OPEN CONTRACTS 2021: ENSURING A GOOD DEAL

The 2019 EITI Standard requires EITI implementing countries to disclose all contracts and licenses that are granted or amended from 1 January 2021. This new requirement is reflective of how contract transparency in the extractive sector has become a global norm in recent years. To date, more than 30 EITI countries have disclosed their contracts. Major companies have signified support, and civil society organisations have stepped up their efforts on this agenda. The introduction of EITI's requirements on contract disclosure is expected to further improve the management of mining oil and gas sectors as citizens gain more access to information on deals governing these sectors.

What do we mean by contract transparency?

Contract transparency under the EITI Standard means the disclosure of the full text of any contract, license, concession, production-sharing agreement or other agreement granted by, or entered into by, the government which provides the terms attached to the exploitation of oil, gas and mineral resources. The disclosure includes the full text of any annex, addendum or rider which establishes details relevant to the exploitation rights or the execution thereof, as well as the full text of any alteration or amendment to these documents.¹

Why is contract transparency important?

Contract transparency enables citizens to understand and monitor compliance with the terms, obligations and payments arising from the extractive projects in their countries. This helps curb corruption because it empowers citizens to assess whether contractual obligations have been breached and who should be held accountable. Contract disclosure further allows comparison of different contracts across jurisdictions, resulting in a more level playing field and enabling governments to negotiate for better deals.

What are the EITI's requirements on contract transparency?

Under the 2019 EITI Standard, implementing countries are required to:

- Disclose any contracts and licenses that are granted, entered into or amended after 1 January 2021.

¹ [https://eiti.org/document/standard#r2-4](https://eiti.org/document/standard#r2-4)
- Document the government’s policy on disclosure of contracts and licenses that govern the exploration and exploitation of oil, gas and minerals. This includes:
  
  o a description of whether legislation or government policy requires or prohibits disclosure of contracts and licenses
  o explanation for deviation from policy, if any
  o an explanation of where the government policy is embodied
  o documentation of the multi-stakeholder group’s discussion on what constitutes government policy on contract disclosures.
  o reforms relevant to the disclosure of contracts and licenses planned or underway
  o an overview of which contracts and licenses are publicly available including a list of all active contracts and licenses with corresponding links
  o explanation of legal or practical barriers where contracts cannot be published

Implementing countries are encouraged to publicly disclose any contracts and licenses that provide the terms attached to the exploitation of oil, gas and minerals (entered into before 2021).

The multi-stakeholder group is expected to agree and publish a plan for disclosing contracts with a clear time frame for implementation and addressing any barriers to comprehensive disclosure. This plan will be integrated into work plans covering 2020 onwards.

**Contract transparency is already a global norm**

More than half of EITI implementing countries (31 out of 52) have published extractive contracts with varying levels of disclosure. The International Monetary Fund (IMF) and NRGI affirm that contract transparency is an established norm.

Support also comes from private sector forums like the International Council on Mining and Metals (ICMM) and The B Team, as well as leading development finance institutions and international governance organizations like the U.N. and the OECD. Further, the majority of the company constituency on the EITI Board have made public statements supporting the practice of contract disclosure. These are BHP, BP, Equinor, Freeport-McMoRan, Rio Tinto, Shell and Total. Numerous other EITI supporting companies around the world have joined these ranks, including Kosmos and Tullow.

“We believe that the only way for a level playing field to be guaranteed is for governments to disclose contracts (and to do so in a systematic way), either through an EITI requirement or through government regulation.”

— Tom Butler, CEO, International Council on Mining and Metals
Regional highlights

Africa
Many African countries have taken the lead on contract transparency with eight governments endorsing contract disclosure, including Republic of the Congo, Chad, Ghana, Guinea, DRC, Liberia, Malawi and Senegal. Some countries, such as Mali are also proactively publishing contracts, even though the government has not formalized a disclosure policy.

Ten EITI member countries – Chad, DRC, Guinea, Liberia, Malawi, Mali, São Tomé and Príncipe, Senegal, Sierra Leone and Togo – have adopted and implemented policies of full disclosure. Most contracts are publicly accessible online. In Cameroon, civil society contributed to the publication of the model petroleum sharing contract on the website of Société Nationale des Hydrocarbures, a state-owned company, and helped pass a new law in July 2018 mandating contract transparency. In Ghana and Malawi, civil society efforts culminated in the publication of all contracts through online portals.

Asia and Eurasia
Contract transparency is gaining traction in Asia and Eurasia, with contracts being published in Albania, Armenia, Kyrgyzstan, Mongolia, the Philippines and Timor Leste. Mongolia had published extractive contracts with local communities which could improve debates on resource governance at the local level. In the Philippines, the civil society organization involved in the multi-stakeholder group (Bantay Kita) has helped local communities and indigenous peoples understand and evaluate mining contracts. This has empowered stakeholders in mining areas to monitor companies’ compliance with contractual obligations and has informed discussions on local development projects.

Europe
In Germany, mineral or petroleum rights are not awarded through contracts, but through a licensing process directed by law. Approvals of license applications include the conditions related to the license and are made public if the project in question requires an environmental impact assessment. In the UK, the Oil and Gas Authority website provides access to the full text of all oil and gas licenses.

Latin America
Many countries from Latin America and the Caribbean have legal basis for contract disclosure through laws allowing access to information. This includes countries such as Colombia, Dominican Republic, Guatemala and Honduras. Other countries, like Peru, have portals that make oil and gas contracts publicly available. Mexico, through its National Hydrocarbons Commission (CNH) has created a portal that not only makes oil and gas contracts available, but it also allows users to see the changes within the contract’s lifetime. Guyana has published some petroleum agreements online. In Trinidad and Tobago oil and gas contracts are confidential.
Legislating contract disclosure in countries

EITI processes are helping countries advance contract disclosure in many ways, including in sector-wide legislation. Ten years ago, only nine member countries had a law requiring the publication of oil, gas or mining contracts. Now, 24 countries have such laws.

**Mongolia:** The contract for the most important mine in the country—the Oyu Tolgoi copper mine—states in clause 15.21 that “This Agreement shall be made public.” The government has published both the original 2009 contract and the 2015 contract amendment.

**Afghanistan:** The petroleum contracts state: “The Ministry shall have the right to keep a copy of this Contract in the Hydrocarbons Register, publish and keep publicly available and distribute to provincial offices such information and reports on the Contract, related documents and the Contractor as is required pursuant to the Hydrocarbons Law...” These contracts have been published by the Government.

**Dominican Republic** promulgated legislation requiring that all acts and activities of the “Public Administration” be made public. This has included public contracts, such as mining contracts.

**Mexico** has a more targeted legislation focusing on disclosure of oil and gas site assignments to the state-owned company Pemex as well as contract allocations to private investors in the hydrocarbon sector.

Publication of contracts is technologically simple and not labor intensive.

Public contracts are only truly “public” if they are easy to find, browse, search and use. If governments do not seek to improve access in these ways, increased disclosure can actually obscure information, which makes finding the information about the extractive industries more difficult rather than easier. A few EITI countries publish extractive contracts either through government platforms (Armenia, Ghana, Mexico) or through a dedicated contracts portal (Ghana, Philippines). Some have published contracts through company websites (e.g. BP, Kosmos, Tullow).

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2 http://www.minenergy.am/page/571
3 https://asignaciones.energia.gob.mx/motorBusqueda.Aspx
4 https://www.ghanapetroleumregister.com
5 http://contracts.ph-eiti.org/