

## Contract Transparency - Highlights of Global Norm Advances

By Oxfam, as of 12 February 2020

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|    | <ul style="list-style-type: none"> <li>• 2005 - IMF endorsed contract disclosure for oil, gas and mining projects as best practice for governments in its Guide for Resource Revenue Transparency.</li> <li>• 2007 – Codified in 2007 IMF Code of Good Practices on Fiscal Transparency</li> <li>• 2019 – <b>IMF Fiscal Transparency Code updated to state that contract disclosure is a global norm</b>, added into formal evaluations on client country performance.</li> </ul>  |
|    | <p><u>UN Principles for Responsible Contracts (2015):</u><br/> <i>“Principle 10: The contract’s terms should be disclosed, and the scope and duration of exceptions to such disclosure should be based on compelling justifications.”</i><br/> <b><i>“Disclosure of the contract also promotes accountability of both parties to implement the promises agreed in the contract and notifies third parties of the rights and obligations of the parties to the contract.”</i></b><br/> <i>“The contract delineates responsibility for making the contract terms accessible. The contract requires publication in an accessible manner, taking into account possible barriers to access such as linguistic, technological, financial, administrative, legal or other practical constraints.”</i></p>   |
|    | <p><i>“Contract transparency should be simply treated as a normal aspect of doing business.”</i><br/> <i>“Transparency in the sector is enhanced by publishing government contracts, revenues and the names of owners associated with the country’s oil and gas reserves.”</i></p>   |
|  | <p><i>Guiding Principles for Durable Extractives Contracts:</i><br/> <b><i>“Recognising the benefits of transparency and reporting in the extractives sector, the parties should anticipate during the negotiation process the public disclosure of their future signed contracts in accordance with international good practice, with due regard taken to both protecting proprietary or commercially sensitive information and the public interest in transparency. Agreeing to publish contracts adds an important dimension of ex post accountability to negotiation processes. This means that the parties are likely to negotiate and draft in a manner to ensure that terms are able to withstand public and commercial scrutiny.”</i></b></p> <p><i>“..Countries should be encouraged to publicly disclose contracts and licenses. Such disclosures can promote more effective management of countries’ extractive resources by enabling stakeholders to monitor all relevant actors and ensure that they act responsibly during the implementation of the project.”</i></p> |
|  | <p>In 2012, the World Bank Group’s International Finance Corporation (IFC) established mandatory contract disclosure as a requirement for oil, gas and mining projects it finances.</p>  |
|  | <p>In 2013, the European Bank for Reconstruction and Development (EBRD) included a requirement for contract publication for upstream hydrocarbon projects that receive financing from the bank as part of its Energy Strategy.</p>   |

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|    | <p><i>“MIGA will encourage governments and corporations to make extractive industry contracts public, and commencing two years from the date of its Board approval of this policy MIGA will require, in the case of extractive industries projects it guarantees, that the principal contract with government that sets out the key terms and conditions under which a resource will be exploited, and any significant amendments to that contract, be made public.”</i></p>  |
|    | <p><i>“Although it’s not a condition of ICMM membership, <b>the majority of our members are willing to make public the general terms of their contracts in any specific country, assuming that proper protection for competitively-sensitive information is in place. This is a good practice that we support.</b>”</i></p> <p><i>To best support contract transparency, ICMM expects its members to support the Extractive Industries Transparency Initiative (EITI), a global standard that promotes open and accountable management of natural resources. Each country that implements the standard is expected to publish its policy on the disclosure of contracts and licences that govern the exploration and exploitation of oil, gas and minerals. It also encourages implementing countries to disclose contracts and licences (although this is not yet a mandatory requirement for EITI membership).”</i></p> |
|    | <p><i>“Transparency in the sector is enhanced by publishing government contracts, revenues and the names of owners associated with the country’s oil and gas reserves.”</i></p>   |
|    | <p><i>“Ideally, tax exemptions and reliefs should be specified by law and <b>generally available to all market participants. Where there are exceptions, we will work with relevant authorities to encourage publication of those incentives and contracts.</b>”</i></p>  |
|  | <ul style="list-style-type: none"> <li>● World Bank Extractive Industries Source Book states that good practice requires host-state governments to <i>“be responsible for the publication and widespread, easily accessible dissemination of contract terms and credible data on EI revenues received and related allocation and expenditures”</i>.</li> <li>● World Bank has integrated contract disclosure performance into governance assessments of some resource-rich countries through the Mining Investment and Governance Review (MInGov).</li> <li>● World Bank co-manages ResourceContracts.org, the oil and mining contract repository, and participates in the Open Contracting Partnership.</li> </ul>   |
|  | <p>In 2011, the International Bar Association Model Mining Agreement Project produced a public model mining agreement that includes a section entitled ‘<i>This Contract is a Public Document</i>’, designed to provide negotiators and drafters of mineral investment contracts with a comprehensive reference to inform future negotiations.</p>  |
|  | <p><i>“The material terms for mineral exploration, development and production agreed between the operating company and government entities shall be freely and publicly accessible, with the exception of confidential business information in the national language(s) of the country in which the mining project is located.”</i></p>   |
|  | <p>The Natural Resource Charter is used to benchmark government performance. The 2014 revision to the charter added that <i>‘the government should disclose information on allocation procedures; the contracts awarded, including fiscal and tax terms; the beneficial ownership of all license holders; the agreed work program; and financial commitments and any fiscal terms particular to the license’</i>.</p>   |