

Step 4 Research Guide: Decision to Extract, Licensing and Contracting

Diagnosing Corruption in the Extractive Sector:
A Tool for Research and Action
Annex. Step 4 Research Guide

AUGUST 2021

Contents

What does this area of focus cover?	3
How to use this research guide	3
Preliminary questions	6
A. Which forms of corruption are of significant concern?	7
B. What causes the different forms of corruption?	12
C. What measures could help prevent corruption?	15

What does this area of focus cover?

This area of focus covers the range of required approvals and decisions before companies are allowed to explore for or extract natural resources. This could include:

- Opening of new areas to extractive activity
- Awards of exploration and production licenses, including the selection of local minority partners
- Negotiation (or renegotiation) of contract terms
- Approval of environmental and social impact assessments (ESIAs) and management plans
- Land acquisition and resettlement
- Community consultation, including requirements around free, prior and informed consent (FPIC), where applicable
- Renewals and transfers of exploration and production licenses

In Box 1 we provide examples of how corruption has arisen in this area in the past.

How to use this research guide

The following research questions and guidance will help the independent expert complete Step 4 of the diagnostic assessment. The research findings will provide the basis for drafting the Step 4 report and completing the Diagnostic Table. The research guide draws from analyses of past corruption cases and relevant reports and guidance.¹

For users considering the mining sector, a particularly relevant resource is the [Mining Awards Corruption Risk Assessment \(MACRA\)](#) tool developed by Transparency International's Accountable Mining Programme.

To date, Transparency International chapters have conducted MACRA assessments in at least 18 resource-rich countries. We recommend that the independent expert reviews the MACRA approach, its global findings, and especially any existing MACRA assessments that are relevant to the country in which this diagnostic is being conducted.

The independent expert should review this research guide before developing a research plan for Step 4, as the questions below may inform who they decide to interview and other choices around the research approach. The independent expert should then use the questions in this annex to guide their desk research, interviews, focus groups and surveys (if used). The questions below are not exhaustive, but rather are meant to prompt ideas and provide insight on how corruption has arisen in countries around the world. The independent expert can skip questions that are not relevant to their context.

The guidance below has four parts:

Preliminary questions

- A. Which forms of corruption are of significant concern?
- B. What causes the different forms of corruption?
- C. What measures could help prevent corruption?

The main guidance document contains further advice about Step 4, including definitions of key terms, potential information sources, and guidance on how to summarize and present the findings. The independent expert should read the main guidance document in combination with this research guide.

¹ To understand corruption risks in this area of focus, we reviewed dozens of real world corruption cases, as well as publications including: A. Sayne et al., [Twelve Red Flags: Corruption Risks in the Award of Extractive Sector Licenses and Contracts](#) (Natural Resource Governance Institute, 2017); Transparency International Accountable Mining Programme, [Combatting Corruption in Mining Approvals: Assessing the Risks in 18 Resource-Rich Countries](#) (2017); Transparency International Accountable Mining Programme, [Mining Awards Corruption Risk Assessment \(MACRA\) Tool](#) (2020); Open Contracting Partnership and Natural Resource Governance Institute, [Open Contracting for Oil, Gas and Mineral Rights: Shining a Light on Good Practice](#) (2018); A. Williams and K. Dupuy, [Deciding Over Nature: Corruption and Environmental Impact Assessments](#) (U4 Anti-Corruption Centre, 2016); and OECD, [Corruption in the Extractive Value Chain: Typology of Risks, Mitigation Measures and Incentives](#) (2016). To identify common anticorruption good practices, our main sources included: [The Resource Governance Index](#) (2021) and the [EITI Standard](#) (2019); among others.

→ Box 1.

Examples of corruption risks in the decision to extract, licensing and contracting

Bribery to influence awards

In 2008, two executives at Griffiths Energy, a small Canadian company, began cultivating a relationship with Chad's then-ambassador to the U.S. and Canada. In early 2009, Griffiths offered to pay the ambassador a USD 2 million fee for "advisory, logistics, operational and other assistance."² The ambassador then helped arrange meetings with top Chadian officials.

Not long after, Griffiths succeeded in receiving the rights to two oil blocks in the country, and subsequently paid the promised sum to a Nevada-registered entity owned by the ambassador's wife.³ Griffiths also sold four million of its shares to associates of the ambassador at steeply discounted prices. When new management at Griffiths later discovered the transfers, they self-reported them to Canadian and U.S. authorities and, in 2013, pled guilty to Canadian bribery charges.⁴

In 2021, a Swiss court found businessman Beny Steinmetz and two of his associates guilty of corruption in their pursuit of mining licenses in Guinea between 2006 and 2010. They had been accused of paying millions in bribes to the wife of the former president, to obtain iron ore exploration permits, and of forging documents to cover up the scheme.⁵ The verdict followed years of legal battles around how Steinmetz's company had secured rights to the mining project, which it then sold for a large sum. Steinmetz has consistently denied wrongdoing.⁶

Favorable treatment of politically connected entities

In 2010, the Angolan government awarded licenses to two oil fields to a U.S. company, Cobalt. The Angolan national oil company as well as two little known local firms were Cobalt's partners on the deal.

Soon after the award, however, journalists discovered that three top Angolan government officials were among the beneficial owners of these firms, including the then-head of the national oil company.⁷ When questioned about the deal, the officials claimed to be unaware of the transactions and pulled out of the deal.⁸ In 2007, the government of Azerbaijan, authorized by a presidential decree, issued a 30-year license for five gold fields to a company named Azerbaijan International Mineral Resources Operating Company (AIMROC).⁹

Some parliamentarians complained that none of the four entities that co-owned AIMROC had a track record in the mining sector. Additionally, journalists found that one of the four entities was co-owned by three Panamanian companies, all of which employed two daughters of the Azerbaijani president as senior managers, according to their corporate filings.¹⁰ Neither of these two women had evident experience in the mining sector. To date, no formal charges have been filed and no investigation has been launched.

2 United States Department of Justice, *Verified Complaint for Forfeiture In REM* (2015), 2.

3 United States Department of Justice, "Department of Justice Seeks Forfeiture of \$34 Million," June 2015.

4 K. Cryderman, "Judge approves \$10.35-million fine for Griffiths Energy in bribery case," *Globe and Mail*, 25 January 2013.

5 S. Nebehay, "Swiss court finds Israeli businessman Beny Steinmetz guilty of corruption," Reuters, 22 January 2021.

6 T. Burgis and N. Hume, "Beny Steinmetz battles to stay out of jail" *Financial Times*, 5 February 2021.

7 T. Burgis and C. O'Murchu, "Angola officials held hidden oil stakes," *Financial Times*, 15 April 2012.

8 T. Burgis, "Cobalt cuts ties to two Angola oil partners," *Financial Times*, 28 August 2014.

9 K. Ismayilova and N. Fatullayeva, "Azerbaijani Government Awarded Gold-Field Rights To President's Family," *Radio Free Europe/Radio Liberty*, 3 May 2012.

10 Ibid.

Examples of corruption risks in the decision to extract, licensing and contracting (continued)

Collusion between companies

In 2014, the U.S. state of Michigan filed criminal charges against two large natural gas companies, Encana and Chesapeake, for colluding to drive down the price of natural gas leases.

According to leaked emails, executives at the two companies collaborated to decide which company would bid on various leases, thus contributing to a drop in the lease price from \$1,510 per acre to just \$40 per acre between auctions held only five months apart.¹¹

According to Michigan authorities, around 700 landowners suffered losses as a result. In the resulting settlement agreement, Chesapeake did not admit to any criminal wrongdoing and paid a \$25 million fine. Encana paid \$5million in a civil settlement.¹²

Undermining the integrity of environmental impact assessments (EIAs)

The following is an excerpt from the U4 Anti-Corruption Resource Centre report titled *Deciding over nature: Corruption and environmental impact assessments*:¹³

In China, companies have reportedly provided kickbacks to local government environmental agencies in exchange for positive recommendations of EIAs (Huang and Liu 2014). Companies also use other means to favorably influence EIA approval; reportedly in Peru, “mining companies routinely sneaked into the ministry with flash drives and helped government workers edit environmental impact studies” (Dougherty 2015).

A Human Rights Watch report highlights yet another way in which high levels of government monopoly and discretionary power over the EIA creates opportunities for corrupt behavior in India (HRW 2012). Expert committees set up by the environmental ministry review and approve EIAs and grant environmental clearances.

Although the EIA regulations state that committee members should carry out site visits to confirm data presented in EIA reports, this is rarely or never done. As a result, instances have been reported of EIAs that included false data as well as text and data that were copied and pasted from EIA reports for completely different projects.

11 B. Grow and J. Schneyer, “Chesapeake Reaches \$25 Million Michigan Settlement over Leasing Charges,” Reuters, April 24, 2015. Earlier Reuters reporting on the case stated that the average price dropped from \$1,413 per acre to \$46.

12 Michigan Department of Attorney General, “Schuette Announces \$5 Million Civil Settlement, Criminal No Contest Plea by Encana Oil & Gas USA to Resolve Bid-Rigging Allegations,” 2014.

13 A. Williams and K. Dupuy (U4, 2016, p13).

Preliminary questions

Before researching the corruption-focused questions that form the core of Step 4, the independent expert should answer the preliminary questions below. Answering these questions will help the independent expert to:

- Update their understanding of the area of focus prior to conducting interviews
- Clarify the research scope and possibly select a subtopic
- Identify relevant sources of information and potential interviewees.

Researching the preliminary questions should be brief, though precisely how much work is needed will depend on the independent expert's existing familiarity with the subject. The independent expert should revisit the Step 2 research as a key source of information here. The preliminary questions should provide background information only and the independent expert does not need to capture the findings in detail in the Step 4 report or Diagnostic Table.

What are the key attributes of award processes in the sector?

Before speaking to stakeholders, the independent expert should gather up-to-date, basic information about the decision to extract, licensing and contracting. This will help them to ask specific, well-informed questions and can provide a basis for narrowing the assessment scope under the next preliminary question.

The identification of the most important stakeholders related to this area of focus will also help the independent expert to identify potential interviewees for the Step 4 research and potential participants for the Step 5 and 6 prioritization and action planning workshops. If the independent expert and user already know that they want to focus on one aspect of the decision to extract, licensing and contracting (see next question), they could limit this scan to the selected subtopic.

To answer this question, the independent expert should revisit the information on 'the decision to extract, licensing and contracting' collected in the Step 2 worksheet and report. They could also review other data sources such as EITI reports (especially reporting under requirements 2.1-2.4), relevant sections of the [Resource Governance Index \(licensing component\)](#), key laws and regulations (and specific contracts which may be accessible through www.resourcecontracts.org), license registry data, licensing process/bid rounds documentation and ESIA disclosures.

Attributes to consider could include:

- The main laws and regulations governing awards processes, including any subject to ongoing reform.
- The main government institutions and key stakeholders involved in decision-making (this could include mining or petroleum ministries, ministries dealing with the environment, land, water, forestry, agriculture, Indigenous affairs, and social affairs, regional and local governments, community representatives).
- The size, type, and country of origin of companies holding licenses in the sector or anticipated to apply for licenses.
- The methods used for making awards for exploration and production rights (e.g., auctions, competitive tenders, direct negotiations, "first come, first served" processes), and official reasons for selecting such methods.
- Related approvals or requirements (e.g., ESIA, community consultation, land access, FPIC requirements).
- Contextual factors such as the commodities extracted, the location of extractive operations, the number of active licenses and anticipated future trends (e.g., announcements of upcoming licensing rounds or contract negotiations).
- The status of transparency in this area, including the license registry, contracts and beneficial ownership reporting by license-holding companies.
- Significant environmental, social, and gendered impacts in the sector.
- Issues around the sale of assets by the state, or the transfer of assets between parties.

Which aspects of award processes should the research consider?

The independent expert and user should consider which awards processes to cover in the assessment. The independent expert could examine all aspects of how the government makes awards or focus in on specific processes (e.g., negotiations of large-scale production contracts, ESIA approvals). The decision to select a specific subtopic could be informed by consideration of which awards processes are particularly significant, perceived to have the greatest corruption challenges, or show prospects for reform. The Step 4 report should include a clear justification for the selected scope.¹⁴

In some countries, state-owned enterprises (SOEs) play an important – direct or indirect – role in licensing processes. Where there are significant corruption concerns associated with this role, the independent expert should refer to the separate research guide on SOEs for further guidance.

A. Which forms of corruption are of significant concern?

The independent expert should identify forms of corruption that are of significant concern in this area of focus. To do this, the independent expert should consider which forms of corruption have occurred in the past or could occur in the future.

In Step 5, the independent expert and user will use the tool's Diagnostic Table to prioritize among the forms of corruption. Therefore, during Step 4, the independent expert should gather information on which forms of corruption are of greatest concern. The aim should be to focus on forms of corruption which are likely to occur, and which could cause significant harm.

Evidence for answering this question will include:

- Past corruption cases. If a form of corruption has arisen in the past, it might arise again – unless reforms now make it less likely.

- Interviewee perceptions of areas where corruption is happening or could occur in future.
- Evidence on where corruption has occurred in the past from existing reports and investigations (e.g., from media, non-governmental organizations, parliament)
- The presence of red flags linked to those forms of corruption. These are the warning signs and observable symptoms of corruption. Box 2 contains examples.

Below we describe several forms of corruption related to the decision to extract, licensing and contracting, as well as a list of associated red flags. The independent expert should assess whether these forms of corruption are a problem in the sector they are looking at. **This is not an exhaustive list**, but rather presents forms of corruption that are prevalent and harmful in extractive sectors around the world. The research should also seek to identify any other forms of corruption related to the decision to extract, licensing and contracting that are serious concerns. In answering this question, the independent expert should be as specific as possible, including by identifying the specific processes or types of entities involved. We recommend identifying no more than 10 leading forms of corruption (in most assessments, the independent expert will likely identify fewer than that).

Common forms of corruption in decision to extract, licensing and contracting

Bribery to influence awards

Companies may bribe decision-makers to influence awards processes. In some cases, the companies will initiate the bribe to advance their interests; in others, officials will solicit the bribe. The bribes could be a financial payment or some other form of favor or inducement, such as gifts, entertainment, promises of future employment or business opportunities.

¹⁴ Transparency International Accountable Mining Programme, Mining Awards Corruption Risk Assessment Tool (Abridged) (2021) could also be consulted here, especially on pages 7-8.

Examples of scenarios in which this form of corruption could arise include:

- Companies bribing officials to deviate from standard award criteria, processes, or timeframes, or to get information about competitors' bids and activities.
- Companies bribing officials to secure contract terms that are unduly favorable to them or that deviate substantially from legal or commercial norms.
- Companies bribing officials to approve ESIA's and associated management plans even if these do not meet regulatory requirements. Bribery can also be a factor unduly influencing the screening, scoping and report preparation phases of the ESIA process, for example if companies bribe officials to waive ESIA requirements or if they bribe independent experts to ignore certain issues or impacts.
- Companies bribing officials or community representatives to secure consent or land access – in particular when this is contrary to the interests of the community or specific vulnerable groups such as women or Indigenous peoples.
- Government officials sexually extorting license applicants, especially female artisanal and small-scale miners.

Favoritism in licensing processes and decisions

Government officials may implement awards processes in a manner that favors certain parties. The officials could do so for personal reasons, for example if they have a financial interest in a certain company, or a personal or political connection to a company's owner(s). The officials may also be rigging awards processes at the explicit or implicit direction of more powerful political figures. In some cases, politically connected companies may acquire licenses or land rights through unfair awards, and then sell them on at a profit (while potentially providing kickbacks to officials).

This form of corruption could occur in several different ways. For example, government officials could:

- Intervene in awards processes to ensure the applications of certain companies receive preferential treatment, or otherwise steer licenses towards favored parties.
- Pressure applicants to partner with a specific politically connected company.
- Fail to investigate the beneficial owners of certain bidding companies, or ignore problematic beneficial owners.
- Leak confidential information about the award process to politically connected companies.
- Arrange contract terms in a way that enables a politically connected company to earn excessive returns or avoid certain obligations.
- Approve ESIA's and associated management plans even if these do not meet regulatory requirements.

Collusion or manipulation by companies to influence awards processes

In contexts where licenses are awarded through competitive tenders or auctions, companies may collude with each other to manipulate outcomes. Several companies linked to the same individual or parent company could submit bids for the same license to increase the likelihood of success. Or companies might coordinate their bids in a prearranged manner, such as submitting bids that are intentionally defective or uncompetitive in order to drive down the price of the assets. In such cases, corruption could potentially occur without the knowledge or participation of government officials.

An individual company could also misrepresent themselves in the licensing process. They might lie about their qualifications or obscure an inappropriate beneficial owner. Where local participation is required, foreign companies might hide behind local "fronts."

Manipulation of environmental and social assessment processes

In most countries, before companies are allowed to commence operations, they must prepare an ESIA describing the project's anticipated impacts and management plans for mitigation. Approval is usually the responsibility of a different institution to the one issuing exploration and production rights.

ESIA processes can be vulnerable to corruption, including when companies make misleading statements, omit information or manipulate data. Corruption can also arise when there are conflicts of interest between the company and the experts selected to conduct the ESIA, for example if the experts have incentives to highlight a project's benefits rather than to provide an objective assessment. The absence of accurate and verified information makes it harder for government officials, impacted communities and civil society to make an informed judgment about a project. In some contexts, companies may consciously take advantage of the government officials' lack of expertise or knowledge and provide misleading information, knowing that it will not be detected. In other contexts, officials may turn a blind eye due to bribery or favoritism (as noted above).

Manipulation of community consultations

Community engagement can occur at different stages, including during FPIC processes, land acquisition, ESIA, and the negotiation of community benefits. Often, companies and governments contract third parties such as lawyers and consultants for these purposes. Corruption can occur when consultation requirements are bypassed, done as a formality, conducted in bad faith, or when insider deals or payoffs influence the outcomes. In some cases, companies or governments can use the threat of force to manipulate outcomes, with state or non-state armed actors intimidating communities into signing consultation documents or participating in processes that they do not agree with. These challenges can arise particularly in contexts where there is an obligation to obtain FPIC from Indigenous peoples.

Local leaders can also create corruption risks in community consultations, as they may conspire with companies or government officials, manipulate negotiations for their personal benefit and fail to represent community interests, including the views of women and vulnerable groups. Community leaders might do so in return for bribes, gifts, employment offers, or benefits from compensation payments or community development projects. They may also do so to channel benefits towards allies or specific social or ethnic groups.

Undue private influence over laws and regulations

Companies may seek to influence the rules governing awards processes to ensure they are as favorable as possible to their interests. This could include pushing for noncompetitive award processes (e.g., direct negotiation or "first-come, first-served" allocations) where competitive tenders are more appropriate, or weakening requirements around community consultation and consent and ESIA.

Companies or their lobbyists might pay bribes or offer other inducements (e.g., gifts and hospitality) to policymakers. In some cases, undue influence on policymaking can appear both legal and normalized – often referred to as "state capture." This can occur when government officials or their allies hold financial interests in the sector they are supposed to regulate, when government and companies exchange personnel regularly (the "revolving door"), or when companies finance political campaigns and engage in excessive informal lobbying. Drawing the line between acceptable and corrupt behavior is often subjective and context dependent.

Embezzlement and misappropriation of public funds

Companies often need to make payments to government entities during the awards process. Officials can divert these payments to benefit their personal/private interests. Where this is a major challenge, we recommend referring to the separate research guide on revenue collection for further information.

→ Box 2.

Red flags of corruption in the decision to extract, licensing and contracting

Certain red flags or warning signs often accompany the forms of corruption described above. The independent expert should look out for these warning signs during the research process.

Licensing and contracting

- Among the entities that compete for and/or receive licenses, including non-operator minority shareholders, are companies that:
 - Lack experience or in other ways do not meet award criteria.
 - Appear to have been set up specifically for the award.
 - Submit incomplete or false information about themselves.
 - Have a history of controversy or criminal behavior, or previous operational failures.
 - Have won many other awards despite no apparent commercial advantage.
 - Have a politically exposed person (PEP) as a shareholder, or a business relationship with a PEP.
 - Show signs of a PEP being their hidden beneficial owner.
- Officials intervene in the award process to benefit specific companies. Warning signs include officials:
 - Recommending that a license applicant partner with a particular company in order to apply.
 - Giving a company preferential access to confidential information.
 - Overriding the outcome of the awards process or deviating from established rules.
- Companies provide payments, gifts or favors to PEPs with influence over awards processes.
- Officials have conflicts of interest. Warning signs include officials who:
 - Hold commercial interests in the sector.
 - Hold multiple decision-making roles.
 - Fail to disclose potential conflicts of interest or recuse themselves when conflicts are apparent.
 - Have conflicting institutional objectives, for example when SOE officials have influence over awards their SOE is competing for (e.g., via a joint venture in which the SOE is a member).
- Officials deliberately constrain competition. This could include officials:
 - Giving companies first right of refusal without clear justification.
 - Eliminating legitimate bids for unclear reasons.
 - Awarding licenses or contracts on a non-competitive basis when a competitive process would be more typical or appropriate.
 - Putting in place unreasonably short bidding windows or other administrative barriers.
- Awards processes show signs of company collusion, such as:
 - Multiple companies linked to a single individual or parent company submitting bids for the same license or contract.

Red flags of corruption in the decision to extract, licensing and contracting (.continued)

- Companies submitting bids that appear intentionally defective or uncompetitive.
- Winning companies providing benefits to losing companies.
- Companies use third-party intermediaries or agents to gain advantage in awards. Specific warning signs include:
 - Officials recommending or requiring a company to retain a specific intermediary.
 - Companies using intermediaries who have close ties to officials.
 - Companies paying intermediaries unusually high fees or contracting intermediaries to provide atypical or not clearly defined services.
- Contract terms deviate from regulatory requirements or industry and market norms. This could include:
 - Winning bids that are substantially higher or lower than the government's own assessed value for the license or contract.
 - Winning bids that deviate widely from the bids made by other companies.
 - Final contract terms that reduce the winner's obligations or make the deal more valuable to the winner in other ways.
- The winning company or its owners sell the asset or their shares in the asset for a profit without having done substantial work.

ESIAs, land access and community consultation

- Exploration or production work commences without authorization of related approvals such as ESIAs and land acquisition from other departments or levels of government.
- ESIAs are approved without adequate verification of their accuracy and truthfulness.
- Consultation occurs only with local elites.
- Consultation occurs too late in the awards process to be meaningful.
- Projects are allowed to proceed without broad community support.
- FPIC requirements are ignored in consultations with Indigenous communities.

Rulemaking

- Rulemaking deviates from relevant international and national standard processes (e.g., long delays; fast-tracked reforms; lack of public consultation or transparency).
- Reforms unduly benefit a certain group, harm the interests of the state or result in notable weaknesses in the rules.
- Nepotism and revolving doors between the private and public sectors.
- Companies and/or regulators fail to disclose information about their interactions.
- Companies make large campaign donations to public officials with influence over rulemaking.

B. What causes the different forms of corruption?

For the forms of corruption identified as a leading concern in Question A, the independent expert should try to uncover why the corruption has occurred in the past or why it might occur in the future. The following questions could help guide this research. They address risk factors and underlying causes—and it is essential that the research covers both of these subjects.

Which risk factors make corruption more likely to occur?

Certain policies, practices and other risk factors can make systems more vulnerable to corruption. For instance, if the institutions tasked with processing license applications are understaffed and underfunded, their employees may be more susceptible to accepting bribes or requesting facilitation payments.¹⁵ In this example, the low levels of human and financial capacity are risk factors. While capacity gaps do not show that corruption has occurred, they indicate that institutions could be vulnerable to corruption. Identifying specific risk factors is important because they can provide a starting point for targeted action-planning in Step 6 of the diagnostic assessment. For the decision to extract, licensing and contracting, risk factors might include:¹⁶

A lack of transparency, such as failures to disclose:

- Up-to-date information on resource reserves and other relevant geological data.
- Information about the process for deciding whether to open (new) geographic areas to extractive activity, as well as clarity on the boundaries of those areas.

- The rules governing awards, including the choice of allocation method, qualification and assessment criteria, timelines, negotiable terms, the list and location of areas or blocks allocated.
- Award participants and outcomes including the name of companies applying for and receiving licenses as well as information justifying why and how certain decisions were made, including any deviations from the licensing rules.
- Beneficial ownership information of companies applying for or holding exploration or production rights.
- The full text of licenses and contracts agreed between companies and government, including annexes and amendments.
- Asset declarations from the officials who play a decision-making role in awards processes.
- ESIA reports, management plans, associated government approvals, and the technical opinions of the agencies involved in decision-making.
- Processes and outcomes of community consultation, including community development agreements.
- Details on land acquisition processes, including details on compensation packages.
- Lobbying activity and political donations by companies operating in the sector.
- Information related to contract compliance, i.e., publication of project level data on commercial, social and environmental outcomes.

Weak oversight and public participation, including the absence of:

- Oversight of major awards by parliament, civil society and media.
- Independent audits of institutions implementing awards processes.

¹⁵ TA facilitation payment is a small bribe solicited to facilitate or expedite the performance of a routine transaction or service which the entity making the payment is legally entitled to receive.

¹⁶ To prepare this list of risk factors, we reviewed several sources of governance, transparency and anticorruption guidance, and selected the policies and practices that relate most directly to the forms of corruption noted above. The sources include: indicators covered by subcomponent 1.1 (licensing) of the [Resource Governance Index](#); requirement 2 (legal and institutional framework, including allocation of contracts and licenses) of the [EITI Standard](#); annex 1 (common risks) in Transparency International Accountable Mining Programme, [Mining Awards Corruption Risk Assessment \(MACRA\) Tool](#) (2020); chapter 1 (corruption risks in the decision to extract) and chapter 2 (corruption risks in the awarding of mining, oil and gas rights) in OECD, [Corruption in the Extractive Value Chain: Typology of Risks, Mitigation Measures and Incentives](#) (2016); Open Contracting Partnership and Natural Resource Governance Institute, [Open Contracting for Oil, Gas and Mineral Rights: Shining a Light on Good Practice](#) (2018); table 1 (corruption risks in the stages of the EIA process) in A. Williams and K. Dupuy, [Deciding Over Nature: Corruption and Environmental Impact Assessments](#) (U4 Anti-Corruption Centre, 2016).

- Meaningful community consultation, including government and companies failing to:
 - Communicate early and clearly to local stakeholders about the awards process.
 - Identify and meaningfully consult women and vulnerable groups.
 - Present project information in a culturally appropriate and non-technical manner.
 - Seek broad community support for project development and, where applicable, secure FPIC.
- Grievance mechanisms for communities, or access thereto.
- Capacity within communities to effectively engage with extractive companies and government representatives.

Weak integrity measures

- When credible corruption accusations arose in the past, the government did not respond with an investigation or sanctions against the individuals involved.
- The government fails to enforce anti-bribery laws, or to pursue investigations of officials implicated in foreign bribery cases.
- The licensing authority does not undertake robust, risk-based due diligence on applicant companies, including requiring the companies submit beneficial ownership information, screening that information for political exposure and other risks, and researching the companies' anticorruption practices and any past corruption concerns.
- Restrictions on revolving doors between personnel in the public and private sectors are weak or absent (e.g., no mandatory "cooling off" periods).
- Restrictions on officials holding interests in the sectors they oversee are absent, there is a lack of declaration requirements for licensing officials.
- Restrictions on political campaign donations or lobbying by companies are weak or absent.
- Companies seeking or holding licenses lack robust anticorruption policies and procedures, including due diligence systems, transparency, codes of conduct and whistleblower protections.

Weak institutions and processes

- Onerous paper-based application procedures that increase the need for local agents.
- Lack of clear and robust criteria, including:
 - criteria for selecting specific awards methods (e.g., "first come, first served" versus competitive processes)
 - prequalification standards
 - integrity criteria related to anticorruption practices, PEPs, etc.
 - biddable financial and technical terms
 - criteria for the approval of ESIA's
 - consultation requirements, including FPIC requirements where applicable
 - surface and land rights, including recognition of the land rights of women and protections of customary land rights
- Unclear steps and timeframes involved in the awards process.
- The absence of a system for companies to appeal licensing decisions.
- Unclear, overlapping or contradictory mandates of institutions or officials implementing awards processes. This could include licensing authorities also being responsible for promoting investment in the sector, SOE officials participating in licensing decisions that apply to the SOE, or national and subnational institutions having overlapping licensing powers.
- Licensing authorities that lack the capacity to:
 - assess the country's reserves
 - conduct due diligence checks
 - verify the contents of ESIA's
- Lack of proper recordkeeping, including a comprehensive and up-to-date public registry of licenses (i.e., a cadastre) aligned with EITI requirements.
- Lack of coordination between the registry of extractive rights and other land use registries (e.g., agriculture, forestry, protected areas), as well as between national and subnational institutions.

- Low pay or precarious contracts for government officials.
- Lack of controls to prevent license stockpiling, such as the absence of “use it or lose it” rules.
- Lack of controls related to license transfers, including requiring timely disclosure, imposing transfer fees commensurate with standard license fees, and subjecting transferees to the same qualification requirements and due diligence as license applicants.
- Undocumented and ad hoc face-to-face contact between government officials and applicants, creating opportunities for corruption.

Practices that undermine fair competition

- Officials exercising discretion over licensing decisions
- Use of direct negotiations when open, competitive bidding would be more appropriate (e.g., in contexts where there is existing knowledge of an asset’s geological potential and interest from a wide range of companies)
- Absence of strong and transparent prequalification regimes including for non-operating partners
- Absence of standardized models or guidelines for license and contract terms
- Widespread use of agents by companies seeking licenses from the government
- Requirements on companies to form joint ventures with local firms when such arrangements are “imposed” by officials, or require partnering with unqualified entities.

Weak enforcement of rules

- Licensing rules and requirements are not followed in practice
- Companies receive licenses despite not meeting the necessary requirements and criteria
- Failure by government to investigate deviations from the rules and requirements.

Foreign actors enabling corruption

- Banks fail to refuse and report suspicious transactions, such as possible bribes or payments to a destination other than the typical or legally mandated government account.
- Foreign jurisdictions fail to actively enforce home-country anti-bribery laws.
- Foreign agents or intermediaries use corrupt tactics to help their clients win licenses.
- Bribes, embezzled funds or other illicit financial flows move through offshore accounts held by shell companies. The enablers here could include: the banks, the service provider that helped set up the shell company, or the secrecy jurisdiction in which the company is incorporated.
- Foreign jurisdictions fail to prevent illicit funds, such as bribes, to enter their economies, such as via real estate investments. Or, they fail to use visa bans and other tools against individuals credibly implicated in corruption.

What are the underlying causes and motives of the leading forms of corruption?

It is important for the Step 4 research to include ideas about the underlying causes of corruption, which often relate to the country’s political system. This type of research can be difficult, as there is often no hard evidence for the motives behind corruption or on who benefits from it. It can also be quite sensitive. However, stakeholders usually do have ideas about the drivers of corruption and its place in their country’s politics and economy.

The independent expert can collect ideas on underlying causes through thoughtful interviewing, assurances of anonymity, triangulating answers across stakeholders and reaching out to experts who study the country’s political economy. Any insights gained on the causes of corruption will be useful in Step 6; action planning should reflect the country’s political realities and the selected actions could address underlying causes as well as the specific forms of corruption or risk factors.

Key questions include:

What is the relationship between the country's political elite and companies operating in the sector?

- Do the owners of the companies maintain close relations with powerful political figures or groups?
- Do political figures and their associates hold interests in extractive companies?
- Do companies provide financial backing or other advantages to politicians?

Who wins and who loses from the corruption or governance weaknesses? Or who would win or lose if the corruption took place in the future?

- Who is involved, both formally and informally, in the different forms of corruption? Who influences events in these areas?
- Who would benefit if the corruption took place? Who would lose out? Benefits could be financial, professional or political.
- Which international actors, such as exploration and production companies, suppliers or service providers (e.g., lawyers, accountancies, consultants), are involved? Do these actors have a history of corruption allegations or other wrongdoing? Would they profit, directly or indirectly, from the corruption?

Are anticorruption actors strong enough to detect, punish and deter corruption?

- Does the country have an anticorruption agency that operates independently and effectively?
- Does the government or SOE conduct serious investigations when credible corruption allegations arise? Have officials and companies been charged with corruption in such instances?
- Has the anticorruption agenda become politicized, i.e., is it used to go after political opponents?
- Can other anticorruption actors, such as NGOs, community activists and journalists, operate without the threat of censorship, intimidation, or violence?

How are the causes of corruption changing (or not changing)?

- How prominent is the extractive sector in the country? Does it play a disproportionate role in the country's economy and politics?
- Do wider political or economic events make this form of corruption more or less likely? The events could include a recent or upcoming election, domestic or international conflicts, economic booms or downturns, corruption scandals, and/or shifting demand for specific natural resources. For licensing this could include whether demand for the country's natural resources is rising or falling, and how this might influence the incentives for corruption?
- Has corruption become normalized? Is corruption in this area allowed to persist because stakeholders feel that "this is just how the system works"? Is that a common excuse?

C. What measures could help prevent corruption?

The independent expert should gather ideas for what anticorruption measures might help address the identified forms of corruption. These ideas will help to inform the action planning in Step 6.

Who might support anticorruption reforms and why?

- What current incentives work in favor of anticorruption reform? These could include anticorruption commitments by top politicians; a damaging corruption scandal; pressure from international creditors such as the IMF, and a desire to attract international investors, among other incentives.
- What measures would alter the incentives, making corruption more risky and less appealing?
- Which actors would support anticorruption reform in this area? Does corruption lead to undesirable costs for any actor? Would any actor benefit politically by supporting reform? Relevant actors could include politicians and political parties, government and SOE officials, various categories of companies, civil society groups, unions, host communities, foreign governments, international financial institutions, among others.

- Of the forms of corruption identified, where is reform most feasible?
- Are there ongoing reforms which could help address the form of corruption, directly or indirectly?
- When corruption cases arose in the past, how did anticorruption actors or processes perform? What can we learn from this record about strengths and weaknesses in anticorruption responses?

What are specific ideas for anticorruption actions?

To solicit ideas from interviewees, the independent expert could ask:

- If you could change one thing in this area, what would make the most difference in preventing corruption?
 - What policies and practices currently work well in helping prevent corruption, and could be further strengthened? If familiar to the researcher or interviewees, other comparable countries may also offer ideas of successful tactics.
 - Would fixing any of the **risk factors identified under Question B** effectively help prevent corruption? This could include actions to:
 - Enhance transparency
 - Strengthen oversight and participation
 - Promote integrity
 - Enact institutional and process reforms
 - Increase fair competition
 - Strengthen the enforcement of rules
 - Address foreign enablers
 - Would stakeholders recommend any of these specific anticorruption actions, which are considered good practices or have proven successful in the past?
 - **Publish extractive sector contracts and licenses.** This should include disclosing the full text of any contract, concession, production-sharing agreement or other agreement granted, or entered into, by the government which provides the terms attached to the exploitation of oil, gas and mineral resources.
- Going beyond EITI requirements, countries could publish all contracts regardless of when they were signed and expand the scope of disclosures to include major procurement or commodity trading contracts.
- **Standardize and automate licensing processes to reduce discretionary behavior.** Using model contracts and setting fiscal terms consistently in advance can help reduce opportunities for discretion and influence-peddling. Adopting a digital application systems reduces the risks of bribes and facilitation payments, and digital cadasters encourage clarity and oversight.
 - **Collect, disclose and vet beneficial ownership information.** Licensing authorities could:
 - require all companies that apply for or hold a participating interest in an exploration or production license to identify their beneficial owners, their level of ownership and details about how ownership or control is exerted;
 - verify the information for all or high-risk applicants;
 - use the information to screen for PEPs, conflicts of interest and other corruption risks; and,
 - publish the information for all companies participating in awards processes. This reporting during the licensing process should be accompanied by establishing a publicly available register of beneficial owners for all companies that hold extractive rights, as required by the EITI. As noted under other topics, countries could expand the scope of beneficial ownership disclosures to include major subcontractors and commodity traders.
 - **Strengthen conflict-of-interest rules** regarding the participation of officials and PEPs in the extractive sector, and address weaknesses in the enforcement of those rules.
 - **When possible, prohibit the use of representative agents in licensing processes,** or at least require companies to disclose their agents, maintain a public list of registered agents, and limit the access agents have to officials.

- **Adopt and enforce robust and transparent prequalification standards** for all companies including local minority partners. Monitor closely the selection of local partners, and in particular ensure that they are not “imposed” by officials (based on political connections or for their personal/private interests).
- **Ensure the licensing authority has adequate resources**, both in terms of funding and human resources.
- **Upgrade social protection and company consultation processes.** To prevent against their manipulation, the government could ensure laws, regulations and guidelines governing ESIA's and consultations are aligned with international best practices on environmental and social performance, and ensure proactive implementation.¹⁷ Governments would also need to provide relevant government authorities with adequate resourcing and expertise so that they are able to review/verify the ESIA's.
- **Full investigation and, if appropriate, criminal proceedings against those alleged to have committed corrupt acts**, including officials implicated in foreign bribery cases.

¹⁷ Key points of reference could include the [IFC Performance Standards \(2012\)](#), [ICMM's Good Practice Guidance on Indigenous Peoples and Mining \(2015\)](#) and [OECD's Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector \(2017\)](#)

About NRGi

The Natural Resource Governance Institute is an independent, non-profit organization that supports informed, inclusive decision-making about natural resources and the energy transition. We partner with reformers in government and civil society to design and implement just policies based on evidence and the priorities of citizens in resource-rich developing countries. Learn more at www.resourcegovernance.org



This publication was financed by GIZ as commissioned by the German Federal Ministry of Economic Cooperation and Development.

On behalf of

