

Democracy and oil: A combustible mix

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For the past two years, in my work for Revenue Watch, I have advised parliamentarians in African and Middle Eastern nations that have recently discovered oil or recently discovered democracy, providing training to members of parliament (MPs) and helping analyse oil policies and legislation. I was motivated by the conviction that parliaments are central to good governance, representing the voice of the people, making laws and holding the executive to account. I still believe that, but the complex challenges posed by oil wealth in today's Africa and in the emerging Middle Eastern democracies means parliaments across the continent struggle to fulfil these roles.

Oil governance is founded on the principle that petroleum rights are vested with the State on behalf of its citizens and that the State's primary role is to maximise the benefit from the exploitation of the subsoil resources to the owner of the resources – its citizens. The rulers of the state, i.e. its Government, or Executive, is responsible for making the policies that achieve this goal whilst the Parliament is responsible for making the laws that enact the policies. The Government creates and enables a series of institutions, typically a National Oil Company and a Regulatory Body to implement policy and ensure the legal and regulatory framework is complied with. The Executive is accountable to Parliament, and ultimately its citizens, for the effectiveness of its policies and their implementation. Parliament therefore plays an essential role in the governance of a nation's petroleum.

It can be easy for rulers in oil-rich nations to become detached from those they rule as oil revenues flows in centrally from companies rather than through popular taxation. The events of the 2011 Arab spring with the pro-democratic popular uprisings in Tunisia, Egypt, Libya, Syria and Yemen (all countries with substantial oil endowments) emphasise that the accountability of rulers to those they rule is an essential requirement for stability in oil producing countries. For Egypt, Tunisia and Libya a functioning parliament trusted by its citizens will be essential if democracy is to be effective. So what lessons do I draw from my work with parliamentarians?

In Uganda a billion barrels has been discovered in the Lake Albert region on the border with the Democratic Republic of Congo. The next step is to agree a development plan that maximises the benefits to the owners of the resource (the Ugandan people) and delivers a return for the providers of capital and know-how (the foreign oil companies). However, Uganda has still to create the necessary legal

and regulatory framework and the regulatory institutions. In Ghana some two billion barrels have been discovered since 2006 and production started in December 2010 and is currently around 80,000 barrels per day. Production started before oil management laws were passed and before infrastructure to exploit associated gas was built. In Iraq, the Baghdad Government has signed contracts with foreign oil companies to increase production to 12 million barrels per day whilst the regional authorities in Kurdistan have signed separately numerous exploration agreements with no coordination with Baghdad. Iraq has no depletion policy – i.e. how much oil does it need to produce? 12 million barrels is 4 times its historic OPEC quota. Again no national oil policy or law is in place – a draft law has been before parliament since 2007. Why do many parliaments find it difficult to fulfil their function effectively? I believe the answer relates to three failings – lack of information, lack of expertise and a failure to prioritise the 'National' interest over self and clan interests.

Two years ago, I was invited by a senior MP from a ruling party in an African country to visit the parliament building after I led an oil workshop for MPs and civil society. His business card listed his parliamentary committee memberships on one side; on the back were his business interests in a school, a hotel and a travel agency.

"You need to be wealthy to be an MP in Africa," he explained. It seems his constituents expected him to fix things for them - pay for schooling for their children, repair the road to the village etc. So African MPs need to be wealthy, but even this MP found it hard to defend his constituents in a rural area where oil had recently been found. Consequently, some of his constituents were driven off lands they had used for livestock grazing, by outsiders apparently linked to the country's elite. The MP claimed he had tried to represent their interests but had been subjected to many threats. It was too dangerous for him to continue to represent their interests and he wanted an outside NGO, such as Revenue Watch, to take up their cause. African MPs need not only to be wealthy, but also brave. This is also true in Iraq where each parliamentarian has 30 bodyguards to protect them.

If representing your constituents interests can be challenging for an MP, how about the law-making function? Oil is not a renewable resource and its exploitation impacts both today's and future generations. Law-making therefore requires a long-term vision for both national development and the role of oil and gas in it. Without this vision,



large oil revenues can be captured for the short-term gain of those in power. However, I have witnessed that achieving a consensus around a long-term vision is often problematic in many African democracies. The Executive may try to curtail debate by submitting laws to Parliament under emergency powers that severely limit the time for scrutiny. Or else, where national policies are unclear or not consensual, laws are submitted to parliament but not passed for years – for example in Nigeria and Iraq.

Tribalism is never far beneath the surface and is a major barrier to achieving a national consensus. For many Africans, tribal allegiances are strong, and identification with the nation weak. The same could be said of Iraq. Crafting unity in a nation created by imposed colonial boundaries remains a distant concept – witness the breakup of Sudan – and often impedes efforts to garner widespread support for a national oil or mining policy. Failed efforts to build national consensus around policy objectives can lead to situations like Ghana's, where the country has begun oil production without coming to agreement on a national oil policy, instead following an outdated law drafted in 1984 with few regulations to ensure the country derives the maximum benefit from its finite resources.

Another common weakness in African law-making is the lack of detailed technical regulations and enforcement. An oil law on its own is not enough. Oil production is a complicated and hazardous business. Without adequate technical regulations and an effective regulator, countries can take on enormous risks. Regulations and a competent regulator are too often absent. Deep water wells, like the BP well in the Gulf of Mexico that spilled millions of barrels of crude, are regularly drilled off Africa's shores. Foreign oil companies and their contractors effectively regulate themselves in places like Ghana and Sierra Leone. The lack of explicit regulations gives too much leeway for officials' discretion in approving activity, and too much risk of their making personal gain from their official position.

Any African or Iraqi MP who wants to hold their government to account for its stewardship of the oil sector will, in my experience, struggle to access oil sector data and often lack either sufficient knowledge of the oil industry or credible research support to analyse what information they could obtain.

Take the example of the billion barrels discovered by foreign oil companies in Uganda. Most Ugandans I met assumed that they had been sold short by either their government or the oil companies. In fact, in my review of

the contracts the Ugandan government negotiated, the agreements were tough and compared favourably with other countries. The problem was that MPs did not have easy access to the contracts, which had confidentiality clauses, leaving only leaked copies available. In one workshop in Uganda, there was an angry and long exchange between the chair of the parliament's Natural Resources Committee and its members, as the chair insisted members had been given access to the oil contracts for review and the members claimed they had not. The argument went on for over an hour and was not resolved. If MPs can't even agree whether or not they can access the contracts, how can Ugandans have trust in the system? "We don't need to publish them," one Ugandan lawyer joked, with telling cynicism about Ugandan governance. "If you pay an official at the Ministry a few dollars they will photocopy it for you. Corruption has some advantages." In fact, the contracts can now be viewed by MPs in the Parliament library but cannot be removed even though digital copies are available for the oil companies and their advisors. There are so many difficult decisions to make about oil governance and yet so much energy and time is expended fighting for the right to access information.

I am under no illusions as to the challenges MPs face on oil governance – tribalism, vested interests, temptations of personal enrichment, national dissent over oil's role in development, unenforced regulations, and only nominal power to hold governments to account. However, I have met many courageous and able MPs, hungry for knowledge about oil, who want to make a difference. In Sierra Leone, I saw MPs from the governing party and the opposition commit themselves to work for national consensus on oil policy. In 2010, Ghanaian MPs rejected the government's draft petroleum exploration and production bill following cross-party training on oil governance, insisting that the bill include provision for a new independent regulator. After a training session in February 2010, a group of Ugandan MPs submitted a petition to publicly disclose oil agreements and have sought the opinion of the country's attorney general on this matter. In Iraq, parliamentarians have called for a halt to further licenses being awarded until an oil law is passed.

MPs have a tough job and need much more support from NGOs, and particularly international organisations. The World Bank, International Monetary Fund and United Nations Development Programme have neglected parliaments and should do more to engage with and support parliaments in their essential role in governance. ■