



# TYOLOGY OF CORRUPTION RISKS IN THE EXTRACTIVES VALUE CHAIN AND ASSOCIATED MITIGATION MEASURES AND INCENTIVES

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# Typology: Rationale and Objectives

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## **RATIONALE:**

- Corruption regarded as a major impediment to inclusive and broad-based resource-based development
- One case out of five cases of transnational bribery occurring in the extractive sector (*Source: OECD Foreign Bribery Report, 2014*)
- This calls first for improved understanding of how corruption operates in practice, including evolving patterns, to devise appropriate responses.

## **OBJECTIVES:**

Help policy makers, law enforcement officials and stakeholders:

- better understand and raise awareness about evolving corruptive behaviours (schemes; parties involved, their roles on the demand and supply-side and their interactions; mechanisms and vehicles; risk factors at both the public and private level)
- identify loopholes that increase exposure to corruption risk.
- pave the ground for public-private collaboration to develop effective responses against corruption (recommended mitigation measures and incentives/disincentives)



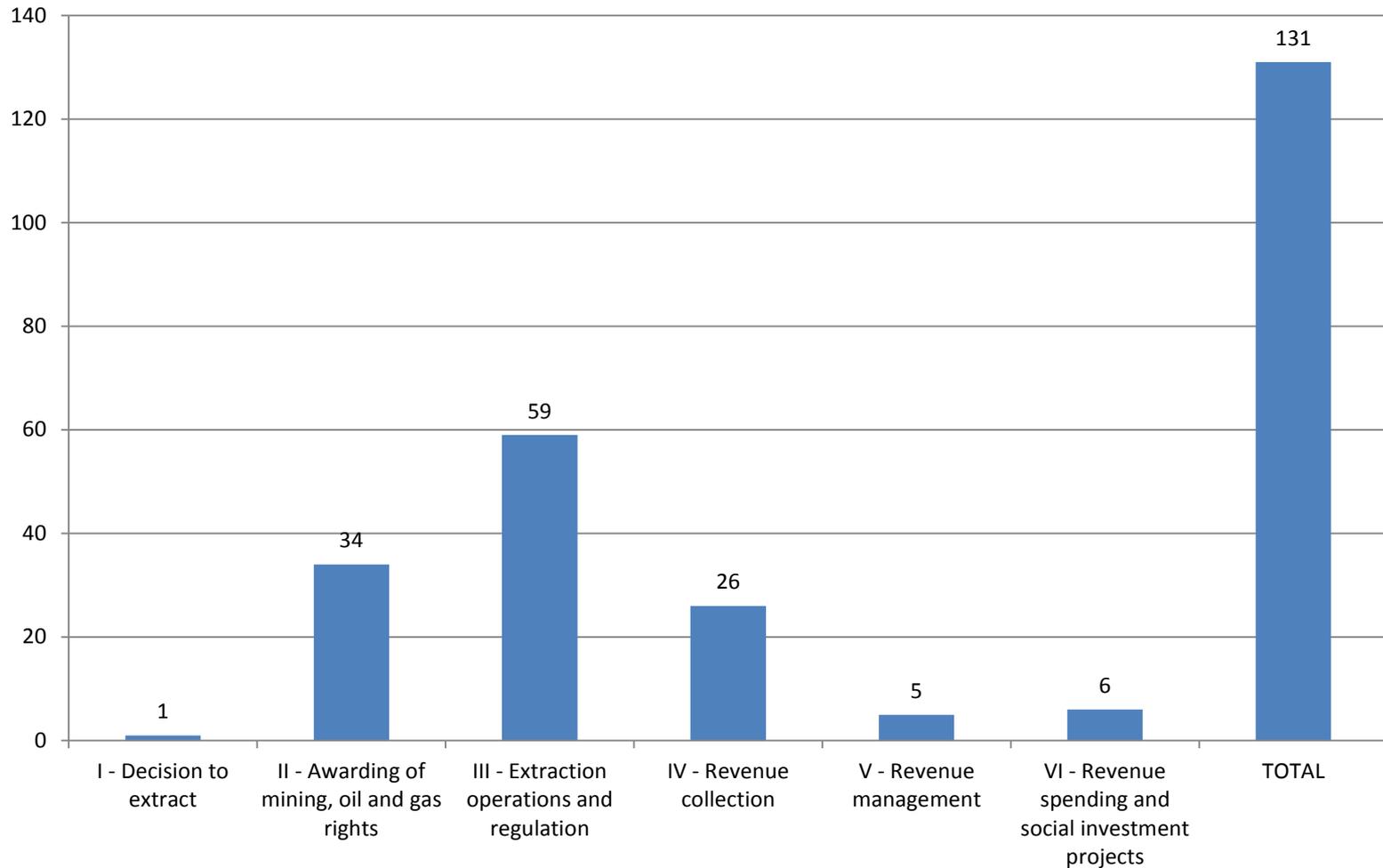
# How is the Typology being developed?

<b>17-18 November 2014</b>	<b>3rd Plenary Meeting</b> Mandate given by participants in the Policy Dialogue
<b>Jan. to May 2015</b>	<b>1st phase</b> <ul style="list-style-type: none"><li>- Comprehensive mapping of corruption schemes; parties involved, their roles on the demand and supply-side and their interactions; mechanisms and vehicles; risk factors at both the public and private level along the value chains of extractives</li><li>- 4 conference calls organised with the MS Working Group</li></ul>
<b>29-30 June 2015</b>	<b>4th Plenary Meeting</b> Review of the Typology
<b>Sept. to Nov. 2015</b>	<b>2nd phase</b> <ul style="list-style-type: none"><li>- Development of mitigation measures and incentives to effectively reduce and prevent corruption risks in extractives</li><li>- 3 conference calls with the MS Working Group, France, Guinea, Indonesia, Papua New Guinea, Peru, Philippines, Eni, ICMM, Berne Declaration, Engineers Without Borders, Natural Resource Governance Institute, Oxfam France, Sherpa France, Social Clarity and Transparency International, U4 Resource Anti-Corruption Center</li></ul>
<b>2-3-4 December 2015</b>	<b>5th Plenary Meeting</b> <ul style="list-style-type: none"><li>- Review of recommended mitigation measures and incentives</li></ul>



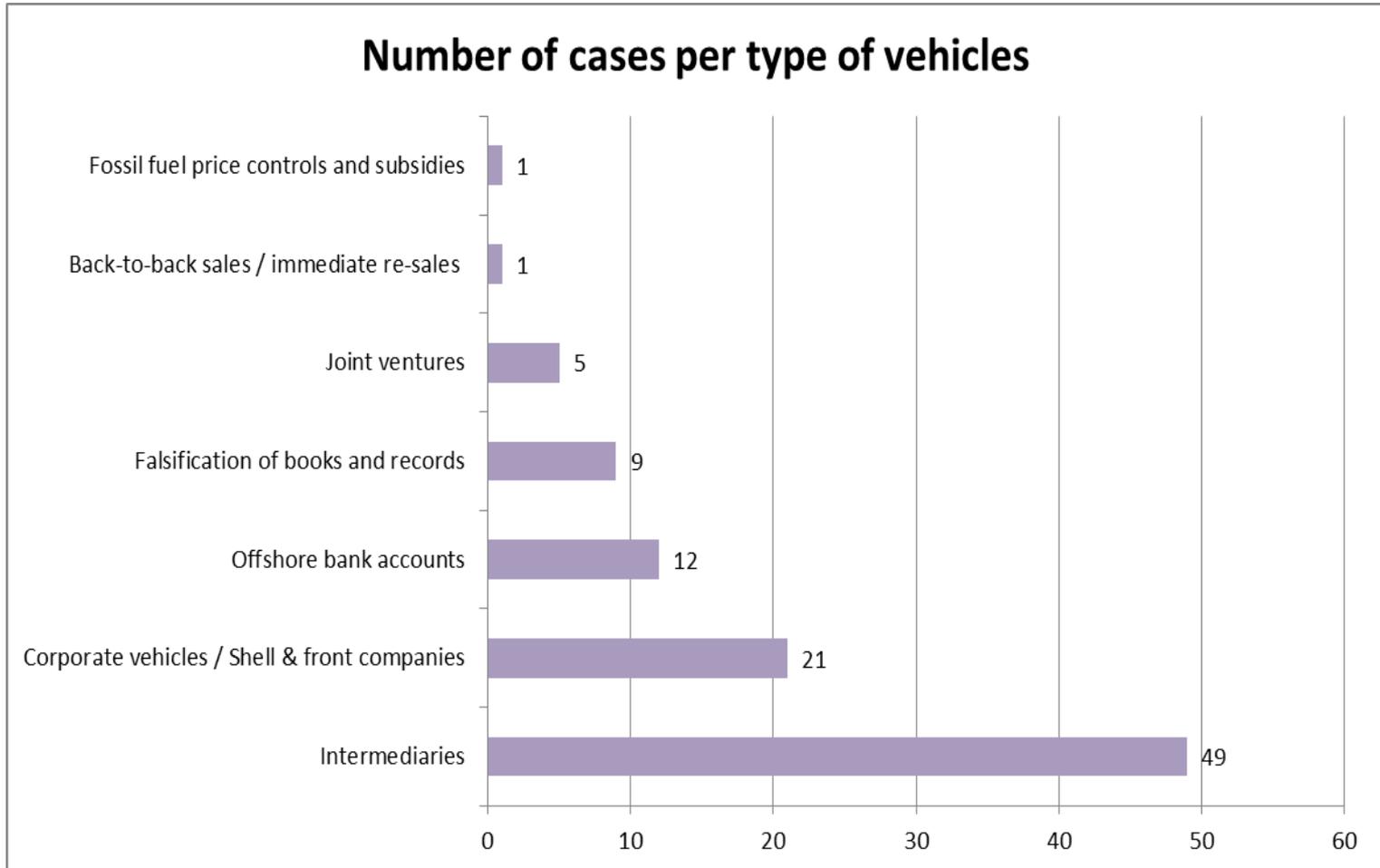
# 1st Phase - Key findings: incidence of corruption cases

**Number of cases per phase of the extractives value chain**





## 1st Phase - Key findings: vehicles and mechanisms



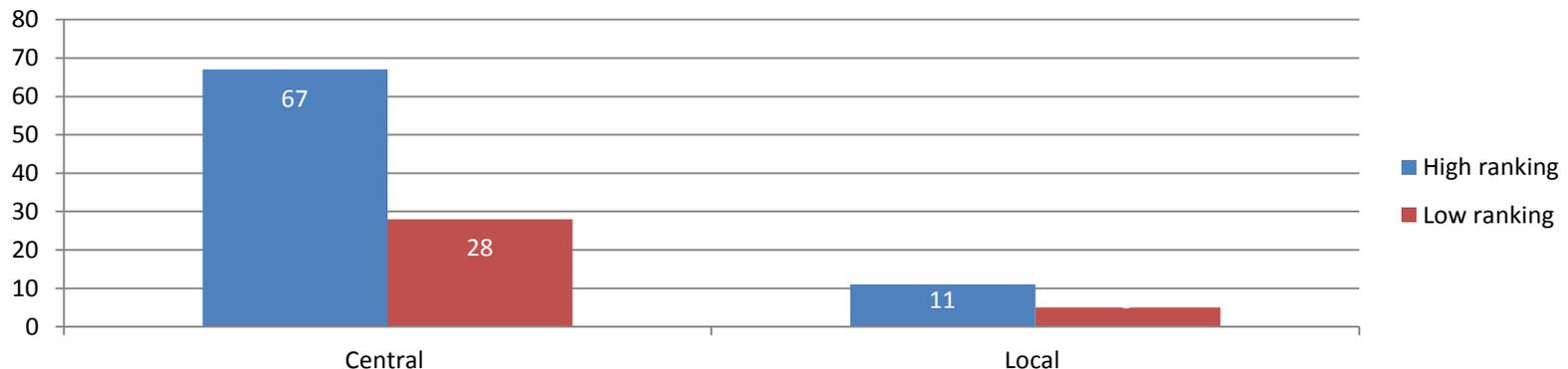


## 1st Phase - Key findings: Parties involved

Public officials (from central or local government, SOEs), private companies (main operator / subcontractors, foreign / local companies) and third parties (intermediaries, consultants, local partners, etc.) may act indistinctly as instigators or beneficiaries of the corruptive behaviour

→ concerted efforts are required for tackling both the supply and demand sides, domestically and internationally

**Number of cases according to level of government officials**





## 2<sup>nd</sup> Phase – Examples of Incentives/Disincentives (1/2)

HOME COUNTRIES	HOST COUNTRIES	COMPANIES
<ul style="list-style-type: none"> <li>• Make bribes or expenditures incurred in furtherance of corrupt conduct in contravention of criminal or any other laws non tax-deductible, and ensure that tax authorities rigorously detect bribe payments concealed as allowable expenses.</li> <li>• Provide adequate guidance to taxpayers and tax authorities as to the types of expenses that are deemed to constitute bribes to foreign public officials.</li> <li>• Reward (directly or through NGOs) good corporate conducts and behaviours, including continuous certified compliance with ethical standards and anti-corruption programmes, through for examples case-specific publication, public comparison of companies' positive anti-corruption performance.</li> <li>• Organise awareness-raising initiatives in the public and private sector for the purpose of preventing and detecting corruption (including foreign bribery) and provide specific written guidance to companies on anti-corruption laws, including, if applicable, those implementing the OECD Anti-Bribery Convention.</li> </ul>	<ul style="list-style-type: none"> <li>• Take merit-based human resource decisions, developing positive career development paths, offering competitive base pay and reward packages for high ethical performance in order to encourage public officials to comply and exceed anti-corruption compliance standards.</li> <li>• Provide that money saved from uncovering corruption associated with collusive behaviours in public procurement/bidding remains in part with the administration that helped discover it.</li> <li>• Consider adopting laws and regulations allowing authorities to suspend, to an appropriate degree, from competition for public contracts or deny other public advantages, including public subsidies, officially supported export credits, and contracts funded by official development assistance to enterprises determined to have bribed foreign or domestic public officials in contravention of the country's national laws (<b>also applicable to home countries</b>).</li> <li>• Debar companies found guilty of violating tender regulations from participating in future bids for a set period of time determined on the basis of the seriousness of the violation (<b>also applicable to home governments</b>).</li> </ul>	<ul style="list-style-type: none"> <li>• Adopt a 'zero tolerance' policy towards corruption and put in place appropriate incentives to encourage observance of anti-bribery management systems by directors, officers, employees, and where appropriate, business partners, and appropriate disciplinary measures for violations.</li> <li>• Grant public recognition to compliant business partners (e.g. 'business partners of the year' award, mention on corporate website, promotional activities, etc.).</li> </ul>



## 2<sup>nd</sup> Phase – Examples of Incentives/disincentives along the extractive value chain (2/2)

HOME COUNTRIES	HOST COUNTRIES	COMPANIES
<ul style="list-style-type: none"><li>Consider adopting laws and regulations recognising advantages (for instance in participating to public tenders, in requesting public subsidies) to companies with continuous certified compliance with ethical standards and anti-corruption programmes (<b>also applicable to host governments</b>).</li></ul>	<ul style="list-style-type: none"><li>Consider the opportunity to put in place measures to encourage cooperative behaviours and corporate self-reporting regarding instances of corruption (e.g. leniency mechanisms, alternative means of settlements such as deferred prosecution agreements, reduced financial penalties, compliance defence or limitation of liability, exemption from interim measures), while avoiding condoning deviant behaviours (<b>also applicable to home countries</b>).</li><li>Consider evidence of unreliable or fraudulent statements or information, including on beneficial ownership, provided by the company obtaining a license as legal grounds for terminating the license, taking into account the seriousness of the violation.</li><li>Prohibit campaign contributors from receiving contracts and concessions during their candidate's term in office when the latter is in a position to influence the assignment of such contracts and concessions.</li><li>Allocate extra resources supplementing funding of local development projects, based on performance in budgetary information disclosure and results of audit reporting.</li><li>At the local level, introduce penalties for deviations from planned revenue and expenditure targets.</li></ul>	<ul style="list-style-type: none"><li>Consider the establishment of a list of pre-qualified suppliers (where possible cross-industry) to reward compliance with anti-corruption standards and prevent corruption where host government's pre-qualification standards are lower than industry standards.</li></ul>



## 2<sup>nd</sup> Phase – Examples of Mitigation Measures (1/2)

Issue	Where in the value chain	Possible mitigation measures	
		HOST GOVERNMENTS	COMPANIES
<p><b>Discretionality, high politicisation of the decision-making process, collusion between public and private sector , « revolving door phenomenon »</b></p>	<p>For example:</p> <ul style="list-style-type: none"> <li>• Approval of environmental impact assessments</li> <li>• Granting of authorisations or waivers</li> <li>• Bidding or negotiation process</li> <li>• Revenue collection</li> <li>• Customs clearance, immigration visa application, administrative authorisations</li> <li>• NRFs and SOEs management</li> <li>• Public procurement</li> </ul>	<ul style="list-style-type: none"> <li>• Set pre-determined and objective criteria to be explicitly and transparently considered in the decision-making process (e.g. contract renegotiation, selection of bidders and suppliers, pre-qualification of local suppliers, and granting of waivers).</li> <li>• Limit political interference in state-owned companies' technical decisions by making appointments based on demonstrated professional and technical expertise rather than political patronage, invest in staff integrity and capacity and adopt strong employee accountability provisions</li> <li>• Introduce standardised and automatic procedures (e.g. customs clearance, immigration visa application, revenue collection, bid submission, etc.) / develop standardised models or guidelines (e.g. licenses and contract terms)</li> <li>• Put in place mechanisms for preventing or detecting conflict of interest of key public officials, including declarations of interest, specific disclosure requirements for Politically Exposed Persons (PEPs), regular redeployment of officials in positions susceptible to corruption.</li> <li>• Implement robust conflict of interest policies, adopt adequate regulation of lobbying activities and political campaign financing</li> <li>• Ensure independent monitoring, oversight by third parties (e.g. civil society, parliament)</li> </ul>	<ul style="list-style-type: none"> <li>• Exercise strict control and monitoring of corporate personnel having relationship with public officials (e.g. involvement of at least two employees in discussions and interactions with public officials, periodic reporting on activities carried out in relationship with public officials, appropriate level for internal formal autorisation and delegation of powers)</li> <li>• Implement internal financial and accounting control system (e.g. two signatures on payments, restricting the use of cash)</li> <li>• Rotate on regular basis personnel in compliance-sensitive positions</li> <li>• Provide appropriate anti-corruption training to employees</li> </ul>



## 2<sup>nd</sup> Phase –Examples of Mitigation Measures (2/2)

Issue	Where in the value chain	Possible mitigation measures	
		COUNTRIES	COMPANIES
<b>Opacity on beneficial ownership</b>	<p>Corrupt schemes involving corporate vehicles, shell companies, offshore bank accounts, front companies, local entities owned by politically affiliated persons, etc.</p> <p>For example:</p> <ul style="list-style-type: none"> <li>• contract awarding</li> <li>• commodity trading</li> <li>• enforcement of local content requirements</li> <li>• joint ventures</li> <li>• privatisation or acquisition of shares in a public company</li> </ul>	<p><i>For host countries:</i></p> <ul style="list-style-type: none"> <li>• Adopt a definition of 'beneficial owner' that captures the natural person(s) who ultimately owns or controls extractive companies operating in the country with specific reference to PEPs in the beneficial ownership definitions.</li> <li>• Consider requiring public disclosure of beneficial ownership information for extractive companies and public beneficial ownership registries of extractive companies, reflecting changes in ownership and corporate structures over time.</li> <li>• Ensure effective supervision of beneficial ownership disclosure requirements, including the establishment and enforcement of effective, proportionate and dissuasive sanctions for non-compliance.</li> <li>• Harmonise national regulations related to beneficial ownership with international standards on transparency of ownership (e.g. EITI declaration form template).</li> <li>• When the company ownership is structured across multiple jurisdictions, ensure participation of competent authorities in information exchange on beneficial ownership with international counterparts in a timely and effective manner.</li> </ul> <p><i>For home countries</i></p> <ul style="list-style-type: none"> <li>• Establish easily and freely accessible charts of the MNE group(s) headquartered in the country, illustrating the legal and ownership structure, and geographical location of operating entities, including all subsidiaries (domestic and foreign)</li> <li>• Create public beneficial ownership registers of companies headquartered in the country, also reflecting ownership changes over time</li> </ul>	<ul style="list-style-type: none"> <li>• Provide to governments information on group corporate structure and beneficial ownership</li> <li>• Designate a senior company official to attest accuracy of beneficial ownership information submitted or disclosed</li> <li>• Limitat transactions and operations involving offshore companies</li> </ul>