


TRANSPARENCY AND ACCESS TO INFORMATION MECHANISMS IN CHINESE INVESTMENTS IN THE AMAZONIA

LOT 58 AND AMAZON WATERWAY CASES





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PREPARED BY:

María Sembrero Huaranga

COLLABORATOR:

Diego Saavedra Celestino

REVIEWED BY:

Vanessa Cueto La Rosa

EDITED BY:

Derecho, Ambiente y Recursos Naturales (DAR)

Jr. Cartagena 130, Pueblo Libre, Lima - Peru

Telephones: 511 - 340 3780 | 511 - 340 3720

E-mail: dar@dar.org.pe

Website: www.dar.org.pe

DESIGNED BY:

Sonimágenes del Perú S.C.R.L.

Av. Gral. Santa Cruz 653. Off. 102, Jesús María, Lima - Peru

Telephone: (511) 277-3629 / (511) 726-9082

E-mail: adm@sonimágenes.com

Website: www.sonimágenes.com

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ABBREVIATIONS AND ACRONYMS

ANA	National Water Authority
PPP	Public Private Partnerships
CNPC	China National Petroleum Corporation
COICA	Coordinator of Indigenous Organizations of the Amazon River Basin
EIA	Environmental Impact Assessment
EIA-d	Detailed Environmental Impact Assessment
EITI	Extractive Industries Transparency Initiative
UPR	Universal Periodic Review
TSR	Technical Support Report
ASM	Artisanal and Small-Scale Mining
EIAA	Environmental Impact Assessment Amendment
MINCU	Ministry of Culture
MINEM	Ministry of Energy and Mines
MTC	Ministry of Transport and Communications
OEFA	Agency for Environmental Assessment and Control
OGP	Open Government Partnership
OSITRAN	Supervisory Agency for Investment in Public Use Transport Infrastructure
PAS	Sanctioning Administrative Procedure
EMP	Environmental Management Plan
APP	Administrative Penalty Procedure
RCM	Machiguenga Communal Reserve
SENACE	National Environmental Certification Service for Sustainable Investments
FTA	Free Trade Agreement
BZ	Buffer Zone

CONTENIDO

I. Introduction	4
II. Legal framework	6
III. Transparency and access to information: investment projects in the peruvian Amazonia	8
3.1. Updating information on chinese investments	10
3.2. Analyzing project cases: Lot 58 and Amazon Waterway project cases	14
3.2.1. Transparency and access to information mechanisms.	16
3.2.1.1. Lot 58 Case.	16
A. Evaluating Transparency Portals.	18
B. Evaluating responses submitted on access to public information	40
3.2.1.2. Amazon Waterway Case	44
A. Evaluating Transparency Portals.	46
B. Evaluating responses given on access to public information	51
IV. Conclusions and recommendations	54
References	58



I. INTRODUCTION

The access to public information constitutes a fundamental right to request and receive information owned or reproduced by any of the state entities. This right is enshrined at national level in the Political Constitution of Peru¹ and in the Peruvian regulations; and at international level² by international mechanisms and/or initiatives aiming to ensure that all persons are provided with necessary information in an efficient and timely manner. *Las personas reciban información necesaria de manera eficiente y oportuna.*

The Extractive Industries Transparency Initiative (EITI), Open Government Partnership (OGP), Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Principle 10), currently the Escazú Agreement, are international initiatives promoted in the country to strengthen transparency and access to information actions, which have created and established appropriate standards and mechanisms in implementing the access to information and transparency both in the private and public sector.

Such initiatives need to be strengthened from the State and civil society to achieve a full environmental democracy. It should be also considered that every limitation to access to information in environmental and social matters results in socio-environmental conflicts, which effect does not only cast serious doubts on the viability of investments in our countries, but it may result in violations of human rights (DAR, 2017).

In light of that, the State and private sector must strengthen the transparency mechanisms in issues regarding public, private projects and negotiations made within the framework of development policies and investments, in accordance with the international framework mentioned in the previous paragraph; Transparency Law and Access to Public Information as well as the principle of transparency of Legislative Decree No. 1362³, that regulates the Private Investment Promotion through Public Private Partnerships and Projects in Assets, and orders that all quantitative and qualitative information to be used for decision making during the evaluation, development, implementation and accountability of a project is publicly known, under the principle of publicity laid down in Article 3 of the Single Unified Text of Law No. 27806, Law on Transparency and Access to Public Information approved by Supreme Decree No. 043-2003-PCM.

It should be noted that the appropriate compliance with the regulatory framework and implementation of international mechanisms regarding the access to information allow the necessary conditions for citizen participation, formation of public opinion, monitoring and control of public decisions and shares from

1 Number 5 of Article 2 of the Peruvian Constitution.

2 The instruments of the United Nations (UN) and Inter-American System are the 1948 Universal Declaration of Human Rights (Articles 12 and 19), the 1966 International Pact on Civil and Political Rights (Articles 17 and 19), the 1948 American Declaration of the Rights and Duties of Man (Article 4), the 1969 American Convention on Human Rights (Article 13) and the Principles of Lima of 2000.

3 Published on July 22, 2018.



Urubamba Basin
Photo: DAR

investors that may affect the welfare (environment), rights, as well as planning and development of the country.

Within this framework, the objective of this report is to evaluate the compliance with transparency and access to information of foreign investments in the country. Therefore, a qualitative methodology will be applied in the form of a case study, that is, in an empirical manner (exploratory, descriptive and explanatory).

The evaluation will measure the compliance with regulations through the results of quality for response to information requests, as well as the information published in the transparency portals. Therefore, the access to information will be analyzed, giving priority to four indicators for this evaluation: complete and updated, accurate, timely and intercultural approach information, considering the characteristics specified by the Constitutional Court⁴.

The analysis will examine the access to information needed for compliance with socio-environmental obligations established and protection of rights, such as information on contract negotiation signed by the State; environmental management instruments and compliance with the right to prior consultation and execution level of each project. The evaluation will focus on Chinese investment projects due to the large flow of them in the country, considering that China is ranked first as investing country in Peru (YU, 2020). The analysis will focus on the Infrastructure and Hydrocarbons sector, specifically in the access to information and transparency mechanisms of the Amazon Waterway Project and Lot 58.

⁴ Court in repeated jurisprudence, the constitution guarantees the contents by the right of access to public information does not only comprise the public bodies' obligation to provide information requested, but this one must be complete, updated, accurate and true. Hence, if the right of access to information forces the Public Administration bodies to inform in its positive aspect, it requires the information to be provided not to be false, incomplete, fragmentary, circumstantial or confusing in its negative aspect. Visit: <https://www.tc.gob.pe/jurisprudencia/2012/05173-2011-HD.html>

II. LEGAL FRAMEWORK

International framework

- Universal Declaration of Human Rights
- International Pact on Civil and Political Rights
- 1948 American Declaration of the Rights and Duties of Man
- American Convention on Human Rights
- Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Principle 10) - Escazú Agreement.

Urubamba Basin
Photo: DAR



National framework

- Political Constitution of Peru
- Law No. 27806, Law on Transparency and Access to Public Information
- Supreme Decree No. 072-2003-PCM, Regulation of Law on Transparency and Access to Public Information.
- Legislative Decree No. 1362, Private Investment Promotion through Public Private Partnerships and Projects in Assets.
- Supreme Decree No. 002-2009-MINAM, Regulation on Transparency, Access to Environmental public Information and Citizen Participation and Consultation in Environmental Issues.
- Legislative Decree No. 1353 that creates the National Transparency and Access to Public Information Authority.
- Supreme Decree No. 019-2017-JUS, Regulation of Legislative Decree No. 1353 that creates the National Transparency and Access to Public Information Authority, strengthens the Personal Data Protection Regime and Interest Management Regulation.
- Legislative Decree No. 1416 that strengthens the Court for Transparency and Access to Information.
- Supreme Decree No. 021-2019-JUS that approves the Single Unified Text of Law No. 27806, Law on Transparency and Access to Public Information.
- Ministerial Resolution No. 035-2017-PCM, “Guidelines for the Implementation of the Standard Portal of Transparency in Public Administration entities” - Directive No. 001-2017-PCM-SGP.
- Supreme Decree No. 002-2009-MINAM that approved the Regulation on Transparency, Access to Environmental Public Information and Citizen Participation and Consultation in Environmental Issues.
- Supreme Decree No. 040-2014-EM - Regulation on Environmental Protection and Management for Exploitation, Beneficiation, General Labor, Transport and Mining Storage Activities.
- Supreme Decree No. 028-2008-EM, Regulation on Citizen Participation in the Mining Subsector.
- Supreme Decree No. 002-2019-EM, Regulation on Citizen Participation for the Performance of Hydrocarbons Activities.
- Supreme Decree No. 004-2017-MTC, Regulation on Environmental Protection for the Transport Sector.

III. TRANSPARENCY AND ACCESS TO INFORMATION: INVESTMENT PROJECTS IN THE PERUVIAN AMAZONIA

The access to public information is a right laid down in the national and international framework. Its appropriate implementation in all main lines of governmental action puts together a basis of good governance, which promotes the political legitimacy, economic growth and social development.

At international level, several initiatives promoting transparency have strengthened the access to information Initiative, such as the Extractive Industries Transparency Initiative (EITI) composed, in a tripartite basis, of the private sector (companies), State and civil society; the Open Government Partnership (OGP); the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Principle 10), currently Escazú Agreement.

Quezada, Vilchez and Patiño (2009)⁵ indicate that the transparency mechanism generates the following advantages: 1) contributes to compliance with law and decreases discretion in its interpretation; 2) helps in the measured use of public resources and efficiency; 3) encourages honesty and responsibility and 4) makes intergovernmental coordination easier.

Likewise, the Peruvian Ombudsman finds it necessary and essential to promote transparency and ensure access to information held by public entities, since it contributes to the fight against corruption, promote private investment, make citizens trust more in their public authorities, and promote efficiency in the provision of public services (Peruvian Ombudsman, 2020)⁶. Furthermore, it makes public management control easier, achieving an informed participation and citizen monitoring on the decisions made by the State.

Along the same lines, investment information transparency is very important (including but not limited to extractive, infrastructure projects) both at profile, pre-feasibility, feasibility, design and implementation levels, in accordance with the regulatory framework of Law No. 27806 which lays down that all public information financed by the public budget must be access to public information, so that it serves as a basis for an administrative decision and protection of human and fundamental rights. Since the consequences of private, public and Pension Fund Administrators (AFP) investment development do not only encompass economic impacts, but social, environmental and cultural impacts, their information must be efficiently transparent. Along these lines, the transparency mechanism will not only strengthen the protection of rights, but also the supervision of the State's obligations.

⁵ (Critical evaluation to access to public information in the State of Mexico, 2009)

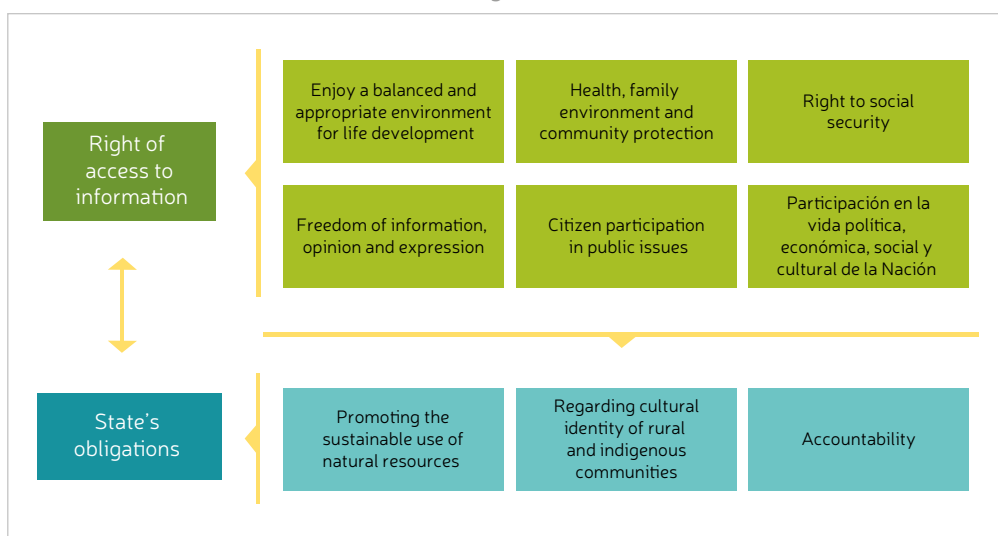
⁶ Visit: <https://www.defensoria.gob.pe/defensoria-del-pueblo-la-transparencia-y-el-acceso-a-la-informacion-publica-siguen-siendo-un-reto-en-el-peru/>



Urubamba Basin
Photo: DAR

It should be taken into account that the violation of the right of access to information makes the defense of other fundamental rights impossible, such as the right to life, a safe and balanced environment, health, physical integrity, citizen participation, prior consultation, among others. This is often to the detriment of the most vulnerable populations or those submitted to a historical disadvantage situation (DAR, 2017) (See Diagram 1)

DIAGRAM 1
Link between the right of access to information, other fundamental rights and State's obligations



Source: Own preparation.

Currently, regulations and institutionality regarding the access to information and transparency do not allow knowing the information on environmental management efficiently. This is evidenced by the difficult access to information on the right to use and discharge of water resources, implementation budget and guarantee provided for mine closure⁷, holders' responsibilities regarding environmental liabilities, current status and fines of sanctions imposed by environmental control authorities, etc.

In this regard, according to Alarco and Salazar (2019)⁸, the governance is one of the major challenges for AFP (at international level) due to the weakest access to information, transparency and public participation mechanisms in the process of project design, performance measurement, among others.

Although recommendations have been given from the civil society⁹ to strengthen transparency and right of access to information, both in the extractive and infrastructure sector regarding the environmental and social information, these latter ones continue to be weak, even more in investment issues.

3.1. Updating information on chinese investments

The private foreign investment in the country has stood out by its growth. The presence of Chinese investments has grown more with the Belt and Road Initiative¹⁰, in addition to the Free Trade Agreement (FTA) which was in effect since 2010 and currently, it is negotiating an upgrade thereof.

As of 2019, the State has conducted four rounds of negotiation on upgrading the China-Peru FTA. In light of that, indigenous organizations request, as a fundamental issue, to consider in this negotiation the opportunity to upgrade the FTA conditions by incorporating an environmental chapter that allow us to include measures aimed at the environmental protection as part of the business activities to be promoted.

It should be noted that 96.5 % of exports from our country to China are associated with natural resources, according to data of the Peruvian-Chinese Chamber of Commerce as of 2017, which are mainly part of the mining and fishing industries, as well as in the forest, oil and gas sectors, which are developed in zones of greatest biodiversity and vulnerability in our country (DAR & Alarco, 2019) (see Table 2).

7 Trusts as guarantee for Closure Mine Plans

8 (Public-private risks. Regulatory failures in the Public Private Partnerships and political recommendations for the region based on the Peruvian case, 2019)

9 i) Public Hearing of the Inter-American Commission on Human Rights (IACHR): Right of access to information and transparency in the environmental management, concession, monitoring and control of extractive activities in Latin America and the Caribbean, ii) Transparency Portals and Requests for Access to Information. 2013-2017 Diagnosis; iii) Regional Report on Transparency and Access to Information in Extractive Industries in Latin America and the Caribbean, among others.

10 Peru joined China's Belt and Road in 2019 upon the signature of the Memorandum of Understanding in Beijing.

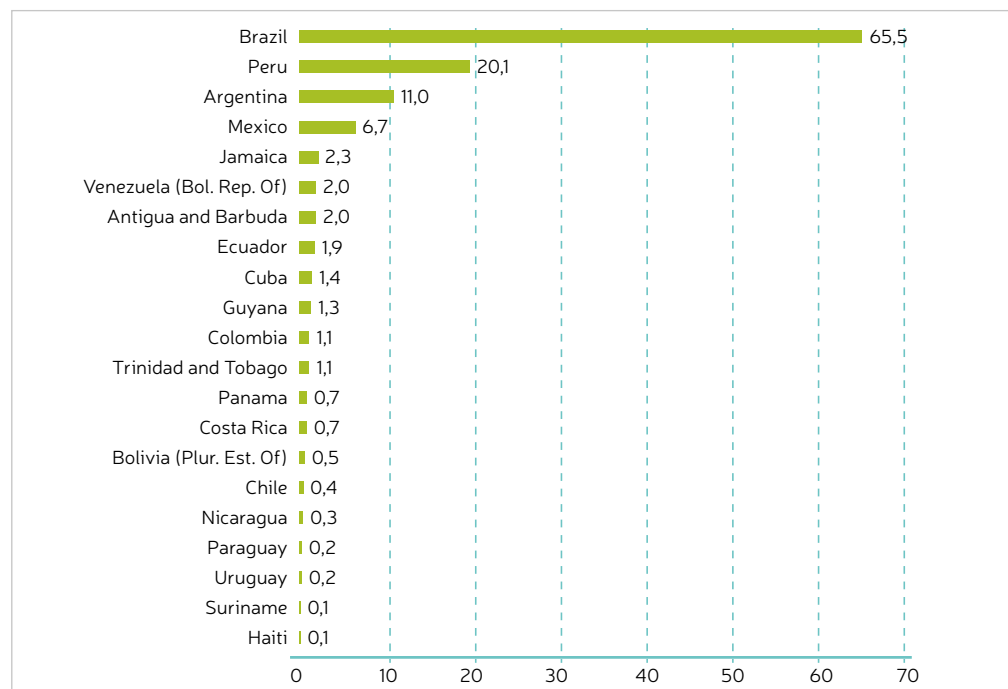
TABLE 2
China's cumulative direct investments in Peru 2006-2018 (US\$ millions)

Sector	Investment (US\$ millions)	Jobs created	Investment sharing (%)	Employee profit sharing (%)
Food and fishing	1,755	8,066	9.0	22.9
Consumer goods	2	276	0.0	0.8
Communications	4	23	0.0	0.1
Electricity	1,785	4,855	9.1	13.8
Hydrocarbons	3,253	419	16.6	1.2
Mining	12,351	17,547	63.1	49.9
Financial sector	327	809	1.7	2.3
Services	91	3,195	0.5	9.1b
Total	19,567	35,190	100	100

Source: (Alarco, China – Peru: disparities and challenges in the short and medium term)

As reported by the ambassador of the Asian nation in Peru, Liang Yu, Chinese investment reached 30,000 million dollars in our country in 2019 (Toscano, 2019), and Peru is one of the countries with more revenues from Chinese investments in Latin America (see Figure 1).

FIGURE 1
Latin America and the Caribbean (21 countries): estimate of foreign direct investment (FDI) inflows from China, per country of destination (2005 - October 2017) in billion dollars



Source: Economic Commission for Latin America and the Caribbean (ECLAC) according to Financial Times, fDi Markets and Bloomberg.

Note: The estimate includes the number of acquisitions and merging operations and announced projects.

In this context, it should be considered that Chinese investments in Latin America have generated criticism for their practices against environmental and labor rights, and against indigenous communities.

The evaluation for compliance with the principles by China contained in the Universal Declaration of Human Rights conducted by the United Nations within the framework of the Universal Periodic Review (UPR) shows that many Chinese companies' development and infrastructure projects were neither compatible with human rights nor respectful to the environment and with sustainable use of natural resources.

China underwent the UPR in 2018 (its third UPR process) and this has allowed us to prepare a list of recommendations for the Chinese government. The recommendations are based upon the reports received on cases of violations for the different complaints regarding investments of this country in the Amazon River Basin, which encompasses forced eviction actions, use of violence, contamination of water resources, soil contamination, among others (DAR & Alarco, 2019).

In light of that, China accepted 284 out of 346 recommendations for the defense of rights within the framework of its extractive and infrastructure projects, included among other things, to implement and respect its extraterritorial obligations, a warning that was taken from the report prepared by the Coordinator of Indigenous Organizations of the Amazon River Basin¹¹ (COICA).

Nevertheless, it should be considered that, in its previous second Universal Periodic Review in 2013, the Government of the People's Republic of China accepted 204 out of 252 recommendations made by 137 States, of which there was progress in relation to some accepted recommendations, but there was no progress in others and regressive measures have been even taken (Amnistía Internacional, 2018). In light of that, it is important to strengthen the information transparency mechanisms to achieve an efficient monitoring for a true progress and respect to rights, especially when considering that Chinese investments are concentrated in zones of high biodiversity and with presence of indigenous communities (DAR & Alarco, 2019). Some of these examples are projects such as the Amazon Waterway, Lot 58, Toromocho, Las Bambas, San Gabán Hydroelectric Power Plant (see Table 3).

¹¹ Visit: https://dar.org.pe/archivos/EPUchina_espanol.pdf

TABLE 3
Identification of some Chinese companies and areas of operation in the country

Chinese companies	Departments where the investment is developed
ENERGY AND MINES SECTOR	
China National Petroleum Corporation (CNPC)	Cusco and Ucayali
Bureau of Geophysical Prospecting (BGP)	Madre de Dios and Cusco
Sapet Development Peru Inc.	Piura and Madre de Dios
Chinese Consortium Hydro Global (EDP, Compañía Nacional Portuguesa and CTG, China Three Gorges Group).	Puno
Huallaga Holding Company Limited (China Three Gorges and Energías de Portugal)	Huánuco and Lima
Hyosung China	Piura
Mitsubishi Corporation (Tokyo, Japan)	Ancash, Piura and Moquegua
Shougang Corporation (Shougang Hierro Perú S.A.A)	Ica
Aluminum Corporation of China (Minera Chinalco Peru S.A.)	Junin
Minerals and Metals Group (MMG) China Minmetals Corp.	Apurímac Cajamarca
Guoxin International Investment Corporation	Apurímac
Citic Metal Co.	Apurímac
Minera Shouxin Perú S.A. (China Baiyin Nonferrous Group Co. Ltd (51%) and Shougang Hierro Perú S.A.A. (49 %))	Ica
Jinzha Mining Perú S.A. (part of the Zhongrong Xinda Group).	Arequipa
INFRASTRUCTURE SECTOR	
Consorcio Hidrovía Amazónica S.A. (COHIDRO), composed of SINOHYDRO – China and Construcción y Administración S.A. (CASA) – Peru.	Peruvian Amazonia
GMC Consortium (Engineering Solutions S.A.C., Satel Telecomunicaciones & Datos S.A.C. and Yangtze Optical Fibre and Cable Company (YOFC) - China)	Amazonas, Ica
China Communication Construction Company Limited	Ancash
Road and Bridge	Lima
Consorcio CCECC Perú (China Civil Engineering Construction corporation 90 % and Road Solutions E.I.R.L. 10 %)	Madre de Dios and Cusco
Consorcio Vial Selva: (China Harbour Engineering Company Limited and Corporación Jara y Chávez S.A.C.)	San Martín, Huánuco, Ancash

Own preparation

Generating new investments in the country is a step forward for the economic development and growth, provided that a mutual benefit is developed, rights are respected and there is a sustainable development in this relationship. A bad management and/or negotiations that do not include socio-environmental issues in a comprehensive manner and have a weak control and participation process often result in corruption actions, as well as socio-environmental impacts and violation of rights.

In view of the situation proposed, the undermentioned transparency and access to information mechanisms implemented in two Chinese investment projects are evaluated: i) Lot 58, hydrocarbon project that has been implemented and is in operation and ii) Amazon Waterway, infrastructure project that moved ahead to the evaluation process for the Environmental Impact Assessment, which the company itself desisted from it, although its contract is in effect. The selection of cases to be analyzed was based on i) its classification as “large-scale projects” by SENACE and ii) its location in sensitive areas.

3.2. Analyzing project cases: Lot 58 and Amazon Waterway project cases

It is required to know the specific characteristics of each project for evaluating the access to information for the selected cases. In light of that, such information is shown in the following table, under a structure to allow identifying the need and importance of the information transparency.

TABLE 4
Lot 58 and Amazon Waterway project descriptions

	Lot 58	Amazon Waterway
Characteristics	<ul style="list-style-type: none"> • Located in the lower Urubamba zone, Urubamba basin, Department of Cusco. • Comprises hydrocarbons exploration and exploitation activities. • Its objective is the commercial gas exploitation in the Urubamba, Picha, Taini and Paratori deposits of the lot. • Has gone through different activities supported in different environmental assessments, which started in 2007. • Has the Global Environmental Certification of the Detailed Environmental Impact Assessment of the “Development Project – Lot 58” for the exploitation activity. 	<ul style="list-style-type: none"> • Project located in 4 rivers of the Peruvian Amazonia: Huallaga, Marañón, Ucayali and Amazonas. • Aims at improving the seaworthiness conditions in a stretch that covers 2,687 km and 4 rivers of the Peruvian Amazonia: the Huallaga, Marañón, Ucayali and Amazonas for cargo and passenger transportation. • The Project has three components: (i) provide information on water levels by installing a system of gauging stations; (ii) provide information for GPS navigation and (iii) provide a ship channel by removing tree logs (stumps) and dredging works to improve the ship channel (DAR, 2020).

	Lot 58	Amazon Waterway
Holders	<ul style="list-style-type: none"> China National Petroleum Corporation (CNPC), which purchased shares of the subsidiary Petrobras Energía Perú 	<ul style="list-style-type: none"> Consortio Hidrovía Amazónica S.A. (COHIDRO), composed of the following companies: i) SINOHYDRO, currently belongs to the Power Construction of China Group and ii) Construcción y Administración S.A. (CASA) – Peru.
Location	<ul style="list-style-type: none"> The project superposes on the territories of the Tangoshiari, Carpintero-kirigueti, Kochiri, Camisea, Puerto Huallana, Mayapo, Ticumpina, Camaná, Timpía, Chirumbia, Cashiriari, Segakiato, Shivankoreni and Poyentimari indigenous communities, belonging to the Machiguenga indigenous people. 	<ul style="list-style-type: none"> The area of the project covers Loreto and Ucayali regions in a zone of high biodiversity, where 424 indigenous communities are, belonging to 14 indigenous peoples: Achuar, Asháninka, Awajún, Bora, Kapanawa, Kichwa, Kukama-kukamiria, Murui-muinani, Shawi, Shipibo – Konibo, Tikuna, Urarina, Yagua and Yine.
Expected impacts	<ul style="list-style-type: none"> Altering the habitat and keeping wildlife away from the Buffer Zone of the Machiguenga Communal Reserve, which is considered as a protected natural area of direct use and the Megantoni National Sanctuary, Otishi National Park and Ashaninka Communal Reserve. Destruction of resource zones used by the local population, habitat fragmentation and destruction of vegetation and soil quality of the influence are of the project. 	<ul style="list-style-type: none"> The project would create dredging activities in the Amazonian rivers, resulting in damage to the aquatic ecosystems, as well as impacting on the worldview, food safety and collective rights of indigenous peoples.
Prior consultation process	<ul style="list-style-type: none"> No prior consultation process has been made. 	<ul style="list-style-type: none"> Yes, the prior consultation of the contract and Terms of Reference for the Environmental Impact Assessment of the project in 2015 was made.

	Lot 58	Amazon Waterway
Current status	<ul style="list-style-type: none"> • It is in the exploitation stage by contract. Nevertheless, exploration activities have been performing. • The project has no the operating forest clearing permit approved in the Global Environmental Certification; therefore, it is in a legal proceeding to be approved by SENACE. Nevertheless, it has obtained the operating forest clearing permit for “2D Seismic Prospecting” project. • Has a new schedule for 2D seismic activities approved, which has been postponed upon request of the holder itself until 2021. 	<ul style="list-style-type: none"> • In 2019, COHIDRO desisted from the evaluation process of the EIA started in 2018, due to the lack of ecotoxicology studies; nevertheless, the contract is still in effect. • Through Ministerial Resolution (M.R.) No. 0085-2020-MTC, the Ministry of Development and Social Inclusion (MIDIS) was included in the Multi-sectoral Working Group¹² of the Amazon Waterway. • COHIDRO has submitted its 2020 Business Plan¹³ on the Amazon Waterway Project, where it is provided that the pre-operational activities will start this 2021. • COHIDRO submitted a proposal for addendum No. 1 to the contract of the project¹⁴, which was declared unfeasible by the MTC¹⁵.

Own preparation

3.2.1. Transparency and access to information mechanisms

3.2.1.1. Lot 58 Case

Lot 58 has an area of 3401.34 km² and is located in the lower Urubamba zone, in the Amazonian zone of the Department of Cusco. It is part of the Urubamba’s energy complex along with the hydrocarbon lots as those of the Camisea project.

The negotiation for Lot 58’s hydrocarbons exploration and exploitation finished in 2005 with the contract approval¹⁶ for exploration and exploitation license between the Government and Petrobras Energía Perú S.A by Supreme Decree (S.D.) No. 17-2005-EM, which granted seven years for the exploration stage (which has been extended for three more years) and for exploitation until completing a period of 40 years after the exploration stage. Until now, the Peruvian Government does

12 Composed of MTC, which presides over it, Presidency of the Council of Ministers (PCM), Ministry of Agriculture (MINAGRI), Ministry of Environment (MINAM), MINCU, Ministry of Education (MINEDU), Ministry of Energy and Mines (MINEM), Ministry of Health (MINS), Ministry of Production (PRODUCE), Ministry of Labor and Employment Promotion (MTPE), Ministry of Housing, Construction and Sanitation (MVCS), Regional Government of Ucayali, Regional Government of Loreto, Regional coordinator of indigenous peoples of San Lorenzo (CORPI-SL), Regional Organization of Indigenous Peoples of the East (ORPIO) and AIDSESEP Ucayali Regional Organization (ORAU).

13 Business Plans are annual meetings where concession companies in port, airport, waterway, road network and railroad infrastructure inform the OSITRAN’s officials of the works performed in their respective concessions. In accordance with Article 25 of the OSITRAN’s General Regulation of Supervision, approved by Board of Directors Resolution No. 024-2011-CD-OSITRAN.

14 Visit: <https://cdn.www.gob.pe/uploads/document/file/1253031/Propuesta%20de%20Adenda%201%20Hidrov%C3%ADa%20Amaz%C3%B3nica.pdf>

15 Ver: <https://dar.org.pe/ositran-declara-inviable-intento-de-aumento-de-dragado-en-rios-por-hidrovia-amazonica/>

16 Visit: <http://www.perupetro.com.pe/relaciondecontratos/relacion.jsp?token=98>

not start a prior consultation process in the indigenous peoples that live in this zone, within the framework of the project, despite the fact that Peru has signed the ILO-Convention 169.

In light of that, the Machiguenga Council of the Urubamba River indigenous organization (COMARU) sent a letter¹⁷ requesting to declare the Supreme Decree No. 014-2005-EM null and void, which approved the License Contract for Hydrocarbons Exploitation and Exploration that violates the right to prior consultation of the indigenous peoples, failing to comply with the ILO-Convention 169.

Petrobras made the following actions, in order to perform the resource exploratory stage:

- Environmental and Social Impact Assessment (ESIA) of the 2D-3D seismic prospecting and exploratory drilling project.
- Environmental Management Plan (EMP) for treatment and final disposal of debris and drill cuttings.

In 2014, Petrobras sold shares of its subsidiary Petrobras Energia Perú to China National Petroleum Corporation (CNPC). In light of that, Lot 58 changed the company name Petrobras to CNPC Perú S.A. Nevertheless, the 2005 license contract for exploration and exploitation remained and the executor was changed by S.D. No. 019-2014-EM.¹⁸

China National Petroleum Corporation (CNPC) is a state-owned fuel producing company and the largest integrated oil and gas company in the People's Republic of China, but according to its track record, it has been more than once in the blacklist of polluting companies of its country of origin, since it would have violated a number of environmental regulations during the inspections conducted in 2014¹⁹ (David Stanway and Judy Hua).

Regarding Lot 58, CNPC developed and submitted a number of environmental management instruments, in order to continue with exploration and exploitation activities:

- EIA for prospecting project covering 782, 41 Km of 2D seismic lines and drilling up to 12 exploratory wells.
- EIAA for prospecting projects covering 782, 41 Km of 2D seismic lines and drilling up to 12 exploratory wells.
- TSR for “2D Seismic Prospecting Expansion Project - Lot 5”.
- La Peruanita Base camp Abandonment Plan.
- TSR for the “Changing location of the Urubamba-3 exploratory well to Lot 58” project.
- EIA for exploitation of 10 wells from four structures: Urubamba, Pichi, Tani and Paroni.

17 Visit: <https://dar.org.pe/wp-content/uploads/2020/10/Solicitud-Audiencia-Consulta-CIDH-2020.pdf>

18 Visit: http://spijlibre.minjus.gob.pe/normativa_libre/main.asp

19 See: (Stanway & Hua, n.d.)

- TSR for the “Changing location of the 2D Seismic Project - Lot 58” project.
- TSR for the “Construction, Operation and Abandonment of Cells for Final Disposal of Organic Waste in La Peruanita Base Camp - Lot 58”.

In 2018, SENACE granted the Environmental Certification for the “Lot 58 Development Project” by Directorial Resolution No. 00041-2018-SENACE-PE/DEAR, which objective is the commercial gas exploitation in the Urubamba, Picha, Taini and Paratori deposits of Lot 58, where ten development wells will be drilled/prepared for gas and condensate extraction, as well as the construction and operation of flowlines and production facilities for collection, process, transfer and delivery of natural gas and condensate production to the final users. On the other hand, the National Service of Natural Areas Protected by the State (SERNANP) provided access to the Machiguenga Communal Reserve by Chief Resolution (C.R.) No. 003/2019-SERNANP-JRCM, to conduct the evaluation of natural resources and environment for six months (Suarez & Saavedra, 2019).

It should be remembered that, since 2015, MINEM transfers functions to SENACE to include the review and approval of the Detailed Environmental Impact Assessments, the respective updates, changes, technical support reports, requests for classification and approval of Terms of Reference, support in the preparation of Baseline, Citizen Participation Plan and other related acts or procedures. Although SENACE currently reveals all information submitted, evaluation process, approval and rejection of the environmental instrument through its platforms, according to its functions, MINEM must do the same with the environmental management instruments that were and remained under its responsibility.²⁰

A. Evaluating transparency portals

Considering the importance of access to information on investments and shares that may affect the social, economic and environmental development, the State must ensure that the access to it be easy and may be obtained in a timely manner. In addition, all information must be complete and updated, so that it may be used efficiently.

Additionally, in accordance with Article 8 of the Regulation of Law on Transparency and Access to Public Information that provides the characteristics of all information published in the transparency portal of each institution, it should be highlighted that i) all information will be written and submitted, taking into account the need of information by the users for the services provided by the entity and ii) it must be true, complete and updated, under the responsibility of the official from the body or organic unity providing the information and the official responsible for updating the Transparency Portal.

Considering these characteristics, in order to be clear about the analysis contained in the report, the criteria used to evaluate the access and information transparency mechanisms are specified:

²⁰ Visit: <https://busquedas.elperuano.pe/normaslegales/aprueban-culminacion-del-proceso-de-transferencia-de-funcion-resolucion-ministerial-no-328-2015-minam-1316356-1/>

- **Updated information:** the information submitted or published must contain all binding provisions that have been developed in the course of time to date.
- **Complete information:** the information submitted or published must have the entire contents of binding provisions that have been developed in the course of time to date.
- **Accurate information:** the information submitted must respond to the information requested clearly.
- **Intercultural approach information:** the information submitted or published must be written and submitted, taking into account the need of information by the users, implementing the differential treatment to indigenous or original peoples.

According to the above, regarding the Lot 58 case, transparency mechanisms developed in the portals of three institutions (OEFA, MINEM and SENACE) are analyzed, focusing on how transparency of environmental management and control instruments is. Three quality criteria are evaluated: (i) whether the information of portals is easily accessible (how difficult it is to find information in the portals will be evaluated), (ii) whether it is complete and updated and (iii) whether the information includes an intercultural approach, considering that it must be accessible both in its scope and comprehension by the 55 indigenous or original peoples (51 of them located in the Amazonia and four in the Andean region), who are mainly affected by the execution of different projects (see Table 5).

In this evaluation, it is important to mention the change made by the State in 2018, in which all portals of the ministries migrated to a single platform called *gob.pe*. This is part of the promotion of a digital government, focusing the contents of new portals on information regarding procedures and services, in order to make information management easier. Nevertheless, the information provided therein: news, legal regulations, reports, publications, campaigns and indicators is limited (DAR and CooperAcción, 2019) and key information that was in the previous websites is reduced.

DAR made this setback in the information transparency evident, due to the risk of a historical information loss, if the link moves to the previous portal as done by some institutions. For example, in the hydrocarbons sector, the direct link to bodies and line managements under the public entities that had valuable information such as Environmental Impact Assessments (EIAs), Technical Opinions, Participation Workshops, Hearings, among others, kept by the Directorate General of Energy and Environmental Affairs of the MINEM would be lost; information that is less visible now since it is only in the previous portal. In light of that, through Letter 385-2018-DAR/DE²¹, DAR gave recommendations to the PCM, in order that a cross-sectoral work is implemented in the process of changes in the websites, with the participation of the National Transparency Authority and other sectors, ensuring that the new platform does not lose the original information or giving the sectors the opportunity to maintain the previous portals.

²¹ Visit: <https://dar.org.pe/informacion-publica-seria-menos-accesible-en-nueva-plataforma-gob-pe/>

TABLE 5
Evaluating information transparency on Lot 58 - Institutional portals

Institution	Information to be analyzed	EVALUATION		
		Accessibility (easy/regular/difficult)	Complete and Updated	Intercultural (Differential treatment to indigenous peoples)
MINEM	Environmental management instruments	<p>Regular difficulty to access</p> <p>The existence of two institutional websites that are not interconnected is confusing when looking for information. Even more when the current website gob.pe has no information required in the socio-environmental context.</p>	<p>Updated: YES</p> <p>The information published encompasses all environmental management instruments approved by the Ministry.</p> <p>Complete: NO</p> <p>The contents of environmental management instruments previously approved by the institution are not attached.</p>	<p>Intercultural: NO</p> <p>None of the websites include a differential treatment or consider options such as linguistic diversity.</p>
OEFA	Monitoring, supervision and control files	<p>Regular difficulty to access</p> <p>Website duplicity is a problem, your pages have no interoperability mechanisms. In addition, the structure of its websites makes it difficult to understand how to find information.</p>	<p>Complete: NO</p> <p>Report or resolutions attached to all respective annexes are not submitted.</p> <p>Updated: NO.</p> <p>The website shows update dates that do not match current dates (see Table 8).</p>	<p>Intercultural: NO</p> <p>None of the websites include a differential treatment or consider options such as linguistic diversity.</p>
SENACE	Environmental management instruments	<p>Easy to regular access</p> <p>Although there is website duplicity, these websites have interoperability mechanisms.</p> <p>Nevertheless, it should be noted that it has disaggregated information of the project in different items.</p>	<p>Complete: NO</p> <p>Technical opinions regarding the approved EIA as that of National Forest and Wildlife Service (SERFOR) are not attached.</p> <p>Updated: NO</p> <p>An item has the current status of the Environmental Management Reports (EMRs) out-of-date, and it may cause confusion.</p>	<p>Intercultural: NO</p> <p>None of the websites include a differential treatment or consider options such as linguistic diversity.</p>

Own preparation

a) Analyzing the transparency mechanism of the MINEM Portal:

It has two institutional websites: i) The only platform of the Peruvian State <https://www.gob.pe/minem> and ii) The institutional portal of the MINEM http://www.minem.gob.pe/_sector.php?idSector=22. The current platform, that is, the only platform of the State, has limited information (news, legal regulations,

reports and publications). This observation has been made by the civil society since the platform creation, without any further improvement.

On the other hand, in the institutional portal of the MINEM (http://www.minem.gob.pe/_sector.php?idSector=22), the “Environmental Affairs on Hydrocarbons” section is found. There is a number of information options to be submitted therein, including “Instrumentos de gestión ambiental resueltos (*Environmental management instruments addressed*)” and “Estudios en evaluación (*Studies under evaluation*)”.

In “Instrumentos de gestión ambiental resueltos”, when verifying the information on Lot 58, the whole list of approved environmental management instruments is shown, where the document entry date, file number and approval resolution of each instrument are detailed. The structure in which the information is presented is appropriate, easy to understand and ordered. Nevertheless, in this website, the resolution and technical support report can be only shown, but not the contents of environmental management instruments, that is, the information presented is not complete. On the other hand, this website has no an intercultural approach, since cultural diversity of potential users that may require the information is not considered (see Figure 2).

FIGURE 2
Transparency Portal - Environmental management instruments addressed - Lot 58

Nro.	Fecha de Ingreso MEM	N° de Expediente	Nombre de la Empresa	Tipo de Documento	Sub Sector	Nombre del Proyecto	Unidad	Región	Provincia	Distrito	Resolución
1	04/05/2016	2600892	CNPC PERU S.A.	PC	HIDROCARBUROS	PA DEL CAMPAMENTO BASE LA PERUANITA -LOTE 58	LOTE 58	CUSCO	LA CONVENCIÓN	ECHARATE	279-2017-MEM-AAE
2	09/11/2015	2551069	CNPC PERU S.A.	EIA	HIDROCARBUROS	MODIFICACION DEL EIA DEL PROYECTO DE PROSPECCION DE 782.41 KM DE LINEAS SISMICAS Y PERFORACION DE HASTA 12 POZOS EXPLORATORIOS PARA LA UBICACION BASE URUBAMBA	LOTE 58	CUSCO	LA CONVENCIÓN	ECHARATE	297-2016-MEM-AAE
3	04/09/2015	2531955	CNPC PERU S.A.	ITS	HIDROCARBUROS	ITS PARA LA MODIFICACION DE LA UBICACION DE 02 POZOS EXPLORATORIOS Y LA DISPOSICION DE RECORTES EN LA LOCACION URUBAMBA 1X - LOTE 58	LOTE 58	CUSCO	LA CONVENCIÓN	ECHARATE	066-2016-MEM-AAE
4	13/08/2015	2526631	CNPC PERU S.A.	PPC	HIDROCARBUROS	PPC DEL MEJA PROSPECCION DE 782.41 KM LINEAS SISMICAS 2D Y PERFORACION 12 POZOS- BASE URUBAMBA	LOTE 58	CUSCO	LA CONVENCIÓN	ECHARATE	0F-1771-2015-MEM-AAE
5	28/03/2014	2379202	CNPC PERU S.A.	EIA	HIDROCARBUROS	EIA DEL PROYECTO DE PROSPECCION DE 782.41 KM DE LINEAS SISMICAS 2D Y PERFORACION DE HASTA 12 POZOS EXPLORATORIOS LOTE 58 - CUSCO	LOTE 58	CUSCO	LA CONVENCIÓN	ECHARATE	119-2015-MEM-AAE
6	28/08/2012	2224758	CNPC PERU S.A.	PPC	HIDROCARBUROS	PPC. EIASD. PARA EL PROYECTO DE PROSPECCION DE 782.41 KM DE LINEAS SISMICAS 2D Y PERFORACION DE HASTA 12 POZOS	LOTE 58	CUSCO	LA CONVENCIÓN	ECHARATE	0F-2184-2012-MEM-AAE
7	09/07/2012	2210786	CNPC PERU S.A.	PPC	HIDROCARBUROS	TDR EIA SD PARA EL PROYECTO DE PROSPECCION DE 782.41 KM DE LINEA SISMICA 2D Y PERFORACION DE HASTA 12 POZOS	LOTE 58	CUSCO	LA CONVENCIÓN	ECHARATE	0F-1615-2012-MEM-AAE
8	02/11/2010	2039115	CNPC PERU S.A.	PMA	HIDROCARBUROS	PMA. INCREMENTO DE AREA SISMICA 3D LOTE 58. LA CONVENCIÓN - CUSCO	LOTE 58	CUSCO	LA CONVENCIÓN	ECHARATE	106-2011-MEM-AAE
9	22/09/2009	1924321	CNPC PERU S.A.	PMA	HIDROCARBUROS	PMA TRATAMIENTO Y DISPOSICION FINAL DE RIPIOS Y RECORTES DE PERFORACION- LOTE 58	LOTE 58	CUSCO	LA CONVENCIÓN	ECHARATE	057-2010-MEM-AAE
10	11/05/2007	1689341	CNPC PERU S.A.	EIA	HIDROCARBUROS	ESTUDIO DE IMPACTO AMBIENTAL Y SOCIAL DEL PROYECTO DE PROSPECCION SISMICA 2D - 3D Y PERFORACION EXPLORATORIA LOTE 58	LOTE 58	CUSCO	LA CONVENCIÓN	ECHARATE	920-2007-MEM-AAE

Source: Institutional Portal of the MINEM (Date: October 20, 2020) (<http://extranet.minem.gob.pe/DGAEE/expedientes>)

On the other hand, in “Environmental Management Instruments - Under evaluation”, the Environmental Plan of Lot 58, which was submitted in May 2020 and without an approval resolution obtained, is shown in the item of the detailed Environmental Plan (see Figure 3).

The preparation of this detailed Environmental Plan was submitted in order to invoke the first temporary complementary provision of the S.D. No. 023-2018-EM, which orders the following:

The Holders of the Hydrocarbons Activities can, on an exceptional basis and only once, submit a Detailed Environmental Plan (DEP) in the following assumptions: a) (...) and b) In case of hydrocarbons activities, which have not been included in the previous assumption, those with Environmental Management Instrument and have made an expansion and/or changes to the activity, without having previously made the respective amendment procedure (...) the Holders of the Hydrocarbons Activities that aim to invoke this environmental adaptation shall inform the Competent Environmental Authority of such decision, attaching information on the components built (...).

Due to the exploratory activities in the Picha 2X and Taini 3X sites, which were performed as part of the EIA for “2D-3D Seismic Prospecting and Exploratory Drilling”, these were performed with changes to the displacement of coordinates approved for both wells and sites, without any amendment to the environmental management instrument; CNPC invoked such provision mentioned in the previous paragraph through Letters CNPC-HSSE-397-2018 and CNPC-HSSE-399-2018, and this shows the degree of flexibility in the environmental regulations, which may cause serious impacts.

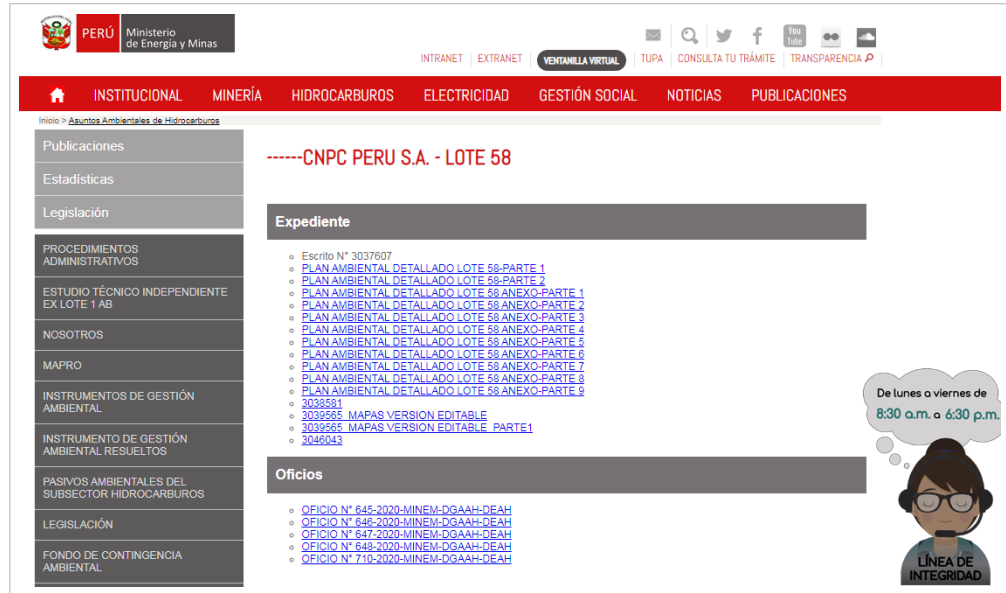
On the other hand, it is demonstrated that both institutional websites of the MINEM lack an interoperability mechanism between them, which may cause

Urubamba Basin
Photo: DAR



confusion and limit the access to information to persons who are not familiarized with these portals.

FIGURE 3
Transparency Portal - Studies under evaluation - LOT 58



Source: Institutional Portal of the MINEM, on October 18, 2020
(http://www.minem.gob.pe/_area.php?idSector=22&idArea=222&idTitular=9758&idMenu=sub8879&idCateg=1885)

b) Analyzing the transparency mechanism of the SENACE Portal:

It has two institutional websites: i) The only platform of the Peruvian State <https://www.gob.pe/senace> and ii) The institutional portal of the SENACE <https://www.senace.gob.pe/portada/>. Unlike the case of MINEM, both have an interoperability mechanism between them. Both websites have access to address the EVA digital platform (enabled as of August 2018) and the former Platform of the Single Window of SENACE.

In addition, both platforms address a section called “Grandes Proyectos en el sector - Large Projects in the sector”, which publishes specific information on the evaluation process of the Lot 58 project of the company CNPC S.A. This section includes a short description of the project, the evaluation status, aide-mémoire and environmental certification data, nevertheless, the information on the environmental certification process is incomplete, because it has no reports of the technical opinions from different institutions.

furthermore, the information in this section is disaggregated, since this section only shows the development of the Environmental Impact Assessment of the project, but it does not display other instruments such as the last TSR²² approved²³ in 2019, which can be shown in the EVA Platform – Citizen Consultation.

22 TSR for change of location of the LOT 58 seismic project.

23 Through Directorial Resolution No. 0137-2019-SENACE-PE/DEAR.

FIGURE 4
EVA Platform - CITIZEN CONSULTATION

Source: <https://eva.senace.gob.pe:8443/consultaCiudadano/#/> (Date: October 20, 2020)

Likewise, its outdated institutional portal in the item “Consulta ciudadana de proyectos - Citizen Consultation for projects” may cause confusion, since current information on the status of the environmental management instruments is not obtained in the search results, for example, in the EIA for the Lot 58 Development Project, it is indicated that it is in under evaluation process, when it has been already approved by Directorial Resolution No. 00041-2018-SENACE-PE/DEAR (see Figure 5)

FIGURE 5
Search result in the institutional website of SENACE

RESULTADO DE LA BÚSQEDA									
Total de Registros: 4									
Empresa	Ruc	Tipo de Proyecto	Proyecto	Estado	Expediente	Fec. Exp.	Tipo de Estudio.	Actividad	Acción.
CNPC PERU S.A.	20356476434	Otros Proyectos del Subsector Hidrocarburos	CELDA DE DISPOSICIÓN DE RESIDUOS ORGÁNICOS EN EL CAMPAMENTO BASE LA PERUANITA - LOTE 58	EN EVALUACIÓN	H-ITS-00170-2018	11/07/2018	Informe Técnico Sustentatorio	HIDROCARBUROS	
CNPC PERU S.A.	20356476434	Explotación de Hidrocarburos (Desarrollo y Facilidades de Producción)	PROYECTO DE DESARROLLO DEL LOTE 58	EN EVALUACIÓN	06982-2017	22/12/2017	Estudio de Impacto Ambiental Detallado	HIDROCARBUROS	
CNPC PERU S.A.	20356476434	Exploración de Hidrocarburos (Perforación de pozos)	MODIFICACIÓN DE LA UBICACIÓN DEL POZO EXPLORATORIO URUBAMBA-3 EN EL LOTE 58	EN EVALUACIÓN	05889-2017	08/11/2017	Informe Técnico Sustentatorio	HIDROCARBUROS	
CNPC PERU S.A.	20356476434	Exploración Sísmica (2D-3D)	AMPLIACIÓN DEL PROYECTO DE PROSECCIÓN SISMICA 2D EN EL LOTE 58	EN EVALUACIÓN	05782-2017	05/11/2017	Informe Técnico Sustentatorio	HIDROCARBUROS	

Source: Institutional Portal of SENACE (Date: January 12, 2021).
<https://enlinea.senace.gob.pe/VentanillaExt/consultaproyecto/listar>

On the other hand, an aspect to be strengthened by the institution is the coordination and how to make the granting process and current status of the environmental permits transparent, which includes the Global Environmental Certification, a key element in the environmental management and project implementation that must follow procedures and established principles. An example of this is the approval of the Lot 58 forest clearing authorization that must be requested and evaluated in accordance with the environmental regulations, and show its process so as not to violate indigenous peoples' rights.

Regarding the forest clearing authorization, the regulations specify the following:

Forest and Wildlife Law LAW No. 29763	Regulation for Forest Management S.D. No. 018-2015-MINAGRI
<p>Article 36. Forest clearing authorization</p> <p>Prior authorization of SERFOR or the respective regional forest and wildlife authority is required for forest clearing, according to the level of environmental assessment required for each case, in accordance with the National Environmental Impact Assessment System and as laid down in the regulation of this Law.</p> <p>If these forest clearings could affect rural and indigenous communities, the right to prior consultation of the ILO-Convention 169 governs.</p> <p>Forest clearing is not permitted in land reserves for indigenous peoples in situation of isolation or initial contact.</p>	<p>Article 128.- Forest Clearing and Prior Consultation²⁴</p> <p>SERFOR and the Regional Forest and Wildlife Authorities (ARFFS) respect the collective rights of indigenous communities, rural communities and indigenous or original peoples, in accordance with Law No. 29785, Law on the Right to Prior Consultation of Indigenous or Original Peoples and its Regulation, if forest clearing could affect indigenous peoples.</p> <p>When forest clearing serves as a complementary measure, the Twelfth Complementary, Temporary and Final Provision of the Regulation of the aforementioned Law, which was approved by Supreme Decree No. 001-2012-MC, will govern.</p> <p>SERFOR approves, in coordination with the Ministry of Culture and Ministry of Justice and Human Rights, the guidelines for forest clearing, including the verification of compliance with the prior consultation process, where applicable.</p>

When analyzing the areas of destruction contained in the EIA of the Lot 58 Development Project for the forest clearing process at global level, it is shown that the buffer zone (BZ) of the Machiguenga Communal Reserve and area of the same reserve (see Table 6) are affected, and it may have impacts on the Tangoshiari, Carpintero-kirigueti, Kochiri, Camisea, Puerto Huallana, Mayapo, Ticumpina, Camaná, Timpía, Chirumbia, Cashiriari, Segakiato, Shivankoreni and Poyentimari indigenous communities living around the reserve; therefore, the prior consultation process is mandatory, which has not been implemented to date.

²⁴ This article applies the Fifteenth Complementary, Temporary and Final Provision of the Regulation of Law on Prior Consultation, which was approved by Supreme Decree No. 001-2012-MC, where it is ordered that, in those cases related to infrastructure construction and maintenance in health and education matters, as well as the required for the provision of public services, prior consultation is not applied. Nevertheless, this provision was declared null and void recently upon a sentence; therefore, it was not considered in the table shown.

Visit: <https://dar.org.pe/corte-suprema-anula-disposicion-que-recortaba-derecho-a-consulta-previa/>

TABLE 6
Intervention area and forest clearing of the project, inside and outside the Buffer Zone of the RCM

Construction Stage					
Description		Area outside the RCM BZ (Ha)	Area inside the RCM BZ (Ha)	Total	
Area with prior approval (Ha)	CNPC EMRs		39,61	18,61	58,22
*New Intervention Area for EIA (Ha)	Area considered for forest clearing	Resources and fixed surfaces	109,40	14,34	123,74
		Flow line	28,64	116,93	145,57
	New area with prior forest clearing authorization		0,01	0,00	0,01
	To be used as transporting extraction material		6,85	0,50	7,35
	Superposed with water bodies (Picha river and Urubamba river) and Malvinas Plant		2,92	0,23	3,15
Total intervention area of the project (Ha)		187,43	150,61	338,04	
Percentage (%)		55,45%	44,55%	100%	
Total forest clearing area (Ha)		138,04	131,27	269,31	

Source: (SENACE, 2018)

It should be noted that, until now, CNPC has a pending authorization of two operating forest clearing permits (TH7) for the LOT 58 unit: (i) Forest Clearing Authorization at global level through the Global Environmental Certification and (ii) Forest Clearing Authorization for the Urubamba-3 Site, and a third request (iii) the Forest Clearing Authorization at 2D Seismic Prospecting - Lot 58 project level has been recently approved.

Global operating forest clearing permit.

Regarding the forest clearing authorization at global level, which is part of the environmental permits of the EIA approved in 2018, it is indicated that this one has not been included in the approval of the Global Environmental Certification. SENACE documented in its Report No. 00228-2018-SENACE-PE/DEAR, that this omission was due to the lack of technical opinion of SERFOR:

On the issuance date of this report, SERFOR has not issued its technical report related to the TH7 (Forest Clearing Authorization); therefore, SENACE shall continue with the evaluation process of the EIA-d, excluding the aforementioned operating permit, without prejudice to the right of CNPC Perú S.A. to process it at SERFOR, in accordance with the number 45.8 of Article 45 of the IntegrAmbiente Regulation.

Nevertheless, this decision seems to have more an underlying reason, pending between the confusion of responsibilities on the non-implementation of prior consultation to be developed in accordance with Article 36 of Forest and Wildlife Law, Law No. 29763.



Urubamba Basin
Photo: DAR

MINCU and SENACE noticed the non-implementation of prior consultation for forest clearing authorization in the EIA evaluation. In light that, CNPC specified the following:

(...) as part of the Forest Clearing Authorization (TH-07) process, the prior consultation will be made to communities of the influence area in the Workshop upon presentation of the EIA-d. In this regard, it is indicated that the prior consultation is governed by its own specific rules; therefore, it must not be made during an Informational Workshop of the EIA-d. In addition, the main objective of informational workshops and public hearings related to the EIAs is defined in Article 13 of the M.R. No. 571-2008-MEM/DM. Therefore, another procedure with different purposes cannot be linked.

In accordance with the Report No. 00228-2018-SENACE-PE/DEAR, it was concluded that the observation has not been remedied and that SENACE is responsible for analyzing the appropriateness or not to make a prior consultation process, in accordance with Law No. 29785 and its Regulation.

In light of that, in the last-mentioned report, it is understood that a final opinion has not been given regarding this issue and the submission of this report to the Directorate General of Rights of Indigenous Peoples of the Office of the Deputy Minister of Intercultural Affairs is defined as a necessary step for its information and related purposes.

It should be noted that finally SERFOR issued its Technical Report No. 0655-2018-MINAGRI-SERFOR/DG, which gives a favorable opinion to the EIA and the Forest Clearing Authorization request, requesting to take into account the legal considerations in the prior consultation, in the event that indigenous communities are affected.

In light of that, in 2019 CNPC submitted a Contentious-Administrative Action (CAA) to the Judiciary against SENACE for the non-approval of Forest Clearing Authorization at global level, which proceeding continues.

Forest clearing authorization at 2D Seismic Prospecting project

Regarding the forest clearing Authorization at 2D Seismic Prospecting - Lot 58 project level, it is specified that this already has the approval of SERFOR, because the Forest Clearing Authorization was granted at the end of 2019, under Code No. AUT-DES-2019-22 for the “2D Seismic Prospecting - Lot 58 project” for four months, through the Resolution of the Directorate General No. 591-2019-MINAGRI-SERFOR-DGGSPFFS²⁵. It is important to highlight that this Resolution determined in its Article 2 that, before granting the Forest Clearing Authorization, the prior consultation process shall be made:

Article 2: The Directorate General of Energy and Environmental Affairs of the Ministry of Energy and Mines (...) shall carry out the prior consultation process before in the area matter in approval of the Environmental Impact Assessment of the project (...).

In light of that, the General Office for Social Management of the MINEM, through report No. 017-2019-MINEM/OGGS/OGDPC/AOC, stated the following: 1) the activities performed in Lot 58 between 2006 and 2007 are consistent with the provisions of the ILO-Convention 169 and 2) it is indicated that the measure to be referred to for the performance of exploration and exploitation activities is the Supreme Decree that approves the signature of contracts for the exploration and exploitation of oil and gas lots, in accordance with M.R. No. 350-MEM-DM²⁶ of 2012, requesting to confirm the forest clearing authorization granted.

Finally, in January 2020, through Resolution No. 021-2020-MINAGRI-SERFOR-DGGSPFFS, SERFOR, taking into account the arguments set out in the previous paragraph, maintained the act of forest clearing authorization of 83.4 hectares, declaring Article 2 null and void, which determines the authorization for the prior consultation implementation (see Table 7).

²⁵ Regulations that are not published in any institutional portal.

²⁶ Ministerial Resolution for the Energy Sector (Electricity and Hydrocarbons) that approves the administrative procedures where the prior consultation process must be made; an occasion on which it will be made and in charge of the Directorate.

Visit: https://minem.gob.pe/_legislacionM.php?idSector=6&idLegislacion=7088#:~:text=Resoluci%C3%B3n%20Ministerial%20para%20el%20Sub,y%20la%20Direcci%C3%B3n%20a%20carga.

TABLE 7
Process implemented for the authorization of operating forest clearing - Lot 58 permit

Forest Clearing Authorization requested	Granting authorization	Process
Forest clearing authorization at global level through the Global Environmental Certification	No	<ul style="list-style-type: none"> • SERFOR, through Technical Report No. 0655-2018-MINAGRI-SERFOR/DG, gives a favorable opinion to the EIA and the Forest Clearing Authorization request. Nevertheless, it is required to take into account legal considerations in the prior consultation, in the event that indigenous communities are affected. • On December 5, 2018, CNPC sent an Appeal for Reconsideration to SENACE, requesting to include the favorable technical opinion given by SERFOR and issue the Operating Permit 7 (Forest Clearing Authorization – TH7). • On January 21, 2019, SENACE sent the Directorial Resolution No. 013 -2019-SENACE-PE/DEAR to CNPC, based on the Report No. 00058-2019-SENACE-PE/DEAR, and the Appeal for Reconsideration filed by CNPC was declared groundless. • On February 11, 2019, CNPC lodged the Appeal against the Directorial Resolution No. 013 -2019-SENACE-PE/DEAR before SENACE. • On March 29, 2019, SENACE sent the Resolution of the Executive Presidency No. 00030-2019-SENACE-PE to CNPC, whereby it declares the Directorial Resolution No. 013 -2019-SENACE-PE/DEAR null and void, but it orders that the Operating Permit TH7 (Forest Clearing Authorization) SHALL NOT be included in the Global Environmental Certification. • On April 2, 2019, through Letter CNPC-HSSE-067-2019, CNPC sent a new request for forest clearing authorization corresponding to the Stage 1 of the Lot 58 Development Project to SERFOR. • On April 12, 2019, PERUPETRO grants force majeure for the evidence provided by CNPC (GGRL-SUPC-GFST-0365-2019). • On August 28, 2019, CNPC submitted a CAA before the Judiciary, requesting the partial annulment of the Resolution of the Executive Presidency No. 00030-2019-SENACE-PE. • On December 23, 2019, SERFOR notified CNPC of the Technical Report No. 1089-2019-MINAGRI-SERFOR-DGGSPFFS/DGGSPF, including technical observations to the file and indicating that it has requested the MINEM the report on the prior consultation of Lot 58 reiteratedly through Official Letter No. 0593-2019-MINAGRI-SERFOR-DE. • On March 2, 2020, SERFOR notified CNPC of the Technical Report No. 196-2019-MINAGRI-SERFOR-DGIOFFS/DCZO, where, among other recommendations, SERFOR indicates that the identification of forest cover in the areas required for forest clearing is considered as relative; while it is related to covers generated and represented by differential scales, it is necessary to verify them in situ.

Forest Clearing Authorization requested	Granting authorization	Process
Forest clearing authorization at 2D Seismic Prospecting - Lot 58 project level	Yes	<ul style="list-style-type: none"> • Authorization was granted through D.R. No. 591-2019-MINAGRI-SERFOR-DGGSPFFS. Nevertheless, Article 2 of such resolution specifies that before granting the Forest Clearing Authorization, the prior consultation process shall be made. • On December 27, 2019, CNPC requested SERFOR in writing to clarify the scopes of Article 2 of the Resolution of the Directorate General No. 591-2019-MINAGRI-SERFOR-DGGSPFFS. • On January 13, 2020, SERFOR notified CNPC of the Resolution of the Directorate General No. 021-2020-MINAGRI-SERFOR-DGGSPFFS, maintaining the administrative act contained in the Resolution of the Directorate General No. 591-2019-MINAGRI-SERFOR-DGGSPFFS and making its Article 2 null and void.
Forest clearing authorization for the Urubamba-3 Site	No	<ul style="list-style-type: none"> • On January 19, 2018, CNPC submitted the request for Forest Clearing Authorization for the Urubamba-3 Site before SERFOR. The ocular inspection, as part of the evaluation process, was made from April 10 to 12, 2018. • On May 25, 2018 and Letter No. 132-2018-MINAGRI-SERFOR-DGGSPFFS-DGSPF, SERFOR informed CNPC that, due to 100 % of the area required for forest clearing is within the Ticumpinia Indigenous Community, finds it necessary to evaluate the prior consultation procedure in order to determine whether the forest clearing required clashes with the collective rights of such indigenous people. • On July 5, 2018, CNPC and SERFOR gathered to discuss the issue, CNPC sent all information required by such entity to SERFOR, regarding the meetings held with the Ticumpinia Indigenous Community. • On December 23, 2019, SERFOR notified CNPC of the Technical Report No. 1090-2019-MINAGRI-SERFOR-DGGSPFFS/DGGSPF, including technical observations to the file and indicating that it has requested the MINEM the report on the prior consultation of Lot 58 reiteratedly through Official Letter No. 0593-2019-MINAGRI-SERFOR-DE. • MINEM, through Official Letter No. 01-2020-MINEM/VMH and Technical Report No. 017-2019-MINEM/OGGS/OGDPC/AOC, issued to SERFOR documents the non-implementation of consultation, in accordance with Law and Regulation of prior consultation. • According to SERFOR, such entity is preparing the final evaluation report and proposal for the approval resolution. For such approval, SERFOR has planned to use the equivalence report issued by the General Office for Social Management (OGGS). • On April 27, 2020, CNPC made a payment for forest clearing fee of the Urubamba-3 Site, in accordance with Letter No. 0108-2020-MINAGRI-SERFOR-DGGSPFFS-DGSPF del 21.04.20. • In May, SERFOR confirmed the issuance of the approval resolution for forest clearing of the Urubamba-3 Site; nevertheless, it has not been yet notified due to the implementation of the management system by electronic means.

Source: (CNPC Perú, 2020). Own preparation.

The above reflects lack of clarity and transparency regarding the justification for the non-implementation of the right to prior consultation, in accordance with the ILO-Convention 169 and compliance with the Forest and Wildlife Law, Law No. 29763.

It is very urgent to mention that for Forest Clearing Authorization of the Urubamba-3 Site - Lot 58, MINEM, through Official Letter No. 01-2020-MINEM/VMH and Technical Report No. 017-2019-MINEM/OGGS/OGDPC/AOC, continues to affirm that the citizen participation process implemented between 2006 and 2007, which included informational workshops and public hearings as part of the preparation and evaluation of environmental management instruments, meet the regulations set out nationwide (in the aforementioned period) and are consistent with the ILO-Convention 169. Therefore, it assumes that these actions are equivalent to the consultation processes provided for in the aforementioned convention.

These interpretations and provisions evidence that the proposal for homologation of citizen participation processes they would be implementing²⁷, making them appear that they are prior consultation processes by the approval of equivalence reports, which were rejected by the Ministry of Culture²⁸.

The State and private entities must understand that the right to citizen participation is not the same as the right to prior consultation, its nature and purpose are different, since, while the participation is a right focused on the information and addressed to all population in general; prior consultation is an intercultural dialog that aims the consent from indigenous peoples and must meet the principles, characteristics and standards laid down in the ILO-Convention 169 for this process, and the provisions that state otherwise seriously violate the rights of indigenous peoples and the aforementioned convention.

These points show how important it is to reveal information of the current status and permits approved of each project, which cannot be translated into a limited access, at the moment of their management and decision making, restricting the population to be informed, participate and monitor processes at specific and significant moments. In light of that, it is necessary not only to strengthen transparency portals of public institutions, but also concessions and/or companies.

c) Analyzing the transparency mechanism of the OEFA Portal:

Regarding the information transparency for environmental monitoring, supervision and control, the OEFA Portal makes the following available: 1) Open Data of the OEFA; 2) Interactive Portal for Environmental Control and 3) Registry of Administrative Acts and Environmental Offenders Registry.

An evaluation of the websites owned by OEFA will be made below, in order to reveal information:

²⁷ Visit: <https://gestion.pe/economia/evaluan-camisea-sea-sometido-consulta-previa-273341-noticia/?ref=gesr>

²⁸ Visit: <https://gestion.pe/economia/snmp-ministerio-de-cultura-rechazo-homologacion-en-lotes-pendientes-de-consulta-previa-noticia/>

1. **Open Data**²⁹: In this portal, five information categories are shown: i) Environmental Assessment, ii) Environmental Supervision, iii) Environmental Control, iv) Policies and Strategies and v) institutional information.

In relation to the category “Policies and Strategies”, information on the Specialized Prosecutor’s Offices in Environmental Matters is revealed, strengthening capacities in environmental control, technical opinions made to regulatory projects and those of the OEFA, as well as the national environmental complaints service.

Regarding the categories “Environmental Assessment”, “Environmental Supervision” and “Environmental Control”, these are shown in the following information:

TABLE 8
Information contained in the OEFA Portal - Open Data

Environmental assessments:	<p>Environmental Assessments to determine causality (EADC)</p> <p>Information updated from January 2018 to March 31, 2019. They include the following data: name of environmental assessment, environmental component, location point, location description and date. Parameters of components found.</p> <p>Early Environmental Assessments (EEA)</p> <p>Information updated from January 2018 to December 31, 2019.</p> <p>They include the following data: name of environmental assessment, environmental component, location description, location point and sample type. Parameters of components found.</p>
Environmental supervision:	<p>Completed supervisions</p> <p>Information updated from January 2018 to June 30, 2020.</p> <p>They include the following data: name of the sector, month of supervision, file number, company, inspected unit, location and report number.</p> <p>Administrative measures</p> <p>Information updated from January 2018 to June 30, 2020.</p> <p>They include the following data: coordinates, name of the sector, file number, holder, unit/project, resolution number, measure description, measure status, supervision report code, region, district and order description.</p>

²⁹ Visit: <http://datosabiertos.oefa.gob.pe/home>

Environmental control:	Resolutions issued
	Information updated from January 2018 to June 30, 2020.
	They include the following data: resolution and file number, sector, holder, inspected unit, department, province, district and resolution status.
	Appeals resolved (updated from January 2018 to June 30, 2020).
	They include the following data: name of the sector, file number, company, inspected unit, department, province, district, resolution status and application of offense fine (information submitted as categories yes/no).
	Resolutions with final fines
	Updated from January 2018 to June 30, 2020.
	They include the following data: company, file number, year, sector, environmental unit, department, province, district, type of offense, resolution number in instances and fine im

Own preparation

Throughout this information framework, the only cases found regarding Lot 58 were in the item “Resolutions issued” in which D.R. No. 1014-2018-OEFA/ DFAI and 2623-2018-OEFA/DFAI (see Figure 5) as well as in item “Appeals issued”, in which R. No. 1800-2017-OEFA/DFSAI/PAS was found, containing the offense regarding the non-compliance of the Environmental Management Instrument.

In no case resolutions are attached to obtain more detailed information and previously specified general information is only obtained.

On the other hand, it is shown that information is not updated in accordance with the Regulation of Law on Transparency and Access to Public Information.

FIGURE 6
Control for sub-directorial and directorial resolutions issued

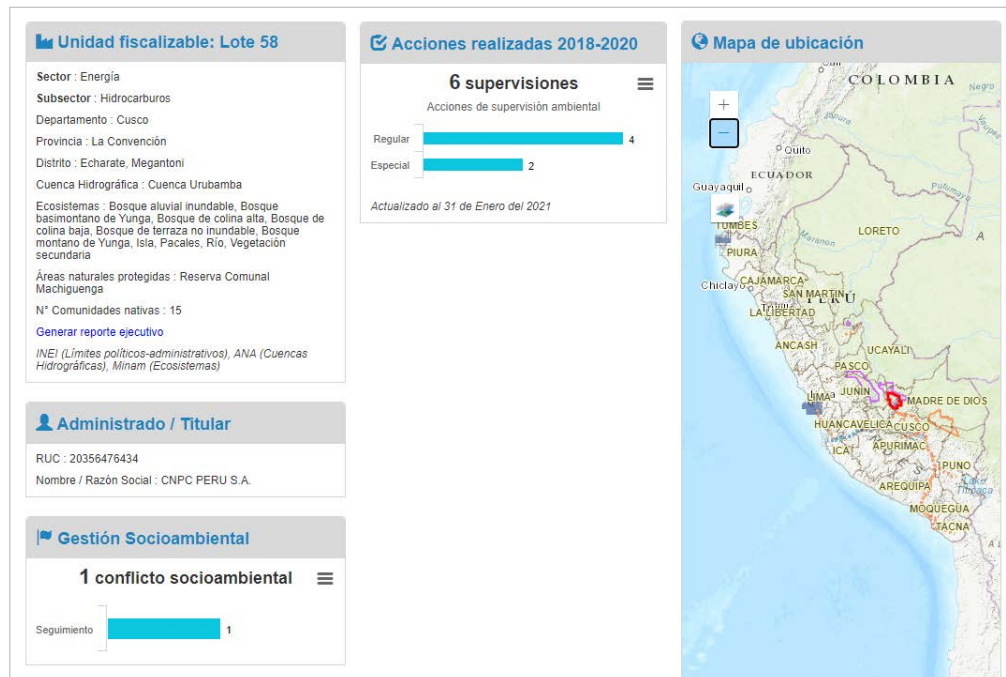
	TIPO DE INFORME	NRO# INFORME	INICIO DE SUPERVISION	RAZON SOCIAL	UNIDAD AM...	DEPARTAMENTO
	CNPC PERU S.A.	LOTE X	PIURA	TALARA	EL ALTO	RECONSIDERACION
	CNPC PERU S.A.	LOTE X	PIURA	TALARA	EL ALTO	RESPONSABILIDAD ADMINISTRATIVA...
	CNPC PERU S.A.	LOTE 58	CUSCO	LA CONVENCION	ECHARATE	RESPONSABILIDAD ADMINISTRATIVA...
	CNPC PERU S.A.	LOTE X	PIURA	TALARA	EL ALTO	ARCHIVO
	CNPC PERU S.A.	LOTE X	PIURA	TALARA	EL ALTO	RESPONSABILIDAD ADMINISTRATIVA...
	CNPC PERU S.A.	LOTE X	PIURA	TALARA	EL ALTO	ARCHIVO
	CNPC PERU S.A.	LOTE X	PIURA	TALARA	EL ALTO	RESPONSABILIDAD ADMINISTRATIVA...
	CNPC PERU S.A.	LOTE X	PIURA	TALARA	EL ALTO	RESPONSABILIDAD ADMINISTRATIVA...
	CNPC PERU S.A.	LOTE 58	CUSCO	LA CONVENCION	ECHARATE	RESPONSABILIDAD ADMINISTRATIVA...
	CNPC PERU S.A.	LOTE X	PIURA	TALARA	EL ALTO	ARCHIVO
	CNPC PERU S.A.	LOTE X	PIURA	TALARA	EL ALTO	RESPONSABILIDAD ADMINISTRATIVA...
	CNPC PERU S.A.	LOTE X	PIURA	TALARA	EL ALTO	IMPROCEDENCIA DE RECONSIDERA...

Source: <http://datosabiertos.oefa.gob.pe/dataviews/250316/resoluciones-subdirectoriales/>
(Date: October 20, 2020)

2. Interactive Environmental Control Portal - OEFA: Information on the environment status and environmental control actions in Peru is published, which are organized in sections “Intervenciones (*Interventions*), Resultados (*Results*) and Mapas (*Maps*)”.

In the navigation command, in section “Intervenciones”, updated information until August 2020 is obtained. Data shown is related to the number of environmental supervision actions made (see Figure 7). Nevertheless, detailed information on environmental supervisions is neither submitted nor documentation or monitoring and supervision files are attached. Therefore, the Board of Directors Resolution (BDR) No. 015-2012-OEFA/CD is not met³⁰, indicating that the monitoring and environmental assessment reports, as well as the direct supervision agreement containing objective information comprise public information. Furthermore, the portal mentions a socio-environmental conflict, without further details.

FIGURE 7
Interactive Environmental Control Portal – Lot 58 Interventions

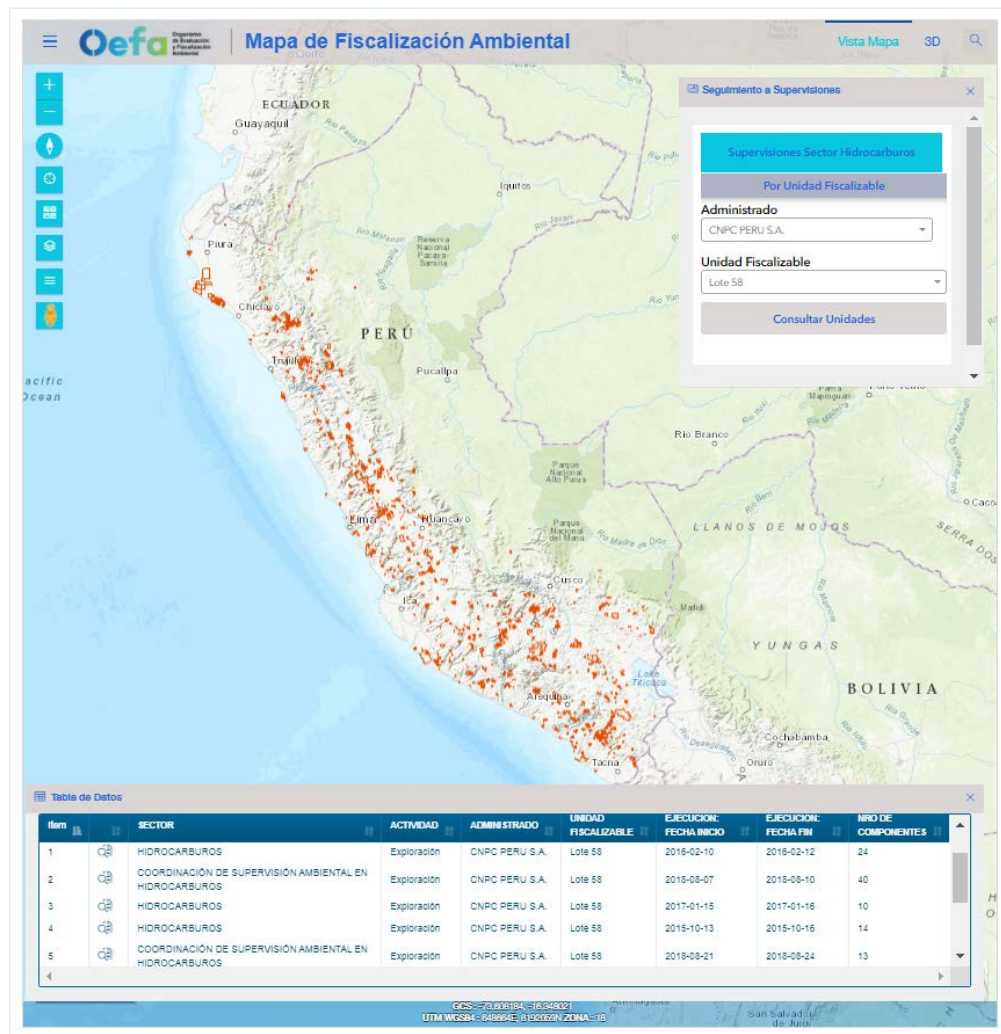


Source: Interactive Environmental Control Portal – Lot 58. Date: October 21, 2020
<https://publico.oefa.gob.pe/Portalpifa/IntervencionesUF.do>

In the navigation command, in section “Resultados”, basic information such as name of the project sector, activity, company, inspected unit, start date, end date and number of components is shown. Where: i) the data titles are not clear and cause confusion and ii) these reports do not include technical and objective information from the sampling, analysis and monitoring, as well as other facts or relevant objectives related to the supervision. It is highlighted that the transparency of these results would neither constitute any prejudgment nor indications of an offense; therefore, there is no infringement of confidentiality (see Figure 8).

³⁰ Directive that promotes further transparency regarding the information managed by the Agency for Environmental Assessment and Control - OEFA.

FIGURE 8
Interactive Environmental Control Portal – Lot 58 Results



Source: <https://pifa.oefa.gob.pe/mfiscamb/index.html#> (screenshot dated October 20, 2020)

Findings regarding Lot 58 in command “Intervenciones” deliver six supervisions as results (four regular supervisors and two special supervisors) from 2018 to 2020. However, the information base of the item “Results” provides as information the implementation of seven supervisions, of which only four belong to the temporary parameter from 2018 to 2020. The difference of processes found in both OEFA portals regarding Lot 58 is confusing, such information does not allow for a true control by the residents. In addition, none of the portals reveal the technical objective results obtained in the supervision process. It is concluded that the information published is not complete, as it includes information that is too general.

In light of that, it is necessary to strengthen the transparency information mechanism in environmental matters, in this case control, due to its importance, since they are formal instruments for measuring the liability by each holder, the role of compliance with the regulations as well as the criteria and flexibility of the supervisory body.



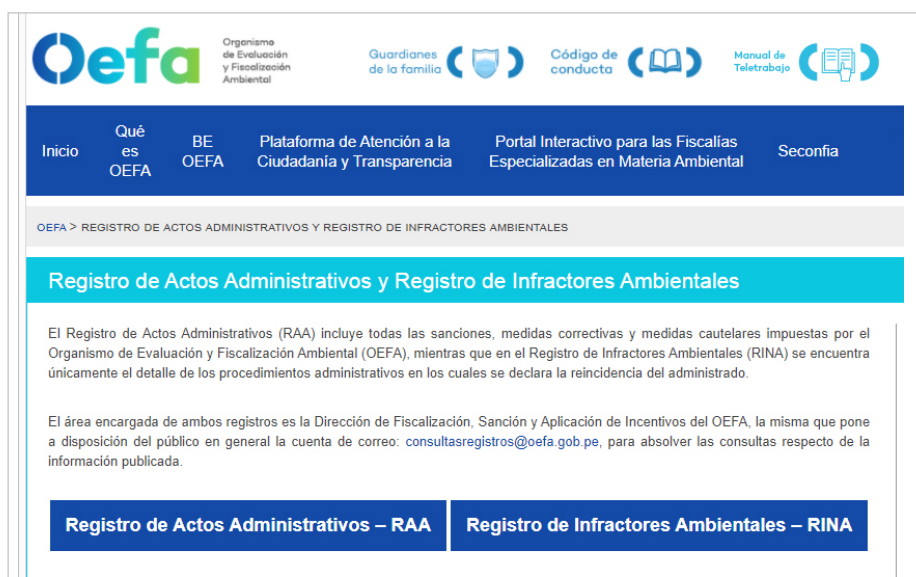
Urubamba Basin
Photo: DAR

3. Registry of Administrative Acts and Environmental Offenders Registry

These registries are found in the former institutional website of OEFA (<https://www.oefa.gob.pe/version-anterior/>). This website is interconnected with the open data website of OEFA and gob.pe. It is important to highlight that, the user can move from this website to the aforementioned websites, but this cannot be done the other way around.

The Registry of Administrative Acts (RAA) is found in this website, and according to the same portal, it must include all sanctions, corrective and precautionary measures imposed by the Agency for Environmental Assessment and Control (OEFA). Moreover, the Environmental Offenders Registry (RINA) is found, which should detail the administrative procedures where recidivism of the company is stated (see Figure 9).

FIGURE 9



Source: <https://www.oefa.gob.pe/raa-rina>

Although no content is found in the “Environmental Offenders Registry (RINA)”, eight administrative processes are registered in the item “Registry of Administrative Acts”, which provides more detailed information; nevertheless, not all aforementioned titles contain information, as shown in Table 9.

TABLE 9
Data registered regarding Lot 58, classified as whether it provides or not information

Data containing information	Data not containing any kind of information
<ul style="list-style-type: none"> • Offense committed • Unfulfilled provision • Corrective measure • Sanction decision • Decision date • Notice date • Uncontested sanction • Appeal Decision (Court of Environmental Control - TFA) • Decision date • Purpose of Appeal Decision • Overall fine • Non-pecuniary sanction 	<ul style="list-style-type: none"> • Precautionary measure • Coercive fine • Decision for reconsideration • Decision date • Notice date • Appeal Decision's direction

Own preparation

It is noted that, according to the data published, no fine imposed at the beginning of the administrative procedure is registered. At the end of the instance, an amount of S/O is registered in all registered processes (see Table 10).

TABLE 10.
Registro de Actos Administrativos-OEFA

File	Name	Offense committed	Unfulfilled provision	Corrective measure
2974-2017-OEFA/DFSAI/PAS	CNPC Perú S.A.	Exceeding Maximum Permissible Limits and/or Environmental Quality Standards (ECA)	Article 117 of Law No. 28611, Article 17 of Law No. 29325, Article 3 of Supreme Decree No. 015-2006-EM, Article 1 of Supreme Decree No. 037-2008-PCM	Enhancing domestic wastewater treatment system and other actions that company deems necessary and making their effluents comply with the Maximum Permissible Limits of the Hydrocarbons Subsector for the parameters: phosphorus, total coliforms and thermotolerant coliforms.
1800-2017-OEFA/DFSAI/PAS	CNPC Perú S.A.	Commitments and/or complex environmental standards	Article 9 of Supreme Decree No. 015-2006-EM; Article 29 of Supreme Decree No. 019-2009-MINAM.	Demonstrating the revegetation in the slope bench for the burning pit of the Picha 2X well platform.
1087-2013-OEFA/DFSAI/PAS	Petrobras Energía Perú S.A.	Solid waste	Article 48 of Regulation for Environmental Protection in Hydrocarbons Activities, approved by Supreme Decree No. 015-2006-EM, in accordance with Article 10 and 38 of Regulation of General Law on Solid Waste, approved by Supreme Decree No. 057-2004-PCM.	The administrative liability was determined, without imposing a corrective measure.
0735-2016-OEFA/DFSAI/PAS	CNPC Perú S.A.	Commitments and/or complex environmental standards	Article 9 of Supreme Decree No. 015-2006-EM.	Demonstrating the revegetation for the burning pit identified during the supervision.
0486-2018-OEFA/DFSAI/PAS	CNPC Perú S.A.	Environmental monitoring	Article 8 and 58 of Supreme Decree No. 039-2014-EM, Article 24 of Law No. 28611, Article 15 of Law No. 27446, Article 29 of Supreme Decree No. 019-2009-MINAM.	The administrative liability was determined, without imposing a corrective measure.
0430-2013-OEFA/DFSAI/PAS	Petrobras Energía Perú S.A.	Commitments and/or complex environmental standards	Article 9 of Regulation for the Environmental Protection in Hydrocarbon Activities, approved by Supreme Decree No. 015-2006-EM	The administrative liability was determined, without imposing a corrective measure.
0378-2016-OEFA/DFSAI/PAS	CNPC Perú S.A.	Adoption of environmental precaution and control measures	Article 9 of Regulation for Environmental Protection in Hydrocarbons Activities, approved by Supreme Decree No. 015-2006-EM.	Petrobras shall demonstrate the implementation of control measures for soil erosion in areas of the burning pit and slope produced in the area where drill cutting is ordered, in accordance with the commitment made in its environmental management instrument.
0152-2014-OEFA/DFSAI/PAS	Petrobras Energía Perú S.A.	Solid waste	Article 48 of Regulation for Environmental Protection in Hydrocarbons Activities, approved by Supreme Decree No. 015-2006-EM. Article 10 of Regulation of General Law on Solid Waste, approved by Supreme Decree No. 057-2004-PCM	The administrative liability was determined, without imposing a corrective measure.

Source: Institutional website of OEFA/Registry of Administrative Acts
Visit: <https://www.oefa.gob.pe/raa-rina>

Sanction Decision	Decision Date	Notice Date	Uncon- tested sanction	Appeal Decision (TFA)	Decision Date	Notice Date	Purpose of Appeal Decision	Overall Fine
1014-2018- OEFA/DFAI	05/29/2018	05/30/2018	Yes					0,00
1397-2017- OEFA/DFSAI	11/24/2017	11/24/2017	No	094-2018- OEFA/TFA- SMEPIM	04/19/2018	04/26/2018	The liability determined in the Directorial Resolution No. 1397-2017-OEFA/DFSA is confirmed. In addition, the corrective measure imposed is revoked.	0,00
711-2014- OEFA/DFSAI	12/01/2014	12/01/2014	Yes					0,00
1069-2017- OEFA/DFSAI	09/22/2017	09/22/2017	Yes					0,00
2623-2018- OEFA/DFAI	10/31/2018	11/08/2018	Yes					0,00
436-2013- OEFA/DFSAI	09/27/2013	09/27/2013	No	045-2014- OEFA/TFA	02/28/2014	03/31/2014	The sanction was declared null and void through D.R. No. 1907-2016-OEFA/DFSAI/SDI. It is declared not to initiate Sanctioning Administrative Procedure (PAS).	0,00
940-2016- OEFA/DFSAI	06/30/2016	07/06/2016	Yes					0,00
113-2014- OEFA/DFSAI	02/25/2014	02/25/2014	No	002-2014- TFA-SEP1	08/27/2014	09/03/2014	The sanction was declared null and void. It is declared not to initiate the Sanctioning Administrative Procedure through D.R. No. 1891-2016-OEFA/DFSAI/SDI del 02/12/2016 notified on 12/19/2016	0,00

B. Evaluating responses submitted on access to public information

Considering the existing gap regarding transparency topics that has been identified in institutional portals, we solicited to MINEM, OEFA and PeruPetro through access to public information requests, a variety of information: regarding environment, negotiations and the current status of the project with the purpose of analyzing the transparency mechanism and the compliance with provisions established in the regulations mentioned at the beginning of the report.

For the evaluation, the submission of complete, updated and accurate information is being considered, as well as the submission of the **information according to the established deadline, in accordance with Article 11 of Law No. 27806** that establishes that every Public Administration Entity that has received the information request **must submit such information within a period that does not exceed ten business days**³¹.

For this evaluation, the approved Environmental Management Instruments were requested to MINEM, as well as the mining operation and exploration contracts, which are very important in order to analyze their compliance and the type of negotiation established, the submitted lot booking report and the monthly reports of actions carried out with the purposes of knowing the current status of the project. Meanwhile, the interposed sanctions resolutions were requested to OEFA, and they must show the infractions and environmental liabilities developed by the company.

The submitted information is analyzed in Table 11 according to quality criteria: submission or response time; accurate, complete and updated information.

³¹ It is worth recalling that this measure is not that strict now, as the previous deadline for the information submission was seven business days, and it was amended by Legislative Decree No. 1353, published on January 7, 2017.

TABLE 11
Evaluating access to information - Lot 58

Requested Information	File	Institution	Request date/	Submission date	Complete and updated information	Accurate Information
Complete with background and updated on Environmental Management Instruments of Lot 58 (EIA, MEIA and TSR)	3044549	MINEM	06/15/20	06/26/20 Complies with the deadline	NO	NO
Mining Operation and Exploration Contracts. Modifications of Lot 58	3044549	MINEM	06/15/20	06/26/20 Complies with the deadline	YES	YES
Last record on booking report, Lot 58	3044133	MINEM	06/15/20	06/26/20 Complies with the deadline	NO	NO
Monthly reports on Lot 58 activities	3044156	MINEM	06/15/20	06/26/20 Complies with the deadline	NO	YES
Resolutions or sanctions interposed through monitoring or auditing the company CNPC Peru SA, for mining operations or explorations in Lot 58, from 2015 to 2020	2020-E01-044296	OEFA	06/30/20	07/15/20 Does not comply with the deadline	NO	YES
Report on Lot 58 activities, which is submitted to Peru Petro, the requested reports are the ones submitted from 2019 to March, 2020.	14492920200709_90a1c3fc	PERUPETRO	07/09/20	07/20/20 Complies with the deadline	NO	YES

Own preparation

Five out of six access request responses given by public institutions were submitted according to the deadline established in the Law on Transparency, except for OEFA that took 15 days in submitting its response.

However, taking into account criteria, validation or quality and suitability assurance measures on the submitted information, it is hereby stated that four out of six of the responses given were not complete or updated. Likewise, two out of six of the responses were not accurate and/or were not submitted in a clear and orderly way. The following is the analysis carried out.

a) Analysis of the mechanism implemented by MINEM in response to the access to information request

The information given on the Environmental Management Instruments did not have complete and updated files (See Table 12). Although, it is understood that this institution does not have a digital file with all the current documentation due to the transfer of functions before SENACE, this information was not given to the requesting person, and the requested information was not transferred to SENACE, according to Article 11 of the Single Unified Text of Law No. 27806, Law on Transparency and Access to Public Information: “(...) in the event that the Public Administration entity is not obliged to have the requested information and if its location or destination is known, this entity must redirect the request to the obliged entity or to the one that has the information, and the requesting person should be informed of this circumstance before the company and according to law (...)”.

TABLE 12
List of submitted documentation and missing information on Environmental Management Instruments - Lot 58 Approved by MINEM

Submitted documentation	Missing information
<ul style="list-style-type: none"> • Approval by means of RD 119-2015-MEM of the Prospection Project EIA of 782,41 km 2D seismic lines and up to 12 exploratory wells drilling. • Approval by means of RD 920-2007 MEM of the 2D and 3D Seismic Prospection EIA and Exploratory Drilling. • TSR for the “Modification of the Urubamba-3 exploratory well location in Lot 58” project, by means of RD 004-2018-SENACE-JEF/DEAR. • Approval through 279-2017-MEM of La Peruanita Base Camp Clearing-out plan. • Approval by means of RD 297-2016-MEM of the Prospection Project EIAA of 782,41 km 2D seismic lines and up to 12 exploratory wells drilling. 	<ul style="list-style-type: none"> • EIA by means of RD. 0041-2018/ SENACE-PE/DEAR for the mining operation of 10 wells derived from four structures: Urubamba, Pichi, Tani and Paroni. • TSR of the “Construction, Operation and Clearing-out of Organic Waste Final Disposal Cells at La Peruanita Base Camp – Lot 58”, by means of RD No. 009-2018-SENACE-PE/DEAR. • RD 044-2017-SENACE-JEF/DEAR, that approves the TSR of the 2D Seismic Prospecting Expansion Project – Lot 58. • Approval by means of RD 106-2011- MEM of the Environmental Management Plan (EMP) by increase of 3D Seismic Area.

Own preparation

Likewise, the information was not accurate because most of the content were submission receipts, and notification letters. Additionally, the structure and the classification were not specific and the submitted information was difficult to verify, systematize and understand (see Figure 10). Although there is discretion when submitting the information, it is necessary to work in order to get efficient and precise information.

FIGURE 10
Structure and classification of the submitted information- Environmental Management Instruments - Lot 58 Approved by MINEM

Índice de /3044549/

[directorio principal]

Nombre	Tamaño	Fecha de modificación
1689341/		24/6/20 19:00:00
2531955/		24/6/20 19:00:00
2600892-16-PAH-09/		24/6/20 19:00:00
EIA-14-H-0003 2379202/		24/6/20 19:00:00
MODIFICACIÓN-2551069-Cod de Arch-15-0008/		24/6/20 19:00:00

Índice de /3044549/1689341/

[directorio principal]

Nombre	Tamaño	Fecha de modificación
1689341-1.pdf	37.0 MB	9/5/18 19:00:00
1689341-10.pdf	76.2 MB	9/5/18 19:00:00
1689341-11.pdf	184 MB	9/5/18 19:00:00
1689341-12.pdf	57.1 MB	9/5/18 19:00:00
1689341-13.pdf	19.3 MB	9/5/18 19:00:00
1689341-14.pdf	103 MB	9/5/18 19:00:00
1689341-15.pdf	101 MB	9/5/18 19:00:00
1689341-16.pdf	208 MB	9/5/18 19:00:00
1689341-2.pdf	10.6 MB	9/5/18 19:00:00
1689341-3.pdf	31.2 MB	9/5/18 19:00:00
1689341-4.pdf	154 MB	9/5/18 19:00:00
1689341-5.pdf	598 MB	9/5/18 19:00:00
1689341-6.pdf	80.4 MB	9/5/18 19:00:00
1689341-7.pdf	143 MB	9/5/18 19:00:00
1689341-8.pdf	36.9 MB	9/5/18 19:00:00
1689341-9.pdf	25.9 MB	9/5/18 19:00:00

Source: Screenshot of the information submitted on el 06/26/2020 (Screenshot taken on 07/01/2020)

Likewise, the mining operation and exploration concession contracts of Lot 58 were requested to MINEM. As a response, the mining operation and exploration contract (2005) was submitted, which was approved by means of D.S. No. 017-2005-EM, the amendment of the contract in which it is extended for 3 more years and the exploration term (2013), approved by means of D.S. No. 009-2013-EM and the amendment of the contract where the company name is changed from PETROBRAS to CNPC Perú SA, approved by means of D.S. No. 019-2014-EM.

b) Analysis of the mechanism implemented by PERUPETRO in response to the access to information request:

Regarding the request of monthly actions reports of Lot 58, important information so that the population can have a formal document of the monitoring, verifying actions and compliances; MINEM complies with informing that it does not have such documents and informs PERUPETRO about such request according to what is stated in the access to information and transparency law mentioned before. However, we did not receive any response. Given this situation, we had to send another request to the institution, which was responded in a timely and accurate manner but it was incomplete because the last report registered on June was missing, which was requested again by means of file "11405920200805_84aade9a", however, there was no response to such request.

c) Analysis of the mechanism implemented by OEFA in response to the access to information request:

On the other hand, the information requested regarding resolutions of sanctions interposed in Lot 58 between 2015 and 2020, only had one resolution as response, the Resolution No. 094-2018-OEFA/TFA-SMEPIM, single resolution from the Court of Environmental Control, which is the final instance that decides on sanctions and that in legal terms is the only sanction resolution that has been concluded.

Although the information was accurate within what is demanded by the legal framework, the evaluation of the portal information as "complete" is doubtful because based on the Framework Law from the Environmental Management System, Law No. 28245, which defines as environmental information any written, visual or data base-formed information held by the authorities related to water, air, soil, flora, fauna and natural resources, in general, as well as the activities or measures that affect or may affect them and in accordance to BDR N° 015-2012-OEFA/C, a **Public Summary on the Sanctioning Procedure** should have been provided, which must contain the file number, name, company name or business name of the company under investigation, procedure status, inspected unit, supervision date, the information whether the sanction was or not applied and whether any means of challenge was or not submitted, if necessary, such as the Directorial Resolution No. 1069-2017-OEFA/IDFSA, since it is also a sanctioning resolution in process and it is important to reveal it, so that a monitoring process can be carried out not only regarding the environmental management of the private company, but also regarding the supervisory body. Even taking into account how long it is the administrative procedure, since it dates from 2013.

3.2.1.2. Amazon Waterway Case

The Amazon Waterway project is a project promoted by the Peruvian Government that aims to adapt navigation in four major rivers of the Peruvian Amazon: Huallaga, Amazonas, Marañón and Ucayali; for a concession of 20 years.

The conditioning of the navigation would imply, according to the contract, dredging works in the streambed of rivers to facilitate the passage of the boats; the cleaning service of stumps or stranded tree logs in the river; and a package of services for safer navigation within the river channel, such as satellite navigation via GPS.

In the surroundings of the project there are several sensitive areas as the Pacaya – Samiria National Reserve and part of its buffer zone; the buffer zone of the Cordillera Azul National Park, the buffer zone of the Tamshiyacu – Tahuayo Regional Conservation Area and the Sierra del Divisor reserved area. Likewise, there are more than 60 thousand people from 14 indigenous peoples grouped in 424 native communities from whom the rivers are a source of livelihood.

For that reason, the project raised concerns against social and environmental potential risks as damages to the food safety of indigenous peoples because the deposits that will be removed with the dredging represent food for different species; to health because arsenic was found above the allowed limits in some areas; and to transport safety, among others.

Even in this context, the Amazon Waterway project was going to be developed at the beginning, violating the right of prior consultation to the indigenous communities following the basis of the Fifteenth Complementary Provision of the Regulation on Prior Consultation which states that “no construction and maintenance of infrastructure in the areas of health, education, as well as those necessary for the provision of public services will require prior consultation”. And being the Amazon Waterway project classified as a public service for the improvement of communication routes, for the State it was not appropriate for a prior consultation to be carried out.

However, after a writ of amparo filed by the Indigenous Organization ACODECOSPAT in 2015, the right to prior consultation of the contract was implemented as well as the ToR for the Environmental Impact Assessment of the Project. It is important to highlight that the Fifteenth Complementary Provision of the Regulation on Prior Consultation was voided by the Supreme Court in January 2021 after a legal process initiated by the Interethnic Association for the Development of the Peruvian Rainforest (AIDSESP) along with the legal advice of the IDLADS Institute and the support of DAR³².

The project is in charge of the COHIDRO S.A. consortium, integrated by the Peruvian company Construcción y Administración S.A. (CASA) and the Chinese company SINOHYDRO which belongs to the Power Construction of China Group, the biggest Chinese hydroelectric construction company.

It is worth mentioning that there was a lawsuit filed against SINOHYDRO by International Rivers and a platform of local organizations due to serious negative impacts for the execution of several projects in communities and ecosystems of different latitudes that include floods in national parks, archeological remains and forced relocations. Likewise, there are complaints filed in Ecuador related to the Coca-Codo Sinclair³³ Hydroelectric Plant project and in Bolivia there is a great number of complaints for labor violations.

32 Visit: <https://dar.org.pe/corte-suprema-anula-disposicion-que-recortaba-derecho-a-consulta-previa/>

33 Visit: <https://www.elcomercio.com/actualidad/negocios/china-sinohydro-registra-10-denuncias.html>

In 2018, the concessionaire submitted the EIA-d, first environmental management tool that will give the green light to the execution of the project before SENACE, which was declared to be inadmissible because of the omission of a participatory workshop in Nauta.

In May 2019, SENACE admitted again the EIA in order to evaluate it after having rectified the participation omissions that were identified. However, the EIA submitted had more than 400 remarks made by the institution and by specialized technical experts³⁴. One of said remarks was the lack of complementary ecotoxicological studies. Having seen that, COHIDRO formally desisted from continuing with the EIA evaluation.

Currently, the project is on-going because the award was submitted in February 2020 in order to prepare ecotoxicological studies. Also, the Ministry of Transport and Communications reaffirmed the project contract validity through declarations given to the media ³⁵.

Likewise, COHIDRO proposed an addendum to the contract in which, besides recognizing the uncertainty of the final number of dredging areas, some administrative facilities for the company were proposed. Said addendum proposal was declared unfeasible and inadmissible in January 2021 by the General Directorate of Programs and Projects of the Ministry of Transport and Communications (MTC).

A. Evaluating Transparency Portals

Regarding the project transparency mechanism, the transparency portals of three institutions (MTC, OSITRAN, SENACE) were analyzed. The information analyzed in these portals corresponds to the right to prior consultation, negotiation contracts and Environmental Management Instruments. The same criteria for the analysis of Lot 58 were considered: if the portals information is accessible (the difficulty in finding information in the portals was evaluated), if it is complete and updated, and if the information considers an intercultural approach (see Table 13).

34 (DAR, n.d.)

35 Visit:<https://gestion.pe/economia/mtc-gobierno-no-cierra-opcion-a-hidrovia-amazonica-pese-fallo-de-estudios-ambientales-noticia/>

TABLE 13
Evaluating Portals transparency- Amazon Waterway

Institution	Information to be analyzed	EVALUATION		
		Accessibility (easy/regular/difficult)	Complete and Updated	Intercultural (Differential treatment to indigenous peoples)
MTC	On compliance of prior consultation	<p>Regular to difficult access</p> <p>The website duplicity that does not have interoperability mechanisms brings confusion when searching for information.</p>	<p>Complete: NO</p> <p>Vital information that should be public is not included such as the approved Final Engineering Study (EDI), monitoring reports on compliance of agreements reached in prior consultation.</p> <p>Updated: NO</p> <p>There is no description within the content of actions currently developed and related to the previous paragraph.</p>	<p>Intercultural: NO</p> <p>None of the portals shows a differential treatment, nor considers options as linguistic diversity.</p>
OSITRAN	Contracts and Addenda	<p>From easy to regular access</p> <p>Although there is website duplicity, the structure of its portal allows to find information on the project in a quick way.</p>	<p>Complete: NO</p> <p>It does not have content related to addenda proposals or other provisions linked to the contract.</p> <p>Updated: NO</p> <p>There are no references or allusion to addenda proposals or other provisions linked to the contract</p>	<p>Intercultural: NO</p> <p>It does not show differential treatment, nor considers options as linguistic diversity.</p>
SENACE	Environmental Management Instruments	<p>From easy to regular access.</p> <p>Although there is duplication of pages, the interoperability of both pages helps to find project information quickly.</p>	<p>Complete: YES</p> <p>Shows all the content related to the project EIA</p> <p>Updated: YES</p> <p>Describes the whole process implemented related to the Project EIA</p>	<p>Intercultural: NO</p> <p>None of the portals shows a differential treatment, nor considers options as linguistic diversity.</p>

Source: Own preparation

a) Analyzing the transparency mechanism of the MTC Portal:

The problem of the duplicity of institutional web pages and the lack of interoperability is still happening in this case. The existence of the single State


















platform that has limited information and the MTC institutional portal that has more detailed information can put limitations in the access to information due to the confusion that arises in users that are not that related with these pages.

The MTC institutional portal shows information about the Amazon Waterway project in the section transport/water transport where specific information can be found about the implemented prior consultation and the project team work.

Regarding the process and compliance of the Amazon Waterway project prior consultation in the MTC portal, a brief summary is included about the implemented processes and there is translation available into 13 native languages only on the roadmap of the consultation plan (see Figure 11). Likewise, the portal shows the report and consultation minutes with an appropriate structure. However, the compliance monitoring process of agreements reached in the prior consultation are not part of this information published on the portal, meaning that there is incomplete information as well as not updated information on the implemented consultation in 2015.

It is worth mentioning that there is an evaluating standard mechanism of prior consultation for each project in portals of responsible institutions because it is a monitoring tool of the real compliance on prior consultation implementation and it must be important information given to indigenous peoples in order to inform them in a timely manner taking into account the Good Faith and Maximum Publicity principles.

FIGURE 11
Institutional Portal of the MTC – Amazon Waterway consultation

DESCRIPCIÓN	ENLACE
Plan de Consulta del proyecto Hidrovía Amazónica	
Hoja de Ruta o Resumen del Plan (español)	
Hoja de Ruta o Resumen del Plan (achuar)	
Hoja de Ruta o Resumen del Plan (ashaninka)	
Hoja de Ruta o Resumen del Plan (ashaninka)	
Hoja de Ruta o Resumen del Plan (awajun)	
Hoja de Ruta o Resumen del Plan (bora)	
Hoja de Ruta o Resumen del Plan (capanahua)	
Hoja de Ruta o Resumen del Plan (kichwa)	
Hoja de Ruta o Resumen del Plan (kukama)	
Hoja de Ruta o Resumen del Plan (murui-muinani)	
Hoja de Ruta o Resumen del Plan (shawi)	
Hoja de Ruta o Resumen del Plan (Shipibo)	
Hoja de Ruta o Resumen del Plan (tikuna)	
Hoja de Ruta o Resumen del Plan (yagua)	
Hoja de Ruta o Resumen del Plan (yine)	
Cargo de entrega del Plan de Consulta y la medida	

Source: MTC Institutional Portal, screenshot (10/21/20)
https://portal.mtc.gob.pe/informacion_general/hidroviass/hidroviass.html

Considering that the Amazon Waterway project is the first major river transport project in the Peruvian Amazon and that poor management and weak previous studies would cause serious socio-environmental impacts and would jeopardize the food safety of indigenous peoples located in influence areas of the project, it is necessary to promote monitoring mechanisms to ensure compliance with established regulations, the rights of indigenous peoples and care for the environment.

Therefore, it is important and necessary to make transparent specialized studies to identify fundamental aspects such as the detailed dimensioning of the project, as would be possible with the Final Engineering Study - EDI, which has not been made transparent to date.

b) Analyzing the transparency mechanism of the OSITRAN Portal:

The accessibility to information in this portal can be qualified as adequate, since the information structure is classified by the type of transportation that the entity oversees. However, there is still the problem of website duplicity that are not interconnected.

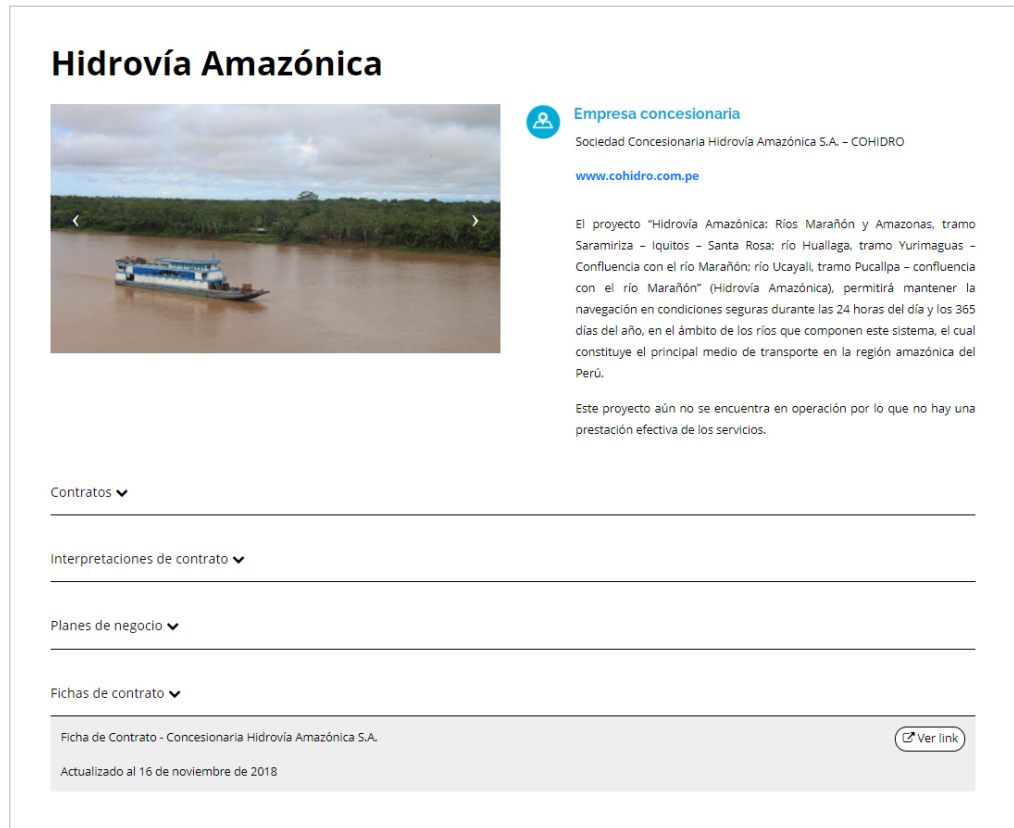
Regarding the Amazon Waterway, the institutional portal contains contract, business plans and contract sheets information. (see Figure 12). Thus, the complete content of the contract and its annexes is transparent, as well as the business plans of the project for 2018 and 2020. However, important documents that should be transparent in this framework are the addenda or proposals that are under evaluation, such as the proposed addendum 1 of the Amazon Waterway contract³⁶, and although it is published in the MTC single State platform, in the institutional page of OSITRAN, there is no information regarding it. This highlights the disaggregated mechanism to make information transparent, which may bias its location

It should be noted that the proposed contract addendum published in August 2020 is a document that should be analyzed to evaluate the route that the PPP of the Amazon Waterway will take both at an economic and socio-environmental level, considering that this proposed contract addendum establishes the extension of deadlines for the submission and approval of the EDI and EIA (p. 20) and shows uncertainty in terms of actions and socio-environmental responsibilities regarding dredging and wrong steps taken, a highly criticized component of the project due to the possible impacts it may generate, as it recognizes that these vary in a short period of time, preventing an adequate allocation of risks and blindly delegate responsibilities to the State. Although this proposal was finally declared unfeasible and inadmissible by the MTC³⁷, it should be considered in order to continue monitoring the proposals and decisions made regarding the project.

36 Visit: <https://cdn.www.gob.pe/uploads/document/file/1253031/Propuesta%20de%20Adenda%201%20Hidro%C3%ADa%20Amaz%C3%B3nica.pdf>

37 Visit: <https://dar.org.pe/ositran-declara-inviabile-intento-de-aumento-de-dragado-en-rios-por-hidrovia-amazonica/>

FIGURE 12
Institutional Portal of OSITRAN – Amazon Waterway Contract



Hidrovia Amazónica

Empresa concesionaria
Sociedad Concesionaria Hidrovia Amazónica S.A. - COHIDRO
www.cohidro.com.pe

El proyecto "Hidrovia Amazónica: Ríos Marañón y Amazonas, tramo Saramiriza - Iquitos - Santa Rosa; río Huallaga, tramo Yurimaguas - Confluencia con el río Marañón; río Ucayali, tramo Pucallpa - confluencia con el río Marañón" (Hidrovia Amazónica), permitirá mantener la navegación en condiciones seguras durante las 24 horas del día y los 365 días del año, en el ámbito de los ríos que componen este sistema, el cual constituye el principal medio de transporte en la región amazónica del Perú.

Este proyecto aún no se encuentra en operación por lo que no hay una prestación efectiva de los servicios.

Contratos ▼

Interpretaciones de contrato ▼

Planes de negocio ▼

Fichas de contrato ▼

Ficha de Contrato - Concesionaria Hidrovia Amazónica S.A. Ver link

Actualizado al 16 de noviembre de 2018

Source: Screenshot of the Institutional Portal of OSITRAN, Date 10/21/2020 <https://www.ositran.gob.pe/hidrovias/hidrovia-amazonica/>

On the other hand, the 2020 Business Plan³⁸ published on the website shows an estimate of investments to be made from 2020 to 2024, in which it is possible to visualize the resumption of pre-operational operations in 2020 and even plans to invest in the acquisition of a suction dredge by 2020 (see Figure 13). In view of this, it is important to ensure transparency in all processes for monitoring decisions that may affect the ecosystem and the people of the Amazon.

38 Visit: <https://www.ositran.gob.pe/wp-content/uploads/2018/11/pdn-2020-cohidro.pdf>

FIGURE 13
Estimating investments to be made from 2020 to 2024 (USD)

DESCRIPCIÓN	DETALLE	2020	2021	2022	2023	2024(*)
Etapa I	Estudio Definitivo de Ingeniería - EDI	356,234	773,622	773,622	-	-
	Estudio de Impacto Ambiental detallado-EIAd	298,381	2,338,181	2,338,181	-	-
	Adquisición e instalación de Estaciones Limnimétricas	225,972	-	-	-	-
	Adquisición Draga de Succión por arrastre + Equipos auxiliares (TSHD)	8,502,474	-	-	134,920	-
	Adquisición Draga de cortador multipropósito tipo Watermaster 4	-	-	-	1,624,780	-
	Adquisición de equipos para extracción de Quirumas	-	-	608,527	2,444,141	-
	Adquisición de dos (02) Dragas de Succión con cortador (CSD)	-	-	4,618,544	-	-
	Adquisición de equipos auxiliares CSD	-	-	4,889,930	-	-
	Servicio de dragado apertura - Tramo Ia)	-	-	13,665,905	1,888,784	-
Etapa II	Servicio de dragado apertura - Tramo Ib)	-	-	1,227,466	6,955,641	-
	Servicio de dragado - Tramo II)	-	-	1,189,266	5,776,437	962,740
	Servicio de Supervisión de Obra- Regulador	652,867.25	-	1,702,977	1,223,606	62,578
	Servicio de implementación unidades de cobro y sistema	-	-	75,000	75,000	-
	Servicio de instalación de sistema de información operativo	-	1,500,000	150,000	150,000	150,000
TOTAL		10,035,927	4,611,803	31,239,419	20,273,309	1,175,318

(*) También debe incluir a todos aquellos conceptos relacionados con las inversiones ejecutadas y ampliable en años estimados
* Nota: Existe un monto de inversión por definir según negociaciones generadas a partir de una pendiente suspensión de obligaciones.

Source: (COHIDRO, 2020)

c) Analyzing the transparency mechanism of the SENACE Portal:

The information recorded by SENACE on the environmental management tool of the Amazon Waterway project, in this case the EIA, is complete, updated and it was submitted with an adequate structure that facilitates its accessibility. It also contains additional tools that make it easier to understand. However, the page does not provide differential attention, nor does it consider options that take into account the linguistic diversity of the indigenous peoples affected by the project.

B. Evaluating responses given on access to public information

Considering the information gap on the right to prior consultation through access to public information, the Ministry of Culture and the Ministry of Transport and Communications were asked for updated reports on compliance with the agreements reached in the prior consultation process of the Amazon Waterway project, in order to analyze its transparency mechanism and compliance with established provisions.

The analysis of access to information of the Amazon Waterway project takes into account the same criteria considered in the analysis of Lot 58 (see Table 14).

TABLE 14
Evaluating access to information – Amazon Waterway

Requested Information	File	Institution	Request date	Submission date	Complete and updated information	Accurate Information
Follow-up document on the compliance of agreements reached from prior consultation of the Amazon Waterway	00000 12467- 2020	MINCU	02-05-2020	02-17-2020 Complies with the deadline	NO	YES
Follow-up document on the compliance of agreements reached from prior consultation of the Amazon Waterway	151915.	MTC	08-06-2020	08-20-2020 Complies with the deadline	NO	NO

Source: Own preparation

From the two requests sent, both were responded within the established deadline. However, the information provided by MINCU was neither updated nor complete and MTC did not provide any information.

- a) **Analyzing the mechanism implemented by the Ministry of Culture in response to the access to information request:** The information submitted by the Ministry of Culture consists on a report prepared by the Ministry of Transport and Communications. It complies with what is established in Article 13 of the Law on Transparency and Access to Public Information: “(...) the request for information does not imply the obligation of the Public Administration entities to create or produce information that they do not have or they are not obliged to have at the time the request is made (...)”

It is concluded through this action that the Ministry of Culture has complied with issuing the information it had. However, it is also evident that this entity does not have its own report based on the information provided by MTC meaning that there is no MINCU’s own report that analyzes with its own criteria and based on information from different sources the due compliance with the agreements established from the prior consultation of the project.

Considering that compliance with the prior consultation is binding and is a right of the indigenous peoples, having follow-up information with an analysis and criteria established by the evaluating entity, MINCU, is fundamental for the indigenous peoples.

- b) **Analyzing the mechanism implemented by the Ministry of Transport and Communications in response to the access to information request:** Regarding the information requested to the MTC transparency office, which was the same requested to MINCU, the entity referred the request to the

National Environmental Certification Service for Sustainable Investments - SENACE, because the Directorate General of Environmental Affairs of the MTC informed that SENACE was the entity in charge of reviewing and approving the detailed Environmental Impact Studies (EIA-d). Despite the fact that the entity has the requested information, it derives this information to MINCU every period.

A clear evidence of the need, in this case, to adopt basic measures to guarantee and promote transparency, according to Law No. 27806, Law on Transparency and Access to Public Information, are the characteristics observed in the process of response to requests for access to information by MTC, which are: i) The wrong designation of the requests for access to information: the request for information did not have to be addressed to the Directorate of Environmental Affairs, but had to be referred to the Directorate promoting the project and/or to the Office of Dialogue and Social Management and ii) lack of institutional coordination and may bring gaps in terms of transparency of information.

IV. CONCLUSIONS AND RECOMMENDATIONS

4.1. Conclusions

- The transparency and access to the information of the Amazon Waterway project and Block 58 have not been implemented efficiently, which weakens the rights of participation, citizen vigilance, protection of health and the enjoyment of a suitable environment for life. Likewise, in Block 58 the right to prior consultation is being violated by implementing actions that can be considered “the homologation of citizen participation processes as prior consultation”, in breach of the provisions of ILO Convention 169, the Law and Regulations Prior Consultation.

It should be noted that these processes, which can be considered the homologation of citizen participation as prior consultation, have not been provisions in dialogue with indigenous populations, are not in accordance with any normative provision, nor have they been actions implemented with transparency mechanisms.

Regarding the transparency portals:

- The transparency mechanisms in institutional portals (MINEM, SENACE, OEFA, MTC and OSITRAN) for the analyzed cases of Lot 58 and Amazon Waterway, should be reinforced in terms of updating, information management and interculturality to comply with the information transparency standard established in the regulations and international mechanisms.
- The website duplicity due to the migration of State institutional portals to the platform named gov.pe has a bias when it refers to look for information, since there is website duplicity that do not manage an interconnectivity mechanism. To date, the information on the main platform, gov.pe, has very general and limited information, which can generate confusion for users who are not familiar with these pages, limiting access to information.
- In all the cases evaluated there was total limitation of access to socio-environmental information for indigenous peoples access is not provided and the information is not adapted to the language of the most affected population.
- Regarding Lot 58, MINEM does not provide full access to the content of all the environmental management instruments approved under its responsibility. SENACE and OEFA have made unquestionable progress in this process, and have even added instruments that facilitate the understanding of information. However, OEFA should work on mechanisms that are in accordance with the Directive that promotes greater transparency regarding the information that OEFA administers, so as not to limit the transparency of information, nor violate the confidentiality status of the documents it generates or has in its possession.

- Regarding the Amazon Waterway project, despite being a project that has only reached the evaluation process of the environmental management instrument (pre-operational stage) has important information on environmental management that should be easily accessible to the public, considering that the project continues and has a contract in force. The information presented in institutional portals is the EIA-d and the technical report of its evaluation; contract and information on the process of prior consultation implemented in 2015. However, fundamental information is missing, such as: a) monitoring of compliance with the agreements established in the prior consultation and b) the EDI, the technical basis of the environmental management instruments that will allow analyzing the concordance in terms of the planning model of the project and the impacts that it could generate. Likewise, information on project progress, such as the proposed contract addendum, must be provided in an articulated manner

Regarding the treatment of access to information requests:

The results of the mechanisms for access to information are weaker than those of the transparency portals, because their compliance mechanism is only based on the response given within the deadline established by the regulations, leaving aside the quality criteria of the information provided, which are at the discretion of each institution.

- Regarding Lot 58, MINEM did not provide complete, timely or structurally adequate information on the contents of the Environmental Management Instruments that were resolved by its entity; OEFA limits its information in the framework of respect for confidential information, and the content provided was incomplete.
- Regarding the Amazon Waterway project, although MINCU provided the last report on monitoring compliance with the agreements reached in the prior consultation that it had in its possession (the monitoring report carried out by MTC), respecting the provisions of the regulations that state that "(...) the request for information does not imply the obligation of the Public Administration entities to create or produce information that it does not have or is not required to have at the time the request is made (...)"; We must not forget that this report was outdated and incomplete. On the other hand, MTC did not comply with the request for access to information, by referring it to SENACE when it was not within its competence.

4.2. Recommendations

- The State and the institutions in charge must supervise due compliance with the right to prior consultation and must not accept forced mechanisms that could violate or weaken it. Strategies and dialogue should be managed with indigenous peoples and investment holders to plan and manage their due compliance in accordance with ILO-Convention 169, the Law and the Regulations on Prior Consultation.

- It is essential that the Peruvian State implements an active Working Group with indigenous peoples and their organizations to strengthen the right to prior consultation. This should address pending issues such as the retroactive application of prior consultation, endorsed by the Constitutional Court in 2016, noting that this right is enforceable since the ratification of ILO-Convention 169 and is not subject to the existence of a specific law. Also, the development of a roadmap for the implementation of the ruling that not only expels from the legal system the Fifteenth Complementary Provision of the Regulations of the Consultation Law, but, raises the implementation of 14 international standards. Likewise, to build effective tools to follow up and guarantee compliance with the consultation agreements.
- It is necessary and urgent that the Peruvian government prioritizes the improvement of mechanisms for access to information and transparency in the extractive industries, since this also implies affecting other fundamental rights, especially in a scenario of economic reactivation where priority is given to the promotion of projects in the extractive and infrastructure sector, adopting clear standards. In view of this, it is important to strengthen international initiatives such as the Escazú Agreement, Open Government and EITI.
- All extractive companies should be encouraged to be part of the EITI, especially those operating in vulnerable areas, as is already the case with CNPC.
- The EITI should be strengthened and promoted at the regional level, promoting transparency and governance at the local level, providing an opportunity for communities, companies, governments and civil society to assess the real impact of extractive activities and their sustainability. Also, include information on artisanal and small-scale mining within the EITI initiative.
- Priority should be given to the transparency of environmental expenditures and payments made by extractive companies to the State, for example, payments for fines, payments for rights to use and discharge hydrocarbon resources, payments corresponding to the EIA, and payments for regulatory contributions.
- The condition of the negotiations with those who make their compensations to the native communities should be made transparent.
- A transparency initiative should be created in the infrastructure sector that is formed by a tripartite group (State, private sector and civil society), following the EITI model, to promote transparency in this sector in a more comprehensive manner.
- Transparency mechanisms should be evaluated not only on the basis of the indicator of answered requests, but also on the basis of information quality criteria, which is the basis for adequate oversight and participation.
- Mechanisms for information on the current status of projects, whether they are in planning, execution or closure, should be strengthened.
- The regulatory framework regarding the transparency of private investments should be strengthened: Guidelines should be developed and implemented

in the framework of greater transparency, together with the right to public participation in environmental matters and access to justice.

- It is recommended that the State include all information from institutional portals in the GOB.PE. platform, solving the duplication of portals and strengthening the right to transparency by having complete and easily accessible information. To this end, an interoperability mechanism between the institutional pages of each sector can be considered.
- In order for the Government to have complete information regarding environmental management, it is recommended that the information of indigenous watchmen and monitors be accepted and made public and that their capacities be strengthened in coordination with indigenous communities and organizations.
- It is necessary to develop a methodology that considers strengthening intercultural and gender indicators in the access and transparency of information, so that everyone has the opportunity to be informed and to evaluate the social, environmental and economic impact that different projects develop.
- The government should intervene to ensure due compliance with prior consultation, respecting current regulations and the rights of native populations. Likewise, companies should include respect for this right as part of their institutional policies.

It should be considered that the gaps in transparency, governance and participation are not only due to the lack of regulations but also to their evaluation, will, political decision, management issues and human capital. A regulation is only as good as the official who interprets it, and the institutional framework is defined more by the actions of these officials than by a set of regulations. Making investments and the PPP system sustainable, credible and generating the expected social value will require a permanent and measurable effort of transparency and accountability on the part of all the State entities involved, but also of the concessionaires, consultants, advisors and business associations. Achieving social validation of the public-private participation model in the provision of infrastructure will require a new attitude from all stakeholders and, above all, respect for the institutional framework that we want to be strengthened. (Segura, Escaffi, Segura, & Távora, 2017)

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E-mail: adm@sonimagenes.com

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