

The National Policy for Transparency and Accountability in the Extractives Sector in Papua New Guinea

[Draft Final]

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Foreword from the Minister

The Government of Papua New Guinea takes transparency and accountability within the oil, gas and mining sectors very seriously. We were proud to be approved, in March 2014, as an EITI candidate country. Our efforts in the extractive sector – so critically important for our economy - are to ensure that there is a fair balance between providing an attractive destination for investors and ensuring benefits to those affected by extractive operations as well as the people of Papua New Guinea.

The time has now come to institutionalise the EITI process within our country, to ensure that there is a mandatory disclosure regime for all involved in oil, gas and mining in Papua New Guinea, and also to ensure that the information the EITI produces is of genuine use to those in government and to citizens of our country.

This policy document sets out the key parameters which will guide the development of a legal framework for extractive industries transparency in Papua New Guinea. Although strongly guided by the international EITI framework (the EITI Principles and the EITI Standard), this policy also addresses the specific context of Papua New Guinea, and in several key respects goes far beyond EITI requirements (such as the requirement for environmental information, and the mandatory disclosure of all contracts and agreements).

With this policy, we look forward to creating regional best practice in the transparent management of our natural resource sectors and ensuring there is shared prosperity from the revenues generated.

Hon. Charles Abel MP

Deputy Prime Minister, Treasurer &
Chairman of PNGEITI Multi Stakeholder Group
Government of Papua New Guinea

Executive Summary

This Policy sets out the mission and objectives for an independent administrative body that promotes and requires transparency and accountability in the mining and petroleum (oil and gas) sectors in Papua New Guinea. This public body will both domesticate international standards and respond to national needs. The public body continues and extends the work of the Extractive Industries Transparency Initiative (EITI) in PNG by transforming the initiative into a legally constituted administration with powers to require reporting organisations (both companies and government bodies) to disclose information. The initiative will further be transformed by acquiring a formal place in an existing context of government institutions.

Through nine policy objectives, this Policy outlines the core functions of the independent administrative body, determines the multi-stakeholder nature of its oversight body, and summarises its key reporting outputs. This Policy also sets out how the new independent administrative body will be embedded within an existing institutional framework by supporting anti-corruption and public financial management activities, but also by assessing the quality and timeliness of information on the extractives sector produced by other government agencies and making recommendations for improvement. Finally, this Policy outlines how the administrative body's outputs will be used to inform and educate citizens and stakeholders to improve public debate and policy making.

This Policy provides multiple benefits: it ensures that there is multi-stakeholder participation (government, the private sector and civil society) in the oversight of the work of the independent administrative body. It also ensures that there are mandatory disclosure requirements placed upon those who are required to provide information, leading to more comprehensive publicly available information. This Policy will guarantee that information produced on the extractive sector is both timely and credible and supports anti-corruption activities within government as well as public financial management. This Policy will also lead to better understanding of the extractives sector across Papua New Guinea and help build trust that the revenues from mining and petroleum are of benefit to all citizens.

This Policy requires two laws to be drafted and approved: firstly, an establishment law that gives the administrative body its legal basis, and secondly, a reporting law that sets out the disclosure and compliance requirements that the administrative body will implement. There will likely be a series of consequential amendments to other legislation related to the extractives sector.

Mission Statement

The independent administrative body promotes open and accountable management of revenue from natural resources for the benefit of Papua New Guineans. It seeks to strengthen government and company systems and policies, inform public debate, support anti-corruption and investment promotion activities of government, and enhance trust.

Introduction to The Policy

The Extractive Industries Transparency Initiative (EITI) is a global standard promoting the open and accountable management of petroleum and mineral resources. At the core of the EITI are the 12 Principles¹ and the compliance framework known as the EITI Standard.² The EITI aims to strengthen government and company systems, inform public debate and promote better understanding of the extractives sector. Countries signing up to the initiative are required to form a secretariat to implement the initiative as well as form an oversight body, known as the multi-stakeholder group (MSG). The MSG comprises of representatives from government, the private sector (extractive companies) and civil society. Implementing countries are also required to publish annual EITI reports which reconcile payments made by companies (in taxes, royalties, fees and other payments) with government receipts. When implementing countries first join EITI, they are known as a “candidate country”. Within two and a half years, implementing countries are assessed via a “validation” process. If successful, implementing countries then become compliant with the EITI Standard.

At the time Papua New Guinea was accepted as an EITI candidate country in March 2015, an EITI National Secretariat was endorsed to be situated within the Department of Treasury for the inception stage. It was also agreed that the EITI in Papua New Guinea would later be separated as an independent administrative body. This Policy provides the framework through which EITI will be established as an independent body by law in Papua New Guinea, in line with plans set out during the EITI accession phase.

While this Policy is strongly guided by the EITI Principles and the EITI Standard, it is equally informed by the national context of Papua New Guinea and the specific transparency and accountability issues that the country faces. Rather than simply providing a legal basis for the continued implementation of EITI in Papua New Guinea, this Policy sets out a transparency and accountability framework that responds to national needs and sets its own compliance standard, informed by international frameworks but taking into account PNG’s special circumstances.

This Policy anticipates and provides the framework for two separate laws: firstly, an establishment law that will provide a legal basis for the new administrative body, and secondly, a reporting law (and associated regulations) that sets out the disclosure and compliance requirements the administrative body will implement. The advantage of this approach is that disclosure and compliance requirements can be more frequently updated in line with changes in international standards or new national requirements, rather than be dependent on legal amendment procedures. Additionally, it provides a strong and stable legal basis for achieving transparency with regard to extractive industries generated revenues.

This Policy is also designed with a medium to long term perspective in mind. Rather than build up an administrative body in its own right as the sole long-term goal, this Policy takes the perspective that the administrative body is the catalyst for systemic improvements in the timeliness and quality of data produced by the extractives sector in Papua New Guinea. The proposed administrative body has to be of benefit to government and significantly contribute to improved natural resource governance to have long-term sustainable value.

¹ <https://eiti.org/document/eiti-principles>

² <https://eiti.org/document/standard>

National Policy Objectives

The following are the nine policy objectives for the National Policy for Transparency and Accountability in the extractives sector in Papua New Guinea. The specific policy measures for each objective are detailed in the next section.

1. Create an independent administrative body to strengthen extractives sector transparency and accountability in Papua New Guinea.
2. Ensure full, active and effective participatory oversight by government, civil society and the private sector in the administration of extractive sector transparency and accountability.
3. Timely publication of comprehensive information on the extractive sector (petroleum, mining and other natural resource sectors deemed appropriate) through the production, collation and dissemination of relevant information in line with international standards.
4. Support anti-corruption activities of government by forwarding unresolved non-technical discrepancies and whistleblower complaints to the relevant government bodies.
5. Develop and regularly update a diagnostic tool to support reform of the extractives sector
6. Strengthen public financial management in PNG through better oversight of extractive sector revenues.
7. Improve public understanding and contribute to public debate and policy-making regarding the extractives sector in PNG.
8. Ensure that the administrative body's findings are effectively disseminated, and the data is relevant to specific constituencies, such as landowners and other affected community members.
9. Ensure complementarity with other transparency and governance frameworks being implemented in PNG.

Policy Measures

The policy measures below substantiate the nine policy objectives and provide further direction for the legal framework to be developed, both in terms of the administrative body establishment law and the reporting law. Current international best practice and the PNG context are given for each objective, to support the specific policy measures.

Objective 1: The Administrative Body

Create an independent administrative body to strengthen extractives sector transparency and accountability in PNG

International best practice:

The EITI Principles and Standard require that the implementation of EITI is overseen by a multi-stakeholder group comprising of representatives from government, companies and civil society. However, there are no prescriptions regarding the form of administrative body that will implement the initiative; national context and government decision-making are the key factors required to shape the most appropriate form of administrative body.

PNG context:

The constitution of Papua New Guinea defines freedom of information as one of the basic rights of citizens. Ultimately, the government institution delivering better transparency and accountability in the extractives sector in Papua New Guinea should be based upon this constitutional principle.

Specific policy measures for Objective 1

1. The administrative body should administer the transparency and accountability reporting framework that is to be developed.
2. The administrative body should be organised to include a multi-stakeholder oversight body.
3. The administrative body should set implementation objectives that are linked both to international standards³ but also reflect national priorities for the extractive industries as well as over-arching government visions and plans.
4. The administrative body should define materiality (what constitutes the minimum threshold of disclosure) for each benefit stream.
5. The administrative body should impose penalties for non-compliance with the reporting framework for any reporting entity (unless penalties for the same non-compliance are imposed by another government body).
6. The administrative body should support the formation of sub-national bodies with multi-stakeholder oversight where and when required.
7. The administrative body may undertake any other activity which furthers its mission.

³ Such as the EITI Principles.

Objective 2: Full Participation

Ensure full, active and effective participatory oversight by government, civil society and the private sector in the administration of extractive sector transparency and accountability

International best practice:

The EITI Standard requires oversight by a Multi-Stakeholder Group, with full and active engagement from all parties. The government should ensure senior government officials are represented; companies should be substantively engaged and facilitated by an enabling environment with respect to relevant laws, regulations and administrative rules. Finally, civil society should be able to participate freely and without restraint, coercion or threat of reprisal.

PNG context:

The socio-cultural context, the geography and the role of landowners and other factors mean that Papua New Guinea has a more complex set of stakeholders and interest groups than elsewhere. Collaborative platforms focusing on the extractives sector among civil society are currently in their infancy.

Specific policy measures for Objective 2

1. The administrative body should be guided by an oversight body.
2. Each stakeholder group (government, companies, civil society) has the power to select its own representatives to the oversight body, and also the power to choose the mechanism by which those representatives are selected.
3. Each stakeholder group should be adequately represented on the oversight body.
4. Each stakeholder group should be represented by senior representatives on the oversight body.
5. Each stakeholder group should agree the means by which issues are to be raised at the multi-stakeholder oversight body and are also reported back to their constituency, to ensure full representation of stakeholder interests and concerns.
6. Civil society should be fully, actively and effectively engaged with and represented on the oversight body, with all obstacles to participation addressed and removed.
7. Civil society should be effectively engaged in the design, implementation, monitoring and evaluation of the work of the administrative body.
8. Civil society and community groups at sub-national level should be actively engaged by the administrative body.
9. The oversight body should set materiality thresholds for all revenue streams, above which companies are required to disclose information to the administrative body.

Objective 3: Comprehensive Disclosure

Timely publication of comprehensive information on the extractive sector (petroleum, mining and other natural resource sectors deemed appropriate) through the production, collation and dissemination of relevant information in line with international standards.

International best practice:

The EITI provides a comprehensive disclosure regime for the extractive sector across the value chain (the process through which natural resources are discovered, licensed, taxed and then revenues allocated and spent, leading potentially to public benefit), including licensing and contracts, benefit streams, production and export data, beneficial ownership, revenue allocation and social expenditure and includes disclosure requirements for state-owned enterprises.

PNG context:

EITI reports indicate that there are currently numerous gaps in disclosure in both the mining and petroleum sectors across the value-chain which a comprehensive disclosure regime will need to address, both in terms of removing obstacles (whether legal or contractual) to disclosure and also requiring disclosure. The new draft Memorandum of Agreement includes a requirement to report in accordance with EITI.

Specific policy measures for Objective 3

1. Require full transparency in the allocation and transfer of legal authorisations (such as licences, permits and agreements) in the extractive sector and also require that there is a publicly available up-to-date register of licences.
2. All contracts, leases, licenses and agreements (including Memoranda of Agreements and Benefit Sharing Agreements) regarding extractive sector assets should be publicly available and accessible documents.
3. Require that all material revenue streams from all extractive sector companies (to both national and sub-national governments) are disclosed, disaggregated by revenue stream and by project (licence) and reconciled against government receipts.
4. Require full unilateral government disclosure of extractive sector revenues, including from companies whose payments to government fall below the materiality threshold set by the oversight group, disaggregated by revenue stream (taxes, royalties, fees, etc.)
5. Require that – for all operational extractive industry projects - production and export volumes and values (disaggregated by commodity) are disclosed, as well as the methodology for their calculation.
6. Require that all material social payments by extractive companies are disclosed, disaggregated by payment type and beneficiary, whether required by contract or agreement or discretionary.
7. Require that there is full and disaggregated disclosure regarding company use of tax credit expenditure.
8. Require that payments to landowner associations and companies are reconciled against landowner association receipts.
9. Require transparency of financial flows through state owned enterprises (including holding companies) in the extractives sector, including quasi-fiscal expenditure, disclosure of the rules and practices governing financial relations between these state-owned enterprises and the government and disclosure of any use of loans extended to extractive sector companies by the state or state owned enterprises.
10. Require transparency with regard to revenue allocation (to subnational governments) both within the budget process and extra-budgetary allocations, and transparency with regard to the instrument or mechanism which mandates these allocations (by constitution, law, contract etc.)
11. Require comprehensive information regarding the beneficial ownership of extractive sector companies, including disclosure of domestic or foreign politically exposed persons.

12. Require that all social and environmental reports related to extractive sector projects (whether produced by companies or the government) are publicly available documents.
13. There should be a periodic review of all the disclosure requirements (to be set out in the reporting law and associated regulations) to ensure that there is comprehensive and timely disclosure of extractive sector information across the value chain. This review may also include recommendations to extend the scope of EITI into other natural resource sectors. The recommendations from each EITI Report as well as the administrative body's annual progress reports will be the two key mechanisms for these reporting updates.

Objective 4. Limit Corruption

Support anti-corruption activities of government by forwarding unresolved non-technical discrepancies and whistle-blower complaints to the relevant government bodies

International best practice:

The United Nations Convention against Corruption (adopted in 2003) is a legally binding universal anti-corruption instrument. Most UN member states are parties to the convention. Meanwhile, ISO 37001 (published in 2016) provides requirements and provides guidance for establishing, implementing, maintaining, reviewing and improving an anti-bribery management system.⁴

PNG context:

The Government of Papua New Guinea adopted a National Anti-corruption Strategy 2010-2030. However, this strategy has yet to be fully implemented. The Government of Papua New Guinea set up a Sweep Task Force in 2011. This body includes members from the Department of Justice, the police department and the Ombudsman Commission. Previously, the National Anti-Corruption Authority (NACA) has been in operation since 2006 and includes members from the Department of Treasury, Office of the Auditor General, Customs, Internal Revenue Commission, Department of Personnel Management, the Office of the Public Prosecutor, the Solicitor General, the Ombudsman Commission, the Police and the Department of Provincial and Local Government Affairs).

Specific policy measures for Objective 4

1. Require that any non-technical discrepancies⁵ that cannot be resolved through the reconciliation process are forwarded to the relevant government body.
2. Forward allegations of corruption or malfeasance in the extractives sector from whistle-blowers to the relevant government body.

⁴ <https://www.iso.org/standard/65034.html>

⁵ Non-technical discrepancies are discrepancies that do not relate to differences due to foreign exchange rates, financial year endings or any other technical or administrative reason.

Objective 5: Diagnostic Tool

Develop and regularly update a diagnostic tool to support reform of the extractives sector

International best practice:

A requirement of the EITI Standard is that the oversight body reviews the outcomes and impact of EITI implementation on natural resource governance through the production of annual reports. An end goal of EITI is “mainstreaming”, whereby existing government systems are optimised to produce the data required by the EITI Standard to the requisite detail and credibility. The diagnostic tool process should therefore have mainstreaming as a medium-term goal.

PNG context:

PNG’s EITI Reports are already serving as a diagnostic tool for assessing government systems in relation to the mining and petroleum sectors and also in terms of public finance management. EITI report recommendations have led to the removal of confidentiality provisions in the tax code for EITI disclosure purposes; increased transparency in the operations of SOEs as well as improved petroleum licence management systems. The EITI process in PNG has also exposed gaps in the management of trust accounts for funds issuing from the extractive sector. There remain other gaps that the diagnostic tool approach will identify in detail, such as the fact that production data disclosure is currently based on company self-reporting and that there is no official data on petroleum production volumes and values.

The key goal of reforming extractive sector governance in PNG is to increase the investor attractiveness of the country.

Specific policy measures for Objective 5

1. Produce annual progress reports that review the outcomes and impact of implementation of the compliance and disclosure requirements on natural resource governance, including recommended actions to extend the detail and scope of reporting (including into other natural resource sectors).
2. Monitor, assess and verify information produced by existing government agencies and make recommendations to improve data quality and timeliness.
3. Commission specific diagnostic assessments when and where required.

Objective 6: Better Public Financial Management Oversight

Strengthen public financial management in PNG through better oversight of extractive sector revenues

International best practice:

The EITI Standard requires timely data: reconciled data (the comparison between company payment information and government receipts) from the extractives sector should be published no older than the second to last complete accounting period (e.g. an EITI report published in 2019 should be based on data from 2017).

PNG context:

Given the significance of the extractives sector for Papua New Guinea, there is the opportunity for the administrative body's outputs to be integrated into the budget preparation process to ensure more realistic macro-fiscal modelling and planning.

Specific policy measures for Objective 6

1. Provide continuous (unreconciled) disaggregated online disclosures of revenues (and other extractives data, such as production and export volumes and values) to government from extractive operations.
2. Require that extractives data from no earlier than the previous year's accounting period be published in the annual EITI reports.
3. Draft EITI reports should be reviewed by the Auditor-General's Office to ensure there is capacity addition and knowledge transfer.
4. Develop a process whereby revenues reported by government are reconciled with revenue payments reported by companies without the need for independent assessment.

Objective 7: Public Debate And Policy-Making

Improve public understanding and contribute to public debate and policy-making regarding the extractives sector in PNG

International best practice:

The EITI Standard requires that EITI reports are comprehensible, actively promoted, publicly accessible and contribute to public debate.

PNG context:

EITI reports are already being used in parliament as the basis for debate among politicians and policy-makers around natural resource governance. There is therefore the opportunity to formalise this process through the policy framework.

Public bodies such as the National Economic and Fiscal Commission forward their reports to both the relevant ministry and to Parliament.

Specific policy measures for Objective 7

1. Annual EITI reports and annual progress reports should be submitted both to Cabinet and Parliament.
2. The administrative body should be responsive to ad hoc or periodic requests from Parliament and Papua New Guinean government bodies to provide policy input or clarifications on extractive industry data or to provide ad hoc reports based on specific issues regarding extractive industry information.
3. Annual EITI Reports should be published both in full and also in an accessible comprehensible summary form with appropriate use of data visualisation.

Objective 8: Effective Dissemination

Ensure that the administrative body's findings are effectively disseminated, and the data is relevant to specific constituencies, such as landowners and other affected community members

International best practice:

The EITI Standard requires that paper copies of the annual EITI Reports are published and widely disseminated. Implementing countries are also encouraged to publish EITI data under an open licence, to make users aware that information can be reused without prior consent. EITI Reports are also required to be available in open data format (xlsx or csv) and publicise the availability of this data.

PNG context:

The terrain of Papua New Guinea and socio-cultural complexity means that efforts will need to be made to ensure that the data produced by EITI Reports is accessible, meaningful and relevant to citizens, whether directly impacted by extractive operations or not.

Specific policy measures for Objective 8

1. The administrative body should develop a comprehensive portal website that publishes data produced by the administrative body, but also collates information produced by other government agencies.
2. The administrative body should adopt an open data policy for all EITI reports.
3. The administrative body should develop an information, communications and education strategy that is appropriate for Papua New Guinea to ensure that outputs produced by the administrative body are effectively mainstreamed and provide relevant and meaningful information to different stakeholder groups across the country.

Objective 9: Complementarity

Ensure complementarity with other transparency and governance frameworks being implemented in PNG

International best practice:

Beyond EITI, there are a number of international frameworks that are relevant and should guide the administrative body, such as the Open Contracting Partnership, the Open Government Partnership, the EU Transparency Directive, the EU Non-financial reporting directive, the Financial Action Task Force (in relation to Beneficial Ownership), the UN Guiding Principles on Business and Human Rights, the United Nations Declaration on the Rights of Indigenous Peoples (in terms of Free, Prior and Informed Consent) and so on.

PNG context:

The Government of Papua New Guinea participates in a number of international frameworks beyond EITI that will be of relevance for the administrative body and its oversight body. Rather than simply viewing the administrative body as the legal basis for implementing EITI in Papua New Guinea, the new institution should be seen as a platform through which engagement with the government of Papua New Guinea in terms of transparency and accountability interventions can be consolidated and strengthened.

The government also has various over-arching visions and plans, including Vision 2050 and the Strategy Plan 2010-2030.

The new institution will be required to cooperate with other PNG government institutions with related functions (such as the Ombudsman Commission and the Investment Promotion Authority).

Specific policy measure for Objective 9

1. The administrative body should establish contact with other transparency and accountability initiatives (whether guided by international standards or otherwise) in Papua New Guinea and agree, where required, cooperation and information sharing mechanisms, whether by Memorandum of Understanding frameworks or otherwise.
2. The administrative body should keep abreast of transparency related initiatives and practices outside PNG and strive to ensure that it follows international best practice approaches in its work.
3. The administrative body should establish contact with government agencies with related functions in Papua New Guinea and agree, where required, cooperation and information sharing mechanisms, whether by Memorandum of Understanding frameworks or otherwise.

Policy Implementation

This Policy will require two laws to be developed and promulgated: firstly, an establishment law that provides a legal basis for the administrative body, and secondly, a reporting law (and associated amendments) that sets out the disclosure and compliance requirements that the administrative body will implement. There will likely be a series of consequential amendments to other legislation, including the 1992 Mining Act and the 2005 Mineral Resources Authority Act, as well as the Oil and Gas Act 1998. Further amendments may also be required to embed the reporting outputs of the administrative body into the budget preparation cycle.
