

Peru’s OGP natural resource commitments in the shadow of the Extractive Industries Transparency Initiative

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The OGP Openness in Natural Resources Working Group is co-chaired by the Natural Resource Governance Institute and the World Resources Institute. It commissioned three case studies to identify opportunities and challenges in the implementation of natural resource commitments and to document how civil society participates in the development of these commitments in different contexts. This case study focuses on Peru.

INTRODUCTION

Peru became an official member of the Open Government Partnership (OGP) in 2012 and has issued two National Action Plans (NAP) thus far: NAP 2012–2014 and NAP 2015–2016. Peru’s third NAP covering the period 2017–2019 is currently in the development phase and should be finalized by the end of October 2017.

Table 1 summarizes three commitments relating to natural resources contained in NAP 2012–2014 and NAP 2015–2016.

As shown in Table 1, two out of the three natural resource commitments relate to the Extractive Industries Transparency Initiative (EITI) (1.k and 6), an international initiative establishing a global standard for open and accountable natural resource management. The government has reported these commitments as completed. The only other natural resource commitment relates to access to environmental information (1.j), but it has never been translated into specific activities and did not have any indicators to measure its implementation.

Table 1. Overview of Peru’s natural resource commitments and their official level of completion

Date	No.	Commitment	State of completion
NAP 2012–2014	1.j	Improve access to environmental information: Improve the mechanisms for access to environmental information, with an emphasis on extractive industries.	Not assessed
	1.k	Strengthen the EITI commission: Consolidate EITI, expand representation, ensure development of conciliation studies and evaluate implementation in regions with extractive industries.	Not assessed at end term, but considered completed*
NAP 2015–2016	6	Implementing EITI commissions in three regional governments: Establish transparency criteria on the use of the income received by regional governments from extractive companies (mining and hydrocarbons), to encourage the development of their regions.	Completed*

* This analysis however questions the effective level of completion of these commitments.

BARRIERS TO IMPLEMENTATION

Although implementation of OGP natural resource commitments is overall considered relatively successful (with two out of three natural resource commitments qualified as “completed”), various barriers to implementation exist.

LIMPING MULTI-STAKEHOLDER PROCESSES

The Secretariat of Public Management (*Secretaría de Gestión Pública* – SGP), attached to the president of the council of ministers, has overall responsibility for the development and implementation of NAPs in Peru. In 2013, the government also created a multi-stakeholder forum, the Permanent Multisector Commission, in charge of monitoring the OGP process. In accordance with the OGP co-creation guidelines, the multisector commission is comprised of six representatives from the government, three from civil society and one from the private sector (see Table 2). All representatives have voting rights for the decisions adopted. The Ombudsman’s Office, the High-Level Commission of Anticorruption and the Office of the Comptroller-General participate as observers.

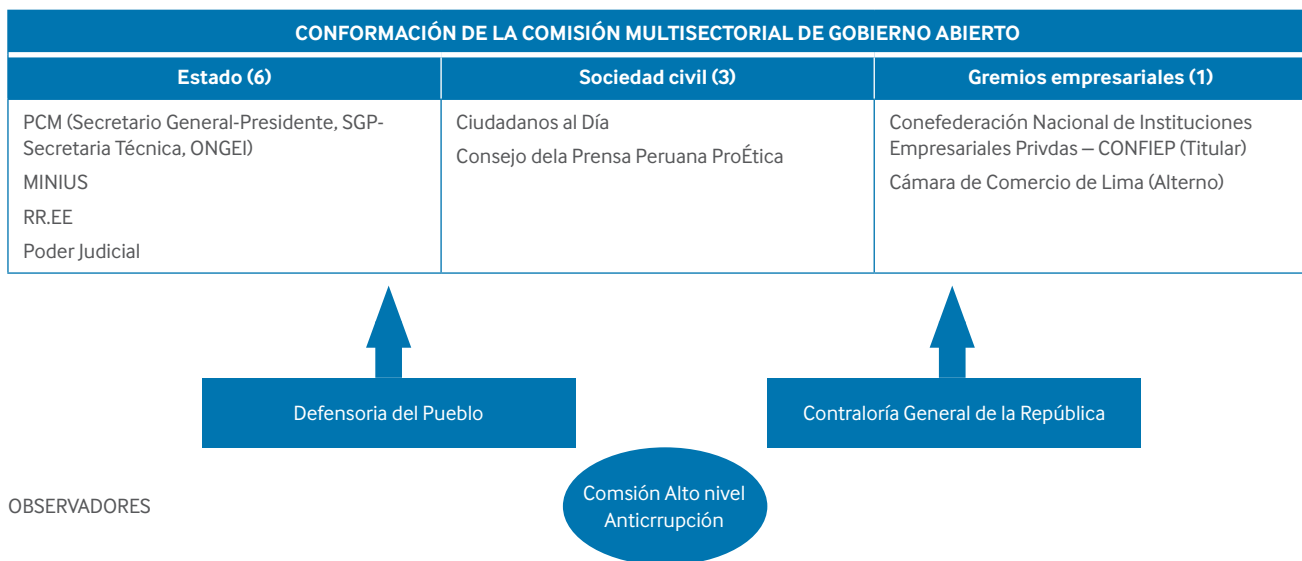
However, the multisector commission has been paralyzed since December 2014 when all three civil society representatives formally stepped out of the

OGP process. This decision was motivated by two main issues. First, the government passed a number of legislative measures that limit transparency and access to information.¹ Second, the OGP process experienced a complete deadlock in 2014 when the government refused to approve the 2014–2016 draft NAP, which had been agreed upon by civil society actors and supported by the ombudsman’s office. One of the priority commitments within the draft NAP was the creation of an independent transparency and access to information authority, which would lead the government’s transparency policy and be financially independent with a specific budget attributed by the Ministry of Economy and Finance.

The government approved the NAP on 17 July 2015, without the participation or validation of the final version by civil society actors, and without the key commitment of creating the transparency and access to information authority. The general sentiment of civil society actors was that the Peruvian government rushed to approve a somewhat improvised NAP without the multisector commission’s backing in order to comply with the OECD requirements for Peru’s membership. Civil society actors publicly denounced the government’s unwillingness to take meaningful advancements in the areas of transparency and access

Table 2. Composition of the multisector commission

Source: Mid-term self-assessment report 2013



1 In particular, the Legislative Decree No. 1129 qualifies any information in relation to national security as “secret”.

to information. Over 30 civil society organizations published an announcement in the national newspaper urging the government to take a number of priority actions to promote open government, ensure effective access to information and fight against corruption.² The multisector commission has not been re-established to date.

When interviewed about the consequences of this paralysis, SGP officials did not see immediate implementation concerns. They highlighted that the EITI commitments were completed. While this is true, it is important to note that EITI in Peru runs completely independently from OGP. The non-functioning multisector commission did not hamper its implementation but instead affected the credibility of the OGP process as a whole. The insufficient multi-actor dialogue prevented the NAP from containing transformative open government commitments. Accordingly, the Independent Reporting Mechanism (IRM) 2012–2014 report stated that civil society actors and the government had to resume cooperation for the development of a new action plan.

The OGP process in Peru also suffered other significant inconsistencies with the basic requirements of the OGP co-creation guidelines. In this context, the IRM highlighted the public participation as being insufficiently inclusive in both NAPs. There was insufficient inclusion of civil society actors in the regions, of unions, academia and indigenous communities. Also, the government failed to publish an overview of public and civil society contributions with the government's response on how these contributions were taken into account. However, civil society representatives interviewed for this case study stated that their contributions for the NAPs had been taken into consideration.³ In particular, civil society representative Pilar Camero Berríos⁴ specified that the commitment relating to access to environmental information (1.j) and the commitment relating to the national EITI commission (1.k) were civil society initiatives.

LACK OF COORDINATION BETWEEN GOVERNMENTAL AGENCIES

The full implementation of these two EITI commitments depends on the Peruvian EITI commission. It does not depend on OGP, but coordination with SGP is critical to ensure milestones are achieved. According to the IRM, coordination did not happen, however, and the EITI commission did not even feature as the implementing agency in the 2012–2014 NAP. The government officials⁵ interviewed for this case study argued though that there had been consistent coordination between SGP and EITI, at least informally. This may have happened through information exchange directly between SGP and the Ministry of Energy and Mines (MINEM – the lead government agency for EITI in Peru), but no evidence exists to support this.

ABSENCE OF HIGH-LEVEL CHAMPIONS TO SUPPORT OGP PROCESS

According to multiple interviews, OGP does not have the necessary high-level government support. This lack of backing contrasts with the independently running EITI in which there is considerable political will to promote the transparency process of extractive industries. Peru's EITI technical secretary, Fernando Castillo Torres, representative of MINEM and the focal point for EITI Peru, has been responsible for implementing EITI for the past eight years. He was also representing MINEM during the socioenvironmental conflicts that occurred in extractive projects during the past few years. Castillo therefore has been able to build a strong relationship with civil society actors and indigenous organizations, as well as with extractive companies. The Vice-minister of Mining, Guillermo Shinno has been actively promoting EITI as well.⁶

SGP does not have nearly the same level of standing as MINEM and government officials in charge of the OGP process have changed constantly. This prevented SGP from developing a durable relationship with civil society

2 See an excerpt of the newspaper announcement in *El Comercio*, 1 October 2015: http://www.dar.org.pe/archivos/docs/elcomercio_2015-10-01_p17.pdf.

3 Interviewees were mostly referring to the first OGP Action Plan. Civil society contributions in the second OGP National Action Plan were limited due to the paralysis of the multisector commission.

4 Pilar Camero Berríos of DAR acted as the civil society representative in Peru's EITI commission. (created by Supreme Decree No. 028-2011-EM). She was alternate representative for the period from February 2013 to December 2015 and main representative for the period from January 2016 to May 2017.

5 Representatives of SGP (the OGP lead in Peru) and the Ministry of Energy and Mining (MINEM – the EITI lead in Peru).

6 See, for example, the following news article: "MEM espera que el próximo gobierno continúe con procesos de transparencia en industrias extractivas," *Perú 21*, 28 June 2016: <https://peru21.pe/economia/mem-espera-proximo-gobierno-continue-procesos-transparencia-industrias-extractivas-221903>.

actors or the private sector. OGP's relative success in terms of implementing EITI commitments can therefore be fully attributed to the political backing of EITI.

INSUFFICIENT QUALITY OF COMMITMENTS

Peru's 2012–2014 NAP initially contained 47 commitments. The two natural resource commitments were both commitments proposed by civil society organizations and received their backing. However, during our interviews, civil society representatives indicated that they had raised concerns at the time about the lack of specificity and progress indicators that could be turned into action.

During the first year of NAP implementation, many commitments were behind schedule and proved to be too vaguely drafted, as they were either insufficiently achievable or measurable. SGP therefore decided to reduce the number of commitments to 12 and developed progress indicators. SGP held 16 meetings with multi-stakeholders for the redrafting process. Ten months after the start of the implementation period, the new commitments and indicators were made public, but still had not been finalized. This created uncertainty about their implementation, and the level of completion of commitment 1.j at the end term of the 2012–2014 NAP was “not assessed.” While progress indicators were developed for commitment 1.k, they seemed inconsistent with its objective to strengthen the EITI commission to the point that it is “recognized as the institutional transparency reference point of the mining and hydrocarbon sectors.”⁷ The indicator merely measured the number of companies that would submit information to the national EITI commission and did not mention the effective access and use of this information by the public.

Peru's 2015–2016 NAP contains only one natural resource commitment, relating to the establishment of three decentralized EITI commissions in the regions of Moquegua, Piura and Loreto. The IRM considered this to be a significant contribution to transparency and accountability, as it would increase dialogue between government authorities, companies and civil society actors at the subnational level. It would also potentially reduce the number of social conflicts that arise in the Peruvian regions due to intense extractive activities.

However, the indicator to measure the progress of this high-impact commitment was again inadequate. The Peruvian government categorized this commitment as “completed” at the NAP end of term by the mere passing of the legislation establishing EITI commissions in Moquegua, Piura and Loreto. The legislation had in fact already been passed before the approval of the second NAP. It is also evident that the legislation does not necessarily ensure the proper functioning of the subnational EITI commissions. For instance, the subnational EITI commissions in Piura and Moquegua are functioning, while the EITI commission in Loreto has not been active to date and its membership has not yet been determined.

A fourth EITI commission in Arequipa has recently been established, and there are plans to establish two additional EITI commissions in the departments of Apurímac and Ancash in the next two years. The civil society participants interviewed for this case study considered EITI a very important transparency tool in the extractive industries, but its success cannot be attributed to OGP.

NO ALLOCATED BUDGET

SGP receives a budget for the *overall* development and implementation of Peru's NAPs. However, when it comes to specific commitments, it is up to every implementing agency to earmark resources from their own budget. In other words, government agencies will not receive additional funds from the general budget for commitment implementation. Given that most government agencies struggle with budgetary constraints, there is inevitably no guarantee that they will have sufficient resources to implement OGP commitments.

Additionally, SGP faces timing issues for determining its OGP budget. NAPs usually run for 24 months from July. However, Peru's general budget is approved by the end of each calendar year. This discordance makes it difficult to earmark specific resources to OGP implementation.

Although the Peruvian government did not assign any budget for implementing individual OGP commitments, commitments 1.k and 6 could still be implemented using the EITI budget, as it has its own sources of financing including the World Bank and the Peruvian government.

7 Revised NAP 2012–2014.

LESSONS LEARNED

The successful implementation of natural resource commitments depends on how they have been developed and drafted. The development process in Peru has been difficult. With the multisector commission inactive since December 2014, and the lack of open consultation by the government when drafting NAPs, natural resource commitments lack specificity, ambition and measurability, which has affected OGP's credibility.

From the Peruvian experience with EITI, tripartite partnerships among the private sector, the government and civil society can be a very effective tool in increasing transparency in the ambit of natural resources. Within the framework of OGP, it is therefore crucial to re-establish a permanent multi-stakeholder dialogue to ensure future implementation of OGP commitments.

Lack of coordination with and direct involvement of the EITI commission reduces reporting on OGP natural resource commitments to a mere administrative procedure without any actual importance. Progress made

on commitments 1.k and 6 repeats the progress made within the EITI commission. As OGP and EITI run as initiatives that are fully independent from each other, OGP has no influence on the implementation of these commitments, nor can it take any credit for the level of completion of these commitments.

OGP natural resource commitments have so far been insufficiently transformative and ambitious. This can be attributed to the lack of government interest in OGP. With SGP's frequent staff turnover and OGP having insufficient connection with civil society and the private sector, this agency may not be a strong actor to lead the OGP process. On top of lacking a strong leading agency, OGP struggles with a lack of resources. Although SGP does receive funds from the general budget, these funds are not used for the implementation of individual commitments. The absence of additional budget for OGP implementation naturally also makes government agencies less eager to commit to ambitious and transformative OGP commitments.

Summary tables of natural resource commitments in Peru's NAPs

National Action Plan 2012–2014, Commitment 1.j	
STATUS	NOT ASSESED
Summary	Improve access to environmental information: Improve the mechanisms for access to environmental information, with an emphasis on extractive industries.
Implementing agencies	<i>Secretaria de Gestión Pública (SGP)</i>
Person responsible for implementation	Not defined
Information sourced on what was done to implement commitment	<ul style="list-style-type: none"> • NAP 2012–2014 • Self-assessment report of September 2013 • IRM progress report 2012–2013 • Conducted interviews
Budget assigned for implementation	The Peruvian government did not assign any additional budget for implementing this commitment.
Outputs and outcomes of implementation	Not quantified within OGP
Key implementation concerns	Of the government Commitment quality: <ul style="list-style-type: none"> • Insufficient specificity of the commitment. • No progress indicators. Budget: <ul style="list-style-type: none"> • No funds attributed for implementation to implementing agencies. • SGP faces difficulties in receiving budget for “overall OGP implementation” as OGP timeline does not coincide with approval of Peruvian annual budget.
	Of civil society Non-compliance with co-creation guidelines: <ul style="list-style-type: none"> • No timeline/prior invitation. • Public participation not broad enough. • No presentation of how civil society inputs have been taken into account. Lack of political will to move process forward. Commitment quality: <ul style="list-style-type: none"> • Insufficient specificity of the commitment. • No progress indicators. Budget: No funds attributed for implementation to implementing agency.

National Action Plan 2012–2014, Commitment 1.k		
STATUS	COMPLETE	
Summary	Strengthen EITI commission: Consolidate EITI, expand representation, ensure development of conciliation studies and evaluate implementation in regions with extractive industries.	
Implementing agencies	Secretaria de Gestión Pública (SGP)	
Person responsible for implementation	Fernando Castillo, General Director for the Department of Social Management – Ministry of Energy and Mining and lead of EITI in Peru	
Information sourced on what was done to implement commitment	<ul style="list-style-type: none"> • NAP 2012–2014 • Self-assessment report of September 2013 • IRM progress report 2012–2013 • Conducted interviews 	
Budget assigned for implementation	EITI commission budget is used for the implementation of this commitment. The Peruvian government did not assign any additional budget for implementing this commitment.	
Outputs and outcomes of implementation	Not quantified within OGP. However, the national EITI commission has been gaining importance independently of OGP National Action Plans.	
Key implementation concerns	Of the government	<p>Commitment quality:</p> <ul style="list-style-type: none"> • Insufficient specificity of the commitment. • No progress indicators. <p>Budget: No funds attributed for implementation to implementing agencies. SGP faces difficulties in receiving budget for “overall OGP implementation” as OGP timeline does not coincide with approval of Peruvian annual budget.</p> <p>Mandate: EITI commission not assigned as implementing agency.</p>
	Of civil society	<p>Non-compliance with co-creation guidelines:</p> <ul style="list-style-type: none"> • No timeline. • Public participation not broad enough. • No presentation of how civil society inputs have been taken into account. <p>Lack of political will to move process forward.</p> <p>Commitment quality:</p> <ul style="list-style-type: none"> • Insufficient specificity of the commitment. • Progress indicator inconsistent with commitment. <p>Budget:</p> <ul style="list-style-type: none"> • No funds attributed for the implementation to implementing agencies. However, this commitment was implemented with the EITI budget (fully independent from OGP). <p>Mandate:</p> <ul style="list-style-type: none"> • SGP has no mandate to implement and EITI not assigned as implementing agency. • No documented coordination between OGP and EITI.

National Action Plan 2015–2016, Commitment 6	
STATUS	COMPLETE
Summary	<p>Implement EITI commissions in three regional governments:</p> <ul style="list-style-type: none"> Establish transparency criteria on the use of the income received by these governments from extractive companies (mining and hydrocarbons). Encourage the development of their regions.
Implementing agencies	National EITI Commission Peru, assigned to the Ministry of Energy and Mining (MINEM)
Person responsible for implementation	Fernando Castillo, general director for the Department of Social Management – Ministry of Energy and Mining and lead of EITI in Peru
Information sourced on what was done to implement commitment	<ul style="list-style-type: none"> NAP 2015–2016 Self-assessment report of September 2016 IRM Progress Report 2015–2016 Conducted interviews
Budget assigned for implementation	EITI commission budget is used for the implementation of this commitment. The Peruvian government did not assign any additional budget for implementing this commitment.
Outputs and outcomes of implementation	<p>Ordinances establishing the EITI commissions in the regions of Piura, Moquegua and Loreto.</p> <p>EITI commissions in Piura and Moquegua are functioning properly with tripartite membership. Their activity and progress can be tracked on their websites.</p> <p>However, membership of the EITI commission in Loreto has not been established, and the commission has not convened to date.</p>
Key implementation concerns	<p>Of the government</p> <p>Budget:</p> <ul style="list-style-type: none"> No funds attributed for implementation to implementing agencies. SGP faces difficulties in receiving budget for “overall OGP implementation” as OGP timeline does not coincide with approval of Peruvian annual budget.
	<p>Of civil society</p> <p>Non-compliance with co-creation guidelines:</p> <ul style="list-style-type: none"> Public participation not broad enough. No presentation of how civil society inputs have been taken into account. <p>Lack of political will to move process forward.</p> <p>Commitment quality:</p> <ul style="list-style-type: none"> Commitment to actions already implemented before the term of NAP 2015–2016. Progress indicator inconsistent with commitment. <p>Budget:</p> <ul style="list-style-type: none"> No funds attributed for implementation to implementing agencies. However, this commitment was implemented using the EITI budget (fully independent from OGP). <p>Mandate:</p> <ul style="list-style-type: none"> No documented coordination between OGP and EITI.