

FIRST COMMENTS BY
THE EITI PERU MULTI-SECTORAL STANDING COMMISSION
ON THE INITIAL APPRAISAL OF THE EITI INTERNATIONAL SECRETARIAT
- PERU VALIDATION

The EITI Peru validation process began in July 2016, for which initial information was sent electronically to the International Secretariat. Later, there was the official visit by Mr Francisco Paris and Ms Aida Aamot from 18 to 22 July, during which period information was provided in the requested format, interviews being conducted with the various institutions and representatives of civil society, business and the State for which we were asked.

The EITI Multi-Sectoral Standing Commission (MSSC) received the initial evaluation report of the International Secretariat of EITI on the validation process for EITI Peru by email on two dates: the executive summary (in Spanish) on Friday 16 September and the complete document (Spanish and English) on Wednesday 21 September. In addition, we were informed that this initial evaluation of Peru had already been forwarded to the Validator and that there would be three sessions of the Validation Committee, on 29 September and 5 and 6 October.

In this regard, the MSSC would have appreciated being able to acquaint itself with this report prior to its presentation to the Validator, in order to clarify the concerns of the International Secretariat and to make clarifications on its contents, linked in some cases to the internal legislation of Peru. In this way, the Validator would have had a more precise document on how the Initiative has been implemented in Peru.

The MSSC considers that its work throughout its participation in the Initiative and the gains made, which have been recognised and valued not only by the three EITI Peru Multi-Stakeholder Groups, are proof not only of progress in the process of construction of dialogue and trust, but also of having achieved development towards a greater, concrete objective to benefit the country, that is, transparency over the end use of resources from the extractive sector and steps made for better governance in the extractive sector on the basis of improved transparency and sharing of information. In this regard, it is worth noting the development of the first regional studies.

Given the context of the national reality of Peru, this is the unanimously agreed goal that calls us, that of checking how much and how the extractive companies contribute to the Peruvian State and how these resources are used in the end to benefit the country. We believe that we have given concrete evidence that we are on that path. Regarding the recommendations that form part of the work of the International Secretariat, we should note that they will be the subject of discussions in the MSSC in order to define our actions in this regard.

The MSSC forwards these initial comments, on the statement by the International Secretariat in regard to significant and insufficient progress in relation to the EITI provisions, with the aim of

contributing to better understanding of the achievements of the MSSC within the framework of its powers and national law.

WORK PLAN (1.5)

Summary of main outcomes

The Work Plan does not include clear objectives with regard to EITI linked to national priorities for the extractive sector. It also lacks a clear explanation of costs and details on priorities for capacity building. The Work Plan should be finalised, officially approved by the MSSC and made available to the public.

MSSC comment

In the text of the Secretariat's report, it is stated that the 2016 Work Plan describes target areas and activities without this reflecting national priorities for the extractive industries. Nonetheless, it states and highlights that the plan emphasises implementation of EITI at subnational level in Peru as a priority. Indeed, for the MSSC, this is the relevant issue in the context of the reality of the country; this is a national priority since it involves addressing the end use of the resources generated by the extractive industries.

The MSSC took it for granted that in stating that implementation of EITI at subnational level was a priority, this was at the same time the national priority, since it gives added value to its implementation.

In addition to the above, it should be noted that the objectives of the EITI Peru Action Plans are framed on two levels:

- A) National objectives: (General) consistency with the contents of the "National Agreement" and the "Bicentenary Plan", with regard to the strengthening and modernisation of the State, reducing corruption, managing natural resources and the competitiveness of the economy.

- B) National-sectoral objectives:
(Specific) consistency with the guiding role of the Ministry of Energy and Mines (MINEM) to make a strategic contribution to the governance of the extractive sector through timely and transparent information to the public, the reputational strengthening of extractive companies with their environments, the promotion of the investment market in the extractive sector, the prevention of social conflict in the extractive sector and contributing to the sectoral modernisation of the State, actively participating in the actions of Open Government.

With respect to **resources (budget)** for conducting the activities included in the EITI Peru Action Plans:

- a) Resources for the EITI implementation process in Peru are from various sources: The Peruvian State (Ministry of Energy and Mines) and International Cooperation (World Bank and others). In this regard, the EITI Peru Technical Secretariat (Ministry of Energy and Mines

Office of Social Management), in response to the ambition of the MSSC to improve implementation of the EITI Initiative, strengthened its capacities by allocating human, infrastructure and other resources to this process. Thus, from 2011 to June 2016, resources allocated to different aspects of improved implementation, including human resources, amounted to PEN 2,740,081.55, (equal to USD 900,000).

- b) These resources are scheduled for implementation according to the nature of each source in accordance with the rules established for this process and within the framework of the objectives and areas of work of the EITI Peru Action Plans.
- c) The Action Plan budgets for the periods 2012-2014 and period 2015 were constructed in accordance with the above. Both plans have budgets known by the EITI Peru MSSC.

The Action Plan budgets were not described at specific level (except for considerable or significant products such as National Reconciliation Studies). This is due to administrative aspects of implementation by State actors.

To date, the MSSC is in the process of reviewing its Work Plan 2016-2018. This process is an opportunity for the MSSC to reflect on the challenges of EITI in Peru and implementation of the EITI 2016 Standard. In this respect, the MSSC, independently and in accordance with the national context, will include greater detail on the objectives, targets, lines of action and activities to be conducted, making clear the link between EITI and the work priorities identified by the MSSC, that will have the final goal of strengthening transparency in the extractive sector, contributing in this way to improving governance.

LICENCE ALLOCATIONS (2.2)

Summary of main outcomes

While the electronic land registry system seems to comprehensively address licensing in the mining sector, the issue of licence transfers in the hydrocarbons sector has not been addressed by the MSSC. Similarly, in the oil and gas sector, there is considerable information available to the public. Nevertheless, the completeness of this information and disclosure of transfers has not been addressed by the MSSC.

MSSC comment

While the three estates represented in the MSSC know and use the tools that disclose this information, this issue was not a priority subject of discussion since for the MSSC it is understood that it is a matter on which the country is advanced, although it could be understood that there are elements that could be improved, especially with regard to publishing that fact that this information is available.

While a comprehensive description of the matter of licences is not provided in the National Reconciliation Study, as was stated in the visit by the Secretariat and that we see was taken in part in the report of the International Secretariat, information relating to the allocation of

licences in both the mining and hydrocarbons sectors is publicly available and is explained with the corresponding legal basis in both the reports and web pages of the two institutions of State that are responsible for this subject (the Geological, Mining and Metallurgical Institute (INGEMMET) for mining and PERUPETRO for gas and hydrocarbons).

In mining: Concessions are a legal entity through which the State - as owner of subterranean natural resources in Peru - grants a third party (company or individual) the right to conduct the activities necessary to exploit the mineral resources located in a particular area, on condition that a set of requirements are met. Mining concessions are clearly specified in the Consolidated Amended Text of the General Mining Law.

It is possible to access all information on existing mining concession on the INGEMMET website.

In hydrocarbons: Hydrocarbons licensing in Peru is through signing a contract that has the force of law, between the company and PERUPETRO (representing the Peruvian State). As stated on several occasions, each and every one of these contracts is publicly available on the PERUPETRO website.

It should be noted that in accordance with Peruvian Law, the award of oil blocks is through open bidding processes or direct award, in accordance with a previously established set of rules. Once the lot in the tendering process has been awarded, the contract explained above is then signed. Therefore, any change, sale, transfer or other operation involving a variation in the initial order of the company that signed the contract with the State gives rise to an addendum or modification to the contract and is freely available on the PERUPETRO website.

Other information can be found on the PERUPETRO website in addition to the texts of the contracts signed: expired contracts, procedures for investment, the tendering scheme and the model agreement, among others.

Organic Law of Hydrocarbons:

"Article 12 - Contracts, once approved and signed, may only be amended by written agreement between the parties. Amendments shall be approved by Supreme Decree ratified by the Ministers of Economy and Finance, and Energy and Mines, within the same period provided in Article 11. Licensing Contracts, as well as Service Contracts, are governed by private law, being covered by Article 1357 of the Civil Code.

Article 17 - The Contractor or any of the natural or legal persons forming the Contractor may assign its contractual position or partner with third parties subject to the approval by Supreme Decree ratified by the Ministers of Economy and Finance, and Energy and Mines. Assignments shall entail maintenance of the same responsibilities with regard to the guarantees and obligations awarded and assumed in the Contract by the Contractor.

It should be mentioned that Supreme Decrees approving licensing contracts for exploration and exploitation of hydrocarbons, as with transfers of title, are published in the Official Gazette of Peru, whose circulation is public and daily, in print and virtual formats.

STATE PARTICIPATION (2.6)

Summary of main outcomes

THE MSSC does not seem to have thoroughly reviewed the provisions on State participation in the oil and gas sector and whether this results in significant payments.

MSSC comment

The Secretariat's text clearly reflects the scheme of operation of both PETROPERÚ and PERUPETRO.

PETROPERÚ is a State-owned company under private law dedicated to the transportation, refining, distribution and sale of fuels and other petroleum-derived products. The report also indicates that PETROPERÚ officials told them that their operations are limited (for now) to downstream operations and that they are working on possible opportunities to develop oil blocks in the future.

Block 64

While Block 64 is owned by PETROPERÚ, it did not record any production for the year 2013 and 2014. See the official report at:

<http://www.perupetro.com.pe/wps/wcm/connect/Perupetro/site/Informacion%20Relevante/Estadisticas/Estadistica%20Petrolera>

PERUPETRO S.A. and the company ATLANTIC RICHFIELD PERÚ INC., SUCURSAL DEL PERÚ entered into a licensing contract for exploration for and exploitation of hydrocarbons in Block 64, which was approved by Supreme Decree No. 033-95-EM dated 3 November 1995. There have been successive assignments of contractual positions in this Block.

Supreme Decree No. 011-2013-EM of 26 April 2013 approved the assignment of the contractual position to PETROPERÚ S.A., through which the companies Talisman Perú B.V. Sucursal del Perú and Hess Perú INC., Sucursal del Perú, each assign 50% of their stake in the contract to PETROPERÚ.

In its Annual Report for 2013,¹ PERUPETRO S.A. stated that obligations for the Initial Development Plan (IDP) had been in a situation of force majeure as from 14 May 2013, due to lack of approval for the EIA related to activities for the construction of production facilities.

In its Annual Report of 2014,² PETROPERÚ S.A. recorded that in October 2014 a partnership contract was made with the company GeoPark Perú S.A.C., selected through an investment bank to jointly conduct activities related to the licensing contract for Block 64. PERUPETRO S.A. stated in its monthly Activity Report (November 2014) that PETROPERÚ S.A. assigned 75% of its stake in the contract to GeoPark Perú S.A.C.³

¹<http://www.perupetro.com.pe/wps/wcm/connect/a8b30516-1ce0-4b1d-b7f0-03d322dabf9e/MEMORIA+Perupetro+2014+NUEVO.pdf?MOD=AJPERES>

²<http://www.petroperu.com.pe/transparencia/archivos/MemoriaPETROPERU2014.pdf>

³<http://www.perupetro.com.pe/wps/wcm/connect/517eeca3-c744-4a87-80de-de1b1e5495a8/2014-11+Informe+Mensual+de+Actividades.pdf?MOD=AJPERES&CACHEID=ROOTWORKSPACE517eeca3-c744-4a87-80de-de1b1e5495a8>

Coordination is currently continuing to amend the contract by assignment of contractual position, which will have to have prior approval through a Supreme Decree. To date, PETROPERÚ S.A. has conducted no operations in Block 64 and there has, consequently, been no extraction of resources in Block 64.

All of the above is shown in detail in the respective contracts that are available on the PERUPETRO website.

Lote	Nº de Modificación	Fecha de Suscripción	Testimonios y Modificaciones	Nº de Decreto Supremo	Notaria
64	1	07/12/1995	Contrato de Licencia para la Exploración y Explotación de Hidrocarburos en el LOTE 64, que celebran PERUPETRO S.A. y ATLANTIC RICHFIELD PERU I.N.C., SUCURSAL DEL PERU.	D.S. Nº 033-1995-EM	Ricardo Femandini Barreda
	2	26/10/1999	Cesión y Modificación del Contrato de Licencia para la Exploración y Explotación de Hidrocarburos en el LOTE 64, que celebran PERUPETRO S.A. y ATLANTIC RICHFIELD PERU INC., SUCURSAL DEL PERU; OCCIDENTAL EXPLORADORA DEL PERU LTD., SUCURSAL DEL PERU.	D.S. Nº 049-1999-EM	Ricardo Femandini Barreda
	3	10/05/2001	Cesión de Posición Contractual del Contrato de Licencia para la Exploración y Explotación de Hidrocarburos en el LOTE 64, que celebran PERUPETRO S.A. y OCCIDENTAL EXPLORADORA DEL PERU LTD., SUCURSAL DEL PERU; ATLANTIC RICHFIELD PERU INC., SUCURSAL DEL PERU; BURLINGTON RESOURCES PERU LIMITED, SUCURSAL PERUANA; REPSOL EXPLORACION PERU, SUCURSAL DEL PERU.	D.S. Nº 005-2001-EM	Cecilia Hidalgo Morán
	4	17/03/2004	Cesión de Posición Contractual y Modificación del Contrato de Licencia para la Exploración y Explotación de Hidrocarburos en el LOTE 64, que celebran PERUPETRO S.A. y OCCIDENTAL PETROLERA DEL PERU, I.N.C., SUCURSAL DEL PERU; OCCIDENTAL EXPLORADORA DEL PERU LTD., SUCURSAL DEL PERU; REPSOL EXPLORACION PERU S.A., SUCURSAL DEL PERU; BURLINGTON RESOURCES PERU LIMITED, SUCURSAL PERUANA.	D.S. Nº 006-2004-EM	Cecilia Hidalgo Morán
	5	09/08/2004	Modificación del Contrato de Licencia para la Exploración y Explotación de Hidrocarburos en el LOTE 64, que celebran PERUPETRO S.A. y OCCIDENTAL PETROLERA DEL PERU INC., SUCURSAL DEL PERU; TALISMAN (PERU) LTD., SUCURSAL PERUANA; ANERADA HESS PERU INC., SUCURSAL DEL PERU.	D.S. Nº 027-2004-EM	Cecilia Hidalgo Morán
	6	08/09/2004	Aprobación Lista de Bienes y Servicios, cuya adquisición otorga el derecho a la devolución del IGV, IPM u otro impuesto al consumo, aprobado mediante Resolución Ministerial N 221-2004-EM/DIM en el Contrato de Licencia para la Exploración y Explotación de Hidrocarburos en el LOTE 64.		Cecilia Hidalgo Morán
	7	05/12/2007	Cesión de Posición Contractual y Modificación del Contrato de Licencia para la Exploración y Explotación de Hidrocarburos en el LOTE 64 que celebran PERUPETRO S.A. y OCCIDENTAL PETROLERA DEL PERU LLC., SUCURSAL DEL PERU; TALISMAN (PERU) LTD., SUCURSAL PERUANA y HESS PERU INC., SUCURSAL DEL PERU.	D.S. Nº 077-2007-EM	Cecilia Hidalgo Morán
	8	05/04/2010	Modificación del Contrato de Licencia para la Exploración y Explotación de Hidrocarburos en el LOTE 64 que celebran PERUPETRO S.A. y TALISMAN PERU B.V., SUCURSAL DEL PERU; HESS PERU INC., SUCURSAL DEL PERU.	D.S. Nº 009-2010-EM	Ricardo Femandini Barreda
	9	11/05/2010	Modificación del Contrato de Licencia para la Exploración y Explotación de Hidrocarburos en el LOTE 64 que celebran PERUPETRO S.A. y TALISMAN PERU B.V., SUCURSAL DEL PERU; HESS PERU INC., SUCURSAL DEL PERU.	D.S. Nº 021-2010-EM	Ricardo Femandini Barreda
	10	29/04/2013	Cesión de Posición Contractual en el Contrato de Licencia para la Exploración y Explotación de Hidrocarburos en el LOTE 64, que celebran PERUPETRO S.A. y PETROPERÚ S.A.; TALISMAN PERU B.V., SUCURSAL DEL PERU; HESS PERU INC., SUCURSAL DEL PERU.	D.S. Nº 011-2013-EM	Ricardo Femandini Barreda

PERUPETRO S.A. was created by Article 6 of Law No. 26221, Organic Law of Hydrocarbons (19 August 1993). It is the State-owned company under private law that, on behalf of the Peruvian State, is responsible for promoting, negotiating, signing and monitoring contracts for the exploration for and exploitation of hydrocarbons in Peru.

Regarding Block Z 2B

On 16 November 1993, PETROPERÚ S.A. and PetroTech Peruana S.A. made a contract to explore for and exploit hydrocarbons in Block Z 2B (in 2010 the company PetroTech changed its name to Savia). Supreme Decree No. 044-93-EM approved this contract.

With the creation of PERUPETRO S.A. the latter, from 18 November 1993 assumed the rights and obligations of PETROPERÚ as contracting party in this contract. It should be noted that the contract signed was of the "Services Contract" type, which has a different nature from that of a "Licensing Contract" according to the Organic Law of Hydrocarbons. All of the above is shown in detail in the respective contracts that are available on the PERUPETRO website.

Lote	Nº de Modificación	Fecha de Suscripción	Testimonios y Modificaciones	Nº de Decreto Supremo	Notaria
Z 2B	1	16/11/1993	Contrato de Servicios Petroleros para la Exploración y Explotación de Hidrocarburos en el LOTE Z-2B, que celebran PETROLEOS DEL PERU (PETROPERU) y PETROTECH PERUANA S.A.	D.S. Nº 044-1993-EM	Abraham Velarde Alvarez
	2	19/01/1994	Anexo F del Contrato de Operaciones del Lote Z 2-B "Actas de Entregas de Equipos"		

The scope defined for the National Reconciliation Studies has been that related to Licensing Contracts. The Multi-Sectoral Standing Commission, in the exercise of its powers, will assess the

relevance of including "Services Contracts" and the participation of PERUPETRO S.A. in these, in future National Reconciliation Studies.

COMPREHENSIVE DISCLOSURE (4.1)

Summary of main outcomes

The MSSC has used a definition of materiality based on the value of production, which is not optimal. The documentation of discussions and decisions of the MSSC about the scope of the preparation of reports has not been sufficiently detailed. Based on the agreed approach and definition of materiality, Peru has provided a comprehensive reconciliation of government revenues and payments by companies with the exception of one company (Minera Chinalco Perú). Although coverage of the the reconciliation process is high, it is not possible on the basis of the information provided to reliably estimate tax payments by Chinalco. It seems likely that tax payments by Chinalco will be significant.

MSSC comment

The International Secretariat document states that *"the 2014 EITI Report does not analyse whether other income flows detailed in Requirement 4.1.b are applicable to Peru. No confirmation was requested from the Independent Administrator of the 2014 Report on the subject of whether the scope agreed was right"* (p49).

The MSSC argues that the decision about the flows to include in the fifth Reconciliation Study of 2014 (and earlier Studies) was taken with full knowledge by its members of the system of tax and non-tax payments. By that logic, the new payment flows created by the government of President Ollanta Humala in 2011 were immediately included as from the third Reconciliation Study for the fiscal years 2011 and 2012.

It is not correct to say that the items mentioned in the Requirement 4 were discounted without substantiation. Let us take a look at why. Firstly, the same International Secretariat Report concludes that Requirements 4.2 and 4.4 are not applicable to Peru, with which we agree. Secondly, the MSSC considers that Requirement 4.3 is not applicable and that it is an error to include here the mechanism of works for taxes created by Law 29239, as we shall explain below.

The results of the fifth Study clearly show that the definition of materiality that we are employing, using production value, is efficient and works well because it allows high representation of the payments chosen, as recognised by the International Secretariat Report (p52-53). One indicator that demonstrates this is that the payments reported in the fifth Study represent 96.4% of the total, which shows, ex post, that the materiality criteria chosen are good. In the mining sector, which represents 66% of the total reported payments, the representativeness (materiality) of reported revenue flows is 98.4%, while in the hydrocarbons sector, which represents 34% of total payments reported, the representativeness is 93.1%.

We must also reiterate that, given companies' right to fiscal confidentiality protected by the tax code and the very Constitution of Peru, there is, ex ante, no other way of defining materiality. The non-participation of the Chinalco mining company does not call our definition of materiality into question; what it does is show their vulnerability to decisions such as this, in that in spite of

all the efforts made it could not be reversed, but we have commitments to their participation in future.

It is also stated that *"the confirmation of the Independent Administrator of the 2014 Report was not sought in relation to whether the agreed scope was right"* (p49). The MSSC does not consider it appropriate to request such confirmation, as the recommendations of previous Studies made no reference at all to the possibility of relevant items being overlooked in the scope requested. This is in addition to the fact that in the fiscal year 2013 and 2014 there were no changes in the tax system and the Independent Administrator was not new, since it was responsible for satisfactorily writing the four previous Reconciliation Studies.

INFRASTRUCTURE PROVISIONS AND BARTER ARRANGEMENTS (4.3)

Summary of main outcomes

While stakeholders consider that the Peruvian legal framework does not permit this type of transaction, the provision in Law No. 29230 that allows deductions for investment in public infrastructure warrants further investigation. Representatives of civil society organisations expressed their interest in learning more about the application of rules related to tax credits, such as 'infrastructure for taxes', which may be relevant with respect to this requirement, and/or the coverage of social payments (see Requirement 6).

MSSC comment

The requirement refers to *"agreements involving the provision of goods and services (including loans, grants and infrastructure works), in full or partial exchange for oil, gas or mining exploration or production concessions..."*

Law 29230 on Boosting Regional and Local Public Investment with the Participation of the Private Sector, quoted in the Secretariat's report, does not meet the above definition, but is a law that seeks to promote public investment with the participation of private companies in general and, among them, mining companies. Through this mechanism, interested companies can voluntarily finance the execution of infrastructure works prioritised and approved by regional and local authorities. Expenses incurred by the companies in question are deducted from their annual tax payments on income over several years, in accordance with limits set by the Law. This is why the MSSC does not include it.

We attach a simple figure that explains the issue, adding that all the information on the scheme, provisions and implications of Law 29230 can be found at: <http://www.obrasporimpuestos.pe/0/0/modulos/JER/PlantillaStandard.aspx?ARE=0&PFL=0&JER=24>

¿Qué es la Ley N° 29230?

La Ley N° 29230, llamada "Ley de Obras por Impuestos", es una norma expedida por el Gobierno peruano que busca acelerar la ejecución de obras de infraestructura pública prioritarias en todo el país.

La Ley permite a una empresa privada, en forma individual o en consorcio, financiar y ejecutar proyectos públicos elegidos por los Gobiernos Regionales, Gobiernos Locales y Universidades Públicas para luego, con cargo a su impuesto a la renta de 3era categoría, recuperar el monto total de la inversión. A su vez, los Gobiernos Regionales, Gobierno Locales y Universidades Públicas pagan el financiamiento SIN INTERESES a cuenta de sus recursos de canon, sobrecanon, regalías, rentas de aduana y participaciones, hasta diez años después de culminada la obra.

Beneficios de la Ley N° 29230

Desde el 2008, año en el que fue promulgada la Ley, se han promovido una serie de obras dentro de infraestructura pública básica como redes de agua y desagüe, vías, centros de salud, entre otras.

Todas ellas se han ejecutado como parte de este nuevo modelo de participación del sector público y el sector privado, en donde todos ganan. Gana el Gobierno Regional o el Gobierno Local o la Universidad Pública ya que adelanta recursos financieros provenientes de los recursos determinados, gana la empresa ya que asocia su imagen a grandes proyectos recuperando su inversión y gana la sociedad porque se beneficia con un proyecto ejecutado en menor tiempo.



<i>Translation of the graphic above</i>		
<p>What is Law 29230? Law 29230, called the "Works for Taxes Law", is a law made by the Peruvian Government, seeking to accelerate the execution of priority public infrastructure works throughout the country. The Law permits a private company, on its own or in partnership, to finance and execute public works projects chosen by Regional Governments, Local Governments and Public Universities to then, from its Category 3 income tax, recover the full amount of the investment. Regional and Local Governments and Public Universities pay the funding off INTEREST FREE from their resources of duties paid to Local and Regional Governments (<i>canon, sobrecanon and regalia</i>), customs duties and shares up to ten years from the date of completion of the works</p> <p>Benefits of Law 29230 Since 2008, the year in which this Law was passed, a series of basic public infrastructure works have been promoted, such as water and sewerage networks, roads, health centres and others. They were all carried out as part of this new model of public-private sector participation where everyone wins. The Regional or Local Government or Public University wins, since it brings forward financial resources from determined resources; the company wins since it associates its image with big projects while recovering its investment and society wins because it benefits from projects carried out in less time</p>		
Benefits of Law 29230		
<p>FOR REGIONAL AND LOCAL GOVERNMENT It brings financial resources forward that are discounted until the year after that in which the works are completed.</p>	<p>FOR PRIVATE ENTERPRISE It associates its image with high social impact works. It brings works forward that could increase local and its own competitiveness.</p>	<p>FOR SOCIETY It advances socioeconomic growth, accelerates infrastructure investment, broadens coverage and improves the quality of public services for the population.</p>

<p>It simplifies procedures and frees up technical resources. It accelerates the execution of works, supporting or increasing local economic dynamism.</p>	<p>It improves the efficiency of its corporate social responsibility programmes and it recovers the whole of its investment.</p>	<p>Generation of direct and indirect employment in the local community, through construction or in the subsequent operation and maintenance. It fosters the creation of new companies, given the improvement in competitiveness.</p>
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Finally, it is relevant to state that the Commission has considered the sixth National Reconciliation Study including in its contextual report a detailed section on the fiscal framework and rights to payment associated with the extractive sector, and also the regulations and application of tax credits and Law 29230.

DATA QUALITY (4.9)

Summary of main outcomes

The provisions of this requirement are substantially met. Nevertheless, the standardised ToR for Independent Administrators have not been consistently applied. The result has been a deficiency in the confirmation of several decisions of scope and coverage. Examples of this are the lack of clarity on the materiality of direct ownership of oil blocks by Perúpetro and Petroperú, and the duties paid to the Supervisory Body for Investment in Energy and Mining (OSINERGMIN) and contributions to the FISE (Social Inclusion Energy Fund) social fund.

MSSC comment

In the summary report, the Secretariat notes that *"The provisions of this requirement are substantially met. Nevertheless, the standardised ToR for Independent Administrators have not been consistently applied. The result has been a deficiency in the confirmation of several decisions of scope and coverage."* (p70).

It also reads, *"the Independent Administrator was not assigned the task of reviewing the scope for the preparation of EITI Reports. Neither was it assigned the task of reviewing the definition of materiality and coverage of several flows such as income in kind, infrastructure provisions and barter arrangements, mandatory social expenses, transportation revenues, and other flows related to State-owned businesses."* In this regard and as we mentioned above, we consider that the flows mentioned either do not apply to Peru or are without significance.

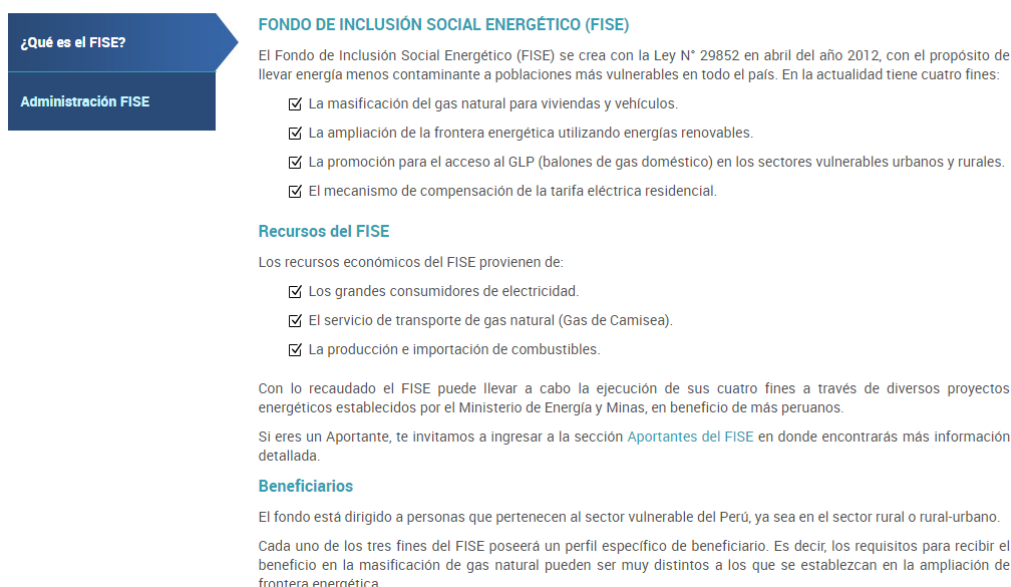
The Secretariat's report suggests taking account of payments to the Environmental Evaluation and Oversight Body (OEFA), OSINERGMIN and the FISE fund, which we consider to be of little significance. Payments to OEFA are called contributions by regulation equivalent to 0.16% of turnover of extractive companies; in the case of OSINERGMIN, payments equate to 0.21% of turnover. FISE, meanwhile, is a subsidy to promote renewable energy and the extension throughout society of the consumption of gas and has revenues from the transport of gas as one its three sources of funding, which we do not consider applicable to the EITI agenda.

In relation to the quality and reliability of the data, we consider that given the degree of scrutiny

to which businesses are subjected by the Peruvian tax agency (SUNAT) and the Superintendency of Securities (SMV), the data presented are generally very reliable. Finally, we consider that there is no need for an external scope study for reasons of cost/benefit and having other priorities such as the automation of reports, conducting a larger number of regional reports, improving the dissemination of EITI and involving more social actors, and implementing the roadmap for compliance with the EITI Standard.

Some information on FISE.

SOBRE EL FISE



¿Qué es el FISE?

Administración FISE

FONDO DE INCLUSIÓN SOCIAL ENERGÉTICO (FISE)

El Fondo de Inclusión Social Energético (FISE) se crea con la Ley N° 29852 en abril del año 2012, con el propósito de llevar energía menos contaminante a poblaciones más vulnerables en todo el país. En la actualidad tiene cuatro fines:

- La masificación del gas natural para viviendas y vehículos.
- La ampliación de la frontera energética utilizando energías renovables.
- La promoción para el acceso al GLP (balones de gas doméstico) en los sectores vulnerables urbanos y rurales.
- El mecanismo de compensación de la tarifa eléctrica residencial.

Recursos del FISE

Los recursos económicos del FISE provienen de:

- Los grandes consumidores de electricidad.
- El servicio de transporte de gas natural (Gas de Camisea).
- La producción e importación de combustibles.

Con lo recaudado el FISE puede llevar a cabo la ejecución de sus cuatro fines a través de diversos proyectos energéticos establecidos por el Ministerio de Energía y Minas, en beneficio de más peruanos.

Si eres un Aportante, te invitamos a ingresar a la sección [Aportantes del FISE](#) en donde encontrarás más información detallada.

Beneficiarios

El fondo está dirigido a personas que pertenecen al sector vulnerable del Perú, ya sea en el sector rural o rural-urbano.

Cada uno de los tres fines del FISE poseerá un perfil específico de beneficiario. Es decir, los requisitos para recibir el beneficio en la masificación de gas natural pueden ser muy distintos a los que se establezcan en la ampliación de frontera energética.

<http://www.fise.gob.pe/que-es-fise.html>

SOCIAL EXPENDITURES (6.1)

Summary of main outcomes

Mandatory social expenditure does not seem to be applicable to Peru. Even so, discretionary spending does seem to be an integral part of companies' social licences to operate. The legal nature of the various agreements between companies and mining communities is unclear and it is, therefore, not possible to determine if this requirement is applicable to Peru.

In the mining and hydrocarbons industry in Peru, there are no legally required obligations for social spending.

On the other hand, there are social and environmental spending obligations assumed by companies after approval of the relevant environmental management instruments (Environmental Impact Assessment (EIA)) for the conduct of extractive activities, obligations that are supervised and controlled by OEFA.

There are also "agreements of a private nature" between companies and stakeholders in the areas of direct and indirect influence of processes. These agreements are governed by civil law and are made in a direct and discretionary manner that may or may not involve commitments

or social spending, much of which form part of corporate social responsibility activities. Enforceability is a matter solely for the parties.

Regarding the recommendation made by the Secretariat to verify this requirement and indicate that "a thorough assessment is required of whether each income stream mentioned in the Standard is applicable to Peru and the guidelines document for such assessments. This revised scope work should in particular include a clearer explanation of the legal nature of contributions," it is our opinion that an appropriate assessment of income flows has been made, but we believe that in future National Reconciliation Studies and documents prepared by the Commission we could explain in detail the scope and enforceability pertaining to Peruvian Law and its correlation with the EITI Standard.

LESSONS LEARNED AND FOLLOW-UP TO RECOMMENDATIONS (7.3)

Summary of main outcomes

EITI Peru has made progress in the implementation of minor technical recommendations resulting from EITI Reports. It has been found that the discrepancies are not significant and representatives of the MSSC seemed to be satisfied with that result. The lack of evidence of any discussion on the strengthening the impact of EITI implementation on the governance of natural resources is problematic.

MSSC comment

With regard to the management of lessons learned and implementation of recommendations, the EITI Peru MSSC has undertaken the following actions:

- 1) **Materiality:** here, the decision was taken to improve the process of reporting to and inviting the extractive companies to participate in the National Reconciliation Study. Similarly with the process of reporting to Peruvian State entities participating in the National Reconciliation Study. To date, thus, the MSSC is satisfied with progress relating to invitations and participation, since the Studies have needed ever less time and greater knowledge of the companies and institutions involved in the process.

- 2) **Regarding communication and preparation of companies and the tax office:** As mentioned in the previous point, the process has become smoother and with greater versatility, although the dates upon which data are collected do not facilitate the process for Peru; firstly, the tax year in Peru is from January to December for which reason during the last quarter of each year company officials have financial reporting processes and other responsibilities, which makes data consolidation difficult. Also, processes for closing tax payments take place between January and April of the following year and it is in the period between April and June that the State, through SUNAT and the Ministry of Economy and Finance, consolidates tax data from the previous tax year. For this reason, it is possible to access official data for that period from July each year.

- 3) **Discrepancies:** As pointed out by the International Secretariat Report, discrepancies in

the EITI Peru figures are irrelevant, noting that the highest is that referred to payment of "concession validity duty". As indicated in the same report, however, the level of mismatch observed has continued to fall in successive reports.

The MSSC is continually building its capabilities and improving its performance. Our actions are based on experience gained and lessons learned after each action. In the case of the National Reconciliation Studies, for example, their preparation is based on experience and each new National Reconciliation Study builds on the results of the previous National Reconciliation Study, taking the recommendations in the development process.

After the initial assessment made by the International Secretariat, the MSSC has seen the relevance of providing more detailed records of MSSC decision-making in order to make clear the discussions held, reflections on EITI implementation (successes, difficulties to overcome, implementation and dissemination challenges, needs for strengthening, etc.), the national context and the generation and dissemination of information to support transparency and improved governance of natural resources.

OUTCOMES AND IMPACT (7.4)

Summary of main outcomes

EITI Peru has written Annual Progress Reports for the past three years. These reports only provide explanations of activities of the preceding year. They do not document the review by the multi-stakeholder group of progress with respect to the objectives detailed in the Work Plan, progress towards compliance with EITI Requirements or compliance with the recommendations from Conciliation Reports.

Although various stakeholders have informally analysed progress and the outcomes of EITI implementation, there is no evidence that the MSSC has officially reviewed the outcomes and impact of the implementation of EITI.

MSSC comment

The MSSC conducted the evaluation of implementation through addressing the main aspects of this process at different times:

1) **The preparation and publication of the EITI Peru National Reconciliation Studies.**

Discussions were held, considering and evaluating progress on implementation of the Initiative in Peru in relation to compliance with the EITI Standard, as part of discussions for approval of the Terms of Reference for the National Reconciliation Studies. One result of this evaluation and subsequent action was implementation of the disaggregation of companies' payments in National Reconciliation Studies.

Similarly, the EITI Peru MSSC, considering operational aspects (institutional budgets and conditions) of preparation of National Reconciliation Studies, analysed this situation in working meetings, as a result of which the possibility was raised of automating preparation of National Reconciliation Studies. An initial level of consensus was

achieved to take this forward, but lack of funding has left it pending. Addressing this issue arises from our ambition to improve the updating of information published by National Reconciliation Studies. Disseminating more current data is one of the MSSC's challenges for improving implementation of EITI Peru.

2) The process of subnational implementation of EITI Peru

The MSSC considered and continues to consider relevant to the country and the Initiative, advancing implementation of transparency on the use and destination of resources from extractive activities. Thus, a comprehensive approach to the transparency "value chain" in the EITI Standard was addressed.

As a result of this discussion, the EITI Peru Multi-Sectoral Standing Commission approved the Internal Directive for implementation of the decentralisation of EITI Peru. After successful implementation of the Initiative in two regions (Piura and Moqueagua), the Commission has evaluated and decided to broaden its scope to three new regions in subsequent years. Prioritisation for implementation of new regional processes was evaluated - a discussion in which the main criteria were considered to be: the political will of subnational governments, the existence of interested civil society organisations, the existence also of interested companies, and the role of extractive activities in regional economies.

3) Dissemination activities and/or mechanisms

The EITI Peru MSSC, as provided for compliance with the EITI Standard, evaluated and authorised (in some cases) the holding of dissemination events for the contents of the National Reconciliation Studies and Regional Transparency Studies in order to comply with the advance of the Initiative.

This was demonstrated in the presentation of the National Reconciliation Studies and also the Regional Transparency Studies in Moqueagua and Piura, inviting the attendance of local authorities, social leaders, representatives of institutions and communications media and with the participation of members of the EITI Peru National Commission.

One element that strengthened our outreach and consolidation efforts was the **systematisation of the implementation process of the EITI Initiative in Peru (lessons learned from implementation)**. This effort had two clear components (collating the experience of EITI Peru and the sharing of experience of Peru with Guatemala) as part of the triangular cooperation promoted by GIZ.

Systematisation: this process and documentation of experiences and lessons learned has been ongoing since early 2016 and was completed in June 2016. Three groups from EITI Peru took an active part in it throughout the process of gathering, organising and interpreting information. This document gathers together information on the main progress on: the National Reconciliation Study, implementation, management model of

the Commission, multi-stakeholder dialogue, subnational implementation of EITI and Regional Transparency Studies. It also notes the drivers of success and issues pending improvement within the process of implementation of the Initiative, and this is why the Peruvian Government has undertaken to strengthen this sustainability through the provision of resources for the conduct of National Reconciliation Studies.

This systematisation process has enabled stakeholders in the three parts of EITI Peru to take stock of the current state of the Initiative, suggest improvements and, most of all, to consider the institutional and budgetary sustainability of the Initiative.

The transfer of capabilities: Experience from implementation of EITI Peru has been used to strengthen other processes that are taking place in Latin America. This experience has served to transmit our know-how to other implementation processes, such as in Guatemala, with whom three work days were held to contribute to: the process of preparing National Reconciliation Studies (as part of application of the EITI Standard), the management model of the Multi-Sectoral Standing Commission and the process of subnational implementation.

It considers, therefore, that evaluation relating to the process of implementing EITI Peru took place at different times, always within the progressive compliance with the EITI Standard.

This information was not, however, organised or classified in such a way as to explicitly point to these evaluations. That is why measures will be taken henceforth to have the information on evaluations and discussions occurring in meetings of the National Commission classified, supported and organised.

The MSSC regularly reviews implementation of specified activities. Nonetheless, it is considered a necessary part of self-criticism to evidence the evaluation and review processes, to deepen reflection and to improve the dissemination of outcomes.

Similarly, the MSSC is considering including in future Annual Progress Reports information on progress in and challenges to the implementation of EITI in Peru, touching on the legal framework, the national context, the commitments set out in the EITI 2016 Standard and the needs of the public in relation to EITI. In this way it will be possible to make clear the contribution of EITI to the improvement of the transparency and governance of the extractive sector.