

*Les Rayons de la Transparence !*

**REPUBLIQUE TOGOLAISE**



**SECRETARIAT TECHNIQUE**

**Preliminary Report for the Second Validation of Togo**

**Comments by the Multi-Stakeholder Group**

**Corrective measure 1 : Governance of the multi-stakeholder group : Requirement 1.4**

In accordance with Requirement 1.4, the multi-stakeholder group should update its internal governance document to include provisions ensuring that:

(i) The representation of the multi-stakeholder group includes the appropriate stakeholders;

(ii) Clear procedures are in place regarding stand-in members of the Steering Committee and the replacement of members of this Committee;

(iii) Members of the multi-stakeholder group communicate with their constituencies;

(iv) A mechanism is in place to resolve conflicts of interest;

(v) The policy of the Steering Committee regarding per diems is clear and transparent;

(vi) The multi-stakeholder group works to approve a regulation on nomination of its members for the purpose of renewal of the multi-stakeholder group.

**Requirement 1.4 : Governance of the multi-stakeholder group**

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| **Observations** | **Comments of the multi-stakeholder group** | **Actions** |
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| **Composition and membership of the multi-stakeholder group**: Although its members were renewed in October 2019, a week before the start of the second validation, the multi-stakeholder group had not changed its structure since the first validation. | The remark of the International Secretariat is pertinent. However, we would like to point out that the decree establishing the EITI in Togo defined the structure of its bodies. In view of the recommendations of Togo's first validation, the multi-stakeholder group hired a consultant to review internal governance of the bodies of EITI-Togo. For the 2016-2019 mandate, the order on nomination already provided for rotation of members, agreed by the civil society constituency, notwithstanding the provisions of the decree. Before the second validation, the International Secretariat observed in Lomé that there was a major change in the renewal of members for the new mandate of the multi-stakeholder group, although the decree has not been amended. For these reasons, this observation should be more of a positive point for Togo. | The new members of the Steering Committee and National Supervisory Council are confirmed by order of the Minister of Mines and Energy (Order No. 061/MME/CAB/2O2O of June 19, 2020) and by order of the Prime Minister (Order No. 2O2O- 052/PMRT of June 24, 2020).  Members are nominated for a three-year term |
| At the time of validation, the new members of the multi-stakeholder group had not been confirmed by order | At the time of validation, the members of the multi-stakeholder group had not been confirmed, and this was simply to allow good follow-up of the validation by those who participated in the validation. Now that the preliminary report is known, the order for renewal of the multi-stakeholder group has been signed and published. The mandate begins from the date of signature. | The renewal of the members of the multi-stakeholder group has been confirmed by the orders of the Prime Minister for the National Supervisory Council (Order No. 2O2O-052/PMRT of June 24, 2020) and of the Minister of Mines and Energy for the Steering Committee (Order No. 061/MME/CAB/2O2O of June 19, 2020). |
| The order on nomination of these members had not yet been signed at the start of validation. | The composition of the renewal of the multi-stakeholder group was adopted by the Steering Committee during the self-assessment workshop. The signing of the order did not go ahead because it was decided to await finalization of validation before the new mandate came into force. | The orders for the renewal of members, for both the Steering Committee and the National Supervisory Council, have already been signed: National Supervisory Council (Order No. 2O2O- 052/PMRT of June 24, 2020); Steering Committee (Order No. 061/MME/CAB/2O2O of June 19, 2020). |
| Although the National Supervisory Council is supposed to be the decision-making body of the EITI, the council did not meet in 2019. This contravenes Article 6 of the decree which states that the National Supervisory Council must meet at least twice a year | The effort of the multi-stakeholder group, far from defusing the content of the observation, has rather reinforced it, since governance is primarily about bringing practice into line with facts. To this end, the decree called for the ministers who are in the National Supervisory Council to also be represented in the Steering Committee. As a result, they are always informed of progress in implementation. They informally discuss difficulties and decisions between themselves and with the Prime Minister, the president of the National Supervisory Council. There are no minutes of meetings, but the direction towards proper implementation was sustained. | The internal governance of the EITI-Togo bodies will be formalized and codified. A consultant has been recruited for this purpose. |
| There is no clear procedure for nomination of members of the National Supervisory Council, and there is no evidence that members comply with certain provisions of the decree, such as holding at least two meetings per year. The last meeting of the National Supervisory Council took place on October 15, 2018. | To strengthen the governance procedures of the multi-stakeholder group and the Technical Secretariat, the multi-stakeholder group has undertaken the process of hiring a consultant to develop the procedures to be put in place for internal governance of the multi-stakeholder group, ensuring compliance of EITI implementation with the principles of the Standard. The signing of the contract is scheduled for July 2020 | The multi-stakeholder group has hired an international consultant to design internal governance for the bodies of EITI-Togo. The work will start in July 2020. |
| **Representation of civil society**  Page 8, paragraph 1, line 9: although these procedures are not clearly codified in any document examined by the Technical Secretariat | This was the situation at the first validation. The reference system used for the renewal process relating to the 2020-2023 mandate was the minutes of participation of civil society in the EITI, the civil society directives of 2019 and the decree on creation and organization of EITI-Togo, including publication of the call for candidates with regard to civil society. | The system of reference will be reviewed by the consultant for internal governance of the multi-stakeholder group and will be submitted to the International Secretariat for codification. |
| **Representation of the extractive industry**  Page 8, line 5: consultation with stakeholders also showed that the members of this sub-constituency were not aware of their role in convening, supervising and making decisions within the EITI, apart from the periodic communication of extractive data. | Two associations have been created: APIET for the mining industries and the Association of Water Producers for the purpose of meetings.  Decisions are taken together in the Steering Committee and in working groups. | A series of actions will be taken in 2021 in order to reinforce the capacities of all branches of the bodies of EITI-Togo in enactment and decision-making for implementation of the EITI. A three-day workshop will be organized already in 2020, at the start of the new mandate. |
| **Government representation**  Page 9, paragraph 2, line 5  Nomination and renewal procedures have not been codified, although the constituency sought to hold more meetings prior to validation to clarify constituency guidelines | A consultant will be recruited in July 2020 to design internal governance procedures for the multi-stakeholder group. The document will state the procedures to be followed for the governance of constituencies and EITI stakeholders.  The provisions of the decree establishing EITI-Togo will be amended and reinforced on the basis of the document’s recommendations. |  |
| Terms of reference  Page 5paragraph 3, line 1  Although the nomination procedures changed in October 2019 before the start of the second validation, the official documents on the terms of reference and internal rules have not been changed since the first validation. | The consultant for the design of internal governance procedures of the multi-stakeholder group will propose models for the ToR and internal rules that comply with the principles of the EITI Standard. | The consultant to be hired in July 2020 for internal governance of the multi-stakeholder group will propose guidelines on the codification of procedures for the nomination and renewal of members. |
| **Assessment by the Secretariat**  Page 10, paragraph 1, line 9  The order approving the new members of the multi-stakeholder group and the terms of reference for the constituencies have not yet been published. The multi-stakeholder group has clarified the policy on per diems, but official documentation on the disbursement of the allowance for attendance or transportation was not available. | The order nominating members is signed when validation work for the provisional validation report is completely finalized.  The consultant for governance procedures of the multi-stakeholder group will suggest to us the steps to follow for a per diem allowance and allowances for travel and participation. | The multi-stakeholder group will recruit a consultant in July 2020 for internal governance of the bodies of EITI-Togo and for sustainable financing of implementation. |

**Corrective measure 2 : Work plan : Requirement 1.5**

Requirement 1.5 states that the multi-stakeholder group should ensure that the work plan:

(i) establishes clear implementation objectives that are linked to the EITI principles;

(ii) reflects national priorities, agreed activities and responsible parties

**Requirement 1.5 : Work plan**

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| **Observations** | **Comments of the multi-stakeholder group** | **Actions** |
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| **Objectives and consultations**  Page 11, paragraph 1, line 4  National priorities are not clearly defined and no clear link has been established between the goals of EITI implementation | The observation of the International Secretariat is pertinent. The shortcoming will be rectified by the 2020-2022 work plan. However, we would like to point out that the implementation of the EITI is charismatic. The representatives of ministries within the Steering Committee are given recommendations and decisions and apply them in national priorities in the form of regulations, directives or reforms.  This is evidenced by the fact that several reforms have been undertaken as a result of the EITI at the level of the ministries of finance and mines, as well as the ;putting in place of laws on transparency, access to public information, amendment of the Penal Code, etc. | The 2020-2022 work plan is established and clearly defines the links between the goals of implementation and national priorities. |
| **Measurable and time-bound activities**  Page 12, line 3  However, it does not show measurable results from implementation.  Page 12, line 5  In addition, not all activities are given time limits | The work plan includes the organization during the year of a self-assessment workshop in order to measure the results of implementation. In addition, public debates during the dissemination of EITI Reports or awareness raising build on the perception of stakeholders and citizens.  It is usually the case that recurrent activities are not given time limits | The 2020-2022 work plan will take account of the remarks of the International Secretariat (measurable results, deadlines for activities, others). An initiation workshop for new members will be organized at the start of the mandate in 2020 for familiarization with the 2020-2022 work plan. |
| **Capacity constraints**  Page 12, line 2  It does not address technical capacity constraints in the multi-stakeholder group, or assignment of staff to the Technical Secretariat. |  | This issue will be properly addressed by the internal governance model proposed by the consultant for the multi-stakeholder group. |
| **Legal or regulatory obstacles identified**  The work plan does not include proposals for overcoming more general legal or regulatory obstacles that may arise, or for integrating beneficial ownership into the legal and regulatory framework. The work plan does not consider the main achievements to date, or the potential obstacles and risks to the implementation of the EITI, other than the issue of lack of funding. | The work plan does not specifically include proposals to overcome possible obstacles, but all these matters are discussed during self-assessment workshops and recommendations are made to address them. | This question will also be addressed by the internal governance procedures which will be proposed by the consultant.  In addition, a consultant will be hired in July 2020 to develop the legal and regulatory procedures for beneficial ownership. |
| **Assessment by the Secretariat**  **Page 13, paragraph 2, line 1**  Togo will need to ensure that national priorities are clearly identified and are linked to clear objectives for EITI implementation beyond reporting.  The multi-stakeholder group will also need to ensure that ongoing activities are included in the work plan, with a view to implementing reforms in various spheres such as transparency od contracts and systematic disclosures.. |  | The 2020-2022 work plan will be scalable and will take account of all the recommendations of the second validation. |
| The multi-stakeholder group is encouraged to include measures for overcoming legal and regulatory obstacles to implementation, as well as capacity building activities to ensure effective oversight of the EITI process.  Togo is encouraged to strengthen coordination processes between constituencies in design of the EITI work plan and to ensure that all of the constituencies (government, extractive industry and civil society) are consulted on future updates of work plans. |  | This issue will be properly developed by internal governance and should explicitly be made a part of the work plan in accordance with the development of implementation and the actions undertaken by the stakeholders. |
| Togo could consider issuing more regular updates on the implementation of the work plan, to clarify how the multi-stakeholder group and the secretariat follow up on implementation. This might support the efforts of the multi-stakeholder group to mobilize potential donors to support particular activities in the work plan. |  | A half-way review of the work plan is envisaged for each year. |

**Corrective measure 3 : Policy on contract disclosure : Requirement 2.4**

Pursuant to Requirement 2.4, the multi-stakeholder group will need to clarify government policy on contract transparency, including relevant legal provisions, actual disclosure practices, and any government reforms that are planned or are underway.

**Requirement 2.4 : Policy on contract disclosure**

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| **Observations** | **Comments of the multi-stakeholder group** | **Actions** |
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| **Government policy**  Page 14, line 1  The current Mining Code and the draft law amending the Mining Code, which was adopted by the Council of Ministers in July 2019, contain no specific provision on the publication of mining contracts | The Mining Code contains provisions on transparency and not specifically on the publication of contracts. Rather, it is a matter of publication of all information on the extractive sector. | The multi-stakeholder group will ask the Ministry of Mines and Energy to ensure the application of the provisions of the Transparency Code, with regard to the publication of mining contracts, in the Mining Code and in its implementing texts. |
| **Practice and accessibility**  Page 14, paragraph 2, line 1  The Hydrocarbons Code does not define a model production sharing contract (PSA) for oil and gas contracts and does not contain any provision on contract disclosure.  In practice, the contracts signed in 2010 between ENI and the government have not been published. |  | The multi-stakeholder group will ask the Ministry of Mines and Energy to propose a programme for revising the Hydrocarbons Code, which will subsequently be integrated into the work plan. |
| **Assessment by the Secretariat**  Page 14, paragraph 1, line 7  The EITI Report sets out information on contracts made in the year under review, but does not make clear which contracts and licenses were published in full. This raises doubts as to the completeness of the data published in each repository. |  | The multi-stakeholder group will ensure that all contracts are published in their entirety. |
| Page 14, paragraph 2, line 1  To strengthen implementation, the multi-stakeholder group is encouraged to take into account the new provisions of Requirement 2.4, taking particular care to establish a system for all licences and contracts that should be systematically published from January 1, 2021. |  | This question will be treated and developed by the Mining Cadastre at the level of the General Directorate for Mines and Geology.  The multi-stakeholder group will ensure that all contracts of companies with significant revenues are published before January 2021. A programme will be designed for this purpose. |
| The multi-stakeholder group is also encouraged to include in its work plan detailed activities for the full disclosure of contracts.  The multi-stakeholder group may also wish to assess the completeness of contract disclosures and background data published in various repositories, and consider the feasibility of bringing all mining contract disclosures together in a single repository to avoid duplication. |  | The work plan will take the resolution of all these issues into account.  The Mining Cadastre will serve as a unique repository for the publication of mining contracts. |

**Corrective measure 4 : Requirement 2.6 : State participation**

Requirement 2.6 calls for the multi-stakeholder group to disclose details concerning conditions applicable to participation by a state-owned enterprise (SOE), including its degree of responsibility for meeting expenses at different stages of the project cycle (such as fully paid equity, free equity or deferred interest), which may be done on the website of the relevant SOE.

The multi-stakeholder group should also present details of loans and loan guarantees provided to the Société Nouvelle des Phosphates du Togo (SNPT).

**Requirement 2.6 : State participation**

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| **Observations** | **Comments of the multi-stakeholder group** | **Actions** |
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| **Loans and guarantees**  Page 16, paragraph 2, line 10  The EITI report highlights three financial commitments in 2017 relevant to the SOE, Togolaise des Eaux (TdE) (investment grants, loans, leasing and similar contracts) amounting to 2,607,325,234 CFA francs.  After reviewing the financial statements of the company, the independent administrator was unable to obtain detailed information on these commitments, such as dates, initial amounts, identity of borrowers and/or lenders and repayment terms.  This contributed to the lack of clarity on fund transfers between TdE and the state. |  | The multi-stakeholder group will ask TdE to provide the independent administrator with detailed and comprehensive information on fund transfers between it and the state. |
| **Assessment by the Secretariat**  Page 17, paragraph 2  To strengthen implementation and improve public access to information on the rules and practices governing relations between state-owned extractive enterprises and the government, SNPT could consider expanding the scope of its own separate systematic disclosures, for example via a website where the company's statutes, audited financial statements and disclosures relating to SNPT's operations outside the extractive industries could be published.  The multi-stakeholder group could also clarify all of the legal and business conditions associated with the purchase of an additional participation by the state in addition to the 10% non-paying participation in extractive companies. |  | The multi-stakeholder group will ask SNPT to set up its own website for the systematic publication of company information, including financial statements.  The multi-stakeholder group will ask the Ministry of Mines and Energy to design implementing texts for the Mining Code which clearly explain all legal and commercial conditions linked to the purchase of additional participation by the state, in addition to the 10% non-paying participation in extractive companies. |

**Corrective measure 5 : Infrastructure provision and barter agreements : Requirement 4.3**

In accordance with Requirement 4.3, the multi-stakeholder group should strive to fully understand the relevant terms of barter agreements and contracts, the identity of the parties involved, the resources pledged by the state, the value of the counterparty in terms of financial and economic flows (for example, infrastructure works) and the level of materiality of these agreements compared to conventional contracts. The multi-stakeholder group and the independent administrator should ensure that the EITI Report presents these agreements with a level of detail equal to that applied to the disclosure and reconciliation of other payments and income streams.

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| **Observations** | **Comments of the multi-stakeholder group** | **Actions** |
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| **Assessment by the Secretariat**  Page 19  To strengthen implementation, Togo is encouraged to ensure that annual disclosure of the implementation of barter agreements is accompanied by a mechanism to ensure reliability of the data. |  | The multi-stakeholder group will ask the Ministry of Mines and Energy to mention in the revised Mining Code that the benefits granted to companies on the model of barter agreements will be disclosed each year to the independent administrator of the EITI Report in a reliable and comprehensive manner. |

**Requirement 4.3 : Infrastructure provision and barter agreements**

Corrective measure 6 : Transactions between state-owned enterprises and the government : Requirement 4.5

Requirement 4.5 calls for the multi-stakeholder group to ensure that SNPT provides the detailed information requested by the independent administrator in order to deepen the process of reconciliation with government figures.

**Requirement 4.5 : Transactions between SOEs and the government**

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| **Observations** | **Comments of the multi-stakeholder group** | **Actions** |
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| **Assessment by the Secretariat**  Page 20, paragraph 2  To strengthen implementation, Togo may wish to look at ways of systematically disclosing significant payments by state-owned enterprises to the government through the regular publication of SNPT's audited financial statements on the internet. |  | The multi-stakeholder group will hire a consultant in July 2020 to design an open-data mechanism. As a result, all information from public and private companies will be published regularly and systematically. |

**Corrective measure 7 :** **Subnational transfers: Requirement 5.2**

Requirement 5.2 calls for the multi-stakeholder group to communicate with the Office Togolais des Recettes (Togolese Revenue Office, OTR) in order to disclose the revenue sharing formula for all transfers between state entities at national and subnational levels that relate to revenues from the extractive sector, including any discrepancies between amounts actually transferred between the central government and each of the subnational entities concerned.

**Requirement 5.2 : Subnational transfers**

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| **Observations** | **Comments of the multi-stakeholder group** | **Actions** |
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| **Progress since validation**  Page 21, paragraph 1  The report indicates that it has not been possible to reconcile subnational transfers between the General Directorate of the Treasury and Public Accounting (DGTCP) and local administrations, due to a lack of reporting by the latter (pages 10 and 105).  The report does not explain why so many local governments have not reported the subnational transfers (rebates), which they received.  The Public Expenditure and Financial Accountability (PEFA) report for 2016 indicates that annual financial reports by local governments do not exist in Togo.  According to a government stakeholder, the country is now implementing reforms in order to strengthen the reporting capacities of local governments.  Page 21, paragraph 2  Togo has not followed recommendations on ensuring the quality of data on subnational figures (the DGTCP did not provide all of the quality guarantees agreed for the year under review, according to the 2017 EITI Report) ( page 18).  Page 21, paragraph 3  According to the independent administrator, there were no ad hoc transfers between the state and local governments in 2017. |  | The multi-stakeholder group will ensure capacity building by local administrations for the declaration of subnational transfers.  The multi-stakeholder group will request the DGTCP to provide the independent administrator with all the information that is required in order to ensure the quality of data on subnational figures.  This information will be publicly available on the EITI-Togo website.  The multi-stakeholder group will organize awareness-raising and capacity building workshops for stakeholders for the disclosure of subnational transfers. |
| **Assessment by the Secretariat**  Page 21, paragraph 2  To strengthen implementation, Togo is encouraged to make more effort to increase the participation of local governments in the EITI reporting process and may wish to consider ways of enhancing the quality of disclosures related to subnational transfers. |  |  |

**Corrective measure 7 : License register : Requirement 2.3**

**Requirement 2.3 : License register**

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| **Observations** | **Comments of the multi-stakeholder group** | **Actions** |
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| **Progress since validation**  Page 22, paragraph 2, line 4  Expiration dates are provided, along with provision and request dates. However, several licenses held by companies with significant revenues are missing from the list of the Directorate General of Mines and Geology (DGMG), including the license held by SOGEA SATOM  Page 22, paragraph 3, line 5  It is the responsibility of the DGMG to update the portal, in coordination with Trimble.  Some data on licenses held by companies with significant revenues for fiscal year 2017:   * the license of SOGEA SATOM for use of quarries is absent; * Many licenses held by companies with significant revenues currently have the status “under renewal”, including the two licenses held by SNPT; * the license held by Togo carrière (Togo quarries), the fifth largest taxpayer in 2017, expired in August 2018 and was still marked “under renewal” * one of the licenses (PE-96-0001) held by WACEM, which expired in 2016, was still marked “under renewal” on March 4, 2020; * the license held by SAMARIA, a company with significant revenues, is currently marked "under renewal" while its expiration date is set in June 2022; * the license held by TGC, another company with significant revenues, expired in April 2018 and was still marked “under renewal” on March 4, 2020 * It is stated that Shehu Dan Fodio, a company with significant revenues, submitted a license application in 2018, but the license was granted in 2012. |  | The mining cadastre will specify information on the licenses of all companies in detail.  The mining cadastre will correct all these shortcomings. |
| **Assessment by the Secretariat**  Page 23, paragraph 2, line 3  Togo should ensure that all of the data envisaged in the EITI Standard on licenses and contracts held by all companies with significant revenues are fully disclosed.  Page 23, paragraph 3, line 1  In order to strengthen implementation, Togo is encouraged to ensure that the cadastre covers all licenses held by companies operating in the extractive sector. |  | The mining cadastre is designed to achieve this.  Idem. The mining cadastre is designed to achieve this. |

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