# Contract Transparency : Who, What, How, When?



# Contracts: what are we talking about?



Hierarchy of legal instruments governing the relationship between investors and governments



## **Contracts : Role and features**

Means of enactment	<b>Signed by parties</b> , may be subject to parliamentary ratification or other approval formality.	
Scope	More specific than laws, can go to detailed level of regulations (quasi-legislative role!)	
Key elements	<ul> <li>Key rights and obligations of parties (e.g. payments, work programs, etc.)</li> <li>Interaction with rest of legal regime is critical (particularly divergences and stabilization if any)</li> <li>Confidentiality (exceptions and scope) if any</li> </ul>	
Modified by	<ul> <li>Agreement between parties to amend</li> <li>Substance may be modified through changes in law (but stabilization clauses)</li> </ul>	
When are they used	<ul><li>To complement legal framework</li><li>To supersede legal framework</li></ul>	

"As far as possible, terms should be written into legislation that can be more clearly scrutinized; any remaining concessions which depart from standard legislated terms should be submitted to and approved by the legislature. " (NRC)



**Contract transparency ought to mitigate the challenges caused by the use of contracts!** 

## Benefits of contract transparency



"Arguments" against contract transparency

- 1. Contracts contain commercially sensitive information
- 2. Contract confidentiality clauses do not permit disclosure
- 3. Transparency will scare off investors
- 4. Contracts are too complex for the public to understand
- 5. Contract transparency exposes companies and governments to criticism

## Myth 1: Commercially Sensitive Information

Specific terms	Likely to cause competitive harm if disclosed	In a primary contract?
References to future transactions	Yes	Unlikely
Trade secrets	Yes	Unlikely
Work obligations	Unlikely	Likely
Local Content	Unlikely	Likely
Employment and training	Unlikely	Likely
Financial terms of the deal (terms and payment rates)	Unlikely	Almost always
Parties to the contract	Unlikely	Almost always

Source: NRGI, Contracts Confidential, 2009

Myth 2: Despite the confidentiality clause..

Usual exceptions to confidentiality clauses:

- 1. Information already in the public domain
- 2. Information that a party has to divulge by virtue of applicable laws
- 3. Mutual agreement of the parties

# Myth 3: Transparency will scare off investors



## Myth 4: Contracts are too complex for the public to understand



Myth 5: Contract transparency exposes govts and companies to criticism

- Contracts that are subject to criticism will be renegotiated when the political or the commodity cycle changes anyway
- If contract transparency is imposed at the outset, fear for criticism leads parties to draft better deals
- The publication of actually well drafted contracts dissipate mistrust

## Actors involved in contract transparency



## Government - led contract transparency - Status 2015

Governments disclosing all or nearly all contracts	Government disclosing some contracts
Afghanistan	Azerbaijan
Canada (Alberta)*	Bahrain
Guinea	Bolivia
Liberia	Democratic Republic of Congo
Mexico	Ecuador
Norway*	Ghana
Peru	Greece
Philippines	Iraq
United Kingdom*	Mali
United States (Gulf of Mexico)*	Mauritania
	Mongolia
	Mozambique
	Republic of Congo
	Sierra Leone
	Timor-Leste
	Venezuela
	Yemen

\* Denotes that the country uses a licensing regime

## Growing support from progressive companies

"We respect the wishes of our host governments, but take the position that should a government wish to make these agreements public, we would fully support them in doing so." —Tullow Oil "If you're a long-term investor, you want to build trust. I cannot see one reason why investment agreements are kept confidential. I think the commercially-sensitive thing is an anachronism."

-Chris Anderson

(then Corporate Affairs Director, Newmont Mining)

## Growing incorporation of contract transparency in International Standards



Encouraged as of 2013



Encouraged already as of 2005







## **General Assembly**

Encouraged as a means of protecting human rights in business operations



NATURAL RESOURCE CHARTER

Precept 2

## Result of this growing support:

<u>At least 1200 contracts and</u> <u>documents from 75 oil, gas</u> <u>and mining countries are out</u> <u>there in the open!</u>

## So where to find contracts?

- Online repositories
- Rc.org's national websites
- Ministry websites
- Official Gazette and Cadastre
- National EITI websites
- Company websites
- Stock Exchanges

## **Online Repositories** http://repository.openoil.net/

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OpenOil	Page Discussion		Read View source	Create account & Log View history	
SHUTTLEWORTH	Main Page				
Main page Recent changes	OpenOil repository: scope and purpose	The next s modeling	tage: public financial	OpenOil concession API	
ewnloads Engage Email notifications Help us improve	The ambition this website hopes to contribute to is: the world's oil contracts available at a click. Open data structures are key for that, and we propose a draft file naming convention, and define the scope of this initial	You don't know access to contra the numbers. To	what you've got til its modeled @? having acts is the first step. Then you need to run o improve governance, models should be o be accessible to a broader constituency -	OpenOil has published the first open API applied to oil extraction rights @ around the world, including 20,000 "blocks", "fields" and "concession areas" from some 70 countries and involving some 2,000 unique corporate structures @ as operators and contractors. We hope this	
Get Context EIA Country Briefs Resource Contracts	release. Please help us improve our service 댮과 and sign up 먒과 if you want to know when more contracts come in. See our press release for more.	of financial mode	open ৫ <sup>7</sup> . OpenOil will be launching a series els over the next months. We are looking nic modelers and in-country partners ৫ <sup>7</sup> .	Application Programming Interface is a significant step towards a formal, open data standard around extraction rights 많.	
OpenOil Projects Homepage Financial Modeling Corporate Mapping	Contracts A to Z (806 in 73 countries) Full-text search across an contracts Search			ap of the World contracts and concessions data in this repository on a single aran Africa and soon to cover the whole globe.	
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Angola

## Online Repositories www.resourcecontracts.org



## National contract sites: Guinea

http://www.contratsminiersguinee.org



#### **Conventions publiées**

Vous trouverez ici l'intégralité des conventions minières signées par la République de Guinée depuis son

#### Message d'accueil

« Soyez les bienvenus sur le site internet du Comité Technique de Revue des Titres et Conventions Miniers de la

## National contract sites: Philippines http:// contracts.ph-eiti.org/



## National contract sites: Sierra Leone http:// www.nma.gov.sl/resourcecontracts/

SIERRA LEONE RESOURCE CONTRACTS

A directory of

## Resource Contracts from Sierra Leone

Search 7 Contracts and Associated Documents

Search

## Ministry website

Ministry of Petroleum ENERGY FOR A BETTER GHANA	Search	Q
I HOME NEWS PUBLICATIONS THE MINISTRY		
DOWNLOADS		
<ul> <li>Petroleum Revenue Management Bill 2010</li> <li>Petroleum (Exploration and Production) Bill 2010</li> <li>National Energy Policy</li> <li>Draft Street Lighting Policy</li> <li>Local Content and Local Participation in Petroleum Activities</li> <li>Fundamental Petroleum Policy For Ghana</li> </ul>		
Petroleum Agreement among the Republic de Ghana Ghana National Petro		

### **Official Gazette**

# **GACETA OFICIAL** DE LA REPÚBLICA BOLIVARIANA DE VENEZUELA

ÑO CXXXVIII — MES I

Caracas, viernes 15 de octubre de 2010

Número 39.531

#### SUMARIO

#### Ministerio del Poder Popular para Relaciones Exteriores

Resolución mediante la cual se designa al ciudadano Jhony Fredy Balza Arismendi, como Embajador Extraordinario y Plenipotenciario de la República Bolivariana de Venezuela en la República de Malí. Providencia por la cual se constituye la Comisión de Contrataciones de este Fondo, integrada por los ciudadanos que en ella se indican.

Providencia por la cual se delega en el titular de la Gerencia de Proyectos para el Desarrollo Agrario de este Fondo, la atribución y firma de los actos y documentos que en ella se mencionan.

Deselución mediante la quel se dispone el coso en sus funciones

Ministorio del Poder Popular

## National EITIs



### **Company Websites**





As part of Tullow's commitment to transparency, we are publishing a copy of our Ghana Petroleum Agreements for both the Deep Water Tano Contract Area and the West Cape Three Points Contract Area; we also include a copy of the relevant Deeds of Assignment. The Petroleum Agreements are being published at the request of, and with the approval of, the Government of Ghana.

PETROLEUM AGREEMENTS DEEPWATER TANO CONTRACT AREA PA 쓰 WEST CAPE THREE POINTS CONTRACT AREA PA 쓰

DEEDS OF ASSIGNMENT

SHARE ON **f v** in **S** 

## Stock Exchanges: NY - SEC

State State				U.S. Securities and	Home   Latest Filings   Previous Pa	
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SEC Home »	Search the Next-Ge	eneration EDGAR System » Company Search » Current Page				
SIC: 1311 - CR State location: (Assistant Dire	CHAPARRAL RESOURCES INC       CIK#: 0000019252 (see all company filings)       Business Address       Mailing Address         SIC: 1311 - CRUDE PETROLEUM & NATURAL GAS       2 GANNETT DRIVE       2 GANNETT DRIVE         State location: NY   State of Inc.: DE   Fiscal Year End: 1231       WHITE PLAINS NY 10604       WHITE PLAINS NY 10604         (Assistant Director Office: 4)       2818777100       2818777100					
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Filings	Format	Description		Filing Date	File/Film Number	
UPLOAD	Documents	[Cover]SEC-generated letter Acc-no: 000000000-06-053041 Size: 6 KB		2006-10-31		
UPLOAD	Documents	[Cover]SEC-generated letter Acc-no: 000000000-06-053030 Size: 22 KB		2006-10-31		
SC 13E3/A	Documents	[Amend]Going private transaction by certain issuers Acc-no: 0000950129-06-008892 (34 Act) Size: 81 KB		2006-10-06	005-18426 061133027	
SC 13D/A	Documents	[Amend]General statement of acquisition of beneficial ownership Acc-no: 0000950129-06-008869 (34 Act) Size: 86 KB		2006-10-05	005-18426 061129934	
15-12G	Documents	Securities registration termination [Section 12(g)] Acc-no: 0000950129-06-008772 (34 Act) Size: 11 KB		2006-09-29	000-07261 061116008	
8-K	Documents	Current report, items 2.02, 5.03, and 9.01 Acc-no: 0000950129-06-008771 (34 Act) Size: 33 KB		2006-09-29	000-07261 061116004	
SC 13E3/A	Documents	[Amend]Going private transaction by certain issuers Acc-no: 0000950129-06-008538 (34 Act) Size: 80 KB		2006-09-19	005-18426 061097496	

### Stock Exchanges: SEDAR - Toronto



## Stock Exchanges: ASX - Australia



## What are the possible legal ways to implement contract transparency?

Legal Mode (ordered according to the hierarchy of legal instruments)		
Constitution	Niger (2010), Philippines (1987) (subject to Law), Mexico (2014)	
Hydrocarbon Law	Mauritania (2010), Republic of Congo (1994) – Mozambique (2014 –main clauses), Sierra Leone (2011), Timor Leste (2005), Sao Tome y Principe (2014)	
Mining Law	Mali (2012 for exploitation titles), Mozambique (2014)	
Transparency or EITI Law	Liberia (2013), Tanzania (2015)	
Ratification of contracts	Liberia (as per constitution), Azerbaidjan, Bolivia, Egypt, Georgia, Yemen, Kyrgyzstan	
Parliamentary Approval (associated with ad- hoc publication by Parliament)* Sierra Leone, Mongolia		
Under Law of Freedom of Information	Ecuador	
Minister Order*	Ghana (2011)	
Model Contracts		
Comprehensive contract review*	Guinea (2011), DRC (2008)	
Creation of the reguatory agency*	Sierra Leone (2013)	
Contractual clauses on a case by case	Mongolia (OT)	

\* Is or can be unilateral disclosures on the part of the government

## Law is not necessarily applied .. an actual process for disclosure is needed

