

Lima, 18 February 2019

Dear Members of the EITI Board Validation Committee and of the EITI International Secretariat

By hand -

We would like to cordially to introduce ourselves as the Civil Society members of the EITI Peru National Commission, to share with you our position in relation to the consultations undertaken by the representative of the International Secretariat, Santiago Dondo, emailed on 14 February 2019 with reference to the corrective actions raised during the second EITI Standard validation process undergone by our country.

1. CIVIL SOCIETY ENGAGEMENT

As civil society members, we participated in the preparation of the letters sent by the EITI Peru National Commission to the EITI International Secretariat on its observation with regard to social expenditures (6.1) and indicators of materiality (4.1) reported in the VI National Transparency Report for EITI Peru. In the communications sent, we presented the position of civil society as members of the EITI Peru National Commission. However, we believe that there are certain points that should be clarified with respect to the points mentioned and our interpretation of them.

It should also be noted that as civil society, we have prioritized social and environmental expenditures as new topics, as well as other social and environmental information, for inclusion in transparency reports on Peru, with the result that it was possible in the 2015-2016 Transparency Report, for the first time, and after periods of negotiation in the EITI Peru National Commission, to include information on social and environmental payments/spending in the contextual section of the report.

2. REGARDING REQUIREMENT 6.1 - SOCIAL EXPENDITURES

1. In the last letter that the EITI Peru National Commission sent to the International Secretariat, we made necessary clarifications on Social Funds and Social Spending, as we had found errors of understanding of their nature and operation in Peru in the International Secretariat's Evaluation Report.

As the EITI Standard clearly states with regard to mandatory social expenditures, *"Where the beneficiary of the mandated social expenditure is a third party, i.e. not a government agency, it is required that the name and function of the beneficiary be disclosed. Where reconciliation is not feasible, countries should provide unilateral company and/or government disclosures of these transactions."* The same standard states that the same efforts should be made for discretionary spending, but this should be on the basis of an agreement by the multi-stakeholder group.

Therefore, we representatives of civil society have always argued that the Social Funds and Social Expenditures should be transparent and made publicly available by the Government of Peru and by companies.

Until recently, information on this spending in the mining sector was available via the DATAMART application, which provided access to information on investment amounts and types (projects, donations and/or equipment) by company, location and year, among other criteria, but with difficulty due to the antiquated nature of the application. A reference was made to this application in the contextual section of the VI National Transparency Report (pages 190-193).

As civil society, it is our view that the dissemination of information on social expenditures via DATAMART is defective in terms of updating and user-friendliness, as we have repeatedly observed in meetings of the National Commission. The recent deactivation of the system used to access DATAMART (due to the process of migrating from one IT system to another) without providing an alternative access method is, in our view, a step backward for the transparency of the State.

On the basis of the deficiency noted above, we wrote the following in the last letter from the EITI Peru National Commission Validation Group to the International Secretariat: *"The National Commission will provide the information available on both items in the clearest and most comprehensive way in the forthcoming VII National Reconciliation Study."* We believe that, consequently, the Ministry of Energy and Mines (MINEM) should make a firm commitment to publish this information in the shortest possible time.

2. Concerning the discretionary nature of social expenditure, the following clarification is necessary. From the regulatory point of view, in respect of mining, these expenditures are the enactment of the Declaration of Prior Commitment that the mining companies sign, according to law, as a requirement for receipt of a mining concession. It is known that each company plans this spending in accordance with its corporate policies.

However, there are also social expenditures that form part of agreements or commitments in the Environmental Impact Study (EIS) and its amendments, which are NOT discretionary in nature but are mandatory for both the mining and the hydrocarbons sectors. Therefore, social spending in our country is made up of discretionary spending and other spending which is mandatory in nature. The problem is that the Annual Consolidated Financial Statements submitted by mining-sector companies to the State give one combined figure for both types of spending and we do not know if it is possible to differentiate between them. This should become the subject of a future commitment to be able to differentiate between these types of spending and have a better picture or transparency channels with regard to these amounts.

3. In the case of the hydrocarbons sector, neither the concept of the Declaration of Prior Commitment nor that of the Annual Consolidated Financial Statements exist and, as previously mentioned, social expenditures are only generated within commitments under the Environmental Impact Study (EIS), which are mandatory. What is more, there is no platform similar to DATAMART for the monitoring, quantification or systematization of such amounts. Our view is that there is no justification whatsoever for social spending information not being publicly

accessible in the hydrocarbons sector in a similar manner to that in the mining sector. Although there is no provision in our national legislation to produce platforms or tools of this type, we believe that there is a need for a commitment to move forward in this regard and generate greater transparency in the sector.

3. CONCERNING REQUIREMENT 4.1 - MATERIALITY OF PAYMENTS

On this point, we have an agreement of the EITI Peru National Commission that ratifies the validity of the two materiality validation criteria that we use in reconciliation reports and that we, as social society, share.

However, to resolve the difficulty that we have reached on this issue with the EITI International Secretariat, we have sent a letter as representatives of civil society to the EITI Peru National Commission, suggesting that a letter be sent to the National Superintendency of Customs and Tax Administration (SUNAT) requesting the information required in the comment made by the EITI Board Validation Committee.

Lastly, we would like to reiterate our commitment to continuing to promote implementation of the EITI Standard in Peru, as well as mechanisms to achieve greater transparency in our country's extractive sector.

Sincerely,

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