



# Open Contracting for Oil, Gas and Mineral Rights: Shining a Light on Good Practice

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## Executive summary

Emerging evidence shows that increasing transparency and public engagement in government contracting is a powerful way to craft better public deals, improve public services, deter fraud and corruption, build trust and promote a more competitive business environment.

Deals in the oil, gas and mining sectors may be worth billions of dollars over decades. Yet, there is surprisingly little systematic guidance for ensuring transparency in allocating and managing the rights to explore for and exploit natural resources. This report aims to address that gap by shining a light on global good practices that will be useful for regulators, oversight actors and transparency advocates, including those working to implement the Extractive Industries Transparency Initiative (EITI) standard or to develop Open Government Partnership (OGP) national action plans.

So far, few countries have been able to effectively present information about the diverse elements of regulation in the extractive industries. Most information is disconnected, scattered across a range of agency silos and often uses very different data standards (if any). If there are public disclosures, they tend to be geared toward industry needs, with little consideration of what citizens might want or need to better understand the industry and contribute to its improved functioning.

It doesn't have to be this way. We found several examples of better practice from around the world where more systematic approaches have enabled citizens to better understand and, where appropriate, engage with rights allocation and management processes. These efforts were not only good for government efficiency but appear to help with business engagement, competition and civic trust as well. While many of these examples came from Organisation for Economic Co-operation and Development (OECD) countries, we also found good practices in countries at the frontiers of resource exploration and production, such as Lebanon, Sierra Leone and the Philippines.

## Recommendations

Governments should take a systematic approach to improve transparency across the entire process by which they award oil, gas and mining rights. This should cover all stages of the contracting process, namely planning, the allocation and award process, as well as information about contract terms and their implementation.

### Explain the system and the actors involved

Too often, transparency efforts have focused on outputs of the rights allocation process, particularly the development of mineral and petroleum registries that provide basic information about rights awarded. Significantly less attention has been paid to helping citizens make sense of the legal and regulatory processes by which rights are granted, and communicating which agencies and players oversee the granting of resource rights.

**1 Use joined-up information to explain the contracting system in full.** Governments should provide resources that explain all the regulatory processes surrounding contracting, incorporating information from multiple agencies as necessary and presenting it in a joined-up manner. Examples: Common Ground website, New South Wales (Australia); Rondas Mexico website, National Hydrocarbons Commission (CNH) (Mexico).

**2 Reconcile information needs of both companies and citizens.** Information should target all potential users. Governments should consult widely to avoid a situation where information disclosure is overwhelmingly designed for one stakeholder group. Examples: Regulatory Excellence Initiative, Alberta Energy Regulator (AER) (Canada).<sup>1</sup>

**3 Communicate who the decision-makers are.** Governments should disclose the identity of decision-makers responsible for: i) planning and making policy around contract allocation and implementation; ii) approving contracts, including any material deviations; and iii) monitoring compliance with those contracts. Examples: Public Zone website, Oil and Gas Commission, British Columbia (Canada); Rondas Mexico website, CNH (Mexico).

### Planning

The planning stage is critical to success. Shortcomings here can undermine every stage thereafter, leading to huge losses to the state and its citizens right from the start.

**4 Disclose information about the areas to be opened to extractive industry contracting and why.** Governments should disclose information about the decision process in selecting new areas for extractive activity. This should include decision making criteria for making decisions; information about who makes the decisions, who will be consulted, how and when; information about the final decision, including rationale, as well as clarity on the boundaries of areas to be opened up. Example: Norway.

<sup>1</sup> Although it is not involved in rights allocation decisions, the AER's approach to regulatory design is still relevant to government agencies leading rights allocation processes.

**5 Reconcile sub-surface and surface rights and the needs of their users.** Governments should employ public, openly licensed and user-friendly systems to allow all stakeholders to identify and reconcile overlaps between sub-surface and surface rights and needs. Example: Common Ground website, New South Wales (Australia).

**6 Publicly explain the choice between different allocation methods and how they apply in different situations.** Where governments can choose between multiple types of processes, they should publish rules about which allocation approach applies in a given area and explain why they selected a particular approach. This should include common sense explanations in addition to relevant legislation/regulation. Example: Petroleum and Minerals website (New Zealand).

### Allocation and award of contracts and licenses

While allocation processes may range from highly visible competitive bid rounds to routine non-competitive rolling applications, some basic transparency requirements hold in all cases.

**7 Communicate early that allocation is happening.** Governments should ensure that communications are early, clear and intentionally target local stakeholders, not just the international business press. Example: CNH (Mexico).

**8 Publish the rules of the game.** Governments should publish overall rules for the process including timelines and application requirements; the criteria against which companies are being assessed; and information about appeals processes. Where these rules are split over policy documents that multiple agencies manage, those in charge should bring the information together in one place. Examples: Minerals Permits website (New Zealand); Ronda Colombia 2014 website, National Agency of Hydrocarbons (ANH) (Colombia); Norwegian Petroleum Information Portal.

**9 Disclose who stands to benefit.** Governments should publish the names of all companies applying for rights, including during prequalification. Governments should also disclose companies' beneficial ownership information and use this information to screen applicants for conflicts of interest and corruption risks at the point of prequalification or prior to award. Example: Lebanon (disclosures in prequalification), EITI Standard (beneficial ownership disclosure), Sierra Leone (beneficial ownership information use in licensing).

**10 Disclose regulator engagement with prospective companies.** Governments should disclose regulator engagement with prospective companies, as well as all queries and clarifications. Examples: Ronda Colombia 2014 website, ANH (Colombia); Rondas Mexico website, CNH (Mexico).

**11 Conduct and disclose consultative processes.** Governments and companies should disclose information about consultative processes with communities about the awarding of rights, especially on matters that directly concern the community, including community development agreements. Examples: Northern Territory, (Australia); Philippines; Peru; Chile.

**12** **Disclose allocation outcomes.** Governments should disclose basic details about the awards, ideally alongside information justifying why and how certain decisions were made. Examples: Zambia; CNH (Mexico); AER (Canada).

### The contract itself

Contracts, licenses or permits set out the terms and conditions associated with the right to explore or exploit natural resources. Transparency of these terms is key.

**13** **Disclose contracts.** Governments should disclose, for each project, the full text of the main agreement, as well as annexes and amendments. They should connect this with other related ancillary agreements, permits, approvals and studies that may add additional rights or obligations to an extractive project. Ideally, this should bring together different information and processes to make it useful. Examples: Rondas Mexico website, CNH (Mexico); Philippines; Sierra Leone; the Democratic Republic of Congo (DRC); Guinea; Mongolia.

### Implementation

During the implementation stage, it is critical to release timely, accessible information disaggregated at the level of individual extractive projects to enable scrutiny of government and company compliance with the rules.

**14** **Disclose investment, production and reserves.** Governments should disclose regularly updated information regarding reserves, investment, exploration and production, on a project-by-project basis. Example: Norwegian Petroleum Directorate’s “Factpages.”

**15** **Disclose revenues and benefits.** Governments should produce project-level disclosures in line with EITI requirements, ideally mainstreamed into government systems rather than standalone reporting. These disclosures should include payment and benefit flows broken down to the level of greatest relevance to citizens. Example: GoSL Online Repository, Sierra Leone.

**16** **Track and disclose contract compliance.** Government should publish project-level data on commercial, social and environmental outcomes against project-level rules to track compliance. Examples: AER (Canada); CNH (Mexico).

# Open Contracting for Oil, Gas and Mining Rights

Transparency in the allocation and management of oil, gas and mining rights can improve industry engagement, competition and civic trust. These recommendations and good practice examples show how governments are making a difference.



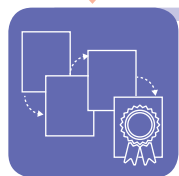
## THINK ABOUT THE BIG PICTURE

To those who lack an understanding of the wider legal and regulatory processes and players who oversee the granting of resource rights, information can appear jumbled and confusing.



## PLANNING

Shortcomings in planning can undermine the whole contracting chain and can result in huge losses later on.



## ALLOCATION & AWARD

Allocation processes may range from highly visible competitive bid rounds to routine non-competitive rolling applications. Some basic transparency requirements apply in all cases.

7

### Communicate early that allocation is happening.

Ensure that communications are early, clear, and target local stakeholders, not just the international business media.



Example: CNH Mexico.

8

### Publish the rules of the game.

Publish overall rules for the process including timelines, application requirements and the criteria used to assess companies.



Examples: Minerals Permits website, New Zealand; Ronda Colombia 2014 website, ANH Colombia; Norwegian Petroleum Information Portal.



## THE CONTRACT

Transparency of contracts, licenses or permits is key because these documents set out the terms and conditions linked to the right to explore or exploit natural resources.

13

### Disclose contracts.

For each project, disclose the full text of the main agreement, as well as annexes and amendments, and connect this with other related agreements, permits, approvals and studies.



Examples: Ronda Mexico website, CNH Mexico; Philippines; Sierra Leone; DRC; Guinea; Mongolia.





1

**Use joined-up information to explain the contracting system in full.**

Bring together information often from multiple sources to explain the range of rules, processes and players and how they relate to each other.



Examples: CommonGround website, New South Wales (Australia); Rondas Mexico website, CNH Mexico.

2

**Reconcile information needs of companies and citizens.**

Consult widely to avoid a situation where information disclosure is overwhelmingly designed for one stakeholder group.



Example: Regulatory Excellence Initiative, Alberta Energy Regulator. (Canada)

3

**Communicate who the decision-makers are.**

Disclose the identity of decision-makers responsible at each stage of the contracting process.



Examples: Public Zone website, Oil and Gas Commission, British Columbia (Canada); Rondas Mexico website, CNH Mexico.

4

**Disclose information about the geographical areas to be opened up to extractive industry contracting and why.**

Disclose information about the process for deciding whether to open new areas to extractive activity as well as clarity on the boundaries of those areas.



Example: Norway.

5

**Reconcile sub-surface and surface rights and the needs of their users.**

Allow all stakeholders to identify and reconcile overlaps existing between their sub-surface and surface rights and needs.



Example: CommonGround website, New South Wales.

6

**Publicly explain the choice between different allocation methods and how they apply in different situations.**

Where multiple types of allocation processes can be used, clarify which allocation approach applies in a given area.



Example: Petroleum and Minerals website, New Zealand.

9

**Disclose who stands to benefit.**

Publish the names of all companies applying for rights along with information about their beneficial owners. This should be used to screen applicants for conflicts of interest and corruption risks.



Examples: Sierra Leone; Lebanon

10

**Disclose regulator engagement with prospective companies.**

Disclose regulator engagement with prospective companies as well as all queries and clarifications.



Examples: Ronda Colombia website 2014, ANH Colombia; Rondas Mexico website, CNH Mexico.

11

**Conduct and disclose consultative processes with communities.**

Disclose information about consultative processes with communities relating to the award of rights.



Examples: Northern Territory, Australia; Philippines; Peru; Chile.

12

**Disclose allocation outcomes.**

Disclose key details about the awards, ideally alongside information justifying why and how certain decisions were made.



Examples: Zambia; CNH Mexico; Alberta Energy Regulator.

14

**IMPLEMENTATION**

Disclosure of implementation information disaggregated at the level of individual extractive projects is required for scrutiny of government and company compliance with the rules.



Example: Norwegian Petroleum Directorate's "Factpages".

15

**Disclose revenues and benefits.**

Produce project-level disclosures in line with EITI requirements, ideally mainstreamed into government systems rather than standalone reporting, and with payment and benefit flows broken down to level of greatest relevance to citizens.



Example: GoSL Online Repository, Sierra Leone.

16

**Track and disclose contract compliance.**

Publish project level data on commercial, social and environmental outcomes against project level rules to track compliance.



Examples: Alberta Energy Regulator; CNH, Mexico

# 1. Introduction

Open contracting is about improving government contracting processes by enabling citizens, governments and businesses to jointly identify risks, fix problems, and enhance results by publishing and using open, accessible, and timely information. (See Box 1 for more on open contracting.) In the allocation of extractive industries rights, where contracts<sup>2</sup> between governments and companies over publicly held natural resources might be worth billions of dollars, these efforts have so far largely focused on the outcomes of the allocation process, with a strong focus on the development of mineral and petroleum registries that indicate where rights have been awarded. Significantly less attention has been paid to the transparency of the processes by which contracts are awarded, the content of the contracts themselves and their implementation.

This report aims to fill these gaps by providing examples of good practice in transparency across the whole chain of events by which governments award oil, gas and mining contracts, starting with planning, moving on to allocation and award processes and finally considering the way that regulators communicate information about contract terms and their implementation. While many of our examples are drawn from OECD countries with highly developed extractive industries, such as Mexico, Norway, Australia and Canada, we also see that important steps being taken by non-OECD and “frontier” extractive jurisdictions such as the Philippines, Lebanon and Sierra Leone. Regardless of the level of regulatory development and industry experience, our results show that no single country excels in all areas.

The appetite to open up rights allocation processes of the extractive sector is clear. The governments of Ghana and Mexico have already made commitments to take an open contracting approach in their extractive industries, and several more are interested in following suit.<sup>3</sup> The Extractive Industries Transparency Initiative (EITI) standard requires several disclosures around the contracting and licensing process, and the EITI open data policy encourages implementing countries to incorporate these into ongoing government and corporate reporting systems, rather than relying on annual EITI reports.<sup>4</sup> Policy organizations and civil society are already exploring ways to help,<sup>5</sup> and global initiatives such as the Open Government Partnership (OGP) are providing the space for governments and citizens to discuss these initiatives in more detail. With so many governments, citizens and private sector actors asking for examples of good practice, it is our hope that this report can help meet these demands. (See Section 1.4 for more on potential users of this report.)

2 This report largely uses the terms “contracts,” “permits” and “licenses” interchangeably. There are, of course, some potential material differences between them, which are addressed in Section 1.2 below.

3 “Anti-Corruption Summit: country statements”, Anti-Corruption Summit: London 2016, last modified 12 May 2016, [www.gov.uk/government/topical-events/anti-corruption-summit-london-2016](http://www.gov.uk/government/topical-events/anti-corruption-summit-london-2016).

4 “Systematic disclosure, Mainstreaming the EITI,” EITI, accessed 30 May 2018, [eiti.org/mainstreaming](http://eiti.org/mainstreaming).

5 The theme for the 2017 Africa Oil Governance Summit, for example, was “the role of open contracting for efficient negotiations and effective revenue utilizations.” See “3rd Africa Oil Governance Summit,” ACEP Ghana, last modified 7 October 2017, [www.africaoilsummit.org](http://www.africaoilsummit.org).

### Box 1. Introducing open contracting

There is strong emerging evidence that through open contracting—the process of making the planning, allocation and implementation of public contracts open by default—governments make better deals with taxpayers’ money, deter fraud and corruption, build trust with citizens and promote a more competitive and fairer business environment.

A growing field of policy and practice has developed around how best to deliver such openness, including the creation of a set of global open contracting principles agreed upon by governments, companies, civil society<sup>6</sup> and a non-proprietary Open Contracting Data Standard for sharing contracting information along the entire government contracting process.<sup>7</sup>

There has been growing global endorsement for this shift, with high-level support from the OECD, G20, the 2016 London Anti-Corruption Summit and the OGP.<sup>8</sup> Around 30 countries have made commitments, in fora such as the OGP, to implement open contracting, mostly in their public procurement processes.

In Ukraine, open contracting was put at the heart of the ProZorro public e-procurement reforms.<sup>9</sup> This helped the government increase competition, with thousands of new businesses now supplying the government and a halving of the perception of corruption by business. The step has led to savings of hundreds of millions of dollars (measured by comparing budgeted amounts to price paid), and ultimately better budgetary planning.<sup>10</sup>

A recent academic paper analyzing over four million public procurement contracts across Europe between 2006 and 2016 found robust evidence that increasing transparency lowers the risk of corruption, especially where there is proactive disclosure of information before or during the process rather than afterwards.<sup>11</sup> Similarly, a World Bank survey of 34,000 companies in 88 countries shows that competition was higher and kickbacks were fewer and smaller in places where transparent procurement, independent complaint mechanisms and external auditing are in place.<sup>12</sup>

The open contracting global principles are not sector specific, and their application to different sectors may require some adaptation, particularly for sectors and processes with a different approach than government procurement. This report aims to advance open contracting in the extractive industries by analyzing how improved transparency in the rights allocation process can be adapted to help improve governance of the oil and mining sectors.

6 “Global Principles for Open Contracting,” Open Contracting Partnership, accessed 7 October 2017, [www.open-contracting.org/get-started/global-principles](http://www.open-contracting.org/get-started/global-principles).

7 “Open Contracting Data Standard: Documentation”, Open Contracting Partnership, accessed 7 October 2017, [standard.open-contracting.org/latest/en/](http://standard.open-contracting.org/latest/en/).

8 Such as the OECD Principles for Enhancing Integrity in Public Procurement, G20 Principles for Promoting Integrity in Public Procurement, 2016 London Anti-Corruption Summit Communiqué, Paris Declaration of the Open Government Partnership.

9 For more on ProZorro, see: [www.open-contracting.org/2016/07/28/prozorro-volunteer-project-led-nation-wide-procurement-reform-ukraine](http://www.open-contracting.org/2016/07/28/prozorro-volunteer-project-led-nation-wide-procurement-reform-ukraine).

10 Detailed performance reports can be found at [www.open-contracting.org/2017/04/19/learning-insights-measuring-results-ukraine/](http://www.open-contracting.org/2017/04/19/learning-insights-measuring-results-ukraine/) and [www.open-contracting.org/2018/01/12/learning-insights-latest-impacts-emerging-ukraines-prozorro-reforms](http://www.open-contracting.org/2018/01/12/learning-insights-latest-impacts-emerging-ukraines-prozorro-reforms). Savings relative to budget have changed over time. They increased as competition improved and transaction costs decreased, but have reduced more recently as planning has improved. Not all budgetary savings may be realised, of course.

11 M. Bauhr, A. Czibik, M. Fazekas and J. de Fine Licht. “Lights on the Shadows of Public Procurement. Transparency in government contracting as an antidote to corruption?” DigiWhist, September 2017, [digiwhist.eu/publications/lights-on-the-shadows-of-public-procurement-transparency-in-government-contracting-as-an-antidote-to-corruption/](http://digiwhist.eu/publications/lights-on-the-shadows-of-public-procurement-transparency-in-government-contracting-as-an-antidote-to-corruption/).

12 S. Knack, N. Biletska and K. Kacker, “Deterring Kickbacks and Encouraging Entry in Public Procurement Markets Evidence from Firm Surveys in 88 Developing Countries,” Policy Research Working Paper 8078, World Bank Group, Washington DC, May 2017, [documents.worldbank.org/curated/en/817871496169519447/Deterring-kickbacks-and-encouraging-entry-in-public-procurement-markets-evidence-from-firm-surveys-in-88-developing-countries](http://documents.worldbank.org/curated/en/817871496169519447/Deterring-kickbacks-and-encouraging-entry-in-public-procurement-markets-evidence-from-firm-surveys-in-88-developing-countries).

## 1.1 MOVING FROM DISCLOSURE TO TRANSPARENCY

Our research for this report highlighted a tension between “disclosure” and “transparency.” While it is common for the two words to be used interchangeably, they can be in opposition: if one is looking for a specific piece of information that has been disclosed, then the disclosure of even more information without improving its “searchability” might actually make a situation less transparent, by burying the metaphorical needle in an even bigger haystack.

Many extractive industry disclosures contain two shortfalls in transparency. First, few countries have effectively integrated information about the diverse elements of regulation in the extractives sector. Most information relating to the management of extractive industries is managed in different agency silos, often using different data standards (if any), with little thought for how information should be shared between agencies and combined to facilitate use. Concerned citizens looking for answers to basic questions relating to how extractive industries may impact their lives (e.g.: where are the borders of the mining site? Who is held accountable in case of a spill? What requirements are there for employing locals?) are often left frustrated. As one interviewee noted of their national system: “Everything was disconnected. People had to go to multiple places to find out what they needed and to make sense of the data presented to them. What little content existed for the community was written in jargon or legalese.”<sup>13</sup>

Second, and related, is the fact that extractive industry disclosures tend to have a top-down design. This means that disclosures focus on what experts who are deeply involved in the sector believe should be public, rather than the information that broader national and local stakeholders actually want and/or need.<sup>14</sup> Governments often develop their transparency systems according to the need to attract investment, and transparency is thus usually built around technically complex issues such as delineation of resource rights, procedural issues and the collection of geological data. Although citizens may have access to these systems, the information almost exclusively addresses commercial questions rather than citizen queries.

Fortunately, these concerns are not falling on deaf ears. The EITI, which 50 countries around the world now implement, has recognized the need to expand its requirements beyond the original purpose of showing how much money companies paid to governments. It now links a range of important elements in open contracting, including a description of the legal framework governing extractive industries (requirement 2.1), information on the award or transfer of licenses (requirement 2.2), the need for a publicly available cadaster or register of licenses (requirement 2.3), a recommendation to publish the contract/license documents that govern the exploration and exploitation of oil gas and minerals (requirement 2.4) and a requirement to publish information about the beneficial owners of extractive industry projects (requirement 2.5). Furthermore, the requirement to disaggregate revenue payments at the level of individual extractive projects (requirement 4.7), means that EITI data will increasingly be useful to understand and scrutinize the implementation of extractive industry contracts.

**One interviewee said of the national system: “Everything was disconnected. People had to go to multiple places to find out what they needed and to make sense of the data presented to them. What little content existed for the community was written in jargon or legalese.”**

<sup>13</sup> Sefton Darby, research interview.

<sup>14</sup> J. Nash and D.E. Walters, “Public Engagement and Transparency in Regulation: A Field Guide to Regulatory Excellence”, Research paper prepared for the Penn Program on Regulation’s Best-in-Class Regulator Initiative, June 2015. Accessed on 7 October 2017, [www.law.upenn.edu/live/files/4709-nashwalters-ppr-researchpaper062015pdf](http://www.law.upenn.edu/live/files/4709-nashwalters-ppr-researchpaper062015pdf).



These changes are indicative of an awareness that most transparency efforts to date have focused on the outcomes of the extractive industry, for example payments or social and economic impacts, at the expense of information on the processes and participants of the system that bring about those outcomes. Yet, without an understanding of all three it is difficult for interested citizens to understand and engage with the sector.

## 1.2 CONTRACTS, PERMITS AND LICENSES

This report largely uses the terms “contracts,” “permits” and “licenses” interchangeably. While in general these documents play a similar role—in that they are all used to set out rights to explore for and/or exploit natural resources—and countries may use them together or in place of one another, there can be some important differences.

Contracts (sometimes also referred to as “agreements”) tend to be more detailed documents associated with regulatory systems that allow for greater negotiation around specific projects.<sup>15</sup> This is common where a country may not possess an adequate body of laws and regulations that would cover all aspects of the project or the project’s significance (e.g., potential to dominate the economy) and specificity (e.g., substantial infrastructure requirements such as construction of railways and ports) gives the investor sufficient leverage to negotiate a bespoke legal regime. In contrast, permits and licenses are likely to be shorter documents referencing a set of terms and conditions fixed by existing laws and regulations. They grant standard rights to a company and allow for less flexibility to negotiate terms.<sup>16</sup>

In this sense a country’s legal framework around extractives can be characterized as being more “law-driven” (relying on permits and licenses) or more “contract-driven.” Of course, this distinction is not always clear cut and most countries fall somewhere along the spectrum between being law-driven and contract-driven.<sup>17</sup> Further, terminology is not always consistently applied: in many instances, documents that people refer to as “licenses” or “permits” actually exhibit the characteristics of contracts, and vice versa. In this report, to avoid confusion we have used the word “contract” broadly, to refer to the range of documents that frame a company’s rights to explore and/or exploit natural resource assets. It is important to note that this should by no means be taken to suggest a preference for the contract-driven approach over the law-driven approach, and, in any event, the open contracting approach remains relevant regardless of the approach taken.

15 By way of example, see the series of legal agreements around the development of Azerbaijan’s offshore oil resources (notably Azeri-Chirag-Deepwater Gunashli) and the transportation of oil and gas through the Baku-Tbilisi-Cheyhan and South Caucasus Pipelines. These agreements, signed in the 1990s, cover not only commercial and work program obligations, but also fiscal considerations, environmental monitoring and regulation, local employment quotas, and human rights issues. In certain scenarios of contradiction between the contract and the laws of Azerbaijan, they even call for non-application of the laws to the project. A full list of the various agreements can be found at: [www.bp.com/en\\_az/caspian/aboutus/legalagreements.html](http://www.bp.com/en_az/caspian/aboutus/legalagreements.html).

16 See, for example, Australia’s list of government legislation for offshore oil development at [www.nopta.gov.au/legislation-and-compliance/index.html](http://www.nopta.gov.au/legislation-and-compliance/index.html).

17 For example, some countries use model contracts or licenses which are based on existing laws and regulations and spell out limited areas for customization and negotiation.

In terms of transparency, standalone agreements can appear superficially attractive, as, if disclosed, they can provide a comprehensive summary of how a project is to operate. However, they are often withheld from public scrutiny, giving the impression that every aspect of an investment is negotiable and secret. In contrast, the licenses and permits used in law-driven systems often contain little useful information and require interested citizens to trawl through pages and pages of laws and regulations to get a full picture. However, at least laws and regulations are more likely to be publicly available.

More broadly, contract-driven systems can create numerous risks from a governance perspective, including corruption in negotiation, the possibility that parties can agree to stabilization clauses that undermine future government reform efforts, and the potential for highly variable terms from one project to the next, which significantly complicates monitoring. More law-driven systems, in contrast, usually allow greater public input because the public is more likely to be able to participate in the legislative process than in individual contract negotiations. For these reasons a legal framework with comprehensive laws and regulations and less space for negotiation in individual contracts usually provides a stronger foundation for a country to manage its extractive industries.<sup>18</sup>

### 1.3 STRUCTURE OF THE REPORT

In an effort to advance transparency across the entire process by which rights are allocated, awarded and managed in the extractive industries, this report covers the following topics:

- Overarching issues including **the system** and **the actors** involved (Section 2)
- The **planning** process that informs the design of the allocation process, including considerations of which areas are available for exploration and exploitation (Section 3)
- The **allocation and award** process, whether it be through a competitive bid round/tender process, a rolling or first-come-first-served allocation process, or through more discretionary processes (Section 4)
- The **contract** document (Section 5)
- The **implementation** of the contract (Section 6)

Recommendations are set out at the end of each section of the report along with quick reference versions of the examples of good practice described in more detail in the section.

18 NRG, "Reader: Legal Framework: Navigating the Web of Laws and Contracts Governing Extractive Industries," March 2015, available at: [resourcegovernance.org/sites/default/files/documents/nrgi\\_primer\\_legal-framework.pdf](http://resourcegovernance.org/sites/default/files/documents/nrgi_primer_legal-framework.pdf).

We hope that organizing the report in this way will help users to understand and find relevant information. Nevertheless, it is important to note that in practice a holistic approach that transcends these categories and stages is the best way toward implementation. This is partly because these stages do not have precise borders, and aspects of each flow into others. But it is also due to the fact that end users of information do not necessarily understand the allocation process in this way. Indeed, as one interviewee noted: “What people wanted to know was, is there a lease over my house? Is there going to be drilling? What does having a lease actually mean? What rights do I have? What will the environmental and health impacts be?”<sup>19</sup> In effect, disclosure demands often cut across the various phases.

Finally, we must acknowledge that the exact flow of the stages may in reality be different and is influenced by industry practice. Allocation of exploitation rights is usually preceded by a permit for prospecting and/or exploration. In oil and gas, exploration and production rights are often awarded together, while in the mining industry, the separation between exploration and production is generally clearer (though holders of exploration rights may have a preference for obtaining production rights).

## 1.4 POTENTIAL USERS OF THIS REPORT

It is our hope that that this report can be a useful source of practical information for those wanting to improve the availability and usability of public information around the contracting process in the extractive industries. The examples contained within this report could inform:

- **Government officials and legislators who design allocation processes.** The most effective transparency approaches are usually built into the rules that govern the allocation process. Government officials (e.g., in sector ministries, the industry regulator or the cadastral office) and legislators can use this report for examples of how to incorporate greater transparency.
- **Government officials who oversee and approve awards and work to ensure company compliance with obligations.** Officials could use the examples in this report to identify ways to better communicate their award actions to the wider public. The examples relating to contracts and their implementation could be used by industry regulators to create greater transparency and usability of information around company compliance.
- **Oversight actors: Parliamentarians, civil society, journalists and citizens.** The examples in this report illustrate categories of information that oversight actors should be asking for in order to better understand the industry, find problems and fix them. These actors include interested citizens, including those affected by extractive projects, parliamentarians that represent them, civil society and journalists.

19 Sefton Darby, research interview.

- **EITI and OGP stakeholders.** Many of the examples in this report could help national and increasingly sub-national EITI processes as they seek to mainstream relevant EITI disclosure requirements (referenced in Section 1.1 above) into national governance and management systems. Similarly, national OGP processes can use these examples as a menu of potential transparency commitments.
- **Extractive company officials and investors.** Promoting a better business environment is an important aim of open contracting and companies should therefore be significant proponents of many of the approaches and examples included in this report. Companies are already important target audiences of disclosures (e.g., geological information and allocation process rules) and beneficiaries of open contracting (e.g., from more equitable competition). Company officials will also find it useful to draw upon some overarching themes of this report, such as the need to make information “joined-up” (see Section 2.2) and user-friendly, as they develop their own disclosure policies. Investors, including banks, international financial institutions (IFIs) and private equity firms may also use these examples to determine how well governments are responding to the informational needs of various stakeholders as part of risk assessment activities.

## 1.5 APPROACH TO RESEARCH

This report builds on earlier research on best practices for transparency in contract management carried out by NRGi for the National Hydrocarbons Commission of Mexico.<sup>20</sup> This report goes further to consider earlier stages of the contracting process, namely planning and allocation. Some sections of this report, particularly those on transparency of actors and on implementation of contracts, draw heavily on the original research. Detailed new research in this report complements the findings of the original research, including through interviews with practitioners and researchers in several different countries. These included both OECD countries (including Norway, Australia, Canada, Mexico and New Zealand) as well as non-OECD countries (including Colombia, Sierra Leone, Lebanon and the Philippines). We also reviewed data from the 2017 Resource Governance Index<sup>21</sup> and surveys of contracting processes in eight countries where NRGi has programs (the Democratic Republic of Congo, Indonesia, Myanmar, Nigeria, Peru, Tanzania, Tunisia and Uganda).

20 NRGi, “International Best Practices for Transparency in Contract Management” 2016, accessed 4 October 2017, [resourcegovernance.org/sites/default/files/documents/international-best-practices-contract-management-english.pdf](https://www.resourcegovernance.org/sites/default/files/documents/international-best-practices-contract-management-english.pdf).

21 NRGi, “2017 Resource Governance Index,” accessed 7 October 2017, [www.resourcegovernanceindex.org/](http://www.resourcegovernanceindex.org/).



The research also came across certain limitations and caveats:

- **“Good” practice does not always equal “best”:** The research has identified a number of examples of good practice, but has not ranked those practices against one another. As such, it should be noted that practices highlighted in this report are “good” relative to the jurisdictions that the research was able to cover, but they may not necessarily be best practice.
- **Low commodity prices:** A commodity price slump over the five years preceding the research for this report has led to fewer extractives investments and fewer government contracting processes. This means that the number of recent such processes available for review has been more limited than would otherwise be. The good news is that the premium on disclosure and transparency has risen as governments have sought to attract investment.
- **Focus on user-centered design:** Our research highlights good examples of user-centered disclosure and transparency and emphasizes how valuable it is. We have not conducted a detailed audit of how the information is being used, although we have highlighted preliminary evidence where available. This can be an area for valuable future research and hopefully, this report will awaken the appetite of others for this work too.

Finally, it is important to stress that transparent, accessible, user-friendly information does not equal good governance by itself. Transparency is a necessary part of a well-functioning governance environment, but it also requires effective rulemaking, strong institutions with the capacity to enforce the rules and a political environment that allows for policy reform and accountability. “Zombie transparency”—where governments may provide some information disclosure but stakeholders are actively deterred from using it—is already a problem in the extractive sector and the aim here is not to add to the problem.<sup>22</sup> Transparency can certainly help, but it is by no means a universal panacea for broader governance challenges.<sup>23</sup>

22 See “Zombie Transparency: Lessons from the Extractive Industries,” Aid Info Plus, available at [aidinfoplus.org/zombie-transparency-lessons-from-the-extractive-industries/](http://aidinfoplus.org/zombie-transparency-lessons-from-the-extractive-industries/).

23 For an overview of the broader questions in governance of extractive industry licensing processes, see Precept 3 of the Natural Resource Charter Benchmarking Framework, NRCI, 2015 pp.37-46, accessed 7 October 2017, [resourcegovernance.org/sites/default/files/documents/natural-resource-charter-benchmarking-framework-report-2017-web\\_0.pdf](http://resourcegovernance.org/sites/default/files/documents/natural-resource-charter-benchmarking-framework-report-2017-web_0.pdf).

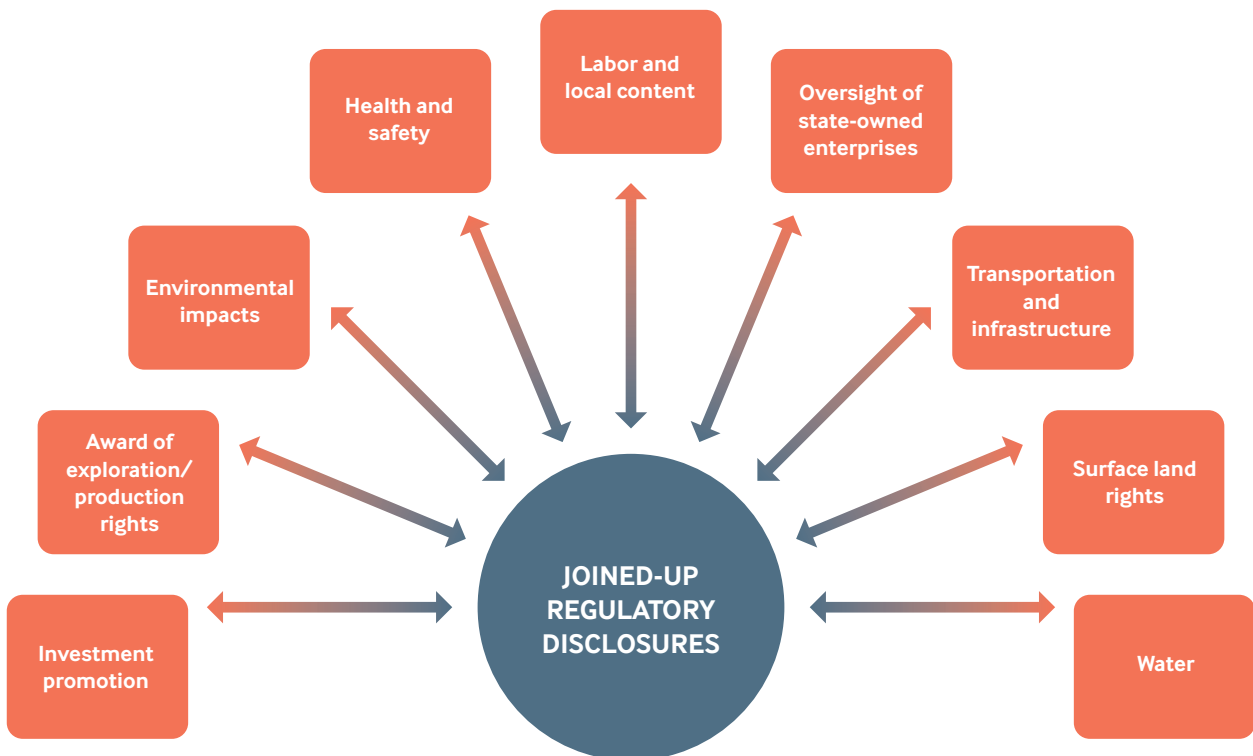
## 2. Overarching issues: The system and the actors involved

Efforts to make extractive industry rights allocation and management more transparent have tended to focus on the outcomes of the process. In contrast, governments and those who advise them have paid much less attention to transparency regarding the whole contracting system and the actors involved. This presents challenges for citizens who want to understand how extractive projects are selected, who makes decisions and who stands to benefit.

### 2.1 EXPLAINING THE SYSTEM

It is a relatively common practice for regulators to provide links to relevant legislation, regulation and guidelines outlining contracting processes, but given the technical and legal nature of these documents and sheer number of activities involved, this information is often only comprehensible to experts in the field. Regulators with more experience using transparency often provide factsheets on parts of the system that are most likely to be of public interest (e.g., overview of permitting, understanding the impacts of extractive activities on land access, and general overview of exploration and exploitation). Few regulators, though, go so far as to join up information about the various government regulatory functions involved in the sector's oversight. (See Figure 1.)

Figure 1. Integrated information management and disclosures around rights allocation and implementation



Amidst a range of institutions with varied roles, the sector regulator may be the government body with the broadest view of the industry as a whole, though even its scope often has limits. While such government bodies will most likely have maps of license areas and an overview of extractive activity, they tend to have and to provide limited information on the actions and engagement of other regulators. To get information from various regulators, users typically need to navigate multiple websites, clicking different links, some of which will be either broken or unavailable, or will direct users to online forms to request additional information, which may or may not receive a response. This complicated and cumbersome “user journey” would be unacceptable in online commerce. In online sales terms, the rate of “cart abandonment” is probably very high among members of the public wishing to obtain information about an extractive project.

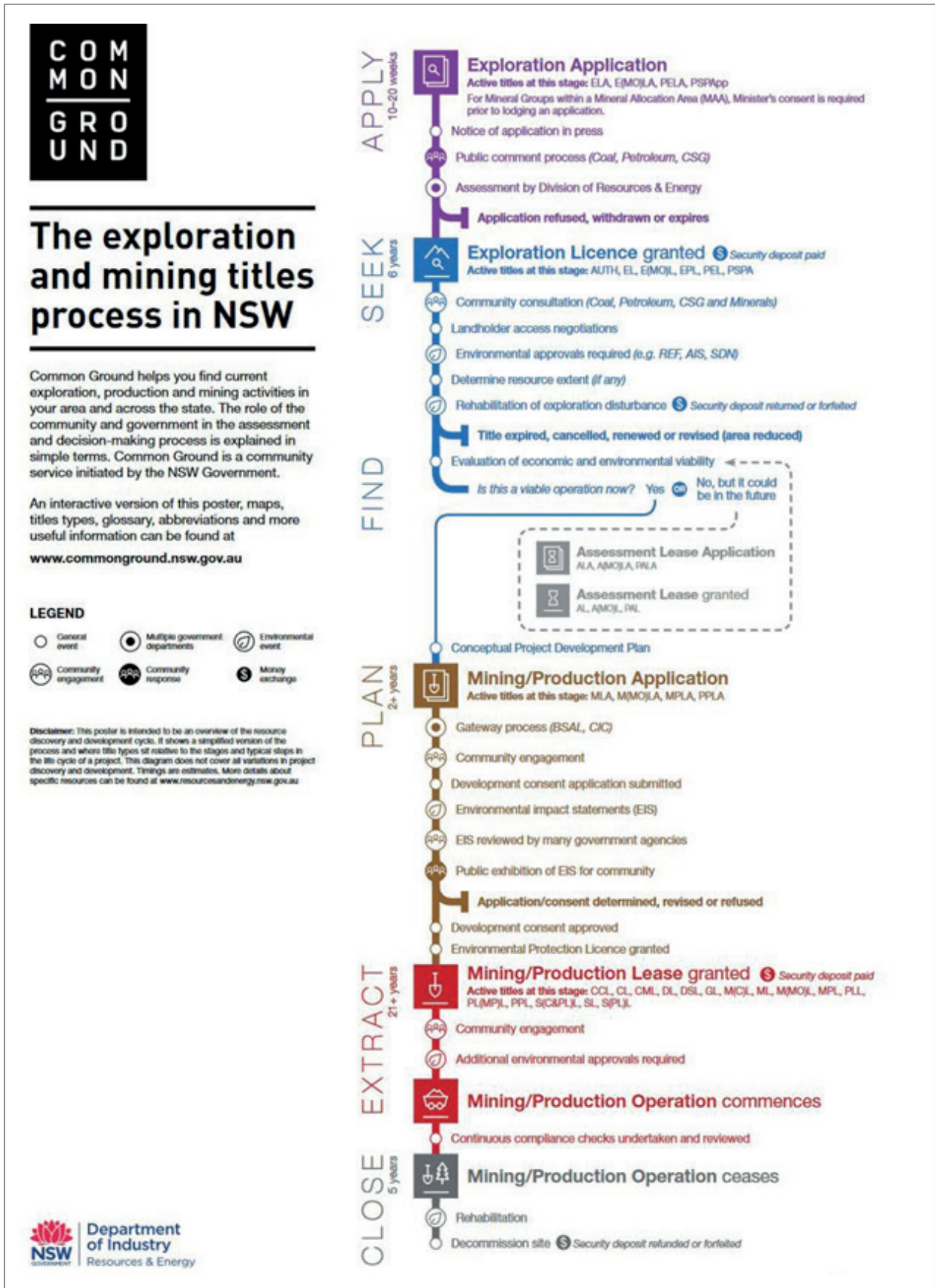
A small number of governments have recognized this predicament and have made specific efforts to make the overall system as transparent as possible. This includes providing resources that explain all the different regulatory processes and how they fit together, as well as cutting through the thicket of dense terminology in the sector. As one regulator puts it, “We were always transparent. But our focus was highly technical. Citizens understood that we had to do technical work (assessments, studies and so on) and that we reported on outcomes. But the thing they didn’t understand was the processes in which these decisions were embedded. Explaining these processes gives us a path to confidence.”<sup>24</sup>

The Common Ground website provides a tangible example of how to explain the license allocation system. A state-level regulator in Australia—the New South Wales Department of Industry (Resources and Energy)—developed the site to help the public obtain information about resource exploration and production in the state. Put together in collaboration with communities, industry and government, the site has interactive maps on industry activities and easily accessible information about the various stages of the industry, where decisions are made and when community engagement takes place. (See Figure 2.) Importantly, information is contextualized, so users get not only the outcome, but also a sense of the framework in which it is situated.

**“We were always transparent. But our focus was highly technical. Citizens understood that we had to do technical work (assessments, studies and so on) and that we reported on outcomes. But the thing they didn’t understand was the processes in which these decisions were embedded. Explaining these processes gives us a path to confidence.”**

24 Interview with an AER official, 17 November 2017.

Figure 2. Common Ground overview of the New South Wales contracting system





## 2.2 PRESENTING SYSTEM INFORMATION IN A JOINED-UP MANNER

It is important to differentiate the design of regulatory structures from how governments present their functions to the public. While different agencies have different responsibilities and lines of political accountability (see Box 2), this does not preclude all concerned agencies from coordinating to present information in a way that supports a coherent, orderly flow of information about the administrative processes, outcomes and actors in resource extraction. This so-called joined-up information allows users to see how one piece of information fits with others in the broader context, including in the bigger picture of the overall national or local strategy for natural resource management.

If there are, for example, five different regulatory agencies with responsibilities for administering a particular project, then being able to access key information in one place rather than five would be an enormous step forward (and one that few governments appear to have taken). While government agencies will continue to exist and function as separate entities with their own legislation, resources and lines of accountability, it should be possible to pull the different strands from the different agencies together in a single place for particular activities or projects. (See Figure 1 for an example.) This would involve:

- Mapping out the roles and remits of all of the different agencies involved
- Engaging with community members in areas near exploration and production activity to determine their priorities for transparency and information use
- Identifying incentives for various agencies and government departments to pool their public-facing information management
- Agreeing on a phased approach of disclosure and a realistic schedule for updates

A leading example of a joined-up information system is the Rondas Mexico website, which presents information on petroleum bid rounds in Mexico.<sup>25</sup> The portal presents a relatively seamless interface, through which users can find a range of information about the rights allocation process, access contract documents and view project-level disclosures on the industry's commercial, environmental and social outcomes. This involves cooperation between various agencies, including the energy ministry (SENER), the finance ministry (SHCP), the Mexican Oil Fund (FMP), the Safety, Energy and Environment Agency (ASEA) and the CNH.

**While different agencies have different responsibilities and lines of political accountability, this does not preclude all concerned agencies from coordinating to present information in a way that supports a coherent, orderly flow of information about the administrative processes, outcomes and actors in resource extraction.**

25 "Rondas Mexico," accessed on 15 December 2017, [rondasmexico.gob.mx](http://rondasmexico.gob.mx).

## Box 2. Tradeoffs around regulatory design

Some approaches to joined-up information can result in trade-offs for regulatory effectiveness. It can be tempting for governments to establish “one-stop shop” regulatory bodies that bring the full range of regulatory roles into one institution or a super-regulator to oversee all others. Both can work but combining some roles can also increase the likelihood of conflicts of interest. A super-regulator that expends effort attracting a new investor might, for example, find it very difficult to then reject or publish information about a sub-standard bid or permit application, especially if it is not in competition with others. All organizations respond to priorities and to their “hierarchy of needs,” so a regulator that has spent months considering and eventually granting a resource right might be hesitant to then disclose information about non-compliance by that company.

Governments that choose to maintain regulatory independence can still link information from different regulators for disclosure. Other options include appointing “sherpas” or project managers to help companies and the public negotiate regulatory processes<sup>26</sup> or establishing a requirement for “annual review meetings” around major projects in which companies present their operational plans to different central and local government regulators.<sup>27</sup>

## 2.3 SPEAKING TO ALL AUDIENCES

Companies need fast access to highly technical information; non-technical audiences may need clear and user-friendly information. Those providing information need to meet both requirements. As one interviewee noted though, it is easy for the information to get skewed by immediate needs of business.<sup>28</sup> There is no simple answer for how to meet these competing demands, but it is critical to develop an approach that is seen as locally legitimate. Even if the level of transparency is high, disclosures that are seen to be driven by the needs of one group above all others risk damaging public trust.

The AER, which regulates the implementation of contracts but is not involved in the allocation and award process, is an interesting example of creating a regulatory system that speaks to all audiences. Very early in its existence the AER sought to define the meaning of being an “excellent” regulator. As part of that approach, AER held a public design tender for a Regulatory Excellence Initiative.<sup>29</sup> The University of Pennsylvania won this and led a participatory process including consultations with indigenous people, AER employees and various stakeholders (e.g., landowners, oil and gas companies, industry associations, nongovernmental organizations and different levels of government). AER made the process and results of the consultation process public<sup>30</sup> and the AER continues to carry out public polling and stakeholder surveys (including with staff) to measure perceived levels of transparency and trust. The results are telling. The most recent AER annual

26 For example, Canada’s federal government has a standalone Major Projects Office that guides projects of a certain size through the various regulatory processes they must pass. See [mpmo.gc.ca/home](http://mpmo.gc.ca/home).

27 Section 11.8 of New Zealand’s Minerals Programme 2013 describes the annual review meeting process in greater detail. See [www.nzpam.govt.nz/assets/Uploads/our-industry/rules-regulations/minerals-programme-2013.pdf](http://www.nzpam.govt.nz/assets/Uploads/our-industry/rules-regulations/minerals-programme-2013.pdf).

28 In this case they were referring to a particular regulator’s transparency program being almost entirely driven by a desire to attract greater foreign investment.

29 Also referred to in some places as the Best-in-Class Regulation Project. See [aer.ca/about-aer/spotlight-on/regulatory-excellence-initiative](http://aer.ca/about-aer/spotlight-on/regulatory-excellence-initiative).

30 AER, “What We Heard – Province Wide Feedback on the Alberta Model for Regulatory Excellence,” April 2016, accessed on 15 November 2017, [aer.ca/documents/about-us/RegulatoryExcellence\\_WhatWeHeard.PDF](http://aer.ca/documents/about-us/RegulatoryExcellence_WhatWeHeard.PDF).

report notes 82 percent of Albertans and 77 percent of stakeholders expressed confidence in the AER.<sup>31</sup>

What is notable about the AER model is the recognition that effective and transparent regulation is not just about open structures, processes and outcomes, but also about the *culture and behavior* of those involved. Transparency and trust depend on inputs such as consultation and dialogue as well as on outputs such as disclosures. The Regulatory Excellence Model has that cultural commitment to transparency woven throughout. The heart of the model has three “core attributes”: utmost integrity, empathetic engagement, and stellar competence. Those attributes are then broken down into nine “tenets of regulatory excellence” that are to be put into practice in particular policies or outcomes. Figure 3 presents the three tenets under the “empathetic engagement” heading, which are particularly relevant to the subject of this report. As described in further detail later, AER officials have internalized the transparency approach, pointing out that the benefits of a transparent regulator are clear, notwithstanding associated challenges, as a strong regulator is part of the path to a strong social license to operate.<sup>32,33</sup>

**Transparent regulation is not just about open structures, processes and outcomes, but also about the *culture and behavior* of those involved.**

*An excellent regulator engages empathically with all segments of society when making decisions and exercising authority.*

**4. Even-handedness:** An excellent regulator engages fairly with all affected interests, recognizing that sometimes even-handedness will require affirmative outreach to ensure that otherwise poorly represented views are adequately heard.

**5. Listening:** An excellent regulator hears what everyone who has values or interests at stake in its decisions has to say, seeking to understand how its decisions will affect others and trying to make decisions that benefit from the different knowledge distributed throughout society.

**6. Responsiveness:** An excellent regulator responds to concerns and explains its decisions fully and sincerely, being transparent not merely by providing access to information but also by giving reasons for its actions (including decisions not to act) and addressing all important arguments for and against its chosen course of action.

**Figure 3. Selected tenets of regulatory excellence from the AER**

31 AER, 16/17 Annual Report, p.11, accessed on 15 November 2017, [www1.aer.ca/annualreport/](http://www1.aer.ca/annualreport/)

32 Interview with an AER official, 17 November 2017.

33 Adapted from C. Coglianese, “Listening, Learning, Leading – A Framework for Regulatory Excellence,” accessed on 31 May 2018, [www.law.upenn.edu/live/files/4946-pprfinalconvenersreportpdf](http://www.law.upenn.edu/live/files/4946-pprfinalconvenersreportpdf),

## 2.4 TRANSPARENCY OF DECISION-MAKERS

While transparency of the system will help stakeholders understand how all the different parts of the contracting process fit together, the picture will not be complete without transparency regarding the key actors at each stage. Allegations of conflicts of interest regarding regulators' decision-making powers often top lists of public concerns.<sup>34</sup> Providing transparency of who makes decisions at each stage of a contracting process and who stands to benefit from those decisions is important for public trust. It is also critical to identifying potential corruption risks surrounding the allocation, award and implementation of contracts.

While many regulators provide information on the steps involved in various approval processes, as well as lists of agencies and their roles, they rarely identify the specific officials responsible for approving or monitoring a particular regulation, budget, or contract. There are good reasons not to identify specific officials at certain stages in an approval process, especially to prevent influence peddling. However, once an official has issued an approval, the public has a strong interest in knowing who was responsible for the decision.

Knowing that their role in decision-making and monitoring processes will be made public should incentivize officials to follow proper procedures and to act in the public interest. Likewise, these disclosures should help increase public confidence that potential conflicts of interest can be identified and assessed. Any protocols that are in place to manage conflicts of interest should also be disclosed.

A good example comes from British Columbia, where the website of the Oil and Gas Commission features a "public zone"<sup>35</sup> that serves as a centralized source for citizens seeking information about projects. The approval documents for most projects include the name of the responsible decision-maker. (See Figure 4.) The disclosures also include the nature of the individual's decision-making authority, such as "statutory decision-maker" or "commission-delegated decision-maker." Mexico's CNH, for example, not only publishes the schedules and agendas of the meetings where commissioners will decide whether to grant licenses, it also provides details about the commissioners, including their financial interests.<sup>36</sup>

**Providing transparency of who makes decisions at each stage of a contracting process and who stands to benefit from those decisions is important for public trust.**

34 For a practical overview of markers of corruption risks in extractive sector licensing see Aaron Sayne, Alexandra Gillies and Andrew Watkins, "Twelve Red Flags: Corruption Risks in the Award of Extractive Sector Licenses and Contracts," NRG, 2017, accessed 10 October 2017, [resourcegovernance.org/analysis-tools/publications/twelve-red-flags-corruption-risks-award-extractive-sector-licenses-and](http://resourcegovernance.org/analysis-tools/publications/twelve-red-flags-corruption-risks-award-extractive-sector-licenses-and). See also, Transparency International, *Combatting Corruption in Mining Approvals: Assessing the Risks in 18 Resource-Rich Countries* (Transparency International, 2017), accessed on 28 December 2018, [www.transparency.org/whatwedo/publication/combating\\_corruption\\_in\\_mining\\_approvals](http://www.transparency.org/whatwedo/publication/combating_corruption_in_mining_approvals)

35 "Public Zone" British Columbia Oil and Gas Commission, [www.bcogc.ca/public-zone](http://www.bcogc.ca/public-zone).

36 See [transparencia.cnh.gob.mx/home/declaracion-de-intereses/index.html](http://transparencia.cnh.gob.mx/home/declaracion-de-intereses/index.html). This page shows a map of the block being offered, the names of the officials in charge and access to additional data and information, [rondasmexico.gob.mx/r2-102-bloques](http://rondasmexico.gob.mx/r2-102-bloques).

The screenshot displays the British Columbia Oil and Gas Commission website for the Pacific Trails Pipeline project. The page features a navigation menu at the top with options like 'Home', 'Online Services', 'FAQs', and 'Support'. Below the navigation, there are tabs for 'Public Zone', 'Industry Zone', 'Legislation', 'About Us', 'Careers', and 'What's New'. The main content area is titled 'Pacific Trails Pipeline' and includes a 'Project Overview' section stating it is a proposed 463-kilometre, 42-inch natural gas pipeline. It also lists the 'Reponent(s)' as Chevron and 'Associated Infrastructure' as Kitimat LNG Facility. On the right side, there are three lists of approved permits: 'APPROVED PROJECT PERMITS', 'APPROVED ROAD PERMITS', and 'APPROVED WATER ACT AUTHORIZATIONS'. A red arrow originates from the 'APPROVED PROJECT PERMITS' list and points to a signature on a permit document. The permit document includes details such as the permit number (0700505), the date (September 13, 2013), and the authorized signatory, Paul Jeakins, Commissioner. It also lists conditions and contact information for Scott Land & Lease Co. Ltd.

Figure 4. The British Columbia Oil and Gas Commission’s “public zone” feature discloses decision-makers



## 2.5 TRANSPARENCY OF BENEFICIARIES: BENEFICIAL OWNERSHIP

Secret ownership structures enable some extractive companies to hide improper relationships with government officials or evade tax payments. Publishing information about companies’ “beneficial owners”—the individuals that ultimately control or profit from the company—can help to deter such practices and enable detection. For example, beneficial ownership disclosure can help identify the use of shell companies located in tax havens or reveal an oil company owned by someone in government who can influence the allocation process receives a valuable contract.

A successful beneficial ownership disclosure framework would collect information at the time of application or prequalification and use this information to screen and disqualify applications that report false information or present clear corruption risks. Decision-makers would scrutinize problematic beneficial ownership structures as part of the decision to make an award. Section 4 presents further details on beneficial ownership transparency, including recommendations and examples of good practice (Section 4.3 in particular).

## 2.6 RECOMMENDATIONS

Type of information	Recommendation	Example of good practice
Using joined-up information to explain the contracting system in full	Government should provide resources that explain all of the many regulatory processes surrounding contracting, bringing together information from multiple agencies as necessary, and presenting this in a joined-up manner.	<p>The New South Wales (Australia) Common Ground website has maps and situates the entire mining licensing process with easily accessible information about the various stages of the award process, including when and how decisions will be made and when and how community engagement takes place.</p> <p><a href="http://commonground.nsw.gov.au">commonground.nsw.gov.au</a></p> <p>Rondas Mexico presents a seamless interface through which users can find a range of information about the licensing/contracting process for petroleum contracts in Mexico. It brings together information from five government institutions.</p> <p><a href="http://rondasmexico.gob.mx">rondasmexico.gob.mx</a></p>
Reconciling information needs of companies and citizens	Governments should avoid designing information disclosure overwhelmingly for one stakeholder group, which can lead to people questioning the motives of the institution involved.	<p>The AER took a highly participatory approach to regulatory design with its Regulatory Excellence Initiative that included consultation with various stakeholders. It focused on culture and behavior of the regulatory team. The agency continues to carry out public polling and stakeholder surveys to measure perceived levels of transparency and trust in the institution.</p> <p><a href="http://www.aer.ca/protecting-what-matters/reporting-on-our-progress/defining-regulatory-excellence">www.aer.ca/protecting-what-matters/reporting-on-our-progress/defining-regulatory-excellence</a></p>
Disclosure of decision-makers	<p>Governments should disclose the identity of decision-makers responsible for:</p> <ul style="list-style-type: none"> <li>• Planning and making policy around contract allocation and implementation processes</li> <li>• Approving contracts, including any material deviations</li> <li>• Monitoring compliance with contracts</li> </ul>	<p>The British Columbia Oil and Gas Commission’s “Public Zone” discloses approval documents, including the name of the responsible decision-maker and the nature of his or her decision-making authority.</p> <p><a href="http://www.bcogc.ca/public-zone">www.bcogc.ca/public-zone</a></p> <p>Mexico’s CNH provides details about the commissioners who approve or deny applications, including their interests.</p> <p><a href="http://transparencia.cnh.gob.mx/home/declaracion-de-intereses/index.html">transparencia.cnh.gob.mx/home/declaracion-de-intereses/index.html</a></p>

## 3. Planning

As with any process, the planning stage of contracting for extractive resources is critical because shortcomings here will negatively impact all subsequent stages of the contracting process. Lack of early engagement with relevant stakeholders such as local communities whom the project will impact can be corrosive for the future relationship and damaging to the project, including financially. One study involving a mining investment of USD 3 billion to USD 5 billion estimated the cost of local disruption and conflict to be up to USD 20 million a week.<sup>37</sup>

Planning should establish the overarching objectives for the entire contracting process and management of a natural resource endowment as a whole. In a well-functioning system, these tend to center around two imperatives. Governments want to attract the best companies with the highest likelihood of successfully developing subsoil assets and bringing benefits to the country and the local community through tax revenues, supply chain linkages and jobs.<sup>38</sup> But governments also need to make sure that the adverse environmental and social impacts associated with extraction do not outweigh the benefits.

To attract potential investors, governments seek to build a better picture of the resource base by collecting and publishing existing geological information or by investing in new surveys to generate new geological data. To make sure that the negative impacts of extraction do not outweigh the benefits, ideally governments carry out some form of assessment of the overall costs and benefits of opening up new areas to resource contracting. Most also build registries and cadastral systems to understand surface and subsurface ownership and access rights in the areas under question. Alongside these efforts, the planning stage is also the time for governments to make big picture decisions about how they will allocate permit areas and what regulatory systems should manage projects when they commence.

With so many important decisions to make, governments should place consultation, engagement and transparency at the center of any planning activities. Yet, they often only consider these factors as an afterthought. The subsections below address some of these key planning stage decisions and the associated transparency priorities.

### 3.1 OPENING NEW AREAS TO EXTRACTIVE ACTIVITY

Extractive industry projects can bring many benefits but they can also be highly disruptive. Given the potentially significant impact of these decisions, transparency over the decision to open new areas to extraction is critical. In addition to the outcome of any decision, governments need to lay out clear criteria to inform that decision, including information about who makes the decision, who will be consulted, how and when, and a full report justifying the process.

37 R. Davis and D. Franks, "Costs of Company-Community Conflict in the Extractive Sector," Corporate Social Responsibility Initiative Report No. 66., Harvard Kennedy School, Cambridge, MA. Accessed 15 October 2017, [sites.hks.harvard.edu/m-rcbg/CSRI/research/Costs%20of%20Conflict\\_Davis%20%20Franks.pdf](https://sites.hks.harvard.edu/m-rcbg/CSRI/research/Costs%20of%20Conflict_Davis%20%20Franks.pdf).

38 And potentially also through infrastructure and social spending depending on the nature of the agreements.

Too often the decision to extract is made in a silo, driven solely by geological potential with little consideration of the negative environmental and social impacts and whether they might outweigh the projected positive benefits of extraction.<sup>39</sup>

It is common to seek industry views on what areas to open up to extractive activity, particularly since company workers are well placed to provide input on which locations they think are most promising for major exploration programs.<sup>40</sup> More participatory approaches that involve a full range of stakeholders, including local citizens, are rarer. In light of this, participatory impact assessments known as “strategic impact assessments”<sup>41</sup> are increasingly recognized by governance experts as the best way to determine whether an area should be opened up to extraction. The best impact assessments of this kind connect the various perspectives of different stakeholder groups and government institutions and support holistic resource development strategies that look at fiscal and non-fiscal costs and benefits of extraction.

Although not termed as a strategic impact assessment, Norway’s petroleum sector provides a compelling example of transparency around the decision and process for determining which areas are to be opened to extractive activity. The country’s overall approach to petroleum activity and high-level criteria for how to develop the sector is laid out in the “10 oil commandments” from 1971 and a more recent white paper (2011)<sup>42</sup> that the government presented to Norway’s parliament. Commandment 4 regarding protection of nature and Commandment 9 regarding special treatment of certain regions given “special socio-political considerations,” are particularly relevant to the question of which areas should be open to extractive activity. The Norwegian process for “opening” new areas involves high levels of public engagement and consultation as part of a detailed geological and environmental assessment by the government before any bid rounds are conducted.<sup>43</sup> Decisions on whether to open a new area for exploration are subject to public consultation. The government presents proposals to the parliament along with a public report explaining the proposal,<sup>44</sup> and the final decision rests with the parliament.<sup>45</sup>

**Participatory impact assessments known as “strategic impact assessments” are increasingly recognized by governance experts as the best way to determine whether an area should be opened up to extraction.**

39 For more on environmental information disclosure in the natural resource sector, see OGP Openness in Natural Resources Working Group, “Issue Brief: Disclosing environmental information in the natural resource sector,” February 2016: [www.opengovpartnership.org/sites/default/files/FIN%20OGP%20Issue%20Brief%20Env%20Disc.pdf](http://www.opengovpartnership.org/sites/default/files/FIN%20OGP%20Issue%20Brief%20Env%20Disc.pdf).

40 These sorts of nomination processes can be found in countries such as Australia, Brazil, Colombia, Norway and New Zealand. See Table 6.1 in Brathwaite and Jarquin, “The Role of Information in the Allocation of Petroleum Exploration and Production Rights,” *Transparent Governance in an Age of Abundance*, IDB, 2014. An example of this kind of nomination process and the criteria to consider nominations can be seen at [www.petroleum-acreage.gov.au/2016/2017-nominations](http://www.petroleum-acreage.gov.au/2016/2017-nominations).

41 Strategic impact assessment (SIA) is a multi-disciplinary tool that evolved from the environmental impact assessment (EIA). Whereas EIAs are applied at the project level, SIAs are applied at the strategic level and consider the wider environmental, social and economic impacts of a particular policy or strategy. See “Strategic Impact Assessment,” *Sustainability Concepts*, accessed 8 October 2017, [www.gdrc.org/sustdev/concepts/21-sia.html](http://www.gdrc.org/sustdev/concepts/21-sia.html).

42 Ministry of Petroleum and Energy, “An industry for the future – Norway’s petroleum activity,” White Paper to the Storting, 2011, accessed 21 October 2017, [www.regjeringen.no/globalassets/upload/oed/petroleumsmeldingen\\_2011/oversettelse/2011-06\\_white-paper-on-petro-activities.pdf](http://www.regjeringen.no/globalassets/upload/oed/petroleumsmeldingen_2011/oversettelse/2011-06_white-paper-on-petro-activities.pdf).

43 Ministry of Petroleum and Energy, Chapter 6 “Management of unopened areas,” 2011.

44 Regulations prescribe that the report must address several elements, including an assessment of the impacts of opening the new licensing area, evaluation of the comments received during consultation, explanations of how the impacts of petroleum activities will be monitored and how to reduce and compensate for significant adverse effects of such activities. Chapter 2a of *Regulations – Petroleum Activities*, 22 June 1997, accessed 15 November 2017, [www.npd.no/en/Regulations/Regulations/Petroleum-activities/](http://www.npd.no/en/Regulations/Regulations/Petroleum-activities/).

45 “The Petroleum Act and The Licensing System,” *Norwegian Petroleum*, accessed 15 November 2017, [www.norskpetroleum.no/en/framework/the-petroleum-act-and-the-licensing-system/](http://www.norskpetroleum.no/en/framework/the-petroleum-act-and-the-licensing-system/).

### 3.2 RECONCILING SUBSOIL AND SURFACE RIGHTS

Potential overlaps between multiple subsoil and surface rights are of great interest to investors, who want to know risks associated with the tenure of potential project areas. They are also of interest to citizens who want to know if extractive activities could potentially conflict with their existing ownership and access rights to land, water or other assets.

Transparency around these issues faces two challenges. First, land registries handling information on surface rights tend to be separate from mining cadasters and petroleum registers, which handle information relevant to the extractive industries. This need not be problematic where data is standardized and good working relationships exist between the separate institutions. As this is often not the case, information silos form and the different categories fail to link. In some instances, where subnational authorities or a combination of institutions assign rights, these disconnects can be even greater.

The second challenge is that most cadastral systems are designed by a combination of information technology (IT) specialists, technical regulators and geologists who are primarily concerned with the technical aspects of extractives allocation rather than broader governance concerns. Recent NRGi research found that while having a license register or cadaster is increasingly common, having one that is publicly accessible is significantly less common.<sup>46</sup> Furthermore, even where web-based cadaster systems are public, prohibitive licensing agreements can prevent citizens from using and or reusing cadastral data (including by republishing on other websites), thereby inhibiting civic engagement and analysis of this information.<sup>47</sup> So, while the private sector and those with the technical know-how have been able to access rights information through engagement at cadastral offices, citizens are often left in the dark. This carries the significant danger that some overlapping rights and needs will only be realized once they directly conflict.

Indonesia's "One Map" policy provides a good example of how governments can improve public understanding of licensing and land use decisions that multiple authorities make. The policy seeks to create a single portal for all land uses and to make that data publicly accessible and shareable. This includes developing the Minerba One Map Indonesia ("MOMI") portal, which aims to integrate mining data from across the country. The government is carrying out the process in tandem with the "clean and clear" certification process, in which the Director General of Minerals and Coal has verified around 64 percent of the existing mining licenses to be free of competing claims. MOMI is still under development but will ultimately be publicly accessible.<sup>48</sup>

**Recent NRGi research found that while having a license register or cadaster is increasingly common, having one that is publicly accessible is significantly less common.**

46 A survey of eight countries (namely the Democratic Republic of Congo, Indonesia, Myanmar, Nigeria, Peru, Tanzania, Tunisia and Uganda) found that while seven of the countries maintain a cadaster of natural resource rights and licenses, only four of these are currently publicly accessible. This is generally in line with the Resource Governance Index (RGI) finding that over half of the 89 assessments had no publicly available registry of rights and license details.

47 For example, Trimble (formally Spatial Dimension), which supports the Landfolio cadaster system in 14 countries has a stock disclaimer that states, "Material from this website may not be republished (including republication on another website) ... without prior written permission from both the Ministry of [ministry name] and Trimble Land Administration. Furthermore, it may not be edited or otherwise modified; redistributed; or used for litigation purposes."

48 Indonesia EITI report, 2015, p.32-35, accessed 18 May 2018, [eiti.org/document/2015-indonesia-eiti-report](http://eiti.org/document/2015-indonesia-eiti-report).

Another good example is New South Wales' previously discussed Common Ground website.<sup>49</sup> This site had the aim of making information more easily accessible and understandable by changing the previous approach of using technocratic and specialized language. The New South Wales government produced the site after protests against a number of coal seam gas (CSG) exploration leases took place in 2010. Among the many exploration leases for CSG that the authorities had issued across New South Wales, one covered the majority of metropolitan Sydney—Australia's largest city and commercial hub. Most surprising was the fact that most people were unaware that CSG had leases over their property until the details of the leases were published in Sydney's largest newspaper.<sup>50</sup>

One key feature of Common Ground is a user-friendly map (see Figure 5 below) that shows various licenses and applications for licenses against layers of other information that were most relevant to people, including:

- Areas of *environmental concern*: reserves, parks, forests and World Heritage areas
- Areas of *concern to indigenous peoples*: native title areas, indigenous land agreement areas
- Areas of *administrative concern*: the boundaries of local councils
- Areas of *social and economic concern*: exclusion areas and strategic agricultural land areas

49 "Common Ground," NSW Government, Planning & Environment, accessed 18 May 2018, [commonground.nsw.gov.au](http://commonground.nsw.gov.au).

50 H. Aston, "Sydney's secret power grab," Sydney Morning Herald, 14 November 2010, [www.smh.com.au/environment/conservation/sydneys-secret-power-grab-20101113-17ru0.html](http://www.smh.com.au/environment/conservation/sydneys-secret-power-grab-20101113-17ru0.html).





### **Box 3. Competitive, non-competitive and hybrid allocation processes**

Some of the examples in this report come from countries primarily using competitive allocation processes (standalone tenders or regular bid rounds). This is often the product of the quality of geological information available. Competitive processes are considered the best option where significant geological data is available (either from the government or other companies) and companies believe exploration activities are more likely to move into production. Competitive processes are particularly relevant where (i) more than one company is likely to be interested in an area; and (ii) governments and potential investors are more likely to be able to estimate the value of a potential resource.

In many countries or areas though, production or geological information may be scarce or not immediately encouraging. In such “frontier” areas, the case for running competitive processes is significantly lower: there may be few investors in the marketplace (particularly with low commodity prices) and little geological information to inform a decision on how much to spend on a contract or permit (or whether to develop the resource). Competitive processes are also demanding to run, especially when making sure that they are fair and open to maximize bids.

Frontier areas are therefore more commonly allocated using non-competitive processes in which companies can apply for contracts over open areas at any given time and the first applicant meeting all requirements receives the right (i.e., first-come, first-served). This is particularly common in mining, as opposed to oil, since in mining it is generally more difficult to make robust inferences about the economic potential of exploration and long-term returns are lower.<sup>51</sup>

Accordingly, allocation systems, and their degree of competition, need to be appropriate to levels of geological information and commercial interest (sometimes influenced by political and market risk). There may be circumstances in which competitive processes are unrealistic, or a poor use of regulatory resources. Some countries choose hybrid systems for this reason. They use competitive allocation in areas where the risks are lower, bidders are likely to be more numerous and potential returns higher, and non-competitive processes in other areas.

There is a natural assumption that competitive processes are inherently more transparent than non-competitive processes, not least because disclosures from competitive processes are easier to manage. For example, annual bid rounds in the petroleum sector often have clear start and finish dates, with most disclosure happening simultaneously and linked to clear decision points in the allocation process.

Non-competitive allocation systems give the impression of less transparency because new permit applications and awards occur on a rolling (in some cases daily) basis, rather than in a more formalized manner. Building transparency measures into non-competitive systems is therefore even more important to counteract this impression.

51 B.C. Land, “The Similarities and Differences between Mining and Petroleum Investment: A Comparison of Investment Characteristics, Company Decisions and Host Government Regulation,” *Oil Gas & Energy Law (OGEL)*, Vol. 5 - issue 2, April 2007.

### 3.3 SELECTING BETWEEN DIFFERENT ALLOCATION PROCESSES

When deciding which allocation process to use, governments typically choose between non-competitive processes and competitive processes. Which is appropriate depends on various factors such as the level of geological information available, the amount of company interest this generates and the government's capacity to conduct a competitive process. (See Box 3.) These factors are not necessarily the same for all areas in a country and many countries therefore use multiple systems, with competitive processes applying in some areas and non-competitive in others.<sup>52</sup>

Where there is a mixture of allocation systems, there can be a high degree of discretion and opacity around the criteria and decision-making processes for determining which system applies to which areas. In some cases, uncertainty around the jurisdictions of different government entities risks creating alternative licensing processes that circumvent the normal systems. In DRC, for example, state-owned mining company Gécamines transferred a series of license interests to private partners, often without announcement, in practice sidestepping the mining law's main allocation system and undermining its safeguards against awarding a license inappropriately.<sup>53</sup>

Ensuring transparency around which allocation system applies in a given case ensures that allocation processes are clear to all while creating confidence that the government is not selecting non-competitive processes carelessly (or corruptly). Accordingly, where the government uses more than one allocation system, public safeguards and disclosure regimes should cover the rules and process for selecting which system applies to which areas (including accessible legislation, regulation guidelines or rules that determine this) and the results (e.g., a cadastral system that shows which systems applied to which areas).

New Zealand demonstrates relatively good practice for transparency to help navigate this mix of information. The country makes for an interesting example because it combines attempts to attract greater investment with a reputation for public openness and probity.<sup>54</sup> New Zealand's allocation system is also an interesting hybrid process, with different allocation methods applying to different commodities and to different areas.

In fact, New Zealand allows three different allocation processes for minerals:

- 1 Occasional competitive tenders over large areas
- 2 A “newly available acreage” process, which acts as a “mini-tender” for much smaller areas in prospective regions
- 3 A non-competitive (i.e., first come, first served) “acceptable work program offer” process for all other areas

**Where there is a mixture of allocation systems, risks can arise when there is a high degree of discretion and opacity around the criteria and decision-making processes for determining which system applies to which areas.**

52 In more than half of the 89 country sectors that the 2017 RGI assessed, the government used multiple types of processes. See [www.resourcegovernanceindex.org](http://www.resourcegovernanceindex.org).

53 See for example “Secretive plans to sell a lucrative Congolese mining asset raise further Congo corruption concerns,” Global Witness, 18 October 2013, [www.globalwitness.org/en-gb/archive/secretive-plans-sell-lucrative-congolese-mining-asset-raise-further-congo-corruption/](http://www.globalwitness.org/en-gb/archive/secretive-plans-sell-lucrative-congolese-mining-asset-raise-further-congo-corruption/).

54 New Zealand has never placed lower than fourth in Transparency International's Corruption Perceptions Index; it scores between the 97th and 100th percentile rank on all six of the World Bank's governance indicators. See [info.worldbank.org/governance/wgi/index.aspx#home](http://info.worldbank.org/governance/wgi/index.aspx#home).

In order to explain which allocation processes apply in a given case, in addition to the relevant legislation and regulations, the New Zealand Petroleum and Minerals website provides:

- Straightforward explanations of the three processes<sup>55</sup>
- Guidance documents on the processes and the differences between them<sup>56</sup>
- An online database that allows searchers to determine which allocation method applies to an area<sup>57</sup>

#### **Box 4. Managing geological information**

The geological bias of many existing allocation systems and regulators can be viewed as one of the root causes of the lack of transparency in the extractive industries. After all, planning, allocation, award and implementation are all largely structured around the presentation, collection and exploitation of increasing amounts of geological data. Most cadastral systems are highly inaccessible and fairly indigestible due to their design by a “difficult” combination of IT specialists, technical regulators, lawyers and geologists: a combination of professions that rarely ends in public enlightenment.

Transparency campaigners, in turn, have been slow to address stewardship of geological knowledge. Most extractives exploration ends in failure and the real return to the state in these circumstances is geological knowledge. Having a regulatory system that ensures that geological data from previous exploration is surrendered to the government in consistent formats is crucial to capturing the value of this knowledge for the state. While exploration expenditure that does not lead to production can be seen as a loss in one sense, it represents, over time, many billions of dollars’ worth of knowledge that the state could potentially leverage into better investments, better investors, lower costs and higher recoveries.

A key intervention for both the start (planning) and the end (implementation) of the overall allocation process is therefore to ensure data sharing and surrender in areas that companies explore but relinquish. Data standards need to be in place to ensure that companies provide information to the government in a format that can then be used and disclosed by the government to inform planning and allocation processes in the future.<sup>58</sup>

In fact, very few allocation systems appear to generate reports about what happened to permits/licenses which have been surrendered and therefore no longer show up on public maps. While (all being well) geological data may have been returned to the government and integrated into geological databases, there is a broader public interest in understanding whether areas have been previously explored, by whom, and what level of activity took place during those previous permits. Strikingly, we could not find an example of particularly strong practice in this area.

55 “Permit tiers and restrictions,” New Zealand Petroleum & Minerals, accessed 18 May 2018, [www.nzpam.govt.nz/permits/minerals/types/#tiers](http://www.nzpam.govt.nz/permits/minerals/types/#tiers).

56 “Minerals Guidelines,” New Zealand Petroleum & Minerals, accessed 18 May 2018, [www.nzpam.govt.nz/permits/minerals/guidelines/](http://www.nzpam.govt.nz/permits/minerals/guidelines/).

57 “NZP&M’s online permitting system,” New Zealand Petroleum & Minerals, accessed 18 May 2018, [permits.nzpam.govt.nz/aca/](http://permits.nzpam.govt.nz/aca/).

58 For example, in Australia, see National Offshore Petroleum Titles Administrator, “Guidelines for Reporting and Submission of Offshore Petroleum Data,” 2013, accessed 18 October 2017, [www.nopta.gov.au/reporting-and-data-submissions/docs/OPGSA-Data-Guidelines.pdf](http://www.nopta.gov.au/reporting-and-data-submissions/docs/OPGSA-Data-Guidelines.pdf).

### 3.4 RECOMMENDATIONS

Type of information	Recommendation	Example of good practice
Decisions around which areas should be opened to extractive industry contracting	Governments should disclose information about the process of deciding whether to open new areas to extractive activity. This should include criteria for making decisions; information about who makes the decisions, who will be consulted, how and when; information about the final decision including rationale and clarity on the boundaries of areas to be opened up.	Norway’s approach to detailed geological and environmental assessment, as well as the role of public consultation and parliament in approving new areas.  <a href="http://www.regjeringen.no/en/dokumenter/meld.-st.-28-20102011/id649699/sec6?q=barents">www.regjeringen.no/en/dokumenter/meld.-st.-28-20102011/id649699/sec6?q=barents</a>
Reconciling sub-surface and surface rights and uses	Governments should employ public, openly licensed and user-friendly systems to allow all stakeholders to identify and reconcile overlaps existing between sub-surface and surface rights.	The New South Wales (Australia) Common Ground website  <a href="http://commonground.nsw.gov.au">commonground.nsw.gov.au</a>
Selecting between different allocation processes	Governments should publish rules about which allocation approach applies in a given area (where multiple types of processes are used). This should include not just relevant legislation/regulation but also straightforward explanations.	New Zealand Petroleum and Minerals website  <a href="http://www.nzpam.govt.nz/permits/minerals/">www.nzpam.govt.nz/permits/minerals/</a>



## 4. Allocation and award of contracts and licenses

When people think about contracting in the extractive industry they usually think about the allocation and award process by which governments consider and evaluate applications for permits to explore or produce. Though there can be variation in the format of these procedures, which, as mentioned in Box 3 above, range from highly visible competitive bid rounds to routine non-competitive rolling applications, some basic transparency requirements hold in all cases.

It is critical to provide clear information on the “rules of the game,” and to provide evidence of how these rules are being followed. These disclosures are critical to build public trust: if citizens question the legitimacy of a contract’s allocation, they are unlikely to embrace the implementation that follows. Public disclosures are also highly important in building companies’ confidence that they are being treated fairly. As a result, the governments of several countries have emphasized transparency in their allocation and award process as a central tenet of their approach to attract high quality companies—often successfully.

### 4.1 ANNOUNCING THAT ALLOCATION IS HAPPENING

A basic transparency requirement is making people aware that an allocation process is taking place. In competitive bidding processes, this is relatively straightforward and usually involves a public announcement followed by a communication campaign to get the news out to interested parties.<sup>59</sup> While the imperative for licensing bodies is to attract investor or company interest, there is also an important public communication component,<sup>60</sup> and many countries require this by law.<sup>61</sup>

In non-competitive allocation processes, where applications are made on a rolling basis, it is important to clearly identify and communicate which areas of land could be subject to applications. Disclosures should be made at the point that a regulator receives an application,<sup>62</sup> not just at the point of award or decline. Such disclosures should ideally include all relevant application materials, such as those establishing the technical and financial capacity of the applicant.

59 See, for example, the recent announcement for the 24th licensing round on the Norwegian shelf [www.npd.no/en/news/News/2017/24th-licensing-round/](http://www.npd.no/en/news/News/2017/24th-licensing-round/).

60 It is important to note that communications around rights allocation processes need to strike a careful balance between awareness raising and expectations management. For more considerations on government communications strategies on resource development see Paul Collier, “Under Pressure,” *Finance and Development*, December 2013, Vol. 50, No. 4, accessed 9 July 2016, [www.imf.org/external/pubs/ft/fandd/2013/12/collier.htm](http://www.imf.org/external/pubs/ft/fandd/2013/12/collier.htm).

61 For example, see rules in Angola (Decree 48/06, art. 9) and Trinidad and Tobago (Petroleum Regulations (Deep Water Competitive Bidding) Order, 2013, cl.4(6)) on public communication regarding bids.

62 The Online Permitting System of New Zealand Petroleum and Minerals, for example, allows a public search that identified permit applications made on the same day as the search. The search provides additional information, including the type of application, the operator, the status of the application and, in some cases, additional supporting information. Accessed 22 November 2017 [permits.nzpam.govt.nz/aca/](http://permits.nzpam.govt.nz/aca/).

## 4.2 THE RULES OF THE GAME

As mentioned earlier, transparency of the allocation process covers not only the outcomes but also how the entire system works, including timelines and application requirements, the criteria against which companies are to be assessed and information about appeals processes. While it may seem obvious to publish this information, results of the recent Resource Governance Index (RGI) show that rules for licensing processes were not publicly available in just over a third of (32 of 89) jurisdictions covered.<sup>63</sup>

It is particularly important to be open around the criteria for evaluation and award. The choice and number of criteria can be an important factor in allocation system design (e.g., work program versus financial offer in competitive processes or what level to set capacity requirements in non-competitive processes), but that choice is largely beyond the scope of this report. Irrespective of the approach and criteria selected, it is important for criteria to be clear and to be applied in a transparent and non-discriminatory manner. This is central to the commercial credibility of the process.

One issue is that the technical and financial capacity criteria are often ambiguous. This can be particularly problematic in non-competitive processes where capacity criteria are one of the few methods for evaluation and need to be applicable for a wide range of potential projects. One good example of a response to this challenge comes from New Zealand, where the government has made a concerted effort to provide clear and publicly available guidelines around basic allocation criteria.<sup>64</sup>

Where bidding processes are used, bid round websites that share information, including timeframes, announcements and related information are useful portals for transparency for both companies and citizens. Colombia's ANH ran a competitive process in 2013-14, which led to the allocation of 89 onshore and offshore areas to Colombian and international oil and gas companies. The website for this process, Ronda Colombia 2014, directed potential investors toward information about available technical and geological data, maps and geographical information, and what was expected of bidders, including legal, financial, technical and operational, environmental, and corporate social responsibility requirements.<sup>65</sup> Mexico's CNH goes a step further, and describes the bidding process using video, describing even on-the-day logistics such as parking, what time to arrive, and how members of the public can watch the full bidding process online if they choose.<sup>66</sup>

63 "Data Explorer, RGI 2017, Q1.1.4(c), [www.resourcegovernanceindex.org/about/downloads](http://www.resourcegovernanceindex.org/about/downloads).

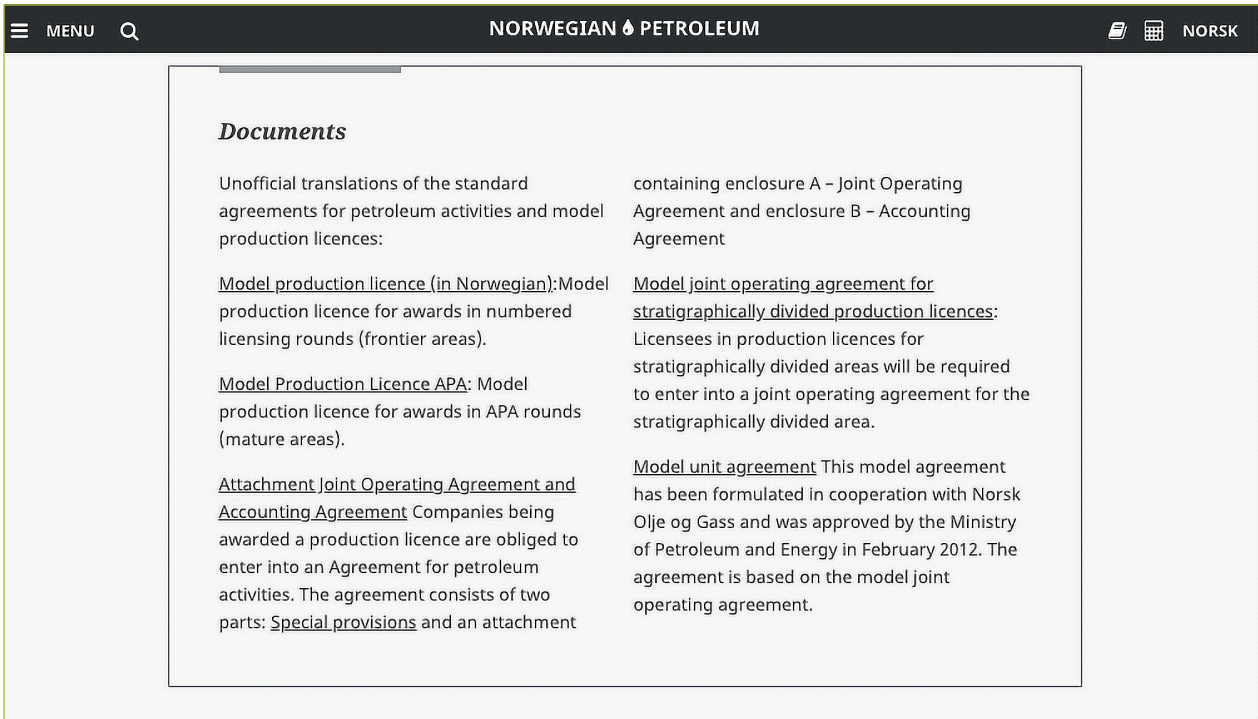
64 "Minerals Guidelines," New Zealand Petroleum and Minerals, accessed 18 May 2018. For example, with respect to determination of financial capability for non-competitive processes, the guidance states that applicants should demonstrate an ability to cover the costs of the first stage of the work program (generally two or three years) and any associated fees. The guidelines also provide details on what evidence of financial capability will be considered. See [www.nzpam.govt.nz/assets/Uploads/permits/minerals-guidelines/guidance-financial-capability-determinations.pdf](http://www.nzpam.govt.nz/assets/Uploads/permits/minerals-guidelines/guidance-financial-capability-determinations.pdf).

65 "Información Importante," Ronda Colombia 2014, accessed 18 May 2018, [ronda2014.anh.gov.co/rondacolombia2014/](http://ronda2014.anh.gov.co/rondacolombia2014/).

66 "Ronda 1. Terrestres," Rondas Mexico, accessed 18 May 2018, [rondasmexico.gob.mx/103-multimedia/](http://rondasmexico.gob.mx/103-multimedia/).

For jurisdictions that take more of a contract-driven rather than law-driven approach toward the allocation and award process (see section 1.2), the allocation processes may contain an additional negotiation stage in which project terms and conditions are agreed upon before the award is made. Using model contracts is one approach to improve accountability and structure negotiations. Such model contracts could specify which terms are up for negotiation and which are fixed. Many countries use and publish model agreements, including Mexico and Norway. (See Figure 6.)

**Figure 6. Publication of model production license on the Norwegian Petroleum information portal<sup>67</sup>**



67 "The Petroleum Act and The Licensing System," Norwegian Petroleum, accessed 18 May 2018, [www.norskpetroleum.no/en/framework/the-petroleum-act-and-the-licensing-system/](http://www.norskpetroleum.no/en/framework/the-petroleum-act-and-the-licensing-system/).

### 4.3 WHO STANDS TO BENEFIT?

Information about who makes decisions in the allocation process and who stands to benefit from those decisions is critical to avoid corruption and conflicts of interest. We discuss transparency of decision-makers as an overarching issue in Section 2.4, and this section focuses on the transparency of the companies applying for rights and their beneficial owners—the individuals that ultimately control or profit from the companies.

In the first instance, it is important that information about the companies applying for rights are known by all stakeholders. In non-competitive bids, company information should be published by the authorities at the moment an application is submitted. In competitive bids, information should be published regarding both successful and unsuccessful applicants. Given the nature of these processes, governments usually provide this information upon announcement of an award. Where pre-qualification processes are used, either for competitive or non-competitive processes, governments should also publish the full list of qualified and unsuccessful candidates. Lebanon's recent oil and gas bid round provides an example of disclosure in the context of prequalification, including information on the applicants, the specific criteria applied, which companies qualified, and why certain companies did not.<sup>68</sup>

But naming companies is not enough; it is also necessary to publish information about their beneficial owners—the actual people who control or benefit from the company. Currently, most countries only publish basic information on legal ownership of companies in their registers—information that is usually inadequate to determine problematic ownership relationships. But the field is changing fast: countries such as the U.K.,<sup>69</sup> Norway, the Netherlands, and Ukraine have public beneficial ownership registers in various stages of development; a recent EU decision makes public registers mandatory across the EU;<sup>70</sup> and dozens more countries made commitments related to beneficial ownership disclosure at the U.K. anti-corruption summit in May 2016.<sup>71</sup> Importantly, public disclosure of beneficial ownership information is also a requirement of the EITI Standard for companies that “apply for, or hold a participating interest in an exploration or production oil, gas or mining license or contract.” The Standard also provides that “[w]here possible, beneficial ownership information should be incorporated in existing filings by companies to . . . agencies regulating extractive industry licensing.”<sup>72</sup>

**Naming companies is not enough; it is also necessary to publish information about their beneficial owners—the actual people who control or benefit from the company.**

68 See [www.lpa.gov.lb/prequalification.php](http://www.lpa.gov.lb/prequalification.php). The site also includes more information on the country's first licensing round (2017), including an overall road map, an overview of the bidding process, a tender protocol, the model agreement and results for the prequalification and bid round.

69 “Search the Register,” Companies House, accessed 18 May 2018, [beta.companieshouse.gov.uk/](http://beta.companieshouse.gov.uk/).

70 “Euro Tax Flash from KPMG's EU Tax Centre” KPMG, accessed 18 May 2018, [home.kpmg.com/xx/en/home/insights/2017/12/etf-351-amlid5-and-ubo-agreement.html](http://home.kpmg.com/xx/en/home/insights/2017/12/etf-351-amlid5-and-ubo-agreement.html).

71 Max George-Wagner, Alexandra Gillies and Joseph Williams, “Who Committed to What in Extractives at the U.K. Anti-Corruption Summit?” NRGi, 20 May 2016, [resourcegovernance.org/blog/who-committed-what-extractives-uk-anti-corruption-summit](http://resourcegovernance.org/blog/who-committed-what-extractives-uk-anti-corruption-summit).

72 EITI Standard, Provision 2.5(c).

Beneficial ownership information can help screen applicants for conflicts of interest and corruption risks. A recent NRGi review of 50 mining and oil laws showed that around half already legally prohibit “politically exposed persons” (PEPs) from holding interests in companies applying for extractive contracts. The RGI also found that a significant number of countries require officials to declare assets (publicly or to government authorities).<sup>73</sup> Unfortunately, there has been little progress on connecting these bits of information and incorporating them into contracting decision-making. Sector legislation seldom requires regulators, as part of evaluating applications or bids, to check whether the applicant company has any PEP beneficial owners that present conflict of interests risks.

**Beneficial ownership information can help screen applicants for conflicts of interest and corruption risks.**

In order to increase the usefulness and impact of beneficial ownership disclosures, regulators should collect beneficial ownership information from companies applying for extractives licenses and screen such information (e.g., during a prequalification process) to disqualify companies with certain basic risk factors (e.g., failing to provide beneficial ownership information or a conflict with the legal regime’s underlying anticorruption provisions). NRGi has developed guidance on how governments can strengthen extractives licensing policies and processes by collecting beneficial ownership information as part of applications and using this information to screen for basic corruption risks that problematic beneficial ownership linkages pose.<sup>74</sup> Centralized national beneficial ownership registers that cover all sectors or international registers such as the one the OpenOwnership consortium is establishing (which includes the Open Contracting Partnership - see <https://openownership.org/>) can be useful complementary tools. They can work in tandem with collecting and screening beneficial ownership information as part of extractives licensing processes.

In this new and rapidly evolving area, Sierra Leone is one country embarking on beneficial ownership monitoring in its mining licensing process. In order to screen applicants for corruption risks and conflicts of interest, the National Minerals Agency (NMA) with support from Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH is redesigning license application forms to request beneficial ownership information and is working on a memorandum of understanding on information sharing with the Corporate Affairs Commission in charge of general company registration.

73 The 2017 RGI found that of 81 countries assessed, 24 required public asset disclosure and another 40 required disclosure to a government authority. See [www.resourcegovernanceindex.org/about/data-and-source-documents](http://www.resourcegovernanceindex.org/about/data-and-source-documents).

74 Erica Westenberg and Aaron Sayne, “Beneficial Ownership Screening: Practical Measures to Reduce Corruption Risks in Extractive Licensing,” NRGi, 15 May 2018, [resourcegovernance.org/analysis-tools/publications/beneficial-ownership-screening-practical-measures-reduce-corruption](http://resourcegovernance.org/analysis-tools/publications/beneficial-ownership-screening-practical-measures-reduce-corruption).



#### 4.4 REGULATOR ENGAGEMENT WITH PROSPECTIVE COMPANIES

Regulator engagement with prospective companies should be disclosed by the regulator, as should all queries and clarifications. Examples of transparent practices in this regard include the Ronda 2014 website in Colombia, which published all questions and answers, and updated registered users about new information as it came in.<sup>75</sup> This is also emerging best practice in e-procurement platforms. In Mexico, all presentations that CNH makes to prospective investors are live-streamed and archived online.<sup>76</sup>

#### 4.5 CONSULTATIVE PROCESSES

Regulators and companies should disclose information about consultative processes with communities relating to the award of rights. The International Labour Organization (ILO) Convention No. 169 (ILO Convention 169) calls on governments to consult with indigenous and tribal people prior to allowing exploration or exploitation of mineral or subsurface resources, with the objective of achieving agreement or consent. The principle of *free, prior and informed consent* has been signed into law in the Philippines and the Northern Territory of Australia, while other countries such as Peru and Chile have developed consultation regulations modelled after ILO Convention 169, with the latter having also issued jurisprudence requiring the halting of projects for lack of this consent.<sup>77</sup> New Zealand's reports on consultations around oil and gas block allocations provide an example of disclosure around consultative processes and include a summary of the consultations with indigenous and tribal people, the associated inputs and resulting recommendations.<sup>78</sup>

#### 4.6 THE OUTCOME OF ALLOCATION

Awarding a subsoil right is the outcome of an allocation process. This is a turning point in the long timeline of activities during contracting. Once the government makes, shares and announces the decision, it should change its focus from investment promotion and allocation of rights to regulating the project's implementation.

75 Ronda Colombia 2014.

76 For example, for the first round of tender, this page shows a map of the block being auctioned, the names of the officials in charge and access to additional data and information, [rondasmexico.gob.mx/r2-102-bloques/](http://rondasmexico.gob.mx/r2-102-bloques/).

77 Oxfam International, "Community Consent Index 2015: Oil, gas, and mining company public positions on Free, Prior, and Informed Consent," accessed 18 May 2018, [www.oxfam.org/sites/www.oxfam.org/files/file\\_attachments/bp207-community-consent-index-230715-en\\_0.pdf](http://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/bp207-community-consent-index-230715-en_0.pdf).

78 New Zealand Ministry of Business, Innovation and Employment, "Report on consultation on blocks for tender for Block Offer 2017," March 2017, [www.nzpam.govt.nz/assets/Uploads/block-offer/2017/consultation-report-block-offer-2017.pdf](http://www.nzpam.govt.nz/assets/Uploads/block-offer/2017/consultation-report-block-offer-2017.pdf).

The government should communicate awards in a way that builds recognition for the project, builds awareness of its next steps and enshrines the commitments made by all the parties. Countries do this in different ways. Indonesia and Uganda announce awards in the local press.<sup>79</sup> Nigeria holds an open conference at which the bids are opened<sup>80</sup> and Myanmar's Ministry of Electricity and Energy announces awards on its Facebook page. There are two main categories of information disclosure at this stage, details about the award and details about the how and why behind the decision.

Regulators should disclose details about the award including the full text of the contract itself. The information about awards that the EITI standard requires includes the license holder(s); information about the geographical license area; the date of application, date of award and duration of the license; and in the case of production licenses the commodity being produced (EITI requirement 2.3).<sup>81</sup> Most countries produce a basic list of rights awarded on a regular basis, and many have developed web-based mining cadaster systems and petroleum registries that provide this data visually through maps. However, as noted in Section 3.2, many of these systems contain prohibitive licensing arrangements that present challenges for citizens or businesses that want to use the information. This severely curtails any data-sharing potential. Another common failing is that countries omit the actual award documents (i.e., the contract/license and other related documents) from these disclosures. We discuss this more in the next section.

Regulators should also release information clarifying why and how certain decisions were made. As with award information, the EITI standard provides a useful summary of the basic information to include, such as a description of the process for awarding licenses, the criteria used, information about the recipient and non-trivial deviations from the legal framework and policies governing license allocations (requirement 2.2).<sup>82</sup> While some EITI reports appear to have this information,<sup>83</sup> its coherence and quality need improvement. In some cases, opacity around certain parts of the award (contracts in particular), makes it challenging to confirm whether or not there were deviations in licensing processes, not least because the overarching regime is unclear. An audit of Liberia's resource concession awards from 2009 and 2011 found that the government failed to fully apply its own laws when awarding 60 of 68 contracts for mining, oil and gas, logging and large-scale agriculture.<sup>84</sup>

**Regulators should release information clarifying why and how certain decisions were made.**

79 Indonesia: author interview, Uganda: Uganda Ministry of Energy of Energy and Mineral Development press statement, 30 August 2016, [www.petroleum.go.ug/news/62/Government-of-Uganda-Issues-Five-5-Petroleum-Production-Licences-to-Tullow-Uganda-Operations-Pty-Limited-and-Three-3-Petroleum-Production-Licences-to-Total-Uganda-BV](http://www.petroleum.go.ug/news/62/Government-of-Uganda-Issues-Five-5-Petroleum-Production-Licences-to-Tullow-Uganda-Operations-Pty-Limited-and-Three-3-Petroleum-Production-Licences-to-Total-Uganda-BV).

80 Nigeria 2013 EITI report, p318.

81 See EITI Standard Section 2.3, and EITI Guidance Note 3 – License Registers available at [eiti.org/document/guidance-note-on-license-registers](http://eiti.org/document/guidance-note-on-license-registers).

82 See EITI standard, requirement 2.2.

83 See for example Indonesia 2014 EITI Contextual report, pp.39-58, [eiti.org/sites/default/files/documents/eiti\\_indonesia\\_report-2014-contextual-report-english.pdf](http://eiti.org/sites/default/files/documents/eiti_indonesia_report-2014-contextual-report-english.pdf).

84 See [www.leiti.org.lr/uploads/2/1/5/6/21569928/151344593-leiti-post-award-process-audit-process-report.pdf](http://www.leiti.org.lr/uploads/2/1/5/6/21569928/151344593-leiti-post-award-process-audit-process-report.pdf). A more recent audit (2012-2015) found only 33 out of 160 licenses compliant, with the remainder having incomplete documentation to determine compliance: [www.leiti.org.lr/uploads/2/1/5/6/21569928/leiti\\_second\\_post\\_award\\_process\\_audit\\_final.pdf](http://www.leiti.org.lr/uploads/2/1/5/6/21569928/leiti_second_post_award_process_audit_final.pdf).

CNH in Mexico marks itself as a leader in this area by publishing the schedules and agendas of the meetings in which the commissioners decide whether to grant licenses and permits. These are webcast through stable connections and split screens enable viewers to follow live presentations, papers and view the discussion material. A ticker tape at the bottom of the screen highlights the agenda item under discussion, helping viewers to follow the meeting's flow. In addition, CNH makes two-minute videos available the following day, which explain the meeting's decisions and rationale, as well as the key commitments regulators expect from operators. The videos are in Spanish with English subtitles.<sup>85</sup>

AER's *Publication of Decision Tool* provides an example of a tool that other governments could adapt to disclose rights allocation decisions, although the government of Alberta does not currently use it for this purpose. It is an easy-to-use database that allows users to view decisions regarding applications. These include applications for pipelines and wells, reclamation, oil sands and waste and storage.<sup>86</sup> The database publishes decisions on these applications several times a week. Such a feature can be particularly helpful in situations where award decisions might roll out on a regular basis, such as permits awarded after rights have been allocated, or rights allocation decisions in non-competitive processes. The decision log includes information about the affected locations and the name and contact information of the responsible officer at the company submitting the application. Another tool on the AER site makes the actual application available. Users can also request them, which the *Publication of Decision Tool* indicates. The database allows users to filter information by the type of project, company, date or location. Users can also search for applications approved, denied, withdrawn, or partly approved.<sup>87</sup>

85 For example, see a two-minute video summarizing a commissioner's meeting held in October 2016. It outlines the projects and operators approved and key technical considerations for both exploration and production activities, [www.gob.mx/cnh/videos/resumen-53-sesion-extraordinaria-2016?idiom=es](http://www.gob.mx/cnh/videos/resumen-53-sesion-extraordinaria-2016?idiom=es).

86 The AER's mandate focuses on regulation of the sector during implementation of projects, rather than during the initial allocation of a license.

87 "Publication of Decision," AER, accessed 18 May 2018, [search.aer.ca/pnod-en/search/theme/pnod?fq%5b%5d=feed\\_str:all&sort=recent](http://search.aer.ca/pnod-en/search/theme/pnod?fq%5b%5d=feed_str:all&sort=recent).

## 4.7 RECOMMENDATIONS

Type of information	Recommendation	Example of good practice
Public announcement about allocation processes	Government communications around allocation processes should be designed to target citizens as well as companies.	Officials at Mexico’s CNH webcast decisions around recent bid rounds, enabling viewers to follow presentations, papers and the discussion material live. In addition, two-minute videos, generally available the following day, explain the decisions, their rationale, and the key commitments expected from operators. For example, see video summarizing a commissioner’s meeting held in October 2016.  <a href="http://www.gob.mx/cnh/videos/resumen-53-sesion-extraordinaria-2016?idiom=es">www.gob.mx/cnh/videos/resumen-53-sesion-extraordinaria-2016?idiom=es</a>
Rules of allocation processes	Governments should publish overall rules for the process, including timelines and application requirements; the criteria against which it assesses companies; and information about appeals processes. Where these rules are split over policy documents that multiple agencies manage, the government should make an effort to bring documents together in one place.	In New Zealand a high volume of mineral permit applications led to a concerted effort to provide clear and publicly available guidelines around basic allocation terms such as financial capacity, technical capacity, resource reporting and industry best practice.  <a href="http://www.nzpam.govt.nz/permits/minerals/guidelines/">www.nzpam.govt.nz/permits/minerals/guidelines/</a>
	In the case of bidding processes, governments should maintain bid round websites with information including timeframes, announcements and related information designed for both companies and citizens.	The website for Ronda Colombia 2014, directed potential investors and citizens to available technical and geological data, maps and geographical information, and what expectations of bidders, including legal, financial, technical and operational, environmental, and corporate social responsibility requirements.  <a href="http://ronda2014.anh.gov.co/rondacolombia2014/">ronda2014.anh.gov.co/rondacolombia2014/</a>  Norway publishes the model production license on the Norwegian Petroleum Information Portal.  <a href="http://www.norskpetroleum.no/en/framework/the-petroleum-act-and-the-licensing-system/">www.norskpetroleum.no/en/framework/the-petroleum-act-and-the-licensing-system/</a>
	Where negotiation is a part of the allocation process, governments should clearly specify which terms are up for negotiation and which are fixed, usually by publishing an applicable model agreement and the eventual agreed contract.	Tunisia publishes its model contracts in the <i>Journal Officiel</i> and has also adopted a policy of publishing all executed contracts, including those based on the model.  <a href="http://data.industrie.gov.tn/">data.industrie.gov.tn/</a>
Who stands to benefit	Governments should publish the names of all companies applying for rights. Where pre-qualification processes are used, governments should provide information on both qualified and unsuccessful candidates.	Lebanon’s recent oil and gas bid round provides an example of disclosure in the context of prequalification, including information on the applicants, the specific criteria applied, which companies qualified, and why certain companies did not.  <a href="http://www.lpa.gov.lb/prequalification.php">www.lpa.gov.lb/prequalification.php</a>
	Governments should collect and disclose beneficial ownership information for all companies as part of the allocation process. Definitions and disclosures should follow good practice as detailed above.	EITI standard requirements on beneficial ownership  <a href="http://eiti.org/beneficial-ownership">eiti.org/beneficial-ownership</a>
	For greatest impact, regulators should also use beneficial ownership information during the contracting process to screen applicants (e.g., during a prequalification process) to disqualify those failing to provide information and, before awarding rights to a selected company, to scrutinize any information indicating a conflict with anticorruption provisions.	Sierra Leone’s NMA is redesigning license application forms to request beneficial ownership information to screen applicants for risks relating to corruption and conflicts of interest.

Type of information	Recommendation	Example of good practice
Regulator engagement with prospective companies	Governments should disclose regulator engagement with prospective companies as well as all queries and clarifications	Colombia's Ronda 2014 publishes all questions and answers online, while Mexico's CNH live-streams and archives online all its presentations to prospective investors.  <a href="http://ronda2014.anh.gov.co/rondacolombia2014/">ronda2014.anh.gov.co/rondacolombia2014/</a>  <a href="http://rondasmexico.gob.mx/r2-102-bloques/">rondasmexico.gob.mx/r2-102-bloques/</a>
Consultative processes	Governments and companies should disclose information about consultative processes with communities relating to the award of rights, especially on matters that directly concern the community, including community development agreements.	New Zealand's reports on consultation provide an example of disclosure around consultative processes for oil and gas allocation.  <a href="http://www.nzpam.govt.nz/assets/Uploads/block-offer/2017/consultation-report-block-offer-2017.pdf">www.nzpam.govt.nz/assets/Uploads/block-offer/2017/consultation-report-block-offer-2017.pdf</a>
Outcomes of the allocation process	Governments should disclose details about the award, including information about the license holder(s); information about the geographical license area; the date of application, date of award and duration of the license; and in the case of production licenses the commodity being produced.	Most countries produce a basic list of rights awarded on a regular basis, and many have developed web-based mining cadaster systems and petroleum registries that provide this data visually through maps. Many of these examples, however, are not openly licensed. See for example:  <a href="http://portals.flexicadastre.com/zambia/">portals.flexicadastre.com/zambia/</a>
	Governments should publish information justifying why and how they made certain decisions.	CNH in Mexico marks itself as a leader in this area by publishing the schedules and agendas of the meetings in which the commissioners decide whether to grant licenses and permits. These are webcast through stable connections and -split screens enable viewers to follow presentations and view the papers and discussion materials live.  <a href="http://www.gob.mx/cnh/videos/resumen-53-sesion-extraordinaria-2016?idiom=es">www.gob.mx/cnh/videos/resumen-53-sesion-extraordinaria-2016?idiom=es</a>  Although not used for rights allocation decisions, the AER's <i>Publication of Decision Tool</i> could be particularly useful to provide information on rolling applications in the case of non-competitive bids.  <a href="http://search.aer.ca/pnod-en/search/theme/pnod?fq[]=feed_str:all&amp;sort=recent">search.aer.ca/pnod-en/search/theme/pnod?fq[]=feed_str:all&amp;sort=recent</a>

## 5. Contract

Contracts, licenses and permits are an integral part of the legal framework for the extractive sectors, containing project-specific rights and obligations that complement the wider legal framework.<sup>88</sup>

Disclosure of extractive industry contracts is an emerging global norm. Around 40 countries have published at least some of their extractive industry contracts and the number of jurisdictions with laws requiring contract disclosure has risen dramatically from five to 22 in the last 10 years. (See chart in Figure 7.)<sup>89</sup> The practice is endorsed by the *IMF Guide on Resource Revenue Transparency*,<sup>90</sup> the *UN Principles for Responsible Contracts*,<sup>91</sup> the International Bar Association's *Model Mining Development Agreement*,<sup>92</sup> encouraged by the *Extractive Industries Transparency Initiative Standard*<sup>93</sup> and required by the International Finance Corporation, the Multilateral Investment Guarantee Agency and the European Bank for Reconstruction and Development for certain extractive projects they finance.<sup>94</sup> At least 18 companies, including Total, Kosmos Energy, Tullow Oil and Rio Tinto, have made public statements in support of contract disclosure<sup>95</sup> and several others make disclosure contracts in stock exchange filings in their home countries.<sup>96</sup>

88 While in more law-driven regimes the variation between different agreements should generally be minimal, it is not possible to know the rules for a particular project for certain without seeing the applicable agreement, license or permit.

89 "Contract Disclosure Practice and Policy," Robert Pitman, docs.google.com/spreadsheets/d/1FXEeD43jw6VYHV8yS-8KJ5-rR5I0XtKxVQZBWzr-ohY/edit#gid=0.

90 Robert Pitman, IMF, "Guide on Resource Revenue Transparency," 2007, p.17, accessed 9 July 2017, www.imf.org/external/np/pp/2007/eng/051507g.pdf.

91 UN, "Principles for responsible contracts," 2011, p.32, accessed 9 July 2017, at www.ohchr.org/Documents/Publications/Principles\_ResponsibleContracts\_HR\_PUB\_15\_1\_EN.pdf.

92 International Bar Association, "Model Mining Development agreement," p.130, accessed 9 July 2017 www.mmdaproject.org/presentations/MMDA1\_0\_110404Bookletv3.pdf.

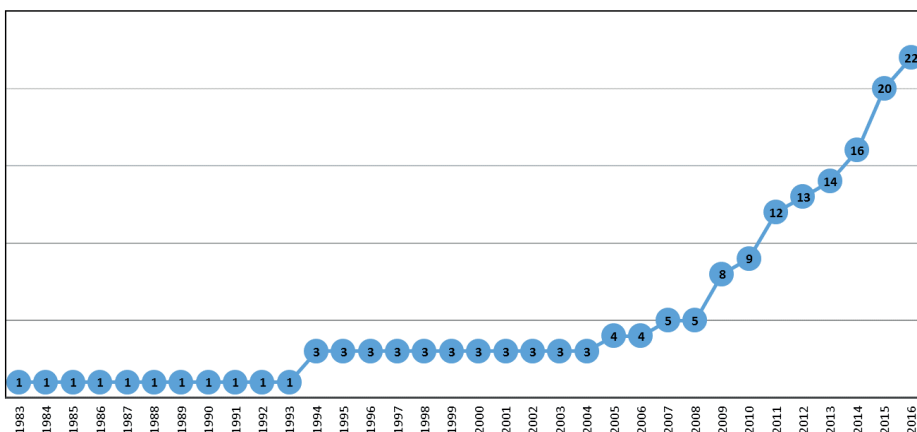
93 EITI Standard, Section 2.4.

94 International Finance Corporation, "Policy on Environmental and Social Sustainability," 2012, pp.11-12, www.ifc.org/wps/wcm/connect/7540778049a792dcb87efaa8c6a8312a/SP\_English\_2012.pdf?MOD=AJPERES. Multilateral Investment Guarantee Agency, "Policy on Environmental and Social Sustainability," 2013, p. 10, www.miga.org/documents/Policy\_Environmental\_Social\_Sustainability.pdf., European Bank for Reconstruction and Development, Energy Sector Strategy, 2013, p.60, www.ebrd.com/what-we-do/sectors-and-topics/ebd-energy-strategy-transparency.html.

95 Isabel Munilla and Kathleen Brophy, "Contract Disclosure Survey 2018," Oxfam America, policy-practice.oxfam.org.uk/publications/contract-disclosure-survey-2018-a-review-of-the-contract-disclosure-policies-of-620465.

96 Rob Pitman, "How Many Governments Are Disclosing Oil, Gas and Mining Licenses and Contracts?" 2 March 2017, resourcegovernance.org/blog/how-many-governments-are-disclosing-oil-gas-and-mining-licenses-and-contracts.





**Figure 7. Countries with laws requiring disclosure of extractive industry contracts or licenses based on a review of all 51 EITI member countries at 31 December 2016.<sup>97</sup>**

Source: NRG

Some countries do not disclose the contract documents themselves, but provide summaries of key terms. While summaries are useful, contract terms can have many legal nuances and it is generally not possible to fully understand summary terms without seeing how they relate to other parts of the contract. Standard practice, as EITI requirement 2.4 recommends, is therefore for countries to publish the full text of contracts, their annexes and any amendments. In addition to these core contract documents, many countries may have another layer of ancillary agreements, permits, approvals and studies that may add or modify rights or obligations to an extractive project. Box 5 provides an overview list of these documents.

**Box 5. Contracts and other related documents that may be linked to an extractive project**

**Contracts, licenses, permits**

- Main agreement
- Annexes
- Amendments

**Environmental documents**

- Environmental impact assessments
- Environmental monitoring plans
- Environmental reports
- Associated environmental studies
- Closure and decommissioning plans

**Social documents**

- Local content/local employment plans
- Local content reports
- Community development agreements/corporate social responsibility plans (if applicable)

97 Rob Pitman, *How many countries are disclosing oil, gas and mining contracts*, (NRGI 2017), accessed on 15 June 2018, [www.resourcegovernance.org/blog/how-many-governments-are-disclosing-oil-gas-and-mining-licenses-and-contracts](http://www.resourcegovernance.org/blog/how-many-governments-are-disclosing-oil-gas-and-mining-licenses-and-contracts)

## 5.1 MAKING CONTRACTS ACCESSIBLE

To maximize the utility of contract disclosure, it is critical to make contracts easy to find, browse, search and use. Standard practice is to publish copies of contracts online, with paper-based options available for communities lacking internet access. In jurisdictions with multiple languages, translation into the relevant local language(s) is also important.

It is important to ensure that documents are disclosed in a machine-readable format. All too often, original contract documents are disclosed as image files or “locked PDF” files with text that cannot be searched. Machine-readable formats, for example, allow keyword searches. The ResourceContracts.org platform is a good example of a ready-to-use product that allows for publication of contracts in such formats. (See Box 6 for more information.)

Advanced portals allow users to browse contracts by company, by project or by geography, and include timeseries information to show how amendments change contracts over time. A notable example is the New Zealand Petroleum and Mineral Web Map Service interface. This includes interactive maps, summary information about the permit work program and which commitments have already been met, the original permit documentation and permit changes, including who signed off on changes at each stage.<sup>98</sup>

**All too often, original contract documents are disclosed as image files or “locked PDF” files with text that cannot be searched. Machine-readable formats allow for keyword searches.**

### **Box 6. ResourceContracts.org, an open data disclosure platform**

The World Bank, NRGi and the Columbia Center for Sustainable Investment developed ResourceContracts.org as a global repository of publicly available oil, gas, and mining contracts. The repository currently hosts over 1,500 contracts, licenses and other related documents from over 90 countries.

Notably, ResourceContracts.org houses contracts in line with the open data principles, allowing access to contracts in searchable and machine-readable formats. To help make the content of lengthy contracts more accessible, ResourceContracts.org has developed an approach to categorizing each document with metadata and providing the option to identify and summarize key contract terms (e.g., fiscal, environmental, social or operational) and to allow for comparison of such terms between contracts.

The portal allows countries to learn more about relevant contracts of similarly situated countries and even particular investors. For example, officials of a government considering disclosing contracts can use Resource Contracts.org to see if companies investing in the country have disclosed contracts in other countries.

The ResourceContracts.org platform has also been adapted for national sites, often in coordination with the government. Several countries, including the Philippines, Sierra Leone, DRC, Guinea and Tunisia are using this technology, while others are in the process of developing new sites using the technology.<sup>99</sup> These country sites are being used to also support disclosure of other documents associated with the principle contracts, such as those listed in Box 5 above.

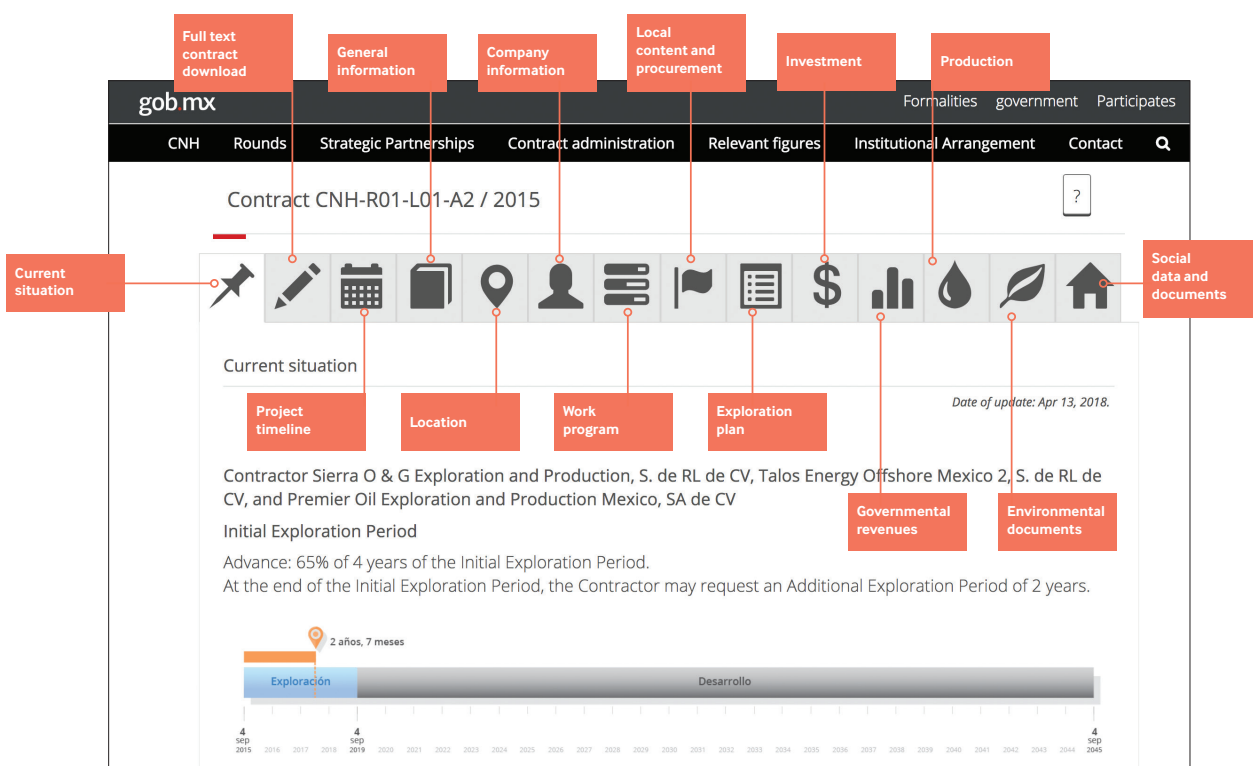
98 “New Zealand Petroleum and Mineral Web Map,” New Zealand Petroleum and Minerals, [data.nzpam.govt.nz/permitwebmaps?commodity=petroleum](http://data.nzpam.govt.nz/permitwebmaps?commodity=petroleum).

99 For example, the Philippines website is available at [contracts.ph-eiti.org](http://contracts.ph-eiti.org), while the Sierra Leone website can be viewed at [www.nma.gov.sl/resourcecontracts](http://www.nma.gov.sl/resourcecontracts).

## 5.2 CONTRACT DISCLOSURE AT THE HEART OF JOINED-UP TRANSPARENCY

For countries that rely on contracts and related documents, disclosing all these documents in one place and in a way that recognizes the relationship between these and other information and processes is key to usability. As with many of the issues discussed in this report, this requires connecting documents that are typically held by a number of different institutions. As Section 2.2 outlines, Mexico is one country that has done this well. The Ronda Mexico website features a dedicated page for each awarded contract. In addition to the main contract and related documents, these pages include tabs which users can navigate to view additional information, such as details about the allocation process under which the contract was awarded, environmental documents and work plans. Furthermore, each contract page has the architecture for disclosures related to the implementation stage, including project-level data on local content and procurement, investment, government revenues and production levels. (See Figure 8.)<sup>100</sup> Such joined-up disclosure allows the public to see how governments and companies are performing against the commitments they made as part of the contracting process.

Figure 8. Example of a contract page from Rondas Mexico Website<sup>101</sup>



100 See for example [rondasmexico.gob.mx/CNH-R01-L02-A2-2015/](http://rondasmexico.gob.mx/CNH-R01-L02-A2-2015/).

101 "Contrato CNH-R01-L02-A2/2015," Rondas Mexico, [rondasmexico.gob.mx/CNH-R01-L02-A2-2015/](http://rondasmexico.gob.mx/CNH-R01-L02-A2-2015/).

### 5.3 RECOMMENDATIONS

Type of information	Recommendation	Example of good practice
Disclosure of contracts	Governments should disclose, for each project, the main agreement, as well as related documents that may add further rights or obligations to an extractive project. Ideally, the government should do so in a joined-up manner that brings together different information and processes to facilitate usability.	<p>The Ronda Mexico website features a dedicated page for each awarded contract. In addition to the main contract and related documents (e.g., environmental documents and work plans), these pages include tabs which users can navigate for further information, including the allocation process under which the contract was awarded and information relevant to the project's implementation and compliance with various obligations (e.g., local content, production and revenues).</p> <p><a href="http://rondasmexico.gob.mx/CNH-R01-L02-A2-2015/">rondasmexico.gob.mx/CNH-R01-L02-A2-2015/</a></p> <p>Several countries, including the Philippines, Sierra Leone, DRC, Guinea and Mongolia have developed or are in the process of developing open data contract portals using resourcecontracts.org.</p> <p><a href="http://www.resourcecontracts.org">www.resourcecontracts.org</a></p> <p><a href="http://contracts.ph-eiti.org">contracts.ph-eiti.org</a></p> <p><a href="http://www.nma.gov.sl/resourcecontracts">www.nma.gov.sl/resourcecontracts</a></p>

## 6. Implementation

Following the award of a contract, agencies that prioritize investment promotion either become regulators or pass the project on to other regulators who will oversee compliance. The expectations, engagement and information needs of stakeholders such as communities and civil society, change too. The implementation stage is often by far the most significant in terms of duration and direct impact, with project implementation often spanning decades. Other stages that this report addresses usually last only months (e.g., a bid round) or a few years in length (e.g., planning). Similarly, the most significant benefits (e.g., revenue streams and employment) and costs (e.g., environmental and social) only occur once implementation begins. During this stage, oversight actors such as parliament, civil society and the media can play a key role in using disclosures for monitoring project obligations and supporting government efforts on compliance.<sup>102</sup>

Given that contracts and/or licenses are generally the starting point for defining extractive projects, these documents are a natural lens through which to approach the implementation phase and monitoring of projects. In this context, the tendency for regulators and companies alike to publish overly aggregated information about commercial, environmental and social outcomes of the industry may prevent real analysis of the implementation phase and scrutiny of government and company compliance with the rules. Fortunately, international standards and legal norms are beginning to coalesce around the idea of project-level reporting. On the issue of payments to governments for example, the EU and Canada have made it mandatory for companies active in those jurisdictions to publicly disclose, on a project-by-project basis, all extractive payments and taxes they give to any government globally.<sup>103</sup>

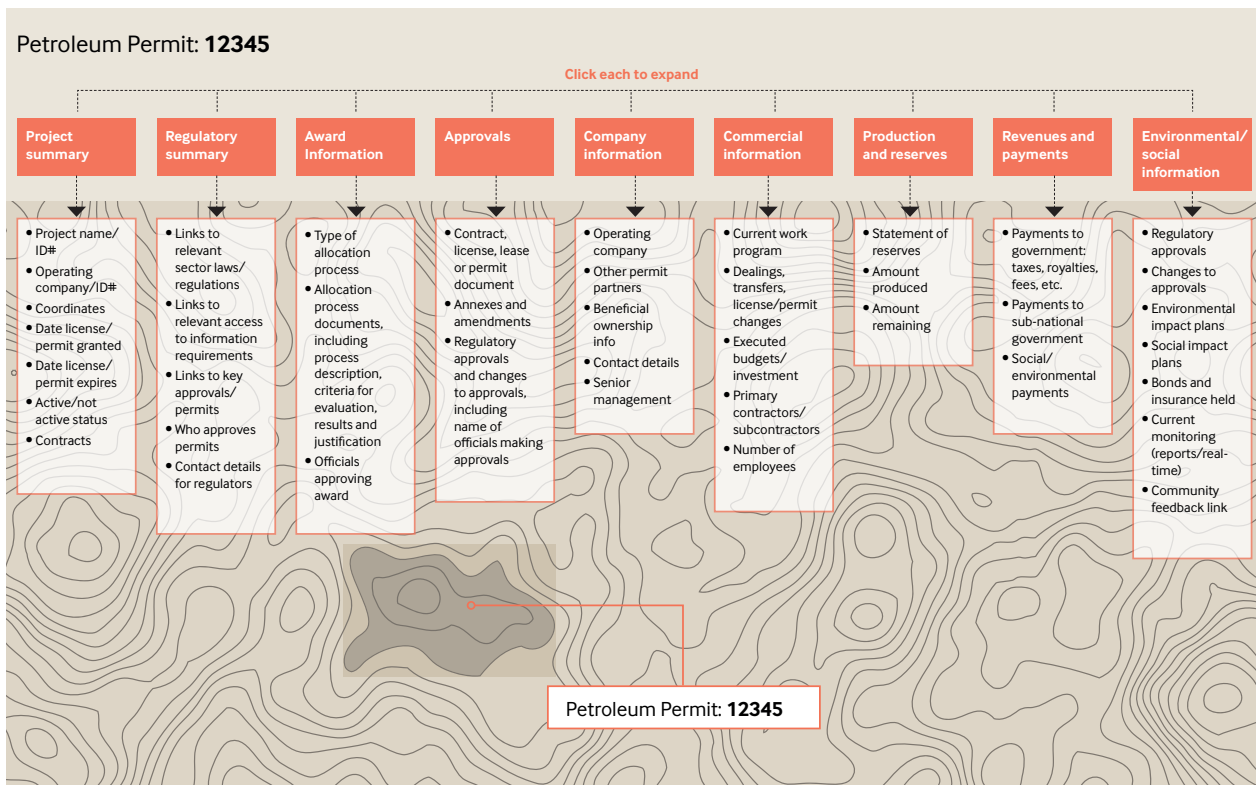
Another NRGi publication, *International Best Practices for Transparency in Contract Management*,<sup>104</sup> provides a detailed project-level approach to joined-up regulatory transparency of the implementation stage. A summary of how a country might want to report on a project-level for all the issues covered in this report is provided in Figure 9.

102 Erin Smith and Peter Rosenblum, "Enforcing the Rules: Government and Citizen Oversight of Mining," Revenue Watch Institute, 2011, [resourcegovernance.org/sites/default/files/documents/rwi\\_enforcing\\_rules\\_full1.pdf](https://resourcegovernance.org/sites/default/files/documents/rwi_enforcing_rules_full1.pdf).

103 See EU Accounting and Transparency Directives 2013/34/EU, European Parliament (2013). [eur-lex.europa.eu/eli/dir/2013/34/oj](http://eur-lex.europa.eu/eli/dir/2013/34/oj) and Canadian Extractive Sector Transparency Measures Act (ESTMA) [laws-lois.justice.gc.ca/eng/acts/E-22.7/page-1.html](https://laws-lois.justice.gc.ca/eng/acts/E-22.7/page-1.html).

104 Natural Resource Governance Institute, *International Best Practices for Transparency in Contract Management* (2016), accessed 4 October 2017, [resourcegovernance.org/sites/default/files/documents/international-best-practices-contract-management-english.pdf](https://resourcegovernance.org/sites/default/files/documents/international-best-practices-contract-management-english.pdf).

**Figure 9. Possible model for joined up implementation stage transparency at the project level<sup>105</sup>**



## 6.1 TRANSPARENCY OF INVESTMENT, PRODUCTION AND RESERVES

Best practice in this area involves providing regularly updated information regarding reserves, investment, exploration and production on a project-by-project basis. The Norwegian Petroleum Directorate’s “Factpages” service provides a good example of reporting. (See Figure 10.)<sup>106</sup> It provides easy-to-use, key commercial information about exploration and production licenses. While it does not provide links to other regulators (e.g., on environmental and health and safety issues), it discloses the following information about production licenses:

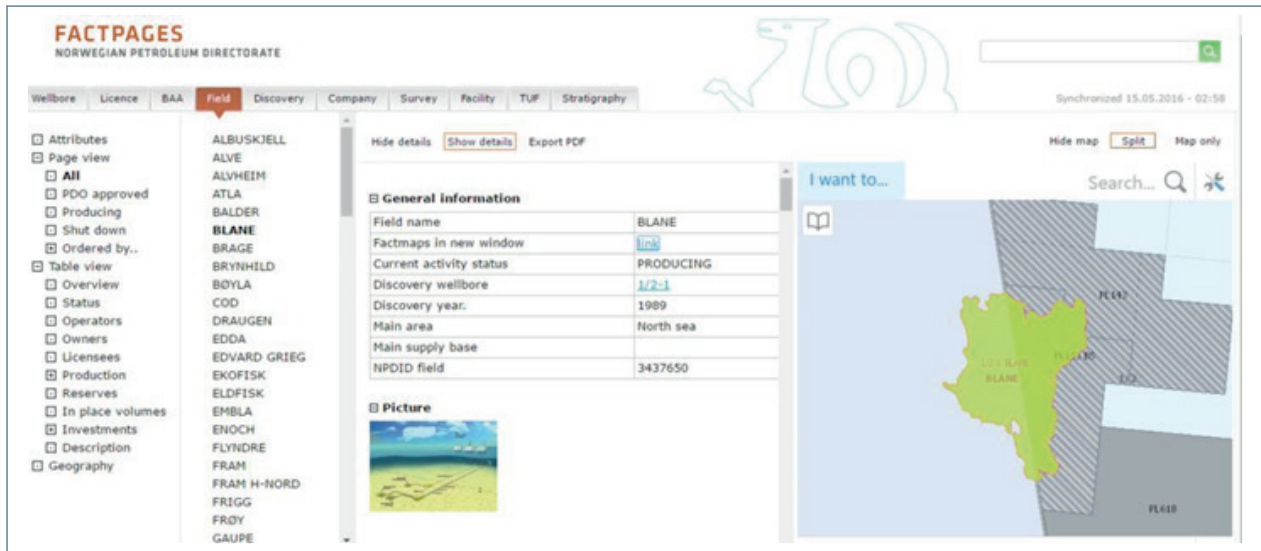
- Details of the current and historic owners and operators of the license
- Reporting of total reserves of oil and gas, including total amounts recovered thus far and total amounts remaining
- A basic project summary including the production license number, the status (active or otherwise) of the project, when the license was granted and when it will expire and the dates of the key project phases
- Details of historic and future levels of investment (reported in millions of Norwegian krone) in the license
- Summaries of historic field production

<sup>105</sup> Based on an earlier diagram produced for NREGI, *International Best Practice for Transparency in Contract Management*.

<sup>106</sup> “NPD FactMaps,” Norwegian Petroleum Directorate, [gis.npd.no/factmaps/html\\_20/](http://gis.npd.no/factmaps/html_20/).



Figure 10. Norwegian Petroleum Directorate’s Factpages



## 6.2 TRANSPARENCY OF REVENUES AND BENEFITS

Considerable advice and guidance already exist on best practice for transparency of revenues and benefits from the extractive industries—primarily from EITI.<sup>107</sup> In the context of this report, the key issues to consider when including transparency of revenues and benefits are:

- Mainstreaming revenue and benefit information within core government systems so people can access the information easily and so that it synchronizes with information about government budgets and finances. Far too many EITI reports are disconnected, standalone publications, and are often not machine-readable.
- Making the information as relevant as possible to users. This includes breaking down payments and benefit flows to the levels of government that are closest to citizens.
- Ensuring that the disclosures capture not only the “big ticket” tax and royalty figures, but also the smaller benefit flows that are most visible and important to local communities. For example, the 2 percent that is paid to a local council to spend on projects in areas that host extractive projects is often as relevant to building trust as the 50 percent that is paid into the national consolidated fund for use in all public sector issues.
- Going beyond reconciliation of company payments against government receipts by also disclosing (and addressing) any discrepancies between what should have been paid according to legislative and/or contractual terms and actual payments.

<sup>107</sup> See EITI Standard and EITI Guidance Notes: [eiti.org/document/standard](http://eiti.org/document/standard) and [eiti.org/guidance-notes-standard-terms-of-reference#guidance-notes](http://eiti.org/guidance-notes-standard-terms-of-reference#guidance-notes). Guidance note 29 on project-level reporting is particularly relevant. See also the NRGi Guide to the EITI Standard: [www.resourcegovernance.org/eitiguide/](http://www.resourcegovernance.org/eitiguide/).

In this rapidly changing area, several countries are innovating. One of these is Sierra Leone, where the government's online repository joins up project level tax and non-tax data collected by the National Revenue Authority and National Minerals Agency for all mining payments. These data are publicly available and updated periodically, although users must set up their own account to browse the payment data.<sup>108</sup>

### 6.3 ENVIRONMENTAL AND SOCIAL DISCLOSURES DURING IMPLEMENTATION

Environmental and social issues should comprise an area of concern and disclosure throughout the contracting process, including when deciding which areas to open to extraction during the planning stage (see Section 3.1) and in consultations during the allocation stage (as described in Section 4.5). These issues become even more real during the implementation stage. The range of environmental and social issues covered in oil and gas contracts often does not fall solely under the jurisdiction of oil and gas regulators. Rather, several government agencies often share responsibility for monitoring and enforcement. This multiplicity of players requires a high degree of coordination among agencies and can hinder information coherence and clarity. We recommend that the oil and gas sector regulator assume a leadership role to coordinate information disclosure and transparency across agencies and government departments.

With respect to the content of disclosures, key elements include:<sup>109</sup>

- Publication of environmental and social impact assessments (ESIAs) and environmental and social management plans (ESMPs) for all extractive projects, which, in both cases, may have separate environmental and social components. Plain language versions/summaries should complement these documents to support dissemination where possible.
- Regular updates should follow the publication of initial assessments and plans, showing how these plans are being implemented, along with links to corresponding monitoring results and updates about any incidents and how they are handled.
- Linking to company reports on these issues and providing other primary documents (e.g., community development agreements, where applicable) will allow stakeholders such as civil society organizations representing communities to be on the same page as the government and companies.

AER's approach provides a good example of transparency at key parts of the implementation stage. AER provides links to environmental information (including monitoring of water use and quality and greenhouse gas emissions) and providing real-time environmental compliance information through a Compliance Dashboard. (See Figure 11.) This portal includes information about

**Several government agencies often share responsibility for monitoring and enforcement of environmental and social issues relating to a project. This multiplicity of players requires a high degree of coordination among agencies and can hinder information coherence and clarity.**

108 "GoSL Online Repository", National Minerals Agency, Sierra Leone, [sierraleone.revenuedev.org/dashboard](http://sierraleone.revenuedev.org/dashboard)

109 See also OGP Openness in Natural Resources Working Group (2016): [www.opengovpartnership.org/sites/default/files/FIN%20OGP%20Issue%20Brief%20Env%20Disc.pdf](http://www.opengovpartnership.org/sites/default/files/FIN%20OGP%20Issue%20Brief%20Env%20Disc.pdf).

incidents, investigations and eventual compliance and enforcement actions.<sup>110</sup>

According to the regulator, the AER’s incident reporting tool has proved especially important, as it has pushed companies to be more public and proactive in reporting incidents as they know the AER will be publishing information.<sup>111</sup>

**Figure 11. AER’s Compliance Dashboard**

Data last updated 11/15/2017, 6:31:37 PM Mountain Time

Print Save

Show 10 entries Search:

Reference No.	Company	Category	Noncompliance(s)	Date of Enforcement
201711-13	LGX Oil + Gas Inc.	Care & Custody	Licensee unable to provide care and custody of the licenced properties.	2017-11-14
201711-06	Rally Canada Resources Ltd.	IWCP	Failure to meet imposed terms and conditions in the Notice of Noncompliance dated April 29, 2016.	2017-11-09
201711-07	Scavenger Energy Gp Inc.	IWCP	Failure to meet imposed terms and conditions in the Notice of Noncompliance dated April 29, 2016.	2017-11-09
201711-08	Procyon Energy Corp.	IWCP	Failure to meet imposed terms and conditions in the Notice of Noncompliance dated April 29, 2016.	2017-11-09
201711-09	Windtalker Energy Corp.	IWCP	Failure to meet imposed terms and conditions in the Notice of Noncompliance dated April 29, 2016.	2017-11-09
201711-10	Silver Bay Resources Ltd.	IWCP	Failure to meet imposed terms and conditions in the Notice of Noncompliance dated April 29, 2016.	2017-11-09
201711-11	Ascensun Oil and Gas Ltd.	IWCP	Failure to meet imposed terms and conditions in the Notice of Noncompliance dated April 29, 2016.	2017-11-09
201711-12	Hutton Energy Ltd.	IWCP	Failure to meet imposed terms and conditions in the Notice of Noncompliance dated April 29, 2016.	2017-11-09
201711-02	Stormhold Energy Ltd.	Legislative & Regulatory Enforcement	Failure to pay security deposit. Failed to comply with requirements of the Inactive Well Compliance Program. Failure to pay its proportionate share of the 2016 and 2017 Orphan Fund Levies.	2017-11-07
201711-03	Petromin Resources Ltd.	Legislative & Regulatory Enforcement	Failure to pay security deposit. Failure to pay its proportionate share of the 2016 and 2017 Orphan Fund Levies.	2017-11-07

Search Refe Search Company Search Category Search Noncompliance(s) Search Date of

Showing 1 to 10 of 1,121 entries Previous 1 2 3 4 5 ... 113 Next

Expand/Collapse All Clear Filters

### 6.4 COMPLIANCE WITH CONTRACT/LICENSE TERMS

While some good examples exist of disclosure of environmental compliance information, disclosure of information on commercial compliance (e.g., compliance on exploration commitments or investment of agreed amounts) seems rarer. There may be reasons for the lack of visible information on commercial compliance rates,<sup>112</sup> but it risks undermining company follow-through on commitments agreed at earlier stages as well as the regulator’s credibility. Fortunately, there are examples of progress in this area. Mexico’s recently developed portal for the oil and gas sector has the architecture for future implementation stage disclosures, including around commercial elements such as investment and work plan commitments.<sup>113</sup> New Zealand Petroleum and Mineral’s Web Map Service interface, referenced earlier, also includes summary information about work programs and which commitments have already been met.<sup>114</sup>

110 “Compliance Dashboard,” AER, [www1.aer.ca/compliancedashboard/index.html](http://www1.aer.ca/compliancedashboard/index.html)

111 Interview with AER official, 17 November 2017.

112 These could include: A general tendency for regulatory resources to focus on the front-end of the regulatory process (granting and declining applications), rather than on compliance—non-compliance being addressed through changes to terms or voluntary surrender—and regulator concerns about the impact that publicizing non-compliance could have on future investment promotion or ongoing legal processes.

113 See for example [rondasmexico.gob.mx/CNH-R01-L02-A2-2015/](http://rondasmexico.gob.mx/CNH-R01-L02-A2-2015/).

114 “New Zealand Petroleum and Mineral Web Map,” New Zealand Petroleum and Minerals, [data.nzpam.govt.nz/permitwebmaps?commodity=petroleum](http://data.nzpam.govt.nz/permitwebmaps?commodity=petroleum).

## 6.5 RECOMMENDATIONS

Type of information	Recommendation	Example of good practice
Transparency of investment, production and reserves	Governments should disclose regularly updated information regarding reserves, investment, exploration and production on a project-by-project basis	Norwegian Petroleum Directorate's "Factpages" includes project-level information regarding reserves, status, investment and production. <a href="https://gis.npd.no/factmaps/html_20/">gis.npd.no/factmaps/html_20/</a>
Transparency of revenues and benefits	Governments should provide project-level disclosures in line with EITI requirements, ideally mainstreamed into government systems rather than standalone reporting. Such disclosures should break down payment and benefit flows to the level of greatest relevance to citizens.	EITI standard and guidance notes <a href="https://eiti.org/document/standard">eiti.org/document/standard</a> <a href="https://eiti.org/guidance-notes-standard-terms-of-reference#guidance-notes">eiti.org/guidance-notes-standard-terms-of-reference#guidance-notes</a> In Sierra Leone, the GoSL Online Repository joins-up project level tax and non-tax data collected by the Ministry of Mines and Mineral Resources and the Ministry of Finance and Economic Development for all mining payments. The information is publicly available, although users must set up their own account to browse the payment data. <a href="https://sierraleone.revenue.gov.sl/dashboard">sierraleone.revenue.gov.sl/dashboard</a>
Environmental and social disclosures	Governments should produce disclosures pooling information from various regulators, including impact assessments and management plans, along with regular updates on implementation and any incidents.	AER's practices, including links to environmental information and providing real-time compliance information, including through the Compliance Dashboard. <a href="http://www1.aer.ca/compliancedashboard/index.html">www1.aer.ca/compliancedashboard/index.html</a>
Transparency of contract compliance	Governments should publish project-level data on commercial, social and environmental outcomes against project-level rules to track compliance.	AER's Compliance Dashboard for compliance with environmental obligations (link as above) Mexico's recently developed oil and gas portal, which includes investment and work plan commitments as well as the architecture for future reporting on compliance with commitments. <a href="https://rondasmexico.gob.mx/CNH-R01-L02-A2-2015/">rondasmexico.gob.mx/CNH-R01-L02-A2-2015/</a>

## Conclusion

All too often, poor resource governance is rooted in mistakes in the way that governments select companies, agree to the terms by which companies run projects, and monitor compliance with those terms. Emerging evidence on public contracting processes suggests that increased transparency and public engagement would go some way toward improving contracting decisions, building public trust, deterring fraud and corruption and ensuring a regulatory environment conducive to business and competition. Yet, for the oil, gas and mining sectors, where public agreements to explore or exploit resources can be worth billions of dollars, there is little in the way of systematic guidance for governments wishing to open up public contracting for allocating rights to explore for and exploit natural resources.

This report challenges government decision-makers and transparency advocates to change the *status quo* in three ways. First, it shows that around the world, there are already examples of good practice that reformers can draw inspiration from. These span the entire contracting chain: from planning, to allocation and award, to contracts and their implementation. Second, it shows that good practice is not exclusively the domain of rich and established producers. Many of the most innovative examples in this report come from frontier jurisdictions. These examples show that limited experience with resource extraction or weak institutional capacity should not be seen as barriers to openness. Finally, as this report notes, there is no single country that excels across the whole contracting chain. Even the best performers still have room for improvement.

We are optimistic that the examples of good practice identified in this report can be a useful tool for those striving to improve extractives governance. We also hope that the report can encourage collaboration across government, business and civil society to learn, improve and innovate by identifying and sharing other examples of good practice in open contracting in the extractive industries, both within and beyond processes like EITI and the OGP.

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