
GOOD PRACTICES FOR NEGOTIATING LEASES AND CONCESSIONS FOR NATURAL RESOURCE EXPLOITATION

QUERY

This paper should cover good practices for mitigating corruption risks in the negotiation and handing out of leases and concessions for natural resource exploitation in various sectors, such as mining, oil and gas, and potentially agriculture.

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1. INTRODUCTION

The awarding of leases and concessions is the process by which a government provides a private company with the rights to use land and exploit natural resources – whether for mining, logging, agribusiness or other land use. This process presents one of the most significant corruption risk areas in the governance of natural resources.

A lack of transparency throughout the stages of the contracting process - from planning, to allocation and award, to the terms and implementation of a contract - allow space for corruption to occur. Companies may employ bribery or wield their political connections to secure preferential treatment in the negotiation of a contract (Lindner, 2014). The details of contractual arrangements for companies to exploit natural resources are often not disclosed, and when they are, their complexity can make

public scrutiny and accountability difficult to achieve (World Bank 2007). The terms of natural resource contracts can be exposed to corruption; in determining the area of exploitation, the cost recovery basis, the share of the profits, the length of operation, rate of production, environment concerns, end-phase commitments, as well as reporting and control commitments (Kolstad et al. 2008). As a result, countries may negotiate poor terms with companies, to the benefit of private interests and the enrichment of public officials and at the expense of socioenvironmental rights of the local population. The concept of the “resource curse” experienced by many resource-rich countries in the global South derives from the frequent failure of resource wealth to translate into material benefits for local populations (Chene, 2014).

This helpdesk answer presents good practices for mitigating the significant risks of corruption in the negotiation and awarding of leases and concessions. It is important to note that exact legal definitions of leases and concessions vary between jurisdictions, and that there are significant differences in the processes for allocation between sectors – whether for mining, oil and gas, or large-scale land-based investments such as agriculture or forestry. This study draws from literature exploring corruption risks in these diverse sectors. In line with the literature, “good” rather than “best” practices are highlighted, as the significant variations between sectors and legal frameworks in different countries makes any ranking of practices difficult. This answer provides an overview of general principles and examples of good

practice from the mining, oil and gas sectors and large-scale land investments, however any assessment of the transferability of these good practices between sectors or jurisdictions is outside the scope of this study.

2. LEGAL AND REGULATORY FRAMEWORKS

“Contract” vs. “law-driven” systems

The literature highlights the importance of addressing corruption risks and promoting transparency throughout the entire decision-making process, from the development of legal frameworks through the allocation process, implementation of contracts and the implementation of the rules regulating revenue management and spending (Lindner, 2014). A country may have a more or less developed legislative framework for handling these processes, which has an impact on corruption risks and means to mitigate against them. Countries with well developed “law-driven” systems allocate permits and licenses for mining based on a clear legislative framework with minimal space to negotiate terms (Open Contracting Partnership (OCP) and Natural Resource Governance Initiative (NRGI). 2018). In contrast, countries with less developed legal frameworks may grant rights through individually negotiated agreements. Such “contract-driven” systems often result in more ad-hoc and opaque processes, with greater scope for negotiation around specific projects, increasing both the risk of corruption and the risk of a worse deal for the host country or affected communities (Columbia Center on Sustainable Investment, 2014). OCP and NRGI found that “law-driven systems tend to allow for greater public scrutiny as the public is more likely to be able to participate in the legislative process than in individual contract negotiations”. (OCP and NRGI, 2018). Laws also tend to be publicly available, which means the rights and obligations of investor parties are more easily ascertainable. Hybrid systems, with elements of both contracting and law driven systems, are also possible and common in the extractives sector (Caripis, 2017).

The literature points to the preferability of comprehensive and transparent law-driven systems with disclosure of the rules and regulations that govern decision making around natural resource use. For contexts where such a

comprehensive legislative framework is lacking, “model contracts” are recommended as an interim measure (NRGI, 2014). Model contracts limit the scope of contract negotiation and provide a good practice template to assist countries which do not yet have a strong legal framework in place to govern the allocation process. The International Bar Association’s Mining Law Committee has developed a Model Mining Development Agreement, and the International Institute for Sustainable Development has developed a model contract for large-scale agricultural investments (NRGI, 2014).

Increasing transparency of lobbying

In countries that depend economically on natural resource exports, extractive industries or commodities companies may wield significant political weight, and as such their influencing power over national policies and legislation should be monitored. By ensuring transparency and disclosure of companies’ lobbying activities, the risk of undue influence over natural resource legislation and regulations is diminished. Greater transparency of lobbyists’ interactions with government enables greater public scrutiny, which can keep the behaviour of governments and lobbyists in check (Caripis, 2017).

3. TRANSPARENT AND PARTICIPATORY LAND USE PLANNING AND REGISTRIES

Before a government takes the decision to lease out land or allow for extractive activity to take, some key prerequisites should be in place. 1) Land rights (both surface and sub-surface) should be recognised and transparently registered. This ensures that there is clarity regarding land ownership and avoids the risk of negotiations taking place over areas which should be exempt such as customary lands or areas of conservation. 2) A comprehensive Environmental Impact Assessment should be conducted. This allows for clarity amongst all stakeholders on the potential environmental and social impacts that a project will have, which allows for appropriate modifications or adequate compensation to be agreed in advance if the lease or concession goes ahead. 3) Governments should follow their international obligations to consult with communities that will be affected by natural resource exploitation, in particular the rights of

indigenous peoples to Free, Prior and Informed Consent (FPIC).

1. Recognition of land rights and transparent land registries

Research by IIED highlights the negative outcomes suffered by the rural poor in developing countries from large-scale land deals and stresses that recognition and respect for the customary land and resource rights of rural people should be a pre-requisite for any such deals to take place (Cotula, 2016). Kenya is an example of a country that has taken steps to protect customary land rights, with the Community Land Act 2016 which formalised titles to “community land”, established a Community Land Registrar and a dedicated institution, the National Land Commission to oversee the formalisation of titles, registration of land and land use planning (Caripis, 2017). Where communities’ land rights go unrecognised, support from civil society actors through participatory community mapping can help to build internal capacity for community land protection and seek formal government recognition (Knight, 2016).

If the recognition of customary land rights is a pre-requisite for just land and extractive deals to take place, a frequent challenge for communities in exercising their rights is the lack of comprehensive, transparent and accessible registries of land tenure and sub-surface rights. Accurate, coordinated and publicly available land use data reduces the risk that all parties – communities, government, civil society and the licencing authority – can be deliberately misled about conflicting land uses and rights (Caripis, 2017). A particular challenge in this regard is that the national registers that handle information on surface rights (i.e. land tenure) are often separate from those that handle information on extractive industries (mining cadastres or petroleum registries), this data is rarely standardised and disconnects between the multiple authorities that handle the data (often split between national and sub-national level) can further complicate meaningful access to information (OCP and NRGI, 2018).

Indonesia’s “One Map” policy is seeking to address this challenge, by creating a single portal for all land use (including extractives, protected forests, plantations, agricultural areas and customary lands) - and make the data publicly accessible and shareable (Open Government

Partnership, 2016). Another good practice in this area can be found in New South Wales’ “Common Ground” website, which the government of New South Wales developed to provide accessible and understandable information to their citizens on mining production and exploration in the state. The website is written in straightforward language and features an interactive map that details overlaps between coal licenses and land rights of native groups (OCP and NRGI, 2018). More recent innovations include the Bitland Digital Registry in Ghana, which employs blockchain technology to create a transparent record of land ownership using drones, remote sensing and field-level research to enhance the data (Greene, 2018).

Proactive disclosure through comprehensive and integrated registries can mitigate against the opacity in which many decisions around leases and concessions take place, and establish a level playing field for actors entering into or impacted by the negotiation of leases and concessions. Such registries should recognise and map existing traditional and customary land rights and should keep an up to date and accurate record of land uses, availability and transfers (World Bank, 2011).

2. Environmental Impact Assessments

If conducted appropriately, Environmental Impact Assessments (EIAs) provide vital information regarding the expected impacts a concession or lease will have on the local environment and populations. Environmental Impact Assessments are ideally conducted before a contract is signed - before the conclusion of the negotiations or as a condition for a company receiving a license to operate. Such, *ex-ante* assessments can increase disclosure of information and help stakeholders understand the potential impacts of a land or extractive deal, thus allowing for modifications to the project design to minimize negative effects, or the negotiation of compensation for affected actors and environments (OCP and NRGI, 2018).

In a series of investigations into large scale land investments in Africa, the Oakland Institute (2011) found that the absence of EIAs and their lack of disclosure was a major challenge to accountability. Without clear regulations, high technical standards, strict controls and oversight, EIAs risk becoming at best a “box-ticking” exercise and at worse an opportunity to manipulate

information and present fraudulent conclusions that downplay a concession or lease's potential impact. To address corruption risks in EIAs, the National Resource Governance Initiative (2017) recommends that governments:

- i. Improve technical training of private EIA experts and provide them with specific anti-corruption training;
- ii. Improve the technical standard and consistency of methodologies applied to the different types of EIAs;
- iii. Develop a professional code of conduct for private EIA experts;
- iv. Improve the accountability and sanctions regime for EIAs by enhancing public information provision;
- v. Improve transparency around EIA public consultations;
- vi. Improve the application of formal sanctions for private EIA experts in the case of submission of consistently poor EIAs.

Research by the TI Mining for Sustainable Development Programme concurs with these recommendations, and stresses that where the relevant government authority cannot perform its job adequately due to lack of funding, introducing fees or a levy for the assessment may be an option to bolster its economic resources (Caripis, 2017).

3. Consultations and Free Prior and Informed Consent

Local communities must be involved in decision-making processes around land use or natural resource exploitation that affect them. Governments and companies should disclose information about how consultative processes will run and how communities' views will be taken into account (OCP and NRGI, 2018). Moving beyond mere consultation, the ILO Convention 169 (1989) and the UN Declaration on the Right of Indigenous Peoples (2007) enshrined the right of indigenous groups to obtain free, prior and informed consent (FPIC) before any actions that take place on their lands. The FAO Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (2012) also includes FPIC for indigenous peoples. Civil society campaigning calling for the extension of FPIC to other (not only indigenous) affected communities was unsuccessful, however the FAO Guidelines do call for "consultation and participation" with all affected groups (FAO, 2012).

Transparency International's Mining for Sustainable Development Programme calls for clear, binding processes and principles that set minimum standards for the content, timing, participants and mode of consultations; transparency in the conduct of negotiations and the consultation process; and publication of agreements and other outcomes of community engagement (Caripis, 2017). The TI study also flags that the timing of consultation affects corruption risks - when consultation occurs determines whether or not it is genuine and meaningful, and how easily the process is manipulated (Caripis, 2017). Enshrining FPIC in national laws means that indigenous communities can seek recourse in the courts when their rights are violated. For example, in 2016 in Colombia, the Constitutional Court invalidated a series of administrative decrees that created numerous "strategic mining areas" on the grounds that the government had failed to consult with indigenous and Afro-descendent communities living in the designated areas. Even though no licences had yet been granted, the Court held that the government had a duty to consult before the land was allocated to mining (Caripis, 2017).

The concept of "Community Protocols" has been developed and promoted by international organisations such as Natural Justice and the Centre for International Environmental Law (CIEL) to empower communities to better understand and exercise their rights over natural resources. A typical community protocol includes: a description of the community, its leadership, and decision-making processes, including how they have defined free, prior and informed consent; an assertion of their customary laws and linkages with their bio-cultural ways of life; a map of their traditional territories and a description of their bio-cultural heritage; an inventory of their rights, according to national and international law. The development of the protocol strengthens the community's awareness of its rights, and through its dissemination these expectations are communicated externally (Global Witness, 2012). In the extractives industries there is an increasing trend towards the development of "Community Development Agreements" (CDAs) which seek to define the relationship between a company and the affected community, outlining specific obligations that the company commits to support the community's self-defined long term development plans (CCSI, 2014).

A good example of successful land use consultations

comes from the Canadian state of British Columbia, where, following a decade of conflict over logging, the government initiated a Strategic Land Use Planning (SLUP) process based on principles of public participation, consensus-based decision making, consideration of resource value and sustainability and the involvement of indigenous peoples. The SLUP resulted in the development of 17 plans covering 85% of BC's land base - over three times the size of the UK - which settled many long-standing disputes. Lessons learnt from the process include that multi-stakeholder, consensus-based decision-making is a lengthy process (each plan took on average 4 years) but one that allows for information sharing and trust building; a moratorium on extractive activities during negotiations was a necessary prerequisite for dialogue to work; enshrining plans within legislation and establishing "plan implementation monitoring committees" helped ensure that plans were adhered to (Global Witness, 2012).

4. TRANSPARENT ALLOCATION AND AWARD OF CONTRACTS

Host and home governments alike must guard against bribery and undue influence in decision making over leases and concessions (see section 8 for mitigating measures that companies and home governments can take). The process a host government follows for the allocation of contracts depends upon the natural resource to be exploited. For example, in terms of subsurface resources (oil, gas, minerals) the most appropriate allocation process depends on the quality of geological information available. Competitive processes are considered the best option for the allocation of contracts where sufficient information is available to make a reasonable estimate of the resource value and where there is more than one qualified and interested company (OCP and NRG, 2018). However, competitive bidding is not always possible or appropriate, in particular with respect to the allocation of mining licenses where the extent of economically viable mineral resources is harder to ascertain. For this reason, direct allocation or the rule of "first come, first served" is more common in the mining sector, whereby the first company meeting the requirements that applies for a contract over an open area will receive the rights (Caripis, 2017).

Building transparency around competitive and non-competitive allocation systems is key to reducing corruption risks. Where a government employs a mix of allocation systems, there should be public disclosure of the rules and processes for selecting which system applies in any given case. Where responsibility for carrying out different aspects of the process are split between various agencies, the government should aim to bring all the information together in one accessible online resource (OCP and NRG, 2018). [The New Zealand Petroleum and Minerals website](#) presents good practice in this sense, providing information on the three distinct allocation processes and the differences between them, and an online database that allows users to determine which method applies to any given area (OCP and NRG, 2018).

Where competitive bidding applies, to avoid opacity and discretion, the Natural Resource Governance Initiative (2013) recommends that host governments should make information related to all stages of bidding processes publicly available, including; timelines for submitting bids, selection and evaluation criteria, contracts award decisions as well as other critical information such as geological potential, cost recovery, length of operations available transparently to all stakeholders. Governments should further disclose the names of all companies bidding for rights, along with beneficial ownership information (see 6. Tackling Conflicts of Interest) and where pre-qualification criteria are used, provide information on successful and unsuccessful candidates (OCP and NRG, 2018).

Where negotiation of a contract is part of the allocation process, OCP and NRG recommend that governments disclose which terms are negotiable and which are fixed, for example by publishing a model agreement and the final contract (see 5. Contract Transparency).

Where possible, putting in place an online submission and allocation process increases transparency and limits interaction between public officials in charge of the bidding process and bidders (NRG, 2013). Governments should publish information on final decisions that have been made and provide clear and understandable justifications. Mexico's National Hydrocarbons Commission (CNH) is considered a leader in this sense as it publishes schedules and agendas and web-casts its meetings where decisions on licenses and permits are made, allowing viewers to

follow the decision-making process live (OCP and NRG, 2018).

An additional critical factor to reducing corruption in the awarding process is the independence of the decision-making authority. Governments should appoint independent bodies responsible for the technical design of the allocation and the oversight of the allocation process. Institutional arrangements that ensure transparency and safeguard the independence of the licencing authority reduce the opportunities for different parties to interfere with or seek preferential treatment (Caripis, 2017).

Botswana is deemed to be a good practice leader in Africa in its mining policies and regulations, scoring highest of all African countries in the Fraser Institute's 2013 survey of mining companies under the policy perception category (Fraser Institute cited in Lindner, 2014). Botswana's 1999 Mines and Minerals Act reformed the process of licensing, making it predictable and clear. The government's website clearly details the application process and costs and ensures that the licencing authority, the Minister of Minerals, Energy and Water Resources, has very limited administrative discretion as the conditions are stated clearly in the Act (Williams and Dupuy, 2016). In Chile, the risk of corruption in the awarding of mining licences is mitigated as licences are awarded via an administrative process by judges, on the advice of a technical body, SERNAGEOMIN. Transparency International's Mining for Sustainable Development Programme found that "this system provides a degree of stability to the approvals regime because of a number of features: first, the process is transparent, as all information regarding the status of the application and the decisions of the judges is available online both to applicants and the public. Second, the judges are independent and removed from political pressures of government" (Caripis, 2017).

5. CONTRACT TRANSPARENCY

In most countries and natural resource sectors, non-disclosure of contracts on the basis of corporate confidentiality remains the norm. In an extensive review of the impacts of non-disclosure in driving land-grabbing, Global Witness, the Oakland Institute and the International Land Coalition called for the adoption across all land and

natural resource decision-making of a precautionary principle of "if in doubt, disclose", to make a shift from an international norm in which States and companies operate opaquely, to one in which they automatically disclose all information, unless it can be proven beyond doubt why such disclosure would harm commercial competitiveness or not be in the public interest (Global Witness, 2012). Following the same precautionary principle, NRG suggests a "best practice" confidentiality clause for mining contracts that requires the full terms of any agreement to be publicly available, with information only kept confidential if a Party "establishes that confidentiality is necessary to protect business secrets or proprietary information." (Rosenblum and Maples. 2009). Increasingly international financing institutions are requiring contract disclosure as a condition of funding, since the IFC Access to Information Policy was revised, extractive industry financed projects now require contract disclosure and the IMF Revenue Transparency Initiative requires that "contractual arrangements between the government and public or private entities, including resource companies and operators of government concessions, should be clear and publicly accessible." (IMF cited in Global Witness, 2012).

In terms of the content of natural resource contracts to be disclosed, it is recommended (Global Witness, 2012) that three key questions must be covered in detail:

1. Who are the Parties to the contract, and how are they involved in the investment? (Includes: names of company, sub-contractors, affiliates, and beneficial owners; financial intermediaries and backers, and any third parties to the contract, such as affected communities).
2. What rights, responsibilities and obligations does the company have? (Includes: concession area and nature of rights, business plans and development intentions; terms of procurement; value of land, rents, and fees, projected profits and revenues, taxation regimes, and closure plans; Inter-relationship of legal jurisdictions and how they apply in the event of dispute; Obligations of the business enterprise, including how they will liaise with employees, local communities (respecting and protecting the rights of local communities and landholders), and maintain the environment; Obligations of the State to monitor the implementation of the contract's terms and conditions, including grievance mechanisms, sanctions, and penalties in the case of non-compliance).
3. What have they done to assess and mitigate potentially negative impacts? (Includes: Publicly agreed and documented evidence of human rights, socio-economic, environmental, due diligence, food security, value and supply chain,

and other impact assessments; Publicly agreed and disclosed mitigation and management plans; Resettlement and compensation plans.)

Strives towards contract transparency have been more successful in the extractives sector than other natural resource sectors. Since 2013, the Extractive Industries Transparency Initiative (EITI) has encouraged contract disclosure and the prevalence of contract transparency among EITI countries has increased significantly: As of 2017, more than one in three EITI countries have legal provisions supporting contract transparency. 29 of the 52 EITI countries disclosed at least some contracts, either at the relevant ministry website or on the national EITI website (EITI, 2018). Mexico is seen as a good practice leader in contract transparency in the oil and gas sector, as the Mexican CNH which oversees the state-owned company Pemex has begun implementing the open contracting data standard in its oil exploration and extraction contracts (NRGI, 2017). The CNH has taken a number of positive steps including publishing the full text of contracts, with links to the contracts themselves as well as a summary of key contract terms designed to facilitate user comprehension. If systematically populated, the CNH system should facilitate the ongoing monitoring of the implementation of PEMEX's contracts by civil society (NRGI, 2017).

For contract disclosure to be effective in tackling corruption, it must also be timely. Contracts should be published online and made available to affected communities without internet access, and also be made available in local languages (OCP and NRGI, 2018). Online disclosure should be organised in an easily accessible, searchable, machine readable format. A good example is the ResourceContracts.org platform developed by CCSI, NRGI and the World Bank, a user-friendly database of over 1,500 publicly available oil, gas and mining contracts from over 90 countries. CCSI has since supported a number of governments develop their own country specific mining contract databases, in [Guinea](#), the [Philippines](#), [Sierra Leone](#), [Tunisia](#) and [DRC](#). While contract transparency is much more developed in the mining, oil and gas sectors, initiatives have been made to drive greater transparency in land contracts. In 2015 CCSI and the World Bank launched OpenLandContracts.org, which covers agriculture and forestry contracts in 15 countries.

The potential impact of contract disclosure in securing accountability is clear from the example of the largest land deal brokered in the history of South Sudan, for which the Oakland Institute publicly released the contract in 2011. The contract between the South Sudanese Government and the American company Nile Trading and Development, was for a 49-year lease for 600,000 ha, with a possibility of the company expanding this by a further 400,000 ha for US\$25,000 (US\$16 per ha), including unencumbered rights to exploit all natural resources in the leased land. The publication of the contract resulted in the community of Mukaya Payam leading a protest against the deal, which ultimately led to the President revoking the investment in their region (Global Witness, 2012).

6. TACKLING CONFLICTS OF INTEREST

Research from TI's Mining for Sustainable Development Programme highlights the risks of government officials or their close associates –termed “Politically Exposed Persons” – holding interests in mining companies. To mitigate this risk in Colombia, public bodies have a legal duty to keep registers of the assets and income of their staff. Unfortunately, these declarations are not always updated or thoroughly verified, and the regulation does not extend to consultants or contractors (Caripis, 2017). NRGI reviewed mining and oil laws in 50 countries and found that around half included prohibitions on PEPs from holding interests in companies applying for extractives licenses. While applauding these prohibitions as an important step, the authors stress that in most resource rich countries, without beneficial ownership transparency, it is impossible to verify who ultimately benefits from a company's extractive rights (Westenberg and Sayne, 2018).

As a result, many EITI countries are complementing disclosure of license and contractual information with further information on the beneficial owners of the companies that operate in the sector. By 2016, over 50 EITI signatories had published roadmaps for beneficial ownership disclosure. EITI's policy on beneficial ownership requires that by 2020 EITI countries ensure that all companies operating in their jurisdiction publicly disclose the identity of their beneficial owners when applying for, or when holding a participating interest in, a domestic oil, gas

or mining license or contract (EITI, 2018). The NRGi has developed guidance for governments on how regulators can add a beneficial ownership screening component to the contracting process in order to disqualify any companies that fail to provide the required information or where information revealed raises red flags about potential conflicts of interests or corruption (Westenberg and Sayne, 2018).

TI's Mining for Sustainable Development Initiative further recommends measures to tackle 'revolving doors' – the movement of staff between industry and government legislative or regulatory bodies. For example, Peru's mining authority INGEMMET requires contractors and employees to submit a legal declaration that they do not work with private companies related to the authority and has further strengthened its access to information systems to allow tracking of any complaints made (Caripis, 2017). The research also recommends that public bodies foster a culture of commitment to integrity by establishing integrity systems, as has been effective in the Department of Mines and Petroleum in the state of Western Australia (Caripis, 2017). Civil society and media monitoring can also prove an effective check on conflicts of interest. In Chile, the School of Journalism at the Universidad Diego Portales set up a website called La Puerta Giratoria del Poder ("the revolving doors of power") that details the employment information of the 400 highest ranking public officials in the last two administrations, highlighting the movement between the public and private sectors, with the aim of empowering civil society to monitor and hold these individuals to account (Caripis, 2017).

7. OVERSIGHT AND MULTI-STAKEHOLDER INITIATIVES

Mechanisms for independent monitoring and oversight are also essential to the clean governance of natural resource concessions and leases – this can include audits, parliamentary oversight, civil society and media monitoring, as well as corporate transparency and monitoring. Pellegrini (2011) highlights the strong potential role parliaments have to play in monitoring natural resource contracts and securing accountability by overseeing audits.

Multi-stakeholder initiatives such as the Extractive Industries Transparency Initiative (EITI) have been successful in enhancing transparency and dialogue between civil society, government and private sector actors in the extractives sector in some countries. EITI is the most comprehensive and far reaching multi-stakeholder transparency initiative to tackle natural resources. EITI is the global standard for the good governance of oil, gas, and mineral resources and is implemented in 52 countries around the world (EITI, 2018). The initial focus of EITI was on revenue transparency, which led to critiques of its narrow focus and the lack of evidence that the increased transparency had translated into increased accountability the participating countries (Chene, 2017). Following lobbying by civil society to increase the scope of the standard, since 2013 EITI has encouraged implementing countries to disclose information throughout the decision-making chain, including on licensing processes and the subsequent contracts (NRGI, 2015).

This has led to an increase in countries providing information on the licensing process, including information on which awards are under negotiation, and the ensuing contracts. Well over half of EITI implementing countries now disclose at least some contracts, however there is room for improvement in terms of increasing the number and details of contracts available and making them more readily accessible to the public (Pitman, 2017). Amongst the countries that disclose all or most of their contracts are Australia, Canada, DRC, Ecuador, Guinea, Liberia, Norway and Peru (NRGI, 2013). In Liberia the EITI process was established in 2009 and has had far reaching impacts. The Liberia Extractive Industries Transparency Initiative Act (LEITI) requires disclosure of revenues and payments from the agriculture and forestry sector as well as the extractive industries (CCSI, 2014). In addition to information about revenues, LEITI requires disclosure of all contracts in the sector and has started disclosing information about the ownership of companies. LEITI has further conducted a full post-award audit of the processes for awarding concessions, contracts, licenses, permits and other rights to exploit natural resources in the period July 2009 to December 2011, with a view to ascertain whether the licensing processes were in compliance with applicable Liberian Laws at the time of award (EITI, 2016). The LEITI process has been credited with increasing trust between stakeholders in Liberia, a country with a recent history of violent conflict and has been used by local communities

and companies to demonstrate social impacts and ensure better local revenue distribution (NRGI, 2015).

Aside from EITI, there are several other global initiatives seeking to promote greater transparency and accountability in the management of natural resources, such as the Kimberley Process Certification Scheme (KPCS), the Publish What You Pay (PWYP) coalition and the International Council of Metals and Mining (Chene, 2017). In the agribusiness sector, market-based frameworks such as the Roundtable on Responsible Soy Association (RTRS) also seek to enhance transparency in supply chains (Global Witness, 2012).

However, Søreide and Truex (2011) caution that multi-stakeholder initiatives should not be seen to be a silver bullet to achieving meaningful accountability, as multi-stakeholder groups rarely have the authority to enforce legislation, and the various stakeholders may be subject to incentives that conflict with their mandate. Potential conflicts of interest within the group, as well as the balance of power among stakeholders and other external constraints, are also likely to constrain their effectiveness.

8. MITIGATING COMPANIES MEASURES AND BY HOME GOVERNMENTS

Corporate compliance

Effective corporate compliance measures by companies engaged in negotiations around natural resource exploitation is another vital component to mitigating corruption risks. EY (2016) outline a series of steps for establishing an effective anti-corruption compliance programme for the oil and gas sector:

1. Conduct a risk assessment program
2. Develop a corporate anti-corruption policy
3. Implement anti-corruption policies and controls
4. Implement anti-corruption financial controls
5. Conduct anti-corruption compliance training
6. Monitor the program
7. Anti-corruption procedures in M&A

Civil society action to monitor corporate behaviour are also a key part of the puzzle in increasing consumer scrutiny over natural resource governance. Oxfam's ["Behind the Brands"](#) campaign is a good example of holding investors

and multinational corporations to account for the governance and sustainability of their supply chains.

Foreign Bribery

Legislation that criminalises foreign bribery in home country governments has also been key to tackling the risks of bribery in the awarding of contracts. In the US, anti-bribery provisions in the Foreign Corrupt Practices Act (FCPA) make it illegal to "corruptly" give, promise to give, or authorise the giving of, whether directly or through another, "anything of value" to a foreign official. The UK Bribery Act goes further, covering the overall conduct of a broader range of foreign companies that do business in the UK, tackling facilitation payments and also making businesses responsible not only for the actions of its employees but also for those of all "associated persons" (Lindner, 2014).

9. LEGAL RECOURSE AND GRIEVANCE MECHANISMS

Where preventative measures have failed, legal recourse to address corruption in the handling of natural resource leases and concessions can be an important vehicle for justice. Grievance mechanisms, if sufficiently resourced, independent and powerful, can provide an important avenue to mitigate against negative impacts of a project and an avenue to report corruption. Grievance mechanisms are highlighted as a key component of responsible investment by the UN Business and Human Rights framework, the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, and the OECD-FAO Guidance on Responsible Business Conduct Along Agricultural Supply Chains (CCIS, 2014).

The literature highlights that redress via local grievance mechanisms and legal channels can be effective, but that support is often required to help communities understand their rights and access justice. Since 2006, in Bachieng, a region of Laos, an NGO has been working with officials from the Ministry of Justice to provide legal training to communities, who learnt of the powers they had to negotiate with local authorities on land concessions, which has empowered them to work with provincial authorities to

negotiate better terms or reject proposed concessions (Global Witness, 2012). Similarly, an IIED project in West Africa focused on building capacity of civil society actors to use legal training to hold public authorities to account at national and provincial levels – the training was tailored depending on the level of devolution of natural resource governance in each country (Cotula. 2016).

Where local mediation has failed, redress has been sought through the national or international courts. In 2016, a grand jury in Liberia indicted top government officials for conspiring to amend key laws to enable a London-listed company, Sable Mining SBLM.L, who allegedly paid US\$950,000 in bribes to gain rights to one of the world's richest iron ore deposits, the Wologozi Mountain Range (Caripis, 2017). In Cambodia in 2014, local NGOs partners with international campaigning groups submitted a communication on land-grabbing to the prosecutor's office of the International Criminal Court (ICC), which, if it is eventually taken up by the prosecutor will be a landmark case, alleging that land-grabbing has constituted a crime against humanity in the country (GLAN, 2017).

BIBLIOGRAPHY

- African Union. 2010. Frameworks and guidelines on land policy in Africa. Land policy in Africa: and framework to strengthen land rights, enhance productivity and secure livelihoods. African Union, African Development Bank and Economic Commission for Africa, Addis Ababa, Ethiopia. https://www.uneca.org/sites/default/files/Publication/Files/fq_on_land_policy_eng.pdf
- Caripis, L. 2017. Combatting Corruption in Mining Approvals: Lessons from 18 Resource Rich Countries. Transparency International https://www.transparency.org/whatwedo/publication/combating_corruption_in_mining_approvals
- Columbia Center on Sustainable Investment (CCSI). 2014. Governing Natural Resources: Lessons learned from good governance initiatives for extractive industry investments and large land-based agricultural investments <http://ccsi.columbia.edu/work/projects/comparing-lessons-learned-for-extractive-industry-investments-and-large-land-based-agricultural-investments/>
- Chêne, M. 2017. Transparency and governance of natural resource management: A literature review Query. U4 Expert Answer, (September), 1–11. <https://knowledgehub.transparency.org/helpdesk/transparency-and-governance-of-natural-resource-management-a-literature-review>
- Cotula, E. L., & Berger, T. (n.d.). 2017. Improving accountability in agricultural investments : Reflections from legal empowerment initiatives in West Africa. IIED. <http://pubs.iied.org/12604IIED>
- Cotula, L. and Jokubauskaite, G. 2016. Land investments, accountability and the law: Lessons from West Africa. IIED, London. <http://pubs.iied.org/pdfs/12590IIED.pdf>
- Deininger, K., Byerlee, D., Lindsay, J., Norton, A., Selod, H., Stickler, M. 2011. Rising Global Interest in Farmland: Can it Yield Sustainable and Equitable Benefits. The World Bank. <https://siteresources.worldbank.org/DEC/Resources/Rising-Global-Interest-in-Farmland.pdf>
- Williams and Dupuy. 2016. At the extremes: Corruption in natural resource management revisited. U4 BRIEF September 2016. <https://www.u4.no/publications/at-the-extremes-corruption-in-natural-resource-management-revisited/>
- EITI. 2016. Guidance note 4 on license allocations. <https://eiti.org/document/guidance-note-on-license-allocations#summary>
- EITI. 2018. EITI Progress Report 2018. https://eiti.org/sites/default/files/documents/2018_eiti_progress_report_en.pdf
- EY. 2016. Managing bribery and corruption risks in the oil and gas industry. [http://www.ey.com/Publication/vwLUAssets/EY-managing-bribery-and-corruption-risks-in-the-oil-and-gas-industry/\\$FILE/EY-managing-bribery-and-corruption-risks-in-the-oil-and-gas-industry.pdf](http://www.ey.com/Publication/vwLUAssets/EY-managing-bribery-and-corruption-risks-in-the-oil-and-gas-industry/$FILE/EY-managing-bribery-and-corruption-risks-in-the-oil-and-gas-industry.pdf)
- Global Legal Action Network (GLAN), International Institute for Environment and Development (IIED) and Centre pour l'Environnement et le Développement (CED). 2017. How to promote transnational accountability in relation to “land grabbing”? Insights from a brainstorming event. <http://pubs.iied.org/pdfs/G04187.pdf>
- Global Witness. 2012. Dealing with disclosure: improving transparency in decision-making over large-scale land acquisitions, allocations and investments. https://www.globalwitness.org/documents/10523/dealing_with_disclosure_1.pdf
- Greene, S. 2018. Can blockchain unblock climate finance? IIED Blog, <https://www.iied.org/can-blockchain-unblock-climate-finance>
- Kolstad, I., Soreide, T., Williams, A. 2008. Corruption in natural resource management – an introduction. U4 Brief. <http://www.u4.no/publications/corruption-in-natural-resource-management-an-introduction/>
- Knight, Rachel; Vogelsang, Jaron; Brinkhurst, Marena. 2016. Namati's Community Land Protection Facilitators Guide <https://namati.org/resources/community-land-protection-facilitators-guide/>
- Lindner. 2014. Good practice in mitigating corruption risks in the extractives sector <https://www.u4.no/publications/good-practice-in-mitigating-corruption-risks-in-the-extractives-sector>
- FAO. 2012. Voluntary Guidelines Responsible Governance of Tenure Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security FAO. 2012. <http://www.fao.org/docrep/016/i2801e/i2801e.pdf>
- Natural Resource Governance Institute. 2015. Contract Transparency. Creating Conditions to Improve Contract Quality. https://resourcegovernance.org/sites/default/files/nrgi_Contract-Transparency.pdf
- Natural Resource Governance Institute. 2015. The Extractive Industries Transparency Initiative (EITI) Using EITI to Promote Policy Reform, (March).

-
- https://resourcegovernance.org/sites/default/files/nrgi_EITI.pdf
- Natural Resource Governance Institute. 2015. Transparency Mechanisms and Movements. NRG Reader, (March). https://resourcegovernance.org/sites/default/files/nrgi_Transparency-Mechanisms.pdf
- Nunan, F. 2016. Topic Guide: Governance of Natural Resources. DFID. Nunan, F. 2016. <https://www.gov.uk/dfid-research-outputs/topic-guide-natural-resource-governance-summary>
- OECD. 2016. Corruption in the extractive value chain: typology of risks, mitigation measures and incentives. <http://www.oecd.org/dev/Corruption-in-the-extractive-value-chain.pdf>
- Oakland Institute. 2011. Understanding Land Investment Deals in Africa <https://www.oaklandinstitute.org/special-investigation-understanding-land-investment-deals-africa>
- Open Contracting Partnership and Natural Resource Governance Institute. 2018. Open Contracting for Oil, Gas and Mineral Rights: Shining a Light on Good Practice <https://www.open-contracting.org/resources/open-contracting-oil-gas-mineral-rights-shining-light-good-practice/>
- Open Government Partnership (OGP) 2016. Indonesia: One Map Policy https://www.opengovpartnership.org/sites/default/files/case-study_Indonesia_One-Map-Policy.pdf
- Pellegrini, M. 2011. Parliaments - Promoting Contract Transparency. NRG. http://www.resourcegovernance.org/sites/default/files/RWI_Parliamentary_Briefing_ContractTransparency.pdf
- Rosenblum, P. and Maples. S. 2009. Contracts Confidential: Ending Secret Deals in the Extractive Industries, Revenue Watch Institute <https://resourcegovernance.org/sites/default/files/RWI-Contracts-Confidential.pdf>
- Søreide, T. & Truex, R. 2011. Collaboration against Corruption? Multi- Stakeholder Groups in Natural Resource Management. <https://www.cmi.no/publications/file/4055-collaboration-against-corruption.pdf>
- Søreide, T. (2012). Risks of Corruption and Collusion in the Awarding of Concession Contracts. Policy Department Economic and Scientific Policy, European Parliament Søreide, T. [http://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL-IMCO_NT\(2012\)475127](http://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL-IMCO_NT(2012)475127)
- Westenberg, E., & Sayne, A. 2018. Beneficial Ownership Screening: Practical Measures to Reduce Corruption Risks in Extractives Licensing. NRG. <https://resourcegovernance.org/analysis-tools/publications/beneficial-ownership-screening-practical-measures-reduce-corruption>
- Wickberg, S. (2013). Tools to reduce private sector engagement in grand corruption during the award of public contracts , concessions and licenses. *U4 Expert Answer*, (April), 1–10. <https://www.u4.no/publications/tools-to-reduce-private-sector-engagement-in-grand-corruption-during-the-award-of-public-contracts-concessions-and-licenses>
- Williams, A. (2016). *Deciding over nature: Corruption and environmental impact assessments*. <https://doi.org/10.13140/RG.2.2.33434.44489>
- World Bank. 2007. The Many Faces of Corruption. <https://openknowledge.worldbank.org/handle/10986/6848>

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