Paris Declaration Briefing: Transparency and Open Contracts in the Natural Resource Sector
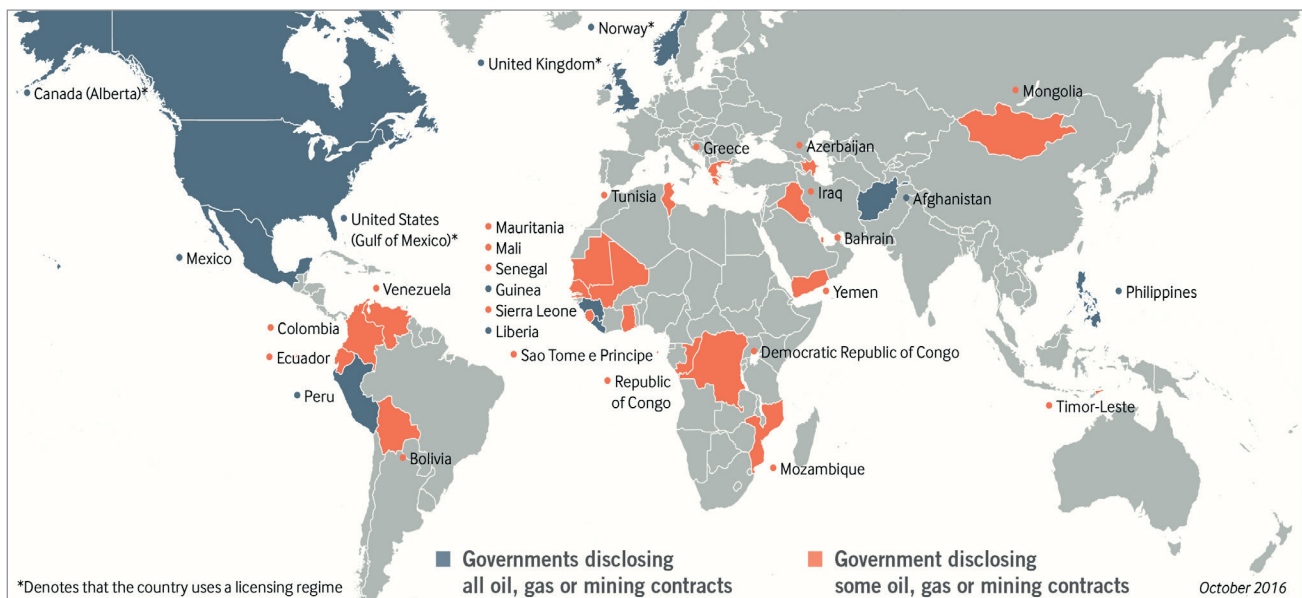
In this briefing we consider collective action 8 of the Paris Declaration for the Open Government Partnership (OGP).[1] This action addresses transparency and open contracting in the extractives and land sectors—a priority issue identified by the Openness in Natural Resources Working Group (ONRWG).[2] We unpack the collective action into three main themes and explore concrete actions that governments and civil society organizations participating in OGP might take as part of their efforts to achieve change on these issues.

Background

The outcome statement for the fourth OGP Global Summit, taking place 7-9 December 2016, is titled "Paris Declaration for Open Government Partnership: Collective actions for the renewal of our democracies."[3] It will feature collective actions that national and subnational governments and CSOs can sign up to as part of efforts to find tangible methods of achieving existing priorities to which they have committed in OGP national action plans. Currently available in draft form on a contribution platform that allows comments and additions, collective actions will cover a wide range of thematic areas, including public procurement, anonymous companies and political party financing.

On the subject of the governance of natural resources, collective action 8 focuses on transparency and open contracting in the oil, gas, mining, agriculture and forestry sectors. It reads:

"We will publish the contracts, licenses or leases (including associated geospatial information) which detail the agreements made between companies and the government on natural resources and land projects and the sales of commodities, and we will improve the transparency of the processes through which those agreements are made, in line with the open contracting principles. We will also publish information and assessments on the potential social and environmental impacts of these projects, and improving accountability and participation in their environmental management."[4]

*Denotes that the country uses a licensing regime

■ Governments disclosing all oil, gas or mining contracts
■ Government disclosing some oil, gas or mining contracts

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This covers three major themes, which we explore below.

- **Contract disclosure.** Disclosing the contracts, licenses or leases detailing agreements made between companies and the government to exploit or sell natural resources, including the geospatial boundaries of these agreements.

- **Open contracting in natural resources.** Making more transparent, participatory and accountable the processes through which companies and governments come to agreements on natural resources.

- **Environmental disclosure and participation.** Improving environmental and social information dissemination and citizen participation in processes to determine, monitor and manage environmental impacts.

Theme 1. Contract disclosure

Contracts, licenses and leases signed by governments and resource companies are the fundamental documents that set out obligations, rewards, rights and protections associated with many natural resource investments. Without access to these documents, it is not possible for citizens to fully understand the nature of the agreements that their governments have made on their behalf, and to accurately evaluate the potential impacts of these decisions. This can seriously undermine efforts by governments and companies to build trust and manage expectations around resource projects.

To their credit, an increasing number of authorities recognize the importance of contract disclosure. More than 28 governments have now published at least some of the contracts, licenses or leases signed with extractives companies. This number is growing every year. (See map below.) In 2016, Colombia, Tunisia and Senegal disclosed for the first time,[5] and more countries (such as Ghana and Tanzania) are expected to implement recently passed disclosure legislation soon.[6] The private sector is also taking note: several companies including BHP Billiton, Kosmos Energy, Newmont, Rio Tinto, Statoil and Tullow Oil have already spoken out in support of contract disclosure. Global technologists are also stepping in to help, providing ready built platforms such as resourcecontracts.org. Governments are now using these platforms to develop bespoke national contract portals, as in Sierra Leone, the Philippines and Tunisia.[7]

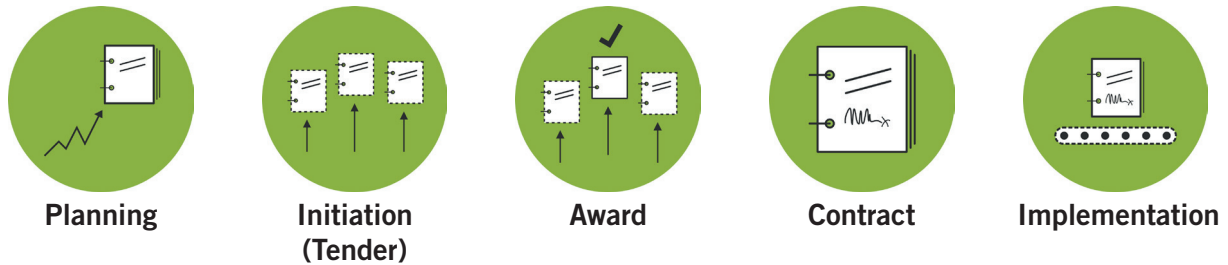Concrete actions countries can take:

Governments can:	Civil society actors can:
• Proactively publish all contracts, licenses and leases associated with resource rights. • Proactively publish commodities sales contracts. • Share contract disclosure experiences with other countries.	• Monitor obligations contained within contracts. • Support civic education and debate on contract terms. • Share experience monitoring and providing education on contracts with other countries.

Theme 2. Open contracting in natural resources

Open contracting in natural resources involves implementing policies to improve transparency, participation and oversight of the processes through which governments and companies develop contracts. Many of the smartest and most responsive governments are doing this for a variety of reasons: to create a level playing field for investors; to ensure that information is not lost between different governmental bodies; to demystify the contracting process for citizens; and to ensure relevant consultations are held and safeguards are met.

The governments of Ghana and Mexico made commitments to take an open contracting approach to their extractive activities at the London Anti-Corruption Summit in May 2016.[8] More recently, Tunisia indicated that it will follow suit. To do this, these countries are exploring ways to apply the Open Contracting Global Principles[9] to the natural resource sector through targeted reforms and development of technology platforms to enable participation at specific points along the open contracting chain.

Open contracting in extractive industries can involve publishing better information around the award of contracts. This can include providing geospatial information on the area that the contracts cover, or using technology like resourcecontracts. org to publish contracts in an open data format, allowing for annotations and searchability. But open contracting can also include improving the planning, initiation and implementation of contracts. The potential for peer learning on these issues is therefore significant: some countries have effective planning processes, while others might be better at allocation and award or the implementation of resource contracts.

Planning   **Initiation (Tender)**   **Award**   **Contract**   **Implementation**

Concrete actions countries can take:

Governments can:	Civil society actors can:
• Implement reforms to pursue open contracting at one or more stages of the contracting chain, such as publishing spatial data on project areas. • Develop technology platforms to enable transparency and participation at one or more stages of the open contracting chain and releasing spatial data, such as resourcecontracts.org. • Share experiences and tools opening up contracting process with other countries.	• Monitor government plans to develop open contracting processes. • Support civic education and debate on contracting processes. • Share experience monitoring and providing education on contracting processes. • Share analysis and release of spatial data to ensure appropriate land and natural resource management.

Theme 3. Environmental disclosure and participation

Natural resource projects can bring a number of negative social, environmental and health impacts to nearby communities. Community members must be involved in decision-making processes throughout the lifecycle of projects that might affect them. This would include the decision whether or not to go ahead with projects, as well as other important decisions relating to ongoing environmental management. Community members need specific types of timely information presented in relevant forms to engage in community planning and monitoring. This includes information about exploration, siting of specific facilities in their area, use of water and impact on biodiversity, types of pollutant released, efforts companies are taking to remediate environmental problems, company ownership and contact details, and public health risks associated with waste discharges.

In a 2015 study, WRI's Environmental Democracy Index (EDI), found that governments generally do not provide easy access to comprehensive information on mining operations or related environmental and social impacts.[10] The research, which assessed 70 countries, indicates that while almost half of the countries legally require all government agencies to monitor the performance and compliance of activities that could harm the environment, 64 percent of these countries were not making point-source (such as a factory or mine) pollution information publicly available in any form. The EDI also found that a majority of countries provided limited or no access to environmental impact assessments (EIAs). Countries performing best in the index in relation to requirements for consultation in relation to national laws on EIAs were Indonesia, Ecuador and South Africa.

Concrete actions countries can take:

Governments can:	Civil society actors can:
• Ensure early community participation in the development of terms of reference for environmental impact assessments processes, as well as their review, and ensure mandatory public participation in the development and implementation of environmental management plans.	• Demand opportunities for public participation reach out to the most vulnerable and most directly affected by any proposed use of natural resources.
• Simplify technical environmental information and provide it in forms that can be understood by local communities.	• Track and monitor disclosures and participation around the management of environmental impacts.
• Proactively disclose environmental impact assessments, environmental management plans, and environmental permits, licenses and monitoring data.	• Support civic education and simplify technical environmental information, supporting fair debate on decisions about environmental management.
• Share experiences in environmental disclosure and participation with other countries, as well as the implementation of environmental management plans.	• Share experiences on monitoring and provide education on environmental management. • Utilize the environmental democracy index to assess countries progress in establishing legal rights and practice.

How can a government or civil society organization sign up to collective action 8?

In order to sign up to a collective action, governments or CSOs should email parisdeclaration@opengovpartnership.org with the following information:

- The names of government(s) and/or civil society organization(s) contributing. It can be a single government or civil society organization (e.g., "Country *x* will ...") or several governments and/or civil society organizations (e.g., *"Country a* and *country b*, together with *CSO x, CSO y* and *CSO z* will...")*. Signing on as a group is encouraged.

- The specific contribution a government or civil society organization can share with others in OGP.

- Tools a government or civil society organization can share with others in OGP.

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Endnotes

1   See http://paris-declaration.ogpsummit.org/topic/58172e4af224461c2c31c846
2   See http://www.opengovpartnership.org/blog/marie-lintzer/2016/02/26/great-ideas-ogp-action-plans-improving-resource-governance
3   See https://en.ogpsummit.org/osem/conference/ogp-summit
4   See http://paris-declaration.ogpsummit.org/
5   For Colombia disclosures see https://www.anm.gov.co/, for Tunisia see http://tunisia.resourcecontracts.org/ and for Senegal see http://www.gouv.sn/Point-de-situation-sur-les.html
6   For information about new disclosure rules in Ghana see http://www.acepghana.com/press/246/ and for Tanzania see http://www.teiti.or.tz/wp-content/uploads/2014/03/The-Tanzania-Extractive-Industries-Transparency-Accountability-Act-2015.pdf
7   For Sierra Leone see http://www.nma.gov.sl/resourcecontracts/ for the Philippines see http://contracts.ph-eiti.org/ and for Tunisia see http://tunisia.resourcecontracts.org/
8   For Ghana's commitment see https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/522707/Ghana.pdf and for Mexico see https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/522966/Mexico.pdf
9   See http://www.open-contracting.org/get-started/global-principles/
10 See http://www.environmentaldemocracyindex.org/