

# Legal Frameworks and How to Monitor Them

Advancing Accountable Resource Governance in Asia Pacific

January 2018

Patrick Heller

# Session Plan

1. Legal hierarchy – how the state structures its management of the industry
2. Zooming in on contracts – opportunities and risks
3. What can we do? Advocacy, monitoring and enforcement

# 1. Legal Structure and Hierarchy

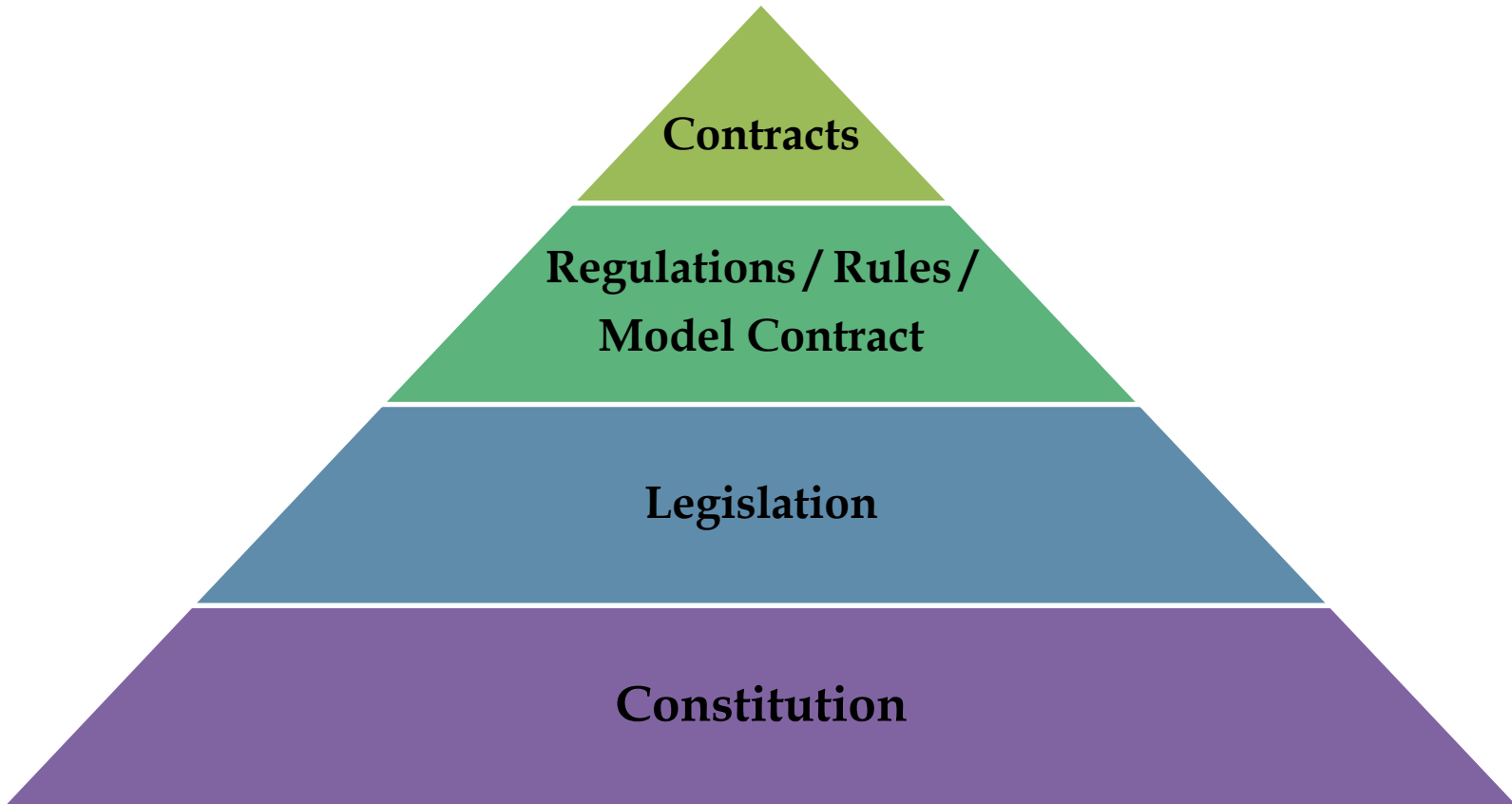
Why does the legal framework governing the oil or mining sector matter?

Three areas of focus today:

- a. Sets the institutional structure for the state.
- b. Sets the relationships between government and companies.
- c. Sets checks and balances between the state, companies and citizens.

What are the key laws and other legal instruments that govern oil and mining?

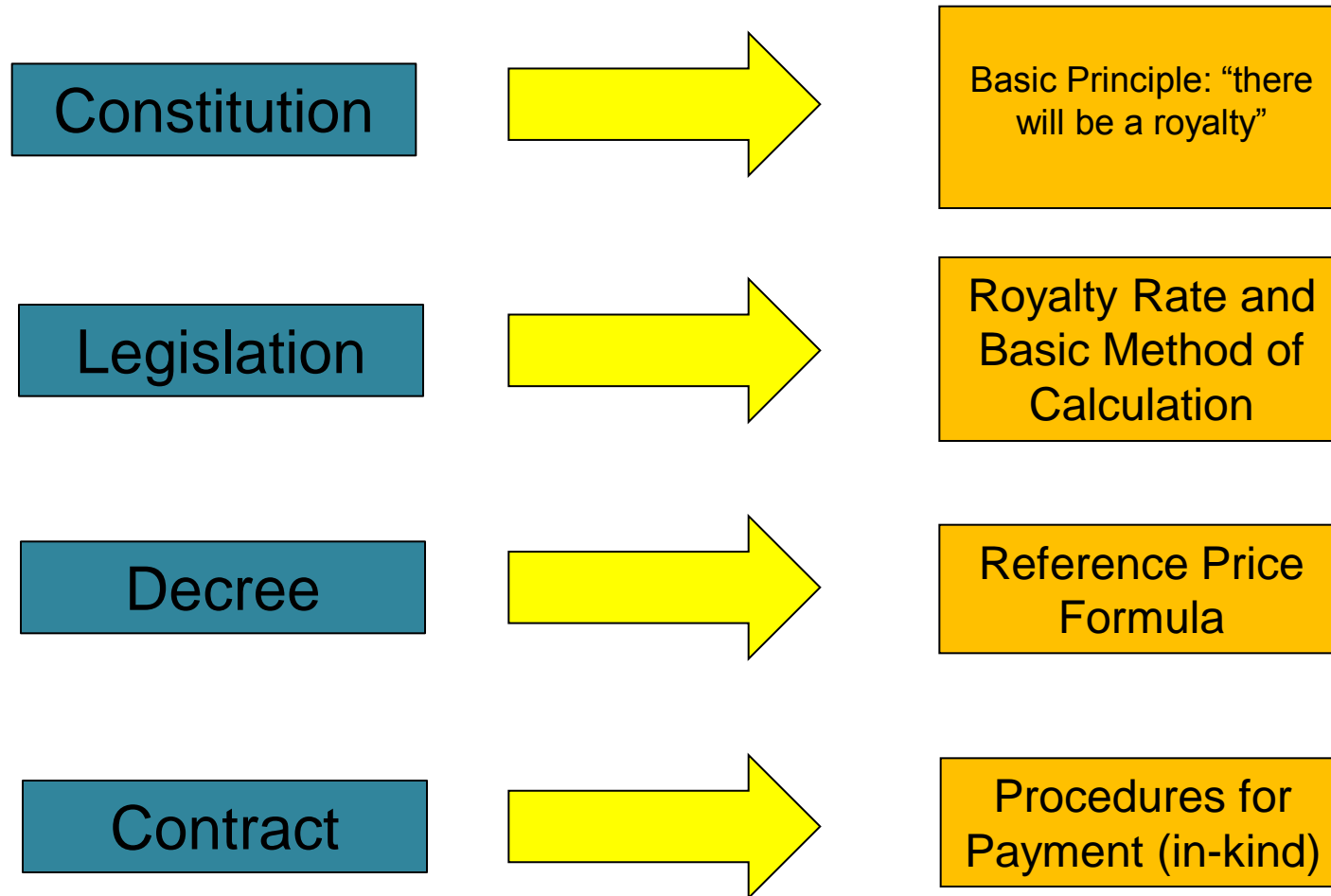
# Legal Structure and Hierarchy



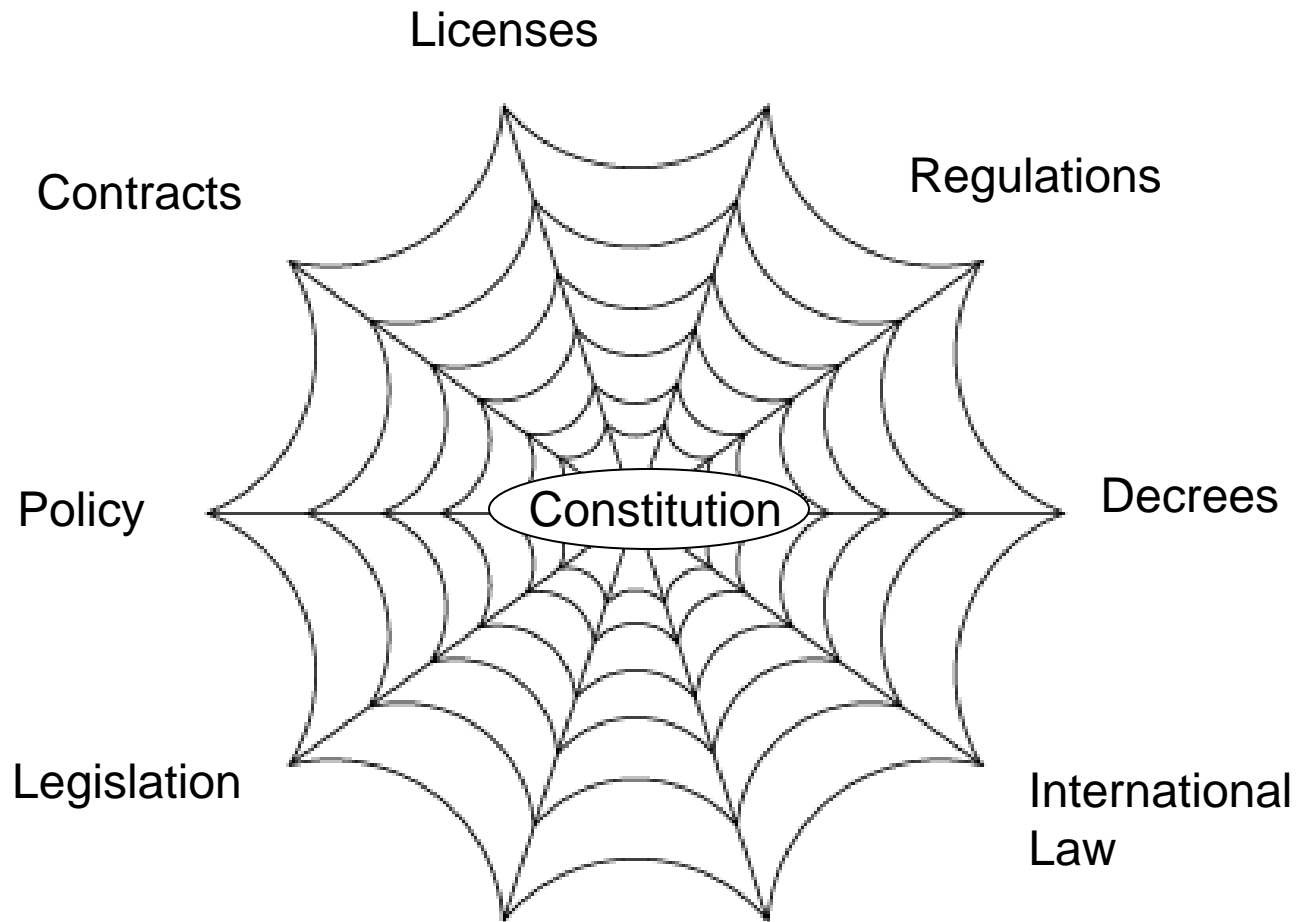
# Institutional structure: where are rules established?

Type of text	Issues covered	Examples of specific documents
Constitution	Role of legislature, freedom of information, state ownership, basic institutional responsibilities	
Legislation	Roles, responsibilities, oversight of state institutions	Petroleum Act, Minerals Act, State-Owned Enterprises Act, Extractive Industries Transparency Act
Regulation	Specific powers of state agencies, modes of implementation	Petroleum Regulations, Minerals Regulations, Operational Regulations
Contracts	Roles of ministries or SOEs vis-à-vis specific projects	PSAs, concession agreements, Offtake agreements

# Rules for companies: Mining Royalties in Colombia

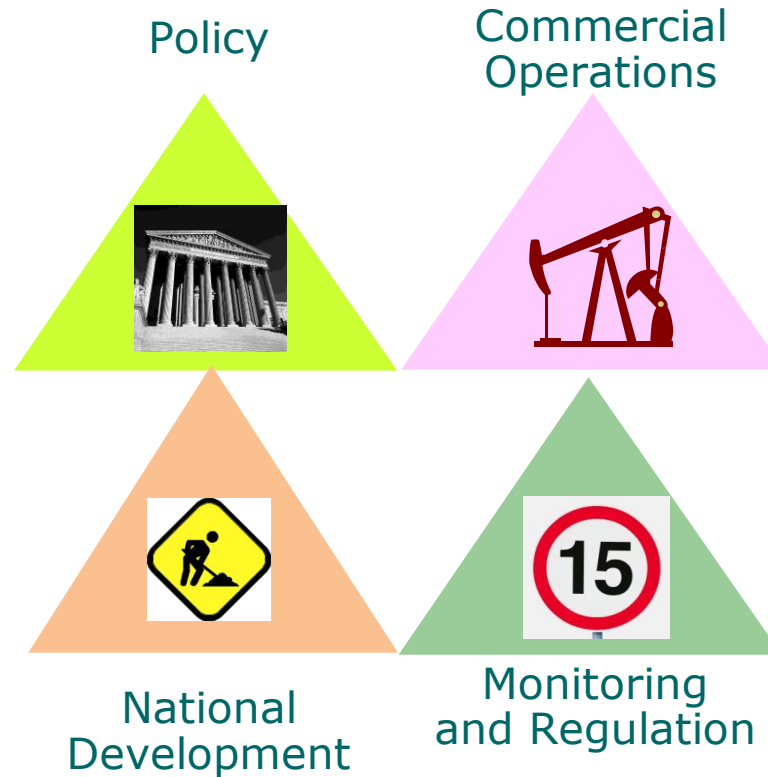


# Reality can be messier





# Institutional Structure – four key roles to allocate



# Archetype 1: Norway



Policy



Commercial  
Operations



National  
Development



Monitoring  
and Regulation

# Archetype 2: Malaysia

Commercial  
Operations

Policy

Monitoring  
and Regulation



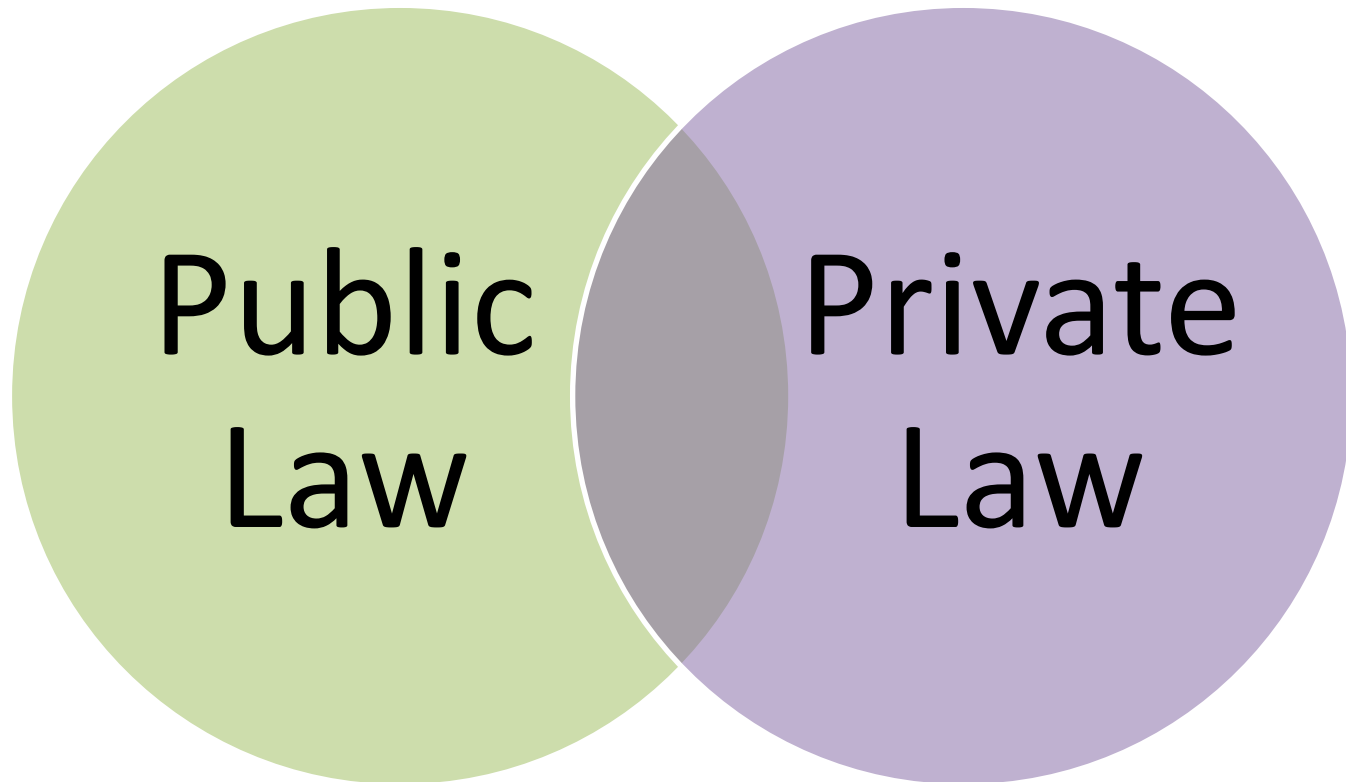
National  
Development

# Accountability mechanisms are critical for effective institutions

1. Clear roles and responsibilities
2. Technocratic leadership/boards of directors
3. Meritocratic hiring and promotion
4. Extensive (and effectively-tailored) investment in skills development
5. Transparent reporting on activities and results

## 2. Oil and mining contracts

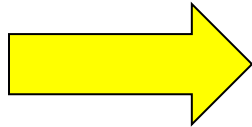
### a. Why do we have them?



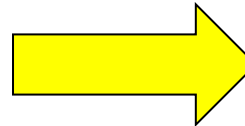
*In petroleum....*



Agreement



Exploration/  
Development



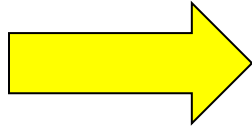
Production

# Split license system

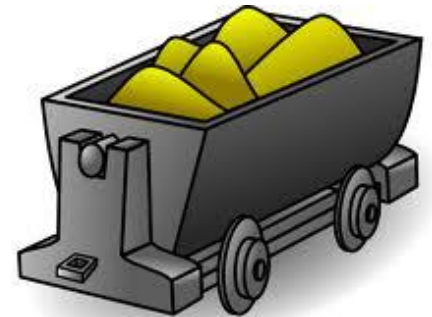
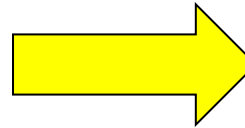
*In mining, frequently....*



Exploration

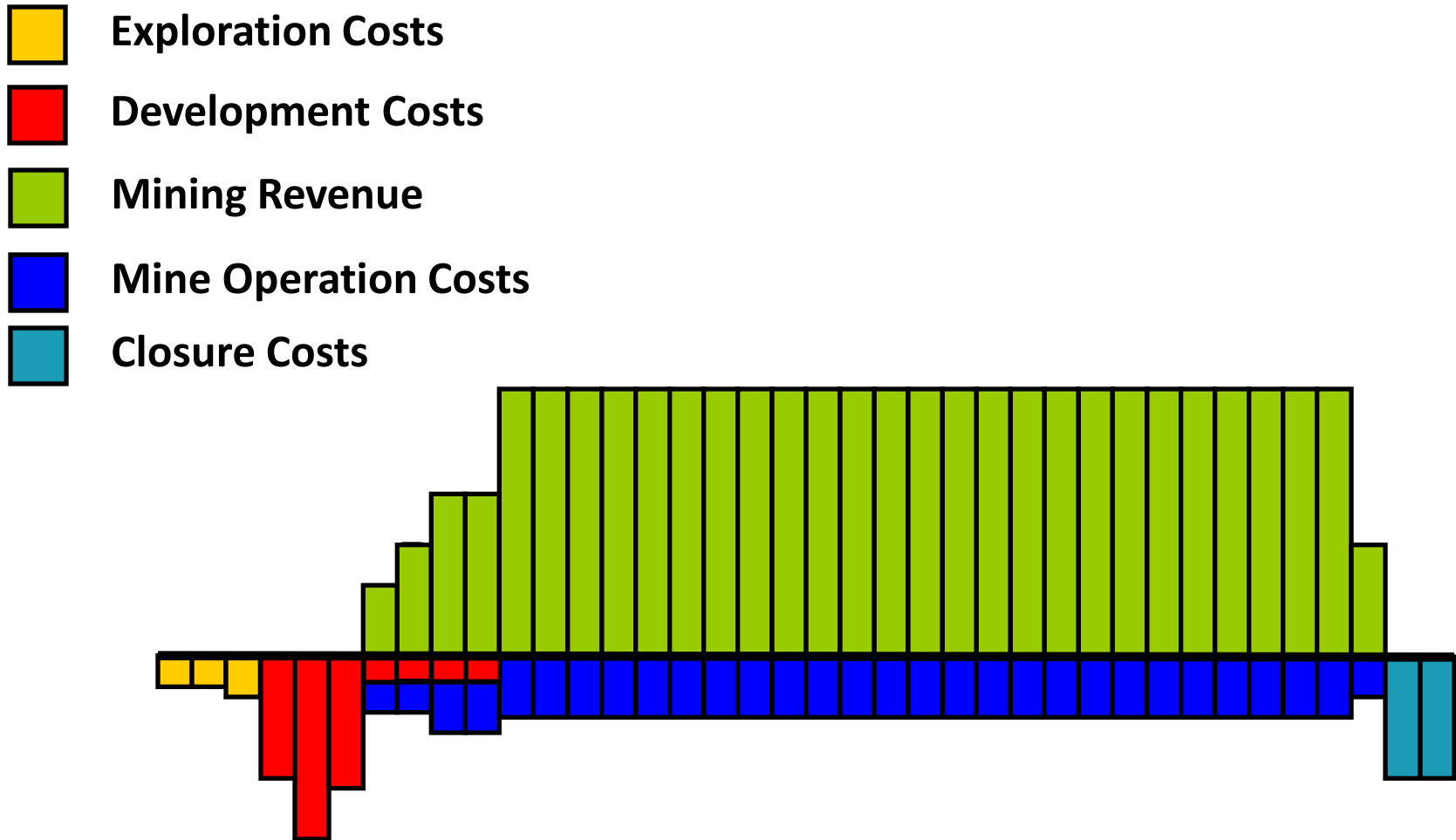


Agreement



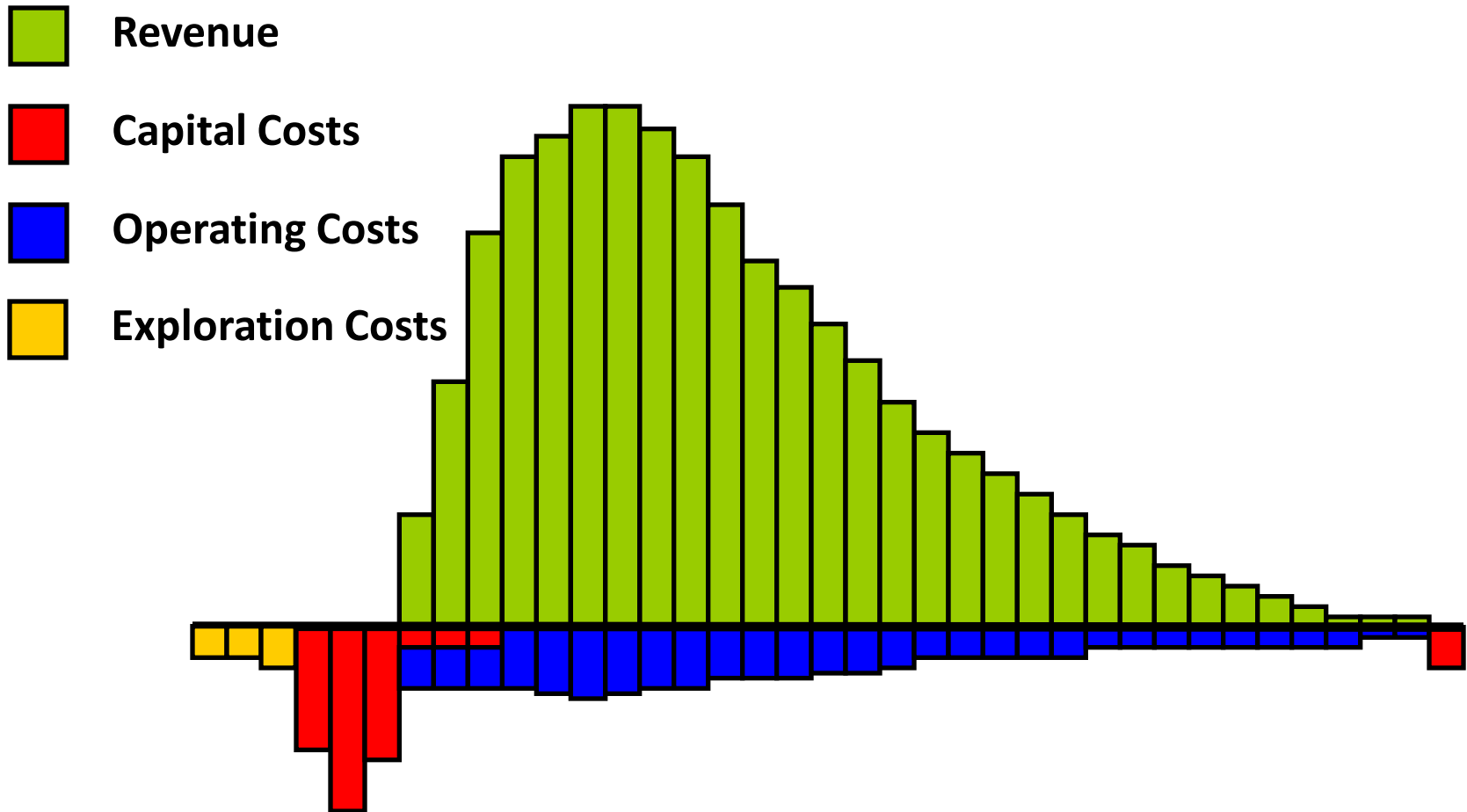
Production

# Three risks to manage – Risk 1: Project Timeline (mining)





# Risk 1: Project Timeline (oil and gas)



# Risk 2: exploration

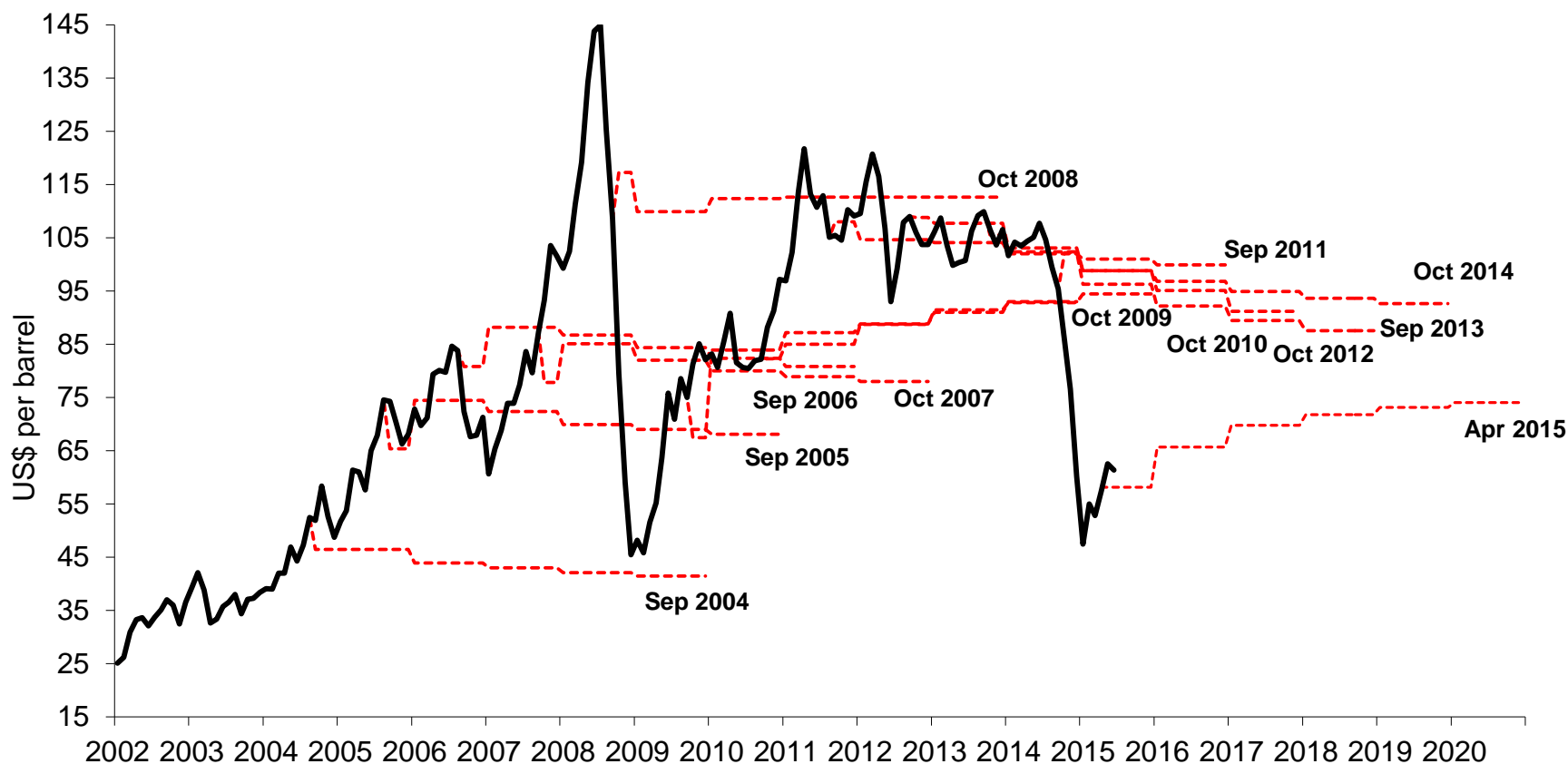
## Drilling success rates and discovery sizes 2010-2014

	Frontier	Emerging	Maturing	Mature
Commercial Success Rate	8%	47%	30%	36%
Average Discovery Size mmboe	352	353	74	30
Drilling Cost \$/boe	3.0	0.4	2.0	2.4

Based on drilling results of 40 mid and large cap E&P companies, does not include Appraisal costs of pre-drilling seismic and studies. Approximate full finding cost is 3x drilling cost

# Risk 3: market volatility

**WEO Oil Price Forecasts 2002-2020**  
(Monthly prices, 2015 U.S. Dollar per Barrel)



# How much should terms be standardized? How much should vary by contract?



NATURAL  
RESOURCE  
CHARTER

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

# Oil and mining contracts

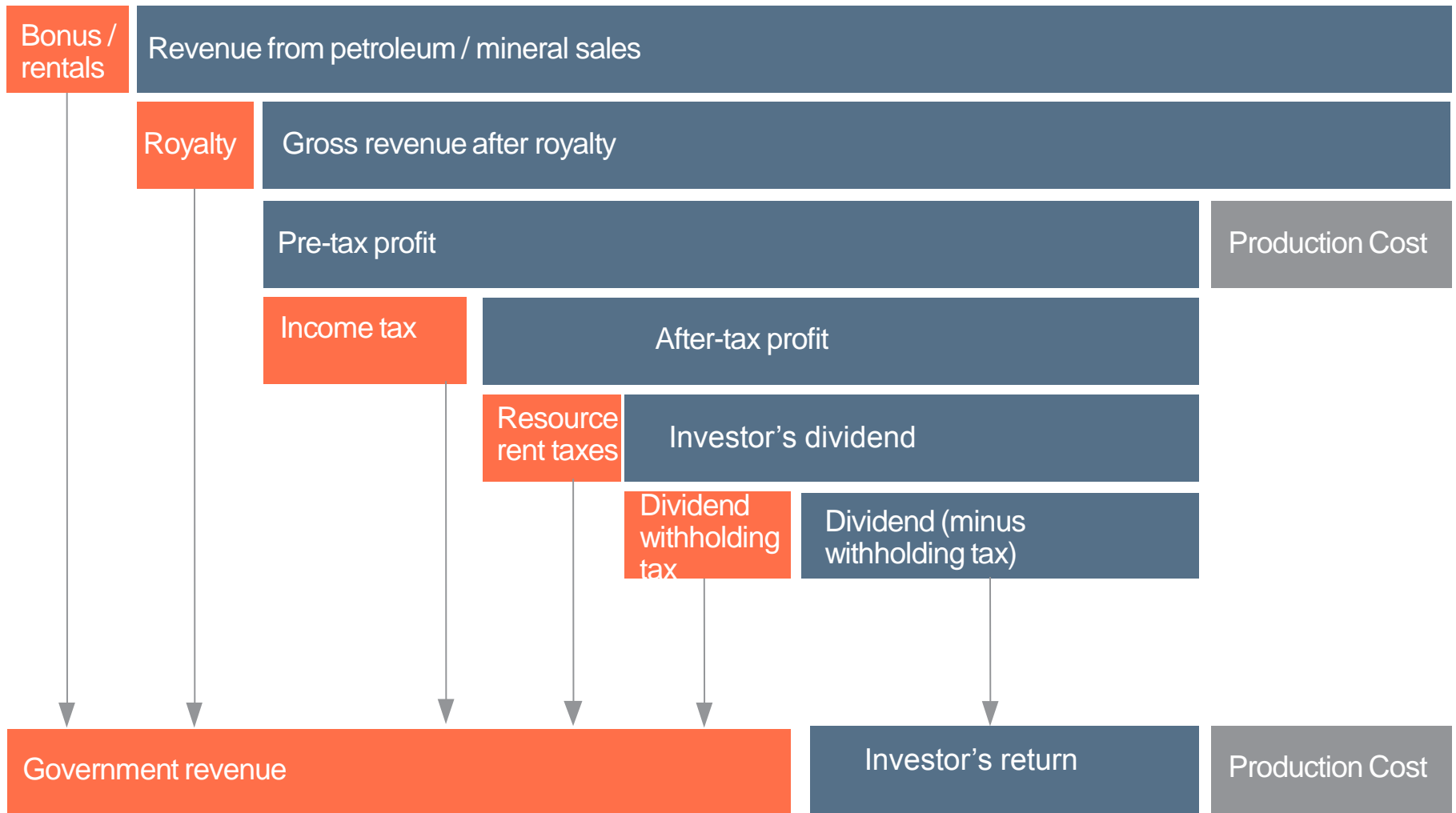
## b. Key features and typologies

Agreement Type	Key Features	Examples
Concession (Royalty/Tax)	Company owns 100% of the produced resource	UK, US, Colombia, Brazil
Production Sharing	Produced resource is split among government and company, company gets entitlement to recover costs plus some share of profit	Indonesia, Azerbaijan, Angola
Service Contract	Government retains ownership, companies are paid a fee	Iran, Iraq, Mexico, Bolivia

# Content of agreements can include.....

- Term and length of contract
- Work program obligations
- Contractor rights, obligations and liabilities
- Discovery and appraisal
- Development and production
- Cost recovery, Fiscal terms
- Measurement of mineral/petroleum
- Confidentiality
- Change of ownership
- Environmental protection and safety
- Local content
- Abandonment/rehabilitation
- Accounting procedures
- Company Guarantees
- Termination
- Governing law and arbitration
- Stabilisation

# Royalty/Tax Regime

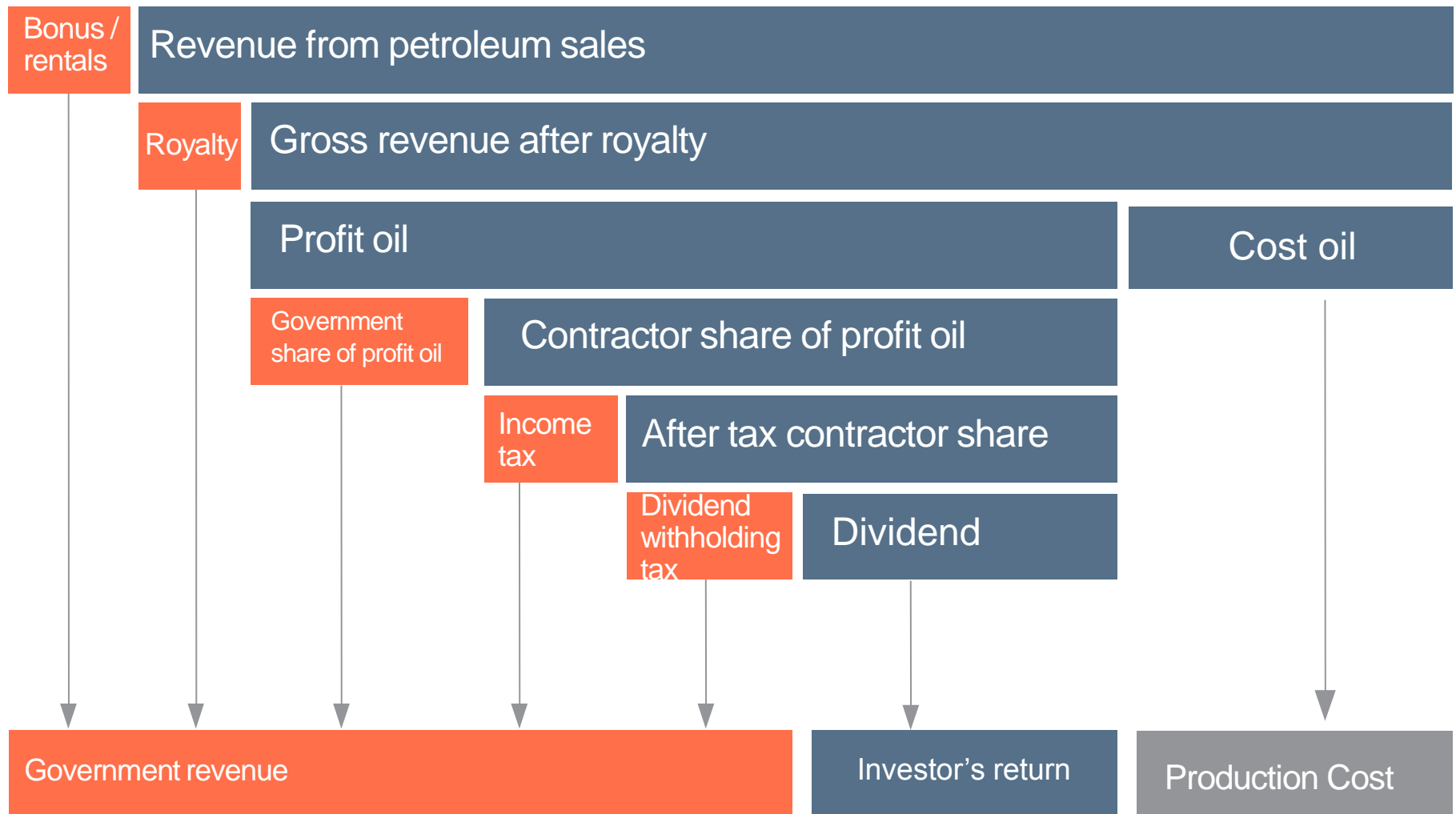


# Royalty/Tax: Key Issues

Subject	Concession Features
Direction of Payments	Contractor pays government
Distinguishing Government Revenue Streams	Royalties and Income Taxes
Other Possible Revenue Streams	Bonus, Dividends from State Equity, Dividend Withholding Tax, Windfall Profits Tax, Fees
Key Issues in System Design	<ul style="list-style-type: none"><li>• Setting appropriate royalty</li><li>• Tax rates and rules on deductions</li><li>• Providing some measure of progressivity</li></ul>
Advantages	Simplicity
Disadvantages	No built-in progressivity, alignment of incentives



# Production Sharing Contracts (PSCs)



# PSAs: Key Issues

Subject	PSA Features
Direction of Payments	Contractor pays government taxes and (sometimes) royalties; Government sells share of petroleum
Distinguishing Government Revenue Streams	Production share
Other Possible Revenue Streams	Royalties, Income Tax, Bonus, Dividends from State Equity, Dividend Withholding Tax, Windfall Profits Tax, Fees
Key Issues in System Design	<ul style="list-style-type: none"><li>• Cost Recovery Rules</li><li>• System for Production Split</li><li>• Oversight of National Oil Company</li></ul>
Advantages	Direct government role in oil sales, alignment of incentives, easy to build in progressivity
Disadvantages	Increased potential for conflict of interest

# PSA Examples: Profit-oil split

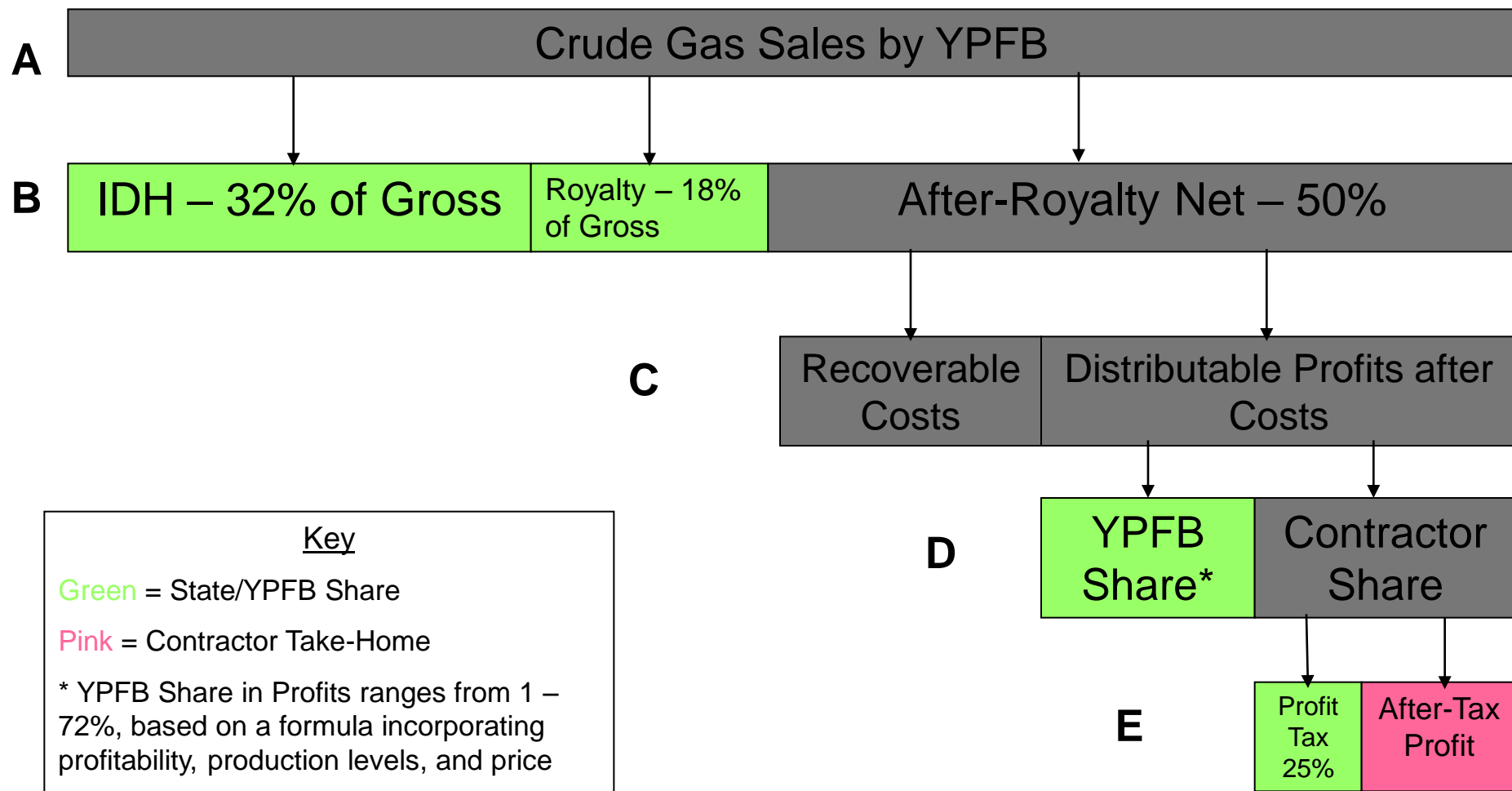
## Production-based: Nigeria (Bonga deepwater)

Cumulative Production	Profit-oil split
< 350 mb	20% state / 80% contractor
351 – 750 mb	35% state / 65% contractor
751 – 1000 mb	45% state / 55% contractor
1001 – 1500 mb	50% state / 50% contractor
1501 – 2000 mb	60% state / 40% contractor

## IRR-based: Azerbaijan (ACG)

Internal Rate of Return	Profit-oil split
RROR < 16.75%	30% state / 70% contractor
16.75% < RROR < 22.75%	55% state / 45% contractor
RROR > 22.75%	80% state / 20% contractor

# Service Contract Financial Flows: Bolivia



# Service Contracts: Key Issues

Subject	Service Contract Features
Direction of Payments	Government sells all petroleum, pays fee to contractor
Distinguishing Government Revenue Streams	Sale of production
Other Possible Revenue Streams	Royalties, Income Tax, Bonus, Dividends from State Equity, Dividend Withholding Tax, Windfall Profits Tax, Fees
Key Issues in System Design	<ul style="list-style-type: none"><li>• Determination of Fee</li><li>• Oversight of National Oil Company</li></ul>
Advantages	High levels of government control over operations and petroleum
Disadvantages	Incentives for contractors may be inadequate (particularly upside); Increased potential for conflict of interest

# Arbitration and stabilization

#COMMODITIES JANUARY 7, 2018 / 6:51 AM / 3 DAYS AGO

**Libya's NOC says wins arbitration on Ras Lanuf refinery, calls for restart**

Reuters Staff

2 MIN READ



## **Exxon Mobil Wants To Enforce \$188M Venezuela Award**

By [Natalie Olivo](#)

**Freeport warns of arbitration as Indonesia mining dispute escalates**

BSGR seeks arbitration against Guinea over loss of mining rights

**Total seeks arbitration over Uganda tax dispute**

Can you change a contract once it's  
been finalized?



# Oil and mining contracts

## c. How are they awarded?

### Key Goals:

1. Pick the “right” company
2. Get the best terms for the State
3. Limit / eliminate corruption
4. Reflect broader sector goals

*...important for system to be consistent with legal framework.*



# Do you award contracts through a competitive process?

Generally, competitive bidding allows country to:

- choose best among pool of bidders
- have a stronger negotiating position to get best terms
- increase transparency and minimize discretion / discrimination

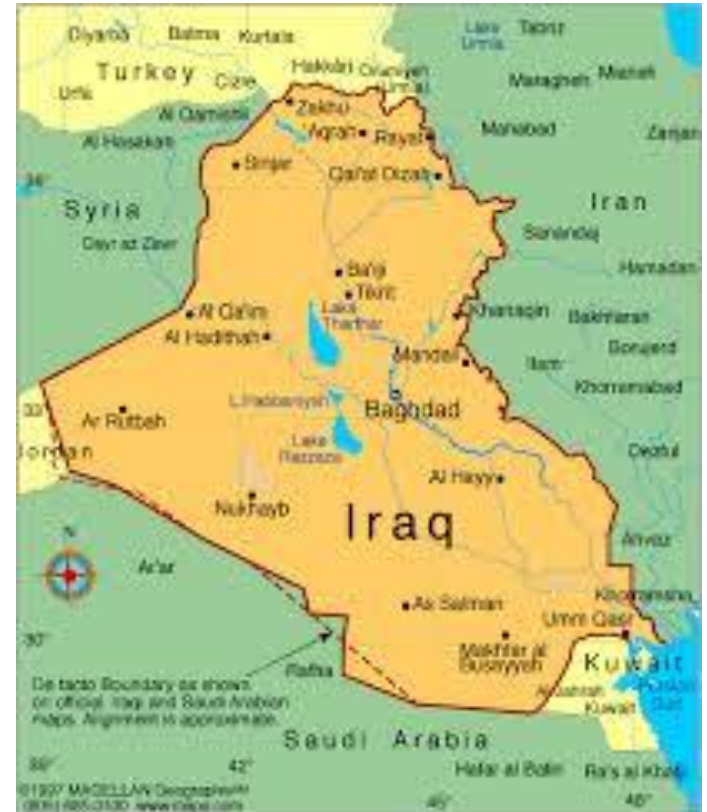
# Auctions in Iraq - 2009

**\$2.80/barrel:**

Difference between fee bid by Exxon & the winning bid of CNPC/BP for Rumaila oil field.

**\$750m:**

*Extra* accruing to Iraq per year from 1m barrels per day (bpd) production of the Rumaila field.



# Risk of post-bid negotiation



Source: Guardian and Platform London

# Good practices

Competitive processes	All processes
Limited number of biddable variables	Maximize geological information before process
Make ranking and relative weight of variables clear	Limit variance from standardized legal rules
Build (or contract) sufficient expertise to run the process	Publish the reasons for selection, identity of the winner and the licenses/contracts
Competitive but realistic fiscal conditions	Require strong technical/financial qualifications

# SOEs in the license allocation process

Rule for SOE access to upstream projects	Example(s)
SOE has monopoly over all E&P	Saudi Arabia, Mexico (up to 2013)
SOE has guaranteed role/option	Algeria, Malaysia, Brazil (deepwater “pre-salt” fields)
Application with favor	Kazakhstan, Mexico (now)
Full competition	Norway, Colombia

### 3. What can we do?

In your work, how do you engage to improve the legal framework governing extractive industries?

a. We can understand!





# An example



Shah Deniz Project,  
Azerbaijan



Oyu Tolgoi Project,  
Mongolia

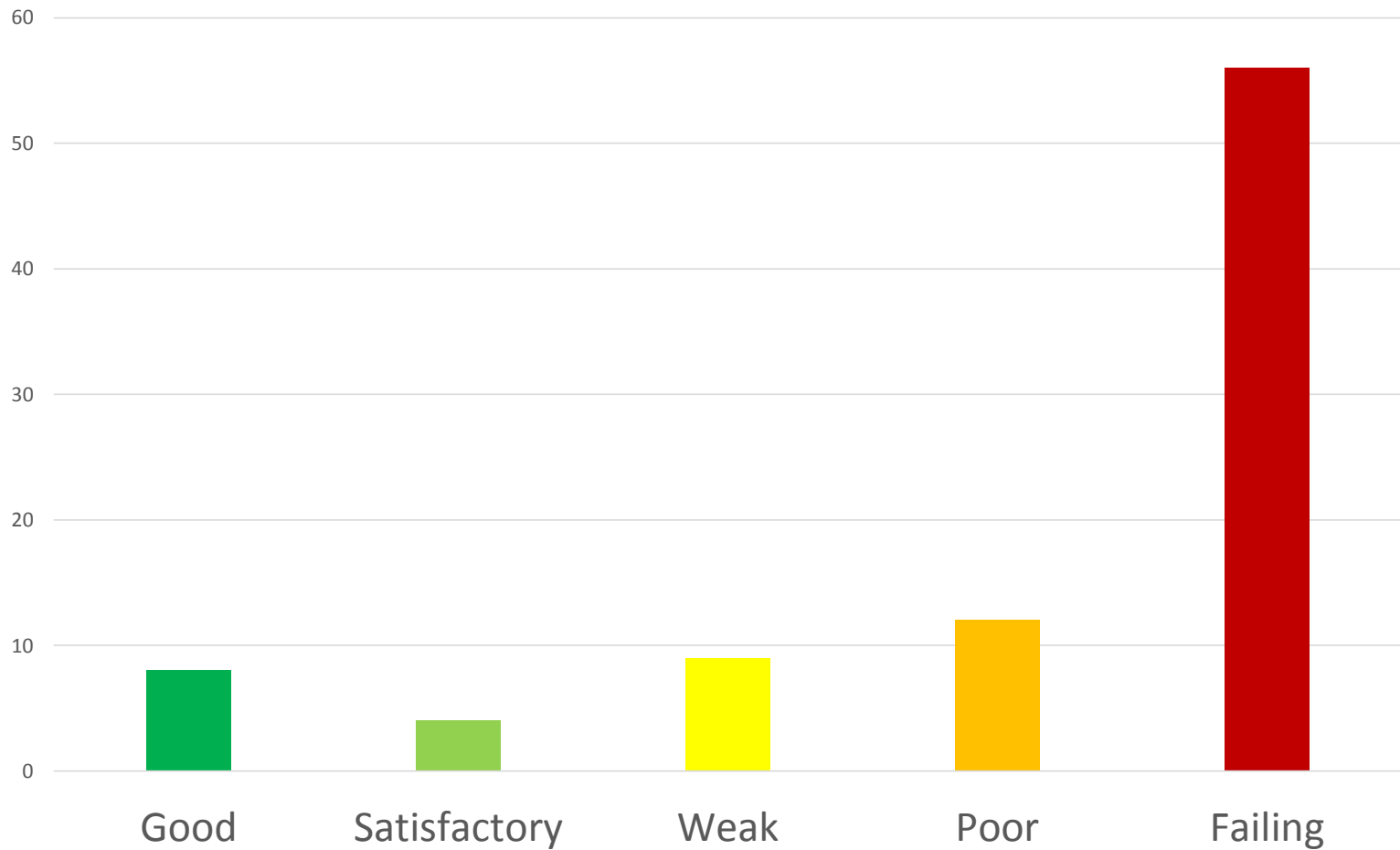


## b. We can advocate for transparency



<http://resourcegovernance.org/sites/default/files/documents/paris-declaration-briefing-transparency-and-open-contracts-in-the-natural-resource-sector-web.pdf>

# Resource Governance Index: Contract Disclosure Practice



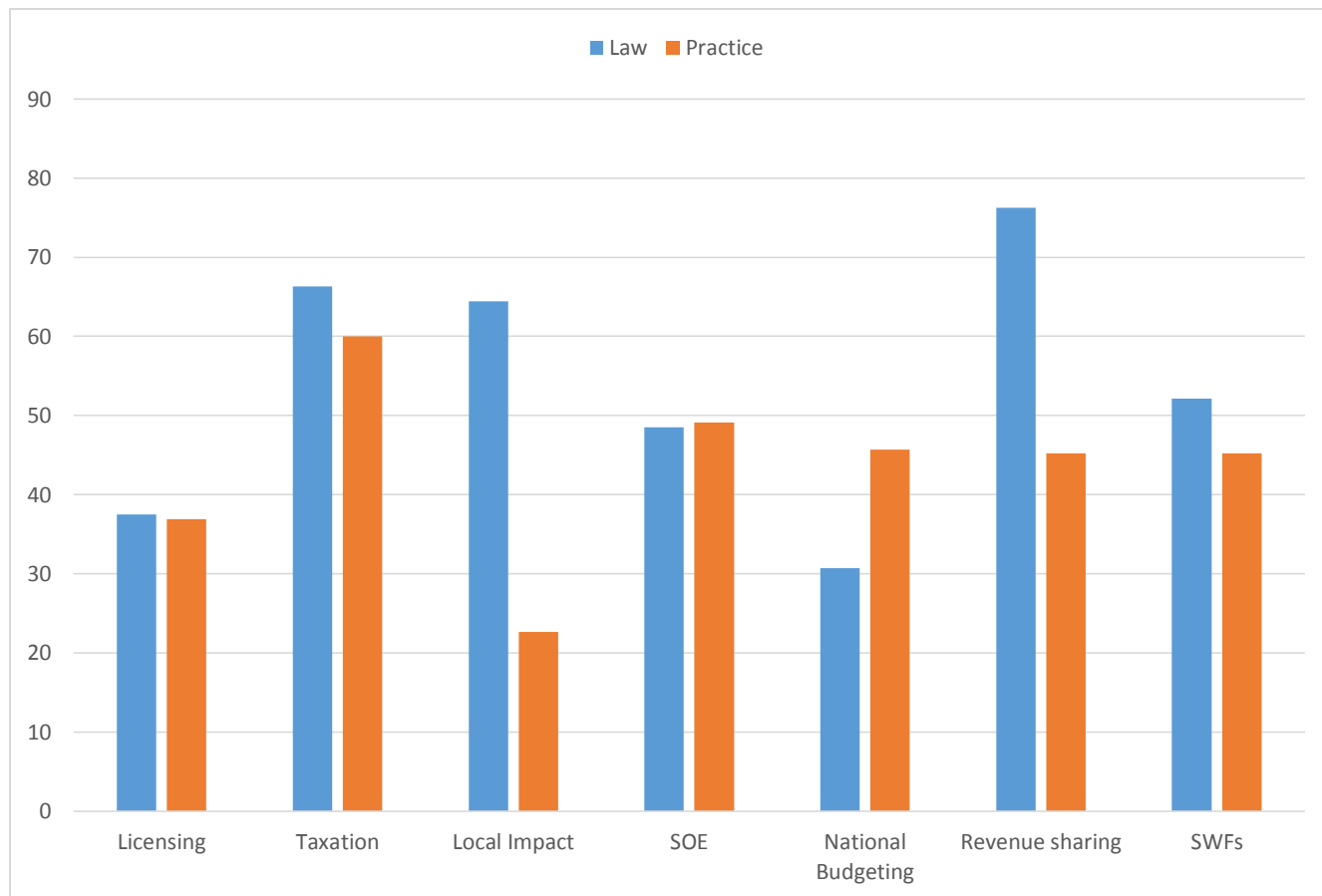
<http://resourcegovernanceindex.org/data/both/issue?category=1&indicator=10&region=global&subcategory=1>

# EITI and Contract Disclosure

- The EITI Report should provide an **overview of any contracts and licenses that are already publicly available**, and include a reference or link to the location where these are published. (§3.12(b))
- The EITI Report must document the **government's policy on disclosure of contracts and licenses** related to both exploration and exploitation, including relevant legal provisions, actual disclosure practices and any reforms that are planned or underway. (§3.12(b))
- EITI implementing countries are *encouraged* to **publicly disclose any contracts and licenses** that provide the terms attached to the exploitation of oil, gas and minerals. (§3.12(a))

## c. We can monitor compliance

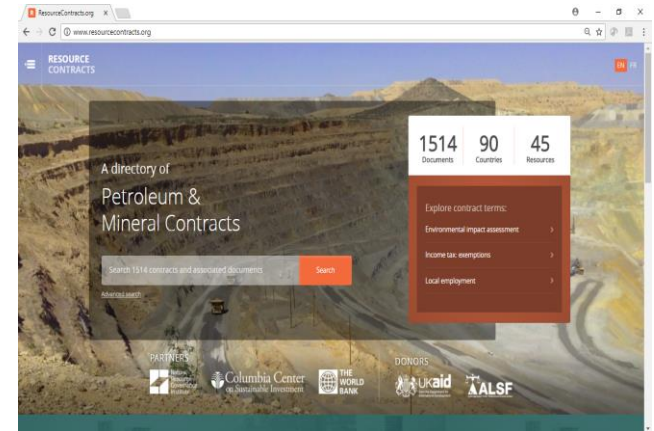
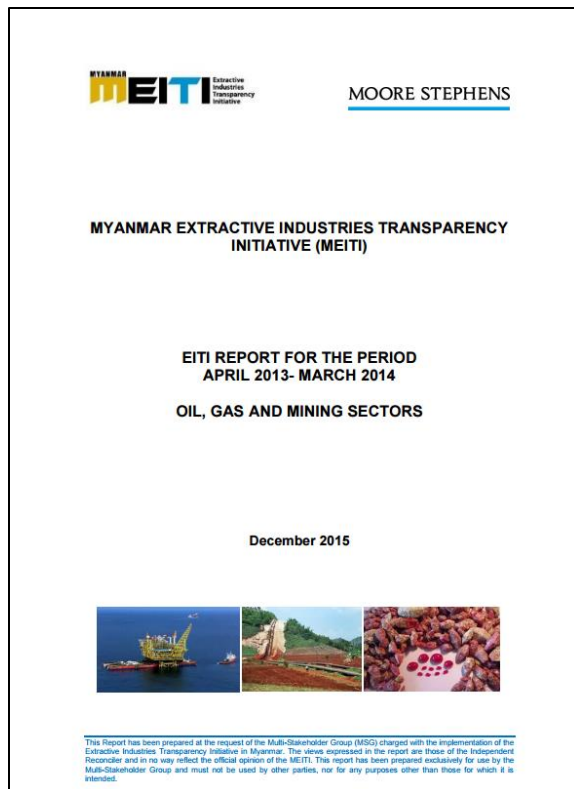
Resource Governance Index: countries often do not follow their own rules.



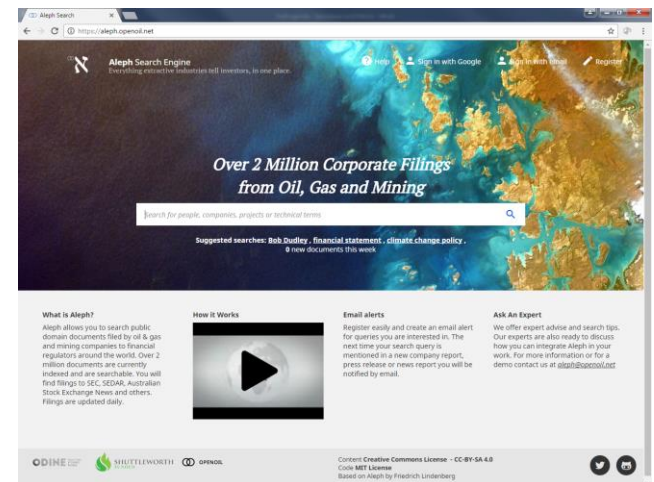
# Tools available to monitor obligations

[www.resourcecontracts.org](http://www.resourcecontracts.org)

## Country EITI Reports



<https://aleph.openoil.net/>



**Annex 2: Breakdown of licenses and oil companies**

Licence reference	Operator	Companies	Extracted product	Licence type	Granted	Expires	Area
JPDA 03-12	ConocoPhillips	ConocoPhillips Santos Inpex Sahul Eni Tokyo Timor Sea Resources	Condensate, LPG, LNG	PSC	02/04/2003	06/02/2022	JPDA
JPDA 03-13	ConocoPhillips	ConocoPhillips Santos Inpex Sahul	Condensate, LPG, LNG	PSC	02/04/2003	16/12/2021	JPDA
JPDA 03-19	Woodside Petroleum	Woodside petroleum Shell Development Osaka Gas Sunrise Conoco Phillips	Gas	PSC	02/04/2003	04/10/2026	JPDA
JPDA 03-20	Woodside Petroleum	Woodside petroleum Shell Development Osaka Gas Sunrise Conoco Phillips	Gas	PSC	02/04/2003	13/11/2026	JPDA
JPDA 06-101 A	Minza Oil & Gas	Minza Oil & Gas	na	PSC	09/03/2007	09/03/2014	JPDA
JPDA 06-102	Petronas	Petronas Carigali Korean Gas Samsung Oil & Gas LG	na	PSC	29/12/2006	29/12/2010	JPDA
JPDA 06-103	Oilex	Oilex Japan Energy Corporation Videocon Bharat PetroResources GSPC Pan Pacific Petroleum	na	PSC	15/01/2007	15/01/2014	JPDA



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Explore contract terms:

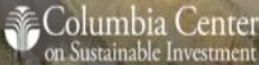
Environmental impact assessment


Income tax: exemptions

Local employment


PARTNERS


Natural Resource Governance Institute

Columbia Center on Sustainable Investment

THE WORLD BANK

DONORS

UKaid  
from the Department for International Development

ALSF  
American Leadership for Sustainable Finance

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<div> <div>Timor - Leste</div> <div>Search within Timor - Leste contracts</div> <div> <div>Download</div> <div>17 DOCUMENTS</div> </div> </div>																																		
<div> <div>Contracts in Timor - Leste</div> <div>Resources In Timor - Leste</div> <div>Hydrocarbons 17</div> </div>																																		
<table> <tr> <th>DOCUMENT</th><th>YEAR</th><th>RESOURCE</th><th>CONTRACT TYPE</th><th></th></tr> <tr> <td> <div>Eni Timor Leste S.p.A, Contract Area A, PSA, 2006</div> </td><td>2006</td><td> <ul style="list-style-type: none"> <li>Hydrocarbons</li> </ul> </td><td> <ul style="list-style-type: none"> <li>Production or Profit Sharing Agreement</li> </ul> </td><td></td></tr> <tr> <td> <div>PC (Timor Sea 06-102 ) Ltd., KG (Timor Sea 06-102) Ltd., Samsung Oil &amp; Gas (Timor Sea 06-102) Ltd., LG (Timor Sea 06-102), JPDA 06-102, PSA, 2006</div> </td><td>2006</td><td> <ul style="list-style-type: none"> <li>Hydrocarbons</li> </ul> </td><td> <ul style="list-style-type: none"> <li>Production or Profit Sharing Agreement</li> </ul> </td><td></td></tr> <tr> <td> <div>ConocoPhillips JPDA Pty Ltd., ConocoPhillips (91-13) Pty Ltd., Phillips Petroleum Timor Sea Pty Ltd., Eni JPDA 03-13 Limited, Bayu-Undan, Amendment, PSA, 2003</div> </td><td>2003</td><td> <ul style="list-style-type: none"> <li>Hydrocarbons</li> </ul> </td><td> <ul style="list-style-type: none"> <li>Contract Amendment</li> <li>Production or Profit Sharing Agreement</li> </ul> </td><td></td></tr> <tr> <td> <div>ConocoPhillips (91-12) Pty Ltd., Santos (JPDA 91-12) Pty Ltd., Inpex Sahul, Ltd., ConocoPhillips (Timor Sea) Pty Ltd., ConocoPhillips (Emet) Pty Ltd., JPDA 03-12, Amendment, PSA, 2003</div> </td><td>2003</td><td> <ul style="list-style-type: none"> <li>Hydrocarbons</li> </ul> </td><td> <ul style="list-style-type: none"> <li>Contract Amendment</li> <li>Production or Profit Sharing Agreement</li> </ul> </td><td></td></tr> <tr> <td> <div>Eni Timor Leste S.p.A, Contract Area C, PSA, 2006</div> </td><td>2006</td><td> <ul style="list-style-type: none"> <li>Hydrocarbons</li> </ul> </td><td> <ul style="list-style-type: none"> <li>Production or Profit Sharing Agreement</li> </ul> </td><td></td></tr> </table>					DOCUMENT	YEAR	RESOURCE	CONTRACT TYPE		<div>Eni Timor Leste S.p.A, Contract Area A, PSA, 2006</div>	2006	<ul style="list-style-type: none"> <li>Hydrocarbons</li> </ul>	<ul style="list-style-type: none"> <li>Production or Profit Sharing Agreement</li> </ul>		<div>PC (Timor Sea 06-102 ) Ltd., KG (Timor Sea 06-102) Ltd., Samsung Oil &amp; Gas (Timor Sea 06-102) Ltd., LG (Timor Sea 06-102), JPDA 06-102, PSA, 2006</div>	2006	<ul style="list-style-type: none"> <li>Hydrocarbons</li> </ul>	<ul style="list-style-type: none"> <li>Production or Profit Sharing Agreement</li> </ul>		<div>ConocoPhillips JPDA Pty Ltd., ConocoPhillips (91-13) Pty Ltd., Phillips Petroleum Timor Sea Pty Ltd., Eni JPDA 03-13 Limited, Bayu-Undan, Amendment, PSA, 2003</div>	2003	<ul style="list-style-type: none"> <li>Hydrocarbons</li> </ul>	<ul style="list-style-type: none"> <li>Contract Amendment</li> <li>Production or Profit Sharing Agreement</li> </ul>		<div>ConocoPhillips (91-12) Pty Ltd., Santos (JPDA 91-12) Pty Ltd., Inpex Sahul, Ltd., ConocoPhillips (Timor Sea) Pty Ltd., ConocoPhillips (Emet) Pty Ltd., JPDA 03-12, Amendment, PSA, 2003</div>	2003	<ul style="list-style-type: none"> <li>Hydrocarbons</li> </ul>	<ul style="list-style-type: none"> <li>Contract Amendment</li> <li>Production or Profit Sharing Agreement</li> </ul>		<div>Eni Timor Leste S.p.A, Contract Area C, PSA, 2006</div>	2006	<ul style="list-style-type: none"> <li>Hydrocarbons</li> </ul>	<ul style="list-style-type: none"> <li>Production or Profit Sharing Agreement</li> </ul>	
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<div>Eni Timor Leste S.p.A, Contract Area A, PSA, 2006</div>	2006	<ul style="list-style-type: none"> <li>Hydrocarbons</li> </ul>	<ul style="list-style-type: none"> <li>Production or Profit Sharing Agreement</li> </ul>																															
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Eni Timor Leste S.p.A, Contract Area L, PSA, 2006		2006	Hydrocarbons	Production or Profit Sharing Agreement
Eni Timor Leste S.p.A, Contract Area B, PSA, 2006		2006	Hydrocarbons	Production or Profit Sharing Agreement
Oilex (JPDA 06-103) Ltd., Global Energy Inc., Bharat PetroResources JPDA Limited, GSPC (JPDA), JPDA 06-103, PSA, 2006		2006	Hydrocarbons	Production or Profit Sharing Agreement
Woodside Petroleum (Timor Sea 1) Pty Ltd., INPEX Timor Sea Ltd., Talisman Resources (JPDA 03-01) Pty Ltd., JPDA 06-105, PSA, 2006		2006	Hydrocarbons	Production or Profit Sharing Agreement
Reliance Industries Limited, Contract Area K, PSA, 2007		2007	Hydrocarbons	Production or Profit Sharing Agreement
ConocoPhillips (91-12) Pty Ltd., Santos (JPDA 91-12) Pty Ltd., Inpex Sahul, Ltd., ConocoPhillips (Timor Sea) Pty Ltd., ConocoPhillips (Emet) Pty Ltd., JPDA 03-12, PSA, 2003		2003	Hydrocarbons	Production or Profit Sharing Agreement
Model Contract, PSA, 2005		2005	Hydrocarbons	Production or Profit Sharing Agreement
Model Contract, PSA, 2014, 001		2014	Hydrocarbons	Production or Profit Sharing Agreement

0 ANNOTATIONS

There are no annotations associated with this contract.

**TIMOR SEA DESIGNATED AUTHORITY FOR THE  
JOINT PETROLEUM DEVELOPMENT AREA**

**PRODUCTION SHARING CONTRACT**

**JPDA 03-12**

**METADATA**

Country  
Timor - Leste

Signature Year  
2003

Resource  
Hydrocarbons

Type of Contract  
Production or Profit Sharing Agreement

Open Contracting Identifier  
ocds-591adf-9640771314

Disclosure Mode  
Government

More from Timor - Leste

More for Hydrocarbons

**Associated Documents**

ConocoPhillips (91-12) Pty Ltd., Santos (JPDA 91-12) Pty Ltd., Inpex ...

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TEXT

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💬 0 ANNOTATIONS

There are no annotations associated with this contract.

PRODUCTION SHARING CONTRACT

JPDA 03-12

This production sharing contract, which has been approved by the Joint Commission established under the Timor Sea Treaty (hereinafter called the Treaty), is made and entered into on this 2 day of April 2003 by and between the Designated Authority established under the Treaty, party of the first part, and ConocoPhillips (91-12) Pty Ltd ABN 73 064 963 346, a corporation organised and existing under the laws of Australia, Santos (JPDA 91-12) Pty Ltd ABN 44 056 937 75, a corporation organised and existing under the laws of Australia, Inpex Sahul, Ltd ABN 059 844 781, a corporation organised and existing under the laws of Japan, Petroz (Timor Sea) Pty Ltd ABN 85 053 698 794, a corporation organised and existing under the laws of Australia and Emet Pty Ltd ABN 49 050 134 908, a corporation organised and existing under the laws of Australia hereinafter collectively called the "contractor", parties of the second part, both hereinafter sometimes referred to either individually as the "Party" or collectively as the "Parties".

WITNESSETH

WHEREAS, petroleum existing within the Joint Petroleum Development Area established by the Treaty is a resource to be exploited by the Contracting States;

WHEREAS, the Designated Authority, with the approval of the Joint Commission, has an exclusive authority to contract for petroleum activities in and throughout the area described in Appendix A of this contract and outlined on the map which is Appendix B of this contract, which area is hereinafter referred to as the "contract area";

WHEREAS, the Designated Authority wishes to promote petroleum activities in the contract area and the contractor desires to join and assist the Designated Authority in accelerating the exploration and development of the potential petroleum resources within the contract area;

WHEREAS, the contractor has the necessary financial capability, and technical knowledge and ability to carry out the petroleum activities hereinafter described;

WHEREAS, in accordance with the Treaty, including the Petroleum Mining Code as referred to in Article 7(b) of the Treaty, a cooperative agreement in the form of a production sharing contract may be entered into between the Designated Authority and corporations for the purpose of petroleum activities; and

WHEREAS, by Annex F of the Treaty, a contract shall be offered to those corporations holding, immediately before entry into force of the Treaty, contract numbered 91-12 in the same terms as that contract, modified to take into account the administrative structure under the Treaty, or as otherwise agreed by Timor-Leste and Australia, and this is that first mentioned contract;

NOW, therefore, in consideration of the mutual covenants herein contained, it is agreed as follows:

📄 METADATA

Country

Timor - Leste

Signature Year

2003

Resource

Hydrocarbons

Type of Contract

Production or Profit Sharing Agreement

Open Contracting Identifier

ocds-591adf-9640771314

Disclosure Mode

Government

More from Timor - Leste

More for Hydrocarbons

Associated Documents

ConocoPhillips (91-12) Pty Ltd., Santos (JPDA 91-12) Pty Ltd., Inpex ...

# Key steps for monitoring

1. Understand the obligation
2. Check all available sources
3. Estimate what compliance would look like, and compare that against reality
4. Ask questions, rinse, repeat
5. Communicate with key stakeholders

## Example – Excise Taxes at the Rio Tuba Mine









# EITI reports give us numbers

## Rio Tuba payments to government, 2014, PHP (post-reconciliation)

Corporate income tax	1,287,082,163
----------------------	---------------

Excise tax	107,714,867
------------	-------------

Withholding on foreign shareholder dividends	288,310,548
--	-------------

Withholding on royalties to claim owners	0
--	---

SUBTOTAL	1,683,107,578
----------	---------------

MINING	Per participating entity	Per government agency	Variance pre-reconciliation	Reconciled amount	Variance post-reconciliation
<b>Pacific Nickel Phils., Inc.</b>					
Corporate income tax	-	8,612	(8,612)	8,612	-
Excise tax on minerals	-	-	-	-	-
Withholding tax - Foreign shareholder dividends	-	-	-	-	-
Withholding tax - Royalties to claim owners	-	-	-	-	-
<b>SUBTOTAL</b>	-	8,612	(8,612)	8,612	-
<b>Platinum Group Metals Corporation</b>					
Corporate income tax	326,489	326,489	-	326,489	-
Excise tax on minerals	239,735,279	239,735,278	1	239,735,278	-
Withholding tax - Foreign shareholder dividends	562,242,930	55,359,708	506,883,222	55,359,708	-
Withholding tax - Royalties to claim owners	-	-	-	-	-
<b>SUBTOTAL</b>	802,304,698	295,421,475	506,883,223	295,421,475	-
<b>Rio Tuba Nickel Mining Corporation</b>					
Corporate income tax	1,287,083,962	1,287,082,163	1,799	1,287,082,163	-
Excise tax on minerals	138,531,277	107,714,867	30,816,410	107,714,867	-
Withholding tax - Foreign shareholder dividends	288,310,548	288,310,548	-	288,310,548	-
Withholding tax - Royalties to claim owners	-	-	-	-	-
<b>SUBTOTAL</b>	1,713,925,787	1,683,107,578	30,816,209	1,683,107,578	-
<b>Shuley Mine, Incorporated</b>					
Corporate income tax	198,766,250	198,766,250	-	198,766,250	-
Excise tax on minerals	42,745,544	42,745,544	-	42,745,544	-
Withholding tax - Foreign shareholder dividends	-	-	-	-	-
Withholding tax - Royalties to claim owners	-	-	-	-	-
<b>SUBTOTAL</b>	241,511,794	241,511,794	-	241,511,794	-



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1  
CONTRACT

Year Signed


Resource

Company Name

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Document ▲	Year Signed	Resource	Contract Type
 <b>Rio Tuba Nickel Mining Corporation - MPSA No. 114-98-IV, 1998</b>	1998	Nickel	Production or Profit Sharing Agreement

## Rio Tuba Nickel Mining Corporation - MPSA No. 114-98-IV, 1998

Search in this document

36 ANNOTATIONS

By Page By Topic

General Environment **Fiscal**

Operations Social Other

GENERAL

**Corporate headquarters**

2nd Floor, Solid Mills Building, dela Rosa St., Legaspi Village, ... more

Page: 1

**Country**

Republic of the Philippines

Page: 1

**Date - contract signature**

June 4, 1998

Page: 1

**Location**

The concession area is located at Barangay Rio Tuba, Bataraza, ... more

Page: 5

**Name of company executing document**

Rio Tuba Nickel Mining Corporation

Page: 1

**Document title**

TEXT PDF 1 of 19

Contract for Operating Mines in Non-Reservation Areas

**MINERAL PRODUCTION SHARING AGREEMENT**

MPSA No. 114-98-IV

This **MINERAL PRODUCTION SHARING AGREEMENT** (this "Agreement") is made and entered into in Quezon City, Metro Manila, Philippines, this **JUN 04 1998** day of by and between:

**THE REPUBLIC OF THE PHILIPPINES**, hereinafter referred to as the GOVERNMENT, represented in this Act by the Secretary of the Department of Environment and Natural Resources, with offices at Department of Natural Resources Building, Visayas Avenue, Diliman, Quezon City, Metro Manila

and

**RIO TUBA NICKEL MINING CORPORATION**, a corporation duly organized and existing under the laws of the Republic of the Philippines, hereinafter referred to as the CONTRACTOR, with offices at the 2nd Floor, Solid Mills Building, Dela Rosa St., Legaspi Village, Makati City and represented in this act by its President, **MANUEL B. ZAMORA JR.**, as authorized by its Board under Annex "A" which forms an integral part hereof.

**WITNESSETH :**

WHEREAS, the **1987 Constitution of the Republic of the Philippines** (the "Constitution") provides in Article XII, Section 2 thereof that all lands of the public domain, waters, minerals, coal, petroleum, and other natural resources are owned by the State and that their exploration, development and utilization shall be under the full control and supervision of the State;

WHEREAS, the Constitution further provides that the State may directly undertake such activities, or it may enter into a Co-Production, Joint Venture, or Mineral Production Sharing Agreement with Filipino citizens, or cooperatives, partnerships, corporations or associations at least sixty per centum of whose capitalization is owned by such citizens;

WHEREAS, pursuant to Republic Act No. 7942, otherwise known as "The Philippine Mining Act of 1995", which took effect on 09 April 1995, the Secretary of the Department of Environment and Natural Resources is authorized to enter into Mineral Production Sharing Agreements in furtherance of the objectives of the Government and the Constitution to bolster the national economy through sustainable and systematic development and utilization of mineral lands;

WHEREAS, the Government desires to avail itself of the financial resources, technical competence and skill which the Contractor is capable of applying to the mining

**METADATA** see summary

Country  
Philippines

Signature year  
1998

Resources  
Nickel

Type of Contract  
Contract

Open Contracting Identifier  
ocds-591adf-7265722663

**Related docs**

Rio Tuba Nickel Mining Corporation - Annex of MPSA No. ....

**More**

From Philippines

For Nickel

## Rio Tuba Nickel Mining Corporation - MPSA No. 114-98-IV, 1998

Search in this document

TEXT

PDF

8 of 19

### Production Share - "Profit Oil features (triggers for variations in split - IRR, factor, production, etc.)

The government share shall be the excise tax on the mineral products extracted. The contractor shall pay excise taxes at the rates prescribed in RA 7729, to the nearest BIR office in the province where the mine is located. This government share shall be divided as prescribed by the Local Government Code. In computing the excise tax due, the contractor must strictly follow auditing and accounting requirements as prescribed by laws and regulations. – Sec. 6.4 ... less

Page: 8

### Restrictions on transactions with affiliated parties

The contractor is not restricted from selling to its affiliates, ... more

Page: 9

### Surface fees or rent

The surface fee is akin to occupation fees for MPSAs. .... more

Page: 8

### OPERATIONS

#### Infrastructure

The contractor may install infrastructure it needs for the operation ... more

Page: 14

### Work and Investment commitments

Philippines with full specifications as to the intermediate products, by-products or final products and of the terms at which they were disposed;

- b.2) Work accomplished and work in progress at the end of the year in question with respect to all the installations and facilities related to the utilization program, including the investment actually made or committed;
- b.3) Profile of work force, including management and staff, stating particularly their nationalities, and for Filipinos, their place of origin (i.e., barangay, town, province, region); and
- b.4) Ownership of the Contractor, particularly with respect to nationality.

### SECTION VI

#### FISCAL REGIME

- 6.1 General Principle - The financial regime of this Agreement shall be governed by the principle according to which the Government expects a reasonable return in economic value for the utilization of non-renewable mineral resources under its national sovereignty while the Contractor expects a reasonable return on its investment with special account to be taken for the high risk of exploration, the terms and conditions prevailing elsewhere in the industry and any special efficiency to be gained by a particularly good performance of the Contractor.
- 6.2 Registration Fees - Within fifteen (15) days upon receipt of notice of approval of this Agreement from the Regional Office, the Contractor shall cause its registration at the concerned Regional Office and pay the registration fee in the amount of P100 and an additional P10 for P.D. 1856. Failure of the Contractor to cause the registration of this Agreement within the prescribed period shall be sufficient ground for cancellation of the same.
- 6.3 Occupation Fees - Prior to registration of this Agreement and on the same date every year thereafter, the Contractor shall pay to the concerned Municipal/City Treasurer an Occupation Fee over the Contract Area at the annual rate of fifty pesos (PhP50) per hectare or a fraction thereof. If the fee is not paid on the date specified, the Contractor shall pay a surcharge of twenty five percentum (25%) of the amount due in addition to the occupation fees.
- 6.4 Share of the Government - The government share shall be the excise tax on mineral products at the time of removal and at the rate provided for in Republic Act No. 7729 amending Section 151 (a) of the National Internal Revenue Code, as amended, as well as other taxes, duties, and fees levied by existing laws.

“The government share shall be the excise tax on mineral products at the time of removal and at the rate provided for in Republic Act No. 7729 amending Section 151(a) of the National Internal Revenue Code...”

# Referring to the law, which was enacted in 1994

"SEC. 151. *Mineral Products.* -

"(A) *Rates of Tax.* - There shall be levied, assessed and collected on minerals, mineral products and quarry resources, excise tax as follows:

"(1) On coal and coke, a tax of Ten pesos (P10.00) per metric ton;

"(2) On all nonmetallic minerals and quarry resources, a tax of two percent (2%) based on the actual market value of the gross output thereof at the time of removal, in the case of those locally extracted or produced; or the value used by the Bureau of Customs in determining tariff and customs duties, net of excise tax and value-added tax, in the case of importation.

Notwithstanding the provision of paragraph (4) of subsection (A) of this Section, locally extracted natural gas and liquefied natural gas shall not be subject to the excise tax imposed herein.

"(3) On all metallic minerals, a tax based on the actual market value of the gross output thereof at the time of removal, in the case of those locally extracted or produced; or the value used by the Bureau of Customs in determining tariff and customs duties, net of excise tax and value-added tax, in the case of importation, in accordance with the following schedule:

"(a) Copper and other metallic minerals;

"(i) On the first three (3) years upon the effectivity of Republic Act No. 7729, one percent (1%);

"(ii) On the fourth and the fifth years, one and a half percent (1 1/2%); and

"(iii) On the sixth year and thereafter, two percent (2%);

"(b) Gold and chromite, two percent (2%).



## Using 2014 EITI data to estimate what should have been paid – from EITI report, page 73

	Nickel	Iron Ore/ Concentrate	Limestone
Export Volume (metric ton)	915,805	1,353,255.00	0
Local Sales Volume (metric ton)	428,978	0	3,382,826
Export Sales Value (PHP)	2,073,873,725	2,692,457,125	0
Local Sales Value (PHP)	316,144,756	0	1,538,694,120
<b>Total Sales Value (PHP)</b>	<b>2,390,018,481</b>	<b>2,692,457,125</b>	<b>1,538,694,120</b>

What tax rate applies to nickel? 2%

What tax rate applies to iron? 2%

What tax rate applies to limestone? 2%

If it is 2014, how do we calculate?

Actual market  
value of gross  
output at time of  
removal

**X**

2%

**=**

Excise tax

So what would we have expected the company to have paid the government in 2014?

Nickel Production Value	2,390,018,481
+ Iron Production Value	2,692,457,125
+ Limestone Production Value	1,538,694,120
= TOTAL PRODUCTION VALUE	6,621,169,726
* Excise tax rate	2%
= EXPECTED EXCISE TAX PAYMENT	132,423,395



## How do they line up?

Our estimation	Actual excise tax payment, per EITI report
132,423,395	107,714,867

Difference in absolute terms	Difference in relative terms
24,708,527 PHP (551,783 USD)	19%

What do we do with this information?



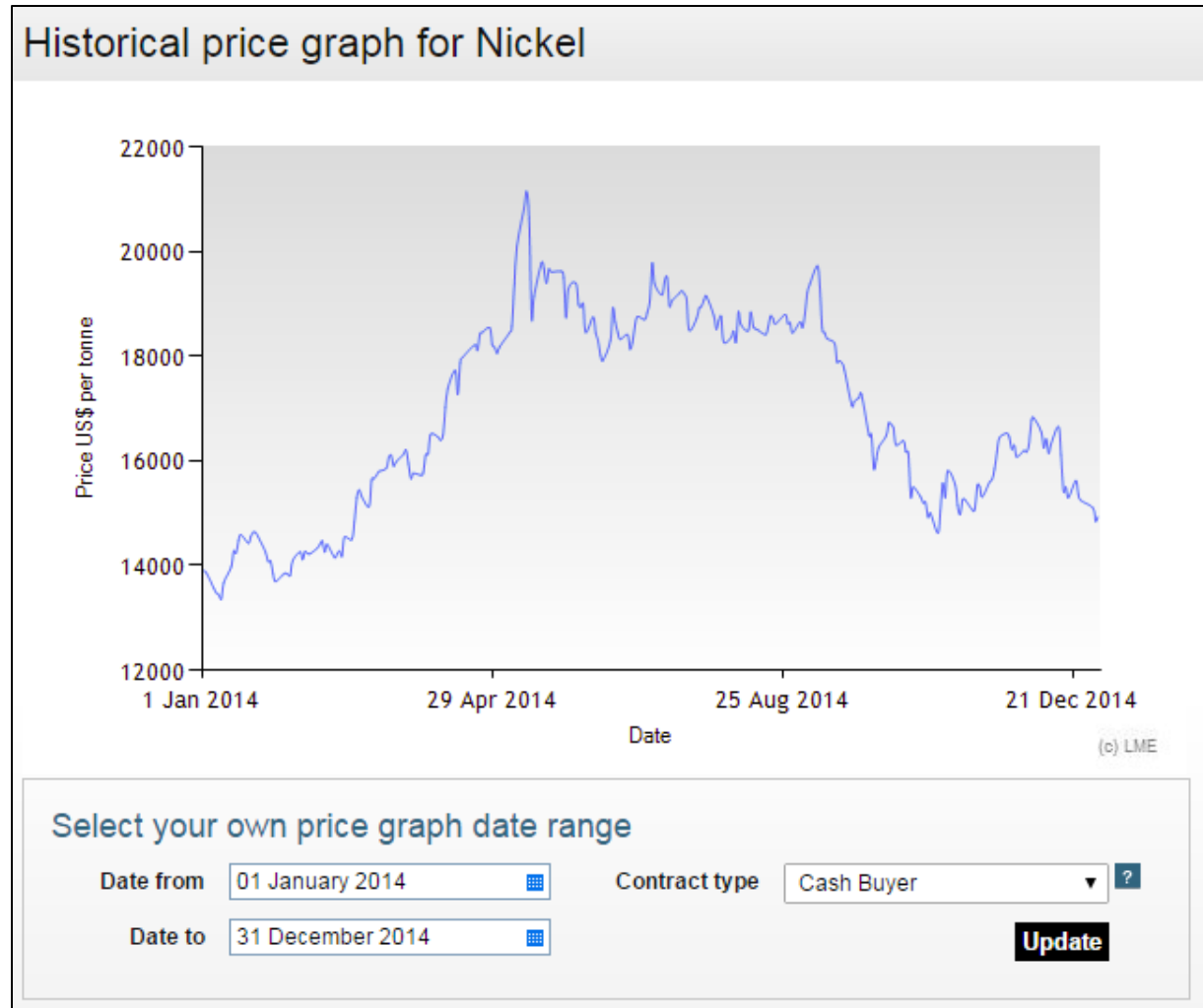
?

*Maybe.....*

*.....but not usually*

# What might explain the difference?

Price variations over the course of the year?



Source: London Metals Exchange

What might explain the difference?

Remember the language of the law?

Tax is based on “the actual market value....at the time of removal.....”

What questions would you want to ask the government or the companies?

# Communicating with stakeholders



<http://www.grupofaro.org/content/an%C3%A1lisis-econ%C3%B3mico-y-socio-ambiental-del-primer-contrato-de-miner%C3%AD-gran-escala-una-mirada-de>



[https://www.open-contracting.org/2013/11/18/putting\\_contract\\_transparency\\_to\\_work/](https://www.open-contracting.org/2013/11/18/putting_contract_transparency_to_work/)

Thank you.

[pheller@resourcegovernance.org](mailto:pheller@resourcegovernance.org)



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