

Debate EITI: Contract transparency in Latin America and the Caribbean

Concept note

Wednesday 9 November 2022

Time (2 hours)

16:00-17:30 Central European Time

10:00-11:30 Eastern Time (USA, Dominican Republic, Trinidad and Tobago)

9:00-10:30 Mexico City

Virtual

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Summary

Contract transparency is an essential element of EITI implementation. Contracts describe the terms and conditions of natural resource exploitation. Contract transparency helps the public understand whether citizens and countries are getting a good deal for the exploitation of their own natural resources. It also allows governments and civil society to forecast the revenue flows and the responsibilities that companies have with their communities.

Contract transparency has been advancing in Latin America, although unevenly and several challenges remain. A recent report commissioned by the International Secretariat with support from USAID analysed the challenges and opportunities to implement contract transparency for the 11 EITI implementing countries of the Latin American and Caribbean region.

The report found that:

- The full text of contracts and licenses are not available in 8 of the 11 countries and in many cases, there are considerable barriers to disclosure.
- There is limited advocacy for contract transparency from government and the private sector, while civil society advocacy focuses on public procurement.
- Legal barriers are the most significant hurdles to making progress on contract transparency. These barriers are typically in the form of confidentiality clauses which are wide in scope and prohibit the disclosure of information.

However, the region includes remarkable examples of contract transparency. The experience of Mexico's National Hydrocarbon Commission and the information disclosed on its website, the availability of every contract in Dominican Republic, and the efforts in Colombia in the hydrocarbon sector and in Peru in the mining sector are worth highlighting. However, disparities within countries persist. The mining sector in Mexico and Colombia are still lagging far behind in terms of contract transparency. Moreover, countries like Trinidad and Tobago do not allow for any contract to be publicly available.

In order to raise awareness of the challenges ahead, share successful experiences and point out to challenges ahead regarding Contract Transparency in Latin America and the Caribbean, Debates EITI will bring together speakers from the government, industry and civil society constituencies to speak broadly to the following questions:

1. What was the process to advance contract transparency in the region? What are the lessons learnt and the examples the region should follow?
2. What are the challenges that hinder contract transparency and what can we do to tackle them?
3. How do companies face contract transparency challenges? Can there be proactive and voluntary disclosure in countries where the law does not allow public disclosure of information?
4. How can multi-stakeholder dialogue at the subnational level and access to data empower local communities to hold both governments and companies accountable?
5. With the energy transition in mind, what information related to social and environmental regulation and compliance is key to ensure that resource extraction is sustainable? How can contract transparency contribute to a just transition?

Background

Contract transparency levels the field for the extractive activities in one country. It helps companies learn if the conditions are the same for all participants in a bidding round, if all are paying the same percentage of royalties and taxes, and if the licensing processes have been done in accordance with the law. Moreover, contract transparency is the basis for further transparency (for instance, beneficial ownership transparency) that facilitates due diligence practices that companies need to follow.

Contract transparency is a very strong tool for anticorruption efforts. It brings light into the nature of each negotiation that has been carried out in the exploitation of natural resources, it allows multistakeholder groups to assess whether the conditions that are set in the law are observed, it

highlights corruption risks, and opens the possibility for MSGs to provide ideas and best practices to tackle these risks.

The provisions of Requirement 2.4 of the EITI Standard include the publication of the full text of contracts and licenses that came into force after 1 January 2021 and their amendments. Having a contract transparency plan in place, listing all contracts and licenses in force, disclosing the policy and legislative framework, and documenting any deviations from the disclosure policy are all elements that strengthen business conditions, transparency and accountability.

However, in Latin America and the Caribbean, confidentiality clauses in contracts and legislations are the main barriers to contract disclosure. A recent study of contract transparency in the LAC region shows there is a major opportunity in increasing advocacy to contract transparency from all actors involved in EITI implementation in the region.

Legal framework and provisions also play a role in LAC when it comes to contract transparency, and countries like Mexico and the Dominican Republic are good examples of having a legal framework that enables the right to information and thus disclosure of contracts. Legal reforms to advance contract disclosures would highly benefit and contribute to enhancing transparency in countries that do not have freedom of information laws.

Table 1: Summary of legal frameworks that support and obstruct contract transparency

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

Source: "Contract transparency in Latin America and the Caribbean Identifying obstacles and opportunities for EITI implementation". Michael Barron Ltd., Engaged Ltd. 2022. Commissioned by EITI with support from USAID.

Speakers

1. **Juan Carlos Zepeda**, Mexico – Energy Director. Mexico Infrastructure Partners. Former Commissioner President, National Hydrocarbon Commission. Mexico.
2. **Ruth Hidalgo**. Director. Participación Ciudadana. Ecuador

3. **Miguel Díaz.** Viceminister of Mining. Dominican Republic.
4. **Melanie Richards.** Independent Consultant. Trinidad and Tobago

Moderator:

Jennifer Lewis. Deputy Director. Anti-corruption Task Force. USAID.

Format and capacity

The session will be a panel discussion with discussion guides provided by the moderator.

- 5': Welcome by the EITI International Secretariat.
- 5' Introduction by the moderator.
- Max. 25': Each panellist will have five minutes to address two or three specific questions agreed in advance with the moderator, "Davos-panel" style.
- Max. 25': The moderator will then follow up with questions to each panelist on their previous presentation and focus on challenges and solutions.
- Max 20': The discussion will then be open for questions from the audience. These questions will be gathered by the International Secretariat through a chat, and then shared with the commentator.

Interpretation in English, and Spanish will be provided. The debate will be over Zoom webinar platform.