

“HOW TO READ AN OIL AND GAS CONTRACT” - PUBLIC UNDERSTANDING OF EXTRACTIVE INDUSTRY NEGOTIATIONS

Summary

“How to read an oil and gas contract” will be the first book to open the process of oil and gas contract negotiations to the lay reader. OpenOil, a Berlin-based non-profit consultancy, has convened a group of world-class experts – lawyers, economists, and negotiators from southern countries – to collectively author the book in October and release it under the Creative Commons license. It will be distributed through three global networks specialized in governance of extractive industries, reaching up to 10,000 people worldwide. The book will be the foundation of a program to broaden understanding of negotiations across the governments and societies of some 30 countries around the world where they are of critical importance, acting as a soft tool building negotiation capacity, and promoting the norm of contract transparency.

Problem to be addressed: asymmetry of negotiation capacity in extractives

Many countries with nascent oil and gas industries lack capacity to have an informed debate around governance of the industry. International oil companies have more experience in negotiating contracts, and a clear, single objective: maximizing revenues and internal rates of return; they also have the financial capability to hire world class lawyers to ensure that they have the best possible chance at the negotiating table. Host governments on the other hand face a more complex task of benefit maximizing, deciding between multiple competing objectives, with less resources and experience. They cannot always afford the best professional advice and even when they can, professional negotiators need to receive a clear brief from the countries they are representing if they are to get the best possible result.

And yet the issue is of paramount importance. Resource nationalism is rising again in Africa and elsewhere, leading to expropriations (Argentina), widespread labour unrest (Peru, South Africa and Zambia) and talk of contract renegotiation (Nigeria). Yet the number of people within government who have a handle on the salient issues can sometimes be counted in single figures, as civil servants, presidential aides and ministers are excluded from negotiation and sometimes even access to contracts. Also, in an increasingly open world, parliaments and publics scrutinize contract terms but often from a position of almost total ignorance, leading sometimes to excessive criticism and a corresponding need by governments for political window dressing of contracts in a way which may store up trouble for the future.

The international community increasingly recognizes negotiation capacity around extractives as a vital development issue. Income from these industries in Africa, for example, represents a multiple of all development aid and any initiative which succeeded in securing more could have major beneficial effects. At the same time many institutions such as bilateral agencies or IFIs face conflict of interest issues in terms of direct advice in particular negotiation rounds, since they also represent countries where companies on the other side of the table are headquartered, provide jobs and pay taxes.

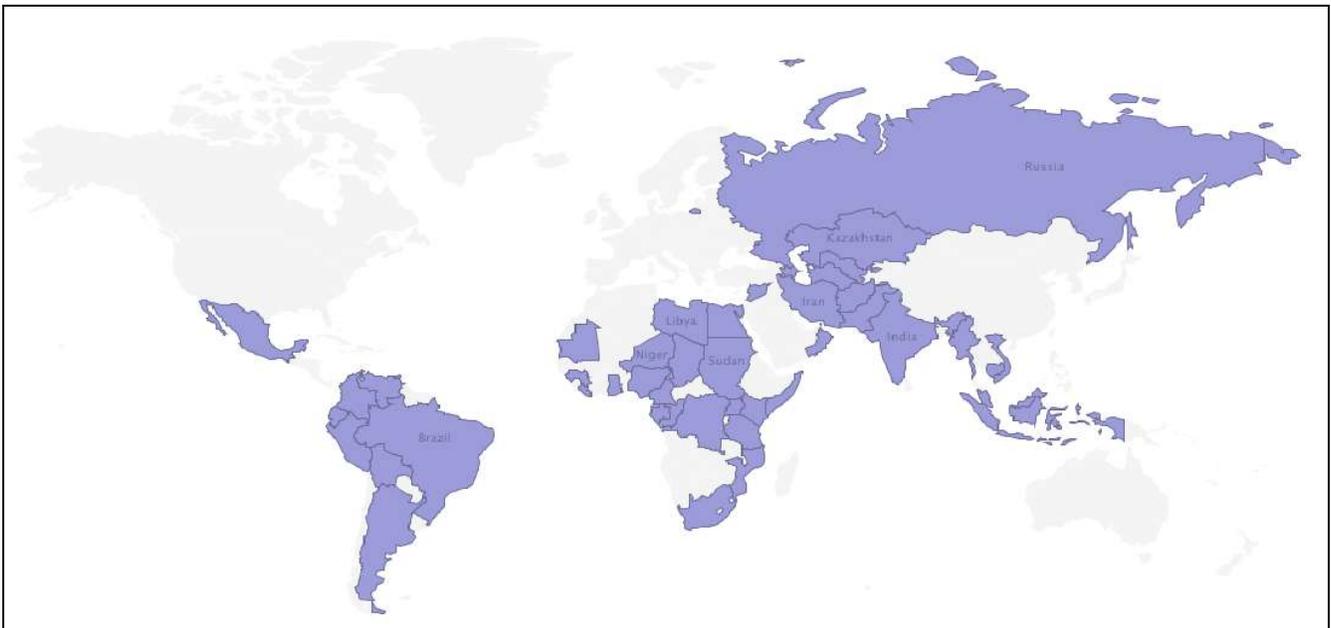
The Book

“How to Read an Oil and Gas Contract” will be a soft tool for general negotiating capacity rather than support in specific negotiations. Using a technique borrowed from the software world, the project will convene 10 to 12 world level experts at a venue in Germany in October-November and conduct a “booksprint”. Using a sample of contracts already in the public domain, the group will explain in layman's terms the principal features of a

contract, compare different legal approaches to them, and supply all the context and background necessary for non-specialists to understand what they are reading. A graphic designer will also be in the room to create visualizations of complex issues and reduce “text heaviness”. The result will be a book of 200-250 pages, capable of being read in a single sitting, for example, on a trans-Atlantic flight. It will not enable readers to become a negotiator, but rather, to engage negotiators in an intelligent conversation, to understand what the major issues are in any negotiation and, broadly speaking, what approach is being adopted towards them and how that might compare to other places or to global best practice.

Participants fall into two categories, those with deep professional experience, and those from the “demand side”, people in negotiating positions for southern governments. The first group includes from Peter Eigen, former chair of the Extractive Industries Transparency Initiative (EITI), Jay Park QC, a Norton Rose lawyer who has advised many states and investors regarding oil regimes, Susan Maples, advisor to the President of Liberia and author of *Contracts Confidential*, and Michael Jarvis, program leader for the Governance of Extractive Industries Program at the World Bank Institute. From the government side, there are strong expressions of interest from negotiators in Sierra Leone, Liberia, Azerbaijan, Afghanistan and Trinidad & Tobago.

Target Countries



Sub-Saharan Africa: South Africa, Tanzania, Mozambique, Kenya, Somalia, Sudan, South Sudan, Egypt, Libya, Chad, Cameroon, Nigeria, Niger, Mauritania, Ghana, Liberia, Guinea, Equatorial Guinea, Republic of Congo, DRC, Gabon, Uganda. *Central and Latin America:* Colombia, Peru, Bolivia, Ecuador, Venezuela, Brazil, Argentina, Mexico, Trinidad & Tobago. *Middle East:* Syria, Oman, Iran, Yemen, Algeria. *Asia:* Pakistan, Afghanistan, Kazakhstan, Turkmenistan, India, Myanmar, Bangladesh, Cambodia, Vietnam, China, Malaysia, Indonesia, Timor Leste

Promotion and Distribution to Beneficiaries

OpenOil has discussed with three global networks specialised in governance of extractive industries to promote and distribute the book. These networks represent 10,000 people engaged in governance of extractive industries.

- *GOXI*, the “Governance of the Extractives Industries”, is a network set up by the World Bank Institute which includes 1,200 members from 55 countries, with a preponderance in 25 African countries. A large majority of Goxi members would be in the target audience for the book. GOXI project leader Michael Jarvis is due to attend the booksprint.
- The *Natural Resources Charter* is a global initiative designed to help governments and societies govern natural resources. Its board is headed by former Mexican president Ernesto Zedillo and includes statesmen and leaders from around the world. The NRC has elaborated 12 principles of governance, is engaged in country work across Africa and the Middle East, and has about 1,000 people on its email lists. A member of the secretariat is due to attend the booksprint.
- Publish What You Pay (PWYP) is a network of some 650 civil society organisations dedicated to transparency in the extractive industries. The book concept will be presented for feedback and pre-ordering at PWYP's 10th anniversary summit in Amsterdam in September.

In addition, OpenOil will promote to its own email list of 2,000 people and engage actively with other networks such as the Revenue Watch Institute, the Association of International Petroleum Negotiators and others to further promote print and electronic versions of the book.

Evolution

Once published under Creative Commons license, the book will form the basis of two further developments.

First, it will form the basis of workshops and training courses in how to understand oil and gas contracts. Although many such courses now exist they are geared in terms of course material and price range to the company side. OpenOil and its partners will “democratize” such courses, holding them in southern cities at a price range that ensures broad participation by government officials and civil society leaders alike.

Second, the book will be publicly available for anyone to adapt and localise to specific languages, countries, and even negotiating rounds. “How to Read an Oil and Gas Contract” is the first in a series over two years.

The Partners

OpenOil UG (<http://openoil.net>) is a Berlin-based non-profit energy consultancy seeking better outcomes from the oil and gas industry for the people of producing nations, within the context of the market economy. Partners include the United Nations Development Program, the Food and Agriculture Organisation, Revenue Watch Institute, the Center for Global Development, Simprentis Ltd, and the EITI secretariat. Ongoing projects include public domain reference guides to extractive industries in nine countries – <http://wiki.openoil.net> – and research into energy subsidies and cash dividend models of achieving transparency. Founder Johnny West has worked on energy issues since reporting for Reuters in the 1990s. He contributes regularly to *Petroleum Economist*, *Huffington Post*, and the *Guardian* newspaper. He wrote a book on the Arab Spring¹ which included an analysis of the Libyan oil industry under Muammar Gaddafi and is working on a sequel called *Oil and the Arab Spring*.

The proposed booksprint will be implemented in partnership with Sourcefabric - <http://www.sourcefabric.org> - established as a Czech non-profit organisation with its headquarters in Prague. Sourcefabric provide news organisations with the software, expertise and support to produce news online, in print and on air.

1 <http://www.amazon.co.uk/Karama-Journeys-Through-Arab-Spring/dp/0857389947>