

# Understanding contracts in the extractive industry



# **ILO:** After this session the participants will be able to:

- *Understand contracts importance and place in the legal system*
- *Explain the main structure and contents of petroleum contracts*
- *Understand differences and similarities in the variety of contracts*

# Purpose of contracts in extractive industries (PSA/PSC)

- Securing an exclusive right to undertake a particular activity on a particular piece of land/seabed in exchange for royalties, taxes and other obligations
- Governs the relationship between the national government and contract/license holder for an exploration and/or extraction/exploitation project

# PSA/PSC

## Definitions and features

A **contract** is a legally binding agreement which recognises and governs the rights and duties of the parties to the agreement

In the event of breach of contract, the law awards the injured party access to legal remedies such as enforcement, compensation, indemnification, damages and cancellation

# Why are contracts important?

- Pacta sunt servanda
- Inadequate/insufficient legislation
- Timing of revenues
- Size of monies involved
- Ownership to the sub-soil resources?
- Environmental issues
- Local content – Regional want and requirement
- Long lasting existence
- **Audit criteria!**

# Titles of various contracts in EI sector



## Contract titles generally used in EI:

- Convention
- Licence
- Permit
- Concession
- Agreement
- Mineral Development Agreement
- Mining Investment Agreement
- Mining Contract
- Mining Concession
- License Agreement
- Memorandum of Understanding (MoU)
- Joint Venture – JV

## Contract titles particular for Petroleum Operations

- Petroleum Contract
- Petroleum Sharing Agreement (PSA)
- Petroleum Sharing Contract (PSC)
- Exploration and Exploitation Agreement
- Exploration and Production Contract (E&P)
- Concession
- Joint Venture - JV

# Main Revenue Regimes - Petroleum operations

## Principal features

- Production sharing system (PSA/PSC)  
*Contractor owns a share of the resource once it is extracted:* Afghanistan, Azerbaijan, Ghana\*, Indonesia, Libya, Timor-Leste, Uganda
- Concessionary/Licence system  
*Contractor owns the resource in the ground\*:* Norway, Brazil, Egypt, Tunisia, Colombia, Ghana\*, Argentina
- Technical service agreements  
*Contractor receives a fee for extracting the resource:* Iraq, Bolivia, Peru, Ecuador, Mexico, Philippines,

\* Norwegian system differs slightly



# Contracts in the legal system hierarchy

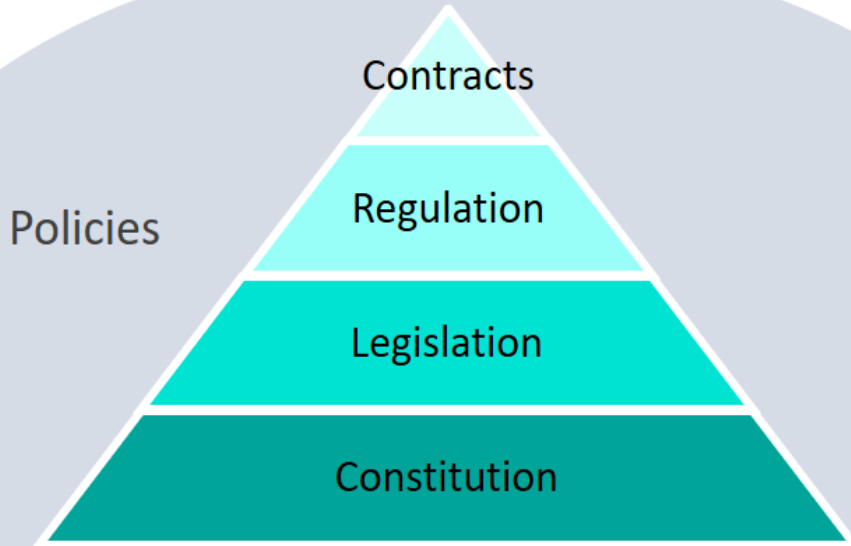


- Constitution
- Acts
- Regulations
- Contracts
- Policies?

Wich take presedence?



# Contracts in the legal system hierarchy



# EI – Contracts

## What do they cover?

### *Core Features:*

- Economic development
- Operational obligations
- Fiscal provisions – State revenues
- Reporting
- Ownership to assets
- Environmental issues
- Social issues
- Local employment and procurement
- Change of ownership or management
- Dispute resolution
- Closure, decommissioning, dismantling, abandonment



# EI – Contracts – What do they cover? (ctnd)

## *New features last 20 years:*

- Company Social Responsibility (CSR)
- Human rights
- Anti-bribery provisions
- Local consultations
- New deal structures:
  - Infrastructure
  - Public housing
  - Other non-monetary benefits



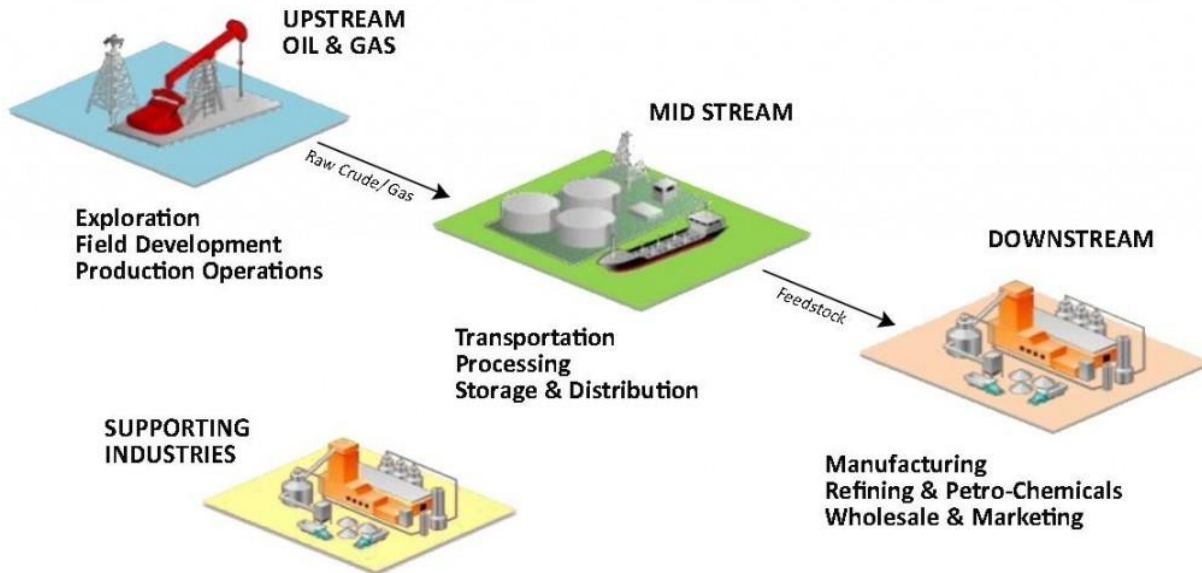
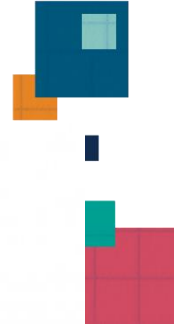
# Structure of a PSA/PSC

*Order in which things would happen in a petroleum project*

- Introduction/Preamble
- Definitions
- Exploration
- Appraisal and Development
- **Production**
- **Fiscal terms**
- Local Content
- Dispute resolution
- Etc
- **Annexes, Exhibits...**

# PSA/PSC main Principles

- Ownership to the resource: Petroleum in or under any land or water is the property of the People/Government
- Ownership to assets
- Ring Fencing
- No duplication of costs
- All contract expenditures, expenses and costs shall be *necessary, appropriate and economical* - Arm`s length principle?



**PSA/PSC regulates the  
“upstream”**

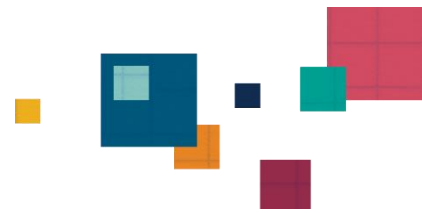
# Available contracts in extractive industries

*Useful links:*

- [https://afrosai-e.org.za/wp-content/uploads/2019/10/Extractive-Industries-Guideline-2019\\_Final.pdf](https://afrosai-e.org.za/wp-content/uploads/2019/10/Extractive-Industries-Guideline-2019_Final.pdf)
- <https://openoil.net>
- <http://www.resourcecontracts.org>
- <http://www.eisourcebook.org/>



# CONTACT AFROSAI-E



[info@afrosai-e.org.za](mailto:info@afrosai-e.org.za)



+27 (0)10 286 0104



[www.afrosai-e.org.za](http://www.afrosai-e.org.za)

Follow us on:





# Main Revenue Regimes - Petroleum operations

## Principal features

### Production sharing system (PSA/PSC)

Economic risk on Contractor (Petroleum Company)

Available petroleum is shared between the parties

*Contractor owns a share of the resource once it is extracted:*

*Afghanistan, Azerbaijan, Ghana\*, Indonesia, Libya, Timor-Leste, Uganda*

### Concessionary/Licence system

Economic risk on Government

Revenues (IOC profits) are taxed

*Contractor owns the resource in the ground\*:*

*Norway, Brazil, Egypt, Tunisia, Colombia, Ghana\*, Argentina*

### Technical service agreements

Economic risk on Government

*Contractor receives a fee for extracting the resource*

*Fees are taxed:*

*Iraq, Bolivia, Peru, Ecuador, Mexico, Philippines,*

\* Norwegian system differs slightly



# Excercise



How many of your countrys petroleum contracts are available to the public?

How many other contracts than petroleum contracts are available to the public?

How many contracts are not available to the public?

