

EITI REQUIREMENT 2.2

Contract and license
allocations

Guidance Note

October 2021



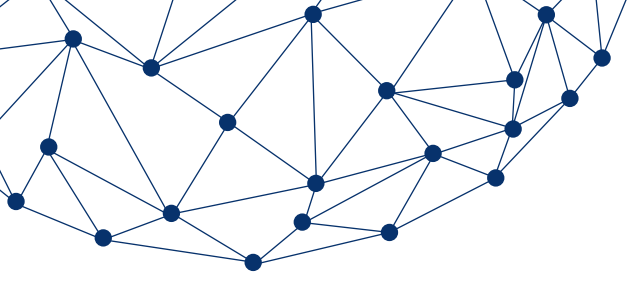
This note has been issued by the EITI International Secretariat to provide guidance to implementing countries on meeting the requirements in the EITI Standard. Readers are advised to refer to the EITI Standard directly, and to contact the International Secretariat to seek further clarification.

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Executive summary

Governments in most resource-rich countries have established systems for allocating contracts and licenses to companies for the exploration and exploitation of oil, gas and minerals. Often, these allocation procedures are defined in publicly available legislation and regulations that set out how and on what terms companies are granted rights. Sometimes, however, these procedures are unclear, which can increase corruption and investment risks and lead to revenue losses for both governments and companies.

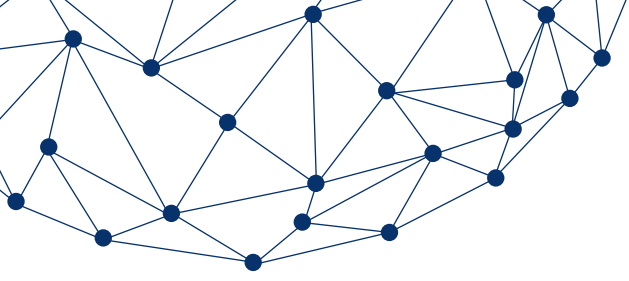
Reporting information about license allocation systems enables citizens to access essential information about how the country's natural resources are developed and managed. It is also a first step towards ensuring that licenses are not obtained through inefficient or corrupt practices or acquired by politically connected individuals. In cases where there are deficiencies or vulnerabilities in the licensing process, stakeholders can draw on disclosures to press for reforms for more transparent and efficient licensing systems. Transparency in contract and license allocation can also help improve the investment climate and the potential for extractives to contribute to sustainable development.

[Requirement 2.2](#) of the EITI Standard requires that implementing countries disclose information about license awards and transfers that take place during the accounting period covered by the EITI reporting cycle. This information should include a description of the process for awarding and transferring licenses, the criteria used, as well as deviations from the legal framework and policies on license allocations. Disclosures may also include additional information on the licensing process, such as commentary on the efficiency and effectiveness of these systems.

This note provides step-by-step guidance to multi-stakeholder groups (MSGs) on how to address these issues as part of EITI implementation and strengthen regular disclosures related to licensing. It should be read alongside guidance on license registers ([Requirement 2.3](#)) and beneficial ownership of license holders ([Requirement 2.5](#)).

What can the data help answer?

- 1) What are the existing rules and procedures for government awards or transfers of licenses in the oil, gas and mining sector?
- 2) What kind of licenses are being awarded or transferred, what companies have acquired licenses and what commodities are companies exploring for or producing? Is the shift away from fossil fuels to cleaner sources of energy likely to have any impacts on these projects?
- 3) What procedures were followed for license awards and transfers that took place in a specific time-period? Were there any deviations between the legislated procedures and actual practice of awarding or transferring licenses?
- 4) Are there vulnerabilities in the licensing framework? Is the process vulnerable to risks of corruption and mismanagement?



Overview of steps

Steps	Key considerations	Examples
<p>Step 1: Establish a common understanding of the scope of disclosures and objectives for license awards and transfers</p>	<ul style="list-style-type: none"> • What legislation and institutions are responsible for the allocation and transfer of licenses? • What award methods are used to allocate and transfer licenses? • What concerns have been raised by stakeholders related to licensing procedures and practices? What reforms are underway? 	<ul style="list-style-type: none"> • Transparency International's Mining Awards Corruption Risk Assessment (MACRA) tool • NRGI's Corruption Diagnostic tool
<p>Step 2: Identify and supplement disclosures on contracts and license allocations and transfers</p>	<ul style="list-style-type: none"> • What publicly available disclosures are there on allocations and transfers of contracts and licenses? • Which agencies are already disclosing information? • What are the gaps in the publicly accessible information on license allocations, and how can EITI reporting address these gaps? 	<ul style="list-style-type: none"> • NRGI and Open Contracting Partnership's publication on open contracting
<p>Step 3: Compare licensing procedures with practice</p>	<ul style="list-style-type: none"> • What are appropriate methods for assessing whether deviations are significant? • Are there deviations from the legal and regulatory framework governing license transfers and awards? • How can information on deviations be made publicly accessible? 	<ul style="list-style-type: none"> • Mongolia • Liberia • Zambia
<p>Step 4: Take steps to strengthen systematic disclosures</p>	<ul style="list-style-type: none"> • What information should government agencies disclose or collect for EITI reporting? • Can the information be disclosed in an open format? • What would be steps to strengthen systematic disclosures? 	<ul style="list-style-type: none"> • Open Contracting Partnership's (OCP's) Open Contracting Data Standard • Ukraine
<p>Step 5: Agree recommendations to improve licensing processes and practices</p>	<ul style="list-style-type: none"> • Are there opportunities for the licensing procedures to be more effective and efficient? • Are there potential vulnerabilities in the licensing framework the MSG could encourage the government to address? • How can disclosures inform ongoing or planned reforms? 	<ul style="list-style-type: none"> • Ghana • Madagascar



Requirement 2.2

The objective of this requirement is to provide a public overview of awards and transfers of oil, gas and mining licenses, the statutory procedures for license awards and transfers and whether these procedures are followed in practice. This can allow stakeholders to identify and address possible weaknesses in the license allocation process.¹

- a) Implementing countries are **required** to disclose the following information related to all contract and license awards and transfers taking place during the accounting period covered by the most recent EITI disclosures, including for companies whose payments fall below the agreed materiality threshold:
 - i. a description of the process for transferring or awarding the license;
 - ii. the technical and financial criteria used;
 - iii. information about the recipient(s) of the license that has been transferred or awarded, including consortium members where applicable; and
 - iv. any material deviations from the applicable legal and regulatory framework governing license transfers and awards.

In cases where governments can select different methods for awarding a contract or license (e.g. competitive bidding or direct negotiations), the description of the process for awarding or transferring a license could include an explanation of the rules that determine which procedure **should** be used and why a particular procedure was selected.

Where there are gaps in the publicly available information, these **should** be clearly identified. Any significant legal or practical barriers preventing comprehensive disclosure of the information set out above should be documented and explained, including an account of government plans to overcome such barriers and the anticipated timescale for achieving them.

- b) Where companies hold licenses that were allocated prior to the period covered by EITI implementation, implementing countries are **encouraged** to disclose the information set out in 2.2(a).
- c) Where licenses are awarded through a bidding process, the government is **required** to disclose the list of applicants and the bid criteria.
- d) The multi-stakeholder group **may wish** to include additional information on the allocation of licenses as part of the EITI disclosures. This could include commentary on the efficiency and effectiveness of licensing procedures, and a description of procedures, actual practices and grounds for renewing, suspending or revoking a contract or license.

¹ EITI (2021), *Validation Guide*, <https://eiti.org/document/2021-eiti-validation-guide#req22>.



How to implement Requirement 2.2



Step 1 Establish a common understanding of the scope of disclosures and objectives for license awards and transfers

The MSG is advised to first gain a common understanding of the scope of the requirement and the main transparency and governance challenges encountered in the national context.

In accordance with Requirement 2.2.a, information related to any license awards or transfers taking place during the period covered by the EITI reporting cycle should be disclosed. The requirement relates to all contract and license awards and transfers taking place in the accounting period, including for companies whose payments fall below the agreed materiality threshold. This covers all types of licenses, including exploration rights.

Keeping in mind that the answers might vary from one sector to another, the MSG may wish to consider the following questions and identify relevant sources of information:

- What are the definitions of “award” and “transfers” of licenses in the national context? For example, MSGs might consider that a change in beneficial ownership of a license holder represents a license transfer, even if the legal holder of the license remains the same; or MSGs might wish to disclose any changes in the identity of minority consortium members.
- Which laws and regulations specify the procedures for license applications and the process by which licenses are issued, approved and transferred? How have they been developed and agreed?
- Which institution(s) has authority to grant oil, gas and mineral licenses? Are there several allocation systems, e.g. systems at national, regional and local levels? If so, is there a clear delineation of responsibilities between authorities? Where responsibilities are not clearly defined, and how are disputes typically resolved?
- What licensing processes and methods does the government follow, e.g. bidding rounds, auctions, direct negotiations or awards on a first-come-first-serve basis? Are there timeframes assigned to each method and its steps, including related to decision-making?
- Can different methods for awarding contracts or licenses, e.g. competitive bidding or direct negotiation, be selected by authorities awarding them? What rules determine which procedure should be used?

- What documentation should applicants provide to be eligible for the license application process?
- On what criteria are decisions to award, transfer, renew or suspend licenses based? Are these clearly established? If they differ, how are the criteria publicly announced? This may include technical and financial qualifications needed to hold an oil, gas or mineral right, legal criteria, integrity criteria (such as beneficial ownership and politically-exposed persons disclosure), criteria for health, safety and environment, work programs etc.
- How are applicants informed of the evolution of the process, including whether their application was successful?
- Do the licensing procedures ensure follow-on title, i.e. are exploration rights automatically converted to or followed by development rights in the event of a discovery?
- Are there reforms planned or underway for the current licensing system?
- Have stakeholders expressed or identified concerns or challenges related to the licensing process, including any corruption risks? How can the MSG take these into account when defining objectives related to licensing disclosures?

In addition to publicly disclosed information and feedback from stakeholders or the constituencies represented on the MSG, sources of information may include:

- Corruption risk assessments undertaken by the government, civil society or partners;
- Compliance audits by the supreme audit institutions;
- Media coverage of particular licensing processes or awards that have raised concerns; and
- Tools developed to help stakeholders identify vulnerabilities in the licensing process, such as Transparency International's Mining Awards Corruption Risk Assessment (MACRA) tool.² Step 2 of the MACRA tool provides guidance on mapping the process and practice of awarding mining licenses. The tool can also be adapted to assess the licensing process governing other sectors, like oil and gas. Other useful tools include NRGi's Corruption Diagnostic tool, based around a structured questionnaire that helps MSGs identify and prioritise corruption risks.³

2 Transparency International (2020), *Mining Awards Corruption Risk Assessment Tool – 3rd Edition*, <https://www.transparency.org/en/publications/mining-awards-corruption-risk-assessment-tool-3rd-edition>.

The TI website also includes several "license maps" to shine a light on the different steps of licensing processes using country examples. See: Transparency International (2020-2021), "License maps", <https://transparency.org.au/global-mining-3/licence-maps/>.

3 NRGi (2020), *Extractive Industries Corruption Risk Diagnostic Tool*, <https://resourcegovernance.org/sites/default/files/documents/extractive-industries-corruption-risk-diagnostic-tool.pdf>.

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Mapping the processes and practices of licenses awards

Sources on official licensing processes	Sources on actual licensing practices
Official websites for tracking exploration and production license applications	Interviews with private sector representatives (male and female – particularly if assessing small-scale and artisanal mining)
Application forms (these might be available for free or at a low cost from the awarding agency)	Interviews with staff of awarding agency/cadastre (retired staff may speak more freely than current staff)
Government policy documents	Interviews with the relevant minister(s) or advisors
National laws and the petroleum/ mining code	Department of Petroleum or Mines staff receiving and processing applications
Interviews with staff of awarding agency/ cadastre	Hypothetical case to test and analyse processes
Interviews with private sector representatives (retired staff may speak more freely than current staff)	Academic papers and other research on the awards process
Interviews with the relevant minister(s) or advisors	Interviews with civil society organisations that have expertise in oil, gas and mining
Academic papers and other research on the awards process	Focus group discussions with women and men from communities affected by oil, gas and mining activities

Source: Adapted from Transparency International (2020), [Mining Awards Corruption Risk Assessment Tool – 3rd Edition](#), Table 4, p. 24.



Step 2

Identify and supplement disclosures on contracts and license allocations and transfers

Information should ideally be made publicly available by the relevant government agencies through their own systems. Consistent with good practice and systematic disclosure under the EITI, countries should record details of any awards made in a publicly available license register (see [Requirement 2.2](#) of the EITI Standard).

Based on a review of information already being disclosed and information gaps identified, the MSG should collect additional data directly from the relevant government agencies and disclose this information on their websites or in EITI Reports.

In line with the requirement, the following information should be publicly accessible:

- **A description of the process for awarding or transferring contracts and licenses.** Where this information is publicly available, it is sufficient to include a link or reference to where this information can be accessed. In some cases, mining or oil and gas legislation and regulations may be the main source of information on the licensing process, while in other cases further description and details on the process may be provided by the relevant government authority to guide license applicants or ensure that stakeholders are aware of the applicable procedures.

The OECD highlights cases where vague language in the choice of the process for the allocation of extraction extractives rights presents a potential corruption risk.⁴ For instance, the relevant legislation may establish that licenses can be awarded either through a bidding process or through direct negotiation, but may fail to provide criteria for selecting the process. In cases where the government can select different methods for awarding a contract or license, the description of the process for awarding or transferring a license should include an explanation of the rules that determine which procedure should be used and why a particular procedure was selected.

- **Details about the technical and financial criteria used for awarding or transferring the license(s).** Where this information is publicly available such as in the applicable regulation, it is sufficient to include a link or reference to where this information can be accessed.

⁴ OECD (2016), *Corruption in the Extractive Value Chain Typology of Risks, Mitigation Measures and Incentives*, OECD Development Policy Tools, https://read.oecd-ilibrary.org/development/corruption-in-the-extractive-value-chain_9789264256569-en, p. 49.

Where technical and/or financial criteria are not used to evaluate a license application, this should be explicitly stated. MSGs should clarify whether the technical and financial criteria used to allocate licenses are the same as those used for license transfers, as these may differ depending on the relevant legislation. This might also differ depending on the type of license awarded or transferred.

It is important to note that criteria for awarding and transferring rights are not the same as the criteria needed to accept applications. For example, paying application fees or completing an environmental impact assessment are required for a company to be eligible for acquiring rights, but these are not part of the criteria that determine whether or not rights are awarded. In contrast, a company might be required to document its financial situation by submitting audited financial statements or its technical capacity by submitting proof of similar projects before being awarded rights.

In another example, if rights are awarded on a first-come-first-served basis, one clear criteria is that the company's application was the first one submitted for a particular area. For first-come-first-served awards, the remaining question becomes whether there are any minimum criteria that a company would need to satisfy, e.g. minimum of experience in other extractive activities or a minimum debt to equity ratio to finance the activities. If the award/transfer process is not on a first-come-first-served basis, the criteria would specify how the country chooses between different companies that might apply for the same license or contract.

A review of 100 corruption cases by the Natural Resource Governance Institute (NRGI) found that 54 cases included unqualified companies competing for or being awarded licenses or contracts⁵. The review highlights the importance of establishing clear criteria related to licensing processes.

- **Information about the allocated and transferred licenses, including recipients.** The MSG could for example include a link to a publicly accessible register or cadastre system that contains this information. Where such registers/cadastres do not contain the necessary information, MSGs should ensure that the information is made publicly accessible, for example via the website of the relevant ministry or through EITI reporting. As per [Requirement 2.2](#) on license registers, information about the recipient(s) should include at least:

5 Aaron Sayne, Alexandra Gillies and Andrew Watkins (2017), *Twelve Red Flags: Corruption Risks in the Award of Extractive Sector Licenses and Contracts*, NRGI, <https://resourcegovernance.org/analysis-tools/publications/twelve-red-flags-corruption-risks-award-extractive-sector-licenses-and>.

- The license holder(s), including consortia members where applicable, and details on their legal and beneficial owners;
- The coordinates of the license area;
- The duration of the license (date of application, date of award and duration of the license); and
- In the case of production licenses, the type of commodity being produced.

MSGs might wish to ensure that information required under [Requirement 2.5](#) on beneficial ownership is linked to the above, i.e. that beneficial ownership information of corporate entities that apply for or hold a participating interest in an exploration or production license or contract is publicly available.

Details on licenses transferred in a given period are typically not available from a public license register, and may need to be disclosed separately if the existing systems do not allow for access to this information. However, Afghanistan and the United Kingdom are amongst examples where the license registers provide information about the license ownership history.⁶

- **A list of applicants and criteria for bidding processes, if applicable.** MSGs should, in accordance with Requirement 2.2.b), investigate whether any licenses have been awarded through a bidding process during the accounting period covered by the EITI reporting cycle. Where such bidding processes have taken place, the EITI reporting cycle should include or provide a link to the list of applicants, and details about the bid criteria.

Depending on opportunities and demand identified by stakeholders, the MSG is also encouraged to include a **description of procedures and grounds for renewing a contract or license and for suspending or revoking a contract or license** (Requirement 2.2.d). Ensuring transparent decision making in the process of renewing or revoking licenses or contracts is important to limit corruption risks and hold the government accountable for license management.⁷

6 See Afghanistan National Procurement Office, *Afghanistan Government Electronic And Open Procurement System (AGEOPS)*, <https://ageops.net/en/procurement-procedure/contract/progress/NPA%252FMOMP%252F97%252FW-2087%252FICB>; United Kingdom Oil & Gas Authority, Field equity shares, 2014-2020, <https://www.ogauthority.co.uk/media/7671/copy-of-2014-2020-field-equity-shares-june-2021.xlsx>.

7 Transparency International (2020), *Mining Awards Corruption Risk Assessment Tool – 3rd Edition*, <https://www.transparency.org/en/publications/mining-awards-corruption-risk-assessment-tool-3rd-edition>.

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Any significant **legal or practical barriers preventing comprehensive disclosure of the required information** for all license awards and transfers that have taken place during the period covered by EITI reporting should be documented and explained by the MSG. The MSG should also document **government plans for seeking to overcome barriers and the timeline for achieving them** (Requirement 2.2.a). Any follow-up actions to be taken by the MSG should be integrated into their annual EITI work plan.

Where feasible, MSGs are encouraged to disclose similar information for any licenses held by companies covered in a given EITI reporting cycle, but awarded prior to the accounting period covered by the report (Requirement 2.2.b).

For further guidance, NRGi and Open Contracting Partnership's publication "Open Contracting for Oil, Gas and Mineral Rights: Shining a Light on Good Practice"⁸ describes examples of best practice in presenting information on license awards and management processes. It includes a list of basic information to provide, regardless of the method mandated by regulation.



Step 3

Compare licensing procedures with practice

The EITI Standard requires **disclosures related to any non-trivial deviations from the applicable legal and regulatory framework governing license transfers and awards** (Requirement 2.2.a.iv).

This might include cases where the license(s) were awarded using a different licensing practice than the one commonly followed, or where there are deviations from standard criteria or contract terms.

This provision provides an opportunity for the government to explain and justify any deviations, and allows the public to identify and assess any discrepancies between the licensing policy and practice. It provides an opportunity for MSGs to detect any corruption red flags for further investigation, as well as identify any gaps in implementation that need to be addressed to help prevent corruption. The MSG could build on the findings to develop recommendations to address any potential gaps or weaknesses identified (see Step 4).⁹

8 NRGi, Open Contracting Partnership (2018), *Open Contracting for Oil, Gas and Mineral Rights*, <https://resourcegovernance.org/sites/default/files/documents/open-contracting-for-oil-and-gas-mineral-rights.pdf>.

9 For further guidance, see: NRGi (2021), *How Can Anticorruption Actors Use EITI Disclosures?*, <https://resourcegovernance.org/analysis-tools/publications/how-can-anticorruption-actors-use-eiti-disclosures>; Transparency International (2020), *Using the EITI Standard to Combat Corruption: Lessons from Transparency International's Mining Research in Five Countries*, <https://transparency.org.au/publications/using-the-eiti-standard-to-combat-corruption/>.

The MSG should clearly document any substantive deviations as well as its approach. It could consider the following methods to identify deviations from the regulatory framework:

- **Adopting a risk-based approach**, which can include discussing suitable practices for the assessment, identifying relevant information to gather to investigate risks, documenting key risk factors that may result in material deviations, agreeing on the level of assurance based on the identified risks and selecting a sample for analysis (see case study from Mongolia below). This could include reviewing the license award process step-by-step to assess the level of transparency and accountability.
- **Requesting and analysing evidence from relevant government agencies and companies**, e.g. requesting a written confirmation from or visiting the ministry overseeing the industry or the authority allocating licenses to confirm whether any non-trivial deviations have occurred during the reporting period; requesting companies to report concerns related to deviations. The analysis could focus on specific cases, where the MSG conducts spot checks on the documentation provided by license applicants and assesses whether there were any deviations in practice from the criteria required for approving an application (see case study from Liberia below).
- **Considering opportunities for supreme audit institutions and other oversight institutions to examine the processes and practices**, e.g. through a compliance audit. In some countries, Supreme audit institutions may be well placed to undertake such audits, and can use findings from EITI reporting and Validation in their risk assessments (see case study from Zambia below). The MSG might also wish to provide training to enhance other actors' capacity to undertake similar work, for example to civil society organisations.

The MSG might wish to adopt the same methodology for assessing deviations in practice in the process for renewing, suspending or revoking licenses. Ensuring that deviations in the conditions under which licenses can be renewed may be particularly important for the mining sector, where companies are sometimes awarded licenses on a non-competitive, first-come-first-serve basis without necessarily having the technical and financial capacity required to develop a project.¹⁰

¹⁰ Aaron Sayne, Alexandra Gillies and Andrew Watkins (2017), *Twelve Red Flags: Corruption Risks in the Award of Extractive Sector Licenses and Contracts*, NRG. <https://resourcegovernance.org/analysis-tools/publications/twelve-red-flags-corruption-risks-award-extractive-sector-licenses-and>.

CASE STUDY**Mongolia****A risk-based approach to addressing deviations through EITI reporting**

In Mongolia, the MSG agreed a risk-based approach with the Independent Administrator, who checked the supporting documents in 52 license awards and transfers (out of 864 total awards and transfers). These included six license awards and two transfers that the MSG considered to pose some level of risk. Other cases were randomly selected (17 awards, 17 transfers and 10 awards through bidding). Mongolia's 2016 EITI Report provides detailed findings of the assessment of non-trivial deviations, detailing discrepancies in 11 license awards and six transfers.

Source: *Mongolia EITI (2017)*, [Mongolia Eleventh EITI Reconciliation Report 2016](#), p. 86.

CASE STUDY**Liberia****Liberia EITI post-award license process audit**

Liberia used the EITI process to scrutinise the procedure for awarding contracts. They have undertaken two "post-award process audits", which revealed that procedures were not being consistently followed. An audit in 2013 analysed 68 contract awards and concluded that 62 of these had been awarded through processes that were not compliant with laws and regulations. The second audit, conducted in 2016, showed that insufficient information was available to determine whether due process had been followed for 127 out of 160 contracts awarded in the period January 2012 to June 2015.

Source: *Liberia EITI (2013)*, [LEITI Post Award License Process Audit Report](#).

CASE STUDY

Zambia Compliance audit by supreme audit institution on license awards

Following up on the findings from EITI Reports and Validation, Zambia's supreme audit institution, the Office of the Auditor General, undertook a compliance audit on the awarding and monitoring of mining rights for 2017. The audit report, published in 2020, identified disclosure gaps in the technical and financial criteria for assessing license applications and insufficient monitoring of progress and compliance with work programmes by operating companies. The audit identified a range of opportunities to strengthen the licensing process, including assessment of applications, compliance in quarterly reporting by companies and oversight of export licenses. The findings generated significant media attention and were presented in Parliament in March 2020. The Ministry of Mines has since cancelled 874 licenses, and is considering reforms to address weaknesses identified in its licensing procedures.

Source: National Assembly of Zambia, [Compliance Audit Report on the Awarding and Monitoring of Mining Rights for 2017 Accounts](#)



Step 4 Take steps to strengthen systematic disclosures

The MSG might wish to identify transparency gaps by **assessing the availability, quality, reliability and timeliness of licensing information** and ease of access to this information, and formulating recommendations for relevant government agencies to address these gaps and strengthen systematic disclosures. Where government agencies provide systematically disclosed data, EITI reporting can focus on highlighting discrepancies between the regulatory framework and practice in licensing procedures, or in supporting other agencies, such as SAIs, inspectorates and anticorruption agencies, in their efforts to ensure that license allocations are performed in accordance with the legal framework. For example, Colombia's Ministry of Mines website provides access to the full license application dossier, allowing for independent assessment of non-trivial deviations.¹¹

In moving towards systematic disclosures, the MSG could also consider whether the information should be disclosed in an open data format to facilitate access and analysis by civil society, industry and investors.

11 Colombia Agencia Nacional de Minería, *Transparencia y acceso a la información pública*, <https://www.anm.gov.co/?q=transparencia>.

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The Open Contracting Partnership's (OCP) Open Contracting Data Standard¹² (OCDS) provides guidance on how improve contracting transparency by systematically disclosing information on the process for awarding contracts or licenses. Its approach entails disclosing data for each step of the contracting process and publishing summary records for the overall contracting process.

The OCDS provides a framework for categorising information about license and contract awards or transfers, enabling cross-referencing between data points, databases or countries. Through the OCDS, each license or contract can be described in separate data files. The technical and financial criteria for awarding a license or contract are described under OCDS' category of "awardCriteriaDetails" and can incorporate different criteria types, their weighting, etc. Progress in a given licensing process can also be disclosed using the OCDS.

CASE STUDY

Ukraine

Open contracting in the sale of mineral rights

The Prozorro.Sale system for state asset sales was created to transform public asset sales in Ukraine via a transparent electronic auction system, which provides open and publicly available data about the auctions' processes that will soon be available in OCDS format. The system was expanded in 2019 to pilot the sale of mineral extraction rights, and in 2020 the system implemented a new tailored auction procedure for mineral extraction rights. Since the start of the pilot project on sales of mineral extraction rights in 2019, there have been 160 successful auctions with an average price increase of 199%, which has generated nearly 58 million USD in revenue for the state.

Source: Open Contracting Partnership (OCP), "[The Prozorro.Sale case of using an open auction to sell oil/gas licenses](#)"; Prozorro.Sale, <https://info.prozorro.sale> and bi.prozorro.sale.

12 Open Contracting Partnership (2017), *Open Contracting Data Standard*, <http://standard.open-contracting.org/latest/en/>.



Step 5 **Agree recommendations to improve licensing processes and practices**

Based on the national objectives agreed by the MSG in their work plan and consultations with stakeholders, the MSG could further analyse disclosures related to license allocations. Where the MSG agrees that findings should be addressed to improve natural resource governance, **recommendations can be developed to help strengthen the licensing process.**

The MSG may wish to include **commentary on the efficiency and effectiveness of the licensing systems.** This can include information on:

- The duration of the whole licensing process – from application to award/transfer – including deviations from the deadlines set in the legal framework or guidelines;
- The percentage of rejected license applications during the year covered by the EITI reporting cycle;
- The percentage of empty tenders or annulled auctions during the year covered by the EITI reporting cycle;
- The percentage of occupied land/blocks as a percentage of the total land/blocs open for extractive industry activity;
- The percentage of disputes regarding applications or tender bid procedures during the year covered by the EITI reporting cycle and how these were resolved;
- Changes in ownership of license holders during the accounting year covered in EITI reporting,
- Due diligence conducted by regulators in awarding licenses, for example whether government agencies conduct checks on the beneficial ownership information of applicants and identify politically-exposed persons; and
- Any disputes between community representatives and/or land owners and license holders and how they were potentially resolved.

The MSG might also consider whether there are vulnerabilities in the license allocation process that can contribute to mismanagement in the allocation of licenses. Based on Transparency International's Mining Awards Corruption Risk Assessment (MACRA) tool,¹³ vulnerabilities could include:

- Development of new mining laws and policies without public scrutiny

¹³ Transparency International (2020), *Mining Awards Corruption Risk Assessment Tool – 3rd Edition*, <https://www.transparency.org/en/publications/mining-awards-corruption-risk-assessment-tool-3rd-edition>.

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- Limited or no due diligence on companies' financial and technical claims
- No system for declaring and managing conflicts of interest
- Potential for access to confidential information
- Limited or no verification of information about the environmental and social impacts of the proposed mining project
- Lack of oversight or prior approval of transfers of licenses or controlling interests in license holders without prior approval of the regulator
- Information withheld from companies or communities by the authorities
- Lack of openness or scrutiny over licensing decisions (whether by the public, managers or parliament)
- Lack of transparency over what decisions are made and why
- Lack of meaningful consultation with women and men from mining-affected communities

The MSG might also wish to document whether any governance challenges identified through EITI reporting have led to significant changes in the licensing process. For example, the 2019 Validation of the Kyrgyz Republic showed that the State Committee for Industry, Energy and Subsoil Use (SCIESU) started awarding licenses on a first come, first serve basis in 2018 after corruption risks related to the practice of direct negotiations were uncovered, and later documented through EITI reporting.

CASE STUDY

Madagascar Scrutinising and addressing gaps in licensing processes

In 2011, the Government of Madagascar placed a moratorium on new mining license awards. However, according to the 2014 EITI Report, applications filed prior to the moratorium could still be granted. In response to unclear mining licensing procedures and practices, EITI Madagascar commissioned a study to review how mining licenses were managed after the moratorium was effectuated. Published in 2015, the report found that no new license had been awarded since 2011, but concluded that the suspension in licensing deterred formal mining exploration and contributed to the opacity around the government's mining revenues.

The report further recommended that the government postpone new statutes for the mining cadastre. This would allow the government to: review its role; evaluate discrepancies in EITI and government data on revenues collected by the cadastre; publish clear rules for auditing the cadastre; consult with stakeholders in preparation for reopening the cadastre; draw on best practice in reforming mining legislation; and undertake systematic disclosure through the cadastre website. The MSG shared the findings with the president and head of the mining cadastre and updated the study in 2017.

While the cadastre's office has partly implemented the recommendations from the report, opportunities for improvement remain. The 2018 EITI Report highlighted specific examples of deviations in license awards, transfers and renewals. In March 2020, Transparency International Initiative Madagascar identified corruption risks in license awards using the MACRA tool. It documented 19 vulnerabilities, ranging from the absence of clear deadlines for ministry approval to capacity challenges at the local level hampering local buy-in for new extractive projects. It identified three corresponding groups of high risks and formulated recommendations for each relevant actor.

Sources: Transparency International Initiative Madagascar (2020), [Évaluation des risques de corruption dans l'octroi des titres miniers à Madagascar, Synthèse](#); EITI-Madagascar (2019), [Rapport de réconciliation 2018](#); EITI-Madagascar (2015), [Diagnostic de la gestion des titres miniers](#).

CASE STUDY**Ghana****From recommendations to licensing reforms and civil society participation**

Prior to recent petroleum sector reforms in Ghana, the 1984 Petroleum Law stipulated competitive bidding for petroleum rights. Nonetheless, the Minister of Petroleum could also negotiate directly with companies. Ghana's 2012-2013 EITI Report highlighted that this could potentially result in licenses being awarded to inefficient operators, and that it was problematic that the details of the negotiations were not made public.

The report recommended that the Ministry of Petroleum introduce open bidding rounds for petroleum blocks and publish information on the awarded contracts on the ministry's website. Following lobbying by Ghana EITI and stakeholders, these recommendations were taken up in the 2016 Exploration and Production Bill, which requires that tendering or direct negotiation processes be published and announced in the media.

In 2019, a civil society group undertook an assessment of a licensing round. The report provides clear recommendations for improving future licensing rounds, including issuing reconnaissance licenses to gather high-quality data, disclosing further details on the bidders and their beneficial owners, avoiding discretionary direct negotiation and ensuring stronger public engagement.

Source: *Civil Society Licensing Round Monitoring Group (2019), [Ghana's First Oil Licensing Round Monitoring Report](#)*.



Further resources

- Transparency International (2020), *Mining Awards Corruption Risk Assessment Tool – 3rd Edition*, <https://www.transparency.org/en/publications/mining-awards-corruption-risk-assessment-tool-3rd-edition>.
- NRGi (2021), *Diagnosing Corruption in the Extractive Sector: A Tool for Research and Action*, <https://resourcegovernance.org/analysis-tools/publications/diagnosing-corruption-extractive-sector-tool-research-and-action>.
- Open Contracting Partnership (2017), *Open Contracting Data Standard*, <http://standard.open-contracting.org/latest/en/>.
- Aaron Sayne, Alexandra Gillies and Andrew Watkins (2017), *Twelve Red Flags: Corruption Risks in the Award of Extractive Sector Licenses and Contracts*, Natural Resource Governance Institute (NRGI), <https://resourcegovernance.org/analysis-tools/publications/twelve-red-flags-corruption-risks-award-extractive-sector-licenses-and>.



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