

Extractive Industries Transparency Initiative (EITI)

Second Validation of Burkina Faso

Draft assessment by the EITI International Secretariat

25 September 2019

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1. Summary

Burkina Faso's second Validation commences on 13 August 2019. The EITI International Secretariat will assess the progress made in addressing the 6 corrective actions established by the EITI Board following Burkina Faso's first Validation on 14 February 2018.¹ The 6 corrective actions relate to:

1. MSG oversight (Requirement 1.4)
2. Workplan (Requirement 1.5)
3. Licence register (Requirement 2.3)
4. State participation (Requirement 2.6)
5. Economic contribution (Requirement 6.3)
6. Follow up on recommendations (Requirement 7.3)

In addition, the Secretariat has reviewed progress in meeting Requirements 2.2 (on license allocations), given concerns over back-sliding since the first Validation.

The Secretariat's assessment is that Burkina Faso has addressed four of the six corrective actions having made "satisfactory progress" on the corresponding requirements and had made "meaningful progress" with considerable improvements in addressing the other two corrective actions. In addition, the Secretariat's assessment is that there has been back-sliding in Requirement 2.2 on licence allocation.

The outstanding gaps relate to MSG oversight (*Requirement 1.4*), license allocation (Requirement 2.2) and licence register (Requirement 2.3).

The draft assessment was sent to the Burkina Faso EITI MSG on 3 October 2019. Comments from the MSG are expected by 24 October 2019. After consideration of the comments from the MSG, the assessment will be finalised for consideration by the EITI Board.

¹ 'EITI Board decision on Burkina Faso's first Validation', accessed [here](#)

2. Background

Burkina Faso was accepted as an EITI Candidate on 15 May 2009 and was declared compliant to the 2011 EITI Rules on 28 February 2013. The first Validation of Burkina Faso against the EITI Standard commenced on 1 April 2017. On 14 February 2018, the EITI Board found that Burkina Faso had made meaningful progress in implementing the 2016 EITI Standard. Six corrective actions were identified by the Board, as listed above. The Board encouraged Burkina Faso to address these corrective actions to be assessed in a second Validation commencing on 13 August 2019.

Burkina Faso EITI has undertaken a number of activities to address the corrective actions, including:

- Publishing its 2017 EITI Report on 9 August 2019;
- Publishing the updated MSG ToR on 24 July 2019;
- Publishing the industry constituency ToR on 31 July 2019;
- Publishing the civil society constituency code of conduct on 31 July 2019;
- Publishing the 2019-2021 Burkina Faso EITI work plan on 26 June 2019;
- Publishing an addendum on state participation in the mining sector on 8 August 2019;
- Publishing a Validation auto-evaluation report and a plan to follow up on EITI recommendations on 24 July 2019.

The following section addresses progress on each of the corrective actions. The assessment is limited to the corrective actions established by the Board and the associated requirements in the EITI Standard. The assessment follows the guidance outlined in the Validation Guide.² In the course of undertaking this assessment, the International Secretariat has also considered whether there is a need to review additional requirements, i.e. those assessed as “satisfactory progress” or “beyond” in the 2016 Validation. While these requirements have not been comprehensively assessed, in the Secretariat’s view there is no evidence to suggest progress has fallen below the required standard and no additional issues that warrant consideration by the EITI Board.

3. Review of corrective actions

As set out in the Board decision on Burkina Faso first Validation, the EITI Board agreed six corrective actions.³ The Secretariat’s assessment below discusses whether the corrective actions have been sufficiently addressed. The assessments are based on a desk review of minutes of the MSG meetings from February 2018 to August 2019, the 2017 EITI Report, the 2018 annual progress report, the triennial workplan for 2017-2019 and the 2019 annual workplan, alongside various documents submitted by the MSG to the secretariat, e-mail correspondences, and limited stakeholder consultations (in-person with the Technical Secretariat, as well as industry and civil society representatives on 6-7 May 2019 in Ouagadougou). Documents used as part of this review are available on the Burkina Faso EITI website.⁴

² https://eiti.org/sites/default/files/documents/validation-guide_0.pdf

³ EITI Board, ‘EITI Board decision on Burkina Faso’s Validation’(February 2018), accessed [here](#) in July 2019.

⁴ Burkina Faso EITI, documentation pour la seconde validation (July 2019), accessed [here](#) in July 2019.

3.1 Corrective action 1: MSG governance (#1.4)

In line with Requirement 1.4, the MSG should task each stakeholder group to clarify their internal nominations and representation procedures to improve the transparency and participation in the process. The MSG should also agree a process to ensure greater accountability of MSG representatives to the constituencies and ensure that its per diem practice is publicly codified. As a matter of urgency, the MSG should agree a clear and formalised ToRs in line with Requirement 1.4.b. The MSG may also wish to formalise its relations with local multi-stakeholder chapters to guide developments and ensure that vibrant discussions at the local level are fed into the national MSG's discussions.

Findings from the first Validation

The first Validation concluded that Burkina Faso made inadequate progress towards meeting this requirement. The MSG had been formed and included representatives nominated by the different constituencies, with no suggestion of interference or coercion. However, Validation noted that the lack of clear nominations and replacement procedures or records, which led to a lack of clarity on the number of MSG members, remained a concern. Validation found that the Supervisory Committee overseeing EITI implementation, chaired by the Ministry of Finance, faced challenges of inconsistent and insufficiently high-level participation. Validation highlighted that the draft ToRs for its internal governance had been adopted in 2015 but had not been signed by the Chair of the MSG, the Minister of the Economy, Finance and Development and not enforced. There was inadequate follow-up by the national secretariat in the written records of its discussions and decisions. Additionally, while practiced, per diem policies and rates were not adequately codified for public accountability. The Validation considered that these weaknesses had affected the functioning of the MSG in overseeing EITI implementation.

Progress since Validation

The MSG clarified its internal nominations and representation procedures by updating its Terms of Reference (ToR), called 'internal rules', on 24 July 2019.⁵ The civil society and industry constituencies on the MSG developed their respective constituency guidelines, which included provisions for the designation of their MSG representatives, in the first half of 2019.⁶ A draft EITI Decree, establishing the legal status of the EITI and the role and responsibilities of the key bodies of EITI Burkina Faso. was shared with the International Secretariat in the lead up to Burkina Faso's second Validation but was not adopted by the start of Validation. Civil society and industry representatives on the MSG were formally designated on 8 August 2019, through a Ministerial Order from the Minister of Economy, Finance and Development confirming their nominations.⁷

Stakeholders from government, civil society and industry confirmed that the MSG had not formalised its relations with local multi-stakeholder groups since the first Validation. They explained that the government had put on hold its plans to establish local MSGs because of a lack of resources and lack of clarity with regards to the mandate of these MSGs and the expected impact of their work.

A review of 2018-2019 MSG meeting minutes confirms that the MSG has met regularly since first the Validation (five times in total in 2018 and 2019 each). There is also evidence that the MSG has met its EITI reporting deadlines. Some stakeholders consulted expressed concern with regards to the absence of progress in the government's review and approval of the Decree codifying the legal status of EITI Burkina Faso. This lack of progress was explained by the change of government in January 2019 and by the government's focus on responding to a major security crisis in the country. Stakeholders however believed that this did not have any impact on the MSG's day to day work and

⁵ ITIE Burkina Faso, Règlement intérieur du Comité de Pilotage, accessed [here](#) in August 2019

⁶ ITIE Burkina Faso, Civil society code of conduct (accessed [here](#)), company constituency ToR (accessed [here](#)), in August 2019.

⁷ Ministère des Finances Burkina Faso, Arrêté de nominations des membres du comité de pilotage, accessed [here](#) in August 2019.

that it had not affected the MSG's ability to have a ToR in line with Requirement 1.4.b. However, stakeholders consulted considered that the new EITI Decree was still required going forward to update the institutional structure of the EITI in Burkina Faso.

MSG composition and membership: Article 8 of the MSG's ToR confirms that the MSG is composed of 25 members in total. This provision was implemented in practice and reflected in Ministerial Order nominating MSG members signed on 8 August 2019. Article 2 of the MSG's internal rules confirm that the mandate of industry and civil society representatives on the MSG is limited to 4 years and is renewable once. Article 3 confirms that the civil society and industry constituencies are free to designate their representatives in the manner they choose, and need to adopt and publish their own constituency guidelines confirming the designation procedures, and the name of their representatives on the MSG.

Government nominations: According to the ToR, the government constituency includes 11 representatives, including the Secretary General of the Ministry of Finance (Chair of the MSG), the Secretary General of the Ministry of Mines (vice-Chair of the MSG), Directors General of customs, tax, treasury, mines, mining cadastre, quarries, industrial development, and local government, as well as a representative from the association of regional governments regions, the association of municipalities and regions. Nominations procedures have not changed since the first Validation. Participation on the MSG is linked to the representative's position in their department. The ToR appear to be followed in practice in relation to government representation on the MSG.

Banking and financial sector: According to the ToR, the financial sector is represented by one member of the banking association, and one member of the Central Bank. This appears to be followed in practice.

Industry nominations: The ministerial order on MSG membership and the MSG's internal rules confirm that the industry constituency includes six representatives, including the Executive Director of the Chamber of Mines, and five representatives of mining companies at the production stage. The Chamber of Mines plays a coordinating role for industry participation's in the EITI, by playing the role of constituency coordinator. The Chamber of Mines also played a lead role in elaborating internal guidelines for the industry constituency and minutes of the meetings that led to the ToR are available on the Burkina Faso EITI website.⁸ The guidelines confirm that the nomination of industry representatives on the MSG is made by consensus or by vote during a meeting by the Chamber of Mines. They confirm that industry representatives' mandate is for 4 years and can be renewed once. It sets criteria for participation, including being familiar with the EITI and mining sector issues, and commitment to participate in MSG meetings. These nomination procedures were implemented in practice for the renewal of industry participation on the MSG in early August 2019.⁹

Civil society nominations: The civil society constituency includes eight representatives, representing the following organisation: ORCADE (organisation for capacity building and development), AFEMIB (association of women miners), AJB (association of journalists), CGD (centre for democratic governance), REN-LAC (national anti-corruption network), CONAPEM (corporation of artisanal miners), ABSM (alliance for the promotion of mining services and goods), and Publish What You Pay coalition. In the first half of 2019, civil society representatives on the MSG developed constituency guidelines (a Code of Conduct) to structure their participation in the EITI.¹⁰ The Code of Conduct confirms that the mandate of MSG members is for 4 years, renewable once. The Code of Conduct states that it applies to current civil society organisations that are currently represented on the MSG, without explicitly naming these organisations. The process for the drafting of this code of conduct is not publicly documented. It not possible to confirm whether civil society organisations not MSG had an opportunity

⁸ Chambre des Mines, Procès-verbaux des réunions de la Chambres des Mines (May and July 2019), accessed [here](#) and [here](#) in August 2019.

⁹ Chambre des Mines, Procès-verbal de réunion de juillet 2019, accessed [here](#) in September 2019.

¹⁰ ITIE Burkina Faso, Civil society code of conduct, accessed [here](#) in August 2019

to comment or take part in this exercise. The same CSO representatives were appointed to serve on the MSG following the adoption of the code of conduct and the call for nominations

. Constituency coordination and outreach: The MSG's internal rules do not explicitly task government, industry and civil society to canvass broadly and coordinate to seek inputs from their broader constituency on key EITI documents.

Government: While there are no constituency guidelines confirming how government MSG members should liaise with their constituency in practice, there is evidence that the National Secretariat has played an active role in consulting government entities that are not represented on the MSG, such as during the preparation of the 2019-2021 workplan.¹¹

Industry: While there is evidence that the Chamber of Mines has attempted to disseminate the work of Burkina Faso EITI to companies and investors through its website¹², there is no evidence to suggest that industry representatives have canvassed the industry constituency more broadly on the preparation of key EITI documents such as the annual progress report, the work plan or the EITI Report. The industry constituency's internal guidelines state that industry representatives on the MSG meet on a quarterly basis to discuss on EITI implementation and that the minutes of these meetings are shared with all the members of the Chamber of Mines. The guidelines also state that information on MSG activities and relevant EITI documents are shared with the broader industry constituency through a dedicated mailing list. There was no evidence available at the start of Validation that these communication and outreach procedures had been implemented in practice.

Civil society: Article 15 of the civil society code of conduct states that civil society MSG representatives meet on a quarterly basis to discuss EITI implementation. Article 16 states that civil society representatives on the MSG convene a meeting with CSOs not represented on the MSG to report on the MSG's activities and seek views from stakeholders. Civil society stakeholders consulted ahead of Validation confirmed that used a Whatsapp group to consult CSOs on key MSG documents and decisions. However, here is no evidence to suggest that civil society representatives on the MSG have canvassed their constituency more broadly for the preparation of key EITI documents such as the annual progress report, the work plan or the EITI Report.

Terms of reference and internal governance: The MSG's revised internal rules cover all aspects listed under Requirement 1.4.b. While the internal rules do not provide specifically for conflicts of interest or rules for their treatment of confidential information, Article 23 highlights that MSG members are bound by the EITI Code of Conduct.

Decision making: The MSG's decision-making procedures have not changed since the first Validation. Article 18 of the MSG's internal rules confirms that decisions are taken by consensus. Government, industry and civil society stakeholders consulted as part of Validation confirmed that Burkina Faso EITI's decision-making process was inclusive and that all MSG decisions since the first Validation had been made by consensus. This is confirmed from a review of MSG meeting minutes.

Record keeping: There is evidence that the MSG has met five times in 2018 and five times in 2019, more frequently than that planned for in the MSG's internal rules (i.e. one quarterly meetings). Details

¹¹ See corrective action 2 on work plan.

¹² Chambre des Mines du Burkina Faso (website), accessed [here](#) in September 2019

of MSG discussions are reflected in MSG meeting minutes, drafted by the National Secretariat and approved by the MSG, available on the EITI Burkina Faso website.¹³

Advance notice of meetings: Government, industry, and civil society stakeholders consulted during Validation confirmed that relevant documents were circulated sufficiently ahead of meetings and that meetings were announced in a timely manner.

Per diems: Article 20 of the internal rules sets out Burkina Faso's policy on per diems for attending EITI meetings in Burkina Faso and overseas. It confirms that MSG members are entitled to receive XOF 35 000 (USD 50) per meeting, while the chair receives XOF 50 000 (USD 86) per session. It notes that a session cannot exceed three days, as per relevant government decrees. Stakeholders from government, industry and civil society consulted ahead of Validation did not raise any concerns about per diems causing conflicts of interest.

Capacity of the MSG: The MSG's internal rules do not explicitly require that MSG members should have the capacity and availability to work on the MSG. The Industry constituency's internal guidelines set some criteria for industry representatives, including that they should be familiar with the EITI and mining sector issues, and should commit to participate in MSG meetings. None of the stakeholders consulted expressed concerns about specific capacity constraints for the MSG.

Attendance: Articles 24 and 25 reflect the procedure that should be used by the MSG to address potential repeated absence of an MSG member, as well as replacement procedures. Analysis of MSG meeting attendance (via MSG meeting minutes) shows attendance remained good in 2018 and 2019, with quorums reached at all meetings.

Secretariat's Assessment

The Secretariat is satisfied that the corrective action on multi-stakeholder oversight has been partly addressed and considers that Burkina Faso has achieved meaningful progress on Requirement 1.4. Industry and civil society have, shortly prior to the start of Validation, adopted public procedures to nominate their representatives on the MSG. While the new EITI Decree is still pending at the start of Validation, the MSG has adopted ToR through its internal rules that are aligned with all aspects of Requirement 1.4.b. However, there is no evidence to suggest that the civil society code of conduct was the fruit of an open, transparent, and inclusive process. There is no evidence to suggest that industry representatives on the MSG have canvassed their respective constituencies more broadly on key EITI documents and activities, although there is evidence that the Technical Secretariat consulted organisations that were not members of the MSG in developing the work plan. The Technical Secretariat has made sure that there were timely announcements of MSG meetings and advance circulation of documents, and that written records of its discussions and decisions are kept, even if the detail of MSG discussions is not always reflected in meeting minutes. The MSG's ToR publicly codifies its per diem practices.

In accordance with Requirement 1.4, Burkina Faso should ensure that the procedures for nominating and changing EITI multi-stakeholder group representatives are public and implemented in a fair, open and transparent way in practice. Burkina Faso is encouraged to ensure that effective outreach activities are undertaken with civil society groups and companies, including through communication such as media, website and letters, informing stakeholders of the government's commitment to implement the EITI, and the central role of companies and civil society. Members of the MSG are

¹³ ITIE Burkina Faso, minutes of 2018 ([here](#)) and 2019 ([here](#), [here](#) and [here](#)) MSG meetings, accessed in September 2019.

strongly encouraged to liaise with their constituency groups on a regular basis, and to consult broadly on EITI documents, including the annual progress report, the work plan, and the EITI Report.

3.2 Corrective action 2: Work plan (#1.5)

In line with Requirement 1.5, the MSG should agree a work plan linked to national priorities and that is the product of wide consultation with stakeholders. The MSG is encouraged to consider how more meaningful discussions through the EITI, linking to national priorities, could encourage more active participation by all stakeholder groups.

Findings from the first Validation

The first Validation concluded that Burkina Faso had made meaningful progress in meeting this requirement. Stakeholders on the MSG considered that they had been involved in the drafting of the work plan and civil society confirmed that their priorities were taken into account. Validation found that the work plan was linked to national priorities for the mining sector. The 2016-2018 action plan was fully costed, included measurable results, an indication of funding sources and was published on the EITI website. However, the first Validation considered that there was scope for broader consultation on the work plan and inclusion of other relevant government activities in the sector. Validation also found that the work plan could also better reflect ongoing activities by the Ministry of Energy and Mines, which in partnership with the World Bank's PADSEM was implementing reforms such as the modernization of the mining cadastre.

Progress since Validation

Publicly accessible workplan: The MSG adopted and published a triennial work plan for 2019-2021 on 7 June 2019. This Work plan is publicly accessible on the Burkina Faso EITI website.¹⁴

Objectives for implementation and consultations: The objectives of the triennial Work plan are aligned with the 2016 Standard, as well as to the National Socio-Economic Development Plan (PNDES), the national mining policy, the government's general policy document, and to Burkina Faso's first Open Government Partnership national action plan.

A description of the consultations process for the preparation of the workplan is available in annex 2 of the Workplan (pp. 33-40). This annex lists the tasks undertaken to elaborate the workplan, the members of the ad-hoc working group tasked with elaborating the work plan, as well as a list of civil society, industry, and government representatives consulted on the work plan. Burkina Faso EITI held a first workshop on the work plan on 8 February 2019, to seek the views of MSG representatives from the administration, industry and civil society. This consultation was broadened civil society organisations (such as Réseau Afrique Jeunesse) and government agencies (such as the national institute of statistics) that are not represented on the MSG. A draft work plan was then developed by an ad-hoc MSG working group during a retreat in Kedougou on 26-29 March. The draft work plan was then shared with government, industry and civil society stakeholders for consultation on 17 April. A

¹⁴ Burkina Faso EITI, Plan action triennial 2019-2021 (June 2019), accessed [here](#) in July 2019

review of MSG meeting minutes confirms that the MSG commented on and approved the triennial work plan on 26 June 2019.¹⁵

Stakeholders from all constituencies consulted as part of this second Validation confirmed that the consultation process has been broad and transparent, and that organisations that were not members of the MSG had an opportunity to provide feedback on the draft work plan.

Measurable, time-bound activities: The triennial work plan includes measurable and time-bound activities related to 7 key priorities, including strengthening MSG governance, licence allocation, monitoring of production, revenue collection, revenue redistribution, the mining sector's socio-economic contribution, and enhancing results and impact of EITI implementation. The Work plan also reviews key achievements to date, as well as potential obstacles and risks to EITI implementation.

Secretariat's Assessment

The International Secretariat is satisfied that the corrective action on work plan has been addressed and considers that Burkina Faso has made satisfactory progress on Requirement 1.5. The MSG approved a triennial work plan (2019-2021), which is public and reflects national priorities for the extractive industries, open government, and sustainable development. The work plan addresses the scope of EITI reporting, includes plans to address legal and regulatory obstacles to implementation, and outlines the MSG's plans for following up on recommendations from EITI reporting and Validation. There is evidence that the process for developing the workplan was transparent and inclusive of the views of members of the broader government, industry and civil society constituencies.

To strengthen implementation, Burkina Faso may wish to publish more regular updates on work plan execution to reflect the detail with which the MSG and secretariat track implementation. This could further support the MSG's efforts to reach out to prospective donors to support specific work plan activities.

3.3 Corrective action 3: Licence register (#2.3)

In line with Requirement 2.3, the MSG should ensure comprehensive disclosure of the dates of application and license coordinates for all licenses held by material companies, if not for all extractives licenses irrespective of the license available through government and company reporting systems as a routine feature of their management systems

Findings from the first Validation

The first Validation concluded that Burkina Faso had made meaningful progress towards meeting this requirement. The 2015 EITI Report provided a list of mining licenses active in 2014 and information including license-holder name, dates of award and expiry, commodities covered and name of decree awarding the license, but not dates of application or license coordinates. The report also described Burkina-Faso's cadastral management system, which provided public access to dates of application, but only of maps of licenses, rather than their specific coordinates.

¹⁵ Burkina Faso EITI, Minutes of the 26 June 2019 MSG meeting (July 2019), accessed [here](#) in July 2019

Progress since Validation

The Burkina Faso EITI MSG published the 2017 EITI Report on 8 August 2019 and published the Decrees awarding 25 production licences, as well as 322 research, semi-mechanised, artisanal and small-scale mining licences (all published on the same webpage) on 24 July 2019.¹⁶ Burkina Faso's online mining cadastre was launched in February 2019 and is accessible online, albeit with intermittent interruptions in connectivity.¹⁷

Licenses held by material companies: The list of mining licences as of 31 December 2017 provided by the Ministry of Mines is annexed to the 2017 EITI Report (annex 8, pp 140-151). This list covers 392 mining licenses active in 2017 (pp.140-151). This includes 26 industrial mining production licences, for which the name of the project, the licence holder, date of award and date of expiry are provided, but not dates of applications, licence coordinates, and the commodity produced. The report also lists 274 industrial mining research licences, for which the name of the project, licence holders, dates of award date and dates of expiry are provided, but not dates of application, licence coordinates and the commodity produced.

The 2017 EITI Report includes the award decrees for Kiaka SA (production permit) and SOFANEC (three quarrying production permits), ROXGOLD SANU (production permit) in the EITI Report (pp. 183 - 203). These decrees include all information listed under Requirement 2.3.b including licence holder names, dates of application, award and expiry, the commodities covered and the licence coordinates.

The 2017 EITI Report notes that the online repository of the Ministry of Mines of Burkina Faso is open to the public and accessible and provides data on licenses required by the EITI Standard (pp 30-31). However, a spot-check of licenses available on the repository confirms that only the data on the license holder, the name of the project, the license coordinates and the commodity produced are currently disclosed, and not dates of application, award, and expiry.

On the Burkina Faso EITI website, the MSG published the award decrees for 25 mining production licences, with the exception of the licence held by Pan African Tambao SARL, covering all 21 material companies.¹⁸ The MSG also published 322 research, semi-mechanical, and artisanal and small-scale mining licences. These decrees appear to have been published together on a few webpages, with limited effort to classify them by data of award, by type or by name. These award decrees include the license holder name, the dates of application, award, and expiry, the commodity(ies) covered, as well as the geographical coordinates. The Secretariat notes however that dates of application were missing from the award decrees for the production licences held by Gryphon, Hounde Gold Operation, Riverstone Karma, Essakane, and Konkera, all material companies.

Secretariat's Assessment

The International Secretariat's assessment is that the corrective action related to license registers has been partly addressed and considers that Burkina Faso has made meaningful progress, with considerable improvements on Requirement 2.3. Neither the 2017 EITI Report, nor the online license depository reflect all the data points required under requirement 2.3. While the MSG has attempted to disclose missing data points on licences by publishing award decrees, the Secretariat considers that the accessibility of this information remains limited. In addition, the dates of application for production licences held by five material companies are not available in the respective award decrees. The International Secretariat therefore concludes that the broader objective on licence transparency has not been met and that further efforts are required to ensure a comprehensive disclosure.

In line with requirement 2.3, Burkina Faso is required to maintain a publicly available register or cadastre system(s) with the following timely and comprehensive information in line with Requirement

¹⁶ ITIE Burkina Faso, accessed in August 2019: production permits [here](#), research permit [here](#), semi-mechanical mining permits [here](#), quarrying permits [here](#).

¹⁷ Cadastre minier du Burkina Faso, accessed [here](#) in August 2019.

¹⁸ Pan African Minerals was ordered to stop operating the Tambao mine by the Government of Burkina Faso in 2015 and was stripped of its rights. An arbitration process was concluded on 28 February 2019.

2.3.b regarding each of the licenses pertaining to companies within the agreed scope of EITI implementation. Burkina Faso should ensure that dates of application, award and expiry are available for all extractive licenses.

3.4 Corrective action 4: State participation (#2.6)

In line with Requirement 2.6, the MSG should ensure comprehensive disclosure of the extractives companies in which the government, or any SOE, holds equity and the terms associated with this equity. It should also work with government stakeholders to clarify and document the rules and practice related to the financial relation between SOEs and the government (such as those related to retained earnings, reinvestment and third-party funding) as well as the existence of any loans or loan guarantees from the state or any SOE to companies operating in the mining sector.

Findings from the first Validation

The first Validation concluded that Burkina Faso had made inadequate progress in meeting this requirement. While the 2015 EITI Report described the existence of three SOEs, Validation found that it did not provide an explanation of the prevailing rules and practices regarding the financial relationship between the government and SOEs. The report provided a list of state participations in the mining sector, and described the terms associated with the state's 10% free equity in mining projects, but not of the state's equity in the three SOEs. Validation highlighted changes to state participation in the year under review, noting that this related to new licenses allocated in 2015.

Progress since Validation

With regards to the corrective action related to Requirement 2.6, the Burkina Faso MSG published its 2017 Report on 9 August 2019 and an addendum on state participation in the mining sector the same day.¹⁹

Materiality: The 2017 EITI Report explains (p.33-35) that three state-owned enterprises ("*sociétés à capitaux publics*") and two state-owned public establishments ("*établissement publics de l'Etat*") engage in mining sector-related activities in Burkina Faso: SOPAMIB, BUMIGEB, ONASSIM, SEPB and ANEEMAS. The report (p.33) and the addendum confirm that the state held 100% of shares in these five entities in 2017. The 2017 Report notes that two entities (SOPAMIB and ANEEMAS) were not operational in 2017 and thus collected no payments or made no transfers to government. The report demonstrates that ONASSIM is engaged in providing security for artisanal mining areas, and therefore is not participating in the upstream sector.

As a result, only two entities were engaged in upstream activities in 2017:

- The **Bureau of Mines and Geology of Burkina Faso (BUMIGEB)** supports mining prospection and exploration activities, mainly through the sale of geological maps, the development of small-scale mining, and the implementation of various mining and environmental safety controls. The addendum notes that it was established in 1997 and is fully owned by the state. Consultations with stakeholders noted that the activities of BUMIGEB in 2017 were limited to services such as the sale of geological maps (p. 30) for fees ranging from XOF 3,000 to XOF 50,000 depending on the data. The 2017 Report notes that BUMIGEB revenues collected by BUMIGEB in 2017 account for 0.01% of extractives revenues (p. 69) hence these payments are not material. According to the Report (p.14), BUMIGEB collected XOF 26m, or 0,015% of total revenues collected. For completeness, the report includes unilateral disclosures by BUMIGEB on the "fees charged to extractive companies in return for its services" (p.34). The MSG nonetheless decided to disclose payments for services delivered by BUMIGEB in 2017 (p.34). A note that lists the services and fees applied by BUMIGEB is annexed to the 2017 EITI

¹⁹ ITIE Burkina Faso, note sur la participation de l'État, accessed [here](#) in September 2019.

Report (pp. 152-154). Moreover, the report (p. 33) and the addendum on the financial relationship between the state and SOEs (p. 7) note that although the BUMIGEB received subsidies from the state, it did not pay any dividends to the state and did not receive any loans or loan guarantees or provide loans to other companies.

- The **State Company for the Production of Phosphates (SEPB)** is responsible for the production and distribution of phosphates in Burkina Faso to support agricultural development. The addendum confirms that SEPB was established in 2012, with a capital of XOF 910.8m. However, the report notes (p.35) that the SEPB did not collect material revenues, did not make any material payments to the state in 2017 (XOF 53,630) and did not transfer dividends to the state in 2017.

As neither BUMIGEB and SEPB generated material payments in 2017, the IA concludes that there were no SOE responsible for the exploration or production of mineral resources as defined in Requirement 2.6 (a) of the EITI Standard (2016). » (p. 32).

There is evidence in the 2017 EITI Report that the MSG considered dividends from the state's minority participation in 15 mining companies were material, given that they were included in the scope of reconciliation (p.60). The total value of dividends reconciled in 2017 is XOF 2.7675bn. The results of reconciliation of the 15 mining companies' dividends to government are presented in Annex 10 (pp.156-176).

Financial relations: The addendum published on 9 August 2019 describes the *statutory financial relationship* between the state and the five SOEs. It notes that the financial relationship between the state and these SOEs covers capital stock, the payment of taxes and the sharing of dividends. It confirms that the state owns 100% of the SOEs' shares and that any decision to increase or decrease the SOEs' capital is taken by the Council of Ministers, based on a motivated report by the line ministry overseeing the SOE (in this case, the Ministry of Agriculture for SEPB, and the Ministry of Mines for BUMIGEB). It notes that SOEs are subject to tax obligations, in the same way as all private companies, including direct and indirect taxes, registration fees, and property taxes. The distribution of dividends is agreed annually during annual general meeting of the SOEs, during which the SOE's audited financial statement is discussed. The Decree N°2000-189 governing SOEs, referenced in the EITI Report, states that 10% of SOEs' net earnings are transferred to a reserve fund required by law, until the fund is equal to one fifth of the SOE's capital base. It requires remaining net earnings to be allocated based on decisions by the general meeting, particularly with regards to dividends and the establishment of general or special reserve funds.²⁰

The note adds that ONASSIM and ANEEMAS are considered as "*établissements publics administratifs*" and that they are only required to pay direct and indirect taxes to the state, not dividends (pp 7-9). With regards to financing, the note confirms that the state can provide capital or operational subsidies to support the SOE's operations to deliver public services. The note also confirms that SOEs can seek loans from financial institutions, after review and approval by the national commission on public debt. It is implicit in the report that these institutions are not allowed to issue equity/shares to third parties, given its reference to them as wholly-owned by the state by statute. With regards to SEPB, based on the review of the SOE's 2017 financial statement, the report concludes that SEPB did not generate material payments to the government and did not transfer dividends to the state in 2017. The report confirms that the MSG included the revenues collected by BUMIGEB from fees charged to private operators for its services in 2017 in the scope of the EITI Report (p.34). These 2017 revenues collected by BUMIGEB are disclosed in the report (p.60). However, the report does not clarify whether SEPB and BUMIGEB retained earnings, reinvested in their operations or had any outstanding third-party (debt) financing in 2017.

In terms of *financial relations in practice* in 2017, the report confirms that the state received XOF 2.8bn (USD 4.7m) in the form of dividends in 2017, corresponding to 1.55% of total extractive

²⁰ Gouvernement du Burkina Faso, Décret N°2000-189/PRES/PM/MCIA du 17 mai 2000 portant statut général des Sociétés d'Etat, accessed [here](#) in September 2019.

revenues that year (p.69). These dividends originates from the state's participation through mining companies. The value of dividends is presented both in aggregate and disaggregated by each of the four mining companies that paid dividends to the state in 2017 (p.69).

The 2017 EITI Report discloses the total amount of public investment and operating subsidies transferred to SEPB (XOF 716m) and BUMIGEB (XOF 1.993bn) in 2017. The addendum on state participation confirms the total amount of direct and indirect taxes these SOEs paid to the state in 2017(p.7)

The addendum confirms that the state did not provided loans or guarantees to SEPB or BUMIGEB in 2017, and that these SOEs did not provide loans to other mining companies in 2017 (p.7).

Level of state ownership: The 2017 EITI Report explains that the Mining Code's Article 18 gives the state the right to receive 10% free equity in mining companies when they receive large-scale industrial mining production licenses. The report describes the terms associated with this 10% free equity, noting that this state participation cannot be diluted in the event of an increase in share capital and that the state is entitled to 10% of dividends without being required to cover 10% of expenditures (p.32). The report lists the 15 mining companies in which the state holds a 10% equity interest (p.32).

While the report indicates that there were no changes in the state's equity participation in 15 companies in the year under review, it does not provide an explicit explanation for the changes in state ownership evident in Table 9 of the report, which shows that the number of companies in which the state holds 10% equity declined by four companies in 2017.²¹ It is however possible to confirm in other parts of the report that the Kalsaka and SMB projects stopped operations in 2015 (p.45), that Burkina Faso and Pan African have been in litigation since 2015 with an international arbitration process ongoing (p.42), and that the Orezone Bombore project only became operational in 2017 (p.45). However, the report does not specifically explain the terms of the changes in state participation in 2017.

Secretariat's Assessment

The International Secretariat's assessment is that the corrective action related to state participation has been addressed and considers that Burkina Faso has made satisfactory progress on Requirement 2.6. Although the 2017 EITI Report could have been clearer in its assessment of the materiality of extractives SOEs, both the report and its addendum provide an explanation of the prevailing statutory rules regarding the financial relationship between the state and the SOEs, as well the practice of financial relations in 2017 with regards to BUMIGEB and SEPB, the two SOEs that meet the definition in Requirement 2.6.a. Based on these disclosures, it is the Secretariat's understanding the SEPB and BUMIGEB did not generate material payment to the state in 2017. The report confirms that neither BUMIGEB or SEPB were material in 2017. The addendum to the 2017 EITI Report confirms that the state did not provide any loans or guarantees to SOEs and that the state and SOEs did not provide any loans or guarantees to mining companies in 2017. However, the report demonstrates the materiality of revenues derived from the government's minority equity participations in mining production license-holding companies. The 2017 EITI Report provides a list of direct state minority equity participations in the mining sector, and describes the terms associated with the state's 10% free equity in mining projects, and with the state's equity in the five SOEs. While the report does not describe the terms of transactions for the four changes in state participation in 2017, the Secretariat understands that these were liquidations of companies that caused the state's ownership of interests in mining companies by four.

To strengthen implementation, Burkina-Faso is encouraged to clarify its definition of SOEs to ensure consistency in future EITI reporting, and to use EITI implementation as an annual diagnostic of restructuring of state participation in the mining sector. Burkina Faso may also wish to ensure that

²¹ Kalsaka Mining, Sociétés des Mines de Belahouro (SMB), Pan African Tambao and Orezone Bombore SA.

audited financial statements of SOEs engaged in the mining sector are published, and that these SOEs disclose details of their corporate governance in line with provisions of the 2019 EITI Standard.

3.5 Corrective action 5: Economic contribution (#6.3)

In line with Requirement 6.3, the MSG should ensure comprehensive disclosure, in absolute and relative terms, of the economic contribution of the extractive industries, including informal activities such as artisanal mining.

Findings from the first Validation

The first Validation concluded that Burkina Faso had made meaningful progress in meeting this requirement. The 2015 EITI Report provided, in absolute and relative terms, the contribution of the extractive industries to GDP, to total government revenues and to exports as well as the main locations of production. Validation found that the report did not include comprehensive figures on employment in the sector. Validation highlighted a lack of information on the ASM sector, which is particularly significant in Burkina Faso.

Progress since Validation

The 2017 EITI Report provides figures, in absolute and relative terms, on the extractive industries' contribution to Gross Domestic Product (p.49), government revenues (p.49) and exports (p.49).

Employment: The 2017 EITI Report provides information on employment in the mining sector, covering industrial mining, small-scale mining, and quarrying, in absolute terms and as a share of total employment, provided by the General Directorate for the Economic Planning (p.49). It notes that employment in the mining sector in 2017 corresponded to 0,30% of total employment, with 27 494 people employed directly in the sector. It notes that 11 400 new jobs were added between 2016 and 2017.

Artisanal and small-scale mining (ASM): The 2017 EITI Report includes a section on the artisanal and small-scale mining sector (pp 50-51). The report reflects the main finding from the national survey on artisanal mining conducted in 2016 by the National Institute of Statistics and published in September 2017. It notes that ASM employed 140 196 miners on around 448 mining sites around the country, producing an estimated 9.2 tons of artisanal gold equivalent to XOF 232,2 billion. It adds that Burkina Faso's southwest region produces close to half of the country's artisanal gold, and the northern region about a quarter. The report also reflects the key findings of a survey conducted by the OECD in 2018, which estimated annual production of ASM gold to be 20-25 tonnes each year, as opposed to 45.5 tonnes for industrial gold. This survey noted that only 236 kg of ASM gold was exported officially in 2017. This survey estimated that the ASM sectors employs directly and indirectly close to 1 million people, including 300 000 diggers.

Secretariat's Assessment

The Secretariat is satisfied that the corrective action on the socio-economic contribution of the mining sector has been addressed and considers that Burkina Faso has achieved satisfactory progress on Requirement 6.3. The 2017 EITI Report provided comprehensive disclosures on employment in the mining sector, in absolute terms and as a share of total employment, as well as on artisanal and small-scale mining. All other data listed in Requirement 6.3 have also been publicly disclosed.

To strengthen implementation, Burkina Faso is encouraged to ensure that information on the contribution of artisanal and small-scale mining and informal mining to the economy is regularly disclosed and publicly accessible

3.6 Corrective action 6: Follow-up on recommendations (#7.3)

In line with Requirement 7.3, the MSG should ensure broad consultations on all recommendations in following up on concrete reforms. The MSG should act upon lessons learned and identify, investigate and address the causes of any discrepancies in company and government reporting, establishing a clear timeframe and responsibilities for implementation of reforms. The MSG, in consultation with government stakeholders in particular, may wish to consider institutionalising its mechanisms for following up on recommendations from the EITI process, including Validation, as a means of ensuring closer attention to implementation.

Findings from the first Validation

The first Validation concluded that Burkina Faso had made meaningful progress in meeting this requirement. Validation found that the presence of high-level officials on the MSG had led to actions to identify, investigate and address the causes of discrepancies and to consider the recommendations for improvements from the IA in previous EITI Reports. Validation highlighted that none of the recommendations in past EITI Reports had been fully implemented according to the 2015 EITI Report.

Progress since Validation

The MSG published a self-assessment report to review progress in addressing causes of discrepancies, as well as implementation of recommendations stemming from EITI reporting and Validation on 24 July 2019.²² The MSG published an addendum to the EITI Report presenting its mechanism to monitor and follow-up on recommendations stemming from EITI Reports and Validation on 9 August 2019.²³ The MSG published its 2018 annual progress report on 26 June 2019.

The self-assessment report was developed through a series of workshops in June 2019, that brought together 25 MSG representatives from government, civil society and industry. It reviews progress in implementing Validation correctives measures and soft recommendations (pp.4-18).

The 2017 Report also includes a table listing 22 recommendations for addressing the causes of discrepancies, as well as the MSG's views on each of them and progress made so far in their implementation (pp.19-35). Through this table, the MSG confirms that 14 recommendations have been implemented, five are currently being implemented and three have not been implemented.

There is further evidence of actions taken by the MSG to follow-up on the causes of discrepancies after the publication of the 2016 EITI report and before the publication of the 2017 EITI Report in MSG meetings minutes.²⁴

The table on follow-up to recommendations from EITI reporting is also available in the 2017 EITI Report.²⁵ Activities to implement some of these recommendations are included and budgeted in EITI Burkina Faso's 2019-2021 work plan.²⁶

²² ITIE Burkina Faso, Rapport de suivi de mise en œuvre des recommandations de l'ITIE, accessed [here](#) in August 2019.

²³ ITIE Burkina Faso, Note sur le dispositif de suivi-évaluation, accessed [here](#) in August 2019.

²⁴ ITIE Burkina Faso, MSG meeting minutes of 11 June 2019 meeting ([here](#)) and 26 July 2019 ([here](#)), accessed in September 2019.

²⁵ ITIE Burkina Faso, Rapport ITIE 2017, accessed [here](#) in August 2019.

²⁶ ITIE Burkina Faso, plan d'action triennal 2019-2021, accessed [here](#) in August 2019.

The addendum on the MSG's mechanism to follow-up on recommendations explains that the Technical Secretariat's monitoring and evaluation officer is tasked with keeping track of progress for all recommendations and to develop a first draft of the annual progress report. It explains that a technical working group of the MSG reviews this draft report, collects additional information, and makes recommendations to the MSG to improve its follow-up to EITI recommendations. The MSG is tasked with approving the annual progress report and to make recommendations to companies and the government to address causes of discrepancies and lift potential obstacles in EITI implementation.

Secretariat's Assessment

The Secretariat is satisfied that the corrective action on lessons learned and follow-up on recommendations has been fully addressed and considers that Burkina Faso has achieved satisfactory progress on requirement 7.3. Minutes of MSG discussion and documents published ahead of Validation, including the Validation self-assessment report and the 2017 EITI Report, confirm that the MSG has adopted a mechanism to identify, investigate and address the causes of discrepancies and to consider the recommendations stemming from EITI Reports and Validation. There is also evidence of MSG discussions actions to address the causes of discrepancies, including in MSG meeting minutes.

To strengthen implementation, the MSG is encouraged to use follow-up on EITI recommendations as a mechanism for driving and monitoring the implementation of reforms in both government and company systems.

4. Assessments of requirements previously assessed as satisfactory progress in 1st Validation

In the course of undertaking this assessment, the International Secretariat has also considered whether there is a need to review additional requirements, i.e. those assessed as "satisfactory progress" in the 2017 Validation. In particular, the Secretariat reviewed possible back-sliding in the 2017 EITI Report on requirements related to Contract and license allocations (Requirement 2.2). The Secretariat's view is that there is evidence to suggest progress has fallen below the required standard on Requirement 2.2 and warrant consideration by the EITI Board, for a downgrade to "meaningful progress".

4.1 Assessment of Requirement 2.2

In the course of undertaking this assessment, the International Secretariat has also considered whether there is a need to review additional requirements, i.e. those assessed as "satisfactory progress" in the 2017 Validation. In particular, the Secretariat reviewed possible back-sliding in the 2017 EITI Report on requirements related to license allocation and transfer (Requirement 2.2). The Secretariat's view is that there is evidence to suggest progress has fallen below the required standard on Requirement 2.2 and warrant consideration by the EITI Board, for a downgrade to "meaningful progress".

Findings from the first Validation

The first Validation concluded that Burkina Faso has made meaningful progress towards meeting this requirement. The 2015 EITI Report described the statutory license allocation and transfer procedures, highlighting the number of licenses that were granted or transferred in 2015. There was no evidence of license awards through competitive bidding in the year under review. The EITI Report did not

highlight any non-trivial deviations from the statutory procedures for awards and transfers in 2015. Stakeholders consulted highlighted the existence of deviations from statutory allocation procedures.

The independent Validation recommended that requirement 2.2 on licence allocations be upgraded to satisfactory progress, noting that there was no evidence of non-trivial deviations from the statutory allocation process and that the Independent Administrator noted in the 2015 EITI Report that all awards were made in accordance with the statutory licence allocation process.

Progress since Validation

Award/transfers: The 2017 EITI Report provides a detailed description of the statutory procedure for licence allocation (pp. 25-29). The report notes that licence allocations and transfers are governed by the Mining Code and by Decree 2017/036 of 26 January 2017 on licence allocation. Mining licences in Burkina Faso are awarded on a first come first serve basis. The 2017 EITI Report notes that 136 licences were allocated in 2017 (including 6 production licenses, 107 research licenses, 10 quarry exploitation licences, 10 ASM licences, two semi-mechanised licenses). All licenses awarded in 2017 are listed in Annex 8 of the Report (pp. 140-151). The 2017 EITI Report notes that no production licenses were transferred, and 10 research permits were transferred in 2017 (p. 30).

Technical and financial criteria: Decree 2017/036 of 26 January 2017 on licence allocation states that licences in Burkina Faso are awarded on a first come first serve basis (p.27). The report covers in detail the statutory criteria for exploration permits, industrial small and large-scale mining permits, semi-mechanical artisanal permits, quarrying permits and in the case of competitive bidding. It is noted that exploration permits are subject to verification of the number of research permits held by the applicant. This is set at three permits for natural persons and seven for legal entities. The National Mines Commission, which is in principle responsible for examining applications and giving technical advice, does not publish its work or any summary of the analyses of the feasibility studies (financial, technical, project analysis) submitted to them for license applications (p. 29). Only reports on environmental impact studies of mining projects are made available to the public for consultation when the mining company applies for an operating license.

According to the 2017 EITI Report, no clear technical or financial criteria are taken into account for new license allocations (p. 29). The acceptance of the applicants' request is based on the administrative documents, provided for in the legislation, but not on the applicant's ability to make the expenses needed for the successful development of the mining site.

The 2017 report notes that other than the payment of taxes, no technical or financial criteria are considered when approving license transfers in Burkina Faso (p.29).

License awardee information: For transfers, the Report includes the names of the license transferor and transferee, the name of the project, the date of application, and the surface area (p.30). For renewals and new licenses, Annex 8 provides the name of the permit, the mineral produced, license-holder, issue date, expiration date and surface area.

Non-trivial deviations: The Report does not indicate any deviations from the statutory procedures for any license awarded or transferred in 2017.

Commentary on efficiency: The 2017 EITI Report does not comment on whether all awards or transfers have been made in accordance with the allocation procedures and statutory criteria outlined in the Report. The Independent Administrator noted the following shortcomings regarding the inefficiency of the system of granting these permits, namely a lack of criteria on the technical and financial capacity of the applicant to meet the expected expenditure to implement the work plan and achieve the desired results of the activity in question; and; the mass granting of research permits against a very limited granting of operating permits (pp. 81-82).

Secretariat's Assessment

The International Secretariat considers that Burkina Faso has made meaningful progress on Requirement 2.2. While the 2017 EITI Report lists the licenses awarded and transferred in the year under review and provides a general overview of the licence allocation and transfer procedures in Burkina Faso, it does not specifically describe the technical and financial criteria used in licence allocations and transfers in the year under review. The report does not highlight any non-trivial deviations from the statutory procedures for awards and transfers in 2017.

In accordance with Requirement 2.2.a, Burkina Faso should ensure that the awards and transfers of mining, oil, and gas licenses during the year are publicly disclosed annually, highlighting the process for awarding and transferring licenses, including technical and financial criteria, and any non-trivial deviations from the applicable legal and regulatory framework governing license awards and transfers.

5. Conclusion

Having reviewed the steps taken by Burkina Faso to address the six corrective actions requested by the EITI Board as of the commencement of its second Validation (13 August 2019), it can be reasonably concluded that four of the six corrective actions have been fully addressed. The Secretariat's assessment is that there has been back-sliding in Requirement 2.2, on licence allocation. This would result in an overall assessment of "meaningful progress" with considerable improvements across several individual requirements, with three corrective actions.

The outstanding gaps relate to MSG governance (Requirement 1.4), license allocation (Requirements 2.2) and licence register (Requirement 2.3).