

Worksheet G

III. Exploration, licencing and monitoring operations

Background: In most countries, the national government is the owner of all sub-soil resources. But because resource exploration and extraction is a financially and technically difficult thing to do, most governments do not undertake these activities themselves. Instead, they usually enter into agreements with private sector companies that have these competencies and yield the benefits through taxation, sharing of production and other means.

To ensure that the country gets the best deal for its resources, governments must do the following as part of their exploration and licencing processes:

1. Understand the resource base, manage the resulting data and decide whether to licence areas and at what pace
2. Choose a process for ensuring that resource rights are allocated to the companies with the financial and technical capacity to explore or exploit the resources, without risk of corruption or conflicts of interest
3. Monitor operations to ensure companies fulfil their commitments in accordance with the law, regulations and best practices.

The party's position should address all three of the above and can have an impact whether in power or in opposition. As Norway considered opening up new areas for oil exploration, the Green Party prioritized concerns about climate change and the long-term sustainability of extraction and proposed to phase out all activities within 20 years. Despite the fact that it originated from a very small party, the position elevated the topic to the national stage. The policy was subsequently adopted by another party and similar language is becoming increasingly common in the statements of others.¹⁴⁷

Developing a position on licencing processes is an opportunity for a party to strengthen its understanding of the country's geological resources, the land tenure process and the sector's operating environment, and to lay the groundwork for meaningful action.

¹⁴⁷ See the Norway case study in Chapter 2.

Costs and trade-offs

When developing policy stances related to **opening new areas to extraction** it is particularly important to consider:

- What knowledge the government already has about the property rights, geology and environmental risks in the region
- The time and financial costs involved in obtaining more clarity through pre-licencing surveys and environmental and strategic impact assessments, and how these costs weigh against the risks associated with poor quality information (e.g., significant information deficits between the government and companies, and significant environmental impacts)
- The financial costs of establishing/managing land and resource licence registries and the risks associated with conflicting claims
- The challenges and risks associated with allocating licences too quickly (e.g., changes in risk and value, regulatory oversight capacity) and with licence area sizing (e.g., attracting bidders vs allowing just a few companies to control huge portions of land)

When developing policy stances related to **the licencing process, including licence transfers**, it is particularly important to consider:

- The political and economic risks associated with awarding contracts to companies without the requisite expertise and resources, or to companies with a reputation for poor operations or unethical behaviour
- Whether there is sufficient competition and the government has the administrative capacity to conduct a competitive licence round (as is best practice); or, in situations where this is not the case, what the government can do to identify reputable companies, overcome information deficits between itself and companies, and limit the use of negotiable/biddable terms
- The corruption and conflict of interest risks associated with the licencing process and the degree to which open and competitive bidding, political exposure rules and the transparency of beneficial ownership can mitigate these risks
- The financial costs associated with collecting, verifying and publishing beneficial ownership information, balanced against the risks associated with hidden ownership (e.g., political

exposure, conflicts of interest and awarding contracts to unethical and/or unqualified companies)

- The specific risks associated with licence transfers (e.g., corruption and questionable new companies)
- When and how is best to disclose information on licencing processes and the licences themselves, and the implications for independent oversight

*When developing policy stances related to **monitoring operations** it is particularly important to consider:*

- The risks associated with company operations moving ahead without sufficient government scrutiny of development plans, weighed against the implications of long delays in the approval process that can deter investment
- The implications of company operations failing to realize the demands of agreed work plans and the most appropriate consequence (e.g., relinquishment or payment)
- The time and financial costs involved in collecting, managing and disclosing geological and operational data

For more information on these policy issues, refer to Precept 3 in the Charter Benchmarking Framework and the NRGi primer on granting rights to natural resources.¹⁴⁸

Guiding questions	Current orientation
<ul style="list-style-type: none"> • Does the party already have a stance (formal or informal, public or internal) on how new areas should be opened up for exploration or extraction? If so, what is that stance? 	
<ul style="list-style-type: none"> • Does the party already have a stance (formal or informal, public or internal) on how licences should be allocated? If so, what is that stance? 	
<ul style="list-style-type: none"> • Does the party already have a stance (formal or informal, public or internal) on how licences should be monitored? If so, what is that stance? 	
<ul style="list-style-type: none"> • What do the party's base and its core constituencies think about exploration, licencing and monitoring extractive operations? What does the wider population think? 	

¹⁴⁸ The Granting Rights to Natural Resources primer is available at <<http://www.resourcegovernance.org/analysis-tools/publications/primer-granting-rights-natural-resources>>.

Guiding questions	Current framework
<ul style="list-style-type: none"> • What is the current legal and regulatory framework for awarding extraction and exploration licences? Is it consistently implemented?¹⁴⁹ 	
<ul style="list-style-type: none"> • What assessments are made prior opening up an area for extraction? What information does the government prepare prior to a licencing round? What does the government do to address possible information asymmetry between itself and resource companies?¹⁵⁰ 	
<ul style="list-style-type: none"> • How does the government currently guard against conflicts of interest in the award of licences?¹⁵¹ 	
<ul style="list-style-type: none"> • How does the country perform on the general ‘Licencing’ subcomponent of the Resource Governance Index? What underlying rules and practice indicators does the country perform poorly on and why?¹⁵² 	
<ul style="list-style-type: none"> • If the country is an EITI member, what were the findings and recommendations around the ‘Legal and Institutional Framework, Including Allocation of Contracts and Licences’ and ‘Exploration and Production’ requirements in the latest EITI report?¹⁵³ 	
Policy options	Stances
<p>What should the government do to better prepare before allocating licences?</p> <ul style="list-style-type: none"> • Should the government facilitate or fund pre-licencing surveys and make geological information available to companies? • Should a strategic impact assessment be conducted and published before allocating licences? • Prior to allocating licences, how should the government establish property rights and how should those rights be upheld? • How should licences be organized to ensure that areas do not overlap or conflict with existing rights to explore and extract resources? • Should there be a policy on the pace of licencing and size of licence areas? 	<p><i>Example stance:</i> The party believes that the government must carefully consider the benefits and costs prior to awarding natural resource licences. We therefore commit to ensuring that strategic impact assessments are completed in advance.</p>

¹⁴⁹ Information on the current framework may be available in the RGI data under questions 1.1a-c, 1.1.1a-1.1.6c, and 1.1.10c-d.

¹⁵⁰ Information on the current framework may be available in the RGI data under question 1.1c.

¹⁵¹ Information on the current framework may be available in the RGI data under questions 1.14a-1.18b.

¹⁵² For detailed answers to these questions, refer to the downloadable RGI Data explorer available at <<http://www.resourcegovernanceindex.org/about/data-and-source-documents>> (subcomponent 1.1). For a quick snapshot of the subcomponent and indicator scores, see the country profile at <<http://www.resourcegovernanceindex.org/country-profiles>> (select your country, scroll down to the Full Scores section, and click + to expand the relevant scores).

¹⁵³ Find the latest report and other information on country progress on the EITI website at <<https://eiti.org/countries>>.

Policy options	Stances
<p>What should the government do to ensure that it awards resource rights to competent and law-abiding companies, in a way that maximizes value for the country?</p> <ul style="list-style-type: none"> • How should licence applicants be screened before they are allowed to enter a licencing round or negotiation? • How should the method of awarding licences account for the level of competitive interest and the administrative capacity of the government? • How should negotiable/biddable terms be limited and further negotiations after the bidding process be resisted? • Should the government submit licence transfers to the same checks and balances as an initial licence award? • Should the government disclose pre- and post-licence round information? • What should be done to ensure that oversight of the licencing process is effective and that conflicts of interest are avoided? 	<p><i>Example stance:</i> The party believes that the process for awarding natural resource licences should get the country the best deal possible. We therefore commit to creating a model contract that sets out standard terms that apply to all licence holders, along with a limited set of terms that companies can bid on during an auction or offer during negotiations.</p>
<p>What should the government do to better monitor operations across project lifecycles?</p> <ul style="list-style-type: none"> • How should the government evaluate and approve development plans with appropriate consideration for all stakeholders without undue delay? What institutions should be involved and are they properly resourced? • What should be done to ensure that the government has the capacity to monitor companies during each stage of the project lifecycle? • How should the government collect and manage geological and operational data? 	<p><i>Example stance:</i> The party believes that the government must have the mandate and capacity to monitor natural resource extraction. We therefore commit to ensuring that all company work programmes are properly reviewed prior to and during extraction by the Ministry of Mines.</p>