

Terms of Reference

Contract transparency in Papua New Guinea (PNG) - Assessment of benefits, challenges, risks and opportunities

1. Background:

Contracts, licenses and associated agreements are important elements of a country's legal framework. They explain the rights and obligations of all parties involved in the exploration and production of oil, gas and minerals. By shedding light on the rules and terms that govern extractives projects, contract transparency can help curb corruption and empower citizens to assess whether they are getting a good deal for their resources. In recognition of the significance of contract disclosure, the EITI Standard ([Requirement 2.4](#))¹ requires all implementing countries to disclose any contracts and licenses that are granted, entered into or amended from 1 January 2021, including the full texts of Contracts, annexes, addendums or riders. Over 30 EITI countries have thus far disclosed some or all mining, oil or gas contracts.

In Papua New Guinea, progress towards contract disclosure has been limited. The details of contracts and licenses are protected by confidentiality provisions in Section 163 of the Mining Act (MA) 1992, Section 52 of the Mineral Resources Authority (MRA) Act and Section 149 of the Oil and Gas Act (OGA) 1998. Without legislative amendment, agreements could only be made public with the approval of both the company and the Department of Petroleum and Energy (DPE) or Mineral Resources Authority (MRA) (as appropriate). Contracts are held and maintained by the Solicitor General's office and to date, no contracts have been made publicly available. Broader benefit-sharing agreements related to mining and oil and gas projects are also not currently publicly disclosed.

Despite the challenges, stakeholders continue to make progress. The Mineral Resources Authority (MRA) is seeking legal advice on making all mining project Memorandums of Agreement (MOAs) publicly available. The PNG EITI Multistakeholder group (PNG MSG) and PNG EITI Secretariat are engaging with partners and government entities to explore solutions to non-disclosure of contracts.

¹ The term contract in Requirement 2.4(a) means:

- i. The full text of any contract, concession, production-sharing agreement or other agreement granted by, or entered into by, the government which provides the terms attached to the exploitation of oil gas and mineral resources.
- ii. The full text of any annex, addendum or rider which establishes details relevant to the exploitation rights described in 2.4(d)(i) or the execution thereof.
- iii. The full text of any alteration or amendment to the documents described in 2.4(d)(i) and 2.4(d)(ii).

The term license in Requirement 2.4(a) means:

- i. The full text of any license, lease, title or permit by which a government confers on a company(ies) or individual(s) rights to exploit oil, gas and/or mineral resources.
- ii. The full text of any annex, addendum or rider that establishes details relevant to the exploitation rights described in 2.4(e)(i) or the execution thereof.
- ii. The full text of any alteration or amendment to the documents described in 2.4(e)(i) and 2.4(e)(ii).

2. Objectives:

To support the PNG MSG in implementing Requirement 2.4 of the EITI Standard on contract disclosure, a consultant will be engaged by the International Secretariat with support from USAID to produce a study describing the existing legal framework for contract disclosure in PNG and evaluating risks and challenges as well as the opportunities and benefits associated with disclosing extractive contracts in PNG. The outcome of the study is expected to enhance stakeholders understanding of any potential risks and offer practical solutions on how to address such risks and reap the benefits of public disclosure. The PNG EITI MSG will be consulted in the drafting of the study.

3. Scope of work:

The study will include the following:

1. Discussion of contracts regime for the mining, oil and gas sectors in PNG
2. Discussion of existing legal framework for contract disclosure in PNG, specific to the extractive sector and more broadly
3. Discussion of actual disclosure practices, including a list of extractive contracts and MoUs/MoAs that have been disclosed, and whether there are deviations from policy
4. A list of relevant contracts that should be disclosed to meet Requirement 2.4
5. Identification of legal, political and practical barriers and other challenges to contract disclosure in Indonesia
6. Recommendations to address barriers, including practical guidance for addressing legal barriers
7. Risk assessment and recommendations to mitigate risks
8. Discussion of benefits of contract disclosure in the context of PNG and links to issues in natural resource governance in the country
9. Opportunities for implementing contract disclosure, including alignment with other national reforms
10. Draft roadmap for contract disclosure in PNG with suggestions on objectives, specific activities, training needs, and stakeholder mapping

The consultant will be expected to:

1. Conduct consultations with key stakeholders
2. Liaise with the MSG, national secretariat and International Secretariat regarding the progress of the study
3. Conduct workshops when necessary for drafting sections of the study
4. Present the findings of the study to the MSG
5. Produce a list of all active contracts and licenses as well as MoUs/MoAs, indicating which are publicly available and which are not.
6. Produce a list of relevant contracts that should be disclosed to meet Requirement 2.4
7. Produce a risk assessment and opportunities paper
8. Publish a summary of key findings and recommendations that could serve as speaking points for stakeholder engagement

4. Deliverables and timeline

The assignment is expected to take 20 consultancy days in July and August and should be completed by end of August 2021.

Timeline:

Activity	Date
Consultations, workshops with stakeholders	July 2021
First draft	16 August 2021
Presentation to MSG	Week of 16 August 2021
Final draft	31 August 2021

5. Consultant's qualifications:

The consultant should be a prominent firm or individual(s) that PNG MSG considers to be credible, trustworthy and technically competent.

The consultant must demonstrate:

- Expertise in PNG's legal framework and contracts regime, specifically in the extractive sector relating to project agreements, MOAs, Development Agreements, UBSA, LBSAs etc. A PNG law degree or relevant background in the context of PNG is an advantage.
- Expertise in natural resource governance in PNG, as demonstrated by at least seven years of relevant work experience.
- Familiarity with the EITI Standard's requirements on contract disclosure.
- Adequate experience in producing similar technical studies and research.
- Sufficient familiarity with PNG's government systems, laws and policies. The consultant must demonstrate ability to access information from government through well-established networks within the PNG's bureaucracy.
- Adequate experience in conducting consultations with various types of stakeholders from government, companies and civil society.
- Advanced written and communication skills in English.

To ensure quality and independence in the undertaking, the consultant must, in their technical and financial proposals, disclose any potential or actual conflicts of interest, together with a comment about how they may be avoided.

6. Administrative support

The Secretariat would provide the following support to the project:

- Regular oversight through calls and email exchanges.
- Technical assistance in undertaking, reviewing and completing the study, including clarifying relevant requirements of the EITI Standard
- The necessary background information and input as needed
- Any relevant support required for the completing of the project