

March 14, 2020

Jay Clayton, Chairman
Robert J. Jackson, Jr., Commissioner
Hester M. Peirce, Commissioner
Elad L. Roisman, Commissioner
Allison Herren Lee, Commissioner
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090 USA

Dear Chair Clayton and commissioners:

I would like to take this opportunity to address you as the Executive Director of “Derecho, Ambiente y Recursos Naturales (DAR)”, a Peruvian non-governmental organization that promotes sustainable development of the Amazon Basin in order to improve respect for indigenous rights and environmental governance.

DAR is an organization that works on a local and global level. It is part of Publish What You Pay international coalition and other several coalitions in Latin America and the Caribbean. We also work directly with different indigenous organizations in our country and indigenous organizations from the Amazon Basin. Since 2013, we have been civil society representatives in the Extractive Industries Transparency Initiative (EITI) multi- stakeholder group and, since 2016, we have served on the International Board.

Peru has been part of EITI since 2005 and has implemented a multi- stakeholder platform at a national level, and since 2018 at a local level with the participation of the region of Loreto. Simultaneously, there are legal mechanisms in Peru that allow companies to compensate with royalty payments to the local communities where resources are extracted. These legal mechanisms also ensure that companies publish their payments to the different sectors of the State in the extractive sector.

The purpose of this letter is to express our concern about specific changes made in the third round of regulation for section 1504 held in December 2019, where the United States Securities and Exchange Commission (SEC) voted for a new bill which we consider is not in accordance with the objectives that the EITI recognizes or the improvement of governance and transparency of the extractive sector because the application of this bill will weaken the obligation of companies to disclose their information.

Even though this bill does not apply to Peruvian extractive companies, it does have an effect on those companies operating in Peru whose headquarters are in the United States. For example, big mining companies such as “Sociedad Minera Cerro Verde S.A.A”, “Minera Yanacocha S.R.L” or “Doe Run Peru SRL” are subsidiaries of United States corporations (Freeport- MCMoran, Newmont Golgport, Southern Copper Corp., Renco Group). And in the oil sector, we can find corporations like Hunt Oil and Maple Gas Corporation that also have subsidiaries with the same name in Peru.

In 2012, we [wrote](#) a letter about the proposed Section 1504 rule and expressed our support for the recommendations and comments made by Publish What You Pay (PWYP) coalition. In particular, we noted that no exemptions for reporting should be provided and that the Commission should define “project” in relation to each lease, license and/or other concession level arrangement entered into by a resource extraction issuer. We further recommended that a reasonable minimum threshold for payments to be reported should be set.

However, in light of the changes to the rule proposed in late 2019, we reiterate our support for the position of the Publish What You Pay (PWYP) coalition, due to the following reasons.

- The bill includes new contract definitions based on three criteria: a) The type of resource that is being commercialized; b) the extraction method; c) the main subnational political jurisdiction where the economic activity takes place. In Peru, this addition creates a lack of obligation to provide information to the state about payments that have been made for socio-environmental compensation, which is crucial to determining compliance with companies' environmental commitments and obligations.
- The bill also allows exemptions for “smaller” and “emerging growth” companies. In the case of Peru, usually small companies, especially national ones, are associated with large companies to look for new operations and expand mining projects. As there are different environmental requirements for large, medium and small companies in the National Environmental Law, this association between large and small companies will be used to avoid environmental requirements and therefore will compromise the access to information and transparency.
- The bill also includes conditional exemptions in the cases of a foreign law prohibition or pre-existing contract terms. In the case of Peru, under the national laws N° 27623 and N° 27624, the American companies operating here could access exemptions to their legal obligations such as the payment of taxes and different benefits. This would significantly limit the processes of transparency and access to information
- The higher de minimis thresholds in the proposed rule would directly affect the performance of our local EITI. In Peru, our subnational EITI databases use information provided by companies bound by their country's reporting requirements to generate a significant part of its disclosures. If this information is not supplied through a requirement for US-listed companies, communities where they operate will continue to miss out key details.

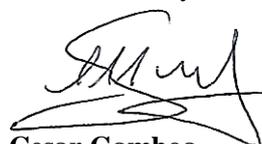
We believe that these measures represent a setback in increasing transparency and in the obligation of companies to publish their information. It also gives the companies greater facilities for investment at the expense of the respect of fundamental rights and the guarantees of benefits distribution without considering the side effects of those facilities such as the lack of transparency regarding the amounts, payments and remuneration of its operations.

In this context, the changes made in this latest round of regulation for Section 1504, restricts the dialogue between the state, civil society, and business to promote social governance and reduce socio-environmental conflicts. The EITI initiative in Peru is applied at the sub-national level and has recently been implemented in an Amazon department. Promoting high transparency of the industries in this region contributes to the sustainable management of the Amazon forest.

Exceptional conditions do not guarantee the proper performance of companies because it allows them to have discretion of their financial information, limiting the vigilant role that civil society has to monitor compliance with its obligation. It also generates a contradiction to what EITI as well as the European and Canadian international standards promote.

In that sense, we believe it is necessary to evaluate these proposals because they do not guarantee transparency in the monitoring of investments, limiting the efforts to face information access problems and to improve governance in the extractive sector.

Yours sincerely,



Cesar Gamboa

Policy Director

Derecho Ambiente y Recursos Naturales (DAR)