



Contract transparency in Latin America and the Caribbean Identifying obstacles and opportunities for EITI implementation

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Final Report



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Abbreviations and acronyms

ANH	National Hydrocarbon Agency (Colombia)
ANM	National Mining Agency (Colombia)
ASM	Artisanal and Small-scale Mining
CNH	National Hydrocarbon Commission (Mexico)
CSO	Civil Society Organization
EITI	Extractive Industries Transparency Initiative
EITI-RD	Dominican Republic EITI
EITI-SR	Suriname EITI
FFOS	Fishermen and Friends of the Sea (Trinidad & Tobago)
FOI	Freedom of Information
FY	Financial Year
GDP	Gross Domestic Product
GGMC	Guyana Geology and Mineral Commission
GYEITI	Guyana EITI
IDB	Inter-American Development Bank
INGEMMET	The Institute of Geology, Minerals and Metallurgy (Peru)
INHGEOMIN	Honduran Institute of Geology and Mines
LAC	Latin America and Caribbean
MEEI	Ministry of Energy and Energy Industries (Trinidad & Tobago)
MoNR	Ministry of Natural Resources (Suriname)
MSG	Multi-stakeholder Group
NGC	National Gas Company (Trinidad & Tobago)
PE	Petroecuador (Ecuador)
PEP	Politically Exposed Person
PSC	Production Sharing Contract
SERNA	Secretary of Natural Resources and Environment (Honduras)
SIACAM	Open Information System for the Public on Mining Activity in Argentina
TTEITI	Trinidad & Tobago EITI

Executive summary

This report considers the challenges and opportunities of implementing Requirement 2.4 on contract transparency of the EITI Standard 2019 in the 11 implementing countries in the Latin American and Caribbean region. The 11 countries are:

- Argentina
- Colombia
- The Dominican Republic
- Ecuador
- Guatemala
- Guyana
- Honduras
- Mexico
- Peru
- Suriname
- Trinidad & Tobago

For each country, the report provides the context and status of contract transparency, a gap analysis between current practice and Requirement 2.4, challenges and opportunities to implementing contract transparency and recommendations for each country. Ecuador and Trinidad & Tobago are considered in more detail as case studies.

The provisions of Requirement 2.4 include the publication of the full text of contracts and licenses that came into force or were amended after 1 January 2021, having a contract transparency plan in place, listing all contracts and licenses in force, disclosing the policy and legislative framework, and documenting any deviations from the disclosure policy. The full text of Requirement 2.4 is attached as Appendix 1.

The main findings are:

- The full text of contracts and licenses are not available in 8 of the 11 countries and in many cases, there are considerable barriers to disclosure.
- There is limited advocacy for contract transparency from government and the private sector, while civil society advocacy focuses on public procurement. Also, the advocacy that does occur does not appear to be supported by a strong, and evidence-based use case that provides a detailed analysis of the benefits of contract transparency for government, the private sector and civil society.
- Legal barriers are the most significant hurdles to making progress on contract transparency. These barriers are typically in the form of confidentiality clauses which are wide in scope and prohibit the disclosure of information.

As well as the recommendations in each country chapter, the report also makes 11 recommendations for the EITI International Secretariat, governments, companies, and civil society organizations.

The report contains a roadmap for promoting contract transparency in the region. This has a two-year time frame and focuses on raising awareness and creating an obligation for each country to develop and implement its own roadmap for implementing Requirement 2.4. There is also a template for a roadmap for each country to use as a basis for their own implementation.

The EITI International Secretariat commissioned this report from the Consultants, who were selected after a competitive process. The project was funded with the generous support of USAID.

1 Introduction

Michael Barron Consulting Ltd, Engaged Consulting Ltd, and Victoria Vasalo (the Consultants) are pleased to present this report on Contract Transparency in Latin America and the Caribbean (LAC). In accordance with the Terms of Reference, this report includes a map of publicly available information related to Requirement 2.4 of the EITI Standard 2019, analysis of the obstacles and opportunities in EITI implementing countries in the region, as well as a roadmap of concrete recommended actions to advance and strengthen contract transparency.

The EITI International Secretariat commissioned the Consultants to undertake this project after a competitive tender process. This work is funded by USAID. The Consultants acknowledge the support of USAID.

The countries in the region have, to date, made varying levels of progress on implementing Requirement 2.4 which includes obligations on implementing countries to publish all contracts for the exploitation of oil, gas and minerals that came into force or were amended after 1 January 2021 and to produce a list of contracts that are currently in force.

In the extractive industries, arrangements to explore for, exploit and sell the resulting production are governed by several types of contracts. Different countries will use a variety of legal mechanisms, structures, and agreements to govern the extractives sector. These can include concession agreements, licenses, joint ventures, and production sharing contracts. Transparency of these contracts facilitates greater understanding of the terms and conditions on which both private and state-owned companies undertake activities, the value that is accruing to different stakeholders



Created with mapchart.net

Figure 1: EITI implementing countries in the region

including national and local governments as well as local communities and, above all, contributes to holding governments and companies accountable for the way they exploit the country's natural resources and the benefits this brings.

1.1 Benefits of contract transparency

There are significant potential benefits in disclosing extractive sector contracts and licenses, and these apply to all resource rich countries. Disclosure of the full text of contracts and licenses in a country brings benefits to that country beyond compliance with the EITI Standard 2019. Contract transparency can bring benefits to governments, companies, and civil society. But overall, it can contribute to strengthening trust in the governance and accountability of a country's extractive industries and demonstrate the integrity of the sector. Increased transparency, accountability, trust, and integrity are likely to reduce risks for current investors in a country and render its extractive sector more attractive for new investors.

For government, contract transparency allows government agencies to demonstrate to citizens and investors that they have secured equitable terms for the exploitation of the country's natural resources and that contracts and licenses abide by the laws of the country. It also enables governments to demonstrate that they are holding companies to account and enforcing contract terms.

For companies, contract transparency contributes to their efforts to build, maintain, and strengthen their license to operate by demonstrating that their dealings with host governments are open and fair. It also enables companies to demonstrate that they are complying with the contract terms and making an equitable contribution to the country's economic and social development. Contract transparency can also contribute to companies having constructive dialogue with stakeholders on the terms contained within contracts and licenses.

For civil society, contract transparency can provide a valuable tool in holding both governments and the companies to account. Civil society can understand the contractual terms for exploitation of the country's natural resources and verify compliance. Civil society can also gain insight into where terms could be improved to ensure a more equitable share of the benefits to both citizens and the companies.

2 Scope and objective

2.1 Scope

As indicated by the map in Figure 1, this report covers the 11 countries in the Latin America and Caribbean region that are implementing EITI. They are:

- Argentina
- Colombia
- The Dominican Republic
- Ecuador
- Guatemala
- Guyana
- Honduras
- Mexico
- Peru
- Suriname
- Trinidad & Tobago

This report focuses on Requirement 2.4 of the EITI Standard 2019. It considers the factors that obstruct each country's ability to comply with the Requirement and what is required to facilitate compliance. Requirement 2.4 provides a definition of contract documents (including licenses) that cover both the exploration and exploitation of hydrocarbons and minerals. It requires documenting the government's policy towards disclosure of contracts. In terms of publishing the full terms of contracts, Requirement 2.4 concentrates on the documents that govern exploitation of resources rather than those documents that govern exploration activities or the sale of commodities (see chapter 4 for more details). This report will, therefore, focus on each country's system for licensing the exploitation and extraction of oil, gas, and minerals. The EITI Standard 2019 also contains other provisions relevant to contract and license transparency, e.g. Requirements 2.2 and 2.3. While these requirements are not the focus of this report, it will consider the implications of these requirements for meeting Requirement 2.4. In each country section the Consultants have indicated the agency responsible for awarding contracts and licenses in the mining and hydrocarbon sectors. In cases where the most recent EITI Report describes the award process, the Consultants have provided the relevant reference, otherwise, the Consultants have provided a brief description.

The terms, conditions and obligations attached to concessions to exploit natural resources can be set out in legislation applicable to all those operating in the sector or included in bilateral contracts or licenses between host governments and individual operators. The more terms, conditions and obligations set out in publicly accessible legislation, the more open and transparent the regime. Contract or license transparency is important to provide visibility of those areas not covered by legislation, and the more that is included in the contracts and licenses, the more important transparency becomes.

In most countries, including those in scope for this study, some aspects of the terms, conditions and obligations are set out in legislation and others are included in licenses and contracts. Contracts and licenses can also be categorized by the types of fiscal terms they offer.

In the mining sector, the fiscal regime is typically based on a tax and royalty model. Taxes are payable on the profits arising from the sale of the commodity. In addition, many countries apply a royalty (normally a percentage of the value of the commodity at a specified stage in the production process), payable by the license holder. The basis for and applicable rates for royalties and taxes are typically set out in law. In practice, the levels of tax and royalty will vary over time, and the relative levels will also change, as each is driven by different variables, including commodity prices, capital expenditure and energy prices.

The hydrocarbon sector has two broad categories of fiscal regime. The first is tax and royalty, similar to the mining sector. The second is production sharing contracts (PSC). Under this regime, the contract holder(s) pay all the costs of exploration and exploitation. The revenues from production are then shared between the government and the contract holders to allow the contract holders to recover their costs, make a profit and meet their tax liabilities. The production share splits can vary from contract to contract.

2.2 Objective

The overall objective of this report is the delivery of a mapping study, roadmap and two case studies on the level of adoption of Requirement 2.4 of the EITI Standard 2019 across the 11 EITI implementing countries in the LAC region.

More specifically, this report:

- Documents the requirements of the EITI Standard 2019 with respect to contract transparency, and the specific challenges associated with implementing Requirement 2.4, and
- Documents the information that is required in the EITI Standard regarding contract transparency.

For each EITI implementing country in the region, this report:

- Documents the status of contract transparency in that country.
- Provides a gap analysis for each country between current practice and Requirement 2.4.
- Sets out the challenges the country faces in implementing Requirement 2.4 in full,
- Identifies opportunities to advance contract transparency in each country, and

- Provides actionable recommendations for the MSG in each country and other stakeholders where relevant.

For the region, the report:

- Sets out a roadmap for raising the visibility of contract transparency and sharing lessons learned to build momentum on contract transparency in the region.
- Provides recommendations for the EITI Board and International Secretariat, company representatives, civil society organizations and for all countries.

For Ecuador, the report:

- Develops a detailed case study including:
 - Stakeholder consultation to ascertain and document views on the status, options and recommended actions to enhance contract transparency, with:
 - The National Secretariats
 - MSG members
 - Relevant government agencies
 - A desktop review of known cases where public opinion, the media or other stakeholders have demanded more transparency in contracts, and
 - Actionable recommendations to enhance contract transparency in Ecuador as the EITI Standard 2019 is implemented.

For Trinidad and Tobago, the report:

- Develops a detailed case study including:
 - Stakeholder consultation to ascertain and document views on the status, options and recommended actions to enhance contract transparency, with:
 - The National Secretariat
 - MSG members
 - Relevant government agencies
 - A desktop review of documents prepared by TTEITI to identify the issues and any recommendations to enhance contract transparency, and
 - Actionable recommendations to enhance the level of compliance with the contract transparency requirements of the EITI Standard 2019 in Trinidad and Tobago.

3 Methodology

The Consultants used a five-stage methodology as described below.

Inception. A short inception phase consisted of a kick-off call between the Consultants and representatives of the EITI International Secretariat. On this call, the following were agreed: the priority tasks for the assignment, the project schedule (including deadlines for deliverables), list of stakeholders, key documents and the most effective use of consultant time. The Consultants and the International Secretariat also discussed potential implementation issues already identified by the Secretariat regarding the region.

Desktop review. The Consultants undertook a thorough review of the following: EITI Reports and relevant government websites from the 11 EITI implementing countries, EITI guidance notes on contract transparency, relevant third-party reports and studies on contract transparency including those produced by Open Contracting, and by civil society organizations in the region. This stage also included research required for each of the two case studies.

Stakeholder engagement. The Consultants engaged with relevant stakeholders in each country through semi-structured interviews. The stakeholders included the National Secretariat, members of each MSG and any other key stakeholders they recommended to include in the conversation. As well as one-on-one interviews, the Consultants developed two questionnaires. The first was designed for members of the MSG, secretariat representatives and other stakeholders to give insights into the issues regarding contract transparency in their country. This questionnaire is set out in Appendix 3. The second questionnaire was for national coordinators only and was designed to collect some baseline information on the status of contract transparency in their country. This questionnaire is set out in Appendix 4.

The responses to these questionnaires have been limited from some countries. Figure 2 below shows the level of response as of 24 June 2022 to questionnaire 1 (for all stakeholders). The insights from these responses have been incorporated into the relevant country assessments below.

It is noteworthy that three countries supplied no responses at all, and another three supplied only a single response. A low level of response should not necessarily be assumed to reflect a lack of progress on contract transparency. Indeed, The Dominican Republic is in a very advanced stage with respect to contract transparency, but only supplied a single questionnaire reply.

However, low levels of response to the questionnaire could indicate one or more of the following:

- A low level of understanding of contract transparency among MSG members
- A low level of interactive engagement between the National Secretariat and MSG members
- A low level of active participation by MSG members in driving forward EITI Reporting
- Constrained capacity in National Secretariats, due to staff or funding shortages

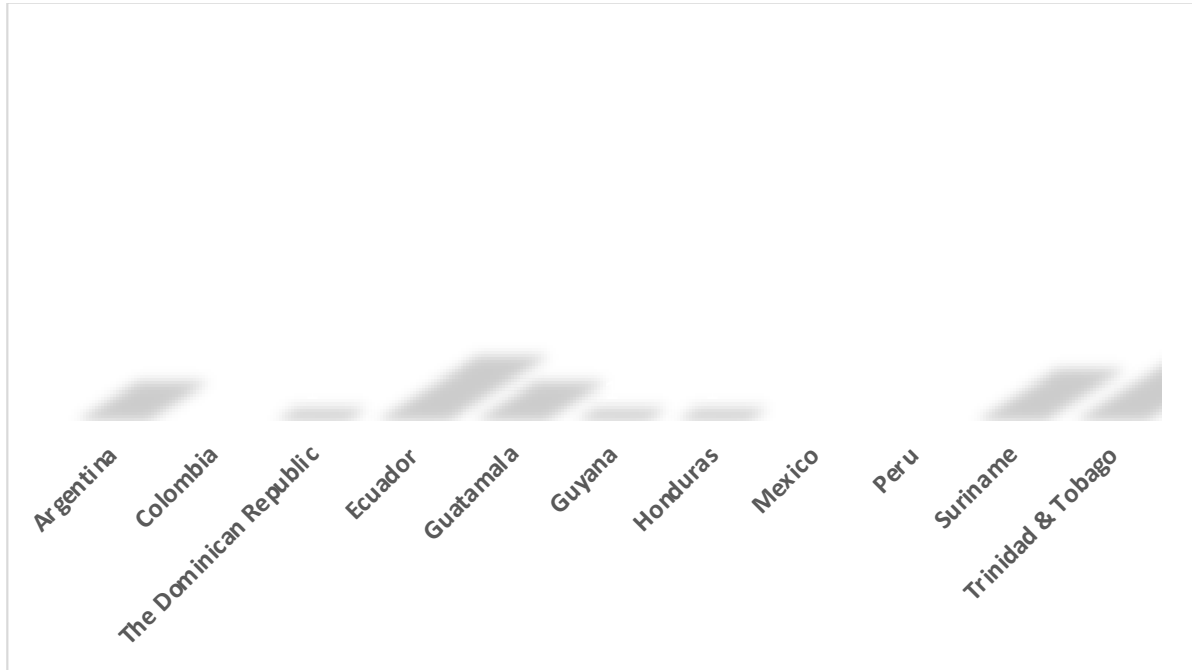


Figure 2: Responses to stakeholder questionnaire

EITI International Secretariat support. The Consultants maintained regular contact with the International Secretariat to report progress on the project, and to identify and report any obstacles as soon as possible, in order that they could be addressed within the project timeframe.

3.1 Availability of information

Basic information

In considering the level of contract transparency in each country, one of the factors that the Consultants reviewed was the extent of information available on active contracts and licenses. The information available can fall into one or more of the following categories:

- The full text of contracts and licenses being available in a searchable database
- The full text of contracts and licenses being available as PDF documents but not fully searchable
- A summary of the terms of contracts and licenses
- Basic information on each contract or license
- No information at all

The Consultants considered “basic information” to include the following information (e.g. available through a cadastre portal):

- License reference number
- Location and size
- Name of entity(ies) holding the license

- Percentage share of each entity(ies) in license
- Date of license application
- Date of license award
- Term of license or license expiration date
- Commodity
- Status e.g. exploration or exploitation

3.2 Resource contracts website

The Consultants also considered sources for the full text of documents aside from government and EITI websites. The only other source identified was the Resource Contracts website.¹ There are over 2,700 documents published on this website. These currently cover 98 countries. At least one document is disclosed for each of the countries covered by this report, apart from Honduras, for which no documents are available on this website.

The Resource Contracts website aims to publish any contract put into the public domain by a government or private sector contracting party, but also those put into the public domain by a non-contracting party. Hence it appears to include contracts not officially published domestically in each country. However, there does not seem to be a material number of LAC contracts on the website which are not already available in those countries, with the possible exception of Peru, where further research may be warranted.

The contracts published do not represent an exhaustive set of all extractive sector contracts in a country, and in some cases are missing some pages or annexes. Furthermore, some of the documents disclosed are not live contracts at all. For example, the two documents disclosed for Trinidad and Tobago are two versions of the model PSA contract, one from 2006 and one from 2014.²

However, the website can be a useful source of contracts for countries which have not yet achieved contract transparency under EITI. Indeed, in some cases, it may be possible to advocate for the official publication of contracts in a country where a large number of contracts are already in the public domain on the Resource Contracts website, although this may not be particularly relevant for the LAC region.

Table 1: Contracts published on the Resource Contracts website

Country	Oil and gas	Mining	Model contract	Total number of contracts disclosed	Range of years of signature
Argentina	5			5	2009-2015
Colombia	282	5	1	288	1977-2020
The Dominican Republic		5		5	2009-2014

¹ <https://resourcecontracts.org>

² <https://resourcecontracts.org/countries/tt>

Ecuador	20	1		21	1999-2012
Guatemala	1			1	1993
Guyana	11			11	1999-2016
Honduras				0	
Mexico	136			136	2003-2018
Peru	119	152		271	1989-2015
Suriname	4			4	2011-2015
Trinidad & Tobago			2	2	2006-2014

Source: resourcecontracts.org

3.3 Limitations

As described in the methodology above, the Consultants undertook a combination of desktop research, stakeholder interviews and stakeholder surveys for this project. All stakeholder interviews were conducted online due to time and budget constraints as well as the need to comply with restrictions related to the coronavirus pandemic. No travel to any of the countries in scope for this report was undertaken.

The Consultants were able to speak to EITI representatives in all the countries but in some cases, there was a slow response, and the Consultants were not able to conduct an interview until the later stages of the research process.

The Consultants issued two surveys in both Spanish and English. The first survey used Google forms and was for MSG members and other relevant stakeholders. The number of responses to the survey is shown in Figure 2 above. There were no responses or limited responses from some countries. The second survey was for national coordinators only and was conducted via e-mail. Due to the low level of responses, it was not possible to draw meaningful conclusions.

4 EITI Requirements

There are three key provisions in the EITI Standard 2019 relevant to contract transparency. Appendix 1 provides the full text of Requirement 2.4. These requirements are:

- **Requirement 2.2** on allocation of contracts and licenses. This provision requires the disclosure of the process for the allocation or transfer of contracts or licenses that have occurred during the EITI implementation period. This includes the criteria on which such allocations or transfers were approved.
- **Requirement 2.3** on register of licenses. The requirement obliges implementing countries to have a public register of licenses with timely and comprehensive information on each license holder and license area.
- **Requirement 2.4** on contract transparency. Under this requirement, each implementing country is required to disclose contracts and/or licenses that come into force on or after 1 January 2021 or any existing license that is amended after that date. Each implementing country is also required to publish a plan for the disclosure of licenses. The requirement also obliges each country to document the government's policy on license transparency including the legal framework for disclosure and any legal provisions that obstruct license transparency. In documenting the government policy, each country should also set out the details of any licenses that are already in the public domain. Where the disclosure practice deviates from the government policy or the legal obligations, these deviations should also be documented. Finally, the requirement makes clear that disclosure of a contract or license includes publishing the full text of the contract or license as well as the full text of any annexes, addendums, riders or amendments to the contract or license.

The disclosure of contracts or licenses under Requirement 2.4 refers only to those concerned with the exploitation of oil, gas and minerals. It does not require the disclosure of licenses or other permits for exploration of oil, gas and minerals or for other activities related to the extractive sector e.g. transport of oil, gas or minerals or the onward sale of oil, gas or minerals. The EITI Board in a decision dated 21 October 2020 clarified that it is at the discretion of the MSG to decide what exploration contracts are material and should be disclosed. The full text of the Board decision states, *"It is agreed that the MSG be given the discretion to select which exploration contracts are considered material and should be disclosed."*³

Requirement 2.4 also encourages the disclosure of licenses and supporting documents that came into force before 1 January 2021. This is not, though, a mandatory part of the Requirement. As noted above, in its guidance on implementing Requirement 2.4, the EITI Board encourages the disclosure of exploration licenses, where these are material but leaves this up to the discretion of the MSG. The number of exploration licenses for oil, gas and minerals may number hundreds or even thousands. This represents a considerable effort in digitizing and making publicly available all relevant documents.

³ Board decision 2020-69/BC-295, <https://eiti.org/board-decisions/board-agreed-clarifications-requirement-24>

Of the 11 countries which are the subject of this report, only three (Argentina, Guyana and Mexico) have been Validated against the EITI Standard 2019. Mexico was assessed as “mostly met” against Requirement 2.4. Argentina and Guyana have been assessed as partly meeting Requirement 2.4. Seven of the remaining nine countries have been Validated against the 2016 version of the EITI Standard. Ecuador has yet to undergo Validation. Of the seven countries Validated against the 2016 Standard, two are identified as having made “outstanding progress”, four have made “satisfactory progress” and one “meaningful progress” (see below, Table 2).

Table 2: Validation status of Requirement 2.4

	Date joined EITI	Most recent Validation	Validation status under #2.4 of the EITI Standard 2016*
Argentina*	2019	2022	Partly met
Colombia	2014	2018	Outstanding progress
The Dominican Republic	2016	2019	Outstanding progress
Ecuador	2020	TBC	N/A
Guatemala	2011	2018	Satisfactory progress
Guyana*	2017	2022	Partly met
Honduras	2013	2019	Satisfactory progress
Mexico*	2017	2022	Mostly met
Peru	2007	2018	Satisfactory progress
Suriname	2017	2021	Meaningful
Trinidad & Tobago	2011	2018	Satisfactory progress
Notes	Countries marked * validated under EITI Standard 2019		

Source: <https://eiti.org>

Requirement 2.4 of the earlier 2016 Standard encouraged public disclosure of contracts and required implementing countries to document the government’s policy on contract transparency.

The EITI Standard 2019 significantly raised the bar. Disclosure of all contracts entered into force from 1 January 2021 is now a requirement, together with a list of all active contracts. There is also a requirement to disclose contextual information about the legislative framework for contract transparency and a description of what happens in practice. Table 3 provides a summary of the key relevant changes from the EITI Standard 2016 to the EITI Standard 2019.

Therefore, Table 2 above does not fairly represent the status of EITI implementing countries against what is currently considered best practice. The move from being Validated against the EITI Standard 2016 to the EITI Standard 2019 will most likely result in significant downgrading for countries in relation to Requirement 2.4.

It is important that MSGs appreciate that their next Validation will be against a much more stringent Standard and put in place clear actions to move towards compliance with Requirement 2.4 of the EITI Standard 2019.

Table 3: Comparison of Requirement 2.4 in 2016 and 2019 EITI Standards

EITI Standard 2016	EITI Standard 2019
<p>2.4 Contracts.</p> <p>a) Implementing countries are encouraged to publicly disclose any contracts and licenses that provide the terms attached to the exploitation of oil, gas and minerals.</p> <p>b) It is a requirement that the EITI Report documents the government’s policy on disclosure of contracts and licenses that govern the exploration and exploitation of oil, gas and minerals. This should include relevant legal provisions, actual disclosure practices and any reforms that are planned or underway. Where applicable, the EITI Report should provide an overview of the contracts and licenses that are publicly available and include a reference or link to the location where these are published.</p>	<p>2.4 Contracts.</p> <p>a) Implementing countries are required to disclose any contracts and licenses that are granted, entered into or amended from 1 January 2021.</p> <p>Implementing countries are encouraged to publicly disclose any contracts and licenses that provide the terms attached to the exploitation of oil, gas and minerals.</p> <p>b) 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.</p> <p>c) It is a requirement to document the government’s policy on disclosure of contracts and licenses that govern the exploration and exploitation of oil, gas and minerals. This should include:</p> <ul style="list-style-type: none"> <li data-bbox="644 1133 1391 1637">i. A description of whether legislation or government policy addresses the issue of disclosure of contracts and licenses, including whether it requires or prohibits disclosure of contracts and licenses. If there is no existing legislation, an explanation of where the government policy is embodied should be included, and the multi-stakeholder group should document its discussion on what constitutes government policy on contract disclosures. Any reforms relevant to the disclosure of contracts and licenses planned or underway should be documented. <li data-bbox="644 1682 1391 1982">ii. An overview of which contracts and licenses are publicly available. Implementing countries should provide a list of all active contracts and licenses, indicating which are publicly available and which are not. For all published contracts and licenses, it should include a reference or link to the location where the contract or license is published. If a contract or license is not published, the legal or

	<p>practical barriers should be documented and explained.</p> <p>iii. Where disclosure practice deviates from legislative or government policy requirements concerning the disclosure of contracts and licenses, an explanation for the deviation should be provided.</p>
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Source: EITI Standard 2016⁴ and EITI Standard 2019⁵

⁴ <https://eiti.org/document/eiti-standard-2016>

⁵ <https://eiti.org/document/eiti-standard-2019>

5 Country assessments

5.1 Argentina

Context

Argentina was accepted as an EITI implementing country in 2019. Due to the federal structure of Argentina, the country requested an adapted implementation (EITI Requirement 8.1) with Phase 1 of implementation focusing on the national government and Phase 2 focusing on provincial governments. In June 2022, Argentina, as part of its first Validation, was assessed as partly meeting Requirement 2.4.

According to article 124 of Argentina's Constitution,⁶ natural resources belong to provincial governments which are autonomous. The only exception is offshore hydrocarbon resources which are under the jurisdiction of the national government and are the only extractive sector contracts reported by Argentina to EITI under Phase 1 of adapted implementation.⁷ The granting of mining licenses in Argentina is regulated by the National Mining Code,⁸ and exploration permits, and concessions of hydrocarbons are regulated by the National Hydrocarbons Law.⁹ Provincial governments grant and administer mining licenses and hydrocarbons permits and concessions, according to each provincial legal framework which follows the National Mining Code and Hydrocarbons Law. Neither the Mining Code nor the Hydrocarbons Law call for the publication or disclosure of extractive sector contracts. When a mining license, hydrocarbon permit or concession is granted, it is published in the National or Provincial Official Gazette.

When Argentina applied to EITI, the national government indicated that it lacked the mandate to ensure compliance with EITI from provincial governments. Access and disclosure of extractive sector contracts and licenses by provincial governments is set for Phase 2 and requires significant engagement and negotiations with provincial governments.

Argentina issued its Scoping and Materiality Report in 2020 and released its first annual EITI Report in December 2020 (for FY2018), a second report in December 2021 (for FY2019), and a Progress Report in December 2021. As a result of Argentina's adapted implementation, none of these reports provide substantial information on the status of the disclosure of extractive sector contracts or provide an update on ongoing negotiations with provincial governments. To date, Argentina only reports to EITI its offshore hydrocarbons concessions granted by the national government and a list of mining licenses. Phase 2 of the EITI Reporting

⁶ See Argentina's Constitution, art. 124 that read at <http://servicios.infoleg.gob.ar/infolegInternet/anexos/0-4999/804/norma.htm>

⁷ See Argentina's First and Second EITI Reports.

⁸ See Mining Code at <http://servicios.infoleg.gob.ar/infolegInternet/anexos/40000-44999/43797/texact.htm>

⁹ See Hydrocarbons' Law 17.319 modified by Laws 26.197 and 27.007 at <http://servicios.infoleg.gob.ar/infolegInternet/anexos/15000-19999/16078/texact.htm>

including licenses and permits granted by the provinces was set to begin in 2021, but due to the coronavirus pandemic, Argentina's MSG postponed it to 2022.¹⁰

In the hydrocarbons sector, and largely due to the Vaca Muerta field, Argentina ranks third globally in terms of exploration and exploitation of unconventional oil and gas, after the US and Canada. Vaca Muerta is ranked second in the world in terms of unconventional gas resources¹¹ (more than 22 trillion cubic meters) and fourth place in unconventional oil resources (27 billion barrels). More than 30 companies currently have interests in Vaca Muerta.¹²

The majority state-owned company YPF S.A. is the main oil and gas producer in the country. It is a private limited company that operates under the regulatory framework applicable to commercial companies. The state owns 51% of its class D shares, but the company is not subject to the rules and regulations applicable to public sector entities. The only cash flow that links YPF to the state and that distinguishes it from other companies in the sector is the payment of dividends that are due to the state in its capacity as a shareholder. YPF's accounts are not consolidated in the national budget.

The process by which hydrocarbons permits and concessions are granted is clearly laid out in the Hydrocarbons Law. They are awarded through public bids following a template term of reference (*pliego*) created by the Energy Secretariat. Generally, and depending on each provincial framework, when a permit or concession is granted, the number of bids received is referenced in the administrative instrument by which it is granted, and such instrument is published in an official gazette. The Consultants heard no concerns from stakeholders regarding transparency of the process by which hydrocarbons permits and concessions are granted.

The Mining Code by which mining licenses are granted also clearly lays out the process by which concessions are granted with steps, timelines, and publication of administrative instruments by which licenses are granted. The Consultants did not hear concerns from stakeholders regarding transparency of the process by which mining licenses are granted, but an NGO report from an MSG member sent to the Consultants outlines strengths and weaknesses of the process.¹³ Among the weaknesses, the report mentions concerns around any person or entity being allowed to request a mining right which could favor speculative mining, limitations around provincial mechanisms to remove mining rights, rights granted to some provincial mining companies, no easy public access to a mine's provincial docket related to permits and concessions, concerns related to environmental and impact assessments, among others.

¹⁰ See Progress Report, 2021, p. 10 at

https://www.argentina.gob.ar/sites/default/files/informe_de_progreso_eiti_argentina_2021_1.pdf

¹¹ Unconventional gas (and oil) describes resources that present technical difficulties to extract and so need specialist techniques such as hydraulic fracturing (fracking) to produce the gas (or oil).

¹² See Argentina's Scope and Materiality Report, June 2020, p. 8 at

https://www.argentina.gob.ar/sites/default/files/informe_de_alcance_materialidad_y_divulgacion_sistematica_0.pdf

¹³ See Report by Poder Ciudadano, April 2020, p. 32 at

https://poderciudadano.org/publicaciones/PoderCiudadano_RiesgosCorrupcionConcesionesMineras.pdf

Contract transparency status

Hydrocarbons

The texts of hydrocarbons contracts in Argentina are not public, including contracts related to the exploitation of offshore hydrocarbon resources. There is no legal provision calling for the publication of contracts in Argentina's legal framework, only provincial administrative instruments or national decrees granting concessions are published in official gazettes. A list of offshore hydrocarbons concessions granted by the national government is disclosed in EITI Reports with reference to dates, companies, and decrees.¹⁴

Due to Argentina's federal structure, compliance with Requirement 2.4 of the EITI Standard was deferred to Phase 2 of the implementation. Despite this, in theory, some information on active provincial concessions should be accessible through the Energy Secretariat's website. The Energy Secretariat's website strives to publish a wide range of data including: the list of exploration permits and exploitation concessions with information on the areas, coordinates, companies holding the concessions and partners in the consortium. These lists in theory cover the entire country, including the permits and concessions granted by the provinces.

On the Energy Secretariat's website, one can find: (i) an interactive map of all active concessions in the country¹⁵ and links to downloadable lists of active hydrocarbons permits and concessions¹⁶. However, the Consultants experienced difficulties in accessing some information on this website. Some links appear to be broken, tables of hydrocarbons concessions¹⁷ and permits¹⁸ could not be fully downloaded and some columns in the tables show illegible codes when downloaded (e.g., one cannot access the date of the concessions or, in some cases, the number of the resolution or administrative instrument by which they were granted). The map of hydrocarbons concessions and exploration permits is illustrative and works well but does not provide clear and specific information on each hydrocarbons concession.¹⁹ Also, the dates on which concessions were granted are not easily accessible so it is difficult to know which contracts were signed after 1 January 2021, as required by the EITI Standard.

¹⁴ See Second EITI Report, p. 63 at

https://www.argentina.gob.ar/sites/default/files/segundo_informe_eiti_argentina_ano_fiscal_2019_1.pdf

¹⁵ See <https://sig.se.gob.ar/visor/visorsig.php?t=4>

¹⁶ See <http://datos.minem.gob.ar/dataset/produccion-hidrocarburos-concesiones-de-explotacion>

¹⁷ See <http://datos.minem.gob.ar/dataset/produccion-hidrocarburos-concesiones-de-explotacion>

¹⁸ See <http://datos.minem.gob.ar/dataset/exploracion-hidrocarburos-permisos-de-exploracion>

¹⁹ See <https://sig.se.gob.ar/visor/visorsig.php?t=4>

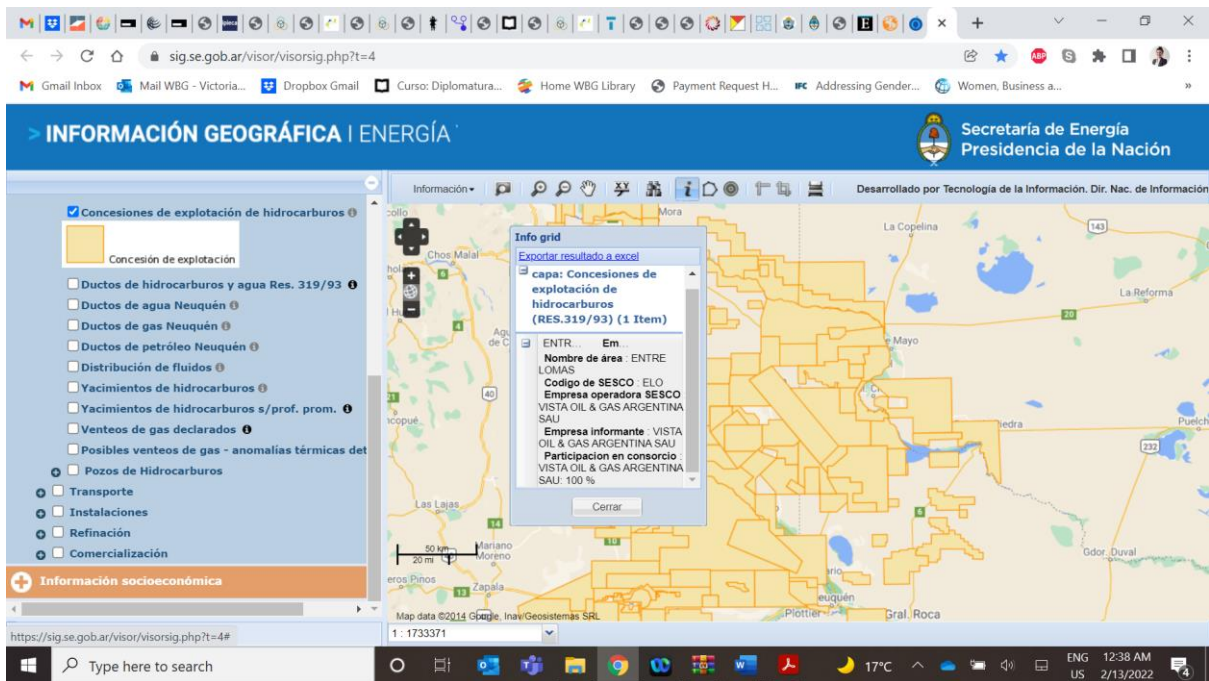


Figure 3: Image from Energy Secretariat's map

Some provinces have their own interactive map of active hydrocarbons concessions. For instance, the Neuquén map shows name of area, type of concession, company, and number of provincial decrees upon a click on the map. The challenge is that the user would need to know the location of the concession to access the information.²⁰

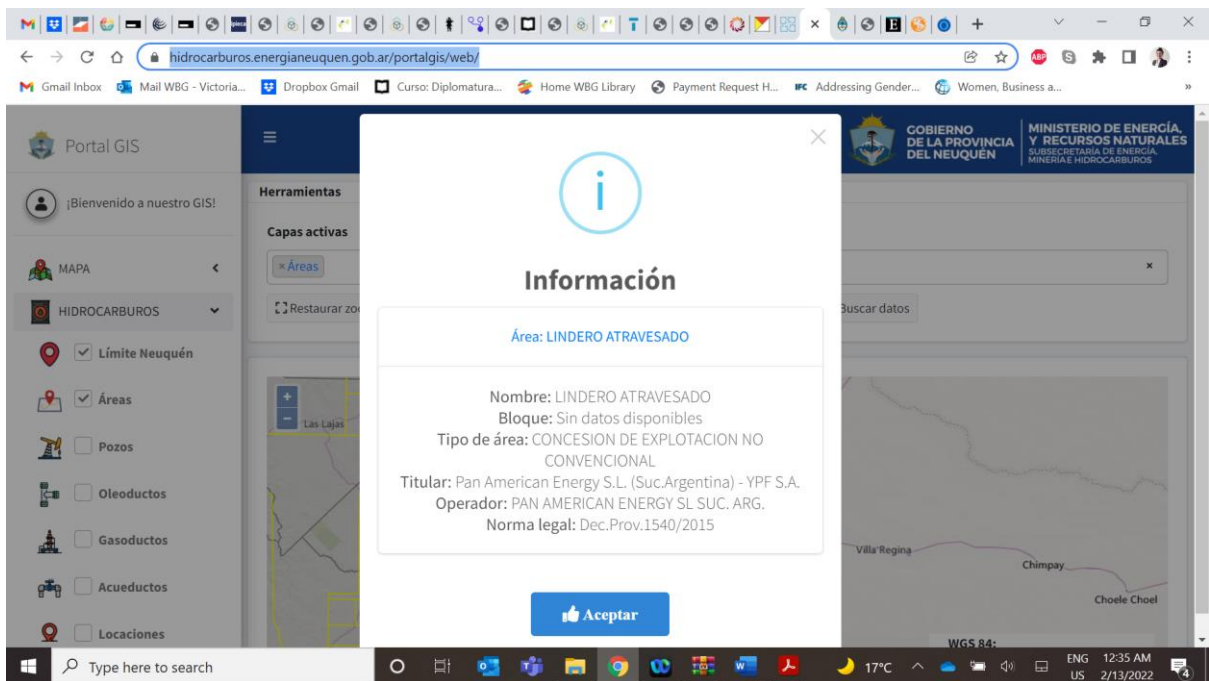


Figure 4: Image from Neuquén Portal

²⁰ See <https://hidrocarburos.energianeuquen.gov.ar/portalgis/web/>

EITI Argentina has sought to make some information on extractive sector contracts from government websites available through its website. However, the Consultants were not able to access this information due to technical difficulties that appear related to the government websites, not the EITI website.²¹

According to public sector representatives, hydrocarbons concession contracts can be accessed upon request from the respective national or provincial authorities. However, this was contradicted by other stakeholders suggesting that it was not possible to access contracts in this manner. Private sector representatives understood the requirements under Requirement 2.4 and expressed the view that access to contracts upon request from government agencies constituted an acceptable level of contract disclosure. Consultants were unable to verify independently if access to contracts was effectively granted or not upon request from authorities.

Mining

Mining exploitation in Argentina is mostly gold, silver, copper, and lithium. The texts of mining contracts are not public in Argentina, only provincial administrative instruments by which mining concessions and permits are granted get published in provincial official gazettes. Due to Argentina's federal structure and since natural resources management and the process of granting permits and concessions falls within provincial governments, compliance with Requirement 2.4 of the EITI Standard is deferred to Phase 2 of the implementation. However, some information on active mining projects is available with limitations in Argentina's EITI Reports as well as from the Energy Secretariat's website.

Argentina's second EITI Report has a seemingly comprehensive list of active mining exploitation projects (including name of project, metal, province, status and company), but no dates for those licenses or reference to the provincial administrative instruments by which those were granted.²² According to the report, all mining exploitation activities should be listed in a link, but this link appears to be broken.²³

The EITI Argentina website has links to the Energy Secretariat's website to access relevant information including: (i) a list of mining projects with high potential,²⁴ (ii) a map of active mining projects, which is referred to as the Unified Mining Cadastre²⁵ and (iii) a list of mining projects and their approximate location (which could not be opened after download).²⁶ Although the information strives to be well organized and systematized at the government level, the Consultants found difficulties in accessing the information: links were broken, tables

²¹ For example, here is the linked list of active hydrocarbons concessions which shows codes and cannot be downloaded: <http://datos.minem.gob.ar/dataset/produccion-hidrocarburos-concesiones-de-explotacion/archivo/b6af0c0e-e463-4cb7-b458-373aafc0ac08>

²² See Second Report, p. 111 at

https://www.argentina.gob.ar/sites/default/files/segundo_informe_eiti_argentina_ano_fiscal_2019_1.pdf

²³ See Second Report, p. 111 where it says: Las actividades de Explotación se encuentran disponibles en línea en el Portal de Información Minera, <http://informacionminera.produccion.gob.ar>

²⁴ See Proyectos con Alto Potencial at <https://www.argentina.gob.ar/eiti/mineria>

²⁵ See Unified Mining Cadastre <https://sig.se.gob.ar/visor/visorMineria.php>

²⁶ See Proyectos Mineros Ubicación Aproximada at <https://www.argentina.gob.ar/eiti/mineria>

could not be properly visualized or downloaded and some columns in tables show illegible codes.

According to EITI Argentina, the list of mining projects with high potential is accurate as of December 2021. When a user clicks on the link, the user is redirected to a map,²⁷ where they can click on each province to access an interactive list of mining projects. In the list, users can access the name of the project, status, mineral concerned, companies involved and the project's location. There is no reference to administrative instruments by which licenses are granted.

The Unified Mining Cadastre or map of mining projects is illustrative, but shows limited information on each mining project with one single click.²⁸ EITI Argentina confirmed that the Unified Mining Cadastre draws information from provincial cadastres but users cannot confirm that the information contained therein is up to date, particularly because one cannot see the date on which concessions were granted or reference to a provincial administrative instrument by which those were granted.²⁹ EITI Argentina also shared that since provincial governments are the ones who feed their own information into the Unified Mining Cadastre, they are unable to confirm how up-to-date the information is for each province. Since dates are not accessible, it is challenging to know which mining contracts were signed after 1 January 2021, as required by the EITI Standard.

In some cases, users click on the location of a mining project and no information is displayed. In some other provinces, users can access the name of the project, mineral concerned, and company involved (see below, Figures 5 and 6).

²⁷ See <https://informacionminera.produccion.gob.ar/>

²⁸ The Unified Mining Cadastre contains similar to what Argentina reported contained in the Centro de Información Minera de Argentina (CIMA) in their first EITI Report and Materiality report. The links for CIMA do not work anymore (probably due to change in government and website), but the Unified Mining Cadastre seems to contain similar information to that contain in CIMA. See <https://sig.se.gob.ar/visor/visorMineria.php>

²⁹ See <http://datos.minem.gob.ar/dataset/proyectos-mineros-ubicacion-aproximada>

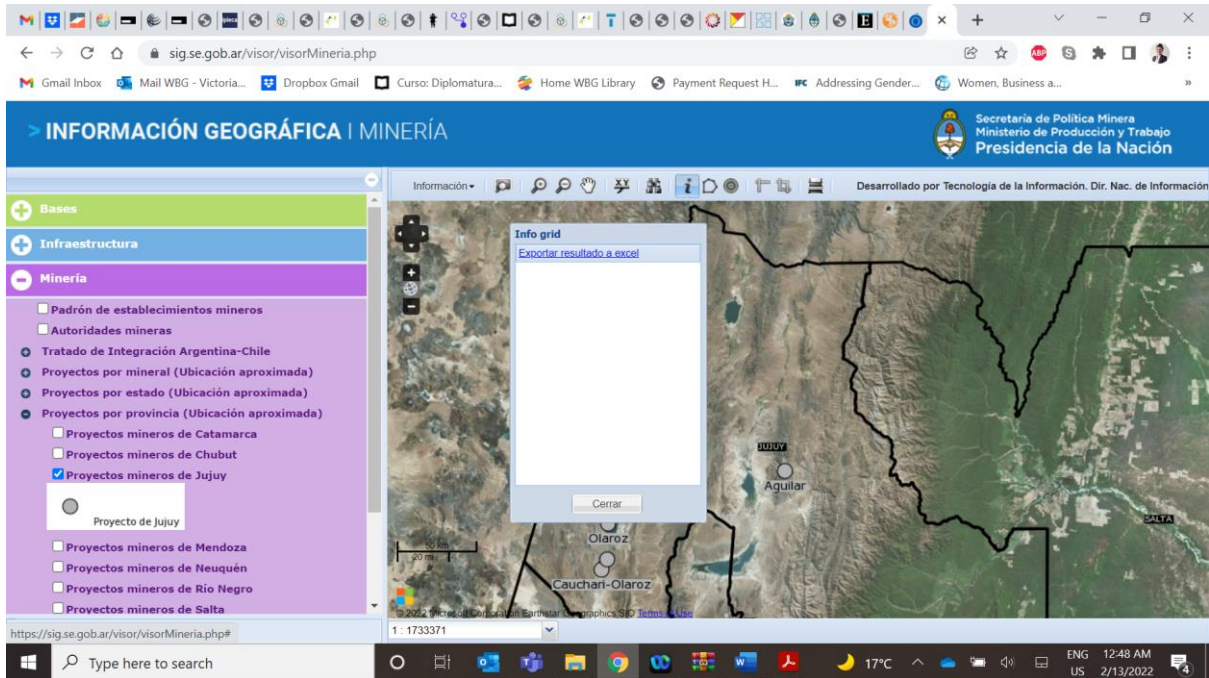


Figure 5: Image from Unified Mining Cadastre failing to show information on a mining concession located in Jujuy upon clicking on the concession dot. Exporting the information to Excel does not work either

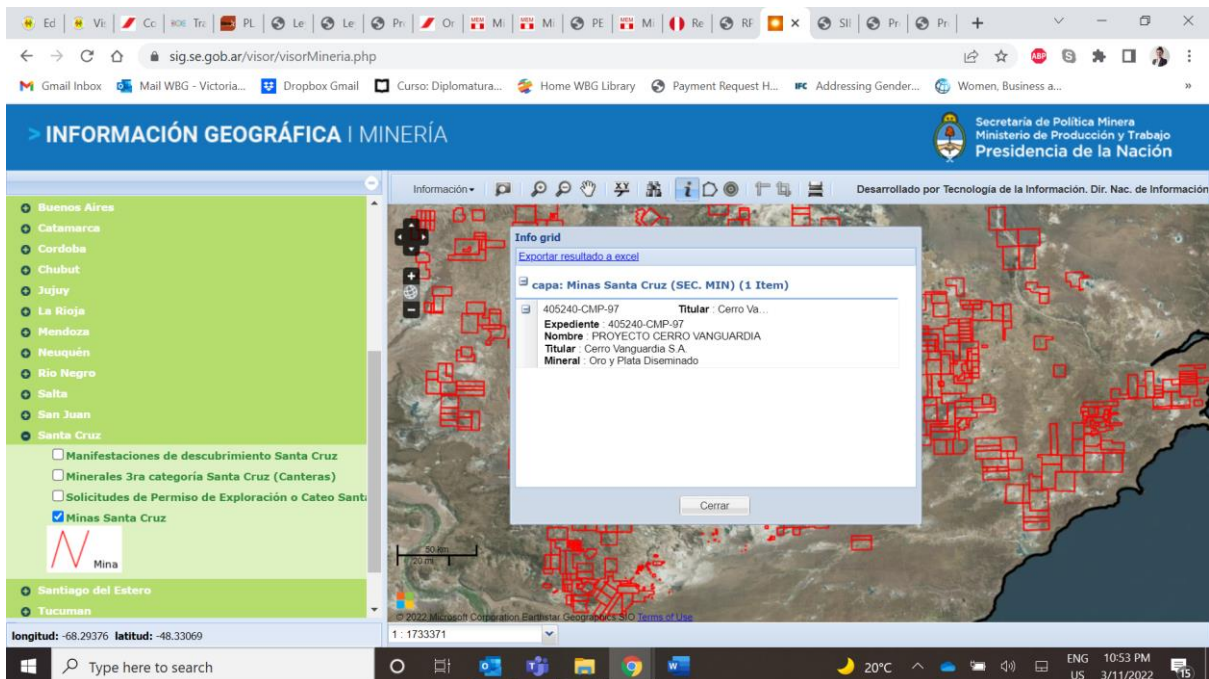


Figure 6: Image from Unified Mining Cadastre showing limited information on a mining concession located in Santa Cruz upon clicking on the concession dot

It is unclear how many provinces have their own cadastres, but the Consultants were able to find mining cadastres for Jujuy,³⁰ Salta³¹, San Juan (did not open well),³² and Neuquén (did not open well).³³

Finally, the Consultants were informed by EITI Argentina that the Ministry of Production recently created a new system called SIACAM (*Sistema de Información Abierta a la Comunidad sobre la Actividad Minera en Argentina* or Open Information System for the Public on Mining Activity in Argentina) through Resolution 89/2022.³⁴ According to the text of the Resolution, SIACAM will seek to gather in one place and report periodically on the economic, geological, geographical, social, health and environmental aspects of the mining activity in Argentina. Resolution 89/2022 does not further specify the information to be contained and reported through SIACAM in each of the aspects mentioned above, and the stakeholders consulted were unable to provide further details. Towards the end of this consultancy project in May 2022, SIACAM became operational.³⁵ On the site, users can find mining information related to foreign trade (exports), formal employment, mining projects and production value. The site also contains mining-related reports, data points and indicators which are very useful to better understand the mining landscape in Argentina. Specifically, regarding active mining projects, SIACAM shows more limited information than that required by the EITI Standard on contract transparency. When users access the tab on active mining projects³⁶ they can visualize all active projects according to location (Province), project name, status, mineral and project ID. Users can also filter by Province and by status. However, SIACAM does not provide users with information on the administrative instruments by which mining licenses were granted or dates concerning the respective project.

³⁰ See <http://181.111.203.253/visor-catastro-minero-v3/js/gmap/>

³¹ See <http://geoportal.idesa.gob.ar/maps/648>

³² See <https://datosabiertos.sanjuan.gob.ar/organization/ministerio-de-mineria>

³³ See http://hidrocarburos.energianeuquen.gov.ar/?page_id=270

³⁴ See <https://www.argentina.gob.ar/normativa/nacional/resoluci%C3%B3n-89-2022-361151/texto>

³⁵ See <https://www.argentina.gob.ar/produccion/mineria/siacam>

³⁶ See

<https://app.powerbi.com/view?r=eyJrIjojNWUxN2E1ZDItZTZkMi00NTRiLTllZTMtNDcxMzE1OWI4MmM0liwidCI6ImNiODg0ZGI1LTI0ODUtNGY5Yi05MzhLTNINjlxZjlyMjU3YiIsImMiOiR9&pageName=ReportSection>

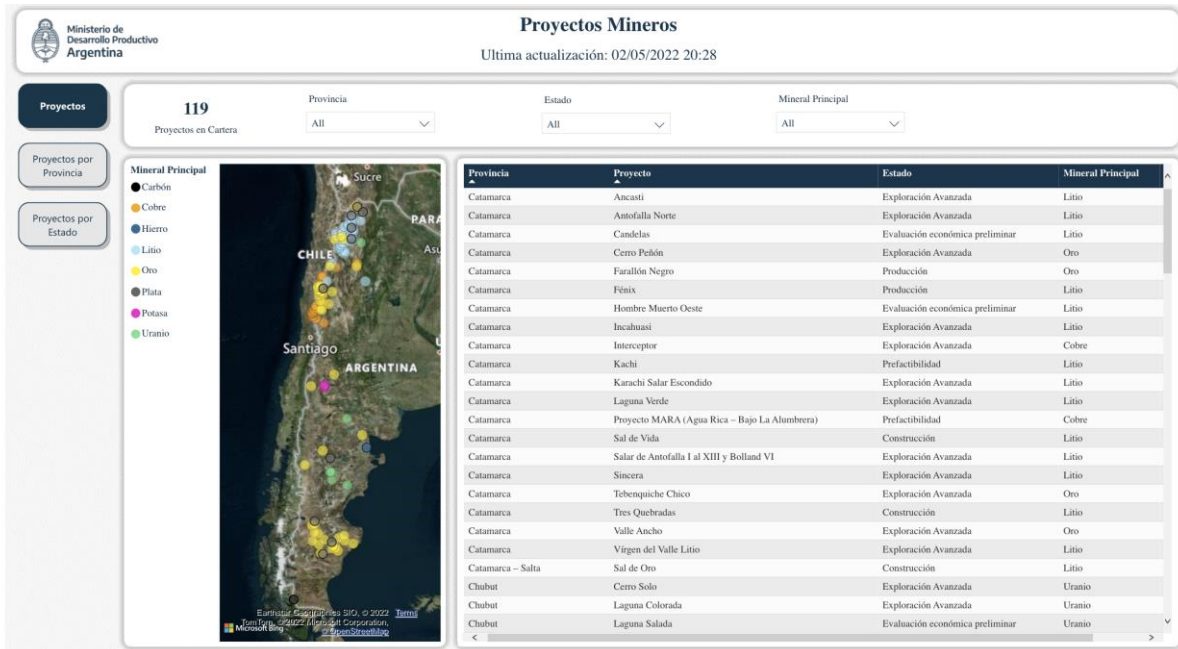


Figure 7: Image from SIACAM, section on active projects, showing information on province, project name, status, mineral concerned and project ID

Gap analysis

Table 4 below presents a gap analysis between the current situation regarding contract transparency in Argentina and Requirement 2.4 of the EITI Standard 2019.

Table 4: Gap analysis for Argentina against Requirement 2.4

Reference	Requirement	Argentina's current practice	Recommended action
2.4.a	Disclose any contracts and licenses that are granted, entered into or amended from 1 January 2021.	The full text of documents is not available, and it is not possible to identify a list of contracts in scope.	<p>Compile a list of contracts in scope and work with provincial government agencies to make the full text of contracts available and easily accessible.</p> <p>Ensure a list is included in future EITI Reports and guidance given on how to access the full text of contracts.</p>

2.4.b	MSG agree and publish a plan for disclosing contracts with a clear time frame for implementation and addressing any barriers to comprehensive disclosure.	No plan in place. Requirement 2.4 was deferred to phase 2 of implementation.	EITI Argentina MSG to produce and publish a plan, report progress on the adhesion of provincial governments and monitor implementation of contract transparency.
2.4.c	Document the government's policy on disclosure of contracts and licenses that govern the exploration and exploitation of oil, gas and minerals.	Policy not fully documented in most recent EITI Report. The report also provides a very limited explanation of the implications of Argentina's federal structure concerning contract transparency.	Ensure government policy is documented in future EITI Reports, potentially including relevant provincial government policies, if any.
2.4.c.i	A description of whether legislation or government policy addresses the issue of disclosure of contracts and licenses.	Description on disclosure is not specifically included in reports, but they do explain limitations around Argentina's federal structure and adapted implementation.	Ensure description is included in future EITI Reports.
	Any reforms relevant to the disclosure of contracts and licenses planned or underway.	No reforms currently underway.	Ensure any relevant reforms are documented in future EITI Reports.
2.4.c.ii	An overview of which contracts and licenses are publicly available.	Information available on government websites and EITI Argentina website with limitations.	Ensure information can be accessed in a reliable manner.
	A list of all active contracts and licenses, indicating	Information on active contracts is provided with links	Ensure information is included in future EITI Reports

	which are publicly available and which are not.	to government websites in most recent EITI Report, but those do not work well.	indicating which are publicly available.
	A reference or link to the location where the contract or license is published.	Links provided are only for administrative instruments granting offshore hydrocarbons concessions (not contracts). Links to provincial mining licenses and hydrocarbons concessions are provided but work with limitations.	Include corrected links and guidance on how to access any publicly available contracts in future EITI Reports.
	If a contract or license is not published, the legal or practical barriers should be documented and explained.	Some explanation of legal and practical barriers documented in most recent EITI Report.	Ensure full description of any legal and practical barriers included in future EITI Reports, with a specific focus on barriers related to provincial government policies or practice.
2.4.c.iii	Where disclosure practice deviates from legislative or government policy requirements concerning the disclosure of contracts and licenses, an explanation for the deviation should be provided.	No deviations identified.	Ensure any deviations noted in future EITI Reports.

Challenges

Legal barriers

- No legal provision mandating the disclosure of extractive contracts in Argentina. There is no legal framework that obliges companies or the government to disclose contracts in the country either at the national or provincial level.

Practical barriers

- Uncertainty about the provincial capacity to comply with contract transparency. Stakeholders raised concerns about the capacity of provincial public-sector agencies to systematize information and digitize extractive sector contracts. The Consultants also heard concerns about the lack of funding and lack of capacity of provincial public servants to manage administrative resources, such as technology and human resources. There is a strong need for capacity building with provinces' public sectors for them to gain a better understanding of EITI and the requirements of contract transparency.

Country-specific challenges

- Set a suitable representation structure for provinces within the MSG. Even when provinces adhere to EITI, the Consultants heard from most stakeholders that there will be a strong need to adjust the structure of the MSG to make sure provinces have a voice. One innovative option could be to set up provincial MSGs. Currently, the MSG representation structure is composed of actors that are based in the capital, Buenos Aires.
- Based on stakeholders' consultations during this work, there seems to be a medium to low perception of opacity in the extractive industry. Despite the lack of disclosure of extractive contracts, private, public, and civil society stakeholders consulted report that the legal frameworks for hydrocarbons and mining, as well as the bidding and award processes, are perceived to be straightforward and transparent.

Opportunities

Legal reforms

- Considering Argentina's federal structure and the number of provincial frameworks which impact contract transparency and the differing practices in each provincial jurisdiction, it would be advisable to work on a national law that adheres to the EITI Standard and mandates the creation of a National Unified Mining Cadastre and a National Unified Hydrocarbons permits and concessions database, with updated and accessible information from all provinces, namely: concession areas, area coordinates, concession dates, companies, reference provincial instrument by which concessions are granted and

other administrative instruments related to the concessions (e.g. transfer of right and revocation of rights). The recently enacted system SIACAM is a positive effort in this direction for the mining industry in Argentina, but with limitations on the information provided which make it fall short of the EITI Standard on contract transparency (at least to date).

Practical measures

- Enhance existing databases starting with data from resource-rich provinces. Although some links did not work properly and the information is not well organized, in order to be accessible it is clear that there is an intention to have a useable database of all extractive projects active in Argentina. While engagements with provincial governments are ongoing, it would be advisable to focus on resource-rich provinces to make sure they provide updated information to existing national databases, including concession areas, area coordinates, concession dates, companies, reference provincial instruments by which concessions are granted and other administrative instruments related to the concessions.

Country-specific opportunities

- Engagement with the provinces. No province has yet committed to implementing the EITI Standard. Stakeholders reported that the EITI Argentina MSG and Secretariat are engaging with provincial governments, providing capacity building, and working towards achieving governors' commitment to the EITI. The focus is on engaging with provinces that hold the highest reserves in natural resources. However, while the hope is that governors begin to commit by mid-2022, this process seems to be going at a very slow pace. EITI capacity building workshops are happening in Salta, Jujuy, Neuquén and Catamarca (in the public sector). There are additional efforts from MSG civil society and private sector representatives to engage with their counterparts in the provinces. All stakeholders agreed that focusing efforts on engagement with provincial governments was of paramount importance.
- The creation of SIACAM through Resolution 89/2022³⁷ strives to gather in one place and report periodically on the economic, geological, geographical, social, health and environmental aspects of the mining activity in Argentina.

Recommendations

1. The MSG structure is based in the city of Buenos Aires with mainly metropolitan members. Due to the federal nature of the country, it would be advisable to rethink its structure to ensure provincial representation.
2. Argentina's next EITI Report should include an update on engagements with provincial governments regarding their adhesion to EITI as well as some indication of gaps and

³⁷ See <https://www.argentina.gob.ar/normativa/nacional/resoluci%C3%B3n-89-2022-361151/texto>

availability of information concerning mining and hydrocarbons concessions granted by provinces.

3. The MSG should influence public policy debates and strongly push for a legal provision calling for the disclosure of extractive contracts. This could be done through a standalone law or as amendments to both the mining and hydrocarbons frameworks.
4. The Energy and Mining Secretariats should strengthen their interactions with provincial authorities to gain a better understanding of the information gaps and availability in each province regarding extractive contract transparency and encourage provinces' adherence to EITI. The focus should be on resource-rich provinces.
5. The Energy Secretariat should periodically review its databases and unified cadastres to make sure they are up to date and accessible. It would also be advisable that users could search the interactive maps using different filters, not only the location of a concession.
6. Provincial governments should do a deep review of the information on extractive contracts that is available, identify information gaps, set a timeline and actions to address those gaps and report periodically to the Energy and Mining Secretariats.

5.2 Colombia

Context

Colombia has been an EITI implementing country since 2014 and since then has published annual EITI Reports covering data from the years 2013 to fiscal year 2019. Validation was conducted in 2018 when it received a rating of “satisfactory progress”.³⁸ Colombia was assessed against the 2016 EITI Standard for that Validation and so has yet to be validated against the 2019 Standard. Validation is scheduled to commence on 1 October 2022.

Colombia has both significant mining and hydrocarbon industries and together these sectors are the largest contributors to the country’s exports, accounting for 53% in 2018.³⁹ Overall the extractive industries accounted for approximately 5% of GDP in 2018. Data published in EITI Reports shows that the extractive industries' contribution to state revenues is declining as a proportion of the overall size of state revenues.

The hydrocarbons sector is dominated by oil production and the largest operator is the state-owned Ecopetrol. The National Hydrocarbons Agency (ANH) oversees the oil and gas sector. The ANH is responsible for awarding oil and gas exploration and production contracts. It uses both competitive tender processes and direct award methods for granting exploration and exploitation rights. The FY2019 EITI Report provides an overview of the contract award system and provides links to the ANH website where detailed information can be found.⁴⁰ The ANH also approves amendments and renewals of contracts.

The country’s mining sector is dominated by the production of coal, nickel and gold. The mining sector includes both large-scale operations, some of which have existed for decades, and small-scale and artisanal mining. In the mining sector, there are two basic categories of contract: negotiated and standard. The “negotiated” contracts are typically used for large-scale operations while “standard” contracts are used for small-scale mining. The National Mining Agency (ANM) oversees the mining sector. It has the responsibility for awarding mining licenses in the country. This is conducted on a “first-come, first-served” basis i.e. the first company to express an interest in exploring for minerals in an area that meets ANM’s technical and financial criteria is awarded the license. The 2019 EITI Report contains an overview of the license award process and provides links to detailed information on the ANM website.⁴¹ Like the ANH, the ANM also approves amendments and renewals to licenses.

Contract transparency status

Colombia enjoys a high level of contract transparency, especially in the hydrocarbons sector. Colombia’s approach to contract transparency is underpinned by a legal obligation for all contracts relating to the exploitation of oil, gas and minerals to be published by the government. As referenced in the 2019 EITI Report,⁴² these provisions are contained in the

³⁸ The EITI Board’s decision on Validation can be found here: <https://eiti.org/board-decision/2018-38>

³⁹ <https://eiti.org/colombia>

⁴⁰ <https://www.anh.gov.co>

⁴¹ <https://www.anm.gov.co>

⁴² See p74.

Law of Transparency and the Right of Access to National Public Information (law 1712 of 2014). In its 2018 Validation, Colombia was assessed as going “beyond” Requirement 2.4 of the EITI Standard 2016. The 2019 EITI Report sets out the contract transparency policy in the country, the legal basis and explains the contractual framework for both hydrocarbons and mining and provides an overview of the exploration and exploitation contracts and licenses in place. It provides numerous links to sources of further information on both the ANH and ANM websites.

There are approximately 300 active contracts in the hydrocarbons industry, and these are all published on the ANH website and are freely accessible (without the need to register or pay fees).⁴³ The complete text of each contract is almost fully available. The section relating to economic rights including price information is redacted. This information is deemed commercially sensitive. This database of contracts is searchable by date of award.

In the mining sector, there are more than 800 active contracts. However, only 23 of these are available on the ANM website. The contracts that are published relate to the largest in terms of production and royalty payments, accounting for about 80% of production. These 23 contracts can be found on the ANM website.⁴⁴

In addition, some of the most material contracts for the coal, nickel and gold sectors are also available on the Colombia EITI website. The contracts that are published represent only around 1% of the total number of contracts. The ANM’s ability to publish all active contracts is constrained by a lack of both human and financial resources to create a more comprehensive database (see below, Challenges). The ANM has also experienced a high level of change in personnel in recent months. However, the Consultants understand that improving the effectiveness of the agency, including its approach to publishing contracts is a priority for the Minister of Mines and Energy. The ANM has partnered with the Inter-American Development Bank (IDB) to implement a new online platform, called ANNA Minería. This project is understood to include the eventual publication of all mining contracts. As noted in the 2019 EITI Report, the Single Regulatory Decree of the Administrative Sector of Mines and Energy (1073 of 2015) called for information to be made available in a reliable and timely manner.⁴⁵ ANNA Minería is putting this into effect to provide a more agile and robust digital platform on the ANM website.

The legal obligation noted above creates a strong basis for contract transparency. The barriers to further transparency are therefore practical rather than legal.

Gap analysis

Table 5 below presents a gap analysis between the current situation regarding contract transparency in Colombia and Requirement 2.4 of the EITI Standard 2019.

⁴³ <https://www.anh.gov.co/hidrocarburos/contratos-y-reglamentacion/produccion>

⁴⁴ <https://www.anm.gov.co/?q=informe-de-materilidad>

⁴⁵ See p73

Table 5: Gap analysis for Colombia against Requirement 2.4

Reference	Requirement	Colombia's current practice	Recommended action
2.4.a	Disclose any contracts and licenses that are granted, entered into or amended from 1 January 2021.	Text of all oil and gas contracts available on the ANH website. Limited number of mining contracts disclosed.	Identify resources to disclose all mining contracts.
2.4.b	MSG agree and publish a plan for disclosing contracts with a clear time frame for implementation and addressing any barriers to comprehensive disclosure.	No plan in place.	MSG develop and publish a contract transparency plan and monitor implementation.
2.4.c	Document the government's policy on disclosure of contracts and licenses that govern the exploration and exploitation of oil, gas and minerals.	Policy documented in the most recent EITI Report.	Ensure future EITI Reports document government policy.
2.4.c.i	A description of whether legislation or government policy addresses the issue of disclosure of contracts and licenses.	The most recent EITI Report contains a description.	Ensure future EITI Reports contain relevant text.
	Any reforms relevant to the disclosure of contracts and licenses planned or underway.	No reforms identified.	Ensure any details of relevant reforms are captured in future EITI Reports.
2.4.c.ii	An overview of which contracts and licenses are publicly available.	List of oil and gas contracts are publicly available on ANH website.	Provide guidance in EITI Report on how to access the information.

		An overview of mining contracts that are publicly available is on ANM website.	
	A list of all active contracts and licenses, indicating which are publicly available and which are not.	As above.	As above.
	A reference or link to the location where the contract or license is published.	Links on EITI Colombia website and in the most recent EITI Report.	Ensure links remain valid and are documented in future EITI Reports.
	If a contract or license is not published, the legal or practical barriers should be documented and explained.	Practical barriers stated in the most recent EITI Report.	Ensure barriers are documented in future EITI Reports.
2.4.c.iii	Where disclosure practice deviates from legislative or government policy requirements concerning the disclosure of contracts and licenses, an explanation for the deviation should be provided.	Majority of mining contracts are not publicly available despite a legal obligation to publish them.	Ensure any deviations are documented in future EITI Reports.

Challenges

Legal barriers

There are no legal barriers to contract transparency in Colombia.

Practical barriers

- Resource constraints. The resource constraints at the ANM represent the most significant barrier to building on Colombia's already strong approach to contract transparency. These

constraints prevent the agency from meeting its legal duty under the Transparency Law to publish all contracts. The ANM faces a more challenging task than its hydrocarbon counterpart in meeting this obligation. As noted above, there are more than 800 active contracts in the sector. Some of these contracts date back more than 30 years and have been extended or amended several times in their lifetime. This represents a considerable number of documents of substantial length to digitize, index and make available in a searchable form online.

Country-specific challenges

- Low level of understanding. There is also a low level of understanding among some stakeholders relating to the nature and type of contracts in force in the country in the extractive sectors. This also extends to interpretation and using the information made available in published contracts, e.g. the different types of contracts used in the mining sector. Negotiated contracts are typically used in large-scale operations and include agreed expenditure on areas such as social investment, with specific amounts given in the contract terms. Standard contracts are typically used for smaller-scale operations and, as their name suggests, contain standard terms. While these terms include an obligation to undertake social investment, there are not specific values given in the contract.

Opportunities

Legal reforms

- In light of the existing legal framework that facilitates transparency in Colombia, the Consultants did not identify any specific areas for reform. In addition, the Consultants were not made aware of any proposed reforms relevant to the extractives sector in Colombia.

Practical measures

- Technical assistance for ANM. There is an opportunity for EITI Colombia in collaboration with stakeholders in government and civil society to identify and secure technical assistance including financial assistance for the ANM to allow it to undertake the creation of an online database for all active mining contracts. Like the 23 mining contracts that are currently available as noted above, this database should contain access to the full text of each document. Like its equivalent in the hydrocarbon sector, this database should be freely accessible. Such a project is likely to include the digitization of all relevant documents and their indexing and tagging so that they are searchable.

Country-specific opportunities

- Outreach. The Consultants understand that there has, to date, been limited outreach and communications on contract transparency in Colombia. This is the case both on the part of the ANM and ANH as well as EITI Colombia. There is therefore an opportunity for EITI Colombia in collaboration with stakeholders in government, civil society, and the private sector to undertake a strategic program of communications on contract transparency.

This would include raising awareness of the types of contracts in force, what information on the terms and conditions are (and are not) available from the published documents and how to interpret and use such information. This program should use a variety of techniques and tools including written material, infographics, social media and briefing sessions. The audience for such a program would include local communities affected by extractive industries, civil society organizations and journalists.

Recommendations

1. The MSG, government and civil society stakeholders should collaborate to identify the resources required to allow the ANM to undertake the publication of all mining contracts. This should include identifying potential sources of funding and setting up a task force to manage the project.
2. The MSG should develop and implement a strategic program of communications and outreach related to contract transparency to support the objectives of its 2020-2023 work plan to communicate the benefits of EITI, enhance understanding of the extractive sectors, facilitate well-informed discussions and overall build trust.

5.3 The Dominican Republic

Context

The Dominican Republic became an EITI implementing country in 2016 and since then has produced reports covering the years 2016-2019. In 2019, the country was validated against the 2016 EITI Standard and in February 2020 the EITI Board decided that the country had made “meaningful progress” in the implementation of the EITI Standard. Its second Validation is scheduled for April 2023.

Mining is an important economic sector in The Dominican Republic, accounting for 4.2% of GDP in 2018, having grown from 0.7% in 2010. This has contributed to the country experiencing some of the fastest economic growth in the region prior to the coronavirus pandemic. Gold and ferronickel are the country’s two main mineral products and account for approximately 40% of exports.⁴⁶ Exploration for hydrocarbons is in its infancy. The first bid round was held in November 2019 and early exploration activities are underway.

The extractive sector (both mining and hydrocarbons) is under the remit of the Ministry of Energy and Mines. The ministry is responsible for the award of licenses. The General Mining Directorate is responsible for day-to-day supervision of the mining sector. The vice-minister for hydrocarbons has responsibility for that sector.

Contract transparency status

The Dominican Republic enjoys a high degree of contract transparency. All mining contracts and licenses are publicly available documents. This is a legal requirement under the country’s Free Access to Public Information Law. As a result, the full text of all mining contract and license documents is available on a government website.⁴⁷ The most recent EITI Report⁴⁸ and The Dominican Republic’s EITI website⁴⁹ contain a description of the policy framework and legislation for contract transparency in the country. They also contain a description of the contract and license award process as well as an overview of mining contracts and the links to relevant third-party sources of information including the website on which to find the full text of documents. The EITI Report and the website also cover the hydrocarbon sector. Reflecting the early nature of oil and gas exploration in the country, there are currently no contracts in place exclusively relating to exploitation, although there is an existing contract which covers both exploration and exploitation.⁵⁰ The Consultants understand from stakeholder interviews that when such contracts are put in place, they will be subject to the law noted above and therefore will also be made publicly available.

⁴⁶ <https://eiti.org/dominican-republic>

⁴⁷ <https://mem.gob.do/transparencia/contratos-especiales/>

⁴⁸ <https://eiti.org/document/dominican-republic-20172018-eiti-report>

⁴⁹ <https://eitird.mem.gob.do/informe-eiti-rd/otorgamiento-de-derechos/>

⁵⁰ Contract between the Dominican Republic and Apache: <https://mem.gob.do/transparencia/contratos-especiales/>

INICIO
PORTAL INSTITUCIONAL
BASE LEGAL DE LA INSTITUCIÓN
MARCO LEGAL DE TRANSPARENCIA
ORGANIGRAMA INSTITUCIONAL
OFICINA DE ACCESO A LA INFORMACIÓN
PLAN ESTRATÉGICO DE LA INSTITUCIÓN
PUBLICACIONES OFICIALES
ESTADÍSTICAS INSTITUCIONALES
SERVICIO AL PÚBLICO
PORTAL 311
DECLARACIONES JURADAS DE BIENES
PRESUPUESTO
RECURSOS HUMANOS
BENEFICIARIOS DE PROGRAMAS ASISTENCIALES
COMPRAS Y CONTRATACIONES

Está aquí: / Documentos / Documentación Especial / Contratos especiales

Contratos especiales

ANEXOS J - M, Contrato APACHE Dominican Republic Corporation, LDC
Descargar (2 MB archivo)

ANEXOS A - I, Contrato APACHE Dominican Republic Corporation, LDC
Descargar (522 KB archivo)

Contrato para la exploración y explotación de Hidrocarburos, Área Costa Afuera, Entre Estado dominicano y Apache Dominican Republic Corporation, LDC
Descargar (467 KB archivo)

Resolución que declara reserva fiscal minera el área que constituía la concesión de explotación de bauxita de Alcoa Exploration Company en la provincia de Pedernales
Descargar (81 KB archivo)

Resolución que aprueba el contrato entre el Estado Dominicano y Alcoa Exploration Company, que sustituye el del 18 de diciembre de 1974 sobre la extracción de bauxita
Descargar (725 KB archivo)

1 2 3 4 5 6 7 [Siguinte](#)

Si no puede visualizar los documentos, es posible que necesite alguno de estos visores:
 Para descargar el visor PDF, clic aquí.

Figure 8: Image from The Dominican Republic Ministry of Energy and Mines's website

Gap analysis

Table 6 below presents a gap analysis between the current situation regarding contract transparency in the Dominican Republic and Requirement 2.4 of the EITI Standard 2019.

Table 6: Gap analysis for The Dominican Republic against Requirement 2.4

Reference	Requirement	The Dominican Republic's current practice	Recommended action
2.4.a	Disclose any contracts and licenses that are granted, entered into or amended from 1 January 2021.	All contracts and licenses for exploitation of minerals are published on a government website.	Ensure future EITI Reports and websites give clear guidance on how to access documents.
2.4.b	MSG agree and publish a plan for	No plan currently in place.	MSG create and implement a

	disclosing contracts with a clear time frame for implementation and addressing any barriers to comprehensive disclosure.		contract transparency plan focusing on awareness raising especially on hydrocarbon contracts.
2.4.c	Document the government's policy on disclosure of contracts and licenses that govern the exploration and exploitation of oil, gas and minerals.	Policy is documented in the most recent EITI Report and on the EITI-RD website.	Ensure future EITI Reports continue to document policy and the text on the website remains up to date.
2.4.c.i	A description of whether legislation or government policy addresses the issue of disclosure of contracts and licenses.	Legislation is documented in the most recent EITI Report and on the EITI-RD website.	Ensure future EITI Reports continue to document legislation and the text on the website remains up to date.
	Any reforms relevant to the disclosure of contracts and licenses planned or underway.	Reforms documented in the most recent EITI Report.	Ensure future EITI Reports continue to document relevant reforms.
2.4.c.ii	An overview of which contracts and licenses are publicly available.	Most recent EITI Report contains an overview.	Ensure future EITI Reports continue to provide this overview.
	A list of all active contracts and licenses, indicating which are publicly available and which are not.	Most recent EITI Report and website provide links to all contracts.	Ensure future EITI Reports and website give clear guidance on how to access active contracts.
	A reference or link to the location where the contract or license is published.	As above.	Ensure future EITI Reports and website give clear guidance on how to access active contracts.
	If a contract or license is not	Not applicable as there is a legal	Not applicable.

	published, the legal or practical barriers should be documented and explained.	obligation to make contracts public.	
2.4.c.iii	Where disclosure practice deviates from legislative or government policy requirements concerning the disclosure of contracts and licenses, an explanation for the deviation should be provided.	No deviations identified.	Ensure any future cases of deviation are noted in EITI Reports.

Challenges

Legal barriers

- There are no legal barriers to contract transparency in The Dominican Republic.

Practical barriers

- The practical barriers to contract transparency relate to the reliability of internet access especially in more remote communities, including those close to mining operations. As all contracts are available online, the lack of adequate internet access could limit the ability of some community stakeholders to access key documents.
- In addition, the complexity of mining documents creates challenges for some stakeholders to interpret them and understand the implications for their community or circumstances. This challenge may be exacerbated in the hydrocarbon sector where there is less familiarity with the sector in the country. The hydrocarbon sector (which consists of offshore exploration) may expose a new set of stakeholders, who are not accustomed to dealing with these issues. Hydrocarbon exploration and any future production activities are likely to impact coastal communities that have no prior experience in engaging with the oil, gas and mining sectors.

Country-specific challenges

- Aside from the practical barriers noted above, the Consultants did not identify any other challenges specific to The Dominican Republic's situation on contract transparency.

Opportunities

Legal reforms

- There appears to be little immediate scope for legal reforms to enhance contract transparency. The country already has an enabling legal framework in place. The Consultants understand from stakeholder interviews that reforms are proposed to laws covering both the mining and hydrocarbon sector. However, these relate to other matters and are not expected to adversely impact transparency.

Practical measures

- While improvement to the reliability of internet services could offer the most practical boost to contract transparency, such measures are beyond the scope of EITI's remit. However, EITI-RD could create and implement a strategic communication and outreach campaign at the community level. Such a campaign would aim to raise awareness of the obligations of extractive companies and government agencies and provide guidance on how communities can hold both extractive companies and government agencies to account. This campaign would need to use non-internet-based media such as radio, public advertising and community events. The campaign should also include communities likely to be impacted by hydrocarbon exploration and future production activities.

Country-specific opportunities

- Aside from the communications and outreach campaign noted above, the Consultants did not identify any further country-specific opportunities.

Recommendations

1. As per the actions in Table 6 above, the MSG should ensure that future EITI Reports continue to provide comprehensive coverage of contract transparency issues and meet all aspects of Requirement 2.4.
2. The MSG and National Secretariat should identify opportunities to share their experience of contract transparency and lessons learned with other EITI implementing countries, both in the region and globally.

5.4 Guatemala

Context

Guatemala joined EITI as an implementing country in 2011 and has issued four EITI Reports. The last report covered FYs 2018, 2019 and 2020 and was published under a flexible format, at the country's request, mostly as a result of the impact of the coronavirus pandemic as well as challenges faced related to timing for compliance and reporting.

On 23 January 2020, the EITI Board deemed that Guatemala had made “inadequate progress” in implementing the 2016 EITI Standard. The country was considered compliant under the 2013 Standard. Guatemala was suspended based on inadequate progress in implementing the EITI Standard and inadequate progress in implementing EITI Requirement 1.1. The Board determined that it would have until 23 July 2021 before a second Validation to carry out corrective actions on several elements of the Standard, including contract transparency.

In its latest EITI Report, Guatemala reports a list of six hydrocarbons exploration permits and five exploitation concessions disclosing contract number, operator, and dates for the contracts.⁵¹ A list of mining licenses is not available in the Report. In Guatemala's 2018 Validation, the EITI Board made recommendations to strengthen Guatemala's disclosure of extractive contracts.⁵² The next Validation of Guatemala will commence in October 2022.

Mining is a bigger industry than hydrocarbons in Guatemala.⁵³ Both mining and hydrocarbons exploitation are under the authority of the Ministry of Energy and Mines. Guatemala's hydrocarbons legal framework is regulated by the Hydrocarbons Law (Decree 109-83) and General Regulation (*Acuerdo Gubernativo 1034-83*).⁵⁴ Guatemala's mining legal framework is governed by the Mining Law (Law Decree 48-97).⁵⁵ According to Guatemala's EITI Reporting, hydrocarbons contracts are awarded by public bidding and approved by the President of the Republic and the Cabinet (published in the Official Gazette as Governmental Agreements). In the mining sector, the Ministry of Energy and Mines (General Mining Directorate) is responsible for awarding mining licenses (geological survey, exploration, exploitation).

⁵¹ See EITI Report 2018-2020, p. 56, at

https://eiti.org/files/documents/informe_flexible_eiti_guatemala_2018-2020.pdf

⁵² The EITI Board made the following recommendations for corrective actions: “In accordance with Requirement 2.3, Guatemala should also ensure that the license holder names, dates of application, award and expiry, commodity(ies) covered and coordinates for all mining and petroleum licenses held by material companies are publicly available. Where this information is already publicly available, it is sufficient to include a reference or link in the EITI Report. Where such registers or cadastres do not exist or are incomplete, the EITI Report should disclose any gaps in the publicly available information and document efforts to strengthen these systems. To strengthen implementation of Requirement 2.4, Guatemala is required to clearly document its policy on contract transparency and make voluntary royalty agreements publicly available.” See <https://eiti.org/board-decision/2020-03>

⁵³ According to Guatemala's latest EITI Report, two companies hold exploitation concessions in the country, while there are at least nine mining companies operating in the country. See EITI Report Dec 2021, p. 36.

⁵⁴ An overview of Guatemala's hydrocarbons legal framework can be found here <https://mem.gob.gt/que-hacemos/hidrocarburos/marco-legal-hidrocarburos/area-de-hidrocarburos/>

⁵⁵ An overview of Guatemala's mining legal framework can be found here <https://mem.gob.gt/que-hacemos/area-mineria/marco-legal-mineria/>.

Contract transparency status

According to provision 10 of the Access to Information Law⁵⁶ passed in 2009, all extractive data and contracts should be disclosed. A list of hydrocarbons exploration and exploitation contracts, as well as one for mining rights for exploration and exploitation are disclosed in Guatemala's Access to Public Information Portal and the website of the Ministry of Energy and Mines. Guatemala's EITI website has links to both.

On the Ministry's website, active hydrocarbons concessions and permits as well as the texts of the administrative instruments (*Acuerdos Gubernativos*) by which those are granted (as published in the Official Gazette) are accessible.⁵⁷ Extractive sector contracts are attached at the end of each *Acuerdo Gubernativo*. Regarding mining, one can access a cadastre map and a list of mining rights granted per department, but the text of the administrative instruments by which mining rights are granted is not available.⁵⁸ Additionally, the mining cadastre does not show dates of application, award or duration of mining licenses. The same information on extractive sector contracts is accessible through the Access to Information Portal (updated January 2022), linked to the Access of Information Law (Article 10, subsection 16), available also at the Ministry of Energy and Mines website.⁵⁹ The information on mining rights is more clearly laid out in the Access to Information Portal desegregated by mining exploration rights, mining exploitation rights, and a mining licenses database which is current as of January 2022 and shows mining exploitation rights granted in 2021.⁶⁰



Figure 9: Image from Guatemala Ministry of Energy and Mines's website

⁵⁶ See Article 10, subsection 16 of the Access to Information Law Portal on this link <https://mem.gob.gt/acceso-a-la-informacion-publica/informacion-publica-de-oficio-2/>

⁵⁷ For Hydrocarbons, see <https://mem.gob.gt/que-hacemos/hidrocarburos/hidrocarburos-upstream/explotacion/>

⁵⁸ For Mining, see <https://mem.gob.gt/que-hacemos/area-mineria/catastro-minero/>

⁵⁹ See Article 10, subsection 16 of the Access to Information Law Portal on this link <https://mem.gob.gt/acceso-a-la-informacion-publica/informacion-publica-de-oficio-2/>

⁶⁰ See Provision 10, subsection 16, called "Base actualizado de licencias mineras" (excel spreadsheet) at <https://mem.gob.gt/acceso-a-la-informacion-publica/informacion-publica-de-oficio-2/>

According to some stakeholders, the text of both hydrocarbon and mining contracts can be made available upon request to the Access of Information Portal. Consultants also heard that it is possible that upon compliance with a request, some contract provisions perceived to be commercially sensitive, will be redacted.⁶¹

EITI Guatemala shared that they have been working towards digitizing and disclosing extractive data and contracts in 2021 and will continue doing so in 2022, especially for mining. According to the National Secretariat, the hydrocarbons office within the Ministry is better staffed and equipped to undertake this task, while the mining office may be struggling with limitations in staff and facing administrative and logistical challenges related to the larger number of licenses it oversees which impact their disclosure practices.

Gap analysis

Table 7 below presents a gap analysis between the current situation regarding contract transparency in Guatemala and Requirement 2.4 of the EITI Standard 2019.

Table 7: Gap analysis for Guatemala against Requirement 2.4

Reference	Requirement	Guatemala's current practice	Recommended action
2.4.a	Disclose any contracts and licenses that are granted, entered into or amended from 1 January 2021.	A list of active hydrocarbons contracts is available, as well as the administrative instruments by which they were granted (none from 2021). A list of mining rights is available, but not the administrative instruments by which those were granted. In the database, mining rights were granted in 2021 and texts are not available.	In EITI Reports that cover 2021, ensure that a list of contracts that have come into force or have been amended is included. Put in place a plan to allow disclosure of full text of contracts and licenses issued since 1 January 2021.
2.4.b	MSG agree and publish a plan for disclosing contracts with a clear time frame for	Available plan 2018-2019 does not include contract transparency. The draft work plan	MSG should develop and implement a contract transparency plan.

⁶¹ See <https://mem.gob.gt/acceso-a-la-informacion-publica/>

	implementation and addressing any barriers to comprehensive disclosure.	shared with the Consultants does not include contract transparency either.	
2.4.c	Document the government's policy on disclosure of contracts and licenses that govern the exploration and exploitation of oil, gas and minerals.	Provision 10, subsection 16 of Access to Information Law calls for disclosure of extractive contracts ⁶² EITI Reports mention the Access to Information Law and Portal but do not elaborate on how those relate to contract transparency obligations under Requirement 2.4.	Elaborate in EITI Reports on Access to Information Law and Portal in connection to contract transparency.
2.4.c.i	A description of whether legislation or government policy addresses the issue of disclosure of contracts and licenses.	As above.	As above.
	Any reforms relevant to the disclosure of contracts and licenses planned or underway.	No reported reforms planned or underway regarding contract transparency.	Ensure description of reforms is included in future EITI Reports, if appropriate.
2.4.c.ii	An overview of which contracts and licenses are publicly available.	A list of active hydrocarbons contracts is available, as well as the administrative instruments by which they were granted. A list of mining rights is	Ensure disclosure of administrative instruments by which mining licenses are granted.

⁶² See Access to Information Law at <https://mem.gob.gt/wp-content/uploads/2020/09/ley-de-acceso-a-la-informacion-publica-decreto-57-2008.pdf>

		available, but not the administrative instruments by which those are granted.	
	A list of all active contracts and licenses, indicating which are publicly available and which are not.	Active contracts are reported in the Transparency Portal at the Ministry's website, but no indication on which ones are public and which are not.	Ensure future EITI Reports include this information.
	A reference or link to the location where the contract or license is published.	This exists for hydrocarbons but not for mining.	MSG should collaborate with relevant government agencies to disclose links to the administrative instruments by which mining licenses are granted.
	If a contract or license is not published, the legal or practical barriers should be documented and explained.	Barriers were explained to the Consultants in the context of this work but do not appear in any public document.	Ensure barriers are documented in future EITI Reports.
2.4.c.iii	Where disclosure practice deviates from legislative or government policy requirements concerning the disclosure of contracts and licenses, an explanation for the deviation should be provided.	Administrative instruments by which mining licenses are granted are not disclosed despite legal provisions to do so in the Access to Information Law, provision 10, subsection 16.	Document deviations in future EITI Reports. Ensure contract transparency plan contains actions to minimize deviations.

Challenges

Legal barriers

- Need for the MSG to have a more robust standing. The MSG in Guatemala was originally constituted by an *AcuerdoGubernativo* which expires every three years and excludes members from outside the government, so representation in the MSG from private sector and civil society is uncertain and both groups only participate as government invitees.⁶³ The Consultants' research showed that it is difficult for members to reach quorum in order to meet and discuss the agenda. This seems particularly linked to the coronavirus pandemic and the challenges around connectivity especially for civil society, as well as difficulties to connect from outside the capital city. Although this barrier does not specifically refer to contract transparency, it is relevant for the overall implementation of the EITI Standard in Guatemala.

Practical barriers

- There is a need to provide staff, administrative, logistical, and technical support to the mining office within the Ministry of Energy and Mines to help them in the process of digitizing and systematizing information towards disclosure of mining licenses.

Country-specific challenges

- There is no item on contract transparency and timing for disclosure of mining licenses in Guatemala's latest work plan covering 2018-2019.
- Lack of funding to work on EITI Reports and strict anti-corruption laws and regulations which cause delays and failures to procure consultants and finalize reports on time.

Opportunities

Legal reforms

- The National Secretariat highlighted the importance of working towards a law to embed EITI in Guatemala's legal framework and make the EITI framework more robust. It would be advisable for that law to formally constitute the MSG ensuring representation and participation of private sector and civil society actors which are not included in the original *acuerdo gubernativo* by which the MSG was created. The National Secretariat also highlighted that an EITI law would provide a more robust structure for EITI implementation, including budget allocation and other resources. This recommendation is not strictly related to contract transparency, but rather one relevant for the overall optimal implementation of the EITI Standard and the functioning of the MSG.

⁶³ This challenge was additionally highlighted in Guatemala's Validation in 2018 under the item MSG governance.

Practical measures

- The Ministry of Energy and Mines has a good approach towards systematizing data. The data available to date on extractive sector contracts is easy to find and displays useful information items towards contract transparency. It is key however to gain a better understanding of the specific challenges for the mining office in disclosing mining licenses.
- Provide capacity building and a refresher to MSG members on the EITI Standard and Guatemala's obligation as an implementing country.

Country-specific opportunities

- According to stakeholders interviewed and the current level of disclosure, there seems to be a good acknowledgement of the importance of contract transparency. However, one stakeholder mentioned that there are legal limitations to disclosing contract provisions related to taxation, and that private companies could be more proactive in disclosing information and avoid requesting the signing of non-disclosure agreements when providing data for EITI Reporting.

Recommendations

1. The MSG and National Secretariat should advocate for the enactment of an extractive industries transparency law to embed EITI in national legislation and ensure funding for EITI-related activities.
2. The MSG and National Secretariat should work closely with the mining office in the Ministry of Energy and Mines to support and encourage them in disclosing the administrative instruments by which mining licenses are granted.
3. The MSG and National Secretariat should engage with the private sector, potentially through the private sector representatives in the MSG, to advocate for companies to avoid signing non-disclosure agreements when providing data for EITI Reporting.
4. The National Secretariat should provide a capacity-building/refresher workshop for all existing and any new MSG members on the EITI Standard and Guatemala's obligation as an implementing country. This could be facilitated by the National Secretariat supported by the EITI International Secretariat and/or external consultants.

5.5 Guyana

Context

Guyana joined EITI in 2017 and has published two annual reports covering 2017 and 2018. The most recent EITI Report (for 2018) was published in April 2021. As well as mining, oil and gas, Guyana includes the forestry and fisheries sectors in EITI Reports, and these sectors are represented on the MSG. The forestry and fisheries sectors are not subject to the reconciliation aspects of the EITI process. They are not excluded from reporting contract transparency, and the information is provided voluntarily by the government. Guyana's first Validation against the EITI Standard 2019 took place in April 2022, and overall Guyana achieved a fairly low score. The Validation identified corrective actions to be undertaken concerning Requirement 2.4 and set a start date for the next Validation of 1 April 2024.

The combined mining, oil, gas forestry and fisheries sectors account for 74% of exports and 11% of government revenue, with gold mining being the most significant contributor.⁶⁴ Guyana's oil and gas sector has until recently been in the exploration phase, with the first liftings of oil from the Liza field taking place in February 2020.

The Guyana Geology and Mines Commission (GGMC) oversees the extractive industries and is responsible for awarding mining licenses. Further information on the legal and institutional framework (under EITI Requirement 2.1) can be found in section 3.2 of the latest EITI Report.⁶⁵

Contract transparency status

In its 2022 Validation against the EITI Standard 2019, Guyana was assessed as having made "fairly low" progress against Requirement 2.4. The key themes identified were:

- The government's policy on public disclosure of licenses and contracts remains unclear, and the GYEITI documents are unclear about potential legal or practical barriers to the full disclosure of all licenses and contracts awarded or amended from January 2021.
- The EITI Report is not explicit about whether non-disclosure of contracts is a deviation from government policy.
- The EITI Report does not make it clear whether any contracts or licenses were granted, entered into or amended since 1 January 2021, and
- GYEITI has not published the text of contracts or licenses granted, entered into or amended since 1 January 2021, or a full list of all active mining and petroleum licenses and contracts.

⁶⁴ Guyana EITI Report 2018

⁶⁵ Guyana EITI Report 2018

Mining

Although there is a right to public access to contracts under the Access to Information Act 2011,⁶⁶ and there is no other legislative impediment to disclosure, no mining licenses or permits are currently publicly available. The latest EITI Report stated that the GGMC maintains the register of all licenses and confirmed that there were 11 active licenses. The report included basic information on these licenses provided by GGMC on 30 March 2021. The report also listed and provided basic information on approximately 4,500 mining permits and 13,000 prospecting permits in an annex to the Report.

Oil & Gas

Article 4 part II of the Guyana Petroleum (Exploration and Production) Act 1986⁶⁷ prevents publication of licenses without the agreement of the license holder. However, all licenses (10 at the time of the last EITI Report) are published on the GYEITI website⁶⁸, with a list and a link included in section 3.5.2 of the latest EITI Report.

Forestry and Fisheries

Licenses are not published but are available from the relevant authority on request and payment of a fee.

At the moment, the mining sector is the most significant for Guyana economically and fiscally, but this is the sector where there is the least transparency in contracts, permits and other agreements.

Gap analysis

Table 8 below presents a gap analysis between the current situation regarding contract transparency in Guyana and Requirement 2.4 of the EITI Standard 2019.

Table 8: Gap analysis for Guyana against Requirement 2.4

Reference	Requirement	Guyana's current practice	Recommended action
2.4.a	Disclose any contracts and licenses that are granted, entered into or amended	Contracts or licenses for the mining sector are not currently available.	Deliver on the activities set out in 1.6.a-e and 1.7.a. in the GYEITI 3 rd Work

⁶⁶ The Access to Information Act 2011 creates a default position of public access for documents, and extractives contracts are not specifically exempted. <https://parliament.gov.gy/publications/acts-of-parliament/access-to-information-act-2011>

⁶⁷ [https://parliament.gov.gy/documents/acts/8170-act_no._3_of_1986_petroleum_\(exploration_and_production\)_act_1986.pdf](https://parliament.gov.gy/documents/acts/8170-act_no._3_of_1986_petroleum_(exploration_and_production)_act_1986.pdf)

⁶⁸ The link given is <https://www.gyeiti.org/contracts/> However, as at February 2022 this link is not active, the Consultants understand due to data being migrated.

	from 1 January 2021.	Contracts or licenses for the oil and gas sector are available on the GYEITI website (although as of January 2022 some were missing due to issues with the recent migration of the website).	Plan Jan 2021 to Dec 2022).
2.4.b	MSG agree and publish a plan for disclosing contracts with a clear time frame for implementation and addressing any barriers to comprehensive disclosure.	No plan in place.	Develop a plan to meet Requirement 2.4, as anticipated in 1.6.b in the GYEITI 3 rd Work Plan Jan 2021 to Dec 2022.
2.4.c	Document the government's policy on disclosure of contracts and licenses that govern the exploration and exploitation of oil, gas and minerals.	Government policy not documented in the most recent EITI Report.	Ensure government policy is documented in future EITI Reports.
2.4.c.i	A description of whether legislation or government policy addresses the issue of disclosure of contracts and licenses.	High-level description of the legislative position in the most recent EITI Report.	Ensure future reports fully cover both legislative and government policy elements.
	Any reforms relevant to the disclosure of contracts and licenses planned or underway.	No specific analyses of the potential impact of reforms to extractives laws on contract transparency.	Monitor reforms and ensure that future EITI Reports consider all potential implications.
2.4.c.ii	An overview of which contracts and licenses are publicly available.	An overview available is in the latest EITI Report and annex.	Continue to publish an overview in future EITI Reports and links to relevant external websites.

	A list of all active contracts and licenses, indicating which are publicly available and which are not.	A list of active licenses is available in the most recent EITI Report including details of which of those are publicly available.	Continue to publish a list in future EITI Reports with an indication of those that are publicly available.
	A reference or link to the location where the contract or license is published.	Not currently provided for mining licenses and permits. Link to GYEITI website for oil and gas licenses.	Provide a list in future EITI Reports.
	If a contract or license is not published, the legal or practical barriers should be documented and explained.	Legal or practical barriers to disclosure of mining licenses and permits is not clearly documented in the most recent EITI Report.	Document barriers in future EITI Reports.
2.4.c.iii	Where disclosure practice deviates from legislative or government policy requirements concerning the disclosure of contracts and licenses, an explanation for the deviation should be provided.	As the current government policy is not available, it is not possible to identify deviations from a disclosure policy.	Ensure any deviations are documented in future EITI Reports.

Challenges

The challenges to contract transparency in Guyana stem from a combination of legal and practical barriers.

Legal barriers

- The Attorney General’s office is currently undertaking a significant reform of extractives sector legislation⁶⁹ and it is important that any law changes take the opportunity to

⁶⁹ <https://www.kaieteurnews.com/2022/05/14/govt-cherry-picking-reform-of-oil-laws/>

embed transparency requirements, and so avoid clauses which limit or prevent transparency.

Practical barriers

- At present there is not a single source of contract information for the oil and gas sector. Some information is included on the GYEITI website, but the websites of the Department of Public Information and the Ministry of Natural Resources also include information on contracts, and there are also other government websites with related information such as the Environmental Protection Agency.⁷⁰
- The previous government announced that it wanted to disclose mineral contracts too,⁷¹ but this has not happened yet, and there does not appear to be a statutory basis for it. Other EITI implementing countries e.g. Colombia (see above) have used freedom of information or specific EITI laws to create an enabling framework and create a statutory basis for the publication of the full text of contracts and licenses. Although the existence of these laws does not necessarily in themselves facilitate transparency (see below, Trinidad & Tobago).
- The Consultants understand that there are capacity constraints within government agencies which might impact efforts to create and maintain a publicly available database of licenses.

Country-specific challenges

- The previous government made public commitments to contract transparency. The current government has not reiterated these commitments in the same way. Political support may be there, but it is not clearly evidenced. Clear political support will be important in moving to greater contract transparency.

Opportunities

GYEITI's 3rd Work Plan, covering the period 1 January 2021 to 31 December 2022 includes six separate activities related to contract transparency. The most important of these is the development of a plan to achieve compliance with Requirement 2.4. This was expected to commence in January 2021 but had not started by January 2022.

The Consultants have identified four further opportunities to allow Guyana to make significant progress towards meeting Requirement 2.4.

⁷⁰ <https://www.epaguyana.org/epa/>

⁷¹ <https://www.caribbeanationalweekly.com/caribbean-breaking-news-featured/guyana-publish-contracts-within-energy-sector/>

Legal reforms

- Legal reforms. The Consultants understand that GYEITI is not aware of any legal requirement to disclose contracts, but that the previous government made firm commitments⁷² to make contracts public. GYEITI should actively engage with the current government to ensure that these commitments remain firm and seek to find ways to get contract transparency embedded into law so that it no longer rests on mutual consent. This could be achieved by an amendment to existing legislation such as The Mining Act, No. 20 of 1989⁷³ and the Petroleum Commission Bill of Guyana (2017).⁷⁴

Practical measures

- Technical assistance. The Consultants understand that government agencies would benefit from technical assistance to develop and maintain public registers of licenses. GYEITI should engage with the government to understand these needs which might include technical assistance in building electronic systems and human resources to sort and digitize documents. GYEITI could potentially assist the government in seeking external support and funding for a program to design and implement an effective portal for all licenses and permits.

Country-specific opportunities

- Disclosure of mineral contracts. The former government announced⁷⁵ that this is the intention, but it has not been implemented by them or the current government. GYEITI should continue to engage with the government to achieve the publication of these contracts. In doing that, GYEITI should promote a single location for the disclosure of all information relating to mineral contracts so that users can find this without having to visit multiple websites. This would most logically be the GGMC.
- EITI Report. The next and future EITI Reports should contain more detail on the government's policy on contract transparency. The description of government policy should reflect the government's commitment to disclose contract information. The annex to the EITI Report should continue to list all licenses and permits.

However, there are a significant number of mining permits listed in the 2018 EITI Report which were granted more than five years earlier. It is not clear from the report whether these permits have been renewed or have expired. For example:

⁷² <https://www.caribbeannationalweekly.com/caribbean-breaking-news-featured/guyana-publish-contracts-within-energy-sector/>

⁷³ http://parliament.gov.gy/documents/acts/8532-act_20_of_1989_mining.pdf

⁷⁴ <https://nre.gov.gy/wp-content/uploads/2017/04/PETROLEUM-COMMISSION-BILL.pdf>

⁷⁵ <https://www.caribbeannationalweekly.com/caribbean-breaking-news-featured/guyana-publish-contracts-within-energy-sector/>

File No	Pl No	Grant Date	Acres	Application Date	Mineral Sought	Name
M-106/MP/000	578/2013	26-Nov-2013	927	29-Apr-2013	Gold and Precious Stones	Dornwell Michael

Figure 10: Example of mining permit from the 2018 EITI Report

The same is true of the prospecting permits, where it is unclear as to whether the list includes expired permits. For example:

File No	Pl No	Grant Date	Acres	Application Date	Location	Mineral Sought	Name	Duration
A-1010/000	021/2017	21-03-2017	301	16-06-2015	not provided	Gold and Precious Stones	Abraham Alaric	1

Figure 11: Example of prospecting permit from the 2018 EITI Report

Recommendations

1. The MSG should promote a single location for the disclosure of all information relating extractives contracts so that users can find this without having to visit multiple websites.
2. The MSG should actively engage with the current government to ensure that transparency commitments made by the previous government remain firm, and the political will for reform remains in place.
3. The MSG should engage with the government to understand capacity constraints, and potentially assist the government in seeking external support and funding for a program to design and implement an effective portal for all licenses and permits.
4. The MSG should implement targeted communications and capacity building aimed at informing stakeholders of the existence and use of that portal.

5.6 Honduras

Context

Honduras joined EITI in 2013 and has published six EITI Reports since (including a Progress Report from 2017 on Requirements 7.4 and 8.4). The latest EITI Report covers 2019-2020. On 27 October 2020, the EITI Board considered that Honduras had achieved meaningful progress implementing the 2016 EITI Standard. However, following the assessment of Requirement 1.3 on civil society engagement as "inadequate progress", Honduras was suspended in accordance with Requirement 8.3.c.i. The EITI Board gave Honduras 18 months before a third Validation (to start on 1 July 2023) to carry out corrective actions.

Honduras has a Transparency and Access to Information Law from 2006 which calls for the publication of contracts entered into by the State.⁷⁶ Additionally, Honduras has adhered to EITI through national executive decree PCM-044-2012 and included a reference to EITI in the second recital of its National Mining Law⁷⁷ as well as in sections of the National Mining Law's regulation.⁷⁸ Honduras has further created the National Organization for EITI implementation through national executive decree PCM 008-2013.⁷⁹

Honduras has no active hydrocarbons exploitation concessions. Honduras does have a growing mining sector (including small, medium, and large-scale mining). Mining licenses and their oversight is handled by the Honduran Institute of Geology and Mines (INHGEOMIN), while the hydrocarbons sector is under the orbit of the Secretary of Natural Resources and Environment (SERNA). SERNA also reviews and grants environmental licenses for mining projects in Honduras. INHGEOMIN is an autonomous institution functioning under the orbit of the Presidential Office. It was created by Article 96 of the National Mining Law and is the institution in charge of reporting to EITI.

Contract transparency status

Mining licenses are regulated by the National Mining Law (Decree 238- 2012 and 292-98).⁸⁰ Honduras's INHGEOMIN discloses a map and a comprehensive list of active mining projects in the country.⁸¹ Filtering the information available per year, the Consultants were able to retrieve 44 licenses (including exploration and exploitation) that were granted in 2021. Users can access the name of the project, name of the rights holder, classification of the mining rights, activity (exploration/exploitation), substance, hectares, location, the date on which the rights were granted and its duration. The information is easily accessible and regularly updated.

⁷⁶ See https://www.tsc.gob.hn/web/leyes/Ley_de_Transparencia.pdf

⁷⁷ See <https://inhgeomin.gob.hn/wp-content/uploads/2021/02/Ley-General-de-Minera-Decreto-238-2012.pdf>

⁷⁸ See <https://inhgeomin.gob.hn/wp-content/uploads/2021/02/Reglamento-de-la-Ley-General-de-Minera-.pdf>

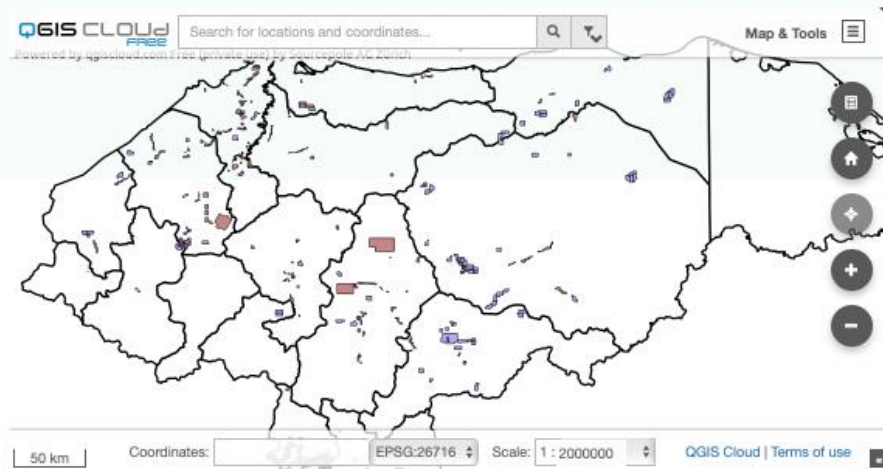
⁷⁹ See <https://inhgeomin.gob.hn/wp-content/uploads/2021/03/20130316.pdf>

⁸⁰ See <https://inhgeomin.gob.hn/biblioteca/>

⁸¹ See <https://inhgeomin.gob.hn/mineria/>

Proyectos Mineros

En esta sección encontraras la representación grafica de los poligonos correspondientes de los derechos mineros otorgados.



Derechos Mineros

En esta sección se encuentra la totalidad de los derechos mineros otorgados a la fecha, el listado considera su naturaleza y clasificación:
Concesiones Mineras, Permisos Mineros y Registros Mineros.

Mostrar 10 registros

Buscar:

Código	Nombre del Proyecto	Titular	Tipo de Derecho Minero	Actividad	Clasificación Sustancia	Sustancia	Hectárea	Municipio	Departamento	Fecha de Registro	Vigencia
91	Buena Vista	El Dorado Mining S.A	Concesión Minera	Exploración	Metálica	Oro y Plata	1000	DANLI	EL PARAISO	15/8/1995 2:57:00 p.m.	4
92	El Barro No. 2	Barro Mining S.A de C.V	Concesión Minera	Exploración	Metálica	Oro, Plata y Cobre	6500	DANLI, TEUPACENTI, JACALEAPA	EL PARAISO	3/11/1966	4

Figure 12: Image from INHGEOMIN's website where users can see the map and the list of mining rights

According to its latest EITI Report⁸² and Mining Law⁸³, Honduras awards mining projects through Resolutions which contain all legal and commercial provisions relating to mining projects. Resolutions cover the classification of the license (metallic, non-metal), the type of right (Concession, Permit, Mining Registry), as well as data such as the approved commodity of interest, the area, location, and owner of the right. According to INHGEOMIN, Resolutions are not disclosed. Despite this, in Honduras’s latest EITI Report 2019-2020 there is a link to the Electronic Notifications section of INHGEOMIN’s website where users can access the text of 16 Resolutions concerning mining rights.⁸⁴ These 16 Resolutions are the most recent ones granted by INHGEOMIN, as confirmed by the institution.

The Consultants were informed in the course of this work that INHGEOMIN is actively working on digitizing and disclosing all Resolutions concerning mining rights, but it was reported that as a small institution with many competing priorities concerning the mining industry, there are delays and postponements in the process of digitalizing and disclosing Resolutions.

Additionally, a new national administration took office in Honduras on 27 January 2022, and there is uncertainty as to how much traction the EITI initiative will gain with the new authorities (national and within INHGEOMIN). The new government’s plan has several references to mining activities,⁸⁵ particularly a ban on open-pit mining.

There are no active hydrocarbons concessions in Honduras, so no list is available. Some hydrocarbon explorations permits are reported on the Honduras EITI website but those do not appear to be active according to the status reflected therein.⁸⁶

Gap analysis

Table 9 below presents a gap analysis between the current situation regarding contract transparency in Honduras and Requirement 2.4 of the EITI Standard 2019.

Table 9: Gap analysis for Honduras against Requirement 2.4

Reference	Requirement	Honduras’s current practice	Recommended action
2.4.a	Disclose any contracts and licenses that are granted, entered into or amended	A list of mining projects is disclosed and the text of the 11 most recent Resolutions is public.	MSG collaborate with relevant government agencies to disclose the full text of all Resolutions granted

⁸² See Honduras EITI Report 2019-2020, p. 44, at https://eiti.org/files/documents/informe_de_flexibilidad_eiti-hn_2019-2020_version_21-dic-2021_secretariado_eiti.pdf

⁸³ See Mining Law, Art. 66-67, at <https://www.eitihonduras.org/wp-content/uploads/2020/03/Ley-General-de-Mineria.pdf>

⁸⁴ See <https://inhgeomin.gob.hn/notificaciones/>

⁸⁵ See <https://www.libre.hn/plan-de-gobierno-de-xiomara-2022-2026>

⁸⁶ See <https://www.eitihonduras.org/sector-hidrocarburos/>

	from 1 January 2021.		from 1 January 2021.
2.4.b	MSG agree and publish a plan for disclosing contracts with a clear time frame for implementation and addressing any barriers to comprehensive disclosure.	No plan in place.	MSG to develop and implement contract transparency plan.
2.4.c	Document the government's policy on disclosure of contracts and licenses that govern the exploration and exploitation of oil, gas and minerals.	Uncertainty over government policy with the new administration. The new national administration is vocal regarding its support of transparency and access to information.	Ensure government policy is documented in future EITI Reports.
2.4.c.i	A description of whether legislation or government policy addresses the issue of disclosure of contracts and licenses.	There is no description of legislation or government policy, but there is a description of contract disclosure practices.	Ensure description is included in future EITI Reports.
	Any reforms relevant to the disclosure of contracts and licenses planned or underway.	There are no specific reforms planned or underway affecting contract transparency. The new national administration is vocal regarding its support of transparency and access to information.	Ensure description is included in future EITI Reports, if appropriate.
2.4.c.ii	An overview of which contracts and licenses are publicly available.	A list of mining projects is disclosed.	Ensure future EITI Reports include a clear overview.

	A list of all active contracts and licenses, indicating which are publicly available and which are not.	A list of mining projects is disclosed. There is no indication as to which ones are active and which ones are not.	Ensure future EITI Reports indicate which contracts or resolutions are active.
	A reference or link to the location where the contract or license is published.	As above.	As above.
	If a contract or license is not published, the legal or practical barriers should be documented and explained.	Barriers not documented.	Ensure future EITI Reports document legal and practical barriers.
2.4.c.iii	Where disclosure practice deviates from legislative or government policy requirements concerning the disclosure of contracts and licenses, an explanation for the deviation should be provided.	Not possible to ascertain deviations.	Ensure future EITI Reports document any deviations.

Challenges

Legal barriers

- No specific legal barriers identified.

Practical barriers

- INHGEOMIN is actively working on digitizing and disclosing Resolutions concerning mining rights, but its representatives shared that as a small institution with many competing priorities concerning mining there are delays and postponements in the process of digitizing and disclosing Resolutions.

- The Executive Director and the two lead directors of INHGEOMIN have resigned from their positions and replacements have not yet been appointed as of July 2022.

Country-specific challenges

- The new national administration is seemingly opposed to large-scale mining. This will have an uncertain impact on Honduras's mining industry and its work towards EITI commitments.
- INHGEOMIN administrative and logistical challenges. INHGEOMIN has not yet disclosed mining Resolutions. INHGEOMIN representatives report having good technical capacity but need more staff support and resources to work efficiently on EITI implementation and reporting while managing other tasks and priorities more generally related to Honduras's mining industry. INHGEOMIN could use further staff support in digitizing and uploading all Resolutions, digitization of data, working on reports, and networking with the MSG.
- Perception of contract transparency as being a low priority to the MSG. Public sector stakeholders expressed the view that the MSG has multiple priorities, and that contract transparency is not at the top of the list. Public sector representatives also expressed the view that the process of digitizing and disclosing Resolutions could gain traction if the MSG jointly recognized its relevance for contract transparency. The Consultants also heard concerns about the differing priorities of MSG members e.g. public sector focused on taxation, civil society focused on environmental and social matters and private sector perceived as disengaged.
- Perception that EITI is not very well known in Honduras. The Consultants heard concerns about EITI having a low profile in Honduras. A first step would be to identify stakeholders, such as MSG members and new authorities taking office, who could undergo capacity building workshops or refreshers on EITI.

Opportunities

Legal

- EITI is strongly embedded in the legal framework. Honduras has adhered to EITI through national executive decree PCM-044-2012 and included a reference to EITI in the second recital of its National Mining Law⁸⁷ as well as in sections of the National Mining Law's regulations.⁸⁸ Honduras has further created the National Organization for EITI implementation through national executive decree PCM 008-2013.⁸⁹

⁸⁷ See <https://inhgeomin.gob.hn/wp-content/uploads/2021/02/Ley-General-de-Minera-Decreto-238-2012.pdf>

⁸⁸ See <https://inhgeomin.gob.hn/wp-content/uploads/2021/02/Reglamento-de-la-Ley-General-de-Minera-.pdf>

⁸⁹ See <https://inhgeomin.gob.hn/wp-content/uploads/2021/03/20130316.pdf>

Practical measures

- No apparent pushback from private sector on disclosure of mining Resolutions.
- Reported support of civil society towards EITI. The Consultants see this as particularly relevant in the context of an incoming administration with a potential negative outlook towards large-scale mining. According to INHGEOMIN and civil society representatives, EITI and civil society engagement in Honduras are improving slowly, and although their advocacy strategies are more closely related to the environmental and social impacts of the industry, the Consultants heard statements of support and acknowledgement of the EITI initiative. This could work to the advantage of keeping the EITI implementation agenda on track.
- Civil society advocacy is focused on the disclosure of environmental licenses (with mitigation measures) granted by SERNA. This is what is most relevant to them, rather than the publication of Resolutions.

Country-specific opportunities

- New national administration seemingly opposed to mining. Although there is uncertainty around how this will impact the mining industry in Honduras and its EITI commitments, it represents an opportunity to engage with new authorities on contract transparency and disclosure. It could be a good opportunity to focus on EITI commitments and public policy proposals perceived by the public as more closely linked to good mining accountability. In that sense, advocating for the publication of mining Resolutions and potentially environmental permits could be a good starting point for EITI and a new administration.

Recommendations

1. The MSG should engage with the new administration to explain the benefits of EITI for greater accountability in the extractive sector.
2. INHGEOMIN should focus on digitizing and disclosing mining Resolutions, identifying challenges and information gaps (if any). INHGEOMIN could use further staff support in digitizing and uploading all Resolutions, digitization of data, working on reports, and networking with the MSG.
3. The EITI International Secretariat should provide capacity building on contract transparency and the EITI Standard in general for Honduras's new national administration authorities. This capacity building could be provided by INHGEOMIN but that may be challenging as INHGEOMIN is part of Honduras's public sector itself. Similar capacity building should be provided to Honduras's private sector which was perceived to be somewhat disengaged by other stakeholders on the matter of contract transparency.

5.7 Mexico

Context

Mexico joined EITI in 2017 and to date has produced three annual EITI Reports covering the years 2016, 2017 and 2018.⁹⁰ The country underwent its first Validation in 2022 and Requirement 2.4 was assessed as “mostly met”.⁹¹ The extractive industries are one of the most significant economic sectors and account for around 3.5% of GDP.⁹² The proportion of the extractive industries’ contribution to the economy has experienced a long-term decline since the late twentieth century as the economy has focused on manufacturing and other sectors. The extractive industries, especially mining, have long played a role in the Mexican economy with some concessions having been operational for more than 100 years. In 2013, Mexico enacted constitutional changes that allowed private sector companies access to the oil and gas sector. Since then, the country has successfully attracted a number of large foreign oil and gas companies, resulting in the signing of approximately 30 new contracts. However, the government that took office in December 2018 suspended bidding processes for new oil, gas and mining concessions for at least three years. Contracts and licenses awarded before the government took office (including those awarded earlier in 2018) remain valid and in force.

The most recent EITI Report (2018 Report) covering fiscal year 2018 (published April 2020)⁹³ contains detailed descriptions of the license allocation and contract award processes for both hydrocarbons (chapter 4) and mining (chapter 5). In the hydrocarbon sector, the National Hydrocarbons Commission (CNH) is responsible for the process and holds open bid rounds for exploration licenses. In the mining sector, the Ministry of Economy is responsible for awarding mining concessions. These are awarded on the basis of applications submitted to the Ministry and are approved on a first-come first-served basis, as long as the application meets all the criteria (see section 5.3.2. of the most recent EITI Report, page 76 onwards).

Contract transparency status

The 2018 Report makes clear the government’s commitment to transparency. Chapter 14 sets out details of the policy and approach of the relevant government agencies towards transparency. This includes legal obligations for government agencies such as the CNH to act with transparency and publish information on a regular basis. The 2013 energy reforms created transparency obligations including the requirement for quarterly publication of information held by the CNH.⁹⁴

Mexico’s extractive industries have a limited level of contract transparency as not all contracts are publicly available online. The mining sector lags behind the hydrocarbon sector in this regard. All the oil and gas contracts signed with private operators are published on a

⁹⁰ <https://eiti.org/mexico#related-documents>

⁹¹ <https://eiti.org/countries/mexico>

⁹² <https://eiti.org/mexico#overview>

⁹³ <https://eiti.org/document/mexico-2018-eiti-report>

⁹⁴ See section 14.4 p180 of Mexico’s 2018 EITI Report

government website. The published documents have personal information redacted in order to comply with Mexico's privacy law. There are currently approximately 24,600 active mining concessions in Mexico. A list of mining titles is available on a government website.⁹⁵ The Mexico EITI Secretariat indicated that the database of mining concessions is expected to be operational in July 2022. In the meantime, basic information is available through an online cadastre map at:

<https://portalags1.economia.gob.mx/arcgis/apps/webappviewer/index.html?id=1f22ba130b0e40d888bfc3b7fb5d3b1b>

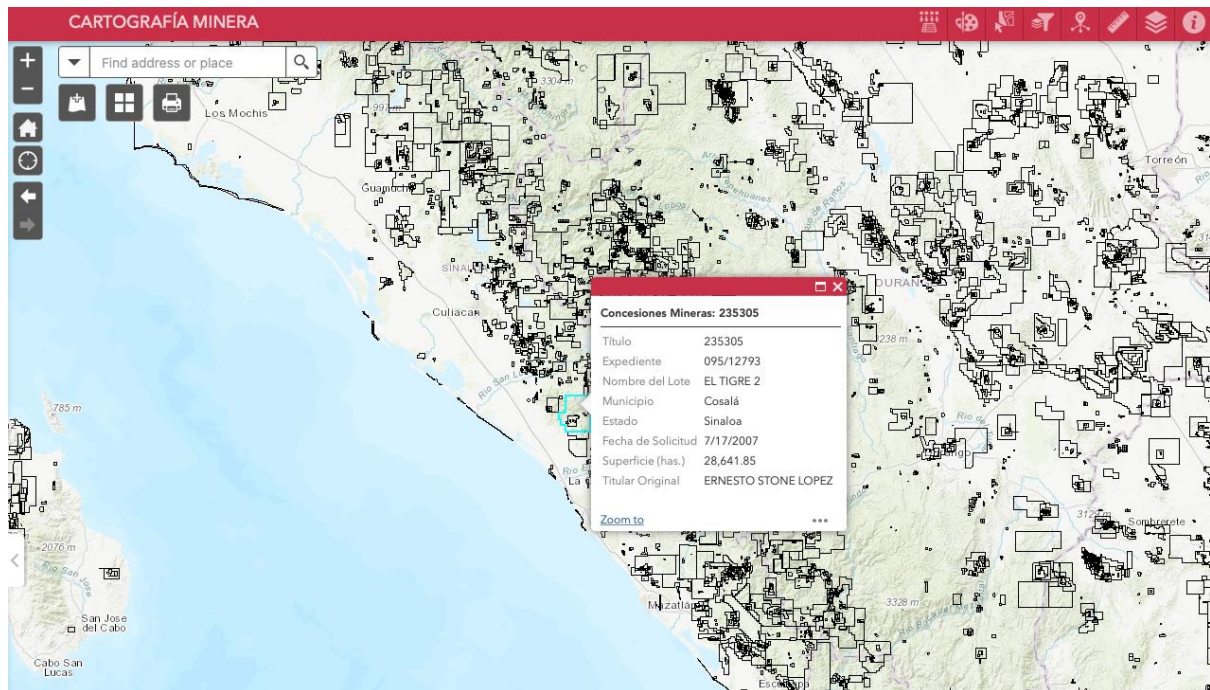


Figure 13: Image from online cadastre map

This map shows all active mining concessions and by clicking on a concession, information on the following is available: concession number, title, location, date of award and the concession holder.

In addition, documents providing more detail on mining concessions (but not the full text) are available through the government's transparency portal.⁹⁶ However, there are legal barriers to the disclosure of some mining data. For example, article 7 of the Mining Law prevents the disclosure of production data by company.

The 2018 EITI Report contains a list of all hydrocarbon licenses awarded up to 31 December 2018. It also contains links to where the full text of licenses and contracts can be found on a government website.⁹⁷ For the mining sector, due to the large number of licenses, it is not practical to list them all, so the report contains tables summarizing the type and number.

⁹⁵ <https://datos.gob.mx/busca/dataset/listado-de-titulos-de-concesiones-mineras>

⁹⁶ <http://portaltransparencia.gob.mx/buscador/search/search.do?method=begin>

⁹⁷ <https://rondasmexico.gob.mx/eng/contracts/>

Gap analysis

Table 10 below presents a gap analysis between the current situation regarding contract transparency in Mexico and Requirement 2.4 of the EITI Standard 2019.

Table 10 Gap analysis for Mexico against Requirement 2.4

Reference	Requirement	Mexico's current practice	Recommended action
2.4.a	Disclose any contracts and licenses that are granted, entered into or amended from 1 January 2021.	<p>Oil and gas contracts published since 2015.</p> <p>Mining contracts are available on request in person at the Public Mining Registry (RPM).</p> <p>Website for mining contracts is under development.</p> <p>No new contracts in oil, gas or mining have been awarded since 1 January 2021.</p>	Provide clear and detailed guidance in future EITI Reports on how to access this information.
2.4.b	MSG agree and publish a plan for disclosing contracts with a clear time frame for implementation and addressing any barriers to comprehensive disclosure.	No plan in place.	EITI Mexico MSG should produce and implement a clear plan for contract transparency including strategic outreach and communications.
2.4.c	Document the government's policy on disclosure of contracts and licenses that govern the exploration and exploitation of oil, gas and minerals.	Government policy documented in most recent EITI Report.	Ensure future EITI Reports document government policy.

2.4.c.i	A description of whether legislation or government policy addresses the issue of disclosure of contracts and licenses.	Description of how legislation and government policy addresses contract transparency is included in the most recent EITI Report.	Ensure such description is included in future EITI Reports.
	Any reforms relevant to the disclosure of contracts and licenses planned or underway.	Energy reform discussions underway.	Ensure any reforms are documented in future EITI Reports.
2.4.c.ii	An overview of which contracts and licenses are publicly available.	Overview available on government websites.	Ensure future EITI Reports give clear guidance on how to access this information.
	A list of all active contracts and licenses, indicating which are publicly available and which are not.	Available on government websites.	Ensure future EITI Reports give clear guidance on how to access this information.
	A reference or link to the location where the contract or license is published.	Link to oil and gas contracts provided. Mining contracts not yet published.	Ensure future EITI Reports give clear guidance on how to access this information.
	If a contract or license is not published, the legal or practical barriers should be documented and explained.	Legal barriers (privacy law) and practical barriers documented.	Ensure future EITI Reports document barriers.
2.4.c.iii	Where disclosure practice deviates from legislative or government policy requirements concerning the disclosure of contracts and licenses, an explanation for the	Mining contracts not yet published.	Ensure future EITI Reports document any deviations from policy or legislation.

	deviation should be provided.		
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Challenges

Legal barriers

- Privacy law. Mexico’s privacy law constrains the ability of the government or EITI Mexico to publish unredacted versions of the contract documents. Under this law, personal information and some information relating to economic matters e.g. on prices must be redacted from published documents. This has only a limited impact on contract transparency and has not prevented the publication of oil and gas contracts and plans to publish all active mining concession documents.
- Mining law restrictions. Legal restrictions on the disclosure of production information in the mining sector (as noted above) could also have an impact on information derived from contract transparency and on holding companies accountable. With the prospect of more details of mining licenses becoming available, more information on the production obligations of companies is likely to become available. As it is not possible to disclose production data by company, it could be challenging to identify whether production obligations are being met and whether the appropriate levels of taxes and royalties are being paid.

Practical barriers

- Volume of data. The volume of active mining contracts in place presents practical challenges to contract transparency. As noted above there are approximately 24,600 active mining concessions in place. Some of these are more than 100 years old and so have numerous extensions and amendments associated with them. This amounts to a considerable number of documents to digitize, index and make available online. In addition, it presents a large dataset for analysis.

Country-specific challenges

- Aside from the legal and practical challenges noted above, the Consultants did not identify any further challenges specific to Mexico’s situation.

Opportunities

Legal reforms

- In order to remove the legal barriers noted above, reforms to the privacy law and mining law would be required. The Consultants were not made aware of any proposals to amend either piece of legislation. Reforms made to the Mining Law in April 2022 did not include any provisions regarding contract transparency. As both barriers deal with information that is sensitive either due to its personal nature or for commercial reasons (i.e. pricing and production), there needs to be agreement first between EITI stakeholders

(companies, government and civil society) on what types of information should be kept confidential and what information that is currently not disclosed, can be.

Practical measures

- Completion of mining concession database. The publication of all documents relating to the 24,600 active mining concessions will represent a significant milestone in Mexico's approach to contract transparency. It will result in nearly all contracts and concession documents relating to the extractive industries in the country being freely available online. The database of mining concession documents should be linked to the existing mining cadastre.

Country-specific opportunities

- Communications and outreach. The publication of contracts and concession documents for Mexico's extractive industries should be accompanied by a strategic approach to communications and outreach on contract transparency. This would include raising awareness of the types of contracts in force.

Recommendations

1. The MSG should develop a plan to include a strategic approach to communication and outreach activities, especially to raise awareness of the information that becomes available when mining concession documents become publicly available online.
2. The MSG should facilitate a discussion and agreement on the types of information that are confidential and the types of information that can be disclosed. Once agreement is reached, the MSG should facilitate efforts to advocate for the required legal reforms to allow further disclosures of relevant information.

5.8 Peru

Context

Peru was the first country in the region to join the EITI. It has been an implementing country since 2007. In that time, the country has published seven EITI Reports covering the years 2004-2018. The most recent EITI Report covering the fiscal year 2017-18 was published in February 2021. Peru underwent its second Validation in 2018 and overall was rated “meaningful progress”. This Validation was undertaken against the 2016 EITI Standard.

The main extractive industries in Peru consist of mining (especially copper, gold and zinc) and natural gas production. There is also a small level of oil production. In 2018, the extractive industries accounted for 12.5% of the country’s GDP and 67% of exports. Overall responsibility for the extractive sector rests with the Ministry of Energy and Mines. The *Instituto Geológico Minero y Metalúrgico* (INGEMMET), an agency of the Ministry is responsible for awarding mining concessions and regulating the sector. In the hydrocarbon sector, the state-owned company PeruPetro is responsible for negotiating and awarding contracts for exploration and production.

On 12 May 2006, the Government of Peru published an Executive Decree that created an EITI Working Group which represents the entire stakeholder constituency and provides a legal basis to the implementation of EITI. The mandate of this working group was renewed by Presidential Decree on 5 September 2008. In 2011, the EITI working group was given permanent status by Decree No.28-2011-EM.⁹⁸

Finally, Law No. 27,806 is Peru’s Transparency and Access to Public Information Law⁹⁹ enacted in 2017. In 2017, Peru created the National Authority for Transparency and Access to Public Information which enacts policies, guidelines and directives related to access to information, supervises compliance with Law 27,806 and reports to Congress. Peru has several transparency portals which are reported in its 2017-2018 EITI Report.¹⁰⁰

Contract transparency status

Hydrocarbons

The Organic Law of Hydrocarbons (Law 26,221) was enacted on 19 August 1993, for the promotion of investments in hydrocarbons exploration and exploitation activities. It also created PeruPetro S.A. as a state company. As stated above, PeruPetro represents the state in negotiating, signing and monitoring hydrocarbons contracts. It also commercializes hydrocarbons. Law 26,221 also states that hydrocarbons exploration and exploitation activities shall be made in the form of license contracts and service contracts, or other forms of contracting authorized by the Ministry of Energy and Mines. An illustrative chart on the

⁹⁸ See http://www.minem.gob.pe/archivos/legislacion-gz318vsz2q140-Decreto_Supremo_No_028-2011-EM.pdf

⁹⁹ See Law 27,806 at <https://www.leyes.congreso.gob.pe/Documentos/Leyes/27806.pdf>

¹⁰⁰ See Peru’s 2017-2018 EITI Report, p. 185.

process for request and approval of hydrocarbons permits and concessions is available in Peru's latest EITI Report.¹⁰¹

PeruPetro discloses a list of active hydrocarbons permits¹⁰² and concessions¹⁰³ which is current as of December 2021. The lists disaggregate the information according to zone, lot, operator, dates of contract, area and modality of the contract. Peru's latest EITI Report 2017-2018 also contained a list of active hydrocarbons permits and concessions but current as at 2017.¹⁰⁴

The texts of some hydrocarbons contracts are available on the website of the Ministry of Energy and Mines, including:

- A list and the texts of guarantee contracts and investment promotion are available at http://www.minem.gob.pe/_detalle.php?idSector=1&idTitular=188&idMenu=sub154&idCateg=188
- A list and texts of some exploitation contracts, hydrocarbon transportation contracts, gas distribution contracts, and other agreements related to installation, operation and maintenance of a natural gas processing plant, available at http://www.minem.gob.pe/_detalle.php?idSector=5&idTitular=2759&idMenu=sub92&idCateg=684
- A list of active hydrocarbons contracts searchable per lot only, with pdf links to the text of such contracts is available at: <http://www.perupetro.com.pe/relaciondecontratos/relacion.jsp?token=76>

However, it is not possible to determine if these available lists and texts are updated or if they represent the totality of hydrocarbons contracts active in Peru.

Mining

Mining in Peru is regulated by the General Mining Law¹⁰⁵ (Supreme Decree 014-92-EM). The process by which mining licenses are granted is laid out in Chapter II of the General Mining Law and in p89 of Peru's latest EITI Report 2017-2018. This process entails a request to INGEMMET, a technical and legal evaluation, disclosure of the request, a new evaluation and if such evaluation is favorable, then the concession will be granted. The Mining Concessions office within INGEMMET handles requests and awards of mining rights through Presidential Resolutions.¹⁰⁶

¹⁰¹ See Peru's 2017-2018 EITI Report, p. 94, at https://eiti.org/files/documents/vii_informe_nacional_eiti_peru_2017-2018.pdf#page=47&zoom=100,109,230

¹⁰² See <https://www.perupetro.com.pe/wps/wcm/connect/corporativo/312b5568-b353-4925-a5c8-41e33214c9ef/Contratos+vigentes+Exploracion+31.12.2021.pdf?MOD=AJPERES>

¹⁰³ See <https://www.perupetro.com.pe/wps/wcm/connect/corporativo/d5a9fa27-3d8a-4155-832f-00f3be3e5ba9/Contratos+vigentes+Explotacion+31.12.2021.pdf?MOD=AJPERES>

¹⁰⁴ See Peru 2017-2018 EITI Report, p. 48-50 at https://eiti.org/files/documents/vii_informe_nacional_eiti_peru_2017-2018.pdf

¹⁰⁵ See http://www.minem.gob.pe/_legislacionM.php?idSector=1&idLegislacion=4752

¹⁰⁶ For further information, go to Peru's 2017-2018 EITI Report, p. 88.

A list of active mining licenses in exploration and production is disclosed in Peru's latest EITI Report 2017-2018,¹⁰⁷ but retrieving that same information through INGEMMET's website was not possible. The link on INGEMMET's website where all active mining licenses are supposedly published was broken.¹⁰⁸ Consultants did find a section on the website where users can access the texts of some mining concessions, disaggregated by month and year (until January 2020). In that section of the website, the text of some mining concessions was downloadable.¹⁰⁹ Information is also available on investment programs from the Ministry of Energy and Mines website.¹¹⁰

Some contracts regarding mining rights are available in full text at the website of the Ministry of Energy and Mines, but the Consultants were unable to verify with EITI Peru if this is a comprehensive list of all mining rights granted from 2003 to 2021.¹¹¹

Consultants also looked at three additional tools that INGEMMET offers to identify mining rights granted in Peru:

- SIDEMCAT which is the *Sistema de Derechos Mineros y Catastro*, where users can inquire about payments of validity rights placing a code or the rights holder's name <http://www.ingemmet.gob.pe/sidemcat>. To access information on mining rights, users need to enter at least three filters to carry out a search, which prevents them from retrieving a full list of all active mining rights.
- GEOCATMIN which is the Mining Cadastre map, where users can observe the status of mining rights and search through code, number or rights holder <https://geocatmin.ingemmet.gob.pe/geocatmin/>. Consultants were also unable to retrieve a list of active mining rights in Peru from GEOCATMIN.
- The site for Consultation of Mining Petition at Cadastral Level where users should be able to access information on mining rights requests available at <https://portal.ingemmet.gob.pe/web/guest/consulta-de-petitorio-minero>. To access information on a mining rights request, users need to enter at least three filters to carry out a search, which prevents them from retrieving a full list of all active mining rights.

Gap analysis

Table 11 below presents a gap analysis between the current situation regarding contract transparency in Peru and Requirement 2.4 of the EITI Standard 2019.

¹⁰⁷ See Peru 2017-2018 EITI Report, p. 37-40 at https://eiti.org/files/documents/vii_informe_nacional_eiti_peru_2017-2018.pdf#page=47&zoom=100,109,230

¹⁰⁸ See <http://www.ingemmet.gob.pe/concesiones-otorgadas>

¹⁰⁹ See <https://www.gob.pe/institucion/ingemmet/colecciones/1786-concesiones-mineras-otorgadas>

¹¹⁰ http://www.minem.gob.pe/_detalle.php?idSector=1&idTitular=189&idMenu=sub154&idCateg=189

¹¹¹ See http://www.minem.gob.pe/_detalle.php?idSector=1&idTitular=189&idMenu=sub154&idCateg=189

Table 11: Gap analysis for Peru against Requirement 2.4

Reference	Requirement	Peru's current practice	Recommended action
2.4.a	Disclose any contracts and licenses that are granted, entered into or amended from 1 January 2021.	<p>A list of hydrocarbons concessions and permits is available. The text of some hydrocarbons contracts is also available.</p> <p>A list of active mining licenses is available in Peru's latest EITI Report. The text of some mining contracts is available.</p>	<p>Provide clear guidance on the Peru EITI website and in future EITI Reports on how to access information on INGEMMET's website and the MINEM's website.</p> <p>Clearly specify which contracts are fully available and which ones are not and explain the reasons for that distinction.</p> <p>Engage with INGEMMET to ensure broken links are fixed and information is easily accessible.</p>
2.4.b	MSG agree and publish a plan for disclosing contracts with a clear time frame for implementation and addressing any barriers to comprehensive disclosure.	No contract transparency plan currently in place.	MSG should develop and implement a contract transparency plan in accordance with Requirement 2.4.
2.4.c	Document the government's policy on disclosure of contracts and licenses that govern the exploration and exploitation of oil, gas and minerals.	There is no specific explanation of the government's policy on the disclosure of contracts.	Ensure future EITI Reports have a clear statement of the government's policy on contract transparency.

2.4.c.i	A description of whether legislation or government policy addresses the issue of disclosure of contracts and licenses.	There is no specific explanation of the government's policy or legislation on the disclosure of contracts.	As above.
	Any reforms relevant to the disclosure of contracts and licenses planned or underway.	No reforms are planned or underway regarding contract transparency.	Ensure a description is included in future EITI Reports, if appropriate.
2.4.c.ii	An overview of which contracts and licenses are publicly available.	This is available in Peru's EITI Report for mining and hydrocarbons. A list of active mining licenses is not available on INGEMMET's website. A list of active hydrocarbons contracts is available on PeruPetro's website.	Engage with INGEMMET to ensure website lists active mining contracts.
	A list of all active contracts and licenses, indicating which are publicly available and which are not.	Yes, for hydrocarbons. Not for mining.	As above.
	A reference or link to the location where the contract or license is published.	Some contracts are published and there are links directing to such documents.	See action for 2.4.a.
	If a contract or license is not published, the legal or practical barriers should be documented and explained.	No explanation of barriers provided.	Ensure future EITI Reports document legal and practical barriers.
	2.4.c.iii	Where disclosure practice deviates from legislative or	No explanation provided.

	government policy requirements concerning the disclosure of contracts and licenses, an explanation for the deviation should be provided.		
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Challenges

Legal barriers

- No legal barriers identified. EITI Standard is embedded in legislation through Decree No.28-2011-EM.

Practical barriers

- Links on the EITI website and Peru’s latest report do not work.
- Links to active mining licenses on INGEMMET’s website do not work. Other tools available to retrieve a list of active mining license require filters which prevent users from retrieving a comprehensive list.

Country-specific challenges

- Peru’s new national administration took office in July 2021. Since then, the Minister and Vice-minister of Energy and Mines have changed several times. The Vice-minister is the head of the EITI National Committee (*Comisión Multisectorial*) and requires support and update from the National Secretariat to lead the EITI initiative in the country.

Opportunities

Legal reforms

- No legal reforms identified as opportunities.

Practical measures

- The National Secretariat identified as an opportunity the fact that *Propuesta Ciudadana*, a member of the MSG, is working on a dissemination and outreach plan for the information in EITI Reports, with support from USAID.
- The MSG is working towards the development of an online tool for data gathering for EITI Reporting which is expected to be ready for the 8th EITI Report.

Country-specific opportunities

- Aside from the practical measures noted above, the Consultants did not identify any further country-specific opportunities.

Recommendations

1. The National Secretariat and MSG should proactively engage with INGEMMET to ensure that their website links work and that information which is supposed to be disclosed is accessible.
2. The National Secretariat and MSG should develop and implement a strategic outreach and communications plan for contract transparency.

5.9 Suriname

Context

Suriname joined EITI in 2017 and has published two annual reports covering 2016 and 2017. The most recent EITI Report (for 2017) was published in December 2019.¹¹² In March 2021, Suriname was validated against the EITI Standard 2016 and was assessed as having made meaningful progress under Requirement 2.4 and overall.¹¹³ The country has yet to be assessed against the EITI Standard 2019.

The extractive industries are vital for the economy, accounting for 85% of exports and 27% of government revenue.¹¹⁴ Suriname has historically relied on the mining of bauxite, but the extractive industries are now focused on gold mining and onshore oil production. In the gold mining sector, artisanal and small-scale mining (ASM) plays a significant role. The country has made recent offshore oil and gas discoveries.

The Ministry of Natural Resources (MoNR) oversees the extractive industries and is responsible for awarding mining licenses. The sector is governed by the Mining Decree 1986.¹¹⁵ This Decree contains general rules for the exploration and exploitation of materials that can be mined. However, rights are granted by the Minister under licenses which may impose any other conditions beyond those included in the Decree. Exploration and exploitation licenses are granted for a period of up to three years and five years respectively, and extension rules apply to both.

The petroleum sector is governed by the Petroleum Act 1990.¹¹⁶ This act empowers the state-owned oil company Staatsolie¹¹⁷ to regulate the oil and gas sector and sign PSCs with other companies to develop hydrocarbon resources. Staatsolie acts as an agent for the Government of Suriname in promoting the sector to international investors, inviting bidders and becoming a signatory to the PSC. MoNR does not maintain a register of the licenses granted by Staatsolie. This information is maintained by Staatsolie itself, but not currently made public.

There is a risk that the broad role of Staatsolie creates a conflict of interest, or at least the perception of a conflict of interest, and the EITI Requirements relating to state-owned enterprises are relevant here. This creates a further incentive for license transparency to provide visibility of the role of Staatsolie.

Sections 5.2.2 and 5.3.2 of the 2017 EITI Report¹¹⁸ provide extensive background information on the licensing process, including an explanation of the specific regime in place for gold exporters created under a special order issued by the Foreign Exchange Commission.

¹¹² https://eitipuriname.org/wp-content/uploads/2019/12/EITI_SR_Report_2017.pdf

¹¹³ <https://eiti.org/document/suriname-validation-2020-0>

¹¹⁴ <https://eiti.org/suriname>

¹¹⁵ <http://extwprlegs1.fao.org/docs/pdf/sur202279.pdf>

¹¹⁶ <https://www.ogel.org/legal-and-regulatory-detail.asp?key=193>

¹¹⁷ <https://www.staatsolie.com>

¹¹⁸ https://eitipuriname.org/wp-content/uploads/2019/12/EITI_SR_Report_2017.pdf

The Petroleum Act 1990¹¹⁹ does not specify the position on transparency. It neither requires nor prevents the inclusion of confidentiality clauses in PSCs. It also does not prevent or facilitate broader transparency.

Contract transparency status

In its 2021 Validation against the EITI Standard 2016, Suriname was assessed as having made “meaningful progress” against Requirement 2.4. As noted above, the country has not yet been assessed against the 2019 Standard, which includes additional requirements, particularly the need to publish the full text of contracts and licenses awarded or amended since 1 January 2021.

Currently, basic information on licenses is publicly available, including the name of the concession, reference number, date of issue and duration. The 2017 EITI Report provides a list of all active licenses in the hydrocarbon sector and the large-scale mining projects. The full text of contracts and licenses are not publicly available. Also, the government’s policy on contract transparency is not clear. The 2017 EITI Report does not set out in clear terms the government’s policy and approach to contract transparency. The report also does not set out the barriers to contract transparency.

For mining, anything agreed with a mining license holder beyond what is set out in the Mining Decree 1986 needs to be debated and voted upon by Parliament. Those agreements are then available via Parliament’s website¹²⁰. However, there are approximately 200 contracts relating to the gold and building materials sectors which are not publicly available. There has been a project ongoing for two years to seek to make these contracts public. This has not progressed further under the current government.

It is the current understanding of EITI-SR that Staatsolie has engaged with its international oil company PSC partners and has agreed that these agreements will be made public, but this has not progressed further. It is expected that these licenses will be published on the Staatsolie website and mirrored on the EITI-SR website, but this is not yet the case.

Gap analysis

Table 12 below presents a gap analysis between the current situation regarding contract transparency in Suriname and Requirement 2.4 of the EITI Standard 2019.

Table 12: Gap analysis for Suriname against Requirement 2.4

Reference	Requirement	Suriname’s current practice	Recommended action
2.4.a	Disclose any contracts and licenses that are granted, entered into or amended	Excerpts for those agreements made public through their parliamentary approval, contracts	Put in place a plan to allow disclosure of full text of contracts and

¹¹⁹ <https://www.ogel.org/legal-and-regulatory-detail.asp?key=193>

¹²⁰ <https://www.dna.sr/>

	from 1 January 2021.	or licenses not currently available.	licenses issued since 1 January 2021.
2.4.b	MSG agree and publish a plan for disclosing contracts with a clear time frame for implementation and addressing any barriers to comprehensive disclosure.	No plan in place.	Develop a plan to meet Requirement 2.4 as part of drafting a work plan.
2.4.c	Document the government's policy on disclosure of contracts and licenses that govern the exploration and exploitation of oil, gas and minerals.	Government policy not documented in the most recent EITI Report.	Ensure government policy is documented in future EITI Reports.
2.4.c.i	A description of whether legislation or government policy addresses the issue of disclosure of contracts and licenses.	No description in the most recent EITI Report.	Ensure this detail is included in future EITI Reports.
	Any reforms relevant to the disclosure of contracts and licenses planned or underway.	Reforms are underway to improve disclosure.	Monitor reforms to support implementation
2.4.c.ii	An overview of which contracts and licenses are publicly available.	Overview available on an external website.	Publish overview in future EITI Reports and link to relevant external websites.
	A list of all active contracts and licenses, indicating which are publicly available and which are not.	List of active licenses available in most recent EITI Report but no indication of which are publicly available.	Publish list in future EITI Reports with indication of those that are publicly available.

	A reference or link to the location where the contract or license is published.	Not provided in the most recent EITI Report.	Provide list in future EITI Reports.
	If a contract or license is not published, the legal or practical barriers should be documented and explained.	Legal or practical barriers not documented in the most recent EITI Report.	Document barriers in future EITI Reports.
2.4.c.iii	Where disclosure practice deviates from legislative or government policy requirements concerning the disclosure of contracts and licenses, an explanation for the deviation should be provided.	As legal position or government policy is not available, it is not possible to assess whether there have been deviations from the disclosure policy.	Ensure any deviations are documented in future EITI Reports.

Challenges

The challenges to contract transparency in Suriname stem from a combination of legal and practical barriers.

Legal barriers

- The legal barriers include confidentiality clauses in PSCs, lack of a legal framework for contract transparency and weaknesses in the legal regime for mining licenses. The Petroleum Act 1990¹²¹ neither requires nor prevents such clauses. PSCs contain confidentiality clauses that require all parties to the PSC to agree to its publication. Such clauses can act as a constraint to publication as one or more parties can withhold permission to disclose the contract's text. This is a challenge faced by other EITI implementing countries. One solution lies in putting in place legislation that overrides the confidentiality clause in relation to the publication of the contract's text. An alternative would be a system whereby parties to the PSC can waive confidentiality. The opportunities to do this in Suriname are set out below (see, Opportunities).
- Suriname also lacks a specific legal framework to enable contract transparency. There are no specific legal provisions to allow the publication of contracts and license documents.

¹²¹ <https://www.ogel.org/legal-and-regulatory-detail.asp?key=193>

For example, Suriname lacks a freedom of information law (or similar) or an extractive industries transparency law, and the current and proposed new mining laws are silent on contract transparency. Other EITI implementing countries have used such laws to create an enabling framework and create a statutory basis for the publication of the full text of contracts and licenses. Although these laws do not necessarily in themselves facilitate transparency (see below, Trinidad & Tobago). In addition to this lack of enabling framework, there also appear to be weaknesses in the implementation and enforcement of the current legal regime in relation to the licensing of mining activities. For example, it is not clear that licenses are in place for all ASM activities. Also, the MoNR may not collect and make available all the information about each mining license area, in the absence of a legal obligation to do so, due to the administrative burden.

Practical barriers

- The practical challenges to contract transparency in Suriname relate to capacity constraints and the volume of contracts to be published. The MoNR appears to lack the human and financial resources to establish both an effective contract and license cadastre and a process for publishing the full text of all relevant contract and license documents. The volume of license documents that would be in scope for publication compounds the challenge posed by capacity constraints. There are an estimated 200 active licenses in the quarrying sector and possibly hundreds of active ASM operations. Creating, maintaining and making available a database that contains the full text of all relevant documents will require considerable human, financial and technology resources.

Country-specific challenges

EITI-SR identified three key country-specific challenges.

- There are approximately 200 contracts in the gold and building materials sectors which have not been published, and where there are significant challenges associated with publication. Some may involve politically exposed persons (PEPs) and other parties to agreements who would be disclosed by their publication. There may be political resistance. Addressing this will require the building of clear political will with those receptive to contract transparency to overcome resistance from PEPs involved in the sector.
- There have been large numbers of licenses issued in the past, in particular in the mining sector, to individuals who may not have the skills, experience and finances to operate that license effectively. There are also examples of contracts being fronted by individuals or organizations other than those operating the license. This represents one of the key reasons for license transparency, allowing stakeholders to see the obligations placed on license holders and hold them to account.
- In some cases there are operating agreements, not sub-licenses, which sit below the main license. The license holder is not involved in the extractive activity and someone else is operating the site. Those operating agreements are not captured within efforts to make licenses transparent. The people actually operating the extractive activity on a day-to-day

basis do not hold the license or sub-license, and so are not disclosed. This makes it difficult for stakeholders to hold them to account.

Opportunities

Legal reforms

- Reform of mining law. The Consultants understand that Suriname's mining law is under review and the proposed amendments will be the subject of stakeholder consultation in the near future. Reforming the mining law provides an opportunity to insert provisions on contract transparency such as creating a legal obligation on the government to establish and maintain a public mining cadastre, require all relevant license documents to be published and other measures to meet EITI Requirements. The Consultants understand that as things stand the draft new law does not include this. The Consultants further understand that the new mining law is in draft and now needs to be shared with a larger audience including communities. This is a normal legislative process to ensure that the proposed law is acceptable to stakeholders. The law will be subject to review and then go to Parliament, although timing for this is not clear at this stage.
- Enact a Freedom of Information law. The enactment of a Freedom of Information law would create a legal framework to enable contract transparency. The law should contain specific provisions relating to the publication of PSCs in the hydrocarbon sector and licenses in the mining sector, including quarrying.

Practical measures

- EITI Annual Report. The next and future EITI Reports should contain more content related to contract transparency. This content should include: a link to the MSG's contract transparency plan, an assessment of whether legislation or government policy addresses the issue of disclosure of contracts and licenses, any relevant reforms in progress or planned, an overview of any contracts and licenses that are publicly available and a link to where these can be found, a clear description of the government's policy towards contract transparency, the legal barriers and a description of any deviations from legislation or policy in relation to contract transparency. Where possible the EITI Report should contain links to existing sources of information on contracts or licenses or the text of such documents. Also the EITI Report should provide clear guidance on how to access this information and any potential barriers (e.g. behind a paywall or only available in a particular language).

Country-specific opportunities

- World Bank Group project for quarrying sector. The World Bank is supporting a project to improve governance and performance in Suriname's quarrying sector. This support provides an opportunity to enhance transparency in the sector e.g. through improving the transparency of the license application and award process, creating a public database of licenses and a process for the publication of the full text of licenses and supporting documents.

Recommendations

1. The MSG and Secretariat should engage with the relevant government agencies undertaking review of the mining law to provide input on provisions that will support EITI implementation including contract transparency.
2. The MSG and Secretariat should engage with the World Bank project on quarrying to ensure that measures that support contract transparency are included in the project and are implemented.
3. The MSG should advocate for the enactment of a freedom of information law that includes provisions that facilitate contract transparency.
4. The MSG should engage with Staatsolie to ensure that it fully understands its EITI Reporting obligations as a state-owned enterprise. The significant role of Staatsolie raises the importance of the state-owned enterprise disclosures under the EITI Standard 2019. The latest Validation identified no progress against Requirement 6.2.

5.10 Case study 1: Ecuador

Context

Ecuador was accepted as an EITI implementing country in October 2020. Its first annual EITI Report is due in December 2022. Ecuador's first EITI Validation is scheduled for July 2023. The EITI Ecuador MSG approved a plan to address contract transparency which has been in place since July 2020 and is being implemented.¹²² EITI Ecuador finalized its Management Report in 2021¹²³ and is in the process of conducting a Scope and Materiality study in preparation for its EITI Report, with the support of Pan American Development Foundation (PADF) Ecuador.

National context: In the 2021 national elections, candidate Guillermo Lasso Mendoza was elected President of Ecuador and a new administration came into government. Since July 2021, Lasso's new administration has enacted and proposed several laws and regulations which directly impact the Ecuadorian extractive industry. The new government's focus on the extractive industry and its regulatory frameworks appears to be a positive factor for EITI implementation in the country and provides a good basis for meaningful stakeholder engagement, influencing the public policy agenda and providing capacity building on contract transparency and the EITI Standard in general.

Since coming to office, Lasso's government has enacted or proposed the following laws and regulations:

- **Presidential Decree 95** issued in July 2021 as an amendment to the Hydrocarbons Law. This decree is aimed at increasing the country's oil production, attracting foreign investment, fostering transparency, and modifying the system of service agreements to participation agreements (see below).¹²⁴ Public sector stakeholders also acknowledged the need for a more comprehensive update of the Hydrocarbons Law as the text currently in force dates from the 1970s and is sometimes inconsistent with current oil and gas industry practices.¹²⁵
- **Reforms to the Mining Law.** The General Assembly (parliament) is currently analyzing amendments to the Mining Law which include items related to the EITI Standard. EITI Ecuador has asked the General Assembly to consider adding a provision on contract transparency and disclosure.¹²⁶

¹²² See Ecuador's 2020-2022 workplan at <https://www.eitiec.org/uploads/content/files/Plan-de-Trabajo-EITI-Ecuador.pdf>

¹²³ The Management Report is located in an open access Google Drive folder that should be accessible in the link below. If access is denied, it can be requested to Ecuador EITI National Secretariat <https://drive.google.com/drive/folders/19YaheuVbLwZeKgpzwDeXP2fbYn3jwhk>

¹²⁴ See <https://www.presidencia.gob.ec/el-ecuador-del-encuentro-cuenta-con-una-nueva-politica-hidrocarburifera/>

¹²⁵ See

https://www.fielweb.com/App_Themes/InformacionInteres/Decreto_Ejecutivo_No._95_20210607132917_20210607132920.pdf

¹²⁶ See suggested amendment by EITI Ecuador, p. 112, at

http://ppless.asambleanacional.gob.ec/alfresco/d/d/workspace/SpacesStore/cf801e9b-4993-4f71-9491-0ea7562252c85/1d_informe_final_ley_de_miner%EDA-signed-signed-signed.pdf

- **Presidential Decree 151** issued in August 2021. This decree sets out the road map for the Ecuadorian mining sector. It is aimed at encouraging private investment in the Ecuadorian mining industry, sustainable mining practices and addressing the issue of illegal mining. It includes an intention to achieve transparent practices concerning income and revenue but has no provision on contract transparency specifically.¹²⁷
- **Economic Development and Fiscal Sustainability Law**, passed on November 29, 2021¹²⁸ by the new government. Its purpose is to promote the sustainability of public finances, the reorganization of the Ecuadorian tax and fiscal systems and provide legal security for the economic recovery of Ecuador after the coronavirus pandemic. This law further supports the provisions of Presidential Decree 95.
 - There is a related bill¹²⁹ currently being analyzed by the General Assembly which seeks to allow the state of Ecuador to exercise a right of repetition to recover any amount of money from current and former public servants whose actions or omissions result in an adverse judicial decision or arbitral award with economic repercussions for the state. The Consultants heard concerns from stakeholders as to how this right of repetition against former and current public servants could very likely result in undermining, compromising and limiting their work and the integrity of Ecuadorian control agencies.

Also of relevance to the extractives sector is article 408 of the Ecuadorian Constitution, which states that the Ecuadorian state shall receive higher benefits than private companies in the exploitation of natural resources. This *Ajuste Soberano* is further regulated by Decree 408-2018.

No law or regulation in Ecuador calls specifically for the publication of extractive sector contracts.

Another aspect of the Ecuadorian context for contract transparency is the issue of pre-purchase agreements with Chinese and Thai companies which have been under close scrutiny and are suspected of corruption, as explained below. According to news reports,¹³⁰ for the period 2009 to 2024, approximately 1.4 billion barrels of crude and fuel oil have been allocated on long-term contracts to PetroChina, Unipecc and Petro Thailand. There are allegations of intermediary endorsements of crude oil sales to several international companies to the detriment of the interests of the state oil company, Petroecuador (PE). These allegations suggest that the money paid to Ecuador by the Asian counterparts came from the re-sale of the same Ecuadorian crude oil. According to PE reports, the delivery of

¹²⁷ See <https://www.recursoyenergia.gob.ec/wp-content/uploads/2021/08/wp-1628209776656.pdf>

¹²⁸ See https://www.gob.ec/sites/default/files/regulations/2022-02/LEY_ORG%C3%83_NICA_PARA_EL_DESARROLLO_ECON%C3%83_MIC.pdf

¹²⁹ See Ley Organica de Repetición Bill at <http://ppless.asambleanacional.gob.ec/alfresco/d/d/workspace/SpacesStore/44a1bc52-45ce-407b-9450-e4068c295ad3/pp-405618-isalvador.pdf>

¹³⁰ See <https://www.eluniverso.com/noticias/economia/que-informacion-clave-le-pidio-petroecuador-a-empresas-como-petrochina-unipecc-y-petrotailandia-nota/>

approximately 220 million barrels of crude oil is still pending until the end of those contracts in 2024. The Control Commission of Ecuador's General Assembly (*Comisión de Fiscalización*) is looking into the flow of funds related to PE's international trade operations and is awaiting response from the Asian counterparts on a request for information.

Finally, strong concerns were raised about opacity and corruption in Ecuador's extractive industry, especially the hydrocarbons sector. Concerns were related to changes in the regulatory framework aimed at facilitating the extension of private companies' hydrocarbon concessions, as well as a perception of opacity and corruption in the evolving mining framework and contracts. Issues related to bribes and lack of information on the distribution of mining and hydrocarbons revenues with local governments were voiced and hamper contract transparency initiatives. There are two relevant cases related to Ecuadorian hydrocarbons concessions (Perenco¹³¹ and Oxy¹³²) which resulted in international arbitrations and adverse arbitral awards for Ecuador. The Perenco case was rooted in an unexpected change in the Ecuadorian extractive legal framework, and the Oxy case was related to a forfeiture of the concession rights.

Contract transparency status

Hydrocarbons

There are three types of oil and gas contracts in Ecuador and each of those has different levels of transparency and disclosure. The contract types are:

- a) Oil and gas contracts entered into by the National Government with private companies, through the former Hydrocarbons Secretariat.
- b) Crude oil and by-products pre-purchase contracts entered into by PE, and the Ministry of Economy and Finance between 2009-2014 with companies from China and Thailand, and
- c) Oil and gas contracts entered into by PE, on behalf of the Ecuadorian State, with private companies (most significant contracts according to investment amount are with Sinopec, Halliburton and Schlumberger).

Some of these contracts are public, and some are not, as explained below.

Those in category a) from 2010-2020 are public but not easily accessible since they are scattered in different sections of various government websites.¹³³ The EITI Secretariat in Ecuador has compiled the information from all those government websites and organized it so that hydrocarbons contracts from 2010-2020 that are public can be accessed more easily

¹³¹ See Perenco ICSID case at <https://www.italaw.com/cases/819> and <http://arbitrationblog.kluwerarbitration.com/2019/11/14/perenco-v-ecuador-an-example-of-a-lengthy-complex-multi-faceted-hard-fought-and-very-expensive-investment-arbitration/>

¹³² See Oxy ICSID case at <https://www.italaw.com/cases/767> and <http://arbitrationblog.kluwerarbitration.com/2015/12/04/oxy-vs-ecuador-chronicle-of-a-death-foretold/>

¹³³ See <https://www.rekursosyenergia.gob.ec/biblioteca/> (for 2019 contracts) and <http://www.historico.secretariahidrocarburos.gob.ec/biblioteca/> (for 2010-2017 contracts)

through the EITI website. According to publicly available information, a comprehensive list of 27 hydrocarbon contracts with 16 different companies fall under this category (20 are service agreements and 7 are participation agreements). When asked about the challenges behind better systematizing access to these contracts, public sector representatives highlighted challenges around migrating the information, a need to redesign the Ministry's website and lack of funding to do so.

Those contracts in category b) are not public and there is uncertainty as to if and when they will be publicly disclosed. Those entered into by PE in category b) have raised concerns in the National Assembly (*Asamblea Parlamentaria*) because there is a perception of a lack of clarity and corrupt practices behind the flow of funds and sale of crude oil between PE and its Chinese and Thai counterparts, as well as other intermediary companies participating in those transactions.¹³⁴ There are allegations suggesting that those pre-purchase agreements have resulted in a US\$4 billion loss for Ecuador, which is still under the obligation to provide crude oil to its counterparties for two more years without receiving further monetary compensation.

Contracts entered into by PE in category c) are technically service agreements, but according to the Economic Development and Fiscal Sustainability Law which modified the Hydrocarbons Law, those service agreements can be converted into participation agreements, which would result in PE's private counterparts solely operating PE oil fields with an extension to the operating licenses. None of these service agreements is public and there is a great degree of uncertainty as to whether they will be disclosed, even if converted into participation agreements under the new framework.

PE has entered into multiple service agreements over the years, but there are three that are most relevant:

- One signed with Kamana Services Consortium in 2016 (owned by French company Schlumberger and Shushufindi Holdings).
- One signed with Servicios Petroleros Igapó SA in 2016 (owned by US company Halliburton), and
- One signed with Sinopec in 2021.

According to public announcements made by PE, these three service agreements amount to over a US\$1 billion increase in production for Ecuador. It is worth noting that both Igapó and Kamana filed two separate arbitration suits against PE in 2021 before the Permanent Court of Arbitration (PCA) in The Hague which are related to their 2016 service agreements, although the details on the subject matter of the arbitrations remain undisclosed.

¹³⁴ See <https://www.eluniverso.com/noticias/economia/a-donde-fue-el-crudo-que-se-vendio-a-china-segun-las-revelaciones-de-autoridades-de-petroecuador-nota/>; <https://www.elcomercio.com/actualidad/politica/contrato-petrotailandia-extiende-entrega-crudo.html>; and <https://www.eluniverso.com/noticias/economia/que-informacion-clave-le-pidio-petroecuador-a-empresas-como-petrochina-unipet-y-petrotailandia-nota/>

The newly enacted option to convert PE service agreements into participation agreements is controversial. According to stakeholders interviewed for this project, there is substantial public concern around the negotiation and procurement processes of PE's service agreements, mainly around the fact that only three international players are PE's counterparts (excluding Ecuadorian companies which are in turn subcontracted by the international companies). There is additionally a strong perception of opacity, corruption and lack of accountability which is perceived to be one of the main causes behind the lack of disclosure of these agreements, as well as behind the newly enacted option to convert these contracts into participation agreements and extend concessions.

The Consultants were unable to speak to PE representatives to better understand the context behind the lack of disclosure of service agreements and participation agreements and hear their perspective on the matter. Additionally, the Ecuadorian public sector representatives to which the Consultants spoke were unaware of the reasons behind PE's lack of disclosure of their service agreements but suggested there were confidentiality restraints applicable to commercial provisions.

According to some stakeholders, hydrocarbons contracts can be requested from government agencies, and they will be provided. No law or regulation calls for the publication of hydrocarbons contracts in Ecuador.

Mining

Ecuador's medium and large-scale mining exploration and exploitation activities are new. There are two mining projects currently active in the country: Fruta del Norte, operated by Canadian company Lundin Gold, and Mirador, operated by Chinese company, ECCSA. Both projects were scheduled to start production in early 2020 but were delayed due to the coronavirus pandemic.

Mining contracts are not public in Ecuador. According to some stakeholders, they can be requested from government agencies, and they will be provided. ECCSA's contract was temporarily available on a government website (then taken down) and can still be found on the Resource Contracts' website¹³⁵. Private sector representatives stated that they do disclose their contracts with the Government on their company website as well as on stock exchange websites as a result of stock exchange regulations (they do so however with redactions). Their perspective seems to indicate that accessing mining contracts through a request to government agencies is a sufficient level of disclosure. They have also expressed the view that they are comfortable with making their own decisions on the extent to which they disclose and redact contract provisions on their websites or stock exchange websites.

Public sector representatives stated that there are 11 additional mining projects on track in Ecuador: five which are soon moving to production, and six that are in an advanced exploration stage. They confirmed that while mining contracts are not publicly disclosed by

¹³⁵ See

<https://resourcecontracts.org/search/group?q=ecuador&country%5B%5D=EC&resource%5B%5D=Copper>

the government due to confidentiality clauses, work plans and investment plans are publicly disclosed by private companies on their websites, as well as accessible through the relevant government agency upon request.

When asked about the challenges behind achieving disclosure and transparency of mining contracts in Ecuador, it was clear that public sector representatives struggled to fully grasp the extent of Ecuador's commitments under EITI as an implementing country and voiced the need to undergo a capacity building workshop on the EITI Standard. They also mentioned that they are understaffed and that they need a larger budget to secure technical capacity. They stated that they are working on a template mining exploitation contract with G7 CONNEX Initiative¹³⁶ which they expect to be ready in early 2022. They explained that their commitment to transparency is focused on streamlining monitoring processes, networking with stakeholders, companies, and public authorities, and disclosing information that is useful for decision-making regarding transparency. Consistent with other stakeholders, they stated that there is strong opposition from anti-mining groups which negatively impacts the willingness to comply with contractual transparency requirements due to the fear that opposition may increase. This may be rooted in a misunderstanding of the focus of civil society advocacy. The Consultants heard from both the EITI Secretariat as well as civil society that the groups that are perceived to be anti-mining, which are part of the MSG, are more interested in technical, social and environmental monitoring than in commercial contracts.

There seems to be the will from the public sector to work towards achieving disclosure and transparency regarding mining contracts in Ecuador. The Consultants heard statements in line with that from public sector stakeholders, and they are suggested in the recitals of different mining regulations in Ecuador, as well as Presidential statements. Despite this, no law or regulation calls for the publication of mining contracts in the country. Furthermore, some stakeholders have referred to strict confidentiality provisions in active contracts. The EITI Secretariat in Ecuador has requested the General Assembly include a provision mandating the publication of mining contracts in the draft Mining Law that is currently being considered.

Stakeholders indicated that since mining is a developing industry and framework in Ecuador, it is fertile ground for politization and criticism. Some stakeholders further indicated that anti-mining advocacy groups in Ecuador are a matter of concern and that their opposition (as well as that of other groups) seems rooted in a lack of understanding of how mining revenues are distributed in the country. Specifically, on the issue of revenue distribution, some stakeholders indicated the need for the government to be able to explain the process by which they receive revenues from private companies and distribute it within the different Ecuadorian regions and local governments. Civil society, as well as private sector stakeholders, supported this view. Private sector representatives mentioned that there is a misconception or lack of understanding about how mining revenues work and that while the public may be under the impression that companies are not paying taxes or failing to comply with their legal obligations, that is inaccurate, and the real issue is addressing the need for transparency concerning the flow of funds between the national government and local governments. The flow of funds related to extractive activity between the national government and local governments in Ecuador is regulated by the *Código Orgánico de*

¹³⁶ See <https://www.connex-unit.org/en/>

Organización Territorial.¹³⁷ An in-depth understanding of this matter was outside the scope of this report, but from the Consultants’ conversations with public sector stakeholders, the perception that there is a lack of information and an inability to explain the process of the flow of funds appears to be substantiated.

Ecuador also grants small-scale artisanal mining licenses and small mining licenses which are not public, and may be granted to individuals, associations or small companies. The Consultants did not focus on these in their research but did learn that the Vice-minister of Mines (who is also the EITI Champion) is planning to reopen the Mining Registry to facilitate access to information about those artisanal mining licenses.

The EITI Secretariat in Ecuador has not had access to mining contracts but keeps a database with basic information provided by the Ministry of Natural Resources.

Gap analysis

Table 13 below presents a gap analysis between the current situation regarding contract transparency in Ecuador and Requirement 2.4 of the EITI Standard 2019.

Table 13: Gap analysis for Ecuador against Requirement 2.4

Reference	Requirement	Ecuador’s current practice	Recommended action
2.4.a	Disclose any contracts and licenses that are granted, entered into or amended from 1 January 2021.	Full text of contracts not yet disclosed, except those granted by the national government.	Publish a list of contracts in the first EITI Report, including all types of hydrocarbons contracts and mining licenses. Work with relevant government agencies, PE and private sector for publication of full-text of contracts.
2.4.b	MSG agree and publish a plan for disclosing contracts with a clear time frame for implementation and addressing any barriers to	Draft plan by the MSG refers to contract transparency but without specificity (as cited in its first management	Finalize plan and roadmap and publish on the EITI Ecuador website.

¹³⁷ See <https://www.gob.ec/sites/default/files/regulations/2020-10/CODIGO-ORGANICO-DE-ORGANIZACION-TERRITORIAL-COOTAD.pdf>

	comprehensive disclosure.	report). A roadmap is pending.	
2.4.c	Document the government's policy on disclosure of contracts and licenses that govern the exploration and exploitation of oil, gas and minerals.	EITI Ecuador Secretariat has a very good understanding of government policy related to the disclosure of extractive contracts and is aware of the need to include such information in EITI Reporting.	Ensure government policy is documented in the first EITI Report.
2.4.c.i	A description of whether legislation or government policy addresses the issue of disclosure of contracts and licenses.	EITI Ecuador Secretariat has a very good understanding of the extent to which Ecuadorian legislation and policy address extractive contracts disclosure and how that relates to the EITI Standard.	Ensure description is included in the first EITI Report.
	Any reforms relevant to the disclosure of contracts and licenses planned or underway.	EITI Ecuador Secretariat is aware of the reforms underway and has advocated for the inclusion of transparency provisions.	Ensure the first EITI Report contains a description of relevant reforms and potential implications.
2.4.c.ii	An overview of which contracts and licenses are publicly available.	Only hydrocarbons contracts entered into by the national govt from 2010-2019 are published. Others are not. Mining licenses are not disclosed.	Include a list of all contracts in the first EITI Report.
	A list of all active contracts and licenses, indicating which are publicly	EITI Ecuador's website has a list of active hydrocarbons concessions granted by the national	Disclose a full list of active hydrocarbons contracts and active mining exploitation licenses.

	available and which are not.	government, and a matrix with basic information on some mining licenses. The matrix is not public and hydrocarbons contracts entered into by PE are not disclosed or clearly listed.	
	A reference or link to the location where the contract or license is published.	EITI website contains links to the text of some hydrocarbons contracts that are publicly available. No information on mining or hydrocarbons contracts entered into by PE.	Include a link to the relevant part of the website in the first EITI Report. Continue working on disclosing mining licenses and hydrocarbons contracts signed by PE.
	If a contract or license is not published, the legal or practical barriers should be documented and explained.	EITI Ecuador Secretariat understands legal and practical barriers.	Ensure barriers are documented in first EITI Report.
2.4.c.iii	Where disclosure practice deviates from legislative or government policy requirements concerning the disclosure of contracts and licenses, an explanation for the deviation should be provided.	EITI Ecuador Secretariat understands where deviations occur.	Ensure any deviations are documented in the first EITI Report.

Challenges

Ecuador faces a range of challenges to achieve contract transparency and comply with the EITI Standard 2019.

Legal barriers

- Changing legal frameworks and need for EITI capacity building. Both the mining and hydrocarbons legal frameworks are being amended by the new national administration. It is of utmost importance that the EITI National Secretariat engage with public sector representatives, as well as PE, to provide capacity building on contract transparency and the EITI Standard in general, and influence conversations on proposed changes to the mining and hydrocarbons regulatory frameworks that may come in the future.
- No legal provision mandating the disclosure of extractive contracts in Ecuador. EITI Ecuador should strive to influence public policy debates in the General Assembly and strongly push for a legal provision calling for the disclosure of extractive contracts to be included both in the mining and hydrocarbons legislation.

Practical barriers

- Lack of capacity in the mining public sector. Capacity building on the EITI Standard and contract transparency is especially relevant for the public sector involved in the new and developing mining industry in Ecuador. From the Consultants' engagement with public sector representatives involved in mining, it was clear they did not fully grasp the different elements and requirements of the EITI Standard that Ecuador needs to comply with as an implementing country. They voiced a need to receive capacity-building support.
- Need for better systematization of hydrocarbon contracts currently publicly available so that they can be accessed easily. Some hydrocarbons contracts granted by the National Government can be accessed, but those involving PE are not disclosed or listed. When asked about the challenges behind systematizing access in one place to these contracts, public sector representatives mentioned challenges around migrating the information, a need to redesign the official website and a lack of funding to do so. Regarding PE's contracts, the Consultants are unable to pinpoint the specific challenges behind the lack of disclosure, but it would be appropriate to increase engagements with PE on contract transparency requirements.

Country-specific challenges

- Need of further engagement with PE. Most of the hydrocarbons contracts not publicly disclosed are those entered into by PE on behalf of the Ecuadorian government. It is of vital importance for EITI Ecuador to develop a relationship with PE, which appears to be very limited now. It is of utmost relevance to understand the reasons and challenges behind PE's lack of disclosure of hydrocarbons contracts, explain Ecuador's obligations under the EITI Standard and carry out capacity building and support of PE staff on contract transparency issues.
- Concerns about opacity and corruption in the extractive industry. The Consultants heard consistent concern about changes in the regulatory framework aimed at facilitating the extension of private companies' hydrocarbon concessions without assurance about disclosure and transparency, as well as a perception of opacity and corruption in the

evolving mining framework and contracts. Issues related to bribes, and lack of information on the distribution of mining and hydrocarbons revenues with local governments were voiced and hamper contract transparency initiatives. It is relevant for EITI Ecuador to understand how the flow of funds works, provide capacity building for the public sector with the aim of developing a strategy to inform the public about revenue distribution to pave the way for contract transparency. Considering the evolving changes in the legal frameworks, and the background of high-profile litigations and arbitrations, EITI should actively engage with civil society and with the private sector to better understand their concerns.

Opportunities

Legal reforms

- Evolving regulatory frameworks. Both the mining and hydrocarbons regulatory frameworks are in the focus of the new government and are being amended. EITI needs to engage and identify areas for cooperation with the government to influence how these new regulatory frameworks are considered and developed and get ahead of potential challenges coming down the line. A good example of that was EITI Ecuador's engagements with the General Assembly to request the inclusion of a provision on contract transparency.

Practical measures

- Engage with civil society and sceptics. The Consultants heard substantial concerns about anti-mining groups. Although private and public sector statements indicate a perception that their opposition is rooted in a lack of information about extractives revenues and lack of transparency regarding contracts, that perception is relevant for the public sector and for the private sector and seems to negatively impact their openness towards contract transparency. The Consultants also heard from civil society that they have major concerns about corruption in the extractive industry in Ecuador. It is vital for EITI to engage directly with them to better understand their concerns and identify potential actions to address these concerns.

Country-specific opportunities

- New administration. The new government's focus on the extractive industry and its regulatory frameworks is a positive factor for EITI implementation in the country and provides a basis for meaningful stakeholder engagement, influencing the public policy agenda and providing capacity building on contract transparency and the EITI Standard in general. This was particularly evident in the Consultants' conversations with the public sector involved in mining which was open to collaboration.

Recommendations

1. The MSG should engage with the government and the General Assembly to ensure provisions on contract transparency are included in the regulatory frameworks of the Ecuadorian extractive sector (particularly mining which is not yet final).
2. The EITI Ecuador Secretariat should strengthen engagements with PE to better understand the challenges behind the lack of disclosure of PE's contracts and support them in complying with EITI Requirement 2.4.
3. The EITI Ecuador Secretariat should provide capacity building to the mining public sector on contract transparency, understand concerns and limitations around contract disclosure and support them in moving towards contract transparency.
4. The MSG should produce and implement a strategic communications plan on contract transparency and its benefits for Ecuador.

5.11 Case study 2: Trinidad & Tobago

Context

Trinidad & Tobago is a longstanding EITI implementing country, having joined in 2011. Since that time, it has published seven annual EITI Reports. The most recent, covering the period 1 October 2017 to 30 September 2018 (FY2018), was published in February 2021. Preparation of a Report covering FY2019 and FY2020 is underway. Trinidad & Tobago was validated against the EITI Standard 2016 in 2018-19 with the EITI Board assessing that the country had made “meaningful progress”. Trinidad & Tobago’s Validation against the EITI Standard 2019 is scheduled to start in September 2022.

Trinidad & Tobago’s extractive industries also have a long history, especially hydrocarbons. The country has produced oil for more than 100 years and is also now a major producer and exporter of natural gas. Trinidad & Tobago also has a small mining sector consisting largely of quarrying activities for construction materials. The extractive industries account for approximately 11% of GDP, more than 80% of exports and more than 15% of government revenues.¹³⁸

The Ministry of Energy and Energy Industries (MEEI) oversees both the hydrocarbon and mineral sectors. Details of the laws and regulations that govern the extractive industries in the country can be found on the MEEI’s website.¹³⁹ These laws contain confidentiality provisions that obstruct contract transparency as set out below. The MEEI holds bid rounds for oil and gas exploration licenses, evaluates the bids and awards exploration licenses. For example, the MEEI held an offshore bid round in late 2021.¹⁴⁰ There are no significant concerns about the offshore license process which is held in an open and transparent manner. The MEEI website also provides the forms for mining licenses and guidance on the application process.¹⁴¹

In the event of a commercial discovery of oil or gas, the exploration license holder(s) apply for a development lease. MEEI evaluates and approves applications for such leases. The successful applicants then sign a production sharing contract (PSC) with the government for exploitation of the hydrocarbon resources or are granted an exploration or production license. In the mineral sector, which is dominated by the production of gravel, sand and other construction materials, the MEEI issues licenses for exploration, mining, processing as well as the export and import of minerals. CSOs have expressed concern about the large number of unlicensed operators in the quarrying sector.

Contract transparency status

The EITI Board has yet to validate Trinidad & Tobago against the EITI Standard 2019 and so its level of compliance with the current Requirement 2.4 has yet to be assessed. In its 2018 Validation (against the 2016 version of the EITI Standard), Trinidad & Tobago received a

¹³⁸ See, <https://eiti.org/trinidad-tobago#extractive-industries-contribution>

¹³⁹ <https://www.energy.gov.tt/for-investors/legislation-and-tax-laws/>

¹⁴⁰ <https://www.energy.gov.tt/for-investors/2021-onshore-competitive-bid-round/>

¹⁴¹ <https://www.energy.gov.tt/services/applications/>

“satisfactory” rating for Requirement 2.4. At that stage, Requirement 2.4 demanded that Trinidad & Tobago documents the government policy on contract transparency. The disclosure of the full text of contracts and licenses was encouraged but not obligatory. The most recent EITI Report gives a clear description of government policy on contract transparency at the time of publication.

The government position stated in the most recent EITI Report is that contracts may not be disclosed due to legal confidentiality provisions: section 35 of the Petroleum Act¹⁴² (Chapter 62:01) and are exempt from disclosure under Section 31 (1) (a) of the Freedom of Information Act (Chapter 22:02). Section 35 is a general provision restricting the disclosure of any information obtained as a result of provisions of the Petroleum Act. Section 31(1)(a) of the Freedom of Information Act exempts disclosure of any information related “to trade secrets or other matters of a business, commercial or financial nature”. As a result, there are no PSCs or mining licenses that have been published in full. The MEEI has published the full text of model PSCs. This model contract contains a confidentiality clause that prohibits the disclosure of any information obtained as a result of operations conducted under the terms of the PSC. However these model contracts are subject to negotiation with the companies developing the hydrocarbon resources. So the final version of the negotiated PSC is not published.

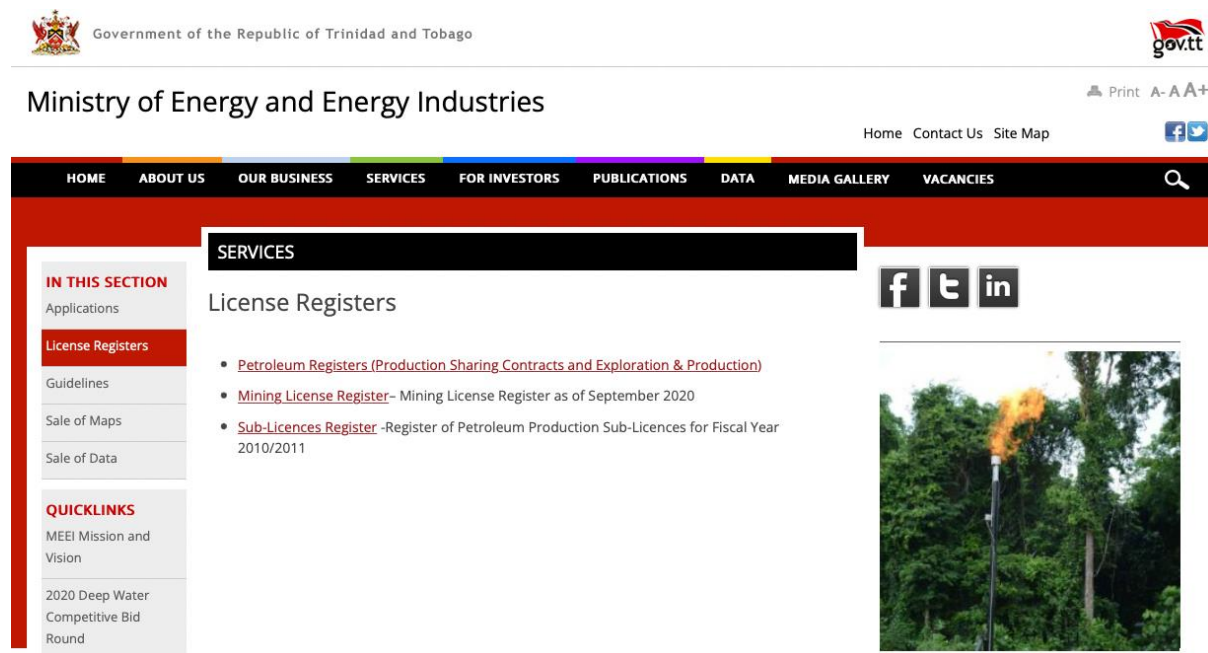


Figure 14: Image from Ministry of Energy and Energy Industries website

The MEEI does publishes basic information on active contracts and licenses on its website.¹⁴³ The MEEI maintains registers of:

- Oil and gas production sharing contracts
- Oil and gas exploration licenses

¹⁴² https://rgd.legalaffairs.gov.tt/laws2/alphabetical_list/lawspdfs/62.01.pdf

¹⁴³ <https://www.energy.gov.tt/services/license-registers/>

- Quarrying licenses

These registers are in the form of Excel spreadsheets and are available at: <https://www.energy.gov.tt/services/license-registers/>

Oil and gas production sharing contracts

This register was updated in May 2022 and underwent substantive revisions compared to the previous version. However, it is not clear how frequently the register is updated. The register provides the following information on each PSC:

- Block name
- Block size (in hectares)
- Parties to the PSC and their percentage share
- Date of application
- Summary of terms
- Summary of surrender provisions
- Guarantees
- Assignment, extension, renewal, amendment, termination details where relevant
- The minimum work obligation

The register also indicates whether the block has been relinquished or terminated.

Oil and gas exploration licenses

This register was also updated in May 2022 but again it is not clear how frequently it is updated. The register provides the following information:

- Block name
- License type
- Parties and percentage share
- License co-ordinates
- Date of application (and effective date if different)
- Duration
- Commodity

This register does not provide consistent information on each license. For example, for some blocks the percentage share of each party to the license is not given.

Quarrying licenses

This register was updated on 29 September 2020 and contains the details of eight quarry licenses. For these licenses, the register contains the following information:

- License holder
- Location
- Land status (i.e. state-owned or private)

- Size
- Mineral
- Co-ordinates
- Start date
- Expiry date
- License number

Section 4.7.4.1 of the latest EITI Report¹⁴⁴ states that MEEI considers PSCs and licenses to be confidential documents and may not be disclosed. As a result, TTEITI is unable to disclose those agreements. This was highlighted in the Validation,¹⁴⁵ which stated that *“Trinidad and Tobago is encouraged to make contracts and contractual terms available for all oil, gas and mining contracts corresponding to companies operating in the country.”*

Contract transparency is firmly on the MSG’s agenda. The MSG is currently organizing a mining sector forum to be held later in 2022, which will feature contract transparency on the agenda and will include a contribution from a representative of The Dominican Republic to give their perspective. Trinidad & Tobago is one of the few EITI implementing countries in the region that has a clear plan for contract transparency. Its current work plan contains specific actions on the issue.¹⁴⁶ The TTEITI website has a section dedicated to contract transparency¹⁴⁷ and TTEITI has written articles on the subject to raise awareness of the issue and the benefits of contract transparency.¹⁴⁸

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https://static1.squarespace.com/static/5835d78c29687ff9ece48584/t/609bd65b0d8f1a3d214baf41/1620825693505/TTEITI_Country_Report_2018.pdf

¹⁴⁵ https://eiti.org/files/documents/trinidad_and_tobago_final_validation_report.pdf

¹⁴⁶ <https://eiti.org/document/trinidad-tobago-20212023-eiti-work-plan>

¹⁴⁷ <https://www.tteiti.com/contract-transparency>

¹⁴⁸ <https://www.tteiti.com/articles/will-contract-transparency-be-beneficial-for-tt>

Contract Transparency

We advocate for public disclosure of the terms and conditions of contracts between the state and oil, gas or mining companies including revenue expectations and each party's obligations in case of an environmental disaster. This directly empowers citizens to hold those in charge accountable for how they manage the extractive sectors. Contract transparency can also help determine whether revenue from a particular agreement is spent to improve the living conditions of people living in fenceline communities where these resources are developed.

View the [EITI Requirement](#).

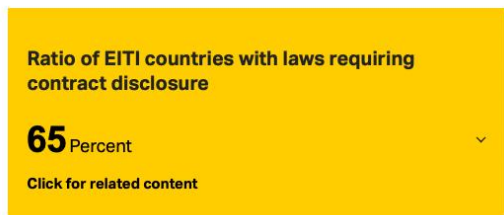


Figure 15: Image from TTEITI website

Contract transparency is also on the agenda of civil society representatives on the MSG. The Fishermen and Friends of the Sea (FFOS) organization is in the forefront of advocacy on contract transparency. There are two concerns that drive this advocacy:

1. A desire to understand the environmental obligations for contract holders, particularly in relation to managing marine environmental impacts, including cleaning up any spills, and
2. A desire to assess whether Trinidad & Tobago is getting the value that it is entitled to under the terms of the PSCs. In particular, FFOS and other CSOs are keen to understand the terms of the contracts by which the state-owned National Gas Company (NGC) buys gas from producers and sells to users such as ammonia producers. There are concerns about the secretive nature of these contracts and that NGC could abuse its dominant position in the market and access to information on prices that other participants in the market do not enjoy. FFOS have written letters to local newspapers¹⁴⁹ on this subject.

The concerns about the role NGC plays in Trinidad & Tobago's natural gas sector stems from the role it plays across the whole value chain. It buys gas from upstream producers (allegedly

¹⁴⁹ https://trinidadexpress.com/opinion/letters/concerns-over-billion-dollar-leakage/article_5476ece6-8387-11eb-b95b-57c448f7c66f.html

at high prices) and sells to industrial users (allegedly at discounted prices).¹⁵⁰ NGC also participates in Atlantic LNG which exports natural gas to global markets. The scope of TTEITI does not include LNG contracts, nor NGC’s gas purchase and sales agreements. These are not covered by the definition in Requirement 2.4 as they do not relate to the production of natural gas.

Gap analysis

Table 14 below presents a gap analysis between the current situation regarding contract transparency in Trinidad & Tobago and Requirement 2.4 of the EITI Standard 2019.

Table 14: Gap analysis for Trinidad & Tobago against Requirement 2.4

Reference	Requirement	Trinidad & Tobago’s current practice	Recommended action
2.4.a	Disclose any contracts and licenses that are granted, entered into or amended from 1 January 2021.	No contracts disclosed to date. Difficult to identify contracts or licenses that have come into force since 1 January 2021.	In EITI Reports that cover 2021, ensure a list of contracts that have come into force or been amended is included. Put in place a plan to allow disclosure of full text of contracts and licenses issued since 1 January 2021.
2.4.b	MSG agree and publish a plan for disclosing contracts with a clear time frame for implementation and addressing any barriers to comprehensive disclosure.	Current workplan contains a specific plan for contract transparency with an expected budget and timeline and clear desired outcomes.	Monitor implementation progress and ensure it remains on track.
2.4.c	Document the government’s policy on disclosure of contracts and licenses that govern the exploration and	The most recent EITI Report covering October 2017-September 2019 sets out the government’s	Ensure any updates to the government’s position are set out in future EITI Reports.

¹⁵⁰ <https://newsday.co.tt/2019/04/20/ffos-govt-must-explain-new-gas-price/>

	exploitation of oil, gas and minerals.	position on contract transparency.	
2.4.c.i	A description of whether legislation or government policy addresses the issue of disclosure of contracts and licenses.	Implication of description in most recent EITI Report is that there is no government policy or legislation that addresses contract disclosure.	Ensure future EITI Reports describe opportunities to advance contract transparency and highlight government policies and/or legislation that could facilitate contract disclosure.
	Any reforms relevant to the disclosure of contracts and licenses planned or underway.	No relevant reforms noted in the most recent EITI Report.	Ensure future EITI Reports describe any relevant reforms.
2.4.c.ii	An overview of which contracts and licenses are publicly available.	Only the text of a model PSC contract is disclosed.	Ensure future EITI Reports continue to note which contracts are publicly available.
	A list of all active contracts and licenses, indicating which are publicly available and which are not.	List of active contracts is available on MEEI's website but the list may not be up to date or complete.	TTEITI Secretariat work with MEEI to ensure a list is kept up to date and complete.
	A reference or link to the location where the contract or license is published.	EITI Report contains a link to the list of active licenses and where the text of a model PSC can be found.	Ensure future EITI Reports continue to provide links where contract information can be accessed.
	If a contract or license is not published, the legal or practical barriers should be documented and explained.	Legal barriers described in EITI Report.	Ensure future EITI Reports continue to explain legal barriers.
2.4.c.iii	Where disclosure practice deviates from legislative or government policy requirements	As legislation and policy does not allow disclosure, no deviations.	Ensure future EITI Reports note any deviations.

	concerning the disclosure of contracts and licenses, an explanation for the deviation should be provided.		
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Challenges

Legal barriers

- The main challenge to enhancing contract transparency in Trinidad & Tobago appears to be legal provisions that prevent the disclosure of the full text of contracts and licenses. The two provisions from the Petroleum Act and the Freedom of Information Act noted above present a considerable barrier to the disclosure of the full text of contracts and licenses. Both are very broad in scope, in particular section 31(1)(a) of the Freedom of Information Act, which provides an exemption against disclosure that appears to cover any information obtained from a business or any matter of “*a business, commercial or financial nature*”. The broad nature of these legal provisions creates a considerable barrier to contract transparency as they do not leave any flexibility in interpretation. The MEEI has relied on these two provisions for its position on contract transparency. Removing these legal barriers would require either amendments to the Petroleum Act and the Freedom of Information Act to introduce a specific exemption for extractive sector contracts, or the introduction of an alternative piece of primary legislation with the ability to override these two Acts.

Practical barriers

- In the event that Trinidad & Tobago does introduce a greater degree of contract and license transparency, the country would also face practical barriers. The disclosure of the full text of all contract and license documents would entail the creation of an online database including the digitization of all relevant documents. The MEEI’s register of PSCs suggests there are currently at least 21 active PSCs. In addition, the MEEI states that there are approximately 90 active mining licenses (although only 8 are listed on its register). While the creation of a database to store and make available these documents and future additions is well within current technology, it will require human and financial resources to implement. This barrier is far from insurmountable, and other countries have taken on much larger digitization projects. However, government will have to allocate some budget for this or obtain technical assistance and then procure the necessary services.

Country-specific challenges

- Both private sector and state-owned companies have expressed concern about the potential negative impact that contract transparency could have on the effective working of energy markets in the country, especially the gas sector. This concern stems from the small size of the Trinidadian economy, the central role that NGC plays in the energy sector

and the integrated nature of the gas industry. NGC acts as the gas aggregator and buys from the upstream producers then sells the gas to petrochemical plants. The concern is that the publication of upstream terms (including prices) as a result of contract transparency would constrain NGC's position when negotiating contracts with petrochemical customers.

- These concerns appear to have contributed to a culture that does not support transparency. The Consultants have been informed that presumption against disclosure seems to exist in both the government and the oil and gas companies that operate in Trinidad & Tobago. There is no apparent appetite either in government or the companies in favor of contract transparency. In the absence of political will, the legislative changes required to allow contract transparency are currently highly unlikely. This is despite some of the companies operating in Trinidad and Tobago being global supporters of EITI and having made statements in favor of contract transparency.¹⁵¹
- There is a lack of leadership in challenging the status quo to overcome the barriers to contract transparency and find solutions that would allow contract transparency in the country. TTEITI can play a role but would benefit from harnessing the support of the private sector, and particularly those EITI supporting companies operating in Trinidad and Tobago. Effective and coordinated communications and advocacy can bring about change.

Opportunities

Legal reforms

- Advancing contract transparency in Trinidad and Tobago will require legal reforms. Both the Petroleum Act (section 35) and the Freedom of Information Act (section 31(1)(a)) would require amendments to create a legal basis for the disclosure of contract and license documents. Indeed, the Consultants would recommend going further than just removing legal impediments, by including a legal obligation for them to be published. TTEITI can play a role in this legal reform by advocating for such reforms. This advocacy could include explaining the case for reform and contract transparency, including providing evidence to support the case.

Practical measures

- As noted above, there are also practical barriers to contract transparency in Trinidad & Tobago. An early step to overcoming this barrier is a full understanding of the extent of the work and resources required to create and administer an online contract database. TTEITI could facilitate the production of a scoping study that identifies the technology, human and financial resources required. The study could also identify potential sources of technical assistance and potential suppliers or contractors.

¹⁵¹ <https://eiti.org/supporter/royal-dutch-shell>

Country-specific opportunities

- While legal reforms could take considerable time (perhaps years) to implement, there are more immediate channels to advance contract transparency in Trinidad & Tobago. The legal barriers to the disclosure of contracts are not absolute. The parties to a PSC could, by mutual agreement, waive the confidentiality provisions and agree to publish the full PSC text. This would require a demonstration of leadership on the part of the companies and the government. To capture this opportunity, at least one company would have to advocate for such a course of action. TTEITI could play a role in amplifying the advocacy for contract transparency and facilitating a pilot project that involves the companies represented on the MSG. The progress made by TTEITI on beneficial ownership transparency could be a model for this.

Recommendations

1. TTEITI MSG and Secretariat should engage with the relevant government agencies undertaking review of the petroleum law to provide input on provisions that will support EITI implementation including on contract transparency. In particular, this should include reform of confidentiality provisions to allow the disclosure of the text of contracts and licenses.
2. TTEITI MSG and Secretariat should undertake a scoping study to create a contract transparency regime in the country. This study should include consideration of the contract information that is likely to cause commercial damage if disclosed, the resources required to upgrade the contract and license information already available on the MEEI website and the resources required to implement an online database of contracts and licenses.
3. In the meantime, TTEITI MSG and Secretariat should engage with EITI supporting companies and seek to build a case for the waiver of confidentiality clauses in contracts and take that proposal to the government.

6 Findings

Meeting the obligations of Requirement 2.4 is challenging for most countries. The full text of contracts, licenses and related documents that come into force or were amended after 1 January 2021 are not readily available in eight of the 11 implementing countries in the region. In five of those eight countries, there is information on the contracts that have come into force since 1 January 2021. For all other active exploitation contracts and licenses (i.e. those already in force on 1 January 2021), there are four countries where the text of such contracts and documents is publicly accessible. In a further four countries, information on active contracts is available (e.g. a list of active contracts and licenses). In the remaining three countries, no such information is available.

In many cases there are considerable barriers to the disclosure of contracts, typically based on confidentiality clauses found in legislation and the contracts themselves. There appears to be little advocacy from governments or the private sector for contract transparency. While some civil society organizations advocate for contract transparency, this is focused on public procurement and the wider economy and not specifically on the extractive sector.

The limited advocacy that does take place does not appear to be supported by a strong, evidence-based use case that provides a detailed analysis of the different uses for information derived from contract transparency and the benefits of contract transparency for government, the private sector and civil society. The lack of robust use case reflects a limited understanding of contract transparency in the region. The benefits of contract transparency were expressed in general terms such as “building trust” or “fighting corruption” but more specific benefits e.g. how contract transparency helps anti-corruption efforts were more difficult to articulate.

Legal barriers are the most significant hurdles to making progress on contract transparency. These barriers are typically in the form of confidentiality clauses which are wide in scope and prohibit the disclosure of information. In addition, the contracts themselves typically contain broad confidentiality clauses. Such clauses usually refer to the disclosure of information and not to the text of the contract itself. Governments and companies routinely rely on these provisions to consider that disclosure of the contract text is not permitted.

In addition to legal provisions that obstruct contract transparency, there is also a lack of legal framework to facilitate contract transparency in most countries in the LAC region. While some countries such as Colombia and The Dominican Republic have right to information laws which facilitate the disclosure of contracts, other countries either have no such law or have laws that do not always contribute to enhancing transparency. Trinidad & Tobago has a freedom of information law, but it has a provision that exempts business-related information from disclosure and has been interpreted to include contracts and licenses in the country’s extractive industries.

Overcoming the legal barriers presents the most significant opportunity to advance contract transparency in the LAC region. This will require legal reforms in the individual countries. The paths to legal reforms include:

- Including transparency provisions in the review and amendment of existing legislation e.g. when laws governing the extractive industries (such as a mining act) are revised. This has the advantage of using a process that is already underway.
- Enacting specific legislation to embed EITI requirements in a law. Such a law provides a statutory basis for all EITI requirements and should support EITI implementation. However, the passage of such a law needs to find support in the government and be given priority in the legislative timetable. Therefore, it may need to compete with other proposed legislation.
- Enacting a freedom of information (FOI) law that contains provisions that allow contract transparency in the extractive industries e.g. as is the case in Colombia or the Dominican Republic (see relevant country sections above). FOI laws typically contain exemptions for commercial matters. Also, other economic sectors may express alarm that the disclosure of extractive industries contracts will set a precedent. Passage of any FOI law also needs to compete against other proposed legislation for priority.

Amending laws or enacting new ones can take considerable time but there are more immediate opportunities to advance contract transparency. Mutual agreement by the parties to a PSC or other contract can lead to its disclosure. Confidentiality clauses do not usually block the parties agreeing to waive those provisions. However, this approach does require a proactive approach by at least one of the parties.

Table 15: Summary of legal frameworks that support and obstruct contract transparency

Country	Freedom of information act or similar	Other transparency provisions in legislation	Confidentiality clauses that obstruct contract transparency	Legislative provisions that obstruct contract transparency
Argentina				
Colombia				
Dominican Republic				
Ecuador				No specific legal provisions for transparency
Guatemala				
Guyana				
Honduras				
Mexico				Privacy law
Peru				
Suriname				
Trinidad & Tobago	Exemption for business-related information			

The leadership required to take a proactive approach and challenge the status quo of confidentiality appears to be missing in the region. Many governments claim to support transparency and indeed support EITI implementation but rarely take the necessary action in relation to contract transparency. Some of the international oil companies and mining companies that operate in the region have expressed support for contract transparency e.g. through endorsing statements by organizations such as ICMM or the B Team in favor of contract transparency and are represented on both the EITI Board and on national MSGs.¹⁵² This includes Shell and BHP. However, this support has not translated into action at a national level to advocate for measures to support the implementation of Requirement 2.4. Some of this reluctance to advocate for contract transparency stems from concerns about the potential negative implications on commercial relations and the effective operation of the markets in oil, gas and minerals. There is a limited scope of information that may cause commercial damage if publicly disclosed. However, this has not been well defined by either the companies or the government (including state-owned companies).

As well as legal and commercial barriers, there are also practical barriers to contract transparency. As most countries are starting from a position where few if any contracts or licenses are fully in the public domain, there are considerable financial and human resources required to establish and administer an effective online database of the full text of contracts, licenses and supporting documents. There is no technology barrier as the software and hardware are readily available. However, effective contract transparency requires a budget and dedicated human resources. Any contract transparency project has to compete for these resources with other priorities, both in terms of EITI implementation and wider policy priorities.

In terms of financial resources available to support implementation of contract transparency projects in the LAC region, the sources for such funds are not clear, especially if the national government cannot or will not support such projects. While technical assistance funds may be available from development banks (e.g. IDB or World Bank), private foundations or donor governments, the experience with other aspects of EITI implementation is that these may fall short of what is required for effective and sustained implementation.

¹⁵²<https://oxfamlibrary.openrepository.com/bitstream/handle/10546/620465/bp-contract-disclosure-extractives-2018-030518-en.pdf?sequence=4&isAllowed=y>

7 Roadmaps

Before considering how individual countries can make progress towards contract transparency via their own roadmap, the Consultants have looked at activities which could be undertaken at a regional level, supported by the EITI Board and International Secretariat.

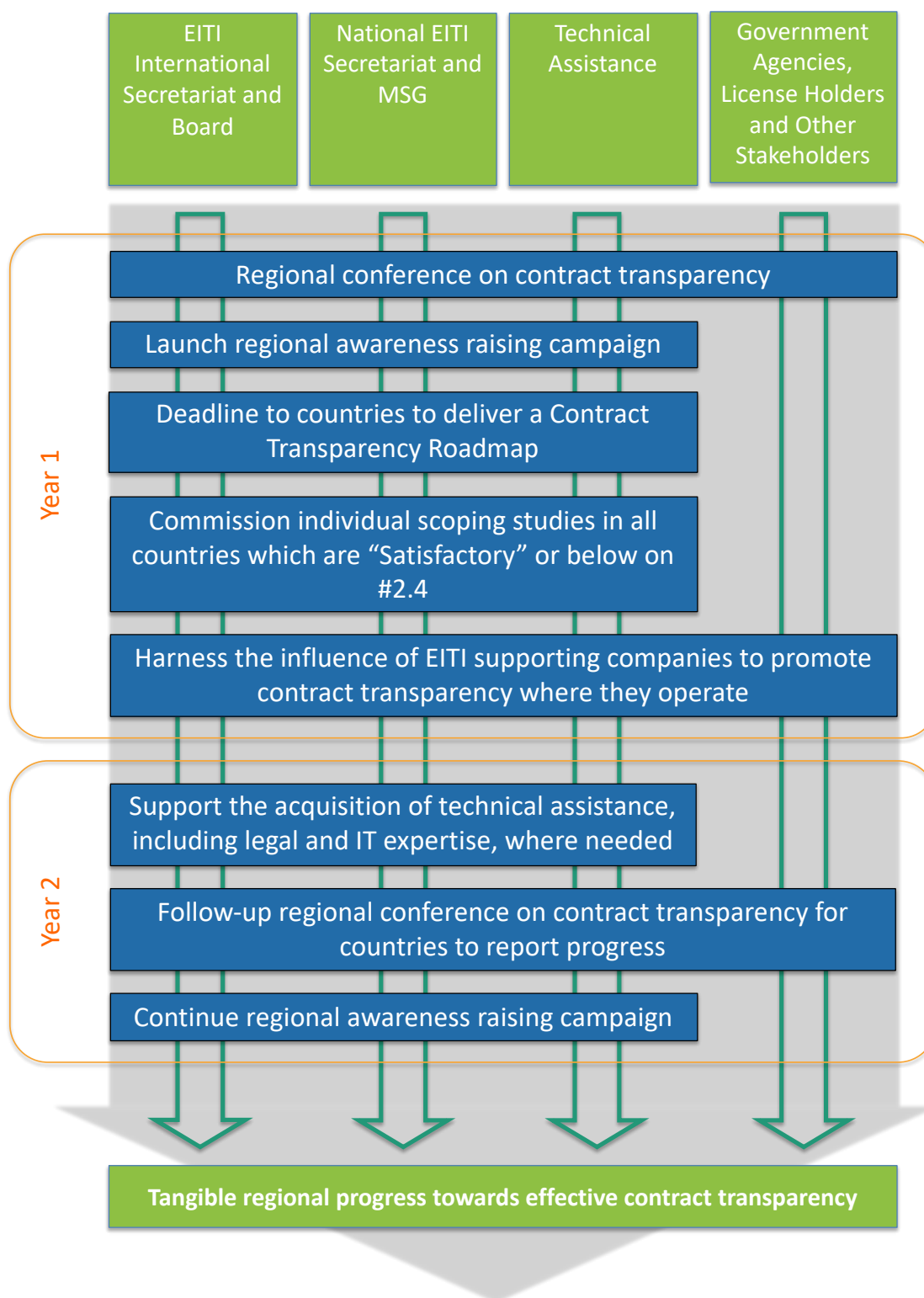


Figure 16: Regional roadmap

These activities fall under four broad headings:

1. Holding a regional conference on contract transparency, similar to those held in Africa, Asia and LAC on beneficial ownership. This would bring together EITI Secretariats, MSG members, government representatives and technical assistance providers, facilitated by the EITI International Secretariat. A follow-up regional conference the following year would allow countries to share successes and challenges, and facilitate peer-learning opportunities.
2. A campaign to raise awareness to highlight the importance and benefits of contract transparency, and build momentum in EITI implementing countries.
3. Modify the EITI Standard to include a requirement on EITI implementing countries to publish a Contract Transparency Roadmap by a set deadline (for example, 31 December 2022). This was an important steppingstone on the journey to beneficial ownership transparency.
4. The commissioning of scoping studies and support for technical assistance to enable countries to deliver on their individual roadmaps.

The Consultants have developed the roadmap above, based on these activities, with a view to seeing tangible progress in contract transparency in the region over a two-year period.

In almost all cases countries need to take multiple actions in order to move to effective contract transparency. Some of these actions are the sole responsibility of the national EITI secretariat and the MSG. Others require collaboration with external agencies or stakeholders. In addition, some activities, such as digitization of contracts, require resources which might be constrained. Others, such as legislative change, are subject to timescales which might not be under the control of the EITI team.

For this reason, it is important for each country to develop a roadmap for contract transparency. That roadmap needs to reflect the starting point for the country, the challenges they face and the specific context. There is no single roadmap applicable in all cases. However, there are key elements likely to appear in an effective roadmap, including:

1. Creation of a license transparency plan, including a detailed and tailored roadmap
2. Decisions about the scope of contract transparency to be implemented, both in terms of the types of documents to be disclosed, and the platform
3. Decisions about the practical processes necessary for contract transparency, including digitization of documents if they are only in paper form
4. Drafting and passing of legislative changes to remove obstacles to contract transparency and to embed transparency in law
5. Practical implementation of the regime, including technology solutions
6. Training and awareness-raising activities

The timescale over which these activities take place will vary from country to country depending on the nature of each task and particularly the processes involved in legislative change.

The roadmap below is intended to be indicative only, and each country should develop one tailored to their needs.

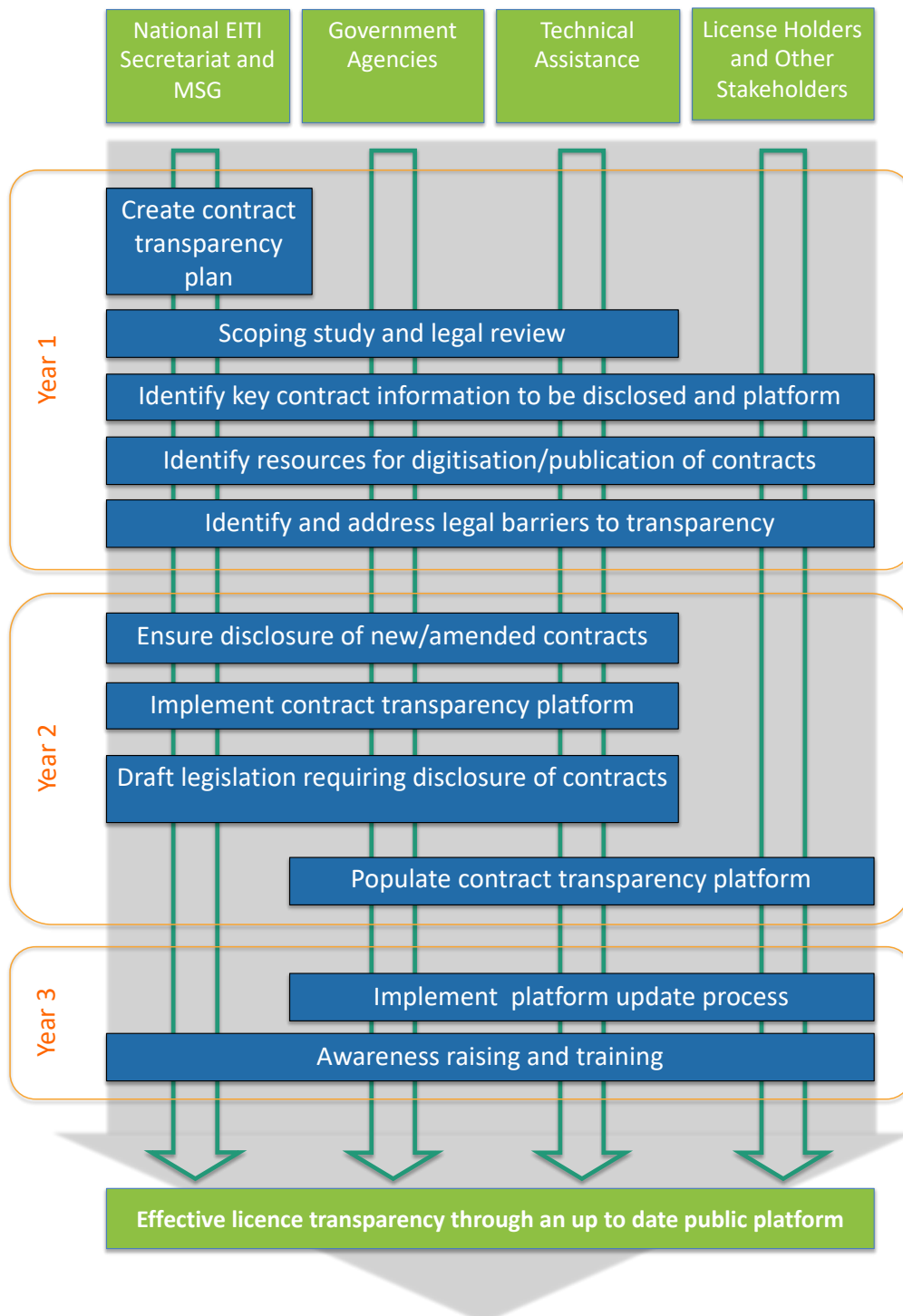


Figure 17: Template for country roadmap

8 Recommendations

8.4 For EITI Board and International Secretariat

1. Commission research to produce an evidence-based paper setting out a clear and robust use case for contract transparency at a global level.
2. Hold a regional contract transparency conference to highlight the use case, and best practices and share lessons learned.
3. Implement a program on contract transparency including holding workshops, producing briefing papers, training material, infographics similar to the Opening Extractives program for beneficial ownership.
4. Consider the potential domestic legal implications of EITI reporting disclosing contracts or terms published on the Resource Contracts website where there is a local legal impediment to contract transparency and advise EITI National Secretariats accordingly.

8.5 For companies

1. In line with “*Expectations for EITI Supporting Companies*” (see Expectation 8),¹⁵³ companies that support contract transparency at a global level (and especially those who are represented on the EITI Board) should advocate at an individual country level for contract transparency.
2. All companies should clearly identify specific information that they consider commercially confidential, which if revealed would cause commercial harm. The companies should also provide evidence to support their analysis.

8.6 For governments

1. Governments should adopt a policy in favor of contract transparency and put in place a multi-disciplinary taskforce to implement the policy. Where relevant, governments should undertake to remove legal and regulatory obstacles to contract transparency and put in place a legal framework to facilitate contract transparency.
2. Governments should identify the resources and technical assistance that they will need to implement a contract transparency policy and to put in place the necessary measures and programs.
3. Governments should put in place (if not already in place) an online, publicly accessible license cadastre for the extractive industries. The cadastre should be searchable by a wide

¹⁵³ <https://eiti.org/documents/expectations-eiti-supporting-companies>

range of criteria including license location, license holder, commodity and data of license award.

8.7 For civil society

1. Civil society organizations should contribute to building the case for contract transparency through providing specific evidence of the benefits of enhanced transparency.
2. CSOs should also contribute to identifying potential sources for funding and technical assistance to implement contract transparency measures in the LAC region. This should go beyond advocacy activities and identify resources to support measures such as the creation and upgrade of license cadastres, facilitate the drafting of legislative amendments, projects to digitize contract and license documents and make these available online.

Appendix 1: EITI Requirement 2.4, EITI Standard 2019.

2.4 Contracts.

1. a) Implementing countries are required to disclose any contracts and licenses that are granted, entered into or amended from 1 January 2021. Implementing countries are encouraged to publicly disclose any contracts and licenses that provide the terms attached to the exploitation of oil, gas and minerals.
2. b) 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.
3. c) It is a requirement to document the government's policy on disclosure of contracts and licenses that govern the exploration and exploitation of oil, gas and minerals. This should include:
 - i. A description of whether legislation or government policy addresses the issue of disclosure of contracts and licenses, including whether it requires or prohibits disclosure of contracts and licenses. If there is no existing legislation, an explanation of where the government policy is embodied should be included, and the multi-stakeholder group should document its discussion on what constitutes government policy on contract disclosures. Any reforms relevant to the disclosure of contracts and licenses planned or underway should be documented.
 - ii. An overview of which contracts and licenses are publicly available. Implementing countries should provide a list of all active contracts and licenses, indicating which are publicly available and which are not. For all published contracts and licenses, it should include a reference or link to the location where the contract or license is published. If a contract or license is not published, the legal or practical barriers should be documented and explained.
 - iii. Where disclosure practice deviates from legislative or government policy requirements concerning the disclosure of contracts and licenses, an explanation for the deviation should be provided.
4. d) The term 'contract' in 2.4(a) means:
 - i. The full text of any contract, concession, production-sharing agreement or other agreement granted by, or entered into by, the government which provides the terms attached to the exploitation of oil, gas and mineral resources.
 - ii. The full text of any annex, addendum or rider which establishes details relevant to the exploitation rights described in 2.4(d)(i) or the execution thereof.
 - iii. The full text of any alteration or amendment to the documents described in 2.4(d)(i) and 2.4(d)(ii).
- e) The term 'license' in 2.4(a) means:
 - i. The full text of any license, lease, title or permit by which a government confers on a company(ies) or individual(s) rights to exploit oil, gas and/or mineral resources.
 - ii. The full text of any annex, addendum or rider that establishes details relevant to the exploitation rights described in in 2.4(e)(i) or the execution thereof.
 - iii. The full text of any alteration or amendment to the documents described in 2.4(e)(i) and 2.4(e)(ii).

Appendix 2: Stakeholders interviewed

Representatives of the EITI Secretariats in the following countries:

Argentina
Colombia
Dominican Republic
Ecuador
Guatemala
Guyana
Honduras
Mexico
Peru
Suriname
Trinidad & Tobago

Representatives of the EITI MSG in:

Ecuador
Trinidad & Tobago

Appendix 3: Questionnaire 1 for stakeholders

We are a team of independent consultants undertaking research on contract and license transparency for the Extractive Industries Transparency Initiative (EITI). The EITI International Secretariat has commissioned this research, which is being funded by USAID. Requirement 2.4 of the EITI Standard requires that all oil, gas and minerals contracts and licenses (text and annexes) are made public by EITI implementing countries. Below you will find a few questions about this topic in your country. Please answer freely and in accordance with your experience dealing with contract/license transparency. There is no need for research in your replies. No answer will be attributable to any person/entity.

1. Please indicate your country
2. What constituency do you represent?
 - 9 MSG Private Sector
 - 10 MSG Public Sector
 - 11 MSG civil society
 - 12 other:
3. Name [optional]
4. Job title [optional]
5. Organization [optional]
6. Are oil and gas contracts or licenses documents currently publicly available in your country?
 - 13 Yes
 - 14 No
 - 15 In part
7. If you answered NO or IN PART, please let us know what oil and gas contracts and licenses are public and what seems to be the reason behind a partial disclosure or lack of disclosure
8. Are mining contracts or licenses documents currently publicly available in your country?
 - 16 Yes
 - 17 No
 - 18 In part
9. If you answered NO or IN PART, please let us know what mining contracts and licenses are public and what seems to be the reason behind a partial disclosure or lack of disclosure
10. If extractive contracts are public in some form, how are they made publicly available?
 - on written request from a government agency

- from a government website for a fee
 - from a government website for free
 - from a third-party website for a fee
 - from a third-party website for free
11. Is it possible and easy to obtain a list of all active contracts or licenses for the exploitation of minerals and oil and gas in your country?
- Yes
 - No
 - In Part
12. If you replied NO or IN PART, please explain the reason for your previous answer
13. Is it possible to obtain a list of all contracts or licenses for the exploitation of minerals or oil and gas that came into force since 1 January 2021?
14. If extractive contracts not public in full as required by EITI 2.4, what would you say are the three main challenges to achieve contract transparency in the extractive industry in your country?
15. Does your country's EITI MSG have a contract or license transparency plan in place?
16. If your country's EITI MSG has a plan on contract transparency, can you please include its link here or send it to victoria.vasalo@gmail.com
17. If your country's EITI MSG does NOT have a plan on contract transparency, what are the reasons for that?
18. Do you consider your country's legal framework is appropriate to achieve contract transparency in the extractive industry?
- Yes
 - No
 - In part
19. Please let us know if there any aspect of your country's legal framework that you feel should be changed or adapted in order to support/achieve contract transparency in the extractive industry
20. Are there any reviews of mining or hydrocarbon legislation underway or draft bills proposed? If so, what opportunities do those offer to improve contract/license transparency in the extractive industry?
21. What are the benefits of contract/license transparency?

22. Do the private sector companies support the disclosure of extractive contracts in your country?
- Yes, fully
 - No
 - In part
23. If private companies do not support contract transparency, why do you think that is?
24. Does the national and local public sector in your country support the disclosure of extractive contracts?
- Yes, fully
 - No
 - In part
25. If the national and local public sector does not support contract transparency or you feel could be doing better, why do you think that is?
26. What other factors do you think are important in considering contract transparency in the extractive industry in your country?

Appendix 4: Questionnaire 2 for national co-ordinators

Dear EITI National Coordinators

As you know, we have issued a survey to you, to be shared with your MSG and other stakeholders. In addition to that, there are 9 questions/requests we would like you to answer personally, and these can be found below.

We would be grateful if you could answer these, and send your answers back to us by email, no later than 23 December.

Regards,

Michael, Tim and Victoria

1. Do you believe that you are currently fully compliant with Requirement 2.4 of the EITI Standard 2019? [YES/NO]
2. If not, have you set an achievable target date to be compliant with Requirement 2.4 of the EITI Standard 2019? [YES/NO]
3. If yes, what is that target date?
4. Do you have a roadmap to improve contract transparency? [YES/NO]
5. If yes, please share that roadmap with us.
6. Is there a specific item in your 2022 workplan to improve contract transparency? [YES/NO]
7. If yes, please share the workplan, highlighting the contract transparency activity.
8. If there is a contract transparency activity in 2022, is that item costed and funded? [YES/NO]
9. Do you have a contract transparency working group/committee? [YES/NO]