

Santo Domingo, 9th of June 2019

Dear Sirs,

Members of the Global Council, International Secretariat and the Validation Committee of the Extractive Industries Transparency Initiative (EITI)

We extend our very warm greetings. The Civil Society representatives of the Dominican Republic National EITI Commission (CN-EITIRD) would like to put forward the valuation we wrote about the International Secretariat Initial Assessment, requested by the Validation Committee, which was based upon two corresponding evaluators; The Independent Validator Report, and the Technical Notes dispatched on the International Secretariat request.

The writing of this communication is motivated by the concern that the different instances of the EITI bodies know loudly the precise assessment provided by the Dominican Civil Society about the results of the validation process of our country and specifically about a set of aspects contained in the documents/reports received, with which we have differences and that we consider necessary are taken into account as such, by the different instances that will qualify the country in a definite manner. Especially because we have frontal disagreements or substantive differences, which have marked a process that, while making important progress, is far from being what was expected in the context of the EITI. This refers in particular to the formulation of the so-called "Technical Notes" and the resulting outcome that they could have on the final qualification of our country.

We are very aware that the decision in this area ensures, in the medium and long term, the growth or stagnation of the EITI in the Dominican Republic and the rate at which the country can introduce the transformations that an adequate governance demands, we highlight the identification of the deficits and limitations as a fundamental issue, as well as the compliance commitments of the established standards in the validation document of the Independent Validator.

Regarding the meaning of the final decisions that will be adopted on the Dominican Republic, upon concluding the country evaluation to qualify the current status of compliance with EITI standards, it should be noted that Civil Society agrees with the communication received to the National Committee of the Dominican Republic where we are informed about the result of recommending the country with a **Meaningful Progress** qualification and provide corrective actions on requirements 3.2, 5.2 and 7.4 as a consequence of the process initiated with the collection of information from the International Secretariat and the report from the Independent Administrator.

The first item refers in a particular way to the value of the production of non-metallic mining by differentiated product; The second, relates to the calculation formula and conceptual discussion on the equivalence between net earnings and ISR for the determination of the sub-national transfer for the

payment of 5% to FOMISAR; and a third one on the results and the impact of the application of the EITI throughout the country.

We also affirm that some other **requirements of the standard have not been fully addressed**, such as: civil society participation (1.3), license allocation (2.2), contract disclosures (2.4) and public debate (7.1).

In relation to **requirement 3.2** we insist that the value of non-metallic production is NOT VOLUME BY SALE PRICE, given that these values are not being reported by company, but by branch of activity, which requires the use of a methodology of National Accounts and not individual reports by companies.

The Civil Society has been persistent in stating that one thing is the value of production at the level of companies to their production costs and / or valued at their sales prices, taking into account the movements of inventories and a different one, when the calculation of value is referred to the country, sector or branch of extractive activity; where not only the values of the inventories intervene, but also the intermediate purchases, the determination of the payments to the production factors -benefits, salaries, rent, interests, rents; The payment of the net taxes of subsidies and other items established regularly in the Manual of National Accounts that is being used in the country under the analysed period.

On this particular requirement, we must also highlight the **recommendation of the validation regarding the effective control that government/regulator maintains on the accuracy of the production volumes reported by the companies**. Nothing was mentioned in the National Commission regarding this, assuming that the data reported by the General Directorate of Mining (DGM) received from the companies are correct. So far and with two Country Reports submitted and a constant demands by Civil Society that actions address non-metallic mining and its incidence at the sub-national level, both in terms of taxes and environmental impact, the DGM has not considered relevant to submit to the National Commission-EITIRD a detail of its monitoring, supervision and verification mechanisms for the information provided by the companies. The representatives of the Civil Society are convinced that this supervision and verification on the extraction-production is, at best, very limited.

In reference to the production values of **non-metallic mining**. This is a particularly sensitive issue, due to the lack of knowledge that currently exists in the National Commission and everything seems to indicate that it is also the case in the Ministry of Energy and Mines (MEM), on the whole of technical-economic variables of this sub-branch of mining, despite the significant number of concessions and licenses granted, its widespread presence throughout the country, a greater number of companies in operation and, additionally, the existence of another law different to the 146-71 that prohibits extraction but grants permits for the exploitation of aggregates in rivers and quarries (Law 123-71), managed by the Ministry of the Environment. There

are important and innumerable aspects that should be taken into account and that the National Commission-EITIRD has not even given any hints to address it.

In this regard, we recommend that the following actions be taken:

1- That the application of Law 123-71 be assumed by the Ministry of Energy and Mines, guaranteeing the operation from the General Directorate of Mining, without institutional conflicts and combined with other related organisms, from other areas of the State.

2- That the mechanisms of verification, qualification and supervision of mining production and its results are public, verifiable knowledge.

Considering that non-metallic production numbers were not reported, we understand that the value of the Technical Note referred to above, can only be used afterwards because the validation date is long past due, which is why it cannot be entered as a qualifying value, although it may be used as an input for recommendations or corrective actions to the Dominican Republic.

We understand that the Technical Notes cannot ensure a retroactive effect, because this would lead to a twisting of the effective result of a period evaluated with a previous cut-off date. This implies a prior explanation at a "Technical Note" level, which should probably serve to strengthen the effectiveness of the recommendations that require progressive changes in the effort to comply with the Standard.

Such Notes, which are not contemplated in the Standard, can only impact on the recommendations that are considered and arise from the validation. As established in the validation procedure in section 2 and linked to paragraph 1 on the review of documents that express the following:

"Without prejudice to the ability of the BOARD to apply its criteria when considering all available evidence, the Secretariat shall not take into account the measures taken after the initiation of the VALIDATION."
(Page 6 of the validation procedure, version in Spanish).

So, it is worth asking: What is the function, value, meaning and purpose of the "Technical Notes"?

In relation to **requirement 5.2** on sub-national transfers, Dominican civil society understands that the government's repeated non-compliance aims to conceal itself with a supposed conceptual difference, even though the Technical Note itself is clear and precise about the position expressed by the government. Civil Society, regarding the delivery of 5% of "the net profits generated" by the exploitation of non-renewable natural resources, as established in article 117, paragraph 2, of Law 64-00 on the environment and natural resources.

Insisting on equating Income Tax with Net Profits, is something conceptual, theoretical, academic and scientifically aberrant. This insistence contradicts the most elementary methodologies, practices, agreements, as well as the IFRS and the NICs that establish that Net Income **"is that resulting then deducted from the profits obtained by a company and organization, all the corresponding expenses and taxes. The net profit is the effective economic benefit obtained by the owners of a company or organization."**

The technical note would be manipulated if it were not specified that Civil Society has been clear and firm defending, with scientific basis, that the law is clear and precise on the subject and that therefore, IN THIS SENSE CONSENSUS HAS NEVER BEEN REACHED AND THEREFORE THE RESOLUTIONS ONLY INCLUDE THE DIFFERENT POSITIONS OF THE ACTORS IN THE CN-EITI-RD.

The clearest argumentation against this capricious interpretation of the government, is the fact that the only company operating under the law, the Dominican Mining Corporation (CORMIDOM), which has paid 5% to the community of Maimon, barely 20 kilometres from Barrick Gold, calculates its profits as established by law and without manipulating "the concept". The worst and most unacceptable fact are that, when the sum of what the government claims to have delivered to FOMISAR from 2015 to date is calculated, it acknowledges that it does not comply with its own and manipulated 5% calculation. Having liquidated the ISR since 2013, the difference that it has stopped paying, based on this calculation, IS NOT REGISTERED AS A PUBLIC DEBT, NOR DELIVERED TO THE LOCAL GOVERNMENT. There is no transparency and much less any glimpse of consequences. Therefore, it is unacceptable to establish that the net profit is equal to the Income Tax because it is "what most resembles it."

That is why we reiterate that in the eyes of the Civil Society it is of paramount importance the assessment by the EITI Validation Committee and its recommendation to the Board, because Civil Society understands that the final decision of that instance of the EITI could constitute a decisive tool for the government to decide once and for all to fulfil this requirement correctly. Furthermore it should make effective the fulfilment of the payment of 5% of the net benefits to all the companies that exploit the mineral resources according to the Law 64-00.

In relation to **requirement 7.4**, the validation report states that:

"The annual progress report does not evaluate efforts to strengthen the impact of the implementation of the EITI on the governance of natural resources. Apparently, the multi-stakeholder group (GMP) has not reviewed or discussed the results and impact of EITI implementation. "

"In accordance to requirement 7.4, the Dominican Republic is expected to assess the impact and results of the EITI and identify the

opportunities to strengthen the impact of the implementation of the EITI on the governance of natural resources."

With a summary of this nature in the validation report, from the civil society we cannot explain ourselves if we reach a qualification of "SIGNIFICANT PROGRES". It would not be possible to sustain this qualification with the arguments and information of the evaluators and the evaluator. Even more when Civil Society has insisted on the need to put the Technical Support Committee to operate in order to create the conditions to improve procedures, qualification of processes, efficiency of standards and regulation, that impact the process qualifying governance.

The impact of the EITI is difficult to see beyond the managing processes. The CN-EITIRD is concentrated mainly on the preparation of the Country report. The fact that the Technical Support Committee has not functioned properly and that only the subject of the report and the Annual Progress Reports (IPA) have been addressed and that it has not been possible to analyse the governance process and the challenges of the process of improvement, confirm our conclusion that in this requirement **THE QUALIFICATION IS INSUFFICIENT.**

Likewise, we cannot consider the impact of the process or measure the incidence to assess the level of information to the country and its society, the role of the actors and the discussed legal framework.

The only activity that was carried out to support a "Technical Note" on this matter was included in a report under the title of the CN-EITI and the IDB, which stated: **"On April 11, 2019, to hold a session of the National Commission with the objective of discussing and documenting the opinions of the commissioners in relation to the impacts derived from the EITI in the Dominican Republic. "**

This activity was carried out, therefore, subsequent to the delivery of the validation reports and should not be entered as an input of such activity. This is the case of the "Technical Notes" on which we have previously expressed our definitive opinions.

In this regard, we recommend that the following actions be taken:

- 1- Carry out a survey of the monitoring, verification and supervision mechanisms handled by public entities on the extractive industry, in order to improve the regulatory system and impact the governance of the sector.

2- Design and implement an action plan that guarantees the empowerment of the EITI initiative, the actors of the process and society in general.

In relation to the requirement 1.3 Participation of civil society. Although We, as members of the civil society in the EITI National Commission of the Dominican Republic point out that we freely express critical opinions to the government and the companies within the Commission, THIS DOES NOT MEAN THAT AT THE NATIONAL LEVEL AND / OR IN CITIZENS' SPACES there is no demands for human rights, such as health, access to drinking water, a healthy and pollution-free environment, the right to protest and to express opinions freely, to unionization, among others. It is demanded that THIS FREEDOM AND EXERCISE OF LAW BE EFFECTIVE IN THE DOMINICAN REPUBLIC, PARTICULARLY IN MINING EXPLOITATION ZONES. The members of the EITI Dominican Republic National Commission also participate in this historical process of demands and limitations of rights outside the EITI Commission. The particular case of Cotuí, where the Pueblo Viejo mine operated by Barrick Gold is located, is a significant example of this dichotomy and a most outstanding one, due to the importance and size of such company and its exploitation initiatives in the DOMINICAN REPUBLIC.

The communities neighbouring the mine and its tailings dam have developed a long history of complaints about the violation of their most fundamental rights, such as, Peasant Articulation, a member of the EITI Commission representing these communities. Government and company are silent to the demands, while trying to silence and trivialize protests and mobilizations, through intimidation, perks, bribery, media and repression, such as the case of the night assault on Cotuí Encadenados Camp, to intimidate, demoralize and relocate them from the entry to the company's Social Responsibility Department, after more than a year and seven months in active protest for their relocation. The two main leaders of this process, were interviewed in the validation and if their opinions and assessments were not duly weighted or submitted to the presentation of evidence, which we understand were supplied, we do not understand why it is concluded that this requirement is satisfactory.

In this sense, the detention of the leaders of organizations that belong to the ENTRE, which is the national space of civil society represented in CN-EITIRD, which has also carried out and presented documents in all the international EITI activities in the Dominican Republic and has documented the same information disclosed in the media or processed formally as:

1- The arrest of the director of the ODPP-UASD Fernando A. Peña S. and the leaders of the Nuevo Renacer Committee during the march from the Camp of the Encadenados to the National Palace on February 7, during the police assault of the San José del Puerto Community Cooperative where they spent the night.

2- The capture of the peasants of the communities of Jurungo and Jobo Claro.

3- Denounce for violation of Human Rights by ENTRE, the Autonomous University of Santo Domingo, the GEMA Group and the Justice and Transparency Foundation, to the Dominican government before the Inter-American Commission on Human Rights.

4- The request for the use of public force by the government and the Barrick Gold mining company to violently evict, at present, the communities of Jurungo and Jobo Claro, in the so-called Montenegro Tax Reserve, in Cotuí.

Many of these violations of rights, threats, persecutions are contained in a document with which judicial notice is given to Mark Bristow, CEO of Barrick Gold Corporation during his recent visit to the facilities of the mining company in the country.

Being declared an EITI country for government and companies allows us to meet very specific objectives, access to financing, for example, but also to preserve, in the case of the government, an image that has nothing to do with the facts and the reality of the country or the industry: Generalized public sector corruption, not only in the case of Odebrecht, opacity and lack of transparency and accountability at all levels of the administration, flagrant breach of the law, among other much more widespread misconduct. On the side of the companies, They seek onerous contracts, avoid the publication of the Audited Financial Statements, absolute opacity on the Environmental Impact Studies (ESIA) and its semi-annual Environmental Compliance Reports, total ignorance of the commercial operations carried out, linkage and business with its own subsidiaries; debt, creditors, conditions and costs leverage, repatriation of dividends, etc. In other words, these are companies that are totally closed to transparency, accountability or any analytical public opinion and incapable of generating true public debate to improve governance. In this state of affairs, the participation of civil society is clear: Open gaps, although limited in their beginnings, that may allow some level of information and documentation that cannot be ignored as a legitimate source, while putting pressure to advance through some improvements in social responsibility and management of resources from the Extractive Industry.

The fundamental recommendation that emerges from this state of affairs refers to the need to reinforce the Rule of Law, combining the efforts of the actors in the process.

However, we are precise when we highlight that from this defence logic of the citizen rights, the CN-EITIRD must investigate, in relation to the impact of the mining operations on the waters, the general effects of contamination, which are also of the fundamental concern to the EITI. From the Standard and its institutional bodies, this problem must be considered and addressed.

In relation to requirement 2.2 License granting. Faced with the absence of technical-economic criteria for its granting, civil society and businesses concerns have been raised due to discretionary decisions and lack of internal criteria in DGM to evaluate the applications. Technical-economic criteria to grant a right or license to explore or exploit a deposit does not in reality or effectively exist in DGM or in the MEM. A simple review of the requirements posted on the DGM website reveals that they are not such and that they lack the conditions to be used as evaluation criteria to assess the level of technical and financial capacities and conditions available to the company and / or the applicant for the concession or license. The central question is to determine and / or quantify the technical and investment capacities available to the applicant to execute the exploratory phase and / or the project study and its economic feasibility, when it comes to the construction of a mine with its corresponding social and environmental impact studies. This absence is what determines, in addition, the adoption of discretionary decisions, since they are not based on verifiable and measurable verifications and quantifications.

The relationships and/or links between MEM and DGM are complicated by obvious reasons: "overlay function", deepened by the fact that the new or recent institution is of highest hierarchy. The details on the manifestations and tensions that this situation engenders are not detailed knowledge by the CSOs; the companies have, in this regard, greater knowledge and information because of their treatment and historical linkage they have built with the DGM. Such requirement with strict adherence to technical principles cannot be satisfactory. In the absence of such criteria with attributes that are proper to them, the qualification should necessarily be different. Should be addressed as an improvement of urgent application.

In this regard, we recommend that the following actions be taken:

- 1- Elaboration of the technical and economic criteria that allows to establish the forms of evaluation / quantification of such capacities in the aspiring entities to obtain concessions in any of level of the process, under absolute observation of the rule of law.

This requirement has to be, by obligation and under documentation, qualified as **INSUFFICIENT**.

In relation to requirement 7.1 Public debate. That the Website exists and, in some way, its use is encouraged is not enough to stimulate public debate. While the diffusion has been extremely limited - only one activity of the 1st. Country Report and only the official circulation of the 2nd. - the possibilities of generating public debate are scarce. Printed documents of the Executive Summary of the 2016 EITI Report has not yet circulated; These paper versions, which are very important in the country, are very limited in number. Other forms of dissemination -participation in radio and television media, presentations in the main Universities, messages through social media, etc.- have not been encouraged. The dissemination and training activities that civil society has carried out despite the extreme funding constraints faced since

the beginning of the EITI process have reached more interested public in the mining areas than the actions carried out by the government and / or the CN -EITIRD. The failure of the Communications Plan that was elaborated in that commission is not just a statement.

If it is assumed the implementation of this requirement as satisfactory is undoubtedly hard to accept; unacceptable for a society that is fully aware of the lack of transparency in government and business, of the environmental and social damage that irrationality and lack of control have created.

The Civil Society worked towards this validation process with full awareness of the importance that the country obtains a significant qualification. This allowed both the government and the companies to be more interested and attentive to get a better qualification in the second validation, while allowing us to advance in the achievement of some improvements and inclusion of new and more detailed information. Achieving a different result or a satisfactory outcome would violate the results of the first two phases of that process, so an explanation about it to civil society would be necessary. In this regard, a conclusion of such characteristics would force Civil Society to assess the conditions of its relationship with the EITI, since it cannot, for reasons of justice and ethics, pledge its social responsibility and its organizational credit.

Regarding this, we recommend that the following actions be taken:

1. Develop an extensive information and educational program that contributes to the empowerment of society and its organizations on the EITI Standard.
2. Articulate a programme of activities that guarantee a horizontal and open discussion on all the central issues of the sector.

We consider that this requirement must be evaluated as **INSUFFICIENT**.

Finally, we reiterate our commitment to continue promoting transparency and governance in the Dominican Republic, as well as the EITI Standard and the mechanisms to achieve this in the extractive sector in our country, as the most eager support, from an active Civil Society, to the process of governance in the way of strengthening democratic institutions and social justice.

Maritza Ruiz Escoto

Carlos Peterson

**Carlos Pimentel
Rossó**

Ynés