



**Supporting Inclusive Resource Development (SIRD)
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TRAINING PROGRAM
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Contract Disclosure & Monitoring

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Introduction

- Contract disclosure in mining, oil and gas industry **is an emerging practice and is gaining momentum** as governments, international institutions and companies embraces transparency
- Without access to these contracts, it is not possible **for citizens to understand the nature of the agreements** that their governments have made or monitor government and company commitments (Open Contracting Partnership, 2016, <https://www.open-contracting.org/resources/extractives/>).
- **In many countries, contracts are not disclosed to parliament or public** (Natural Resource Governance Institute-NRGI, p.1, 2014).
 - USA, Peru, Timor-Leste etc.



Why Contract Disclosure and Monitoring?

- **High stakes are involves**

- Natural wealth which belong to the country as a whole
- Finite/Exhaustible resources
- High risks e.g. environmental impacts

- *“Disclosure of oil, gas and mineral contracts is beneficial to both countries and companies. For companies, it provides stability. For countries, it ensures wealth is maximized and invested into projects that yield development” Hon. Zitto Zuberi Kabwe, Member of Tanzania’s Parliament*

- Contract transparency also **increases investment stability** for extractive companies by securing balanced deals from the outset and lowering renegotiation pressures (NRGI, 2014).

- Contract **secrecy undermine parliamentary oversight**

- weaken accountability and facilitate illegal activities (Ibid.)



Why Contract Disclosure and Monitoring?

- Contract **secrecy invites corruption** and undermines public trust
 - If contracts are not subject to public scrutiny, government officials may be more inclined towards negotiating deals in their own personal interest rather than in the public interest. Alternatively, contract disclosure helps the public to detect and deter bad deals, and can help increase public trust (NRGI, 2014).
- Contract **secrecy weakens the government's negotiating position**
 - Companies have access to a large number of contracts (through their own experience and that of their advisors) and can use this to their advantage in negotiations by asking for concessions that governments have made in previous agreements. Countries, in contrast, seldom have access to company's contracts from elsewhere. Spreading disclosure as an international norm corrects this asymmetry of information and strengthens countries' negotiating position vis-à-vis companies (Ibid.).

Promoting Transparency and Monitoring of Contracts:

https://resourcegovernance.org/sites/default/files/documents/nrgi_contract_disclosure_briefing_eng_20150310.pdf



Why Contract Disclosure and Monitoring?

- Contracts include information on project's: **Fiscal terms, Local content, Environmental impact**
 - **Infrastructure and Production timing**
- These information area crucial for **citizens** to understand, monitor and **hold their governments and investors accountable for their obligations** (*WRI, NRGi & OGP, 2016*)
- From a commercial perspective, both government and investors benefit from disclosure, as it promotes balanced deals:
 - **increased investment stability**
 - **improved revenue collection and forecasting**
 - **decreased risk of renegotiation**
 - **minimized risk of conflict and loss of social licenses to operate** (*Ibid.*)



What laws exist on disclosure in mining, oil and gas contracts in Tanzania?

- **Petroleum Act, 2015**
- **The Extractive Industry (Transparency and Accountability) Act, 2015**
- **Mining Act, 2010**
- **Oil and Gas Revenue Management Act, 2015**
- **Written Laws (Miscellaneous Amendments) Act, 2017**
- **Natural Wealth and Contracts (Review and Renegotiation of Unconscionable terms) Act, 2017**
- **Natural Wealth and Resources (Permanent Sovereignty) Act, 2017**
- **Stock exchange disclosure rules**



What laws exist on disclosure in mining, oil and gas contracts in Tanzania?

Petroleum Act, 2015

- Agreement to grant petroleum rights (**PSAs**) are entered under **S. 47** by **GOT, TPDC** and an **IOC**
- Under **S.91(1) PURA** may, with a written approval of the Minister, make available to the public-
 - **details of all agreements, licences, permits and any amendments to the licences, permits or agreements whether valid or terminated;**
 - details of exemptions, variations or suspensions of conditions of licence and permit;
 - approved development plan; and
 - all assignments and other approved arrangements in respect of a licence and permits



What laws exists on disclosure in mining, oil and gas contracts in Tanzania?

Extractive Industry (Transparency & Accountability) Act, 2015

- Company shall submit to the committee annual reports containing information a local content and SCR [s.15(1)]
- Obligation to publish information [s. 16(1)]-in order to ensure transparency and accountability in extractive industry, **the Committee shall cause the Minister to publish**
 - **In the website or through the media which is widely accessible all the concessions, contracts and licenses relating to extractive industry companies**
 - Names of individual shareholders who own interests in the extractive industry companies
 - Implementation of Environment Management Plans of extractive industries companies
 - Implementation report
 - Information required to be submitted to local or foreign stock exchanges



What laws exist on disclosure in mining, oil and gas contracts in Tanzania?

Mining Act, 2010

Circumstances under which information can be disclosed (is restricted to): (s. 25):

- for, or in connection with, the administration of the Mining Act;
- for the purpose of any legal proceedings;
- for the purpose of any investigation or inquiry conducted under this Act;
- to any person being a consultant to the Government or public officer who is authorized to receive such information; or
- for, or in connection with, the preparation by or on behalf of the Government of statistics in respect of prospecting or mining
- **to enable the Tanzania Extractive Industry Transparency and Accountability Committee to acquire and publish information from the mining companies***



What laws exist on disclosure in mining, oil and gas contracts in Tanzania?

Oil and Gas Revenue Management Act, 2015

- Provide **restricted disclosure** in respect of the revenues in oil and gas industry-
 - This shall be **published by the Minister in the Gazette-*perhaps the new TEITI Regulations have provided on the nitty-gritty***
 - Also shall be **published in the Government website and the website of the Ministry of Finance**
- There is **no requirement for disclosure of the terms of the PSAs** and other petroleum contracts (JOAs, GSAs etc.)



What laws exists on disclosure in mining, oil and gas contracts in Tanzania?

Written Laws (Miscellaneous Amendments) Act, 2017

- There is a general **prohibition against disclosure of geological information** referred under the Second Schedule which has been furnished by the Licence Holder [s.28]
- Exceptions, where information is given:
 - for or in connection with the administration of the Act;
 - For purpose of legal proceedings;
 - For purpose of any inquiry of investigation done under the Act;
 - To any person who is a consultant of the Government of public officer who is authorised to receive such information;
 - For the purpose of preparation by or on behalf of the Government of statistics in respect of prospecting or mining

No room for disclosure to the public for its own sake



What laws exists on disclosure in mining, oil and gas contracts in Tanzania?

Natural Wealth and Contracts (Review and Renegotiation of Unconscionable terms) Act, 2017

- Gives the **power to the National Assembly to review contracts or arrangements** made by the Government relating to natural wealth and resources
 - **Contains unconscionable terms [s.5(2)];**
 - **Apply to existing and new contracts ([s. 5(1)& (3)**
- By assumption, the National Assembly must have unfettered access to the petroleum and mining contracts



What laws exist on disclosure in mining, oil and gas contracts in Tanzania?

Natural Wealth and Resources (Permanent Sovereignty) Act, 2017

- All arrangements or agreements entailing extraction, exploitation or acquisition and use of natural wealth and resources **may be reviewed by the National Assembly(s.12)**
 - This entails that the parliament has access to petroleum or mining agreements

Stock exchange disclosure rules

- Stock exchange disclosure rules mean that many contracts and/or their key terms are publicly available in the stock exchange filings of extractive companies.
 - Examples include TOTAL in Gabon (as a result of US Security and Exchange Commission rules)
<https://www.sec.gov/Archives/edgar/data/1471261/000104746909009334/a2195051zex-10_5.htm>



How accessible are extractive sector contracts to the public?

- Access to contracts is very restricted
 - In 2017 study by NRG1, only 22 of 89 countries disclose contracts and licences
- Under **Sect. 81(1) of the PA2015**, **“PURA may publish contracts, licences etc. after the getting the approval of the Minister:**
 - The use of the term **“may”** means PURA has discretion to publish or not to publish
 - The requirement for PURA to **seek the Minister’s approval adds unnecessary bureaucracy.**
 - Up to now, PURA has not taken any such initiative.
- Under the Contract Renegotiations and Permanent Sovereignty Acts, the parliament may have by implication the access, but not members of the public or private organization or NGOs



How accessible are extractive sector contracts to the public?

- Under the EITA Act, Sect. 16 (1) states that **the Committee/TEITI shall cause the Minister** to publish the contracts, licences, concessions etc. in website or media which is widely accessible
 - Since 2015 nothing has been published.
- Resource Governance Index country scores and rankings



Microsoft Word
7 - 2003 Document



Who is responsible for monitoring contract compliance?

- **Regulators e.g. EWURA, PURA, Mining Commission**
- **Minister**
- **The State Oil Companies/TPDC**
- **Tax Authority/TRA**
- **Parliament**
- **Civil societies/Political parties**



Who is responsible for monitoring contract compliance?

EWURA

- Established by EWURA Act, Cap 414
- Regulates midstream and downstream (s. 29(1))
- Has power to **grant, refuse, renew, suspend and revoke licences S.29(2)**
- Mandated to **give directions to the licensee**
- **Prescribe code of conduct** for industry participants
- **Monitor environmental and safety** impacts



Who is responsible for monitoring contract compliance?

PURA

- Established under Sect 11 of PA 2015
- Functions include [s. 12(10)]
 - **Granting, renewing, suspending and cancelling licences (exploration, development and production permit)**
 - **Monitoring, regulating and supervising petroleum operations**
 - Reviewing and approving budget
 - Promoting local participation
 - **Ensuring compliance**
 - Administer PSAs and other contractual arrangements
 - Give directions to licence holder and or contractor [s. 15(1)]



Who is responsible for monitoring contract compliance?

MINING COMMISSION

- Established under **Sect21(1) of the Mining Act, 2010** (as amended in 2017)
- Functions include supervising and regulating the mining sector
- Monitor industry operations (including by licensing restrictions etc.)
- **Ensure compliance**
- **Monitor and audit environmental performance**



Who is responsible for monitoring contract compliance?

MINISTER/CABINET

- Has power to **grant, renew, suspend and cancel petroleum licences**
- Promote local participation
- Ensure and sustain transparency in the industry
- Make regulations
- Under Sect 19 of the Mining Act, the Minister required to monitor licensing process
- **Cabinet to consider (and if satisfied, approve) the application for special mining licence**
 - Draft MDAs are part and parcel of the application dossier



Who is responsible for monitoring contract compliance?

TPDC

- National Oil Company designate under Sect 8(1) of the PA2015
- Party to the PSAs, JOAs, GSAs etc. and hence monitor other parties' contractual obligations
- In practice applications grant of licences, extension or cancellation has initiated by the PSA Contractor but submitted via TPDC to the Minister and PURA
 - TPDC reviews the application

PARLIAMENT

- Under the Natural Wealth and Resources Contracts (Review and Renegotiation of Unconscionable Terms) 2017
- Natural Wealth and Resources (Permanent Sovereignty) Act 2017



Who is responsible for monitoring contract compliance?

TANZANIA REVENUE AUTHORITY

- Monitoring of costs and cost recovery
- Enforcing ring fencing provisions of the legislation and the PSAs to curb tax evasion
- Monitoring asset acquisitions (Farm-in/out Transactions, assignment etc.)
 - Transactions cannot be concluded without tax clearance being given by TRA



Who is responsible for monitoring contract compliance?

CIVIL SOCIETY/POLITICAL PARTIES

- No strict legal mandate
- Through advocacy, many civil societies and political parties have been able to expose legal and contractual violations e.g. environmental obligations
- Many civil societies play a crucial role in monitoring of contract compliance:
 - NRGi (<https://resourcegovernance.org/blog/contract-transparency-critical-component-civil-society-oversight-mongolia>)
 - EITI (<http://www.eitimongolia.mn/en>)
 - Open Society (https://www.opensocietyfoundations.org/about/offices-foundations?utm_source=open-society-forum-mongolia&utm_medium=web&utm_campaign=office_redirect)



Conclusion

- Natural Resources contracts disclosure is **an emerging norm**
- Disclosure and monitoring is critical because **natural resources development have far reaching implications-socially, economically and environmentally**
- There are **both domestic and non-domestic laws and rules governing disclosure** of contract
- **Accessibility of these contract still a challenge** in many countries including matured democracies
- **Various institutions** are empowered with monitoring of contract compliances

