



# Past the Tipping Point? Contract Disclosure within EITI

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# Executive summary and recommendations

When governments and private sector companies agree to exploit publicly held natural resources, citizens have the right to know the terms of the resulting deals. These terms are contained in licenses, contracts, regulations and legislation. While regulations and legislation are usually public, licenses and contracts are not.

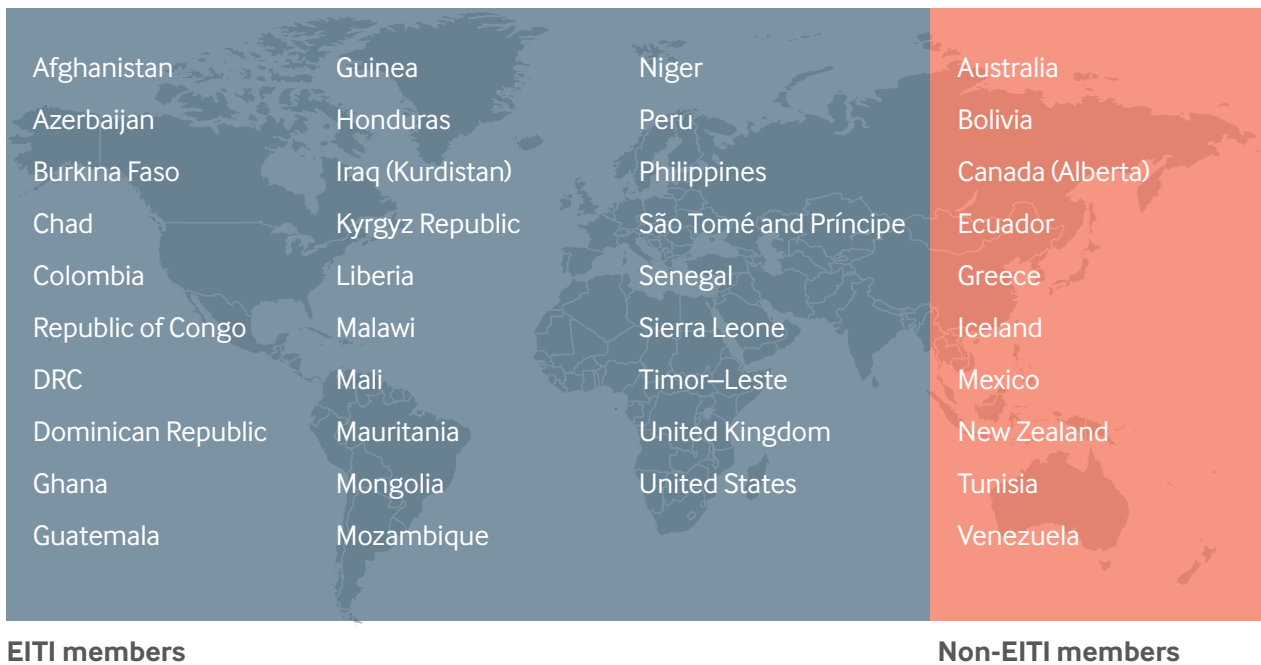
This report shows that it has become the norm among Extractive Industries Transparency Initiative (EITI) implementing countries to disclose the contracts and licenses that lay out the terms for resource exploitation. Based on a review of 51 EITI implementing countries and one subnational region, we find that 29 EITI implementing governments—well over half—have disclosed at least some of these agreements, and several more are taking concrete steps to join their ranks. The decision to disclose contracts or licenses demonstrates that governments and companies are increasingly finding that the benefits of contract transparency outweigh restrictive confidentiality concerns surrounding commercial sensitivity, trade secrets or intellectual property.

Four years after EITI began encouraging contract disclosure through its standard, this report assesses the extent to which host governments have taken up the recommendation. Using EITI country reports and preliminary data from NRGi's Resource Governance Index for 2017, the research indicates that the 2013 EITI Standard gave important additional momentum to the issue of contract disclosure. And while it is difficult to attribute causality to policy change, we note that since the release of the 2013 EITI Standard, nine new countries released contracts, and nine enacted laws that require contract disclosure. Annex 1 contains findings for each country including references and links to key documents.

EITI is now at the center of a global community of contract disclosure in the extractive industries. Three-quarters of the countries that have disclosed extractives contracts or licenses are also part of EITI, as are many disclosing companies and civil society advocates for contract disclosure. Trends in the disclosure of contracts and licenses signal how the EITI community can continue to improve extractive sector governance practices globally. Even though contract disclosure is not a requirement in EITI, many countries have adopted the practice as a result of the global and national debates facilitated by EITI. By providing a space where citizens, companies and governments can share experiences and lessons learned across stakeholder groups and national boundaries, EITI has helped these actors to develop positive governance practices more efficiently.

Nevertheless, there is still plenty of room for improvement. At the time of writing, 20 EITI implementing countries had neither published contracts or licenses nor passed a contract disclosure law, while 11 countries had failed to make the disclosures required under national laws. Even in countries where contract disclosure is an established practice, it remains challenging for citizens to determine which contracts or licenses are active. Broken websites and the use of inappropriate file formats hinder access and can make analysis all but impossible. While EITI reporting requirements mandating the publication of government policies on contract disclosure and information on any planned reforms provide an important opportunity to start a discussion on contract disclosure, the majority of implementing countries do not meet these requirements.

**Governments that have disclosed at least some extractive industry licenses or contracts**



## RECOMMENDATIONS

All EITI stakeholders—both national and international—should do more to improve the scope and quality of contract and license disclosure. Taking the following 12 actions will help.

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**Disclosure.** *Increase the number of contracts available to the public.*

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### **1. Target countries where laws and implementation do not match.**

Eleven countries fail to disclose all the contracts required to be made public under national laws. In these countries, multi-stakeholder groups (MSGs) should highlight inconsistencies between policy and practice, and work to close the gap between law and practice.

### **2. Put contract transparency on the agenda where it is ignored.**

Among the 20 implementing countries that have made no progress on contract disclosure, only 2 included activities on contract disclosure in their 2016 workplans. At the very least, MSGs in these countries should commence discussions on current national policy regarding contract transparency and consider whether improvements in policy should be pursued.

### **3. Increase knowledge sharing within the EITI community.**

National EITI processes have tackled contract disclosure in varied ways. They have facilitated national debate, contributed to legal reforms, supported dissemination of agreements and led education activities to advance understanding of contracts. The EITI international secretariat and support organizations should work to increase opportunities for countries to share experiences on contract disclosure and learn from one another.

### **4. Improve the comprehensiveness of disclosure.**

Of the 29 countries that have disclosed contracts, only 16 disclosed all or nearly all contracts in at least one sector. The reasons for incomplete disclosure vary from country to country, with some being more significant (e.g., legislation does not cover specific contracts) than others (e.g., contract not disclosed because it was recently signed). Where gaps in disclosure exist, MSGs should try to determine why, and push for comprehensive disclosure.

### **5. Confirm the number of contracts or licenses in the sector.**

Citizens often struggle to determine which contracts they should expect to access because they lack information on which contracts even exist. We recommend that all EITI implementing countries publish and maintain a comprehensive list of all active contracts, annexes, amendments and other related documents, even where the contract itself has not been disclosed. The latest version of this list should be included in EITI reporting in furtherance of EITI requirement 2.1 on disclosure of the national legal framework and fiscal regime.

## **6. Encourage companies to embrace disclosure.**

Companies can advance disclosure, but many choose not to. A number of companies have disclosed their contracts in countries where it is not required across the board, including EITI supporting companies like BP in Azerbaijan, Kosmos in several African countries, and Rio Tinto in Mongolia. Companies should adopt contract disclosure as their preferred practice, and pursue it as widely as possible. They should also proactively comply with existing disclosure rules, rather than waiting to be forced to do so.

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**Access.** *Make contracts easy to find, browse, search and use.*

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## **7. Use effective publication channels.**

In this study, the best performing countries published electronic copies of contracts or licenses online, alongside paper-based options to increase accessibility for communities lacking Internet access. But all too often broken websites mean that documents are not easily available. We therefore recommend that implementing countries ensure that national websites are adequately resourced. We also recommend hosting contracts or licenses on multiple websites including national EITI websites.

## **8. Scrutinize gazette publications.**

While several countries require extractives contracts or licenses to be published in the national gazette—the periodical that records the business and proceedings of a government—we could only confirm gazette publication of agreements in two countries. Where contracts are required to be published in gazettes, MSGs should scrutinize whether contracts are being disclosed in the national gazette. Where gazette entries are not held online, or are not easy to navigate, implementing countries should republish gazette sections containing contracts on a government or national EITI website.

## **9. Use open data file formats.**

Most countries currently publish contracts or licenses as image files. These file formats can make the information in contracts harder to use because the text within these files often cannot be searched or easily copied. Implementing countries should publish contracts in open file formats. Platforms like resourcecontracts.org can help countries accomplish this. These documents should be published under an open license to ensure that citizens can use them without restrictions.

## 10. Publish metadata.

When contracts are disclosed by the dozens, or by the hundreds, sorting through them can be challenging. EITI implementing governments should publish not only the contracts but also additional information, known as metadata, that allows for the documents to be organized by subject matter. Basic metadata includes information like the contract title, contracting parties, signing date and commodity being exploited. Standardized metadata among EITI implementing countries would allow users to search for specific issues and better understand company and government rights and obligations in their country, and around the world. The international secretariat could develop data standards for contracts and licenses by borrowing from the Open Contracting Data Standard and the metadata used by resourcecontracts.org.

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**Policy.** *Establish rules to guide disclosure practices.*

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## 11. Develop effective disclosure laws.

Our research shows disclosure is more consistent in countries with legal requirements for contract/license transparency. Countries that seek to strengthen transparency should establish contract disclosure policies in a well-established legal instrument, preferably one that covers all relevant extractive sectors. While legal requirements on contract disclosure need not be complicated, there should be clarity on (a) what should be disclosed, (b) the time frame for disclosure, (c) the format of disclosure and (d) what channels should be used for dissemination. All new contracts should clearly state that the contract is a public document and should be made publicly available.

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**EITI reporting.** *Provide current information on contract disclosure.*

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## 12. Ensure effective EITI reporting about contract disclosure policy and practice.

Section 2.4(b) of the EITI Standard—which mandates implementing countries to disclose government policy on contract transparency, information about contracts in the public domain and any planned reforms—provides an important opportunity for stakeholders to have an open conversation on the issue. Yet, of the 51 countries reviewed here, only 18 were fully implementing these requirements. Common problems included failure to report reforms that were planned or underway, and failure to provide an overview of contracts or licenses in the public domain. To support improved reporting, the EITI secretariat needs to update its guidance on these issues. The ongoing process of EITI validation provides further opportunities to flag and improve reporting shortcomings in this area.

# Introduction

When governments make deals with the private sector to exploit publicly held natural resources, all citizens—inside government and outside—have the right to know the terms of the agreement. These terms are contained in contracts, licenses, legislation and regulations. While legislation and regulations are normally publicly accessible, licenses and contracts often are not.

## Box 1. Which contracts?

Large extractive sector projects involve dozens of agreements, mostly between private parties. This report is concerned primarily with “state-investor” or “host state” agreements agreed between states and the companies that engage in resource exploitation.

The EITI Standard provides a clear definition for these documents as including “any contract, concession, production-sharing agreement or other agreement entered into by the government, which provides the terms attached to the exploitation of oil, gas and mineral resources” or “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.”

As this definition shows, variation in the name and form of these documents can be significant. Regardless, in this report, we used the same criteria when assessing disclosure: Are all of the key terms upon which the right to exploit the resource is based in the public realm?

*This report is concerned primarily with “state-investor” or “host state” agreements agreed between states and companies.*

The full disclosure of contracts or licenses that lay out the rights and obligations of parties executing extractive industry projects is increasingly seen as an essential element of extractive sector good governance. For citizens, the disclosure of contracts and licenses facilitates the monitoring of extractive industry projects and reduces the risks that corruption will result in contractual terms that undervalue national assets. For governments, access to contracts increases public trust, provides valuable information that strengthens the government’s capacity to negotiate, monitor and enforce the rules, and ensures that all officials have access to the agreed terms relevant to their responsibilities. For companies, contract disclosure helps build a “social license to operate” and this can help build stronger community relationships that make projects more stable.<sup>1</sup>

But in many countries, extractive sector contracts remain closely guarded secrets. Access has often been highly restricted even within government. While the public and even those within government struggle to access contracts, frequently companies in the mining or petroleum industry can routinely access the terms of contracts, or the contracts themselves.<sup>2</sup> In fact, for a price, many have been on offer in private databases.<sup>3</sup> This inequitable access to the terms of extractives agreements not only limits governments, it also disempowers citizens and those who represent them, including their parliamentarians, community leaders, the media and civil society organizations (CSOs).

1 See *Contract Transparency: Creating Conditions to Improve Contract Quality* (NRGI, March 2015), 4, accessed 20 February 2017, [http://www.resourcegovernance.org/sites/default/files/nrgi\\_Contract-Transparency.pdf](http://www.resourcegovernance.org/sites/default/files/nrgi_Contract-Transparency.pdf).

2 See *Guide on Resource Revenue Transparency* (International Monetary Fund [IMF], 2007), 17, accessed 20 February 2017, <https://www.imf.org/external/np/pp/2007/eng/101907g.pdf>.

3 For petroleum contracts, see Barrows Company, <http://www.barrowscompany.com>.



Over the past decade, significant progress has been made in placing extractives contracts in the public domain. Contracts once seen as being exclusively for commercial interest are now also regarded as being in the public interest. Important early work in this transformation centered on the importance of transparency to combat corruption risks related to the Chad-Cameroon and Baku-Tbilisi-Ceyhan pipelines.<sup>4</sup> In 2009, the study *Contracts Confidential* analyzed and challenged the legal foundation for contract secrecy.<sup>5</sup> Since 2012, this agenda has been taken up by the global open contracting movement, which aims to make public contracting processes more transparent, competitive and accountable.<sup>6</sup>

*Access to contracts is increasingly regarded as being in the public interest.*

International organizations are now incorporating the principles of contract disclosure into their guidance. In 2007, the IMF's Guide on Resource Revenue Transparency called for the disclosure of extractives contracts.<sup>7</sup> In 2010, following four years of extensive multi-stakeholder consultations, the U.N.'s special representative for business and human rights, John Ruggie, included "The contract's terms should be disclosed" among core "Principles for Responsible Contracts."<sup>8</sup> In 2011, the International Bar Association released a Model Mining Development agreement that included a provision that "this contract is a public document."<sup>9</sup>

International financing organizations have taken note. In 2012, the International Finance Corporation (IFC)—the World Bank's private sector lending arm – added a financing requirement that IFC-backed oil, gas and mining projects disclose the "principal contract with government that sets out the key terms and conditions under which a resource will be exploited."<sup>10</sup> The European Bank for Reconstruction and Development established similar requirements for hydrocarbon projects in 2013.<sup>11</sup>

At the same time, the EITI also became a major driver in spreading the norm of contract disclosure.

- 4 See, for example, *Human Rights on the Line: The Baku-Tbilisi-Ceyhan Pipeline Project* (Amnesty International, 2003), accessed 20 February 2017, [http://bankwatch.org/documents/report\\_btc\\_hrights\\_amnesty\\_05\\_03.pdf](http://bankwatch.org/documents/report_btc_hrights_amnesty_05_03.pdf); *Contracting Out of Human Rights: The Chad-Cameroon Pipeline Project* (Amnesty International, 2005), accessed 20 February 2017, <https://www.amnesty.org/en/documents/pol34/012/2005/en>.
- 5 Peter Rosenblum and Susan Maples. *Contracts Confidential: Ending Secret Deals in the Extractive Industries* (Revenue Watch Institute, 2009), accessed 20 February 2017, <http://www.resourcegovernance.org/sites/default/files/RWI-Contracts-Confidential.pdf>.
- 6 *First Global Meeting Report* (Open Contracting, 2012), accessed 20 February 2017, [http://d3n8a8pro7vnm.cloudfront.net/opencontracting/maillings/9/attachments/original/Johannesburg\\_Meeting\\_Report\\_-\\_FINAL\\_-\\_Dec\\_11\\_2012.pdf?1355256101](http://d3n8a8pro7vnm.cloudfront.net/opencontracting/maillings/9/attachments/original/Johannesburg_Meeting_Report_-_FINAL_-_Dec_11_2012.pdf?1355256101).
- 7 See *Policy on Environmental and Social Sustainability* (IFC, 2012), 11–12, accessed 20 February 2017, [http://www.ifc.org/wps/wcm/connect/7540778049a792dcb87efaa8c6a8312a/SP\\_English\\_2012.pdf?MOD=AJPERES](http://www.ifc.org/wps/wcm/connect/7540778049a792dcb87efaa8c6a8312a/SP_English_2012.pdf?MOD=AJPERES); IMF, *Guide on Resource Revenue Transparency*. See also the proposed updating in pillar IV for the *Draft Fiscal Transparency Principles* (IMF, 2014), accessed 20 February 2017, <https://www.imf.org/external/np/exr/consult/2014/ftc/pdf/121814.pdf>.
- 8 Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, John Ruggie, "Principles for responsible contracts," U.N. Doc. A/HRC/17/31/Add.3 (25 May 2011).
- 9 *Model Mine Development Agreement* (International Bar Association, 2011), 130, accessed 20 February 2017, [http://www.mmdaproject.org/presentations/MMDA1\\_0\\_110404Bookletv3.pdf](http://www.mmdaproject.org/presentations/MMDA1_0_110404Bookletv3.pdf).
- 10 IFC, *Policy on Environmental and Social Sustainability*. See also the IFC Contract Disclosure webpage, accessed 20 February 2017, [http://www.ifc.org/wps/wcm/connect/industry\\_ext\\_content/ifc\\_external\\_corporate\\_site/industries/oil,+gas+and+mining/transparency/contract+disclosure](http://www.ifc.org/wps/wcm/connect/industry_ext_content/ifc_external_corporate_site/industries/oil,+gas+and+mining/transparency/contract+disclosure).
- 11 See *Energy Sector Strategy* (European Bank for Reconstruction and Development [EBRD], 2013), 60–61, accessed 15 February 2017, <http://www.ebrd.com/what-we-do/sectors-and-topics/ebrd-energy-strategy-transparency.html>.

## THE EITI STANDARD AND CONTRACT DISCLOSURE

Recent history of contract disclosure within EITI starts with a proposal made at the October 2012 Lusaka board meeting stating that “implementing countries may decide to make contracts public.” Subsequently, the EITI secretariat held consultations in early 2013 to propose options for the EITI Standard. The consultations generated four potential options:

- **Require** public disclosure of contracts.
- **Require (with some exceptions)** the public disclosure of contracts.
- **Encourage (not require)** public disclosure of contracts.
- Implementing countries **may wish to publicly disclose** contracts.

Of the 20 implementing countries that took part in the consultation, 11 supported making contract disclosure mandatory. Another six supported requiring disclosure with some exceptions.<sup>12</sup> A broad range of CSOs also strongly supported the option to require disclosure.<sup>13</sup> However, in the face of strong opposition from companies and several other governments, the option to encourage, not require, disclosure emerged as the consensus position.

Following these consultations and discussions, the 2013 EITI Standard contained a section on contracts that “encouraged” public disclosure of contracts, as well as a section that required countries to disclose the government’s policy on contract transparency, information about contracts in the public domain and any planned reforms. The text remained unchanged when the EITI Standard was updated at the Lima global EITI conference in 2016. The text of Section 12 (2013) and Section 2.4 (2016) is reproduced in box 2.

*The EITI Standard encourages public disclosure of contracts.*

12 *Consultation on contract transparency* (EITI Secretariat, February 2013), accessed 20 February 2017, <https://eiti.org/document/consultation-on-contract-transparency>.

13 *Contract Disclosure in the Extractive Industries Transparency Initiative: A position paper submitted by the full and alternate civil society members of the EITI International Board* (7 December 2012).

### Box 2. EITI Standard 2016: 2.4 Contracts

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.

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.

c) The term contract in 2.4(a) means:

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.

The full text of any annex, addendum or rider which establishes details relevant to the exploitation rights described in 2.4(c)(i) or the execution thereof.

The full text of any alteration or amendment to the documents described in 2.4(c)(i) and 2.4(c)(ii).

d) The term license in 2.4(a) means:

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.

The full text of any annex, addendum or rider that establishes details relevant to the exploitation rights described in 2.4(d)(i) or the execution thereof.

The full text of any alteration or amendment to the documents described in 2.4(d)(i) and 2.4(d)(ii).

## RATIONALE AND METHODOLOGY

Nearly four years have passed since EITI began to encourage contract disclosure. It is therefore appropriate to take stock of whether this move succeeded in advancing contract transparency among EITI member countries.

This study is based on a review of four areas of contract disclosure—practice, access, policy and EITI reporting—among 51 EITI implementing countries and one subnational region, the Kurdistan Regional Government in Iraq. Given that important differences exist between the petroleum and mining sectors in many jurisdictions, these sectors were analyzed separately for all countries where relevant.

Information was taken from the latest EITI report as of 31 December 2017<sup>14</sup> and from preliminary data from NRG's forthcoming 2017 Resource Governance Index.<sup>15</sup> We also reviewed material prepared by the EITI secretariat including the

*This study is based on a review of 51 EITI implementing countries and one subnational region.*

14 This included reports with a December 2016 publication date that were posted on the global EITI website before 23 January 2017.

15 See *Resource Governance Index* (NRGI, forthcoming). We used preliminary data, which for each country was collected by in-country researchers and in some cases also verified by an independent peer reviewer. While not the final product, the data was an important input that allowed us to double-check the findings presented in EITI reports. The index data covered all but 9 of the 51 EITI countries (countries not included were Albania, the Dominican Republic, Germany, Honduras, São Tomé and Príncipe, Senegal, Seychelles, Solomon Islands and Tajikistan) and contained three specific questions related to contract disclosure: (i) Is the government required to publicly disclose all signed licenses/contracts with extractive companies? (ii) From 2015 onwards, has the government publicly disclosed signed licenses/contracts? (iii) Has the government publicly disclosed all active licenses/contracts, regardless of when they were signed?

2015 brief *Contract Transparency in EITI Countries* and the 2016 review of contract transparency activities in EITI country workplans.<sup>16</sup>

We verified our findings through web research, including reviews of the laws and rules pertaining to contract disclosure, government and company websites where contracts were available, and the contract documents themselves. In specific cases, we also communicated with in-country experts through email and telephone interviews.

We acknowledge that this review may contain gaps. To facilitate understanding of the scope and limitations of our review, the following sections describe our approach to each of the four review areas. Annex 1 contains the findings for the practice, access and policy reviews, including references and links to key documents. Annex 2 contains the summary findings for the review of EITI reporting.<sup>17</sup>

### Box 3. EITI assesses contract disclosure

In 2015, the EITI secretariat published a brief on contract disclosure by 23 implementing countries, which had produced EITI reports under the 2013 EITI Standard as of 31 December 2014.<sup>17</sup>

The brief analyzed the content of EITI reports with an emphasis on disclosure policy, disclosure practice and (where relevant) the channel used for publication. The results were mixed. On government policy, five countries indicated “full disclosure,” seven countries indicated “partial disclosure” and the remainder indicated either no disclosure or simply failed to confirm the existence of a policy. In terms of actual practice, only one country was listed as providing “full disclosure,” with another 10 listed as providing “partial disclosure.”

Two years later, now that many more countries have reported under the new standard, our report revisits many of the questions asked in the original EITI brief. At the same time, our primary sources extend beyond a review of EITI reports, not only incorporating research from NRGi’s forthcoming 2017 Resource Governance Index, but also seeking independent verification of the actual state of contract disclosure.

### Scope

Given the complexity of legal regimes and the large number of jurisdictions under our review we focused on the state-investor or host-government agreements (see Box 4).

Notably this study focused on government-led disclosures of contracts. We did not consider in any depth disclosures that companies made independently of governments, nor did we consider disclosures that were the product of leaks.

We only considered extractive projects with exploitation rights. This meant that resource projects with exploration and production rights were included, while resource projects that only had exploration rights were not considered.

*This study focused on government-led disclosures of contracts.*

<sup>16</sup> *Contract Transparency in EITI Countries* (EITI Secretariat, 2015), accessed 20 February 2017, [https://eiti.org/sites/default/files/documents/eiti\\_brief\\_on\\_contract\\_transparency.pdf](https://eiti.org/sites/default/files/documents/eiti_brief_on_contract_transparency.pdf); Kjerstin Andreassen. *Contract transparency opening up slowly, but steadily* (EITI Secretariat, 2016), accessed 20 February 2017, <https://eiti.org/blog/contract-transparency-opening-up-slowly-steadily>.

<sup>17</sup> See *Brief: Contract Transparency in EITI Countries* (EITI Secretariat, 2015), accessed 19 February 2017, [https://eiti.org/sites/default/files/documents/eiti\\_brief\\_on\\_contract\\_transparency.pdf](https://eiti.org/sites/default/files/documents/eiti_brief_on_contract_transparency.pdf).

Our focus was on large-scale projects because of the sizeable investments they entail and the significant economic, social and environmental impacts they bring. Furthermore, due to the sheer magnitude of these projects, the agreements that governments and companies make concerning them tend to include at least some negotiated terms.

#### Box 4. What should governments disclose?

At its core, contract disclosure is about enabling public access to the rights and obligations that are in the public interest. These include seven key issues: (a) company rights to natural resources; (b) stabilization clauses that insulate investments from changes in the legal and fiscal environment; (c) fiscal terms, including taxes and royalties; (d) operational commitments, such as workplans; (e) environmental obligations; (f) worker health and safety; and (g) social obligations including local content provisions, community consultation requirements and infrastructure agreements.

When we try to determine exactly what a country should disclose, we must recognize that the way these rights and obligations are defined and documented varies from country to country, and in many cases also from agreement to agreement within the same country. Generally, provisions can either be set down in legislation or in contracts that are specific to a particular investment or project. Jurisdictions that favor the former tend to be called licensing regimes, while those that favor the latter tend to be called contractual regimes.

In a pure licensing regime, all major rights and obligations are set out in legislation and regulations. In these circumstances government agreements with companies are simply set through permits and licenses, which contain few (if any) project-specific terms.

In a pure contractual regime on the other hand, very little is defined in generally applicable law, so the primary document governing the investment takes the form of a contract negotiated between the government and the company.

In our review, we sought to confirm whether or not each country used a licensing or a contracting regime. We found that no regime relied purely on laws or purely on contracts. Instead, most countries operated somewhere on a continuum between the two models, using a mix of terms contained within the law combined with negotiated terms in agreements. In the face of this complexity, we narrowed our study to focus on the disclosure of the main state-investor or host-government agreement that primarily documented the rights and obligations related to the seven issues noted above. In some instances this agreement was a license; in other cases it was a contract. While we recognize that this agreement may not contain all the rights and obligations that are in the public interest, we maintain that disclosures of these agreements is a necessary first step on the path towards effective contract disclosure.

*Adapted from:* Erin Smith and Peter Rosenblum, *Enforcing the Rules* (NRGI, 2011), 7, accessed 20 February 2017, [http://www.resourcegovernance.org/sites/default/files/RWI\\_Enforcing\\_Rules\\_full.pdf](http://www.resourcegovernance.org/sites/default/files/RWI_Enforcing_Rules_full.pdf).

#### *Practice*

Our review of contract/license disclosure practice aimed to determine the extent to which governments had affirmatively disclosed the rights and obligations that governed the exploitation of oil, gas or mineral assets.

To confirm that a government had disclosed a contract or license, we had to be able to download the document directly from an official government website, or – where contracts were only available in hard copy – we required an in-country source to send us a scanned version.

We accepted licenses or contracts without evidence of signature and documents that were redacted. We, however, did not accept summaries of terms as a substitute for the contract or license itself. Notably, this approach presented some challenges. In particular, while the government of Norway discloses information about rights and obligations that are in the public interest, including negotiated terms, it does not disclose any of the license documents. For the purposes of this study, we therefore classified it as a country with no confirmed disclosures.

Countries were sorted into three groups:

- Those in which **all or nearly all contracts or licenses were disclosed**. We used this categorization because very few governments in our review produced comprehensive and updated lists of all active exploitation contracts or licenses meaning that we were not able to say with certainty whether all contracts or licenses had been published. The number of disclosed petroleum agreements was cross-checked against government produced lists of petroleum blocks where these were available, while the number of mining contracts was cross-referenced against the number of mine stage properties in the SNL mining database.
- Those in which **some contracts or licenses were disclosed**. This categorization covered countries with inconsistent government disclosure practices. It applied to countries where disclosures had been made, but we could confirm that certain key contracts were not public.
- Those in which **no contracts or licenses were disclosed**.

Finally, for each country with confirmed disclosures we reviewed at least two contract or license documents, selected at random, to see whether annexes or amendments were included in the disclosure. Where there was a table of contents, we checked to see whether all parts mentioned in the table of contents were included in the disclosed document. We also inspected the document to determine whether there was proof of signature and whether any part of the document was redacted.

#### *Access*

Our analysis of accessibility of contracts or licenses sought to determine whether documents were easy to find, browse, search and ultimately use. Where contracts were publicly available, we first considered the *de facto* channels for disclosure (e.g., national gazette, official website, etc.) and their effectiveness.

Next we considered the impacts that the format of the specific documents had for usability (i.e., paper-based publication, non-searchable electronic image or machine-readable/searchable electronic file).

Finally, we reviewed whether any additional information, or metadata, was used to make documents easier to find and/or browse (i.e., title, contracting parties, date and commodity).

### *Policy*

Our review of contract disclosure policy sought to determine whether governments had established rules to guide their contract disclosure practices. The primary question we considered was whether there was a national law or policy that referred specifically to the disclosure of contracts or licenses.

If there was such a law, we sought to confirm whether it: (a) inhibited disclosure of contracts or licenses; (b) neither inhibited nor required disclosure of contracts or licenses; or (c) required disclosure of contracts or licenses. Where an EITI report or preliminary research for the Resource Governance Index stated that there was a law, we sought to collect the appropriate documents and verify the existence of the relevant clauses. Here we reviewed the plain meaning of the clauses, but did not undertake a full legal review to confirm the specific implications of those clauses. We also did not undertake a review of the confidentiality provisions that may be contained within the contracts themselves.

As a final part of our review, in the circumstance where there was a law or policy *requiring* the disclosure of contracts and licenses, we also asked whether it provided standards for how disclosures should take place (e.g., time frame, channels for dissemination, or file formats that documents should be released in).

### *EITI reporting*

Our review of EITI reporting sought to determine whether EITI implementing countries were providing current information on contract disclosure in line with the reporting obligations of Article 2.4(b). Specifically we reviewed the latest EITI report for each country to consider whether EITI reporting: (a) documented “the government’s policy on disclosure of contracts and licenses that govern the exploration and exploitation of oil, gas and minerals;” (b) included “relevant legal provisions, actual disclosure practices and any reforms that are planned or underway;” and (c) provided “an overview of the contracts and licenses that are publicly available,” and included “a reference or link to the location where these are published.”

# I. Overview: Contract disclosure policy and practice

Our data collection and analysis shows clear and strong evidence that disclosure of contracts or licenses is a norm among EITI countries. We find that more than one-third of EITI countries have both disclosed some, all or nearly all extractives contracts and have a legal provision to do so. This number jumps to over half when we also include countries that have disclosed contracts but do not have a legal requirement mandating disclosure, and nears two thirds when we include countries that have laws on contract disclosure but where disclosure is not yet taking place.<sup>18</sup> Annex 1 contains source data for the findings presented in this section, including references and links to key documents.

Contract/license disclosures and legal requirement (18 countries)		
Afghanistan Burkina Faso Colombia Republic of Congo DRC Dominican Republic	Ghana Guatemala Guinea Honduras Iraq (Kurdistan) Liberia	Mozambique Niger Philippines São Tomé and Príncipe Senegal Timor–Leste
Contract/license disclosures, but no legal commitment (11 countries)		
Azerbaijan Chad Kyrgyz Republic Malawi	Mali Mauritania Mongolia Peru	Sierra Leone* United Kingdom United States
Legal commitment but no contract/license disclosures (3 countries)		
Central African Republic	Côte d'Ivoire	Tanzania
No contract/license disclosures and no legal commitment (20 countries)		
Albania Cameroon Ethiopia Iraq (excl. Kurdistan) Indonesia Germany Kazakhstan	Madagascar Myanmar Nigeria Norway Papua New Guinea Seychelles Solomon Islands	Togo Tajikistan Trinidad and Tobago Ukraine Yemen Zambia

Table 1. Overview of contract/license disclosure policy and practice in EITI implementing countries

\*Sierra Leone has a legal requirement to disclose petroleum contracts, but has only disclosed contracts for the (much larger) mining sector where there is no legal requirement.

18 For this overview, “confirmed disclosures” means that the government has willingly placed at least one extractive industry contract in the public domain. “Legal commitment” means that the country has a legal position in favor of contract disclosure, whether in a constitution, legislation, decree or resolution.



As the most effective route to comprehensive contract/license transparency, this report focuses on government disclosures, but they are not the only way that contracts are becoming public. Of 51 EITI countries covered by this report, extractives contracts are publicly available in some manner in all but 10.<sup>19</sup> Where governments do not require disclosure, contracts are becoming public as a result of company stock exchange filings and lending requirements of international financial institutions such as the European Bank for Reconstruction and Development and the World Bank Group's International Finance Corporation (IFC).<sup>20</sup> The fact that contracts are being disclosed via such a range of mechanisms reinforces the global trend towards contract transparency. Governments should be reassured that companies are choosing contract disclosure when weighing up the benefits of transparency against confidentiality concerns.

*Government disclosures are the most effective route to comprehensive contract/license transparency.*

## EITI AS A GLOBAL CONTRACT DISCLOSURE COMMUNITY

EITI encompasses the vast majority of resource-rich countries that disclose contracts. Of the 38 countries we know to have affirmatively disclosed extractives contracts, three-quarters are EITI implementing countries (see figure in executive summary). EITI processes are helping countries advance contract disclosure in many different ways:

*Of the countries we know to have disclosed extractives contracts or licenses, three-quarters are EITI implementing countries.*

**Forum for debate.** The inclusion of contract disclosure in the EITI standard created a requirement for multi-stakeholder discussions on the subject. In Mongolia, an EITI working group on contract disclosure was established in 2015 and, working in collaboration with the Petroleum Authority of Mongolia, ensured that confidentiality clauses were removed from new model production-sharing agreement. In Myanmar, while contracts are not disclosed due to confidentiality provisions, discussions within the EITI process resulted in contract disclosure being included as one of the key recommendations in the first MEITI report.

**Facilitating disclosures.** In a number of countries, the national EITI process has been instrumental in securing the disclosure of contracts. In the Philippines, stakeholders used EITI as a forum to push the National Commission on Indigenous Peoples to disclose the contracts executed by companies with indigenous communities allowing for monitoring of company compliance with commitments on social projects and royalty payments. In Azerbaijan, the national EITI secretariat engaged with companies in order to secure their consent for disclosure resulting in five published PSAs. Timor-Leste has disclosed petroleum contracts following legal reform in 2005, but accessibility on a government website has been inconsistent. The MSG has identified contract disclosure as a workplan priority to ensure that all contracts are easily accessible on the petroleum ministry's website. In Malawi, the EITI MSG has been a vehicle for advocates of disclosure inside and outside government to move the agenda forward. As part of preparations for their first EITI report, the Malawi EITI tasked the Independent Administrator with requesting contracts from reporting companies.

19 Using the resourcecontracts.org global repository, we could not confirm the existence of publicly available contracts in Central African Republic, Côte d'Ivoire, Ethiopia, Germany, Norway, Papua New Guinea, Seychelles, Solomon Islands, Togo, and Trinidad and Tobago.

20 See, for example, the Dauletaly exploration and production contract in Kazakhstan, which became public as a result of a filing in the United States Securities and Exchange Commission, accessed 15 February 2017, <https://www.sec.gov/Archives/edgar/data/1075247/000104476404000049/exhibit1056dauletalyfiling.htm>. See also the block 905 production-sharing contract that was made public by Seven Energy as a result of lending requirements associated with financing from the IFC, accessed 15 February 2017, [http://www.ifc.org/wps/wcm/connect/industry\\_ext\\_content/ifc\\_external\\_corporate\\_site/industries/oil,+gas+and+mining/transparency/contract+disclosure](http://www.ifc.org/wps/wcm/connect/industry_ext_content/ifc_external_corporate_site/industries/oil,+gas+and+mining/transparency/contract+disclosure).

**Dissemination of contracts.** National EITI websites host disclosed contracts in a number of EITI countries including Azerbaijan, Chad, Republic of Congo, the Democratic Republic of Congo (DRC), Liberia, Philippines and Senegal. The Philippines has gone further in creating a dedicated EITI contracts portal in collaboration with resourcecontracts.org. In 2015, the Philippines EITI launched a national website for publishing contracts in an open data format. In total, 87 contracts—44 main contracts and 43 supporting documents—are available, along with associated metadata. The preparation of annotations including detailed technical summaries of the key contract terms are now under development.<sup>21</sup>

**Sector-wide legislation.** Sector-wide legislation implementing the wider principles of EITI has also been used to enshrine the principles of contract disclosure in law. In Liberia, the LEITI Act (2009) calls for the “public disclosure of contracts and concessions bearing relationship with the extraction of forest and mineral resources.” In Tanzania, the Extractive Industries Transparency Act (2015) requires that all new concessions, contracts and licenses should be made public.

**Advancing understanding.** The disclosure of contracts is not an end in itself. For public contracts to contribute to strengthened governance they must be used. National EITI efforts can help to build capacity in analyzing and monitoring contracts. In Liberia, for example, EITI has prepared a simplified matrix for including comparative information and summaries for 30 mining, oil and gas, forestry and agriculture contracts. These have been used in outreach to host communities to build their capacity to both understand and monitor implementation.<sup>22</sup> Elsewhere, several countries have included strengthening capacity and public awareness of contracts in their 2016 workplans. The Republic of Congo, for example, has noted that the complexity of extractives contracts presents a challenge for the effective functioning of the MSG and has budgeted for two capacity building workshops targeted at MSG members as well as CSOs, media and parliamentarians.

21 For contracts webpages, see Azerbaijan, <http://www.eiti.az/index.php/en/senedler-2/agreements>; Chad, <http://itie-tchad.org/?cat=18>; Congo, <http://www.itie-congo.org/index.php/2016-08-04-12-57-07/contrat-de-partage-de-production>; DRC, <http://www.itierdc.net/contrats-ressources-naturelles>; Liberia, <http://www.leiti.org.lr/contracts-and-concessions.html>; Philippines, [contracts.ph-eiti.org](http://contracts.ph-eiti.org); and Senegal, <http://itie.sn/mine/contrats-miniers>.

22 Liberia Extractives Industry Transparency Initiative (LEITI). *Abridged Simplified Contract Matrix* (LEITI, December 2015), accessed 19 February 2017, [http://www.leiti.org.lr/uploads/2/1/5/6/21569928/contract\\_matrix\\_final\\_version.pdf](http://www.leiti.org.lr/uploads/2/1/5/6/21569928/contract_matrix_final_version.pdf).

## PROGRESS SINCE ADOPTION OF THE 2013 EITI STANDARD

Important progress has been made since the 2013 EITI Standard came into force. Nine EITI countries have undertaken legal reforms that strengthen contract disclosure provisions, and at least nine implementing countries have disclosed mining or petroleum contracts for the first time during this period.

Legal reforms on disclosure (9 countries)	First disclosure of extractives contracts (9 countries)
Burkina Faso (Mining Law) 2015	Chad (P)
Central African Republic (Constitution) 2015	Colombia (M,P)
Colombia (Transparency Law) 2014	Malawi (M)
Dominican Republic (Constitution) 2015	Mali (M)
Ghana (Petroleum Law) 2016	Mongolia (M)
Mozambique (Petroleum and Mining) 2014	Mozambique (M,P)
Philippines (Executive Order) 2013	Philippines (M,P)
Senegal (Mining Law) 2016	Senegal (P)
Tanzania (EITI Law) 2015	Sierra Leone (M)

(M = mining, P = petroleum)

Table 2. Advances in contract disclosure in EITI implementing countries since the 2013 EITI Standard

In other countries, most notably Afghanistan, the contract transparency debate that took place in EITI around the passage of the 2013 Standard spurred the country to disclose contracts.<sup>23</sup> Several countries that joined EITI after the 2013 Standard was adopted—Colombia, Malawi and Senegal—have started disclosing extractives contracts soon after joining. This suggests that countries new to the EITI process take seriously the recommendation to disclose contracts or licenses. Notably in Senegal the government committed to contract disclosure early on, partly to show citizens that it was fully committed to EITI principles.<sup>24</sup>

## COUNTRIES WHERE CONTRACT DISCLOSURE IS STALLED

While there is clear momentum towards contract disclosure with most EITI countries, there has been little progress in a number of countries. Our analysis suggests that 20 countries have neither disclosed an extractives contract or license, nor have any law or policy in place requiring contract disclosure. (See table 1.) Of these countries, it appears that only two – Myanmar and Togo—referenced future activities on contract disclosure in their 2016 EITI workplans.<sup>25</sup>

*Analysis suggests that 20 countries have neither disclosed contracts or licenses, nor have a law or policy in place requiring contract disclosure.*

23 Conversation with Katerina Kuai, Senior Capacity Building Officer, NRG, 24 January 2017.

24 Conversation with Ousmane Deme, Operations Officer, World Bank, 18 January 2017.

25 For an overview of 2016 workplans see Andreasen, *Contract transparency opening up slowly, but steadily*.

## II. Contract disclosure practice in implementing countries

In order for contract disclosure to provide valuable information about a country’s extractive sector, contracts or licenses need to be disclosed in full, as do annexes, amendments and other related documents that set out rights and obligations as per agreements between governments and companies. This section explores in further detail the degree to which country disclosures cover all known agreements made with companies. We then consider the quality of the disclosures made.

### CONTRACT DISCLOSURE COVERAGE

Among the 51 implementing countries analyzed in this report, 29 have officially disclosed at least one extractive sector contract. The table below lists these countries in two categories. The first group of 16 have disclosed widely in at least one sector (mining or petroleum). Importantly, because very few countries produce comprehensive and updated lists of all active extractives contracts, we were not able to say with certainty whether all contracts in these countries have been published. We have therefore labeled this group “All/nearly all contracts disclosed.” In the second group we have flagged a further 16 countries where we can confirm that the coverage of disclosure is only partial. In three countries—Colombia, Peru and the Philippines—differing practice between sectors meant that these countries show up on both lists.

*Twenty-nine governments have disclosed at least one extractive sector contract or license.*

All/nearly all contracts disclosed (16 countries)	Some contracts disclosed (16 countries)
Afghanistan (M,P)	Azerbaijan (M,P)
Colombia (P)*	Burkina Faso (M)
Guinea (M)	Chad (P)
Iraq (Kurdistan) P	Colombia (M)*
Liberia (M,P)	Republic of Congo (P)
Malawi (M)	DRC (M,P)
Mali (M)	Dominican Republic (M)
Mauritania (P)	Ghana (P)
Mongolia (M)	Guatemala (P)
Mozambique (M,P)	Honduras (P)
Peru (P)*	Kyrgyz Republic (M)
Philippines (M)*	Niger (M)
Senegal (M,P)	Peru (M)*
Sierra Leone (M)	Philippines (P)*
Timor–Leste (P)	São Tomé and Príncipe (P)
United Kingdom (P)	United States (M,P)

Table 3. Disclosure practices in implementing countries

\*Country is represented in both lists due to differing practice between sectors.

The reasons for incomplete disclosure vary widely across countries. Examples of barriers to full contract disclosure coverage in selected countries include, as follows:

- Philippines, Colombia: Disclose mining contracts only for companies covered by the EITI report.<sup>26</sup>
- São Tomé and Príncipe: Legislation does not cover the Joint Development Area with Nigeria.<sup>27</sup>
- Timor–Leste: The government only hosts contracts signed after 2005 law came into effect.<sup>28</sup>
- DRC: Dozens of sensitive contracts are not disclosed.<sup>29</sup>
- Republic of Congo: Recently awarded oil contracts have not yet been disclosed.<sup>30</sup>

Determining the proportion of total extractives contracts that were actually disclosed in most countries proved challenging. Some governments report this number either in an EITI report or in a ministry publication. For example, the Azerbaijani EITI site provides links to both disclosed contracts and to a register of all production-sharing agreements.<sup>31</sup> Most countries, however, provide no indication of how many active contracts or licenses citizens should expect to be able to access. As part of EITI requirement 2.1 on the disclosure of the legal framework and fiscal regime, implementing countries should be encouraged to maintain an up-to-date, comprehensive list of all contracts, including title, commodity and date of signature, even where the contract itself has not been disclosed. The latest version of this list should also be included in EITI reporting.

*Governments of most countries have given citizens no expectation of which or how many contracts/licenses they might access.*

Further challenges to effective disclosure practices relate to the timeliness and consistency of disclosure. To ensure effective transmission of information and build trust, newly signed contracts should be brought into the public realm in a way that both citizens and private sector entities can anticipate. Our research indicated that there are some countries that disclose contracts on a regularized and timely basis—for example, mining contracts in Guinea, and petroleum contracts in Peru and the United Kingdom. Due to a lack of information on the precise date on which contracts were disclosed, we have not been able to systematically assess the length of time from signing to disclosure, but we noted at least two countries where disclosure policies have not been consistently applied over time—both the Republic of Congo and DRC have disclosed past contracts but have not consistently disclosed newly signed contracts.

26 See *Draft Case Study on Mining Transparency in Philippines* (Open Contracting Partnership, 2016), available on request; conversation with Ana Carolina Gonzalez Espinosa, EITI Civil Society Board Member, 6 February 2017.

27 Oil Revenue Law (Law 8/2004) and the Fundamental Law on Petroleum Operations (Law 16/2009) both require contract disclosure. The JDZ Petroleum Regulations 2003 (Regulation 2003) does not require contract disclosure.

28 Article 30.1(a)(i) of Timor-Leste's 2005 Petroleum Act states: "The Ministry shall make available to the public: copies of all Authorisations and amendments thereto, whether or not terminated."

29 *Qui Cherche, Ne Trouve Pas Transparence: Des Projets Miniers En Republique Democratique Du Congo* (The Carter Center, 2015), accessed 20 February 2017, <https://cdcituri.files.wordpress.com/2015/02/qui-cherche-ne-trouve-pas.pdf>.

30 Early petroleum contracts have been published in full. For contracts signed in 2012, however, the government has published only the relevant decree and not the full contract (see [resourcecontracts.org](http://resourcecontracts.org)).

31 Azerbaijani EITI. PSA Register, accessed 20 February 2017, <http://www.eiti.az/index.php/en/senedler-2/agreements/602-registration-of-licenses>.

## QUALITY OF DISCLOSURE

The EITI Standard encourages disclosure of the full text of any contract or license, as well as the full text of any annex, addendum or rider that establishes details relevant to the exploitation rights.

Our review of a sample of the actual contracts disclosed by each implementing country indicates the following emerging norms:

**Full text without redactions.** Most implementing countries disclose the full text of contracts without redactions. Timor–Leste was the only country that disclosed a contract that contained redactions.<sup>32</sup> Although many legal provisions on contract disclosure include the option to redact clauses that may be viewed as commercially sensitive, it appears that most EITI countries have not found redaction necessary. This supports the findings of reports like *Contracts Confidential*, which indicate that most state-investor contracts do not contain commercially sensitive information.<sup>33</sup>

**Evidence of signing.** Most implementing countries disclose signed versions of contracts. Within our sample, only Azerbaijan and the Kyrgyz Republic disclosed unsigned versions of contracts.<sup>34</sup> For all other countries in our sample, scans of the final signed and initialed contracts were the norm. This is important because evidence of signing helps demonstrate that the contract is the final, agreed-upon version.

**Publication of annexes.** In all cases where a contract included a table of contents that indicated annexes, our review confirmed that annexes were disclosed. But we note that where a contract did not have a table of contents, it was impossible to know whether there were simply no annexes or whether annexes were not included. Disclosure of annexes has been slow.

**Contract amendments.** In our review, we found evidence of the disclosure of contract amendments for only six countries: Azerbaijan, Iraq (Kurdistan), Mongolia, São Tomé and Príncipe, Sierra Leone and Timor–Leste. As contracts and licenses are frequently amended, even if only to extend time periods, it can be assumed that a large number of countries will have amended contracts, many of which are not being disclosed.

32 This was the 2003 ConocoPhillips-Santos-Inpex Sahul PSA and amendment for JPDA 03-12. See <http://www.laohamutuk.org/Oil/PSCs/JPDA03-12.pdf> and <http://www.laohamutuk.org/Oil/PSCs/JPDA03-12Amen> (both accessed 14 February 2017). Note that this contract is in an area in which Timor–Leste shares jurisdiction with Australia under the Timor Sea Treaty.

33 See Rosenblum and Maples, *Contracts Confidential*.

34 For Kyrgyz Republic, the version of the Kumtor contract published on the parliamentary website is unsigned (see [www.kenesh.kg/ru/draftlaw/download/4485/accompdoc/ky](http://www.kenesh.kg/ru/draftlaw/download/4485/accompdoc/ky), accessed 1 February 2017), while for Azerbaijan, the Shah Deniz contract published on the BP website with government consent is also unsigned (see [http://www.bp.com/content/dam/bp-country/en\\_az/pdf/legalagreements/PSAs/SD-PSA.pdf](http://www.bp.com/content/dam/bp-country/en_az/pdf/legalagreements/PSAs/SD-PSA.pdf), accessed 20 February 2017).

**Related documents.** While this report has focused on the primary state-investor contract, it must be noted that in some countries it is necessary to view additional related documents to get a full understanding of the agreements between government and companies. In the Philippines, for example, auxiliary rights including water rights, land rights and forest rights/tree cutting permits are contained within separate documents that are yet to be disclosed.<sup>35</sup> Nevertheless, some countries have already started exploring the possibility of widening the scope of disclosure. For example, Mongolia has started to release community development agreements, outlining company development obligations to local communities on the local EITI website.<sup>36</sup> Meanwhile in Zambia, EITI is exploring the possibility of setting up a portal to make environmental impact assessments publicly accessible.<sup>37</sup>

*In some countries it is necessary to view additional related documents to get a full understanding of agreements between government and companies.*

35 Conversation with Cielo Magno, EITI Civil Society Board Member, 14 February 2017.

36 See <http://eitimongolia.mn/mn/contracts>, accessed 20 February 2017.

37 Conversation with Ian Mwiinga, Communications Officer, Zambia Extractive Industries Transparency Initiative Secretariat, Ministry of Mines and Minerals Development, 2 February 2017.

### III. Contract accessibility in implementing countries

Public contracts are only truly “public” if they are easy to find, browse, search and use. If governments do not seek to improve access in these ways, increased disclosure can actually obscure information, making the task for interested citizens wanting to find out about the extractive industries more difficult rather than easier. This section assesses contract accessibility by examining publication channels, file formats and metadata.

#### PUBLICATION CHANNELS

EITI implementing countries use a wide range of publication channels to disseminate disclosed contracts. Countries generally publish electronic copies of contracts online with paper-based options to increase accessibility for communities lacking Internet access. In most cases, contracts are disclosed on ministry websites, while in some cases, documents are available on the national EITI website.

Gazette (2 countries)	Ministry website (17 countries)	EITI website (7 countries)
Dominican Republic (M) Honduras (P)	Afghanistan (M,P) Burkina Faso (M) Colombia (M,P) DRC (M,P) Guatemala (P) Guinea (M) Iraq – Kurdistan (P) Mali (P)	Mauritania (P) Mozambique (M,P) Peru (M,P) Philippines (M,P) São Tomé and Príncipe (P) Sierra Leone (M) Timor–Leste (P) United Kingdom (P) United States (M,P)

Table 4. Confirmed publication channels<sup>38</sup>

\*Draft website

Broken websites proved to be a challenge, particularly in countries where Internet connections were unreliable. In some cases, such as in Colombia, Ghana and Timor–Leste, following changes to ministry websites, it appears that previously disclosed contracts or licenses are no longer easy to find. One effective remedy is to allow contracts to be held on several different websites. In some cases, governments are doing this. In Mozambique, for example, petroleum contracts are available on the websites of both the Ministry of Resources website and the National Petroleum Institute. In most countries, a simple solution would be for national EITI websites to always host copies of extractive sector contracts, even where they are also available on ministry websites. This kind of innovative publication is easier where governments make it clear that there are no restrictions on use of government data and documents; in such cases, a number of other actors can step in.<sup>39</sup> In Timor–

*Broken websites are a challenge.*

38 Because some ministry and/or EITI websites were not functioning at the time of writing we were not able to confirm disclosure channels in every case.

39 A good example of open licensing of government data and documents is the U.K. Open Government License <http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3>, which is used for the publication of U.K. open data. See <https://data.gov.uk/terms-and-conditions>.



Leste, for example, contracts no longer available on the ministry website have been archived by the national CSO La'o Hamutuk.<sup>40</sup>

Another set of challenges surrounded publications of contracts or licenses in national gazettes. While several countries including Burkina Faso, Côte d'Ivoire, Dominican Republic, Republic of Congo, Honduras, Niger and Sierra Leone have legal requirements to disclose contracts through the national gazette, our review only confirmed two cases in which the full text of extractive sector contracts was reproduced in the gazette (Dominican Republic and Honduras). In most cases we found instead that gazette publications reproduced only a summary of the key terms if anything. In Niger, for example, the documents published in the gazette were only the “strategic partnerships” and not the full contract signed between the government and the companies. An additional problem with many gazettes is that they are not online, which further impinges access.

*Gazette publications can be problematic.*

This is disappointing because in most countries government gazettes provide a natural pre-existing channel for contract disclosure. As the official government record, gazettes have the potential to act as a useful one-stop shop for both legislation and contracts running far back into the past. Further, they tend to have significant legal protections relating to access and availability, which serves to protect the disclosures made within them. Still, gazette publications can be improved. National EITI processes provide a useful forum to discuss the quality of gazette publications of contracts or licenses, and national EITI websites would be suitable places to disseminate gazette entries more widely.

## FILE FORMATS AND METADATA

File formats have important impacts on contract usability. The vast majority of contracts disclosed by governments in EITI implementing countries are PDF images of the original contracts. This format guarantees that the contract is an electronic copy of the original, and allows users to see the signature as well as initials on each page. But a common challenge associated with PDF images is that is that they are not machine-readable or searchable. This means that they are not in a format that allows someone to use a computer to search for specific words within the contract or to copy text from the contract and paste it into another document.

Machine-readable formats make the process of using contracts much easier. For example, with a machine-readable contract, a citizen interested in finding out company royalties across contracts would only have to keyword search for “royalties” in each document to find what they are looking for rather than having to go through pages and pages of contract language.<sup>41</sup> Fortunately, technologies such as the resourcecontracts.org platform (see box 5) now allow for the publication of signed and initialed contracts in machine-readable formats. Among EITI countries, the Philippines and Sierra Leone are using this technology, and DRC, Guinea and Mongolia are in the process of developing new sites using the technology.<sup>42</sup>

*Machine-readable formats make the process of using contracts much easier.*

40 See <https://www.laohamutuk.org/Oil/PSCs/10PSCs.htm>. According to Timor–Leste’s EITI workplan, the MSG is working to ensure that contracts are published and updated on the ministry website. The Minister of Petroleum and Mineral Resources has made a public pronouncement that contract disclosure will be fully implemented.

41 See, for example, [https://www.constituteproject.org/constitution/Honduras\\_2013.pdf?lang=en](https://www.constituteproject.org/constitution/Honduras_2013.pdf?lang=en).

42 For the Philippines website, see <http://contracts.ph-eiti.org>, while for the Sierra Leone website see <http://www.nma.gov.sl/resourcecontracts>.

Providing additional information about disclosures, known as metadata, can also improve accessibility of contracts or licenses. When contracts or licenses are disclosed by the dozens, or hundreds, sorting through them becomes a real challenge. In these circumstances, the solution is for governments to publish not only the contracts but also add metadata that allows for the documents to be organized. In most cases, governments publish contracts with no metadata at all. In fact, in many countries the only assistance provided in sorting through contracts is that mining contracts are provided on one webpage, while petroleum contracts are provided on a different webpage.

*Metadata allows for documents to be better organized.*

Basic metadata would include the contract title, contracting parties, signing date and relevant commodity. In fact, EITI implementing countries are already required to provide some of this information in their EITI reports. Clause 2.4(b) of the EITI Standard states: “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.” More advanced metadata can support these disclosures and would include name and company identifiers of all companies party to the contract, type of contract, type of resource, date of signatory and any amendments, geo-coordinates for the spatial boundaries of the contract area and information about contract terms.

As more and more contracts are disclosed among EITI member countries, the benefits of standardized metadata increase. Standardized metadata would support better interoperability of contract information disclosed by different countries, allowing users to more easily find contracts of potential interest from other countries. Given that companies already have access to contracts from many different countries (see introduction), enabling this kind of accessibility among citizens and their governments would help breakdown asymmetries of information. As a first step towards an EITI data standard for contracts, EITI established an Open Data Policy in 2015, encouraging EITI implementing countries to “provide data in granular, machine-readable formats.”<sup>43</sup> As EITI seeks to help implementing countries develop metadata for their contract disclosures, it could be useful to borrow metadata practices from data standards like the Open Contracting Data Standard for Extractives as well as existing public contract repositories, such as resourcecontracts.org (see box 5).<sup>44</sup>

43 EITI Secretariat. *EITI Open Data Policy* (EITI, 2016), accessed 20 February 2017, <https://eiti.org/standard/open-data-policy>.

44 Open Contracting Data Standard, accessed 20 February 2017, [http://www.open-contracting.org/2015/02/17/extension\\_of\\_the\\_open\\_contracting\\_data\\_standard\\_for\\_extractives\\_industries\\_and\\_land](http://www.open-contracting.org/2015/02/17/extension_of_the_open_contracting_data_standard_for_extractives_industries_and_land); Resource Contracts, [www.resourcecontracts.org](http://www.resourcecontracts.org); *Open Data Policy Guidelines* (Sunlight Foundation, 2014), accessed 20 February 2017, [http://sunlightf.wpengine.com/wp-content/uploads/2016/09/OpenDataGuidelines\\_v3.pdf](http://sunlightf.wpengine.com/wp-content/uploads/2016/09/OpenDataGuidelines_v3.pdf).

### Box 5. Resourcecontracts.org – an open data disclosure platform

Resourcecontracts.org was established as a global repository of publicly available oil, gas and mining contracts. Run by NRGi, the Columbia Center on Sustainable Investment and the World Bank, the repository is working to provide plain language summaries of each contract's key social, environmental, human rights, fiscal and operational terms, as well as tools for searching and comparing contracts. Hosting over 1,350 contracts, licenses and other related documents at the time of writing, resourcecontracts.org promotes greater transparency of investments in the extractive industries, and facilitates a better understanding of the contracts that govern them.

Notably, resourcecontracts.org houses contracts in line with the principles open data, allowing access to contracts in searchable and machine-readable formats. To help make the content of these often-lengthy contracts more accessible, resourcecontracts.org has developed a rigorous approach to categorizing each document with rich metadata and providing the option to annotate each contract's social, environmental, human rights, fiscal and operational terms.

Resourcecontracts.org allows countries to learn more about relevant contracts of similarly situated countries and even particular investors. For example, for a government that is interested in disclosing contracts, resourcecontracts.org allows them to see if their investors have disclosed contracts in other countries.

Increasingly countries are now working to adapt the resourcecontracts.org platform for their own national sites. So far, the government of Sierra Leone and the EITI secretariat in the Philippines have developed their own dedicated web-portals using adaptations of the technology, while the governments of Guinea, DRC and Mongolia are in the process of developing new sites. Importantly, these country sites are being used to also support disclosure of other documents associated with the principle contracts, including annexes, addendums, and environmental impact assessments and monitoring plans.<sup>2</sup>

45 Resource Contracts, accessed 20 February 2017, [www.resourcecontracts.org](http://www.resourcecontracts.org).

## IV. Contract disclosure policy in implementing countries

Although laws mandating contract disclosure are not necessarily a precondition for disclosure to take place, contract/license disclosure is often more likely to happen where there is a legal requirement to do so. Among the 51 EITI countries that have disclosed contracts, 82 percent of sectors with enabling contract disclosure laws had published contracts compared to only 30 percent of sectors without such laws having disclosed contracts. This section provides an overview of which countries have contract disclosure laws and the type of legal instruments they use. It then considers a set of key considerations for contract disclosures. Finally, it examines the gap between policy and practice.

### THE STATE OF LAW AND POLICY ON CONTRACT DISCLOSURE

Close to half of EITI countries have a law or policy that requires some form of contract disclosure for either the petroleum or mineral sector. Only 10 countries have disclosure rules that apply to both sectors. And more than half of the countries have no stated law or policy related to contract disclosure in either the petroleum or mineral sector.

*Close to half of EITI countries have a law or policy that requires some form of contract/license disclosure.*

Barrier to disclosure (5 countries)	No law or policy (32 countries)	Require disclosure (22 countries)
Cameroon (P)	Azerbaijan (M,P)	Afghanistan (M,P)
Ethiopia (M)	Cameroon (M)	Burkina Faso (M)
Papua New Guinea (M,P)	Chad (M,P)	CAR (M,P)
Seychelles (P)	Republic of Congo (M)	Colombia (M,P)
Trinidad and Tobago (P)	Côte d'Ivoire (M)	Republic of Congo (P)
	Ethiopia (P)	Côte d'Ivoire (P)
	Germany (M,P)	DRC (M,P)
	Ghana (M)	Dominican Republic (M)
	Guatemala (M)	Ghana (P)
	Honduras (M)	Guatemala (P)
	Iraq (P)	Guinea (M)
	Kazakhstan (M,P)	Honduras (P)
	Kyrgyz Republic (M)	Iraq – Kurdistan (P)
	Madagascar (M,P)	Liberia (M,P)
	Malawi (M,P)	Mozambique (M,P)
	Mali (M,P)	Niger (M,P)
	Mauritania (M,P)	Philippines (M,P)
	Mongolia (M,P)	São Tomé and Príncipe (P)
	Myanmar (M,P)	Senegal (M,P)
	Nigeria (M,P)	Sierra Leone (P)
	Norway (P)	Tanzania (M,P)
	Peru (M,P)	Timor–Leste (P)
	Sierra Leone (M)	
	Solomon Islands (M)	
	Tajikistan (M,P)	
	Togo (M,P)	
	U.K. (M,P)	
	U.S. (M,P)	
	Yemen (P)	
	Zambia (M)	
	Ukraine (M,P)	
	Indonesia (M,P)	

Table 5. Law and policy on contract disclosure

Of note, very few countries appeared to have a barrier to disclosure in legislation. Our review suggests that there are only five countries where confidentiality requirements might extend to contracts.<sup>46</sup> Of course, even if this were the case it remains true that many extractive industry contracts contain confidentiality clauses that may indicate that the contract itself is to be a confidential document. However, this point must not be overstated. In their review of over 150 contracts, *Contracts Confidential*, Rosenblum and Maples note that confidentiality clauses are “largely generic” and that the general confidentiality clause used in most contracts does not rule out disclosure.<sup>47</sup> Further, where both parties agree, transparency clauses within contracts can actually be used to advance contract disclosure (see Box 6).

46 These are Cameroon (P), Papua New Guinea (M,P), Seychelles (P), Trinidad and Tobago (P), and Zambia (P).

47 See Rosenblum and Maples, *Contracts Confidential*, 25–27.

### Box 6. Contract clauses: Confidentiality or transparency?

Many extractives contracts contain confidentiality clauses restricting publication of commercially sensitive project data. In some cases these clauses explicitly include the contract itself, but in many cases they do not. In a growing number of cases, contractual provisions make the document public.

In Mongolia, the contract for the most important mine in the country—the Oyu Tolgoi copper mine—states in clause 15.21: “This Agreement shall be made public.” The government has published both the original 2009 contract and the 2015 contract amendment.<sup>3</sup>

In Afghanistan, petroleum contracts state: “The Ministry shall have the right to keep a copy of this Contract in the Hydrocarbons Register, publish and keep publicly available and distribute to provincial offices such information and reports on the Contract, related documents and the Contractor as is required pursuant to the Hydrocarbons Law.” These contracts have been published by the Government.<sup>4</sup>

In Malawi, production-sharing agreements signed in 2014 state: “The Ministry and the Contractor shall make public this Agreement and any amendments or written interpretations of this Agreement.” Unfortunately neither the government nor the company has yet acted on this obligation.<sup>5</sup>

The Mining Law Committee of the International Bar Association released the Model Mining Development Agreement in April 2011, which includes a provision that contracts be fully disclosed. The specific provision is contained in Article 30.1 entitled: “This Contract is a Public Document.” The lead provision states: “This Agreement and the documents required to be submitted under Section 2.4, by any past and present parties is a public document, and shall be open to free inspection by members of the public at the appropriate State office and at the files designated in the following subsection (e), and at the Company’s office in the State during normal office hours.” This is a particularly important development, not so much for its content, but rather because a mainstream legal institution developed it.<sup>6</sup>

## LEGAL REQUIREMENTS TO DISCLOSE CONTRACTS

For countries with a positive obligation to disclose contracts or licenses, the source of that obligation varies widely. In several countries the requirement comes from the constitution itself (e.g., CAR, Niger, Philippines). In other countries contract disclosure provisions are contained in broader investment laws (e.g., Mozambique), information laws (e.g., Colombia) or extractive industry transparency laws (e.g., Liberia, Tanzania). For the majority of countries, the provision is contained in a general mining or petroleum law. For several countries, the obligation is found only in a decree or resolution (e.g., DRC). In some cases, contracts must be subject to parliamentary approval (including Afghanistan, Azerbaijan, Ghana, Guinea, Liberia, Mongolia, Sierra Leone and Yemen), but the form and quality of parliamentary review and approval varies widely, and few parliamentary review processes result in contracts entering the public domain.

48 Mongolia – Ivanhoe Mines Mongolia Inc. LLC, Ivanhoe Mines Ltd., Rio Tinto International Holdings Ltd. *Oyu Tolgoi Deposit-6708A-6710A, Investment Promotion Agreement* (2009), Article 15.21.

49 Afghanistan – 33.1 Transparency

50 *Malawi’s Troubled Oil Sector: Licenses, Contracts and Their Implications* (Oxfam, 2017), 5, accessed 23 February 2017, <https://mininginmalawi.files.wordpress.com/2017/02/oxfam-2017-malawis-troubled-oil-sector-licenses-contracts-and-their-implications.pdf>

51 *Model Mine Development Agreement* (International Bar Association, 2011), 130.

Constitution (3 countries)	Information/ extractives sector law (4 countries)	Mining law (5 countries)	Petroleum law (12 countries)	Decree/ resolution (2 countries)
CAR	Colombia	Afghanistan	Afghanistan	DRC
Niger	Liberia	Burkina Faso	Republic of Congo	Philippines
Philippines	Mozambique	Guinea	Côte d'Ivoire	
	Tanzania	Mozambique	Ghana	
		Senegal	Guatemala	
			Honduras	
			Iraq (Kurdistan)	
			Mozambique	
			São Tomé and Príncipe	
			Senegal	
			Sierra Leone	
			Timor-Leste	

Table 6. Source of policy or law requiring contract disclosure

There are strong reasons to prefer that principles of contract disclosure be embedded in a durable legal instrument such as the national constitution, crosscutting access to information laws, principle sector legislation or cross-sectoral EITI legislation. Parliamentary resolutions, regulations, decrees and executive orders are less durable and therefore generally less preferable, but can play a role in providing greater specificity on what precisely must be disclosed, when and where. In some cases the concept may be addressed in different legal documents, and as long as there is no contradiction between the provisions, that may be workable. In Mozambique, for example, similar provisions in the mega-projects law (2011) reinforce the commitment to contract disclosure in the mining and petroleum laws (2014).

*There are strong reasons for embedding principles of contract disclosure in a durable legal instrument.*

### KEY CONSIDERATIONS IN LEGAL REQUIREMENTS

While legal commitments to contract disclosure need not be complicated, they can be valuable to provide greater specificity through policy statements, regulations or even in the law itself. Ideally, clarity should be provided on:

- What specifically must be disclosed (full text of all “active” contracts; the full text of any annex, addendum or rider; the full text of any alteration or amendment);
- A reasonable time-frame for publication following the date of signature;
- The format of the disclosed contract (searchable electronic file) and the channel for dissemination (e.g., gazette, government web-site, EITI website).

Few countries currently provide much specificity. There is relatively little clarity on what exactly should be disclosed with most clauses referring simply to the contract, agreement or convention. The DRC petroleum legislation (2015) specifies that disclosure should cover all valid contracts and include annexes.<sup>52</sup> The Timor-Leste

52 The DRC Hydrocarbon Law (2015) Article 41 requires that all natural resource contracts (including annexes) should be disclosed within 60 days of being signed. Article 190 of the same act requires the Minister of Hydrocarbon to publish within 30 days of promulgation of the act all valid hydrocarbon contracts.

petroleum legislation (2005) specifies that disclosure shall include “copies of all Authorisations [contracts] and amendments thereto, whether or not terminated.”<sup>53</sup>

The time frame for disclosure is mentioned in only a few cases. The Central African Republic Constitution (2015) requires publication within 8 days of signing, while the DRC petroleum legislation (2015) requires publication within 60 days of signing.

Where the publication channel is referenced at all, it is often the national gazette (e.g., Burkina Faso, Republic of Congo, Niger, Côte d’Ivoire, Sierra Leone); although we were only able to find two examples where the full text of contracts were actually disclosed via this channel (Dominican Republic and Honduras). In some cases, publication on websites is required, including in the Guinea Mining Code (2011) and the Tanzania EITI Act (2015).<sup>54</sup>

### THE GAP BETWEEN POLICY AND PRACTICE

While legal requirements make contract disclosure more likely, they do not guarantee disclosure. We note that 11 countries are failing to live up to contract disclosure requirements in their national laws. This includes seven countries that have only disclosed some of the contracts that they are required to disclose and another set of four countries—Central African Republic, Côte d’Ivoire, Sierra Leone and Tanzania—that have yet to disclose any contracts that they are required to disclose. In these cases, MSGs are well placed to highlight inconsistencies between policy and practice and suggest ways to work towards disclosure of contracts.

*Eleven countries are failing to publish according to requirements in their national laws.*

Not disclosing all contracts required by national law (7 countries)	Not disclosing any contracts required by national law (4 countries)
Burkina Faso (M)	Central African Republic (M,P)
Republic of Congo (P)	Côte d’Ivoire (P)
DRC (M,P)	Sierra Leone (P)
Ghana (P)	Tanzania (M,P)
Niger (M,P)	
Philippines (P)	
São Tomé and Príncipe (P)	

Table 7. Countries failing to implement national disclosure laws

53 Article 30.1(a)(i) of Timor-Leste’s 2005 Petroleum Act states: “The Ministry shall make available to the public: copies of all Authorisations [contracts] and amendments thereto, whether or not terminated;

54 Guinea’s mining code provides another good example indicating that following signature, the agreement will be published on the official website of the Ministry of Mines, and that after ratification, the convention will be published in the official gazette and on the official website of the Ministry of Mines. The Tanzania Extractive Industries Transparency and Accountability Act (2015) is one of the better examples. It states: “16. In order to ensure transparency and accountability in extractive industries, the Committee shall cause the Minister to publish (a) in the website or through a media which is widely accessible all concessions, contracts and licenses relating to extractive industry companies.”



On a more positive note, 11 countries disclose contracts despite the fact that they do not have a specific legal obligation to do so. This demonstrates that legal requirements are not necessary to enable contract disclosure. Yet, we find that lack of legal backing may reduce the likelihood that a country will disclose all contracts. While 8 of 18 countries with disclosure laws had disclosed all or nearly all contracts, only one country without a disclosure laws had published all or nearly all contracts (Sierra Leone [M]).

Azerbaijan (M,P)	Mongolia (M)
Chad (M,P)	Peru (M,P)
Kyrgyz Republic (M)	Sierra Leone (M)
Malawi (M,P)	United Kingdom (M,P)
Mali (M,P)	United States (M,P)
Mauritania (M,P)	

Table 8. Countries that disclose despite not having a national law (11 countries)

## V. EITI reporting on contract disclosure policy and practice

The 2013 EITI Standard established a clear and specific set of requirements for implementing countries to report government policy and practice on contract disclosure (3.12.b). The provisions were retained, unchanged, in the 2016 EITI Standard (2.4.b). Even where contract disclosure is not happening, this reporting provides an important opportunity for implementing countries to discuss the issue with EITI MSGs and as a result of annual EITI reports. This is why it is critical that countries take these requirements seriously. This section examines EITI reporting requirements in detail before presenting the result of our analysis of reporting by EITI countries.

*EITI reporting provides an opportunity to discuss the issue of contract disclosure.*

### UNDERSTANDING EITI REPORTING REQUIREMENTS ON CONTRACT DISCLOSURE

The specific requirement in provision 2.4(b) reads as follows:

*“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.”*

The requirement is both clear and detailed. And while it does not require contract disclosure it does require detailed reporting on the current state of play and future trajectory for contract disclosure.

To support implementation, the secretariat has also provided further guidance for MSGs on issues to consider in meeting the requirements for documenting their government’s position on disclosure policies and practices.<sup>55</sup> In 2015, the EITI secretariat published a review of how countries report on government contract transparency policies.<sup>56</sup> The analysis included a study of 23 implementing countries, based exclusively on a review of information contained in published EITI reports. The conclusions point to significant shortcomings in meeting the reporting requirements as set out in the 2013 and 2016 EITI Standard. Half of the countries failed to report on government policy (either generally or for the mining or petroleum sector). Reporting on disclosure practice was more consistent, though several countries indicating a policy of full disclosure confirmed that no contracts had actually been disclosed.

<sup>55</sup> See *Guidance note on contract transparency*, Requirement 3.12 (2013 Standard)/Requirement 2.4 (2016 Standard), (EITI Secretariat, 2013), accessed 20 February 2017, <https://eiti.org/document/guidance-note-on-contract-transparency>.

<sup>56</sup> See *EITI Brief: Contract transparency in EITI countries* (EITI Secretariat, 2015), accessed 20 February 2017, <https://eiti.org/document/eiti-brief-contract-transparency-in-eiti-countries#annex>.

More recently, the EITI secretariat has undertaken an analysis of annual workplans in order to assess the degree to which countries were moving ahead with contract disclosure as recommended in the EITI Standard. Once again the results were disappointing, with more than half of the workplans containing no reference at all to contract disclosure.<sup>57</sup>

### REPORTING UNDER EITI REQUIREMENT 2.4(B)

Our review of the most recent EITI reports submitted by each country confirms that alignment with reporting requirement 2.4(b) of the EITI Standard is improving, though there is room for improvement. Our analysis suggests that of 51 countries under review, 18 meet the requirement, 18 partially meet the requirement and 10 do not meet the requirement as summarized in Table 9. Five countries (Central African Republic, Dominican Republic, Germany, Malawi and Yemen) were not reviewed because they have not yet submitted reports under the 2013 or 2016 standard. For a specific review of each country see Annex 2.

*Of 51 countries under review, only 18 met the reporting requirements of section 2.4(b)*

Meet the requirement (18 countries)		Partially meet the requirement (18 countries)		Do not meet the requirement (10 countries)
Cameroon	Norway	Afghanistan	Madagascar	Republic of Congo
Colombia	Papua New Guinea	Albania	Mauritania	Guinea
Guatemala	São Tomé and Príncipe	Azerbaijan	Nigeria	Iraq
Indonesia	Senegal	Burkina Faso	Peru	Liberia
Kazakhstan	Seychelles	Chad	Philippines	Mongolia
Kyrgyz Republic	Tajikistan	Côte d'Ivoire	Sierra Leone	Niger
Mali	Togo	DRC	United Kingdom	Solomon Islands
Mozambique	Trinidad and Tobago	Ethiopia	United States	Tanzania
Myanmar	Ukraine	Ghana		Timor-Leste
		Honduras		Zambia

Table 9. Reporting under EITI requirement 2.4(b)

To meet the requirements of provision 2.4(b), countries had to meet the standard for both the petroleum and the mining sector where relevant. Countries deemed to have only partially met the reporting requirements included those that failed to mention the government’s policy on contract disclosure or to substantiate reported disclosure practices with an overview of contracts and links or references to the disclosed documents.<sup>58</sup> Finally those that were deemed as not meeting the requirements included those countries that failed to state government policy or practice on contract disclosure. Two non-reporting countries—the Solomon Islands and Zambia—failed even to mention the issue of contract disclosure.

57 Note: The scoring was generous—vague references were accepted. See Andreasen, *Contract transparency opening up slowly, but steadily*.

58 We set a low bar for the requirement to provide an overview of contracts and links or references to the disclosed documents. We marked positively countries that stated how many contracts there were and where they could be found (e.g., website, gazette).

Important EITI reporting challenges included:

Failure to report on any reforms that are planned or underway. Twenty-three countries failed to report on reforms. While for many countries, this was likely because there were no reforms planned or underway, we note that it would be preferable if the fact that the country had no reforms underway was clearly stated, as it is important information for those wanting to advance the cause of contract disclosure, particularly in countries where contract disclosure is not an established practice.

Failure to provide an overview of publicly available contracts and licenses, and to include a reference or link to the location where these are published. Of the 29 countries that affirmatively disclosed contracts, only four produced overviews of contracts in the public domain, as well as links and references to the location where these contracts were published (Chad, Mozambique, São Tomé and Príncipe, and Sierra Leone). Around half provided no details at all on disclosed contracts. Importantly, in most countries it was difficult to determine what proportion the disclosed contracts were of the total number of active contracts.

Failure to report practice on contract disclosure. Ten countries were deemed to be non-reporting on the basis of failing to clearly state their contract disclosure practices. Analysis of these countries shows that some are good performers with strong records of contract disclosure (Guinea, Liberia and Timor–Leste), while four are countries that have no current practice of disclosure (Iraq [not Kurdistan], Solomon Islands, Tanzania and Zambia). It seems that some countries report on contract disclosure in one year and then neglect the subject in future years, presumably because there is nothing new to report. This creates a challenge for those seeking information on the country.

## NOTABLE REPORTING ON CONTRACT DISCLOSURE POLICY AND PRACTICE

A number of reporting practices we encountered in our review were noteworthy. These included reports that listed or stated contracts in the public realm that were not released by the host government. For example, Cameroon noted mining contracts that were made public because of company decisions to disclose or due to securities regulations in the home countries of multinational companies.<sup>59</sup> Chad went one step further and provided a full list of active petroleum contracts, noting whether they were available on the EITI website or the global resource contracts website, or whether they were simply not available.<sup>60</sup>

59 See *Rapport ITIE Cameroun 2014*, (43, accessed 20 February 2017, [https://eiti.org/sites/default/files/documents/rapport\\_itie\\_cameroun\\_2014\\_30\\_12\\_16.pdf](https://eiti.org/sites/default/files/documents/rapport_itie_cameroun_2014_30_12_16.pdf)).

60 See *Rapport ITIE Tchad 2014*, 22, accessed 20 February 2017, <http://itie-tchad.org/wp-content/uploads/2016/12/Rapport-ITIE-Tchad-Final-2014.pdf>.

Some reports flagged shortcomings in policy and practice, but also detailed important ways that the implementing country could move forward. In the Seychelles, for example, confidentiality clauses in oil and gas contracts were the biggest hurdle, but the report also noted: “an important follow-up step would be to introduce contract waivers to these agreements in order to address the confidentiality restrictions in the petroleum agreements and to seek participation of Oil and Gas companies as part of MSG.”<sup>61</sup> In Papua New Guinea, the report stated: “To date no contracts have been made publically available. This is an issue which civil society organisations in particular seek to change in the interests of greater transparency.”<sup>62</sup>

Other reports gave detailed accounts of ongoing complications in making contract disclosure a reality. In Indonesia, for example, the contextual report detailed an ongoing legal dispute between the central information committee and BP Migas (now SKK Migas), the state-owned enterprise, that resulted in a court ruling declaring that the contracts are not public information.<sup>63</sup>

The inclusion of these types of important contextual information can help guide reform efforts to make contract disclosure a reality.

61 See *Seychelles EITI Reconciliation Report 2013–2014*, 23, accessed 20 February 2017, <http://petroseychelles.com/images/pdfs/SEITI%202013-2014%20final.pdf>.

62 See *Papua New Guinea Extractives Industry Transparency Initiative Report 2014*, 43, accessed 20 February 2017, <http://www.pngeiti.org.pg/download/pngeiti-2014-report>.

63 See EITI Indonesia. *Contextual Report 2015*, 52, accessed 20 February 2017, [https://eiti.org/sites/default/files/documents/2012-2013\\_indonesia\\_eiti\\_report\\_2\\_-\\_contextual\\_en.pdf](https://eiti.org/sites/default/files/documents/2012-2013_indonesia_eiti_report_2_-_contextual_en.pdf).

## VI. Conclusion

There is clear and strong evidence that the disclosure of extractive industry licenses and contracts is now the norm among EITI implementing countries. More than 50 percent of implementing governments have disclosed at least some extractive sector licenses or contracts and close to two thirds have either disclosed or passed a law requiring disclosure.

The inclusion of a provision to “encourage” contract disclosure in section 2.4(a) of the EITI standard in 2013 brought further support to the contract disclosure cause. National EITI processes have supported contract disclosure in varied ways, by facilitating national debate, contributing to legal reforms, supporting dissemination of agreements and leading education activities to advance understanding of contracts. It is noteworthy that since 2013 nine governments of EITI implementing countries disclosed contracts for the first time, while a further nine approved new policies and laws requiring disclosure.

Despite great progress, challenges still remain for many citizens seeking access licenses or contracts that contain information that is in the public interest. Twenty EITI implementing governments had made no progress on either the practice or policy of contract disclosure, while a further 11 governments were failing to fully implement national laws requiring disclosure. Of the governments that do disclose, 16 were failing to publish all licenses or contracts for at least one sector.

The reporting requirements of section 2.4(b) of the EITI standard—which require implementing countries to report government policy and practice on contract disclosure—present EITI all implementing countries with an important opportunity to discuss the issue of access to contracts and licenses. While many EITI countries are providing useful contextual information that can help guide reform efforts to make contract disclosure a reality, there is still some room for improvement particularly among the 10 countries that are not meeting the reporting requirements.

There is little doubt that we are at tipping point. Licenses and contracts that were once seen as purely commercial documents are now increasingly understood to also be in the public interest. We hope that the findings and recommendations of this report help EITI implementing countries improve the quality and accessibility of licenses and contracts that are already in the public domain. We also hope that these findings and recommendations motivate reformers in non-disclosing countries to push for the publication of the licenses and contracts that govern oil, gas and mining projects

## Annex 1. Overview of contract disclosure policy and practice by country<sup>64</sup>

Country (sector)	Proportion of contracts/licenses disclosed	Official mode of access	Contract/license disclosure/access summary	Contract/license disclosure legal provision	Legal instrument name (date)	EITI reporting under requirement 2.4(b)	Contract/license disclosure in 2016 EITI workplan <sup>65</sup>
Afghanistan (M)	All/nearly all	Web	439 mining contracts disclosed, published on the Ministry of Mines and Petroleum website	Require	Mineral Law of Afghanistan (2009)	Partial	No
Afghanistan (P)	All/nearly all	Web	3 petroleum contracts disclosed, published on the Ministry of Mines and Petroleum website	Require	Afghan Hydrocarbons Law (2009)	Partial	No
Albania (M)	None	None		None		Partial	No
Albania (P)	None	None		None		Partial	No
Azerbaijan (M)	Some	EITI site	1 mining contract disclosed, published on the national EITI website	None		Partial	Yes
Azerbaijan (P)	Some	EITI site	5 contracts disclosed, published on the national EITI website	None		Partial	Yes
Burkina Faso (M)	Some	Web	2 mining contracts disclosed, published on the Ministry of Mines website	Require	Law no. 036-2015 Mining Code of Burkina Faso (2015)	Partial	Yes
Cameroon (M)	None	None		None		Full	No
Cameroon (P)	None	None		Potentially restrictive confidentiality clause	Decree no. 2000/465 Application of the Petroleum Code (2000)	Full	No
Central African Republic (M) (suspended)	None	None		Require	Constitution (2015)	No report	No workplan
Central African Republic (P) (suspended)	None	None		Require	Constitution (2015)	No report	No workplan
Chad (M)	None	None		None		Partial	Yes
Chad (P)	Some	EITI site	3 contracts disclosed, published on national EITI website	None		Full	Yes
Colombia (M)	All/nearly all	Web	30 contracts disclosed, published on ministry website, but link not easily accessible	Require	Law no. 1712 (2014)	Full	No
Colombia (P)	All/nearly all	Web	488 contracts disclosed, published on the ANH website, but link not easily accessible	Require	Law no. 1712 (2014)	Full	No
Côte d'Ivoire (M)	None	None		None		Partial	Yes

64 An electronic version of this table including links can be accessed at <https://docs.google.com/spreadsheets/d/1FXEeD43jw6VYHV8yS-8KJ5-rR510XtKxVQZBWzr-ohY/edit#gid=0>. This will be updated on an ongoing basis.

65 Source: Kjerstin Andreasen. *Contract transparency opening up slowly, but steadily* (EITI Secretariat, November 2016), accessed 19 February 2017, <https://eiti.org/blog/contract-transparency-opening-up-slowly-steadily>

Country (sector)	Proportion of contracts/licenses disclosed	Official mode of access	Contract/license disclosure/access summary	Contract/license disclosure legal provision	Legal instrument name (date)	EITI reporting under requirement 2.4(b)	Contract/license disclosure in 2016 EITI workplan <sup>65</sup>
Côte d'Ivoire (P)	None	None		Require	Ordinance 2012-369 (2012)	Full	Yes
Republic of Congo (M)	None	None		None		None	Yes
Republic of Congo (P)	Some	EITI site	10 contracts disclosed (newer contracts undisclosed), published on the national EITI website	Require	Hydrocarbon Code, Law no. 24-94 (1994)	None	Yes
DRC (M)	Some	Web	100+ contracts disclosed (some controversial contracts remain undisclosed), published on the Ministry of Mines website	Require	Décret du Premier Ministre no. 011/26 (2011)	Partial	No
DRC (P)	Some	Web	5 contracts disclosed, published on Ministry of Petroleum website (link currently broken)	Require	Décret du Premier Ministre no. 011/26 (2011)	Partial	No
Dominican Republic	Some	Gazette	1 contract disclosed, published in national gazette (not online)	Require	Constitution (2015)	No report	No
Ethiopia (M)	None	None		None		None	No
Ethiopia (P)	None	None		None		Full	No
Germany (M)	None	None		None		No report	Yes
Germany (P)	None	None		None		No report	Yes
Ghana (M)	None	None		None		Partial	No
Ghana (P)	Some	Web	5 contracts disclosed (following company disclosure), initially published on the ministry of petroleum website but no longer available	Require	Petroleum (Exploration and Production) Act (2016)	Partial	No
Guatemala (M)	None	None		None		Partial	No
Guatemala (P)	Some	Web	6 petroleum contracts disclosed, published in national gazette and on the Ministry of Energy and Mines website	Require	Hydrocarbons Law, Decree no. 109-83 (1983)	Partial	No
Guinea (M)	All/nearly all	Web	60+ contracts disclosed, published on the open contract portal	Require	Mining Code of the Republic of Guinea (2011)	None	Yes
Honduras (M)	None	None		None		None	Yes
Honduras (P)	All/nearly all	Gazette/web	1 contract disclosed, published in the national gazette	Require	Constitution (2013) and Hydrocarbons Law (1984)	Full	Yes
Indonesia (M)	None	None		None		Full	No
Indonesia (P)	None	None		None		Full	No
Iraq (P)	None	None		None		None	No
Iraq (Kurdistan) (P)	All/nearly all	Web	35+ contracts disclosed, published on Ministry of Natural Resources website	Require	Kurdistan Oil and Gas Law (2007)	None	No
Kazakhstan (M)	None	None		None		Full	No
Kazakhstan (P)	None	None		None		Full	No



Past the Tipping Point? Contract Disclosure within EITI

Country (sector)	Proportion of contracts/licenses disclosed	Official mode of access	Contract/license disclosure/access summary	Contract/license disclosure legal provision	Legal instrument name (date)	EITI reporting under requirement 2.4(b)	Contract/license disclosure in 2016 EITI workplan <sup>65</sup>
Kyrgyz Republic (M)	Some	Web	1 contract disclosed, published on parliamentary website	None		Full	Yes
Liberia (M)	All/nearly all	EITI site	20 contracts disclosed, published on the national EITI website	Require	Leiti Act (2009)	None	Yes
Liberia (P)	All/nearly all	EITI site	9 contracts disclosed, published on the national EITI website	Require	Leiti Act (2009)	None	Yes
Madagascar (M)	None	None		None		Partial	No
Madagascar (P)	None	None		None		Full	No
Malawi (M)	All/nearly all	Web	2 contracts disclosed, published by government in machine-readable format on resourcecontracts.org	None		No report	Yes
Malawi (P)	None	None		None		No report	Yes
Mali (M)	All/nearly all	Web	13 contracts disclosed, available on the Ministry of Mine website	None		Full	Yes
Mali (P)	None	None		None		Full	Yes
Mauritania (M)	None	None		None		Partial	No
Mauritania (P)	All/nearly all	Web	25 contracts disclosed, EITI report indicates published on the Ministry of Petroleum website (unconfirmed)	None		Partial	No
Mongolia (M)	Some	EITI site	12 mining contracts disclosed, published on the draft national EITI website	None		None	Yes
Mongolia (P)	None	None		None		None	Yes
Mozambique (M)	All/nearly all	Web	5 contracts disclosed, published on the Ministry of Mineral Resources and Energy website	Require	Law no. 15/2011	Full	Yes
Mozambique (P)	All/nearly all	Web	8 contracts disclosed, published on the Ministry of Mineral Resources and Energy website	Require	Law no. 15/2011	Full	Yes
Myanmar (M)	None	None		None		Full	Yes
Myanmar (P)	None	None		None		Full	Yes
Niger (M)	Some	Gazette	1 uranium contract disclosed (now expired), no confirmed disclosures through national gazette	Require	Constitution of Niger (2010)	None	Yes
Niger (P)	None	None		Require	Constitution of Niger (2010)	None	Yes
Nigeria (M)	None	None		None		None	No
Nigeria (P)	None	None		None		Full	No
Norway (P)	None	None		None		Full	No
Papua New Guinea (M)	None	None		Potentially restrictive confidentiality clause	Mining Act (1992)	Full	No

Past the Tipping Point? Contract Disclosure within EITI

Country (sector)	Proportion of contracts/licenses disclosed	Official mode of access	Contract/license disclosure/access summary	Contract/license disclosure legal provision	Legal instrument name (date)	EITI reporting under requirement 2.4(b)	Contract/license disclosure in 2016 EITI workplan <sup>65</sup>
Papua New Guinea (P)	None	None		Potentially restrictive confidentiality clause	Oil and Gas Act (1998)	Full	No
Peru (M)	Some	Web	138 contracts disclosed (2003–2015), published on the Ministry of Mining website	None		Partial	No
Peru (P)	All/nearly all	Web	60+ contracts disclosed, published on the state company petroleum website	None		Partial	No
Philippines (M)	All/nearly all	Web	41 contracts disclosed (only EITI participating companies), published in machine-readable format on the PH-EITI Open Contract Portal	Require	Executive Order (EO) 147 (2013)	Partial	Yes
Philippines (P)	Some	Web	3 contracts disclosed (only EITI participating companies), published in machine-readable format on PH-EITI Open Contract Portal	Require	Executive Order (EO) 147 (2013)	Partial	Yes
São Tomé and Príncipe (P)	Some	Web	10 contracts disclosed (none from joint development zone), publish on the public information registry website	Require	Fundamental Law on Petroleum Operations (2009)	Full	No
Senegal (M)	All/nearly all	EITI site	34 contracts disclosed, published on the national EITI website	Require	Mining Code (2016)	Full	Yes
Senegal (P)	All/nearly all	EITI site	10 contracts disclosed, published on the website of the national EITI committee	Require	Petroleum Code (1998)	Full	Yes
Seychelles (P)	None	None		Potentially restrictive confidentiality clause	Petroleum Mining Act (1976)	Full	No
Sierra Leone (M)	All/nearly all	Web	6 contracts disclosed, published in machine-readable format on the National Mineral Agency website	None		Full	No
Sierra Leone (P)	None	None		Require	Petroleum (Exploration and Production) Act (2011)	Partial	No
Solomon Islands (M)	None	None		None		None	No
Tajikistan	None	None		None		Full	No
Tajikistan	None	None		None		Full	No
Tanzania (M)	None	None		Require	Tanzania Extractive industries (Transparency and Accountability) Act (2015)	None	Yes

Country (sector)	Proportion of contracts/licenses disclosed	Official mode of access	Contract/license disclosure/access summary	Contract/license disclosure legal provision	Legal instrument name (date)	EITI reporting under requirement 2.4(b)	Contract/license disclosure in 2016 EITI workplan <sup>65</sup>
Tanzania (P)	None	None		Require	Tanzania Extractive industries (Transparency and Accountability) Act (2015)	None	Yes
Timor–Leste (P)	All/nearly all	Web	10+ contracts disclosed, initially published on National Petroleum Auditory website but not currently accessible	Require	Petroleum Act no. 13/2005 (2005)	None	Yes
Togo (M)	None	None		None		Full	Yes
Togo (P)	None	None		None		Full	Yes
Trinidad and Tobago (P)	None	None		Potentially restrictive confidentiality clause	Petroleum Act and Regulations (1969)	Full	No
Ukraine (M)	None	None		None		Full	No
Ukraine (P)	None	None		None		Full	No
United Kingdom (M)	None	None		None		Partial	No
United Kingdom (P)	All/nearly all	Web	Electronic versions of licenses are available from the 11th Landward Licence and Seaward Production Licences from the 20th round onwards	None		Partial	No
United States (M)	Some	Web	The public can view offshore leases on BSEE's database and onshore natural resources, by visiting BLM's Land and Mineral Legacy Rehost 2000 System (LR2000) database	None		Partial	No
United States (P)	Some	Web	The public can view offshore leases on BSEE's database and onshore natural resources, by visiting BLM's Land and Mineral Legacy Rehost 2000 System (LR2000) database	None		Partial	No
Yemen (suspended)	None	None		None		No report	No workplan
Zambia (M)	None	None		None		None	No
Zambia (P)	None	None		Potentially restrictive confidentiality clause	Petroleum (Exploration and Production) Act (2011)	None	No

## Annex 2. Overview of EITI reporting under provision 2.4(b)

This table includes comments to improve contract transparency reporting for each EITI implementing country based on a review of their reporting under requirement 2.4(b) of the EITI Standard.

<b>Meets the requirement. Those countries that reported fully were deemed as those that met all the EITI requirements in provision 2.4(b). Where a country had both mining and petroleum sectors, they were required to meet the standard for both sectors.</b>	
Cameroon	Should explicitly mention any reforms that are planned or underway or make it clear that there are none.
Colombia	No comment
Guatemala	Should explicitly mention mining reforms that are planned or underway or make it clear that there are none.
Indonesia	No comment
Kazakhstan	Should explicitly mention any reforms that are planned or underway or make it clear that there are none.
Kyrgyz Republic	Should make it clear that the Kumtor contract is available on the parliamentary website.
Mali	Should explicitly mention any reforms that are planned or underway or make it clear that there are none.
Mozambique	Should explicitly mention any reforms that are planned or underway or make it clear that there are none.
Myanmar	No comment
Norway	Should explicitly mention any reforms that are planned or underway or make it clear that there are none.
Papua New Guinea	Should explicitly mention any reforms that are planned or underway or make it clear that there are none.
São Tomé and Príncipe	Should explicitly mention any reforms that are planned or underway or make it clear that there are none.
Senegal	No comment
Seychelles	Should explicitly mention any reforms that are planned or underway or make it clear that there are none.
Tajikistan	Should explicitly mention any reforms that are planned or underway or make it clear that there are none.
Togo	Should explicitly mention any reforms that are planned or underway or make it clear that there are none.
Trinidad and Tobago	Should explicitly mention any reforms that are planned or underway or make it clear that there are none.
Ukraine	Should explicitly mention any reforms that are planned or underway or make it clear that there are none.
<b>Partially meets the requirement. Those countries that failed to mention the government's policy on contract disclosure or to substantiate reported disclosure practices with an overview of contracts and links or references to the disclosed documents.</b>	
Afghanistan	Should provide an overview of publicly available contracts/licenses and include references/links.
Albania	Should state current practice and upcoming reforms.
Azerbaijan	Should provide an overview of publicly available contracts/licenses and include references/links.
Burkina Faso	Should provide an overview of publicly available contracts/licenses and include references/links.
Chad	While the petroleum sector is fully reporting, the mining sector needs to provide an overview of publicly available contracts/licenses and include references/links.
Côte d'Ivoire	While the petroleum sector is fully reporting, the mining sector needs to report legal provisions and practice.
DRC	Should make clear upcoming reforms that are planned or underway, or make it clear if there are none. Should clarify information on the actual practice of contract disclosure.
Ethiopia	Although the report is generally good for the petroleum sector, the section on mining does not address the issue of contract disclosure.

Ghana	The report should clearly state the policy on contract disclosure in the mineral sector. For the petroleum sector, the report should provide an overview of publicly available contracts/licenses and include references/links.
Honduras	Although the report is generally good for the petroleum sector, the section on mining does not address the issue of contract disclosure.
Madagascar	Although the report is generally good for the petroleum sector, the section on mining does not address the issue of contract disclosure.
Mauritania	Although the report is generally good for the petroleum sector, the section on mining does not address the issue of contract disclosure.
Nigeria	Although the report is generally good for the petroleum sector, the section on mining does not address the issue of contract disclosure.
Peru	The report clearly states the practice for both sectors, but fails to mention legal provisions or upcoming reforms for either sector.
Philippines	The report clearly states the practice for both sectors, but fails to provide an overview of publicly available contracts/licenses or references/links.
Sierra Leone	While the report is generally good for the mining sector, the section on petroleum does not address the issue of contract disclosure.
United Kingdom	While the report is generally good for the mining sector, the section on petroleum does not address the issue of contract disclosure.
United States	While the report accurately describes the practice, it fails to mention anything regarding legal provisions or upcoming reforms.
<b>Does not meet the requirement. Those countries that failed to state the government policy or practice on contract disclosure.</b>	
Republic of Congo	While the report mentions laws, it doesn't mention practice.
Guinea	The report is unclear on policy and practice.
Iraq	While the report mentions practice for Kurdistan, it does not address the issue of contract disclosure for the rest of Iraq.
Liberia	While the report mentions the requirement for contract disclosure, it does not mention legal provisions or current practice.
Mongolia	The report fails to describe contract disclosure practice.
Niger	The report fails to describe contract disclosure practice.
Solomon Islands	The report fails to mention contract disclosure.
Tanzania	The report fails to mention contract disclosure.
Timor–Leste	While the report mentions the practice for petroleum, it fails to address the issue of mining.
Zambia	The report does not mention contract disclosure.
<b>No report. Those countries that have not yet reported under the 2013 or 2016 standard.</b>	
Central African Republic	
Dominican Republic	
Germany	
Malawi	
Yemen	

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