CONTRIBUTION OF ITURI CIVIL SOCIETY TO THE DRAFT 2013 EITI REPORT PROPOSED BY THE INDEPENDENT ADMINISTRATOR

01. Background

In the second half of June 2015, the Independent Administrator produced a draft of the 2013 EITI report in order to request opinions and feedback from Congolese civil society. This report reviews the draft in terms of form and content.

Civil society organization *Cadre de Concertation de la Société Civile de l'Ituri sur les Ressources Naturelle* (CdC/RN) reviewed the draft report on June 27 and 28, 2015. After the review and a critical assessment of the draft, some inconsistencies were noted and some suggestions were proposed to the EITI-DRC multi-stakeholder group to improve the final report. This report also identifies some strengths and areas for improvement in the draft report.

However, because of the short time allowed for the analysis of the document (the largest EITI-DRC report to this day), other observations may be raised to progressively improve this report and future ones. One of the major strengths of the draft is that it incorporates more contextual information than previous reports, particularly with regards to production and exports (EITI Standard, 3.5), real property (EITI Standard 3.11), social payments (EITI Standard 4.1, e), the license register (EITI Standard, 3.9), etc. However, the report should be improved to make it more comprehensible, as laid down in requirement 6 of the EITI Standard.

This could in fact facilitate the involvement of a wider public in improving the accessibility and transparency of the process in the DRC. This document aims to contribute to improving the draft EITI report submitted by the Independent Administrator on June 22, 2015 and sent by mail to stakeholders on June 26, 2015. It focuses on the following points:

1. Analysis of the draft 2013 EITI report; and

2. Recommendation for the improvement of the draft 2013 EITI report.

02. Methodology

To better contribute to the improvement of quality of the draft 2013 EITI report, it was essential to scrutinize the content. Our methodology was to go through two major stages: the gathering of work materials and analysis.

First, we consulted the following documents:

- The new EITI Standard of July 2013;
- The draft scoping of the draft 2013 EITI report from March 2015;
- The draft 2013 EITI report produced by the Independent Administrator;
- the 2012 EITI-DRC Report
- The contribution of Ituri civil society to the draft scoping of the draft 2013 EITI report from the March 10, 2015;
- The memo from Ituri civil society on the analysis of the 2012 EITI Report from the February 26, 2015;
- The Production Sharing Contract between the DRC, Caprikat and Foxwhelp of May 2010; smf
- The Partnership Agreement between AGM and SOKIMO for the AGK project development of March 2010.

We then produced a comparative study of the 2012 EITI Report, the draft scoping of the draft 2013 EITI report, and the draft of the EITI 2013 report to assess its strengths and weaknesses. At this point, our analysis has identified inconsistencies in the draft report both in terms of form and substance. With regards to form, civil society has identified material, spelling and grammatical errors in the draft report.

With regards to substance, the work has focused on the evaluation of the draft 2913 EITI report compared to the requirements of the EITI Standard, contextual information, and recommendations previously made by Ituri civil society to the EITI-DRC multi-stakeholder group, which coincided with those of the Independent Administrator in the 2012 EITI-DRC conciliation report.

This assessment of the implementation of recommendations of previous memos and the identification of irregularities in the draft 2013 EITI report have enabled Ituri civil society, through CdC/RN, to validate its contribution following a workshop on the analysis of the 2013 draft EITI report organized in Bunia, from June 27-28, 2015 with the financial support of the Technical Secretariat of EITI-DRC.

I. Analysis of the 2013 EITI - DRC Draft Report

The draft 2013 EITI report was analyzed taking into account the requirements for the EITI Standard and those related to contextual information. Regarding the EITI Standard, the following aspects were examined: the scope of the different flows, the frame of reference for companies, and the materiality threshold. As for the contextual information, the analysis dealt with sub-national transfers, the register of licenses, data on mining production, and the reporting of social payments.

1.1. Conventional EITI: the scope of flows, companies and materiality threshold

Ituri civil society welcomed maintaining the $300,000 materiality threshold. The group had expressed its wish in their contribution to the scoping draft of March 10, 2015. However, the group regrets that the semi-industrial mining sector was not included in the scope of flows or companies with regard to the (former) Province Orientale.

In the scoping draft of the 2013 EITI report, Ituri civil society had noted on page 6 that the mining flow framework of reference was increased from 38 in 2012 to 42 flows in 2013. However, the draft 2013 EITI report (page 82-84) took over a total of 43 mining flows. The group wants an explanation in relation to the new flow added in the framework of reference of mining projects of the draft 2013 EITI report. It is the same for oil flows, which instead of being identical to those in 2012, also increased from 36 to 41, an increase of 5 new oil flows in the draft 2013 EITI report. The group wants the mining and oil flow framework of reference to be clearly presented in the 2013 EITI report, like the 2011 EITI-DRC supplementary report on page 20.

Regarding the scope of companies, the group noted the existence of the list of mining companies in the scope of the 2013 EITI report. However, it found that there is an inaccuracy on the perimeter of the mining companies for the year 2013. Indeed, it is difficult to know the exact number of oil companies of the 2013 perimeter.

When assessing pages 25, 90, 58, 85 and 16 of the draft 2013 EITI report, the number of oil companies changes from 17 (page 86) to 16 (page 85) and 14. Sometimes the oil company Glencore appears and disappears elsewhere. On pages 86 and 159, the group found that the Office of Gold Mines of Kilo Moto is mentioned instead of "Kilo Moto Mining Company."

On page 95, point 5.2, the sub-heading 5.2.1, the first paragraph under the heading "*Conciliation tables by mining company*" is the result of a copy – paste error from the previous paragraph on page 89. We propose that this paragraph be corrected by amending the second line to read: "... a summary of the differences between payment flows reported by mining companies .... And not by oil companies ... as mentioned in the draft 2013 EITI report, page 95." The group also noted that it is difficult to determine the operational phases of mining companies unlike those of oil companies. Indeed, the table in Annex 2, on page 157 of the draft 2013 EITI report, does not provide details on operational phases of mining companies.

This makes it difficult to quantify the real contribution of mining companies in exploration compared to production companies to the national budget. Even the license register listed in Annex 4 does not clarify operational phases for all mining companies with exploitation licenses, but which aren't necessarily producing.

It is therefore essential to determine a company's operational phase in its profile. Finally, while welcoming the separation of formerly merged flows, namely IPR-IER in the draft 2013 EITI report, Ituri civil society noted the persistent gap between the statistics of the extractive sector published by the scoping draft of the 2013 EITI report, the draft 2013 EITI report and quarterly opinions, and releases from the Ministry of Finance. This raises a problem of reliability of sources. Indeed, the draft 2013 EITI-DRC report estimated revenues of $1,803,381,867, while the scoping draft was estimated at $1,205,866,769.39, and the notices published by the Ministry of Finance at $1,017,830,868.01.

The Ituri civil society group thinks it necessary to provide further explanation of these discrepancies between the figures while indicating the additional sources consulted in order to determine the total revenue of the extractive sector.

1.2. Contextual information

The group found that the draft 2013 EITI report provided a little more detail than previous EITI reports. However, some observations were made on the following key contextual information:

- The sub-national transfers
- The register of licenses
- The data on mining production
- Reporting of social payments
- The data on exports

1.2.1. The sub-national transfers

Unlike the requirement 4.2.e - 3.7 of the EITI Standard and the multi-stakeholder group decision to reconcile sub-national transfers data to mining fee between the Ministry of Finance and the DRKAT in the 2013 EITI report, the group found that Kibali Goldmines exported gold for an estimated value of $63,458,512 (page 171). Using the expected mining fee of this export, the group determined an approximate figure of $1,586,462.80.

Since the sub-national transfer does not require a materiality threshold for publication, the group thinks it best to include it as such (sub-national transfer) for it to be reconciled between the Ministry of Mines, the DGRPO and the Ministry of Finance. In addition, in the scoping draft of the 2013 EITI report, Annex 10 on the sub-national payments, at page 35, were two flows, namely:

- Tax on resident cards for foreigner ($168,000.00)
- Surface rights of mining concessions and hydrocarbons (ICM) ($214,388.32)

Curiously, in the draft 2013 EITI report, these two flows no longer appear. The group would like clarification on this situation, and if necessary that the information be re-entered it in the final report.

1.2.2. The Register of Licenses

There are identical titles attributed to two different companies. All exploration permits (EP) granted to BK Mining on page 184 are also granted to SOKIMO on page 174. The group would like an explanation.

Moreover, some permit numbers in the draft 2013 EITI report are not accessible on Flexicadastre due to poor registration. This is notably the case for AGK's EP 05105, which is listed as EP 5105 on page 171. Similarly for SOKIMO, EP 05074 is listed instead of 5074.

1.2.3 Data on the Production (requirement 3.5)

On page 213, the draft 2013 EITI report gives production quantities without specifying the production areas. The unit of measurement listed on page 213, Annex 11 of the draft 2013 EITI report is the tonnage. When viewing the estimated production of Kibali Goldmines at 88,199, one wonders if it refers to pure gold or ore containing gold. One also wonders if the figure is estimated in ounces, as it is often the case with gold, or if it's tonnage, which is often applied to copper and cobalt (requirement 3.5a).

This is the same for data on mining exports in quantity and value (Annex 12, page 217). The report provides the quantity exported and the dollar value without specifying the unit for the exported product (3.5.b). To make the report more comprehensible, the team believes that the export units should be included.

1.2.4. The reporting of social payments (Requirement 4.1.e)

Several mining and oil companies reported social payments, contrary to the 2012 EITI Report. However, the reported social payments bring are confusing with regards to the ultimate recipient, which are in most cases sub-contractors, staff, or local chiefs (example: the oil company Oil of DR Congo reported fees paid to the Doctor Aimé Tibamwenda, who was an employee in 2013, as social payments, and AGK said fees paid for the rehabilitation of the center of Budana were social payments, although this is part of the obligations of its JV contract, point 23, as a condition for the success of the AGK mining project. It is indeed a mandatory payment and not a voluntary or social one). Moreover, other companies have not disaggregated their payments (for example, in the case of Kibali, which declared having paid without providing any detail).

II. RECOMMENDATIONS

The main recommendations proposed by civil society involve conventional scoping and contextual information required or recommended by the 2013 EITI Standard.

2.1. Classic EITI

1. Resolve divergences in the framework of reference for oil companies in determining the exact number in the scope of hydrocarbons for the year 2013.
2. Clarify the scope of flows by specifying their numbers by sector and explaining the withdrawal or the appearance of new hydrocarbon or

mining flows compared to previous EITI reports as well as the draft scoping of the 2013 EITI report.

3. Explain the difference between revenues issued by the Finance Ministry in 2013 and the draft 2013 EITI report.
4. Provide in the mining companies profile chart listed in Annex 2 a section that provides information on their respective operational phases as for the oil companies.
5. Explain why the semi-industrial companies in Province Orientale are not included in the 2013 scope, despite their importance being undeniable considering the materiality threshold of $300,000.
6. Correct material errors and on pages 86 and 159, where the Office of Kilo Moto Gold Mines should be replaced by the "Kilo Moto Mining Company"; and on page 95, paragraph 5.2, where the second line of sub-heading 5.2.1. "*Tables of conciliation by mining company*" should be replaced by a summary of the differences between "***payment flows reported by mining companies*** .... ***and not by oil companies*** ... "as mentioned in the draft 2013 EITI report.

2.2. Contextual Information

1. Include a table on the payment made by the government to EPEs and a summary of the applicable rule of financial responsibility.
2. Require companies to detail the social projects achieved for the benefit of local communities and not to report these social payments fees paid to third parties in terms of obligation or in exchange for a benefit or service rendered in their favor.
3. Publish the amount of mining fees paid by mining and oil companies, in this case the company Kibali Goldmines, and the amount transferred to the provinces and ETD in accordance with Article 240 of the Mining Code and the requirement 4.2 e and 3.7 of the EITI Standard by reconciling it with the declaration of the Ministry of Mines, of the Ministry of Finance and of Provincial Revenue Collection Departments.

4. Explain the omission of two sub-national flows in favor of the Province Orientale contained in the scoping draft but which disappeared in the Draft Report.
5. Explain why the same mining titles are attributed to two or more holders (e.g. of *TItres de Bon Génie* K Mining and SOKIMO).
6. Standardize the transcription of research permit numbers (mining rights) to facilitate verification on the flexicadastre website (eg. write EP 5105 and not 05105 for AGK).
7. Clarify the unit of measurement for all the data in the production and export charts included in Annexes 11 and 12 of the draft 2013 EITI report taking into account various mineral substances (e.g. specify whether the 88,199 produced and exported by Kibali Goldmines is expressed in tonnage or in ounce).
8. Provide a separate section in the production table in Annex 11 and page 213 of the draft 2013 EITI report to include the production areas in accordance with requirement 3.5 of the Standard.

Done at Bunia, June 28, 2015,

For the CoC / RN with the approval of the Board of Directors