

## Five Steps to Disclosing Oil, Gas and Mining Contracts in Tunisia

### INTRODUCTION

Oil, gas and mining contracts detail the commitments between government and companies that determine the net public benefits derived from resource extraction. Without knowledge of these documents, citizens and oversight actors such as parliamentarians, civil society groups and the media cannot properly evaluate the risks and benefits that accompany extraction; nor can they effectively monitor these agreements.

There is significant interest among many countries to publicly disclose oil, gas and mining contracts (and licenses, where applicable).<sup>1</sup> In Tunisia, this interest has manifested itself in the advocacy positions of civil society organizations as well as debates in parliament. At the same time, there are also numerous questions about how to move forward with such disclosure in practice and how to respond to several perceived risks. This note seeks to address these questions and outlines concrete steps that countries can take to promote contract transparency in a way that advances national governance objectives, including where applicable through multi-stakeholder initiatives such as the Open Government Partnership (OGP) or the Extractive Industries Transparency Initiative (EITI). Tunisia joined the OGP in 2014 and the government is apparently considering moving forward with EITI.<sup>2</sup>

Disclosing extractive contracts is one of the most important steps that countries can take to promote more effective and transparent management of their extractive resources. Contract transparency can help:

- Promote constructive relationships between citizens, companies and governments—this can reduce conflict and facilitate stability in the sector.
- Set realistic expectations about the terms of and timelines for extraction, which facilitates accurate government revenue collection and forecasting.
- Provide enhanced opportunities for multi-stakeholder monitoring of adherence to obligations, which encourages all parties to act accountably in project implementation.

1 Agreements between the government and companies in the extractive sector take different forms and have different names. While this document refers primarily to “contracts,” this should be understood to also incorporate “licenses” or other agreements where such documents contain the principle terms and conditions for extraction. Further information on this is included in Step 2 (on defining the scope of disclosure) below.

2 See <https://eiti.org/blog/perfect-storm-transparency-and-good-governance-tunisia-extractive-industries>

- Motivate governments and companies to negotiate stronger contracts with broader country buy-in
- Enhance the utility of other disclosures (for example, Tunisia’s Open Data Platform,<sup>3</sup> which the government initiated through its OGP commitments), by providing context that facilitates the analysis and understanding of revenue flows and other data

This note starts with a review of international practice, demonstrating how contract disclosure is being adopted as an international norm of good governance in the extractive sector. The note then looks at the practical steps needed for disclosure, starting with how countries can begin discussing contract disclosure (Step 1) and then how countries can approach defining the scope of disclosure (Step 2). Next, we cover mechanisms for collating and verifying documents (Step 3) and establishing public access to this information (Step 4). Finally, the note outlines options for increasing public education and outreach (Step 5). Throughout the note, we base the discussion on lessons learned from the experiences of the growing number of countries that publish extractive industry contracts.

## CONTRACT DISCLOSURE: AN INTERNATIONAL NORM FOR NATURAL RESOURCE GOOD GOVERNANCE

A growing number of countries (including countries with significant capacity constraints), companies, and international bodies and standards are supporting and undertaking contract disclosure.

### Countries

A diverse group of countries have adopted extractive contract transparency through various methods. As of February 2016, some 29 countries had disclosed contracts through official channels.

Governments disclosing all or nearly all contracts	Governments disclosing some contracts	
Afghanistan	Azerbaijan	Mauritania
Canada (Alberta)*	Bahrain	Mongolia
Colombia	Bolivia	Mozambique
Guinea	Democratic Republic of Congo	Republic of Congo
Liberia	Ecuador	São Tomé and Príncipe
Mexico	Ghana	Sierra Leone
Norway*	Greece	Timor-Leste
Peru	Iraq (Kurdistan)	Venezuela
Philippines	Mali	Yemen
United Kingdom*		
United States (for the Gulf of Mexico)*		

\* License system

3 See: <http://data.industrie.gov.tn/>

Countries have implemented contract disclosure through different mechanisms, including explicitly requiring disclosure in oil/mining sector legislation (e.g., Sierra Leone, São Tomé and Príncipe, Guinea), through EITI legislation (Liberia) or pursuant to freedom of information laws and policies (e.g., Colombia, to some extent Mexico). Several countries have created online searchable databases for their contracts and/or licenses (e.g., United Kingdom<sup>4</sup> and United States<sup>5</sup>).

### *Companies*

Many major international oil and mining companies have had their contracts published, as a result of:

- Country contract publication policies (e.g., ExxonMobil in the United States and Liberia, Rio Tinto in Guinea)
- *Ad hoc* contract publication by governments and/or companies (e.g., publication of Azeri oil contracts involving companies such as BP, SOCAR, Amoco, Lukoil, Elf and Statoil; Mongolia's Oyu Tolgoi mining agreement with Rio Tinto and Ghana's oil contracts with Tullow and Kosmos)
- Stock exchange disclosure rules in certain countries requiring the publication of "material" contracts of listed companies. Examples include Total in Gabon (as a result of U.S. Security and Exchange Commission rules)<sup>6</sup> and Lion Petroleum in Kenya (as a result of a filing with the Canadian Securities Administrators).<sup>7</sup>

Several companies have spoken out in favor of contract disclosure. Rio Tinto has recently stated that it "... supports countries publicly disclosing contracts and licenses for the exploitation of oil, gas and minerals..."<sup>8</sup> A Newmont official attested publicly that he "cannot see one reason why investment agreements are kept confidential," calling "the commercially sensitive thing... an anachronism." Tullow has stated that they "take the position that should a government wish to make these agreements public, we would fully support them in doing so." Similarly, Kosmos Energy has announced that "where it is legally possible and acceptable to our host governments, we also prefer to make the material terms of our Petroleum Agreements (PAs) and Production Sharing Contracts (PSCs) publicly available."<sup>9</sup>

4 See <http://tools.decc.gov.uk/en/content/cms/tools/oglicences/oglicences.aspx#>

5 See [https://www.data.boem.gov/homepg/data\\_center/other/WebStore/pimaster.asp?appid=11](https://www.data.boem.gov/homepg/data_center/other/WebStore/pimaster.asp?appid=11)

6 See [https://www.sec.gov/Archives/edgar/data/1471261/000104746909009334/a2195051zex-10\\_5.htm](https://www.sec.gov/Archives/edgar/data/1471261/000104746909009334/a2195051zex-10_5.htm)

7 See <http://sedar.com/>

8 See [www.riotinto.com/documents/RT\\_taxes\\_paid\\_in\\_2014.pdf](http://www.riotinto.com/documents/RT_taxes_paid_in_2014.pdf)

9 See <http://www.kosmosenergy.com/responsibility/transparency.php>

### Tunisia focus: Companies

Several of the oil companies operating in Tunisia already have experience with publication of their contracts. For example, the 2005 *convention particulière* and the production sharing contract for the Sfax offshore permit in Tunisia were published as a result of the reporting obligations of one of the parties, Eurogas International, which is listed on the Canadian National Stock Exchange.<sup>10</sup> Similarly, the 2006 *convention particulière* for the Chaal permit was published as a result of Candax Energy's reporting obligations as a listed company on the Toronto Stock Exchange.<sup>11</sup> While these Tunisian contracts are publicly available on foreign sites, they have still not been made available on official Tunisian sites such as that of ETAP (L'Entreprise Tunisienne d'Activité Pétrolières, Tunisia's national oil company) or the open data platform developed by the Ministry of Industry pursuant to Tunisia's OGP national action plan.

Other oil companies active in Tunisia have had some of their contracts with other governments published. For example, the Italian company Eni, which has traditionally had significant operations in Tunisia, had its oil leases in the US published, as a result of government policies there. Perenco, a privately held French company also active in Tunisia, has had its production sharing contracts with Iraq's Kurdish Regional Government published, as a result of government policies there.<sup>12</sup>

### International bodies

Section 3.12 of the EITI Standard encourages EITI-implementing countries to “publicly disclose any contracts and licenses that provide the terms attached to the exploitation of oil, gas and minerals.” The International Monetary Fund (IMF)'s Code of Good Practices on Fiscal Transparency notes that natural resource “contractual arrangements ... should be clear and publicly accessible.” The International Finance Corporation (IFC) requires each IFC-backed oil, gas and mining project to disclose its “principal contract with the government that sets out the key terms and conditions under which a resource will be exploited.” For its part, the World Bank recommends open contracting as good practice.<sup>13</sup> Similarly, the European Bank for Reconstruction and Development (EBRD) requires that the terms of subsoil contracts and licenses for hydrocarbon projects it funds from 2015 be made public.<sup>14</sup> The Natural Resource Charter calls for governments to publicly disclose contracts. The International Bar Association's model mining agreement states: “This Agreement...is a public document, and shall be open to free inspection by members of the public at the appropriate State office...” (Section 30.1(a)).

10 The contracts are available through the official Canadian stock exchange disclosure site (SEDAR) as well as at <http://www.resourcecontracts.org/countries/tn> and <http://repository.openoil.net/wiki/Tunisia>.

11 Ibid.

12 See <http://cabinet.gov.krd/p/p.aspx?l=12&r=296&h=1&s=030000&p=64>

13 See [http://www.ifc.org/wps/wcm/connect/industry\\_ext\\_content/ifc\\_external\\_corporate\\_site/industries/oil,+gas+and+mining/transparency/contract+disclosure](http://www.ifc.org/wps/wcm/connect/industry_ext_content/ifc_external_corporate_site/industries/oil,+gas+and+mining/transparency/contract+disclosure)

14 See <http://www.ebrd.com/cs/Satellite?c=Content&cid=1395236704433&pagename=EBRD%2FContent%2FHublet>

## STEP 1: DISCUSSING CONTRACT DISCLOSURE

Consideration of contract disclosure will be different for each country, but should generally start with a thorough evaluation of the country's context in order to determine whether, and how contract disclosure could contribute to the achievement of national governance objectives. This requires a thorough evaluation by various stakeholders, including government, civil society and companies.

### **Q: When should the issue of contract disclosure be considered by relevant stakeholders?**

Contract disclosure can be considered and adopted at any time, for example through policy or decree (as was the case in Afghanistan and the DRC). However, certain processes such as legal reform present a particularly good opportunity for considering the issue. This could, for example, include the revision of sector-specific legislation such as a new mining code (as in Guinea) or the adoption of transparency legislation (as in Liberia). This can stem from pro-transparency commitments included in fundamental legal documents such as the constitution.

Initiatives such as the OGP or EITI present ideal opportunities to consider and act on contract disclosure, since they combine a multi-stakeholder approach and a pro-transparency orientation. In the case of OGP, contract transparency can be considered during the discussion of the national action plan (NAP) and where reference to contract disclosure is included in the NAP, the issues outlined in this note can be considered in greater detail during implementation of the NAP.

In the case of EITI, Section 3.12 of the EITI Standard specifically encourages implementing countries to publicly disclose any contracts and licenses that provide the terms attached to the exploitation of oil, gas and minerals. The EITI Standard also states that EITI reports are required to document the government's policy on disclosure of contracts and licenses that govern the exploration and exploitation of oil, gas and minerals, including relevant legal provisions, actual disclosure practices and any reforms that are planned or underway. Where applicable, the EITI report should provide an overview of the contracts and licenses that are publicly available, and include a reference or link to the location where these are published.

As such, the multi-stakeholder group (MSG) of an EITI implementing country should consider contract disclosure at several points in the EITI process, including in the developing the EITI work plan, while undertaking data collection/reconciliation, preparing the annual EITI report and in making recommendations about broader policy reforms based on analysis of EITI data.

### Tunisia focus: An appropriate context to discuss contract disclosure

The debate around natural resource contract disclosure is already under way in Tunisia. A combination of different developments such as the new constitution, ongoing legal reform, interest by civil society and parliamentarians, and engagement with international processes such as OGP and potentially EITI, mean that now is a good time for the issue to be considered further.

The debate around contract disclosure was initially raised by some members of the National Constituent Assembly during the constitutional process. These members specifically suggested that the constitution require all agreements related to natural resources to be disclosed, although this suggestion was not included in the final version. However, the constitution does specifically include references to transparency and access to information, and Article 13's requirement for parliamentary approval of natural resource contracts could partially be understood as trying to increase transparency of these contracts by at least disclosing them to the representatives of the people.

The contract transparency issue was again raised in the discussions around Tunisia's OGP National Action Plan, with some civil society organizations pushing to incorporate contract disclosure as a government commitment. A specific commitment regarding increasing transparency in the natural resource sector was included in the NAP. Commitment No. 18 includes reference to the development of an open data platform on oil and mining sector investment with data on, among other categories, "companies operating in the sector and the size of their investments and activities and their contracts." While the Ministry of Industry has created a commendable open data platform containing important information such as production levels, the only specific information on contracts is a reference to the Journal Officiel containing the decree approving the relevant contract. These decrees include very limited supplemental information on the contract. For the time being, the platform does not disclose actual contracts or key information from the contracts (e.g., work commitments, renewal terms, fiscal terms not set out in the Hydrocarbons Code and production sharing terms where applicable). The ambiguity and flexibility of NAP Commitment 18 gave the government discretion on what data to publish. However, the data platform could still possibly be used in the future to disclose contracts.

There are several opportunities to advance the contract disclosure discussion in Tunisia. Most significantly, the Tunisian government is currently reviewing the legal framework around natural resources in order to bring it into conformity with the constitution, which, as mentioned above, contains a range of provisions related to contract disclosure. Tunisia could seize the opportunity of this revision to incorporate provisions related to contract disclosure within both the hydrocarbons and mining codes.

Future iterations of Tunisia's OGP national action plan could provide another opportunity to discuss and implement contract disclosure. If the Tunisian government moves forward with the EITI adherence process, the Tunisia EITI multi-stakeholder group (MSG) could be another appropriate forum.

### **Q. How can countries (and various stakeholders) consider the benefits of contract disclosure?**

Stakeholders (including in EITI countries the MSG) should consider the pros and cons of contract transparency as part of their broader review of natural resource governance/transparency issues. First, they ought to consider the existing policy and practice in the country with respect to contract disclosure. If a country does not currently disclose contracts, or the scope of disclosure is inadequate (see Section 2 below for more information on scope), the next step is to consider the benefits that contract disclosure can bring to all constituencies.

Disclosing contracts allows **government** to:

- Build trust, including within host communities, that the state is pursuing the public interest
- Develop consensus and reduce tensions around the respective obligations of operating companies and the state, thereby promoting stability and reducing risk to investors
- Increase future revenues by making it difficult for any single official/agency to sign deals with limited long-term advantages

Disclosing contracts allows **citizens** to:

- Recognize the net returns that their country receives from the exploration and extraction of natural resources.
- Understand the source and nature of the revenue data that is released (e.g., through EITI, OGP commitments, annual reports, etc.) including variations in company obligations and contributions over time (e.g., low tax payments during cost recovery periods).
- Understand the existing local content, environmental and social obligations that guide company and government behavior in their communities.

Disclosing contracts allows **companies** to:

- Establish contracts that are more stable, with broader country buy-in, a stronger social license to operate and lower pressure to renegotiate.
- Lower risks of corruption in the negotiation of contracts.
- Explain why revenues may not meet unrealistic public expectations (such as when exploration costs are being recouped).
- Reduce the bargaining leverage of unskilled or unscrupulous companies that seek to sign deals that are out of step with international standards.

### Tunisia focus: “Winou el pétrole” and the need to build trust and provide accurate information

The recent “Winou el pétrole” campaign is indicative of some of the most important potential benefits of contract disclosure for Tunisia. While the aim here is neither to praise nor criticize the campaign, it is clear that the campaign revealed three key issues:

- lack of trust from civil society and the public in the government’s management of the sector
- lack of accurate knowledge of sector issues on the part of civil society and the public due (at least in part) to the lack of information
- lack of communication and synergy between different stakeholders regarding natural resource governance.

In this context, the non-publication of contracts has been interpreted by some activists as an indicator of corruption. In this sense, taking steps toward contract publication would be an important element in avoiding further social troubles and restoring trust, with government and companies providing accurate information to replace rumors and misinformation.

Moving forward with publication would also be a positive message to prospective investors as it would indicate a commitment to transparency on the part of the Tunisian government. This could hopefully contribute to reversing the recent trend of investors being less interested in Tunisia’s hydrocarbons and mining sectors.

## **Q. How can we approach the concerns most commonly expressed in relation to contract disclosure?**

*Concern #1: Do contracts contain commercially sensitive information that could cause competitive harm to petroleum or mining companies if disclosed?*

Contracts that would be disclosed rarely contain information like trade secrets, production techniques and proprietary practices—details usually associated with threats to competitiveness. These contracts typically lay out the obligations that a company owes to the producing state and its citizens (and vice versa), including expected fiscal payments, environmental and social responsibilities and plans for developing the resource. They do not provide details of a company’s technology or how it executes its strategy. This is part of the reason why many countries have been comfortable disclosing entire contracts, and why many companies have unilaterally published their contracts pursuant to stock exchange requirements to publish materially relevant information.<sup>15</sup>

Some stakeholders might contend that the fiscal terms themselves represent commercially sensitive information that should not be disclosed, because the publication of a deal a particular company signed in one country would impede that company’s ability to negotiate for maximum benefit in another. If such a concern is raised, there is a need to weigh the benefits accruing to the companies from this asymmetric access to information at a global level<sup>16</sup> against the rights of citizens to access information on the fiscal terms accorded by their governments, as well as the other benefits from disclosure discussed above. The countries that have already decided in favor of contract disclosure have determined that arguments against making fiscal terms public are not sufficient to justify non-disclosure. In the same manner that countries (including all those participating in the EITI) have determined that data on payments from taxes, bonuses and other fiscal flows are in the public interest, countries pursuing contract transparency have decided in favor of the public’s right to information on the contracts upon which those payments are predicated.

15 CAMAC Energy, for example, recently published its production-sharing contract with the government of Kenya on the U.S. Securities and Exchange Commission’s website ([http://www.sec.gov/Archives/edgar/data/1402281/000143774914004260/cak20131231\\_10k.htm](http://www.sec.gov/Archives/edgar/data/1402281/000143774914004260/cak20131231_10k.htm)), and Tullow Oil published its agreements with the government of Ghana ([http://www.tullowoil.com/files/pdf/petroleum\\_agreement\\_deepwater\\_tano.pdf](http://www.tullowoil.com/files/pdf/petroleum_agreement_deepwater_tano.pdf)).

16 Companies tend to operate in multiple countries and have information on multiple jurisdictions, while governments are generally more limited in their information. Companies also benefit from information that their advisors (lawyers, consultants, business intelligence firms, etc.) can provide them on the market, including contract terms. See *Contracts Confidential: Ending Secret Deals in the Extractive Industries*, <http://www.resourcegovernance.org/analysis-tools/publications/contracts-confidential-ending-secret-deals-extractive-industries>.



### Tunisia focus: Contracts and commercially sensitive information

In the case of Tunisia, the nature of the legal framework strengthens the case for contract disclosure by weakening some of the potential commercial sensitivity concerns. Contracts are primarily used in the hydrocarbons sector and, under the regime of the current Hydrocarbons Code of 1999, there are two levels of contracts for each project:

- a convention particulière between the state (i.e., the Ministry of Industry), the investing company and ETAP
- either a production sharing contract or a joint venture agreement between the investing company and ETAP
- The convention particulière, which is the principal agreement dictating the terms of the investment, is largely based on a model contract that was approved by decree and published in 2001.<sup>17</sup> The use of the model contract means that there is only limited information that is negotiated or is otherwise specific to a contract, namely:
  - name of the company, its headquarters and its legal representative in the country
  - percentage share of the company in the license
  - threshold value above which contracts for services and equipment are to be submitted to the oversight of the ministry
  - threshold value above which company procurement must involve a competitive process
  - surface area of the license
  - minimum work plan to be implemented by the company, including description and cost
  - conditions for eventual renewal (i.e., periods and work plan/costs)

The remaining elements of the contract, including the fiscal terms, are set out in the model contract and emanate directly from the Hydrocarbons Code. Accordingly, there is very limited “new” information in a contract that would be made available through publication. Furthermore, this information would not include trade secrets, production techniques or proprietary practices. That is not to say that disclosure of such contracts would serve no purpose. In fact, disclosure can serve the important purposes of:

- i. demonstrating that actual contracts comply with the model/code, thereby dispelling rumors about secret contracts deviating from the law; and
- ii. providing information on key elements such as the work plan and conditions for renewal that are negotiated specifically for each contract and can reveal information relevant to ensuring compliance with contract obligations.

As the other contract (i.e., production sharing or joint venture that is entered into directly with ETAP) is viewed as an agreement implementing the convention particulière it should not include any sensitive information. Nevertheless, transparency of these contracts could be particularly important, as, unlike the convention particulière, there are no publicly available models for them and they are more likely to be negotiated.<sup>18</sup> In addition, the negotiated terms of these contracts, such as the “profit oil” percentages in production sharing contracts, can have an impact on the financial situation of ETAP, which, as a fully state-owned enterprise, in turn has an impact on state finances.

With respect to the contracts signed prior to the Hydrocarbons Code of 1999, (these constitute the majority of Tunisia’s petroleum contracts<sup>19</sup>), it is somewhat difficult to speculate on content as there was no publicly available model for the executive to follow in negotiating and executing these contracts. Disclosure of these contracts is particularly important due to this lack of a model and because fiscal terms were largely included in the contracts.

As noted above in the global section, the issue of commercial sensitivity often ultimately requires the balancing of private interests of companies against citizens’ public interest of knowing the terms for contracting around a public good. In this context, it is worth noting that the Tunisian constitution makes it clear that natural resources are the property of the Tunisian people (Article 13) and also includes commitments to transparency, namely the right to information and the right to access to information (Article 32) and the stipulation that the administration should respect the principles of transparency and responsibility (Article 15). Those provisions seem to be additional arguments in favor of contract disclosure.

17 Decree n 2001-1842 of 1st august 2001.

18 See Resource Governance Index: Tunisia March 2014 questionnaire, question 7, p. 7. Available at: [http://www.resourcegovernance.org/sites/default/files/country\\_pdfs/RGIquestionnaireHC\\_Tunisie.pdf](http://www.resourcegovernance.org/sites/default/files/country_pdfs/RGIquestionnaireHC_Tunisie.pdf)

19 Of Tunisia’s 53 concessions, 12 concessions have been issued under the Hydrocarbons Code of 1999 and remainder (41) have been under previous regimes.

*Concern #2: Do confidentiality clauses prevent disclosure?*

Many oil, gas and mining contracts contain confidentiality clauses that may prevent parties from disclosing certain types of sensitive information to third parties. Where a country is considering implementing contract transparency, any confidentiality clauses contained in the relevant contracts should be examined to determine whether they explicitly preclude the publication of the contract itself.

Where there is a confidentiality clause that precludes publication of the contract, the various implicated stakeholders should work together to address it. Most confidentiality clauses allow a contract's parties to share information by mutual consent, which would enable a process to secure the consent of contracting parties for the publication of the contract. However, if a contract does not contain such a provision, governments and companies can agree to modify it to allow contract transparency, including by a standard-form amendment. Confidentiality clauses also generally include an exception for legally mandated disclosures, allowing governments to require transparency by law.

**Tunisia focus: Confidentiality provisions**

While concerns about confidentiality provisions have been raised in discussions around contract disclosure in Tunisia, it is important to note that the current model convention particulière and the Hydrocarbons Code do not contain any confidentiality clauses or provisions prohibiting disclosure of contracts. Furthermore, review of the only publicly available Tunisian production sharing contract<sup>20</sup> indicates a confidentiality provision (Article 25) that is focused on limiting the disclosure of technical information such as seismic reports and technical data relevant to the operations under the contract, and does not include a provision prohibiting disclosure of the contract itself.

It is also worth noting that in addition to the aforementioned constitutional provisions in favor of transparency, Tunisia is in the process of putting in place a decree-law on access to information.

## STEP 2: DEFINING THE SCOPE OF DISCLOSURE

If, pursuant to the considerations addressed above, a decision is made to implement contract disclosure, it must then be decided *which* contracts to disclose, and *when* they should be disclosed.

### **Q: What kinds of contracts?**

The precise terminology for contracts used in different countries will vary. This is why, for example, Section 3.12 of the EITI Standard is written relatively broadly and refers to the disclosure of “any contract, concession, production-sharing agreement or other agreement granted by or entered into by, the government which provides the terms attached to the exploitation of oil gas and mineral resources,” as well as “any license, lease, title or permit by which a government confers on a company or individual rights to exploit oil, gas and/or mineral resources.”

<sup>20</sup> As indicated earlier, the production sharing contract for the Sfax offshore permit is publicly disclosed as a result of Canadian stock exchange requirements applicable to one of the parties, Eurogas International, and is available

Among countries which rely on contracts to establish substantial portions of the core conditions for exploitation of oil, gas and minerals, national commitments to disclosure have resulted in the publication of documents using the following terminology:

- Production sharing agreements (e.g., Mauritania<sup>21</sup>, Iraqi Kurdistan<sup>22</sup>, Afghanistan<sup>23</sup>)
- Concession agreements (e.g., Liberia<sup>24</sup>)
- Investment agreements (e.g., Mongolia<sup>25</sup>)
- Investment promotion and guarantee contracts (e.g., Peru<sup>26</sup>)
- Mineral development agreements (e.g., Liberia)
- Petroleum agreements (e.g., Ghana<sup>27</sup>)

Regardless of the precise contract form, these examples exhibit one central feature: the documents to be disclosed are those that establish the core conditions upon which the right to exploit the resource is based.

In addition to the original text of contracts, it is important to include as part of any contract disclosure regime certain corollary documents essential to understanding the terms of the contract or modifying these terms. The EITI Standard for example also encourages the publication of the full text of “any annex, addendum or rider that establishes details relevant to the exploitation rights” and of “any alteration or amendment.”

#### Tunisia focus: Which contracts?

As noted above, Tunisia’s natural resource contracts are primarily in the hydrocarbons sector and, under the current Hydrocarbons Code, divided into two levels: the convention particulière and the production sharing contract or joint venture contract. Both sets of documents would be required for comprehensive contract disclosure. Given that the convention particulière is the primary contract setting out the legal basis for hydrocarbons operations, a strategy for prioritizing disclosure may wish to consider this hierarchy. At the same time, the second level of contracts (entered into directly with ETAP) are also interesting for disclosure, especially given the absence of a public model for these contracts and their impact on ETAP’s finances.

21 See <http://www.petrole.gov.mr/MinesIndustrie/Documents/Contrats/listedescontrats.htm>

22 See <http://www.krg.org/p/p.aspx?l=12&p=1>

23 See <http://mom.gov.af/en/page/1384>

24 See <http://www.leiti.org.lr/contracts-and-concessions.html>

25 See <http://www.mmdaproject.org/presentations/MMDA%20Mongolia%20Ivanhoe%20Agrt-1.pdf>

26 See <http://www.minem.gob.pe/descripcion.php?idSector=1&idTitular=188&idMenu=sub154&idCateg=188>

27 See [http://www.energymin.gov.gh/?page\\_id=218](http://www.energymin.gov.gh/?page_id=218)

### Q: What text to publish?

Countries considering publishing contracts should ideally look to publish these documents in their “full text” form, as is encouraged by the EITI Standard. The reason for this is that publishing the full text, including the relevant signatures, represents the strongest path for countries to realizing the benefits of disclosure: increased trust among citizens, companies and government; ability to monitor compliance and enforcement; ability to maximize usefulness of revenue data; and enhanced incentives to sign contracts in the long-term public interest. This would also be in line with emerging global best practice. More than 25 countries have begun to publish oil, gas and mineral contracts in full and industry groups such as the International Council on Mining and Metals have voiced their support for full text disclosure.

Some stakeholders, including within the EITI context, have expressed concerns about full-text publication, and voiced a view in support of a middle-ground approach wherein the country publishes contracts with some information redacted, or publishes summaries of key terms but not the texts themselves. Some countries where opposition to full disclosure remains strong may be well-served to consider such an approach, which certainly provides more transparency than a de facto standard of total contract opacity.

Where stakeholders in a country are debating this sort of limited approach to contract transparency, we recommend that they analyze whether there is a legitimate and significant case for business harm arising from full-text disclosure. Global research has shown that trade secrets and proprietary processes are virtually never contained in the sorts of contracts that are subject to the standard.<sup>28</sup> This is why many countries have decided to publish contracts in their entirety.

This is not to suggest that plain-language summaries of key terms cannot be useful as a tool for public understanding of contracts—the use of summary texts as a supplement to the contract documents is discussed in detail in Step 5, below.

#### Tunisia focus: Full-text publication

As noted above, under Tunisia’s current hydrocarbon regime much of the contract’s content is a product of the model contract and the terms of the Hydrocarbons Code. In this context, one of the main aims of contract disclosure is to demonstrate that actual contracts comply with the model/code, thereby dispelling rumors to the contrary. Accordingly, publishing the entire contract, potentially with a summary of key terms that are not included in the model, would be the most effective approach in sending a positive message to other stakeholders, especially civil society.

The situation could be different for contracts under the previous legal regime, where there seems to have been greater deviations between contracts. In this context, the government may wish to consider starting with summaries of the key elements of those contracts.

28 See, e.g., *Contracts Confidential: Ending Secret Deals in the Extractive Industries*, <http://www.resourcegovernance.org/analysis-tools/publications/contracts-confidential-ending-secret-deals-extractive-industries>.

## Q: How many contracts to publish? Which ones?

Ideally all contracts should be published, as is the approach of the EITI encouragement (“any [contract]...which provides the terms attached” to exploitation). Such an approach—which is put into practice by countries including Liberia, Peru and the United States—promotes consistency, equal treatment and maximum public information about extractive industry management.

In some countries, it may be determined that the immediate disclosure of all contracts is not feasible, and that some sort of staged approach to disclosure is necessary. In this case, there are several possible principles on which a country could base decisions about what to disclose first:

- *Prioritizing contracts attached to projects meeting a certain materiality reporting threshold (e.g., matching the threshold of other disclosure regimes such as EITI if applicable)* can facilitate deep public understanding of the most important revenue-generating projects and create good linkages with other reporting regimes, such as EITI if applicable.
- *Prioritizing “new” contracts at the time that they enter into force* can serve as an important commitment by a government to be held accountable to its people for its contracting decisions. The tradeoff in such an approach would be that it would reduce the impact of disclosure on public understanding of existing contracts, which in many cases will represent the bulk of the revenues and impact on the sector.
- *Prioritizing existing contracts* would counteract the problem mentioned above by emphasizing the known universe of deals. The tradeoff in such an approach would be that it would de-emphasize new oil or mining projects, which are sometimes important sources of public concern.
- *Prioritizing either petroleum or mining, depending which is the most important sector, or the one with the fewest immediate obstacles to disclosure, could generate significant impacts on accountability while building toward full disclosure.*

### Tunisia focus: Prioritization

The issue of prioritization is an important one that deserves further discussion in the Tunisian context. Given that the contract structure is most important in the hydrocarbons sector, it may make sense to prioritize that sector for contract disclosure. The easiest approach for government may be to first commit to publishing any new oil contracts, thereby allowing the government to signal in advance to company counterparts that future contracts will be published. Another possibility could also be to prioritize disclosure of contracts signed under the current Hydrocarbons Code, while contracts from the former legal regime are initially published only in summary form, and then at a later stage in their entirety. At the same time, the government should be aware that certain stakeholders may push for the prioritization of contracts which represent the greatest level of production. Another possibility could be to prioritize disclosure of those contracts where the company counterparties are open to disclosure.

The different options and potentially incremental nature of contract disclosure provide the government with a certain level of flexibility. One key element in choosing between these different options is to consult with different stakeholders so that their concerns are taken into account.

### STEP 3: COLLATING AND VERIFYING DOCUMENTS

Once the scope of contract disclosure has been decided, it is necessary to collate the documents themselves and prepare them for disclosure. Which entity does this will depend on the country. In EITI implementing countries this will be straightforward—with authorization from the proper levels of government, the MSG or the EITI national secretariat can coordinate with the ministry or agency that is the signatory of the contract (or issuer of the license) to ensure that the correct, complete documents are collected. In the absence of EITI, this task may be assigned to the relevant sector ministry or agency—or alternatively be allocated to another government entity, such as one more broadly responsible for governance or access to information matters.

It is important to ensure that the companies that are a party to the licenses or are signatories of the contract are informed of the pending disclosure and have an opportunity to voice any concerns about the authenticity of the documents being disclosed. Multi-stakeholder processes such as the EITI provide an ideal forum in which this process can be carried out, because they provide opportunities for regular communication among all stakeholders. In any event, all companies need to be made aware of the decisions taken around the scope of disclosure. The relevant entity collecting the documents should share each copy of the contract to be disclosed to the relevant company, with a fixed time period before the publication date during which the company has an opportunity to raise any questions about whether it is the final and official version.

#### Tunisia focus: A coordinated approach

A government committee could be created for collecting and reviewing the documents to be disclosed. This committee could include representatives from, among others, the Ministry of Industry, Energy and Mines, the prime minister's office (potentially the legal department) and ETAP, in order to ensure sufficient coordination between government stakeholders. This committee, or one of the offices participating in it, could be responsible for outreach to the relevant companies. Another option would be a multi-stakeholder approach (involving government, private sector and civil society), such as the OGP or EITI, in order to allow for communication and building of trust among all stakeholders.

### STEP 4: DEFINING THE MODES OF PUBLIC ACCESS

Best practice in most countries will involve publishing the contracts online, on a website that is accessible free of charge, without a registration requirement or posing other technological barriers. Where applicable, having the contracts posted as part of the country's EITI or OGP website itself can facilitate strong linkages between contract disclosure and other required disclosures (see the following section for a discussion of public education and outreach). Importantly, contracts should be published in an open data format rather than "locked" PDF documents. This enables users to search for terms within contracts and allows the possibility of adding annotations, which makes contracts easier to understand and reduces the potential for misunderstanding. ResourceContracts.org is a global online contract repository using the Open Contracting Data Standard and developed by the World Bank Institute, Columbia Center for Sustainable Investments and the Natural Resource Governance Institute (NRGI). Throughout 2016, NRGI is supporting the roll out of country versions of resourcecontracts.org—so far we have helped put out sites for Guinea, the Philippines and Sierra Leone.

In some countries where internet penetration is low and where there is a high demand for access to the contract documents, stakeholders may consider also making a limited number of copies available in hard-copy format at the office of the entity collecting the documents (e.g., the national EITI secretariat or another official office), ideally free of charge or for a limited printing fee.

#### Tunisia Focus: Public access through the *Journal Officiel*, the open data platform and/or a contract disclosure website

If contract disclosure is included within the revised Hydrocarbons and Mining Codes, (given the current legal reform process around these codes), new contracts could be published in the *Journal Officiel*. With respect to existing contracts, one option would be to publish contracts on the open data platform established by the Tunisian government as part of its OGP commitment to increased contract transparency. Given the other related information that is part of this platform, it would be useful to have all published contracts included (or linked to) on the site as it would allow for efficient access to related information. NRGi could also assist in the creation of a Tunisia contract disclosure site using the existing ResourceContracts.org platform.

## STEP 5: MAXIMIZING PUBLIC EDUCATION AND OUTREACH

As with all elements of natural resource transparency, the disclosure of contracts should not represent the end point of a country's efforts. Public communication is critical if a country is to derive the maximum governance benefits from disclosure. Contracts are frequently subject to widespread misunderstanding, therefore the combination of disclosure of the documents with an effective commitment to public education would open up tremendous opportunities for greater trust and stronger oversight.

The development of strategies around public communication can be incorporated into plans for contract disclosure from the earliest stages. Technological and informational tools that implementing countries can consider using include:

- *Plain-language explanations to facilitate broader understanding.* Disclosure provides an opportunity to promote wider understanding of contract terms by linking the contracts to plain-language summaries of key terms, which gives visitors to the site an opportunity to more easily sort through large documents and focus on and analyze aspects of the contract that they are particularly interested in. The government of Guinea pioneered this approach via [www.contratsminiersguinee.org](http://www.contratsminiersguinee.org), which builds on technology developed by the global [www.ResourceContracts.org](http://www.ResourceContracts.org) project.
- *Linkages between contract terms and other reporting data.* As noted previously, contract disclosure enhances the utility of other extractive industry information (e.g., revenue information disclosed under EITI or OGP or by government sources), by providing context that facilitates analysis and understanding. Countries should consider how the information in contracts can be displayed alongside such other related data in order to increase usefulness and comprehensibility. Plain-language summaries can facilitate such linkages.
- *Linkages to registry of licenses.* Disclosing the full text of licenses (and associated contracts) as part of a publicly available register or cadaster system, which already exist in certain countries and are required of EITI implementing countries, could streamline the disclosure process.

---

## Training and outreach:

- *Public forums to discuss contract terms and their implementation.* Disclosure of contracts provides an opportunity to organize public meetings where key constituencies, including community groups, have an opportunity to pose questions to better understand the implications of contract language and how projects are progressing. Such forums provide opportunities for company and government officials to share key facts with citizens and build public trust.
- *Training.* Training can be organized by the government and/or other stakeholders to help local government officials, journalists, civil society groups or other constituencies better understand the nuances of extractive industry contracts and their impact on extractive industry governance. These events can help dispel common myths about petroleum and mineral contracts and can facilitate a more constructive public-private dialogue. Several international firms and organizations are available to help interested countries develop such trainings.

### Tunisia focus: Capacity building around contracts

The extent of distrust and misunderstanding around the sector in Tunisia is indicative of the need to not just disclose contracts, but also go further in communicating and building capacity to help stakeholders such as parliamentarians, civil society groups and journalists understand and responsibly use disclosed information. The government can play a role in this process by packaging information in user-friendly ways, as can platforms such as OGP and potentially EITI. Organizations such as NRGi can also support Tunisia in constructing an online platform and building capacity around extractive contracts.

#### For more information on NRGi's work on contract disclosure in Tunisia, contact:

Wissem Heni, Tunisia Program Officer, [wheni@resourcegovernance.org](mailto:wheni@resourcegovernance.org)  
Amir Shafaie, Senior Legal Analyst, [ashafaie@resourcegovernance.org](mailto:ashafaie@resourcegovernance.org)

#### For more information on NRGi's work on contract disclosure internationally, contact:

Rob Pitman, Governance Officer, [rpitman@resourcegovernance.org](mailto:rpitman@resourcegovernance.org)

The Natural Resource Governance Institute, an independent, non-profit organization, helps people to realize the benefits of their countries' oil, gas and mineral wealth through applied research, and innovative approaches to capacity development, technical advice and advocacy.  
**Learn more at [www.resourcegovernance.org](http://www.resourcegovernance.org)**