Contract Transparency:

EITI Leaders Forum
February 12, 2020
Isabel Munilla
Policy Lead, Extractive Industries Transparency
Contract Transparency: The most interesting requirement in the new EITI Standard

EITI Leaders Forum
February 12, 2020
Isabel Munilla
Policy Lead, Extractive Industries Transparency
All stakeholders need the public to have realistic expectations of the potential benefits, costs and risks from extractive projects.
CONTRACT DISCLOSURE:

What are the trends?
What is the requirement?
How might we use it?
“Contract disclosure is a global norm”
Trend: Disclosure law adoption

Number of countries requiring disclosure of oil, gas or mining contracts
Trend: 44 countries have disclosed 27 have laws

https://bit.ly/2Hm48Yc
“Contract transparency should be simply treated as a normal aspect of doing business.”
Trend: Contract availability

- 2,000+ contracts in 90+ countries publicly available
- ‘Pay to see’ databases – Full contracts, key terms, models, etc.
- Securities disclosure for investors
- Proactive government contract disclosure portals:
  - Congo, Colombia, Ghana, Guinea, Liberia, Mexico, Mongolia, Peru, Philippines, Norway, UK, US
Trend: Contract repositories
Trend: Portals!
Ghanapetroleumregister.com

DEEPWATER TANO

OPERATOR: Tullow Ghana Limited – 35.48% interest in block

OTHER CONTRACTING PARTIES:
1. Anadarko Petroleum Corporation – 24% Interest in Block
2. Kosmos Energy Ghana HC – 24% Interest in Block
3. PetroSAGhana Limited – 2.52% Interest in Block
4. Ghana National Petroleum Corporation (GNPC) – 1.4% Interest in Block

Contract Area Size:
1. Portion of Jubilee Field: 61 sq. km
2. TEN Development and Production Area: 450 sq. km
3. Wawa Discovery Area: 106 sq.km

Effective Date: March 10, 2006

Current Phase of Operations: Development and Production

ASSETS
- Jubilee Field
- Twenebo-Enyento-Ntomme (TEN) Fields
- Wawa Discovery Area

Status of Operations
Contractor is producing oil from the Jubilee and TEN Fields utilizing the FPSO
Mongolia Portal: resourcecontracts.mn
Contract Monitoring contains historic and current information on contracts monitored by CNH, including those awarded in Rounds and Farmouts, as well as Oil Entitlements migrated to Contracts.

Search by contract name, location or contractor:

- **CNH-R01-L01-A2/2015**: Sierra O&G Exploration y Production, S. de R.L. de C.V., Talos Energy Offshore Mexico 2, S. de R.L. de C.V., and Premier Oil Exploration and Production Mexico, S.A. de C.V.
- **CNH-R01-L01-A7/2015**: Sierra O&G Exploration y Production, S. de R.L. de C.V., Talos Energy Offshore Mexico 7, S. de R.L. de C.V., and Premier Oil Exploration and Production Mexico, S.A. de C.V.
- **CNH-R01-L02-A1/2015**: Eni México, S. de R.L. de C.V.
**CONTRATO PARA LA EXPLORACIÓN Y EXTRACCIÓN DE HIDROCARBUROS BAJO LA MODALIDAD DE PRODUCCIÓN COMPARTIDA**

**ENTRE**
## Program of Compliance with Local Content submitted by the Operator

<table>
<thead>
<tr>
<th>Item</th>
<th>Period 1</th>
<th></th>
<th>Period 2</th>
<th></th>
<th>Period 3</th>
<th></th>
<th>Period 4</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Expenditure in million pesos</td>
<td>Estimated Local Content Percentage</td>
<td>Expenditure in million pesos</td>
<td>Estimated Local Content Percentage</td>
<td>Expenditure in million pesos</td>
<td>Estimated Local Content Percentage</td>
<td>Expenditure in million pesos</td>
</tr>
<tr>
<td>1. Goods and Services</td>
<td>16.4</td>
<td>93.00%</td>
<td>3.4</td>
<td>50.00%</td>
<td>257.9</td>
<td>25.00%</td>
<td>0.7</td>
</tr>
<tr>
<td>2. Workmanship</td>
<td>3.7</td>
<td>6.00%</td>
<td>2.9</td>
<td>8.00%</td>
<td>3.1</td>
<td>8.00%</td>
<td>1</td>
</tr>
<tr>
<td>3. Training Services</td>
<td>0</td>
<td>0.00%</td>
<td>0</td>
<td>0.00%</td>
<td>0</td>
<td>0.00%</td>
<td>0</td>
</tr>
<tr>
<td>4. Technology transfer</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.1. Construction and operation of</td>
<td>0</td>
<td>0.00%</td>
<td>0</td>
<td>0.00%</td>
<td>0</td>
<td>0.00%</td>
<td>0</td>
</tr>
<tr>
<td>research and development centers</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.2. Financing and contribution to</td>
<td>0</td>
<td>0.00%</td>
<td>0</td>
<td>0.00%</td>
<td>0</td>
<td>0.00%</td>
<td>0</td>
</tr>
<tr>
<td>research programs and technology</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>development</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.3. Value and developed patent</td>
<td>0</td>
<td>0.00%</td>
<td>0</td>
<td>0.00%</td>
<td>0</td>
<td>0.00%</td>
<td>0</td>
</tr>
<tr>
<td>royalties</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.4. Technology selection, adaptation and implementation</td>
<td>0</td>
<td>0.00%</td>
<td>0</td>
<td>0.00%</td>
<td>0</td>
<td>0.00%</td>
<td>0</td>
</tr>
<tr>
<td>4.5. Specialized formation</td>
<td>3.8</td>
<td>100.00%</td>
<td>3.8</td>
<td>100.00%</td>
<td>2.3</td>
<td>100.00%</td>
<td>0</td>
</tr>
<tr>
<td>5. Infrastructure</td>
<td>0</td>
<td>0.00%</td>
<td>0</td>
<td>0.00%</td>
<td>0</td>
<td>0.00%</td>
<td>0</td>
</tr>
</tbody>
</table>
Trend: Many Supportive Extractive Companies
At least 18 companies support disclosure in some form
Company policy highlights

“Total supports government efforts towards advancing transparency in accordance with the EITI framework, and advocates for the public disclosure by countries of their Petroleum contracts and licenses. To do this, Total strives to:

- Foster dialogue between the relevant Group officials and representatives of States, civil society and the EITI;
- Participate in the efforts of the EITI Board;
- Promote the EITI and its principles among the States in which it operates and, more generally, whenever it has the opportunity;
- Share resources and recommendations based on our experience”
“BP supports contract transparency and recognizes that it can help to promote accountability and transparency. BP has proactively disclosed contracts for its Caspian operations on its website, and is considering preparing a formal policy on contract disclosure.

We see contract disclosure as being led by the host government, however, we are supportive, and to the extent we can, we will support the mechanics of contract disclosure. We recognize that EITI Standard implementation has moved beyond ‘encouragement’ of contract disclosure.”
“We encourage governments to share contracts and licences, in line with the EITI’s revised standard on contract transparency. This requires countries implementing the EITI standard to disclose contracts and licences that are granted, entered into or amended from January 1, 2021. We also aim to support governments’ ambitions to achieve contract transparency.”
Company Policy Highlights

“As a founding member of the Extractive Industries Transparency Initiative (EITI) and signatory to the B-team’s Tax Principles, Rio Tinto believes that greater transparency and accountability is key to building trust and encouraging sustainable business practices. **We will disclose contracts with governments in relation to minerals development, where they are not subject to a confidentiality undertaking and encourage governments to allow such disclosure.**

Rio Tinto commits to disclosing taxes paid and payments to governments. We also support beneficial ownership disclosure and will strive to provide information of the beneficial owners of those entities that we have joint ventures with, in line with the EITI Standard and expectations.

Rio Tinto will engage with governments and other stakeholders to share our experiences on disclosure and transparency and encourage the harmonisation of reporting obligations aligned with global best practice.”
Company statement highlights

“When legally permitted and consented to by host governments, **PanAust supports making the material terms of its contracts publically available** (in line with EITI requirements).”

“Petrobras is committed to good corporate governance practices, which are based on greater transparency and accountability. In this context, we **proactively publish in our Transparency Portal information on the contracts where Petrobras acts as contractor**, in compliance with the Law on Access to Information…”

“Vale would **support conditional contract transparency** and would be willing to take part in discussion groups and initiatives to develop the concept of contract transparency…”

When it comes to contracts, we **are happy to operate in an environment, in a country, that has full contract disclosure.** We actually come from a country where we have full disclosure of the contract conditions and we have a concession agreement where all details are public.”
“Although it’s not a condition of ICMM membership, the majority of our members are willing to make public the general terms of their contract in any specific country, assuming that proper protection for competitively-sensitive information is in place. This is a good practice that we support.”

“ICMM company members commit to engage constructively in appropriate forums to improve the transparency of mineral revenues – including their management, distribution or spending – or of contractual provisions on a level playing-field basis, either individually or collectively through ICMM.”
ADVANCING INTER-GENERATIONAL EQUITY
through responsible resource governance
How Energy and Mining Contract Transparency Can Inform Investment Analysis
WHAT IS THE REQUIREMENT?
2019: New EITI Contract Requirement (1)

- A **requirement** to disclose all contracts and licenses that are granted, entered into or amended from 1 January 2021.

- An **encouragement** to disclose all contracts and licenses.
2019: New EITI Contract Requirement (2)

• An **expectation** for EITI multi-stakeholder groups to **agree and publish a plan for disclosing contracts**, including:
  
  • A **clear timeframe** for implementation
  • **Address any barriers** to comprehensive disclosure
  • **Integrate into work plans** from 2020 onwards
2019: New EITI Contract Requirement (3)

• EITI Report must provide a list of all active contracts and licenses, including:

  • **Availability**: Indicate which are publicly available and which are not.

  • **Location link**: Include reference or link to location where contract or license is published.

  • **Barrier explanation**: If contract or license is not published, the legal or practical barriers must be documented and explained.
EITI Contracts: What is covered?

EITI Requires:

• The **full text** of any **contract or license** which “provides the terms attached to the exploitation of oil gas and mineral resources”.

• Plus:
  • **Full text** of any **annex, addendum or rider**
  • **Full text** of any alteration or amendment

• This is a **minimum standard**.
Practical opportunities to make progress:

National processes:

• **Passing a sector law?** Include contract disclosure.

• **Is there a new licensing round?**
  • Change model contracts to include transparency clause like Mexico
  • Get transparency included in bid protocols.

• Is your country in the process of producing a **cadaster or register?** Include full text contracts.

• Are you in **OGP**? Include this in your next Action Plan.

Take advantage of EITI resources:

• Learning from EITI countries, Guidance Notes, Contracts Checklist

• Government Network on Contracts
Practical opportunities to make progress:

Study corporate statements and request support

Discuss examples of what is feasible & share lessons: oil & mining law clauses, model contracts, disclosure portals

Engage supporters: IMF, WB

Nervous? Unpack & address concerns proactively

• Concerns about risks are common, but have been overcome by EITI countries
• Share lessons with countries & companies with experience
HOW MIGHT WE USE CONTRACTS?
Revenue Risks: Audits are too late

Oil companies start incurring costs from exploration

Exploration → Construction Development → Production

May be outside the audit time limit; record keeping requirements may have run out.

Governments wait to audit costs when revenues start to flow.
Revenue Risk: Audit rights are fragmented

- **NOC**: Audit taxes; production
- **Regulator**: Audit production
- **Tax Authority**: Audit taxes
- **Petroleum revenue administration**: Audit SOEs, agencies
- **Ministry**: Audit taxes; production
- **SAIs**: Audit SOEs, agencies
Contract uses

Assessing revenue risk:

- Cost recovery timeframes & limits
- Cost auditing timeframe and rights
- Accounting annexes
- Government equity participation
- Debt financing
- Stabilization clauses
- Profit-based taxes
Contract uses

Basis for rich dialogue:

• Intra-governmental & inter-ministerial
• EITI MSG
• On links to other EITI requirements: environment, gender
• Municipalities and communities around projects
Contract uses

Timing & volume of revenues:

- Economic analysis/modeling
- Forecasting: National & subnational level revenue
- Understanding the package of fiscal instruments & how they work together

Community risk & impact mitigation:

- Evaluate and socialize Env/Soc mitigation requirements
  - communities see outcome of licensing & consultation process
- Documents agreements with communities
- Realistic expectations on stabilization clauses
- Confirms community revenue sharing provisions
  - link to revenue projections & local spending plans
Contract uses

Analyze for energy transition risk policies:

• Project timeframes & revenue assumptions
• Operational footprint & project plans
• Special intergenerational funds
• Methane and other GHG management
• Land use
THANK YOU

Isabel Munilla
Isabel.munilla@Oxfam.org
Twitter: @IsabelMunilla
Key links and guides: transparency and accountable natural resource management

Oxfam Contract Disclosure Survey
EITI: http://www.eiti.org
Publish What You Pay Campaign: http://www.pwyp.org
NRGI: http://www.resourcegovernance.org
Resource Governance Index: https://resourcegovernanceindex.org/
Open Contracting: http://www.open-contracting.org
Open Government Partnership: http://www.opengovpartnership.org
TI Mining for Sust Dvlpt Project:
IMF Fiscal Transparency Code/Natural Resources Pillar
Oxfam Petroleum Cost Auditing Report
ADDRESSING COMMON CONCERNS
# Common concerns

<table>
<thead>
<tr>
<th>Concern</th>
<th>Potential for competitive harm if disclosed?</th>
<th>Found in a primary contract?</th>
</tr>
</thead>
<tbody>
<tr>
<td>References to future transactions</td>
<td>Yes</td>
<td>Unlikely</td>
</tr>
<tr>
<td>Trade secrets</td>
<td>Yes</td>
<td>Unlikely</td>
</tr>
<tr>
<td>Fiscal terms of the deal, payments and rates</td>
<td>Unlikely</td>
<td>Likely</td>
</tr>
<tr>
<td>Work obligations</td>
<td>Unlikely</td>
<td>Likely</td>
</tr>
<tr>
<td>Local content</td>
<td>Unlikely</td>
<td>Likely</td>
</tr>
<tr>
<td>Employment and training</td>
<td>Unlikely</td>
<td>Likely</td>
</tr>
<tr>
<td>Parties to the contract</td>
<td>Unlikely</td>
<td>Likely</td>
</tr>
</tbody>
</table>

Source: Adapted from Revenue Watch Institute, April 2012[^12]
What about confidentiality clauses?

- **Confidentiality clauses** are not a barrier. Parties to a contract can include language to allow contract to be published by mutual consent or to be required by law.
  - Tullow, which publishes its contracts in Ghana, has called these clauses outdated.
  - Barrick attempts to include transparency provisions

- **Concerns around commercial consequences**: governments and companies will be forced to give concessions, open themselves up to criticism, or show corruption
  - But transparency can be basis to renegotiate terms to be more favorable and durable & stop race to the bottom
What about confidentiality clauses?

Sample confidentiality clause, DWM Petroleum AG production sharing contract, Zuunbayan XIV Area, 2008

Clause 12: Exploration, Production and Technical Data

12.10 Confidentiality

The parties hereto shall maintain all documents and reports referred to in this Article XII as confidential and shall not divulge it to any third party without the consent of the other party hereto. The foregoing confidentiality obligation shall not apply to:

1. Disclosure by either party hereto to its employees. Affiliates, consultants, prospective assignees, prospective lenders or subcontractors to the extent required for the conduct of petroleum operations; or

2. Disclosure by either party hereto to the extent required to comply with applicable laws, or the rules or regulations of any stock exchange on which a party’s, or its affiliate’s, shares are listed.

3. Contractor shall inform to Mineral Resources and Petroleum Authority about potential investor. The potential investor shall certify to keep information in confidential.