August 2020

The Resource Governance Index

2020 Interim Evaluation Report for the Democratic Republic of Congo

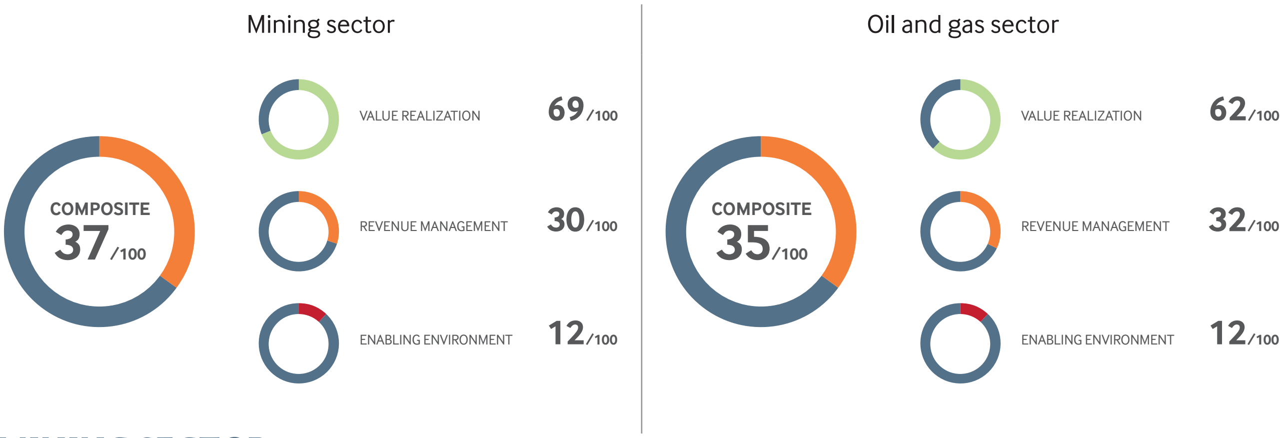
Key messages

- The DRC has made progress in governance of the mining and oil and gas sectors, according to the results of this Resource Governance Index (RGI) interim evaluation covering the 2018-2019 period.
- Resource governance progress in the DRC results in part from the reformed mining code of 2018, which introduced several new requirements on transparency of revenues, operations and management of environmental and social impacts. Greater availability of data on revenues and state-owned enterprises has also improved the country's results.
- However, governance of the mining and hydrocarbons sectors does not meet the RGI's criteria for "satisfactory" performance. Good governance is a priority in the current context – characterized by an economic recession, and exacerbated by the crisis linked to the coronavirus pandemic, as well as international interest in DRC's subsoil resources for facilitating energy transition – if the country is to reap maximum benefit from its resources.
- The DRC's government should continue to pursue the reforms to which it has committed in legislation. In particular, this involves the aimplementation of the revised mining code and hydrocarbons law, to achieve the desired results of these reforms.
- The state-owned enterprises (SOEs) evaluated in the interim evaluation, Générale des Carrières et des Mines (GECAMINES) and Société Nationale des Hydrocarbures (SONAHYDROC), show improved performance relative to the 2017 RGI. Their scores are boosted by disclosures through the Extractive Industries Transparency Initiative (EITI) and the regulations introduced through recent legal reforms in the sector. However, GECAMINES and SONAHYDROC achieved "weak" and "poor" in RGI performance categories respectively.
- Transparency – in particular the disclosure of financial statements, and joint venture contracts, and observing public procurement rules for the sale of mining assets and shares – is critical to ensure SOEs contribute effectively to the efforts of the state.
- Transparency in the DRC's extractive sector is highly dependent on the EITI process, new guidance from which promotes comprehensive and systematic disclosure by government and companies.

SUMMARY

This report presents the results and recommendations of the evaluation of governance of the DRC's mining and oil and gas sectors in 2018 and 2019. The evaluation was carried out according to the methodology of the Resource Governance Index (RGI), the only international index measuring transparency in countries rich in mining, oil and gas resources. This interim evaluation of the DRC was carried out in order to assess implementation of the recommendations from the 2017 edition of the RGI, and to take into consideration the progress made through recent legal reforms in the country, in particular the revision of the mining code and regulation in 2018 and their implementation. Overall, governance of the mining and hydrocarbons sectors has slightly improved since the last evaluation published in 2017. The mining sector gains 4 points, increasing its score from 33 to 37 out of 100. The oil and gas sector sees an increase of 10 points, from 25 to 35 points out of 100.

Figure 1. Resource Governance Index composite and component scores, DRC interim evaluation



MINING SECTOR

Broadly speaking, the DRC mining sector's increased scores in the 2020 RGI interim evaluation are connected to improved rules and regulations. However, despite the advances observed, implementation of the innovations introduced and institutions established by the revised mining code and regulation is still ongoing.[1] This widens the gap between the scores associated with the legal framework and those associated with practice by 4 points.

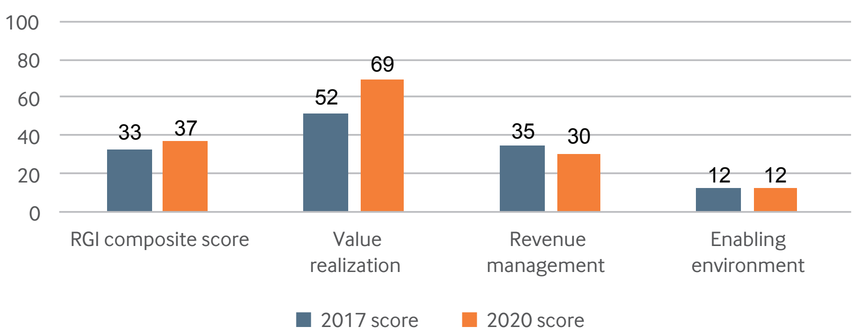
The value realization component score increased from 52 in the 2017 RGI to 69 in the 2020 RGI interim evaluation, moving from "weak" to the "satisfactory" performance band. Important progress has been made in the subcomponents relating to taxation and local impact, which are now classified as "good." This progress is linked to the disclosure of open data and new rules on the transparency of environmental and social impact assessments (ESIAs) and other documents.

Licensing sees a more modest increase, from 64 to 67 points, and continues to be characterized by a gap between rules and practice in the areas of contract disclosure and beneficial ownership. GECAMINES is the largest state-owned enterprise in the copper and cobalt mining sector. It plays a leading role in the management of deposits of these minerals, including regulation of access to mining rights. GECAMINES sells and transfers mining assets and joint venture contracts and collects a significant part of resulting revenues, some of which it passes on to the state. GECAMINES' score increased by 19 points, from 35 in the 2017 RGI to 54 in the 2020 interim evaluation. This improvement is a result of rules introduced by the revised mining code and disclosures through the EITI. However, these rules are not always followed in practice.

In contrast, the revenue management component decreased by five points from 35 to 30 out of 100 as a result of the discrepancy between new rules establishing the Mining Fund for Future Generations (FOMIN) and its application on the ground.

The enabling environment component has not seen a change, maintaining a score of 12 out of 100 for the two years evaluated. This component reflects general aspects of good governance – such as quality of institutions, independence of the judiciary, and freedom of expression – which contribute to a favorable environment for governance in the extractive sector.

Figure 2. Overall scores for the mining sector by component



1 NRGI, Jean Pierre Okenda, Innovations de la nouvelle législation minière de la RDC : opportunités, défis et perspectives de mise en œuvre, July 2019. www.resourcegovernance.org/sites/default/files/documents/innovations_de_la_nouvelle_legislation_miniere_de_la_rdc_opportunites_defis_et_perspectives_de_mise_en_oeuvre_0.pdf.

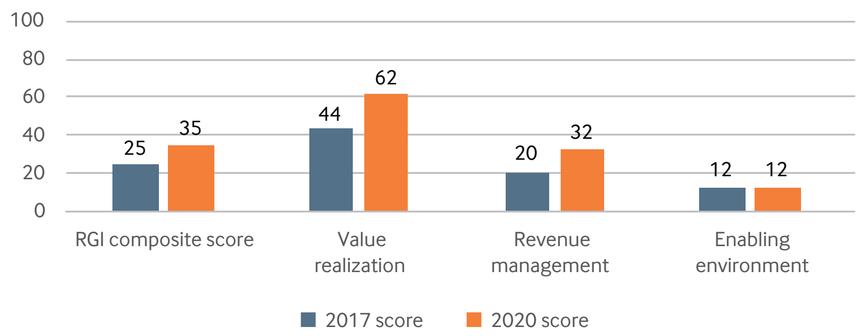
HYDROCARBONS SECTOR

Less mature than the mining sector, DRC's oil and gas sector improved by 10 points with a score of 35 in the 2020 RGI interim evaluation, compared to a score of 25 in the 2017 RGI. This score situates governance of the sector in the RGI's "poor" performance band, the same as the mining sector which is only 2 points ahead. The value realization component recorded an improvement of 18 points, from 44 in the 2017 RGI to 62 in the 2020 edition. Licensing, taxation and local impact recorded score improvements of 19, 9 and 25 points respectively in the 2020 evaluation, as a result of enhanced regulation following the adoption of regulations governing the hydrocarbons sector.

The practice-related scores have improved thanks to disclosure of data through EITI reports. SONAHYDROC, the only state-owned enterprise in the hydrocarbons sector, improved by 18 points: a score of 43, compared to 25 in the 2017 RGI, places SONAHYDROC in the "poor" performance band. This achievement benefited significantly from declarations in the 2016 EITI contextual report focusing on SOEs. Transparency in the sector remains heavily dependent on EITI reports, a situation at odds with new EITI guidance promoting a transition to comprehensive and systematic statements in the national systems of governments and enterprises.[2]

The revenue management component recorded a relative improvement, from 20 to 32 points. As in the mining sector, the enabling environment component did not see any progress.

Figure 3. Overall scores for the oil and gas sector by component



2 For more about integrated transparency, see the EITI website: www.eiti.org/files/documents/eiti_standard2019_a4_fr.pdf.

INTRODUCTION

In the last global edition of the RGI, carried out in 2017 (see Box 1), the DRC obtained a score of 33 out of 100 for its mining sector[3] and 25 out of 100 for the oil sector.[4] Following the launch of the 2017 edition, the Natural Resource Governance Institute (NRGI) consulted with stakeholders in DRC's extractive sector regarding the results and recommendations. Since these consultations, several developments have taken place both in terms of legal reform[5] and the implementation of actions[6] to promote good governance in DRC's extractive sector. It has become essential to update the DRC's RGI evaluation in order to understand the progress made and update recommendations. The data and conclusions of the 2020 RGI interim evaluation for DRC are presented in this report.

Box 1. What does the Resource Governance Index (RGI) measure?

The Resource Governance Index evaluates policies and practices that authorities employ to govern their countries' oil, gas and mining sectors, in particular from the perspective of transparency and accountability.[7] The index provides a composite score for each sector assessment. For most countries, the index assesses either the oil and gas sector, or the mining sector. Both are evaluated in the case of DRC.

The RGI is based on three components: value realization, revenue management, and enabling environment. These are broken down into 14 subcomponents, which in turn comprise 51 indicators based on 133 questions. NRGI calculates the composite score using the scores of three index components. The two first components, value realization and revenue management, directly measure countries' governance of extractive resources.

The third component of the index measures the enabling environment of governance in a country, based on data from the Worldwide Governance Indicators and the Open Data Inventory.[8,9] The enabling environment component evaluates the quality of institutions, independence of the judiciary, and freedom of expression, among other issues. For further details about the 2017 RGI, please visit www.resourcegovernanceindex.org.[10]

This evaluation covers the 2018-2019 period and includes recommendations for the government that assumed power in 2019, as well as for international partners, with a view to improving natural resource management in DRC. DRC is immensely rich in minerals and its economy is heavily dependent on its natural resources. However, the country struggles to transform its mineral wealth into economic growth and development, a problem that can be attributed in part to poor governance and transparency.11 This 2020 RGI interim evaluation occurs within a volatile economic and sectoral context. (See Box 2.) Though not providing direct responses to the health crisis, benefits from improved governance are essential for the resilience and future of the mining and oil industry, and the recovery of the Congolese economy.

3 NRGI, Natural Resource Governance Index 2017. www.resourcegovernanceindex.org/country-profiles/COD/mining.
4 NRGI, Natural Resource Governance Index 2017. www.resourcegovernance.org/analysis-tools/publications/indice-de-gouvernance-des-ressources-naturelles-2017.
5 The case of the publication of Law No. 18/001 of 9 March 2018 amending and supplementing Law No. 007/2002 of 11 July 2002 on the mining code, published in the Official Gazette - Special Issue - 3 May 2018.
6 For example, progress in the disclosure of extractive contracts in RDC. See the NRGI blog: www.resourcegovernance.org/blog/pushing-better-extractives-contract-disclosure-drc
7 NRGI. 2017. Natural Resource Governance Index
8 World Bank, *Worldwide Governance Indicators* (2017), info.worldbank.org/governance/wgi.
9 Open Data Watch, *Open Data Inventory* (2017), odin.opendatawatch.com.
10 Specific information about the methodology is available at www.resourcegovernanceindex.org/about/methodology
11 World Bank. 2014. République Démocratique du Congo, rapport de suivi de la situation économique et financière (Democratic Republic of Congo, progress report on the economic and financial situation), December 2014, 2nd edition, p. 15, documents.banquemondiale.org/curated/fr/944441468023358130/pdf/928440WP0FRENC0plet00PUBLIC00FRENCH.pdf

Box 2. A volatile economic and extractive sector

DRC's economy is heavily dependent on its natural resources, in particular copper and cobalt, which respectively represented 50 percent and 35 percent of total mining revenues in 2018.[12] The extractive sector contributed to over 90 percent of DRC exports over the last five years. Real GDP growth reached 5.8 percent in 2018, driven by rising copper and cobalt prices and increasing production.[13] The contribution of the extractive sector to state revenue almost doubled between 2017 and 2018, from 2,511 to 4,895 billion Congolese francs (1.3 to 2.5 billion U.S. dollars).[14] The increase in revenue is a result of maturing copper, cobalt and gold projects and new investments in other minerals, including strategic minerals for the energy transition.[15] DRC is among the largest global suppliers of the metals and minerals required for the energy transition. Within this context, good governance of the mining sector in the DRC is essential not only to ensure that Congolese citizens benefit from the mineral resources, but also to guarantee a responsible global supply chain for renewable energy technologies.

Over the last four years, economic growth has remained generally positive, with an average rate of 4.7, exceeding the sub-Saharan average of 2.7 percent, notwithstanding the shock in 2016. However, economic growth in 2019 remained below the pre-crisis rate, which was 6.9 percent in 2015. It is therefore necessary for the government to intensify efforts and to pursue the implementation of reforms that have the potential to drive resilient and sustainable development and reduce poverty.[16] In 2020, the COVID-19 pandemic has severely reduced mining production, adding to the country's economic challenges.

DRC's mining industry is highly dependent on a supply chain that is dominated by China.[17] The start of production at the Deziwa mine and the Kamoa-Kakula mine from 2022 bodes well for DRC, but production will depend greatly on the recovery of the global economy heavily impacted by the coronavirus pandemic. With regard to the impact of the pandemic on the extractive industries, the International Monetary Fund (IMF) observes that forecasts currently predict a contraction of 5.5 percent in the sector in 2020. Copper prices have dropped by more than 20 percent since the beginning of the crisis, reaching the lowest level in four years.[18] However, the IMF indicated that a downturn in economic growth was looming in 2020 even before the coronavirus pandemic, as a result of weaknesses in the mining sector.

According to projections, real GDP growth was forecast to be down by more than a percentage point compared to 2019, due to suspension of production at the large copper and cobalt mine in Mutanda and the closure of the mining company Boss Mining.[19] This also has significant implications for exports and government revenue.[20] In addition to the pandemic, DRC must deal with the systemic governance challenges which plague the sector, with a view both to attracting new investment and increasing the sector's contribution to the domestic economy and government revenue.

RGI interim evaluations have been carried out on an exceptional basis in a limited number of countries in 2019 and 2020.[21] Consequently, the results are not comparable to those of other countries included in the 2017 RGI. For more information on the methodology of this evaluation, see Box 3.

Box 3. Methodology of the interim evaluation

The methodology of the interim evaluations is the same as that used to produce the 2017 RGI, described above in Box 1. The process was launched at a workshop in August 2019, with the participation of delegates from the Ministries of Mines and Hydrocarbons and heads of relevant public authorities. The purpose of the workshop was to inform authorities about the interim evaluation process, forge a mutual understanding of the objectives, and gather participants' expectations and observations. Data collection was carried out by two independent researchers recruited through a competitive process. This process commenced in October 2019 and was completed at the end of 2019. Data were then closely examined by an independent peer reviewer and quality controlled by NRGI before the drafting of this report. A summary including the main conclusions was then shared with the authorities for comments and objections prior to this publication. The resource evaluated in the mining sector is copper[22], and the two state-owned enterprises assessed are Générale des Carrières et des Mines (GECAMINES) and Société Nationale des Hydrocarbures (SONAHYDROC).

12 IMF, Report No. 19/285 of 4 September 2019, www.imf.org/en/Publications/CR/Issues/2019/09/04/Democratic-Republic-of-the-Congo-2019-Article-IV-Consultation-Press-Release-Staff-Report-and-48648.

13 Idem.

14 2017-2018 EITI contextual report, p. 102. See also Central bank of the Congo, Annual Report 2018, pp 132-133.

15 Following the revision of the mining code and regulation in 2018, cobalt, germanium and columbite tantalite (Coltan) were declared strategic minerals by Decree No. 18/042 of 24 November 2018, a direct consequence of which was the increase in the level of mining revenue, which went from 3.5 to 10 percent. Among investments in projects for cobalt are the reopening of the KCC project and the start of production by Metalkol and Deziwa in 2018.

16 Sylvestre Ilunga Ilunkamba (Congolese prime minister), speech introducing the 2020 draft budget bill to the National Assembly by his Excellency the Prime Minister, head of government, Kinshasa, 18 November 2019, p. 5.

17 NRGI, Jean Pierre Okenda, le secteur minier à l'épreuve du coronavirus en République Démocratique du Congo. (NRGI, Jean Pierre Okenda, the mining sector tested by coronavirus in the Democratic Republic of Congo. www.resourcegovernance.org/blog/secteur-minier-coronavirus-congo-rdc

18 IMF, Report n° 20/146 of 16 April 2020, Box 1. www.imf.org/en/Publications/CR/Issues/2020/05/01/Democratic-Republic-of-the-Congo-Request-for-Disbursement-Under-the-Rapid-Credit-Facility-49389.

19 IMF, Report n° 19/285 of 5 August 2019, Box 2. www.imf.org/en/Publications/CR/Issues/2019/09/04/Democratic-Republic-of-the-Congo-2019-Article-IV-Consultation-Press-Release-Staff-Report-and-48648.

20 IMF, Report No. 20/146 of 16 April 2020, p. 3. www.imf.org/en/Publications/CR/Issues/2020/05/01/Democratic-Republic-of-the-Congo-Request-for-Disbursement-Under-the-Rapid-Credit-Facility-49389.

21 See www.resourcegovernanceindex.org/about/interim-updates.

22 Copper and cobalt are the main raw materials; they represented 50 percent and 35 percent, respectively, of total mining revenue in 2018. www.imf.org/fr/News/Articles/2019/06/05/pr19201democratic-republic-of-the-congo-imf-staff-completes-2019-article-iv-mission.

SUMMARY OF RESULTS FOR THE RGI INTERIM EVALUATION

In the following sections, we present the results of the 2020 RGI interim evaluation for the two sectors evaluated in DRC. Each sector is evaluated for the three RGI components: value realization, revenue management, and enabling environment.

Table 1. DRC's RGI score trends between the 2017 edition and the 2020 interim evaluation

	MINING			OIL AND GAS		
Index component	**2017 score**	**2020 score**	**Trend**	**2017 score**	**2020 score**	**Trend**
RGI COMPOSITE SCORE	33	37	+4	25	35	+10
VALUE REALIZATION	52	69	+17	44	62	+18
Licensing	64	67	+3	46	65	+19
Taxation	67	76	+9	71	80	+9
Local impact	42	78	+36	33	58	+25
State-owned enterprises	35	54	+19	25	43	+18
REVENUE MANAGEMENT	35	30	-5	20	32	+12
National budgeting	33	35	+2	33	35	+2
Subnational resource revenue sharing	36	.	.	8	29	+21
Sovereign wealth funds	.	25	.	.	.	.
ENABLING ENVIRONMENT	12	12	0	12	12	0
Voice and accountability	22	13	-9	22	13	-9
Government efficiency	5	9	+4	5	9	+4
Regulatory quality	12	12	0	12	12	0
Rule of law	6	6	0	6	6	0
Control of corruption	17	6	-11	17	6	-11
Stability and absence of violence	7	9	+2	7	9	+2
Open data	16	29	+13	16	29	+13
AVERAGE SCORE FOR LAWS	59	71	+12	42	62	+20
AVERAGE SCORE FOR PRACTICES	43	51	+8	36	51	+15
GAP (PRACTICES LESS LAWS)	-16	-20	-4	-6	-11	-5

PERFORMANCE BANDS

Good	Scores over 75
Satisfactory	Scores 60-74
Weak	Scores 45-59
Poor	Scores 30-44
Failing	Scores under 30

The mining sector gained 4 points on its performance in the 2017 edition of the RGI, with a score increase from 33 to 37 out of 100. The oil and gas sector improved by 10 points, with a score increase from 25 to 35 out of 100. However, despite these improvements, neither of the two sectors obtained an overall score above 45 points out of 100.

The enabling environment score has remained the same throughout the last three years, at 12 points.

Value realization

Value realization covers the governance of allocating extraction rights, exploration, production, environmental protection, revenue collection, and state-owned enterprises. Both sectors obtained satisfactory scores in the 2020 RGI interim evaluation. A score improvement is observed in all subcomponents.

Licensing

DRC's scores for licensing increased in both sectors. In particular, the hydrocarbons sector sees an improvement that takes it from "weak" to the "satisfactory" performance band. However, both sectors are still characterized by a discrepancy between the rules and their implementation, particularly with regards to contract disclosure and beneficial ownership.

The 2018 mining code reform in DRC strengthened standards of governance. For example, the government is required to launch an open or restricted public tender for the sale of mineral deposits studied, documented or processed by the state or its authorities.[23] This obligation applies to state-owned enterprises (SOEs) for purchase or sale of all or part of a mining right.[24] In both cases, the tenders should be carried out in accordance with the procedures provided for in the Congolese legislation on public procurement[25] and in accordance with generally accepted and recognized international mining practice. The review of the mining code thus addressed a legal vacuum related to the role played by SOEs in the sale of mining assets and rights in DRC.

The licensing process would be even more transparent if the law required all biddable and negotiable terms and selection rules and criteria to be made public. The absence of any known precedent on the sale of a deposit studied, documented and processed by the state represents an opportunity for authorities to guarantee transparency and competitiveness in future tenders. However, with regard to the sale of all or part of a mining right held by a state-owned enterprise (SOE), NRGI research showed that SOEs concluded at least three contracts between 2018 and 2019 on studied deposits without applying the public tender process as stipulated.[26] This contributes to the gap recorded in the 2020 RGI interim evaluation between progressive legal provisions and their application.

The 2015 hydrocarbons code specifies only one type of licensing process: competitive tenders. Regulations define the rules for the process. However, no contracts appear to have been concluded in accordance with the process.[27] The government has recently mentioned the option of launching a tender, without providing details about the blocks concerned.[28] This would represent a valuable opportunity to demonstrate that the good practices enshrined in law are also applied in practice. However, such an aspiration may suffer from the effects of the coronavirus pandemic on oil prices.

23 See Article 33 of the mining code as amended in Paragraphs 1, 2, 3, 4 and 7 under Article 2 of Law No. 18/001 of 9 March 2018, amending and supplementing Law No. 007/2002 of 11 July 2002 on the mining code.

24 See Article 25f of Decree No. 038/2003 of 26 March 2003 on the mining regulation as amended and supplemented by Decree No. 18/024 of 8 June 2018, published in the Official Gazette - Special Issue - 12 June 2018.

25 Law No. 10/010 of 27 April 2010 on tendering procedure.

26 The partnership agreement between Gécamines and Hong Kong Excellence, drive.google.com/file/d/1-wgpL2QStkEUVaHU7PbR7uYKGNP2KEDX/view. La Sokimo a cédé trois permis à Kodo Resources SARL (Sokimo awards three licenses to Kodo Resources SARL). www.tsieleka.com/2020/02/22/rdc-la-sokimo-liquidee-apres-la-cession-totale-des-trois-titres-a-kodo-ressources-et-sa-participation-directe-dans-ajn-ressources. Miba concluded a partnership agreement with International Development & Investment. www.business-et-finances.com/la-verite-sur-le-contrat-miba-am-international-development-investment.

27 The only contracts approved during the evaluation period are contracts concluded under the former legislation, which lack the orders of approval or which require amendments.

28 Financial Afrik, RDC : lancement d'un appel d'offres pour l'attribution des nouveaux blocs pétroliers (DRC: launch of a call for tenders for the allocation of new oil blocks). www.financialafrik.com/2020/05/11/rdc-lancement-dun-appel-doffres-pour-lattribution-des-nouveaux-blocs-petroliers.

Box 4. Relevance of open and competitive tenders in the DRC

Discretion, lack of transparency and secret negotiations in the granting of licenses pose several risks for DRC in terms of conflicts of interest and loss of public revenue. According to analysis of EITI data carried out by the NRGI, revenue from sales of assets and signature bonuses (pas de porte)[29] represent the majority of SOEs' revenues.[30] The valuation of assets and deposits sold according to market conditions is therefore essential to maximize revenues for the national budget. SOEs play a significant role in the control of cobalt and lithium deposits, which attract considerable interest within the global context of increasing demand for minerals for energy transition. For DRC to benefit from its endowment in strategic minerals, the country must ensure that government agencies and SOEs follow best practice in awarding mining rights to competent investors.[31]

Congolese laws require regular and comprehensive disclosure of extractive contracts.[32] In practice, several extractive contracts have already been published on the websites of the Ministries of Mines[33] and Hydrocarbons[34] and on the DRC EITI website.[35] However, approximately sixty contractual documents remain undisclosed, according to a count carried out by the NRGI and other civil society organizations in the extractive sector.[36] These are mainly contracts relating to the sale and transfer of assets by SOEs in both sectors.

Article 7 of the mining code requires the disclosure of the beneficial owners of mining assets.[37] A draft decree to implement the requirement, initiated by a mixed ad-hoc committee set up by the EITI Executive Committee over a year ago, has not been sent to the prime minister for signature. The signing of this decree would contribute to preventing conflicts of interests reported in the licensing processes and the sale and the transfer of undervalued assets and deposits. (See Box 4.) The requirement to disclose beneficial owners is also enshrined in the EITI 2019 Standard and is equally applicable to the hydrocarbon sector. To date, some mining and oil enterprises have voluntarily disclosed their beneficial owners in EITI reports.

The mining code and regulation tasked the Mining Cadaster (CAMI) with establishing, in paper or digital format, and maintaining mining cadasters and the following registers:[38]

- special register for new applications for mining or quarrying research rights
- general record book of applications for renewals, transformation of mining or quarrying rights, transformation in multiple research or operating permits, extension to new substances, and the waiving of mining or quarrying rights
- register of rights granted
- register of annual surface rights by block
- register of applications for the registration of mortgages, farmouts, sales, transfers, and option contracts
- register of mortgages, farmouts, sales, transfers, and option contracts
- register of lapses and withdrawals
- register of start of works

29 Non-refundable bonus received by the State, in the event of call for tender, for remuneration of efforts initially made or delivered by the state or a state-owned mining enterprise for the discovery of a deposit which is then considered to be studied, documented and processed, or a deposit that reverts to the state after the expiry of a mining exploitation right, in accordance with the provisions of the mining code.

30 NRGI. *DRC's mining sector revenues: Increasing accountability through payments to governments reports*, report being drafted.

31 IMF, 2019 Article IV Consultation – Press Release, September 2019, p. 6, 16 and 19.

32 2011 Decree on the disclosure of extractive contracts, mining code and regulation of 2018 and hydrocarbons code and regulation of 2015 and 2016.

33 www.mines-rdc.cd/resourcecontracts

34 See www.hydrocarbures.gouv.cd/?-Contrats-

35 See www.itierdc.net/carte-de-la-rdc-cliquable/registre-petrolier; www.itierdc.net/carte-de-la-rdc-cliquable/contrats-miniers

36 See also IMF (2019), 2019 Article IV Consultation – Press Release, p. 4.

37 See the EITI website for the definition of "beneficial ownership": eiti.org/beneficial-ownership.

38 See Articles 34, 46, 124, 171, 179, 184, 185 b, 185 c, 188, 190, 194, 289 paragraphs 4, 5 and 290 of the mining code and Article 68 of the mining regulation.

Accordingly, since 2017 CAMI has developed an online portal which contains certain information on mining licenses.[39] However, this portal cannot be considered a register in the sense of the mining code since it does not contain all the information listed above. Article 323 of the mining code stipulates that registers relating to mining and quarrying rights, as well as maps of mineral reserves, can be consulted freely by the public through the Mining Cadaster. Access to data is conditional on the payment of fees fixed by the mining regulation. Furthermore, the RGI considers it good practice to disclose the names of companies holding shares in mining licenses. To date, the names of joint-venture partners are not accessible via CAMI's online portal.

In the hydrocarbons sector, the law provides for the ministry responsible for the sector to maintain an ad-hoc register where granted hydrocarbon rights are recorded.[40] The hydrocarbons code provides for public access to the register, in accordance with the provisions set out by hydrocarbons regulation.[41] However, the provision specified for access to the register could undermine the transparency[42] promoted by the Congolese government in upstream and downstream hydrocarbons activities.[43] This is because any person wishing to access the register must apply to the Minister, copying the Secretary General for information; state the reasons for requesting access to the register; attach legal information of a corporate entity and the full identity of managers, in the case of a natural person; and pay an administrative fee.[44]

On the ground, research has shown that the Ministry of Hydrocarbons does not maintain any such public register of hydrocarbon extraction rights as provided for by law. Rather, the Technical Secretariat of DRC EITI keeps an online petroleum register[45], which is unfortunately lacking certain elements and metadata stipulated by the hydrocarbons regulation.[46] These include the geographical coordinates of the sedimentary basin or block agreed.

39 CAMI. DRC Licenses, www.drclicences.cami.cd/fr/
40 Article 42 of Law No. 15/012 of 1 August 2015 on the general hydrocarbons regime.
41 Idem.
42 According to the EITI open data policy, transparency must allow stakeholders to freely consult and easily use data. According to Objective 7 of the EITI open data policy (www.eiti.org/document/eiti-open-data-policy#objectives), free access to, and subsequent re-use of, open data are of significant value to society and the economy.
43 Article 11 of Law No. 15/012 of 1 August 2015 on the general hydrocarbons regime.
44 Article 49 of Decree No. 16/010 of 19 April 2016 on the hydrocarbons regulation.
45 www.itierdc.net/carte-de-la-rdc-cliquable/registre-petrolier
46 Article 48 of Decree No. 16/010 of 19 April 2016 on the hydrocarbons regulation.

Recommendations on licensing	Intended recipients of the recommendation
Recommendation for both sectors (mining and hydrocarbons)	
Sign the draft decree on the disclosure of beneficial ownership in the extractive sector.	Prime Minister
Recommendations for the mining sector	
Consider developing precise guidance for calls for tenders, demanding the publication of biddable and negotiable terms and selection rules and criteria, in particular with regard to offers on assets held by state-owned enterprises.	Ministry of Mines
Apply and uphold the provisions of the mining code on the mandatory use of the call for tender process with regard to the sale of all or part of a mining right held by state-owned enterprises.	GECAMINES Ministry of Mines
Pursue comprehensive and regular disclosure of mining contracts, including those that are missing.	Ministry of Mines CTCPM
Add the information relating to the shareholders of joint-ventures, and the information required by the mining code and regulation, to the portal of the Mining Cadaster.	Mining Cadaster
Recommendations for the hydrocarbons sector	
Complete all the elements indicated by law that are still missing in the register of licenses for the hydrocarbons sector.	EITI
Disclose all contracts and ancillary documents in accordance with the hydrocarbons code.	Ministry of Hydrocarbons
Establish and maintain an oil register in accordance with the hydrocarbons code, and make it accessible to the public.	Ministry of Hydrocarbons
Apply the legal requirements on the transparency of submission criteria and process rules during any calls for tender for the granting of oil licenses.	Ministry of Hydrocarbons

Taxation

According to the 2020 RGI interim evaluation, taxation is one of DRC's best-performing subcomponents. Both sectors achieve scores in the "satisfactory" category. As shown in Box 5, this performance is mainly a result of disclosures made within the EITI process in DRC.

Among the innovations included in the revised mining code is an obligation for companies to publish operational and payment statistics on a quarterly basis, and for government agencies to declare revenue collected. Although the statistics on mining production and exports are accessible on the website of the Technical Unit for Mining Coordination and Planning (CTCPM) for the years 2018-2019[47], they are not presented in a disaggregated format. (See Box 5.) The same is true of the fiscal statistics of the Central Bank of the Congo (BCC). Consequently, it is necessary to cross-check several sources to obtain and use detailed data. Reporting practices in the oil and gas sector are similar.

The RGI considers the payment of extractive industries revenue to the public treasury to be good practice, with a view to guaranteeing traceability. In DRC, not all mining revenue is paid to the public treasury. The revised mining code stipulates that revenue from signature bonus relating to SOE deposits is kept by the SOE, rather than paid to the public treasury.[48] Moreover, in practice SOEs and provincial authorities collect payments that are not recognized by the mining code, in violation of the comprehensive and exclusive nature of the fiscal and customs regime of the mining code.[49] These types of parafiscal levies may lead to poor traceability of payments in the extractive sector and thereby skew budgetary data at a national level.[50] This phenomenon does not exist in the hydrocarbons sector, where there are fewer payment flows.

47 www.ctcpm.cd/web/?page_id=895
48 Article 33a of Law No. 007/2002 on the mining code as amended and supplemented by Law No. 18/001 of 9 March 2018.
49 Only the contributions and customs duties provided for in this law shall apply to the holder of the mining licenses, to the exclusion of all other forms of taxation currently present or which may be provided for in other future laws or regulations.
50 Incidental taxation is specific to the DRC. It includes all rights, taxes and levies that are not provided for in the mining code, by which are nonetheless imposed by financial authorities, decentralized administrations and other state agencies, which often have power of control over mining activity and transport.

The mandate of the Court of Audit is to monitor the management of state finances, public assets, provincial accounts and decentralized territorial entities (ETDs), as well as public authorities.[51] However, it does not systematically audit or publish the annual audit reports of each agency. The last audit report carried out by the Court of Audit concerning three financial agencies (DGRAD, DGDA and DGI) is dated 27 February 2013, and covers four fiscal years (from 2007 to 2010). However, the 2013 audit was limited to the determination of revenues received by each province according to their capacity for revenue collection, pursuant to the Constitution, which allocates 40 percent of national revenue of a national character to provinces.[52]

Due to the operating constraints of the Court of Audit, the DRC EITI Executive Committee has entrusted the task of certifying the accounts of financial authorities to the Inspectorate General of Finances (IGF), within the framework of data quality assurance procedures.[53] However, the IGF is facing similar operating constraints to those of the Court of Audit. These constraints meant that the IGF was unable to certify the statements from financial agencies and other state entities that were completed within the framework of the EITI 2017 report.[54]

Box 5. EITI and progress on systematic disclosure

The value realization component of the RGI shows efforts by public authorities to disclose up-to-date information required by the EITI Standard (cadastral information, data on reserves, production, exports, payments, transfers to local communities, and revenue flows to state-owned enterprises (SOEs)), in line with the concept of "systematic disclosure."[55] The CTPCM online portal could in the future set a real example of integrated transparency, with the objective of providing open, easily accessible and disaggregated statistics.[56] However, at the time of writing the only statistics available via the portal concern some mineral reserves and important information is still missing, such as up-to-date operational and fiscal statistics disaggregated by enterprise and type of mineral. Consequently, in the absence of a comprehensive portal, DRC remains dependent on the EITI process for data that is disaggregated by enterprise and payment type. The fact that EITI data are often published with a delay of two years diminishes their value and limits their use. There is no such portal for the hydrocarbons sector. Despite the conducting of a feasibility study into updating the website of the Ministry of Hydrocarbons, this resource currently contains only a few outdated statistics.[57]

51 Article 180 of the Constitution of the Democratic Republic of the Congo of 18 February 2006 as amended by Law No. 11/002 of 20 January 2011.
52 Court of Audit (DRC), National audit of revenue of financial authorities (DGDA, DGI and DGRAD), February 2013. www.courdescomptes.cd/doc/PNUD_%20BROCHURE%20AUDIT%20REGIES%20FIN.pdf.
53 2017 EITI report, p. 23.
54 2017 EITI report, p. 10.
55 See eiti.org/systematic-disclosure
56 See emine.ht2techinfo.cd/#autre_graphe
57 See www.hydrocarbures.gouv.cd/?-Statistiques-et-informations-relatifs-aux-activites-de-la-production-et-

Recommendations on taxation	Intended recipients of the recommendation
Recommendation for both sectors (mining and hydrocarbons)	
Publish disaggregated information, on a quarterly basis, regarding payments received by government entities from various mining and oil companies, preferably by project and by region.	Ministry of Finance Ministry of Mines Ministry of Hydrocarbons
Publish annual reports on the results of audits carried out and recommendations made on the management of public finances by governmental financial agencies operating in the management of the extractive sector, including DGI[58], DGRAD[59], DGDA[60], the financial authorities at the provincial level, and ETDs (decentralized territorial entities), FOMIN, and others.	Court of Audit Inspectorate-General of Finances
Publish up-to-date EITI reports.	EITI
Update statistics on production, exports and payments in the EITI portal, as per the last EITI report.	EITI
Recommendations for the mining sector	
Publish quarterly disaggregated financial statements on mining activities.	Ministry of Finance
Complete and maintain the online portal for mining projects and statistics and present them in a disaggregated manner.	Ministry of Mines CTCPM
Recommendations for the hydrocarbons sector	
On the Ministry website, disclose oil and gas statistics that are up-to-date and aggregated by project and by type of payment flow.	Ministry of Hydrocarbons

Local impact

The interim evaluation notes a significant difference between the two sectors for the subcomponent relating to environmental protection and local impact. The score of the mining sector improved significantly between the 2017 RGI and the 2020 RGI interim evaluation, from 42 to 78 out of 100, while the score of the hydrocarbons sector increased from 33 to 58 out of 100. The source of this disparity is the legal framework and its enforcement. The mining code includes more robust provisions than the hydrocarbons code for the resettlement of populations when they are affected by extractive activities, including a process of consultation, evaluation and monitoring.[61]

In terms of transparency, Law No. 11/009 of 9 July 2011 on the basic principles relating to environmental protection provides for the right of the public to be informed of final Environmental and Social Impact Assessments (ESIAs).[62] The revised mining code includes this principle and requires disclosure of the summaries of ESIAs, Environmental and Social Management Plans (ESMPs), and Mitigation and Rehabilitation Plans (MRPs).[63] The legal framework of the hydrocarbons sector does not contain any requirement for the disclosure of ESIAs or ESMPs, nor any express reference to the application of the law on the basic principles relating to environmental protection.

In practice, some ESIAs have been published in the mining sector, but not in the oil sector. In the mining sector, some ESIAs and ESMPs are available through the provincial authorities or foreign exchanges, but they are still not systematically disclosed by the CTCPM, other competent authorities, or companies, as required by law. On the ground, multiple public authorities claim responsibility for the management of the ESIA and ESMP process, as a result of lack of harmonization between relevant laws. (See Box 6.)

58 Directorate-General of Taxation.
59 Directorate-General of Administrative, Legal and Land Revenue, and Revenue from Shares.
60 Directorate-General of Customs and Excise.
61 Art. 11 mining Code, Art. 26 mining regulation.
62 Article 9 of Law No. 11/009 of 9 July 2011 on the basic principles relating to environmental protection.
63 Article 25g of Decree No. 038/2003 of 26 March 2003 on the mining regulation as amended and supplemented by Decree No. 18/024 of 8 June 2018.

Box 6. Responsibilities in relation to the instruction, retention and disclosure of ESIAs, ESMPs and MRPs

Analysis of several laws in force in the DRC relating to the extractive sector indicates that responsibility for the instruction, retention and disclosure of environmental and social impact studies, including their management plans, lies with four main structures:

- The **Congolese Environment Agency (ACE)**, established by Decree No. 14/030 of 18 November 2014. This decree set out the statutes of the Agency, whose remit includes the evaluation and approval of ESIAs as well as monitoring of their implementation, including in the extractive sector. The Agency also retains reports relating to environmental and social impact studies that can be consulted by any natural or legal person who expresses the need to do so.[64]
- The **Directorate for the Protection of the Mining Environment (DPEM)** was established through Article 10 of the mining code. In collaboration[65] with ACE, National Fund for Promotion and Social Service (FNPSS) and, where applicable, any other state body involved, the DPEM has the task of carrying out, in the mining sector, the environmental appraisal of ESIAs, ESMPs and MRPs, as well as plans for the contribution of the project to surrounding communities.[66]
- The **Technical Unit for Mining Coordination and Planning (CTCPM)**, provided for in Article 14a of the mining regulation, has the task of publishing the summaries of ESIAs, ESMPs, and MRPs on its website. Article 25g of the aforementioned regulation provides more information on the elements[67] that must be included.
- The **Standing Evaluation Committee (CPE)** is provided for in Article 3 of the Interministerial decree of 22 February 2019, which sets out the terms for collaboration between ACE, DPEM and the National fund for promotion and social service (FNPSS). Under this Article, the CPE constitutes the instructional framework of the ESIAs, ESMPs and MRPs. It also submits favorable environmental and social opinions to ACE, so that ACE in turn can issue environmental certificates to be submitted to the Mining Cadaster.[68]

On the basis of the above, it is the CTCPM that is responsible for disclosing the summaries of the ESIAs, ESMPs and MRPs. In all other sectors, the legal framework stipulates that consultation is free to any natural or legal person who expresses the need, and that this process is conducted through the ACE. However, there is no explicit statement on the disclosure of the ESIAs and ESMPs in the hydrocarbons sector. Therefore, practice limits application of the will of the legislator.

Recommendations on local impact	Intended recipient of the recommendation
Recommendation for both sectors (mining and hydrocarbons)	
Centralize and make available to the public all reports relating to Environmental and Social Impact Assessments (ESIAs), as well as Environmental and Social Management Plans (ESMPs), including the ESMPs from all business sectors covered by the strategic environmental evaluation, as listed in the Annex of Decree No. 14/019 of 2 August 2014, which sets out the rules on the procedural mechanisms on environmental protection.	Ministry of the Environment through ACE (Agence Congolaise de l'Environnement)
Recommendations for the mining sector	
Disclose all summaries of Environmental and Social Impact Assessments (ESIAs), Environmental and Social Management Plans (ESMPs), and Mitigation and Rehabilitation Plans (MRPs) in the mining sector.	Ministry of Mines through CTCPM
Recommendations for the hydrocarbons sector	
Adopt a directive which integrates the requirement to disclose ESIAs and ESMPs into the legal framework of the hydrocarbons sector.	Ministry of Hydrocarbons

64 Article 38 of Decree No. 14/019 of 2 August 2014 laying down the operating rules of the procedural mechanisms for the protection of the environment.

65 Article 11 of the mining regulation provides for the signature of an Interministerial decree for Mines, Environment and Social affairs respectively, in their powers to fix the modes of collaboration between the Congolese Agency of the Environment (ACE), the Directorate for the Protection of the Mining Environment and the National Fund for Promotion and Social Service (FNPSS).

66 Article 42 of the mining code and Article 11 of the mining regulation.

67 A presentation from the applicant; a summary description of the project and its components; a description of the method of exploitation; a description of the physical, biological, economic and sociological environments; a description of the impacts and corresponding mitigation measures, and a description of the subcontractors.

68 Article 8 of the Interministerial decree of 22 February 2019 laying down the terms for collaboration between the Congolese Agency of the Environment (ACE), the Directorate for the Protection of the Mining Environment (DPEM) and the National Fund for Promotion and Social Service (FNPSS).

State-owned enterprises

The two state-owned enterprises (SOEs) evaluated in the RGI are Générale des Carrières et des Mines (GECAMINES)[69] and Société Nationale des Hydrocarbures (SONAHYDROC).[70] Between the 2017 RGI and the 2020 RGI interim evaluation, the scores of the two SOEs increased from 35 to 54 and from 25 to 43 out of 100, respectively. This trend is mainly attributable to additional declarations made in the DRC EITI's 2016 supplementary contextual report focusing on SOEs.[71] Furthermore, the revised mining code reinforces the obligation of transparency on financial flows[72] and sets out clearer rules on the commercialization of minerals applicable to all companies, including SOEs.[73] It should be noted that the recommendations presented in this report also apply to other SOEs in the mining sector.

The EITI contextual report devotes a specific chapter to the examination of SOEs' financial statements and provides new information on the governance of these institutions, such as sales data from GECAMINES, information about its subsidiary SIMCO, and SONAHYDROC's joint venture expenditures. This confirms the central role of the EITI process for transparency of SOEs, and highlights the importance of strengthening the EITI and improving the regularity of publication of EITI reports in DRC. SONAHYDROC, in particular, does not yet have an independent disclosure system and EITI remains the main source of reporting on the company's activities.

State-owned enterprises collect a significant proportion of revenue in both sectors – up to 17 percent of mining revenue, according to EITI data.[74] A part of these revenues is further passed on to the state. For GECAMINES, the rules on financial transfers between the company and the state are clear, but there are gaps in practice: in the absence of profits and dividends for the state, the government has claimed SOEs pay a "contribution to the state budget" which lacks a legal basis.[75] For SONAHYDROC, there are no rules for revenues collected as a state agency, even though revenues could be significant in the future if DRC achieves its objectives for oil production. The role of SONAHYDROC should increase in line with the ambitions of DRC to develop this sector.

The publication of audited financial statements is necessary to facilitate access to more useful and detailed data on financial flows via the two SOEs. To date, the lack of disclosure of financial statements remains a major shortcoming in the governance of GECAMINES, SONAHYDROC, and other SOEs within the scope of the EITI report, contributing to "weak" or "poor" scores in the 2020 RGI interim evaluation. In this regard little progress has been made since 2017, despite the recommendations made by the NRGI, Congolese civil society through the COGEP platform[76], and development partners such as the IMF.[77]

Last, non-commercial activities and the lack of transparency on associated expenditures limit the score of GECAMINES. Neither GECAMINES nor SONAHYDROC has published a code of conduct. These difficulties related to transparency placed DRC's SOEs among the least advanced of those evaluated in the 2017 RGI.[78] Both SOEs can draw inspiration from the examples of other African SOEs to continue to strengthen transparency. (See Box 7.)

69 www.gecamines.cd
70 www.hydrocarbures.gouv.cd/?SONAHYDROC-La-Societe-Nationale-des-hydrocarbures
71 EITI Technical secretariat. 2018. 2016 Supplementary contextual report www.eiti.org/node/10199.
72 Article 25 d of the mining regulation stipulates that "Public services responsible for the collection of taxes, customs and excise duties, as well as levies, fees and revenue at the national and provincial level, as well as state-owned enterprises operating in the value chain, submit quarterly financial statements on their mining activities to the minister responsible for finance. A copy of the aforementioned statement is reserved for the minister responsible for mines. The report mentioned in the preceding paragraph is published by the minister responsible for finance within fifteen days of receipt on its website. "
73 See Article 108g on the commercialization and export of mining products.
74 Data on cumulative revenue 2010-2016.
75 ITIE-RDC, commentaires du Comité exécutif sur le projet de rapport du Validateur independent (EITI-DRC, comments from the Executive committee on the draft report of the Independent validator), p. 35. www.eiti.org/files/documents/fr_msg_comments_drc_validation.pdf
76 Coalition for the governance of state-owned enterprises in the extractive sector.
77 International Monetary Fund, press release, 3 September 2019. www.imf.org/News/Articles/2019/09/03/democratic-republic-of-the-congo-pr-19322-imf-executive-board-concludes-2019-article-iv-consultation.
78 For more information: resourcegovernance.org/analysis-tools/publications/guide-relatif-aux-declarations-des-entreprises-publiques-du-secteur

Box 7. Using the RGI to identify best practice on transparency of state-owned enterprises

The 2017 edition of the RGI evaluated 74 state-owned enterprises in the mining and oil sectors. Among these companies, GECAMINES and SONAHYDROC were among the weakest performers in terms of transparency and accountability.[79] Positive increases in the scores of the two Congolese SOEs in this interim evaluation could contribute to improved scores in future editions of the RGI. A review of the rules and practices of the best performing SOEs could demonstrate a path to follow for better governance:

- **Disclosure of financial statements.** ZCCM-IH, a Zambian SOE, publishes annual reports and financial statements certified[80] by an independent auditor, in accordance with the rules of the stock exchanges of Lusaka and London, where it is listed. The Ghana National Petroleum Corporation (GNPC) publishes expenditures linked to non-commercial activities in its reports.[81] SOGUIPAMI, based in Guinea, discloses expenditures invested in exploration partnerships.[82]
- **Accountability and audits of SOEs.** SOGUIPAMI and the Tanzania Petroleum Development Corporation[83] are examined by the Auditor General, who certifies their financial statements and annual reports, both of which are also published. In Ghana and Tanzania, state-owned enterprises must present their reports to parliament.
- **Transparency in the sale of commodities.** The Ghanaian Petroleum Revenue Management Act[84] of 11 April 2011 requires the Ministry of Finance to publish the volume, value and date of GNCP's oil sales.

Recommendations on state-owned enterprises	Intended recipient of the recommendation
Recommendation for both sectors (mining and hydrocarbons)	
Disclose the audit reports of state-owned enterprises (SOEs), and, where applicable, authorize their disclosure on the EITI website.	Ministry of Portfolio EITI
Publish audited annual reports including full financial statements; publish and adopt, where applicable, a code of conduct for each SOE.	GECAMINES SONAHYDROC
Recommendations for the mining sector	
Sign the decree on rules for management of revenues from the sale or transfer of shares by GECAMINES and other SOEs in the extractive sector.	Prime Minister
Withdraw quasi-fiscal activities in the field of health and education, or, as a minimum, publish expenditures in these activities by GECAMINES and other SOEs in the mining sector.	GECAMINES
Respect the call for tender process for the sale or transfer of shares and mining rights, and guarantee maximum publicity of the process.	GECAMINES
Respect and support the disclosure of joint venture contracts and asset sale contracts, as well as the disclosure of ESIAs and ESMPs of projects in which GECAMINES participates.	GECAMINES

79 NRGI, Resource Governance Index: From Legal Reform to Implementation in Sub-Saharan Africa. www.resourcegovernance.org/sites/default/files/documents/rgi-from-legal-reform-to-implementation-sub-saharan-africa.pdf
80 www.zccm-ih.financifi.com/financials/financial-statements
81 www.gnpcghana.com/annual_reports.html
82 www.soguipami.info/rapports-dactivites
83 www.tpdc.co.tz/downloads.php
84 www.mofep.gov.gh/publications/acts-and-policies/petroleum-revenue-management-act-815

Revenue management

The score for the revenue management component for the mining sector decreased by 5 points, from 35 in the 2017 RGI to 30 out of 100 in the 2020 RGI interim evaluation. This decrease is explained by new provisions in the mining code on the establishment of the mining fund for future generations, which have not yet been implemented. In contrast, the revenue management score for the oil and gas sector increased by 12 points, from 20 in the 2017 RGI to 32 in the 2020 RGI interim evaluation.

National budgeting

The national budgeting subcomponent covers the management of public finances. In the 2020 RGI interim evaluation, the same score is recorded for both sectors: 35 out of 100, a slight improvement compared to the 2017 RGI. The national budget includes information on total government revenue and expenditure, as well as aggregate revenue from the extractive sector. This subcomponent score is adversely affected by the absence of fiscal rules to manage the budget balance and level of public debt, as well the lack of a centralized portal for all economic data from the extractive sector. The national budget should also include projections related to the evolution of mining and oil revenue.

Recommendations on national budgeting	Intended recipient of the recommendation
Recommendation for both sectors (mining and hydrocarbons)	
Publish in a single online portal the data on reserves, production, exports and revenue from the extractive sector.	Ministry of Finance Ministry of Mines Ministry of Hydrocarbons
Publish projections relating to the evolution of mining and oil revenue.	Ministry of Finance Ministry of Mines Ministry of Hydrocarbons
Adjust state expenditures to realistic revenue projections in order to reduce recourse to emergency credit due to urgent needs for the balance-of-payments equilibrium.	Ministry of Finance

Subnational resource revenue sharing

The revised mining code reformed the regime for allocating mining revenues to subnational entities. Under the 2002 code, the central treasury was responsible for transferring part of the revenue to the provinces and local producing communities. With the 2018 mining code, mining companies pay revenue directly at national, provincial and local levels (decentralized territorial entity, ETD), and into a mining fund for future generations (see next subcomponent). For this reason, revenue "sharing" in the sense of the RGI (understood as transfers from central to subnational entities) no longer exists and DRC obtains a score of "not applicable" for the entire subcomponent. However, in order to take into account the new legislation, NRGI has used the RGI questionnaire to evaluate the transparency of direct payments to subnational entities, without including this information in the calculation of the RGI scores. See Box 8.

Box 8. Governance of revenue payments to subnational entities

The legal framework for direct revenue sharing with decentralized territorial entities (ETDs) is governed by Article 242 of the revised mining code, which sets out the following distribution formula:

Mining revenue is paid by the holder of the mining exploitation license at the rate of:

- 50% to the central government;
- 25% to an account designated by the administration of the province where the project is located;
- 15% to an account designated by the decentralized territorial entity (ETD) within whose jurisdiction the exploitation operates;
- 10% to the Mining Fund for Future Generations (FOMIN).

In terms of audits of these flows, the general mandate assigned to the Court of Audit to monitor the flows paid by state agencies also covers payments made to provinces and local communities. Practices on the transparency of flows of sub-national payments are still not systematized and researchers were not able to find payment statistics at the level of the Ministry of Finance, nor of the provincial administrations or ETDs. Initial experiences of the application of the code have revealed that, in certain cases, sharing among the different ETDs is not clear where ETDs overlap (sectors, communities) and where mining projects extend over several ETDs.[85] The government should develop additional guidance to clarify rules in such cases.

In the oil and gas sector, the hydrocarbons code requires that 10 percent of oil revenue be paid to producing communities for the management of environmental impacts. This requirement has never been implemented. The subnational resource revenue sharing subcomponent is given a score of 29 out of 100 in the 2020 RGI interim evaluation for hydrocarbons, reflecting the significant gap between the current legal framework and its implementation.

Recommendations on subnational revenue sharing	Intended recipient of the recommendation
Recommendation for both sectors (mining and hydrocarbons)	
Publish, on a quarterly basis, the revenue flows received by the provinces and ETDs from mining and oil companies, by province/region, project and ETD.	Ministry of Finance
Recommendations for the mining sector	
Adopt an additional guidance note, both to specify revenue sharing objectives and to clarify the rules and formulas for revenue sharing in the event of overlap of mining projects.	Ministry of Mines Ministry of Finance
Recommendations for the oil sector	
Implement the transfer of 10% of oil revenue to producing communities for the management of environmental impacts: determine regulations and identify the management institutions.	Ministry of Finance Ministry of Hydrocarbons

Sovereign wealth funds

As indicated above, 10 percent of mining revenue must be paid to a mining fund for future generations (FOMIN). This fund is established by Article 8a of the revised mining code and its terms are defined by the Decree of December 2019.[86] The establishment of structures for managing the fund is still ongoing. However, significant factors justify its inclusion in this interim evaluation, above all the fact that payments paid to the fund have commenced. Monitoring transparency and good governance of these flows is therefore important.

85 See: NRGI, Jean Pierre Okenda, Innovations de la nouvelle législation minière de la RDC : opportunités, défis et perspectives de mise en œuvre, July 2019. www.resourcegovernance.org/sites/default/files/documents/innovations_de_la_nouvelle_legislation_miniere_de_la_rdc_opportunites_defis_et_perspectives_de_mise_en_oeuvre_0.pdf.

86 Decree No. 19/17 of 25 November 2019 on the Status, organization and operation of a Public Institution named the Mining Fund for Future Generations (FOMIN).

The sovereign wealth funds subcomponent for the mining sector obtains a score of 25 out of 100. With regard to rules, the decree establishes clear requirements for financial reporting and auditing of the fund. However, reporting could be strengthened with a requirement for public disclosure of the fund's annual reports to facilitate citizen oversight. The lack of rules governing withdrawals from this fund and parliamentary approval of withdrawals as part of the budget process also bring down the score achieved by the FOMIN.[87]

At this stage of implementation of the FOMIN, several RGI questions on the practical application of rules have not been given a score in the interim assessment.[88] These questions concern, for example, the disclosure of annual financial reports; disclosure of assets held by FOMIN; respect of rules on deposits; and adherence with rules limiting investments. However, one major challenge revealed by the 2020 RGI interim evaluation is the lack of transparency concerning amounts paid to the fund during the 2018 and 2019 fiscal years. While this revenue is understood to be paid into an escrow account of the Mining Cadaster through the Congolese Central Bank (BCC), the absence of statements from the BCC on the amounts deposited makes it impossible to evaluate the respect of the revenue sharing formula (10 percent of mining revenue), and impedes accountability on the management of this fund.[89]

In the oil sector, the sovereign wealth funds subcomponent is not applicable. However, Article 19 of the hydrocarbons code stipulates: "A fund is established for future generations. The resources of the fund come mainly from the state's share of profit oil. The management of the fund for future generations is assigned to a public institution established for this purpose by decree deliberated in the Council of Ministers." Such a decree does not yet exist. However, since 2015 EITI reports have shown that the state is receiving profit oil, a share of which should be taken for the fund for future generations.

Recommendations on sovereign wealth funds	Intended recipient of the recommendation
Recommendations for the mining sector	
Consider drafting additional rules on the management of FOMIN: rules governing the amounts withdrawn from the fund; rules on the budgetary approval of such withdrawals; and rules directing the investment decisions of the fund. Demand the publication and parliamentary scrutiny of FOMIN's financial statement.	Ministry of Finance Ministry of Mines
Publish an audited annual report of FOMIN with the following information: total value of the fund; fund withdrawals and deposits during the period; destinations of investments, their nature and returns.	To the board of directors of FOMIN
Publish the revenue flows paid to FOMIN disaggregated by project.	Central Bank of the Congo Ministry of Finance EITI Executive Committee
Recommendation for the hydrocarbons sector	
Sign the decree on the establishment, organization and operation of the oil fund for future generations, or clarify the reasons for the non-operationalization of this fund.	Prime Minister Ministry of Hydrocarbons

87 For a better understanding of the risks of sovereign wealth funds without rules of investment, withdrawals and independent auditing, see NRGI & CCSI. 2014. *La gestion des fonds de ressources naturelles : comment assurer des retombées pour tous.* (Management of natural resource funds: how to guarantee benefits for everyone) For example, p. 5: "most governments allow domestic spending to be financed directly by the financial assets of their fund rather than through the budget process. This situation diminishes the responsibility to Parliament, democratic institutions and the management systems for public finances in certain countries. In Azerbaijan, for example, public authorities used the State Oil Fund (SOFAX) to directly finance strategic government projects, such as the railway linking Azerbaijan, Georgia and Turkey. These expenditure items are not subject to the same requirements in terms of declaration or tendering as those financed through the normal budgetary process, and nor are they subject to rigorous parliamentary control. "

88 While it is not possible to evaluate the management of a structure or activity that does not yet exist, according to the RGI methodology, the questions obtains a score of "not applicable" which does not adversely affect the overall evaluation.

89 Before the relocation of accounts, the Cadaster had declared receipt prior to 20 February 2019 of the amount of 8.037 million US dollars, which was transferred to the sub-committee of the Public Treasury at the Central Bank by the Ministry of Finance. The same report indicates that neither the Central Bank nor the Ministry of Finance have declared the payments received for the account of the mining fund. EITI Technical Secretariat, 2017-2018 contextual report, December 2017, p. 86.

Enabling environment

The score of the last component, enabling environment, remains the same as it was for the 2017 RGI: 12 points out of 100. However, the subcomponents of enabling environment show different trends. Elements where DRC has recorded progress reflect better government efficiency[90] and the availability of open data.[91] Meanwhile, the scores associated with control of corruption and voice and accountability have decreased. Data related to enabling environment are for the year 2018, during which DRC experienced instability resulting from an electoral period. In 2020, the situation is more stable. However, the Corruption Perception Index (CPI) published by Transparency International confirms that the negative trend of DRC in terms of corruption continued into 2019.[92] The government has an opportunity to reverse this trend by identifying fighting corruption as a central policy objective.

CONCLUSION

The 2020 RGI interim evaluation shows progress made on the governance of the extractive sector (both mining and oil and gas) in DRC over the last two years, 2018 and 2019. However, progress is constrained by significant challenges at the level of legislation as well as practices on the ground. For example, rules to strengthen transparency and accountability are lacking in some areas. The interim evaluation also highlights the need to harmonize governance between the two extractive sub-sectors, as well as with the country's general legal framework.

The detailed recommendations on each RGI question have been formulated for each of the subcomponents with the hope that their implementation has a positive impact on the natural resource governance. Particular attention is required from authorities for the integration of a culture of transparency and systematic accountability within central, provincial, and local administrations, as well as within state-owned enterprises.

90 With regard to quality of public services, the public sector and the degree of independence with regard to political pressure, and the formulation and implementation of policies. See: info.worldbank.org/governance/wgi.

91 Data that is freely available for the public to access, exploit and re-use. These data provide several opportunities to broaden human knowledge and create new quality products and services. According to the definition provided by the Open Knowledge Foundation in 2005, the essential criteria for Open Data are that it can be freely accessed, re-used and distributed by anyone (www.lebigdata.fr/open-data-definition).

92 See www.transparency.org/country/COD