

SCOPING STUDY ON CONTRACT TRANSPARENCY IN MONGOLIA

DORJDARI NAMKHAIJANTSAN AND ZOLJARGAL NARANBAATAR

JULY 2024

Natural Resource Governance Institute

Contents

1. Introduction 4
Background 4
Objectives 6
2. Approach 7
Methodology 7
Scope 7
3. Key findings 8
Main developments 9
EITI requirements and contract disclosures 11
Requirement 2. Legal and institutional framework, contracts and licenses 11
Requirement 4. Revenue collection 26
Requirement 6. Social and economic spending 28
4. Conclusions and Recommendations 29
5. Annexes 34
Annex A. Contract types 34
Annex B. A list of extractive contracts 35
References 36

Cover image: by NRGI





The study was made possible with support from the Extractive Industries Transparency Initiative International Secretariat and funding from the European Bank for Reconstruction and Development.

1. Introduction

Background

This report presents the scoping study on Mongolia's contract transparency, undertaken by the Natural Resource Governance Institute (NRGI). The study was made possible with the support and funding of the Extractive Industries Transparency Initiative (EITI) International Secretariat and the European Bank for Reconstruction and Development (EBRD).

Mongolia's mining sector is the backbone of its economy, significantly contributing to gross domestic product, exports, government revenue, and foreign investment. It creates high-paying jobs and boosts local economies, especially in the mining regions. Coal, copper, gold and other minerals are major government revenue drivers, generating export earnings of USD13.9 billion in 2023. This constitutes 92 percent of the country's total exports and 29.9 percent of the government revenue[1]. While Mongolia's oil production is relatively small, it still contributes to government income and benefits local communities. In 2023, the oil sector produced 4.7 million barrels of crude oil, generating USD364.7 million in export earnings and accounting for 1.3 percent of government revenue[2].

Despite its economic importance, Mongolia's mining sector faces numerous challenges that hinder its development. Corruption scandals have plagued the sector, while environmental and social issues remain significant. A widespread perception persists that Mongolia does not receive its fair share of mining profits. Frequent policy changes, often driven by populism rather than thorough analysis, have eroded investor confidence. This is evidenced by ongoing disputes with investors, a decline in new foreign direct investment, and a lack of new discoveries and projects.

Recognizing the mining sector's vital role in Mongolia's economy and the need for good governance, the country joined EITI in 2006[3] to promote transparent and accountable management of the extractive sector. The EITI sets a global standard for transparency and good governance in the extractive sector. It requires companies and governments to disclose detailed information on revenues, payments, production volumes, commodity sales, mining company

---

[1] Ministry of Mining and Heavy Industry. "Minerals Sector Statistics 2023." Ministry of Mining and Heavy Industry, 2023. www.mmhi.gov.mn/%d1%81%d0%b0%d0%bb%d0%b1%d0%b0%d1%80%d1%8b%d0%bd-%d1%81%d1%82%d0%b0%d1%82%d0%b8%d1%81%d1%82%d0%b8%d0%ba/.

[2] ibid

[3] EITI Mongolia Secretariat. "EITI Mongolia." EITI Mongolia, n.d. www.eitimongolia.mn/.

ownership, and extractive contracts governing relationships investors. Since January 2021, the EITI Standard mandates full disclosure of contracts and licenses, enhancing transparency and allowing citizens to understand the impact of extractive projects on their nation[4].

Contract disclosure is a crucial ingredient of good governance and transparency in the extractive sector, benefiting all stakeholders involved. For instance, it enables governments to strengthen regulatory systems and ensure efficient oversight, mitigates reputational risks for companies and fosters trust with other stakeholders, and empowers citizens to hold governments and companies accountable. This transparency allows citizens to monitor revenues and other areas of impact of mining on their country[5].

Contract disclosure in Mongolia has evolved significantly both within and outside of the EITI framework. The latest EITI Validation Report[6] indicates that Mongolia has largely met EITI requirements by publishing numerous contracts on a dedicated portal. However, there is room for improvement in government policies and practices regarding full contract disclosure.

Domestic legislation has also evolved, mandating the disclosure of certain mining sector contracts. Additionally, initiatives like the Open Government Partnership[7], prioritize transparency in extractive sector contracts. Finally, some companies, particularly those listed on stock exchanges, disclose contracts voluntarily due to legal requirements, or to mitigate corruption risks and public perception issues.

While the government and companies have published many contracts, it remains unclear if all relevant contracts are disclosed. The disclosure process also lacks clear regulations and a systematic approach, as discussed in the next sections of this study.

---

[4] EITI International Secretariat. "EITI Requirement 2.4," n.d. www.eiti.org/sites/default/files/2022-01/EN%20EITI%20GN_2.4.pdf
[5] ibid
[6] EITI International Secretariat. "Mongolia 2022 Validation Report," October 2022. www.eiti.org/sites/default/files/2022-10/EITI%20Validation%20of%20Mongolia%20%282022%29%20-%20Final%20Validation%20report%20%28July%202022%29%20%28EN%29.pdf
[7] Open Government Partnership. "Mongolia Action Plan 2023-2027," January 8, 2024. www.opengovpartnership.org/documents/mongolia-action-plan-2023-2027-december/.

Objectives

This study examines Mongolia’s EITI requirements, legal framework, and current practices for disclosing extractive contracts. Our goal is to ensure full compliance with the EITI Standard, believing contract transparency is crucial for strengthening sector governance. The primary objective of this scoping study is to identify discrepancies between the EITI Standard, existing policies, and actual contract disclosure practices in Mongolia's oil and mining sectors, analyze barriers to contract disclosure, and provide recommendations to improve current disclosure practices. This objective entails identifying and documenting all relevant contracts that exist, creating a comprehensive list of all contracts that should be disclosed, and analyzing legal requirements and current contract transparency practices. For this study, contracts are defined broadly and in line with the EITI Standard, including the full texts of main contracts and any annexes or amendments that may also be significant to understand the relationships that they are regulating. We will not delve into licenses and permits, as these are subject to uniform conditions outlined in Mongolian law rather than specific contractual terms. These objectives collectively aim to enhance transparency and accountability in Mongolia's extractive industries, promoting responsible resource governance through the EITI.

2. Approach

Methodology

The study seeks to answer the following questions:

- What types of contracts are used in the extractive sector?
- What are the current commitments and legal requirements for contract disclosure in Mongolia?
- What are the current contract disclosure practices and deviations from the commitments and legal requirements?
- What are the barriers to contract disclosure and how can they be overcome?

To address these questions, the study employs a mixed-methods approach, involving:

- **Desk research:** A comprehensive review of EITI workplans, reports, relevant literature, EITI Standard guidelines and requirements, legal documents, and relevant studies to analyze the existing landscape of contract disclosure rules and practices in Mongolia.
- **Stakeholder consultations:** Interviews with government officials, industry and civil society representatives to gather diverse perspectives on contract disclosure practices, barriers, and opportunities. Engagement with the EITI Secretariat provided insights into the EITI Standard, best practices, and disclosure challenges.
- **Contract analysis:** Examination of contracts available on the designated portal and other sources to assess disclosure requirements and identify deviations from these requirements and legal obligations.

By combining these methods, the study aims to provide a comprehensive assessment of extractive contract disclosure in Mongolia.

Scope

Extractive contracts are diverse, varying by scope, value, legal form, duration, project importance, stakeholders, and complexity. The industry involves numerous complex stakeholder relationships, leading to a variety of contracts. This study focuses on state-investor contracts, where the state may be represented by central or local governments or state-owned enterprises, and the investor

by private, public, or mixed-ownership companies operating in the sector. Contracts between private parties are excluded.

The EITI Standard includes contract disclosure rules and definitions. Key requirements are in Section 2.4 "Contracts and licenses[8]", but related provisions are also found in Section 2.1 "Legal framework and fiscal regime" and Section 2.2 "Contract and license allocations". The Standard defines "contract" as "the full text of any contract, concession, production-sharing agreement or other agreement granted by, or entered into by, the government which provides the terms attached to the exploitation of oil, gas and mineral resources". The multi-stakeholder group must determine which exploration contracts to disclose based on materiality and practicality.[9] Both exploitation and exploration contracts should be disclosed.

In Mongolia, both exploitation and exploration require a special license, respectively labelled a mining license and an exploration license. However, not all projects or mining and exploration activities require contracts to determine the main conditions of such activities. Special permits (interchangeably called as "licenses") are not accompanied by specific contracts; instead, the conditions of these licenses are prescribed in the legislation, namely the Minerals Law[10], and other relevant laws and regulations. While information on license allocation and holding is subject to disclosure requirements under the EITI, these processes are not covered in this study unless their disclosure is closely linked to contract disclosures.

3. Key findings

This section provides context for the contract transparency movement in Mongolia over the past decade and presents key findings from the country's experience with contract transparency and disclosure in the mining sector. The detailed findings are organized around relevant EITI Standard requirements for contracts and assesses whether these requirements have been implemented through or outside of the EITI, and whether domestic legislation and practices support or hinder the implementation of specific requirements.

[8] EITI, "2023 EITI Standard" (EITI, 2023), www.eiti.org/sites/default/files/2024-04/2023%20EITI%20Standard_Parts1-2-3.pdf.
[9] p.20, EITI.
[10] "Minerals Law," July 8, 2006.

Main developments

Since 2012, EITI Mongolia has consistently demonstrated its commitment to fostering transparency in extractive contracts by publishing annual work plans and ensuring open access to crucial information.

A pivotal moment in this journey towards transparency occurred in 2014 with the establishment of a dedicated sub-working group[11] within the Multi-Stakeholder Group (MSG) focused solely on contract transparency. This marked a significant milestone, setting the commitment of various stakeholders to this endeavor. Civil society organizations emerged as champions of contract transparency initiatives. For instance, the Open Society Forum (OSF) played a key role in creating and funding Mongolia's Contracts Portal. Officially launched on April 22, 2019[12], the portal serves as a vital central repository for oil and mining contracts. Furthermore, NRGI and other stakeholders have actively engaged in equipping relevant stakeholders with the necessary knowledge and skills through various capacity-building trainings. These training courses have been instrumental in enhancing understanding and promoting the effective implementation of contract transparency measures.

Contributions to contract disclosure extend beyond these organizations. Many civil society organizations have actively participated in delivering training specifically focused on local government level agreements. These efforts have been crucial in raising awareness and fostering advocacy at the grassroots level, ensuring the benefits of transparency reach even remote communities.

The government reaffirmed its commitment to publishing mining and petroleum contracts at the launch of the contract portal.[13] However, concerns persist regarding the lack of specific actions and progress towards publishing all contracts through EITI reports or on the Contracts Portal. Continued government leadership remains essential for achieving comprehensive contract transparency.

---

[11] EITI Mongolia Secretariat. "EITI Mongolia Work Plan 2014," 2014. www.resource4.sodonsolution.org/eitimongolia/File/2021/02/03/fe4x71hog1xhqv1n/EITIM_POA_2014en.pdf.
[12] Ministry of Mining and Heavy Industry. "Extractive Contracts Are Accessible to the Public." Ministry of Mining and Heavy Industry, n.d. www.mmhi.gov.mn/2019/04/22/4456/.
[13] Robert Pitman, "Mongolia's Missing Oil, Gas and Mining Contracts," January 2019, www.resourcegovernance.org/sites/default/files/documents/mongolias-missing-oil-gas-and-mining-contracts.pdf.

The 2022 EITI Reconciliation Report for Mongolia[14] reveals that 75 percent (or 693 out of 928) of publicly disclosed contracts are local-level agreements between local authorities and mining companies. The disclosure of some of these agreements are mandated by law, such as local community cooperation agreements, while others, like water and land use or small-scale mining agreements are not.

The OSF funds and manages the Contracts Portal, with support from the EITI Secretariat. The EITI Secretariat facilitates the process by sending official letters to subnational EITI Councils, prompting them to upload contracts signed between local authorities and mining companies using their portal user accounts. However, inadequate tracking and limited human resources have led to inconsistencies between contract data in EITI reconciliation reports and in the Contracts Portal, raising concerns about the completeness of public contract disclosure.

Contract disclosure practices vary among companies in Mongolia. While not mandated by law, some companies, like Oyu Tolgoi LLC which manages arguably the most important project in the country, choose to voluntarily disclose their contracts and agreements on their company websites. This promotes transparency and public access to information. Oyu Tolgoi LLC, a joint venture between Erdenes Oyu Tolgoi LLC (representing the Mongolian government through 34 percent equity holding) and Rio Tinto (66 percent shareholder and the manager of the project), exemplifies this commitment to transparency. Their investment agreement (2009) setting out key parameters for financial and operational relationships between the government and the investor, as well as accompanying agreements such as the shareholder agreement (2011), and various environmental documents (impact assessment, protection management plans, protection reports etc.) are all publicly available on the company's website[15]. In contrast, Badrakh Energy, a joint venture formed in 2015 between Orano (66 percent shareholder) and Mon-Atom (34 percent), a Mongolian state-owned company, does not currently exhibit the same level of transparency. While the company's website states that it signed a shareholder agreement[16] in October 2013 and additional agreements[17], including Deposit Development Agreement (2016) with the Mineral Resources and Petroleum Authority, and cooperation agreements (2018) with the governor of Ulaanbadrakh

[14] EITI Mongolia Secretariat. "2022 Mongolia EITI Reconciliation Report," 2023. www.resource4.sodonsolution.org/eitimongolia/File/2024/01/26/ccgk80kk82n69ur3/17-%D1%80%20%D1%82%D0%B0%D0%B9%D0%BB%D0%B0%D0%BD.pdf.
[15] Oyu Tolgoi. "Oyu Tolgoi," n.d. www.ot.mn/agreements/.
[16] Orano in Mongolia. "Orano in Mongolia," n.d. www.orano.group/en/orano-across-the-world/mongolia
[17] Badrakh Energy. "Badrakh Energy," n.d. www.badrakhenergy.com/en/home-en/.

soum and Zuunbayan bag of Sainshand soum of Dornogovi aimag, these are not publicly available on either the company's website or the Contract Portal.

A 2019 NRGI briefing on Mongolia's contract transparency, titled 'Mongolia's missing oil, gas and mining contracts', underscored that many contracts are still being missing from the public view.[18] This finding remains largely relevant today, as discussed below.

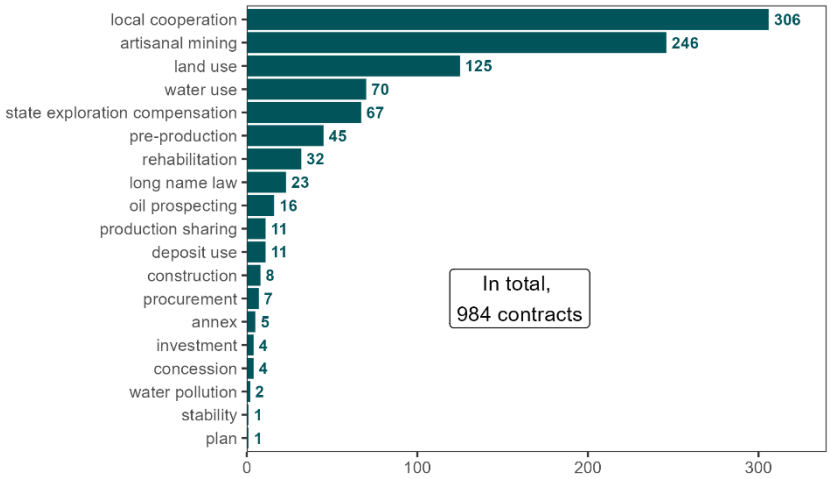
EITI requirements and contract disclosures

Requirement 2. Legal and institutional framework, contracts and licenses

2.1 Implementing countries are required to disclose …a description of the different types of contracts and licenses that govern the exploration and exploitation of oil, gas and minerals…"[19]

The EITI annual report includes a section[20] on contract transparency. This section details the types of contracts disclosed through the contracts repository, commissioned by the EITI, Open Society Forum and the Ministry of Mining and Heavy Industry[21]. The report's annex provides a list of 984 contracts categorized into 19 groups.[22] Figure 1 illustrates the major contract groups.

Figure 1. Types of contracts listed in the 2022 EITI Reconciliation Report



[18] Pitman, "Mongolia's Missing Oil, Gas and Mining Contracts."
[19] p.17, EITI, "2023 EITI Standard."
[20] EITI Mongolia Secretariat, "2022 Mongolia EITI Reconciliation Report," 2023, www.resource4.sodonsolution.org/eitimongolia/File/2024/01/26/ccgk80kk82n69ur3/17-%D1%80%20%D1%82%D0%B0%D0%B9%D0%BB%D0%B0%D0%BD.pdf.
[21] "Contracts Repository," Resource Contracts Mongolia, n.d., www.iltodgeree.mn/.
[22] pp. 135-136, Table 90, EITI Mongolia Secretariat, "2022 Mongolia EITI Reconciliation Report."

The majority of contracts disclosed through the Contracts Portal and EITI annual reports pertain to local community relationships, labeled as local cooperation agreements, corporate responsibility agreements, etc. These agreements are mandated by the Minerals Law[23], and are argued to be administrative decisions that fall under the jurisdiction of General Administrative Law and as such have to follow the process and transparency set out under this law. The second largest contract group involves artisanal mining cooperatives or individuals entering agreements with local governments to operate on predesignated plots of land on the territory administered by these local governments.

While the portal lists numerous contracts and the EITI reports use this portal to assess the state of contract transparency in Mongolia, no explanation is given or analysis done for which types of contracts constitute the main contracts that give companies the right to explore or exploit minerals, and which ones are the supporting contracts. For example, investment agreements for major deposits set conditions for exploitation of certain mineral deposits, while land use or water use agreements, although important in themselves, could be considered as supporting contracts for the main activities of investors that are enshrined in the investment agreements. It should be noted that the contracts listed on the Contracts Portal are not all included in the annexes to the EITI reports.

In addition to providing such a detailed list of contracts, the EITI report also contains a list of laws and regulations and specific clauses in those that are related to contract disclosures[24]. However, details with regard to what these legislations specifically require, and the description of these contracts in terms of purpose and scope, including whether the provided list is comprehensive, i.e. includes all contracts that fall under the EITI disclosure requirement, are glaringly missing. Below we provide the description of the main types of contracts that are used in Mongolia, with the explanation of the purpose of such agreements, as well as whether these are mandated by domestic legislation or not.

The following contracts are typical in Mongolia's extractive sector:

- **Investment agreements** –Currently mandated by the Law on Investment, these major contracts govern relationships between the government and investors who intend to invest

[23] Article 42, "Minerals Law."
[24] pp. 134-135, Table 89, EITI Mongolia Secretariat, "2022 Mongolia EITI Reconciliation Report."

more than MNT 500 billion while intended for all sectors, they are primarily used in extractives. The agreements allow maintaining a stable operating environment through stabilization of taxes and guarantees for the protection of investments. The signatories to the agreement are the government represented by the executive and the investor. Investment agreements are optional and can be requested by investors. The length of such agreements should be 15-18 years. The best-known investment agreement is between Rio Tinto and the government on developing and operating the Oyu Tolgoi project; however, this agreement was signed under the Minerals Law which at the time of signing in 2009, and before the new Investment Law came into force, regulated investment agreements. The 2022 EITI report describing the Contracts Portal lists four investment agreements, but we find that two of them are in cement production rather than purely in the mineral sector.

- **Shareholder agreements** – These are arrangements between investors, and for the purposes of this study, these are contracts made between investors and the state represented by various entities in the government. This state representation usually takes place through state owned companies that formally hold equity stakes in project companies that hold licenses for or operate mining projects. Shareholders agree on details regarding the governance of the project company and the roles and responsibilities of each party, including financial benefits that the government receives through its equity participation in projects. Therefore, these agreements are essential for understanding the benefits of mining projects to the country in cases where the government holds equity shares in mining companies. While these contracts are not required by laws, they are seen as guarantees of effective cooperation between the parties. In the absence of such contracts, the relationships covered by these agreements are subject to stipulations of existing laws, such as Company Law. We find that the EITI report does not contain any shareholder agreements, even though at least the one for the Oyu Tolgoi project between Rio Tinto which holds 66 percent of Oyu Tolgoi and Erdenes Oyu Tolgoi, the SOE holding the government interest of 34 percent in Oyu Tolgoi LLC, is widely available through the company's and SOE's websites and other sources.
- **Deposit use agreements** – These are mandated by the Law on Minerals to determine the state's equity share in mining projects that utilize deposits defined as strategic, as well as in

cases when mining companies must pay the government compensation for using deposits that were initially discovered with public funds. Notably, while 11 contracts were listed as deposit use agreements in the EITI Reconciliation Report for 2022[25], we assess that these are actually local community agreements mandated by Article 42 of the Minerals Law and not deposit use agreements. The Contracts Portal and the annexes to the EITI annual reports both contain no actual deposit use agreements, and it is unclear if and how many such agreements are in force as of today.

- **Service or operator agreements** – These are mostly relevant to large projects, including those run by SOEs, when license holders hire operator companies to provide mining services. For instance, Erdenes Tavan Tolgoi, the largest state-owned coal miner, signed operator or service contracts with private mining service providers, and these came under scrutiny during the parliamentary public hearings held in relation to the so called "coal theft" scandal at the end of 2023. These contracts may have financial and other arrangements that make them as important as, for instance, investment agreements, in terms of understanding the financial and other benefits of mining. The EITI does not provide any operator or service agreements on the Contracts Portal even though companies like Erdenes Tavan Tolgoi are known to have contractor mining service providers.[26] The company, while providing a lot of useful information, does not provide contracts with these operators on their website, despite having a dedicated corner labelled as 'extraction contracts'. The extent of the use of operators by other large scale mining license holders is not readily known due to the absence of such information.
- **Cooperation agreements** – These are mandated by the Law on Minerals and the Law on Petroleum and focus on how local authorities and mining and oil companies can cooperate on environmental protection, mine use, infrastructure development, and local employment issues. The signatories to these agreements are local authorities and license holders. There is a model agreement[27] approved by the government that local governments and companies can use. The

[25] Annex 39 and 40, EITI Mongolia Secretariat.
[26] For example, 6 companies are listed as operators, p. 31, Erdenes Tavan Tolgoi, "Annual Report for 2023" (Erdenes Tavan Tolgoi, 2024), www.ett.mn/mn/file-viewer/5747.
[27] Government of Mongolia. "Model Agreement," 2016. www.legalinfo.mn/mn/detail?lawId=207245&showType=1.

EITI report contains a significant number (306) of cooperation agreements but does not provide details on whether this is a comprehensive list of all existing agreements, or if all these agreements are still in effect.

- **Land use agreements** – These are mandated by the Law on Minerals, and Law on Land. The signatories to the agreement are local authorities and license holders. While obtaining these agreements is essential for conducting exploration and mining activities, they usually do not contain essential details on the extractive activities. The Contracts Portal and the EITI reports contain a large number of agreements of this type, however, there is no explanation as to whether this database contains all agreements that are in effect or not.
- **Water use agreements** – These agreements are mandated by the Law on Minerals, and Law on Water. The signatories to the agreement are the local authorities and the license holder. The Contracts Portal and the EITI reports contain a large number of agreements of this type, however, there is no explanation as to whether this database contains all agreements that are in effect or not.
- **Production sharing agreements** – These are mandated by the Law on Petroleum to regulate a range of fiscal terms and environmental plans. The signatories to the agreement are the government and license holders. These agreements constitute the main agreements between oil companies and the government and cover all key fiscal and operational aspects of a given project. The contracts database contains 11 such contracts; however, there is no explanation as to whether these represent a comprehensive list of such agreements. In fact, some of the agreements are known not to be in the database, such as contracts linked to the biggest oil producing company, Dachin Tamsag. The EITI reconciliation report for 2022 states that there are "31 contractors operating on 28 blocks".[28] The same report provides a table of contracts that are available on the Contracts Portal, but only for 24 blocks[29], and then in the next table, it tallies contracts that were made public to 27.[30] The government agency in charge of oil production reports that there are 14 active and 4 dormant fields linked to 15 companies in

[28] p.79, EITI Mongolia Secretariat, "2022 Mongolia EITI Reconciliation Report."
[29] Table 59, pp.89-90, EITI Mongolia Secretariat.
[30] Table 60, pp. 90-92, EITI Mongolia Secretariat.

2023.[31] In short, there is no single, credible source of information on how many production sharing agreements are in existence.

- **Stabilization certificates** – While stabilization certificates are not strictly contracts, they regulate key fiscal conditions in relation to projects held by the investors with such certificates. The certificates are regulated by the Law on Investment. The minimum investment amount to qualify for a stabilization certificate is MNT30 billion. Stabilization certificates fix the applicable tax rates for specific taxes such as corporate income tax, value-added tax, customs duties, and royalties. The duration of the stabilization period varies based on the investment amount, industry, and location, ranging from 5 to 18 years. Stabilization certificates are revoked if investors sign investment agreements with the government. Prior to the introduction of stabilization certificates by the 2013 Law on Investment, the 1993 Law on Foreign Investment allowed for stabilization agreements to be signed by the government with investors. While the EITI annual report for 2022 claims that there are 11 stabilization agreements listed on the Contracts Portal, only one was attached to the annexes of the report itself.
- **Financing arrangements** – Sometimes the government negotiates various financing arrangements for specific projects with investors. For example, in the case of the Oyu Tolgoi project, the government received loans from the company in the form of advance tax payments through such arrangements as government T-Bill purchase agreements. Because they are subject to negotiations between the two sides in line with general laws and not prescribed by a specific law, the extent of using such agreements is difficult to assess. Also, in some cases the government may provide guarantees to state owned or other companies in procuring loans from banks or other sources. No such agreements were listed in the EITI annual reports while the Contracts Portal contains at least one such agreement, specifically for the funding of the underground project for the Oyu Tolgoi mine.

[31] MRPAM, "Costs of Contractors," 2024, www.view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fmrpam.gov.mn%2Fpublic%2Fpages%2F49%2F%25D0%2593%25D1%258D%25D1%2580%25D1%258D%25D1%258D%25D0%25BB%25D1%258D%25D0%25B3%25D1%2587%25D0%25B8%25D0%25B9%25D0%25BD%2520%25D0%25B7%25D0%25B0%25D1%2580%25D0%25B4%25D0%25B0%25D0%25BB%25202023.xlsx&wdOrigin=BROWSELINK.

- **Offtake agreements** – These are often concluded as part of financing arrangements or service agreements and might be relevant in the context of state-owned enterprises. Often such agreements are made on a barter basis where service or finance providers are compensated by a portion of production. Assumptions behind prices and quality of commodity become crucial to understanding the costs and benefits of such arrangements. The EITI reports and their annexes do not contain information on such contracts.
- **Environmental arrangements** - The environmental obligations of mining companies in Mongolia are established through a combination of legislation and policies. Law on Environmental Impact Assessment (2012) requires mining companies to conduct environmental impact assessments (EIAs) before starting operations. These EIAs must identify potential environmental impacts and propose mitigation measures. Law on Minerals (2009) requires companies to develop and implement environmental protection plans, including measures to prevent pollution, conserve natural resources, and rehabilitate land after mining is complete. Sustainable Development Policy (2012) encourages responsible mining practices that minimize environmental and social impacts. In addition, companies sign environmental rehabilitation contracts, some of which are listed in the EITI annual reports.

"2.2.a Implementing countries are required to disclose information related to all contract and license awards and transfers taking place during the accounting period covered by the most recent EITI disclosures…"[32]

The EITI annual report contains a list of contracts disclosed during the reporting year, with useful details on when those contracts were signed.[33] The report neither describes the process for awarding these contracts, except for general legal provisions pertinent to contracts, nor provides details on the technical and financial criteria used to award these contracts, or any material deviations from the applicable regulatory framework. These are conditions prescribed by the EITI Standard in relation to licensing, but in Mongolia's context could be applied to contracts as well.

[32] p.17, EITI, "2023 EITI Standard."
[33] Annex 39, EITI Mongolia Secretariat, "2022 Mongolia EITI Reconciliation Report."

Mongolia's EITI reports are certainly missing important contracts as part of the listing of contracts in its annexes, as described in 2.1 above. The listing of contracts in the EITI report does not even correctly include all the contracts available in the Contracts Portal, nor does it explain which contracts were signed during the reporting period.

2.2.a (continued) "Where there are gaps in the publicly available information, these must be clearly identified. Any significant legal or practical barriers preventing comprehensive disclosure of the information set out above must be documented and explained, including an account of government plans to overcome such barriers and the anticipated timescale for achieving them."[34]

The EITI annual report does not provide any explanation of gaps in the publicly available information related to extractives contracts disclosures. For example, EITI reports do not contain a list of stability agreements, as discussed under section 2.1 above, despite the fact that some of these agreements are available on the Contracts Portal. There is also no discussion of legal or practical barriers to contract disclosures in these reports.

We find that Mongolian legislation requires disclosure of contracts for certain types of contracts, namely:

- Cooperation or local-level agreements (mining) (Minerals Law, Article. 42.4)
- Purchase and sale contracts of state-owned companies (Public Information Transparency Law, Article. 8.1 & 8.4; Glass Accounts Law, Article. 6.1.1)

The laws also require disclosure of environment related documents, such as environmental impact assessments (Mining Law, Article. 57.4), protection plans (Mining Law, Article. 57.4), and environmental protection reports (Mining Law, Article. 57.4).

Cooperation, or local-level agreements are signed between local authorities and license holders in the extractive sector. These agreements are mandated by the laws made publicly accessible through the contract portal (iltodgeree.mn). As of February 2024, the portal contains 790 such agreements, covering the period from 2009 to 2023. This includes 695 agreements signed with

[34] p.18, EITI, "2023 EITI Standard."

local authorities from 2009 to 2022, as reported in the 2022 EITI reconciliation report[35], and an additional 95 local level agreements signed in 2023[36].

The Public Information Transparency Law (Article 8.1 & 8.4) and the Glass Accounts Law (Article 6.1.1) require the disclosure of contracts related to the procurement and sale contracts of state-owned companies. While the Glass Account portal[37] discloses the procurement plans of state-owned companies, it does not currently publish the purchase agreements or sales contracts on the portal. Government entities and state-owned enterprises are responsible for uploading information to the Glass Account Portal, including their annual budget, procurement plans and local development fund planning, by January 10th of each year. The implementation of the law has been inconsistent, particularly among state-owned enterprises in Mongolia. This unevenness can be attributed to several factors, including unclear legal language regarding responsibilities, insufficient government action to ensure compliance and weak consequences for non-compliance[38].

In accordance with the Law on Minerals of Mongolia (Article 57.4), environmental impact assessments (EIAs), environmental protection management plans (EPMPs), and environmental protection reports (EPRs) are mandated to be publicly disclosed. However, there is no clear timing specified for the publication of these environmental documents, nor are there clear sanctions for failing to publish them. Currently, only EIAs are currently available through a public portal at www.eic.mn. While the Ministry of Environment and Tourism possesses EPMPs and EPRs, these documents are not currently accessible to the public[39].

One area of contention is whether some agreements made between the government and companies should be considered administrative decisions that fall under the jurisdiction of General Administrative Law[40]. The Administrative Law grants participants the right to access information as

---

[35] EITI Mongolia Secretariat. "2022 Mongolia EITI Reconciliation Report," 2023. www.resource4.sodonsolution.org/eitimongolia/File/2024/01/26/ccgk80kk82n69ur3/17-%D1%80%20%D1%82%D0%B0%D0%B9%D0%BB%D0%B0%D0%BD.pdf.
[36] Contract portal. "Contracts Portal," n.d. www.iltodgeree.mn/.
[37] Ministry of Finance. "Glass Account Portal." Shilen Dans, n.d. www.shilendans.gov.mn/.
[38] Dorjdari Namkhaijantsan. "Mongolia's State-Owned Mining Enterprises: A Deeper Look Into Glass Accounts Data," May 2022,www.resourcegovernance.org/sites/default/files/documents/mongolia_mining_soe_deeper_look_into_glass_accounts_data.pdf.
[39] Interview with Mr.Enkhmunkh G, Head of Environmental Assessment Department of Ministry of Environment and Tourism, February 2024.
[40] Parliament of Mongolia. General Administrative Law (2015). www.legalinfo.mn/mn/detail/11259.

disclosed by the Public Information Law[41]. According to this legislation, cooperation agreements outlined in Minerals Law Article 42 are required to be made public. But if local cooperation agreements are deemed to be administrative decisions, not only the final agreements would be subject to public disclosure of information, but also other information need to be disclosed throughout and after the negotiation and signing processes.

In relation to legal requirements, the EITI workplans include the government's commitment to prepare the draft EITI legislation with the expectation that the parliament will discuss and adopt it into a law.

2.2 (continued) "The multi-stakeholder group is encouraged to include additional information on the allocation of licenses as part of EITI disclosures. This could include …a description of procedures, actual practices and grounds for renewing, suspending or revoking a contract or license…"[42]

EITI annual reports do not contain information that describes procedures, actual practices and grounds for renewing, suspending or revoking contracts. Most of the information related to such procedures and practices can be found in some of the contracts related to the main project activities. For instance, the Oyu Tolgoi investment agreement, together with its accompanying shareholders' agreement, contains details on the grounds for renewing, suspending or revoking these given contracts. In cases where no contracts for project activities are signed, these relationships are subject to existing laws including the Civic Code.

2.4.a "Implementing countries are required to disclose any contracts and licenses that are granted, entered into or amended from 1 January 2021.

The EITI annual report for 2022 contains information on contracts entered into 2022[43], while the report for 2021 contains information on contracts signed in 2021[44]. However, no information on

[41] Parliament of Mongolia. Public Information Law (2021). www.legalinfo.mn/mn/detail?lawId=16390263044601.
[42] p.18, EITI, "2023 EITI Standard."
[43] Annex 40, EITI Mongolia Secretariat, "2022 Mongolia EITI Reconciliation Report."
[44] Annex 40, EITI Mongolia Secretariat, "2021 Mongolia EITI Reconciliation Report," 2022, www.resource4.sodonsolution.org/eitimongolia/File/2023/01/19/ktmvrh2dagte5km8/%D0%9E%D2%AE%D0%98%D0%A2%D0%91%D0%A1-%D1%8B%D0%BD%2016%20%D0%B4%D1%83%D0%B3%D0%B0%D0%B0%D1%80%20%D0%BD%D1%8D%D0%B3%D1%82%D0%B3%D1%8D%D0%BB%20%D1%82%D0%B0%D0%B9%D0%BB%D0%B0%D0%BD.pdf.

amendments is provided, including whether any applicable amendments were executed during the reporting period.

Even when some contracts are required for disclosure by laws, as discussed under section 2.2.a above, there is no legal requirement to disclose amendments to the contracts. Most of the community level agreements are made for a short term, so the practice of amending them is simply not used, as the parties typically enter into a new agreement once the previous one expires.

2.4.a (continued) Implementing countries are encouraged to publicly disclose any contracts and licenses that provide the terms attached to the exploitation of oil, gas and minerals, as well as material exploration contracts.

Mongolia's mining and exploration licenses are not accompanied by contracts that detail the terms attached to these licenses. Rather, the terms and conditions that apply to these licenses are prescribed by the legislation. There are no specific exploration contracts that the government signs with investors or that are prescribed by the legislation.

2.4.b The multi-stakeholder group is expected to agree and publish a plan for disclosing contracts with a clear time frame for implementation and addressing any barriers to comprehensive disclosure. This plan will be integrated into work plans covering 2020 onwards.

EITI annual workplans contain information regarding the disclosing of contracts. For instance, the workplan for 2023 contains a specific objective and actions specified under this objective for promoting contract transparency in Mongolia.[45] For example, activities such as improving the EITI website, uploading new contracts, and capacity building for contract disclosures for relevant officials are included in the workplan. At the same time, the annual workplan for 2024 includes some of the actions from the previous year's plan, namely the ones listed above, and adds a few others.[46] While all these work plan components are geared towards meeting EITI Standard

[45] EITI Mongolia Secretariat, "EITI Mongolia Work Plan 2023," 2023, www.eitimongolia.mn/p/49?locale=en.
[46] EITI Mongolia Secretariat, "EITI Mongolia Work Plan 2024," 2024, www.resource4.sodonsolution.org/eitimongolia/File/2024/01/26/qg4jevohp8vr1cm4/Mongolia%20EITI%202024%20Work%20plan.pdf.

requirements, the actions included are not specific enough to determine if they would be sufficient to address existing barriers to comprehensive disclosure.

2.4.c "The multi-stakeholder group is required to document the government's policy on disclosure of contracts and licenses that govern the exploration and exploitation of oil, gas and minerals."

The EITI annual reports contain documentation of laws and regulations that are relevant to extractive contracts and their disclosure but do not include a narrative explanation of how these legal requirements relate to contract disclosure. This means that while these references to specific legal documents may contain information on the policy regarding contract disclosures, they may also simply set the legal grounds for specific contracts.

As mentioned in the previous sections, only a few types of contracts are explicitly required to be disclosed by laws, including local community cooperation agreements and SOE procurement agreements, in addition to documents related to environmental protection. Despite the disclosure of numerous contracts through the Contracts Portal and other means, the lack of legal requirements to disclose key project-related contracts, such as investment agreements, has been a key impediment to contract disclosures in Mongolia. The announcement that the government would submit a draft law on EITI to parliament for subsequent approval of the law, including contract transparency clauses, has not materialized over the years. The government's commitment to contract transparency has been repeatedly underscored by officials, including the Deputy Minister of Mining and Heavy Industry during the official launch of the contracts website. The minister stated that all extractive industry contracts, including investment agreements, production sharing agreements, and even local contracts, would be available on the online portal.[47] However, it appears that little has been done to use existing opportunities to ensure that contract disclosures are required by law. For instance, the adoption of the Public Information Transparency Law in 2021, which specifies all the information that needs to be made public, was an opportunity for the government to include extractive contracts as subject to disclosure.

The government expressed its commitment to contract transparency through various other channels as well. For instance, the Mongolian government has repeatedly demonstrated its

[47] Ministry of Mining and Heavy Industry. "Extractive Contracts Are Accessible to the Public." Ministry of Mining and Heavy Industry, n.d. www.mmhi.gov.mn/2019/04/22/4456/.

commitment to contract transparency in the extractive sector through its participation in the Open Government Partnership (OGP). This commitment was outlined in the 2016-2018 National Action Plan[48] and strengthened in the 2021-2023 plan[49], which aimed to establish a legal framework for disclosing all types of extractive sector contracts. The recent 2024-2027 National Action Plan[50] reaffirms this commitment to contract transparency.

Similarly, Mongolia's anticorruption efforts include activities with indirect relevance to contract disclosures. The 2023-2030 Anticorruption National Program[51] does not have specific articles directly addressing contract transparency, but its focus on overall transparency can indirectly encourage it. This includes making information on the planning and implementation of state-owned mining projects publicly available. Additionally, the plan calls for public access to information regarding procurement by state-owned mining companies.

Some important extractive contracts, like the investment agreement for the Oyu Tolgoi project, contain a specific requirement to disclose the contract itself. However, this is an exception rather than a norm, and even this disclosure requirement does not extend to many related contracts for the given project.

2.4.c (continued) "The multi-stakeholder group is required to document the government's policy on disclosure of contracts… This must include: …A description of whether legislation or government policy addresses the issue of disclosure of contracts and licenses, including whether it requires or prohibits disclosure of contracts and licenses. If there is no existing legislation, an explanation of where the government policy is embodied must be included, and the multi-stakeholder group must document its discussion on what constitutes government policy on contract disclosures. Any reforms relevant to the disclosure of contracts and licenses planned or underway must be documented."

The EITI annual reports do not discuss or document policies on contract disclosures. While the documents refer to specific legislative acts that are relevant to extractive contracts (a table copied

[48] Open Government Partnership. "Mongolia Action Plan Review 2016-2018," n.d.
[49] Open Government Partnership. "Mongolia Action Plan Review 2021-2023," July 21, 2022. www.opengovpartnership.org/documents/mongolia-action-plan-review-2021-2023/.
[50] Open Government Partnership. "Mongolia Action Plan 2023-2027," January 8, 2024. www.opengovpartnership.org/documents/mongolia-action-plan-2023-2027-december/.
[51] Parliament of Mongolia. "2023-2030 Anticorruption National Program," 2023. www.legalinfo.mn/mn/detail?lawId=16760139781851.

from the Contracts Portal), these references are not explained, and most of them are irrelevant to contract disclosures. EITI annual workplans contain an objective related to strengthening contract disclosures, but this objective is not supported by activities aimed at reviewing and changing government policies. The workplans also reference the preparation of a draft law on EITI to be submitted to the parliament, but, as documented, it is unclear if the law will ever be passed. Under these circumstances, legal grounds for strengthening the transparency of contracts could focus on what the government's executive branch can do within its own authority.

2.4.c (continued) "The multi-stakeholder group is required to document the government's policy on disclosure of contracts… This must include: …An overview of which contracts and licenses are publicly available. Implementing countries must provide a list of all active production and exploration contracts and licenses, indicating which are publicly available and which are not. For all published contracts and licenses, the overview must include a reference or link to the location where the contract or license is published. If a contract or license is not published, the legal or practical barriers must be documented and explained."

The EITI annual reports do contain a list of all production sharing agreements in the oil sector and an extensive list of contracts in the mining sector that are largely borrowed from the Contracts Portal. However, there is no explanation of whether these lists are comprehensive or if there are contracts that are not included. The EITI annual report for 2021 contains links to navigate to disclosed contracts online, while the report for 2022 provides the list of contracts without such links. Under these circumstances, it is not possible to assess the extent and coverage of disclosed contracts in the extractives sector compared to the whole population of relevant contracts. While the Contracts Portal is a significant step towards the disclosure of contracts, there is no assurance that all contracts that should be disclosed under the EITI requirements are covered.

During this study, we requested information on the number of active contracts from both the Ministry of Mining and Heavy Industry and the Mineral Resources and Petroleum Agency of Mongolia. However, neither provided a specific number.

The Contracts Portal is funded and administered by OSF. Therefore, as a non-governmental organization, OSF lacks the ability to compel the government or local authorities to publish contracts. Moreover, OSF indicated that there is limited knowledge of the actual number of locally signed contracts and whether their publication on the Contracts Portal is anywhere near complete.

They attributed this to a lack of authority and designated personnel to handle such data collection and management. OSF expressed the belief that the Ministry of Mining and Heavy Industry or the EITI Secretariat should take responsibility for operating the portal.

2.4.c (continued) "The multi-stakeholder group is required to document the government's policy on disclosure of contracts… This must include: … Where disclosure practice deviates from legislative or government policy requirements concerning the disclosure of contracts and licenses, the multistakeholder group must provide an explanation for the deviation."

The EITI annual reports do not contain information on legislative or government policy regarding the disclosure of contracts, rendering any analysis of deviations in practice impossible. The current Mongolian legal framework only mandates the public disclosure of a specific and limited set of contracts within the extractive sector. This means that crucial agreements such as investment agreements, production sharing agreements, and deposit use agreements are absent from the list of mandatory disclosures. Their disclosure in practice is due to contractual obligations or in response to public demands and is managed in an ad hoc manner. This limited scope of mandatory disclosure creates a barrier to transparency, as crucial information regarding the terms and conditions governing extractive projects remains inaccessible to the public. Even when contracts are mandated for disclosure by law, implementation can vary significantly. There are currently no mechanisms in place for cross-checking or verifying the completeness and accuracy of uploaded contracts. This inconsistency undermines the effectiveness of the disclosure system. For example, companies may state the existence of agreements like cooperation agreements with local authorities, but these documents are not actually available on the contract website. Contracts identified in Mongolia's EITI reconciliation reports might also be missing from the contract portal or vice versa. Documents related to environmental protection, such as environmental protection plans and reports, are publicly available only in a limited manner, despite legal requirements.

As stated above, the contract portal is funded and administered by OSF. Therefore, as an NGO, OSF lacks the ability to compel the government or local authorities to publish contracts.

Requirement 4. Revenue collection

4.2.a "Where the sale of the state's share of production of oil, gas and/or mineral resources or other revenues collected in kind is material, the government, including state-owned enterprises (SOEs), are required to disclose …where applicable, …payments (in cash or in kind) related to swap agreements…" and "The multi-stakeholder group is encouraged to disclose information on the ownership of the product sold and the nature of the contract (e.g. spot or term)."[52]

Mongolia's production sharing agreements in the oil sector do not include in-kind contributions. As such, this EITI Standard requirement does not apply to Mongolia.

4.2.b "Implementing countries, including SOEs, are encouraged to disclose …any material deviations from the applicable legal and regulatory framework governing the selection of buying companies and the related sales agreements" and "Implementing countries are encouraged to disclose the related sales agreements with buying companies."[53]

Mongolia has started collecting export sales agreements from companies for the purposes of royalty and other tax collections. However, at present, sales agreements are not subject to public disclosure by any legislation. The EITI workplan for 2024 includes an activity to upload sales agreements of SOEs to the Contracts Portal. As of now, the portal does not contain such agreements. While most of the sales contracts are not public, Erdenes Tavan Tolgoi, the coal-exporting SOE, disclosed some contracts on its website that are barter agreements falling under section 4.3.a of the EITI Standard, discussed below.

4.2.d "…Companies are encouraged to publish data disaggregated by individual seller, contract or sale. The disclosures could for each sale include information on the nature of the contract (e.g. spot or term) and load port."[54]

Sales contracts are not public, as discussed in section 4.2.b above.

[52] p.28, EITI, "2023 EITI Standard."
[53] p.28, EITI.
[54] p.28, EITI.

4.3.a "The multi-stakeholder group is required to consider whether there are any agreements or sets of agreements involving the provision of goods and services (including loans, grants and infrastructure works), in full or partial exchange for oil, gas or mining exploration or production concessions or physical delivery of such commodities" and "Where …these agreements are material, the multi-stakeholder group is required to ensure that these agreements are comprehensively described to the public…"

The EITI Reconciliation Report for 2022 contains a section describing infrastructure barter agreements.[55] 33 agreements of this nature are noted in the report, with details provided in the annex. However, it is unclear if these 33 agreements can be considered barter agreements, as it seems the reporting parties have included any non-monetary contributions to local communities or any purchase of equipment etc., in these agreements. EITI templates should be amended to request the necessary information to improve reporting.

Mongolia has used barter agreements, mainly in relation to the infrastructure work, at Erdenes Tavan Tolgoi SOE. The agreements, initially signed as confidential, were made public following the 'coal theft' scandal through the company's website.[56] These agreements are related to the construction and financing of a coal hauling railway in exchange for future coal deliveries by the SOE.

4.3.a (continued) "Implementing countries are encouraged to publish the underlying barter or infrastructure agreement, including resource-backed loan agreements."

While direct resource backed loan arrangements are not known to have been used, barter agreements for infrastructure have been used at some SOEs, as described in the previous section.

[55] Section 6.3, p.136, EITI Mongolia Secretariat, "2022 Mongolia EITI Reconciliation Report."
[56] "Coal Supply Agreement," www.ett.mn/, November 13, 2019, www.ett.mn/mn/news/single/5007.

Requirement 6. Social and economic spending

6.1.a "…Implementing countries are expected to disclose the contracts, and any other documents required by law, that describe the level and allocation of material mandatory social expenditures."

Social expenditures occur mostly within so called local level, or local cooperation agreements mandated by law, namely by the Minerals Law. These contracts are required by law to be disclosed, as discussed above. Specifically, these contracts are listed as open information items under the Public Information Transparency Law. EITI reports, as well as the Contracts Portal contain multiple details and actual contracts signed by companies with local communities. However, there is no clarity as to whether the list of contracts is comprehensive, and whether the listed contracts are valid at the reporting date.

6.1.b "Where material payments by companies to the government related to the environment are mandated by law, regulation or contract that governs the extractive investment, implementing countries are required to disclose such payments. Where environmental payments are mandated by contracts, implementing countries are expected to disclose these contracts."

The EITI reconciliation reports, and the Contracts Portal contain lists and actual contracts related to environmental rehabilitation. The EITI report annex contains 108 such contracts, including those signed in relation to the Law on Prohibition of Mining in Waterheads and Forest Areas. However, it is unclear if these lists are comprehensive.

4. Conclusions and Recommendations

In Mongolia, various contracts are used in the extractive sector, and their disclosure is increasingly accepted as a key component of promoting good governance and transparency. While the practice of disclosing extractive contracts has gained traction in recent years, there is no clear understanding of whether all contracts are disclosed or even how many contracts exist that are subject to disclosure requirements or good practice. Only a specific subset of all existing contracts is required to be disclosed to the public by laws and regulations. This discrepancy between legal requirements and the EITI Standard, which requires the maintenance of a list of all existing contracts, creates challenges in achieving comprehensive contract transparency. While Mongolia has made efforts through various initiatives and a dedicated online contracts repository, limitations in the legal framework and inconsistent implementation hinder full public understanding and accountability of extractive contracts. It appears that the government, despite many pledges and rhetoric to support contract transparency, has not demonstrated the leadership needed to advance contract transparency to a new level and meet all the EITI Standard requirements related to contract disclosures. This is evidenced by delays in adopting the EITI Law, missed opportunities to include more robust contract transparency requirements in the Public Information Transparency Law, and the failure to ensure that the Contracts Portal is routinely updated and covers all contracts. Additionally, there has been a lack of demand for auditors preparing the EITI Reconciliation Report to provide a specific list of existing contracts for comparison with the list of disclosed contracts.

In addition to these observations, we find that several issues are emerging that create obstacles to achieving full contract transparency in the extractives sector:

- **A large number and variety of contracts are used in the extractive sector, but there is still no mechanism to document all contracts and agreements comprehensively, resulting in no complete list of contracts being available.** The main contracts or agreements used in the sector include investment agreements, shareholder agreements, deposit use agreements, cooperation agreements, land use agreements, water use agreements, production sharing agreements, and stabilization certificates. Unfortunately, for none of these contract types can we determine the exact number that has been signed or are currently in effect.

- **Disclosure requirements are limited and inadequate for meeting EITI Standard requirements or for meeting public expectations.** Mongolian legislation mandates the disclosure of specific contracts, including cooperation agreements, environmental documents, and purchase and sale contracts of state-owned companies. However, crucial agreements like investment agreements, production sharing agreements, and deposit use agreements are not mandated for disclosure. At the same time, as evidenced by recent corruption scandals, including "the coal theft", timely and full disclosure of contracts would allow for public scrutiny and help prevent corruption to a certain extent.
- **Current EITI reports do not meet the EITI Standard requirements**. The EITI Standard requires the disclosure of all oil and mining contracts, encompassing various elements like preliminary information, fiscal terms, non-fiscal terms, and administrative provisions. While Mongolia has made progress, significant discrepancies exist between EITI requirements on contract disclosure, Mongolian legislation and disclosure practices with regard to the scope of disclosures.
- **Government policies on contract disclosures are not ambitious enough or consistently followed through.** Several initiatives promote contract transparency, including the EITI, Open Government Partnership, and domestic policies such as the National Anti-Corruption Program. EITI workplans include ambitious objectives on contract disclosures, including the adoption of a new EITI law that would incorporate contract disclosure requirements. Some SOEs have disclosed important contract related information and the actual contracts through their websites in an effort to curb corruption. However, most of these policies have not materialized, including the expected EITI law.
- **The Contracts Portal is an important step in contract disclosures, yet it is incomplete and lacks legal underpinning.** As the most significant contracts disclosure channel, the portal primarily features local-level agreements signed between local authorities and license holders, which are mandated by law for disclosure. Discrepancies exist between contracts listed in the EITI reports and those uploaded to the portal, raising concerns about the completeness of the repository. Additionally, the collection of contracts and their actual posting on the portal are managed by a non-governmental entity which, while having the necessary ambitions and effort,

lacks the power and resources to compel the disclosure of all contracts held by companies and the government agencies.

In summary, while Mongolia has undertaken initiatives to improve contract transparency in the extractive sector, challenges remain. Addressing these challenges, such as revising the legal framework to mandate the disclosure of all relevant contracts and ensuring consistent implementation, is crucial for achieving comprehensive contract transparency, meeting EITI Standard requirements, and fostering public understanding and accountability. With this in mind, we put forward the following recommendations to improve contract transparency in Mongolia's extractive sector:

- **Fill the leadership void on contracts transparency:** The government needs to re-emphasize its commitment to contract disclosures. Additionally, the EITI MSG must also lead the cause by organizing dedicated discussions on the state of contract disclosures, assessing why previous commitments have failed or not been fully realized, and developing a plan of concrete actions to enhance transparency of contracts within a short time frame.
- **Use existing legal authorities of the government**: The government should review and revise its legal framework to expand the scope of mandatory contract disclosures within the extractive sector. This should include requiring public disclosure of significant agreements such as investment agreements, production sharing agreements, and deposit use agreements. While the executive branch may not be empowered to pass laws, it has many other legal means to ensure that at least the list of all contracts is prepared and published. This is especially true for many SOEs operating in the sector, whose management is completely at the discretion of the executive branch of the government. The excuse of an upcoming EITI law adoption for delaying legal reforms is unacceptable after more than a decade of the expectations of this law being passed by the parliament. This will show the championship by the government on the matter of contract transparency in action.
- **Ensure the EITI Law is on the Parliament's agenda**: The passage of a specific Law on EITI would be instrumental in addressing the mandate issue by requiring the disclosure of a wider range of contracts related to the exploration and exploitation of minerals and oil. The

government should prioritize the enactment of this law to enhance transparency and accountability. However, the government should provide clear alternatives to Parliament, including amendments to the existing legislation, that would achieve contract transparency comparable to what is envisioned by the draft EITI law.

- **Enhance implementation mechanisms**: Implementing agencies should establish mechanisms to ensure the completeness and accuracy of uploaded contracts on the Contracts Portal. This could involve cross-checking contracts against reported agreements and instituting verification processes to ensure consistency with the contract portal. The EITI reconciliatory terms of reference should require the assessment of contacts disclosures for completeness, comprehensiveness and timeliness.
- **Promote voluntary disclosure**: While certain contracts may not be mandated for disclosure by law, the government should encourage companies to voluntarily disclose a broader range of agreements beyond those required by legislation. Incentives or recognition programs could be developed to encourage companies to adopt transparent practices.
- **Strengthen civil society engagement**: Civil society organizations play a crucial role in advocating for transparency and holding stakeholders accountable. The government should actively engage with civil society groups to solicit feedback, identify areas for improvement, and collaborate on initiatives to enhance contract transparency.
- **Invest in capacity building**: Capacity-building initiatives should be expanded to equip relevant stakeholders with the knowledge and skills necessary to navigate contract transparency requirements effectively. Training programs should cover aspects such as contract interpretation, disclosure obligations, and monitoring mechanisms.
- **Improve access to environmental documents**: The government should take steps to ensure that environmental-related documents, such as environmental protection plans and reports, are made publicly available in accordance with legal mandates.
- **Establish clear guidelines**: Clear guidelines and standards should be developed by the EITI MSG to outline the criteria for contract disclosure, including the types of agreements to be

disclosed, the information to be included, and the format for publication. This will help ensure consistency and transparency in disclosure practices across the extractive sector.

5. Annexes

Annex A. Contract types

In Mongolia, there are fourteen different types of contracts, and three environmental obligations related to the exploitation of oil and minerals in Law on Minerals, Law on Petroleum, Law on Nuclear Energy, Law on purchase of goods and services with state and local property funds, Law on Public Information Transparency, Law on Investment, Law on Glass Accounts as follow:

1. Investment agreement
2. Deposit use agreement
3. Indemnity agreement
4. Cooperation agreement or local level agreement (mining)
5. Land use agreement
6. Water use agreement
7. Small-scale mining contracts
8. Contract for the use of derivative deposits
9. Agreements for lease of assets and sales of products
10. Mining license as collateral agreement
11. Confidentiality agreement
12. Production sharing agreement
13. Cooperation agreement (oil)
14. Safeguard agreement (radioactive minerals)
15. Purchase and sale contracts of state-owned companies
16. Environmental impact assessments
17. Environmental protection plans
18. Environmental protection implementation reports

Only for cooperation agreement or local level agreement (mining) under the Article 42.4 of the 2006 Minerals Law and purchase and sale contracts of state-owned companies under the Article 8.1 and 8.4 of the 2021 Public Information Transparency Law under the Article 6.1.1 of the 2014 Glass Accounts Law the government is required to publish those agreements and contracts. Furthermore, Article 57.4 of the 2006 Mining Law requires disclosing of environmental impact assessments, environmental protection plans and reports.

Annex B. A list of extractive contracts

The exact number of active contracts is not available through the contract portal or any other sources.

#	Contract types	Governing law	Estimated number	Available on Contract portal
1	Investment agreement	Law on Investment	Number unknown	2
2	Deposit use agreement	Law on Minerals and Law on Petroleum	2*	0
3	Indemnity agreement	Law on Minerals	Number unknown	67
4	Cooperation agreement or local level agreement (mining)	Law on Minerals	Number unknown	306
5	Land use agreement	Law on Minerals and Law on Land	Number unknown	125
6	Water use agreement	Law on Minerals and Law on Water	Number unknown	70
7	Small-scale mining contracts	Law on Minerals	Number unknown	246
8	Contract for the use of derivative deposits	Law on Minerals	Number unknown	0
9	Agreements for lease of assets and sales of products	Law on Minerals	Number unknown	0
10	Mining license as collateral agreement	Law on Minerals	Number unknown	0
11	Confidentiality agreement	Law on Minerals	Number unknown	0
12	Production sharing agreement	Law on Petroleum	~ 15	11 (partially)
13	Cooperation agreement (oil)	Law on Petroleum	Number unknown	?
14	Safeguard agreement (radioactive minerals)	Law on Nuclear Energy	Number unknown	
15	Purchase and sale contracts of state-owned companies	Law on purchase of goods and services with state and local property funds, Law on Public Information Transparency, Law on Glass Accounts	Number unknown	
16	Environmental impact assessments	Law on Minerals	Number unknown	~5,000
17	Environmental protection plans	Law on Minerals	Number unknown	0
18	Environmental protection implementation reports	Law on Minerals	Number unknown	0
19	Shareholder agreement	Law on Company	2*	0
20	Stabilization certificates	Law on Investment	Number unknown	0

*Orano's website states they signed a shareholder agreement in October 2013 and additional agreements including Deposit Development Agreement (2016) with the Mineral Resources and Petroleum Authority.

References

Badrakh Energy. “Badrakh Energy,” n.d. www.badrakhenergy.com/en/home-en/.

Dorjdari Namkhaijantsan. “Mongolia’s State-Owned Mining Enterprises: A Deeper Look into Glass Accounts Data,” May 2022. www.resourcegovernance.org/sites/default/files/documents/mongolia_mining_soe_deeper_look_into_glass_accounts_data.pdf.

EITI International Secretariat. “EITI Brief on the SOE Transparency,” November 2020. www.eiti.org/sites/default/files/attachments/brief_soe_business_case.pdf.

———. “EITI Requirement 2.4,” n.d. www.eiti.org/sites/default/files/2022-01/EN%20EITI%20GN_2.4.pdf.

———. “Guidance Note on Addressing Corruption Risks through EITI,” December 2021. www.eiti.org/sites/default/files/2022-02/Addressing%20corruption%20risks%20GN.pdf.

———. “Guidance Note on Requirement 2.6 (State Participation and SOEs),” October 2020. www.eiti.org/sites/default/files/2022-02/en_eiti_gn_2.6.pdf.

———. “Mongolia 2022 Validation Report,” October 2022. www.eiti.org/sites/default/files/2022-10/EITI%20Validation%20of%20Mongolia%20%282022%29%20-%20Final%20Validation%20report%20%28July%202022%29%20%28EN%29.pdf.

———. “Mongolia Board Decision on 2022 Validation,” October 12, 2022. www.eiti.org/board-decision/2022-47.

———. “Policy Brief on Contract Transparency – Asia,” February 2021. www.eiti.org/sites/default/files/attachments/eiti_contract_transparency_policy_brief_en_asia.pdf.

EITI Mongolia Secretariat. “2006 Mongolia EITI Reconciliation Report,” 2007. www.resource4.sodonsolution.org/eitimongolia/File/2021/02/02/alnb3bdv4ha7tcoc/Final_report_2006.pdf.

———. “2007 Mongolia EITI Reconciliation Report,” 2008. www.resource4.sodonsolution.org/eitimongolia/File/2021/02/02/ood0p77t7fz2li1v/Final_report_2007.pdf.

———. “2008 Mongolia EITI Reconciliation Report,” 2009. www.resource4.sodonsolution.org/eitimongolia/File/2021/02/02/qfl6ozov0o37cknm/Final_report_2008.pdf.

———. “2009 Mongolia EITI Reconciliation Report,” 2010. www.resource4.sodonsolution.org/eitimongolia/File/2021/02/02/9n1k5ym3a73rig1f/Final_report_2009.pdf.

———. “2010 Mongolia EITI Reconciliation Report,” 2011. www.resource4.sodonsolution.org/eitimongolia/File/2021/02/02/dpgmsos3wkejjm2n/Final_report_2010.pdf.

———. “2011 Mongolia EITI Reconciliation Report,” 2012. www.resource4.sodonsolution.org/eitimongolia/File/2021/02/02/qri3pzwotc2ndy2y/Final_report_2011.pdf.

———. “2012 Mongolia EITI Reconciliation Report,” 2013. www.resource4.sodonsolution.org/eitimongolia/File/2021/02/02/0zyek2xj02yr7anb/Final_report_2012.pdf.

———. “2013 Mongolia EITI Reconciliation Report,” 2014. www.resource4.sodonsolution.org/eitimongolia/File/2021/02/02/104103njpms3j88y/Final_report_2013.pdf.

———. “2014 Mongolia EITI Reconciliation Report,” 2015. www.resource4.sodonsolution.org/eitimongolia/File/2021/02/02/6tlew3933qijlsp5/Final_report_2014.pdf.

———. “2015 Mongolia EITI Reconciliation Report,” 2016. www.resource4.sodonsolution.org/eitimongolia/File/2021/02/02/oyjqun4fbt0l1ppt/EITI_Report_2015_Mongolian.pdf.

———. “2016 Mongolia EITI Reconciliation Report,” 2017. www.resource4.sodonsolution.org/eitimongolia/File/2021/02/02/ygdhhpl8d5cgkp2m/Mongolia_EITI_Report_2016_Mongolian.pdf.

———. “2017 Mongolia EITI Reconciliation Report,” 2018. www.resource4.sodonsolution.org/eitimongolia/File/2021/02/02/o46t85c8rbr9rvlo/EITI_report_2017_mn.pdf.

———. “2018 Mongolia EITI Reconciliation Report,” 2019. www.resource4.sodonsolution.org/eitimongolia/File/2021/02/02/c49dswx2qh5qqu86/Mongolia_2018_EITI_Report_MN-12.30.pdf.

———. “2019 Mongolia EITI Reconciliation Report,” 2020. www.resource4.sodonsolution.org/eitimongolia/File/2021/02/02/akv20vk30otsscy8/2020_FINAL%20EITI%2014%20Report%20MN-20210115.pdf.

———. “2020 Mongolia EITI Reconciliation Report,” 2021. www.resource4.sodonsolution.org/eitimongolia/File/2022/01/05/hruavbf4lnnq8zo7/Mongolia%20EITI%202020%20Report%20in%20Mon.pdf.

———. “2021 Mongolia EITI Reconciliation Report,” 2022. www.resource4.sodonsolution.org/eitimongolia/File/2023/01/19/ktmvrh2dagte5km8/%D0%9E%D2%AE%D0%98%D0%A2%D0%91%D0%A1-%D1%8B%D0%BD%2016%20%D0%B4%D1%83%D0%B3%D0%B0%D0%B0%D1%80%20%D0%BD%D1%8D%D0%B3%D1%82%D0%B3%D1%8D%D0%BB%20%D1%82%D0%B0%D0%B9%D0%BB%D0%B0%D0%BD.pdf.

———. “2022 Mongolia EITI Reconciliation Report,” 2023. www.resource4.sodonsolution.org/eitimongolia/File/2024/01/26/ccgk80kk82n69ur3/17-%D1%80%20%D1%82%D0%B0%D0%B9%D0%BB%D0%B0%D0%BD.pdf.

———. “EITI Mongolia.” EITI Mongolia, n.d. www.eitimongolia.mn.

———. “EITI Mongolia Work Plan 2012,” 2012. www.resource4.sodonsolution.org/eitimongolia/File/2021/02/03/95bbegys8pk3vv3k/ActionPlan2012en.pdf.

———. “EITI Mongolia Work Plan 2013,” 2013. www.resource4.sodonsolution.org/eitimongolia/File/2021/02/03/nxq13cmym8hhm6if/ActionPlan2013en.pdf.

———. “EITI Mongolia Work Plan 2014,” 2014. www.resource4.sodonsolution.org/eitimongolia/File/2021/02/03/fe4x71hog1xhqv1n/EITIM_POA_2014en.pdf.

———. “EITI Mongolia Work Plan 2015,” 2015. www.resource4.sodonsolution.org/eitimongolia/File/2021/02/03/d90478z2rigf3i2s/EITIMActioPlan2015en.pdf.

———. “EITI Mongolia Work Plan 2016,” 2016. www.resource4.sodonsolution.org/eitimongolia/File/2021/02/03/31415gketn8cw8ds/Mongolia%20EITI%202016%20Workplan%20in%20English.pdf.

———. “EITI Mongolia Work Plan 2017,” 2017. www.resource4.sodonsolution.org/eitimongolia/File/2021/02/03/037wcl42mvronc1u/Mongolia%20EITI%20Work%20Plan%202017%20in%20English.pdf.

———. “EITI Mongolia Work Plan 2018,” 2018. www.resource4.sodonsolution.org/eitimongolia/File/2021/02/03/ycijwzp81zc5du0h/Mongolia_EITI_2018_Work_plan_implementation_EN.pdf.

———. “EITI Mongolia Work Plan 2019,” 2019. www.resource4.sodonsolution.org/eitimongolia/File/2021/02/03/qwg5hhkn7c6q0u21/Mongolia_EITI_2019_Work_plan_EN.pdf.

———. “EITI Mongolia Work Plan 2020,” 2020. www.resource4.sodonsolution.org/eitimongolia/File/2021/02/03/g7q3mm5qciyq31vs/Implementation%20status%20in%20Eng%20Mongolia%20EITI%202020%20Work%20plan%202020%2007%2010.pdf.

———. “EITI Mongolia Work Plan 2021,” 2021. www.resource4.sodonsolution.org/eitimongolia/File/2021/02/03/ti6zj2pdawlvjntp/Mongolia%20EITI%202021%20Workplan%20in%20English.pdf.

———. “EITI Mongolia Work Plan 2022,” 2022. www.resource4.sodonsolution.org/eitimongolia/File/2022/03/14/h98xwg3gc6hljtie/Mongolia%20EITI%202022%20Work%20Plan%202022%2001%2006.pdf.

———. “EITI Mongolia Work Plan 2023,” 2023. www.eitimongolia.mn/p/49?locale=en.

———. “EITI Mongolia Work Plan 2024,” 2024. www.resource4.sodonsolution.org/eitimongolia/File/2024/01/26/qg4jevohp8vr1cm4/Mongolia%20EITI%202024%20Work%20plan.pdf.

EITI and Open ownership. “Brief on Beneficial Ownership and Corruption Prevention,” December 2022. www.eiti.org/sites/default/files/2022-12/OE%20Policy%20brief_Who%20benefits_0.pdf.

Government of Mongolia. “Model Agreement,” 2016. www.legalinfo.mn/mn/detail?lawId=207245&showType=1.

GRI. “GRI Global Reporting.” Global reporting, n.d. www.globalreporting.org/.

Hubert, Don. “Disclosing Exploitation Terms under R 2.4.” Resources for Development Consulting, September 2022.

Ministry of Environment and Tourism. “Байгаль Орчны Мэдээллийн Сан.” Environmental information portal, n.d. www.eic.mn/.

Ministry of Finance. “Glass Account Portal.” Shilen Dans, n.d. www.shilendans.gov.mn/.

Ministry of Mining and Heavy Industry. “Extractive Contracts Are Accessible to the Public.” Ministry of Mining and Heavy Industry, n.d. www.mmhi.gov.mn/2019/04/22/4456/.

———. “Minerals Sector Statistics 2023.” Ministry of Mining and Heavy Industry, 2023. www.mmhi.gov.mn/%d1%81%d0%b0%d0%bb%d0%b1%d0%b0%d1%80%d1%8b%d0%bd-%d1%81%d1%82%d0%b0%d1%82%d0%b8%d1%81%d1%82%d0%b8%d0%ba/.

Mongolia EITI National Secretariat. “Mongolia 2021 EITI Report,” December 2022. www.eiti.org/sites/default/files/2023-01/ENG_EITI_Report_16_2022_Final.pdf.

Mr.Enkhmunkh G. Head of environmental assessment department of Ministry of Environment and Tourism, February 2024.

Open Government Partnership. “Mongolia Action Plan 2023-2027,” January 8, 2024. www.opengovpartnership.org/documents/mongolia-action-plan-2023-2027-december/.

———. “Mongolia Action Plan Review 2016-2018,” n.d.

———. “Mongolia Action Plan Review 2021-2023,” July 21, 2022. www.opengovpartnership.org/documents/mongolia-action-plan-review-2021-2023/.

Orano in Mongolia. “Orano in Mongolia,” n.d. www.orano.group/en/orano-across-the-world/mongolia.

Oyu Tolgoi. “Oyu Tolgoi,” n.d. www.ot.mn/agreements/.

Parliament of Mongolia. “2023-2030 Anticorruption National Program,” 2023. www.legalinfo.mn/mn/detail?lawId=16760139781851.

Pitman, Robert. “Mongolia’s Missing Oil, Gas and Mining Contracts,” January 2019. www.resourcegovernance.org/sites/default/files/documents/mongolias-missing-oil-gas-and-mining-contracts.pdf.

———. “Thawing the Freeze on Contract Disclosure in Mongolia,” February 26, 2019. www.resourcegovernance.org/articles/thawing-freeze-contract-disclosure-mongolia.

———. “Монгол Улсад гэрээг ил болгох явдлыг эрчимжүүлэх нь,” February 26, 2019. www.resourcegovernance.org/node/5327.

———. “Монгол Улсын газрын тос, уул уурхайн ил болоогүй гэрээнүүд,” January 2019. www.resourcegovernance.org/sites/default/files/documents/mongolia-missing-oil-gas-and-mining-contracts-mn.pdf.

Pitman, Robert, and Dorjdari Namkhaijantsan. “Mongolia Reaffirms Commitment to Publish Mining, Petroleum Contracts,” May 3, 2019. www.resourcegovernance.org/articles/mongolia-reaffirms-commitment-publish-mining-petroleum-contracts.

Ил тод гэрээ. “Contracts Portal,” n.d. www.iltodgeree.mn/.

Монгол Улсын Их Хурал. Ашигт малтмалын тухай хууль (n.d.). www.legalinfo.mn/mn/detail/63.

———. Газрын тосны тухай хууль (n.d.). www.legalinfo.mn/mn/detail/10484.

———. Захиргааны тухай хууль (2015). www.legalinfo.mn/mn/detail/11259.

———. Нийтийн мэдээллийн ил тод байдлын тухай хууль (2021). www.legalinfo.mn/mn/detail?lawId=16390263044601.

———. Төрийн болон орон нутгийн өмчийн тухай хуулийн шинэчилсэн найруулгын төсөл (2022). www.d.parliament.mn/tusul/5979303a-58dd-4250-9370-7c214b8d88fd.

———. Цөмийн энергийн тухай хууль (n.d.). www.legalinfo.mn/mn/detail/97.

———. Шилэн дансны тухай хууль (2014). www.legalinfo.mn/mn/detail?lawId=10497.

Монголын ОУИТБС. “ОУИТБС-ын 2012 Оны үйл ажиллагааны төлөвлөгөө,” 2012. www.resource4.sodonsolution.org/eitimongolia/File/2021/02/02/lvt66sw9zjsxbj4c/Plan_2012_mon.pdf.