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













# Contracts: what are we talking about?

4-Contracts -> Licenses

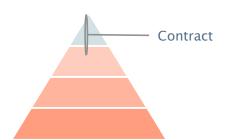
3 - Regulation/Rules/Model Contract -> Licenses

2- Laws

1- Constitution

International Law

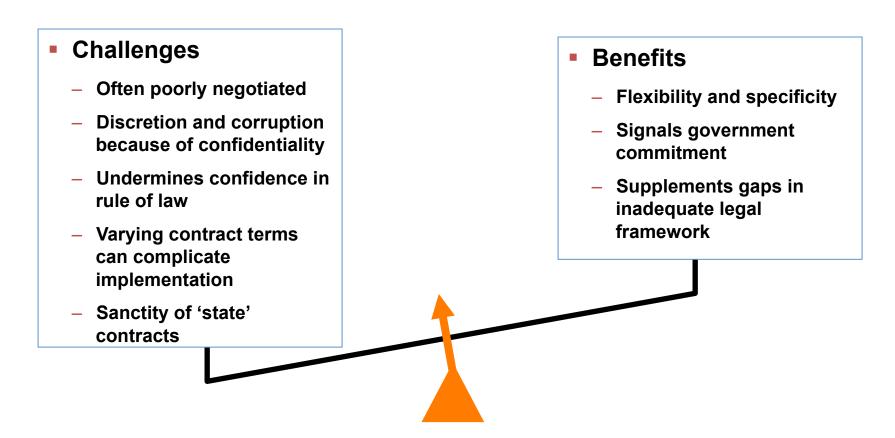
Hierarchy of legal instruments governing the relationship between investors and governments



### 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

Citizens

- Fundamental right to information
- Monitoring
- Reduced risk of corruption

Governments

- Public trust and support
- Reduces asymmetry of information
- Increases capacity to negotiate, monitor, enforce, coordinate
- Improved reputation, credit risk, tax outcomes

Companies

- Helps save social license to operate
- More stable contracts
- Reduced risk of corruption

# "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



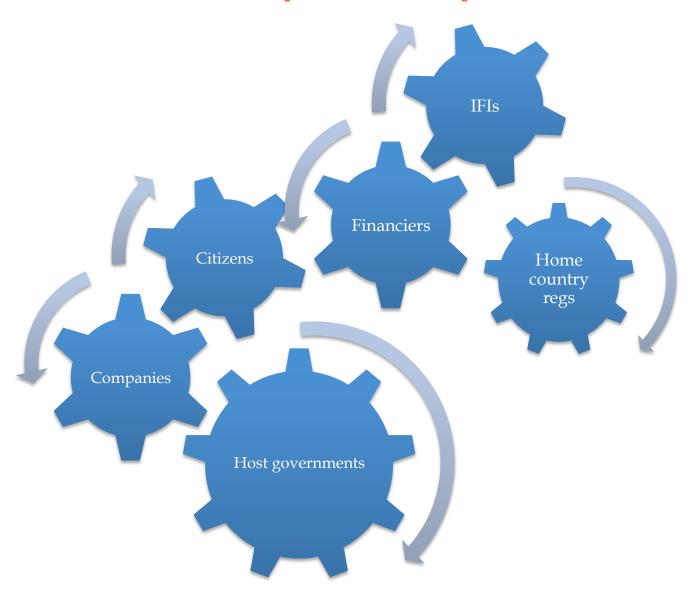
# Myth 4: Contracts are too complex for the public to understand



### 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		

<sup>\*</sup> 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)

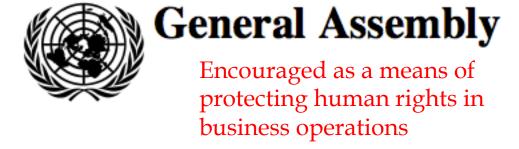
### Growing incorporation of contract transparency in International Standards













Precept 2

### Result of this growing support:

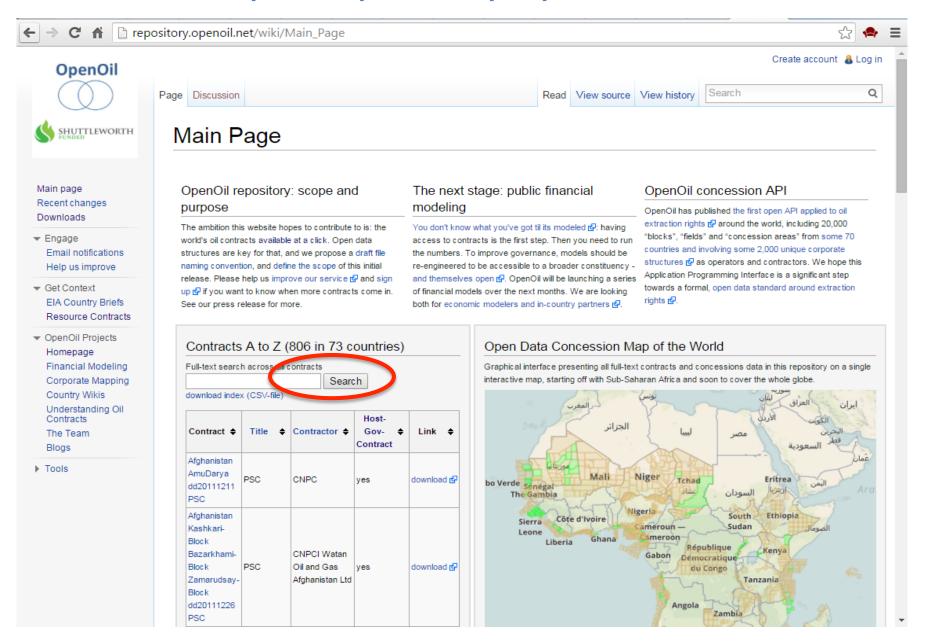
At least 1200 contracts and documents from 75 oil, gas and mining countries are out there in the open!

### 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/



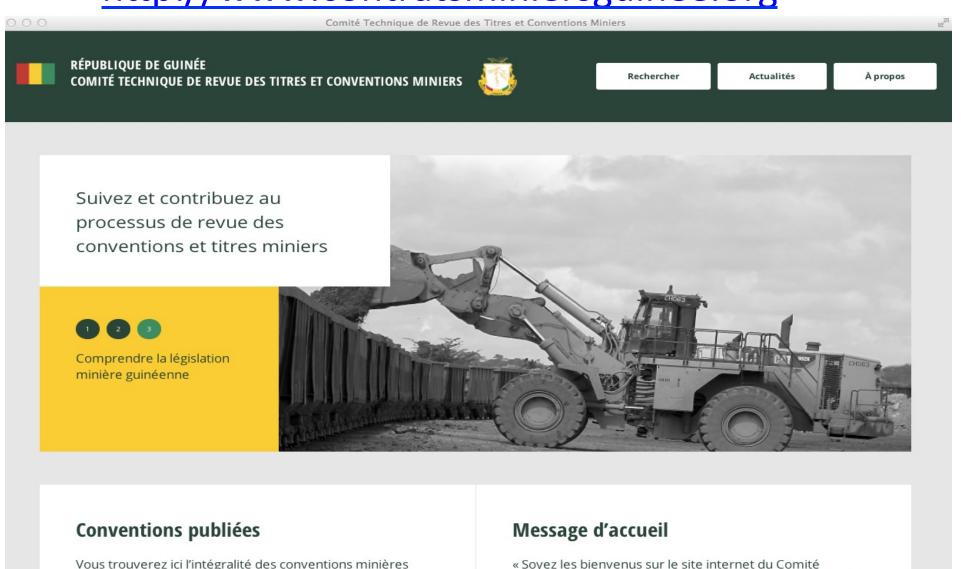
### Online Repositories www.resourcecontracts.org



#### National contract sites: Guinea

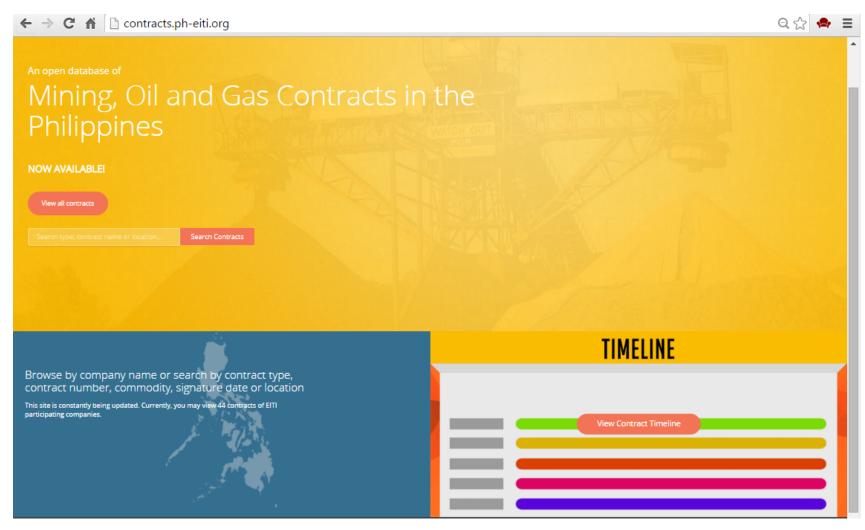
signées par la République de Guinée depuis son

### http://www.contratsminiersguinee.org

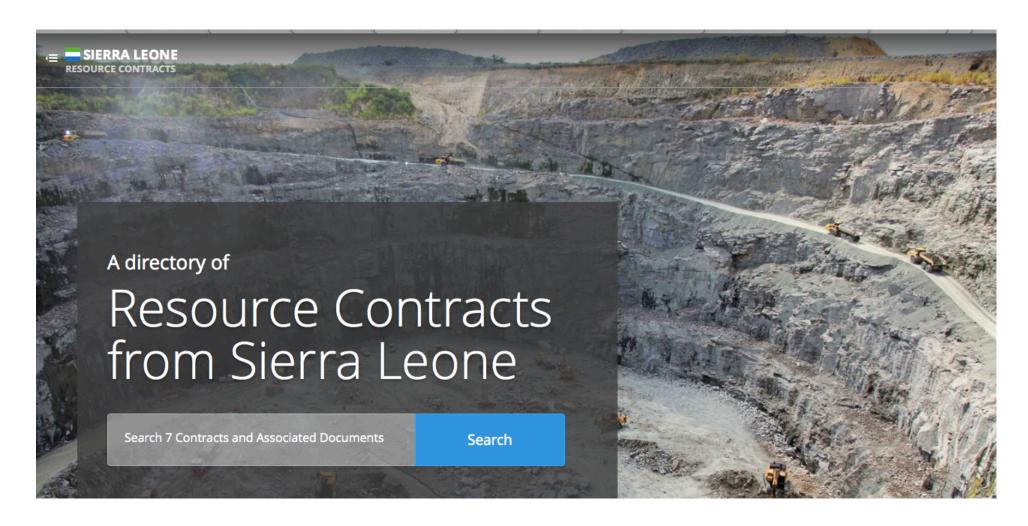


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### National contract sites: Philippines http://contracts.ph-eiti.org/



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



### Ministry website



#### Official Gazette

# GACETA OFICIAL DE LA REPÚBLICA BOLIVARIANA DE VENEZUELA

NO 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.

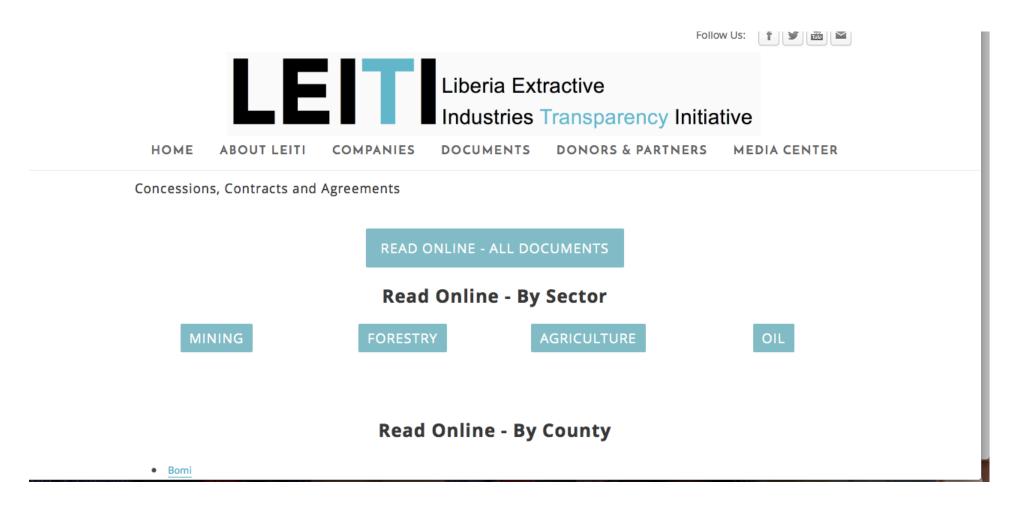
Providencia por la cual se constituye la Comisión de Contrataciones de este Fondo, integrada por los ciudadanos que en ella se indican.

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.

Ministorio del Doder Popular

Paralización modianto la qual de diapona al cosa en sus funcionas

#### National EITIs



### **Company Websites**



### **Company Websites**

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#### Petroleum Agreements

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 出WEST CAPE THREE POINTS CONTRACT AREA PA 出

DEEDS OF ASSIGNMENT

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#### CHAPARRAL RESOURCES INC CIK#: 0000019252 (see all company filings)

SIC: 1311 - CRUDE PETROLEUM & NATURAL GAS
State location: NY | State of Inc.: DE | Fiscal Year End: 1231
(Assistant Director Office: 4)
Get insider transactions for this issuer.

Business Address 2 GANNETT DRIVE WHITE PLAINS NY 10604 2818777100 Mailing Address 2 GANNETT DRIVE WHITE PLAINS NY 10604

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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
DEFA14A	Documents	Additional definitive proxy soliciting materials and Rule 14(a)(12) material Acc-no: 0000950129-06-008536 (34 Act) Size: 66 KB	2006-09-19	000-07261 061097292
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### Stock Exchanges: SEDAR - Toronto



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#### XBRL Voluntary Filing Program

Visit the CSA's XBRL website for information about XBRL and the voluntary program. Click here for information about XBRL software and viewing XBRL financial statements.

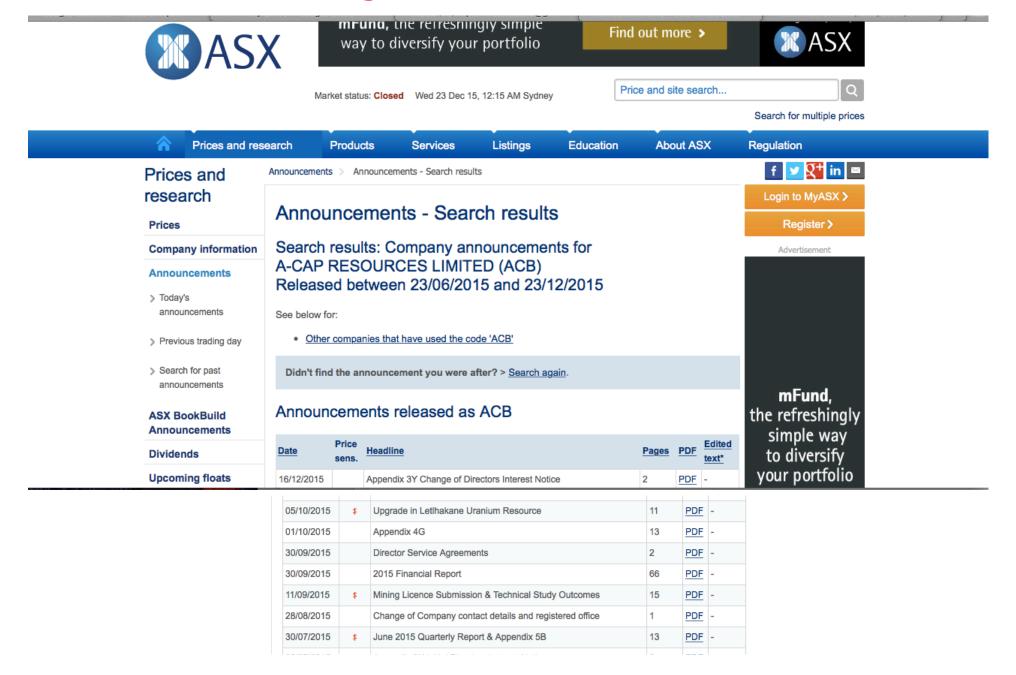
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### What are the possible legal ways to implement contract transparency?

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)

<sup>\*</sup> Is or can be unilateral disclosures on the part of the government

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

National discussion on contracts

Defining the scope of disclosure

Assembling and verifying documents

Defining modes of public access

Maximizing education and outreach