

Validation of Togo
Final Validation Report
Adam Smith International Independent Validator
12th March 2018

1. EXECUTIVE SUMMARY

The Government of Togo committed to implement the EITI through an official launch on 14 December 2009. The National Supervisory Council, the Steering Committee and the technical secretariat were created on 30 March 2010. In October 2010, the country was accepted as an EITI candidate country.

This final validation report follows on from a quality assurance review of the International Secretariat's initial assessment and also takes into account feedback from the MSG. The Validator agrees with the Secretariat's preliminary assessment that requirements 1.4, 1.5, 2.4, 2.6, 4.3, 4.5, 5.2 and 7.4 have not been fully addressed in Togo. However, in respect of requirement 2.3 and in light of feedback from the MSG, the Validator recommends that this be upgraded to satisfactory progress.

2. BACKGROUND

Togo is a Sub-Saharan West African country with an estimated population of 7.3 million inhabitants¹. The recent economic performance has been relatively robust: gross domestic product (GDP) growth has averaged approximately 5% over the period 2014-2016. While Togo has been subject to negative shocks, including the impact of the economic slowdown in Nigeria and lower commodity prices for its main exports, such as phosphates and clinker, the government has pursued an ambitious public investment programme that—in 2015/16—helped sustain aggregate demand. The main drivers of economic growth have been agricultural production and the extractive industries, as well as trading activities. According to statistics provided by the Ministry of the Economy and Finance, over the period 2013-2016, the extractive sector has contributed 0.2, -0.1, 0.6 and 0.0 to the country's GDP.

Togo is a producer of iron, phosphates, limestone, gravel and sand. Yet social conflicts around revenue redistribution to resource-rich communities and mine rehabilitations have been widespread. The country has undergone significant development in mining since the German and French colonial era². Mining operations began in 1961 with the industrial exploitation of phosphate in the maritime region, more precisely, in Hahotoé. The phosphate sector is operated by a single SNPT company in two mines at Hahotoé and Kpogame.

In 1975, industrial exploitation of limestone began in Tabligbo with the installation of a clinker-manufacturing plant. This deposit is currently divided between two companies: WACEM and Scantogo Mines for the production of clinker. In 2006, the government signed an agreement with MM Investment Holding Ltd for the exploitation, processing and commercialisation of iron ore, manganese, bauxite, chromite in the Nayéga perimeter. In 2010, the government granted a permit for the Pomar company to operate the Pagala marble mine in the Blittah region.

On 21 October 2010, the Government of Togo and ENI signed two sharing contracts for the exploration and production of hydrocarbons on the Oti1 and Kara offshore blocks located in the "Dahomey Basin". In June 2012, at the end of its first exploration phase, ENI confirmed that geological studies revealed the existence of black gold in the Oti 1 and Kara 1 blocks. Following a conflict arising from a renegotiation of the contract, ENI ceased operations on the two blocks mentioned above. The government has entered negotiations with other operators for the granting of these permits. However, no confirmation has been given concerning the status of these permits and any forfeiture of the concessions granted to ENI.

¹ World Bank overview Togo updated on 1 April 2017: <http://www.worldbank.org/en/country/togo/overview>

² 2014 EITI Report: https://eiti.org/sites/default/files/documents/rapport-itie-togo_2014.pdf

At present, there is no research or exploitation of hydrocarbons in Togo.

Togo is in the process of creating regulations for its Mining Code. These will include new provisions on local content, mandatory company payment declarations based on audited accounts and socio-economic work by companies in local communities. The government's main priorities in the sector are linked to the World Bank's development and mining governance project (PDGM). Over the period of five years, the country aims to modernise its mining cadastre, institutionalise auditing of the sector and update the mining database.

In line with the Validation Guide, the International Secretariat carried out the first phase of validation—initial data collection, stakeholder consultations, and preparation of their initial evaluation of progress against the EITI requirements (the "Initial Assessment"). Adam Smith International (ASI) was appointed as the independent Validator to evaluate whether the Secretariat's work was carried out in accordance with the Validation Guide. ASI's principal responsibilities as Validator are to review and amend the Initial Assessment, as needed, and to summarize its independent review in this Validation Report for submission to the Board through the Validation Committee.

1. Work Performed by the Independent Validator

The Secretariat's Initial Assessment was transmitted to ASI on the 19th December, 2017. Our Validation Team undertook this phase of the Validation process through: (1) In-depth review and marking up of the EITI Assessment by each team member; (2) Detailed review and comments by the Multi-Stakeholder Specialist of Requirements 1 and the Civil Society Protocol; (3) Detailed review and comments by the Financial Specialist of Requirements 4, 5 and 6; (4) Consolidation of reviews and the production of this draft Validation Report, sent to the International Secretariat on the 8th January 2018.

2. Comments on the Limitations of the Validation

The Validator carefully reviewed the Secretariat's Initial Assessment and at this stage has no comments on the limitation of the validation process.

3. Comments on the International Secretariat's Initial Assessment

The initial data collection, stakeholder consultations, and drafting of the Initial Assessment were generally undertaken by the International Secretariat in accordance with the 2016 Validation Guide. The data collection took place across three phases. Firstly, a desk review of the available documentation relating to the country's compliance with the EITI Standard, including but not limited to:

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

Secondly, a country visit, which took place from 19-26 April 2017. All meetings took place in **Lomé and Palimé**, Togo. The secretariat met with the multi-stakeholder group and its members, the IA and other key stakeholders, including stakeholder groups that are represented on, but not directly participating in, the multi-stakeholder group.

Finally, the International Secretariat prepared a report making an initial assessment of progress against requirements in accordance with the Validation Guide. The initial assessment did not include an overall assessment of compliance. The report was submitted to the Validator, with the National Coordinator (NC) also receiving a copy.

2. GENERAL COMMENTS

- **Progress in EITI Implementation**

The EITI in Togo not only covers the hydrocarbon sector, solid minerals and quarrying sectors, but additionally groundwater exploitation, the transportation sector and the marketing of precious minerals (downstream). Togo presents a dynamic case of EITI implementation with an engaged national team that has a good understanding of the rationale behind EITI implementation. This is reflected in the high quality of documents supporting implementation such as work plans and annual progress reports, as well as consultation amongst stakeholders on these documents. However, there is potential for improvements more broadly in the sector.

The EITI plays an important role in providing statistics on the mining sector, given a paucity of national statistics. The International Monetary Fund (IMF)'s 2014 Togo poverty reduction strategy paper³ notes that 'Cognizant of the current state of the national statistical system, the Government has undertaken institutional and legal reform to build system capacity, creating the national strategy for development of statistics (Stratégie nationale du développement de la statistique) in May 2010.' This led to the creation of the National Statistics Council (CNS—Conseil National de la Statistique) on 3 June 2011, which coordinates, guides and drives the national statistical system. The benefits of EITI implementation are also economic, in that the process corrects errors and improves governance of state revenues, both at the central and subnational levels. Although not yet fully comprehensive, EITI Reports are the sole source of key information linked to production and employment in the country's mining sector. Implementation of the EITI has enabled the state financial authorities, more specifically, the Tax Commission (CI) and the Customs and Indirect Duties Commission (CDDI), to identify weaknesses of their information systems and to take steps to correct the shortcomings.

- **Impact of EITI Implementation**

The government's renewed commitment to improve transparency in the sector has manifested itself in various forms. The government has recruited an expert to revise the Mining Code, which highlights transparency as a key feature of the sector's management. Additionally, on 14 July 2015, the National Assembly unanimously adopted the bill to establish the High Authority for the Prevention and Combating of Corruption and Similar Offences⁴. The Togolese revenue office (OTR) has set up a toll-free number to allow the public to report cases of corruption.

The social impact of the EITI is most visible in mining communities. In 2014, the civil society representative on the MSG, COMINTES, was entrusted with funding from the European Union's national reconciliation and civil society support project. Along with the EITI, COMINTES worked to support advocacy and good governance, particularly in the exploitation of iron from Bangéli, in the prefecture of Bassar. EITI implementation has led to improved scrutiny and oversight of subnational transfers to local authorities. The prefectures of Vo and Zio have used these funds in the construction of social infrastructure such as markets, sanitation and new offices. EITI implementation has also increased recognition of voluntary contributions to support local projects and has given rise to more favourable relationships between businesses and local communities.

³ <https://www.imf.org/external/pubs/ft/scr/2014/cr14224.pdf>

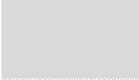
⁴ <http://www.assemblee-nationale.tg/actualites/217-renforcement-de-l%E2%80%99arsenal-juridique-en-mati%C3%A8re-lutte-contre-la-corruption.htm>

The Independent Validator's Assessment of Compliance

Figure 1 – Validator's assessment

EITI Requirements		LEVEL OF PROGRESS				
		No	Inadequate	Meaningful	Satisfactory	Beyond
Categories	Requirements					
MSG oversight	Government engagement (#1.1)					
	Industry engagement (#1.2)					
	Civil society engagement (#1.3)					
	MSG governance (#1.4)					
	Work plan (#1.5)					
Licenses and contracts	Legal framework (#2.1)					
	License allocations (#2.2)					
	License register (#2.3)					
	Policy on contract disclosure (#2.4)					
	Beneficial ownership (#2.5)					
	State participation (#2.6)					
Monitoring production	Exploration data (#3.1)					
	Production data (#3.2)					
	Export data (#3.3)					
Revenue collection	Comprehensiveness (#4.1)					
	In-kind revenues (#4.2)					
	Barter agreements (#4.3)					
	Transportation revenues (#4.4)					
	SOE transactions (#4.5)					
	Direct subnational payments (#4.6)					
	Disaggregation (#4.7)					
	Data timeliness (#4.8)					
	Data quality (#4.9)					
Revenue allocation	Distribution of revenues (#5.1)					
	Subnational transfers (#5.2)					
	Revenue management and expenditures (#5.3)					
Socio-economic contribution	Social expenditures (#6.1)					
	SOE quasi-fiscal expenditures (#6.2)					
	Economic contribution (#6.3)					
Outcomes and impact	Public debate (#7.1)					
	Data accessibility (#7.2)					
	Follow up on recommendations (#7.3)					
	Outcomes and impact of implementation (#7.4)					

Legend to the assessment card

	The country has made no progress in addressing the requirement. The broader objective of the requirement is in no way fulfilled.
	The country has made inadequate progress in meeting the requirement. Significant elements of the requirement are outstanding and the broader objective of the requirement is far from being fulfilled.
	The country has made progress in meeting the requirement. Significant elements of the requirement are being implemented and the broader objective of the requirement is being fulfilled.
	The country is compliant with the EITI requirement.
	The country has gone beyond the requirement.
	This requirement is only encouraged or recommended and should not be taken into account in assessing compliance.
	The MSG has demonstrated that this requirement is not applicable in the country.

3. DETAILED FINDINGS

The Validator agrees with the findings of the Initial Assessment. Therefore there are no detailed findings on disagreements to report.

4. RECOMMENDATIONS

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

1. In accordance with requirement 1.4, the MSG should update its internal governance document with provisions ensuring that (i) representation on the MSG comprises appropriate stakeholders; (ii) there are clear procedures for alternate Steering Committee members and replacement of Steering Committee members; (iii) MSG members liaise with their constituencies; (iv) there is a mechanism for dealing with conflicts of interest; and (v) the Steering Committee's policy on per diems is clear and transparent. The MSG should consider the adoption of the Ministerial order on the renewal of the MSG.
2. In accordance with requirement 1.5, the MSG should ensure that the work plan sets clear implementation objectives that are linked to the EITI Principles and reflect national priorities, and that the workplan clearly sets out the agreed activities and responsible parties.
3. To strengthen implementation, the MSG may wish to discuss and comment on whether the statutory provisions for the management and allocation of mining titles are clear, including the timeline for the allocation of permits.
4. In accordance with Requirement 2.3, Togo should maintain a publicly available register or cadastre system(s) with timely and comprehensive information regarding license holders, coordinates where collated, date of application, date of award, duration of the license and the commodity being produced in the case of production licenses.
5. In accordance with requirement 2.4, the MSG should clarify the government's policy on contract transparency, including relevant legal provisions, actual disclosure practices and any government reforms that are planned or underway.
6. In accordance with Requirement 2.5, the government is encouraged to clarify the government policy on BO disclosure, and to agree a definition of politically exposed persons for beneficial ownership within the Togolese context, as well as a quality assurance mechanisms for company declarations on beneficial ownership.
7. In accordance with requirement 2.6, the MSG should disclose details regarding the terms attached to the SOE's equity stake, including their level of responsibility to cover expenses at various phases of the project cycle, e.g., full-paid equity, free equity, carried interest, for instance on the company's website. The MSG should also provide details on loans and loan guarantees to SNPT.
8. To strengthen implementation, the MSG is encouraged to continue discussions with companies and the OTR on how to improve the collection of production data.
9. To strengthen implementation, the MSG is encouraged to continue discussions with companies and the OTR on how to improve.
10. To strengthen implementation, and in accordance with the global trend toward EITI mainstreaming, the OTR could consider disclosing disaggregated data on mining revenues prior to reconciliation work.
11. In accordance with requirement 4.3, the MSG should gain a full understanding of the terms of the relevant barter agreements and contracts, the parties involved, the resources which have been pledged by the state, the value of the balancing benefit stream (e.g. infrastructure works), and the materiality of these agreements relative to conventional contracts. The multi-stakeholder group and the Independent Administrator should ensure that the

EITI Report addresses these arrangements, providing a level of detail commensurate with the disclosure and reconciliation of other payments and revenues streams.

12. In accordance with requirement 4.5, the MSG should ensure that SNPT provides the detailed information requested by the Independent Administrator allowing for more in-depth reconciliation with government figures.
13. In accordance with requirement 5.2, the MSG should liaise with the OTR to disclose the revenue sharing formula for any transfers between national and subnational government entities that are related to revenues generated by the extractive industries, including any discrepancies between the transfer amount calculated in accordance with the relevant revenue sharing formula and the actual amount that was transferred between the central government and each relevant subnational entity.
