

Response to the EITI International Secretariat's Draft Evaluation Report on the EITI Peru Second Validation

25 January 2019

The EITI Peru Multi-Sectoral Standing Commission (CMP)¹ received the Draft Evaluation Report of the Second Validation of Peru sent by the EITI International Secretariat on 4 January 2019, after a protocol visit to the Vice-Minister of Mines and the President of the Commission.

This document states that the EITI International Secretariat has evaluated the progress made in respect of the six corrective actions laid down by the EITI Board after the first validation, performed in 2017, concluding that "most of the small number of corrective actions in the validation have been adequately addressed".

This document provides a specific response to what are described in the draft as "issues or apparent gaps that should be clarified".

Corrective action relating to requirement 2.6:

Under requirement 2.6, the EITI CMP should conduct a thorough assessment of the roles of Perupetro and Petroperú. In particular, the EITI CMP should clarify the situation with regard to the operation of Block Z-2B, owned by Perupetro and operated by Savia. The EITI CMP should confirm whether operation of this block produces significant payments, including these companies' social expenses.

In this respect, as stated in the draft document, the EITI Peru CMP incorporated the information requested in the corrective action (referring to the roles of Perupetro and Petroperú) in the drafting of the VI National Transparency Report and in more detail in the Supplementary Document. To this end, the relevant consultations and coordination with these public entities were conducted in order to respond as clearly as possible to the aspects required in relation to these State-owned enterprises, which coincides with the International Secretariat evaluation. With regard to the points described as being outstanding:

- i) With regard to the explanation of Activos Mineros S.A.C., in addition to the information provided in the VI National Transparency Report and the Supplementary Document forwarded to the International Secretariat, it is important to clarify that this is a State-owned company under private law operating in the mining sector that has the objective of remedying the mining liabilities for which the State gives it responsibility, maintaining the liabilities that have already been remedied, and administering and supervising the post-privatisation commitments assumed by mining investors; it also collaborates with the promotion of private investment in mining concessions, among other responsibilities of State-owned entities.

The function of Activos Mineros S.A.C. is not similar to that of PERUPETRO; it has no right of ownership over minerals and it does not enter into contracts for the exploration for or extraction of mining resources, neither indirectly nor through any subsidiary. In this respect,

¹ Name given to Multi-Stakeholder Group under Supreme Decree 028-2011-EM, pursuant to Peruvian law.

we consider that the information provided is in compliance with requirement 2.6 of the Standard – State Participation – to which this corrective action refers.

The information already included above may be expanded regarding the relationship between Activos Mineros and the contractual royalties that the company Minera Las Bambas pays. This is a particular and specific case that was established in the context of the privatisation process that Proinversión² was responsible for in 2004 and through which the transfer of the aforementioned concessions is made to Minera Las Bambas. The transfer contract expressly states that Minera Las Bambas will pay financial compensation, termed Contractual Royalties, to the State for the exploitation of the concessions' resources. The contract also establishes that these will be a fixed percentage of 3% of the value of net annual income from the sale of the mineral resources extracted, with payment required to be made on a monthly basis in accordance with legislation in force. In addition, Proinversión established that Activos Mineros S.A.C. would be responsible for the collection of the Contractual Royalties and that these royalties would be distributed in accordance with the regulations in force relating to mining royalties. In this respect, and for this case in particular, Activos Mineros S.A.C. is fulfilling a role as a collector, since all of these resources are transferred to the subnational governments that are the beneficiaries of this item, through the Ministry of Economy and Finance (MEF).

Similarly, considering the relevance and representativeness of the contractual royalties collected by Activos Mineros S.A.C. on behalf of the State, the National Commission considers it relevant to conduct the reconciliation of said item in the forthcoming VII EITI Peru National Transparency Report, in accordance with requirement 4.1 of the EITI Standard, including the distribution of these resources to subnational governments and public universities.

- ii) Regarding the concern expressed by the International Secretariat about the "Other Income" component listed on page 5 of the Supplementary Document forwarded by EITI Peru, (and which has as its source a table taken from the 2016 Annual Report of Perupetro) we need to state that almost all of this item (S/ 1,034 million, of S/ 1,049 million) can be explained - basically - by the income generated by the assets received by Perupetro before termination of the contracts for lots 192 and IX. Thus, Perupetro's financial statements for 2016 (page 27 of the document) state the following:

"To December 31 2015, the additions mainly comprise assets received free of charge for the completion of the exploitation contracts for lot 192 and lot IX, in August and May 2015 respectively. The fair value at the date of receipt of these assets was approximately S/ 1,034,701,000 for lot 192 (approximately equivalent to US\$ 346,549,000) and which corresponds to 3,736 items (...) The value of these assets will be recovered with implementation of the contracts for these lots."

This document also notes that this income is transferred and is listed under the heading of "Transfers to the public treasury" (see page 29). It is important to note that this transfer will be made when the sale of the assets received takes place on the occasion of the signing of

² The Private Investment Promotion Agency, PROINVERSIÓN, is a specialised technical agency that promotes private investment through Public-Private Associations, Assets Projects and Taxation Works for incorporation into public services, public infrastructure, and State-owned assets, projects and entities, according to their powers. In its capacity as the Agency for the Promotion of Private Investment, it is responsible for projects of national importance assigned to it or those for which it is commissioned by the three levels of government. Source: <https://www.proinversion.gob.pe/>

a new long-term exploitation contract for lot 192. In this respect, while the transfer of these assets is listed as an income for Perupetro, these assets are not a real income for Perupetro (it receives the assets through being the company that represents the State in hydrocarbons contracts.) The text reads:

"Transfers to the Public Treasury – The Company recognises Transfers to the Public Treasury as an expense for the financial year in the statement of comprehensive income when they become due, in compliance with articles 6 and 3 of Law 26221 and article 20 of Law 26225, respectively, for which reason the income at the end of the financial year is zero."

Taking the above into consideration, the National Commission considers that these resources are not an income for Perupetro.

Link to Perupetro's 2016 financial statements:

<http://www.perupetro.com.pe/wps/wcm/connect/corporativo/7ad9db79-aadd-438c-8d42-0767e58b8c82/Informe%2Bcorto%2BPerupetro%2B31%2B12-16-15.pdf?MOD=AJPERES>

Corrective action relating to requirement 6.1:

In accordance with requirement 6.1, the EITI CMP should review the coverage of social spending to all stakeholders, including indigenous communities, and agree on an approach to address this requirement in compliance with the EITI Standard.

Regarding this point, it is necessary to clarify the understanding we have of each item noted in the Secretariat's document, in order to prevent any confusion in respect of this matter.

- a. Social Funds are a scheme created in Peru as a result of the privatisation process (initially, these were Trusts). These, therefore, are mandatory for those projects that specify them in their transfer contracts, in which the amount allocated to this purpose is specified. These resources are intended for the conduct of projects of a social nature until they are exhausted (as we note in the Supplementary Document).
- b. Social spending is the spending made by companies under their social responsibility and management policies, the goal of which is to contribute to improving the social and economic conditions of those living in the areas of influence of the extractive projects or operations.

This item is discretionary and particular to each company, since it depends on various corporate factors, primarily financial in nature. Peruvian law promotes this aspect, as it suggests and encourage extractive companies to carry out actions for the benefit of the population and for harmonious relationships with the public. In this context, the extractive companies establish programmes and plans for community relations, which evidence the companies' willingness to contribute to their environments. These plans are implemented through development projects that are funded in a voluntary manner with these contributions made by the businesses.³

³ These community relations plans (RRCC) form part of the social component of the Environmental Impact Assessments. In addition, Supreme Decrees 040-2014-EM and 023-2018-EM were issued in order to record the management of this social spending. It should be noted that these measures are still in the process of regulatory and administrative refinement and are pending implementation.

Considering the foregoing, the EITI Peru CMP decided that this information would be included in the contextual section of the VI National Transparency Report.

For each of them, we need to mention that:

a.1. Information on the Social Funds was provided, indicating the legal framework underlying them, an explanation of their nature and participatory management model, as well as the detail of the use of these resources in the eight specific cases in which this concept features in the period 2015-2016 (pages 186, 187 and 188). More-detailed information was provided in the Supplementary Document, in which we also publish information about these obligations and which is publicly available:

- Four-monthly reports:
http://www.minem.gob.pe/_detalle.php?idSector=3&idTitular=2540&idMenu=sub2539&idCateg=671
- Annual Reports of Social Funds:
http://www.minem.gob.pe/_detalle.php?idSector=3&idTitular=2998&idMenu=sub2539&idCateg=706
- In addition, information on the transfers to these funds is available in the annual reports of PROINVERSIÓN:
<https://www.proinversion.gob.pe/modulos/JER/PlantillaStandard.aspx?are=0&prf=1&jer=5701&sec=16>

b.1. Information on social spending is reported annually by mining companies to the Ministry of Energy and Mines (MINEM) through the Annual Consolidated Declaration (DAC) and, for the hydrocarbons sector, to PERUPETRO through the Community Relations Plan. These are in the form of a sworn declaration. The information is publicly available through the DATAMART application, which provides access to information on the amount invested, type of investment (projects, donations and/or equipment) by company, location and year, among others. A reference to this application was included in the contextual section of the VI National Transparency Report (pages 190-193).

Finally, given the nature of social spending and the Social Funds, the National Commission considers that the concept of reconciliation is not applicable to these, since they are not cash transfers to the State or entities of the State, but are spending directly made by mining rights holders (in the case of social spending) or through the Management Committees (in the case of the Social Funds).

Notwithstanding the above, the EITI Peru CMP will provide the information available on both items in the clearest and most comprehensive way in the forthcoming VII National Reconciliation Study.

Corrective action relating to requirement 4.1:

In accordance with requirement 4.1, the EITI CMP must ensure that the disclosure of national and subnational taxes and income is exhaustive, including the definition of the relative importance and scope of the presentation of reports.

With regard to this requirement, the EITI Peru CMP sent two communications to the International Secretariat (on 11 September and 27 December 2018), in addition to the Supplementary Document, in which it set out the reasons and confirmed its compliance, relevance and comprehensiveness when determining materiality in the drafting of the EITI Peru VI National Transparency Report.

In respect of the foregoing and concerning the cases mentioned in the Draft Validation Report:

- *Minsur S.A. represents 2.02% of the value of 2015 production and 1.92% of 2016 production, yet it pays a proportion of income tax higher than 4%. According to the National Commission's criteria for participation, this company has to be included in the National Transparency Report and, indeed, is one of the companies that has participated in the initiative from the outset. It should be noted however that the report includes companies that have substantially higher production levels even though their share in payments is lower in one particular year since, as we remarked, the payment of taxes depends on various variables including production, product prices, production costs and amortisation of investments, among others.*
- *Regarding the representativeness of the company Petrolera Monterrico. The Draft Report (information in table 3, page 25) incorrectly quotes production levels, stating that production by Petrolera Monterrico is much greater (10 times greater) than production by Graña and Montero Petrolera. However, the official Perupetro figures referred to in the National Transparency Report show that for 2016, the production volume of Petrolera Monterrico S.A. was 139,119 barrels, a lower figure than that stated for Graña and Montero Petrolera. We enclose the table published by Perupetro.*

RESUMEN DE PRODUCCIÓN DE HIDROCARBUROS LÍQUIDOS - 2016				
OPERADOR	LOTE	ACUMULADO (BLS)	PROMEDIO (BPD)	DISTRIBUCIÓN (%)
PETRÓLEO				
GMP	I	381,283	1,042	0.77
PETROMONT	II	116,098	317	0.23
GMP	III	347,695	950	0.70
GMP	IV	232,696	636	0.47
GMP	V	46,935	128	0.09
SAPET	VII/VI	1,172,376	3,203	2.37
UNIPETRO ABC	IX	69,304	189	0.14
CNPC	X	3,941,744	10,770	7.97
OLYMPIC	XIII	1,338,733	3,658	2.71
PETROMONT	XV	17,601	48	0.04
PETROMONT	XX	5,420	15	0.01
BPZ	Z-1	1,019,837	2,786	2.06
SAVIA	Z-2B	3,060,502	8,362	6.19
PACIFIC STRATUS	192	414,875	1,134	0.84
PLUSPETROL NORTE	8	1,601,265	4,375	3.24
MAPLE	31B/31D	38,475	105	0.08
MAPLE	31-E	15,900	43	0.03
PERENCO	67	131,579	360	0.27
CEPSA	131	820,733	2,242	1.66
SUB-TOTAL		14,773,051	40,364	29.88
LÍQUIDOS DEL GAS NATURAL				
SAVIA	Z-2B	429,728	1,174	0.87
AGUAYTIA	31-C	471,728	1,289	0.95
PLUSPETROL	56	12,184,351	33,291	24.64
REPSOL	57	3,214,323	8,782	6.50
PLUSPETROL	88	18,371,826	50,196	37.16
SUB-TOTAL		34,671,956	94,732	70.12
TOTAL		49,445,007	135,096	100.00

Source: Oil Statistics 2016, PERUPETRO

Available at: <https://www.perupetro.com.pe/wps/wcm/connect/corporativo/8edfcf71-e3cc-4652-9322947731b0e278/2016+ok.pdf?MOD=AJPERES&2016>

Regarding this observation, we wish to reiterate that the EITI Peru CMP has established that the work on transparency that it is committed to needs to move forward and ensure that the information is useful to guide the efficient use of the resources generated by extractive activity. We are also committed to taking forward the automation of national reconciliation reports to enable us to publish more up-to-date data.

This is why, 13 years after implementation of the EITI Initiative in Peru, its development can be verified both in terms of the thematic content of the National Transparency Reports and in its providing more comprehensive published data (the materiality of payments increased from 75% to more than 85% of the value of production for the mining sector and from 85% to more than 95% for the hydrocarbons sector) and, more recently, the inclusion of environmental and social data. The EITI Peru CMP is now seeking to strengthen transparency based on the decentralisation of the Initiative to the subnational level, giving meaning to the monitoring of the resources generated towards their use to benefit the population.

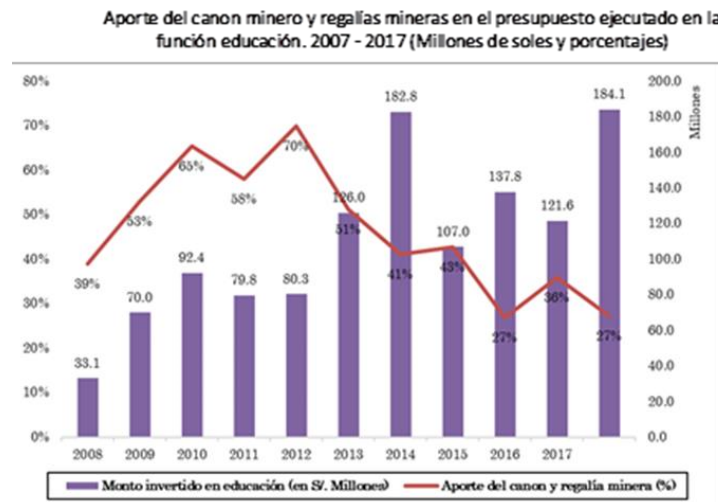
This evolution evidences our interest, as the EITI Peru CMP, in promoting transparency throughout the industry's entire value chain, but most of all it reflects the importance of the progress and growth of multi-stakeholder work in line with the national reality of Peru, hence efforts to expand regional initiatives (sub-national implementation) and disseminate it further.

The work that we have been carrying out in the sub-national sphere seeks to make transparent to the population the public resources that are generated by the extractive industry and received and used by each region's authorities. For this reason, we wish to strengthen public transparency about the management of these resources, with a focus on information-based oversight.

To date, we have five Regional Commissions in place (Piura, Moquegua, Arequipa, Apurímac and, from December 2018, Loreto). Transparency reports are already available in four regions. These have facilitated public access not only to the figures for the sums transferred but, even more importantly, to information on the use of these resources; that is, how much is being invested

and in what, what the main projects are and how these contribute to improving social indicators and the quality of life of citizens living in the areas where the extractive activities are conducted.

These reports help us learn, for example, the importance of mining activities resources (the levy) for funding investment in education in a region such as Arequipa (reaching up to 70% of the total invested in 2012) and the impact they had on improving educational infrastructure indicators in the region. The same analysis is presented for various categories of investment, such as transport, sanitation, rural electrification, education and others.



Source: Ministry of Economy and Finance, 2nd EITI Arequipa Regional Transparency Study

In addition, the regional initiatives under way disseminate the concept of transparency maintained by the EITI initiative, emphasise the importance of multi-stakeholder action and show the efforts made by the Regional EITI Commissions to disseminate and bring – in a clear, simple and easily-understood way – the results of the studies conducted to different audiences, accompanied in many cases by capacity building to understand the initiative and monitor the information that it produces. We attach some of the materials developed by the Regional Commissions of Arequipa, Moquegua, Piura and Apurímac illustrating the foregoing, which can be accessed in the files accompanying this document.

- Annex 1 – Information leaflet on EITI – Piura
- Annex 2 – New authorities' commitment to transparency – Apurímac
- Annex 3 – Summary of 1st Arequipa Regional Transparency Study (ETR)
- Annex 4 – Summary of 2nd Piura Regional Transparency Study (ETR)
- Annex 5 – Poster for Touring Talk – Moquegua
- Annex 6 – Audio broadcast – Piura

Against this background, the EITI Peru CMP plans this year to prioritise: the automation of national reconciliation studies and the consolidation of its progress in the dissemination and communication of the initiative and the results it produces. In this regard, we have the following strategic partnerships:

- Triangular Cooperation: Colombia – GIZ – Peru
- USAID program: Building better practice in the management and governance of the extractive sector in Peru
- Swiss Cooperation: EITI Peru communication strategy and its implementation in Cusco and Apurímac.

Lastly, we should like to reiterate our commitment to the EITI Initiative and that we shall be working for Peru to become consolidated as a leading country, not only meeting the requirements of the Standard, but also broadening and deepening the Initiative in accordance with the needs of governance and sustainable development in the territories in which extractive activity takes place. Our future work will be guided by the priorities stated, which we consider go beyond the requirements of the Standard and should be rated higher.

Lima, 25 January 2019

MULTI-SECTORAL STANDING COMMISSION

EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE - EITI PERU

The contents of this document were approved on 25 January 2019 at the meeting of the Multi-Sectoral Standing Commission (CMP) of EITI Peru, held at the premises of the Ministry of Energy and Mines of Peru, attended by representatives of the State, the Extractive Industries and Civil Society.