

Institute of Certified Public Accountants of Kenya:

Building Resilient Institutions for Economic Development

The Global Coalition Against Corruption

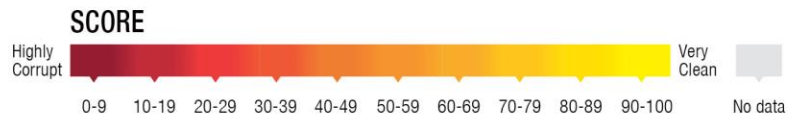
Serena Lillywhite, CEO, TIA – 11 September 2019

Overview

- Corruption Perception Index
- Australia's Integrity landscape
- Whistleblower protection reforms
- Combatting corruption in mining approvals

CORRUPTION PERCEPTIONS INDEX 2018

The perceived levels of public sector corruption in 180 countries/territories around the world.



#cpi2018

www.transparency.org/cpi

This work from Transparency International (2019) is licensed under CC BY-ND 4.0



How did African countries rate?

- Undemocratic regimes undermine anti-corruption efforts
- Only eight of 49 countries score more than 43 out of 100 on the index
- Average score is 32 Seychelles (66) and Botswana (61) score highest
- South Sudan (13) and Somalia (10) score lowest
- Kenya – 27
- Australia – 13 – dropped 8 points in 7 years



SCORE	COUNTRY/TERRITORY	RANK	SCORE	COUNTRY/TERRITORY	RANK	SCORE	COUNTRY/TERRITORY	RANK	SCORE	COUNTRY/TERRITORY	RANK	SCORE	COUNTRY/TERRITORY	RANK	SCORE	COUNTRY/TERRITORY	RANK
88	Denmark	1	66	Seychelles	27	53	Guatemala	53	41	India	76	26	Armenia	105	28	Honduras	132
87	New Zealand	2	65	Belarus	28	52	Italy	54	40	Kuwait	77	25	Brazil	29	27	Kyrgyzstan	133
86	Finland	3	64	Portugal	29	51	Croatia	55	39	Lebanon	78	24	Costa Rica	30	26	Zimbabwe	134
85	Singapore	4	63	Burundi	30	50	Malta	56	38	Myanmar	79	23	Egypt	31	25	Gambia	135
84	Sweden	5	62	Burkina Faso	31	49	Sierra Leone	57	37	Thailand	80	22	El Salvador	32	24	Dominican Republic	136
83	Switzerland	6	61	Denmark	32	48	Turkey	58	36	Paraguay	81	21	Guinea	33	23	Republic of the Congo	137
82	Netherlands	7	60	Taiwan	33	47	South Africa	59	35	Peru	82	20	Senegal	34	22	Haiti	138
81	Canada	8	59	Qatar	34	46	Bosnia and Herzegovina	60	34	Zambia	83	19	Tanzania	35	21	Tajikistan	139
80	Luxembourg	9	58	Botswana	35	45	Colombia	61	33	Kenya	84	18	Lesotho	36	20	Uzbekistan	140
79	Germany	10	57	Israel	36	44	Chad	62	32	Uganda	85	17	Madagascar	37	19	Zimbabwe	141
78	Australia	11	56	Poland	37	43	Malaysia	63	31	Malawi	86	16	Guinea-Bissau	38	18	South Sudan	142
77	Austria	12	55	Cyprus	38	42	Romania	64	30	Niger	87	15	Sierra Leone	39	17	Somalia	143
76	Austria	13	54	San Marino	39	41	Hungary	65	29	Indonesia	88	14	Kenya	40	16		
75	Austria	14	53	Czech Republic	40	40	Spain	66	28	Sri Lanka	89	13	Kenya	41	15		
74	Hong Kong	15	52	Lithuania	41	39	Greenland	67	27	Switzerland	90	12	Kenya	42	14		
73	Israel	16	51	Latvia	42	38	Montenegro	68	26	Liberia	91	11	Kenya	43	13		
72	Belgium	17	50	Saint Vincent and the Grenadines	43	37	Maldives	69	25	Malawi	92	10	Kenya	44	12		
71	Estonia	18	49	Spain	44	36	Guyana	70	24	Mali	93	9	Kenya	45	11		
70	France	19	48	Cabo Verde	45	35	Senegal	71	23	Uganda	94	8	Kenya	46	10		
69	Japan	20	47	Denmark	46	34	Belarus	72	22	Equatorial Guinea	95	7	Kenya	47	9		
68	France	21	46	South Korea	47	33	Japan	73	21	Kenya	96	6	Kenya	48	8		
67	United States	22	45	Costa Rica	48	32	South Africa	74	20	Kenya	97	5	Kenya	49	7		
66	United Arab Emirates	23	44	Rwanda	49	31	Kenya	75	19	Kenya	98	4	Kenya	50	6		
65	Barbados	24	43	Kenya	50	30	Tanzania	76	18	Kenya	99	3	Kenya	51	5		
64	Bhutan	25	42	Namibia	51	29	Kenya	77	17	Kenya	100	2	Kenya	52	4		
63			41			28						1	Kenya	53	3		

<https://www.transparency.org/news/feature/cpi2018-subsaharan-africa-regional-analysis>



Integrity Failings at a Federal Level

- TI – “Corruption is the abuse of entrusted power for private gain”.
- Trust and confidence in government and business at an all time low
- 85% of Australians think some or all federal politicians are corrupt
- 62% of Australians that politicians will make decisions to benefit family and friends
- 56% has witnessed or suspected favoring businesses and individuals in return for political donations



Reforms needed in Australia

- Establish a federal anti-corruption agency
- Greater regulation of lobbyists – undue influence
- Greater regulation of political donations
- Strengthened foreign bribery laws
- Strengthened anti-money laundering laws
 - Real estate agents, accountants and lawyers
- Public register of beneficial owners



Private Sector scandals

- Royal Commissions into banking and financial services sector
- Banking scandals
- Money laundering scandals
- FATF recommendations not implemented





A Hard Road for Whistleblowers

- Career implications –
 - Sacked / made redundant
 - Shunned by colleagues
 - Unable to gain a new job – labelled a snitch
 - Extreme cases – beaten up & killed
- Immense personal toll on health and well being
 - Can drag on for years
 - Often starts long before the whistle is blown
- Broken families and relationships
 - A terrible toll on personal relationships



www.shutterstock.com • 417086449

Reforms to Australia' Whistleblower Protection Act 2019



- 19 Feb. 2019 – Aust. Parliament unanimously passed new legislation
 - Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019
- Will give Corporate WB's greater protection – private sector
- Culture changing impact on the way Aust. companies operate
- New benchmark for WB Protection
- Compensation / remedy will be easier



What Makes it Different?

- World Leading in two respects:
 1. Legal protection now apply from the **outset** – before WB’s experience reprisals
 - Now all Public and large proprietary companies must spell out how they will “support and protect” those who speak up **before** they begin to experience detrimental effects
 2. A company can now be **held liable** if it fails to prevent detrimental acts
 - Company must have support and protection plans in place.
 - Company implement those plans
- Granting WB’s **the right to sue** for failure to prevent detrimental acts is a world first

What Makes it Different?

- New rules for WB outside the company set a new benchmark
 - WBs now protected if they choose to go to prescribed bodies rather than internal company channels
 - Time limits and emergency circumstances provisions to provide better protection
- Scope: who is covered has been widened – not only employees, former employees, contractors, volunteers, spouses and dependents of employees
- The definition of what kinds of wrongdoing can be reported has been expanded and clarified
- Easier for WBs to get compensation and other remedies if they suffer for speaking out
- ASX Corporate Governance Principles – recommends that companies adopt and publish WB policies – Principle 3

What else needs to be done in Australia?

Need to upgrade and match public sector with new private sector WB amendment

- Need to establish a well-resourced whistleblower protection authority
- Part of a National Integrity system

Mining for Sustainable Development



A global, civil society led programme to enhance transparency and accountability in the award of mining licences, permits and contracts

- **Led** by Transparency International Australia, acting as a global Centre of Expertise
- **Implemented** by Transparency International National Chapters and local stakeholders
- **Supported** by the Transparency International Secretariat

Funded by the BHP Billiton Foundation and the Australian Government through the Department of Foreign Affairs and Trade (DFAT)



Australian Government



Focus on mining approvals

Mining approvals:

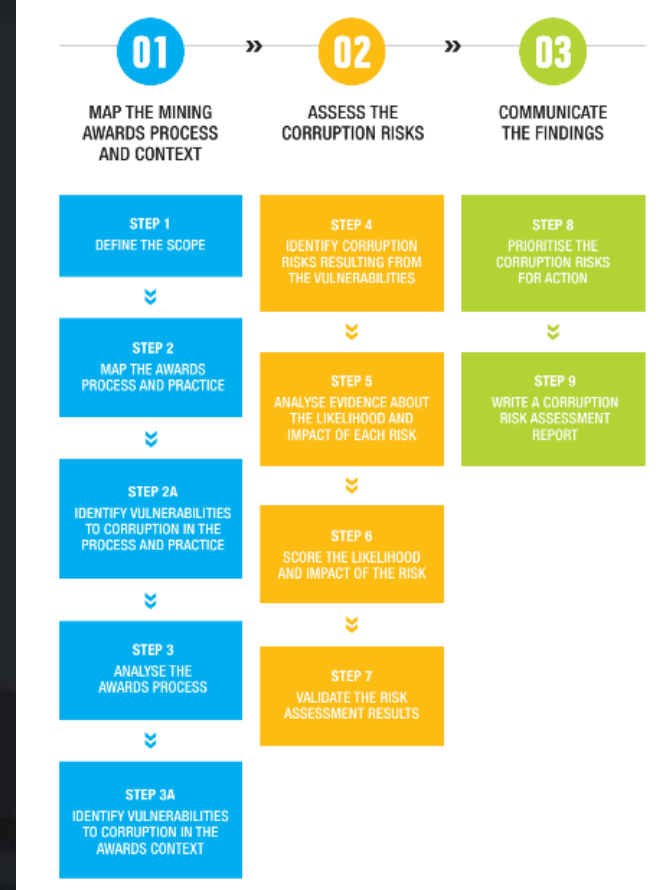
Government decisions about **whether**, **where** and under **what conditions** to permit mining, including **who** to award licences and contracts



Mining value chain. Adapted from: World Bank, Extractives Industries Value Chain.



MINING AWARDS CORRUPTION RISK ASSESSMENT TOOL





The global risk profile

POLITICAL & ADMINISTRATIVE CONTEXT

→ Who benefits from mining approval decisions?

LAND ALLOCATION AND PLANNING

→ How ethical and fair is the process for opening land to mining?

LICENSING PROCESS

→ How fair and transparent is the licensing process?

LICENSING PROCESS: INTEGRITY SCREENING

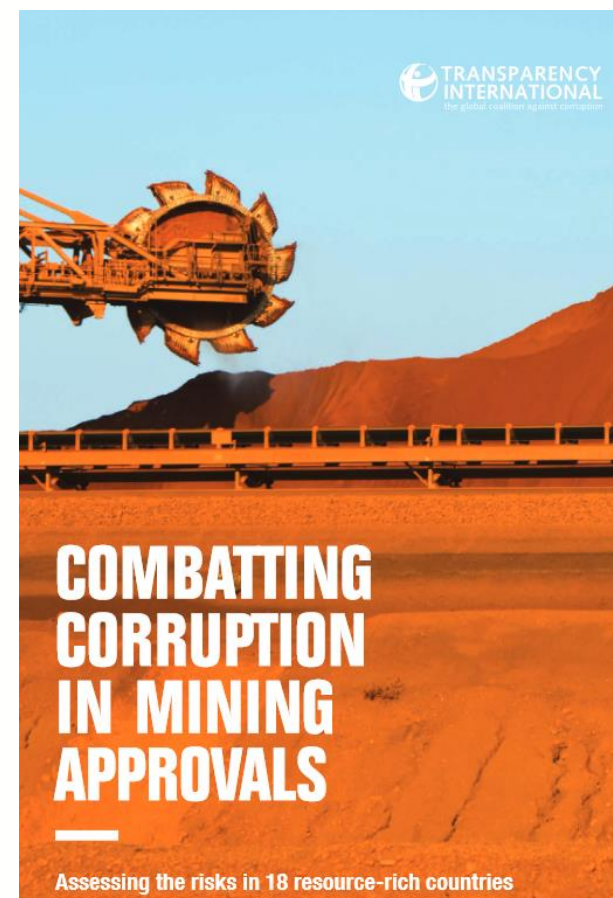
→ Who gets the right to mine?

ENVIRONMENTAL AND SOCIAL IMPACT ASSESSMENT

→ How accountable are companies for their environmental and social impacts?

COMMUNITY CONSULTATION & ENGAGEMENT

→ How meaningful is community consultation?



Over 7000 downloads by March 2018

Corruption risk hotspots



Political and administrative context	Land allocation and planning	Licensing process
Who benefits from mining approval decisions?	How ethical and fair is the process for opening land to mining?	How fair and transparent is the licensing process?
Corruption is more likely when: <ul style="list-style-type: none">• Controls on revolving doors are inadequate• Regulations on political donation and lobbying are weak• The real owners or beneficiaries of licence applicants are not disclosed	Corruption is more likely when: <ul style="list-style-type: none">• Land rights are poorly protected and not properly registered• Rules and criteria for opening land are not clear or transparent	Corruption is more likely when: <ul style="list-style-type: none">• Steps and decision-making criteria in the process are unclear• Information in the licence register is missing or not publicly available• The licence authority is under-resourced

Corruption risk hotspots

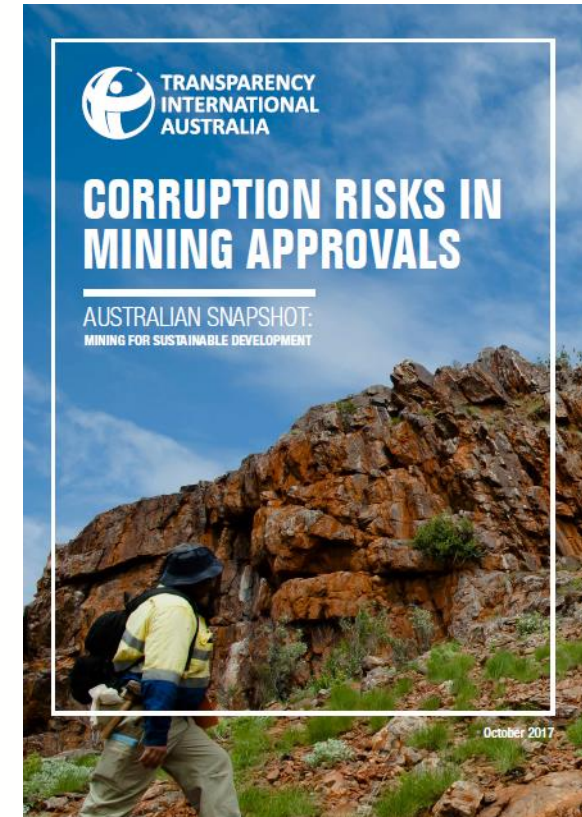


Licensing process: Integrity screening	Environmental and social impact assessment	Community consultation and engagement
Who gets the right to mine?	How accountable are companies for their environmental and social impacts?	How meaningful is community consultation?
Corruption is more likely when: <ul style="list-style-type: none">• Due diligence on licence applicants is inadequate• Controls on licence stockpiling are weak• Regulation and disclosure of licence transfers is ineffective	Corruption is more likely when: <ul style="list-style-type: none">• Verification of ESIAs is inadequate• Accountability of approval decisions is low• Enforcement of licence conditions is weak	Corruption is more likely when: <ul style="list-style-type: none">• Rules for consultation are not clear• Consultation only occurs with local elites• Agreements are not publicly available

Corruption risks - Australia



1. **Inadequate due diligence** on an applicant's integrity such as past unlawful conduct and compliance
2. **Limited verification** of the accuracy of environmental impact statements; and
3. **Policy and state capture** (undue influence) by mining companies.





Due diligence

1. Inadequate due diligence on an applicant's integrity such as past unlawful conduct and compliance

- More effective due diligence process to assess the corporate character of mining applicants, including investigations into beneficial ownership and their historical, economic, social and environmental performance (responsible business conduct) both within and outside of Australia.
- Mining companies strengthen and communicate anti-corruption controls and procedures.



Limited verification of EIS

2. Limited verification of the accuracy of environmental impact statements

- Strengthened quality and accuracy of Environmental Impact Statements through requiring impact assessors to be certified.
- The development and adoption of a more effective system of independent verification.



Policy and state capture

3. Policy and state capture (undue influence) by mining companies.

- Strengthened legislation and frameworks for:
 - Political donations
 - Lobbying
 - Revolving Doors
 - Whistle-blowers in the public sector



Mitigating corruption risk: whose responsibility?



Government,
industry and the public
all have a role to play
to combat corruption
risk in mining
approvals



Website:
transparency.org.au/m4SD

Contact us:
mining@transparency.org

Follow us on Twitter:
#M4SD
@SustDevMining