



UNFINISHED BUSINESS: CONTRACT TRANSPARENCY IN THE EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE

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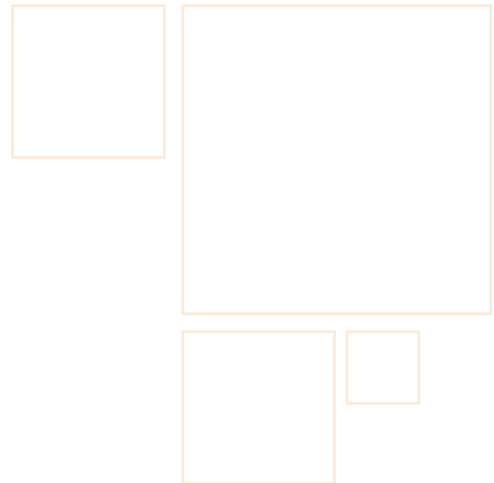




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EXECUTIVE SUMMARY



The urgency of climate action and the complexity of the energy transition mean it has never been more important to be able to understand the deals made between companies and governments for oil, gas and minerals. Thankfully, since 2021, implementing countries of the Extractive Industries Transparency Initiative (EITI) have been required to disclose the contracts between governments and extractive companies.

This briefing surveys the contract disclosure practice of the 57 EITI-implementing countries to understand the extent of their contract disclosure practice. The briefing highlights trends, areas of insufficient disclosure and best practices.

Our key findings include:

- Contract disclosure has become more common. The percentage of EITI-implementing countries that have deliberately disclosed at least one contract increased from 57 percent in 2017 to 70 percent in 2020.
- But more recently progress has stalled. In 2023, the percentage of EITI-implementing countries that have deliberately disclosed at least one contract remained at 70 percent.
- Most EITI-implementing countries are doing poorly at disclosing their contracts. Thirty-seven countries (65%) disclose only partially or not at all. Only 10 countries (about 18%) disclose well in both the mining sector and the oil and gas sector (though a few countries operate in only one of these sectors).
- While the EITI Standard requires that countries produce a list of active contracts, only 10 EITI-implementing countries (18%) have provided such a list in their EITI reports. Without such a list, it is impossible to say whether a country is disclosing all active contracts.
- EITI-implementing countries do not regularly publish contract amendments and annexes. This is problematic because limiting disclosure to the main contract document means that stakeholders do not have access to the full or updated set of terms that apply.

- Among EITI-implementing countries there are 30 national laws that require contract disclosure in the oil and gas sector and 26 laws requiring contract disclosure in the mining sector. Some countries use one law that covers both sectors, while several have a law in one sector but not in the other. While laws can help set expectations for companies and prompt disclosure, they are not a prerequisite for disclosure.
- Despite an EITI requirement in the 2019 Standard that countries publish detailed plans to work toward contract disclosure, most workplans did not include a discussion of the barriers to disclosure, a timeline for making contracts public or any specifics on process.

To address the many challenges surrounding the implementation of contract transparency in the EITI, we make the following priority recommendations:

1

The EITI Board and Secretariat must exercise continued oversight over contract transparency implementation.

2

Oil, gas, and mining companies must support the efforts of countries that are disclosing well, while encouraging countries that are not meeting the Standard to do more.

3

EITI-implementing countries should publish all active contracts they have agreed with extractive industries companies, in line with the spirit of the EITI Standard, consider adopting laws to require contract disclosure and review the implementation of any such existing legislation.

4

EITI coordinators and multi-stakeholder groups should support contract disclosure and contract analysis.

INTRODUCTION

With the energy transition, the lingering economic impacts of the coronavirus pandemic, and Russia's invasion of Ukraine forcing governments and citizens to ask new questions about the management of their extractive industries, public access to oil, gas and mining contracts is more essential than ever.

Contracts agreed between producer governments and companies are crucial documents that set out many of the most important terms governing extractive industry projects.¹ These include:

- Tax, royalty, state participation and production sharing provisions, which are hugely important in determining the distribution of financial benefits between the private sector and the state and its citizens.
- Environmental and social provisions, which detail government and company obligations on a range of important issues, from local content, to worker health and safety, to gender equity, to project decommissioning and rehabilitation.

- Stabilization, arbitration and force majeure provisions, which may significantly limit the flexibility of governments to modify extractive industry rules in the face of emerging policy concerns. Such concerns include the long-term decline of fossil fuels, the imperative to secure supplies of affordable energy and material inputs for clean energy technologies, and the need to align with global climate commitments.

Contracts may take different forms and address different issues depending on the specific legal context of different countries. Some countries limit the range of possible terms that are dealt with in contracts through laws, regulations or model agreements, while others allow for more variation and detail in individual contracts. Regardless of the approach taken, it is crucial that contract documents are disclosed so that the complete set of terms is public knowledge.

The Natural Resource Governance Institute (NRGI), Oxfam, Publish What You Pay (PWYP) and our civil society allies have long been urging countries and companies to [#DiscloseTheDeal](#) (see Box 1).

¹ Except where clearly stated otherwise, this briefing uses the term "contract" to refer to both contracts and licenses, since disclosure provisions in the EITI Standard treat them equally.

Box 1. The #DiscloseTheDeal campaign

#DiscloseTheDeal is a global campaign for the comprehensive disclosure of all contracts relating to the extraction of oil, gas and mineral resources, led by Publish What You Pay (PWYP), a worldwide movement of more than 1,000 member organizations campaigning for open and accountable extractive industries and a people-centered transition to a low-carbon economy. Recognizing that contract disclosure is a keystone of transparency and good governance in the extractive industries, the campaign has three main objectives:

1. Governments should publicly disclose unredacted versions of all extractives contracts, including annexes and amendments.
2. As a minimum, EITI-implementing countries should promptly meet their commitments to publish all contracts granted, entered into or amended from 1 January 2021. Ultimately, governments should publish all contracts currently in force, as well as all official documents related to the implementation of a contract.
3. Extractive industry companies should make a public declaration of support for contract disclosure and pledge to actively push for it in all the countries where they operate.

For resources and further information, visit <https://www.disclosethedeal.org/>.

After two decades of advocacy, emphasizing the importance of citizens' and communities' right to understand and have a say in deals that impact their lives, international institutions, governments, companies and industry bodies have taken note. According to the International Monetary Fund (IMF), contract transparency in the extractive industries is a global norm.²

Dozens of countries around the world today publish extractive industry contracts, and at least 42 leading extractive industry companies have made public statements supporting the practice.³ Contract transparency has been endorsed by numerous private sector bodies including the B Team,⁴ the International Bar Association and the Global Reporting Initiative (GRI).⁵ A range of international institutions, including the IMF, the United Nations and the Organisation for Economic Co-operation and Development (OECD) support the practice,⁶ while the World Bank Group's International Finance Corporation (IFC) and Multilateral Investment Guarantee Agency (MIGA) and the European Bank for Reconstruction and Development (EBRD) have all made contract transparency part of their financing or insurance

- 2 The Fiscal Transparency Code (Pillar IV), which the IMF uses to evaluate countries, ranks specific practices as "basic," "good" or "advanced." Notably, it considers extractive industry contract disclosure as a "basic" level practice under 4.1.1 (Legal Framework for Resource Rights): <https://www.imf.org/external/np/fad/trans/Code2019.pdf>; IMF (2019), Fiscal Transparency Initiative: Integration of Natural Resource Management Issues, <https://www.imf.org/en/Publications/Policy-Papers/Issues/2019/01/29/pp122818fiscal-transparency-initiative-integration-of-natural-resource-management-issues> p. 7
- 3 R. Pitman (2021), "This is Big: Mining Industry Body Commits to Contract Disclosure," NRGI, <https://resourcegovernance.org/blog/this-is-big-mining-industry-body-commits-to-contract-disclosure>.
- 4 The B Team is a global non-profit organization that brings business and civil society leaders together to advocate for economic systems change and new corporate norms.
- 5 I. Munilla and K. Brophy (2018), Contract Disclosure Survey 2018, Oxfam America, <https://policy-practice.oxfam.org.uk/publications/contract-disclosure-survey-2018-a-review-of-the-contract-disclosure-policies-of-620465>, p. 48; B Team (2018), Responsible Tax Principles, <https://bteam.org/assets/reports/A-New-Bar-for-Responsible-Tax.pdf>, p. 7; International Bar Association (2011), Model Mining Development Agreement, <http://www.mmdaproject.org/>, p. 130; GRI (2021), Sector Standard for Oil and Gas, <https://www.globalreporting.org/standards/standards-development/sector-standard-for-oil-and-gas/>. The GRI's sector standard for mining is currently in progress and will follow the same model.
- 6 UN (2016), Principles for responsible contracts, https://www.ohchr.org/Documents/Publications/Principles_ResponsibleContracts_HR_PUB_15_1_EN.pdf, p. 32; OECD (2017), On Combating Corruption and Fostering Integrity, <https://www.oecd.org/corruption/HLAG-Corruption-Integrity-SG-Report-March-2017.pdf>, p. 15.

requirements for the extractive industries.⁷ The International Council on Mining and Metals (ICMM) requires its member companies to disclose contracts entered into after 1 January 2021.⁸ ResourceContracts.org - the world's largest open repository of extractive industry contracts - now contains close to 3,000 documents from 99 countries. More than 600 of these have been tagged to highlight key clauses and to facilitate research.⁹

Despite this progress, much more needs to be done.

The EITI's role in contract transparency

Although there is still much work to do, the extractive sector is making significant progress on breaking down the wall of secrecy that exists around agreements of public interest entered into by governments. This success is strongly tied to the Extractive Industries Transparency Initiative (EITI), an international initiative bringing together civil society, governments and companies to develop and implement standards for transparency and accountability in the oil, gas and mining sectors.

Contract transparency was first incorporated into the EITI Standard in 2013, with a provision that *encouraged* implementing countries to “disclose contracts and licenses that provide the terms attached to the exploitation of oil, gas

and minerals.” This was significantly upgraded in the 2019 Standard, with a new provision that required implementing countries to disclose “any contracts and licenses that are granted, entered into or amended from 1 January 2021,” and an encouragement to disclose contracts that pre-date 2021.¹⁰ This requirement also mandates that when a contract is amended, both the amendment and underlying contract must be disclosed.¹¹

The EITI requirement on contract disclosure, which at the time of writing applies to 57 EITI-implementing countries, continues to encourage disclosure of contracts agreed prior to 1 January 2021. It also includes important provisions to ensure that countries make adequate plans to publish contracts; provide details about how their legal framework addresses contract disclosure; and provide a list of all active contracts and licenses they have entered into. This last provision—a list of active contracts and licenses—is particularly important for accountability. This is because in most countries there is no public record of the contracts that the government has agreed with companies, and therefore no way of knowing whether the range of publicly available contracts represent all documents in—or just a subset of—the full universe of contracts. (We summarize the 2019 EITI Standard provisions on contract transparency in the Annex.)

7 IFC (2012), Policy on Environmental and Social Sustainability, https://www.ifc.org/wps/wcm/connect/7141585d-c6fa-490b-a812-2ba87245115b/SP_English_2012.pdf?MOD=AJPERES&CVID=ki1rw0g, pp. 11-12; MIGA (2013), Policy on Environmental and Social Sustainability, https://www.miga.org/sites/default/files/archive/Documents/Policy_Environmental_Social_Sustainability.pdf, p. 10; EBRD (2013), Energy Sector Strategy, <https://www.ebrd.com/downloads/policies/sector/energy-sector-strategy.pdf>, p. 60.

8 ICMM, “ICMM makes new commitment on contract transparency and publishes members’ 2020 tax contribution,” 9 Dec. 2021, <https://www.icmm.com/en-gb/news/2021/new-commitment-contract-transparency>.

9 See <https://resourcecontracts.org/>.

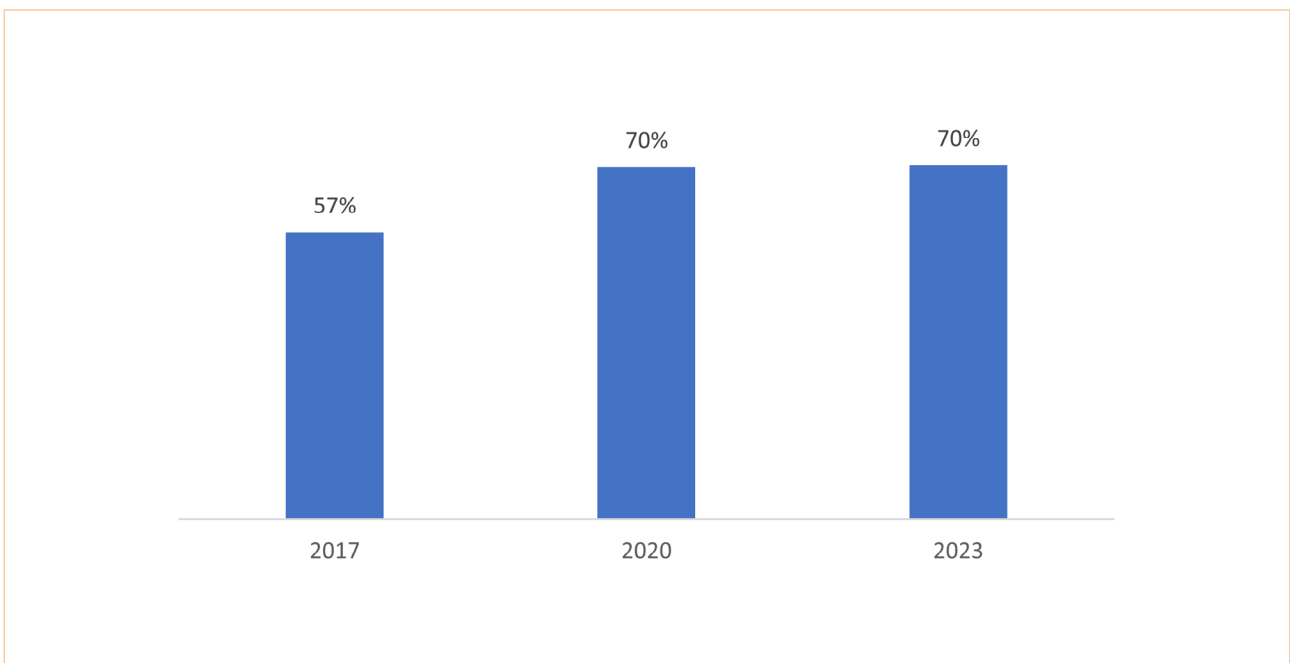
10 EITI 2013 Standard, <https://eiti.org/documents/eiti-standard-2013>, and 2019 Standard, <https://eiti.org/collections/eiti-standard>. Provisions in the EITI Standard can either be “required,” “expected” or “encouraged.” Requirements are mandatory and will be taken into account in the EITI validation process (the process for assessing countries’ progress toward implementing the EITI Standard, which takes place every 12 to 36 months: see <https://eiti.org/validation>). Expectations are provisions that should be considered by multi-stakeholder groups, and these discussions should be documented along with a rationale for disclosure/non-disclosure, all of which is considered in validation. Encouragements indicate that something is optional and, while efforts will be noted in validation, they will not be taken into account in the overall assessment of progress in meeting the EITI Standard.

11 EITI Board (2020), Board Decision 2020-69, <https://eiti.org/board-decision/2020-69>.

Four years on from the adoption of the requirement in the 2019 EITI Standard, and two years since it took effect, it is clear that while implementation has been slow, the number of EITI-implementing countries publishing contracts has plateaued. In 2017, NRGi conducted a review of contract disclosure practices within the EITI, finding that 29 out of

51 countries (57%) had deliberately disclosed at least one contract.¹² In 2020, the EITI conducted its own assessment, finding that this number had risen to 37 out of 53 countries (70%).¹³ In the present 2023 study, we find that 40 out of 57 EITI-implementing countries (70%) have deliberately disclosed at least one contract (Figure 1).

Figure 1. Percentage of EITI-implementing countries that have deliberately disclosed at least one contract



12 D. Hubert and R. Pitman (2017), Past the Tipping Point? Contract Disclosure within EITI, NRGi, <https://resourcegovernance.org/sites/default/files/documents/past-the-tipping-point-contract-disclosure-within-eiti-web.pdf>

13 EITI (2020), Contract transparency in EITI countries: progress, priorities and challenges, Board paper 47-4-B.

In another important EITI development, the 2022 *Expectations for EITI supporting companies* include a provision for the 67 EITI supporting companies to “publicly declare and publish support for governments’ efforts to publicly disclose contracts and licenses ... in line with the EITI Standard, and contribute to public disclosure of contracts and licenses in EITI implementing countries consistent with government procedures.”¹⁴

Yet as we show in this study, adherence to EITI rules is far from universal. At least 16 EITI-implementing countries—more than one in four—are yet to disclose any extractive sector contract. And among countries that are disclosing contracts, most are failing to disclose comprehensively.

Why contract transparency and why now?

The challenges facing governments and citizens of oil, gas and mineral producing countries are growing. Efforts to decarbonize the global economy present fossil fuel producers with volatility and an anticipated long-term decline in oil, gas and coal demand; while mineral producers expect a boom in the transition minerals used for low-carbon technologies. Tensions between major powers epitomized by the war in Ukraine, and global supply chain challenges that emerged during the coronavirus pandemic, have brought to the fore questions of energy security and supply of raw materials. As countries navigate this rapidly changing context, making sure that extractive industry contracts are publicly accessible can help in the following ways.

Avoiding inappropriate contract terms

Under pressure to accelerate project timelines, many countries are working to expedite approvals processes, particularly for transition minerals, creating both corruption risks and risks of undermining the public interest in securing fiscal benefits from extraction.¹⁵ Contract transparency can help in these high-pressure situations by changing the psychology of negotiations: when negotiators know that contracts will be subject to public scrutiny, they have powerful incentives to draft more carefully and agree to terms that all parties—including citizens and civil society oversight actors—view as fair. If mistakes are made, or the context renders agreed terms inappropriate, public access to contracts ensures that these issues can be identified more quickly and corrected.

In recent research, for example, NRGi has noted that stabilization, arbitration and force majeure clauses in many petroleum contracts may have to be reconsidered to enable states to address climate change risks and the need for climate policy action.¹⁶ It is less likely that states will move quickly to review these clauses where contracts are secret.

Monitoring compliance

It is not possible for citizens and oversight actors to ensure that companies or governments are meeting the obligations under their contracts if they do not have access to those contracts. In most countries, contracts are needed to carry out oversight on a range of issues including payments to governments, local content, social payments, worker health and safety, gender equity, and decommissioning and rehabilitation. Importantly, it is not just civil society that benefits.

14 EITI (2022), *Expectations for EITI supporting companies*, <https://eiti.org/documents/expectations-eiti-supporting-companies>.

15 Expert Group on Preventing Corruption in Transition Minerals (2022), *Preventing Corruption in Energy Transition Mineral Supply Chains*, NRGi, <https://resourcegovernance.org/analysis-tools/publications/preventing-corruption-energy-transition-mineral-supply-chains>.

16 N. Woodroffe (2021), *Tying Their Hands? How Petroleum Contract Terms May Limit Governments’ Climate Policy Flexibility*, NRGi, <https://resourcegovernance.org/analysis-tools/publications/tying-their-hands-how-petroleum-contract-terms-may-limit-gov-climate-policy-flexibility>.

In Armenia, for example, local authorities have reported that the publication of contracts has given them the ability to review and keep track of companies' social obligations.¹⁷ Further, contracts often provide specific details about government parties' rights to monitor compliance or carry out fiscal audits to ensure public revenue maximization; disclosure helps government auditors and the public monitor whether or not these rights are effectively utilized and track the timelines of expiration of audit rights and associated record-keeping provisions.¹⁸

Scrutinizing the distribution of risk and reward

Given the many global transitions impacting the extractive industries, it is as important as ever that oversight actors scrutinize the distribution of risk and reward that governments and companies agree in contracts through contract modelling. By testing contractual terms against different hypothetical futures, oversight actors can alert policy makers to risks and uncertainties that the producer country may face and work to ensure that appropriate public policy is in place, ensuring greater strategy resilience and flexibility.

In the Democratic Republic of the Congo (DRC), for example, NRGI is working with the government to use financial modelling of contract terms and scenario analysis to support the development of policies to maximize revenue mobilization in the cobalt sector. And in Senegal and Mozambique, Oxfam is supporting fiscal modelling of frontier oil and gas projects to highlight potential stranded asset risks

and risks to public revenues in the context of expected price declines associated with the energy transition.¹⁹

Tracking changes to the legal framework

Changing global conditions will undoubtedly lead many companies and governments to renegotiate existing contracts, as they have done in the past. As this happens, access to alterations and amendments becomes critical for anyone who wants to understand and scrutinize how legal frameworks governing oil, gas and mining projects are evolving. This is why EITI rules on contract transparency apply to any amendments or alterations made to contracts, in addition to the main contract document itself.²⁰

This study: rationale, methods and findings

Two years after the EITI requirement on contract transparency took effect, this study aims to scrutinize the implementation of the EITI rules on contract disclosure across all 57 EITI countries. The study aims to draw necessary attention to prevalent implementation challenges where further support and advocacy may be needed, but also to examples of good practice within the EITI community that can easily be replicated by other countries—both within the EITI and beyond.

Our primary source for understanding countries' disclosure practices was their latest annual EITI reports as of 11 February 2023. Where information in these reports was missing

17 EITI (2022), Implementation Progress Report June–September 2022, Board paper 54-2-A.

18 A. Redhead, D. Mulé and A. Op de Beke (2018), Examining the Crude Details: Government Audits of Oil and Gas Project Costs to Maximize Revenue Collection, Oxfam, <https://www.oxfam.org/en/research/examining-crude-details>.

19 D. Hubert (2019), Government Revenues from Coral FLNG, Oxfam, https://webassets.oxfamamerica.org/media/documents/Government_Revenues_From_Coral_FLng.pdf?_gl=1*mb8i0e*_ga*MTA5ODUxNTQ2Ni4xNjc2NDc5OTQ1*_ga_R58YETD6XK*MTY4NDI2OTg5MC40Ni4wLjE2ODQyNjk5MzluMTguMC4w.

20 The EITI Board agreed that to fulfil the intent of the EITI requirement on the publication of amendments would require full disclosure of the original contract that is being amended, including previous amendments. See EITI Board (2020), Board Decision 2020-69, <https://eiti.org/board-decision/2020-69>.

or ambiguous, we sought supplementary information from other sources such as national EITI websites, validation documents and government websites. Countries were assessed against a set of themes corresponding to EITI requirements and best practices. These covered workplans, description of contract disclosure policy, understanding the universe of contracts, and contract disclosure practice (see the Annex for an overview of 2019 EITI Standard provisions on contract transparency and relevant research considerations for each of these). Results were coded in a dataset. To ensure validity of the coding selected for each category, the team of three researchers took a consensus coding approach, requiring that all researchers agree on the final designation.

We acknowledge that, as with any survey involving this many countries it is hard to get everything right. We have published summary data of our findings on the #DiscloseTheDeal visual tool and on an online spreadsheet. We hope to keep these tools updated on an ongoing basis. We therefore encourage readers to scrutinize these sources, and to inform us of mistakes or inaccuracies so that we can update them accordingly.

FINDINGS

1. **Contract disclosure within the EITI is not uniform**

While 70 percent of EITI-implementing countries have deliberately disclosed at least one extractive sector contract, disclosure is far from uniform across the EITI community of practice. In each country, we categorized the overall level of disclosure in each sector (mining and/or oil and gas) in one of the following three groups:

- **Disclosing well.** Those countries and sectors in which all or nearly all contracts or licenses have been officially disclosed. We use the “nearly all” designation because even in the best performing countries it is hard to say with certainty if everything has been disclosed, particularly concerning amendments and annexes, and particularly if countries do not provide a comprehensive list of all contracts, amendments and annexes.
- **Disclosing partially.** Those countries and sectors in which some contracts or licenses have been officially disclosed, but others remain undisclosed. This applies to countries where disclosures have been made but where we could confirm that certain key contracts were not public as of 11 February 2023.
- **No disclosure.**

Based on these assessments, we have grouped the 57 countries into five categories (Figure 2).

Figure 2. EITI-implementing countries grouped into five categories according to the extent of their contract disclosure

LEADERS: DISCLOSING WELL IN ALL RELEVANT SECTORS	PARTIAL DISCLOSURE: DISCLOSING WELL IN ONE SECTOR AND PARTIALLY IN THE OTHER	PARTIAL DISCLOSURE: DISCLOSING WELL IN ONE SECTOR BUT NO DISCLOSURE IN THE OTHER	PARTIAL DISCLOSURE: DISCLOSING PARTIALLY IN AT LEAST ONE SECTOR	NO DISCLOSURE
Albania, Armenia*, Dominican Republic, Guinea, Niger, Peru, Republic of the Congo, Senegal, Sierra Leone*, (Afghanistan**)	Democratic Republic of the Congo, Ghana, Liberia, Mozambique, Philippines	Ecuador, Honduras, Mexico, Timor-Leste	Argentina, Burkina Faso*, Cameroon, Chad, Colombia, Côte d'Ivoire, Germany, Guatemala, Guyana, Iraq, Kyrgyz Republic, Malawi, Mali, Mauritania, Mongolia, Netherlands*, São Tomé and Príncipe*, Togo, Ukraine, United Kingdom, Zambia	Angola, Central African Republic, Ethiopia, Gabon*, Indonesia, Kazakhstan, Madagascar, Nigeria, Norway ²¹ , Papua New Guinea Seychelles, Suriname, Tajikistan, Tanzania, Trinidad and Tobago, Uganda, (Myanmar**)
10 (18%)	5 (9%)	4 (7%)	21 (37%)	17 (30%)
* Only one sector assessed				
** Country suspended from the EITI due to political instability				

Notably, 17 countries have not disclosed anything, and a further 21 are only disclosing partially. The remaining 19 countries are disclosing well in at least one sector, with 10 leaders disclosing well in all relevant sectors.

2. Few countries are producing lists of active contracts

Because few EITI-implementing countries disclose a list of all active contracts, it is difficult to say with certainty whether or not countries are disclosing comprehensively. It was therefore not possible to clearly ascertain in the survey how many countries have actually met the EITI requirement to disclose contracts dating from 1 January 2021.

A comprehensive list of active contract documents, including amendments and annexes, is essential for public officials

and citizens to understand the universe of documents that need to be disclosed. Without such a list, it is not possible to say with confidence whether a country is disclosing all active contracts. While the production of such a list is an EITI requirement, many countries' lists fell short in one of the following ways in our survey:

- The list included only public documents, rather than all active contracts (e.g. Guyana).²²
- The list included only the main contract documents, and did not include amendments (e.g. Armenia)²³.
- The list included only license areas or project names, and did not detail the actual contracts that relate to those licenses (e.g. Timor-Leste)²⁴.

21 Norway operates a system where project-level documents including license agreements are accessible upon request via an online public portal. However, given the additional burdens that such request-based systems place on users wanting to find, browse, search and ultimately use contract data, we do not consider this to meet our bar for disclosure.

22 Guyana includes only a list of publicly available agreements, rather than a comprehensive list of all agreements that indicates which are publicly available and which are not: Guyana EITI (2022), GYEITI Report for Fiscal Year 2019, https://eiti.org/sites/default/files/2022-05/GYEITI%20Report%20FY%202019%20%20_0.pdf, p. 96.

23 Armenia: see <https://www.mtad.am/pages/extractive-industries-transparency-initiative>.

24 Timor-Leste, Autoridade Nacional do Petróleo e Minerais, List of Licenses 2006-2021/2022, <http://www.anpm.tl/list-of-licenses-2006-2018/>.

Our analysis shows that, at the time of our research, only 10 countries published lists of active contracts:

- **Five countries—Côte d’Ivoire (oil and gas), DRC (oil and gas; mining), Guinea (mining), Republic of the Congo (oil and gas; mining) and Senegal (oil and gas; mining)—published lists fully in line with EITI requirements.**²⁵ These lists detailed all contract documents covered by the EITI Standard including main contracts, amendments and annexes; they clearly indicated which documents on the list were public and provided links for those documents; and they highlighted documents that were not public, providing policy makers and civil society with a checklist of missing documents to explore. The Senegal example below (Figure 5) includes a list from the country’s 2020 workplan.²⁶ Laying out the universe of contracts in this detailed way allowed Senegal’s EITI multi-stakeholder group (MSG) to systematically work to disclose the contracts clearly identified on the list as non-disclosed, achieving near-full disclosure by 2022.
- **Five countries—Chad, Ghana, Iraq, Mexico and Niger—published lists partially in line with EITI requirements.**²⁷ Iraq and Niger published what appeared to be comprehensive lists that did not include any details about which documents were public and which were not. Chad, Ghana and Mexico have developed online contracts portals that meet many EITI requirements for a list but have a structure that makes it hard to see where progress has been made and whether there are any gaps in the disclosures.

- **A common problem concerned how regularly the lists were updated.** To ensure the information on a list is up to date and can be trusted, countries should provide the date of the last update and information about when and how the list is updated, including who is responsible for updates and how they collect the data. Of the lists we reviewed, those from Côte d’Ivoire and the Republic of the Congo had been updated recently, stating clearly that they had last been updated on 31 December 2022. Online lists from the DRC and Senegal, on the other hand, did not include such information; while they seemed to be up to date, it was hard to be certain whether or not new agreements might have been missing. Updated information from Guinea and Niger confirmed that their lists had not been updated since 2021 and therefore were of limited use in determining the contract disclosure situation in those countries.

The absence of updated lists makes it particularly hard to ascertain whether or not countries have aligned their disclosure practices with the EITI requirement to disclose any contracts and licenses that are granted, entered into or amended from 1 January 2021. By our analysis:

- Only three countries have produced lists of a quality high enough to conclude that disclosures after 1 January 2021 have been comprehensive: Côte d’Ivoire (oil and gas), Mexico (oil and gas) and the Republic of the Congo (oil and gas; mining).

25 Côte d’Ivoire: [oil and gas](#); DRC: [oil and gas](#); [mining](#); Guinea: [mining](#); Republic of the Congo: [oil and gas](#); [mining](#); Senegal: [oil and gas](#); [mining](#).

26 EITI Senegal, Plan de publication contrats miniers, <https://itie.sn/contrats-miniers/>.

27 Chad: [mining](#); [oil and gas](#) (use the following login details: nom = VISITEUR, Mot de Passe = VISITEUR); Ghana: [mining](#); [oil and gas](#); Iraq: no mining list; [oil and gas](#); Mexico: no mining list; [oil and gas](#); Niger: [mining](#); no oil and gas list.



- In all other countries, failure to maintain updated lists of active contracts makes it impossible to say with certainty whether disclosure requirements have been met. In 13 countries where disclosures of documents had taken place since January 2021, we were unable to determine whether these disclosures were comprehensive.²⁸ And among the remaining 41 countries where no post-2021 disclosures had taken place, it was not clear whether these were flouting EITI requirements or not.

See figure 3 on the next two pages for examples of attributes of good contract lists, including screenshots from countries' EITI reporting. The Cote d'Ivoire example showcases a list that includes all amendments. An example from the DRC indicates which contractual documents are public and provides links to those documents. A final example from Senegal highlights which documents are not public (the documents highlighted here were disclosed following the publication of this workplan)

²⁸ Afghanistan, Armenia, Colombia, DRC, Ecuador, Germany, Mali, Mongolia, Netherlands, Peru, Philippines, Senegal, United Kingdom.

Figure 3. Attributes of good lists of contracts, with examples

List includes all amendments (e.g. Côte d'Ivoire) ²⁹	CI-12	Shallow Water	gré à gré	en exploration	CPP (2018) du bloc CI-12 CPP (2018) CI-12 Avenant n°1	8-Janv.-18 19-Janv.-21	Lien\CPP CI-12 (Foxtrot, 08 Janvier 2018).pdf Lien\CPP CI-12 Avenants n°1.pdf	
		CI-27	Shallow Water	gré à gré	en exploitation	CPP (1994) du bloc CI-27	14-Dec-94	Lien\CPP CI-27 (Foxtrot, 14 déc 1994).pdf
						CPP (1994) CI-27 Avenant n°1	13-Nov-95	Lien\CPP CI-27 Avenants n° 1.pdf
CPP (1994) CI-27 Avenant n°2	12-Nov-02					Lien\CPP CI-27 Avenants n° 2.pdf		
CPP (1994) CI-27 Avenant n°3	13-Nov-12					Lien\CPP CI-27 Avenants n° 3.pdf		
CI-502	Deep Water	gré à gré	en exploration	CPP (1994) CI-27 Avenant n°4	24-Feb-20	Lien\CPP CI-27 Avenants n°4.pdf		
				AEF Foxtrot 1999	4-Aug-99	Lien\CPP CI-27 Décret AEF Foxtrot.pdf		
				AEF Foxt et Mahi 2009	26-Mar-09	Lien\CPP CI-27 Décret AEF Foxtrot et Mahi.pdf		
				AEF Foxtrot 2012	29-Feb-12	Lien\CPP CI-27 Décret AEF Foxtrot 2012.pdf		
AEF Manta 2012	6-Sep-12	Lien\CPP CI-27 Décret AEF Manta 2012.pdf						
AEF Marlin 2012	29-Feb-12	Lien\CPP CI-27 Décret AEF Marlin 2012.pdf						
					CPP (2018) du bloc CI-502	8-Jan-18	Lien\CPP CI-502 (Foxtrot, 08 Janvier 2018).pdf	

List indicates which contractual documents are public and provides links for those documents (e.g. DRC)³⁰

Entreprise / Partenaires / Projets miniers	N°	Contrats, avenants et leurs annexes à publier	Date probable de signature	Statut et/ou Lien de publication
28 Sicomines	95	Annexe C à la convention de JV : modèle économique (financial conclusion, primary conclusion et Economic model Parameter)	30/6/1905	http://sicomines.org/System/Attachments/Assets/000/000/0/481/original/331-Sicomines_2008_Convention-IV-Avenants_L2.pdf?file=30928912
	96	Contrat d'amodiation du Permis d'exploitation 8841		https://drive.google.com/File/1Jc0EjHMB7gkK5cm1kM6wqjppzLz1D/view
	97	Avenant n°2 à la Convention de collaboration entre la RDC et le Groupement d'entreprises chinoises relative au développement d'un projet minier et d'un projet d'infrastructures en RDC du 22 avril 2008, signé le 02 septembre 2008	2-sept.-08	A retrouver/ Voir GECAMINES, SICOMINES et BCPSC
	98	Avenant n°4 à la Convention de collaboration entre la RDC et le Groupement d'entreprises chinoises relative au développement d'un projet minier et d'un projet d'infrastructures en RDC du 22 avril 2008, signé le 26 juillet 2017	26-juil.-17	https://www.mines-rdc.cd/ressourcescontrats/contrats/ords/591_415/0/413/6/090/view#/pdf
	99	Protocole d'Accord du 12/03/2010 relatif à la Construction de la Centrale Hydroélectrique de Busanga, à Kolwezi/ Lualaba	2-juil.-05	https://www.mines-rdc.cd/ressourcescontrats/contrats/ords/591_415/0/413/6/090/view#/pdf
	100	Accord de Joint-Venture du 04/07/2016 relatif à la Construction et à l'Exploitation d'une Centrale Hydroélectrique à Busanga	4-juil.-16	https://www.mines-rdc.cd/ressourcescontrats/contrats/ords/591_415/0/413/6/090/view#/pdf

29 EITI Côte d'Ivoire, Registre Blocs Pétroliers...Aout 2022_DGH, www.cn-ite.ci/?page_id=1722,
30 EITI DRC, Tableau_Suivi Publication des Contrats, https://docs.google.com/spreadsheets/d/1mqpho_ho2pVx4Lk1f1q7opX9zR6KFET/edit#gid=1208497244.

List highlights documents that are not public (e.g. Senegal)³¹

Code	Nom du Permis	Parties	Type	Substance	Publié (Oui/Non)	Réf. Contrat initial/ Arrêté	Lien Publication	Statut	Région	Date de Demande	Date d'Octroi	Date de fin	Superficie (Km ²)
A013833	Namel	Spotlight Global-SARL	PR	phosphate de chaux	Non			actif	Kedougu	28/01/2015	15/07/2015	14/07/2021	658.7888
A007433	kolda	Damash Minerals LTD (100%)	PR	phosphate de chaux	Oui	Convention minière pour Phosphates et les substances connexes passée en application de la loi n°2003-36 du 24 novembre 2003 portant Code minier entre la République du Sénégal et Damash Minerals LTD	http://itie.sn/contrats-miniers/	actif	Kolda	25/06/2011	15/07/2011	16/07/2020	1770.1454
A12951	Nabadji	Nabadji Minerals (100%)	PR	phosphate de chaux	Non			actif	Matam	18/08/2014	24/06/2015	22/06/2021	1256.1114
A011842	DIAMBA NORD	BOYA SA	PR	Au et Cu	Non			actif	Tambacounda	24/12/2014	10/06/2015	09/06/2021	242.0052
A011843	Diamba Sud	BOYA.SA	PR	Au	Non			actif	Kedougu	17/12/2014	10/07/2015	09/06/2021	71.4420

31 EITI Senegal, Plan de publication contrats miniers, <https://itie.sn/contrats-miniers/>.

Annexe 11 : Contrats pétroliers en cours de validité au 31 décembre 2020

Permis	Textes attributifs	Contrat de Partage de Production		Observation	Lien de publication
		Date de signature	Date d'approbation		
Marine III	Décret n° 2005-294 du 18/07/ 2005	20/12/2005	Loi n° 10-2006 du 30/03/2006	Signé entre la RC et NEW AGE	https://www.finances.gouv.cg/
Kayo	Décret n° 2006 -173 du 14/04/ 2006	25/06/2007	Loi n° 07-2008 du 07/04/2008	Signé entre la RC et Wing Wah	https://www.finances.gouv.cg/
Ngoki	Décret n° 2006-427 du 31/07/ 2006	22/05/2006	Loi n° 29-06 du 05/10/2006	Signé entre la RC et PEPA	https://www.finances.gouv.cg/
Marine XIII	Décret n° 2008-54 du 28/03/ 2008	21/11/2007	Loi n° 33 -2008 du 12/11/2008	Signé entre la RC et PHILIA	https://www.finances.gouv.cg/
Haute Mer A	Décret n° 2009-228 du 30/07/2009	04/12/2008	Loi n° 03-2009 du 22/09/2009	Signé entre la RC et CNOOC	https://www.finances.gouv.cg/
Mopongo	Décret n° 2013-378 du 19/07/ 2013	23/05/2014		Signé entre la RC et DIG OIL. En cours d'approbation	https://www.finances.gouv.cg/
Ngolo	Décret n° 2013-379 du 19/07/ 2013	15/06/2015		Signé entre la RC et ENI CONGO. En cours d'approbation	https://www.finances.gouv.cg/
Mokélémbémbé	Dn° 2015 -93 13/01/2015	17/07/2019	Loi n° 48-2019 du 31/12/2019	Signé entre la RC et TEPC	https://www.finances.gouv.cg/
Marine VI Bis	Dn° 2015-409 du 22/04/2015	15/06/2015	Loi n° 6-2017 du 24/02/2017	Signé entre la RC et ENI CONGO	https://www.finances.gouv.cg/
Marine XXVII	Décret n° 2018-486 du 26 /12/2018	23/06/2019	Loi n° 50-2019 du 31/12/2019	Signé entre la RC et PERENCO	https://www.finances.gouv.cg/
Marine XXVIII	Décret n° 2018-487 du 26 /12/2018	23/06/2019	Loi n° 51-2019 du 31/12/2019	Signé entre la RC et PERENCO	https://www.finances.gouv.cg/
Marine XX	Décret n° 2019-356 du 30/11/2019	17/07/2019	Loi n° 45-2019 du 31/12/2019	Signé entre la RC et TEPC	https://www.finances.gouv.cg/
Nanga I	Décret n° 2019-356 du 30/11/2019	17/07/2019	Loi n° 47-2019 du 31/12/2019	Signé entre la RC et TEPC	https://www.finances.gouv.cg/
Eneraude II	Décret n° 2019-353 du 30/11/2019	09/04/2020	Loi n° 16-2020 du 28/04/2020	Signé entre la RC et CONGOREP	https://www.finances.gouv.cg/
Tchibouela II	Décret n° 2017-38 du 25 mars 2017	14/07/2015	loi n° 21-2017 du 24/05/2017	Signé entre la RC et PERENCO	https://www.finances.gouv.cg/
Tchibeli Litabzi II	Décret n° 2017 - 39 du 25 mars 2017	14/07/2015		Signé entre la RC et PERENCO	https://www.finances.gouv.cg/
Tchendo II	Décret n° 2017-37 du 25 mars 2017	14/05/2015	loi n° 23-2017 du 24/05/2017	Signé entre la RC et PERENCO	https://www.finances.gouv.cg/
Nsoko II	Décret n° 2019 - 354 du 30/11/2019	17/07/2019	loi n° 46-2019 du 31/12/2019	Signé entre la RC et TEPC	https://www.finances.gouv.cg/
Zatchi II	Décret n° 2014-187 du 30 avril 2014	30/01/2014	loi n° 27-2014 du 13/06/2014	Signé entre la RC et ENI CONGO	https://www.finances.gouv.cg/
Louango II	Décret n° 2014-186 du 30 avril 2014	30/01/2014	loi n° 23-2014 du 13/06/2014	Signé entre la RC et ENI CONGO	https://www.finances.gouv.cg/

32 TIE Congo (2022), Rapport 2020, p.238, <https://eti.org/sites/default/files/2022-07/Republic%20of%20the%20Congo%202020%20EITI%20Report.pdf>

3. Annexes, amendments and additional documents are not regularly disclosed

The requirements of the EITI Standard are clear that, first, any contract amended after 1 January 2021 must be disclosed and, second, the full text of any annex, addendum or rider must also be disclosed. However, most current contract disclosure practice in EITI-implementing countries is focused only on the main contract document. Amendments and annexes are not published with any kind of regularity. This is problematic because limiting disclosure to the main contract document means that stakeholders cannot access the full or updated set of terms that apply. This can lead to misunderstanding of contract terms and misalignment of expectations.

- **Amendments.** In line with EITI Board Decision 2020-69, when a contract is amended after 2021, both the amendment and the original contract that is amended must be disclosed in full.³³ In our survey, only Albania, Chad, Côte d'Ivoire, Ecuador, Ghana, Guinea, Mexico, the Philippines, Republic of the Congo, São Tomé and Príncipe, and Timor-Leste included disclosure of contracts amended after 1 January 2021 in their EITI reporting.
- **Annexes.** There is no clarity in most EITI countries about what is considered an annex. Some countries such as the DRC, Mexico and Mongolia publish annexes expansively, while most others limit their disclosures to the main contract document and the annexes attached to the contract document. Yet the language of the EITI requirement is clear that disclosure applies to any annex, addendum or rider "which establishes details relevant to the exploitation rights described," necessitating a fairly broad universe of relevant additional

documents.³⁴ The requirement is potentially even broader than it might first appear. Documents that may fall under this definition include fiscal term elaborations and clarifications; project workplans and budgets; feasibility studies and development plans; measurement and valuation procedures and sale price terms; transportation, processing and infrastructure agreements; local content, procurement, employment and training plans; community development and economic benefit agreements; and environmental, social and health impact assessments and mitigation plans.³⁵ Most countries come nowhere near this level of disclosure. Recognizing these challenges, the 2023 EITI Standard includes a new provision requiring MSGs to agree and document what should be considered an annex, reflecting on the documents that may establish details relevant to exploitation rights.

Additionally, under the 2019 EITI Standard, countries have been required to develop reporting regimes for rules based in contracts that relate to infrastructure and barter agreements (requirement 4.3), social and environmental spending (requirement 6.1) and sales of the state's share of production (requirement 4.2). These provisions imply that MSGs need to access the contracts underlying these issues to develop appropriate reporting architecture. Nevertheless, our analysis suggests that while many countries have disclosed material payments relating to these flows, very few have published the related contract documents.

Importantly, the upcoming 2023 EITI Standard, due for formal adoption on 12 June, is likely to be more specific about disclosure requirements for these documents. In particular, the new

³³ EITI, The Board agreed clarifications to Requirement 2.4, Board decision 2020-69, 11 Sep 2020, <https://eiti.org/board-decision/2020-69>

³⁴ EITI, Contract transparency: Guidance note 7—Requirement 2.4, Aug. 2017, https://eiti.org/sites/default/files/attachments/ic_paper_17-3_updated_guidance_note_on_contract_transparency.docx.

³⁵ D. Hubert (2022), Disclosing Exploitation Terms under R 2.4: Identifying Agreements, Rulings, Plans and Assessments, not yet published, pp. 8-10.

Standard will encourage publication of infrastructure and barter agreements, require countries to publish contracts for material social and environmental payments, and require countries to publish any environmental, gender and social impact assessments they have conducted. Some countries are leading the way in disclosing these documents. Mexico, for example, discloses some environmental and social impact assessments.³⁶ The DRC publishes some contractual documents related to resource-backed loans,³⁷ and Mongolia publishes some community development agreements.³⁸

4. Laws are helpful but insufficient for ensuring contract disclosure

Among EITI-implementing countries, 22 have laws requiring disclosure in both their mining and their oil and gas sectors; four have laws requiring disclosure in only their mining sector; and seven have laws in just their oil and gas sector (Figure 4).

Some countries may have laws in one sector and not the other because one sector is more prominent in the country while the other is smaller or non-existent. For example, Burkina Faso is rich in gold, zinc, copper, manganese, phosphate and limestone, but does not have a significant oil and gas sector, and thus has only a mining law. Countries may also only have a law requiring contract disclosure in only one sector because the law for that sector has been revised more recently than the law for the other sector. For example, Nigeria's current oil and gas law was passed in 2021 and includes a contract disclosure provision, but its mining law was last updated in 2007 and does not.

36 Mexico: see e.g. <https://rondasmexico.gob.mx/esp/contratos/cnh-r01-l01-a72015/?tab=13>.

37 DRC: see e.g. <https://congomin.es.org/>, <https://www.resourcecontracts.org/contract/ocds-591adf-3702571764/view#/pdf>.

38 Mongolia: see e.g. <http://www.resourcecontracts.mn/>.

Figure 4. Countries with laws requiring contract disclosure, color coded by disclosure practice³⁹

MINING SECTOR LAW	LAWS IN BOTH SECTORS	OIL AND GAS SECTOR LAW	NO LAW
Albania	Afghanistan	Ghana	Angola
Armenia	Cameroon	Guatemala	Argentina
Burkina Faso	Central African Republic	Honduras	Côte d'Ivoire
Sierra Leone	Chad	Nigeria	Ethiopia
	Colombia	Republic of the Congo	Gabon
	Democratic Republic of the Congo	São Tomé and Príncipe	Guyana
	Dominican Republic	Timor-Leste	Indonesia
	Ecuador		Iraq
	Germany		Madagascar
	Guinea		Mali
	Kazakhstan		Mauritania
	Kyrgyz Republic		Mongolia
	Liberia		Myanmar
	Malawi		Netherlands
	Mexico		Norway
	Mozambique		Papua New Guinea
	Niger		Peru
	Philippines		Seychelles
	Senegal		Suriname
	Tanzania		Tajikistan
	Togo		Trinidad and Tobago
	Ukraine		Uganda
			United Kingdom
			Zambia

- Disclosure in both sectors
- Disclosing well in one sector, partially in the other
- Disclosing well in one sector, no disclosure in the other
- Disclosing partially in at least one sector
- No disclosure

Having a law in place does not guarantee contract disclosure. In those 32 countries with laws in place in at least one sector, only nine countries currently disclose well in both sectors.

Moreover, there are four countries—the Central African Republic, Kazakhstan, Nigeria and Tanzania—with laws requiring contract disclosure that do not disclose at all (Box 2).

³⁹ Color coding in Figure 4 corresponds to that used in Figure 2.

Box 2. Laws in Central African Republic, Kazakhstan, Nigeria and Tanzania have not yielded contract disclosure

The Central African Republic, Nigeria, Kazakhstan and Tanzania are the four EITI-implementing countries with contract disclosure laws in place that do not disclose their extractive sector contracts. To this: The Central African Republic, Nigeria, Kazakhstan and Tanzania are the four EITI-implementing countries with contract disclosure laws in place that do not disclose their extractive sector contracts.

In the Central African Republic, Article 49 of the 2015 Constitution states: “the Government has the obligation to obtain the authorization of the National Assembly before the signing of any contract relating to natural resources. It is required to publish the said contract within eight (8) clear days of its signature.”

Kazakhstan’s 2017 Code on Subsoil and Subsoil Use states: “Article 77.1. The state body granting the subsoil use right ensures the open access to information on the subsoil use rights granted. Article 77.1.2. Information on the subsoil use right with due regard to the type of subsoil operations, shall contain the following information: ... content of the issued subsoil use licence and the concluded contract for subsoil use”.

Nigeria’s 2021 Petroleum Industry Act states: “Section 83: (3) The text of any existing contract, license or lease and any amendment or side letter with NNPC shall—(a) not be confidential; (b) be published on the website of the Commission within one year after the effective date; and (c) be provided to the Commission by a contractor of NNPC, licensee or lessee within one year after the effective date.”

In Tanzania, Section 16.(1) of the 2015 Tanzania Extractive Industries Transparency Act states: “In order to ensure transparency and accountability in extractive industries, the Committee shall cause the minister to publish—(a) on the website or through a medium that is widely accessible all concessions, contracts and licenses relating to extractive sector companies” (unofficial translation).

Nevertheless, not having a law in place appears to make countries less likely to disclose.

With the exception of Peru, which has no law requiring contract disclosure yet does disclose contracts well in both its oil and gas sector and its mining sector, countries without laws generally perform less well in disclosing their contracts.

It is not necessary to have a law in place to instigate disclosure. Beyond Peru, our study found that Albania, Armenia, the Republic of the Congo and Sierra Leone all performed well on disclosing contracts in both the oil and gas sector and the mining sector, although these countries have laws that compel contract disclosure in only one sector. Indeed, a country’s membership of the EITI should be sufficient to compel disclosure. Having a contract disclosure law can be helpful to set expectations for the business community, to ensure comprehensive disclosure and to guard against backtracking on commitments to disclose. At the same time, passing national laws can be a lengthy and laborious process, and so establishing contract transparency in the legal framework should not become an additional and unnecessary hurdle to pass on the way to disclosure.

5. Most countries have not published future plans for disclosing contracts

The EITI 2019 Standard required EITI MSGs to publish a plan for disclosing contracts with a clear timeframe for implementation and addressing any barriers to comprehensive disclosure. However, among countries that are not fully disclosing, almost none have published a dedicated plan or made detailed efforts to work toward contract disclosure in the future. In the survey it was very difficult to find countries’ EITI workplans using a simple web search. Not all workplans appear to be published on national EITI sites. We ultimately found most countries’ workplans, but of the 57 EITI-implementing countries, only 22 workplans addressed contract

disclosure; and of these 22 countries, only Senegal had a standalone workplan to address contract disclosure.⁴⁰

Of the workplans we were able to review, many fell short in similar ways. The inclusion of contract disclosure was often merely nominal and included no discussion of barriers to disclosure, a timeline or any specifics on process. For example, Tanzania’s workplan merely says, “agree and publish a plan for disclosing contracts,” and mentions conducting government and company consultation meetings and a workshop on an open contracts registry as follow-on goals.⁴¹ Guyana’s plan is similar.⁴² A common problem was the absence of any plans to identify the scope of contracts that should be disclosed. In the United Kingdom, for example, the workplan item says that the MSG will work toward having the full text of contracts and licenses disclosed by the relevant government bodies or agencies, but it does not assess the scope of contracts that should be disclosed, or which government bodies or agencies are responsible for their disclosure, or set out a time frame and process for their disclosure.⁴³

Perhaps the most robust contract disclosure workplan we reviewed was from Senegal, published in 2020. At the beginning of the 51-page document is a table outlining the full scope and disclosure status of the country’s agreements and authorizations (see Figure 5). EITI Senegal has worked systematically on disclosure, and by the time of its 2021 EITI Report had managed to publicly disclose 250 out of 251 contracts in the official journal or on the EITI Senegal website.⁴⁴ When countries set time-bound goals and work to address barriers to publication, full contract disclosure is possible.

40 EITI Senegal, Plan de publication contrats pétroliers, <https://itie.sn/contrats-petroliers/>

41 EITI Tanzania, Workplan for FY 2020/21, Jul. 2020, https://eiti.org/sites/default/files/attachments/teiti_workplan_july_2020_to_june_2021.pdf, p. 2

42 EITI Guyana, 3rd Work Plan, January 2021–December 2022, <https://eiti.org/sites/default/files/attachments/gyeiti-workplan-2021-2022.pdf>, p. 5

43 EITI United Kingdom, Workplan 2022, <https://www.ukeiti.org/publication/uk-eiti-workplan-2022>.

44 EITI Senegal, Rapport ITIE 2021, <https://itie.sn/>, p. 161.

Figure 5. Extract from mining contract publication plan from EITI Senegal's 2020 workplan

Plan de Publication des contrats miniers

CONVENTIONS ET AUTORISATIONS		Publiées Oui	Non Publiées
PR	68	31	37
CM	20	6	14
PE	5	0	5
AEPM	16	5	11
AECPV	142	4	138
TOTAL CONVENTIONS ET AUTORISATIONS	251	46	205
Convention entre Etat du Sénégal et ICS Février 2007	1	Publiées Oui	Non Publiées
Accord de principe entre Etat Sénégal et Terangagold 2013	1		1
Accord de principe entre Etat Sénégal et TOSYALI 2018	1		1
Protocole Exploitation Massawa entre Etat Sénégal et Terangagold 2019	1		1
TOTAL AUTRES CONVENTIONS ET PROTOCOLES	3	0	3

Few EITI country workplans discuss barriers to contract disclosure or plans to address them. However, there are some exceptions. Indonesia's workplan mentions "current regulation" and "need to conduct test of public consequences" as challenges, but without elaboration or plans to address these issues.⁴⁵ Côte d'Ivoire cites "practical constraints" and "confidentiality clauses" as barriers, but similarly offers no way to address them.⁴⁶ Mexico's workplan states the need for the MSG to agree on a definition of what constitutes a contract.⁴⁷ Trinidad and Tobago's discussion of contract transparency is comparatively robust in that it defines the particular legal barriers to contract disclosure (see Box 3) and lays out plans to seek legal research to help convince stakeholders of the value of legislative change.⁴⁸

Box 3. Extract from Trinidad and Tobago's EITI plan for contract disclosure

"In order to foster a culture of transparency within the extractive sector legislative change is essential. Under the EITI Standard 2019 contract transparency changed from an encouraged practice, to a requirement where all implementing countries are required to publish contracts signed or amended after January 1st, 2021. In Trinidad and Tobago contracts, licenses and PSCs are confidential documents. A legal barrier exists within the Petroleum Act Chap. 62:01 section 35 and the Freedom of information Act Chap 22:02 section 31. The TTEITISC has recently advocated for new production sharing contracts to contain EITI clauses requiring companies to disclose their beneficial owners and revenue payments. Despite this step, the TTEITISC will seek additional legal research to help convince stakeholders on the value of legislative change."

Source: TTEITI's Workplan 2021-2023, p. 4.⁴⁹

45 EITI Indonesia, 2020 Draft Work Plan, <https://eiti.org/documents/draft-work-plan-indonesia-2020>

46 EITI Côte d'Ivoire, Plan d'Action 2022, <https://itie.sn/contrats-miniers/>

47 EITI Mexico, Plan de Trabajo 2021-2022 <https://eiti.org/documents/mexico-2021-2022-eiti-work-plan>

48 EITI Trinidad and Tobago, TTEITI's Workplan 2021-2023, https://eiti.org/sites/default/files/attachments/the_tteiti_workplan_2021-2023_.pdf, p. 5.

49 Ibid.

RECOMMENDATIONS

There are glaring gaps in the implementation of the EITI requirements on contract transparency. Roughly one third of EITI-implementing countries are yet to disclose contracts, while a further third are disclosing only partially. A final third includes countries that disclose well in at least one sector, but of these only half disclose well in both relevant sectors.

To address these challenges, we make the following priority recommendations:

1. The EITI Board and Secretariat should exercise continued oversight over contract transparency implementation.

The Board and Secretariat should request reviews of the implementation of contract transparency among implementing countries at least once per year. They should scrutinize which countries are meeting the Standard and which are not. Where countries are failing to meet contract transparency requirements, the Board and Secretariat should consider the barriers to disclosure, actions that countries are taking to address those barriers and whether or not the country is making adequate effort to implement the Standard.

- 2. Companies should support the efforts of countries that are disclosing well, while encouraging countries that are not meeting the EITI Standard to do more.** In line with the “Expectations for EITI supporting companies,”⁵⁰ companies should make a public statement in support of the publication of contracts in each country they work in. This can help ease policy makers’ concerns that contract transparency will deter investment. It also clarifies that the government is in the driving seat when it comes to developing and implementing a national contract transparency policy.

Also consistent with the *Expectations for EITI supporting companies*, companies should contribute to public disclosure in two important ways. First, they should publish a list of all the contracts including annexes and amendments they have agreed with the government in each of the countries where they work. Second, they should proactively publish contracts unless expressly prohibited by law and provide easily accessible links on their websites. This can help countries that are new to contract disclosure learn what disclosure involves and the benefits it brings.

⁵⁰ EITI (2022), *Expectations for EITI supporting companies*, <https://eti.org/documents/expectations-eiti-supporting-companies>.

3. EITI-Implementing countries should publish all active contracts they have signed with extractive industry companies, in line with both the requirements and the spirit of the EITI Standard. Countries should also consider adopting national laws to require contract disclosure, and countries with laws already in place should assess their implementation.

As a starting point, countries should undertake mapping to produce a list of all contract documents that the government has agreed. This should identify all amendments and annexes that establish details relevant to the exploitation rights, including amendments to those annexes. Countries should make their list of contracts public and in such lists detail the date to which the list is current, information on when and how the list is updated, and details of which contracts are public and which are not, including links for all public documents.

Countries should use their public list of contracts as the basis for disclosure plans, tracking progress against these plans and assuring stakeholders that all relevant documents are public. Once they have begun to disclose, countries should make contracts easy to browse, find, search and use. As encouraged by the EITI, countries should disclose

contracts signed before 2021 as well as from 2021 onwards, understanding that extractive projects are long term and exhaust non-renewable resources, and that most current production is governed by contracts signed many years ago.

Countries should also consider adopting national laws to enshrine contract disclosure as national practice. While these laws should protect contract disclosure and make it automatic, countries should not wait to pass laws to begin complying with their EITI commitments and disclosing their contracts. Where laws already exist, countries should assess their progress in implementing contract disclosure and quickly remedy any implementation gaps.

4. EITI coordinators and multi-stakeholder groups should support contract disclosure and analysis.

As part of their dissemination and public engagement activities, national EITI processes should promote understanding of the extent to which contracts are public and how they can be used to answer important public policy questions. This could include campaigns to alert the public when a new contract is disclosed, and public forums to help citizens understand contracts and their rights contained within them.

Annex. Overview of 2019 EITI Standard provisions on contract transparency and relevant research considerations⁵¹

PLANS TO ADDRESS CONTRACT DISCLOSURE

What the EITI 2019 Standard says:

- The EITI multi-stakeholder group is expected to agree and publish a plan for disclosing contracts with a clear time frame for implementation addressing any barriers to comprehensive disclosure. (EITI Requirement 2.4(b), emphasis added)
- The multi-stakeholder group is required to maintain a current work plan ... The work plan must ... [o]utline plans for disclosing contracts in accordance with Requirement 2.4(b). (EITI Requirement 1.5(c), emphasis added)

Note that, now that contract transparency is an established EITI requirement, neither of these provisions on workplans have been carried over into the 2023 EITI Standard. However, any implementing countries failing to meet these EITI requirements on contract transparency will be required to devise detailed plans to meet corrective actions outlined as a result of the EITI validation process.⁵²

What we considered:

- Was a contract disclosure workplan available on the national EITI website? Were plans for disclosing contracts included in the MSG's current workplan?
- Did the workplan have a clearly stated objective for contract disclosure? Did the objective outline a path to full disclosure of contracts or did it only seek to meet the minimum requirements of the EITI?
- Did the workplan outline a clear time frame for implementation, addressing any barriers to comprehensive disclosure?

DESCRIPTION OF CONTRACT DISCLOSURE POLICY

What the EITI 2019 Standard says:

- It is a requirement to document the government's policy on disclosure of contracts and licenses ... This should include:
 - * A description of whether legislation or government policy addresses the issue of disclosure of contracts and licenses ... [and] [a]ny reforms relevant to the disclosure of contracts and licenses planned or underway.
 - * Where disclosure practice deviates from legislative or government policy ... an explanation for the deviation. (EITI Requirement 2.4(c), emphasis added)

What we considered:

- Did the EITI report include a description of whether legislation or government policy addresses contract disclosure?
- Did the EITI report include explanations for deviations where disclosure practice deviates from legislation or government policy?

⁵¹ See footnote 10 for an overview of the EITI terms "required," "expected" and "encouraged."

⁵² EITI, Validation, <https://eiti.org/validation>.

DOCUMENTATION OF THE UNIVERSE OF CONTRACTS

What the EITI 2019 Standard says:

- Implementing countries should provide a list of all active contracts and licenses, indicating which are publicly available and which are not. For all published contracts and licenses, [the implementing country] should include a reference or link to the location where the contract or license is published. If a contract or license is not published, the legal or practical barriers should be documented and explained. (EITI Requirement 2.4(c)ii)

What we considered:

- Does the implementing country provide a list of all active contracts and licenses? Does this list detail annexes and amendments?
- Does the list indicate which documents are publicly available and which are not?
 - * Does it provide links to public documents?
 - * For documents that are not public, does the list document the legal or practical barriers preventing disclosure?

DISCLOSURE OF CONTRACTS IN PRACTICE⁵³

What the EITI 2019 Standard says:

- Implementing countries are required to disclose any contracts and licenses that are granted, entered into or amended from 1 January 2021.
- Implementing countries are encouraged to publicly disclose any contracts and licenses that provide the terms attached to the exploitation of oil, gas and minerals.
- The term 'contract' in 2.4(a) means: i. The full text of any contract, concession, production-sharing agreement or other agreement granted by, or entered into by, the government which provides the terms attached to the exploitation of oil, gas and mineral resources. ii. The full text of any annex, addendum or rider which establishes details relevant to the exploitation rights described ... iii. The full text of any alteration or amendment to the documents described. (EITI Requirement 2.4(a),(d), emphasis added)

What we considered:

- Has the implementing country disclosed all contracts and licenses granted, entered into or amended from 1 January 2021?⁵⁴ Are annexes and amendments included in these disclosures?
- Has the government disclosed all contracts and licenses granted, entered into or amended prior to 1 January 2021? Are annexes and amendments included in these disclosures?
- Does the implementing country publish other types of agreements including infrastructure and barter agreements, social and environmental agreements or sales agreements for the state's share of production?

⁵³ For the purposes of this study, we have classified a document as disclosed only if it was freely available to access/download on an official website at the time of the research. Request-based disclosure systems did not meet our bar for disclosure given the barriers this presents most users who seek to find, browse, search and ultimately use contract data.

⁵⁴ To determine whether all active contracts and licenses are public, we relied on explicit assessments made in EITI reports, lists of active contracts where these were available, and our understanding of the number of active projects in the country.

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