

Disclosing contracts in the natural resource sector

OGP Openness in Natural Resources Working Group | Issue Brief | February 2016

A product of the close collaboration of the working group's co-anchors: the governments of Mexico and Indonesia, the World Resources Institute, and the Natural Resource Governance Institute

I. Why disclose contracts?

Contracts between resource companies and governments are the fundamental documents that set out the key terms of agreement in many oil, gas, and mining investments. Among other things, contracts may include information on a project's fiscal terms, local content, environmental impact, infrastructure, and production timing—information that is crucial for citizens to understand, monitor, and hold their governments and the investors accountable for their obligations. Moreover, disclosure helps ensure participatory approaches to benefit sharing.

From a commercial perspective, both government and investors benefit from disclosure, as it promotes balanced deals. This can lead to (a) increased investment stability, (b) improved revenue collection and forecasting, (c) decreased risk of renegotiation, and (d) minimized risk of conflict and loss of social licenses to operate.

On a more fundamental level, **contract disclosure helps address the severe trust deficit in the natural resource sector, and cultivates an atmosphere of cooperation among those deeply invested in the success of, and are greatly impacted by, extractives operations: governments, companies, and communities.** Disclosure helps to set realistic expectations for all the stakeholders, which ultimately minimizes the occasion for conflict. It also reduces opportunities for corruption and leakage.

The Open Government Partnership (OGP) is an opportunity for governments to improve their commitment to contract transparency by making commitments around the proactive disclosure of oil, gas, and mining contracts. This brief aims to provide an overview of current standards and practices, and outline concrete examples of contract disclosure in action.

II. Contract disclosure standards and practices

Contract disclosure is quickly gaining traction in international and country policies as part of 'best practice' in the natural resource sector. It is also gaining acceptance within company circles.

International standards

International institutions. The [International Monetary Fund](#)¹ and the World Bank both recommend open contracting as good practices. International finance organizations including the [International Finance Corporation](#)² and the [European Bank for Reconstruction and Development](#)³ require contract transparency in loans made for extractive industry projects.

The Extractive Industries Transparency Initiative (EITI). EITI encourages public disclosure of “contracts and licenses that provide the terms attached to the exploitation of oil, gas and minerals.” Moreover, EITI

requires the inclusion of government policy on the disclosure of contracts and licenses that govern the exploration and exploitation of oil, gas, and minerals in EITI reports.

Country practices

Contract publication. There are more than 25 countries that publish contracts.⁴ Countries may mandate disclosure by the constitution (e.g., Niger, the Philippines, Central African Republic, Guinea), legislation (e.g., Republic of Congo, Liberia, Tanzania), or by decree (e.g., DRC). However, legal backing is not always necessary. Where confidentiality agreements do not preclude contract disclosure, release of contracts can be achieved after simply coming to an agreement with other stakeholders working in the extractive industry.

Disclosure websites. To enable public access to agreements, several countries have created online databases for their contracts and/or licenses, as shown in the table below. For countries that want to create a disclosure website, the Natural Resource Governance Institute (**NRGI**) is supporting the roll out of these country sites, which display contracts in a machine readable format (the best open data standard), allowing for searchability of terms within and across contracts.

Country	Data portals
Guinea	http://www.contratsminiersguinee.org/
Liberia	http://www.leiti.org.lr/contracts-and-concessions.html
Republic of Congo	http://www.itie-congo.org/index.php?option=com_content&view=article&id=102&Itemid=127
Philippines	http://contracts.ph-eiti.org/

By law. Some countries, such as the United Kingdom,⁵ United States,⁶ and Norway,⁷ standardize the terms and conditions of petroleum and mining investments by integrating these conditions in their respective laws. As a result, the terms of the investment are transparently stated in legislation, and the contract outlines only basic information, such as the geographic location of the operation. Hence, the terms that are up for negotiation are reduced, and there is little or no discretion to deviate from the terms contained in the law, regulation, or model agreement. Where terms are standardized and discretion is limited, governments have little incentive to keep contracts opaque, since each project is governed by a generally-applicable set of rules. This approach, which may nevertheless be challenging in terms of providing flexibility for parties, can be very helpful for emerging producer states.

Private sector

While contracts have been published in response to country-level contract publication policies or stock exchange disclosure rules, **a number of corporations, such as Rio Tinto, Tullow Oil, and Kosmos Energy, have championed the cause for contract transparency to build trust and improve their social licenses to operate.**

III. OGP commitments on contract disclosure

Several OGP countries have already incorporated contract disclosure commitments in their respective action plans. The scope of what is published differs per country: some choose to disclose contracts related to resource extraction, while others opt to also disclose information leading up to the execution of the

relevant contract. Regardless of the extent of information that is disclosed, guidance may be taken from the following:

- a. **Use transparency and accountability initiatives, such as the EITI and the OGP, or regional initiatives such as the Africa Mining Vision, as a platform for discussion for contract disclosure.** Countries should use these spaces as opportunities to bring all stakeholders, including investors and communities, to the table to tackle the issues surrounding disclosure.
- b. **Creation of an online repository of natural-resource related contracts,** as in the Philippines, Guinea, Liberia, and Republic of Congo, or with the support of organizations such as NRG. Once published, the contracts released in the public domain can be housed in online contract repositories, such as ResourceContracts.org.
- c. **Publication of data and contracts during each stage of bidding rounds for the awarding of oil contracts,** as in Mexico. Mexico has reformed its oil and gas sector, and enshrined transparency in its law and contracts. Hence, information is made available to the public from the moment the government calls for [bids](#)⁸ for oil extraction. Parties are also required to disclose revenue-related information, which allows for monitoring of fiscal obligations.
- d. **Use disclosure to monitor procedure of awarding,** as in Liberia. Liberia has committed to conduct [post-contract award process audit](#)⁹ of material contracts, concessions, and licenses entered into by the government in mining, oil, forestry, and agriculture sectors within a certain period of time.

To help make contracting information more useful and accessible for governments, civil society, and investors, countries may consider using the [Open Contracting Data Standard](#),¹⁰ a user-friendly and flexible tool that structures information about government contracts, and describes, what, when, and how to release data and associated documents at different phases of the contracting processes.

RESOURCES

- For a discussion on arguments against transparency, see NRG's [reader on contract transparency](#).¹¹
- To understand the provisions of extractive contracts, see [How to Read an Oil Contract](#)¹² and [How to Read a Mining Contract](#).¹³
- For a discussion on how Mexico and the Philippines achieved contract disclosure, listen the working group's webinar [here](#).¹⁴
- For tools that help measure how open and participatory law and practice are in relation to the environment for 70 countries, see the [Environmental Democracy Index](#).¹⁵
- For a measurement of the quality of governance in the oil, gas, and mining sectors in 58 countries, see the [Resource Governance Index](#).¹⁶

ABOUT THE OPENNESS IN NATURAL RESOURCES WORKING GROUP

The [OGP Openness in Natural Resource Working Group](#),¹⁷ co-chaired by the governments of Indonesia and Mexico, the [Natural Resource Governance Institute](#)¹⁸ (**NRGI**) and the [World Resources Institute](#)¹⁹ (**WRI**), is a community that fosters the creation and implementation of concrete and impactful natural resource-related commitments. It seeks to be a platform for peer exchange, and to be a safe space for discussion among stakeholders who are more often than not seen to sit on opposite sides of the table. For support, peer learning, idea exchange, and grounded discussions on your natural resource commitments, contact the working group through:

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To access the sites hyperlinked in this brief, go to:

- 1) Section 1.2.4, <https://www.imf.org/external/np/fad/trans/code.htm>
- 2) Paragraph 50, http://www.ifc.org/wps/wcm/connect/7540778049a792dcb87efaa8c6a8312a/SP_English_2012.pdf?MOD=AJPERES
- 3) <http://www.ebrd.com/cs/Satellite?c=Content&cid=1395236704433&pagename=EBRD%2FContent%2FHublet>
- 4) Forthcoming publication: Promises are vanity, contracts are reality, transparency is vanity (February 2016).
- 5) https://itportal.decc.gov.uk/web_files/recent_licences/oglicences.htm
- 6) https://www.data.boem.gov/homepg/data_center/other/WebStore/pimaster.asp?appid=11
- 7) <http://factpages.npd.no/factpages/Default.aspx?culture=no>
- 8) <http://ronda1.gob.mx/>
- 9) <https://eiti.org/news/liberia-eiti-report-includes-first-eiti-should-be-paid-audit>
- 10) http://www.open-contracting.org/open_contracting_data_standards
- 11) http://www.resourcegovernance.org/sites/default/files/nrgi_Contract-Transparency.pdf
- 12) <http://openoil.net/understanding-oil-contracts/>
- 13) <https://eiti.org/files/mining-contracts-how-to-read-and-understand-them.pdf>
- 14) <http://worldbankva.adobeconnect.com/p447ptabrhw/>
- 15) <http://www.environmentaldemocracyindex.org/map>
- 16) <http://www.resourcegovernance.org/rgi>
- 17) <http://www.opengovpartnership.org/node/5717>
- 18) <http://www.resourcegovernance.org/>
- 19) <http://www.wri.org/>