formats, including full open format. This is the case for the payments made by extractive companies (Requirements 4.1, 4.6) as well as some general and contextual information (Requirements 2.5, 3.2, 3.3, 6.3, 6.4). Data is updated when an EITI Report is available for most disclosures. However, some information in the DRC EITI Reports is disclosed only in PDF format to date rather than in open format on the DRC EITI website, including information in some of the tables and graphs in the latest EITI Report. In its comments on the draft assessment, civil society expresses concern about the lack of publication of some extractive sector data such as contracts and license data by the CAMI. However, the publication of systematically disclosed information in open format is only encouraged, not strictly required, by Requirement 7.2.d.
Recommendations from EITI implementation (Requirement #7.3) *Fully met*	The objective of Requirement 7.3 is to ensure that the EITI implementation is a continuous learning process that contributes to policymaking, based on the MSG regularly considering findings and recommendations from the EITI process and acting on those recommendations it deems are priorities. Most stakeholders consulted from different constituencies considered that the objective had been met given the existence of a robust mechanism for follow-up on EITI recommendations that had led to tangible reforms in practice. The Secretariat's assessment is that the broader objective of the requirement is fulfilled, and that all aspects of the requirement have been implemented as in the previous Validation. Stakeholders consulted explained that the MSG usually reflects on recommendations from prior reports during the work planning phase, which includes an evaluation by the stakeholders of the recommendations from IA and from the Validation. Stakeholders consulted indicated that the work plan activities reflected the recommendations from previous EITI Reports, and there is documented evidence that all the recommendations have been compiled and analysed by the MSG for systematic follow-up on those recommendations that are prioritised.
Review the outcomes and impact of EITI implementation (Requirement #7.4) *Fully met*	The objective of Requirement 7.4 is to ensure regular public monitoring and evaluation of implementation, including evaluation of whether the EITI is delivering on its objectives, with a view to ensuring the EITI's own public accountability. The Secretariat's assessment is that Requirement 7.4 is fully met given that the objective is fulfilled, and all aspects of the requirement have been addressed. In 2021, the DRC EITI produced an annual progress report combining reflection on years 2018, 2019 and 2020. Stakeholders consulted explained that this delay was due to the impact of the COVID-19 pandemic and the MSG's desire to strengthen its review of outcomes and impact. The activities implemented under previous years are listed, with their status. The DRC EITI has considered that the implementation of the transparency provisions in the legislation is a priority, and they have provided recommendations to ensure enforcement. Assessment of progress towards meeting the EITI requirements and addressing the corrective measures from

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	the previous Validation was performed on a regular basis during MSG meetings, and during specific events like a dedicated workshop organised in Lubumbashi. It involved stakeholders from the three constituencies and beyond, who all have been able to provide feedback for consideration. There is clear documentation on the link between recommendations and activities set out in the workplan. The DRC EITI has clearly identified the impact of their work in the country, follows up on the MSG decisions and plan their own corrective measures to strengthen the impact of the EITI implementation.

New corrective actions and recommendations
• To strengthen implementation, the DRC is encouraged to consider efforts to link the annual EITI work plan to a monitoring framework. The DRC EITI is encouraged to explore innovative approaches to extending EITI implementation to inform public debate about natural resource governance and encourage high standards of transparency and accountability in public life, government operations and in business. • To strengthen implementation, the DRC is encouraged to ensure that all data in its EITI reporting is systematically published in open data format. The DRC is encouraged to make systematically disclosed data machine readable and inter-operable, and to code or tag EITI disclosures and other data files so that the information can be compared with other publicly available data. • To strengthen implementation, the DRC may wish to consider ways of more regularly reporting to the public on progress in following up on recommendations from past EITI Reports and Validation, with a view to strengthening the EITI's accountability as a mechanism to support reforms. • To strengthen implementation, the DRC is encouraged to ensure that its review of outcomes and impact of the EITI process is publicly disclosed on an annual basis. The DRC EITI is encouraged to document how it has taken gender considerations and inclusiveness into account.

3. Stakeholder engagement

This component assesses EITI Requirements 1.1 to 1.4, which relate to the participation of constituencies and multi-stakeholder oversight throughout the EITI process.

Progress by requirement and corrective actions

The detailed assessment of progress in addressing each EITI Requirement or corrective action is available from the data collection templates referenced in annex to this report.

EITI Requirement / past corrective action and assessment	Summary of progress in addressing the EITI Requirement
Government engagement (Requirement #1.1)	The objective of Requirement 1.1 is to ensure a full, active and effective government lead for EITI implementation, both in terms of high-level political leadership and operational engagement, as a means of facilitating

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Fully met	all aspects of EITI implementation. The Secretariat's assessment is that this objective is fulfilled, and that the requirement is fully met. There is evidence of several events that Ministers have launched and attended, as well as media interviews given by senior government officials. In 2019, due to the long period of time when the government was not appointed yet, the first meeting of the year for the multistakeholder group took place in October. The dynamism of the DRC EITI, however, came back rapidly with the appointment of the government constituency members. The senior official who currently leads the implementation of the EITI in DRC is the Minister of State, Minister of Planning, Mr Christian Mwando N'Simba Kabulo. There is extensive evidence, including in MSG meeting minutes, of the former Chairs and current Chair having played a proactive role in leading EITI implementation during his tenure, in particular through actions taken to overcome barriers or challenges to EITI implementation: the finalization of the recruitment of the National Coordinator in 2020 is an example, as well as the letter sent by the Chair to the Revenues Authority to ensure timely data provision. In addition to five Ministers, government representation on the MSG includes the Office of the President, the Office of the Prime Minister and both chambers of Parliament. A review of MSG attendance lists shows that most of the senior officials attend MSG meetings regularly, while MSG meeting minutes indicate that they actively take part to discussions. Focal points in the different public entities have been appointed in order to facilitate data collection during the EITI reporting process. The government instructs the various public departments to provide the data required for the EITI process, and prepares letters signed by the Minister to companies do not comply with their disclosure requirements under EITI. The government has appointed a permanent National Coordinator for the EITI DRC during the period, after a period of turmoil, and has improved the regularity of transfers to fund operations and activities. In its comments on the draft assessment, civil society emphasised that significant pressure from donors and civil society was required to ensure the disbursement of funds allocated to the DRC EITI in 2020 given the delays in disbursements due to the change of government. In 2021, the amount transferred to the EITI DRC was 2.3 million dollars. The members of the government constituency discuss and work with their peers, particularly during meetings, and within permanent and ad hoc technical committees like the Council of Ministries, Technical Commission of the Ministry of Finance, or the Interministerial Commission for the evaluation of the Sicomines project. They also take active part in dissemination activities by ensuring effective presence to launch the activities and participate in the follow-up on EITI recommendations.
Industry engagement (Requirement #1.2) *Fully met*	The objective of Requirement 1.2 is to ensure that extractive companies are fully, actively and effectively engaged in the EITI, both in terms of disclosures and participation in the work of the MSG, and that the government ensures an enabling environment for this. The International Secretariat's assessment is that the objective is fulfilled, and the requirement is fully met. The extractive companies' constituency is represented on the MSG by five representatives from different industries: one from SOEs, two from the

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	Chamber of Mines, one for oil and one for forestry. Meeting records show that attendance by the extractive companies is regular and active, except for the representative of the forestry industry. They have established a communication mechanism through focal points in each extractive company, in order to ensure that the EITI reporting is done efficiently and on due time, but there is no evidence that they follow-up with non-reporting companies to ensure full industry participation in EITI reporting. During consultations, stakeholders did not highlight any restrictions to industry participation in the EITI activities. Attendance lists show that the extractive companies within and beyond the MSG have largely participated to the outreach and dissemination efforts organized by the EITI DRC and by civil society. Stakeholders highlighted the importance of such activities for extractive companies, as they give the opportunity to local communities to understand the contribution of the neighbouring mining companies.
Civil society engagement (Requirement #1.3) *Fully met*	The Secretariat's assessment is that Requirement 1.3 remains fully met and that there have been no demonstrable breaches of the EITI protocol: Participation of civil society in the period under review. Stakeholders consulted, including all civil society representatives substantially engaged in the EITI process, considered that the objective of full, active and effective civil society engagement had been met and that there was an enabling environment for civil society participation. None of the stakeholders consulted considered that ad hoc restrictions on civil society created constraints on civil society's engagement in the EITI process. As a sign of this commitment, civil society organisations involved in the EITI process organised a national workshop in June 2022 in Kinshasa to analyse the draft Validation report and formulate their comments, which are reflected in this Validation report. Evidence and stakeholder consultations indicate that the civil society constituency is fully and effectively engaged in all aspects of the EITI process. The nominations procedure for civil society MSG members is codified and publicly available on the website of DRC EITI. The process seems to be currently followed in practice during the ongoing round of nominations in 2022. The constituency contributed to strengthening engagement, outreach, and coordination during the period under review. There is evidence of regular outreach by MSG members to the broader constituency, including regional and provincial CSOs. Civil society in its broader sense uses and disseminates EITI data in research and outreach, including at the local level and despite the Covid pandemic. A large number of civil society organizations are actively involved in the EITI process in the DRC, including local and international NGOs. Local civil society organizations are organized in three main coalitions (PWYP, POM et Réseau ressources naturelles) networks and six platforms called "pools", one for each of the regions of the country: Sud Kivu, Centrale, East, Kassai, Lubumbashi and Kinshasa. Evidence and stakeholder consultations suggest that civil society representatives both on and off the MSG can express themselves freely on topics covered by the EITI, which was confirmed in the MSG's submission for Validation and consultations with civil society representatives. There were no allegations of self-censorship

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	within or outside of the MSG on issues related to natural resource governance. With respect to freedom of expression, several incidents related to alleged potential intimidation or retributions for critical expression on extractive industry governance were identified in the period 2018-2021, two of which involved stakeholders involved in EITI implementation. However, there is no evidence that cases of legal proceedings against specific civil society representatives in relation to their publication of specific articles on the extractive industries have inhibited civil society's ability to express its views on the EITI process, as in the period reviewed in the previous Validation, including on critical issues such as state-owned enterprises' financial management, infrastructure deals or mining license awards. These topics have all been addressed by individual thematic reports, where civil society was able to provide inputs and on which the constituency based subsequent advocacy and campaigning. In addition, the civil society constituency has recently piloted a mechanism to ensure that allegations of constraints on civil society engagement, particularly at the subnational level, can be highlighted to civil society MSG members. There is evidence of intervention by civil society MSG members and the PWYP DRC coalition to respond to allegations of ad hoc restrictions on civil society engagement. Further details are provided in the Annex A.
Multi-stakeholder group (Requirement #1.4) *Mostly met*	The Secretariat's initial assessment is that significant aspects of Requirement 1.4 have been implemented since the previous Validation, and that the broader objective of the requirement is mostly fulfilled. The objective of this requirement is to ensure that there is an independent multistakeholder group that can exercise active and meaningful oversight of all aspects of EITI implementation that balances the three main constituencies' interests in a consensual manner. Opinions of stakeholders consulted were split on whether the objective had been fulfilled in the period under review, with some arguing that it had been achieved while others considered that it was only mostly met. The previous Validation had highlighted several gaps regarding MSG governance. It recommended that the industry constituency agree public nominations procedures ahead of MSG member selection and that the MSG renew its membership in line with statutory procedures. In the period under review in this Validation, each of the three constituencies had their own rules regarding the nomination of MSG representatives. There is no evidence of coercion or attempts to include members that would not challenge the status quo. However, gender balance in the MSG and constituency representation to progress towards gender parity has not been subject to documented discussions. In addition, stakeholders consulted indicated that their constituency did not consider gender aspects as a focus when agreeing their MSG representation. The MSG points out in response to this comment that it is indeed concerned about gender issues. It states that women are actively involved in decision-making and are fairly represented at the level of each college. In addition, the MSG mentions that women with important responsibilities are part of the MSG and that the Code of Conduct of Civil Society and the Constitution of the DRC

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	supports gender equity. However, there is no evidence of actual discussions on how to improve gender balance within the EITI DRC in general, and within the Extractive Industries Constituency in particular. Furthermore, there is no mechanism in place to ensure that this issue will be addressed in the future, particularly by the industry constituency. The government appoints its MSG members based on a list of public institutions included in the EITI decree. The representatives change when the government and other institutions have ceased. There is documented evidence of reports to wider constituency, especially the Council of Ministers. The industry constituency agreed a set of nomination procedures for their MSG representatives on 13 December 2021, although no renewal of industry MSG members was actually undertaken in the period under review. The document, which is available on the EITI DRC website, indicates that the term in office of the industry representatives within the MSG is three years, renewable without limit. Three members out of five have been within the MSG for more than twelve years, whereas the two other members respectively joined in 2014 and 2015. The tenure of the current industry representatives' membership of the MSG was not highlighted as a concern by either the broader industry constituency or other constituencies consulted. The industry stakeholders indicated that they do consider competence and a good understanding of the EITI as the most important criteria to be nominated. Diversity within the constituency has been thought in terms of sector (mining, oil, forestry) and in terms of capital structure (public/private). Communication with the wider constituency is subject to an established mechanism: each mining company has appointed a focal point who is in contact with the MSG members within the industry constituency. In addition, an EITI Commission exists within the Chamber of Mines and communicates regular updates to the assembly, as evidenced by documentation. Civil society representation within the MSG remains governed by their 2014 Code of conduct, which was signed by 30 organizations and platforms. The document indicates that the terms in office within the EITI DRC is three years, renewable once. In order to keep the institutional memory within the constituency, the practice is to proceed to partial renewal of representatives' mandate. No renewal took place during period under review. The last renewal took place in 2018, with three new members nominated. The other two members have respectively been in office since 2010 and 2012. No specific criteria have been established by civil society regarding diversity in terms of region, ethnicity, gender, or topics: stakeholders indicated that competence had to be the priority. No criticism about the nomination procedure and practice was expressed during consultations. An established mechanism for wider consultation is also in force within civil society: their Code of conduct mentions the obligation to circulate information and to share working documents. Non-MSG civil society stakeholders have indicated that information and consultations were effective.

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	The MSG continued to operate during the period under review since the last Validation, despite the difficult context of the COVID-19 pandemic and delays in the appointment of the new National Coordinator in August 2020. Stakeholders consulted within the MSG considered that they had been able to exercise active and meaningful oversight of EITI implementation, with the support of the Technical Secretariat. Stakeholders explained that MSG decisions were taken by consensus and that each constituency was considered an equal partner. There was documented evidence that different voices were listened to during MSG meetings, and that every member fully participated in decision-making. The three constituencies actively and regularly took part in outreach and dissemination efforts, as evidenced by extensive public documentation. In 2021, the MSG prepared amendments to the 2009 Government Decree establishing the EITI in DRC, although these had yet to be enacted by the Prime Minister at the start of this Validation. The revisions to the Decree provide updates on the previous version, but do not seem to cover all provisions of Requirement 1.4b on liaison with broader constituency or adherence to the EITI's Code of Conduct. The MSG's current governance rules in the period under review were those adopted in 2011 and reviewed in the previous Validation. In its comments on the draft assessment, the MSG acknowledges a "relatively long wait" in the adoption of the amendments to the 2009 Decree but notes the absence of a legal vacuum with the existence of the 2009 Decree, supplemented by Executive Committee decisions, including on per diems, and constituency-specific documents, such as the civil society Code of conduct and the company reference document on the appointment and replacement of members. While these efforts should be considered, it should be noted that the update of the EITI DRC's internal governance rules was a corrective measure from the previous Validation. Communication with the wider constituency and compliance with the EITI Code of Conduct remain, pending the new decree, issues that have only been addressed by and for civil society. For the extractive industries in particular, there is no documentation to ensure that regular communication with the wider constituency is in place. The DRC EITI's governance current documents do not provide specifically for conflicts of interest or rules for their treatment of confidential information. In its comment on the draft assessment, the MSG refers to four documents related to the issue of conflict of interest and treatment of confidential information. These are the EITI Code of Conduct, the Technical Secretariat Procedures Manual, the Code of Conduct for Government Officials and the Internal Regulations that has yet to be developed. In addition, there is no indication by stakeholders consulted, of MSG members not abiding by the EITI Code of Conduct or being subject to a conflict of interest. The per diem rules have been publicly made available on the DRC EITI website, as required by the Standard and a corrective action from previous Validation. Reference is made to 2014 MSG meeting minutes where the decisions to establish the amounts – USD 300 per ordinary meeting and

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	USD 100 per extraordinary meeting – were discussed so that they would not cause perceptions of conflict of interest. Stakeholders consulted from various constituencies indicated that per diems had been paid regularly in practice. However, information regarding the practice – amounts distributed during the year – is not publicly disclosed and some stakeholders consulted expressed reluctance to disclose actual per diem payments. The MSG's comments on the draft assessment indicate that the amounts received by each member can be calculated on the basis of the disclosed policy and the number of meetings he/she attended. Not only are there minutes of these meetings, but the amounts are also included in the financial statement, which is a working document of the MSG. In addition, the response from the MSG informs that the accounts of the DRC EITI are audited annually by an independent auditor and published on their website until 2016, and that the financial audit reports for the following years are about to be completed and published. However, despite the efforts made by the MSG on aspects of financial transparency, the publicly-accessible documents related to per diems do not sufficiently inform the public on the actual amounts received - or possibly denied - individually, and does not allow for verification of the compliant implementation of the per diem policy.

New corrective actions and recommendations
• To strengthen implementation, the government is encouraged to sustain its technical and financial support for EITI implementation, with a view to institutionalising EITI implementation into government systems. • To strengthen implementation, the industry constituency is encouraged to continue its technical support for all aspects of the EITI process, including in the technical aspects of EITI disclosures and in strengthening extractive companies' systematic disclosures of data required by the EITI Standard. • To strengthen implementation, the MSG is encouraged to regularly monitor developments regarding civil society's ability to engage in all aspects of the EITI process and to organise awareness-raising sessions on the EITI protocol: Participation of civil society, with participation from the three constituencies. The government, in collaboration with the MSG, is encouraged to document the measures it undertakes to remove any obstacles to civil society participation in the EITI, should these arise in future. In accordance with the EITI protocol: Participation of civil society, civil society MSG members are encouraged to formalize a reporting mechanism for civil society members on and off the MSG to report any case of restriction that could constitute a breach of the protocol, to be then brought to the attention of the MSG. The MSG is expected to document how it addresses these concerns on a regular basis. • In accordance with Requirement 1.4a.ii, the MSG and each constituency should ensure that the amendments proposed in the new decree reflect the requirement, in particular regarding consultation with wider constituency, codification of non-trivial deviations from current procedures and gender balance in their representation to progress towards gender parity. The enactment of the amended decree should be followed-up closely in the practice of the MSG's oversight of the EITI process. A robust mechanism to detect, prevent and address perceived or actual conflicts of interest within the MSG and ensure adherence with the EITI Code of Conduct should help strengthen the MSG's accountability. The practice of per diem, in addition to the rules, should be regularly disclosed.

4. Transparency

This component assesses EITI Requirements 2 to 6, which are the requirements of the EITI Standard related to disclosure.

Overview of the extractive sector (Requirements 3.1, 6.3)

Overview of progress in the module

The DRC EITI has built a central repository of information on the extractive sector on its national website, including a presentation of the mining and petroleum sectors. The main companies operating in the country as well as the main exploration projects are described, as well as a short history and future projects for both sectors. Some of this information is also available on government websites, but not on the level of details than the national DRC EITI website. Therefore, all aspects of the requirement have been met, but not yet exceeded given that not all information is yet systematically disclosed on government portals.

The DRC EITI has played an instrumental role in improving the accessibility of information on the extractive industries' contribution to the economy, including by centralising information on their contribution to GDP, government revenues, exports, and employment. While annual reports from the central bank provide information on extractive exports, much of the macro-economic data in Requirement 6.3 still appears to be primarily disclosed through annual EITI reporting. A thematic report on the contribution of the artisanal sector is currently in preparation by the DRC EITI, but for the year under review, the 2018-2020 EITI Report only disclosed data for artisanal mining of diamonds. Therefore, the Secretariat's assessment is that DRC has addressed all technical aspects of the requirement and that the broader objective of ensuring a public understanding of the extractive industries' contribution to the national economy and the level of natural resource dependency in the economy has been fully met, but not yet exceeded.

Progress by requirement and corrective actions

The detailed assessment of progress in addressing each EITI Requirement or corrective action is available from the data collection templates referenced in annex to this report.

EITI Requirement / past corrective action and assessment	Summary of progress in addressing the EITI Requirement
Exploration (Requirement #3.1) *Fully met*	The Secretariat's assessment is that Requirement 3.1 is fully met, as in the previous Validation. A comprehensive overview of the mining and hydrocarbon sectors is available in the DRC's 2018-2020 EITI Report covering 2018-20. It covers recent developments as well as a brief history and a summary of the main ongoing exploration activities in both sectors. The 2018-2020 EITI Report notes that no oil and gas exploration projects are currently ongoing in DRC. While some of this information is systematically disclosed on government websites, public portals other than the DRC EITI do not yet provide an overview of significant exploration activities in the extractive industries.

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Contribution of the extractive sector to the economy (Requirement #6.3) *Fully met*	The Secretariat's assessment is that Requirement 6.3 is fully met. . DRC has fully met the objective of this requirement by publishing the extractive industries' contribution, in absolute and relative terms, to GDP, government revenues, exports and employment, through systematic disclosures. Stakeholders consulted broadly considered that the extractive industries' contribution to the national economy and the level of natural resource dependency in the economy were adequately reflected, but that more could be achieved to cover the contribution of the informal sector. At this effect, the MSG is preparing a thematic report in 2022 covering artisanal mining in the DRC. Contrary to Production and Export figures, the DRC has not yet included estimates of the informal sector's contribution to the GDP for 2019. Although the annual reports of the BCC[2] and the Employment Agency (ONEM) contain all the information listed under Requirement 6.3, the 2018-2020 EITI Report and summary data files present the economic contribution of the extractive sector in a more granular, clearer and more accessible manner, leaving room to improve the systematic disclosures on the contribution of the extractive sector to the economy.

New corrective actions and recommendations

- To strengthen implementation, the DRC is encouraged to ensure that there is systematic disclosure of significant exploration activities in the extractive sector of the country.
- To strengthen implementation, the DRC may wish to ensure regular publications of estimates of informal extractive activities (including for GDP) on government portals, similarly to the production estimates published by the Ministry of Mines and Geology.

Legal environment and fiscal regime (Requirements 2.1, 2.4, 6.4)

Overview of progress in the module

The DRC systematically discloses information on the legal framework for oil and gas and mining sectors through government websites. Since the last Validation, DRC EITI also describes through regular EITI Reporting (EITI Reports, but also thematic reports on various aspects of the 2019 Standard) complementing documentation on the practice and existing deviations from the applicable legal and fiscal framework. The Secretariat's assessment is that Requirement 2.1 remains exceeded.

On the disclosure of contracts and licenses, the DRC has had a pro-disclosure government policy since 2011, which was confirmed and reinforced by the revisions to the Mining Code in 2018 and the Hydrocarbons Code in 2015.[3] In terms of implementation of the government's policy, the

[2] https://www.bcc.cd/publications/rapports-annuels/rapport-annuel-2019 (In French)
[3] See the 2018-2020 EITI Report (p. 85) and the thematic study by BDO (October 2021), "Rapport thématique sur la divulgation des contrats extractifs en RDC", pp. 6-10 and 15-20: https://drive.google.com/file/d/1j_zuSA-WW0zcbOrn3_4KIRNxQ5shBump/view. Decree no.011/26 of 20 May 2011 sets forth the obligation for the state to publish all contracts related to natural resources within 60 days of their signature. This policy is confirmed in Art. 7 of the 2018 Mining Code and Art. 41 and 190 of the Hydrocarbons Code, with the term 'contract' encompassing the main contract text, annexes and amendments. The 2018 Mining Code's implementing decree reinforced this policy, stipulating that all mining contracts, including their annexes and addendums, were to be published in the Official Gazette and on the CTCPM website.

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EITI has played an instrumental role of coordination of various stakeholders in order to support the mapping of contracts to be disclosed[4] and the building of disclosure tools. The DRC EITI Secretariat also supported the Ministry of Hydrocarbons to design a registry of oil licenses that provides access to all exploration and production licenses and contracts, while providing a list of active rights with the relevant contracts on its website. The Ministry of Mines has been supported by NRGI to set up a registry of active mining contracts disclosing 294 documents, complemented by others contracts published on the DRC EITI website. The MSG has confirmed the completeness of the updated contract publication list, which also includes contracts awarded before 1 January 2021. Regarding the texts of mining licences, a list of licenses has been published on the DRC EITI website for all licences signed since 1 January 2021. A review by the Mining Cadastre of the registry of active mining licenses in 1st semester of 2021 highlights that the contracts related to 8 exploitation licenses[5] could not be found on the Resource contract website, nor on the EITI website. However, in its comments on the draft assessment, the MSG explained that these licences were conversions of research licences into operating licences, renewals or transfers of licences between private companies that were not subject to disclosure requirements. For oil and gas licenses, no license has been awarded since the 1 January 2021. Based on the list disclosed on the EITI website, all petroleum exploration and production contracts should have been disclosed on the EITI website, aside from the contract for the Ndunda block awarded to ENI in 2006, the full text of which is disclosed in the registry of oil contracts under construction on the Ministry of Hydrocarbons' website.

The efforts of the EITI MSG and the national secretariat for implementing the pro-disclosure policy of the government should be commended: they have implemented their roadmap with awareness raising and reach-out activities to stakeholders[6]; they commissioned a specific study to an independent administrator in order to assess their work of disclosure and the government's policy. The disclosure of new mining contracts has been indeed considered as a continuous structural benchmark in the new ECF of 1,5 billion USD granted by the IMF to the country in July 2021, which it considered as met in its first review of December 2021.[7] Under the period of review, the EITI national Secretariat and its working group have managed to make numerous contracts publicly available[8], including very strategic ones regarding the Sicomines agreement or like the agreement between Gécamines to grant its royalty revenue entitlement to the Group Fleurette in the project Metalkol (2017) or in the very significant project KCC (AHIL 2015).[9] And yet, on the latter agreement, the thematic study assesses that nine other documents are missing to properly understand the agreement between Gécamines and AHIL.[10] Some analysis based on the contracts disclosed actually allow CSOs to understand the history of JV by Gécamines in KCC

[4] An EITI working group elaborated a list of 161 mining contracts in order to map the missing documents: https://drive.google.com/file/d/1F0ottUNot6m-ImElqbwGcmmHMGEP6G6d/view Early 2021, 90% were already disclosed (See 2018-2020 EITI Report p. 186-189). A stakeholder from the authorities College explained that the list has become outdated.
[5] These are the companies G12, which was granted 3 PEs on 26 March 2021 (PE687; PE811 and PE809) as well as PE680 on 2 April 2021; PE 2012 granted to TSM Entreprise SARL on 19 April 2021; PE4019 granted to Geoscience Congo Service on 4 February 2021; PE14169 granted to Leda Mining Congo on 22 January 2021; or Ruashi Mining, which was granted PE578 on 26 September 2021.
[6] See the EITI triennial workplan 2021-2023, activity 26 p. 15.
[7] https://www.imf.org/en/News/Articles/2021/12/16/pr21381-drc-imf-executive-board-completes-first-review-ecf-arrangement-and-approves-disbursement
[8] 2018-2020 EITI Report, pp. 87-89.
[9] 2018-2020 EITI Report, p. 87.
[10] BDO (October 2021), ibid, p. 33.

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and Metalkol projects, although the financial counter-party of royalty entitlement cession by Gécamines remains unclear.[11]

However, the thematic study commissioned by the MSG regarding the implementation of this policy concludes that the legal framework should be revised to bring further clarification. It explains that the 2011 Decree had a large understanding of the disclosure of extractive contract, while the implementation rules would no longer clearly include SoEs for disclosure of contracts; would not guarantee that both exploration and production contracts would be covered. The MSG assessment made by BDO conclude that SoEs do not disclose their contracts in general, except Gécamines[12], and identifies 20 missing documents to be published: most of these documents relate to financing and JV mechanisms of SoEs.[13] The legal framework would also lack a clear definition of the format of the disclosure; of the institution in charge of disclosure and, finally, a clear definition of the different types of contracts covered "underpinning extractive activities", as stipulated in the EITI Validation guide.[14] Some EITI stakeholders[15] in the consultation or NRGI[16] ask for instance the disclosure of the trading agreement between Trafigura and the SoE, Entreprise Générale de Cobalt (EGC)[17], although its publication would raise a problem of unfair competition with private companies that do not have the same obligation to publish their sale contract with their subsidiary or any other player. This would notably explain why the assessment commissioned by the EITI MSG, as well as NRGI, recommends the EITI to revise the government pro-disclosure policy to make it more consistent, efficient and specific.

The DRC has made efforts to start using its EITI reporting to disclose information on the statutory mechanisms for government oversight of the environmental impacts of the extractive industries. However, it has not yet used its EITI disclosures to provide an annual diagnostic of the practices related to environmental management. There is scope to expand DRC EITI disclosures in this area that appears of significant public interest.

Progress by requirement and corrective actions

The detailed assessment of progress in addressing each EITI Requirement or corrective action is available from the data collection templates referenced in the annex to this report.

EITI Requirement / past corrective action and assessment	Summary of progress in addressing the EITI Requirement
Legal framework and fiscal regime (Requirement #2.1)	The Secretariat's assessment is that DRC has exceeded the objectives of Requirement 2.1, as in the previous Validation. All stakeholders consulted noted that the government faced challenges in its monitoring of tax payments in

[11] Le Congo n'est pas à vendre (April 2021), "Yabiso, le parapluie de Dan Gertler", KCC p. 7 and Metalkol p. 5: https://congomines.org/system/attachments/assets/000/002/041/original/CNPAV_-_YaBiso_-_Parapluie_de_Gertler.pdf?1619175132
[12] BDO (October 2021), ibid, p. 43 and p. 45.
[13] BDO (October 2021), ibid, p. 33.
[14] See BDO (October 2021), ibid., pp. 18-19, pp. 21-22 and pp. 6-9 for policy recommendations.
[15] BDO (October 2021), ibid, p. 33.
[16] NRGI (September 2021), ibid, p. 4.
[17] The Congolese authorities, after the EITI Committee's decision in April 2021 to continue its reach-out effort for the disclosure of the contract, even wrote to EGC with mention of financial sanctions in case of non-disclosure: https://drive.google.com/file/d/1mj4TY57IcBAD-zrxvbnUBqV8CFxDUNN6/view .

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Exceeded	line with regulations, especially in the mining sector. Industry and civil society representatives commended the DRC EITI's efforts to clarify the fragmented fiscal regime through a comprehensive table and considered that the objective of transparency in the legal framework and fiscal regime had been achieved, although they noted that there were some deviations from the legal framework in practice. Industry representatives noted that the fiscal regime was clear for experts, but not easy to understand for most citizens. Laws and regulations applicable to the hydrocarbons and mining sector are publicly available online, including on the DRC EITI website. In addition, the DRC's 2018-2020 EITI Report thoroughly describes the applicable legal and fiscal regime in both sectors, including the level of fiscal devolution, information about the roles and responsibilities of the relevant government agencies, and the reforms as recently as May 2021. Through EITI reporting, the DRC has made efforts to go beyond the required aspects by describing the implementation of legal provisions in practice and deviations, as well as providing recommendations to the development of new laws and regulations. The majority of information related to the legal framework and fiscal regime for the extractive industries appears to be systematically disclosed on government websites in the DRC.
Contracts (Requirement #2.4) *Fully met*	The Secretariat's assessment is that DRC has fully met Requirement 2.4, including the objective of ensuring the public accessibility of all licenses and contracts underpinning extractive activities (at least from 2021 onwards) as a basis for the public's understanding of the contractual rights and obligations of companies operating in the country's extractive industries. Most stakeholders consulted considered that the objective of Requirement 2.4 had been fulfilled given the publication of extractive contracts, although some stakeholders highlighted that all extractive licenses had not yet been published. The government has had a clear policy in favour of disclosure of extractive contracts and licenses since 2011, reinforced by the 2015 Hydrocarbons Code and the 2018 Mining Code. There appear to have been no oil and gas license or contract awards since 1 January 2021. The list of all oil contracts on the EITI website seems updated and all contracts with riders, signed before 1 January 2021, are published on it or on the contract registry of the Ministry of Hydrocarbons under construction. For mining contracts signed after 1st January 2021, stakeholders consulted explained that they were all published. However, a review of the registry of active mining licenses in 1st semester of 2021 reveals that the contracts associated with eight exploitation licenses could not be found on the Resource contract website, or the EITI website. In its comments on the draft assessment, the MSG explained that these licences corresponded to transformations of research permits into exploitation permits, renewals or transfers of licences between private companies, three cases that were not subject to the requirement for contract disclosure. The study commissioned by the DRC EITI[18] and a study by NRGI[19] do not assess whether all documents related to each extractive contract (e.g., annexes, amendments and riders, where applicable) are published. A technical working group of the MSG

[18] BDO (October 2021), ibid, pp. 30-33.
[19] NRGI (September 2021), "Politique et pratiques de la République Démocratique du Congo en matière de transparence des licences et contrats du secteur extractif : quelle évaluation ?", pp. 26-27: https://resourcegovernance.org/analysis-tools/publications/politique-et-pratiques-rdc-transparence-des-licences-et-contrats

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	manages a list of mining contract documents to assess the missing documents for contracts signed before 1 January 2021, updated in December 2021. In its comments on the draft assessment, the MSG published a list of licences granted since the start of 2021 and a link to the Ministerial Orders awarding each license published on its website. The list of oil and gas contracts on the EITI website is updated given the lack of recent awards and amendments in the petroleum sector according to the stakeholders consulted. The MSG has not formally documented the reasons for the delays in publication of licenses and contracts awarded since 1 January 2021, although stakeholders consulted explained that it was due to the impact of the pandemic. In its comments on the draft assessment, civil society cited the contract signed in February 2022 between the Congolese government and businessman Dan Gertler's company Ventora, which had not yet been published in June 2022. The comments called for a downgrade in the assessment of Requirement 2.4. However, the Secretariat considers that all extractive contracts and licences granted and amended between 1 January 2021 and the start of this Validation (1 January 2022) have been published. There is extensive evidence of efforts by the Ministry of Mines and the DRC EITI Secretariat to implement provisions of this requirement, in a very complex environment in which SOEs manage a large part of the Congolese state's mining assets. Given the concerns of civil society representatives regarding the effectiveness of the system of publication of new extractive contracts and licences and the non-publication to date of the new mining contract signed in February 2022, as well as the lack of systematic disclosure of some mining contracts involving state-owned enterprises, the Secretariat's assessment is that Requirement 2.4 is not yet exceeded.
Environmental impact (Requirement #6.4) *Not assessed*	The objective of this requirement is to provide a basis for stakeholders to assess the adequacy of the regulatory framework and monitoring efforts to manage the environmental impact of extractive industries, and to assess extractive companies' adherence to environmental obligations. The Secretariat's assessment is that the DRC has addressed some encouraged aspects related to the environmental impact of the extractive industries, but that Requirement 6.4 should remain 'not assessed' given that the objective of the requirement is not yet fulfilled The DRC's 2018-20 EITI Report provides an overview of relevant legal provisions and administrative rules related to environmental management and monitoring of extractive projects. Covered topics include the environmental impact assessment process in the mining and the oil sectors, a description of the roles and responsibilities of relevant government agencies in implementing the rules and regulations. However, actual practice, including ongoing environmental impact assessments, is not described.

New corrective actions and recommendations
• To strengthen implementation and increase public access to extractive contracts, the DRC is encouraged to establish centralised and regularly updated databases of published contracts and licences in the mining, oil and gas sectors, for example on the websites of the relevant government entities. The DRC may wish to strengthen its use of the EITI process to assess the effectiveness of the system for publishing extractive contracts and licences.

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- In accordance with Requirement 6.4, the DRC is encouraged to strengthen its use of EITI reporting to disclose the relevant legal provisions and administrative rules related to environmental management and monitoring of extractive projects, as well as review actual practices related to environmental management and administrative enforcement mechanisms.

Licenses and property rights (Requirements 2.2, 2.3)

Overview of progress in the module

The DRC reformed its mining licensing procedures in a revised Mining Code in March 2018, with implementing regulations in June 2018. This Validation reviews the implementation of this new regulatory framework in a context where 764 mining licenses were awarded and 88 mining licenses were transferred from 2018 to 30 September 2020, out of a total of over 3,200 active mining licenses. Some 500 mining titles awarded in 2019 alone. There have not been any awards or transfers of oil and gas licenses or participating interests in oil and gas projects since the period reviewed in the previous Validation.

The new regulatory framework introduced the obligation for any mining license owned by SOEs to be awarded through public tender. Review of data from the CAMI registry of mining titles shows that GÉCAMINES holds 100 mining licenses as of July 2021. In establishing joint ventures with private companies, GÉCAMINES transfers the rights attached to mining permits to these JVs. Civil society organisations have long raised concerns over Gecamine's role as a de facto second mining licensing authority through its transfers of certain mining rights to its JVs with multi-national mining companies.[20] The DRC's latest EITI Report does not provide a list of mining licenses awarded through transfer ('*amodiation*'), despite the award of five mining licenses by Gécamines to a company called Evelyne, an affiliate of the Fleurette group of Dan Gertler.[21]

To address the corrective action from the previous Validation, the MSG commissioned an analysis of non-trivial deviation from statutory procedures of mining licenses awards by an independent consultant, covering a large sample of the 500 mining licenses in the year 2019 (5% of exploration licenses and 42% of production licenses)[22], although it does not include mining rights that were farmed out ("*amodiés*"), or transferred, by the SOEs. The consultant's recommendations on mining license allocations were adopted by the MSG in August 2021. However, the MSG's working group on mining license awards established in the aftermath of the previous Validation has not yet met as of the commencement of Validation.

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

[21] See Africa Intelligence (4 November 2021), "Les conclusions de l'audit de la Gécamines en passe d'être bouclées" : https://www.africaintelligence.fr/industrie-miniere_politique/2021/11/04/les-conclusions-de-l-audit-de-la-gecamines-en-passe-d-etre-bouclees,109702611-bre and Global Witness and the Platform for Protection of Whistle-blowers in Africa (PPLAF) (July 2020), ibid, pp. 20-21. The EITI Report shows a payment from Evelyne to Gécamines in 2018 of 10 million USD (p. 195) and the register of mining licenses indicates the owner of PER 9687, PER 9685, PER 9683, PE 8841 and PE 11229 as Gécamines, although these publicly available documents do not explain whether they were awarded through "amodiation".
[22] BDO (July 2021), "Etat des lieux de l'application des procédures d'octroi des titres miniers et pétroliers, ainsi que des règles de tenue et de publication des registres ad hoc sur la période 1er janvier 2018 au 30 juin 2020": https://drive.google.com/file/d/1h7xCY2dbB7Ibaw0cU09eNmmqUstM8SjD/view

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The DRC's EITI disclosures provide extensive detail on the legal procedures governing the awarding of mining licences, but only cites articles in the Mining Code for certain forms of transfer - namely, transmissions and transfers by option. Stakeholders consulted confirmed the absence of public tenders between 2018 and July 2020, but not the possible existence of transfers of mining rights by SOEs during the same period. The EITI Report presents the amounts of the 'pas de porte' paid to SOEs during the period and at least one example of a transfer of a production licence - a permit to exploit tailings - by Gécamines, in breach of the legislation requiring tendering. It appears that the mining title was transferred to Interactive Energy Russia SA, a company reportedly affiliated to the Fleurette Group, for US$75 million.[23]

One stakeholder indicates that mining titles managed by SoEs do not always appear as they should in the mining register. The report cites the example of the transfer of three production licenses from the state-owned company SOKIMO in exchange for US$750,000 and explains that the transfer did not take place due to non-compliance with the law and the opacity of the process, yet these permits appear to have been awarded to Kodo Resources in 2014[24], in the CAMI registry of mining license. A government stakeholder has indicated the government's willingness to clarify the legal framework applying to mining licenses' transfers and its implementation. At the time of the consultation end of February 2022, the General Inspection of Finance (IGF) had not completed its audit of Gécamines yet, including in relation to the award of mining licenses. With regard to the establishment of a public procurement unit at Gécamines, as recommended by previous EITI Reports, Gécamines stated that it had set up such a unit, but was awaiting accompanying measures to operationalise the unit.

The mining cadastre (CAMI) launched a cadastral portal with access to both a license registry and a geological map. The license registry is presented in the format of cadastral map and in a list of the 3,145 active mining licenses as of July 2021. The CAMI makes this data available to mining operators and scientific bodies in open format upon payments of a fee equivalent to production costs and with copyright restrictions. There is no oil and gas license cadastre or public register, the SGH maintains an internal and manual license registry. Until mid 2021, the EITI website served as the register of oil licenses based on updates from this manual registry, covering all the information as per Requirement 2.3.b aside from dates of application and expiry. The EITI national Secretariat supported the ministry of Hydrocarbons to develop its own online oil and gas license register, which is currently in development.

Progress by requirement and corrective actions

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EITI Requirement / past corrective action and assessment	Summary of progress in addressing the EITI Requirement

[23] Global Witness and Plateforme de protection des lanceurs d'alerte en Afrique (PPLAF), July 2020, « Des sanctions, mine de rien », pp. 20 et 21 : https://www.globalwitness.org/fr/undermining-sanctions-fr/
[24] The EITI Report describes the process of transferring PE 5078, PE 5079 and PE 5081, which was stopped in 2019 (p. 134), even though these licences were granted to Kodo Ressources in 2014, in the mining licenses register.

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Contract and license allocations (Requirement #2.2) *Mostly met (with considerable improvements)*	The Secretariat's assessment is that the DRC has mostly met the objective of Requirement 2.2 to provide a public overview of awards and transfers of oil, gas and mining licenses. Most stakeholders consulted from all constituencies considered that there had been considerable progress in clarifying the practices of contract and license awards and transfers. According to the Secretariat, the objective of the requirement is mostly met, given the exclusion of transfers and other transfers of mining rights from the analysis of deviations from statutory rules in practice. For mining licenses, the EITI Report describes the administrative procedures for license awards and transfers, but does not appear to describe the statutory procedures for certain types of transfers (i.e., "transmissions" and "transfers by option"). For transfers, the EITI Report does not indicate the technical and financial criteria (including for "transmission" and "transfert par option"), nor the beneficiaries of these transfers. In addition, the EITI Report does not indicate whether SOEs have granted farm-out agreements ("amodiation") or transferred mining licenses, over the period. However, in its comments on the draft assessment, the MSG referenced documentation published on the DRC EITI website of such transfers and farm-outs by SOEs of their mining rights to private companies. However, there is no publicly available evidence that describes the MSG's assessment of any deviation in practice in the transfer of a mining discharge licence by Gécamines to Interactive Energy Russia SA in 2019. The EITI Report presents a review of a sample of licences that were granted or transferred during the period (excluding transfers by SOEs) which highlighted a number of non-trivial deviations (missing documents, unreliable data, etc.) and the existence of exceptionally long delays, casting doubt on the efficiency and transparency of some procedures. With regard to oil and gas licences, the DRC's EITI disclosures confirm that none were granted or transferred during the period under review. The legal framework does not provide for any technical or financial criteria for the granting or transfer of exploration and production licences in the oil and gas sector. It is the commission chaired by the Minister of Hydrocarbons that decides on the financial and technical criteria for grants. The EITI Report does not contain a review of significant deviations from legal procedures, as no oil and gas rights were granted or transferred during this period.
Register of licenses (Requirement #2.3) *Fully met*	The Secretariat's assessment is that DRC has fully met the objective of the requirement to ensure the public accessibility of comprehensive information on property rights related to extractive deposits and projects, with considerable improvements since the previous Validation. Many stakeholders from all constituencies highlighted the launch of the mining cadastre as a significant improvement in transparency in mining rights. The CAMI has launched its online cadastre (Landfolio) which contains all data required by EITI Requirement 2.3.b for all active mining licenses. The cadastre provides coordinates for all active mining licenses. However, the information in the mining cadastre does not appear to reflect the transfer of mining rights, through farm-out agreements, by SOEs like Gécamines to private companies and appears to list all such licenses as held by the SOEs themselves. In its comments to the draft assessment, the MSG considered that farm-outs did not

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	strictly speaking represent a change in ownership, and that such titles are still listed as belonging to individual SOEs. Nevertheless, the Secretariat considers that farm-outs of mineral rights involve a transfer of rights to exploit extractive resources and are therefore covered by the definition of mineral rights as defined in Requirement 2.4.d-e. However, the MSG has produced a list of SOE farm-outs in the mining sector, thus complementing the CAMI register and providing the missing information. Various stakeholders consulted confirmed the cadastre appears as comprehensive and that the public part of the software is updated at the end of every month. The mining cadastre data is not available in open format, nor is the list of active mining licenses. The oil and gas license register is under construction by the Ministry of Hydrocarbons, although an early version on the Ministry's website provides most information per Requirement 2.3.b including from commodity, date of application, type of licenses, and geographical coordinates. The register on the EITI website is missing the dates of application and of expiry, although the latter are available in the Ministry of Hydrocarbons register. Neither the Ministry of Hydrocarbons register nor the EITI website register appears to be up to date. In its comments on the draft assessment, however, the MSG clarified that in the absence of licensing in the oil sector since 2015, the EITI and Ministry of Hydrocarbons registers could be considered comprehensive.
New corrective actions and recommendations	
• In accordance with Requirement 2.2.a.iv, the DRC should ensure that any future assessment of significant deviations from legal procedures in the mining licensing process includes awards and transfers made by SOEs in the form of farm-outs, transfers or tenders in the period under review, as well as an explanation of the rules determining the type of procedure followed by SOEs in practice. To strengthen implementation, the DRC is encouraged to include mining licensing in its EITI work plan, in order to follow up on the recommendations from its thematic study on licensing. • To strengthen implementation, the Ministry of Hydrocarbons is encouraged to update its online register of petroleum licences, in particular any changes in the status of the licences - for example, cancellation or transfer. The Ministry of Hydrocarbons could include the geographical coordinates, dates of application and commodities covered by each mining title in the online register. To promote understanding of the information contained in the online register, the Ministry of Hydrocarbons is encouraged to include the names of petroleum licence holders and/or operators. The Ministry of Mines is encouraged to publish all mining licence data in an open format to facilitate research and analysis.	

Beneficial ownership (Requirement 2.5)

Overview of progress in the module

Adherence to Requirement 2.5 on beneficial ownership is assessed in Validation as of 1 January 2022 as per the framework agreed by the Board in June 2019.[25] The assessment consists of a

[25] https://eiti.org/document/assessing-implementation-of-eitis-beneficial-ownership-requirement.

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technical assessment and an assessment of effectiveness, focusing on all aspects of Requirement 2.5.

Technical assessment

The technical assessment is included in the Transparency template, in the tab on Requirement 2.5. The assessment shows that DRC has made progress in establishing a legal basis for the collection and disclosure of beneficial ownership information. The 2018 Mining Code mentions the obligation for mining and petroleum companies to declare their beneficial owners, and the sanctions in case of non-compliance. On December 24, 2021, the Government adopted a draft bill on the fight against money laundering, the financing of terrorism and the financing of the proliferation of weapons of mass destruction, which contains relevant provisions on beneficial ownership. This draft bill applies beneficial ownership transparency to all sectors of activity.

The draft bill includes the definition of beneficial ownership and identifies the CTCPM as the national agency responsible for establishing the registry. For the 2018-20 EITI Report, because of the pandemic-related restrictions and constrained financial resources for EITI implementation, the MSG limited the scope of beneficial ownership reporting to only the companies in scope of EITI reporting for this period.

On September 29, 2021, the MSG decided to proceed with a new beneficial ownership data collection in order to build a comprehensive registry to be posted online[26] on the national EITI website. The MSG Chair has sent a letter requesting updated BO data from companies within the scope of EITI Reporting. Only Material companies were again required to submit the data, and oil and gas companies listed on any stock exchange have been excluded from the scope of the declaration, which represents a weakness in the comprehensiveness of the scope of work.

As a result, beneficial ownership reporting forms were only distributed to material companies included in the scope of EITI reporting, while beneficial ownership data collection not yet institutionalized in government systems. There is no evidence that beneficial ownership data has yet been requested from any companies applying for extractive licenses since 1 January 2020. Public access to legal ownership data is contingent on the payment of a GNF 20 000 (EUR 30) fee per company record. The MSG has not yet published a list of companies holding extractive licenses in DRC that are subsidiaries of companies publicly listed on foreign stock exchanges. References (links) to their statutory filings to their respective stock exchanges are not available, neither in the summary data nor the 2018-20 EITI Report.

Assessment of effectiveness

In April 2021, the DRC underwent a mutual evaluation of its Anti-Money Laundering (AML) and Combating the Financing of Terrorism (CFT) measures and their effectiveness by the Action Group against Money Laundering in Central Africa (GABAC). The GABAC mutual evaluations highlighted deviations between statutory provisions requiring reporting of beneficial ownership data to the financial intermediaries and actual practice, noting that adherence to these requirements is generally weak. Institutional initiatives to strengthen the fight against money laundering are noted, including the creation of the National Financial Intelligence Unit (CENAREF), the Consultative Committee to Combat Money Laundering and the Financing of Terrorism (COLUB), the National Coordination Committee to Combat International Terrorism

[26] See letter n°.1705/CAB/MINETAT/MIN PLAN/CMNK/ITIE/frat/2021 of 08/10/2021 from the EITI MSG Chair

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(CNCLT), the Fund for the Fight against Organised Crime (FOLUCCO) and the Observatory for Monitoring Corruption and Professional Ethics (OSCEP). However, the GABAC report notes that financial resources devoted to AML/CFT are not sufficient to enable this institutional framework to operate optimally. The report also notes the lack of a regulatory framework enabling the government to collect beneficial ownership data from all legal entities. Finally, the report highlights that the country is particularly exposed to money-laundering risks related to the flow of proceeds of corruption, misappropriation of public funds, customs and tax fraud, and mineral trafficking into the financial system. Stakeholders consulted cited the real estate and mining sector as the two most vulnerable sectors when it comes to money laundering and terrorism financing.

Another key challenge for the DRC's beneficial ownership transparency efforts is the lack of an enabling legal and regulatory framework for the identification of extractive industry assets held by politically exposed persons (PEP). Stakeholders consulted highlighted this as a key gap at present, which they expected would need to be addressed to ensure a robust regulatory framework for beneficial ownership transparency. With financial support from the International Secretariat, the MSG commissioned a study by BDO to assess the status of implementation of EITI Requirement 2.5 and to analyse the disclosure of beneficial ownership by extractive companies[27].The study noted the difficulty of reaching out to all companies involved in the extractive sector, and provided several proposals to strengthen beneficial ownership data collection, such as dissemination and outreach activities, or the development of a risk-based approach to beneficial ownership disclosures based on media coverage (in the absence of a register of PEP assets).

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EITI Requirement / past corrective action and assessment	Summary of progress in addressing the EITI Requirement
Beneficial ownership (Requirement #2.5) *Partly met*	The Secretariat's assessment is that the DRC has partly met the requirement's objective of enabling the public to know who ultimately owns and controls the companies operating in the country's extractive industries and to help deter improper practices in the management of extractive resources. In the context of allegations of shell companies used by the Israeli businessman Dan Gertler to avoid US sanctions, stakeholders consulted considered the progress on beneficial ownership disclosures as critical[28]. Several aspects of the full set of criteria for Validation of Requirement 2.5 have not yet been addressed in DRC, including finalizing the legal framework and operationalizing reporting practices for beneficial ownership disclosures. A draft law on beneficial

[27] See Section 5.1.3, https://drive.google.com/file/d/1mn8n2GXUPhhlllzizpVYgbbYdtbvudUw/view
[28] Following international civil society revelations, on 6 December 2021, the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) sanctioned one individual, Alain Mukonda (Mukonda), for providing support to sanctioned billionaire Dan Gertler, as well as 12 entities linked to Mukonda or companies associated with him in the Democratic Republic of the Congo and Gibraltar .

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	ownership has been prepared in 2021 but remains under discussion pending enactment. The project includes the definition of beneficial ownership and identifies the CTCPM as the national agency responsible for setting up the register. In the absence of an established legal framework or reporting requirements enshrined in law, the EITI has attempted to collect beneficial ownership information from material companies as part of data collection for the 2018-2020 EITI Report. Given the high number of small companies with revenues below the materiality threshold, the MSG's comments on the draft assessment note that the MSG limited itself in the year under review to sending reporting templates to companies within the scope of the EITI Report. It is anticipated that the 2020-2021 EITI Report will extend reporting to all companies that hold or apply for extractive licenses, as well as links to stock exchange filings of wholly owned subsidiaries of listed companies. Based on the beneficial ownership section in the 2018-2020 EITI Report, of the 77 extractive licensees with significant revenues, only 21 submitted information on their beneficial ownership. Section 2.5.3 of the 2018-20 EITI Report provides an assessment of the completeness and reliability of beneficial ownership disclosures, although it remains limited to the material companies' submission rather than beneficial ownership data collection from all companies holding and applying for extractive licenses. Information on legal owners is published on the company register website, Following additional data collection in October 2021 after the publication of the 2018-20 EITI Report, the DRC EITI has published a list of beneficial owners in open format on the national EITI website, with 56 companies having disclosed their beneficial owners. Regarding Requirement 2.5.f.iii, subsidiaries of publicly listed material companies have been identified in the summary data and the transparency template, but links to the stock exchange filings of the extractive companies in the DRC that are wholly owned subsidiaries of publicly listed companies have not been disclosed through the 2019 summary data file or on the national EITI website (only general links to the company websites).

New corrective actions and recommendations
• In accordance with Requirement 2.5 by January 2022, the DRC should maintain a publicly available register of the beneficial owners of the corporate entities that apply for or hold a participating interest in an exploration or production oil, gas or mining license or contract, including the identities of their beneficial owners, the level of ownership and details about how ownership or control is exerted. Any significant gaps or weaknesses in reporting on beneficial ownership information must be disclosed, including naming any entities that failed to submit all or parts of the beneficial ownership information. Information publicly disclosed about the identity of the beneficial owner should include the name of the beneficial owner, the nationality, and the country of residence, as well as identifying any politically exposed persons. It is also recommended that the national identity number, date of birth, residential or service address, and means of contact are disclosed. The DRC EITI should assess any existing mechanisms for assuring the reliability of beneficial ownership information and agree an approach for extractive companies to assure the accuracy of the beneficial ownership information they provide. To achieve this target, the DRC should request all license holders to disclose beneficial ownership information and require all applicants of extractive licenses to disclose their beneficial owners. The DRC is encouraged to agree priorities for beneficial ownership disclosures and, based on these priorities, plan efforts to obtain this data. For

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example, the DRC may choose to prioritise disclosures by certain types of companies, companies holding a certain type of license or producing a certain commodity due to risks related to corruption, tax evasion or circumventing provisions for local participation. These priorities should guide outreach efforts to companies and provide them guidance. It is recommended that disclosures are published in open data format, comparable and easy to analyse. The DRC may also wish to expand beneficial ownership disclosures to other segments of the upstream extractive value chain, for instance through collection and disclosure of beneficial ownership information from extractive-sector service providers, to enable monitoring of adherence to local content provisions and to manage corruption and tax evasion risks.

State participation (Requirements 2.6, 4.2, 4.5, 6.2)

Overview of progress in the module

Issues surrounding state participation in the DRC's extractive industries have generated substantial public debate, most notably involving Gécamines[29]. Other SOEs have also attracted public attention over allegations over a lack of transparency in the management of government revenues. The State remains active and regularly actualise the modalities of its involvement in the mining sector in particular, with the creation in 2019 of a new subsidiary of the GECAMINES, Entreprise Générale du Cobalt, in charge of the purchase and the marketing of the cobalt produced in DRC[30] (which activities are due to start in 2022). There was particularly robust public debate within the DRC on this issue, to which the EITI has responded by publishing a thematic report prepared by KPMG on the financial relations of SOEs in the extractive sector in December 2020, covering the period 2017-2018[31]. During this exercise, and for the first time for several SOEs, the audited financial statements (for the years 2017-2018) have been made available to the consultant and analysed. The national EITI website also contains an excellent mapping of the state's direct and indirect participations in the mining and oil and gas sector, regularly updated, in open format[32]. While Gécamines' audited financial statements are now published on its website for 2019 and 2020, it seems that the other SOEs did not continue to publish their audited financial statements after the release of the thematic report[33]. In its response on the draft assessment, the MSG noted the publication of the financial statements of the remaining eight SOEs on the DRC-EITI website in July 2022. The production of the thematic report on SOEs by the DRC-EITI for the period 2017-18 meets all aspects of Requirement 2.6, but unfortunately has not yet been repeated for the period 2019-20. Given this lack of institutionalisation of EITI reporting on SOEs, the Secretariat's assessment is that the objective of transparency in state involvement remains mostly met, despite considerable improvements since the previous Validation.

On quasi-fiscal expenditures, there is significant public attention on Gécamines' financial management, given regular media coverage and its historical dominance of the country's mining

[29] For instance, https://www.pplaaf.org/downloads/business_as_usualFR.pdf (In French)
[30] https://www.agenceecofin.com/cobalt/0212-93644-rdc-les-premiers-achats-d-entreprise-generale-du-cobalt-commenceront-finalement-en-janvier-2022
[31] See here, https://drive.google.com/file/d/1i2480Dsi-qiG9OC27fTg7I-0f9ufEfD3/view (in French)
[32] https://www.itierdc.net/publications/rapports-itie-rdc-2000/rapport-itie-rdc-2018-1er-sem-2020/#chiffres
[33] The financial statements of Sakima, Cominière or Sokimo are not available on their respective websites.

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sector. The MSG has considered the existence of quasi-fiscal expenditures related to material SOEs both in its 2018-2020 EITI Report and in MSG discussions, and has developed a reporting mechanism to identify such expenditures. Reporting templates covering quasi-fiscal expenditures were sent to the nine SOEs and the relevant ministries, who did not report any quasi-fiscal expenditures for the period under review. In addition, stakeholders consulted considered that the "tax advances" paid by the GECAMINES to the Ministry of Finances[34] could not be considered quasi-fiscal expenditures. However, several credible media reports indicate that the SOE's "tax advances" to the state are undertaken outside of the conventional budget process and could be considered interest-free loans from the SOE to the state. In a report published in May 2022, the Inspector General of Finance (IGF) noted that a significant proportion of GECAMINES' tax advances remain to be traced to the account of the Treasury and the tax office. Thus, the Secretariat's assessment is that the objective of Requirement 6.2 is mostly met during the period under review.

Progress by requirement and corrective actions

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EITI Requirement / past corrective action and assessment	Summary of progress in addressing the EITI Requirement
State participation (Requirement #2.6) *Mostly met (with considerable improvements)*	Most of the information required by Requirement 2.6 is available in the 2018-2020 EITI Report and in the 'State-owned enterprises' section of the open data portal on the DRC EITI website. Many stakeholders from different constituencies highlighted the significant work undertaken on disclosures related to extractive SOEs and considered that the objective of transparency in the financial relations between SOEs and the state were in the process of being fulfilled. Regarding the statutory rules on the financial relations of SOEs, including the clarification of the rules on retained earnings, in accordance with Requirement 2.6.a.i, the publication of the SOEs financial statements for the years 2017-2018 provide satisfactory answers. As for the rights of SOEs to raise funds from third parties and their entitlement to sovereign guarantees, this point has been clarified through the publication of a thematic report by KPMG reviewing the audited financial statements of all nine SOEs, as well as during consultations with stakeholders (Ministry of Mines and Hydrocarbons, Gécamines, MIBA, SAKIMA). SOEs' loans and loan guarantees to companies in the extractive sector are detailed in the Summary of the report[35]. Regarding loans granted to extractive companies, only one loan from Gécamines to MIBA dating from 2018 was reported. For this transaction, the initial amount of the loan is specified, as well as the terms of the loan (but not the balance in 2019) in a document produced by Gécamines in June 2022. In its comments on the draft assessment, civil society argues for an assessment of Requirement 2.6 as "partially met" given the lack of information on loans granted by SOEs to extractive companies. The Secretariat's assessment is that these loans have not yet been clarified for 2019 or 2020 due to the lack of

[34] https://zoom-eco.net/finance/rdc-les-avances-fiscales-de-la-gecamines-a-letat-chiffrees-a-530-millions-usd-de-2012-a-2020/
[35] https://drive.google.com/file/d/1-SLRm9bDrB3MsOCWOympa3JxOAjQHIUN/view

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	institutionalisation of the review of SOE financial statements beyond 2017-2018. Regarding the guarantees provided by SOEs in exchange for loans from extractive companies, the interest rates and the balance for 2019 are missing from the description but are not strictly required for this type of third-party financing by Requirement 2.6. In addition, a description of any guarantees covering the eight different loans granted by SOEs to extractive companies does not appear publicly available. Regarding the financial relations between the SOEs and the state in practice, Gécamines seems to be the only SOE to have pursued the publication of its audited financial statements after the thematic report. Both 2019 and 2020 audited financial statements of Gécamines are available on the company's website, although the audited 2019 financial statements of the other eight extractive SOEs had not yet been published at the start of Validation. However, these were published in July 2022 at the request of the MSG. The DRC has made some efforts to disclose information on statutory rules related to SOEs' procurement, contracting and corporate governance, although it has yet to expand this to a diagnostic of practices in these areas. The review of state participation through the thematic report produced by KPMG for the period 2017-18 has not yet been extended for 2019-20, implying that the review of state participation has not yet been institutionalised. In its comments on the draft assessment, the MSG considers that the objective of Requirement 2.6 has been fully met. Nevertheless, the lack of information on the financial relationship between state-owned companies and the state for 2019 compared to the EITI DRC's 2017 and 2018 disclosures supports the Secretariat's assessment that the DRC has mostly met the objective of the Requirement 2.6, with considerable improvements since the previous Validation.
Sale of the state's in-kind revenues (Requirement #4.2) *Not applicable*	There is no evidence of back-sliding since the previous Validation, in which Requirement 4.2 was assessed as "Not applicable". There is no PSC currently giving rise to in-kind revenues to the state in the oil and gas sector. In the mining sector, two production sharing contracts have been concluded. In the first one, the SOE Gécamines, HONG KONG EXCELLENT MINING INVESTMENT CO. LTD (HKEMI) and KINGA KILA MINING SASU (KIK MINING) signed a "partnership Agreement" in December 2018 to share production from the joint commercial exploitation of the "Kingamyambo" and "Kilamusemb" copper and cobalt deposits. For the second, contract, and agreement has been signed in February 2019 between SOKIMO and the mining company KORKHA SARL for the semi-industrial exploitation of two licenses[36]. This contract is for three years renewable and includes a net production sharing clause (gross production minus recoverable costs) of 30% for SOKIMO and 70% for KORKHA. Since these two projects have not yet entered production phase, Requirement 4.2 is considered not applicable in DRC in the period under review.
Transactions related to state-owned	The Secretariat's assessment is that the DRC has fully met the objective of Requirement 4.5 in ensuring the traceability of payments and transfers involving SOEs and strengthening public understanding of whether revenues accruable to the state are effectively transferred to the state and of the level

[36] Exploitation permits 5056 and 5086 located in Haut-Uele.

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enterprises (Requirement #4.5) *Fully met*	of state financial support for SOEs. This view that the objective was fully met was broadly reflected in stakeholder consultations. The revenue streams collected by the SOEs are correctly described and disaggregated in the 2018-2020 EITI Report, amounting to USD 205,7m in 2019. While all SOEs collect revenues (with the exception of SACIM and SCMK-Mn without a joint venture in production), Gécamines alone accounts for more than 95% of the revenues destined to SOEs. With respect to transfers between the state and material SOEs, payments (excluding regular taxes) made to the state by SOEs are correctly detailed and disaggregated in the 2018-2020 EITI Report. The state does not appear to have granted operating subsidies to any SOE, and the review of the financial statements and the responses of the SOEs to the EITI Technical Secretariat's requests for information did not identify any transfers or subsidies from the central or provincial government to any of them for 2019. As part of the 2018-2020 EITI Report, the MSG provided a specific template on loans or subsidies received from the state to each of the nine SOEs, all of which indicated that they had not received any such transfers. As for the comprehensiveness and reliability of the data, since the data was not reconciled as part of the flexible reporting, it is subject to the same limitations as the rest of the financial data (see 4.9).
Quasi-fiscal expenditures (Requirement #6.2) *Mostly met*	The International Secretariat's assessment is that Requirement 6.2 is mostly met in the period under review. Several stakeholders from different constituencies highlighted the public interest in SOEs expenditures, particularly Gécamines. The 2018-2020 report presents the definition of quasi-fiscal expenditures agreed in 2019 and explains that no SOEs have reported such expenses, nor have any ministries. There is evidence of the DRC EITI taking steps to improve its reporting of quasi-fiscal expenditures, including the design of a specific reporting template and its presentation and dissemination[37] to the SOEs of the extractive sector. The thematic report on the review of SOEs' financial statements published in 2021 did not highlight any such expenditures for the year 2017 and 2018. The last Open Budget Survey[38] and IMF article IV review[39] do not mention any examples of quasi-fiscal expenditures. In addition, the 2018-2020 EITI Report covers three cases that could potentially be classified as quasi-fiscal expenditures, including the supply of electricity to the city of Kindu by SAKIMA, the rehabilitation of Kamanyola Avenue by GÉCAMINES and the USD 50 million in 'tax advances' granted by GÉCAMINES to the Treasury. The MSG has analysed each of these transactions and concluded that none of them should be classified as quasi-fiscal, and all the transactions identified occurred before the fiscal year under review (2019). The Secretariat's view is that Gécamines' tax advances to the Treasury could, however, be considered quasi-fiscal expenditures, given that they appear to consist of SOE loans to the government that are not recorded in the government's financial operations report (TOFE) nor the national budget, and appear to be on concessional terms compared to market rates

[37] https://drive.google.com/file/d/1zvGH5EHzmNP8c0VnpjHkGiF5qcH9lmit/view
[38] https://www.internationalbudget.org/sites/default/files/2020-05/congo-%28democratic-republic-of-the%29-202002150030.pdf, April 2020
[39] https://www.imf.org/en/Publications/CR/Issues/2019/09/04/Democratic-Republic-of-the-Congo-2019-Article-IV-Consultation-Press-Release-Staff-Report-and-48648, 2019

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	(i.e., extended at a de facto interest rate of zero). These constitute direct transfers from the SOE to the Ministry of Finance and are intended to finance the budget. These "advance" payments to the MoF have been the focus of recent news in the national and international press and are documented in both the 2018-2020 EITI Report and the SOEs' available 2021 financial statements. However, stakeholders consulted did not consider these "tax advances" as quasi-fiscal, but rather as advances on taxes owed by Gécamines to the state. Nevertheless, the Secretariat notes the existence of several national and international media articles (such as from Radio France International) on the management of Gécamines' 'tax advances', which appear to have been transferred to other parties in practice and have not been offset by subsequent tax payments from the SOE to the state. These media articles, supported by a recently published IGF report, indicate that Gécamines' 'tax advances' to the Treasury are not conducted within the conventional budget process in the DRC. Therefore, the Secretariat considers that Gécamines' loans to the state are likely to represent quasi-fiscal expenditures. In its comments on the draft assessment, the MSG argued that these quasi-fiscal expenditures are contained in the Cash Flow Plan used to prepare the government's financial report (TOFE). They noted that these transfers are not included in the TOFE or the National Budget as they are paid as an aggregate amount, and it is therefore impossible to link them to a specific revenue stream or financial authority. However, the management authority and the flow to be covered are determined following reconciliation sessions held regularly since 2021 between Gécamines and the relevant government authorities. The financial statements of Gécamines clearly show the tax advances as attached to a particular fiscal year, and are entered in the "State debtor" account as a receivable from Gécamines to the State. The MSG obtained from Gécamines and published in June 2022 a summary document of the status of recording ('*titrisation*'), compensation and reconciliation of tax advances. While the IGF audit report on from Gécamines published in May 2022 notes different amounts, both documents agree that part of the tax advances remain to be identified and cleared. The Secretariat considers that the EITI disclosures therefore highlight quasi-fiscal expenditures by from Gécamines even if they are not categorised as such. These can be considered as a form of interest-free loan from from Gécamines to the state until their formal recording ('*titrisation*'). Moreover, while a similar level of transparency to that which exists for other payments and revenue streams is achieved for a part of these tax advances (notably the breakdown by revenue stream), it remains incomplete for the part not yet recorded ('*titrisé*'). In its comments on the draft assessment, civil society refers to the lack of transparency on expenditures of state-owned enterprises such as GCM and SAKIMA, which include other similar tax advances, and which it considers to represent quasi-fiscal expenditures. The MSG's comments on the draft assessment consider that the objective of Requirement 6.2 has been fully met. Nevertheless, the Secretariat's assessment is that the lack of recording ('*titrisation*') of a part of Gécamines' tax advances to the state, and their lack of transparency, means that the objective of Requirement 6.2 is still mostly met.

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	and that the objective of transparency in quasi-fiscal expenditures funded by extractive SOEs is mostly met.

New corrective actions and recommendations
• In accordance with requirement 2.6, DRC should ensure that the details about any loans or loan guarantees to mining, oil and gas companies operating within the country are adequately disclosed, including loan tenor and terms (i.e. repayment schedule and interest rate). To strengthen implementation, the DRC is also encouraged to institutionalise and systematise its review of state participation in the extractive industries, in order to improve understanding of the contributions of SOEs to the country's economy, whether from a financial, economic or social perspective. To strengthen implementation, extractive SOEs are encouraged to regularly publish audited financial statements on their respective websites, to systematically inform the public on the practice of the financial relationship between the State and its companies. • To strengthen implementation and monitoring of in-kind payments, the DRC is encouraged to develop a reporting framework to disclose future in-kind payments from all mining, oil and gas projects giving rise to in-kind revenues to the state once they enter production phase. • In accordance with Requirement 6.2, the DRC is required to develop an EITI reporting process for material SOEs' quasi-fiscal expenditures with a view to achieving a level of transparency commensurate with other payments and revenue streams and should include SOE subsidiaries and joint ventures. These disclosures should cover all material SOEs' public social expenditures, such as loans and other advance tax payments to the state, undertaken outside of the national government budgetary process.

Production and exports (Requirements 3.2, 3.3)

Overview of progress in the module

The DRC is a major producer and exporter of several strategic minerals, such as copper and cobalt. According to Global Witness[40], it is estimated that more than half of the artisanal miners in eastern Congo work in mines where armed groups are present, profiting from the mineral extraction by collecting illegal taxes or trade. In addition of the systematic disclosure[41] of production data volumes and values which includes detailed figures on the artisanal mining of gold, diamonds (66% of the total production disclosed in 2020 comes from artisanal mines), cassiterite and coltan, the DRC EITI has launched a series of activities aiming to shed light on artisanal mining, including the production of a thematic report.

Production values and volumes for the mining sector are systematically disclosed through PDF publications by the CTCPM, in a timelier manner than data contained in EITI Report (production volumes and values are already available for 2020 and the first quarter of 2021). For oil and gas

[40] https://www.globalwitness.org/en/campaigns/republique-democratique-du-congo/
[41] https://ctcpm.cd/site/les-statistiques-minieres (in French)

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however, the valuation of production remains unavailable, although stakeholders noted that the digitalization and publication of the figures were ongoing.

Exports values and volumes are available on the national website of the EITI for both sectors. The mining sector also benefits from granular systematic disclosures on the Ministry of Mines website, where export volumes and values are disclosed by region of origin as well as country of destination.

Progress by requirement and corrective actions

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EITI Requirement / past corrective action and assessment	Summary of progress in addressing the EITI Requirement
Production (Requirement #3.2) *Fully met*	The Secretariat's assessment is that the DRC has fully met the objective of Requirement 3.2. Details of mining production are routinely disclosed[42] in the mining production and export statistics published on the Ministry of Mines website and regularly updated by the CTCPM. The year 2019, however, appears to be incomplete in terms of production volumes and values, although the 2020 production data appears comprehensive for 2020. These disclosures, in pdf format, distinguish between industrial, semi-industrial and artisanal sectors, and include in-depth figures on the artisanal sector for each of the raw materials extracted. The publications also contain analyses of the production of the different products, their evolution over time and the respective weight of the different producers for the year in question. The production data are disaggregated by region, company and raw material, although this information is not yet systematically disclosed in a comprehensive manner on government websites. Oil and gas production volumes and values is provided in the 2018-2020 EITI Report, broken down by company and de facto by project. However, the value of oil production is not provided either in DRC EITI reporting or on government websites. Stakeholders from government departments highlighted that the Ministry of Hydrocarbons was currently working on disclosing the value of the production of oil and gas. Stakeholders consulted noted that the DRC EITI website also contained a database that was supposed to contain production data from each reporting extractive company, disaggregated by commodity and company, although this did not appear publicly accessible during this Validation.
Exports (Requirement #3.3) *Fully Met*	The Secretariat's assessment is that the DRC has fully met Requirement 3.3. Most stakeholders consulted did not express views on whether the objective of transparency in the country's formal exports had been achieved, although some highlighted that EITI data did not cover the country's extensive informal exports. The Secretariat's view is that the objective of transparency in the government's extractive data has been achieved.

[42] https://mines-rdc.cd/fr/les-statistiques-minieres (in French)

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	Mining export volumes and values are systematically disclosed through the Ministry of Mines[43] website and also summarized through EITI reporting. In mining, export volumes and values are disclosed by region of origin as well as country of destination. Both volumes and values can be disaggregated by commodity and are broken down by region and company, (but not by project) in oil and gas and mining sectors on the open data portal of the national website of DRC-EITI[44](such disclosures are encouraged, not required, in the EITI Standard). While Requirement 3.3 appears to be exceeded for the mining sector, given the extent of systematic disclosures of the required data on government portals, production data disclosures for the oil and gas sector remain limited to disclosures in the DRC's EITI Reports.

New corrective actions and recommendations
• To strengthen implementation, the DRC is encouraged to ensure that the value of oil and gas production is systematically disclosed in a similar way to current practice in the mining sector. • To strengthen implementation, DRC is encouraged to disclose through the publications of the Ministry of Hydrocarbons export volumes and values for the oil and gas sector, in a similar fashion than the EITI disclosures on its open data portal (3.3).

Revenue collection (Requirements 4.1, 4.3, 4.4, 4.7, 4.8, 4.9)

Overview of progress in the module

An EITI Report have been published according to the "flexible" EITI reporting approach approved by the Board in response to the Covid-19 pandemic, departing from traditional EITI reconciliation in accordance with Requirement 4.1.c to focus on a unilateral disclosure by companies of their payments and of government disclosures of extractive revenues, without reconciliation.

The approach to disclosures of financial data has been in accordance with Board-approved procedures for "flexible" EITI reporting, and both companies and government agencies have reached a very high rate of reporting (97% of total revenues from companies, and 99,9% for the government agencies).

On infrastructure deals, DRC EITI has dedicated a section to the project SICOMINES in its 2018-2020 EITI Report, and has published an additional thematic Report in November 2021. The list of the infrastructure works are now systematically disclosed on the website of the infrastructure ministry (ACGT). The original contract from 2008 and all four amendments have been published.

The granularity of DRC EITI disclosures has remained stable, although little progress has been accomplished on the project-level aspect of the reporting. The timeliness of EITI reporting has been within the two-year deadline, although the DRC's latest EITI Report was the timeliest set of financial data to date, with information up to July 2020 published in March 2021. There is scope

[43] See 2020 for instance: https://mines-rdc.cd/fr/wp-content/uploads/simple-file-list/STATISTIQUES/STATISTIQUES_MINIERES_ANNEE_2020.pdf
[44] https://www.itierdc.net/publications/rapports-itie-rdc-2000/rapport-itie-rdc-2018-1er-sem-2020/#chiffres

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for DRC to significantly improve by using EITI reporting to integrate and strengthen existing systematic disclosures of the financial data through the T/SL declaration platform.

On the reliability of data, the DRC EITI's scoping study[45] covering 2018, 2019 and the first semester of 2020 provides an annual review of routine government and company audit and assurance rules and practices, including providing a detailed review of the completion of audits for each company included in the scope of reporting. Following the MSG's July 2020 decision to produce a flexible EITI Report covering 2018, 2019 and the first semester of 2020, the payments from companies and revenues from government agencies have been reported unilaterally by each side but have not been reconciled. To ensure the comprehensiveness and reliability of the financial data, additional explanations were requested from the reporting entities for any reporting discrepancy greater than or equal to USD 500 000. The impact of the COVID-19 pandemic was significant on the work of the State General Inspector of Finance (IGF) which was charged with assessing the reliability of financial disclosures from government agencies in the years covered by the report. Although the MSG noted that the IGF pursued its work to gain more clarity over the reliability of the disclosures, only the financial data disclosed by the DGRAD were declared reliable, accounting for less than 15% of total revenues. In its comments on the draft assessment, the MSG underlined the continuation of the IGF's efforts with the two remaining agencies, DGI and DGDA, to reach a conclusion on the quality of their financial data for the year 2019.

Progress by requirement and corrective actions

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EITI Requirement / past corrective action and assessment	Summary of progress in addressing the EITI Requirement
Comprehensive disclosure of taxes and revenues (Requirement #4.1) *Fully met*	The Secretariat's assessment is that the DRC has fully met the overall objective of the requirement. Most stakeholders consulted considered that the objective of comprehensive transparency in government extractive revenues had been fulfilled. A total of 77 companies (including 3 SOEs) were selected based on a materiality threshold of USD 500 000, plus the remaining six SOEs, for a total of 83 entities. On the revenue side of the disclosures, 26 government agencies were included in the exercise. The MSG's decisions on materiality thresholds are published on the DRC EITI website, and no revenue streams appear to have been excluded. Material companies, revenue streams, and government agencies are clearly identified in the 2018-2020 EITI report as well as in the scoping report. Following the Executive Committee's decision of 7/30/2020 to produce a "flexible" report, payments and revenues are reported unilaterally by the parties and therefore are not reconciled. However, additional explanations have been requested from reporting parties for any reporting discrepancies greater than or equal to USD 500,000. In parallel, the data

[45] https://drive.google.com/file/d/1UgkO_dvmLnXtZXQEAgQRTOKOSIcsBSO-/view

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	available on the EITI DRC website includes adjustments made after the production of the relaxed report. Material companies that failed to submit their reporting template are clearly identified, representing 3% of total revenues. Only one provincial agency failed to report revenue for 2019, representing less than 0.1% of total revenue. Total extractive sector revenues, including non-significant revenues, is also clearly disclosed by agencies and disaggregated by revenue stream and company. The coverage for the reporting year is 96%. Audited financial statements for material companies are available for 47 of the 83 companies, as confirmed in a review of extractive companies' auditing practices by the DRC EITI.
Infrastructure provisions and barter arrangements (Requirement #4.3) *Fully met*	The Secretariat's assessment is that the DRC has fully met Requirement 4.3. Most stakeholders consulted did not express particular views on progress towards the objective, although some argued that public understanding of infrastructure provisions and barter-type arrangements had been achieved through the DRC EITI's pioneering disclosures on the SICOMINES agreement. The DRC EITI has disclosed the terms of agreements involving the provision of loans and infrastructures in exchange for exploration or mining production concessions, through the 2018-2020 EITI Report and through its thematic report on SICOMINES, published at the end of 2021. It constitutes a set of agreements involving the provision of a package of loans for infrastructure works in exchange for mining licenses in the Lualaba province. The agreement is categorised as a government-to-government agreement. The MSG and the consultant who wrote the report have acquired a comprehensive understanding of the terms of the contracts and agreements concerned, the identity of the parties involved, the resources that have been promised by the state, the value of the consideration in terms of financial and economic flows (e.g. infrastructure works) and the level of materiality of these agreements in relation to conventional contracts, as well as the changes of these terms across the years. The contracts governing the agreement, as well as all four amendments have been published. These disclosures have been unanimously welcomed by stakeholders and have helped promote discussion around a major agreement. Following the publication of the thematic report on SICOMINES, a commission has been created to re-examine the terms of the contract. The DRC's EITI disclosures cover these agreements and provide a level of detail and transparency commensurate with the disclosure and reconciliation of other payments and revenue flows. There does not appear to be any other barter-type agreement in the DRC's extractive industries in the period under review.
Transportation revenues (Requirement #4.4) *Fully met*	The Secretariat's assessment is that Requirement 4.4 continues to be fully met in DRC, as in the previous Validation. The DRC has continued to use its EITI disclosures to cover material transport revenues in the oil and gas sector, linked to the oil pipeline from Angola, and to describe the terms of the convention determining transport fees.
Level of disaggregation (Requirement #4.7) *Mostly met*	The secretariat's assessment is that the DRC has mostly met the objective of Requirement 4.7. Some stakeholders conceded that the objective of project-level reporting for government revenues levied by project, rather than by company, had not yet been entirely fulfilled. The MSG's comments on the draft assessment consider that the objective of Requirement 4.7 is fully met. Nevertheless, the Secretariat's assessment is that the objective is still largely met given the lack of information on the list of projects on which the EITI reporting by project has been based and which

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	describe precisely the licences covered by each project supposedly covering several closely related licences. In addition, the MSG comments and the EITI Report do not provide disclosure of financial EITI data by project for all projects within the scope of the EITI Report, including projects involving state-owned enterprises. The reconciled financial data in the DRC's EITI Reports is disaggregated by government entity, revenue stream, and company. The definition adopted for the term project is documented in previous DRC EITI Reports and relates to individual companies and extractive projects. However, the MSG's comments on the draft assessment provide a different definition of project than that in the EITI Report, citing only extractive contracts as the basis for projects. In its response to the draft assessment, the MSG has published a table summarising the status of reporting by project. While some revenue streams are identified as being received on a project basis, they are not consistently disaggregated by project (particularly those from SOEs operating several contracts). However, for companies holding a single permit or licence, the EITI report has effectively been disaggregated by project. In cases where the MSG lists several licences as forming a single project, no list of closely interconnected licences or permits forming a coherent project is available.
Data timeliness (Requirement #4.8) *Exceeded*	The secretariat's assessment is that the DRC has exceeded the objective of Requirement 4.8. Several stakeholders consulted highlighted the timeliness of the DRC's most recent EITI reporting as an improvement in its relevance for policy making and public debate. The DRC EITI data has been published in a sufficiently timely manner, with financial data published within less than one year of the fiscal period covered. Stakeholders from government highlighted that despite the context of the COVID-19 pandemic. The EITI Report covering 2018, 2019 and the first semester of 2020 was published in early March 2021. This supports the Secretariat's assessment that DRC has exceeded the requirement's objective of ensuring that public disclosures of company payments and government extractive revenues are sufficiently timely to be relevant to inform public debate and policy making.
Data quality and assurance (Requirement #4.9) *Mostly met*	The Secretariat's assessment is that the DRC has mostly met the overall objective of the Requirement 4.9. While some stakeholders consulted considered that the objective of data reliability had been achieved in the DRC's EITI reporting, others highlighted concerns over the reliability of government revenue collection systems. Steps have been taken under the flexible approach to EITI reporting to ensure the reliability of disclosures of company payments and government revenues from oil, gas, and mining. On the disclosures of company payments to government, the scoping study for the 2018-2020 EITI Report presents the audit procedures currently enforced in the DRC and the quality assurances for EITI reporting agreed by the MSG for the years under review. At the level of government agencies, the General Inspectorate of Finance (IGF) audit reports covering government revenues were made available to the IA and MSG for the period under review (2019). The 2018-2020 EITI Report contains the MSG's assessment of the comprehensiveness and the reliability of financial data disclosed unilaterally by companies and collecting agencies. For government agencies, the report explains that reporting from only the three national agencies (DGI, DGRAD, and DGDA) was certified by the IGF, while reporting by other material national government entities, SOEs and subnational tax offices was not accompanied by quality assurances agreed by the MSG for EITI reporting. The EITI Report states that the IGF was able to provide certification of the reporting by DGRAD, but not from DGI or DGDA. Several stakeholders emphasized the difficulty of the work

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	carried out by the IGF, particularly because of the impact of the COVID-19 pandemic, and noted that efforts were still ongoing to improve the reliability of the figures disclosed for the years covered by the 2018-2020 EITI Report, including by following up with government entities for whose EITI reporting the agreed quality assurances were not provided. As of the commencement of Validation, only the revenues collected by DGRAD, or 14% of total revenues, were covered by quality assurances agreed in accordance with Requirement 4.9, which appeared to hinder progress towards the broader objective of reliable disclosure of taxes and revenues in the view of several stakeholders consulted. The 2018-2020 EITI Report lists the names of reporting companies and government entities that did not adhere to the agreed upon quality assurances, and it is possible to assess the materiality of their payments in 2019 based on the financial data disclosed in the report. The IGF recommended the implementation of the ISYS-REGIES software for the automation of the revenue collection procedure, as well as its dematerialization in order to solve the obstacles to the reliability of financial data.

New corrective actions and recommendations

- To strengthen implementation, the DRC could expand its use of EITI disclosures to facilitate access to the audited financial statements of extractive companies operating in the country. The DRC is also encouraged to consider ways of building on its "flexible" EITI reporting to pilot alternative ways of ensuring comprehensive and reliable disclosures of government revenues from the extractive industries.
- To strengthen implementation, the DRC could explore ways of strengthening systematic disclosures of information related to barter-type infrastructure arrangements such as the SICOMINES agreement. The DRC may wish to expand its use of EITI disclosures to improve transparency in the tax exemptions related to the SICOMINES agreement.
- In accordance with Requirement 4.7, the DRC should agree a definition of project (license, contract and concession) in line with the EITI Standard and ensure that all financial data in its EITI reporting on government extractive revenues that are levied on a project level are reported at a project level. The DRC should ensure that any substantially interconnected agreements or overarching agreements are publicly identified, and that relevant data for each company is sufficiently linked to individual projects. To further improve on government systems, and their ability to monitor payments on a per-project basis, the MSG is encouraged to engage government agencies responsible for their collection. This could include exploring whether any changes are needed in laws or in statutory instruments and regulations, while ensuring such changes are cost-effective.
- In accordance with Requirement 4.9, the DRC should ensure that financial data disclosed by the government agencies are subject to robust quality assurances that ensure that financial data in the DRC's EITI Reports is sourced from sources subject to regular audit in line with international standards.

Revenue management (Requirements 5.1, 5.3)

Overview of progress in the module

The 2018 revised Mining Code created a fund for future generation, meant to be funded by 10% of mining royalty revenues. In the period under review, the modalities of the management of the FOMIN's revenues had not yet been codified in an implementing decree that was enacted in

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November 2019. While the decree required the establishment of a body to manage the fund's revenues, this was not created in the period covered by the latest EITI Report.

During the transition period, funds destined to the FOMIN were transferred to a special account maintained by the mining cadastre, which was subsequently transferred to an escrow account maintained by the central bank. However, the central bank did not disclose the revenues accrued in the escrow account in the 2018-2020 EITI Report, although the report provides estimates of revenues accruing to the FOMIN of between USD 22.9 million and USD 120 million. Stakeholder consultations indicated that a share of the FOMIN funds were used to fund the national budget deficit in 2020-21, while the EITI Report highlights disbursements from the escrow account in 2020. The revenues accruing to the FOMIN and transferred to the escrow account do not appear in the 2019 national budget, although they appear in the annex to the 2020 national budget related to special accounts.[46] Some stakeholders consulted confirmed that the transfers destined to the FOMIN were not covered by the government's financial report (TOFE) for 2019 and confirmed that the IGF was not requested to review the funds in the escrow account as part of its certification of the government's EITI disclosures. There has been significant civil society attention to the management of funds meant to accrue to the FOMIN[47][48] and the DRC EITI report on mining royalties included recommendations for strengthening accountability in the management of the FOMIN funds. While a set of administrators was appointed in December 2021 to manage the FOMIN[49], debates on the mandate and the implementation of the decree governing the FOMIN were ongoing at the commencement of Validation.[50]

The DRC has used its EITI reporting to disclose information on the budget cycle and audit procedures, as well as some forward-looking information on mining production, although there is scope for disclosing further information on projections of commodity prices, mining production and revenue forecasts to support public debate on extractive revenue sustainability.

Progress by requirement and corrective actions

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EITI Requirement / past corrective action and assessment	Summary of progress in addressing the EITI Requirement
Distribution of extractive industry	The Secretariat's assessment is that the DRC has mostly met the objective of Requirement 5.1, considering that the objective of this requirement is to ensure the traceability of extractive revenues to the national budget and ensure the same level of transparency and accountability for extractive revenues that are not recorded in

[46] Ministry of Budget (October 2019), "Projet de loi de finance de l'exercice 2020", Annex XIII, p. 43: https://www.budget.gouv.cd/wp-content/uploads/budget2020/projet/doc1_projet_loi_finances2020.pdf

[47] Article 7 of the Decree. See also Afrewatch (5 February 2021), "Les OSC condamnent l'usage de 25 millions USD du FOMIN à des dépenses non prévues dans son mandat et exigent des organes de contrôle l'ouverture des enquêtes" : https://afrewatch.org/les-organisations-de-la-societe-civile-osc-condamnent-lutilisation-de-25-millions-usd-du-fomin-fonds-minier-pour-les-generations-futures-a-des-depenses-non-prevues-dans-son-mandat-2/

[48] https://congomines.org/reports/2222-les-osc-denoncent-les-intimidations-de-l-ex-premier-ministre-vis-a-vis-du-coordonnateur-de-la-litrase

[49] https://www.tsieleka.com/index.php/2021/12/10/rdc-un-consortium-de-six-ong-demande-la-redefinition-du-fomin/

[50] https://www.itierdc.net/2022/03/03/atelier-dechange-sur-le-fomin-a-kinshasa/

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revenues (Requirement #5.1) *Mostly met*	the national budget. Several stakeholders from different constituencies considered that the objective was mostly fulfilled through the DRC EITI's extensive work on the management of mining royalties, including allocations to special accounts. With regard to extractive revenues collected by SOEs, the 2018-2020 EITI Report explains in detail the rules and practices regarding the revenues that the nine SOEs collected and the extractive revenues that were transferred to the Treasury in the 2018 and 2019 fiscal years. It is also possible to determine the share of each revenue stream collected and retained by SOEs and other revenue-collecting government entities, such as the CAMI and provincial governments, relative to total revenues. Gécamines' audited financial statements were available for the period under review, but not for the other eight SOEs (see Requirement 2.6). In its response to the draft assessment, the MSG obtained the publication of these financial statements. The 2018 Mining Code created a fund for future generations, meant to be funded by allocations of a 10% share of mining royalty revenues. During the period under review, which were the first years of implementation of the revised Mining Code, the modalities related to the FOMIN's management and revenues had not yet been codified, meaning that revenues earmarked for the FOMIN were transferred to an escrow account. These transfers were not recorded in the government's budget or financial statements (TOFE). The revenues accruing to the escrow account in 2019 were not disclosed to the same level of transparency as other extractive revenues in the scope of EITI reporting. The management of funds accruing to the escrow account maintained on behalf of the FOMIN is not described in the DRC's EITI reporting or publicly accessible financial reports. There are indications in public sources such as news articles that USD 25 million out of the USD 29 million disbursed from the escrow account were allocated to finance the national budget deficit in 2020, although stakeholders consulted could not confirm this. The issue of the FOMIN's management has led to polemics, with one CSO the target of a law suit by the former Prime Minister in relation to his comments on the possible misuse of FOMIN funds (*see Requirement 1.3*). In its comments on the draft assessment, the MSG relies on a document issued by the Ministry of Finance indicating that the amount of USD 25 million is included in the Public Sector Cash Flow Plan (PTR 2020) under "Other Income and Grants". As it was included in the budgetary resources, this amount, in accordance with the budgetary principle of universality of public accounts, was indeed used to cover government expenditure. Given the high level of public interest generated around the issue of sub-national payments, and the lack of information on the management of other extractive revenues transferred to the FOMIN escrow account in the period under review beyond the USD 25 million transferred to the state budget, the Secretariat considers that the DRC has mostly met the objective of Requirement 5.1.
Revenue management and expenditures (Requirement #5.3) *Not assessed*	Reporting on revenue management and expenditures is encouraged, but not required by the EITI Standard. It is encouraging that the DRC provides some public information on the budget-making process through both routine government systems and EITI reporting. Several stakeholders consulted highlighted the DRC EITI's expanded disclosures on forward looking projections in the 2018-20 EITI Report, prepared according to a "flexible" approach, and considered that there had been progress towards the objective of strengthening public oversight of the management of extractive revenues. According to article 54 of the LOFIP, there is no earmarked

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	revenues in the extractive sector. However, the DRC has not yet expanded its EITI reporting to disclose additional forward-looking information of relevance for the public debate on resource dependency and extractive revenue sustainability. However, this has not yet included projections for commodity prices, extractive production or revenues.

New corrective actions and recommendations
• In accordance with Requirement 5.1, the DRC should ensure that the management of any extractive revenues that are not recorded in the national budget are specifically described, if possible with reference to publicly available financial reports. The DRC should ensure its EITI reporting publicly clarify the management of extractive revenues not recorded in the national budget. The DRC should ensure that both the companies and the central bank or any other entity in charge of managing extractive revenues not recorded in the national budget consistently disclose disaggregated data on the management of these funds, with reference to publicly accessible financial reports where applicable. • To strengthen implementation, the DRC is encouraged to publicly disclose timely information on expenditures funded by extractives revenues. The DRC, and in particular the Ministry of Budget, is encouraged to publicly disclose information about budget assumptions and projected production, commodity prices and revenue forecasts for the extractive industries.

Subnational contribution (Requirements 4.6, 5.2, 6.1)

Overview of progress in the module

The benefits of extractive industries for local communities have been a central topic of the EITI in DRC over years. In mining sector, the study and workshops organised by the DRC EITI concluded that shares of the mining royalty ("redevance minière") had not been transferred from the central state to ex-Katanga province in accordance with statutory rules and had not been transferred at all to other local governments, between 2007 and 2013. The civil society organisations have been very active in the discussions for reforming the Mining Code in 2018, so that mining royalty payments are made directly from companies to local governments.

The 2018 Mining Code (art 242) allocates thus 50% of the mining royalty to the central state; 25% to the provinces; 15% to the decentralised territorial entities and 10% to a fund for future generations (FOMIN). The FOMIN must be managed at the central level with modalities which had been decided at the end of the period of review (*see Requirement 5.1*). According to the Congolese Constitution[51], the provinces and the local decentralised entities (ETD) are elected with competencies and financial management distinct from the central government. Stakeholders consulted explained that some ETD representatives had not yet been nominated and did not have the capacity to manage revenues paid directly by extractive companies, such as a share of mining royalties. There were conflicting opinions among stakeholders consulted over whether provincial or national governments were in charge of overseeing the payment of mining royalties in the period under review. Revenues arising from the subnational payments are

[51] Constitution of the Democratic Republic of Congo (amended by Law No. 11/002 of 20 January 2011 revising certain articles of the Constitution of the Democratic Republic of Congo of 18 February 2006).

significant, with EITI figures indicating that they accounted for 16% of total government extractive revenues and 50% of the total revenues accruing to provinces in the 2018-July 2020 period. Stakeholders consulted noted that some fifty decentralised territorial entities (ETDs) are entitled to receive mining royalty payments under the reforms, although the DRC EITI focused disclosures on provinces in the latest EITI Report, excluding the ETDs given the challenges in reaching reporting entities during the COVID-19 pandemic. The 2018-2020 EITI Report highlighted inconsistent disclosures of mining royalty payments between extractive companies and provincial governments, with large discrepancies in the two parties' reporting. Considering significant public interest in the management of mining royalties and the large discrepancies in the 2018-2020 EITI Report, the MSG commissioned a thematic study to further investigate the implementation of the revised Mining Code and the revenues accruing for ETDs. The thematic report confirmed the existence of specific agreements on the allocation of the 15% share to ETDs to either compensate other ETDs in the case of overlapping claims or to fund provincial directorates.[52] However, the lack of coverage of ETDs in the EITI disclosures on mining royalty transfers creates a significant gap on an issue of public interest, however. Field surveys by CSOs have shown that most of the mining royalty revenues accruing to the ETDs are spent on the ETD's recurrent expenditures rather than on capital expenditures benefitting local communities as prescribed in the 2018 Mining Code.[53] Nonetheless, the EITI has acted as a catalyst for debate and reform on the management of mining royalty revenues, including by organising two workshops on the subject.[54] These led to the establishment of inter-ministerial committees on the issue, as well as audit missions by different government entities in 2022.

Regarding subnational transfers, the DRC's EITI reporting notes that 10% of national government revenues should be transferred to provinces where oil production takes place as compensation for environmental damage, according to the 2011 Finance Law.[55] The report notes that these transfers have not been effective to date in the absence of implementing regulations pending from the Ministries of Finance and Budget.[56] Thus, subnational transfers of extractive revenues did not appear to be effective in the period under review.

The DRC has made efforts to use its EITI reporting to disclose extractive companies' mandatory and voluntary social expenditures, although the comprehensiveness of disclosures by a minority of extractive companies in the period under review is unclear. Although the DRC EITI's disclosures clarify the existence of payments to government related to the environment in the mining sector, they have not yet comprehensively disclosed all material environmental payments to government in the mining sector. There is scope for expanding these disclosures given

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[52] Thematic Report, p. 29. In Haut-Katanga, a share of the 15% share allocated to ETDs is actually allocated to the commune of Lubumbashi, to the provincial Directorate of Mines in charge of handling the collection of mining royalty with the companies and a solidarity fund for ETDs without mining activities (pp. 31-32 of the Thematic report). In Lualaba, a share of the 15% share allocated to ETDs is actually allocated to the provincial Directorates of Mines and the one of tax revenues collection, to few ETDs which host together a mining license (p. 39 of the Thematic Report, i.e. Raymond Kabongo (April 2021), "Etat des lieux de l'affectation et de la répartition de la redevance minière, ainsi que de la rétrocession des 10% de recettes pétrolières de catégorie B aux provinces productrices" : https://drive.google.com/file/d/1cb6kI_X7nrcnWEMBcfxKIYQnrvadA9hw/view
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[53] Cordaid, June 2020, ibid, p. 7 and CASMIA, February 2021, ibid, p. 22.

[54] Workshop of 24 and 25 November 2020: https://www.itierdc.net/2020/12/01/redevance-miniere-afrewatch-et-resources-matters-relevent-les-faiblesses-du-projet-darrete-interministeriel-du-gouvernement/

[55] EITI 2018-2020 EITI Report, p. 232.

[56] See EITI 2018-2020 EITI Report, p. 233-234, Raymond Kabongo (April 2021), ibid. p. 64 and https://24sur24.cd/kongo-central-la-societe-civile-sollicite-lappui-de-yves-bunkulu-pour-une-retrocession-effective-des-recettes-petrolieres/

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evidence of significant public interest in the social and environmental contributions of extractive companies.

Progress by requirement and corrective actions

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EITI Requirement / past corrective action and assessment	Summary of progress in addressing the EITI Requirement
Subnational payments (Requirement #4.6) *Mostly met*	The Secretariat's assessment is that the DRC has mostly met the objective of the requirement to enable stakeholders to gain an understanding of benefits that accrue to local governments through transparency in companies' direct payments to subnational entities and to strengthen public oversight of subnational governments' management of their internally-generated extractive revenues. Most stakeholders consulted considered that there had been significant efforts to progress towards the objective, in a context of transition with the implementation of the new Mining Code. The MSG's comments on the draft assessment consider that the objective of Requirement 4.6 has been fully met. Nevertheless, the Secretariat's assessment is that the objective is still mostly met given doubts about the reliability of disclosures of direct subnational payment. The DRC EITI has defined a materiality threshold for payments to local governments and has excluded payments of 15% of the mining royalty to the new decentralised territorial entities (ETD). The legal framework in the 2018 Mining Code is not properly implemented and there appear to be several specific agreements on the allocation of a share of the mining royalty revenues to other ETDs (as compensation for overlapping or duplicating industrial facilities) or to fund provincial authorities, that do not appear to be codified in legislation. It is thus difficult to identify the exact recipients of the mining royalty payments. The ETDs' inclusion in the EITI reporting would have required significant outreach in remote mining areas, which was not considered feasible during the pandemic. Some ETDs lack basic public finance management capacity (sometimes manual management) and elected representatives. In its comments on the draft assessment, the MSG reported that it had made available in open format the payments made in 2019 by companies to ETDs in Lualaba, Haut-Katanga, Haut-Luele, Kasai Oriental, Luala, Maniema, North and South Kivu, as well as the revenues declared by the different ETDs. These payments are broken down by ETD and by company, but significant discrepancies between revenues and payments remain, raising questions about the reliability of these declarations. Regarding disclosures of broader sub-national payments, two provincial directorates accounting for less than 1% of total revenue did not report revenue in 2019. However, the number of local government reported as receiving mining royalties in

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	the period under review varies across different sections of the EITI Reports. The MSG decided not to reconcile company payments and provincial authorities' revenues given the "flexible" approach to EITI reporting. Regarding the quality of the data on direct subnational payments in the 2018-20 EITI Report, revenues reported by provincial governments could not be certified by the IGF given the impact of the pandemic (see *Requirement 4.9*).
Subnational transfers (Requirement #5.2) *Not applicable*	The Secretariat's assessment is that Requirement 5.2 is not applicable in the period under review. The provision in the 2011 Budget law requiring that 10% of total government revenues from oil and gas should be transferred to provinces where oil production takes place, as compensation for environmental damage, is awaiting a ruling from the Ministries of Finance and Budget to become effective. Thus, it was not possible to calculate the value of subnational transfers that should have been executed in the period under review, pending publication of the Ministerial ruling.
Social and environmental expenditures (Requirement #6.1) *Mostly met*	The objective of Requirement 6.1 is to enable public understanding of extractive companies' social and environmental contributions and provide a basis for assessing extractive companies' compliance with their legal and contractual obligations to undertake social and environmental expenditures. The Secretariat's assessment is that the broader objective of the requirement is mostly fulfilled, and that significant aspects of the requirement have been implemented. The DRC introduced community development agreements ("cahier des charges") in the 2018 Mining Code, making it mandatory for companies to define the operators' social expenditures to the benefit of local communities affected by mining projects. The document must be developed within six months of the exploitation permit being granted, or immediately for companies that are already at the production stage. In addition, the 2018 Mining Law requires companies to make an annual allocation of 0.3% of their turnover for community development projects. The handbook providing guidelines for these allocations was only published in December 2021, which means such requirements were not effective in the period under review. In the oil and gas sector, the Hydrocarbon Code and its implementing regulations indicate that the social impact has to be considered by contractors. Specific funding, mentioned in the Hydrocarbon rule or in contracts, is to be allocated to social projects. The DRC EITI has agreed a definition of mandatory social expenditures in March 2018 and described the challenges related to the application of the legal and contractual documents. No materiality threshold was set for disclosures of these types of payments. The EITI Report discloses such payments, which were subject to all data quality requirements established by the MSG for other significant payments. A total of 11 mining companies out of 52 in production phase, and two out of 6 material oil companies, unilaterally disclosed voluntary or mandatory social expenditures. Based on the low level of reporting of social expenditure, the MSG decided to conduct a thematic study to assess the level of implementation of social and environmental obligations by

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	extractive companies. All information listed in Requirement 6.1.a is provided for these disclosures of mandatory social expenditures, with some minor gaps in the provision of the identity of non-government beneficiaries for four of the reporting companies. The EITI Report does not devote a specific part to explaining environmental expenditures, but the requirement is applicable in the mining sector. In the mining sector, the financial data is disclosed for payments that can be considered as environmental payments to government based on their name (e.g. the tax on forestry and environment protection). These payments are not explained and disclosed separately from all other tax and non-tax ones and are subject to the same absence of materiality threshold as well as to the same data quality requirements. In the oil and gas sector, no specific environmental expenditures are identified in the EITI Report. The only possible environmental expenditure is the compensation to provinces to offset the environment impact of oil and gas activities.

New corrective actions and recommendations

- In accordance with Requirement 4.6, the DRC should ensure that all companies, all provincial revenue directorates, as well as decentralised government agencies (ETDs), disclose subnational extractive revenues, to levels of reliability as per Requirement 4.9. The DRC should ensure that the legal framework for different sub-national payment streams is publicly described in the context of each province to ensure comprehensiveness of disclosures, including for specific mining royalty allocation agreements between decentralised government agencies (ETDs) and provinces and between different ETDs. Reconciliation of revenues at the subnational level would only be feasible with the knowledge of the actual beneficiaries, in order to foster accountability for the management of extractive revenues by its beneficial owners. Payments should be reported by company, by actual recipient entity and by project where appropriate.
- To strengthen the implementation, the DRC is encouraged to develop a systematic mechanism for timely disclosure by provincial and decentralised authorities of subnational transfers of extractive revenues in accordance with Requirement 5.2. The government and development partners are encouraged to continue and strengthen support to the financial management capacities of provincial and decentralised authorities, as well as to relevant civil society and media initiatives, to promote accountability in the management of extractive revenues transferred to the provinces.
- In accordance with Requirement 6.1, the DRC should ensure public disclosure of material social expenditures by companies that are mandated by law, including by the terms of a community development agreements that are required by law, or the contract with the government that governs the extractive investment. Where the beneficiary of the mandated social expenditure is a third party, i.e., not a government agency, it is required that the name and function of the beneficiary be disclosed. Where extractive companies' payments to government are related to the environment and considered material, these should be comprehensively disclosed in accordance with Requirement 6.1.b. Where the DRC EITI agrees that discretionary social and environmental expenditures and transfers are material, it is encouraged to develop a reporting process

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with a view to achieving transparency commensurate with the disclosure of other payments and revenues.

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Background

Overview of the extractive industries

An overview of the extractive industries is accessible on the country page of the EITI website for the Democratic Republic of Congo.

History of EITI implementation

The history of implementation is accessible on the country page of the EITI website for the Democratic Republic of Congo.

Explanation of the Validation process

An overview of the Validation process is available on the EITI website.[57] The Validation Guide provides detailed guidance on assessing EITI Requirements, while the more detailed Validation procedure include a standardised procedure for undertaking Validation by the EITI International Secretariat.

The International Secretariat's country implementation support team include Solofo Rakotoseheno and Nassim Bennani, while the Validation team was comprised of Hugo Paret, Maylis Labusquière and Alex Gordy. The internal review for quality assurance was conducted by Nassim Bennani, Gisela Granado and Mark Robinson.

Confidentiality

The detailed data collection and assessment templates are publicly accessible, on the internal Validation Committee page here.

The practice in attribution of stakeholder comments in EITI Validation reports is by constituency, without naming the stakeholder or its organisation. Where requested, the confidentiality of stakeholders' identities is respected, and comments are not attributed by constituency. This draft report is shared with stakeholders for consultation purposes and remains confidential as a working document until the Board takes a decision on the matter.

Timeline of Validation

The Validation of the Democratic Republic of Congo commenced on 1 January 2022. A public call for stakeholder views was issued on 15 November 2021. Stakeholder consultations were held virtually on 1-28 February. The draft Validation report was finalised on 24 May 2022. Following comments from the MSG received on 22 June 2022, the Validation report was finalised for consideration by the EITI Board.

[57] See https://eiti.org/validation

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Resources

- Validation data collection file – Stakeholder engagement (FR)
- Validation data collection file – Transparency (FR)
- Validation data collection file – Outcomes and impact (FR)

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Annex A: Assessment of Requirement 1.3 on civil society engagement

Methodology

Due to concerns expressed by stakeholders related to the broader enabling environment for civil society engagement in the EITI, the International Secretariat's Validation team has conducted a detailed assessment of the Democratic Republic of Congo adherence to the EITI Protocol: Participation of civil society.[58]

The assessment follows the Validation Guide, which defines guiding questions and related evidence that should be considered in cases where there are concerns about potential breaches of the civil society protocol.[59] For contextual purposes, the Validation provides an overview of the broader enabling environment for civil society participation in country's extractive sector. The assessment seeks to establish whether legal or practical restrictions related to the broader enabling environment have in practice restricted civil society engagement in the EITI in the period under review. It focuses on the areas where there are concerns regarding adherence with the civil society protocol.

A call for stakeholder views on progress in EITI implementation was launched 15 November 2021, in accordance with the Validation procedure. No submissions were received ahead of the commencement of Validation on 1 January 2022. The assessment draws on the information provided in the Stakeholder engagement file and stakeholder consultations.

Overview of broader environment for civil society engagement

Freedoms of expression, of media and of association as well as the right to demonstrate are guaranteed in the 2006 Constitution. However, there are some constraints in the legal framework for freedom of expression, with defamation and insults punishable with prison sentences and heavy fines. A freedom of information law is yet to be adopted. The landscape of civil society organisations is diversified with several thousand organisations, at the national and local level, working on all aspects of development. However, Human Rights Watch notes that crackdowns on activists, journalists, politicians, and peaceful demonstrators worsened in 2020[60], after some encouraging steps during President Félix Tshisekedi's first year in office that had included the release of political prisoners. While national media organisations continues to proliferate, with numerous private radios gathering the largest audiences, international rankings indicate that civic space continues to be assessed as constrained in terms of enforcement of the law for both civil society and the media. While there was a slight improvement in 2019 before reverting to trend in 2020, Freedom House's Freedom in the World continues to rank the country

[58] https://eiti.org/document/eiti-protocol-participation-of-civil-society.
[59] https://eiti.org/document/2021-eiti-validation-guide.
[60] https://www.hrw.org/news/2021/01/28/dr-congo-repression-escalates

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as “not free”[61] and Civicus as “repressed”[62], as in the period reviewed under the previous Validation.

The DRC still scores low in most freedom international rankings considering the repression of journalists and civil society organisations engaged on human rights and governance issues, even after the election of Felix Tshisekedi in December 2018.[63] At least 10 people were killed in protests following the 10 January 2019 announcement of Félix Tshisekedi as the provisional presidential election, according to Human Rights Watch. According to Reporters Without Borders, there has been an improvement of press freedom and the independence of media slightly improved in the country starting from 2018, despite a legislative framework considered restrictive[64]. The DRC’s ranking improved from 154th in 2018 to 149th by 2021. In its 2019 annual report, press freedom CSO *Journalistes en Danger* (JED) noted a decrease in registered press freedom violations, compared with 2017 and 2018 under former president Kabila, during the first months since the inauguration of president Tshisekedi. On the other hand, it highlights the lack of steps to promote the freedom of the press or the protection of journalists. Between November 2018 and May 2019, the JED registered 37 cases of attacks against press freedom.[65] In 2021 alone, at least 110[66] cases of various attacks against journalists and the media were recorded, in a general context marked by the health crisis due to the Covid-19 pandemic and another political crisis following the break-up of the "FCC-CACH" governing coalition of current President Felix Tshisekedi and former President Joseph Kabila. Finally, the security crisis marked by the state of emergency in the two provinces of North Kivu and Ituri in the east of the country remains.

Some stakeholders consulted acknowledged that CSOs engaged in the EITI process in the DRC, particularly those not directly represented on the MSG, could potentially have been affected by restrictions since the last Validation. In general, restrictions on civil society since October 2018 appear to have affected organisations working on human rights, governance, as well as political protests. According to the U.S. State Department’s CSO Sustainability Index 2020[67], the overall sustainability of CSOs in the DRC remained stable. Civil society’s advocacy efforts appear to have strengthened as CSOs engaged in more campaigns and were able to achieve concrete results despite the pandemic. However, and contrary to the situation in 2019 when the civic space slightly opened when Felix Tshisekedi took office, CSOs were subjected to increased harassment in 2020.[68] In Beni, North Kivu Province, in May, during a peaceful demonstration denouncing the killing of civilians in the region, a young activist from the pro-democracy citizen movement Fight for Change (Lutte pour le changement, LUCHA) was killed and his colleagues were arrested. In December, the police banned and dispersed a peaceful march organized in Kinshasa by the African Association for the Defense of Human Rights (Association africaine de défense des droits de l’homme, ASADHO) and the National Conscience (La conscience nationale) citizen movement to protest the deaths in Beni. However, these protests do not appear to have been linked to

[61] https://freedomhouse.org/country/democratic-republic-congo/freedom-world/2021
[62] https://monitor.civicus.org/country/democratic-republic-congo/
[63] https://monitor.civicus.org/updates/2019/09/10/drc-new-president-new-era-for-civic-space/
[64] https://rsf.org/fr/republique-democratique-du-congo
[65] 13 cases of media outlets that were closed or pillaged, 9 cases of journalists who were threatened, 6 cases of journalists detained, 5 cases of journalists attacked and 4 cases of journalists imprisoned.
[66] https://jed-afrique.org/2021/11/01/rdc-jed-rend-public-son-rapport-annuel-intitule-mauvais-temps-pour-la-presse/
[67] Unchanged at 5.5, see 2020 Civil Society Sustainability Index for DRC, published in December 2021 and consulted on 1 February 2022: https://www.fhi360.org/sites/default/files/media/documents/csosi-africa-2020-report.pdf
[68] https://www.fhi360.org/sites/default/files/media/documents/csosi-africa-2020-report.pdf

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public debate on natural resource governance, nor to the EITI process. The 2021 Freedom in the World[69] index notes few to none improvements regarding abusive enforcement of existing laws for civil society, such as restrictions of rights to demonstrate, arbitrary arrests, censorship, and the use of excessive force by law enforcement. The CSO Sustainability Index and the U.S. State Department's 2020 Human Rights Report on DRC mention large delays to the accreditations of many organisations, possibly due to the Covid pandemic.[70]

Some stakeholders consulted highlighted the existence of violent conflict between state and non-state actors in the DRC, noting that this impacted the ability of CSOs to physically travel to some areas in the country. However, these restrictions were linked to general insecurity in certain areas, rather than an attempt to restrict civil society's engagement in the EITI process or in public debate on natural resource governance.

Expression

There have been no new legal, regulatory, or administrative barriers to freedom of expression on EITI-related or broader natural resource governance issues since the previous Validation. Article 23 of the Constitution guarantees freedom of expression and Article 24 guarantees freedom of the press and access to information. However, Freedom House rated press freedom in the DRC as "not free". [71] The NGO noted that the media frequently criticized the government and the President himself, but that journalists faced defamation suits, threats, detention, arbitrary arrest, including from government authorities, and attacks.

Despite these broader restrictions, there is no evidence from the MSG's submissions for this Validation and stakeholder consultations that they have limited civil society's ability to express its views on the EITI process. A review of the minutes of MSG meetings shows that civil society representatives freely express their views in the presence of senior government officials. Prior to MSG meetings, civil society groups, both members and non-members of the MSG, review the documents on the agenda and issue public statements. Civil society groups that are not members of the MSG often criticize the government and develop recommendations and advocacy positions for their representatives in the EITI process.[72] Between 2018 and 2021, civil society representatives issued several press releases and letters to the Prime Minister and President and other relevant authorities demanding that the government meet its commitments to the EITI Principles. For example, in July 2020, the NGO ASADHO issued a press statement accusing several ministers to delays the funding of the EITI in DRC.[73]

There is ample evidence of public criticism of the government's general management of the mining sector, and of company policies and practices, both in civil society reports and media coverage. The media coverage is robust and diversified, including in national radio, community radio and online media. Some national radio stations with large audiences have weekly call-in

[69]Freedom House, Freedom in the World 2021, DRC Webpage: https://freedomhouse.org/country/democratic-republic-congo/freedom-world/2021
[70] https://www.fhi360.org/sites/default/files/media/documents/csosi-africa-2020-report.pdf
[71] https://freedomhouse.org/country/democratic-republic-congo/freedom-world/2021
[72] A list of the public declarations is available on the website Congomine.org
https://congomines.org/search?utf8=%E2%9C%93&search=ITIE&theme=&type_document=&type_source=&province
[73]
https://congomines.org/system/attachments/assets/000/001/985/original/Annex_3_ASADHO_Communiqu%C3%A9_ITIE_Septembre_2020.pdf?1601548916

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programs dedicated to the mining sector or public financial management issues. Based on stakeholder consultations and available documentation, there do not appear to be topics within the EITI Standard that civil society were restricted to express their views on. There was consensus among civil society stakeholders consulted who were involved in EITI implementation that there were no constraints on their freedom of expression. There is limited evidence of public civil society statements or reports that are critical of DRC EITI implementation.

Several development partners confirmed that, in the October 2018-January 2022 period, issues related to critical topics such as the Sicomines deal between DRC and China, extractive SOEs' financial flows and mining license awards were brought to the public by the publication of thematic reports by the EITI. According to several EITI stakeholders, civil society representants were the most active contributors, both during the inception phase and in the public debate which resulted from the reports. While there is evidence of media investigations into allegations of tax avoidance and opaque deals by the extractive companies owned by the businessman Dan Gertler operating in DRC[74], including under American economic sanctions in the period 2017-2019,[75] there is no evidence of this issue being discussed by the MSG[76][77]. One development partner expressed surprise that the media investigations had not further spurred public debate in DRC, including within the MSG, although he considered that this could be explained by a lack of capacity and expertise on the issues rather than an indication of self-censorship by civil society engaged in the EITI process.

Not directly linked to the EITI, two whistle-blowers working at the time in the Bank Afriland were forced to flee the country and were sentenced to death in absentia in September 2020.[78] After having denounced potential corruption cases linked to companies and individuals engaged in the extractive industries, they were charged with corruption, violation of professional secrecy and criminal association. The information disclosed led to a report from the whistle-blowers' platform PLAAF "*Des sanctions, mine de rien*"[79], and the two individuals received support from international and national CSOs in their legal defense. Stakeholders consulted did not consider this case to be related to the EITI process, however.

Another case involves a former employee of the NGO LITRASE that was using data from the DRC's 2018-2020 EITI Report on the subnational payment *Redevance minière*. LITRASE denounced the withdrawal of USD 30 million from the youth fund of the FOMIN for government operations. A 30-page document was distributed to the various authorities, and a press conference was organised the 5 March 2021 where the use of the founds dedicated to the FOMIN was denounced as embezzlement. Two days later the LITRASE received anonymous threats through a phone call, and the 20 November 2021 received a judicial summon from the former Prime Minister to withdraw its statement by way of press within 8 days, under the charges

[74] https://www.africaintelligence.fr/petrole-et-gaz_strategies-etat/2021/10/18/tshisekedi-lance-l-assaut-final-contre-dan-gertler,109698305-art
[75] Global Witness and the Platform for Protection of Whistle-blowers in Africa (PPLAF) (July 2020), "Undermining sanctions", pp. 20-21: https://www.globalwitness.org/en/campaigns/corruption-and-money-laundering/undermining-sanctions/
[76] In March 2022, an agreement between the Presidency and the Israeli businessman was reached. This memorandum of understanding enshrines a comprehensive and amicable settlement of all disputes between the two parties and allows the country to recover a substantial part of the royalties from the Kamoto Copper Company (KCC), also owned by Dan Gertler. However, nothing has been said about royalties from the Mutanda Mining and Metalkol projects in the southeast of the country, estimated by NGOs to be worth more than $600 million.
[77] https://www.rfi.fr/fr/afrique/20220226-rdc-le-gouvernement-trouve-un-accord-avec-dan-gertler-pour-r%C3%A9cup%C3%A9rer-des-actifs
[78] https://www.rfi.fr/fr/afrique/20210226-rdc-qui-peut-retirer-des-millions-%C3%A0-afriland-first-bank (in French)
[79] https://www.pplaaf.org/downloads/business_as_usualFR.pdf

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of defamation and damages. To date, no complaint has been received from the bailiff. The LITRASE received support from various CSOs: Makuta Mendeleo, Afrewatch, Carter Center, which issued a support letter. Human Rights Watch protected the responsible of the LITRASE when the NGO stopped its activities for four months. This case was listed during the self-assessment of potential breaches of the civil society protocol, but not considered eligible to further actions from the EITI. The members of the civil society constituency nevertheless agreed that a broader public debate should be held on the funds of the FOMIN, to allow every citizen to express their views. Workshops were held in March 2022[80].

Another member of a CSO engaged in the EITI process was arrested and prosecuted in 2020 following his publication of a press release on financial misappropriation by the state-owned diamond mining company MIBA. For having acted as whistle-blower on the financial malpractice within mining SOE MIBA (Bakwanga Mining of Bakwanga), a former consultant was arrested on 4 July 2020 by the National Police and transferred a few days later days later to the Secondary Prosecutor's Office near the Tribunal de Paix de Mbuji-Mayi. After the termination of his contract, he was disconnected from the electrical network of MIBA and expelled from his hotel. After the intervention of civil society members of the MSG, he was acquitted but ordered to pay a fine to the SOE's financial director.

These last two cases were documented and brought to the attention of the constituency's MSG members through a new ad-hoc mechanism piloted by the civil society constituency to report restrictions, during a civil society workshop[81] on freedom of expression and operation jointly organised by the DRC EITI and NRGI. This self-assessment was conducted in preparation for Validation and identified 12 potential cases of restriction on civil society members (police arrests, court proceedings, etc.). The assessment included relevant documentation for each case, highlighted any link to the EITI and the extractive industries where applicable, and the steps taken to address any restrictions identified.

During the period under review, and in addition of the cases included in the self-assessment, this Validation has identified several instances in which CSO activists received threats, without being able to attribute the threats to government and thus breaches of the civil society protocol. Civil society members of the MSG commented on the difficulty of identifying every case presenting a potential breach of the civil society protocol, given the magnitude of the extractive sector and the general context of the civil society space in DRC. However, they did not consider that there was a concerted attempt by the government to curb civil society's freedom of expression on the EITI process, including on natural resource governance.

Operation

There has been no evolution in civil society's capacity to operate, including for their registration, freedom of movement, right to assembly or access to domestic or international funding since the last Validation. CIVICUS and Freedom House have noted that CSO registration is an "extremely bureaucratic" and a "tedious process," without providing specific examples of NGOs working on extractive industries or governance issues whose registration was ultimately unsuccessful. There is no evidence of any new legal, regulatory, administrative or practical barriers to civil society's

[80] https://www.youtube.com/watch?v=PQUm-z_LO0c
[81] https://drive.google.com/file/d/1q3kK-7Lt7avS8sQekWo82wahFQ_F2iPS/view

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ability to freely operate in relation to EITI, including registration, fundraising and operations. Evidence suggests that all civil society organisations part of the constituency engaging in EITI are duly registered with national or regional government authorities. Some stakeholders consulted described the way in which the DRC EITI had helped civil society access to information on the extractive industries, such as when one civil society activist was denied access to some information requested from government agencies and required the intervention of the chair of the PWYP DRC coalition in order to secure this information. No cases of restriction to hold rallies or demonstrations linked to the governance of the extractive industries have been recorded. Approximately three-quarters of organizations in the DRC receive funding from foreign sources according to ICNL. Local civil society organizations engaged in EITI implementation have access to foreign funding, including from the Catholic Organization for Relief and Development Aid (CORDAID), the Belgian Department for International Development (ENABEL), the European Union, the German International Cooperation (GIZ), the United States Agency for International Development (USAID) and the World Bank.

Association

Civil society representatives on the MSG have not faced restrictions in conducting outreach to the broader civil society, including discussions about representation on the MSG and the EITI process. The code of conduct for civil society participating in the EITI was adopted in 2015 and implemented without government or company interference. Civil society representatives on the MSG regularly seek advice and input from CSOs that are not part of the MSG. CSOs consulted, members of the five provincial pools in areas hosting extractive activities, confirmed that they were regularly consulted ahead of the EITI MSG meetings, for commenting on EITI Reports or thematic reports.

Engagement

All stakeholders consulted considered that civil society was strongly engaged in the EITI process and was making the most significant contributions to the EITI process. Former government MSG members indicated that CSOs had to play a "catalytic" role to make the EITI work, and that they did so effectively.

One government MSG member noted that civil society participation had been "outstanding”. Several stakeholders consulted highlighted civil society's consistent record of participation in MSG meetings, their significant contributions to those meetings, their participation in technical working groups, with key contributions to improve the quality of EITI Reports, as well as their active engagement in EITI outreach and dissemination. Civil society have been able to provide inputs on sensible topics such as the mining royalty sharing mechanism or the SICOMINES Report published in November 2021. Industry representatives agreed that civil society was actively participating in the EITI process, even if its demands were considered to be unreasonable at times.

Access to public decision-making

There are indications that civil society organizations participating meaningfully in the EITI process have access to public decision making. First, through the MSG, civil society organizations have

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direct access to senior government officials, including five ministers and officials with direct access to the President and Prime Minister, as well as senior members of private and state-owned companies. This helped ensure that the concerns expressed by the civil society constituency, including steps related to broader reforms, were heard by policymakers. Second, there is evidence that civil society representatives have contributed to the drafting of legislation and have effectively shaped government activity and reforms, such as the reform of the mining code in 2018. The civil society coalition "Le Congo n'est pas à vendre" has also conducted a campaign[82] supported by international media[83] criticizing the financial deals concluded by the DRC and Israeli businessman Dan Gertler[84]. Two other civil society organizations, Afrewatch and Resources matter, conducted a workshop in November 2020 to improve the draft decree on the financial management of the mining royalty by the local authorities (subnational payment). It has been followed up in October 2021 by another workshop to finalize the decree, in the presence of the representatives of the relevant ministries, government agencies and the Presidency.

Assessment

Civil society is fully, actively and effectively engaged in all aspects of the EITI process. Its participation is well-codified in constituency rules that appear to have been followed in practice in the period under review. Civil society influences the scope of the EITI, uses EITI data for advocacy and analysis and actively participates in the MSG's work. Local organisations and communities surrounding extractive sites are frequently involved in EITI outreach and dissemination activities led by EITI or civil society, using EITI data to foster accountability around extractive revenues.. The broader environment for civil society expression in the DRC appears to suffer from several restrictions despite a slight improvement in the aftermath of the election of President Felix Tshisekedi in 2018. International rankings of civic space highlight continuous restrictions to freedom of expression and of assembly in the case of political opponents, civil society organisations and media in this period, with a slight improvement of the civic space for the period 2018-2020. The assessment of adherence to the EITI protocol: Participation of civil society requires a judgement call on the extent to which broader civic space restrictions in the context of a political transition have impacted civil society's ability to engage on EITI related issues.

Evidence and stakeholder consultations suggest that civil society representatives on the MSG can express themselves freely on topics covered by the EITI, which was confirmed in the MSG's submission for this Validation and consultation Civil Society Organisations consulted both on and off the MSG. There were no allegations of self-censorship within or outside of the MSG. With respect to freedom of expression, several incidents related to allegations of potential intimidation or retributions for critical expression on extractive industry governance were identified in the period 2018-2021, two of which involved a stakeholder involved in EITI implementation. However, there is no evidence that such limitations represent a concerted attempt by government to limit civil society engagement in the public debate on natural resource governance. These incidents do not appear to have inhibited civil society's ability to express its views on all aspects of the EITI process, as in the period reviewed in the previous Validation, including on critical issues such as financial flows involving SOEs, infrastructure deals and mining license awards. These topics have all been addressed by individual thematic reports produced by

[82] https://www.corruptiontue.org/
[83] https://www.jeuneafrique.com/1172514/politique/les-milliards-perdus-de-la-rdc-le-rapport-qui-accuse-dan-gertler/
[84] https://twitter.com/afrikarabia/status/1495071524394614790

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the DRC EITI, to which civil society was able to provide inputs and on which civil society has based advocacy and campaigning efforts. Thus, the Secretariat's assessment is that Requirement 1.3 remains fully met as in the previous Validation and that there have been no demonstrable breaches of the EITI protocol: Participation of civil society, in the period under review.

To strengthen implementation, the MSG is encouraged to regularly monitor developments regarding civil society's ability to engage in all aspects of the EITI process and to organise awareness-raising sessions on the EITI protocol: Participation of civil society, with participation from the three constituencies. The government, in collaboration with the MSG, is encouraged to document the measures it undertakes to remove any obstacles to civil society participation in the EITI, should these arise in future. In accordance with the EITI protocol: Participation of civil society, civil society MSG members are encouraged to formalize a reporting mechanism for civil society members on and off the MSG to report any case of restriction that could constitute a breach of the protocol, to be then brought to the attention of the MSG. The MSG is expected to document how it addresses these concerns on a regular basis.

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