

Extractive Industries Transparency Initiative (EITI)

Second Validation of Peru

Draft Assessment by the EITI International Secretariat

31 December 2018

Contents

1. Summary	2
2. Background.....	3
3. Review of corrective actions.....	5
3.1 Corrective action 1	5
3.2.a Corrective action 2 (a).....	8
3.2.b Corrective action 2 (b).....	13
3.2.c Corrective action 2 (c)	14
3.2 Corrective action 3	17
3.4 Corrective action 4	25
3.5 Corrective action 5	28
3.6 Corrective action 6	30
4. Conclusion	32

1. Summary

Peru's second Validation commenced on 1 July 2018. The EITI International Secretariat has assessed the progress made in addressing the six corrective actions established by the EITI Board following Peru's first Validation in 2017¹. The six corrective actions relate to:

1. Work plan (Requirement 1.5);
2. Scoping of EITI reporting with regards to:
 - a. State participation (Requirement 2.6),
 - b. Infrastructure provisions and barter arrangements (Requirement 4.3), and
 - c. Social expenditures by extractive companies (Requirement 6.1);
3. Comprehensive disclosure of taxes and revenues (Requirement 4.1);
4. Data quality and assurance (Requirement 4.9);
5. Discrepancies and recommendations from EITI Reports (Requirement 7.3); and
6. Review of outcomes and impact of EITI implementation (Requirement 7.4).

The Secretariat's draft assessment is that most of the few corrective actions have been addressed. However, there are some issues and potential gaps that need to be clarified before finalizing the assessment. The International Secretariat is seeking comments from Peru's multi-stakeholder group (MSG), the *Comisión Multisectorial Permanente para el seguimiento y supervisión de la Transparencia en el empleo de los recursos que obtiene el estado por el desarrollo de las Industrias Extractivas Minera e Hidrocarburifera* (hereafter CMPE) before concluding its assessment. This draft assessment was sent to the CMPE on 3 January 2019. The assessment will then be finalised for consideration by the EITI Board.

¹ <https://eiti.org/validation/peru/2016>

Peru has been implementing EITI for more than a decade. There are a number of issues that have proven controversial throughout the Validation process. That said, there is wide stakeholder agreement that the EITI has been a valuable platform for promoting transparency and dialogue between government, industry and civil society. Since the EITI Global Conference in Lima, the CMPE has continued its work, with a particular focus on extending EITI implementation to the sub-national level. In addition to reviewing these findings, it may be timely for Peru to consider conducting a deeper analysis and discussion on the EITI process *vis a vis* their national priorities and concerns about the extractive sector.

2. Background

Peru's government established the first CMPE in 2006. Peru was accepted as an EITI candidate in September 2007 and was designated as compliant with the 2009 EITI Rules in February 2012. The first Validation of Peru under the 2016 EITI Standard commenced on 1 July 2016. On 11 January 2017, the EITI Board found that Peru had made meaningful progress in implementing the 2016 EITI Standard. Six corrective actions were established by the Board, pertaining to the following requirements:

1. Work plan (Requirement 1.5);
2. Scoping of EITI reporting with regards to:
 - a. State participation (Requirement 2.6),
 - b. infrastructure provisions and barter arrangements (Requirement 4.3), and
 - c. social expenditures by extractive companies (Requirement 6.1);
3. Comprehensive disclosure of taxes and revenues (Requirement 4.1);
4. Data quality and assurance (Requirement 4.9);
5. Discrepancies and recommendations from EITI Reports (Requirement 7.3); and
6. Review of outcomes and impact of EITI implementation (Requirement 7.4).

The Board asked Peru to address these corrective actions to be assessed in a second Validation commencing on 11 January 2018. On 29 December 2017, Peru submitted a request for an extension for the reporting deadline regarding EITI Report for year 2015, and for the commencement of the Second Validation. In its 39th Board Meeting, held on 13 February 2018, the Board decided to postpone commencement of Peru's second Validation until 1 July.

Peru has undertaken a number of activities to address the corrective actions²

- At its 10 March 2016 meeting, the CMPE agreed the establishment of a Validation Committee (composed by the three constituencies) to follow up on Validations tasks.
- At its 23 June 2016 meeting, the CMPE agreed on a decision of new frequency of meetings to approve terms of reference for IA including corrective actions.
- At its 23 September 2016 meeting, the CMPE extensively discussed the corrective actions and approved revised Terms of Reference (ToRs³) in light of corrective actions.

² All Meeting Minutes are available here: <http://eitiperu.minem.gob.pe/documentos.html>

³ See:

<http://eitiperu.minem.gob.pe/documentos/REGLAMENTO%20COMISION%20MULTISECTORIAL%20PERMANENTE.pdf>

- At its 23 February 2017 meeting, the CMPE agreed the scope of the 2015-2016 EITI Report⁴ with the Independent Administrator, Ernst & Young Peru (henceforth EY).
- In July 2017, Peru published its 2016 EITI Annual Progress Report (APR)⁵.
- In July 2017, the CMPE had a meeting with the EITI International Secretariat Head, Jonas Moberg and the Regional Director for Latin America and the Caribbean, Francisco Paris in Lima. A briefing was given on the current situation and progress of EITI in Peru; the CMPE explained that the Validation process has been a priority in their agenda, while the EITI International Secretariat agreed there has been much progress but also mentioned that there were still several aspects to be improved, referring to the corrective actions. Finally, the CMPE emphasized their commitment in EITI's implementation in the country.
- On 22 December 2017, the CMPE updated its 2016-2018 work plan⁶ in light of corrective action 1.
- On 13-15 March 2018, the CMPE, the EITI Champion Ricardo Labó, other stakeholders (Independent Administrator, Perupetro) had also a meeting with the Regional Director for Latin America and the Caribbean, Santiago Dondo in Lima.
- In January 2018, 8 March 2018, 20 March 2018 and 28 June 2018, the CMPE and the International Secretariat exchanged emails clarifying the scope of each corrective action.
- In January 2018, 27 April 2018 and 21 June 2018 the CMPE had calls with the EITI International Secretariat following up specific corrective actions.
- In February 2018, Peru published its 2015-2016 EITI Report addressing many of the corrective actions.
- On 20 March 2018, the International Secretariat sent a document including specific comments, questions and suggestions related to the corrective actions.
- In June 2018, Peru published its 2017 Annual Progress Report⁷.
- In June 2018, Peru approved and sent the "Complementary Report related to Corrective Actions"⁸ (hereinafter the "Complementary Report").
- In addition to addressing the corrective actions, the CMPE has started discussing the next steps towards systematic disclosures of extractive data through government and company websites.

There are several issues that have proven controversial throughout the Validation process. That said, there is wide stakeholder agreement that the EITI has been a valuable platform for promoting transparency and dialogue between government, industry and civil society. Since the EITI Global Conference in Lima, the CMPE has continued its work, with a focus on extending EITI implementation to the sub-national level.

The following section addresses progress on each of the corrective actions. The assessment is limited to the corrective actions established by the Board and the associated requirements in the EITI Standard. The

⁴ 2015-2016 EITI Peru Report. See:

https://eiti.org/sites/default/files/documents/vi_informe_nacional_de_transparencia_de_las_industrias_extractivas_-_2015_y_2016.pdf

⁵ See: https://eiti.org/sites/default/files/documents/2016_peru_annual_progress_report.pdf

⁶ See: https://eiti.org/sites/default/files/documents/plan_de_accion_eiti_peru_2016-2018.pdf

⁷ See: https://eiti.org/sites/default/files/documents/informe_de_anual_progreso_eiti_2017_-_peru.pdf

⁸ See:

<http://eitiperu.minem.gob.pe/documentos/Documento%20complementario%20a%20las%20acciones%20correctivas%201ra%20Validaci%C3%B3n%20EITI.pdf>

assessment follows the guidance outlined in the Validation Guide⁹. While undertaking this assessment, the International Secretariat has also considered whether there is a need to review additional requirements, i.e. those assessed as “satisfactory progress” or “beyond” in the 2016 Validation. While these requirements have not been comprehensively assessed, in the International Secretariat’s view there is no evidence to suggest progress has fallen below the required standard and no additional issues that warrant consideration by the EITI Board.

3. Review of corrective actions

The Secretariat’s assessment below considers whether the corrective actions have been sufficiently addressed. The assessments are based on minutes of the CMPE meetings from February 2017 to June 2018, the 2015-2016 EITI Report, the 2016 and 2017 APRs, the updated 2016-2018 work plan, the Complementary Report, the “Product 1: Plan and Work Schedule”¹⁰ as an Independent Administrator’s deliverable of the Contract no. 0055-2017-MEM/OGA between the CMPE and the Independent Administrator to perform the 2015-2016 EITI Report dated on 8 November 2017, e-mail correspondences, and stakeholder consultations (in-person and via skype).

3.1 Corrective action 1

In accordance with requirement 1.5, the CMPE is required to 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 work plan should address the corrective actions outlined below. The CMPE is also encouraged to consider the other recommendations in the Validator’s Report and the International Secretariat’s initial assessment, and to consider the guidance note on developing an EITI work plan.

Findings from the first Validation

The first Validation concluded that Peru has made meaningful progress in meeting this requirement. It noted that while the 2016 work plan (sent to the EITI International Secretariat, but not publicly available) included time-bound activities, it did not have an estimate of the costs and a clear reference to possible sources of funds. The first validation also concluded that the 2016 work plan did not include a clear definition of the scope and did not address several aspects of requirement 1.5 of the 2016 EITI Standard such as being clearly linked to national priorities for extractive industries.

Progress since Validation

⁹ https://eiti.org/sites/default/files/documents/validation-guide_0.pdf

¹⁰ It describes the methodology, the work plan, work schedule, the final deliverable, templates to request information per government revenue to companies and public institutions, confidentiality agreement template, among others.

At its meeting on 22 December 2017¹¹, the CMPE modified the 2016-2018 work plan incorporating costs estimates and sources of funds for each aspect of EITI implementation.

The 2016-2018 work plan addresses the following aspects of Requirement 1.5:

- ***Publicly accessible work plan:*** The Complementary Report confirms that the 2016-2018 work plan was approved and published on December 2016 by the CMPE, through emails in accordance with their governing rules. The updated 2016-2018 work plan is available on the EITI Peru website¹².
- ***Objectives of EITI implementation:*** The updated 2016-2018 work plan did not modify the number/descriptions of outcomes, sub-outcomes, and monitoring and dissemination activities already identified in the first International Secretariat Initial Assessment (p. 27)¹³. While the work plan did not include a specific objective to address the corrective actions, the Complementary Report highlighted that this was clearly a main priority for the CMPE. As a clear evidence of its intentions, the Complementary Report mentions the creation of a Validation Committee by the CMPE, on its meeting of 10 March 2016¹⁴. The sole purpose of this Committee was to coordinate and implement the corrective actions to successfully accomplish the Validation process. This committee was created in accordance with activity no. A.1.3 of the work plan, which states “create working groups for specific matters within the work plan”. To do so, this Validation Committee has coordinated meetings with EY, Independent Administrator for the EITI Report 2015-2016. The work plan also reveals that subnational implementation is the main national priority for extractive industries linked to Peru. While beneficial ownership and “automation of information” (mainstreaming) are national priorities included in the work plan, the allocated budget for their implementation is minimum. Meeting Minute dated as of 14 March 2018¹⁵ shows that the CMPE has defined EITI subnational implementation, automation of information and dissemination of EITI information as national priorities.
- ***Efforts to consult key stakeholders on the objectives for implementation:*** The three constituencies (government, industry and civil society) represented in the CMPE agreed on the objectives listed in the work plan. Issues, such as contract transparency, commodity and macro-economic data, licenses, national government budget and revenues amongst others, have been discussed by the CMPE and stakeholders.
- ***Measurable and time-bound activities:*** The work plan outlines the expected outcomes, including “strengthening the CMPE and the EITI-Peru initiative” at the top of the priority list. For each outcome there are planned sub-outcomes and activities and clear indication that funding should be sought. As concluded in the first International Secretariat Initial Assessment, the activities associated with each

¹¹ Minute from 22 December 2017. See: http://eitiperu.minem.gob.pe/documentos/Acta_22_12_17.pdf

¹² See here: <http://eitiperu.minem.gob.pe/documentos/Plan%20de%20Accion%20EITI%20Peru%202016-%202018.pdf>

¹³ See here:

https://eiti.org/sites/default/files/documents/peru_international_secretariat_initial_assessment_final_as_of_15_sept_2016_1.pdf

¹⁴ See here: <http://eitiperu.minem.gob.pe/documentos/ACTA%20EITI%2010-03-16.pdf>

¹⁵ See here: <http://eitiperu.minem.gob.pe/documentos/Acta%20de%20la%20CMP%20EITI%20Peru%2014-03-18.pdf>

outcome are measurable and time-bound (p. 27). It includes suggested timeframes, expected output(s), execution leaders, estimated costs and sources of funds.

- *Activities aimed at addressing any capacity constraints:* The updated 2016-2018 work plan did not modify the number of activities related to capacity constraints. Activity A.1.3 and Activity B.1/B2 of the 2016-2018 work plan are aimed at building capacity in professionals within the CMPE and the Technical Secretariat, respectively.
- *Activities related to the scope of EITI reporting:* The work plan included the implementation of beneficial ownership and automation of information or mainstreaming topics. Although not expressly included in the work plan, the Meeting Minutes of the CMPE¹⁶ and the ToRs for Independent Administrator¹⁷ reflect their discussions and decision to extend the scope of the report to include, for the first time, environmental and social aspects.
- *Activities aimed at addressing any legal or regulatory obstacles:* The work plan did not specifically designate activities to address any legal or regulatory obstacles, but it includes the analysis of regional context to EITI subnational implementations, and elaboration of a beneficial ownership roadmap, which will include legal and regulatory examinations.
- *Recommendations from Validation and EITI reporting:* The activity A.1.3 of the work plan, states that the CMPE should create permanent or temporary working groups to address specific issues such as the analysis of results and effects of the EITI implementation. As mentioned, the work plan does not refer to the address of the corrective actions directly. However, the CMPE extensively discussed in detail each corrective action in various meetings¹⁸ and took specific actions to address them, such as the conformation of the Validation Committee, the inclusion of handful requirements related to the corrective actions in the ToRs for the Independent Administrator, and the execution of several meetings with stakeholders outside the CMPE.
- *Costings and funding sources, including domestic and external sources of funding and technical assistance:* The updated 2016-2018 work plan outlines the costs of implementation for each activity. According to the work plan, costs of EITI implementation were estimated at USD 827,839 approximately. Of the total work plan costs, the World Bank funds for USD 283,746 which represents 34% of the total amount, while the remaining 66% was to be funded by the government. The 2016-2018 work plan reveals that there is also a potential budget related to subnational implementation of approximately USD 390,000.
- *A timetable for implementation:* The timetable included in the work plan 2016-2018 has been consistently followed, however some activities, such as the criteria definition for the mainstreaming process during the EITI implementation, are delayed vis-à-vis the original plan during the EITI implementation. After discussions with the CMPE, issues such as political instability and capacity of

¹⁶ For example, Minute Meeting of 23 February 2017; 9 May 2017; 17 May 2017; and 24 May 2017.

¹⁷ <https://eiti.org/document/standard-terms-of-reference-for-independent-administrator-services>

¹⁸ For example, Minutes Meetings of 16 June 2017, 20 October 2017 and 27 October 2017.

civil society were identified as potential causes for delays in the opening and implementation of EITI in the regions.

Secretariat's Assessment

Subject to feedback from the CMPE, the International Secretariat's preliminary assessment is that Peru has adequately addressed this corrective action and has made satisfactory progress towards meeting Requirement 1.5. The updated 2016-2018 EITI Peru work plan sets out the key aspects of the EITI process, aligned with national priorities. It is publicly accessible with specific and measurable implementation objectives. Stakeholders and companies were adequately engaged in the EITI work plan's preparation.

While the work plan itself did not include specific activities to follow up on corrective actions from the 1st Validation, the Complementary Report reveals that the CMPE took actions to address the corrective actions including the creation of the 'Validation Committee'. This committee worked from March 2016 onwards to address the corrective actions, including several meetings with stakeholders outside the CMPE.

3.2.a Corrective action 2 (a)

The CMPE should undertake a comprehensive scoping study that addresses all aspects of the 2016 EITI Standard. 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 is encouraged to move toward more timely and mainstreamed transparency. In particular:

- a) In accordance with requirement 2.6, the CMPE is required to conduct a thorough assessment of the role of Perupetro and Petroperu. In particular, the CMPE is required to clarify the situation with the operation of Block Z-2B owned by Perupetro and operated by Savia. The CMPE should confirm if the operation of this block gives rise to material payments, including the social expenditures of these companies.
- b) ...
- c) ...

Findings from the first Validation

The first Validation concluded that Peru had made meaningful progress, stating that Peru's EITI Report provided limited information about the Peruvian state-owned enterprises (SOEs, i.e. Perupetro and Petroperu). The Initial Assessment, dated September 2016, highlighted: "there is no evidence that the CMPE has thoroughly reviewed these arrangements, and examined whether they give rise to material revenue payments" (p. 42). While commenting this on the initial assessment, the CMPE¹⁹ stated: "The scope defined for the National Conciliation Studies has been the one referred to the License Contracts. The CMPE, in the use of its attributions, will evaluate the pertinence of including the Service Contracts and the participation of Perupetro S.A. in the next National Conciliation Study".

The EITI Board's decision, dated January 2017, therefore required "a thorough assessment of the role of Perupetro and Petroperu" (p. 5), clarifying the arrangements in the blocks owned by these SOEs and including them in the reporting process.

¹⁹ See p. 7 of document named *First comments of the CMPE to the Initial Evaluation of the International Secretariat of EITI*. (2016)

Progress since Validation

Below, we include a description and assessment relating to three state-owned companies: (1) Perupetro; (2) Petroperu, and (3) Activos Mineros. The International Secretariat has reviewed: (i) the information presented in the 2015-2016 EITI Report; (ii) the International Secretariat's comments and questions to the CMPE sent on 20 March 2018; and (iii) the response or information included in the Complementary Report submitted by the CMPE in June 2018. The Secretariat has also examined other publicly available sources.

1. Perupetro

The 2015-2016 EITI Report includes a one-page description of Perupetro's role (pp. 61-62), which basically is licensing oil blocks to private companies through different contracts, and collect the resulting royalties or share of production. The existing contracts up to 2016 are listed and a link is provided to access the contracts (pp. 67-68), including a very brief description of the types of incomes collected by Perupetro, divided into two types:

Service Contracts: the property of the hydrocarbons is assigned to Perupetro to negotiate contracts with private companies. This kind of contract entitles a third party to operate and extract the oil, and Perupetro pays for that service with a percentage of the production (in kind or in equivalent cash). Perupetro is required to transfer all revenues to the treasury, immediately after collection and some deductions.

The 2015-2016 EITI Report mentions 4 oil blocks governed by Services Contracts: lots I and V, with payment in cash; and lots Z-2B and 192, with payment in kind. Additionally, the report refers specifically to the contract related to block Z-2B (which was highlighted in the first Validation) disclosing its operating area, contracting system, and an access link (p. 68).

License Contracts: Perupetro assigns property rights over hydrocarbons to a company, in exchange for a royalty.

The amounts related to sales of hydrocarbons are reflected in the following table (pp. 67-69):

Cuadro 40: Ingresos recaudados por PERUPETRO años 2015 y 2016

Concepto	2015 (miles de soles)	2016 (miles de soles)
Ingresos por regalías	2,517,530	2,211,347
Venta de hidrocarburos	841,266	632,765
TOTAL	3,358,796	2,844,112

FUENTE: PERUPETRO - Estados Financieros Auditados PERUPETRO 2015-2016.

The amounts collected as royalties because of License Contracts are the same amounts reconciled in the Report (see p. 257), with information provided by the oil companies and Perupetro.

However, the amounts indicated as "sale of oil" (i.e. service contracts) are not included in the reconciliation exercise. The Report clarifies that these figures represent total value of the oil extracted, without deduction of the compensation due to the operator. The costs to be deducted are not included, and the resulting

amounts transferred to the Treasury are not clarified. The amounts showed in the table above are more than USD 255m for year 2015, and about USD 185m for year 2016.

In March 2018 the International Secretariat requested a detailed explanation on the composition of the amounts disclosed in the report (p. 69), disaggregated by each block involved, including the specific participation of Savia (block Z-2B mentioned above), assessing whether the State's share generates the payment of significant revenues.

In June 2018, the Complementary Report provided a brief overview of the role of Perupetro, with links to the company's website (p. 2). It also describes the way in which exploration and production of hydrocarbons is carried through license and service contracts (p. 3). It expressly clarifies that Perupetro does not conduct any operation activity in the service contract blocks. The value of hydrocarbon sales is disaggregated at block level for both years (2015 and 2016). Block Z-2B represents between 76% and 80% of the total value of production under services contracts (p. 4).

Venta de Hidrocarburos 2015- 2016

(En soles)

	LOTE- CONTRATISTA	2015	2016
CNPC PERU S.A.	L-V GMP	9,700,839	6,629,751
ENEL GENERACION PIURA S.A.	L- Z2B SAVIA PERU	3,036,064	2,605,859
GRAÑA Y MONTERO PETROLERA S.A.	L-I GMP	36,807,375	33,084,254
PACIFIC STRATUS ENERGY DEL PERU S.A.*	L-192 PACIFIC	63,359,811	19,174,745
PHILLIPS 66 COMPANY	L-192 PACIFIC	-	16,798,229
PETROLEOS DEL PERU - PETROPERU S.A.	L-I GMP	82,474,653	53,538,328
PETROLEOS DEL PERU - PETROPERU S.A.	L-IX** UNIPETRO	5,571,890	-
PETROLEOS DEL PERU - PETROPERU S.A.	L- Z2B SAVIA PERU	87,807,526	65,618,119
PROCESADORA DE GAS PARIÑAS SAC	L- Z2B SAVIA PERU	174,595	140,221
SAVIA PERU S.A.*	L- Z2B SAVIA PERU	552,332,758	435,175,551
	TOTAL	841,265,512	632,765,058

*Venta de Hidrocarburos perteneciente al Contratista (84% por la retribución) - Información proporcionada por Perupetro el 22-06-18.

** El Lote IX modificó su modalidad de Contrato de Servicios a Licencia en julio del 2015.

It is not clear how much of these amounts are deducted as cost paid to the operator, and how much is finally collected by Perupetro and eventually transferred to the Government. The only comment in this respect is the footnote under the table which states "Sale of Hydrocarbon pertaining to the Contracting party (84% for the compensation)...".

The Complementary Report included a table no. 27 (p. 5) from the 2016 Annual Memories of Perupetro. This table includes the total aggregated amounts for sales of hydrocarbons in 2015 and 2016 (the same data as presented above) and another row with the amounts for "Compensation to the counterparty". The latter represents 89% in 2016 and 81% in 2015, which differs from the 84% stated in the footnote.

The text of the service contract for block Z-2B (the largest), for which a link is included in the Report²⁰, states that the compensation for the operator is to be defined using a formula and may result in a percentage of production ranging from 39% to 84.1% (see clause 8.5 in page 48).

We can conclude that Perupetro has received, for the share of oil assigned to it from the services contracts, approximately USD 48m in 2015 and USD 20m in 2016.

²⁰ See the original contract in this link: <ftp://ftp.perupetro.com.pe/Z%202B/LOTE%20Z-2B%201.pdf>

As far as the International Secretariat is aware, these amounts were not considered or discussed by the CMPE and are not included in the reconciliation exercise. They represent 2.32% and almost 5% of the total amount collected by the government from the hydrocarbons sector.

Other Incomes

The same table (no. 27, in p. 5 of Complementary Report) shows that Perupetro had to transfer (the row states “To Be Transferred”) USD 630m in 2015 and USD 234m in 2016 to the Treasury. These amounts include oil royalties that are reconciled. However, in the case of year 2015, the total amount “to be transferred” exceeds the royalties reconciled by more than double. This is explained mainly by a revenue received by Perupetro under the name of “other incomes”, which amounts for around USD 320 m and is in addition to the incomes that the same table reflect for royalties and hydrocarbons’ sales.

As far as the International Secretariat is aware, this income has not been explained nor considered or discussed by the CMPE.

Social expenditures

With reference to social expenditures, the Complementary Report explains that Perupetro does not execute them. Instead, the contractor companies report these kinds of expenses to Perupetro every semester (p. 5). These social expenditures are not addressed in the EITI Report (see corrective action 2c, below).

Sale of Hydrocarbons’ Process

The Complementary Report includes a concise description of the two types of payment methods existing within services contract. In the largest blocks (Z-2B and 192) the payments to the operator are in kind, which means that Perupetro pays the operator with oil; while in the others is in cash, which means that Perupetro sells the oil and gives back cash to the operator. According to our conversations with officers from Perupetro, these sales are always conducted through a broker selected through an open, competitive process. The notes to the publicly available financial statements of Perupetro explain that it must sell “exclusively through third parties who must not be subsidiaries, affiliates or other corporate organization of which PERUPETRO S.A. is a member, and under the principles of free market”.

2. Petroperu

The 2015-2016 EITI Report includes a description of Petroperu (pp. 69-72) role, clarifying that it is not engaged in the upstream or extractive business, but only in midstream and downstream activities. This includes transportation (oil pipeline Nor Peruano), refining, distribution and commercialization. Petroperu's revenues are also included in the report (pp. 70-72).

The incomes from Petroperu’s transportation activities are disclosed and have reduced from around USD 56m in 2015 to less than USD 5m in 2016, due to the closure of the pipeline in February 2016. Petroperu is subject to general profit taxes as for other companies.

3. Activos Mineros

Page 255 of 2015-2016 EITI Report states that Minera Las Bambas S.A. is obliged to pay royalties under the regime of contractual royalties, which are collected by the state-owned enterprise Activos Mineros S.A. For the year 2016, the royalties declared by Minera Las Bambas S.A. were more than USD 45m.

The EITI Report explains that: “These royalties are transferred to the national, regional and local governments of the area of influence and details of such distribution can be found on the Economic Transparency page of

the Ministry of Economy and Finance". However, the provided link (see below image) refers to a total amount of 91m in 2016. This figure appears to be in Soles but differs from the declaration of the company.

**Consulta de Transferencias a los
Gobiernos Nacional, Regional, Local y EPS**

jueves, 06 de diciembre del 2018

Cuadros Resumen | Mancomunidad | EPS | Gobierno Nacional | Gobiernos Regionales | Gobiernos Locales

RECURSOS AUTORIZADOS ▼

Por Año | Por Mes | Por Recurso

Año	Gobierno Nacional	Gobiernos Regionales	Gobiernos Locales	EPS	Mancomunidades	Total General
2016	4,585,733.54	13,757,200.64	73,371,736.80			91,714,670.98
2017	14,675,440.70	44,026,322.12	234,807,051.34			293,508,814.16
2018	12,160,747.10	36,482,241.30	194,571,953.48			243,214,941.88
TOTAL	31,421,921.34	94,265,764.06	502,750,741.62			628,438,427.02

* Los montos mostrados corresponden al Monto Autorizado.

The Complementary Report in June 2018 only included 3 paragraphs describing the nature of this company, its general functions and objectives and applicable legal provisions. It does not include a specific reference to the royalties collected or whether or not those had been considered.

This amount paid as a royalty arising from a contract with the state-owned enterprise Activos Mineros, is not included in the reconciliation. The Secretariat is not aware of any discussion by the CMPE regarding this exclusion.

Secretariat's Assessment

Subject to feedback from the CMPE, the International Secretariat's preliminary assessment is that Peru has not yet completely addressed corrective action and has made meaningful progress towards meeting Requirement 2.6.

The CMPE has proved a clear description of Perupetro's activities and revenues, including the operation of Block Z-2B as highlighted in the previous Validation. The coverage of royalty payments from license contracts appears to be comprehensive.

Regarding service contracts, the information was provided gradually and there is certainly room for improvement in terms of clarity and scope. For example, the CMPE may wish to consider go into greater detail as to the revenue that the treasury ultimately receives from each of these contracts, to include more details on how third-party sales work in practice, among other things. However, the International Secretariat understands that, with the details included in the Complementary Document and described above, requirement 2.6 can be considered satisfied with respect to Perupetro.

This raises questions regarding compliance with requirement 4.2 on the sale of the state's share of production or other revenues collected in kind. In the International Secretariat's view, the arrangement in Peru regarding service contracts is equivalent to the approach adopted for equity oil as in other countries that have been validated (e.g., Kazakhstan, Republic of Congo, Norway). As such, the approach adopted meets the EITI Standard. However, emerging international best practice is to extend EITI reporting to these oil trades, and the CMPE is encouraged to consider further work in this area.

Petroperu is engaged in transportation and downstream activities. According to requirement 4.4, where revenues from the transportation of oil, gas and minerals are material, the government and state-owned

enterprises (SOEs) are expected to disclose the revenues received. The revenues from transportation are relatively small and have been disclosed.

The outstanding concerns related to this requirement are: (i) the revenues collected by Activos Mineros. This state-owned company appear to collect a significant amount of contractual royalties. It is unclear whether these issues have been considered by the IA or the CMPE. They are not adequately covered in the EITI Report; and (ii) the so-called “other incomes” (in 2015), which were not adequately covered and are unexplained.

3.2.b Corrective action 2 (b)

The CMPE should undertake a comprehensive scoping study that addresses all aspects of the 2016 EITI Standard. 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 is encouraged to move toward more timely and mainstreamed transparency. In particular:

- a) ...
- b) In accordance with requirement 4.3, the CMPE is required to confirm the applicability of the infrastructure provisions made under the regulations of Law 29230 (Law of public infrastructure and private sector participation)
- c)

Findings from the first Validation

The first validation concluded that Peru had made meaningful progress. The first validation concluded that there was no evidence of any consideration by the CMPE or the Independent Administrator regarding the applicability of infrastructure transactions in Peru. The initial assessment of September 2016 recognised that most stakeholders consulted argued that the Peruvian legal framework does not allow for these kind of transactions (p. 53). However, it also referred to statements where some representatives from civil society explained that the law allows deductions for investment in public infrastructure. Therefore, a better understanding of this regulation was required. The first Validation recommended the CMPE “as part of a revised scoping process, [to confirm and document] the applicability of infrastructure transactions” (p.53).

Progress since Validation

The 2015-2016 EITI Report includes a detailed explanation of the “Works for Taxes” regime confirming that this is a method for companies (and not only extractive companies) to pay Corporate Income Tax (CIT) through infrastructure provision, subject to applicable rules and conditions. Through this regime, companies have the option to pay their tax through the execution of a public work projects instead of paying cash. By doing so, a pre-arranged municipal area receives public works, reducing the need for regional government funding. The EITI Report highlights that “Works for Taxes” is not a separate revenue stream, but rather a form of payment for a revenue stream already covered in the EITI Report (pp. 88-90).

The CMPE have therefore concluded that “Works for Taxes” is not relevant to requirement 4.3. It does not include the provision of goods and/or services in full or partial exchange for oil, gas or mining exploration or production concessions. The Complementary Report also provides links to government agencies’ websites, for a better understanding of the regime (p. 6).

Secretariat’s Assessment

Subject to feedback from the CMPE, the International Secretariat’s preliminary assessment is that Peru has addressed the corrective action and has made satisfactory progress towards meeting Requirement 4.3. The Independent Administrator has confirmed the inapplicability of the “Works for Taxes” regime under 4.3 Requirement, noting its coverage under income tax payments under requirement 4.1. The International Secretariat is satisfied with this explanation. However, the MSG may wish to consider opportunities to improve disclosures regarding these in-kind income tax payments, describing which companies and what types of infrastructure and public works are involved.

3.2.c Corrective action 2 (c)

The CMPE should undertake a comprehensive scoping study that addresses all aspects of the 2016 EITI Standard. 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 is encouraged to move toward more timely and mainstreamed transparency. In particular:

- a) ...
- b) ...
- c) In accordance with requirement 6.1, the CMPE should review the coverage of social payments to all stakeholders including indigenous communities and agree an approach to address this requirement in accordance with the EITI Standard.

Findings from the first Validation

The first Validation concluded that Peru has made meaningful progress. The Initial Assessment noted that Peru’s reports did not include any information regarding social expenditures that were mandated by legislation, contract or other binding mechanism. While some stakeholders argued that mandatory social expenditures did not apply; others countered that there were binding obligations that were an integral part of companies’ social license to operate. The Validation concluded that the legal nature of the agreements signed between mining companies and communities should be examined in more detail by the CMPE in accordance with the 2016 EITI Standard (p. 74).

In 2016 the CMPE stated that “in Peru, there are no social expense obligations required by law or by contract in the extractive industry” (p. 11). With regards to the recommendation made by the EITI Board regarding a clearer explanation of the nature and extent of social contributions, the CMPE considered that a proper assessment had already been carried out. However, in that same document the CMPE agreed that in future reports they could better explain the scope and enforceability according to Peruvian regulations.

Progress since Validation

This assessment considers both social funds and social payments.

1. Social funds

The 2015-2016 EITI Report expanded the information and details on this issue. It described the so called “Social Funds” and the legal framework involved. It also provided the list of the eight social funds currently in place related to mining operations (p. 186), including the historical and aggregated amounts involved (table 110, p. 188).

The Complementary Report explains the origin of social funds in Peru and its commitment to develop sustainable projects in benefit of the affected population. Additionally, it incorporates a table (p. 8) with the

total “committed amount”, but with no reference to the period covered, so it is unclear if it relates to EITI Report’s years (i.e. 2015 and 2016) or not. The total committed amount is around USD 350m, and it is mentioned that 83% of it has been already invested in 1,000 different projects. Based on the amount, it seems that this sum reflects the total accumulated since the creation of these funds (i.e. since 2001), but this is not confirmed or clarified.

The Complementary Report makes the following statement about the social funds: “... they do not apply to ***all*** mining projects, so they do not represent a ***general*** obligation” (p. 8). The CMPE therefore decided to include this information in the contextual section of the report.

In the early 90s, the Fujimori government created a legal framework for the State to transfer, under different modalities, “state assets” including the transfer of the ownership of mining concessions and associated goods. Before the Social Funds existed as such, they were Trusts to which the amounts were initially assigned and PROINVERSION was the institution that received the money.

According to the rules in force in the 90s, in the Private Investment Promotion Contracts, the private investor had to make certain payments called “social contributions” (now *social funds*) to allocate them to the execution of sustainable social development projects for the benefit of the population (communities, municipalities) of the area of influence of the Project. In that sense, the payments received by PROINVERSION - consequence of these contributions – have the Private Investment Promotion Contracts as their source.

The legal basis in which social funds were originally created is the DL 996²¹ (as mentioned in p. 186 of the EITI Report). Actual social funds kept the name of the previously existing trusts, which are referred to as the name of the project awarded.

To consider this issue further, the International Secretariat reviewed the Las Bambas Association (mentioned in the list of the 2016 Social Funds disclosed in the 2015-2016 EITI Report). The contract for this mining project was reviewed. Clause 6 (p. 8)²², states: “the company (referring to Minerals and Metals Group in this case), undertakes to make payments to Proinversión, called social contributions, which will be deposited in a trust fund (now a social fund), exclusively for the execution of investment projects in the project's area of influence, in accordance with the provisions of DL 996”. These payments were agreed and settled as a compensation for the grant of mining concession in that same contract. It is quite clear the obligation of the investor company (i.e. currently MMG) to pay social contributions. Moreover, the Ministry of Energy and Mines expressly states that the social funds are not voluntary or part of the corporate social policy or decision, but a result of the contracts assigning mining concessions to the companies. This is included in their [Report on Social Payments made by Mining Companies](#) (image of relevant fragment in Spanish is included below):

²¹ See here: http://www.minem.gob.pe/archivos/legislacion-8szz49hjt77z5-Decreto_Legislativo_N%C2%BA_996_-_Ley_que_crea_los_Fondos_Sociales.pdf

²² See here: http://www.proyectosapp.pe/RepositorioAPS/0/0/JER/PACENTROMIN/Las_Bambas/LasBambas_Contrato_de_Transferencia.pdf

II. MARCO GENERAL DE LOS FONDOS SOCIALES

Los recursos de los fondos sociales son producto del contrato de transferencia otorgado por las empresas mineras y **se encuentran fuera de la decisión de inversión en responsabilidad social que las empresas puedan definir de acuerdo a sus políticas**, el monto transferido a los El Decreto Legislativo N° 996, fue reglamentado por el Decreto Supremo N° 082-2008-EF que permitió la implementación del mecanismo de gestión de inversión social denominado Fondos Sociales, destinados a la ejecución de programas dirigidos a beneficiar a las poblaciones de comunidades y centros poblados asentadas en el entorno, es decir la zona de influencia directa e indirecta de los proyectos minero-energéticos .

At the time of writing, there was insufficient information available to determine if there were payments made by mining companies to the social funds during 2015 or 2016. However, the official [Report IV Quarterly Social Funds as of December 31, 2016](#) shows that there are a significant number of social investment projects undergoing in 2016 with money from these mandatory created social funds. As of 2016, the funds with the greatest volume of execution were Alto Chicama, Las Bambas, Michiquillay and La Granja. The total amount of these four was S/. 901,463,881.61 (94.2% of the total amount executed). The same official report concludes: “During 2016, the lack of transparency of most Social Funds has been evident, demonstrating a lack of interest in catching up with the information required by the norm” (p 22).

Considering the evidence above, and even if execution of projects in 2015 and 2016 was done with money carried over from previous years, the issue of mandatory payments to social funds clearly deserves deeper consideration and explanation in EITI Reports. There is no support in the EITI Standard for the CPME’s argument that these payments can be excluded from reporting because they are not a *general* obligation.

2. Other Social payments

In March 2018 the International Secretariat requested that the CMPE “confirm that there are no significant social payments made by companies by mandate of the law or contracts with the government” (p. 5).

The Peruvian Government promotes corporate social responsibility in many industries; specifically, for mining activities, the DS 040-2014²³ (mentioned in the Complementary Report) *encourages* pre-defined adequate social practices. The purpose of this decree is to ensure that mining activities in the national territory are carried out preserving the constitutional right to enjoy a balanced environment, thus promoting social funds for the development of sustainable projects in benefit of the affected population.

It explained how mining companies must declare actions on corporate social responsibility (“Compromiso Previo”, p. 190) as part of their Community Relations Plan and disclosed the number of sustainable development projects reported by companies in different areas, such as education or infrastructure (table 113, p. 191).

On the other hand, the DS 042-2003, as amended by the DS 052-2010, reinforces the idea that social contributions could be mandatory, as its title reads: “Prior commitment as a requirement for the development of mining activities”. It continues by listing several environmental and social commitments that the mining companies must satisfy (Article 1, section c).

One of them mandates the companies to “comply with all and any agreement or commitment undertaken, including those within the environmental impact assessments”. According to stakeholders consulted, most of

²³ See here: <https://spda.org.pe/wpfb-file/decreto-supremo-040-2014-em-pdf/>

the environmental studies or impact assessments impose social investments as conditions or obligations for the companies.

The list also includes commitments related to education, health, nutrition, environmental management, employment and infrastructure, among others.

Secretariat's Assessment

Subject to feedback from the CMPE, the International Secretariat's preliminary assessment is that Peru has not addressed this corrective action and has made meaningful progress towards meeting Requirement 6.1. There is evidence indicating that at least some social payments appear to be mandatory. There is also substantial public interest in the selection and execution of these projects. However, the CMPE never alluded to this matter in a clear way. Social payments not being applicable for all (as mentioned in the Complementary Report), does not imply not being mandatory for some contracts; which could be in fact material and put at risk the comprehensiveness of the report by not disclosing them.

3.2 Corrective action 3

In accordance with Requirement 4.1, the CMPE should ensure that disclosure of national and subnational taxes and revenues is comprehensive including the definition of materiality and scope of reporting.

Specifically, CMPE should:

- a. In accordance with Requirement 4.1.c and the standard ToR for Independent Administrators, provide a comprehensive reconciliation of government revenues and company payments including ensuring that all companies making material payments and all government entities receiving material revenues comprehensively disclose these payments and revenues.
- b. In accordance with the standard ToR for Independent Administrators, ensure that the Independent Administrator provides an assessment of whether all companies and government entities within the agreed scope of the EITI reporting process provided the requested information. Any gaps or weaknesses in reporting to the Independent Administrator must be disclosed in the EITI Report, including naming any entities that failed to comply with the agreed procedures, and an assessment of whether this is likely to have had material impact on the comprehensiveness of the report.
- c. In accordance with the standard ToR for Independent Administrators, ensure that the Independent Administrator provides an assessment on the comprehensiveness and reliability of the (financial) data presented, including an informative summary of the work performed by the Independent Administrator and the limitations of the assessment provided.

Preamble

Corrective action 3 addresses requirement 4.1 of the EITI Standard, which deals with "comprehensive disclosure of taxes and revenues". This has been a contentious issue in Validations of Peru's implementation of the EITI. It was an issue in the Validation of Peru under the EITI Rules in 2010 and 2012. At the direction of the EITI Board, the International Secretariat has raised concerns about the definition of materiality and the coverage of EITI Reporting in Peru. The CMPE, in turn, has repeatedly noted its satisfaction with the reporting process and argued that the International Secretariat EITI Board has not taken its views into account during Validation. Below, the International Secretariat has sought to explain the key features of this discussion. The

CMPE will be invited to comment on this assessment before it is finalised. The CMPE will also have an opportunity to put its views forward for consideration by the EITI Board.

Clarification of Requirement 4.1

It is useful to introduce this provision in general terms before addressing the specific challenges encountered in Validating these requirements in Peru. Similar challenges have been encountered in other Validations, including the Philippines²⁴ and Colombia²⁵. The EITI International Secretariat strives to validate this provision as consistently as possible.

A key feature of a high quality EITI implementation are disclosures (typically through EITI Reports) that provide stakeholders with a complete account of company tax payments and government tax revenues in the extractive industries. The EITI requires a *comprehensive reconciliation* of company payments and government revenues. As a practical matter, the EITI Standard recognises that it is often not possible to reconcile *all* company payments and government revenues. In the mining sector especially, there are often many relatively small companies that (individually) make small payments, even if their collective contribution can be quite large and important.

The EITI addresses this challenge in three ways. First, the EITI Standard allows the MSG and the Independent Administrator to agree a definition of what constitutes a material payment appropriate to national circumstances. This includes addressing what type of payments are material and what size of payments are material. Companies and government entities can be excluded from EITI Reporting “if it can be demonstrated that [their] payments and revenues are not material”. Secondly, unless there are significant practical barriers, the government is required to provide aggregate information on the “total revenues received from each of the (material) benefit streams agreed in the scope of the EITI Report, including revenues that fall below agreed materiality thresholds”. This “full government disclosure” enables the Independent Administrator to calculate the coverage of the reconciliation in the EITI Report. Thirdly, the Independent Administrator is tasked to address whether any material payments have been excluded, i.e., whether any material tax payer (or government recipient) has not participated. Specifically, the EITI Report should include: “an assessment from the Independent Administrator on the comprehensiveness and reliability of the (financial) data presented” and “any gaps or weaknesses in reporting to the Independent Administrator must be disclosed in the EITI Report, including naming any (material) entities that failed to comply with the agreed procedures, and an assessment of whether this is likely to have had material impact on the comprehensiveness of the report”.

It is useful to note that these requirements have not changed substantially from the equivalent provisions in the 2011 EITI Rules (see Requirements 9 and 11). However, the 2016 EITI Standard introduced tighter requirements in terms of the assessments that should be provided by the Independent Administrator. This was done to ensure that these issues would be clearly addressed in every EITI Report and would not become a controversial issue during Validation. According to Requirement 4.9.b.iii., the MSG is required to use a Standard terms of reference (ToR) when hiring their Independent Administrator. These ToR require²⁶:

²⁴ See: <https://eiti.org/validation/philippines/2016>

²⁵ See: <https://eiti.org/document/colombia-validation-2018>

²⁶ See: <https://eiti.org/document/standard-terms-of-reference-for-independent-administrator-services>

“The Independent Administrator is expected to undertake the following tasks [...]:

1.2 The Independent Administrator should review the scope proposed by the MSG [...] with a particular focus on [...] reviewing the comprehensiveness of the payments and revenues to be covered in the EITI Report.

...

1.3.2 Includes a statement of materiality [...] confirming the MSG’s decisions on the companies and government entities that are required to report including the companies, [...], that make material payments to the state and will be required to report in accordance with Requirement 4.1(c).

The Independent Administrator should exercise judgement and apply appropriate international professional standards in developing a procedure that provide a sufficient basis for a comprehensive and reliable EITI Report.

...

4.2.c. Include an assessment from the Independent Administrator on the comprehensiveness [...] of the (financial) data presented, including an informative summary of the work performed by the Independent Administrator and the limitations of the assessment provided.

...

4.3 Where previous EITI Reports have recommended corrective actions and reforms, the Independent Administrator should comment on the progress in implementing those measures.

A key challenge, therefore, is for the MSG to define what constitutes a material payment. The EITI Board has agreed a guidance note addressing this issue²⁷. As noted in the guidance note, most EITI implementing countries have established a clear definition of what type of payments are material (so-called “in-scope payments” or “in scope revenue streams”) together with a clear threshold defining what constitutes a material payment. A common formulation is: “a company is deemed material if its total tax payments (for in-scope payments) exceeds \$50 000 in the year under review”. In the absence of a clear definition, questions arise as to whether any material payments have been excluded.

The challenge in Peru arises from the approach agreed by the MSG to define materiality. Since the inception of EITI Reporting in Peru, the MSG have defined materiality with reference to the value of production. Strict confidentiality provisions mean that it is not possible to review key government data (especially on income tax) *ex ante*. This makes it challenging to set a realistic threshold. In response, the MSG in Peru agreed to base its definition on the value of production, which can be reviewed in advance (see Annex C for additional detail and justification from the CMPE on this approach). The MSG’s definition is twofold. They aim to cover all companies representing > 2% of total value of production, and to cover > 85% of mining value of production and > 90% of hydrocarbon value of production.

Intuitively, this is logical. One would expect there to be a high correlation between the value of production and the size of tax payments. Indeed, the data from Peru’s EITI Reports have tended to bear this out. However, questions arise about the companies that are close to the margins of these thresholds (especially re: companies that are only slightly below the value of production threshold). For example, it is quite

²⁷ <https://eiti.org/document/guidance-note-on-defining-materiality-reporting-thresholds-reporting-entities>.

conceivable that a company operating at high margins could account for a relatively small proportion of the total value of production, but considerably higher share of total tax payments.

When the EITI Board designated Peru compliant with the 2011 EITI Rules in 2012, it did so based on an analysis of the 2008-2010 EITI Report prepared by the EITI International Secretariat (Board Paper 19-5-D-i). The paper was reviewed in detail by the EITI Board's Validation Committee. The paper concluded the following:

... the definition of materiality with reference to value of production (total or sector-specific) is not optimal. A definition focussing on the size of the payments and related thresholds is preferable. However, the figures from the 2008-2010 report show a positive correlation between total value of production and the share of payments (re-confirming the assessment in the Secretariat Review which indicated that value of production provides a reasonably reliable proxy for the size of the payments). As none of the non-reporting companies account for >1% of the total value of production, the Secretariat considers it reasonable to conclude that the non-reporting companies account for only a small percentage of payments. Moreover, as noted above, the government has reported the revenues from these companies, and the result discrepancies are clearly identified in the report.

In short, the Board agreed that basing the definition of materiality on the value of production alone is not sufficient to fully address this requirement. If an approach based on value of production is adopted *ex ante* during scoping to identify reporting entities, it needs to be combined with an *ex post* assessment of the coverage of payments to determine whether all material payments have been disclosed (or whether it is likely that any material payments have been omitted). In 2012, the EITI Board accepted an *ex post* assessment from the EITI International Secretariat that it was "reasonable to conclude that the non-reporting companies account for only a small percentage of payments". Under the strengthened 2016 EITI Standard, it is a requirement that the EITI Report includes such an assessment from the Independent Administrator, in part to avoid that these issues are controversial during Validation. This then brings us to the findings from the first Validation under the EITI Standard in 2017.

Findings from the first Validation

The Validation found that Peru had made "meaningful progress" in meeting requirement 4.1. The key issues of concern are set out in the initial assessment, which was endorsed by the Independent Validator and the EITI Board:

The CMPE has continued to agree a definition of materiality, based on value of production, used in previous reporting exercises. In 2012, the EITI Board concluded that while that definition was not optimal it was accepted as sufficient given the resulting coverage of payments. The documentation of the CMPE's discussions and decisions on the scope of reporting scope is not sufficiently detailed. It is not clear that fees and contribution paid to extractive sector related organisations such as OSINERGMIN and FIDE were considered.

Based on the agreed scope and materiality definition, Peru has provided a comprehensive reconciliation of government revenues and company payments except for one material company (Minera Chinalco Peru). Despite efforts from all constituencies to bring this company to report, the failure to disclose payments of Chinalco is problematic. It prevents Peru from meeting its own definition of materiality. While the coverage of the reconciliation process is high, it is not possible to reliably estimate Chinalco's tax payments based on the information provided. It also appears likely that these payments are material. The Standard does not provide any exemptions where material companies refuse to participate.

Therefore, the initial assessment of the International Secretariat is that Peru has made meaningful progress in meeting this requirement. It is recommended that Peru, in line with the standardised ToRs for the Independent

Administrator, revises the scope of reporting and thoroughly document the options considered. Ongoing efforts are needed to ensure that all material companies participate.

These findings highlight concerns with both aspects of defining materiality. First, defining *what types of payments are material vis-à-vis OSINERGMIN and FISE*. Second, ambiguity regarding *what constitutes a material payment*, and the non-participation of one company (Chinalco) that appears to make material payments. The corrective actions for the second Validation therefore emphasized adherence to requirement 4.1 and the standard ToR for Independent Administrators, especially with the regard to ensuring that all companies making material payments participate in the reporting process.

Progress since Validation

Defining “in scope” revenue streams

The 2015-2016 EITI Report discloses a list of **revenue streams** covered by the EITI Report (p. 218). This list follows the agreed revenue streams established in “Product 1: Plan and Work Schedule” (p. 8). The Report includes as an explicit assessment from the Independent Administrator that: “according to the conducted analysis, we conclude that the concepts included in the reconciliation exercise are the most material and significant within mining and hydrocarbons sectors, both in terms of value and conceptually” (pp. 221,313). Meeting Minutes of 9, 17, 24 and 31 May 2017 show CMPE discussions regarding the list of revenue streams to be included in the conciliation process.

Following a preliminary analysis of the 2015-2016 Report in March 2018, the International Secretariat noted lack of information regarding some revenue streams and some inconsistencies related to reported amounts on specific government revenues (Income Tax and Royalties in the hydrocarbon sector, and Special Mining Tax and Special Tax Levy for mining). The International Secretariat encouraged the CMPE to more clearly state that there were no other material revenue streams to be considered (e.g. contributions to OSINERGMIN and OEFA)²⁸. The International Secretariat also highlighted the royalty payments made to Activos Mineros S.A. which were not included in reconciliation (see corrective action 2, above).

In the Complementary Report, the CMPE addressed and corrected a number of these issues, with a complete comparison of all payments made by mining and hydrocarbon companies reporting and total amounts received by the Peruvian government per each government revenue (p. 11). The Complementary Report noted that contributions to OSINERGMIN and OEFA, government revenues from Petroperu (see corrective action 2, above) and FISE²⁹ payments were not considered material (p. 10) and were thus incorporated in the contextual section of information. The Complementary Report (pp. 11-12) also highlighted the case of Las Bambas Mine, which paid “contractual royalty payments” (USD 1m for year 2015 and USD 45.7m for year 2016) to Activos Mineros S.A., a state-owned company which only purpose is to remedy mining liabilities.

Materiality definition

²⁸ Payments related to regulatory and control functions provided by specific agencies; one related to the environmental control (OEFA) and the other to the regulation of mining and hydrocarbons (OSINERGMIN). Amounts are between 0.15% and 0.2% of the total invoiced from large and medium size companies.

²⁹ In 2012, FISE was created as an energy compensation system, through the efficient use of energy, and to provide a scheme of social compensation and universal service for the most vulnerable sectors of the population. The funds are levied to large consumers of electricity, and transportation of liquified natural gas or natural gas.

The 2015-2016 EITI Report confirms that the CMPE based its definition of materiality on the value of production (pp. 218-219). The 2015-2016 EITI Report states that there are no non-reporting companies representing more than 2% of total value of production. Reporting companies cover more than 85% of mining value of production and more than 90% of hydrocarbons value of production. It explains that the tax authority (SUNAT) refused to provide any additional information – even aggregated or anonymised – that could be used to calculate the taxes paid by non-reporting companies and thus the overall coverage of the report in terms of the percentage of payments reconciled.

Chinalco Peru was included as a reporting company for both years 2015 and 2016 (considering the value of production). However, this company did not report payments to government because, as explained in the Complementary Report, it did not have any operating profit during those years.

The EITI 2015-2016 EITI Report shows that all selected revenues streams were **reconciled**. The two largest (i.e. Income Tax and royalties, both for the hydrocarbon and mining industries) show no or minimum discrepancies. Discrepancies related to Validity Rights (“*Derechos de Vigencia*”) of between 6% and 11% are of some concern but represent only 0.39% of the total. Moreover, the reason for these discrepancies are well explained by the Independent Administrator (p. 220).

The 2015-2016 EITI Report includes tables (pp. 233 and 234), comparing the amounts paid by revenue stream by the reporting companies with the total amounts collected by government. However, these tables were incomplete.

The Complementary Report dated June 2018, confirmed that the CMPE agreed that value of production is a “valuable and representative criterion to define materiality”. It also included a rectified table reflecting the level of coverage by revenue stream, by year and by sub-sector, comparing to the total collected by government. The coverage is circa 90% for most variable, except for mining royalties in 2015, which covered only 76% of total.

The International Secretariat sent an email to EITI Peru on 20 March 2018 (see Annex A) and 10 August 2018 (see Annex B), inquiring whether the CMPE had requested that the tax authority (SUNAT) provide further information useful to confirm that no companies making material payments were excluded. The response from the CMPE dated 11 September 2018 is attached (see Annex C). The analysis that follows draws on these sources.

Secretariat’s Assessment

Based on the approach adopted in other cases, including the 2017 Validation of Colombia, among others, the International Secretariat notes that value of production does provide a logical indicator for determining comprehensive EITI Reporting *ex ante*.

The International Secretariat understands the arguments presented by the CMPE in the letter dated 11 September 2018. Applying the criterion of value of production is useful to avoid excluding companies with large production that may not be paying taxes (if, for example, they do not make a profit and do not pay income tax). This approach, however, needs to be complemented by an *ex post* assessment to ensure that the EITI report covers all material payments.

Table 1 compiles the data for the most recent year (2016) comparing government revenues from reporting companies with total government revenues. It is noteworthy that reconciliation coverage is quite high, at circa 90% for most factors. It is also clear that income tax is the most important component, in both the mining and oil and gas sectors. Some questions therefore arise regarding the coverage of income tax (the largest revenue stream in both the mining and oil and gas sectors). Concretely: is it likely that a non-reporting company (with value of production below 2%) paid income taxes that were substantially higher (circa 3-5%)? If so, this would be a significant gap in reporting.

Table 1 – Reconciliation coverage of the 2016 Report³⁰

	Government revenues from Reporting Companies		Government Revenues from All Companies		Report Coverage
	(S/.)	(USD)	(S/.)	(USD)	
Oil & gas sector					
Corporate Income Tax	634 197 021	196 601 077	708 092 483	219 508 670	90 %
Oil royalties	2 079 397 229	644 613 141	2 117 018 168	656 275 632	98 %
Total	2 713 594 250	841 214 218	2 825 110 651	875 784 302	96 %
Mining sector					
Corporate Income Tax	3 438 647 042	1 065 980 583	4 016 327 300	1 245 061 463	86 %
Mining royalties	646 774 064	200 499 960	723 281 703	224 217 328	89 %
Special Mining Tax	452 395 894	140 242 727	488 126 040	151 319 072	93 %
Special Mining Levy	199 333 189	61 793 289	202 468 466	62 765 224	98 %
Validity Rights	27 149 687	8 416 403	136 100 532	42 191 165	20 %
Total	4 764 299 876	1 476 932 962	5 566 304 041	1 725 554 253	86 %
Combined	7 477 894 126	2 318 147 179	8 391 414 692	2 601 338 555	89 %

The available data also shows that there is not always a strong correlation between the value of production and the total taxes paid (see Table 2). One company (Minsur) accounts for less than 2% of the total value of production and yet pays a significantly larger proportion (4%) of income tax. The proportion of total tax revenues is also around 4%.

Table 2 – Comparison of Value of Production and Corporate income tax payments for selected companies

Company	Value of Production (USD)	CIT paid (USD)
Compania Minera Antamina S.A.	3 181 700 378	170 646 243
Southern Peru Copper Corporation, Sucursal del Perú	2 019 477 367	200 233 140

³⁰ Exchange rate S/. to USD was 0.31. Oil Royalties and Validity Rights were reported by EITI Peru in USD.

Sociedad Minera Cerro Verde S.A.A.	1 455 012 977	1 467 920
Compania Minera Antapaccay S.A.	1 280 878 322	28 650 853
Minera Chinalco Peru S.A.	1 154 658 090	0
Minera Yanacocha S.R.L.	1 036 917 018	96 889 257
Minera Barrick Misquichilca S.A.	730 196 343	84 028 926
Compania Minera Milpo S.A.A.	675 984 103	22 071 145
Volcan Compania Minera S.A.A.	627 667 562	14 153 473
Compania de Mineras Buenaventura S.A.A.	604 610 081	0
Hudbay Peru S.A.C.	582 772 396	0
Minsur S.A.	464 345 839	45 933 506

Regarding the oil sector, the following table (Table 3) shows that a non-reporting company (i.e. Petrolera Monterrico) has produced in 2016 almost 10 times the volume produced by the participating company Grana y Montero Petrolera S.A. The latter represents more than 2% of the total production value. The question then arises as to whether Petrolera Monterrico should not be considered and, if so, how much of that year's total revenue to the government it represented. This may illustrate the importance of ensuring or seeking a way to demonstrate that no relevant companies have been excluded from the materiality definition.

Company	Block	Value of Production (USD)	% of total Production	Gov. Revenue	% of total Gov Revenues	Production Volumes (BLS)
Olympic Peru Inc, sucursal del Peru	XIII	55 945 652	3,44 %	21 118 921	2,44 %	1338,733
Sapet Development Peru Inc, sucursal del Peru	VII/VI	48 993 593	3,02 %	13 535 802	1,56 %	1172,376
BPZ Exploracion and Produccion S.R.L.	Z-1	42 618 988	2,62 %	1 129 568	0,13 %	1094,611
Grana y Montero Petrolera S.A.	III/IV	42 149 770	2,59 %	7 385 289	0,85 %	580,391
CEPSA Peruana S.A.C	131	36 456 960	2,24 %	4 810 299	0,55 %	820,733
Pluspetrol Norte S.A.	1-AB/8	35 548 083	2,19 %	6 055 320	0,70 %	1472,014
Petrolera Monterrico S.A.	II/XV/XX	No data	No data	No data	No data	5553,689

The data included in Table 3 come from the EITI 2015-2016 Report, except for the production volumes, which come from the website of the Ministry of Energy and Mines which redirects to the PeruPetro website.³¹

In summary, it appears quite possible that a non-reporting company (with value of production below 2%) paid income taxes that were substantially higher (circa 3-5%). If so, this would be a significant gap in reporting. In other cases, this has been cross checked by seeking a confirmation from the tax authority that no non-reporting companies paid taxes above a certain threshold. It should be possible to confirm this without compromising tax-payer confidentiality (as there is no need to name the firms involved). The International Secretariat has asked for additional information on this issue. At the time of writing, it is not clear whether

³¹ See: <http://www.minem.gob.pe/detalle.php?idSector=5&idTitular=2877&idMenu=sub2876&idCateg=695> and <http://www.perupetro.com.pe/wps/wcm/connect/perupetro/site/informacion%20relevante/produccion%20diaria>

this information has been requested from the tax authority, or whether the Independent Administrator considered such data in making their assessment.

Conclusion

Subject to feedback from the CMPE, the International Secretariat’s preliminary assessment is that Peru has not yet fully addressed this corrective action and has made meaningful progress towards meeting Requirement 4.1. The CMPE appears to have agreed a clear and reasonable definition of materiality in terms of the revenue streams to be covered. The issue of royalty payments to Activos Mineros S.A. warrants further clarification, as highlighted above. The issue of Chinalco Peru appears to have been resolved. The Independent Administrator performed a comprehensive reconciliation of government revenues and company payments, considering the selected universe (requirement 4.1.c). However, the long-standing question of coverage of the reconciliation remains. The CMPE’s position on this matter is clear. However, the EITI Board has been equally clear that basing the definition of materiality on the value of production alone is not sufficient to fully address this requirement. If an approach based on value of production is adopted *ex ante* during scoping to identify reporting entities, it needs to be combined with an *ex post* assessment of the coverage of payments to determine whether all material payments have been disclosed (or whether it is likely that any material payments have been omitted). It is not the International Secretariat’s role to identify potential gaps (although there is some evidence to suggest that some non-reporting companies warrant close attention). Rather, this is a requirement that should be addressed by the Independent Administrator as a central feature of their work. The EITI Standard is clear that companies can only be excluded from EITI Reporting if it can be demonstrated that their payments are not material. In other cases (e.g., Colombia), this was done by asking the relevant government authorities (in this case, the tax authority), to verify that no payments above a certain threshold have been excluded from the analysis. However, we have not been able to confirm whether this has been done or whether the Independent Administrator considered such data in making their assessment.

3.4 Corrective action 4

In accordance with Requirement 4.9, the CMPE should ensure that the next report follows the standard Terms of Reference for Independent Administrators. This should include:

- i. That the Independent Administrator, in accordance with section 1.2 of the standard Terms of Reference, reviews the scope proposed by the CMPE with a particular focus on the comprehensiveness of the payments and revenues to be covered in the EITI Report (section 1.2.1);
- ii. That the Independent Administrator examines the audit and assurance procedures in companies and government entities participating in the EITI reporting process, and based on this examination, agree what information participating companies and government entities are required to provide to the Independent Administrator in order to assure the credibility of the data in accordance with Requirement 4.9. The Independent Administrator should exercise judgement and apply appropriate international professional standards in developing a procedure that provides a sufficient basis for a comprehensive and reliable EITI Report. The Independent Administrator should employ his /her professional judgement to determine the extent to which reliance can be placed on the existing controls and audit frameworks of the companies and governments. The Independent Administrator’s

inception report should document the options considered and the rationale for the assurances to be provided.

- iii. That the Independent Administrator provides an assessment of whether all companies and government entities within the agreed scope of the EITI reporting process provided the requested assurances. Any gaps or weaknesses in reporting to the Independent Administrator must be disclosed in the EITI Report, naming any entities that failed to comply with the agreed procedures, and an assessment of whether this is likely to have had material impact on the comprehensiveness of the report.

Findings from the first Validation

The first Validation found that Peru had made “meaningful progress” in meeting requirement 4.9. The key issues of concern are closely related to the issues addressed above re: comprehensive reporting (requirement 4.1). As noted above, the 2016 EITI Standard introduced stricter requirements regarding the work to be undertaken by the Independent Administrator. According to Requirement 4.9.b.iii., the MSG is required to use a Standard terms of reference (ToR) endorsed by the EITI Board, and the Independent Administrator is required to make a number of assessments regarding data quality. The first Validation found substantial gaps:

It is the initial assessment of the International Secretariat that Peru has made meaningful process with this requirement. The same Independent Administrator, Ernst & Young (EY), has reconciled all five of Peru’s EITI Reports (covering 11 fiscal years). The Independent Administrator is trusted by all parties. Payments and revenue data are subject to international auditing standards. Stakeholders are content with the quality assurances in place. There are, however, some areas where Peru’s reporting is not in line with the EITI Standard. The Standard requires that the CMPE and the Independent Administrator agree on ToRs based on the Standard ToRs for the Independent Administrators approved by the EITI Board. One key aspect of these Standard ToRs is for the Independent Administrator to review and confirm a number of scoping and data quality procedures. This has not been done in Peru. As commented in the assessment of other requirements, a number of the requirements in the EITI Standard warrant closer examination to determine whether they are relevant and applicable. These include direct ownership of oil blocks by Perupetro and Petroperu, fees paid to OSINERGMIN, and company contributions to the social fund FISE. Lack of clarity about these items call for the need of a thorough review of the scope in Peru.

In addition, the ToRs require “an assessment from the Independent Administrator on the comprehensiveness and reliability of the (financial) data presented, including an informative summary of the work performed by the Independent Administrator and the limitations of the assessment provided”. In the ToRs adopted by the CMPE, this requirement was not included and should be addressed in future EITI Reports.

Key here is the finding that the Independent Administrator was not tasked to comment on the reliability of [the] data. The most recent report (at that time), did not include an assessment from the Independent Administrator on the comprehensiveness and reliability of the data presented.

The independent Validator agreed with this assessment, noting “the Secretariat’s thorough and excellent analysis of [Peru’s] progress in complying with this requirement”. The EITI Board concurred, and established the corrective actions listed above, which emphasize adherence to the standard terms of reference.

Progress since Validation

- i. *Independent Administrator review of the scope proposed by the CMPE with a particular focus on the comprehensiveness of the payments and revenues to be covered in the EITI Report;*

As noted above, the 2015-2016 EITI Report includes an assessment from the Independent Administrator on the comprehensiveness of the types of payments and revenues to be covered in the EITI Report: “According to the conducted analysis, we conclude that the concepts included in the reconciliation exercise are the most material and significant within mining and hydrocarbons sectors, both in terms of value and conceptually” (p. 313). The Complementary Report clarifies that even though payments such as OSINERGIM and OEFA’s contributions for regulation, FISE and Petroperu’s sales revenues were not considered material by the CMPE (p. 10), these were included in the EITI Report in order to provide a complete account of industry payments (pp. 141-144).

However, the Report does not include a clear statement on the “companies, including SOEs, that make material payments to the state that should be required to report in accordance with Requirement 4.1(c)”. Nor does it provide an assessment of whether the approach adopted led to any gaps that would have had material impact on the comprehensiveness of the report. These issues are treated in more detail above (see corrective action 3).

ii. Examination of the audit and assurance procedures in companies and government entities participating in the EITI reporting process

The report includes a description by the Independent Administrator of the audit and assurance procedures in government entities and companies (pp. 238-239). In the case of government entities, it is noted that these are under the supervision of the General Comptroller of the Republic, which has the authority to carry out audit procedures. It is a requirement that all national public companies are audited once a year. For private companies, the report mentions that although the Peruvian legal framework requires that companies self-declare taxes, through sworn tax returns, these documents are not regulated by audit procedures.

Based on this examination, the Independent Administrator agreed on which information was required from participating companies and government entities in order to safeguard data quality. The Independent Administrator requested that tax information declared by companies was certified through the signature of a representative of the company (pp. 235-237). While the 2015-2016 EITI Report confirmed the existence of a financial law which required that companies with annual revenues greater than USD 3.8m file audited financial statements subject to the SMV, there is no evidence of a detailed list of such companies filing these reports.

The 2015-2016 EITI Report explained that reporting companies are subject to a stricter and simultaneous control and audit by the Tax Administration, SUNAT, considering their size measured in terms of income (p. 239). It was also confirmed that ‘all or almost all’ participating companies are obliged to submit audited financial statements to the SMV, in accordance with International Financial Reporting Standards (IFRS). All CMPE members agreed that information should be collected through a procedure which was reasonable and robust so as to ensure data quality.

The Complementary Report provides more detailed information on government entities audit and assurance procedures under the Peruvian legislative framework. In the case of reporting companies, in addition to the information already mentioned, it emphasizes that when self-declared tax returns by companies are not audited in advance, companies are always subject to future audits by the Tax Administration. Regarding financial information, the report provides a link³² to access to the information filed by companies under the

³² Superintendencia de Mercado de Valores. See:

http://www.smv.gob.pe/Frm_BuscarEmpresa.aspx?data=8F47CCC9B0375C76C2D17E3A64A97DDD22

SMV, however it does not confirm which reporting companies' filed this information. It also reconfirms that most reporting companies were considered "important taxpayers" which have a higher level of exposure for the Tax Administration (p. 11).

The Complementary Report reemphasizes information presented in the 2015-2016 EITI Report: the Independent Administrator verified that company information was reported in designed templates all of them with a representative signature confirming the veracity of the information (p. 15). "Product 1: Plan and Work Schedule" incorporated in the Complementary Report also describes the methodology applied by the Independent Administrator considering the identification of reporting companies following the threshold materiality defined by the CMPE, coordination among stakeholders, collection of information, among others. The Complementary Report confirmed that all procedures and methodology aspects to collect and assure the quality of the data were suggested by the Independent Administrator (p. 16). The Complementary Report also confirms that the CMPE's satisfaction with these procedures.

iii. Assessment of whether all companies and government entities within the agreed scope of the EITI reporting process provided the requested assurances.

According to the 2015-2016 EITI Report, all participating entities complied with the requested assurances by the Independent Administrator (pp. 236-237; and 240-243). The participating entities have also collaborated and provided clarifications when needed. The Complementary Report also reaffirms that all participating companies have complied with all requirements (p. 15).

Secretariat's Assessment

Subject to feedback from the CMPE, the International Secretariat's preliminary assessment is that Peru has sufficiently addressed this corrective action and has made satisfactory progress towards meeting Requirement 4.9. There has been substantial progress compared to the first Validation, clearly documented by the CMPE. Although the standard Terms of Reference for Independent Administrator services has not been followed in every detail, the 2015-2016 EITI Report addresses most of the key requirements and the overall objective of safeguarding reliable data has been satisfied. The Independent Administrator has reviewed the scope of the payments (and revenues) to be reported and reviewed the associated audit and assurance procedures. The Independent Administrator and the CMPE agreed the assurances to be provided as part of the reporting process, and the 2015-2016 EITI Report confirms that all reporting entities provided the requested information (pp. 240-243). The Independent Administrator comments on the comprehensiveness and reliability of the data (pp. 238-243). While there are residual concerns regarding the coverage of reconciliation (i.e., the participation of all companies that made material payments – see corrective action 4, above), the overall objective of requirement 4.9 regarding data reliability has been satisfactorily addressed.

3.5 Corrective action 5

In accordance with Requirement 7.3, and together with addressing the gaps identified in Requirement 7.4 below, the CMPE is required to review the **lessons learnt from EITI implementation** and document the **discussion** with stakeholders regarding strengthening the **impact** on natural resources governance.

Findings from the first Validation

The 2016 Initial Assessment mentioned that there was no evidence of CMPE's discussions on EITI reporting recommendations, discrepancies or lessons learnt; however, it also explained that in practice some of these

recommendations have been followed despite the lack of documentation³³. Thus, the first Validation concluded that EITI-Peru has made meaningful progress in meeting this requirement. For future Validations, the Board required the CMPE “to review the lessons learnt from EITI implementation and document the discussion with stakeholders regarding strengthening the impact on natural resources governance”³⁴.

Progress since Validation

Although corrective actions are not mentioned in the 2015-2016 EITI Report, the APR 2017 and the Complementary Report address each of them in detail. Both documents describe how the CMPE followed up on the corrective actions from the first Validation.

The APR 2017 discloses a list of strengths and weaknesses identified during the EITI process (p. 25-26) demonstrating that the CMPE acknowledged lessons learnt from EITI implementation. As expressed in the 2016-2018 work plan, “the creation of a working group to follow-up lessons learnt from EITI implementation and EITI impact” was included as a specific activity.

The main contributions of EITI implementation are summarized below:

- As revealed at the meeting of 16 June 2017³⁵, increase the level of detail of Meeting Minutes was proposed. This means documenting in further detail discussions around recommendations and other issues related to EITI reporting. Onwards, recommendations from the first Validation have been discussed by the CMPE in detail and in a disaggregated manner on several occasions³⁶.
- Strengthening of subnational implementation in the following areas: Piura, Moquegua, Arequipa and Apurímac³⁷. The establishment of regional commissions was encouraged in these areas and regional reports were elaborated to track the use of the money transferred to subnational levels. At the time of writing, an EITI process has also just been established in the Loreto region.
- Compliance with the Open Government Commitment was also considered as a relevant contribution linked to EITI implementation in Peru. Given the difficulties in accessing information from public resources linked to extractive activities, Peru’s Action Plan³⁸ (p. 25) develops key points to deal with it.
- Cooperation to share EITI's experience with other government sectors. A further technical assistance from the Ministry of Mines and Energy to the Ministry of Production to increase the scope of

³³ See:

https://eiti.org/sites/default/files/documents/peru_international_secretariat_initial_assessment_final_as_of_15_sept_2016_1.pdf

³⁴ See: https://eiti.org/sites/default/files/documents/board-decision-validation_of_peru.pdf (p. 6)

³⁵ See: <http://eitiperu.minem.gob.pe/documentos/Acta%2016-06-17.pdf> (p. 1)

³⁶ See for example CMPE’s meeting of 9 May 2017; 20 May 2017; 17 May 2017; 16 June 2017.

³⁷ This impact has been extensively discussed for example on Meeting Minutes of 22 December 2017; 12 December 2017; 27 October 2017; 14 September 2017; and 2 March 2018.

³⁸ See Peru Action Plan: https://www.opengovpartnership.org/sites/default/files/Peru_Action-Plan_2017-2019.pdf

transparency for EITI implementation has been discussed as an action to strengthen the impact on natural resources governance.

- Disclosure of social and environmental topics on the extractive sector for the first time in the 2015-2016 EITI Report (p. 150), such as environmental auditing processes, strengthening of the social and environmental regulations and compiling information from companies' investments on sustainable development.

The APR 2017 takes note of recommendations provided by the IA in the 2015-2016 EITI Report, indicating they would be discussed and considered for the following Report "as far as operational and regulatory aspects allow that" (p. 314-317). The APR 2016 follows up briefly on recommendations from the 2014 EITI Report (p. 27).

Discussions with stakeholders on the impact of EITI related to governance of natural resources is evident, considering these two points:

- The Complementary Report and the APR 2017 mention the potential cooperation between EITI Colombia and EITI Peru to exchange experience on systematic disclosure. The CMPE is interested in the automation process carried out by the Colombian counterpart, as reflected in discussions on Meeting Minutes of 7 May 2018 and 12 June 2018³⁹.
- The German Cooperation (GIZ)⁴⁰ is developing a baseline study on relevant indicators linked to improving EITI's implementation in Peru, although the assessment has not been launched yet. The CMPE confirmed that the document will be launched and discussed "soon", in order to start tracking the impact and assessing the gaps on dissemination and communication.

Secretariat's Assessment

Subject to feedback from the CMPE, the International Secretariat's assessment is that Peru made satisfactory progress towards meeting this corrective action. There is evidence that the government and the CMPE have taken some steps to act upon lessons learnt, and that stakeholders have discussed how to strengthen EITI's impact.

3.6 Corrective action 6

In accordance with Requirement 7.4, and together with addressing the gaps identified in Requirement 7.3 above, the CMPE is required to consider **recommendations resulting from EITI reporting** and to review the **outcomes** and **impact** of EITI implementation on natural resource governance. The CMPE may wish to consider undertaking, in consultation with all constituencies, an **impact assessment** to identify opportunities to increase impact. The CMPE is encouraged to 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.

³⁹ See: <http://eitiperu.minem.gob.pe/documentos/Acta%20de%20la%20CMP%20EITI%20Peru%2007-05-18.pdf>

⁴⁰ See: <https://www.giz.de/en/worldwide/25819.html>

Findings from the first Validation

The first Validation concluded that Peru has made meaningful progress in meeting this requirement. It mentions that Peru failed to document the progress towards compliance with EITI Requirements and addressing recommendations from reconciliation reports. The APRs only provided an account of the previous year's activities, failing to document the multi-stakeholder group's review of progress against the objectives in the work plan. Given this lack of evidence that the CMPE has formally reviewed the outcomes and impact of the EITI implementation, the first Validation encouraged "to take a more active role in formulating recommendations from EITI Reports and agree on their follow-up and implementation."

Progress since Validation

The Complementary Report references the APR 2017 in addressing this corrective action. While the corrective actions are not detailed in the 2015-2016 EITI Report, the APR 2017 describes how the CMPE followed-up on the first Validation.

The IA lists the recommendations resulting from the 2015-2016 EITI Report (p. 314-317). Of the seven recommendations, six relate to practical/operational issues related to the elaboration of the Report itself, including preparing an anticipated timeline, defining a more accurate process to collect information from the personnel in the companies and clarifying the level of involvement of public entities. The remaining recommendations refer to:

- Strengthening communication strategies: together with the Swiss Cooperation (SECO)⁴¹, the CMPE has been working on a communication strategy. This is in-line with their aim of publishing data as soon as it is legally and practically feasible in order to improve the timeliness of EITI Reports.
- Automation of reconciliation processes: cooperation between Germany, Colombia and Peru, including EITI implementation experience in Colombia on systematic disclosure.
- Enhancement of EITI's subnational implementation: the initiative on Regional Transparency Studies was consolidated. Three regions, Piura, Moquegua and Arequipa, have completed their reports, while in Apurímac the terms of reference are already approved for the first study. These reports seek transparency on transfers to sub-national governments and the use made of these resources (i.e. destination of expenditure).

Review outcomes and impact from EITI Reporting

GIZ is developing a base line ("*línea de base*") of all relevant indicators related to EITI's implementation, to get an initial overview and then propose actions to improve the implementation. Taking into consideration the requirement of the corrective action, follow-up meetings and interviews would be developed and documented, in addition to producing a final report of conclusions.

Social and environmental topics were investigated for the first time in this EITI Report, demonstrating that the CMPE has been exploring options for extending EITI's implementation, as proposed in the corrective

⁴¹ See: <https://www.seco-cooperation.admin.ch/secocoop/en/home/laender/peru.html>

action. In 2015, the Ministry of Energy and Mines transfers to the National Certification Service for Sustainable Investments (SENACE)⁴² the functions related to environmental matters, strengthening in this way social and environmental regulations of the extractive sector. The EITI Report details general laws on environmental issues (p. 153) as well as mining (p. 157) and hydrocarbons (p. 155).

Secretariat's Assessment

Subject to feedback from the CMPE, the International Secretariat's assessment is that Peru made satisfactory progress towards meeting this corrective action. While the CMPE discussed the impact of EITI implementation on natural resource governance, it did not consider recommendations resulting from the latest Report. The APR 2017 takes note on recommendations provided by the Independent Administrator in the EITI 2015-2016 EITI Report saying these will be discuss in the next EITI Report "as far as operational and regulatory aspects allow that". Even though an impact assessment was not launched to the date this Validation started, there is evidence on regularly discussions regarding the contributions of the GIZ to identify opportunities to increase impact. There is evidence on the CMPE taking a more active role in developing recommendations from EITI Reports. It was clear the CMPE active role on exploring options for extending EITI implementation to address issues of greatest relevance such as subnational implementation.

4. Conclusion

The Secretariat's draft assessment is that most of the corrective actions have been addressed. However, there are some issues and potential gaps that need to be clarified before finalizing the assessment. The International Secretariat is seeking comments from the CMPE, before concluding its assessment. The assessment will then be finalised for consideration by the EITI Board.

⁴² See: <https://www.senace.gob.pe/>

Annex A**Email sent to CMPE on 20 March 2018, regarding Corrective Action 3**

From: Santiago Dondo

Sent: tirsdag 20. mars 2018 19.46

To: 'Perez Camarena Rolf Kent' <RPEREZ@minem.gob.pe>; 'cmendoza@snmpe.org.pe' (<cmendoza@snmpe.org.pe> <cmendoza@snmpe.org.pe>); 'vcueto@dar.org.pe' (<vcueto@dar.org.pe> <vcueto@dar.org.pe>); 'horopeza@mef.gob.pe' (<horopeza@mef.gob.pe> <horopeza@mef.gob.pe>)

Cc: Castillo Torres Fernando (DG OGGs) <FCASTILLO@minem.gob.pe>; TEMP_OGGs99 <TEMP_OGGs99@minem.gob.pe>; TEMP_OGGs123 <TEMP_OGGs123@minem.gob.pe>; EITI Peru <eitiperu@minem.gob.pe>; 'Rolf Pérez Camarena' <rkperez@gmail.com>

Subject: Comité Validación – EITI Perú

Estimados Todos:

Ante todo, muchas gracias por su hospitalidad la semana pasada y sus esfuerzos para lograr que mi visita fuera tan provechosa.

Les escribo también para destacar lo que hemos acordado, con la idea de que sea útil para darle seguimiento. Según nuestras últimas conversaciones, hay 3 ejes de acción que debieran iniciarse a la brevedad posible y en simultáneo:

1.- La elaboración, por parte de esta Comisión de Validación, de **un documento que responderá a cada acción correctiva y a cada requisito citado en ellas**. En este sentido, estoy a tiro de WP o de Skype para cualquier pregunta o incluso aportes con los que crean que puedo ser útil. Asimismo, agradecería me compartan cuando sea posible la minuta de la reunión del CNPE en la que se decidió delegar este documento en el Comité. Estaríamos esperando el primer borrador, aunque quizás todavía incompleto, para el viernes 13 de abril.

2.- Elaborar y enviar los **pedidos de información adicional** necesarios, según lo conversado (SUNAT, Perupetro y EY). En cuanto a SUNAT y la tabla de nivel de cobertura respecto a los pagos e ingresos totales, cumplo con lo prometido de pasar a ustedes un texto sugerido para agregar al final de ese pedido: *“Se solicita se nos informe qué porcentaje del total recaudado representa la compañía [minera/hidrocarbúrfera] que más contribuyó, dentro de las que no se encuentran adheridas a la Iniciativa de Transparencia en las Industrias Extractivas (se anexa listado). Esto, sin necesidad de mencionar a la compañía y considerando que el 100% es el total recaudado en el sector [hidrocarburos/minería] y respecto al año [2015/2016]”*.

3.- Elaborar el Informe Anual de Progreso del año 2017 y el documento anexo o ad-hoc respect a los EITIs regionales, todo ello en miras al **cumplimiento del requisito 7 (acciones correctivas 5 y 6)**, y conforme al comentario incluido en nuestro documento de comentarios preliminares que ya vimos y que adjunto.

Por mi parte, estoy coordinando llamada con GIZ para hablar de su estudio (los mantendré al tanto) y estaré enviando otros correos de seguimiento.

Quedo a disposición para lo que consideren.

Saludos,

Santiago J. Dondo

Regional Director
Latin America and the Caribbean
The Extractive Industries Transparency Initiative
Phone: +47 91 63 83 04

Skype: sjdondo

[eiti.org][Website](#) - [Facebook](#) - [Twitter](#)

Annex B

Email sent to CMPE on 10 august 2018, regarding Corrective Action 3

De: Santiago Dondo <SDondo@eiti.org>

Fecha: 10 de agosto de 2018, 21:53:34 GMT+2

Para: Perez Camarena Rolf Kent <RPEREZ@minem.gob.pe>, "'cmendoza@snmpe.org.pe' (cmendoza@snmpe.org.pe)" <cmendoza@snmpe.org.pe>, "'vcueto@dar.org.pe'" <vcueto@dar.org.pe>, "'horopeza@mef.gob.pe'" (horopeza@mef.gob.pe)" <horopeza@mef.gob.pe>

Cc: "Castillo Torres Fernando (DG OGGs)" <FCASTILLO@minem.gob.pe>, TEMP_OGGs99

<TEMP_OGGs99@minem.gob.pe>, TEMP_OGGs123 <TEMP_OGGs123@minem.gob.pe>, EITI

Perú<eitiperu@minem.gob.pe>, Rolf Pérez Camarena <rkperez@gmail.com>, LAC <LAC@EITI.org>, Sam Bartlett

<SBartlett@eiti.org>, Jaqueline Terrel Taquiri <JTaquiri@eiti.org>

Asunto: RE: Comité Validación – EITI Peru

Estimado Rolf y CMP Perú:

En primer lugar, comentarles que estamos avanzando en la etapa de revisión de documentación para la segunda Validación.

Los mantendremos al tanto de las novedades, pero mientras tanto necesitamos hacerles consultas específicas con relación a un punto clave, que es la materialidad (req 4.1.). En base a cálculos que estuvimos haciendo por la información entregada, ordenamos a continuación nuestro entendimiento y la información que necesitamos corroborar:

- En el documento suplementario han incorporado el porcentaje de cobertura respecto al total de tributos de la industria extractiva. Por su importancia, consideramos el impuesto a la renta (IR) del año 2016. El porcentaje de cobertura sobre el total recaudado en ese impuesto es de 90% para hidrocarburos y de 86% para minería.
- Lo que **debemos confirmar es que, en el universo de compañías que no han reportado (10% IR en hidrocarburos y 14% IR para minería), NO haya ninguna que sea relevante** (que represente, por ejemplo, más del 1% del total recaudado de IR dentro del subsector correspondiente). De haberlas, en todo caso, deberemos entender y comprobar por qué no han participado, si se las ha invitado, etc.
- En ese sentido, la primer pregunta es si han incluido esa consulta junto al pedido de información a SUNAT (ver propuesta en punto 2 de mi correo debajo, enviado el 20 de marzo) o no.
- En caso de no haberlo consultado o no haber obtenido respuesta de SUNAT, necesitamos saber si se puede aún obtener esta confirmación. Por si les fuera útil, compartimos con uds. que en algunos países la autoridad impositiva accedió a compartir la información, sin nombres de compañías, con la agencia de gobierno a cargo de EITI (o con el Grupo Multipartes), en un marco de confidencialidad. Alcanzaría con que indiquen el porcentaje de cobertura del total de IR de las cinco compañías que más porcentaje representen, dentro del universo de las no adheridas al EITI.

Para comprender la lógica o fundamento de esta solicitud, les pedimos tengan en cuenta el siguiente ejercicio (basado en cálculos propios en base a la info provista):

- El total recaudado por IR al sector Minería en 2016 fue de USD 1,245 millones.
- Hubo varias empresas que adhirieron y participaron de la conciliación, aun cuando su valor de producción fue menor al 2% de la producción total.
- De esas empresas, hay 9 empresas que pagaron un monto de IR mayor a USD 12,5 millones en 2016 (es decir, que representa más del 1% del total recaudado).
- Entre esas 9, hay 4 (Minsur, Goldfields, Cons. Min. Horizonte y Coimolache) que han aportado en IR más del 2% del total recaudado. De hecho, el pago de Minsur es superior al 4% (IR de USD 54 millones).

Lo anterior demuestra que una empresa puede producir menos del 2% del total producido, y representar más del 4% de lo recaudado en el rubro más relevante.

Por esto, es importante confirmar si, entre los USD 180 millones de IR pagados por empresas que no participaron, hay alguna de ellas que haya pagado un monto proporcionalmente relevante.

Por favor no dejen de avisarnos si tuvieran algún comentario u observación respecto a los números de más arriba o nuestra consulta.

Saludos,
Santiago

Santiago J. Dondo

Regional Director
Latin America and the Caribbean
The Extractive Industries Transparency Initiative
Phone: +47 91 63 83 04
Skype: sjdondo

[eiti.org] [Website](#) - [Facebook](#) - [Twitter](#)

Annex C
English translation for document received from CMPE

Lima, 11 September 2018

Sir

Eddie Rich

Executive Director (e) EITI International Secretariat

Attention: Santiago Dondo
Regional Director for Latin America and the Caribbean - SI EITI

We are pleased to greet you on behalf of the EITI Peru National Commission and in turn to respond to the electronic communication of the EITI International Secretariat of 10 August regarding the second validation process of EITI Peru, specifically on the issue of materiality.

The EITI Peru National Commission, as a platform for dialogue and consensus between civil society, industry and the government, with knowledge of the Peruvian national reality and the extractive activity, agreed to determine the materiality thresholds taking as a basic reference the value of production of its formal extractive industries: 85% for mining and 90% for hydrocarbons. A lower threshold was considered as well to ensure the inclusion of companies considered significant: all companies which represent more than 2% of value of production in the case of mining, and 1% of value of production in the case of hydrocarbons.

These scopes have been decided in unanimous agreement of the EITI Peru National Commission members, therefore the Peru EITI Reports, formerly called National Conciliation Studies, are sufficiently representative of the mining and hydrocarbon industry in the country.

As mentioned above and achieving the objective established by the EITI Peru National Commission, the VI Peru EITI Report together with the Complementary Document⁴³ which was sent to the International Secretariat last July, demonstrate that this criterion is an indicative value of the income collected by the Peruvian State, representing 86% and 90% of the Income Tax in 2016 for mining and hydrocarbons, respectively, as indicated in your electronic communication.

⁴³ Complementary Document referred to the corrective actions of the first Validation of the implementation of EITI in PERU.

In addition, the EITI Peru National Commission considered that using the criterion of participation in the total amount of tax payments in a specific year would not reflect the relative importance of companies in each of the sectors. This is based on two premises:

1. It is not possible to define *a priori* the companies that would participate in the report since the amount that each company has declared for this concept is at that time unknown. In contrast, production values are known since the beginning of the process.
2. The criterion referred to does not ensure an adequate representation of the importance of companies in the country since the amount of tax payments relies on many variables, including: production, the value of quotations, production costs, amortization of investments, among others.

In this sense, members of the EITI Peru National Commission consider that if we used the criterion of participation based on the total amount of tax payments, companies such as Sociedad Minera Cerro Verde (SMCV) or Minera Las Bambas would not have been considered, given that the amount of Income Tax paid with respect to the total does not exceed 2% (SMCV is the main copper producer in the country and in 2015 was culminating the investment for the expansion of its operations, while Las Bambas started production in December 2015 and still does not report profits so it has not generated Income Tax).

Moreover, we consider that an additional distortion is generated when an important company reduces its amount of tax payments in a particular year: companies with insignificant payments may become relevant only for a circumstantial event; therefore, for the EITI Peru full governing body, there are sufficient reasons to ensure that setting the value of production as the indicator of participation, reflects more adequately the reality of the mining and hydrocarbon sectors, and the relevance in the national context.

In view of the foregoing and based on the precedent 11 years of joint progress with the EITI Initiative in Peru, the EITI Peru National Commission ratifies its decision and reaffirms its conformity and relevance with the levels of exhaustiveness that it determined when initiating the VI Peru EITI Report, for which it has made all the necessary coordination and follow-up efforts in order to achieve the goals which is recognized by the Peruvian government, civil society and the extractive companies operating in Peru.

Thanking you for your attention, we extend our special consideration and personal esteem.

Yours sincerely,

Original Spanish document received from CMPE

Lima, 11 de setiembre del 2018.

Señor

Eddie Rich

Director Ejecutivo (e) Secretaría Internacional EITI

Atención: Santiago Dondo
Director Regional para Latinoamérica y el Caribe – SI EITI

Nos es grato dirigirnos a usted con el propósito de saludarlo a nombre de la Comisión Nacional EITI Perú y a su vez dar respuesta a la comunicación electrónica del Secretariado Internacional de EITI del día 10 de agosto referida al proceso de segunda validación de EITI Perú, específicamente sobre el tema de materialidad.

En relación a ello, la Comisión Nacional EITI Perú, en condición de espacio de diálogo y consenso entre sociedad civil, empresas y Estado, con conocimiento de la realidad nacional peruana y de la actividad extractiva, acordó determinar los umbrales de materialidad teniendo como referencia básica el valor de producción de sus industrias extractivas formales: Este es el 85% para minería y 90% para hidrocarburos, teniendo además un umbral inferior para asegurar la inclusión de empresas consideradas significativas, siendo estas mayores al 2% en el caso minero y 1% en el de hidrocarburos.

Estos alcances han sido dispuestos en acuerdo unánime de los integrantes de la Comisión Nacional EITI Perú, para que los Informes Nacionales, antes denominados Estudios de Conciliación Nacional, sean lo suficientemente representativos de la industria minera y de hidrocarburos en el país.

Por lo antes indicado, y logrando el cometido establecido por la Comisión Nacional EITI Perú, el VI Informe Nacional de Transparencia EITI Perú, además del Documento complementario¹ que alcanzamos en julio pasado, demuestra que este criterio resulta ser un valor indicativo de los ingresos recaudados por el Estado peruano, al representar el 86% y 90% del Impuesto a la Renta en el año 2016 para minería e hidrocarburos, respectivamente, tal cual se señala en su comunicación.

Asimismo, la Comisión Nacional EITI Perú tomó en cuenta que de usar el criterio de participación en el monto de impuestos pagados en un año en particular no se reflejaría la importancia relativa de las empresas en cada uno de los sectores. Esto se basa en dos premisas:

1. No puede definirse *a priori* las empresas que participarían del Informe ya que no se conoce el monto que cada empresa ha declarado por dicho concepto, lo que si ocurre con el valor de producción.

¹ Documento complementario referido a las acciones correctivas de la primera validación de la implementación de EITI en el Perú.

2. El criterio al que se hace referencia no asegura una adecuada representación de la importancia de las empresas en el país toda vez que el pago de tributos depende de diversas variables, entre ellas: la producción, el valor de las cotizaciones, los costos de producción, amortización de inversiones, entre otros.


En ese sentido, los integrantes de la Comisión Nacional EITI Perú, consideran que de haberse usado dicho criterio, empresas como Sociedad Minera Cerro Verde (SMCV) o Minera Las Bambas no hubiesen sido consideradas en tanto el monto de pago de impuesto a la renta respecto del total no superan el 2% (SMCV es la principal empresa productora de cobre en el país y en el 2015 estaba culminando la inversión para la ampliación de sus operaciones, mientras que Las Bambas inicia su producción en diciembre del 2015 y aún no reporta utilidades por lo que no ha generado impuesto a la renta).


Además, hemos considerado que se genera una distorsión adicional cuando una empresa importante reduce su monto de pago de impuestos en un año particular, sucede que las empresas con pagos poco significativos pueden convertirse en relevantes solo por un hecho coyuntural; por lo tanto, para el pleno del órgano de gobierno de EITI Perú, existen las razones suficientes para garantizar que el indicador de participación en el valor de producción refleja de forma más cercana la realidad de los sectores minero e hidrocarburos, y la relevancia en el contexto nacional.


Por lo antes indicado y sustentado en los antecedentes de la iniciativa EITI en el Perú, a lo largo de más de 11 años de avance conjunto, la Comisión Nacional EITI Perú ratifica su decisión y reitera su conformidad y pertinencia con los niveles de exhaustividad que determinó al iniciar el VI Informe Nacional de Transparencia, para lo cual ha realizado todos los esfuerzos necesarios de coordinación y seguimiento a fin de alcanzar las metas definidas, hecho que es reconocido por el Estado Peruano, la sociedad civil y las empresas extractivas minero energéticas que operan en el Perú

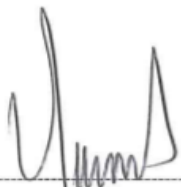
Agradeciendo la atención prestada, extendemos nuestra especial consideración y estima personal.

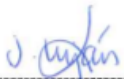
Atentamente,



 Nombre: MIGUEL INCHÁUSTEQUI, Z.
 Organización: MINISTERIO DE ENERGÍA Y MINAS



 Nombre: FERNANDO CASTILLO TORRES
 Organización: MINISTERIO DE ENERGÍA Y MINAS

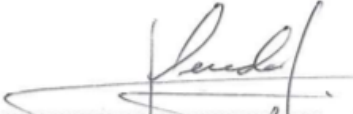

 Nombre: Vanessa Cueto
 Organización: Derecho Ambiente
 y Recursos Naturales



 Nombre: Epifanio Baca T
 Organización: Grupo Propuesta Ciudadana



 Nombre: Julio Muján
 Organización: Sociedad Nacional
 de Minería, Petróleo y Energía



 Nombre: Eduardo Rubio Leache
 Organización: Anglo American Perú S.A.

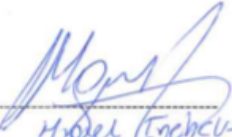

 Nombre: CARMEN MENDOZA
 Organización: SOCIEDAD NACIONAL
 DE MINERÍA, PETRÓLEO Y ENERGÍA


 Nombre: Jorge L. Mercado
 Organización: Repsol


 Nombre: ANA SIFOGAL
 Organización: Pontificia Universidad
 Católica del Perú


 Nombre: Carlos Aranda A.
 Organización: SOUTHERN PERU COPPER CORP.


 Nombre: CIRILO HUGO ORDOÑEZ ROSALES
 Organización: MINISTERIO DE ECONOMÍA Y FINANZAS


 Nombre: Hidel Encheustegui
 Organización: Ministerio de Energía
 y Minas