

Comments Report on the EITI-DR Validation Report

In line with the EITI Validation Committee’s invitation to the Multistakeholder Group (MSG) to present its comments on the Validation Report, the EITI National Commission for the Dominican Republic (NCEITI-DR) hereby submits the following document, availing itself of the MSG’s right to provide feedback on the validation report, as established in EITI’s procedures.

The Government sector representatives have stated their agreement with the content of the validation reports.

The Business sector representatives have stated their agreement with the technical content and substantive nature of the validation reports indicating, however, that the photo on page 97 of the initial validation report does not correspond with the aim of Annex E to this report on “evidencing the use of EITI data”. This annex indicates that the placards are providing subnational transfer information taken from EITI reports. However, the stated photo shows a different kind of information. The sector representatives request the removal of the photo from the initial report.

The Civil Society sector representatives have submitted written comments on eight requirements. The following sets out civil society’s comments and the positions of each NCEITI-DR sector in this regard.

Requirement	Civil society comment	Sectors’ opinion on CS comment
Strategic recommendation for Req. 2.2	<p>2.2 Granting of licences. Lack of technical/economic criteria for their granting. CS and business concerns at discretionary decisions and lack of standards within the Directorate-General for Mining (DGM) for measuring and assessing the criteria by which to evaluate applications. There are no technical/economic criteria within either the DGM or the MEM for granting a permit or licence to explore or exploit a deposit the resources of which belong to the Dominican State. A simple review of the requirements set out on the DGM’s page reveals that they do not meet these conditions and that they therefore fail to comply with the requirements for their use as evaluation</p>	<p>Government, Business and Civil Society: are agreed that this issue should be included in the action plan for validation report recommendations that is being drawn up by the Working Group established for this purpose.</p>

	<p>criteria aimed at verifying the technical and financial capacity and conditions of the company and/or concession or permit applicant. The key issue is to establish and/or quantify the technical skills, investment and suitability of the applicant to implement the exploratory phase and/or project study and its economic feasibility, when it relates to the construction of a mine, with its corresponding environmental and social impact studies. This absence contributes to, or in many cases determines, the adoption of discretionary decisions, which are thus not based on measurable and verifiable checks and measures known to the applicant.</p> <p>The relationships and/or links between the MEM and DGM are complicated for obvious reasons: "functional overlaps" exacerbated by the fact that the new or more recent institution has hierarchical superiority. The CSOs do not know the details of the conflicts and tensions this situation creates; the companies will have better knowledge and information of this as they have built historic links and dealings with the DGM.</p> <p>In strict accordance with technical principles and the provisions of the Standard, this requirement cannot be satisfactory. If no such criteria with the required technical/economic attributes and no corresponding system of measurement exists then the appraisal needs to be done differently. This needs to be addressed urgently.</p>	
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Strategic recommendation for req. 2.3	<p>2.3 Registering licences. Due importance, care and monitoring have never been given to improving the Mining Registry. The results of this can be seen on a daily basis.</p>	<p>Government, Business and Civil Society: agree with the I.V. recommendation on improving the Mining Registry.</p>
<p>Comment on Requirement 2.4 (the Validator made no recommendation as they considered that progress had been achieved beyond the requirement given that all contracts are published)</p>	<p>2.4 Contracts. Are approved by National Congress on the grounds of two main issues: i) it jeopardises or disposes of an asset or wealth owned by the Dominican state for private gain, as established in the Constitution; and ii) as a special contract it introduces clauses that modify the provisions of the Tax Code and its amendments and National Congress therefore needs to be aware of and approve these amendments to current regulations. The Executive enacts them and orders their publication in the Official Journal. The Journal is not always available and not all the annexes seem to be included. They are not always easily located.</p>	<p>Civil society: this comment has been made in order to expand on what has been published.</p> <p>Government, Business and Civil Society: agree on including civil society's comment in the contextual report for this year in order to expand on the information published.</p>
<p>Corrective action to requirement 3.2</p>	<p>In relation to requirement 3.2, the assumption is that it is sufficient for EITI to consider the value of the mining and quarrying sub-sector's production as being the amount of that good or product produced – its volume – at the sale price. Civil society has repeatedly maintained during the NCEITI-DR sessions that this calculation, which could be considered valid as the "sales value" of a particular mining company, does not correspond to nor represent its production value, whether that is the only production in the country, or whether these values relate to the production of a single good produced by</p>	<p>Government: indicated that the statistics published on the EITI-DR Portal satisfy the corrective actions proposed by the Independent Validator.</p> <p>Business: agree with government that the statistics published on the EITI-DR Portal satisfy the corrective actions proposed by the Independent Validator.</p>

	<p>more than one company. The production value of a good nationally, of the sub-sector or branch of activity, is established or determined on the basis of the calculation methodology of the National Accounts/Supply and Use Matrices in place in the country in question. One thing is the production value at its production cost and/or valued at its sales price, bearing in mind inventory movements and so on where the calculation refers to the country, sector or branch of extractive activity. In this, not only do the inventory values come into play but also intermediate purchases, the determination of payments for the factors of production – profits, salaries, income, interest, rents -, the payment of taxes net of subsidies and other budget items normally established in the National Accounts Manual in use in said country. Metal mineral production is valued using the Central Bank and its supply and use calculations as a source but this is not the case for the production values of non-metal minerals, which appear in that source as an afterthought under the heading “Other minerals”. They were thus valued at their sale prices and not at their production values. With regard to this requirement we must remember, in addition, the recommendation regarding the effective control that the government-regulator maintains over the accuracy of production volumes reported by business. Nobody has mentioned this in the NC, it</p>	
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	<p>being understood that the data reported by the DGM, and received from the companies, is correct. There is no mention of the means of verification and supervision used, or whether this is undertaken regularly and exhaustively, as required by current standards. Civil society representatives are convinced that this supervision and verification of extraction/production is limited and, moreover, random and even more insufficient in the case of non-metal production, for which the government cannot provide credible evidence of the effectiveness of its monitoring and supervision. This is a particularly sensitive issue in relation to the production values of non-metal mining, given the lack of knowledge thus far within the NC and, everything would seem to indicate, within the MEM too with regard to the set of technical/economic variables in this sub-branch of mining; and this is despite the significant number of concessions and licences granted, their widespread presence throughout virtually the whole country, the large number of exploitation companies, the existence of a law other than 146-71 which, while prohibiting extraction, grants permits to exploit aggregates in rivers and quarries (Law 123-71), and which is managed directly by the Ministry of the Environment and, lastly and no less important, the existence of regulatory and fiscal barriers ensuring that all companies with a concession in this kind of exploration maintain their records of tax declaration</p>	
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	<p>separate from any other kind of commercial registry, whether industrial, construction, tourist, commercial, etc. This results in the invisibility of a significant share of non-metal mining activity. There are thus numerous important aspects that need to be taken into account in this regard and for which the NCEITI-DR has not yet even provided a road map by which to address them. To date, and with two country reports submitted, plus a third that does not consider this, along with civil society's constant demand to undertake actions to address this kind of mining and its impact sub-nationally, both in terms of means and social and environmental impacts, the relevance of a presentation/discussion with the DGM to obtain a better and more complete knowledge of the issue has not been considered, nor the design of a mechanism to bring businesses and local government together in order to make progress on including them in the initiative.</p>	
<p>Comment on requirement 5.1 (the Validator made no recommendation)</p>	<p>5.1 Distribution of the extractive industry's income. The total payments made by the EI go to finance the State budget, without considering the fact that the income from a non-renewable resource is being used to finance current expenditure, which makes no sense. No-one in the country knows how the taxes received from the EI are actually distributed and used. Not even a small part of these are saved and nor is there any requirement to devote a significant proportion to investment. And this stark</p>	<p>Government and Business: agree that the EITI-DR report meets the provisions of this requirement.</p>

	reality is unfortunately considered satisfactory progress.	
Corrective action to requirement 5.2	<p>With regard to requirement 5.2 on sub-national transfers, there are fundamental differences between Government and Civil Society regarding the concept that serves as the basis for calculating the value of these. Everything indicates that it will be impossible to reconcile these differences. The government says it uses the value of the income tax (ISR) paid in the relevant year as the basis for calculating the 5% to be transferred to the Provincial Council for the Administration of Mining Funds in Sánchez Ramírez (FOMISAR) while civil society assumes that the concept given in Law 64-00, that of net profit, should be used to determine the amount of transfer to be made. It is argued on the EITI-DR Transparency Portal at https://eitird.mem.gob.do that the government has arrived at this conclusion as the result of an agreement reached with the social organisations of Cotuí or Sánchez Ramírez province, without substantiating or providing transparent evidence or confirmatory documents stating the social actors involved, their organisations, the places and dates of these negotiations, the bodies that mediated, nor the means of social communication used to make this process and its results known, among other essential aspects. The CSOs involved in EITI-DR have years of consistent work in this regard, and so it is all the more surprising that there is an attempt to justify the use of</p>	<p>Government: indicated that the Technical Notes correctly address the corrective actions proposed by the Independent Validator.</p> <p>Business: stated its agreement with the Technical Notes that were approved in May of this year.</p>

	<p>this concept on the basis of an agreement supported by local social organisations that they can neither be bothered nor considerate enough to name. The government position is even more inconsistent when it is noted that, over the last four years corresponding to the 2015-2018 period, the values transferred to FOMISAR have totalled DR\$650.0 million: DR\$50.0 million in 2015 and DR\$200.0 million a year over the following three years. The conclusion that we have to draw is that, during at least the last three years of this period, PVDC Barrick paid some \$4,000 million pesos a year by way of ISR. This does not tally with the data reported in the EITI-DR reports 2015-2016, however, where the income tax values are DR\$1,930.1 and DR\$2,416.6 million respectively. Nor does it tally with the data published in the Draft General Law on Budget 2019, tabled for approval in the National Congress, which gives the taxes paid by this company according to the different headings under the Special Mining Rights Lease Agreement (CEAM) for 2013-2018 as well as the taxes expected for 2019. The income tax values reported in 2017 and 2018 totalled DR\$6,221.6 and DR\$3,671.6 million respectively. Given these values, it is not possible to maintain that the basis of calculation used is the amount of ISR because, if this had been the case, they would have had to transfer DR\$712.0 million over these four years and not the DR\$650.0 million noted. Moreover, the concept of “net gain or profit” is not subject to</p>	
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	<p>interpretation. On the contrary, it is an accounting concept equal to the end result paid to the owner of a business, activity or project after deducting their sales values, their costs, expenditure and taxes. The Financial Statements, audited on the basis of Financial Accounting and Auditing Standards, establish and govern these concepts and the principles to which the professionals of these disciplines are subject when endorsing and substantiating their records and reports. Civil society refers exclusively to the concept used in Law 64-00 which, moreover, also appears in the first amendment to the CEAM, and remains unchanged in the second amendment, negotiated by this very government. The fact that we are unable to calculate the value of these transfers exactly is due to the Audited Financial Statements of companies in general, and of the extractive industries, in particular, not being made public, with the notable exception of the banks, which are obliged to publish these statements in the national press. This is why it is enormously important that the EITI recommends that and encourages the NCEITI-DR to approve their inclusion in the Independent Auditor's comparison report. The evaluation made by EITI's Validation Committee and its recommendation to the Board are of crucial importance to civil society as we understand that the final decision of this EITI body could form a decisive means by which the</p>	
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	<p>government can once and for all effectively demand and monitor compliance with this tax payment or transfer at sub-national level from all metal mining companies operating in the country; in addition, it will be able to ensure the compliance of all companies exploiting non-metal mineral resources and construction materials, as stated in Law 64-00. This will solve this serious problem of transparency in the Dominican extractive industry once and for all.</p>	
<p>Strategic recommendation for requirement 7.1</p>	<p>7.1 Public debate. The fact that the Portal exists and that its use is in some way being promoted is insufficient to promote public debate. There has been extremely limited publicity – only one activity from the 1st Country Report and only the official activity of circulating the 2nd - and there are few possibilities for generating public debate. The hard-copy version of the Executive Summary of EITI’s 2016 Report was prioritised because of the Global Conference; within the country these hard-copy versions are very important but few copies are printed. Other methods of dissemination – via radio and television, presentations in the main universities, messages on social media, discussion panels in professional associations, preparation of publicity and training materials aimed at the populations and communities affected by extractive activity, among other things – have not been promoted. The dissemination and training activities that civil society has undertaken since the start of the EITI process, despite its</p>	<p>Government and Business: indicated that this is the opinion of civil society and that they do not share it.</p>

	<p>extremely limited financial resources, have reached a wider target public in the mining zones than the government's limited actions. There has been a clear failure of the Communications Plan produced in the NC and yet no evaluation of its results. It is extremely hard to agree that there has been satisfactory implementation of this requirement. Civil society worked on this validation process fully aware of the importance of the country obtaining a good rating; however, granting it the maximum does more harm than good as it simply validates and rewards what has been achieved to date. A rating of fair progress, which we consider significant, makes it possible for both the government and business to place more focus and attention on an improved rating for the second validation, while at the same time allowing us to progress and focus on achieving results, real improvements in management, supervision and monitoring processes and systems, and to further improve the inclusion of new and more detailed information, set bigger and higher transparency goals and, above all, ensure effective gains in accountability and in mitigating the undesired effects of the industry.</p>	
<p>Corrective action to requirement 7.4</p>	<p>With regard to requirement 7.4 on the results and impacts of the Technical Note prepared and approved in the NC, its aim is to collect and bring order to something which, in the IS's opinion, was dispersed and with no systematic or coherent</p>	<p>Government and Business: indicated that this opinion is that of civil society and they do not share it.</p> <p>Government, Business and Civil Society: are agreed that the IV's recommendation</p>

	<p>presentation. They are largely a product of the work done in a workshop for this purpose led by A. Aamot, IDB consultant supporting EITI-DR. Nevertheless, we have to note here some things that have been a constant concern and demand of the CSOs that form part of the EITI-DR MSG, namely:</p> <ul style="list-style-type: none"> i) Extending and providing continuity to the work of the Technical Support Committee as the scope of its work cannot be limited to helping obtain the data required for preparing the EITI-DR report; ii) Incorporating the DGM and the Ministry of Environment and Natural Resources (MIMARENA) into the MSG, originally proposed as permanent observers to the sessions of NCEITI-DR, and which is now of greater importance due to the changes made to the Standard since the recent Global Conference in Paris 2019; iii) Establishing a review, discussion and implementation mechanism for the recommendations that are submitted for MSG consideration from 	<p>should be included in the action plan for recommendations to the validation report, which is being drafted by a Working Group established for this purpose.</p>
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	<p>the different levels – IS, IA, consultants for scope and materiality studies and annual progress reports, among others;</p> <p>iv) Preparing the Road Map that will enable non-metal mining to be effectively addressed as well as EITI-DR's relationship with local authorities; and</p> <p>v) EITI-DR must become an effective instrument for the analysis and production of proposals to improve processes and policies, promote dissemination and effectively contribute to the public debate on EI in order to achieve improvements in the governance of mineral resources; this is a task of decisive importance and one that is not being achieved.</p> <p>With regard to this last point, there is a need to expressly mention something noted in the Independent Validator's Report under item 2 given that, in addition to its sense of opportunity, it reflects a stark truth, namely: <i>"... it is possible to comply with requirement 7.1 (Public debate) without truly contributing significantly to</i></p>	
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	<i>public debate. The bar for priorities seems to have been set too low here, as it reflects production-based indicators rather than outcomes-based indicators and contradicts the last five words of the first sentence of this requirement in the Standard (bold type is added): “The multistakeholder group must ensure that the EITI report is understandable, actively promoted, available to the public and contributes to public debate.”</i>	
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For the Government sector:

[signed]

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Ministry of Cabinet Affairs

For the Business sector:

[signed]

Mayra Jacobo
Pueblo Viejo Dominicana
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For the Civil Society sector:

[signed]

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