

Contract Transparency:

EITI Leaders Forum

February 12, 2020

Isabel Munilla

Policy Lead, Extractive Industries Transparency



OXFAM

Contract Transparency:

*The most interesting
requirement in the new
EITI Standard*

EITI Leaders Forum

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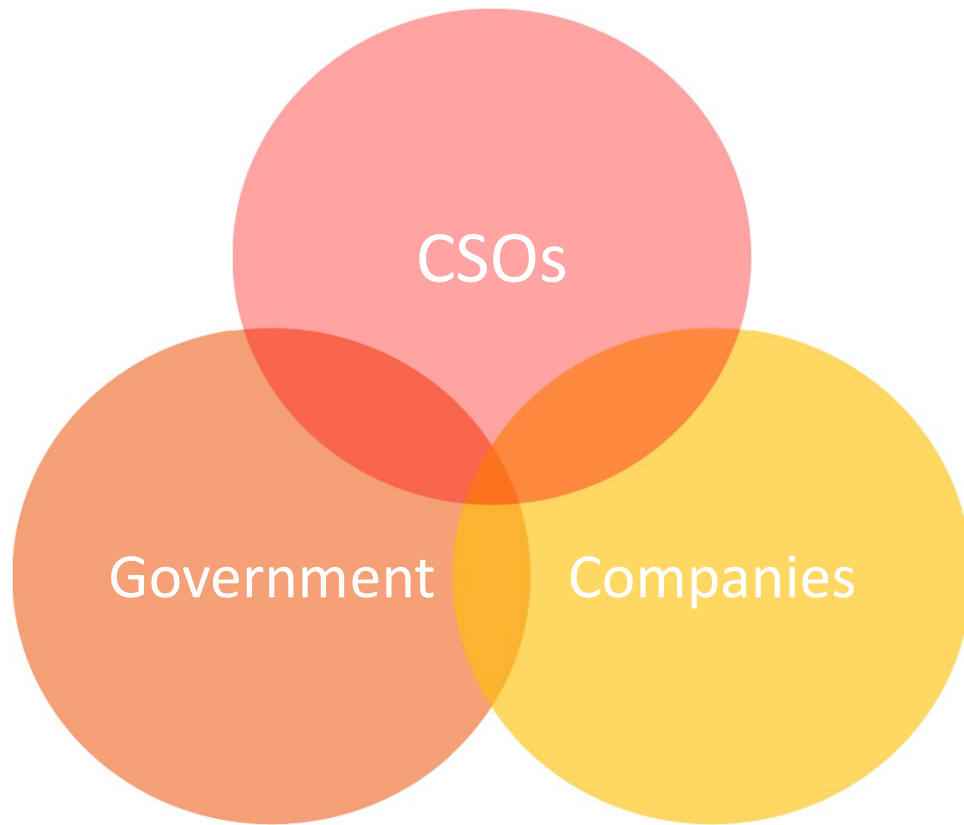
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Policy Lead, Extractive Industries Transparency



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Shared interest



All stakeholders
need the public to have
realistic expectations
of the
potential benefits, costs
and risks
from extractive projects

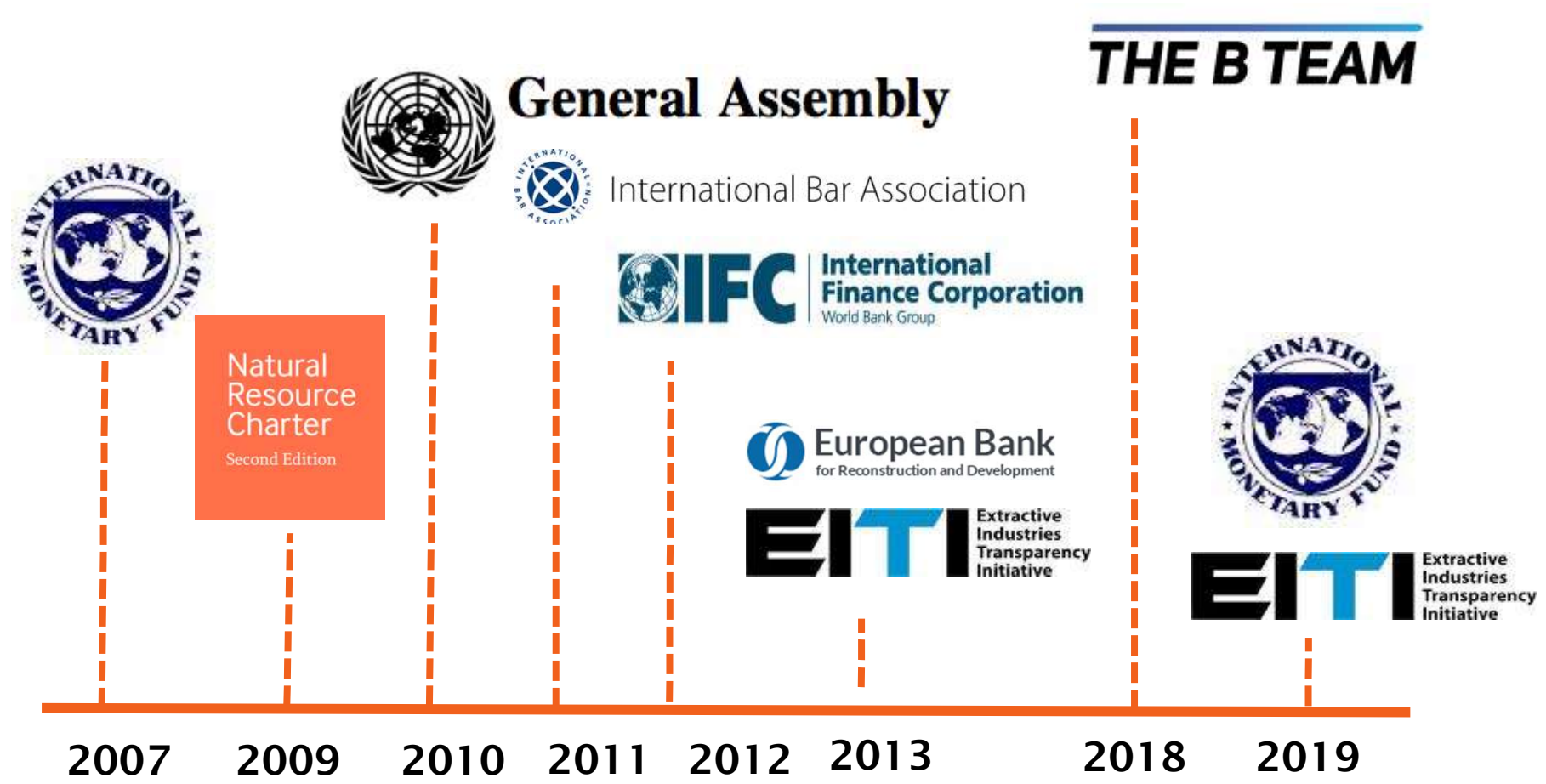
CONTRACT DISCLOSURE:

**What are the trends?
What is the requirement?
How might we use it?**



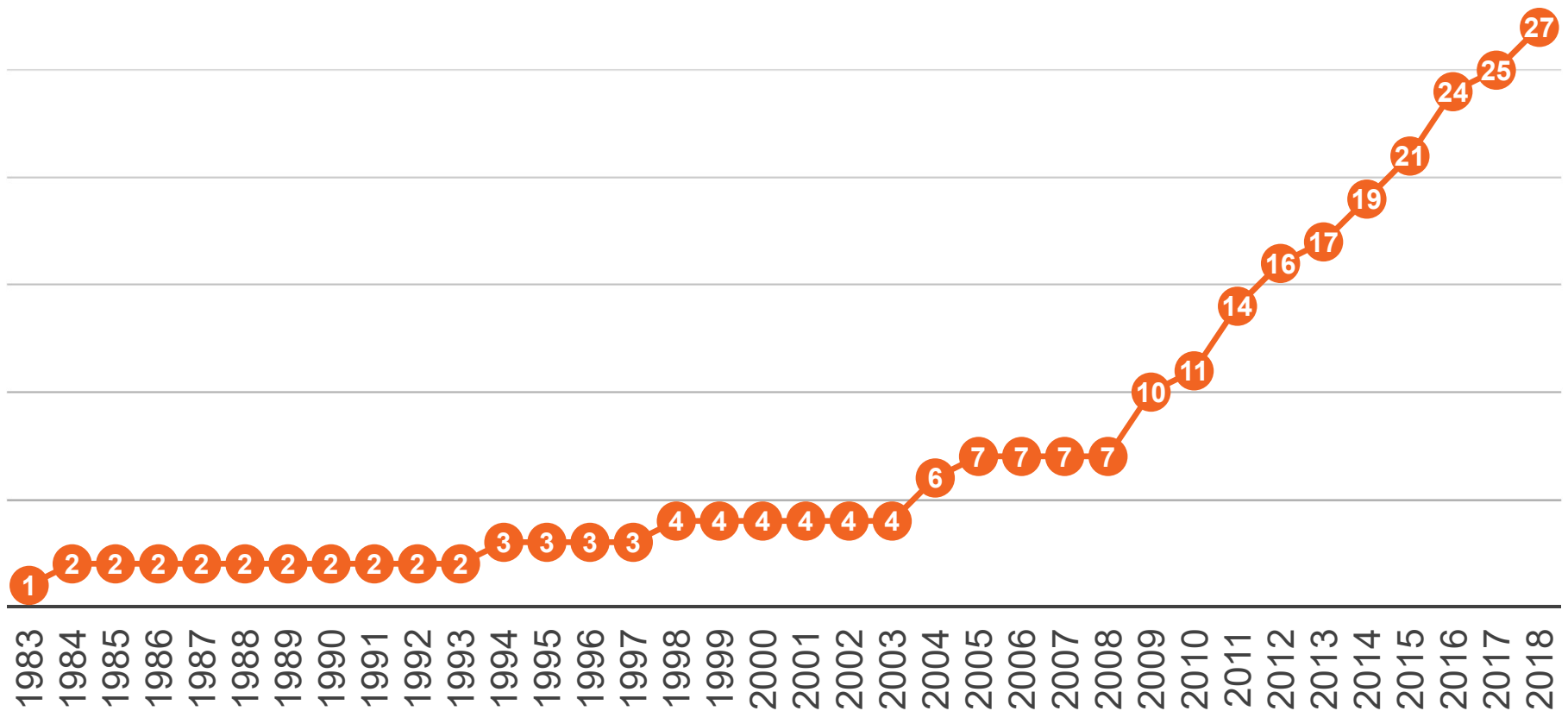
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“Contract disclosure is a global norm”



Trend: Disclosure law adoption

Number of countries requiring disclosure of oil, gas or mining contracts



Trend: 44 countries have disclosed 27 have laws

Contract Disclosure Practice and Policy

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Last update: 25 October 2018

Last update: 25 October 2018

If you have information or suggestions to improve the quality of this table, please email rpitman@resourcegovernance.org.

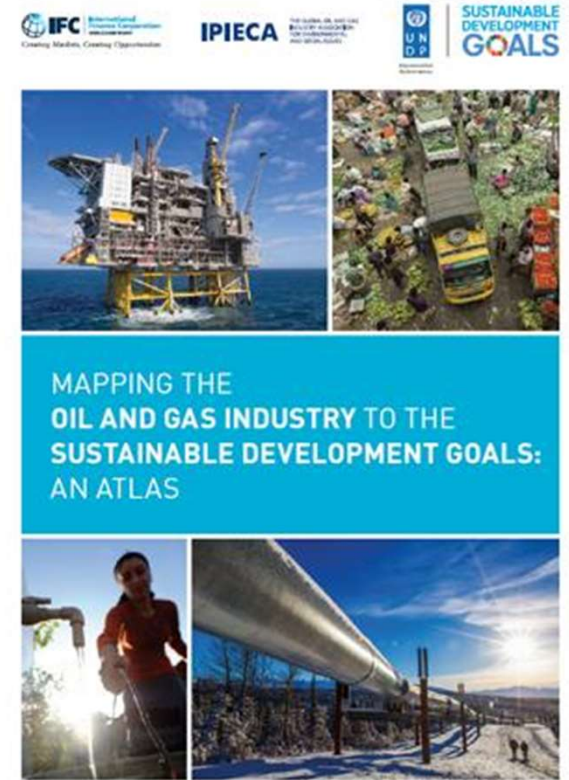
Host government	Sector	Region	Proportion of contracts/licenses disclosed	Official mode of access	Contract/license disclosure/access summary	Contract/licen se disclosure legal provision	Legal instrument name	Date enacted	Language of pro
Chad	Petroleum	Sub Saharan Africa (F)	All/nearly all	EITI site	The EITI website http://itie-tchad.org/convention/ includes links to: 11 production sharing agreements https://drive.google.com/drive/folders/1ebdiyME5G5t2eb8-NjyDOSNJoY28XQ-	Require	Code de Transparence et de Bonne Gouvernance (2016) https://juriafricque.com/blog/2016/11/24/tchad-loi-n-018pr-2016-portant-code-de-transparence-et-de-bonne-gouve-rnance-dans-la-ges-tion-des-finances-publiques/	2016	Article 7. Les contrats entre l'administra publiques ou privées, notamment les ei ressources naturelles et les entreprises service public, sont établis clairement e public. Ces principes valent tant pour la contrat que pour son contenu. Ces cont contrôlés par la Cour des Comptes et pi Parlementaires compétentes. L'implicat secteur privé doit être menée dans la tr règles et procédures non-discriminatoi
Chile	Mining	Latin America and the Carribean	None	None		None			
China	Petroleum	Asia Pacific	None	None		None			
Colombia	Mining	Latin America and the Carribean	Some	Web	In 2016, government published 30 contracts which represent 80% object of greater production and payment of royalties. It does not appear that disclosures have been made since then. https://www.anm.gov.co/?q=informe-de-materilidad&field_empresas_de_m aterialidad_value=All&field_ano_eiti_v alue=All	Require	Law no. 1712 (2014) http://www.wipo.int/wipolex/en/text.jsp?file_id=334095	2014	Article 3... Principio de transparencia. P informacion en poder de los sujetos obl presume publica, en consecuencia de lc deber de proporcionar y facilitar el acce mas amplios posibles y a traves de los n efecto establezca la ley, exduyendo solc excepciones constitucionales y legales y requisitos establecidos en esta ley
Colombia	Petroleum	Latin America and the Carribean	Some	Web	In 2016, government published 493 contracts. These do not seem all	Require	Law no. 1712 (2014)	2014	Article 3... Principio de transparencia. P informacion en poder de los sujetos obl

+ El Contract Disclosure Practice & Policy



<https://bit.ly/2Hm48Yc>

“Contract transparency should be simply treated as a normal aspect of doing business.”



Trend: Contract availability

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



Trend: Contract repositories

← → ↻ <https://www.resourcecontracts.org> ☆ 🔊 🌐 🌍

RESOURCE CONTRACTS AR EN FR

A directory of
Petroleum & Mineral Contracts

Search 2084 contracts and associated documents **Search**

[Advanced search](#)

2084 Documents | 93 Countries | 46 Resources

Explore contract terms:

- Environmental impact assessment >
- Income tax: exemptions >
- Local employment >

PARTNERS

Natural Resource Governance Institute | Columbia Center on Sustainable Investment | THE WORLD BANK | OpenOil

DONORS

UKaid | ALSF

Trend: Portals!

Ghanapetroleumregister.com

PETROLEUM REGISTER



[Home](#) [Exploration History](#) [Contract Areas](#) [Licensing Rounds](#) [Procurement](#) [Legislations](#) [More](#)



DEEPWATER TANO

[Petroleum Agreement](#)

[Registration Permits](#)

[Exploration and Development Permits](#)

[Licenses to Install and Operate Facilities](#)

[Permits to Install and Operate Facilities](#)

[Reconnaissance Licenses](#)

[Drilling Permits](#)

[Production Permits](#)

[Flaring or Venting Authorizations](#)

[Approval of Third Party Access](#)

[Permitted Mortgages](#)

[Assignments](#)

[Any other Permit, Authorization, Approval, Certificate or Consent](#)

OPERATOR: Tullow Ghana Limited – 35.48% interest in block

OTHER CONTRACTING PARTIES:

1. Anadarko Petroleum Corporation– 24% Interest in Block
2. Kosmos Energy Ghana HC - 24% Interest in Block
3. PetroSAGhana Limited– 2.52% Interest in Block
4. Ghana National Petroleum Corporation (GNPC)-14% Interest in Block

Contract Area Size:

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

Effective Date: March 10, 2006

Current Phase of Operations: Development and Production

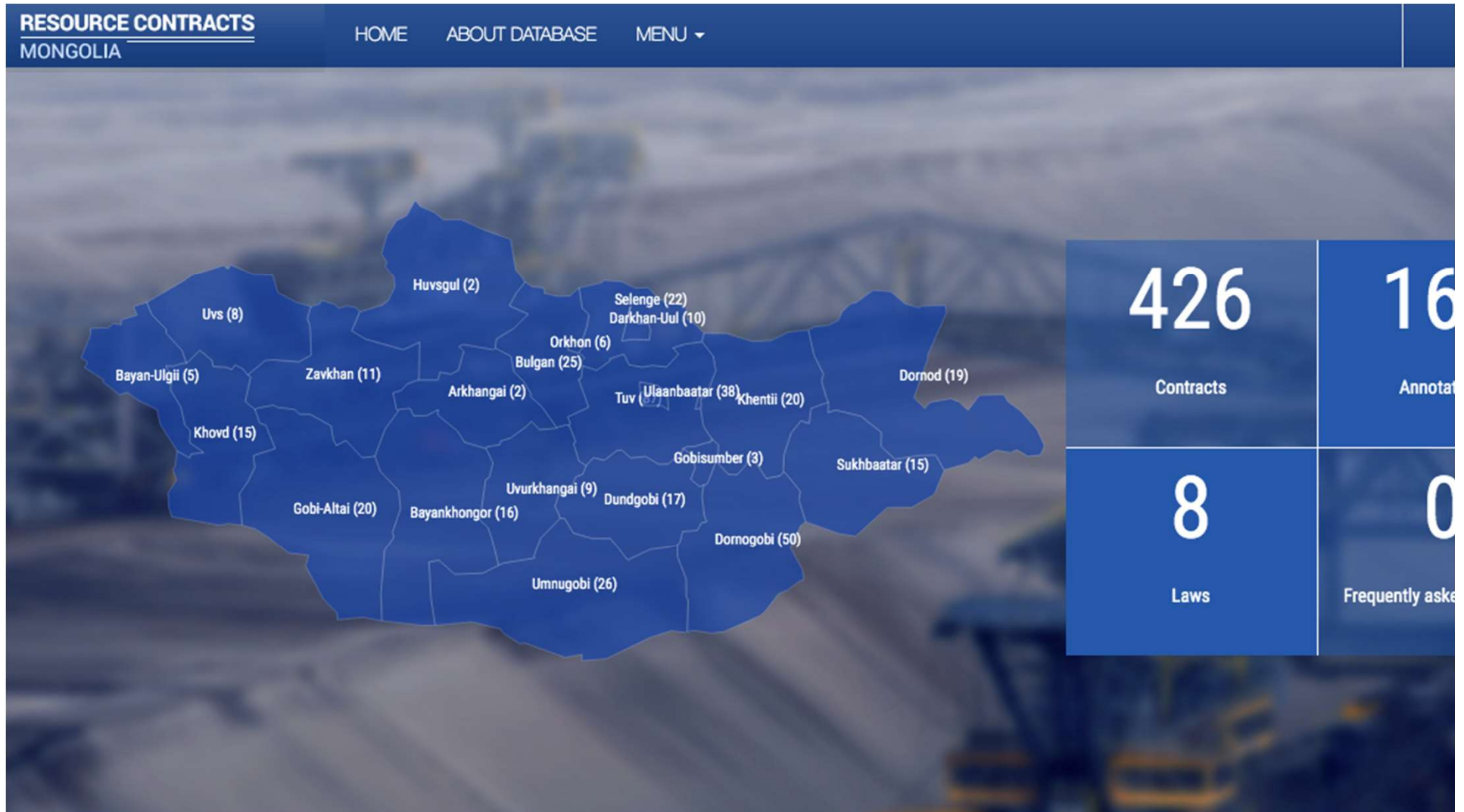
ASSETS

- [Jubilee Field](#)
- [Tweneboa-Enyenra-Ntomme \(TEN\) Fields](#)
- [Wawa Discovery Area](#)

Status of Operations

Contractor is producing oil from the Jubilee and TEN Fields utilizing the FPSO

Mongolia Portal: resourcecontracts.mn

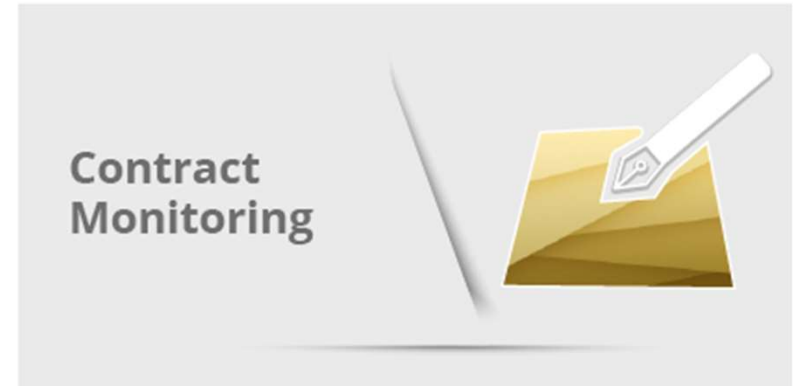


Mexico Portal: rondasmexico.gob.mx/eng/contracts/

[Rounds](#)[Farmouts](#)[Contract Monitoring](#)[Relevant Figures](#)

Contract Monitoring

Contract Monitoring contains historic and current information on contracts monitored by CNH, including those awarded in Rounds and Farmouts, as well as Oil Entitlements migrated to Contracts.



CNH-R01-L01-A2/2015



Sierra O&G Exploration y Production, S. de R.L. de C.V., Talos Energy Offshore Mexico 2, S. de R.L. de C.V., and Premier Oil Exploration and Production Mexico, S.A. de C.V.

CNH-R01-L01-A7/2015



Sierra O&G Exploration y Production, S. de R.L. de C.V., Talos Energy Offshore Mexico 7, S. de R.L. de C.V., and Premier Oil Exploration and Production Mexico, S.A. de C.V.

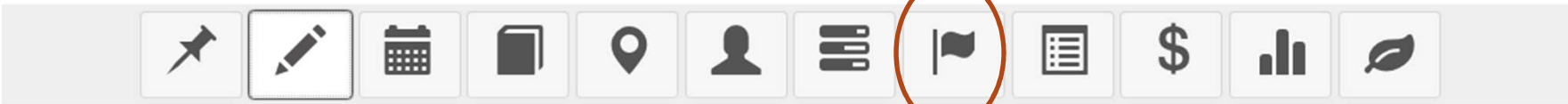
CNH-R01-L02-A1/2015



Eni México, S. de R.L. de C.V.

Mexico Portal: rondasmexico.gob.mx/eng/contracts/

CNH-R01-L01-A2/2015 



Contract

**CONTRATO PARA LA EXPLORACIÓN Y
EXTRACCIÓN DE HIDROCARBUROS BAJO LA
MODALIDAD DE PRODUCCIÓN COMPARTIDA**

ENTRE

Mexico Portal: rondasmexico.gob.mx/eng/contracts/



Program of Compliance with Local Content submitted by the Operator

Item	Period 1		Period 2		Period 3		Period 4	
	Expenditure in million pesos	Estimated Local Content Percentage	Expenditure in million pesos	Estimated Local Content Percentage	Expenditure in million pesos	Estimated Local Content Percentage	Expenditure in million pesos	Estimated Local Content Percentage
1. Goods and Services	16.4	93.00%	3.4	50.00%	257.9	25.00%	0.7	36.00%
2. Workmanship	3.7	6.00%	2.9	8.00%	3.1	8.00%	1	8.00%
3. Training Services	0	0.00%	0	0.00%	0	0.00%	0	0.00%
4. Technology transfer								
4.1. Construction and operation of research and development centers	0	0.00%	0	0.00%	0	0.00%	0	0.00%
4.2. Financing and contribution to research programs and technology development	0	0.00%	0	0.00%	0	0.00%	0	0.00%
4.3. Value and developed patent royalties	0	0.00%	0	0.00%	0	0.00%	0	0.00%
4.4. Technology selection, adaptation and implementation	0	0.00%	0	0.00%	0	0.00%	0	0.00%
4.5. Specialized formation	3.8	100.00%	3.8	100.00%	2.3	100.00%		
5. Infrastructure	0	0.00%	0	0.00%	0	0.00%	0	0.00%

Trend: Many Supportive Extractive Companies



Africa Center for Energy Policy in Ghana interviews a government official regarding a project financed with oil revenues.
Credit: George Osodi/Panos for Oxfam America

CONTRACT DISCLOSURE SURVEY 2018

A review of the contract disclosure policies of 40 oil, gas and mining companies

Contract disclosure in the oil, gas and mining sector is an emerging global norm. Given the progress by governments, international financial institutions and the Extractive Industries Transparency Initiative, this report aims fill the research gap in information regarding corporate policies on contract disclosure. It provides a snapshot of the current landscape of corporate policy based on a survey of public policies and commitments by 40 leading oil, gas and mining companies.

www.oxfam.org



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At least 18 companies support disclosure in some form



Company policy highlights



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

- *Foster dialogue between the relevant Group officials and representatives of States, civil society and the EITI;*
- *Participate in the efforts of the EITI Board;*
- *Promote the EITI and its principles among the States in which it operates and, more generally, whenever it has the opportunity;*
- *Share resources and recommendations based on our experience”*

Company statement highlights



*“BP supports contract transparency and recognizes that it can help to promote accountability and transparency. **BP has proactively disclosed contracts** for its Caspian operations on its website, and is considering preparing a formal policy on contract disclosure.*

***We see contract disclosure as being led by the host government, however, we are supportive, and to the extent we can, we will support the mechanics of contract disclosure.** We recognize that EITI Standard implementation has **moved beyond ‘encouragement’** of contract disclosure.”*

Company statement highlights



“We encourage governments to share contracts and licences, in line with the EITI’s revised standard on contract transparency.

This requires countries implementing the EITI standard to disclose contracts and licences that are granted, entered into or amended from January 1, 2021.

We also aim to support governments’ ambitions to achieve contract transparency.”

Company Policy Highlights

The Rio Tinto logo consists of the words "RioTinto" in a white, serif font, centered within a solid red rectangular background.

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

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

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

Company statement highlights



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



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



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



*When it comes to contracts, **we are happy to operate in an environment, in a country, that has full contract disclosure**. We actually come from a country where we have full disclosure of the contract conditions and we have a concession agreement where all details are public.”*

Highlights of progress



*“Although it’s not a condition of ICMM membership, **the majority of our members are willing to make public the general terms of their contract in any specific country, assuming that proper protection for competitively-sensitive information is in place. This is a good practice that we support.**”*

*“ICMM company members **commit to engage constructively in appropriate forums** to improve the transparency of mineral revenues – including their management, distribution or spending – **or of contractual provisions on a level playing-field basis, either individually or collectively through ICMM.**”*



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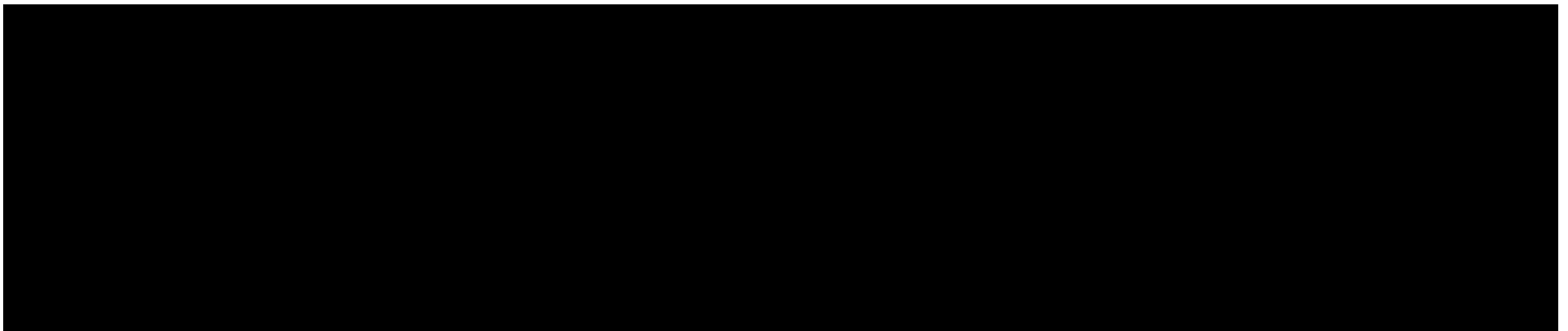
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through responsible resource governance





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ABOUT

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How Energy and Mining Contract Transparency Can Inform Investment Analysis



WHAT IS THE REQUIREMENT?



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2019: New EITI Contract Requirement (1)

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

2019: New EITI Contract Requirement (2)

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

2019: New EITI Contract Requirement (3)

- EITI Report must provide a list of all active contracts and licenses, including:
 - **Availability:** Indicate which are publicly available and which are not.
 - **Location link:** Include reference or link to location where contract or license is published.
 - **Barrier explanation:** If contract or license is not published, the legal or practical barriers must be documented and explained.

EITI Contracts: What is covered?

EITI Requires:

- The **full text** of any **contract or license** which “provides the terms attached to the exploitation of oil gas and mineral resources”.
- Plus:
 - **Full text** of any **annex, addendum or rider**
 - **Full text** of any alteration or amendment
- This is a **minimum standard**.

Practical opportunities to make progress:

National processes:

- **Passing a sector law?** Include contract disclosure.
- **Is there a new licensing round?**
 - Change model contracts to include transparency clause like Mexico
 - Get transparency included in bid protocols.
- Is your country in the process of producing a **cadaster or register?** Include full text contracts.
- Are you in **OGP?** Include this in your next Action Plan.



Take advantage of EITI resources:

- Learning from EITI countries, Guidance Notes, Contracts Checklist
- Government Network on Contracts

Practical opportunities to make progress:

Study corporate statements and request support

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

Engage supporters: IMF, WB

Nervous? Unpack & address concerns proactively

- Concerns about risks are common, but have been overcome by EITI countries
- Share lessons with countries & companies with experience



The background consists of several overlapping, semi-transparent geometric shapes in various shades of green, a bright yellow, and a blue. The shapes are arranged in a way that creates a sense of depth and movement. The text is centered over these shapes.

HOW MIGHT WE USE CONTRACTS?

Revenue Risks : Audits are too late

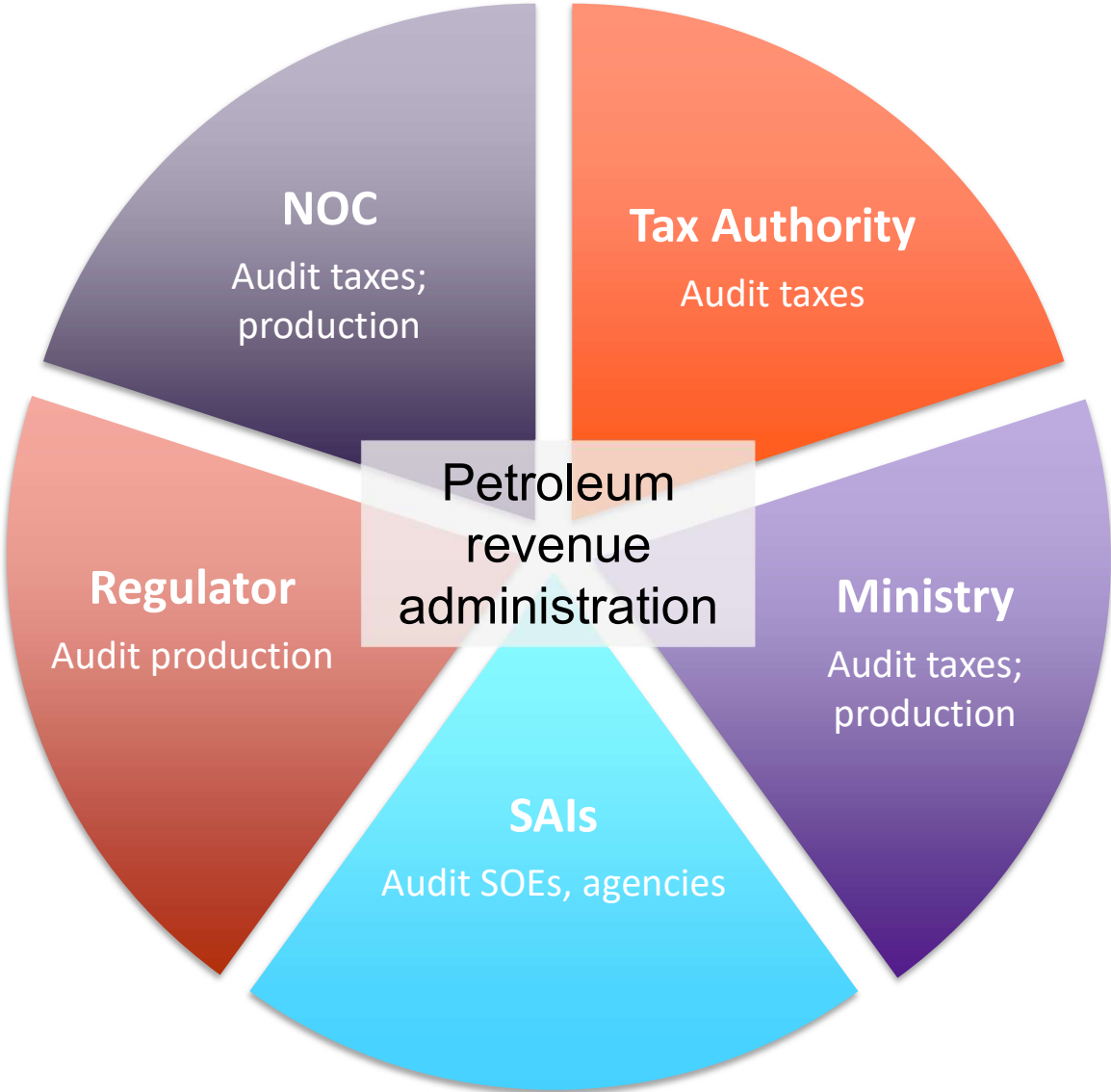
Oil companies start incurring costs from exploration



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

Governments wait to audit costs when revenues start to flow.

Revenue Risk: Audit rights are fragmented



Contract uses

Assessing revenue risk:

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



Contract uses

Basis for rich dialogue:

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



Contract uses

Timing & volume of revenues:

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

Community risk & impact mitigation:

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

Contract uses

Analyze for energy transition risk policies:

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



The background consists of several overlapping, semi-transparent geometric shapes in shades of green, yellow, and blue. The shapes are arranged in a way that creates a sense of depth and movement. The colors are vibrant and the overall aesthetic is modern and clean.

THANK YOU

Isabel Munilla
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Twitter: @IsabelMunilla

Key links and guides: transparency and accountable natural resource management

[Oxfam Contract Disclosure Survey](#)

ResourceContracts.org: <http://www.ResourceContracts.org>

EITI: <http://www.eiti.org>

Publish What You Pay Campaign: <http://www.pwyp.org>

NRGI: <http://www.resourcegovernance.org>

Resource Governance Index: <https://resourcegovernanceindex.org/>

Open Contracting: <http://www.open-contracting.org>

Open Government Partnership: <http://www.opengovpartnership.org>

[TI Mining for Sust Dvlpt Project](#)

[IMF Fiscal Transparency Code/Natural Resources Pillar](#)

[Oxfam Petroleum Cost Auditing Report](#)

The background consists of several overlapping, semi-transparent geometric shapes in various shades of green, a bright yellow, and a blue. The shapes are arranged in a way that creates a sense of depth and movement. The text is centered over these shapes.

ADDRESSING COMMON CONCERNS

Common concerns

Table 1: Common causes of concern around disclosure

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

Source: Adapted from Revenue Watch Institute, April 2012³²

What about confidentiality clauses?

- **Confidentiality clauses** are not a barrier. Parties to a contract can include language to allow contract to be published by mutual consent or to be required by law.
 - Tullow, which publishes its contracts in Ghana, has called these clauses outdated.
 - Barrick attempts to include transparency provisions
- **Concerns around commercial consequences:** governments and companies will be forced to give concessions, open themselves up to criticism, or show corruption
 - But transparency can be basis to renegotiate terms to be more favorable and durable & stop race to the bottom

What about confidentiality clauses?

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

Clause 12: Exploration, Production and Technical Data

12.10 Confidentiality

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

1. Disclosure by either party hereto to its employees, affiliates, consultants, prospective assignees, prospective lenders or subcontractors to the extent required for the conduct of petroleum operations; or
2. Disclosure by either party hereto to the extent required to **comply with applicable laws**, or the **rules or regulations of any stock exchange** on which a party's, or its affiliate's, shares are listed.
3. Contractor shall inform to Mineral Resources and Petroleum Authority about potential investor. The potential investor shall certify to keep information in confidential.

