



DRC's Mining Revenues: Increasing Accountability by Analyzing Payments to Governments Reports

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DECEMBER 2020

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Key messages

- Under European Union, Canadian and United Kingdom mandatory disclosure laws, ten international mining companies have reported more than two billion U.S. dollars in payments to Democratic Republic of the Congo (DRC) government entities since 2015.
- Payments to governments (PtG) reports can improve accountability of companies and governments towards citizens on mining sector payments in the Democratic Republic of the Congo (DRC).
- PtG reports are complementary to the Extractive Industries Transparency Initiative (EITI) reporting process. They can support DRC EITI's efforts to produce the EITI scoping study, exhaustive financial reporting, address corrective measures from the 2019 EITI validation and implement project-level reporting requirements and systematic disclosures.
- PtG reports can provide data and insights on:
 - Payment trends under the DRC's 2018 mining code's increased taxes and royalties and parafiscal payments outside of the mining code in particular to state-owned enterprises (SOEs), including a fuller picture of the fiscal contribution of mining projects
 - Partial implementation of local development payments
 - Increased complexity of how revenues flow from mining companies through the DRC's government finances
 - Sales of mining assets by the government and SOEs, critical for ensuring the DRC benefits from its endowments in minerals required for the global energy transition
- PtG reports highlight the importance of timely and full contract disclosure, necessary for comprehensive accountability of payments levied by DRC government entities, in particular state-owned enterprises.
- For PtG reports to be maximally useful for these purposes, reporting companies and EU, Canadian and U.K. regulators should improve their quality, coverage and contextual relevance in light of the DRC's fiscal and parafiscal regime.

Executive summary

Under European Union (EU), Canadian and United Kingdom (U.K.) laws, ten international mining companies have reported more than two billion U.S. dollars in payments to Democratic Republic of the Congo (DRC) government entities since 2015. These payments to governments (PtG) disclosing companies account for the majority (62 percent) of the mining revenues reported in the DRC's 2016 Extractive Industries Transparency Initiative (EITI) report.

PtG reports improve accountability of companies and the government towards citizens related to mining revenues in the DRC by complementing the EITI reporting process. The DRC EITI Secretariat can use PtG reports to produce the 2020 EITI scoping study and exhaustive financial reporting, address corrective measures of the 2019 EITI validation and implement project-level reporting requirements and systematic disclosures. DRC government agencies can use the data to report on revenues as the 2018 mining code requires. Civil society, auditors and international partners, notably the International Monetary Fund (IMF), can also benefit from using PtG data to monitor critical policy and governance issues in the DRC. These include:

- **Payment trends under the increased taxes and royalties of the 2018 mining code.** In 2017 and 2018, tax and royalty payments of major projects increased just before they were closed or put under care and maintenance due to lower cobalt prices, more costly production, and higher taxes of the revised mining code.
- **Significant para-fiscal payments outside the mining code** made especially to state-owned enterprises (SOEs). For example, Lundin Mining Corporation's PtG reports show the significant consultancy fees that it paid to Gécamines, the largest SOE.
- **Partial implementation of local development payments under the 2018 mining code.** PtG reports by Glencore and Eurasian Resources Group (ERG), among others, show royalties paid directly to provinces and decentralized authorities, but not to the new Mining Fund for Future Generations (Fonds minier pour les générations futures, FOMIN).
- **Increasing fragmentation of how revenues flow from mining companies through DRC government finances.** PtG reports show that 45 DRC government agencies collected revenues from 2015 to 2018, many of which were not based on the fiscal regime of the mining code.
- **Lack of transparency on the sale of mining assets by SOEs and the government, and other payments negotiated by SOEs.** Ivanhoe Mines disclosed a transfer of \$105 million of additional equity to the DRC state in one of the world's largest copper projects, Kamo-a-Kakula. This deal was not covered in EITI reporting.

For PtG reports to be maximally useful for these purposes, reporting companies and EU, Canadian and U.K. regulators should improve their quality, coverage and contextual relevance in light of the DRC's fiscal and para-fiscal regime. We detail our recommendations to each group below.

RECOMMENDATIONS FOR DRC EITI

- In coordination with reporting companies, develop a DRC-specific reporting template that fulfils PtG and EITI reporting requirements and captures the specific fiscal and parafiscal revenues.
- In preparing the EITI scoping report, use PtG reports to identify payments and recipient entities that exceed the materiality threshold of EITI reporting.
- Use PtG reports to identify projects that should report separately under EITI's project level reporting.
- Identify which revenue streams parent companies should report on and request the DRC subsidiary to disclose separately so as to not artificially attribute payments at the project-level.
- Compare amounts, recipients, payment streams and other data to verify and interrogate EITI declarations.
- Use PtG reports to identify payments not attributed to any known payment term and pursue disclosure of contractual or other documents containing payment terms.

RECOMMENDATIONS FOR REPORTING COMPANIES

- Compare the PtG reporting framework, in particular the naming of payment types and recipient government entities, to EITI reporting templates and other companies' reports from the DRC.
 - *Annex I of this report and data from resourceprojects.org can serve as a starting point for identifying relevant payment streams.*
- Ensure PtG reports disclose payments covered by the mining code, contracts and parafiscal payments. These include one-off and recurring payments to SOEs, payments to subnational entities including provincial revenue authorities and community development and payments related to the sale or purchase of mining assets, including transfers in kind.
 - *For example, Ivanhoe Mining's 2016 PtG report strived to disclose the in-kind transfer of equity.*
- Provide sufficient detail for payment interpretation in the explanatory notes. This is critical when payments deviate from standard payments of the fiscal regime, such as one-off payments for asset transfers, in-kind payments and payments to SOEs. This is also important in cases when the PtG payment category is insufficient, as in the case of taxes in the DRC.
 - *For example, Glencore and ERG's PtG reports break taxes down further to corporate income tax and withholding tax. This allows for the matching of 'taxes' at a more disaggregated level. Companies can further disaggregate tax disclosures through the use of notes on individual payment lines and clarifying information in the PtG basis of preparation.*

- Voluntarily report on significant payments and operations outside the scope of PtG reporting requirements. This supports transparency and accountability.
 - *For example, Glencore voluntarily reported on customs duties, provincial road and export taxes and payments to Gécamines in its 2018 report.¹ This helps Glencore communicate its full fiscal contribution to the DRC.*

RECOMMENDATIONS FOR REGULATORS IN COUNTRIES WITH PTG LAWS

- Improve reporting templates to increase standardization of PtG reports and require more granular tax reporting, which, in the DRC, tends to include a variety of different taxes.
 - *For example, Natural Resources Canada (NRCan) has developed a reporting template for Extractive Sector Transparency Measures Act (ESTMA) reports upon which other regulators could leverage and build.*
- Enforce reporting requirements. For example, the Luxembourg regulator should ensure that in its 2020 payment report covering 2019, ERG is fully compliant with the EU Accounting Directive in terms of covering recipient government entities.
- Issue clarifying guidance on:
 - 1 Government entity reporting. In the most recent version of its ESTMA guidance, NRCan stated that reporting best practices included listing “the department or agency within the Payee that received the payment.”² The February 2019 Primary Market Bulletin published by the U.K.’s Financial Conduct Authority, which regulates Glencore’s disclosures, makes clear that the “policy intention is that stakeholders should be able to assess to which precise government entity a payment has been made.”³ ERG refers to Item 2 of article 43 (Chapter 10) of the EU-Accounting Directive, which states that only the total amount of payments to each government need to be included, as justification for not reporting to which government entity it made each payment. The EU and Luxembourg regulators should clarify that companies must disaggregate payments by recipient and enforce reporting.
 - 2 Joint venture reporting. Regulators should ensure that companies report on payments of joint venture companies, even when each joint venture partner individually controls under 50 percent. Critically, Barrick Gold as the operator of Kibali, DRC’s largest gold mine, should ideally report for the whole project, or at least its 45 percent share.
 - 3 Service fees as PtG. Confirm that payments for consultancy fees, infrastructure improvements to the National Electricity Company (Société nationale d’électricité, SNEL) and Center for Expertise, Evaluation and Certification of Precious and Semi-Precious Mineral Substances (Centre d’Expertise, d’Evaluation et de Certification des substances minérales précieuses et semiprécieuses, CEEC) constitute PtG and companies must be report on them.

1 Glencore, *Payments to governments report 2018* (2019), p. 10, www.glencore.com/dam/jcr/c9cea7dd-9fe6-4f9b-bd6a-e82f72672075/Glencore_Payments_to_governments_report_2018-.pdf. Import taxes in Glencore’s PtG report for 2016 are lower than in the EITI report due to inclusion of VAT in EITI data and timing of booking payments in accounting. Email communication from Glencore PLC, 10 February 2020.

2 NRCan, *Extractive Sector Transparency Measures Act Guidance* (2018), p. 9, https://www.nrcan.gc.ca/sites/www.nrcan.gc.ca/files/estma/pdf/ESTMA%20Guidance%20-%20Version%202_1%252C%20July%202018.pdf.

3 UK Financial Conduct Authority (“FCA”), *Primary Market Bulletin* (February 2019), www.fca.org.uk/publication/newsletters/primary-market-bulletin-20.pdf.

- Expand reporting scope to include:
 - 1 Customs duties and export taxes. The DRC's case shows that these are significant, material payments paid by natural resource companies that warrant additional transparency and monitoring. Recipient government entities should report on these and, where feasible, attribute them to a specific project.
 - 2 Payments for the purchase of extractive assets from the government or SOE.
 - 3 Investor loans granted to government entities. DRC SOEs have used loans from investors in many instances and they pay these back as forgone dividends or other payments. Recording these in PtG reports is critical.
 - 4 Short of the inclusion of these additional payment streams, PtG legislation should explicitly allow for the disclosure of other payment types beyond the current seven categories where relevant in a specific country to improve oversight and accountability. This would be in line with the original European Commission PtG law proposal, which included a payment category for "other direct benefits to the government concerned."⁴ For example, the United States' PtG law, Dodd-Frank Section 1504, also includes wording to allow companies to disclose "other material benefits."⁵

RECOMMENDATIONS FOR COUNTRIES WHERE MAJOR EXTRACTIVE COMPANIES ARE REGISTERED

- Adopt PtG laws
 - 1 The United States Securities and Exchange Commission (SEC) is conducting another rulemaking process for Section 1504 of the Dodd-Frank Act, the country's PtG regulations. The SEC should adopt a strong final rule for Section 1504, aligning with the global payment transparency norm established in EU, Canada and Norway. AngloGold Ashanti, as a US based mining operating in DRC, should be required to disclose its PtG when the US implements a new regulation for Dodd-Frank Section 1504.
 - 2 Chinese companies' engagement in the DRC's mining sector has increased considerably.⁶ It would be valuable for Chinese companies to publish PtG reports. These should include loans granted under the Sicominex model.

4 European Commission, *Proposal for a Directive of the European Parliament and of the Council on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings*, (October 2011), [www.europarl.europa.eu/RegData/docs_autres_institutions/commission_europeenne/com/2011/0684/COM_COM\(2011\)0684_EN.pdf](http://www.europarl.europa.eu/RegData/docs_autres_institutions/commission_europeenne/com/2011/0684/COM_COM(2011)0684_EN.pdf).

5 U.S. Congress, *'Dodd-Frank Wall Street Reform and Consumer Protection Act'*, Section 1504 q 1 C II, (January 2010) www.cftc.gov/sites/default/files/idc/groups/public/qswaps/documents/file/hr4173_enrolledbill.pdf.

6 Significant projects include China Molybdenum's participation in TFM, Zinjin Mining's investment in the Kamo-Kakula project, China Nonferrous Metals Corporation (CNMC) participation in Metalkol and Deziwa and Hong Kong Excellen Mining's production sharing agreement with Gécamines..

1. Introduction

This briefing analyzes payments made by companies operating in the Democratic Republic of Congo's (DRC) mining sector. Its objective is to assess the value of payments to governments (PtG) reports as a timely and disaggregated source of data on mining sector payments. PtG reports are produced according to recently implemented PtG laws in the EU,⁷ U.K.,⁸ Canada⁹ and Norway.¹⁰ The laws require oil, gas and mining companies incorporated or listed in these countries to disclose any payments of EUR 100,000 or more to government entities.¹¹ Companies must categorize payments into one of seven payment types: taxes, royalties, license fees, infrastructure improvements, production entitlements, dividends and bonuses. They must also report which government entity receives the payments and must attribute payments to a specific project, where applicable. Companies must submit PtG reports after each financial year's close. In the DRC, ten international mining companies have disclosed over \$2 billion in payments to DRC government entities from 2015 to 2018, with two companies (Glencore and Ivanhoe Mines) having already reported for 2019 at the time of this report's publication.

For several reasons, now is a good time to assess how PtG reports can complement existing data sources from the DRC Extractive Industries Transparency Initiative (EITI) and the DRC government, and improve transparency of DRC's mining revenues. First, PtG reports can help address corrective measures related to data comprehensiveness that arise in the DRC's EITI validation in 2019; improve timeliness of reporting; and meet requirements of the 2019 EITI standard related to project-level reporting and systematic disclosure through routine, publicly available company and government reporting. Second, PtG reports provide a unique, disaggregated view to payments under the 2018 mining code. Finally, PtG reports provide timely data on the rapidly evolving policy context of the DRC's mining sector, including the impact of the Covid-19 pandemic and interest in the DRC's assets in critical minerals needed for the energy transition.

While this briefing demonstrates the value of PtG reporting for these purposes, it also highlights areas to improve the accuracy and quality of these reports and presents ways for companies operating in the DRC and home regulators to improve reporting deficiencies. Building on such improvements, in the future, the two reporting frameworks could be harmonized. This would serve to reduce the reporting burden on companies and improve reporting efficiency.

While this briefing is primarily geared to supporting the EITI process, other oversight actors such as government, auditors and civil society organizations (CSOs) play a critical role in using data for policy analysis, and in scrutinizing EITI and PtG reporting to improve their quality.

7 European Union, *Accounting and Transparency Directive* (2013), [www.europarl.europa.eu/RegData/docs_autres_institutions/commission_europeenne/com/2011/0684/COM_COM\(2011\)0684_EN.pdf](http://www.europarl.europa.eu/RegData/docs_autres_institutions/commission_europeenne/com/2011/0684/COM_COM(2011)0684_EN.pdf).

8 United Kingdom, *The Reports on Payments to Governments Regulations 2014* (2014), www.legislation.gov.uk/ukdsi/2014/978011122235/contents.

9 Government of Canada, *Extractive Sector Transparency Measures Act (ESTMA)* (2014), www.nrcan.gc.ca/our-natural-resources/minerals-mining/mining-resources/extractive-sector-transparency-measures-act/18180?_ga=2.217372179.407795127.1593512947-447512463.1593512947.

10 Norway, *Forskrift om land-for-land rapportering* (2013), www.regjeringen.no/no/dokumenter/forskrift-om-land-for-land-rapportering/id748525.

11 In 2010, the United States passed its own PtG law, Section 1504 of the Dodd-Frank Wall Street Reform Act. The implementing regulation for the law was repealed by the Trump administration in 2017 and at the time of publication no new implementing regulation has been agreed upon. AngloGold Ashanti, as a US-based mining operating in the DRC, will be required to disclose their PtG if and when the US implements a new regulation for Dodd-Frank Section 1504.

Box 1. The role of government and civil society in using and improving PtG reports

EITI data has been critical for oversight actors to monitor extractive sector payments. CSOs have monitored payments by comparing EITI data against fiscal terms found in laws and contracts, as referenced in the mini case studies presented in this report. For example, the Carter Center supported CSOs to conduct case study analyses of payments contributed by major mining projects. From these case studies, CSOs identified cross-cutting challenges on revenue accountability, including lack of contract transparency, risks of tax avoidance and others.¹² However, the insufficient EITI data limited these analyses. Comparing legal and contractual terms with up-to-date, project level data offered by PtG reports can support timely, independent analysis and contextualize reported payments.

Awareness of PtG reports is low among stakeholders in the DRC, in particular among government representatives and the EITI secretariat.¹³ The Ministries of Finance and Mines can use PtG reports to trace payments made in the sector. The DRC government authorities and auditors can use PtG reports to identify payments made to SOEs to verify information in financial statements and transferable revenues to government. Audit institutions such as *Cour des comptes and Inspection générale des finances* can use PtG reports as a source for investigations and audits.

All actors can send feedback, spot inaccuracies, and engage with companies to improve the quality of their reporting. Companies can also actively engage stakeholders in the DRC on their reports to solicit comments and foster use of their reports. As one example of this form of engagement, Kosmos Energy has held a series of workshops in its countries of operation. In these workshops, they disseminate information on their transparency disclosures and work with communities affected by their extractives to understand the data provided.¹⁴

PtG reports are a valuable source of data for forming a comprehensive view of payments collected in the DRC's mining sector. These include payments established in the fiscal regime of the mining code, as well as so called *parafiscal payments*. (See box 2.) In shedding more light on parafiscal payments, PtG reports support efforts to comprehensively model payments that reduce the profit-tax base in the DRC and monitor the sale of mining assets.¹⁵ Finally, they can also support monitoring the implementation of the 2018 mining code's provisions for local development.

Box 2. Parafiscal payments in the DRC

The concept of *parafiscal* payments or *parafiscalité* is specific to the DRC's mining sector context. It refers to parallel taxation to the official, exclusive fiscal regime of the mining code. Parafiscal payments consist of various duties and taxes that the mining code does not provide for, but that various state agencies such as customs authorities, local administrations and SOEs nevertheless impose on mining companies.¹⁶

12 See for example, The Carter Center, *The Carter Center and Partners to Present Key Findings from DRC Mining Sector Fiscal Analyses* (2017), www.cartercenter.org/news/pr/drc-021417.html; OEARSE, *Pile ou face: Qui gagne et qui perd dans le projet KCC en RDC?* (2019), congominer.org/reports/1633-pile-ou-face-qui-gagne-et-qui-perd-dans-le-projet-kamoto-copper-company-en-rdc.

13 Stakeholder consultation on preliminary findings of this research, December 2019, Kinshasa.

14 Kosmos Energy, *2018 Corporate Sustainability Report* (2019), kosmosenergy.com/cr-report/English%20flipbook/flipbook/inc/html/13.html?page=12.

15 IMF, *Five takeaways from Democratic Republic of the Congo's IMF Program* (2019), www.imf.org/en/News/Articles/2019/12/20/na122019five-takeaways-from-the-democratic-republic-of-the-congos-imf-program.

16 NRG, *Fiscalité du nouveau code minier* (2018), p. 2, 19, resourcegovernance.org/sites/default/files/documents/la-fiscalite-du-nouveau-code-minier-de-la-republique-democratique-du-congo_0.pdf; Carter Center, *A State Affair. Privatizing Congo's Copper Sector* (2017), p. 43, www.cartercenter.org/resources/pdfs/news/peace_publications/democracy/congo-report-carter-center-nov-2017.pdf.

In this report, we provide six case studies from companies that are required to produce PtG reports, which illustrate the complementary uses of PtG and EITI data. The gaps illustrated by these case studies are not indicative of misreporting by any party. They are examples of the way that these data can raise avenues for further research and investigation by stakeholders, according to their respective mandates.

In addition to payment data, public availability of mining contracts is essential for a comprehensive view of payments in the DRC. Contracts outside the mining code define the terms of many payments, and comparing actual payments to their terms is only possible when these contracts are public. Disclosure of natural resource contracts has been a legal requirement in the DRC since 2011.¹⁷ Though disclosure has improved significantly, several critical contracts are still missing from the public domain.¹⁸ These include especially contracts entered into by SOEs.

The briefing uses the following sources and methodologies:

- EITI summary data for the DRC compiled on the Natural Resource Governance Institute's (NRGI) Resource Data site (resourcedata.org) and on the DRC EITI site.¹⁹ We cleaned summary data by harmonizing company and revenue stream names, reallocated payments to corrected categories and added sector information. The summary data that we used in this briefing covers the period from 2010 to 2016, for which data was continuously available when we conducted the research in late 2019.
- PtG report data from NRGI's Resource Projects site. We cleaned summary data by removing duplicate reporting and correcting errors introduced by the process of converting PtG reports to a machine readable format.
- We used mining contracts from the DRC Ministry of Mine's official site, NRGI's Resource Contracts and Congo Mines to compare EITI and PtG data to terms of payments.²⁰
- We mapped key payment streams in the DRC's laws and contracts, EITI payment stream names, PtG payment categories and collecting agencies. (See Annex I.)

17 Government of DRC, *Décret N° 011/26 du 20 mai 2011 portant obligation de publier tout contrat entre l'Etat ou une Entreprise du Portefeuille et un ou plusieurs partenaires privés et ayant pour objet la recherche, l'exploration ou l'exploitation des ressources minières, pétrolières et forestières* (2011), <https://www.resourcedata.org/dataset/rgi--mai-2011-portant-obligation-de-publier-tout-contrat-ayant-pour-objet-les-ressources-naturelles->.

18 NRGI, *Advocacy memo to pursue effective and exhaustive disclosure of mining and petroleum contracts in the DRC* (2019), not published.

19 NRGI, ResourceData, accessed April 2020, resourcedata.org; and DRC EITI, Données ITIE, accessed April 2020, itierdc-data.masiavuvu.fr/donnees-itie.

20 Ministry of Mines of the DRC, accessed April 2020, mines-rdc.cd/fr/; NRGI, ResourceData, accessed April 2020, resourcedata.org; and Congominer website, accessed April 2020, congomines.org.

2. Overview of payments in the DRC's mining sector

This section presents an overview of payments reported through the EITI and PtG reports.

EITI DATA

The EITI has been the main source of transparency on mining sector payments in the DRC since the country signed on to the initiative in 2007. DRC's 2016 EITI report disclosed over \$1.02 billion in payments from 104 mining companies. One of the advantages of EITI is that the reporting framework is tailored to capture the variety of payment streams in each country. This means that in the DRC, it includes all payments levied in the DRC's mining sector, including the parafiscal payments introduced in Box 1.

Figure 1 shows the cumulative value of payments by type between 2010 and 2016 according to EITI data. Out of the most important payments, customs duties, income taxes and state royalties are set in the generally applicable fiscal regime of the mining code of 2002, as revised in 2018. It is surprising that customs duties are the highest payment category: NRG's modeling of the DRC's 2002 mining code fiscal regime estimates the contribution of customs duties at five percent of total government revenues from a typical mining project, far below the contribution of income taxes, royalties and state participation.²¹ Their high level may be explained by several factors ranging from large imports during mine development, inclusion of value added tax in EITI data for some years or excess fuel imports for domestic re-sales under the preferential regime of the 2002 mining code.²²

In contrast, the share of income taxes is low compared to model, which predicts them to contribute as much as 65 percent of a typical projects' revenue.²³ EITI data shows that income taxes are also highly dependent on a handful of projects such as the Tenke Fungurume Mine (TFM) and Mutanda Mine. Various reasons, among them generous tax exemptions granted to some mining projects, such as in Banro's mining conventions and the Sicominex project, tax planning by international mining companies, as well as weaknesses in the DRC's tax administration, may explain these trends.²⁴

Other significant payment streams are parafiscal in nature. The copper-producing provinces in the Katanga region collect two types of taxes on road use and copper concentrate exports, reported under other taxes payable by natural resource companies in the EITI data. The provinces justify these taxes with raising funds to maintain roads used for transporting minerals and discouraging the export of

21 Thomas Lassourd, *La fiscalité du nouveau code minier de la République Démocratique du Congo* (NRGI, 2018), p. 18, resourcegovernance.org/analysis-tools/publications/la-fiscalite-du-nouveau-code-minier-de-la-rd-congo.

22 Stakeholder consultation on preliminary findings of the research, December 2019, Kinshasa.

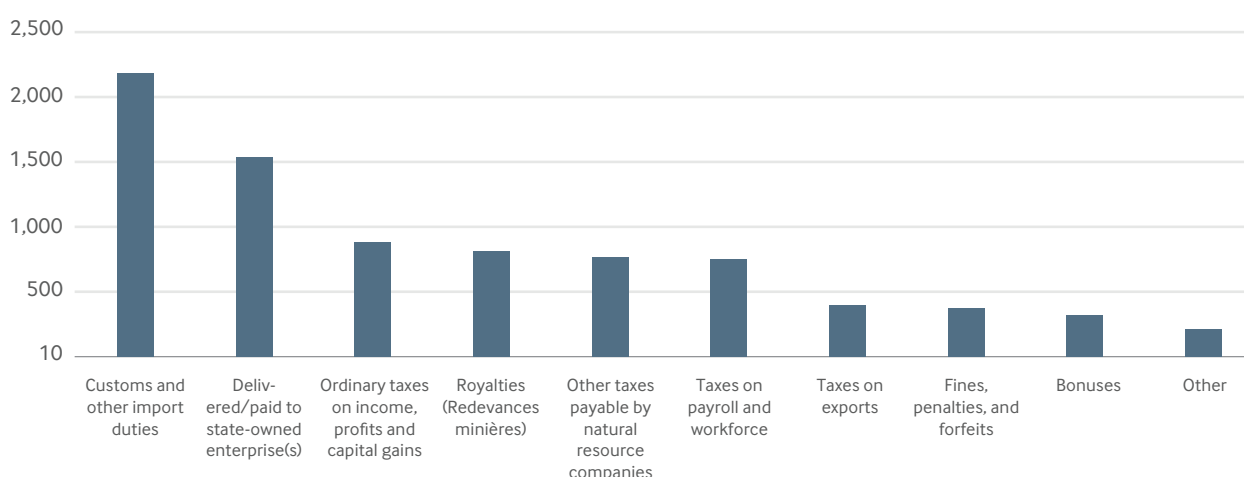
23 Lassourd, *La fiscalité du nouveau code minier*, p. 18.

24 Carter Center, *Improving Governance of Revenues from the Mining Industry* (2017), congomines.org/system/attachments/assets/000/001/220/original/TCC_EIGP_REV_Improving_Governance_of_Revenues_-_Cross-Cutting_Lessons_%28...pdf?1487024488, p. 4; IMF, *DRC selected issues paper* (2019), p. 11-12, www.imf.org/~media/Files/Publications/CR/2019/1CODEA2019002.ashx; www.imf.org/~media/Files/Publications/CR/2019/1CODEA2019002.ashx.

concentrated minerals.²⁵ Provinces also needed to raise their own revenues because the treasury was not transferring a share of royalties to them as it should have according to the distribution formula of the 2002 mining code.²⁶ Therefore, these taxes are outside the fiscal regime of the mining code exempts companies from all taxes not set in the code. However, provinces have a constitutional right to raise their own revenues.²⁷

Customs and other state agencies levy export taxes although the mining code exempts mining companies from paying export duties for mineral products.²⁸ It also caps services by state agencies for fees at one percent of export value. However, analysts report that the customs agency does not always respect the cap because it is entitled to keep part of the fees it collects.²⁹

Figure 1. DRC mining payments by type according to EITI data, 2010 to 2016, (USD millions)



The second largest category of payments according to EITI data are the combined payments made to SOEs. Their magnitude highlights the special role that SOEs play in collecting mining revenues. In 2017, there were eight SOEs active in the mining sector.³⁰ The largest of them is Gécamines, which holds minority equity stakes in joint ventures or has other forms of partnership agreements with over 20 mining projects.³¹ SOEs benefit from the government having granted them the country's mining deposits after it restructured the mining sector. Subsequently, investors could access these deposits only by buying or leasing assets from SOEs or forming joint ventures companies with them, in exchange for various payments negotiated in SOE-investor asset sale and joint venture agreements.

25 ACIDH, *Les revenus des taxes provinciales du secteur miniers et leurs affectations dix ans après, quel impact?* (2018), p. 11, congomines.org/system/attachments/assets/000/001/500/original/Les_revenus_des_taxes_provinciales_ACIDH_IBGDH.pdf?1535986991.

26 DRC EITI, *EITI report 2015* (2017), eiti.org/files/documents/rapport_de_conciliation_itie-rdc_2017_-_final_signe.pdf.

27 Government of DRC, 'Loi n°18/001 modifiant et complétant la Loi n° 007/2002 du 11 juillet 2002 portant Code minier' (DRC Mining Code), Article 220, mines-rdc.cd/fr/wp-content/uploads/simple-file-list/code_minier/CODE-MINIER.pdf.

28 Government of DRC, 'Décret N°038/2003 du 26 Mars 2003 Portant Règlement Minier 2019' (DRC Mining Regulation), Article 509, mines-rdc.cd/fr/wp-content/uploads/simple-file-list/reglement_minier/Reglement-Minier-26-mars-2003.pdf.

29 *Global Witness, Regime cash machine* (2017), p. 26, www.globalwitness.org/documents/19146/Regime_Cash_Machine_Report_Final_Single_pages_BXObnlm.pdf.

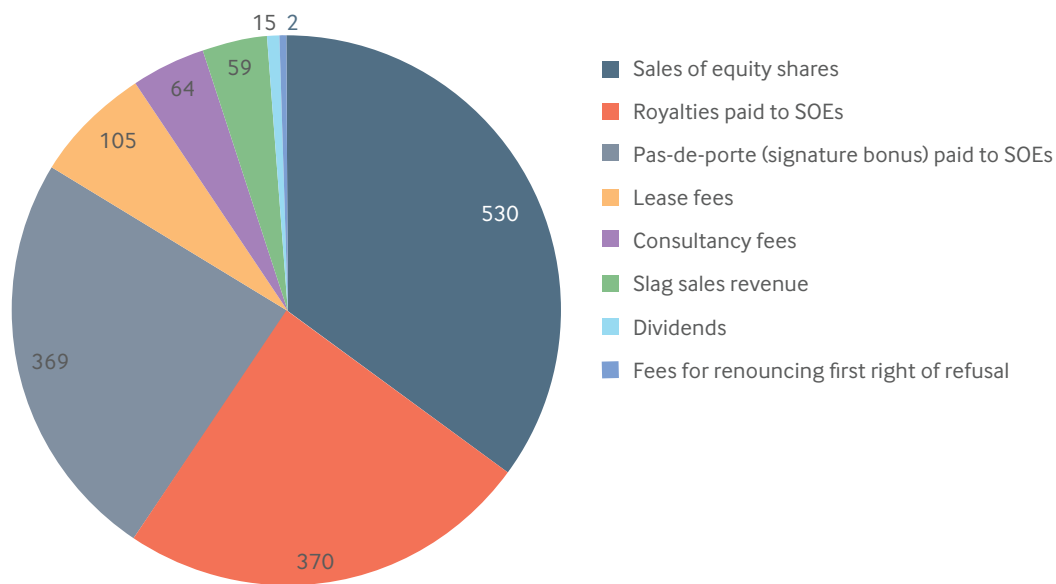
30 GECAMINES, SAKIMA, SODIMICO, SOKIMO, SCMK-Mn, COMINIÈRE, MIBA, SACIM. See more: DRC EITI, *EITI contextual report 2018-19* (2019), p. 56, drive.google.com/file/d/1G-rfFT2qRhdZGmlB2_wBvi5n4ROEr1d/view.

31 The largest by government revenue are Kamoto Copper Company, Metalkol and Boss Mining. DRC EITI, *EITI contextual report 2018-19* (2019), p. 58.

Figure 2 shows payments to SOEs disaggregated by type. Most of them are parafiscal, i.e. not governed by the mining code. Revenue from equity sales and *pas-de-porte* (signature bonuses), which form the majority of payments, are one-off in nature and related to SOEs' sales of equity shares to private investors. Royalties payable to SOEs (different from state royalties, *redevance minière*, stipulated in the mining code), consultancy fees and lease fees, are recurring. Finally, some are ad hoc, such as those for renouncing to exercise SOEs' right of first refusal. Against what should be expected to be important revenues for minority shareholders, SOEs did not collect any dividends from their participation in joint ventures. This is likely a result of a number of factors including parafiscal payments which reduce the tax base of profit-based taxes, different forms of tax avoidance and loans from investors to SOEs to cover their share of project financing which SOEs paid back in future dividends.³² The difficulty of collecting dividends has motivated SOEs to negotiate other revenues in their investor agreements.

The level of detail on SOE payments in EITI reports is due to significant effort by the DRC EITI to improve reporting, following civil society advocacy to raise awareness of SOE payments as an area in the DRC's mining sector where accountability was lacking.³³ Annex I provides further detail on the basis of payments collected by SOEs.

Figure 2. Payments to SOEs according to EITI data 2010 to 2016, USD millions



Despite rich and contextually relevant data, EITI reporting in the DRC has limitations in how it supports accountability. First, the DRC and other EITI-implementing countries publish EITI reports with a significant delay, typically two years after the reporting year, which limits their use for timely monitoring and analysis. Second, reports suffer from a lack of accuracy and coverage of all material payments. In 2019, the DRC's EITI validation raised 13 corrective measures to be met by April 2021, concerning, for example, comprehensive coverage of payments and identification

32 Carter Center, *A State Affair. Privatizing Congo's Copper Sector* (2017), p. 34-35, www.cartercenter.org/resources/pdfs/news/peace_publications/democracy/congo-report-carter-center-nov-2017.pdf.
 33 DRC EITI, *EITI supplementary contextual report* (2018), eiti.org/files/documents/2016_drc_eiti_supplementary_contextual_report_august_2018.pdf; Coalition Pour La Gouvernance des Entreprises Publiques du Secteur Extractif (COGEP), cogep-rdc.org; Carter Center, *A State Affair. Privatizing Congo's Copper Sector*.

of materiality thresholds.³⁴ The 2017 EITI report was published at the last minute in December 2019 and covers a narrower set of companies and payment types than previous reports.³⁵

The validation results and report production challenges reflect the difficulty of reporting accurately and comprehensively on payments in the context of the parafiscal regime, fragmentation of collecting agencies and that secrecy of some payments and their terms.³⁶ As the 2019 EITI standard brings about additional reporting requirements for payments at project level from 2020 and increasingly encourages integrating EITI reporting in countries and companies' regular reports, data accuracy and timeliness will be critical for the DRC to meet these requirements.³⁷

PTG DATA

PtG reports complement EITI reports and help address the above limitations by providing more timely and disaggregated data. As mentioned in the introduction, ten international mining companies have disclosed over \$2.1 billion in payments to DRC government entities from 2015 and 2018, with three companies (Glencore, Ivanhoe and Loncor Resources) having already disclosed payments for 2019 at the time of publication of this report. Companies made these payments to 45 government entities in the country and 20 mining projects.³⁸ (See table 1.)

Table 1. Mining companies' payments to governments reporting in DRC³⁹

Disclosing company	Reporting jurisdiction	Years of reporting	Operating projects in the country	Total payments disclosed for 2018 (in USD)
Alphamin Resources Corporation	Canada	2016 - 2017	Bisie Tin Project	...
Banro Corporation	Canada	2016 - 2017	Banro Congo Mining S.A.	...
	Canada	2016 - 2017	Kamituga Mining S.A.	...
	Canada	2016 - 2017	Lugushwa Mining S.A.	...
	Canada	2016 - 2017	Namoya Mining S.A.	...
	Canada	2016 - 2017	Twangiza Mining S.A.	...
Barrick Gold (Holdings) Limited (formerly Randgold Resources Limited) ⁴⁰	United Kingdom	2018	Exploration projects - Randgold Resources Congo SARL	221,870
	United Kingdom	2016 - 2018	KGL Isiro S.A.R.L.	22,628
Eurasian Resources Group (access through Luxembourg corporate filings portal)	Luxembourg	2016 - 2018	Boss Mining	33,702,721
	Luxembourg	2016 - 2018	Frontier Mine	39,471,515
	Luxembourg	2016 - 2018	Metal Kolwezi (Metalkol)	1,283,798

34 See the EITI Board decision eti.org/board-decision/2019-55.

35 We conducted the analysis informing this briefing in 2019 and covered EITI data from 2010 to 2016.

36 IMF, *DRC selected issues paper* (2019), p 5. www.imf.org/~media/Files/Publications/CR/2019/1CODEA2019002.ashx.

37 Project-level reporting has been part of the EITI standard since 2013, but has not been operationalized due to industry opposition.

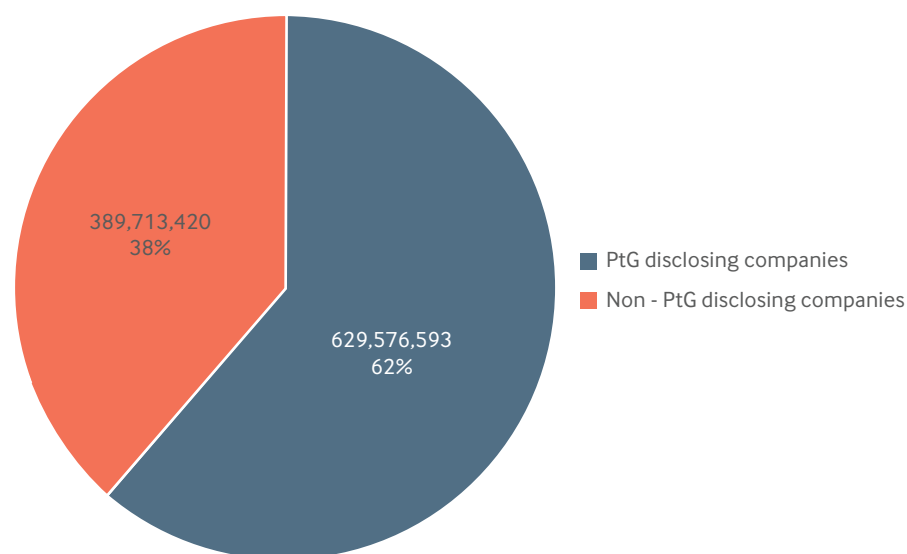
38 Although this briefing focuses on the mining sector, petroleum companies from these countries also produce PtG reports. Companies producing PtG reports on the petroleum sector include, e.g., Total and Tullow Oil.

39 Each company's name is hyperlinked with its PtG reports on its website. In addition, reports can be accessed through the Canadian government's ESTMA portal and the UK Companies House portal. NRG's resourceprojects.org portal also contains all global PtG data in a standardized, machine readable format.

Glencore PLC	United Kingdom	2015 - 2019	Katanga	79,275,000
	United Kingdom	2015 - 2019	Mutanda	513,467,000
Ivanhoe Mines Limited	Canada	2016 - 2019	Kipushi	2,700,000
	Canada	2016 - 2019	Kamoa-Kakula	31,450,000
	Canada	2016 - 2019	DRC Regional Exploration	310,000
Katanga Mining Limited ⁴¹	Canada	2016 - 2018	Kamoto Copper Company S.A.R.L.	79,275,251
Loncor Resources Incorporated	Canada	2016 - 2019	Ngayu	326,490
Lundin Mining Corporation	Canada	2017	Tenke Fungurume Mine	...

PtG disclosing mining companies contribute the majority of mining revenues in the country. Of the \$1.02 billion in mining company payments disclosed in the DRC's 2016 EITI report, PtG-disclosing companies paid \$630 million, or 62 percent. (See figure 3.) This figure does not include payments made by Barrick Gold related to Kibali as operator of the mine. If Barrick were to disclose payments made for this mine, PtG disclosing company payments would equal \$710 million, or 70 percent, of total payments.

Figure 3. Share of total mining revenue in the 2016 DRC EITI report disclosed by PtG reporting companies (USD)

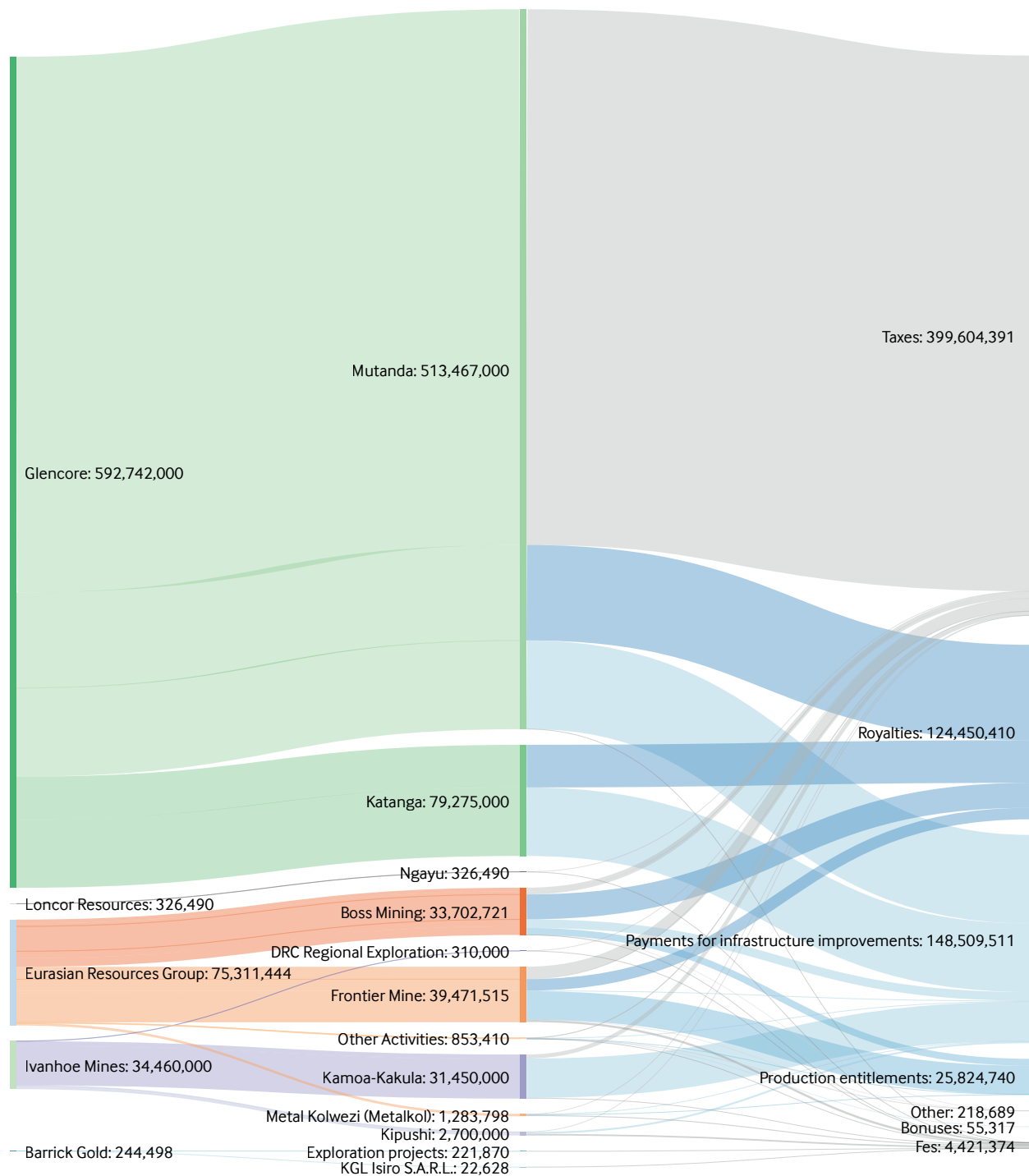


In 2018 alone, six mining companies (Barrick Gold, Eurasian Resources Group, Glencore, Ivanhoe Mines, Katanga Mining and Loncor Resources) disclosed \$703 million in payments to 22 DRC governments entities attributed to nine mining projects. In the DRC, taxes and payments for infrastructure improvements are the most significant categories reported in PtG reports, followed by royalties and production entitlements. (See figure 4.) Reports do not record any dividends to the DRC state or SOEs. We analyze each payment type in more detail in section 4 of the report.

40 Randgold Resources and Barrick Gold merged in 2019. Previously, both companies had reported separately for the projects listed in the table. However, Barrick Gold has not reported on its largest project in the DRC, Kibali Gold Mine, because it controls an equal 45 percent share in the project together with AngloGold Ashanti, which is not required to produce a PtG report. See Barrick Gold, 2019 ESTMA report, p. 5, barrick.q4cdn.com/788666289/files/sustainability/Barrick-2019-Extractive-Sector-Transparency-Act-Report.pdf.

41 Due to Glencore's stake in Katanga Mining, both companies have disclosed payments made by Katanga for its Kamoto Copper Company.

Figure 4. 2018 mining company payments to DRC government entities (USD)⁴²



42 We removed Katanga Mining's disclosures for Kamoto Copper Company from this graph as they are a duplication of those reported by Glencore for Katanga as a result of Glencore's ownership stake in Katanga Mining.

3. Using PtG reports to support the DRC's EITI reporting

The EITI 2019 Standard requires project-level reporting for financial years ending on or after 31 December 2018. This will require DRC EITI to disclose its reporting at the project-level. (See box 3). PtG reporting shows that in the DRC, the vast majority of payments are attributable to a specific project. (See table 3). DRC EITI can use PtG reports to identify payments made by project and implement project-level reporting in line with the EITI International Secretariat's four step guide.⁴³ PtG reports can also help DRC EITI address the corrective actions that were prescribed in its validation process that pertained to comprehensive disclosures and payment material identification.

Box 3. 2019 EITI Standard project-level reporting requirement

The 2019 EITI Standard details the transparency requirements and expectations to which all EITI implementing countries must adhere.⁴⁴ The 2019 Standard contains improvements to transparency requirements in several important areas including: environmental reporting, employment data disaggregated by gender, commodity trading transparency and contract transparency.

Another important area of improvement is the EITI's project-level reporting requirement, which will now be proactively implemented by companies and governments. The EITI Standard now provides clarity around the precise definition of "project" that all EITI countries will use for reporting on fiscal years ending on or after 31 December 2018. EITI's new definition of "project" will be based on the contract or other legal agreement between a government and company. It will align with the definition present in the EU's extractives transparency law (Chapter 10 of the EU Accounting Directive), which will facilitate harmonization across payment disclosures. As a result, the next EITI report, on 2018, must include disclosure of payments at the project-level.

STEP 1. IDENTIFYING LEGAL AGREEMENTS UNDER THE DEFINITION OF 'PROJECT'

Each EITI reporting cycle begins with a scoping study through which the DRC EITI technical secretariat establishes the scope of companies for inclusion in that year's report. In the past, the fragmented, parafiscal and opaque nature of payments has made it difficult for the EITI scoping study to identify all material projects, payment streams and receiving entities that the EITI report should cover.⁴⁵ As the national EITI secretariat sets out to implement project level reporting requirements, PtG reports can help facilitate the scoping study by providing data on payments made by projects, in alignment with the revised mining code's mandatory requirement to report separately on each mining project.⁴⁶

Currently, DRC EITI reports at the level of legal entity. In some cases, legal entities already correspond to a project as defined by the EITI requirement either because they are single asset entities or because legal agreements group interconnected licenses into

43 EITI International Secretariat, *Guidance note 29 on project-level reporting* (2020), eiti.org/GN29.

44 EITI, *The EITI Standard* (2019), eiti.org/document/eiti-standard-2019.

45 POM, *contribution à la détermination du périmètre et seuil de matérialité du rapport ITIE-RDC 2012* (2014), www.itierdc.net/wp-content/uploads/2016/04/SC3-1.pdf.

46 Government of the DRC, DRC mining code 2018, Article 1, 29bis. "Mine distincte : mine distincte d'une autre mine existante et de ce fait nouvelle, qui fait l'objet d'un nouveau droit minier d'exploitation ou d'un contrat d'amodiation, dès lors qu'elle concerne un gisement distinct nécessitant des méthodes d'exploitation et des procédés de traitement séparés ainsi que des moyens de production nettement individualisés, ou du fait de leur éloignement ou de leurs conditions d'exploitation, nécessitant la création d'installations minières distinctes".

a project.^{47,48,49} Regardless, according to the EITI international secretariat's assessment, overall, the 2016 EITI report only offers partial project-level reporting.⁵⁰ Several companies, the SOE Gécamines and Ruashi Mining, for example, hold several non-interconnected permits and do not report separately for each permit. PtG reporting of mining companies, and by the joint venture partners of SOEs, can be useful for understanding which projects different SOE revenues relate to.

STEP 2. IDENTIFYING WHICH REVENUE STREAMS SHOULD BE REPORTED BY PROJECT

PtG reports require companies to disclose payments by type and by government entity. This reporting framework also allows for disclosure of payments that are not attributed to any one project. Therefore DRC EITI can use PtG reports to identify which revenue streams companies should report on at the parent company level so as to not artificially attribute payments at the project level. These can help EITI verify that it captures all company-level payments that exceed the materiality threshold in EITI reports, improve accuracy of payments reporting and address reporting discrepancies. As an example, in 2018, ERG disclosed over \$850,000 in taxes, royalties, fees and production entitlements not attributed to any of its major mining projects (Frontier, Boss, or Metalkol). DRC EITI can use these disclosures to engage with ERG and identify what these payments related to and why they did not attribute the payments to a specific project.

STEP 3. IDENTIFYING WHO SHOULD REPORT WHAT

According to the EITI secretariat's guidance for defining project level reporting, "in arrangements which involve multiple parties it might be necessary to identify what kind of payments are effectuated by the different parties to the contract. It might also be necessary to look at the payments effectuated by different companies or received by different government bodies, including SOEs."⁵¹ In the DRC's mining sector, such situations can arise with project-level payments made by companies with minority shareholding in a joint venture, as well as revenues collected by government entities outside those expected based on the mining code and based on terms not available to the public. In addition, because PtG reporting formats are less detailed and pre-determined than EITI reporting formats, they have yielded information on payment types and government recipients that have been missing in EITI reporting, or to report on the same payment streams differently in PtG reports and EITI reports. We discuss examples of these situations below and identify how stakeholders can compare the two reporting systems to verify declarations.

Identifying missing payments and government recipients in EITI reports

PtG reports point to mining sector payments made to a multitude of government agencies. EITI DRC can use PtG reports to identify government entities outside of those legislated in the mineral fiscal code that should be included in the reconciliation process for project payments in order to verify the nature and basis of the payments disclosed by mining companies.

47 This form of project-level reporting occurs when a company operates only one mine in the country, thereby any payments made by this company are by default made in relation to that one project. One example of this is Frontier SPRL covering license PE 13080.

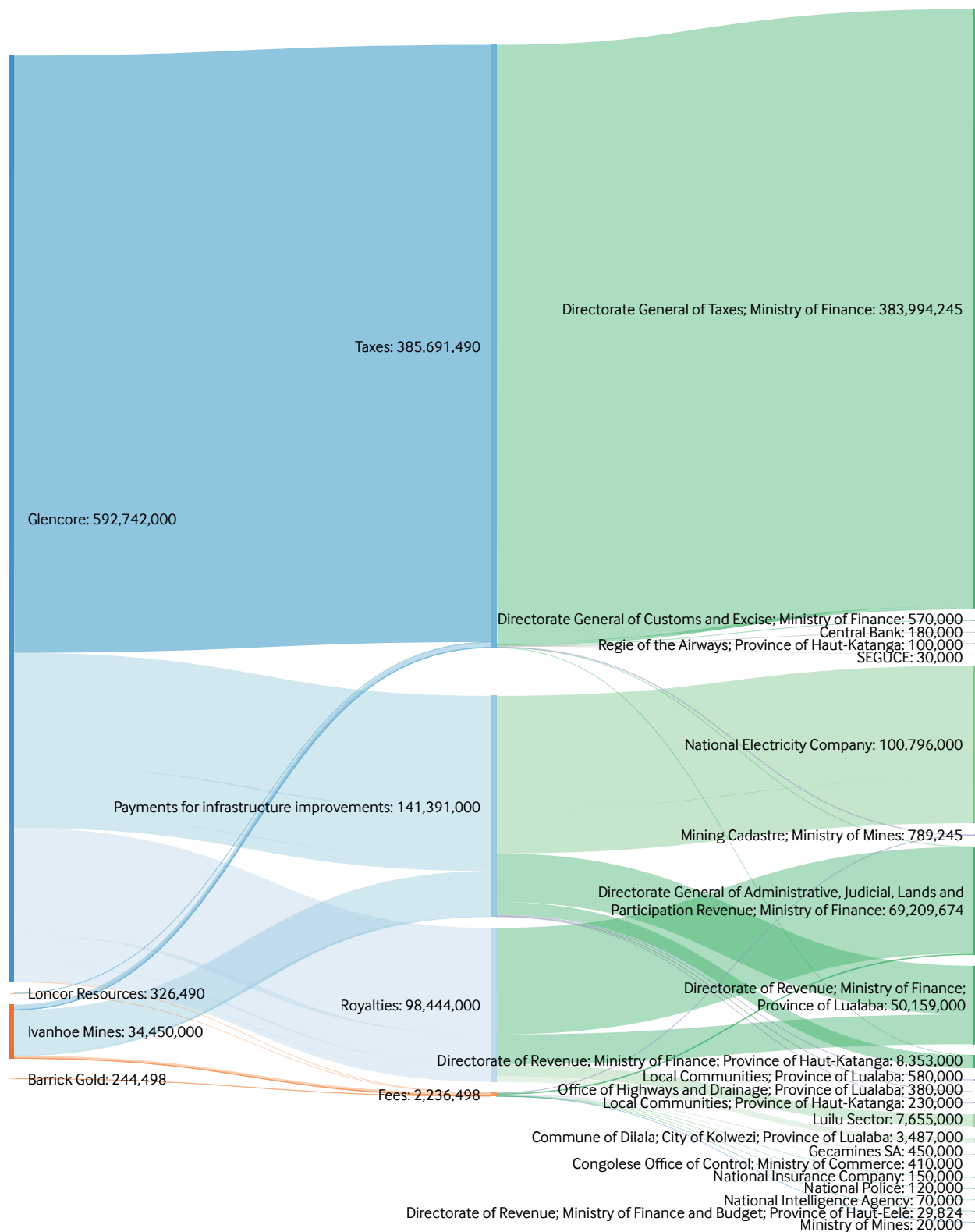
48 If multiple agreements are substantially interconnected, the multistakeholder group must clearly identify and document which instances are considered a single project.

49 Such as Compagnie de Traitement des Rejets de Kingamyambo/Metalkol, covering licenses AECF 3198, 3199, 4282, 4283, 4284, 4285, 4286.

50 Email communication with EITI international secretariat as part of the research process for this briefing.

51 EITI International Secretariat, *Guidance note 29 on project-level reporting* (2020), eiti.org/GN29.

Figure 5. 2018 mining company payments to DRC government entities (USD)⁵²



Government entities that the mining fiscal regime designates as recipient entities for taxes and royalties collected a large share of mining revenues: the Directorate General of Taxes in the Ministry of Finance (Direction Générale des Impôts, DGI) receives the

52 We removed Katanga Mining’s disclosures for Kamoto Copper Company from figure 5 as they are a duplication of those reported by Glencore for Katanga as a result of Glencore’s ownership stake in Katanga Mining. We also did not include Eurasian Resources Group’s payments in figure 5 as ERG did not disclose its payments by recipient government entity.

majority of taxes, while the Directorate General of Administrative, Judicial, Lands and Participation Revenue (Direction Générale des Recettes Domaniales, Judiciaires et de Participation, DGRAD) received royalties. However, not all recipient trends correspond to the fiscal regime: the National Electricity Company received payments for infrastructure improvements and provinces in the Katanga region received a significant share of revenues.

Figure 5 also shows a series of smaller but significant payments received by government entities beyond those stipulated in the mining code. Between 2015 and 2018, the years for which PtG reporting is available, a total of 45 government entities received payments from mining companies at least once. This is an indication of the parafiscal nature of many payments. This could be problematic because multiple agencies collecting revenues can divert revenue streams away from the national Treasury.⁵³

The EITI reconciliation process did not include some of these payments. Case 1 below describes payments made by Banro to the Center for Expertise, Evaluation and Certification of Precious and Semi-Precious Mineral Substances (Centre d'Expertise, d'Evaluation et de Certification des substances minérales précieuses et semiprécieuses, CEEC), a government entity not included in the EITI reconciliation process.

Case 1. Banro's fees to the Center for Expertise, Evaluation and Certification of Precious and Semi-Precious Mineral Substances (CEEC)

In its PtG reports and EITI reports from 2016 and 2017, Banro has declared payments of \$2,680,000 each year to the Center for Expertise, Evaluation and Certification of Precious and Semi-Precious Mineral Substances (CEEC). The mandate of CEEC is to evaluate diamonds, gold, coltan and other precious and semi-precious minerals; provide technical support to trading counters, middlemen, and foundries through monitoring and controlling mineral and financial flows; certify payment of mineral export taxes; training Congolese mineral evaluators; promote the exploitation of diamonds, gold, and coltan and other precious and semi-precious substances; improve the price commanded by Congolese precious and semi-precious minerals; and fight against fraud.⁵⁴ The 2016 EITI scoping report noted that CEEC collects material payments and recommended their inclusion in future reports.⁵⁵ As a result, the 2017 EITI report includes declarations from companies including Banro on payments to CEEC. However, the CEEC should limit the *taxe remuneratoire* that it collects to artisanal miners. Therefore, the exact basis and terms of payments made by Banro is not clear. CEEC itself did not provide a declaration for the EITI process despite repeated requests from the EITI multi-stakeholder group.⁵⁶ In the future, the EITI secretariat can use PtG reports to identify payments to the CEEC earlier.

The EITI and other stakeholders can use PtG reports to verify royalty receipts by subnational entities. The revised mining code requires mining companies to pay royalties to various entities as follows: 50 percent to the national government (DGRAD), 25 percent to the producing province, 15 percent to the decentralized authority (*entité territoriale décentralisée*, ETD), and 10 percent to a newly created Mining Fund for Future Generations (Fonds minier pour les générations futures, FOMIN). The EITI 2017-18 contextual report notes that royalty payments to

53 IMF, *IMF Country Report No. 19/286, DRC Selected Issues*, (2019), p. 11-12, www.imf.org/~media/Files/Publications/CR/2019/1CODEA2019002.ashx.

54 Government of DRC, *Décret n° 11/28 du 07 juin 2011 fixant les statuts d'un établissement public dénommé Centre d'Expertise, d'Evaluation et de Certification des substances minérales précieuses et semiprécieuses* (2011), Article 4, www.leganet.cd/Legislation/Droit%20economique/Code%20Minier/D.11.28.07.06.2011.htm; PACT, *PROMINES Study: Artisanal Mining in the Democratic Republic of Congo* (2010), p. 86, congomines.org/system/attachments/assets/000/000/349/original/PACT-2010-ProminesStudyArtisanalMiningDRC.pdf?1430928581.

55 DRC EITI, *Contextual report 2016* (2017), p. 17-18, drive.google.com/file/d/1f2944s-319TCZ50nw201xH69j7An3Aaf/view.

56 DRC EITI, *EITI report 2017* (2019), p.10.

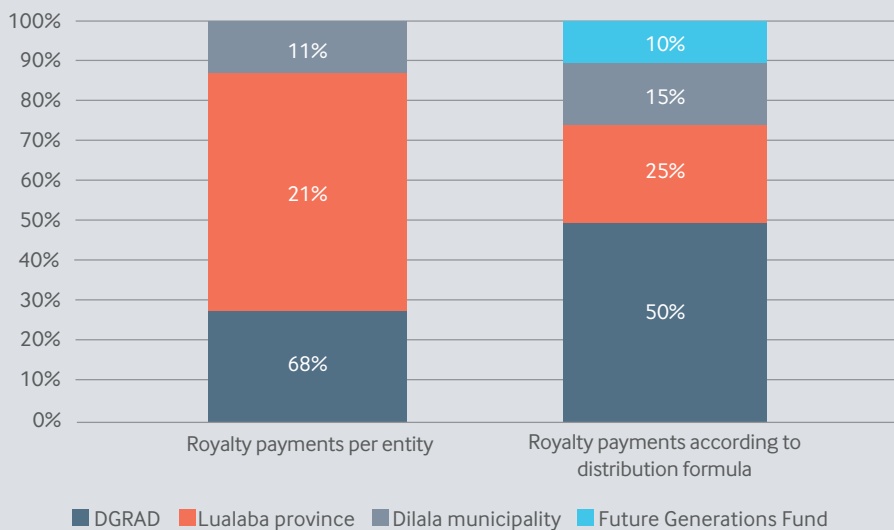
provinces closely corresponded to the formula. However, it recorded deviations between the formula and actual payments at the level of decentralized authorities and the FOMIN.⁵⁷ According to the EITI contextual report, in 2019, mining companies started making payments to the FOMIN. They deposited the payments on a temporary account at the Mining Cadaster, which declared \$8 million received by February 2019. The funds were then transferred to the Central Bank, but neither the Central Bank nor the Ministry of Finance reported receiving payments on behalf of FOMIN.⁵⁸ Direct payments to decentralized authorities and to FOMIN address critical needs for local development.⁵⁹ They also further increase the complexity of how revenues flow from mining companies through the DRC's government finances, making transparency and traceability of these revenues critical.

Lack of clarity in regulations regarding to which subnational entities companies should make payments when mines overlap several decentralized authorities, as well as the slow implementation of the FOMIN are among key obstacles to the mining code's effective implementation.⁶⁰ The effects can be seen in Kamoto Copper Company's PtG reports in Case 2 below.

Case 2. Kamoto Copper Company royalty trends show 2018 mining code implementation challenges

Figure 6 shows royalty payment distribution by Kamoto Copper Company (KCC) in 2018, as reported in Glencore and Katanga Mining PtG reports. In 2018, the split of KCC's payments to different level entities did not fully correspond with the royalty sharing formula for three reasons. First, the revised mining code's provisions took effect in the middle of 2018. Second, Glencore reports that because of initial uncertainty over which decentralized authority is eligible for the 15 percent share, it initially withheld the payment. Upon resolving the uncertainty, KCC made the payment to Dilala. Third, Glencore did not make any payments to the FOMIN in 2018 because it had not yet received formal notice of collection.⁶¹

Figure 6. KCC reported royalty payments by government entity, 2018



57 DRC EITI, Contextual report 2017-2018 (2019), p.82-83.

58 Ibid., p.86-87.

59 Okenda, J P. *Innovations de la nouvelle législation minière de la RDC : opportunités, défis et perspectives de mise en œuvre* (NRGI, 2019), resourcegovernance.org/sites/default/files/documents/innovations_de_la_nouvelle_legislation_miniere_de_la_rdc_opportunités_defis_et_perspectives_de_mise_en_oeuvre_0.pdf.

60 Okenda, *Innovations de la nouvelle législation minière de la RDC*.

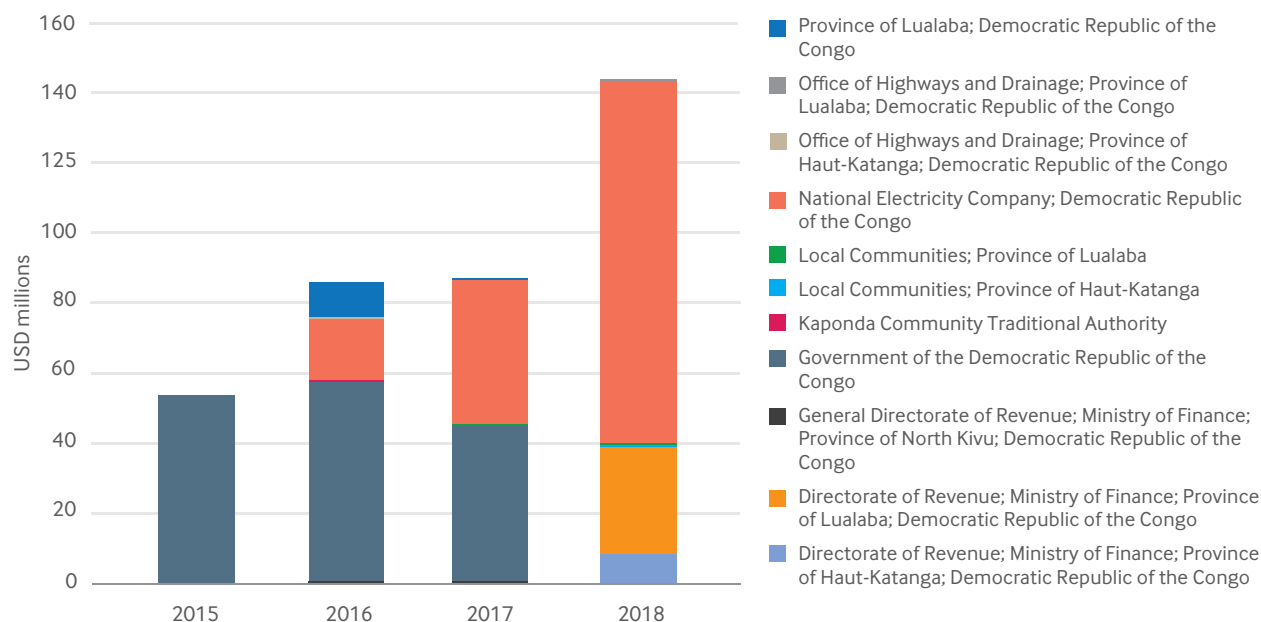
61 Email communication with Glencore PLC, 10 February 2020.

Identifying potentially missing payment types in EITI reporting

Our analysis notes two types of payments where PtG reports provide additional information not captured in EITI reports.

Payments for infrastructure improvements are the second-largest type of payments reported in PtG reports. They can surpass key revenue streams such as royalties in size. The largest contributor to infrastructure payments are the two Glencore projects, Mutanda and Kamoto Copper Company (KCC). (See figure 7.) The largest recipient of payments for infrastructure improvements is the national electricity company (*Société Nationale d'Electricité*, SNEL). According to Glencore, its payments to SNEL are loans for rehabilitation of SNEL's generation and transmission infrastructure. SNEL pays the debt and interest back to KCC and Mutanda by way of deductions from the power invoices payable by the two mines.⁶² Ivanhoe has provided similar explanation for its payments to SNEL.⁶³ These payments should not be confused with those reported as social and environmental payments in EITI reports. Civil society has suggested that these payments should be included in the scope of EITI reporting on the basis that they are material payments to government entities.⁶⁴ Although the DRC EITI multistakeholder group decided not to include them in the reporting scope, covering these payments in PtG reports helped raise a debate on their size, nature and basis and improve accountability. This type of exposition could help gain understanding of other payments reported as infrastructure improvement payments.

Figure 7. Payments for infrastructure by recipient government entity, 2015 to 2018⁶⁵



62 Email communication from Glencore PLC, 10 February 2020.

63 Ivanhoe Mines, *Notice annuelle: Pour l'exercice clos le 31 décembre 2017*, (2018), p. 31, www.sedar.com/FindCompanyDocuments.do; PWYP and World Vision, *Mini étude de cas de PCQVP-Canada – Examen des données par projet au titre de la LMTSE* (forthcoming).

64 OEARSE and Resource Matters, *Publiez Ce Que Vous Consommez: Inclure les paiements d'électricité dans le rapport ITIE-RDC 2016* (2016), congominer.org/reports/1486-inclure-les-paiements-d-electricite-dans-le-rapport-itie-rdc-2016.

65 Figure 7 includes payments for infrastructure improvements reported by Glencore, Alphamin Resources Corporation and Ivanhoe.

Payments related to sales of mining assets may go undetected in EITI reporting if there is little public information about these transactions. Among the corrective measures required by the 2019 EITI validation are comprehensive “public disclosure of assets awarded and transferred,” “publicly available list of companies in which the state or a SOE holds equity” and a “description of the terms associated with the equity.”⁶⁶ Case 3 below illustrates how PtG reports provide information on a transfer of equity to the DRC government which has, to date, not been captured in EITI reports. This is an example of how DRC EITI can use PtG reports to improve comprehensiveness and address the corrective action.

Case 3. Ivanhoe's reporting on the Kamo-Kakula transaction

Ivanhoe Mining's Kamo-Kakula is set to be Africa's largest and the world's second-largest copper mine.⁶⁷ DRC government ownership of the project was initially five percent, per the 2002 mining code's minimum requirement for new licenses. In November 2016, Kamo Holding, the subsidiary of Ivanhoe Mining and Zijin Mining, transferred an additional 15 percent ownership stake to the DRC government. Instead of paying for the additional equity in cash, the government offered the following terms, stated in a draft transfer agreement:

- 1 Transfer of one Congolese Franc to Kamo Holding
- 2 Ratification and validation of the Kamo license acquisition process and exemption of Kamo from litigation in the DRC in association to the transaction
- 3 Support for Kamo to obtain preferential treatment offered under a 2014 cooperation projects law (put in place for the Sicominex project),^{68, 69}

The application of the preferential treatment law would mean that the project would be exempt from taxes and payments. Ivanhoe's 2016 PtG report included a bonus payment of \$105 million reflecting the value of the equity it transferred to the DRC government. Ivanhoe's reporting allows for further inquiry, particularly about whether the additional equity incurred by the DRC adequately compensates for the lost taxes and revenues resulting from the favorable treatment promised for the Kamo-Kakula project. At time of publication of this report, Chinese investors have injected more capital into Ivanhoe and the Kamo project over the past years, and there has been no public announcement about application of preferential treatment to the Kamo-Kakula project. The government has not published the final version of the equity transfer agreement. It has not declared the transfer in EITI reports either: the contextual EITI report for 2017 records that DRC's participation in the project remained at five percent from 2016 to 2018.⁷⁰

Verifying amounts reported

The EITI multi-stakeholder group can verify amounts declared by companies and government entities against PtG reports. This is particularly relevant when it comes to payments made under contractual terms and to state-owned enterprises, and highlights the need for comprehensive publication of contracts. Case 4 presents an example of comparing contractual fees reported by Lundin Mining for the Tenke Fungurume Mine (TFM) in PtG and EITI reports to support the reconciliation

66 EITI. 'EITI Board decision 2019-55/BM-45', 16 October 2019, eiti.org/board-decision/2019-55

67 Amos et al., *The giant Kamo-Kakula project in the Democratic Republic of Congo* (Journal of the Southern African Institute of Mining and Metallurgy, 2018), www.scielo.org.za/scielo.php?script=sci_arttext&pid=S2225-62532018001100003.

68 *Convention de cession des actions entre Kamo Holding et la République Démocratique du Congo* (2016), www.mines-rdc.cd/resourcecontracts/contract/ocds-591adf-5851624654/view#/pdf. Authors' translation.

69 Government of DRC, Loi n°14/005 portant régime fiscal, douanier, parafiscal, des recettes non fiscales et de change applicable aux conventions de collaboration et aux projets de coopération du 11 février 2014, congominex.org/system/attachments/assets/000/000/615/original/Loi-du-11-f_C3_A9vri-2014.pdf?1430929400.

70 Government of DRC, EITI report 2017 (2019), p. 55. Ivanhoe Mining did not respond to NRG's queries related to the current status of the 15 percent ownership transaction, the publication of the final version of the related agreement, and the application of the preferential fiscal regime to the Kamo project.

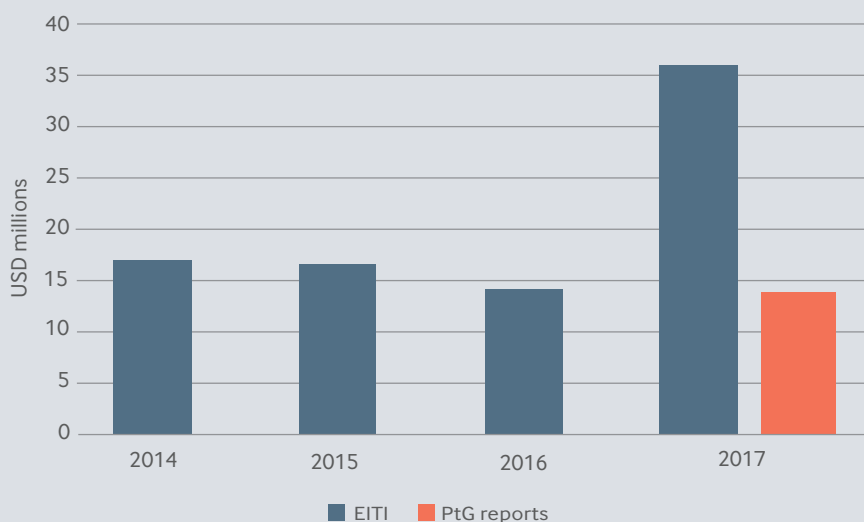
process. It also highlights that without transparency of contracts, confirming the basis of payments is difficult.

Case 4. Lundin mining reports on fees paid to Gécamines

Lundin Mining is a former owner of the Tenke Fungurume Mine (TFM), the DRC's largest copper mine and one of the most significant contributors of government revenues. Lundin is listed in Canada and subject to the Canadian ESTMA law. In its 2017 PtG report, it reported paying \$14.6 million in fees to Gécamines. EITI data from 2014 to 2016 shows that TFM paid consultancy fees to Gécamines ranging between \$14 to 17 million per year. Upon consulting the 2017 EITI report, we note that TFM's consultancy fees increased to over \$37 million, which exceeds the fees reported in Lundin's PtG report for the same year.⁷¹ Lundin has not responded to NRG's queries on the difference.

The nature of consultancy services that TFM acquired from Gécamines and the basis for calculation of related fees, which represent one type of a parafiscal payment, are not public. The joint venture contract signed between TFM and Gécamines states that "the parties agree to enter into a consultancy agreement."⁷² Gécamines nor these mining sector authorities have made this consultancy agreement public despite the legal requirement to do so. In 2018, China Molybdenum bought Lundin and Freeport McMoran's shares in TFM and now owns 80 percent of TFM, with Gécamines retaining 20 percent. There is no information in the public domain on whether the consultancy arrangement continues between TFM and Gécamines under the new owner. As China Molybdenum is not subject to PtG reporting, this source of information is no longer available for payments by TFM, one of the largest copper and cobalt mines in DRC.

Figure 8. Consultancy fees to Gécamines



STEP 4. AGREEING ON A REPORTING FRAMEWORK AND TEMPLATES

As PtG reporting companies generate the majority of mining revenue, PtG reports can make project-level reporting within EITI more efficient. Beyond comparing the two reporting systems, in future, they could gradually be merged. This would allow the EITI reconciliation process to use PtG reports as a starting point, improving the efficiency of data collection. It would also assist DRC EITI in mainstreaming the disclosure of project-level payment data according to systematic disclosures encouraged by EITI. (See box 4.)

71 Government of DRC, *EITI report 2017* (2019), p. 41.

72 Générale des Carrières et des Mines (GECAMINES), Lundin Holdings Ltd, Tenke Fungurume Mining S.A.R.L., Joint Venture Agreements, 2010, Article 15, www.resourcecontracts.org/contract/ocds-591adf-2701755628/view#.

Box 4. EITI systematic disclosure

As the EITI continues to develop, there is increasing expectation that extractive sector transparency will not be confined to EITI reports but will be integrated into governments' and companies' public disclosures. EITI now expects implementing countries to develop plans to incorporate EITI implementation in company and government reporting. The EITI 2019 Standard noted that to achieve outstanding progress, implementing countries will fulfil EITI requirements 'through systematic disclosures in government and company systems.'⁷³ PtG reports provide DRC EITI an opportunity to incorporate existing company disclosures into their reporting requirements.

Developing a common reporting framework that uses a consistent nomenclature that matches with DRC-specific fiscal and contractual terms would enable a company's PtG report to satisfy its company reporting requirement under EITI. The mapping in Annex I of this report can serve as a starting point for development of a common reporting framework.

DRC government agencies can also benefit from PtG reports to meet reporting requirements and to integrate payment data into regular government reporting. Article 25 of the mining regulation requires all government entities to report quarterly on revenues and other statistics.⁷⁴ To comply with this requirement, the CTCPM (Cellule technique pour coordination et planification minière), the technical coordinator of the mining sector under the Ministry of Mines, is constructing an online data portal that will include up-to-date statistics on mining sector revenues. The data portal can use PtG reports for auditing and verifying payment data from government systems and EITI reports. Until the portal is complete, PtG reports are the only source of timely, disaggregated information on revenues according to the revised mining code. (See Case 5.)

⁷³ EITI, *The EITI Standard* (2019), [eiti.org/files/documents/eiti_standard_2019_en_a4_web.pdf](https://www.eiti.org/files/documents/eiti_standard_2019_en_a4_web.pdf)

⁷⁴ See online portal, which includes placeholders for disaggregated reporting templates: emine.ht2techinfo.cd/. At the time of our research, the portal was yet to be populated with data.

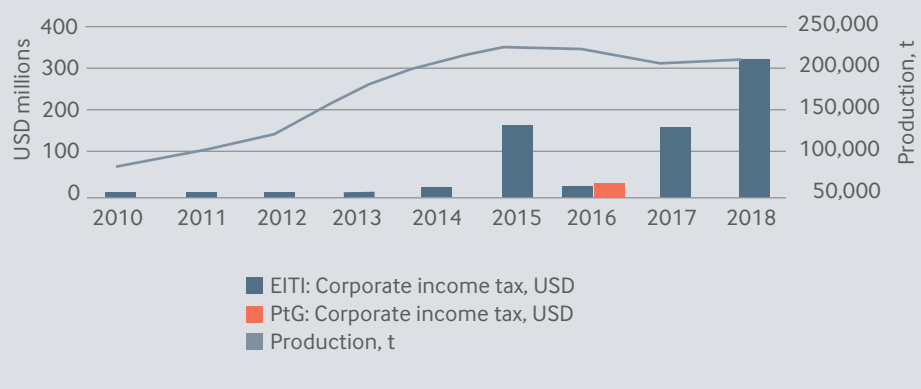
Case 5. Monitoring payments under the revised mining code

The 2018 revision of the mining code aims to increase mining sector government take and contribution to local development. It set a superprofit tax, increased royalties for all minerals and increased government equity stake. In November 2018, the government declared cobalt, coltan and germanium strategic substances by decree, attracting a royalty rate of ten percent.⁷⁵ The revised code also introduced a new royalty sharing formula and requires mining companies to contribute a percentage of turnover to a community development fund.

PtG reports show increasing corporate income tax payments from 2017 to 2018 for the most important mining projects in terms of government revenue: Mutanda, Frontier, and KCC. However, the increased tax burden and recent market developments put these revenues at risk.

In 2019, Glencore suspended operations at the Mutanda mine due to lower cobalt prices, lowering ore grade qualities and increased tax burden.^{76,77} Other companies have also announced financial pressures due to lower prices and a more stringent fiscal regime.⁷⁸ Since March 2020, the economic downturn and lower commodity prices caused by the coronavirus pandemic makes it particularly critical that the government and other stakeholders are able to accurately forecast government revenues.⁷⁹

Figure 9. Mutanda mine corporate income tax payments and copper production, 2010 to 2018



75 Government of the DRC, 'Décret n°18/042 du 24 novembre 2018 portant déclaration du cobalt, le germanium et la colombo-tantalite comme des substances minérales stratégiques', congominer.org/system/attachments/assets/000/001/533/original/Strategic_Substances_Decree.pdf?1543917928.

76 "Glencore's Mutanda Closing May Be Bargaining Tactic with DRC," *Africa Report*, 15 August 2019, www.theafricareport.com/16284/glencores-mutanda-closure-may-be-bargaining-tactic-with-drc.

77 Reopening will depend on the economic feasibility of mine expansion under the 2018 mining code. Email communication with Glencore, 10 February 2020.

78 In addition to Mutanda, the second largest cobalt producer, TFM, issued a warning of being in "deficit zone" following lower prices and higher taxes, and Boss Mining was put under care and maintenance while it "considers new production methods."

79 Okenda, Jean Pierre, *How the DRC Can Defend its Mining Interests During the Pandemic* (NRGI, 2020), resourcegovernance.org/blog/drc-defend-mining-pandemic-congo-coronavirus.

4. Strengthening PtG reports

PtG regulations in the EU, Canada and Norway are necessarily broad and adaptable to be fit for purpose as a reporting template for mining, oil and gas companies reporting on payments for extractive activities in all countries of operation. As described in the previous section, the seven broad categories have been useful in surfacing certain payments not reported through EITI. However, due to a lack of reporting templates tailored to the DRC's specific fiscal and parafiscal regime, companies operating in the DRC report on payments inconsistently across years and compared to each other. Companies have missed opportunities to report on important payments, especially those of a parafiscal nature. For PtG reports to maximally contribute to the EITI process and transparency on mining sector revenues in the DRC more broadly, their quality and level of detail can be significantly improved.

KEY AREAS OF PTG REPORTING CHALLENGES

Reporting quality is particularly limited in seven areas: 1) payments to SOEs; 2) taxes; 3) provincial taxes on road use and exports; 4) Customs duties and export taxes; 5) community development contribution; 6) Government entities; and 7) Other compliance and coverage issues.

Payments to SOEs

In contrast to the importance of payments to SOEs in the EITI data, 2016 to 2018 PtG reports only record two transactions with SOEs. The lack of coverage of SOE transactions in PtG reports is likely linked to their parafiscal nature. (See case 4 on TFM's consultancy fees above). Moreover, payments for purchase of mining assets are not explicitly part of PtG reporting guidance. (See, for example, case 6, which highlights how ERG's PtG report fails to report on a payment related to the purchase of assets.)

Poor coverage of payments to SOEs potentially violates PtG reporting requirements, which cover payments made to SOEs "exercising or performing a power, duty or function of government."⁸⁰ Although DRC's SOEs are structured as limited liability companies, they perform government functions and exercise powers granted by the mining code, which extend beyond those of private mining companies operating in the country. The 2018 revised mining code and other preceding laws formalized their role in selling mineral assets and collecting signature bonuses for assets in which they have invested.

Importantly, not covering SOE payments limits the usefulness of PtG reports in the DRC. In the past, SOEs have sold equity shares in important mining assets under market value through politically connected intermediaries.⁸¹ The DRC holds over 60 percent of global reserves of cobalt and significant deposits of other minerals and metals such as lithium needed for battery production in an electrified society. SOEs own significant shares in exploration and production licenses of these

80 NRCAN, *ESTMA Guidance* (2018), www.nrcan.gc.ca/sites/www.nrcan.gc.ca/files/estma/pdf/ESTMA%20Guidance%20-%20Version%202_1%252C%20July%202018.pdf.

81 Africa Progress Panel, *Africa Progress Report: Equity in Extractives* (2013), p. 56, static1.squarespace.com/static/5728c7b18259b5e0087689a6/t/57ab29519de4bb90f53f9fff/1470835029000/2013_African+Progress+Panel+APR_Equity_in_Extractives_25062013_ENG_HR.pdf; Global Witness, *Secrecy Surrounding Glencore's Business Deals in The Democratic Republic of Congo: Risks Exposing Shareholders to Corrupt Practices* (2012), www.globalwitness.org/documents/17969/DRC-GW_secret_sales_memo_May_9_2012_ENG.pdf.

minerals coveted by investors.⁸² PtG reports should fully cover payments made to SOEs, including purchasing equity from government-controlled entities, to ensure transparency of transactions and their value.

Case 6. Metalkol equity sales

Located in the DRC's Copper Belt province of Lualaba, Metal Kolwezi (Metalkol) is one of ERG's key copper and cobalt assets in the DRC.⁸³ In 2016, Gécamines and its subsidiary SIMCO sold their collective 25 percent share in the Metalkol project for \$170 million.⁸⁴ According to the sales contract, Gécamines would collect this amount in three instalments, \$80 million at the signing of the agreement, \$40 million thirty days from the reception of the first instalment and \$50 million one year after the sale's completion.⁸⁵

In 2016, Gécamines declared to EITI that it had received a portion of \$110 million.⁸⁶ Contrary to this declaration, EITI's review of Gécamines' 2016 financial statement showed a remaining debt to Gécamines of only \$43 million, indicating that \$127 million had been settled as part of the transaction.⁸⁷ The EITI declaration by Gécamines identified the payment coming from an offshore entity. Its beneficial owner was unknown, as Metalkol had not declared its beneficial owners as part of the EITI process and Metalkol initially denied the acquisition.⁸⁸ However, correspondence from Highwind Properties, an ERG subsidiary, confirmed the payment came from this company controlled by ERG.⁸⁹ Gécamines did not put these assets out for public tender nor disclose the sales contract within 60 days of the transaction, as required by a 2011 government decree.⁹⁰

Transparency of asset sale contracts, payments and beneficiaries is critical because in the past, the DRC's mining assets have been sold under market value and then resold for higher value via intermediary companies located in offshore jurisdictions.⁹¹ Therefore, it is problematic that ERG, Metalkol's parent company subject to the EU's accounting directive, did not report on the payments made to Gécamines in its PtG reports. This delayed discovery of the transaction until the 2016 EITI report came out. On the contrary, ERG reported a negative royalty of \$17 million in its PtG report for 2016⁹², noting that the amount relates to a refund from Gécamines as a former joint venture partner. The absence of full disclosure of remaining associated contractual documents in the public domain limits understanding of the basis of this refund.

82 DRC EITI, *EITI contextual report 2017*, p. 56.

83 Partnership agreement between the DRC, Gécamines and the Highwind Group Properties Limited regarding the exploitation of the Kingambyambo, Musonoie and Kisobantu Valley discharge, Article 2, (5 April 2016), drive.google.com/file/d/16W5nCJ7Qw3_aJTpHGvukCl3TyDe_3ipU/view.

84 MoU of April 5, 2016 between the Highwind Group Properties Ltd, Dezita Investments SARL, the Gécamines in the presence of the Kingambyambo Waste Treatment Company, www.mines-rdc.cd/resourcecontracts/contract/ocds-591adf-7609261874/view#; "Carter Center Urges DRC to Disclose Sale Contract for State-owned Mining Company's Metalkol Share", Carter Center, 26 October 2016, congomines.org/system/attachments/assets/000/001/194/original/Carter_Center_Metalkol-Asset-Sale_Press-Release_2016-10-26_ENGLISH.pdf?1477652165.

85 Partnership agreement between the DRC, Gécamines and the Highwind Group Properties Limited regarding the exploitation of the Kingambyambo, Musonoie and Kisobantu Valley discharge, Article 3.2, (5 April 2016), drive.google.com/file/d/16W5nCJ7Qw3_aJTpHGvukCl3TyDe_3ipU/view.

86 DRC EITI, *EITI 2016 reconciliation report*, (2018), p. 7, eiti.org/document/2016-democratic-republic-of-congo-reconciliation-eiti-report.

87 DRC EITI, *Contextual report 2016, ITIE-DRC, complementary report*, (2018), p.45, drive.google.com/file/d/1JVPyPgiGzieGjRe-N8ux-2l3s6lx92zp/view.

88 ERG, *Metalkol RTR Clean Cobalt Performance Report* (2019), p. 16, www.ergafrica.com/wp-content/uploads/Metalkol-Clean-Cobalt-Performance-Report_July-2019.pdf.

89 DRC EITI, *EITI 2016 reconciliation report*, p. 20.

90 "Congo urged to release contract on Metalkol stake sale," *Reuters*, 26 October 2016. www.reuters.com/article/congo-mining/congo-urged-to-release-contract-on-metalkol-stake-sale-idUSL8N1CV90S.

91 Natural Resource Governance Institute, *Copper Giants: Lessons from State-Owned Mining Companies in the DRC and Zambia* (2015), resourcegovernance.org/sites/default/files/nrgi_NMC_English.pdf.

92 In response to questions posed by NRG on its PtG report, ERG mentioned that the definition of payments to governments to be declared according to point 5 of article 41 (Chapter 10) of the Directive on accounting and transparency of EU does not include payments for the purchase of assets from a state body or public enterprise, as the reason for non-reporting.

Some payments to SOEs, such as royalties and consultancy fees, are deductible from profit-based taxes. According to independent models, the DRC's fiscal regime is highly dependent on profit-based taxes for mining sector revenues.⁹³ However, research on profit taxes has showed they consistently deliver lower revenues than estimated.⁹⁴ One reason is that parafiscal payments to SOEs place an additional burden on mining projects' profitability and thus reduce the base on which the central government collects tax revenues. Prior NREGI analysis has shown that in 2015 alone, Ruashi Mining would have paid three times its actual corporate income tax (\$10.4 million) if payments to Gécamines had not increased its costs and reduced profits.⁹⁵ Covering all payments to SOEs helps reporting companies communicate the full extent of their fiscal and parafiscal contribution in the DRC.

Taxes

EITI reporting in the DRC separates three categories under profit taxes: corporate income tax, withholding tax (on dividends and on services by non-resident service providers) and ordinary and extraordinary taxes on income and profits. In addition, there are other taxes payable by natural resource companies. In contrast, PTG reporting only includes one category for taxes. This single category appears to be insufficient for capturing the DRC's different taxes and parafiscal tax-like payments. Glencore and ERG's PtG reports have voluntarily disaggregated profit-based taxes according to the DRC's fiscal regime, allowing greater complementarity between the two reporting systems.

Provincial taxes on road use and exports

Provincial taxes on road use and concentrate exports are a major example of payments reported in an inconsistent manner in PtG reports due to their parafiscal nature. Ivanhoe has reported payments made to the Office of Highways and Drainage in the Province of Lualaba for infrastructure improvement. If this payment is effectively the provincial tax for road use collected by the same agency, Ivanhoe should record it as a tax instead of an infrastructure improvement payment, for sake of clarity and comparability with taxes on road use and on copper concentrate exports (other taxes payable by natural resource companies) in EITI reports. From 2016 to 2018, ERG reported payments of production entitlements for its Frontier, Boss and Metalkol projects despite that there being no production entitlements in the DRC's legislated fiscal regime, nor are they known to exist in the contracts of these projects. ERG has clarified that what they reported as production entitlements are the provincial export taxes.⁹⁶ Glencore has labeled the taxes as provincial road taxes and export taxes, which makes it possible to compare them to the DRC fiscal regime.

While PtG reporting requirements exclude export taxes, taxes paid on road use should fall within the reporting scope as they are paid based on production tonnage. In practice, companies can decide to report on both, to communicate the full fiscal contribution they make in the DRC, as Glencore has done.

93 Lassourd, *Fiscalité du nouveau code minier*, p. 18.

94 Carter Center, *Improving Governance of Revenues from the Mining Industry* (2017), p. 4, [congomines.org/system/attachments/assets/000/001/220/original/TCC_EIGP_REV_Improving_Governance_of_Revenues_-_Cross-Cutting_Lessons_%28...pdf?1487024488](https://www.cartercenter.org/system/attachments/assets/000/001/220/original/TCC_EIGP_REV_Improving_Governance_of_Revenues_-_Cross-Cutting_Lessons_%28...pdf?1487024488).

95 Lassourd, *Fiscalité du nouveau code minier*, p. 21.

96 Email communication from ERG in response to NREGI query, 10 August 2020.

Customs duties and export taxes

Customs duties are the largest payment type for the majority of years available in the EITI data. Similarly, export taxes are among the top ten payments according to EITI data, although they have no basis in the mining code.⁹⁷ Due to the size of these payments collected by the Directorate General of Customs (Direction Générale des Douanes et Accise, DGDA), they merit more attention and accountability, but are currently excluded from PtG reporting requirements.

Community development contribution

The 2018 mining code requires that mining companies pay 0.3 percent of gross turnover to a local development fund. The legislator modeled this legal requirement after TFM's mining convention.⁹⁸ However, Lundin mining did not cover community development payments in its PtG report for TFM. Other PtG reports covering payments under the new mining code, effective from mid-2018, show no payments towards this contribution. This is a result of slow implementation of institutional structures to manage community development contributions.⁹⁹

Precedents of similar community development payments from other countries show that in future, when companies start making payments to the local development fund, they should include them in PtG reports. For example, payments made by oil and gas companies to the Niger Delta Development Commission in Nigeria, which are required to pay a three percent levy on their annual budget, have been disclosed under these payments to governments regulations.¹⁰⁰ Similarly, in its report *Under the Surface: Looking into payments by oil, gas and mining companies to governments*, Transparency International EU engaged with Vedanta Resources and confirmed that the royalty payment disclosed in its 2016 PtG report for the Rampura Agucha zinc-lead mine in Rajasthan, India included payments to the District Mineral Foundation.¹⁰¹

Government entities

The quality of reporting on government entities has improved significantly since the first PtG reports covering payments in the DRC in 2015. For example, Glencore has moved from reporting all payments simply to 'Government of the Democratic Republic of the Congo' in 2015, to in most cases naming the specific recipient government entity. Regardless, the lack of standardized naming of entities across years and between companies makes systematic data use difficult. In the most extreme case, companies did not report on recipient entities at all: ERG, which is incorporated in Luxembourg, has only reported on payments by payment type, not by recipient entity. This failure to identify recipient entities makes the declaration significantly less useful. For example, ERG reported over \$6 million in infrastructure payments by the Boss Mining project in its 2018 PtG report. Because there is no legal basis for infrastructure improvement payments in the general fiscal regime, without disclosing which government entity received these payments, it is impossible to understand how they contribute to government revenues and development outcomes. Similarly, lack of clarity on the basis of fees paid to postal, airways and

97 DRC EITI, EITI report for 2015 (2017), p. 185, drive.google.com/file/d/1VMolHv8pzmrce6kMt8POJI81LU9Y_raw/view.

98 Okenda, *Innovations de la nouvelle législation minière de la RDC*, p. 12-13.

99 Email communication from Glencore PLC, 10 February 2020.

100 Alexander Malden, *Nigeria Oil and Gas Revenues* (Natural Resource Governance Institute, 2017), resourcegovernance.org/sites/default/files/documents/nigeria-oil-revenue.pdf.

101 Transparency International, *Under the Surface: Looking into payments by oil, gas and mining companies to governments* (2018), transparency.eu/wp-content/uploads/2018/10/Under-the-Surface_Full_Report.pdf.

other non-mining sector agencies makes it difficult to trace them back to legal and contractual obligations.

Other compliance and coverage issues

Banro Corporation has not issued a PtG report for the fiscal year 2018. The company delisted from the Toronto Stock Exchange in 2018. However, according to ESTMA guidance, the company must report if it fulfills two of the following three criteria: has at least CAD 20 million in assets, generated at least CAD 40 million in revenue or employs an average of at least 250 employees.

In 2019, Barrick Gold acquired Randgold's 45 percent stake in the Kibali Gold Mine joint venture with AngloGold Ashanti (45 percent) and SOKIMO (10 percent). Although Barrick does not have a controlling interest over this joint venture and is not required to report on its payments, as the operator of the Kibali mine, reporting on the entire Kibali joint venture would contribute to transparency. Barrick's other joint venture partners have taken this approach with regard to other equally controlled joint ventures in accordance with the additional guidance provided by NRCan in August 2017 and April 2018.¹⁰²

102 In its PtG report, NovaGold has included 100 percent of payments made by Donlin Gold LLC, a 50/50 joint venture between Barrick and NovaGold to "enhance transparency." Barrick Gold., *2019 ESTMA report* (2020), p. 5, barrick.q4cdn.com/788666289/files/sustainability/Barrick-2019-Extractive-Sector-Transparency-Act-Report.pdf.

5. Improving governance through better reporting

More efficient and complementary reporting using PtG reports and EITI data is ultimately important because it produces data for analyzing and addressing policy and governance challenges in the DRC's mining sector.

The government, civil society and media can use PtG reports to monitor revenue collection under the revised mining code. With delayed EITI reporting and lack of full implementation of government revenue reporting, PtG reports provide a unique view of payment trends under the 2018 mining code. PtG reports show increasing corporate income tax payments from 2017 to 2018 for the most important mining projects in terms of government revenue: Mutanda, Frontier and KCC. However, recent market developments including the coronavirus pandemic's impact on commodity prices put these revenues at risk, placing an increasing importance on timely data sources.

Combined, PtG and EITI reports form a fuller picture of the fiscal burden placed on mining companies in the DRC, caused by parafiscal payments. These payments include payments to SOEs, export taxes and provincial taxes and payments to customs agencies. PtG reports provide additional information on infrastructure improvement payments. PtG reports' project level disaggregation can help integrate parafiscal payments to project-level fiscal models and compare modeled payments to actual revenues.

Payments to SOEs are among the highest parafiscal payments, and likely to continue to be important in the future. Investors' appetite for the DRC's critical minerals for the energy transition could lead to a new wave of asset sales by SOEs controlling these critical resources. For citizens to benefit maximally from potential deals, future asset sales by SOEs and the government should be run competitively and in accordance with requirements from the 2018 mining code.¹⁰³ Gécamines has announced it intends to renegotiate joint-venture contracts to raise revenues.¹⁰⁴ In 2018, it reached agreements with ERG and Glencore that aim to increase the payments it collects from the KCC and Boss Mining joint ventures.^{105,106} To date, PtG reports point to a continuing trend of SOEs not collecting any dividends from joint ventures. It remains to be seen whether they succeed in negotiating increased dividends or other revenues.

PtG reports can support monitoring contract disclosure by detecting payments based on contracts potentially not in the public domain. Full transparency of contracts and payments related to asset sale transactions is necessary for monitoring that the government and SOEs sell assets at fair market value and payments are made in accordance with law. Without transparency of these

¹⁰³ 'DRC Mining regulation', (2018) Article 25 septies.

¹⁰⁴ "Mining Indaba: le moral de l'industrie minière au beau fixe, malgré les annonces fracassantes de la RDC", Jeune Afrique, 8 February 2018, www.jeuneafrique.com/528933/economie/mining-indaba-le-moral-de-lindustrie-miniere-au-beau-fixe-malgre-les-annonces-fracassantes-de-la-rdc.

¹⁰⁵ The renegotiation agreement reached with Glencore raised bonus amount due to Gécamines from 35 to \$110 and \$170 in certain scenarios per ton of discovered minerals, [www.gecamines.cd/Compre/KCC%20-%20Communiqu%C3%A9%20de%20presse%20G%C3%A9camines%20\(accord%20transactionnel\)%20-%2013%20juin%202018%20\(FR\).pdf](http://www.gecamines.cd/Compre/KCC%20-%20Communiqu%C3%A9%20de%20presse%20G%C3%A9camines%20(accord%20transactionnel)%20-%2013%20juin%202018%20(FR).pdf).

¹⁰⁶ The agreement with ERG raised Gécamines' bonus amount rate from \$35 to \$165 per ton of discovered minerals. "Gécamines redefinit avec ERG les bases de leur partenariat dans Boss Mining," *Financial Afrik*, 10 December 2018, www.financialafrik.com/2018/12/10/gecamines-redefinit-avec-erg-les-bases-de-leur-partenariat-dans-boss-mining.

agreements, existence of certain types of payments and information on who has the obligation to make or collect a payment, is unknown to the public. The IMF has recently embedded contract disclosure in the conditions of its loan conditions for the DRC.

The 2018 mining code has brought about new challenges in following payments collected by an increasing number of government agencies, which PtG reports can help trace. PtG reports show that a large number of government entities collect revenues from the mining sector. Direct payments to provinces, decentralized authorities and to FOMIN address critical needs for local development. However, implementation of community development payments and direct collection of royalties by decentralized authorities is work in progress, and further increases the complexity of how revenues flow from mining companies through the DRC's government finances. At the same time, PtG reports show that companies continue to pay provincial taxes although they are not included in the mining code and provinces now also collect direct royalty payments. Finally, infrastructure payments and other payments to agencies such as the CEEC fragment mining sector revenue collection.

6. Conclusion

This briefing has highlighted the added value of PtG reports as a complementary data source on DRC's mining sector revenues. As next steps, DRC EITI can use this briefing as a guide to engaging with PtG reports as it prepares to produce the 2018 EITI scoping study and reconciliation report, addresses corrective measures of the 2019 EITI validation and implements project-level reporting requirements and systematic disclosures. Companies can improve the quality, coverage and contextual relevance of their PtG reports concerning the DRC. Home regulators can enforce and improve regulations by using the case studies in this report. Finally, civil society and government can review PtG reports and use them as a data source and improve their quality by raising concerns. International actors can keep raising awareness of PtG reports and facilitating their use, including dialogue between stakeholders.

Annex

Table 4. Mining sector revenue streams, fiscal term source, collecting agencies, and mapping to EITI and PtG reporting nomenclature

Revenue type	Tax base	Collecting agency	Legal source (as of 2018)	EITI nomenclature	PtG nomenclature
Corporate income tax	Profit	DGI	General law Mining code	Ordinary taxes on income, profits and capital gains: Impôt sur les bénéfices et profits (IBP) OR Extraordinary taxes on income, profits and capital gains: Impôt spécial forfaitaire (ISF)	Taxes levied on the income, production or profits of companies, excluding taxes levied on consumption ¹⁰⁷
Withholding tax on non-resident service providers	Payments for goods and services	DGI	General law Mining code	Ordinary taxes on income, profits and capital gains:	4 Taxes levied on the income, production or profits of companies, excluding taxes levied on consumption
Withholding tax on capital gains	Profit	DGI	General law Mining code	Ordinary taxes on income, profits and capital gains: Impôt mobilier (IM)	Taxes levied on the income, production or profits of companies, excluding taxes levied on consumption
State royalty (redevance minière)	Production/sales	DGRAD, provinces, EDTs and FOMIN	Mining code	Redevances minières (RM)	Royalties
Pas de porte (signature bonus)	Asset/reserve value	DGRAD	Mining code	Bonuses: Pas-de-porte versés à l'Etat	Signature, discovery and production bonuses
Customs duty	Production/sales	DGDA	General law Mining code	Customs and other import duties: Droits et Taxes à l'importation (DTI)	-
State equity participation	Profit	DGRAD	Mining code	From government participation (equity): Dividendes versés à l'Etat	Dividends ¹⁰⁸
Community development payment	Turnover (chiffre d'affaire)	TBD	Mining code	-	Other?
Export tax	Production/sales	DGDA	-	Taxes on exports: Droits et Taxes à l'exportation (DTE)	-
Road tax	Production/sales	DRHKAT et DRLU ¹⁰⁹	-	Other taxes payable by natural resource companies: Taxe voiries et drainage	Taxes levied on the income, production or profits of companies, excluding taxes levied on consumption
Copper concentrate export tax	Production/sales	DRHKAT et DRLU	-	Other taxes payable by natural resource companies: Taxe provinciale sur les concentrés	-
Contribution to infrastructure development	Varies by contract	Various	Ad hoc or contract	-	Payments for infrastructure improvements
-	-	-	-	-	Production entitlements

107 Such as value added taxes, personal income taxes or sales taxes.

108 Other than dividends paid by an undertaking to a government as an ordinary shareholder of that undertaking, and the dividend is paid to the government on the same terms as to other ordinary shareholders, and the dividend is not paid in lieu of production entitlements or royalties.

109 Directorates of Revenue in Haut-Katanga and Lualaba provinces (Direction des Recettes de Haut Katanga, Direction Générale des Recettes de Lualaba).

Payments to DRC state-owned enterprises¹¹⁰

Revenue type	Tax base	Collecting agency	Source (as of 2018)	EITI nomenclature	PtG nomenclature
SOE equity participation	Profit	SOEs	Contracts		Dividends ¹¹¹
Pas de porte (signature bonus)	Asset/reserve value	SOEs	Contracts	Delivered/paid to state-owned enterprise(s): Pas-de-Porte versés aux Entreprises Publiques/Bonus de signature ou Transfert	
SOE royalty	Production/sales	SOEs	Contracts	Delivered/paid to state-owned enterprise(s): Royalties payées aux entreprises minières publiques	Royalties / Other?
Asset sale revenue	Asset/reserve value	SOEs	Contracts, Law on the state's disengagement in SOEs ¹¹² Mining code	Delivered/paid to state-owned enterprise(s): Cession d'actifs ou parts sociales	-
Lease or rental of mining licenses	Varies by contract	SOEs	Contracts	Delivered/paid to state-owned enterprise(s): Loyers d'amodiation et/ou rente mensuelle	License fees, rental fees, entry fees and other considerations for licenses or concessions
Leases for equipment	Varies by contract	SOEs	Contracts		License fees, rental fees, entry fees and other considerations for licenses or concessions
Fees for renouncing right of first refusal	Varies by contract	SOEs	Ad hoc or contract	Delivered/paid to state-owned enterprise(s): Frais de renonciation au droit de préemption	License fees, rental fees, entry fees and other considerations for licenses or concessions
Fonds versés à la GCM pour la vente des scories	Production/sales	SOEs	Contracts	Fonds versés à la GCM pour la vente des scories	-
Production bonus	Production/sales	SOEs	Contracts	Bonuses: Paiement contractuel sur seuil de production atteint	Signature, discovery and production bonuses
Consultancy fee	Varies by contract	SOEs	Contracts	Delivered/paid to state-owned enterprise(s): Frais de consultance OR Administrative fees for government services: Prestations de services	License fees, rental fees, entry fees and other considerations for licenses or concessions
Loans to SOEs	Varies	SOEs	Contracts or ad hoc	-	-

110 Table based on material flows identified in the 2018 EITI contextual report; A State Affair; and OEARSE, 2019, p. 41 and 45.

111 Other than dividends paid by an undertaking to a government as an ordinary shareholder of that undertaking, and the dividend is paid to the government on the same terms as to other ordinary shareholders, and the dividend is not paid in lieu of production entitlements or royalties.

112 Government of DRC, Loi n°08/008 du 7 juillet 2008 portant dispositions générales sur le désengagement de l'Etat dans les EP (Law on the state's disengagement in SOEs).

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ACKNOWLEDGMENTS

The authors are grateful to Thomas Lassourd’s research informing the findings of this report. The authors also thank reviewers of the report, including Amir Shafaie, Evelyne Tsague, Descartes Mponge, Joseph Williams, Matthieu Salomon, as well as Daniel Mulé, Christoffer Claussen and Emily Nickerson. Participants of research presentation workshops in Kinshasa in December 2019 provided valuable feedback and informed the final report.

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