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EITI's Role in Fighting Corruption

Transparency International's Mining for Sustainable Development (M4SD) Programme commends the EITI Secretariat for examining the opportunities for the EITI to contribute to the fight against corruption and welcomes the invitation to comment on the Discussion Paper 'The EITI's Role in Fighting Corruption'.

Transparency International is the global civil society organisation leading the fight against corruption in more than 100 countries. Transparency International's M4SD Programme is focused on reducing corruption risks in the processes for awarding mining licences, permits and contracts. The M4SD programme is implemented in 20 resource-rich countries by TI country offices ("chapters") and coordinated by TI Australia.

Transparency International's M4SD Programme broadly endorses the findings and recommendations in the Discussion Paper. In our comments, we elaborate on some areas we consider to be especially important and identify further opportunities to strengthen anti-corruption efforts.

In particular, we recommend that:

- **The EITI ensure that MSGs are truly representative and civil society members are independent of government** in order for the EITI to realise its potential to combat corruption;
- **MSGs consider how the EITI can be used to support anti-corruption efforts when defining their workplan objectives** under requirement 1.5, and that **the EITI provide guidance** to assist MSGs in this regard, including guidance **on conducting corruption risk assessments** to help them identify priority areas and opportunities;
- **The EITI emphasise to MSGs how certain requirements in the Standard help fight corruption**, in particular those relating to transparency of licences (2.3) and licence allocations (2.3), material deviations from the allocation process (2.2(a)(iv)), contract transparency (2.4) and beneficial ownership transparency (2.5);
- **Validation assessments look at country efforts to tie disclosure requirements to anti-corruption outcomes**, where relevant, such as for beneficial ownership disclosure. For beneficial ownership, this would mean not only considering the comprehensiveness of BO data disclosed, but also country plans and progress on complementary laws and regulations to ensure the information disclosed is *used* to reduce corruption risks;
- **The EITI require all supporting companies to disclose their anti-corruption policies** on their website as both an expectation and condition of being a supporting country.
- **The EITI keep anti-corruption on the agenda** at conferences, events and in its external communications.

Transparency International's M4SD Programme would be happy to discuss these comments.

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1. Composition of the Multi-Stakeholder Groups

- **Ensuring strong and truly representative MSGs** – For the EITI to effectively play any role in reducing corruption, MSGs must be strong and truly representative of different stakeholder groups. This means that civil society members must be truly independent of government. Only this way will they be able to utilise the data from EITI disclosures, ask probing questions and perform the other anti-corruption functions outlined in the Discussion Paper.

Transparency International **recommends** that EITI adopt stringent standards when assessing compliance with requirements 1.3 (civil society engagement) and 1.4(a) (composition of the MSG) to ensure that MSGs have the strength and capacity to fight corruption. Without strong MSGs, the EITI cannot expect to effectively reduce corruption.

2. National EITI implementation objectives

Defining anti-corruption related implementation objectives - It is at the country level that the EITI can most directly play a role in fighting corruption. As 4.4. of the Discussion Paper notes, national multi-stakeholder groups (MSGs) must define their workplans and objectives, reflecting national priorities for extractive industries (requirement 1.5). Transparency International **recommends** that as part of defining objectives, MSGs should be required to consider how the EITI can be used to support anti-corruption efforts in the country's extractive sector.

If the EITI wants to ensure anti-corruption is firmly on the agenda, it could make it mandatory for MSGs to show how they have considered anti-corruption when developing their objectives and assess that as part of validation.

- **Role for EITI Secretariat** – We **recommend** that the EITI provide guidance to MSGs on how to define meaningful and impactful anti-corruption objectives as part of their EITI implementation objectives. The guidance should indicate the ways various requirements in the EITI standard can help reduce corruption and suggestions about the process MSGs should follow to identify their anti-corruption priorities and the opportunities to advance them through the EITI process.
- **Corruption risk assessment** – Transparency International **supports** the recommendation that MSGs conduct a corruption risk assessment of their extractive sectors. Doing this assessment is a useful first step that would enable MSGs to identify where the sectors are vulnerable to corruption and to work out which issues should be a priority for them to work on through the EITI.

Transparency International **acknowledges** with appreciation the recognition on page 11 of the Discussion Paper that our Mining Awards Corruption Risk Assessment (MACRA) Tool could be useful to MSGs in this respect.

Transparency International's Mining Awards Corruption Risk Assessment Tool

Although the MACRA Tool is focussed on licensing and permitting, the general risk assessment methodology could be adapted and applied to other areas of the extractive value chain.

The Tool has been tested in over 20 diverse resource-rich countries and endorsed by experts from the World Bank and the CEO of the International Council on Mining and Metals.

[The MACRA Tool](#) is currently available in English, French and Spanish and Transparency International would be happy provide a briefing on the tool and the methodology to EITI staff.

3. Existing and potential new disclosures in the EITI standard

- **Licence, contract and licence allocation disclosure** – Transparency International **supports** the identification in Part 2 that existing licence and contract transparency requirements in the EITI standard (2.2, 2.3 and 2.4) provide an opportunity for disclosure of useful information that can help accountability actors such as investigators, civil society and journalists to detect corruption red flags. Our research on the topic supports this proposition (see box below).

MSGs could work with accountability actors such as civil society groups, anti-corruption advocates and the media to help them understand what information to look for in terms of the licence allocation process.

Findings from Transparency International's mining sector study

Transparency International's corruption risk assessment of 18 resource-rich countries¹ (of which 11 are EITI member countries) showed that a lack of transparency and clarity in the steps involved in the licence allocation process was a major source of corruption risk.

Similarly, in several countries we studied, the lack of up-to-date time and accurate licence registers was a real impediment to accountability actors monitoring the identity of licence-holders.

In the case of Colombia, this meant that it was not possible to determine whether a parliamentarian had disposed of his interests in a mining title, as required by parliamentary integrity rules.

Transparency International **recommends** that the EITI actively emphasise to MSGs the value of the licence and licence allocation disclosure requirements for fighting corruption, for example:

- Accountability actors (journalists, academics, civil society groups and sector watch dogs) need to understand the licensing process in order to detect irregularities and hold government decision-makers and companies to account. EITI reporting helps to shed a light on and demystify this often complex process.
- The information helps anti-corruption champions in government to prevent corruption by helping them to identify and close loopholes in the licensing process that make it easier for corruption to occur.
- Transparency in the steps and decision-making process also provides regulatory certainty to companies who will be less easily extorted to pay bribes in order to navigate an opaque licence bidding or application process.

¹ L. Caripis, *Combating Corruption Risk in Mining Approvals: Assessing the Risks in 18 Resource-Rich Countries* (Transparency International: Berlin, 2017).

- **Material deviations** – Transparency International **recommends** the EITI explore the opportunity to strengthen its role in fighting corruption through reporting requirement 2.2(a)(iv) on ‘any material deviations from the applicable legal and regulatory framework governing license transfers and awards’. This requirement essentially asks MSGs to detect corruption red flags.

EITI could research how well MSGs are going about identifying and reporting material deviations, and what is being done with information about these corruption red flags. These findings would help to guide EITI on how it can better educate and support MSGs to effectively use this reporting requirement to detect and prevent corruption.

- **New disclosures to address corruption risk hotspots** – Transparency International **supports** the suggested focus for new disclosures on fixers, agents and intermediaries (at 4.2). Our discussions with mining companies and investors through the M4SD Programme has revealed that this is a key area of vulnerability to corruption, backing up statistics from Stanford University’s FCPA Clearing House about the prevalence of third parties in corruption investigations in the United States, as referenced in the Discussion Paper.

As third parties are engaged to perform services throughout the value chain, we **recommend** the EITI start by mapping the activities referred to in the EITI standard where a third party would be engaged – for example to assist with licence applications and bids – in order to identify relevant and meaningful entry points on the topic.

We **suggest** that another useful role EITI could play, would be to broaden the policy discussion on beneficial ownership and PEP transparency to highlight how this information should be considered by companies as part of their due diligence on prospective agents and intermediaries.

4. Incorporating anti-corruption considerations into validation

- **Validation as an opportunity** – As identified in part 4.4 of the Discussion Paper, we **support** the finding that the method and indicators that EITI validators use to determine whether a country is making progress on meeting requirements are an opportunity for the EITI to (1) determine whether it is contributing to anti-corruption efforts; (2) adapt and improve its support to EITI countries in this regard; and (3) send a clear message to countries about their anti-corruption performance. This is not relevant or appropriate for all requirements, however there are some requirements that have at their heart an anti-corruption purpose. We **draw attention to** the beneficial ownership disclosure and PEP identification requirement (2.5) as one such requirement.
- **Validation of beneficial ownership disclosure** – In assessing whether a country is making meaningful progress with the beneficial ownership disclosure requirement, Transparency International **recommends** that validation assessments look at country efforts and plans to tie disclosure to anti-corruption outcomes.

For example, rather than (just) evaluating the breadth and comprehensiveness of BO disclosures, validators would also look at whether countries have in place or are making progress towards introducing and implementing the complementary laws and administrative practices needed to ensure BO information is *used* to reduce corruption risks, for example, as part of licensing decisions.

We also **recommend** that the EITI be clear and transparent about the indicators they will use to assess progress against the requirement and provide implementation guidance to help EITI member countries more effectively use this anti-corruption disclosure requirement to actually reduce corruption risk.

5. Expectations of company members and EITI's internal processes

- **Company expectations** – Transparency International **supports** the recommendation that the EITI make use of the 2018 Company Expectations statement, particularly in relation to the expectation that supporting companies will conduct integrity and corruption due diligence on joint venture partners, contractors and procurement. These expectations are an opportunity to engage company supporters and members of EITI on these important topics and emphasise the role they can play to fight corruption in the extractive sector and through EITI.

We **draw attention to** several platforms already bring together and engage businesses on anti-corruption and good governance. These include the World Economic Forum's Partnering Against Corruption Initiative and the UN Global Compact. Where appropriate, the EITI could partner or work with these platforms to apply an extractives-specific lens.

Transparency International is working with mining companies to help them improve their business integrity policies and practices through the M4SD programme and **would be happy** to explore possibilities to link this work with EITI. Transparency International more generally has many years of experience in business integrity across all sectors.

- **EITI internal policies and practices** – In the interest of the EITI maintaining its credibility and integrity, Transparency International **strongly supports** the recommendation in part 4.4 that the EITI seek to make its internal processes more robust. We **support** the recommendation for the EITI to examine and strengthen its conflict of interest processes to have a clear, transparent and fair process for detecting and managing real and perceived conflicts of interests involving board members – particularly companies that have a commercial interest in a country that is under review.

Similarly, Transparency International **supports** the recommendation that the EITI screen the beneficial owners of companies seeking to join the EITI for their connection to politically exposed persons and their integrity and anti-corruption track record.

In addition to this, we **recommend** that EITI require all supporting companies to have and disclose their anti-corruption policies on their website. Supporting companies could also be required to ensure clear and practical information about their procurement processes is accessible and transparent on their websites. This would help to mitigate the risks of corruption in the hotspots of procurement and the use of agents, as identified in the Discussion Paper.

6. Other opportunities

- **Involving law enforcement and investigators** – Transparency International **supports** recommendation 4.5 that the EITI encourage national MSGs to engage with relevant law enforcement and anti-corruption agencies to help them improve their understanding of the extractives sector and how they can use information disclosed through EITI. Our experience has shown that such spaces for discussion break down silos between different sectors and open up opportunities for collaboration.
- **Dialogue with anti-corruption actors** – Transparency International **would be happy** to participate in any dialogue convened by the EITI on specific corruption risks and how they could be addressed (recommendation 4.4) both at a global level and, where TI country offices are interested, at a national level.

- ***Dialogue with investors and financial institutions*** – In addition to making data more accessible and current (and therefore relevant) through “mainstreaming”, we **recommend** the EITI look at how it can engage with investors and financial institutions both at a global level and through the MSGs about corruption risks and challenges and to show how the information disclosed through EITI can help in investment due diligence and decision-making.
- ***Overcoming limitations from the multi-stakeholder approach*** – We are **interested in** the structural limitation observed on page 8 that there is a “tendency towards politeness” in MSGs due to the consensus-based and multi-stakeholder approach. The M4SD Programme also takes a multi-stakeholder approach to strengthening transparency and accountability. We **would be happy** to share our experiences and lessons from this experience to contribute to broader knowledge on how some of the challenges and undermining tendencies can be overcome.
- ***Keep anti-corruption on the agenda at conferences*** – Transparency International **encourages** the EITI to continue to frame sessions at global and regional conferences in the context of anti-corruption. This shows leadership and commitment by the EITI to this objective. It also helps to ensure the topic is prominent in the minds of delegates. We **commend** the EITI for including the anti-corruption plenary and the executive session on beneficial ownership transparency for anti-corruption at the 2019 Global Conference.