

**Validation of PERU**  
Validation Report  
Sustainable Development Strategies Group (SDSG), Independent Validator  
11 November 2016

## **1. BACKGROUND**

Among the EITI pioneers in 2004, Peru formed its first multi-stakeholder group (MSG) in 2006, became an EITI Candidate in 2007 and the first EITI compliant country in Latin America in 2009. The EITI Board agreed on 02 June 2016 that Peru's Validation against the 2016 EITI Standard should commence on 1 July 2016. Pursuant to the Validation Guide, the Secretariat carried out the first phase of validation – initial data collection, stakeholder consultations, and preparation of their initial evaluation of progress against the EITI requirements (the “Initial Assessment”). SDSG was appointed as the independent Validator to evaluate whether the Secretariat’s work has been carried out in accordance with the Validation Guide. SDSG will review and amend the Initial Assessment, as needed, and summarize its independent review in a Validation Report for submission to the Board.

- **Work Performed by the Independent Validator**

The Secretariat requested submission of the Validation Reports for Peru and four other countries before the Board meeting in Astana in late October. Both PDF and editable versions of the Initial Assessments for these countries were transmitted to the SDSG Validation Team in September 2016. The Validation Team received and took into consideration the comments of the CMPE. committed to undertake this task through: (1) In-depth review and marking up of the EITI Assessment by the team; (2) Detailed review and comments by Multi-Stakeholder Specialist of Requirements 1 and 7; (3) Detailed review and comments by Financial Specialist of Requirements 2 through 6; and (4) Overall drafting lead and detailed review by Team Leader of all requirements.

- **Comments on the Limitations of the Assessment**

The most significant challenge for the Validation Team is the compressed time frame within which to undertake its review of EITI implementation in Peru. Stakeholder outreach was not practicable and detailed review of documentation beyond the Initial Assessments is necessarily limited. It should be noted, however, that the Independent Validator is not expected to duplicate the data collection and consultation work completed by the Secretariat. Neither is it permitted to consider activities after 01 July 2016, per express directive of the Board. Notwithstanding these limitations, the Validation Team has carefully reviewed the Secretariat’s Initial Assessment and applicable references to determine Peru’s level of progress against the different requirements of the 2016 Standard.

- **Comments on the Initial Assessment**

The initial data collection, stakeholder consultations, and drafting of the Initial Assessment were generally undertaken by the Secretariat in accordance with the 2016 Validation Guide. This entailed a desk review of relevant documents from July 1-15, 2016, a country visit by a three-person team from the Secretariat that conducted stakeholder consultations from 18-22 July 2016, and the production of the Initial Assessment. The Secretariat’s team was identified by name, though it would be helpful to also indicate each member’s level of familiarity or engagement with EITI-Peru to confirm the appropriate balance in perspectives and experience.

Despite the relatively short country visit, it appears the team was able to conduct meetings with different stakeholders, especially members of the CMPE. Given the country’s focus on subnational

implementation of EITI, the team's visit to and meetings in one of the pilot areas (Piura) was very significant and confirmed the value of the country's and region's efforts. While time constraints were understandable, it would have been ideal for the team to also visit the other pilot region. On the whole, the entire process appears to have been transparently undertaken and stakeholders consulted were given several opportunities to provide comments. The Secretariat held several consultations with CSOs, government agencies, and international organizations not directly related to the EITI, however, outreach to a broader space of stakeholders was limited. The Secretariat noted that its assessment covers views principally of key stakeholders engaged in the EITI process.

In general, the Initial Assessment is well organized and clear. It thoroughly discusses the requirements and evaluates Peru's level of progress. Supporting documents and stakeholder input are cited, where appropriate and available. A consistent approach to the use of acronyms and to the format of footnotes will help improve the Initial Assessment. In this regard, the Secretariat's use of tables, figures, and charts to present comparative data is especially helpful. These graphical representations should be listed in the Table of Contents.

## **2. GENERAL COMMENTS**

- **Progress in EITI Implementation**

Peru has published five EITI Reports covering 11 fiscal years. It has established operational licensing and cadastre systems, and systems concerning the national budget and macroeconomic planning. Peru has significantly advanced the subnational dimension of the EITI, transparently transferring extractive industry revenues to subnational governments and piloting EITI implementation regionally in Moquegua and Piura.

The CMPE needs to ensure, however, that their scope of reporting is in line with the 2016 EITI Standard. It should revisit their definition of materiality, develop effective and measurable work plans, consistently address confidentiality issues, and better document the impacts of EITI.

Peru's implementation of EITI thus appears to lack balance and consistency. On the one hand, it demonstrates exemplary progress in the areas of contract disclosure, disclosure of production data, revenue management and allocation, and subnational transfers. On the other, its progress is strikingly inadequate on its work plan, follow up on recommendations, and outcomes and impacts. Peru makes great progress in certain aspects of implementation but appears to focus far less on the reflection and analysis necessary for work planning and impact assessment.

- **Impact of EITI Implementation**

Peru has pioneered EITI implementation internationally and is regionally influential through its hosting of EITI study tours and conferences. EITI data is viewed as credible, which provides common ground for stakeholders to discuss a wide range of issues. The MSG is firmly institutionalized and remains a venue for stakeholder engagement, a significant impact of EITI considering the complexity and protracted nature of mining-related conflicts especially in local areas involving communities. A major impact of EITI-Peru has been its emphasis on subnational transfers to ensure that extractive sector revenues flow to local areas.

Awareness of EITI in Peru appears high, but the country lacks a rigorous approach to monitoring and assessing the impacts of implementation. This is tied to the inadequacies in their work planning process, failure to maintain an updated work plan with measurable targets, and lack of analysis of impacts in their APRs.

- The Independent Validator's Assessment of Compliance

Figure 1 – Validator's assessment

EITI Requirements		LEVEL OF PROGRESS					Note
		No Progress	Inadequate	Meaningful	Satisfactory	Beyond	
Categories	Requirements						
MSG oversight	Government engagement (#1.1)						
	Industry engagement (#1.2)						
	Civil society engagement (#1.3)						
	MSG governance (#1.4)						
	Work plan (#1.5)						1
Licenses and contracts	Legal framework (#2.1)						
	License allocations (#2.2)						
	License register (#2.3)						
	Policy on contract disclosure (#2.4)						
	Beneficial ownership (#2.5)						
	State participation (#2.6)						2
Monitoring production	Exploration data (#3.1)						
	Production data (#3.2)						3
	Export data (#3.3)						
Revenue collection	Comprehensiveness (#4.1)						
	In-kind revenues (#4.2)						**4
	Barter agreements (#4.3)						
	Transportation revenues (#4.4)						**5
	SOE transactions (#4.5)						
	Direct subnational payments (#4.6)						
	Disaggregation (#4.7)						
	Data timeliness (#4.8)						
Revenue allocation	Revenue management & expenditures (#5.1)						6
	Subnational transfers (#5.2)						
	Distribution of revenues (#5.3)						
Socio-economic contribution	Mandatory social expenditures (#6.1.a)						
	Discretionary social expenditures (#6.1.b)						
	SOE quasi-fiscal expenditures (#6.2)						**7
	Economic contribution (#6.3)						
Outcomes and impact	Public debate (#7.1)						
	Data accessibility (#7.2)						
	Follow up on recommendations (#7.3)						8
	Outcomes & impact of implementation (#7.4)						

1-10: Please see Detailed Findings.

\* Initial Assessment does not provide sufficient information to assess progress.

\*\*Changed from 'not applicable'

## 2. DETAILED FINDINGS

- 1.1 **Government engagement.** We agree Peru has made **SATISFACTORY** progress. We note that the Government of Peru's hosting of the first EITI Global Conference in February 2016 was exceptional.
- 1.2 **Company engagement.** We agree Peru has made **SATISFACTORY** progress, however, the lack of a more consistent approach to address confidentiality issues may impact company participation. The engagement of small and medium companies is commendable.
- 1.3 **Civil society engagement.** We agree Peru has made **SATISFACTORY** progress. The environment for civil society appears to be vibrant on the national, regional, and local levels; sustained outreach to CSOs that are not on or affiliated with the CMPE would contribute further to public debate.
- 1.4 **MSG Governance.** We agree Peru has made **SATISFACTORY** progress. The CMPE's governance procedures are generally thorough and well developed, however, they should place greater focus on clear, public ToR for the approval of work plans and annual progress reports (APRs) which are critical implementation tools.
- 1.5 **Work Plan.** We disagree that Peru's progress is meaningful and find it is **INADEQUATE**. Peru has not complied with most aspects of requirement 1.5, and its broader objective in guiding EITI implementation is far from being fulfilled. Among other inadequacies: Peru's work plan is not clearly linked to national priorities for extractive industries; it has often been out of date and both approved and published late; it fails to address several key provisions of the 2016 Standard; it does not address comprehensiveness or data reliability; and it is not fully costed. We have taken the comments of the CMPE into consideration in this assessment.
- 2.1 **Legal Framework and Fiscal Regime.** We agree that Peru has made **SATISFACTORY** progress.
- 2.2 **License Allocations.** We agree that Peru has made **MEANINGFUL** progress. The information provided regarding artisanal and small-scale mining is commendable.
- 2.3 **Register of licenses.** We agree that Peru has made **SATISFACTORY** progress, however, there is no information regarding a mining project that the Peruvian government may still own, as discussed under 4.1 of the Initial Assessment.
- 2.4 **Contract Disclosures.** We agree that Peru has made **SATISFACTORY** progress. However, it would be helpful going forward to investigate further, for example: whether contracts are comprehensible; what are stakeholders' opinions; whether there is capacity building for those wishing to scrutinize contracts more closely.
- 2.5 **Beneficial ownership.** Implementing countries are not yet required to address this provision and progress on this provision does not yet have implications for a country's EITI status.
- 2.6 **State participation in EI.** We disagree with the Initial Assessment that Peru has made meaningful progress and find that it has made **INADEQUATE** progress. Neither the EITI Reports nor the CMPE address whether state participation gives rise to material revenue payments. If Perupetro's ownership was not material, then the requirement is not applicable; if it was material, then disclosure regarding its ownership of the two oil and gas projects is inadequate. Without the required information, even as to the applicability of the

provision, the broader objective of this provision is far from fulfilled. Nor is there an explanation for why the CMPE has not discussed these SOEs and another mining project reportedly owned by the government (as alluded to under 4.1).

- 3.1 **Exploration.** We agree that Peru has made **SATISFACTORY** progress.
- 3.2 **Production Data.** Peru has not only demonstrated satisfactory progress, it has gone **BEYOND** what is required by including sources of data and information on how production volumes and values disclosed have been calculated.
- 3.3 **Export Data.** We agree that Peru has made **SATISFACTORY** progress. Although not stated in the Initial Assessment, the International Secretariat has confirmed that the export data readily available through other official publications disaggregates the data to the level required by 3.3.
- 4.1 **Comprehensive disclosure of taxes and revenues.** We agree that Peru has made **MEANINGFUL** progress.
- 4.2 **In-Kind Revenues.** We disagree that this provision is not applicable because we disagree with the distinction drawn in the Initial Assessment that the sale of the oil to which Perupetro is entitled is not covered by provision 4.2 because it is sold by the operator, on behalf of the Perupetro, instead of being sold by Perupetro. The issues that provision 4.2 is designed to draw out – potential issues involving volumes sold, prices obtained, and fees paid – are present in the arrangement where an operator sells on behalf of an SOE. It does not appear that either the volumes sold or the revenues received from Lote Z-2B are disclosed, nor was it determined that the revenues were material. If the amounts were not material, then the requirement is not applicable; if they were material, then disclosure regarding is inadequate. Based on our interpretation of what is covered by provision 4.2, without the required information, even as to the applicability of the provision, the broader objective of this provision is far from fulfilled. Therefore, we find that Peru has made **INADEQUATE** progress.
- 4.3 **Infrastructure provisions and barter arrangements.** We find that Peru’s progress is not meaningful but **INADEQUATE**. The “MSG and the Independent Administrator are required to consider whether there are any agreements... involving the provision of goods and services...in full or partial exchange for oil, gas or mining exploration or production concessions or physical delivery of such commodities.” There is no evidence of any consideration by the CMPE or the Independent Administrator.
- 4.4 **Transportation revenues.** We disagree that this requirement is inapplicable, rather, we find that Peru has made **SATISFACTORY** progress. This provision requires the CMPE to consider the issue of disclosing transportation revenues and to document its discussions, its rationale, and any barriers to disclosure. The Initial Assessment makes clear that the CMPE discussions were documented and that its rationale for not disclosing was that the revenues were immaterial, suggesting also that there were no barriers to disclosure.
- 4.5 **Transactions related to SOEs.** We disagree with the Assessment and find Peru has made **MEANINGFUL** progress. Per 4.5, the CMPE "must ensure that the reporting process comprehensively addresses the role of [SOEs], including material payments to SOEs from oil and gas and mining companies, and transfers between SOEs and other government agencies." The EITI Reports discuss the two oil SOEs in considerable detail – it appears that Perupetro’s revenues have not been material and that Petroperu’s downstream revenues are

not relevant. However, there has been reference to one mining project owned by the government for which there is no information.

- 4.6 **Subnational payments.** We agree that this requirement is **NOT APPLICABLE**.
- 4.7 **Level of disaggregation.** We agree that Peru has made **SATISFACTORY** progress. Although not stated in the Initial Assessment, disaggregation by government entity is implicit as a result of the disaggregation by revenue.
- 4.8 **Data timeliness.** We agree that Peru's progress has been **SATISFACTORY**.
- 4.9 **Data quality and assurance.** We agree that Peru's progress has been **MEANINGFUL**, and we take note of the Secretariat's thorough and excellent analysis of the country's progress in complying with this requirement.
- 5.1 **Distribution of extractive industry revenues.** We agree with the Assessment that Peru has made satisfactory progress and has even gone **BEYOND** what is required. Peru successfully addresses all the mandatory aspects of requirement 5.1 and undertakes what is encouraged. It attempts, through MEF, to use a revenue classification system and has a publicly accessible online financial administration system.
- 5.2 **Subnational transfers.** The Secretariat's Initial Assessment states that Peru has made satisfactory progress in meeting this requirement, but its Assessment Card indicates that Peru's compliance goes beyond what is required. We agree that Peru's efforts to extend EITI implementation through its work on subnational transfers should be recognised as exemplary. The country's piloting of EITI sub-nationally clearly goes above and **BEYOND** what is mandatory under requirement 5.2. However, the calculation of discrepancies is required to be disclosed with respect to all transfer streams, not just with respect to the regional pilots.
- 5.3 **Revenue management and expenditures.** Disclosure under this requirement is encouraged and is thus not taken into account in the overall assessment of compliance.
- 6.1 **Social expenditures by extractive companies.** We agree with the Initial Assessment that Peru has made **MEANINGFUL** progress, noting the need to clarify the nature of GEM and the status of community agreements under Peru's legal framework.
- 6.2 **Quasi-fiscal expenditures.** We disagree that this requirement is not applicable and find that Peru has made **INADEQUATE** progress. Provision 6.2 requires that the CMPE develop a reporting process with regard to quasi-fiscal expenditures and the Initial Assessment states that there is no evidence documenting any dedicated CMPE discussion regarding the practice of quasi-fiscal expenditures by SOEs.
- 6.3 **The contribution of the extractive sector to the economy.** We agree that Peru has made **SATISFACTORY** progress. We note, however, that "when available" Peru must also disclose an estimate of the informal sector activity.
- 7.1 **Public debate.** We agree that Peru has made **SATISFACTORY** progress.
- 7.2 **Data accessibility.** Disclosure under this requirement is encouraged and is thus not taken into account in the overall assessment of compliance.

- 7.3 **Discrepancies and recommendations from EITI Reports.** We disagree that Peru has made meaningful progress and find that its progress is **INADEQUATE**. The CMPE does not appear to have reflectively discussed recommendations from EITI or Validation Reports, nor has it taken deliberate steps to act upon lessons learnt and consider recommendations resulting from said reports.
- 7.4 **Outcomes and impact of EITI implementation on NR governance.** We agree that Peru's progress has been **INADEQUATE**. We have taken the comments of the CMPE into consideration in this assessment.

#### 4. **RECOMMENDATIONS.**

Below are the Secretariat's overarching recommendations for improving EITI implementation in Peru, with the Validation Team's modifications and supplements in italics.

- 4.1 The CMPE should **review the outcomes and impact of EITI implementation** and agree a **revised and fully costed work plan** which should include specific *and measurable* implementation objectives linked to the EITI Principles and national priorities for the extractive industries. The CMPE may wish to consider undertaking, in consultation with all constituencies, an impact assessment *to identify* opportunities to increase impact. The CMPE *should* take a more active role in developing recommendations from EITI Reports and agree follow-up and implementation. The CMPE is encouraged to explore options for extending EITI implementation to address issues of greatest relevance to contemporary public debates.
- 4.2 The CMPE should **undertake a comprehensive scoping study** that addresses all aspects of the 2016 EITI Standard, including *revisiting the definition of materiality*, a thorough assessment of role of Perupetro and Petroperu and the arrangements related to the regulator OSINERGMIN, *investigating state participation in the mining sector, confirming the nature of GEM* and the nature of the social fund FISE. The CMPE is encouraged to systematically review what information required or encouraged to be disclosed under the EITI Standard is publicly available through existing disclosures. The CMPE may wish to move toward more **timely and mainstreamed transparency**.
- 4.3 The CMPE should ensure the EITI Reports provide information (or links to publicly available sources) regarding the transfer of **hydrocarbon licenses** *and required bid-related information, where applicable*, in the year covered by the report.
- 4.4 The CMPE should ensure that the next report **follows the standard Terms of Reference for Independent Administrators**, and that there is **comprehensive disclosure and reconciliation of all material payments** in accordance with the agreed scope. The CMPE may wish to review the definition of materiality in light of the revised scoping work.
- 4.5 The CMPE is encouraged to consider a number of mechanisms that could **speed up the publication of EITI Reports**. This could include a long-term solution to ensure company participation and for waiving the confidentiality rights to taxpayer data disclosed in the EITI; automated reporting and online disclosures, including in open data formats.
- 4.6 The CMPE is encouraged to consider developing a communication strategy **to increase the EITI's contribution to public debate**, *referencing the EITI Reports, expanding dissemination, and highlighting Peru's licensing, cadastre, budget, and macroeconomic planning systems*. In light of the identified needs, this might include more analytical work and better linkages with the work

advanced by other organisations, including government agencies and efforts, working toward better extractive sector governance.

4.7 *The CMPE is encouraged to further develop and expand its work on the **subnational EITI implementation**. Programs to strengthen awareness and understanding of license allocation procedures and their implications on property rights should be considered, especially for communities and permit holders. Rigorous examination and documentation of impacts on the local level in the pilot regions would be very helpful in informing similar efforts elsewhere in Peru and in other countries.*

4.8 *To strengthen the **sustainability of EITI-Peru**, the CMPE is encouraged to map out short and long term sources of funding for implementation. Programs to increase collaboration should be considered with other national efforts such as the National Office of Dialogue and Sustainability, with CSOs and other organisations working on extractive sector governance, and stakeholders not previously involved with EITI. The CMPE is also encouraged to consider approaches to ensuring consistency in company participation, including legislative or regulatory reforms to address confidentiality issues and embed transparency requirements.*

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