

CONTRACT DISCLOSURE IN MYANMAR



A GUIDE FOR
IMPLEMENTING THE NEW
REQUIREMENTS OF THE
EXTRACTIVE INDUSTRIES
TRANSPARENCY INITIATIVE

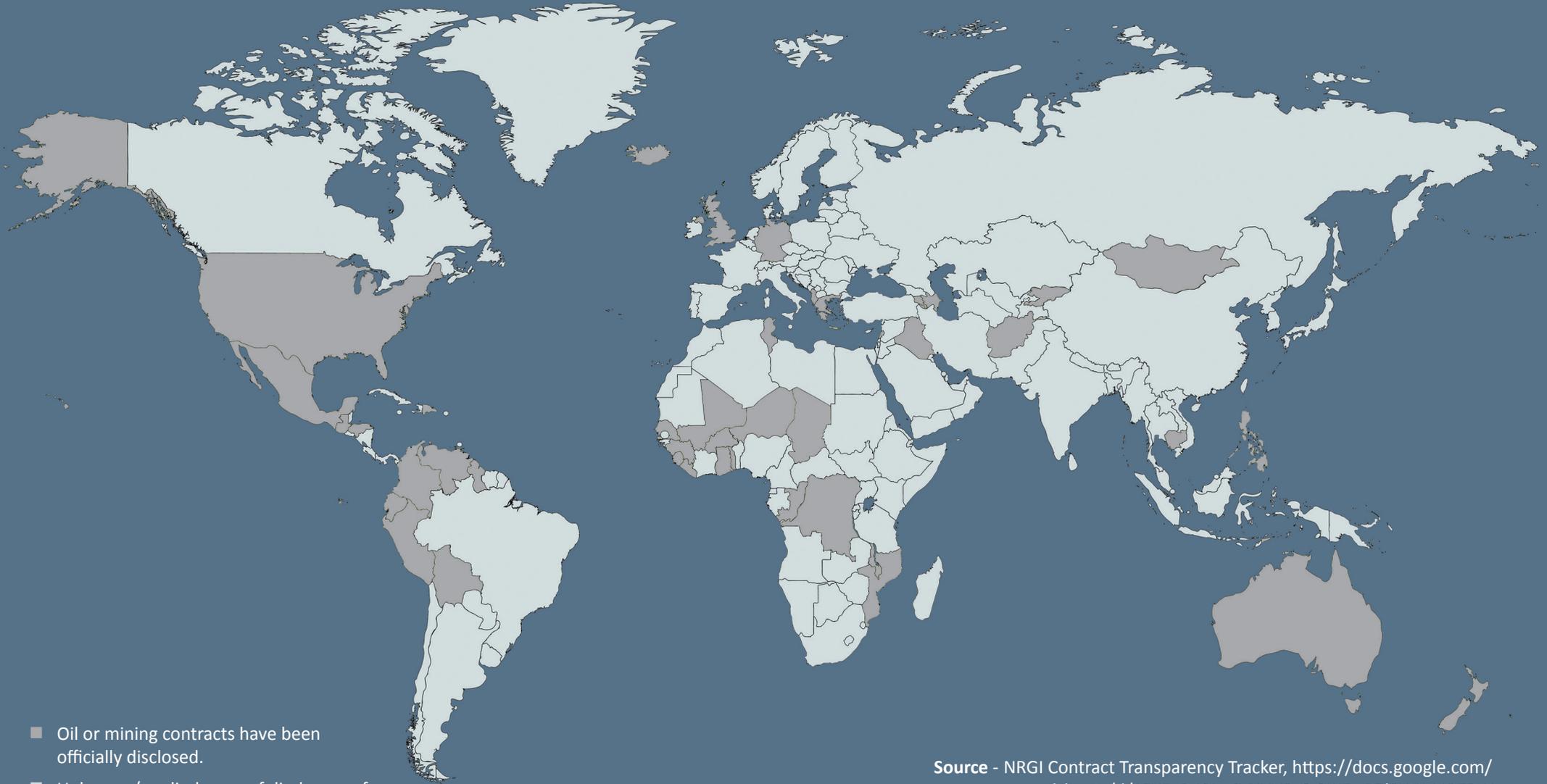
OVERVIEW

Disclosing the contracts signed between governments and oil and mining companies is rapidly becoming standard practice around the world. From 2021 onwards, contract disclosure will be a requirement for all countries implementing the Extractive Industries Transparency Initiative (EITI).

This booklet provides guidance on why the Myanmar government should disclose extractive industries contracts and how to do it.

CONTRACT DISCLOSURE IS A GROWING GLOBAL NORM

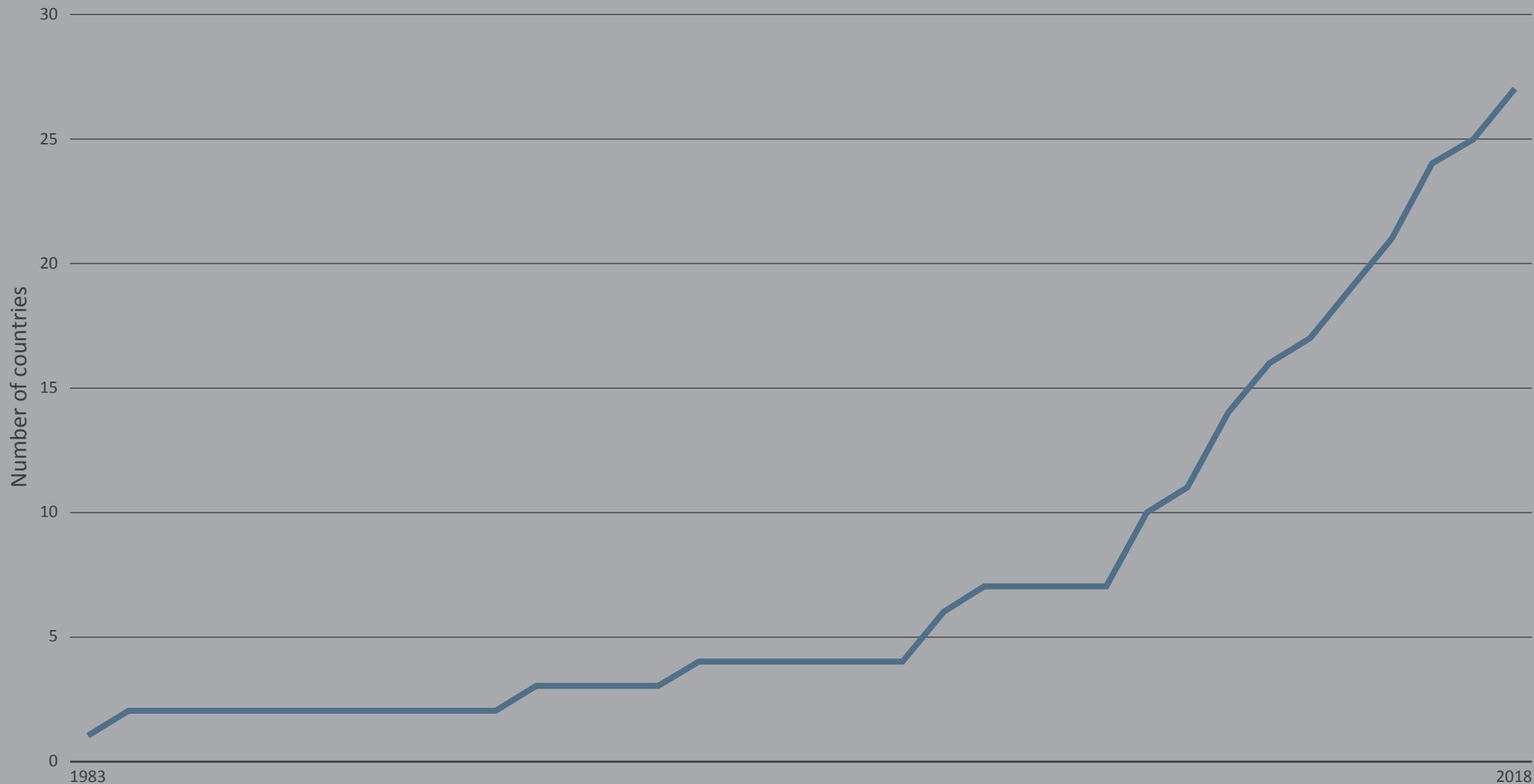
At least 44 countries around the world have disclosed oil and mining contracts, including more than half of EITI implementing countries.



- Oil or mining contracts have been officially disclosed.
- Unknown/no disclosure of disclosure of oil or mining contracts.

Source - NRGi Contract Transparency Tracker, <https://docs.google.com/spreadsheets/d/1FXEeD43jw6VYHV8yS-8KJ5-rR510XtKxVQZBWzr-ohY/edit#gid=0>

THE NUMBER OF COUNTRIES WHICH HAVE INTRODUCED LAWS REQUIRING DISCLOSURE OF OIL OR MINING CONTRACTS HAS INCREASED DRAMATICALLY IN RECENT YEARS. THERE ARE NOW AT LEAST 27 COUNTRIES THAT HAS DONE SO.



Source - NRCI Contract Transparency Tracker, <https://docs.google.com/spreadsheets/d/1FXEeD43jw6VYHV8yS-8KJ5-rR5I0XtKxVQZBWzr-ohY/edit#gid=0>

CONTRACT DISCLOSURE IS AN EITI REQUIREMENT

According to EITI requirements 2.4 and 1.5, implementing countries must:

- disclose all extractive contracts and licenses including the full text of the contracts, and any annexes and amendments that are granted, entered into or amended after 1 January 2021.
- provide a list of all active contracts and licenses indicating which are publicly available and which are not.
- outline plans for how they will disclose contracts in their annual workplan.

Countries are also encouraged to publish existing contracts and licenses (i.e. those that were granted, entered into, or amended before 1 January 2021).



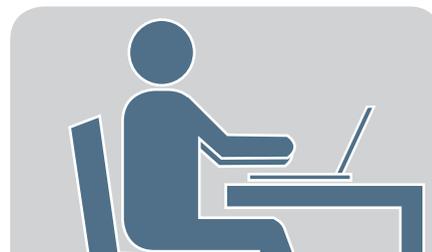
WHY SHOULD THE MYANMAR GOVERNMENT DISCLOSE CONTRACTS?

Contract disclosure has benefits for the government, companies and citizens.



INCENTIVIZE GOVERNMENT AND COMPANIES TO NEGOTIATE GOOD DEALS

When negotiators know that contracts will be public, they have an incentive to agree terms that will be viewed as fair by all. This reduces the risk of demands for renegotiation and creates a more stable investment climate.



HELP OFFICIALS DO THEIR JOB MORE EFFECTIVELY

Contract disclosure allows officials in all departments to know what requirements companies need to comply with. This is particularly important for knowing how much tax companies should be paying.



FACILITATE PUBLIC OVERSIGHT AND ACCOUNTABILITY

Contract disclosure allows citizens to hold the government and companies accountable. This makes it more likely that the government will enforce the rules properly and treat companies consistently and fairly.

COMMON MYTHS ABOUT CONTRACT DISCLOSURE

1 MYTH

Disclosing contract terms harms competitiveness

FACT | *Once a contract is signed, publishing it is unlikely to impact a company's competitiveness. Total's Myanmar contract is publicly available but this has not harmed the company.*

2 MYTH

Confidentiality is in line with standard commercial practice

FACT | *Companies recognize the value of contract transparency. At least 18 of the world's biggest oil and mining companies support disclosure, including some of Myanmar's biggest investors.*

3 MYTH

Confidentiality provisions in contracts and laws do not allow for disclosure

FACT | *Confidentiality clauses usually only apply to project data but do not prevent the government from disclosing the contract itself. Myanmar's laws also do not prohibit the government from disclosing contracts.*

WHAT DOES THE MYANMAR GOVERNMENT NEED TO DISCLOSE?

Best practice would include publication of all agreements signed with companies that determine the right to explore and produce natural resources.



Oil and gas production sharing contracts



Oil and gas transportation (e.g., pipeline) contracts



Mineral prospecting, exploration, feasibility study and production permits



Jade and gemstone private and joint venture production permits



Pearl production permits



Environmental and social documents (e.g., environmental impact assessments)

**HOW CAN
MYANMAR COMPLY
WITH THE NEW EITI
REQUIREMENTS BY
JANUARY 2021?**

- 1 Agree a contract disclosure implementation plan through EITI
 - 2 Publish a list of all existing contracts
 - 3 Ensure all new contracts contain language that allows disclosure
 - 4 Incorporate disclosure requirements into all upcoming licensing processes
 - 5 Publish any new or amended contracts starting from 2021
 - 6 Ensure contracts are easily accessible
 - 7 Enshrine disclosure in laws and regulations
 - 8 Publish all contracts, regardless of when they were signed
- Recommended



The Natural Resource Governance Institute (NRGI) is an independent, non-profit organization that helps countries to realize the benefits of their oil, gas and mineral wealth through research, advocacy, capacity development and technical advice.

Learn more: www.resourcegovernance.org.

FURTHER INFORMATION ON CONTRACT DISCLOSURE

Find out more about contract disclosure in Myanmar in Sebastian Sahla, Hosana Chay and Rob Pitman, *How and Why the Myanmar Government Should Publish Petroleum and Mining Contracts* (Natural Resource Governance Institute, 2019). Available at www.resourcegovernance.org.

Explore NRGI's global database of oil and mining contracts at www.resourcecontracts.org.



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