



Papua New Guinea Extractive Industries
Transparency Initiative

Terms of Reference (ToR) for Engagement of
Legal Consultant to Audit the Reporting
Requirements of the Mining Act and the Oil &
Gas Act and Relevant Extractive Industry
Legislations, Identifying Gaps between these
Reporting Requirements and EITI Reporting
Standards and Draft Propositions to Bridge these
Reporting Gaps.

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1. Introduction

The Extractive Industries Transparency Initiative (EITI) is a Global Best Practice Standard adopted by the Government of Papua New Guinea (GoPNG) to promote revenue Transparency and Accountability in the country's mining and petroleum sectors. The NEC Decision No. 90/2013 approved for PNG to sign up to the EITI and endorsed the Minister responsible for Treasury matters to lead its implementation.

In 2014, the EITI International Board made a decision to accept PNG as an EITI candidate country. The PNGEITI National Secretariat was therefore established in 2015 to provide administrative support to the Multi-Stakeholder Group (MSG) and it has been operating out of the Department of Treasury to date.

The *NEC Decision 80/2019* endorsed *The National Policy for Transparency and Accountability in the Extractive Sector in Papua New Guinea* and noted the commencement of the process to develop a legislation for the establishment of a Statutory Commission as an independent administrative body to manage and coordinate EITI Implementation in PNG.

PNGEITI's objectives are consistent with the Government's priorities through the objectives of the National Policy on Transparency and Accountability in the Extractive Sector 2019.

2. Background

In EITI implementing countries, companies involved in the extraction of natural resources (oil, gas and minerals) are required to report on what they pay to their governments, and governments are required to publish what they receive from these companies. In a given financial year, the data provided are then reconciled by an Independent Administrator (IA) and are published in the Annual EITI Country Report for public information, which is the core function of the EITI in implementing countries.

The Annual EITI Country Report covers activities and revenues received from the extractive sector in the form of taxes, levies, royalties, permits and social voluntary contributions of the sector to the government. The reconciliation process covers payments made by extractive companies to the government and the receipts of these payments by governments.

The PNGEITI National Secretariat endeavours to engage a Legal Consultant to undertake a Comprehensive Audit of reporting requirements of relevant resource legislations, and link up with the EITI Standard/requirements to identify the gaps, and make propositions to adequately capture the gaps in the proposed PNGEITI Commission Bill.

This Terms of Reference (TOR) therefore outlines the tasks for an external Legal Consultant to:

- I. Perform an audit of existing reporting requirements of the Mining Act, the Oil & Gas Act and relevant legislations relating to the extractive sector;
- II. Identify gaps in the reporting requirements of these legislations in contrast with that of the EITI standard and its requirements; and,
- III. Draft propositions to be included in the EITI Commission Bill to bridge the reporting gaps.

The PNGEITI National Secretariat has taken significant steps towards its establishment as an independent entity and a draft of its establishment law, the PNG EITI Commission Bill (PNGEITC)

has been formulated. Extensive stakeholder consultations have been carried out across the country to capture the comments and views of the stakeholders regarding the Bill. The Bill also went through various drafts with the legal Technical Working Group (TWG), and is now in its final stages of a thorough audit and gap analysis. Draft propositions from this audit will be included in the EITI Commission Bill to provide the basis of the establishment of the PNGEITI Commission.

3. Objectives

The main objective of this assignment is to:

- I. Engage a Legal Consultant with relevant knowledge and experience in the PNG Extractive sector;
- II. Carry out an extensive legal audit of the existing reporting requirements of relevant legislations in the PNG mining and oil and gas space;
- III. Do a comparative analysis on the findings with EITI standard and its requirements, and identify gaps;
- IV. Draft propositions to bridge the reporting gaps identified; and,
- V. Produce and provide an Audit Report of this assignment.

4. Work Scope, Tasks and Expected Deliverables

The Consultant is expected to undertake the following tasks during the period;

- I. Identify all relevant legislations governing reporting within the Mining, and Oil and Gas sector;
- II. Comprehend the EITI Standard and its Requirements and its application to the relevant legislations;
- III. Provide a work plan specifying the activities that are to be undertaken in producing a comprehensive legal audit report;
- IV. Consolidate and prepare a comprehensive audit report that identifies gaps, overlaps, and inconsistencies in the current legislative framework governing reporting in the Extractive sector in Papua New Guinea in contrast to the EITI Reporting requirements and standard; and,
- V. Draft propositions to bridge the reporting gaps;

5. Qualification and Requirements

The Legal Consultant must have a minimum of a Bachelor's Degree in Law or preferably a Master's Degree in Law, with a focus on Resource Law, Mining and Oil and Gas Laws, and experience in developing countries natural resources developments.

The Consultant shall demonstrate the following:

Experience

- At least 10 years of experience in legal practice, with a substantial part of that experience in the field of Extractive Industries in Papua New Guinea, environment/resource laws and regulatory compliance;
- Proven experience in conducting legal audits, legislative reviews, and providing legal advisory services within the Extractive Sector and,
- Demonstrated experience in Papua New Guinea or similar context within the Asia-Pacific is highly desirable.

Skills & Competencies

- In-depth knowledge of international and national legal frameworks governing the extractive industries, environment protection, and natural resources management;
- Strong analytical and research skills, with ability to interpret and apply complex legal and regulatory provisions;
- Excellent drafting skills with a proven ability to produce clear, concise, and comprehensive legal reports and recommendations;
- Proficiency in using legal research tools and database; and,
- Strong communication and interpersonal skills, with ability to effectively engage with stakeholders from diverse backgrounds, including government officials, industry representatives, and civil society.

Specific Requirements

- Familiarity with the legal and regulatory environment of Papua New Guinea, particularly in relation to the Extractive Industry sector; and,
- Fluency in English, both written and spoken, is essential. Knowledge of Tok-Pisin will be an asset

6. Methodology

The Consultant is expected to employ a transparent and participatory approach, adhering to internationally recognized best practices for report auditing, validation, and report findings. Methodologies may include document review, interviews, data analysis, and stakeholder engagement

7. Timeline

The Consultant is expected to complete the associated tasks, each in accordance with the proposed schedule below:

Type of activity	Deliverable Dates
Signing of Contract	19 th July, 2024
Initial Meeting and Submission of Work Plan	26 th July, 2024
Preliminary Audit Report An initial report assessing the existing legal framework governing the Extractive Industries in Papua New Guinea, and identification of gaps, overlaps, inconsistencies, and ambiguities in the reporting requirements of relevant legislation	2 nd August, 2024
Legislative Gap Analysis Report Comparative analysis between the relevant legislations and the EITI Reporting Standards	9 th August, 2024
Progressive Draft Audit Report, Stakeholder Engagement Report, and Propositions/Recommendations.	16 th August, 2024
Final Audit Report	23 rd August, 2024

8. Budget

The Consultant should include a financial proposal with a breakdown of all labour hours and other professional fees estimated for this short-term engagement. Professional fees will be paid to the Consultant upon delivery of the services required in this Terms of Reference.

Payment schedule are as follows:

- a) 20% of the contract fee will be paid to the Consultant on the Submission of the Work Plan.
- b) 20% of the fee will be paid to the Consultant upon delivery and acceptance of Preliminary Audit Report.
- c) 20% of the fee will be paid to the Consultant upon delivery and acceptance of Legislative Gap Analysis Report.
- d) 20% of the fee will be paid to the Consultant for delivery and acceptance of draft Progressive Audit Report, Stakeholder Engagement Report, and Drafting Propositions.

- e) The final 20% of the fee will be paid to the Consultant upon delivery and acceptance of Final Audit Report.

The budget for this assignment shall cover the costs associated with research and review of relevant legislation, auditing, analysis, stakeholder consultations (where necessary), drafting of propositions/recommendations, and inclusive of administrative expenses.

9. Roles and Responsibilities

- The Consultant shall be responsible for the execution of all tasks outlined in the Scope of Work; and,
- The Programs and Policy Branch shall provide oversight and guidance throughout the auditing process, including review and approval of the final report.

10. Reporting and Communication

The assignment is expected to commence on the 19th of July 2024 and ends on the 23rd of August 2024. The Consultant is required to report to the client through the Director Policy and Programs. The Director will be the point of contact for any matter relating to this assignment.

Weekly progressive reports on activities accomplished and or meetings held shall be furnished to the National Secretariat through Director Policy and Programs detailing activities undertaken, challenges encountered, and milestones achieved. Communication shall be maintained through regular meetings, emails, and other relevant channels.

11. Monitoring and Evaluation

The performance of the Consultant shall be evaluated based on adherence to timeliness, quality of deliverables, stakeholder satisfaction, and compliance with EITI reporting requirements. Monitoring shall be conducted by Programs and Policy Branch with feedback provided to the Consultant as necessary.

12. Terms and Conditions

- The Consultant shall maintain confidentiality and integrity throughout the reporting process; and,
- Any conflicts of interest or ethical concerns shall be disclosed and addressed promptly

13. Annexes

- i. Draft Commission Bill
- ii. 2023 EITI Standard (Here is the link: <https://eiti.org/sites/default/files/2023-06/2023%20EITI%20Standard.pdf>)