

Santo Domingo, D.R.
7 October 2019

For the attention of:

- Francisco Paris
EITI Latin America and Caribbean Director
- Catherine Greene
Country Officer
- Vilma I. Arbaje de Contreras
EITI-DR National Commission, Executive Secretariat

Dear friends,

I am writing with the comments and observations of the civil society representatives to the EITI-DR who attended the last two (2) working sessions of the NCEITI-DR, numbers 14-2019 and 15-2019 respectively.

Following careful consideration, the civil society organisations have taken the decision not to participate in the virtual session convened for today with a deadline of 12.00, given the impossibility of reaching agreement with the Executive Secretariat and the government and business commissioners on civil society's evaluation of the consultation requested by EITI's Validation Committee, through the International Secretariat.

We would like to take this opportunity to inform you that Maritza Ruiz was designated to sign the document containing the National Commission's comments on the Validation Report on behalf of the social sector.

Yours sincerely,

[signed]
Maritza Ruiz

[signed]
Carlos Pimentel

[signed]
Carlos Perterson

[signed]
Inés Rossó

CC: Elizabeth Mena; Rosa de Los Santos; Pedro Esteva; Mayra Jacobo; Ruth de Los Santos; Yris González; Marta González; Ruth Montes de Oca

Comments and Observations of Civil Society Representatives to EITI-DR on the Last Two Sessions of the National Commission

The following important considerations and conclusions have been made with regard to working sessions nos. 14-2019 and 15-2019 of the NCEITI-DR:

1. The receipt of two communications from Catherine Green-IS, one dated 20 September 2019 to members of the ES and NCEITI-DR: i) once more inviting the MSG to submit the National Commission's comments to the Validation Committee, as established in EITI's Validation Procedures; ii) suggesting that the opportunity be taken to draw up an action plan to address the strategic recommendations included in the Initial Validation Report and the stakeholder consultation; and iii) given that not all MSG members had understood the consequences of submitting new information to the Board in the form of "Technical Notes", setting out the criteria to be met by information disclosed since the start of the validation, as approved by EITI's Board on 27-02-2019. The deadline for sending comments was Tuesday 8 October. The second communication, dated 26 September 2019, was aimed at highlighting the confidential nature of the documents annexed to the first letter – 2 validation reports – and requesting their non-disclosure until the Board's decision had been announced.

Our observations are the following:

- i) As soon as we received the Validation Report from the Independent Validator at the end of May 2019, and having already received the Initial Validation Report, the civil society representatives on EITI-DR requested during a session of the National Commission that the Executive Secretariat set a date to analyse and discuss these documents and send our comments, as established in EITI's Validation Procedures. The ES disregarded this request from the CSOs, on the understanding that we should focus on and comply with the instructions and/or recommendations received from the IS. This task was set, with extraordinarily unjustifiable delay, for Thursday 3 October.
 - ii) The notification calling the meeting established that the commissioners from each of the sectors represented should send the ES their comments prior to the working session. Only civil society complied and thus their comments on the three requirements rated as not fully addressed by the validators, namely: 3.2, 5.2 and 7.4, along with another five considered highly important by civil society – 2.2, 2.3, 2.4, 5.1 and 7.1 – and which in our opinion are over-rated in the given evaluation, served as a basis for the discussions in session no. 15-2019 of the National Commission, as can clearly be seen from the Comments Report on the EITI-DR Validation Report, drawn up by the ES.
 - iii) Finally, it must be noted that, as members of the NCEITI-DR, it is only through Ms Greene's communications that we found out the details of the Board's decision with regard "to taking into account events and information disclosed after the start of the validation and the criteria that must be met for this purpose". Minutes of NCEITI-DR meeting numbers 5, 6, 7 and 8, all in 2019, clearly show that no proper information was presented or discussed at these sessions to explain the underlying aim of these "Technical Notes".
2. The document "**Consultation on Information Disclosed Since the Start of the Dominican Republic's Validation Process**" forms a request from the EITI International Board's Validation Committee, through its International Secretariat, to the NCEITI-DR to give responses to two consultations on information provided by the NCEITI-DR since the start of the country validation:

- I. To confirm NCEITI-DR's support for the information disclosed through Technical Notes since the start of the validation,
- II. To state its understanding of the implications of submitting new information to the Board, in line with EITI Board decision of 27 February 2019, taken in Kiev.

The civil society representatives on EITI-DR must, above all, make it clear that we put forward a proposed amendment to the original version of this document, submitted by the ES, which was partially approved by that body and, we assume, also by the Government and Business commissioners, in an attempt to ensure that this reflected our real understanding of Technical Notes.

We feel it essential to emphasise the following with regard to the Technical Notes:

- i) The Note related to requirement 3.2 on the production value of non-metal minerals is included in the EITI-DR Transparency Portal with an error that was highlighted by civil society. It relates to the difference between the production value of a commodity – a mineral in this case – and its sale price. In other words, while there is a technical note, the information contained in it is incorrect and, worse still, the table relating to this on the Portal gives the heading “Production value” for the column that should correspond to sale price. If the information is not available then this is due to a lack of sufficient effort to obtain it from the official body that produces the economic statistics for the National Accounts – the Central Bank of the Dominican Republic.
- ii) On requirement 5.2, two Technical Notes are unexpectedly not available: one conceptual and the other on calculating the transfer values. The concept note sets out the legal requirements, defended by civil society, and the requirements supported by the government, through the Treasury. In other words, two “apparently diverging positions” when, in reality, this is not the case because one is a response to a legal provision that is not subject to interpretation and which is thus beyond a contract, even though it is called “Special”, without denying its status of administrative contract. Civil society has repeatedly stated that the concept enshrined in Law 64-00 must prevail, which establishes the payment of 5% of the net profits generated. As a matter of fact, it can be seen that in the 1st Amendment to the Contract with Placer Dome, the one applicable to PVDC Barrick given that they have bought Placer Dome, a change is introduced in relation to what was agreed with this latter company, putting in its place the provision set out in the stated Law 64-00. If the Dominican government is complying neither with the law nor with the provision enshrined in the 1st Amendment to the Special Mining Rights Lease Agreement (CEAM), then it is doing so at its own responsibility. And so the Concept Note gives two positions supported by two actors in EITI; in other words, there is formally a signed Technical Note but in fact a law that has been broken without consequence. Does this action meet the compliance criteria established by the EITI Board?

The Note on transfer calculations relates only to the concept used by government and the system of municipal distribution established in the Law creating the Sánchez Ramírez Mining Fund. Other questions need to be asked. Is a calculation based on illegality well-founded or does it have a clear origin? Is there good reason for not having made the calculation of this transfer on the basis of net profits generated, figures which the Treasury and the Tax Department can obtain from the Audited Financial Accounts of PVDC Barrick? Calculations based on both concepts supported by the two sectors/actors could thus be made available. It is our current understanding that the Technical Notes referring to these two requirements were not used to provide additional high-quality and legitimate information and, unfortunately, we realised this too late. This is why, despite having signed them in haste due to the tight deadlines for their dispatch to the IS no later than

30 May 2019, we cannot support them, as this would mean rejecting the technical and legal concepts that we have been maintaining and which were clearly insufficient to be reflected faithfully in these Notes.

- iii) With regard to having a clear understanding of the implications of submitting new information to the Board after the start of the validation, we include here our proposed amendment to the above Consultation document:

Civil society: states that it was not informed and nor does it understand that the Technical Notes will be used retrospectively for the purposes of the validation process, according to EITI Board Decision dated 27 February 2019, it having understood:

- a) That these were a result of IS recommendations aimed at getting the NCEITI-DR to implement improvements in order to comply with requirements 3.2, 5.2 and 7.4 in the context of escalating Standard implementation, and
- b) As commissioners, we have received no information regarding decisions taken in Kiev, and so we are not aware that the Technical Notes can be used in the country validation.