



February 12, 2021

To Honourable Pauline Frost
Yukon's Department of Environment
Box 2703 (V-3A)
Whitehorse, Yukon Y1A 2C6

CC: Honourable Ranj Pillai, Department of Energy, Mines and Resources

Making Yukon's environmental and socio-economic assessment process more transparent and accountable

Among the permits a company has to obtain to start a mining activity, authorities evaluate a potential project's impact through environmental assessments (EAs). If this process is not carried out transparently and accountably, impacts remain hidden, and trade-offs may not be fully understood by the public. Through the Accountable Mining Program, Transparency International (TI) Canada has released a new study analyzing EA transparency and accountability risks in Ontario, British Columbia and Yukon. In this letter, we would like to highlight Yukon study findings, alongside our main recommendations, for your consideration.

To understand the EA process' vulnerabilities in the three studied jurisdictions, TI Canada mapped EA processes as they are supposed to work on paper, and then interviewed stakeholders and rights holders to find out how EAs work in practice. We identified potential risks and evaluated their likelihood and the scale of their impacts. The report uncovered 38 risks that may hinder transparency and accountability in EA processes.

The main risks found in Yukon's Environmental and Socio-economic Assessment Act (YESAA) process were:

- **Information disclosure on engagement and decisions.** The decision document development process was viewed as a "black box" by research interviewees and potentially subject to external or political influences. Multiple interviewees observed that the public is not provided with opportunities to comment on this decision document. Stakeholders said that it is often difficult to follow how final decisions are determined and how potential areas of disagreement with other government departments that have provided input are addressed.
- **Challenging timelines for Indigenous communities to participate in the YESAA process.** There are concerns that Indigenous communities do not have adequate financial and human resources to fully participate in the large volume of assessments that may occur at any given time.

The timelines, especially for designated offices (DO) evaluations, are also quite short. Members of the public and Indigenous communities are often provided 14 days to review a project proposal, which may be one of several proponents requesting a review in their territory at the same time. One interviewee said that one Indigenous community has approximately 11 significant project assessments underway, with inadequate tools and financial resources to support its participation.



- **Ministerial discretion and dual roles of ministries and authorities.** Interviewees raised concerns about the fact that the ministry responsible for promoting mining is also a key actor in the YESAA process in Yukon.

Based on these findings, TI Canada recommends:

- **Stronger disclosures to facilitate transparency.** Decision bodies need to commit to mechanisms by which they can demonstrate full and fair consideration of Yukon Environmental and Socio-economic Assessment Board (YESAB) recommendations, such as making publicly available how YESAB recommendations are evaluated and final decision rationales with substantive evidence and justifications if the final decision is different from YESAB recommendation. We also recommend improving transparency in decision-making processes by providing clear and publically accessible explanations of potential disagreements among government departments.

- **Interventions to strengthen and sustain public trust.** Stakeholders should continue to assess and implement additional financial and technical support mechanisms that could sustain meaningful participation from Indigenous communities. Although the legal framework is clear, procedural guidance on public consultation methods and alternatives to digital disclosures could be explored. Given that the EC and DO have complete discretion on the format, substance and reporting of outcomes stemming from public meetings, procedural guidance can alleviate concerns that these mechanisms do not facilitate meaningful consultation.

- **Integrate FPIC into the EA process.** Based on the example set by the updated British Columbia EAA, TI Canada recommends for Yukon to adopt FPIC in its legislation for accountable and sound mineral exploration and placer and quartz mining to benefit all Yukon communities and to enhance the use of unique 'YESAA process' benefits fully. The Yukon government should also develop clear guidelines on how to implement FPIC and conduct meaningful consultations.

- **End dual roles of ministries and authorities.** The optimal solution to enhance public confidence in ensuring unbiased assessment of projects is to transfer responsibility for mining promotion to government agencies working with economic development. Alternatively, publicly disclosing robust rationales for EA-related decisions could help government agencies demonstrate full and fair consideration of projects.

Why is this important?

With a strong, transparent, and accountable mining sector, Yukon citizens are more likely to benefit from the province's resource wealth, communities are more likely to benefit from a mining project, and the environment is more likely to be cared for. Thus, a transparent and accountable EA process can contribute to sustainable development. Moreover, transparency leads to predictability, making it easier for different actors involved in the EA process to navigate it.



**TRANSPARENCY
INTERNATIONAL
CANADA**

77 Bloor Street West, Suite 1600
c/o Maytree Foundation
Toronto, Ontario, M5S 1M2
t: 416.488.3939
e: ti-can@transparencycanada.ca
transparencycanada.ca

Even though this study focused on the YESAA process, many research participants, especially Indigenous community representatives, highlighted challenges and limitations about compliance, monitoring and enforcement of the Evaluation Report (ER) terms in practice.

The major gaps about ERs are summarized as the transition from the ER to the regulatory phase and the limited communications between YESAB assessors and implementers (Compliance Monitoring and Inspections offices), leading to the creation of unenforceable terms.

Moreover, we would like to highlight the importance of public accessibility of monitoring data and findings to improve and strengthen corporate and government accountability.

Mining Memorandum of Understanding with Yukon First Nations and Mineral Development Strategy

Stakeholders and rights holders that participated in our study highlighted that there is ongoing work, carried out by the Yukon government, to improve the EA process. Rights holders mentioned discussions among the Mining MOU table and the Yukon Mineral Development Strategy. We acknowledge your efforts and believe that our study could be used to inform some of these discussions.

We have attached the Accountable Mining Report and the supplemental Yukon Technical report for your review. You may also find all report materials on our website here:
transparencycanada.ca/accountablemining/accountable-mining-report

TI Canada makes itself available for discussions on how to make the EA process more transparent and accountable. We look forward to upcoming conversations regarding this matter.

Yours sincerely,

James Cohen, Executive Director, Transparency International Canada
Deniz Yaylaci, Accountable Mining Project Manager, Transparency International Canada

For more details, please contact:
James Cohen, Executive Director, Transparency International Canada
416-488-3939
james.Cohen@transparencycanada.ca