

Premise: *The naturally occurring shifts in power and influence between main actors over the lifetime of extractive industry projects can be used to better understand and impact actions related to the political economy.*

Key points:

- Power and interest dynamics across major actors — including companies, communities and host governments — can go a long way in shaping the outcomes from oil sector projects.
- Despite perceptions of one or another actor dominating these processes, power dynamics can shift considerably over the lifetime of a project, with relative influence moving from one actor to another at different points along the way.
- Understanding the nature of these shifts, and the sources of power different actors can draw on, allows those seeking to support good governance of the sector to be more strategic in their interventions -- capitalizing on moments of auspicious power alignments for advancing particular interests and responding more deliberately to more challenging moments.
- This brief provides a preliminary overview of these broad shifts and considers examples of how such insights might be applied to improve outcomes from oil sector development for host governments and communities.

Introduction

Ultimately, the economic, political, social, and environmental impacts of extractive industry (EI) projects—how they are governed, who will benefit from them and how, the extent to which their social and environmental impacts are understood and addressed—are largely the product of interactions among various international, national and local actors that, each in turn, pursue their respective interests and priorities. *Whose priorities will be served, and how, is often a function of power and influence distributions across the different actors. This is not a static condition.*

Therefore, understanding how the relative power and interests of key actors align and misalign over the course of a project's lifecycle can provide an important starting point for understanding how to advance a range of outcomes across the value chain of EI projects, from improved community benefits to better deals for host governments. This knowledge can help guide interventions and improve their effectiveness.

Relative power across key actors—EI companies, host governments and communities—is often misunderstood and its variability over the course of an EI project is often overlooked. Despite assumptions about the dominance of international extractives companies or host governments and the relative weakness of extractives communities, the actual power relations across these actors are dynamic and their relative influence

varies over time. Therefore, so too do the constraints and opportunities for each to realize their respective, sometimes overlapping, interests.

Current (Mis)Understandings and Their Implications

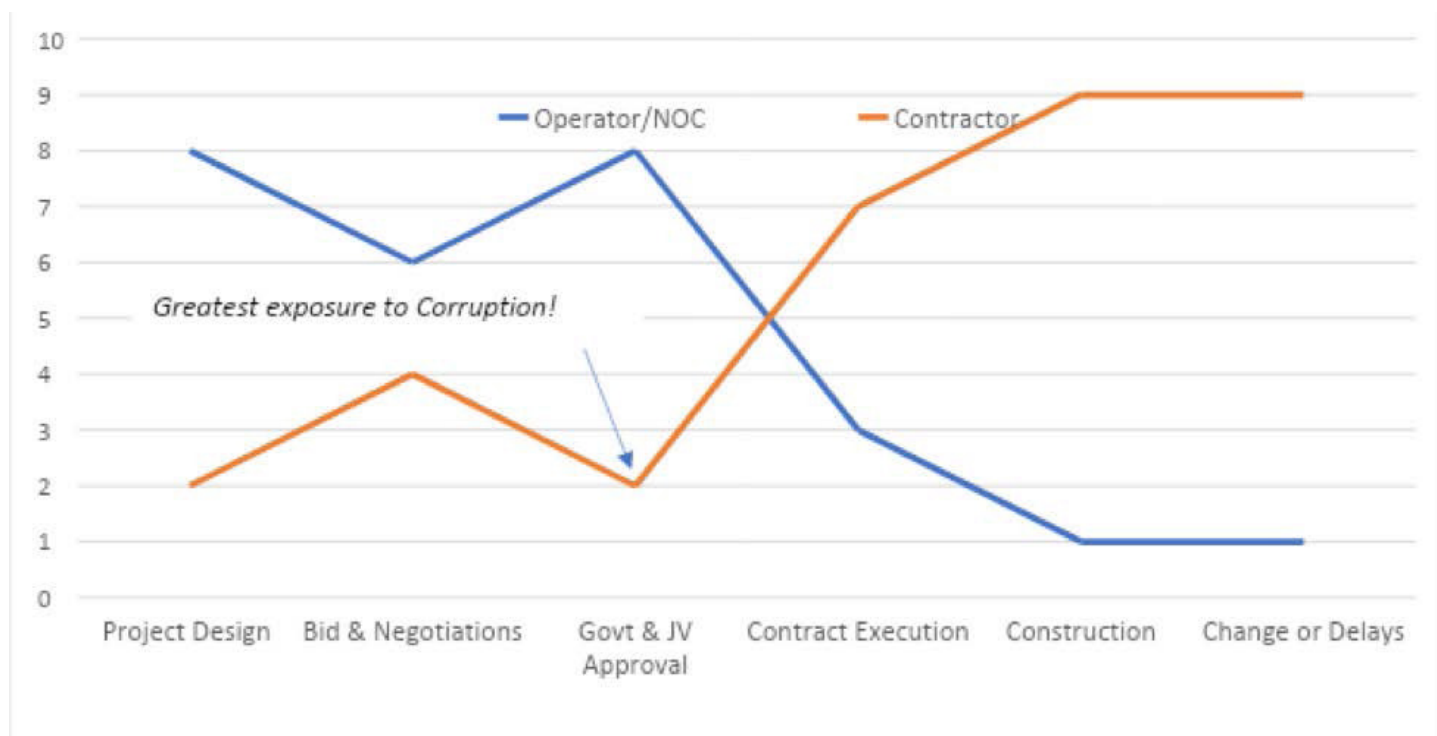
Governments wishing to develop their petroleum resources often perceive the large international oil companies (IOCs) that they rely on to carry out these roles as being much more powerful than the host government due to the IOC's more extensive access to financial and technical resources as well as their ability to move investments globally. IOCs themselves often use this perception to their advantage in negotiations. As a result, the preferences of the companies can dominate outcomes, e.g., negotiated contracts can tip the balance in favor of companies through excessive fiscal incentives and easing of regulations. The reality, however, is much more complicated.

The very nature of the typical upstream project cycle stages—1) license award, 2) exploration, 3) development, 4) production, and 5) decommissioning—inevitably entail a shift in power and influence back and forth among the IOC, the host government and local community actors at each stage. For example, an IOC that enjoys great autonomy and influence during the initial exploration phase will abruptly find itself at the mercy of the government or NOC once they have applied for approval of the development plan required in order to proceed further. This shift is not always understood or anticipated by local governmental and non-governmental actors, especially in locations new to the extractives sector. Similarly, a local community that had virtually no influence on the actions of the IOC or government during an offshore exploration period might find that once construction commences on an onshore base, processing plant or pipeline, its power to influence results will have greatly increased now through its ability to obstruct or disrupt operations. Again, such opportunities are too often missed due to fixed assumptions about relative power and influence across key stakeholders. Variation in relative power and influence can also shift as a function of energy market cycles, scale of the resource, relative knowledge and experience of the government or civil society, requirements built into production sharing agreements (PSAs), and local law and regulatory capacity.

Obtaining a better understanding of these factors, in conjunction with timing, can be a powerful tool in strategizing approaches to advancing the interests of host governments and EI communities. Knowing and anticipating the best time to push for changes in fiscal terms, to apply political pressure for changing legislation on transparency, or to open up negotiations on community issues can help maximize the effectiveness of those political actions.

This short overview offers an initial attempt to map the power of key actors across a petroleum project's lifecycle, an indicative

Figure 4: Relative power and influence between operator/NOC and contractor by project phase



After Production Start

Distribution of power. At this stage, power shifts again to the government and now also to the community. There are fewer jobs once the construction phase ends. The IOC wants to produce as much as quickly as possible and pay as little tax/production sharing as they can. Any government approvals or compliance actions (flaring orders, export licenses, audits, environmental actions, tax claims, local content requirements, import or visa restrictions) can have the effect of limiting or delaying the net revenues of the IOC. The company is therefore vulnerable to government decisions. For similar reasons as explained above, the structure of the PSA can affect the relative power of the parties. During this phase, the local community may experience a slight increase in their leverage as any of their actions can potentially disrupt production operations. The most dramatic and extreme illustration of this may be in the Niger Delta of Nigeria where community concerns over environmental impacts and lack of employment opportunities led to strikes, protests and even attacks on personnel which have over the years resulted in significant production shut-ins.

During Production Decline

Distribution of power. Power begins to shift to the IOC as production declines since, at this point, they have recovered their initial investments, earned a sufficient return and are therefore less exposed to losses than during previous periods. Moreover, absent the likelihood of new prospects in other blocks in the country, the IOC's interest in maintaining a long-term relationship with the government begins to decline. This is especially true for larger IOCs who recognize that they are not as well-equipped to operate declining oil and gas fields as cheaply and efficiently as smaller independents. Also, they see the pending facility decommissioning and abandonment cost on the horizon and, prior to that, the costs of having to repair or replace aging infrastructure and the environmental risks of leaks. The larger IOCs usually at this point pursue a strategy to sell off their interest. This potential for large IOCs' selling their interests to smaller, less financially secure companies creates a risk to the government that funds will not be in place to fully repair and decommission at international standards. The government can preserve some power if the PSA or laws of the country require pre-funding of decommissioning costs, grants the government the right to approve any transfers of interest, or establishes capital gains tax on sales.

Summary table of power and influence across the life of the project

Sources of IOC Power and Influence	Sources of Government Power and Influence
Pre-Award Phase	
<ul style="list-style-type: none"> • More choices around the world • Financial resources and technical expertise • Better knowledge of resource potential 	<ul style="list-style-type: none"> • Size and certainty of potential resource • Control of award process • Due diligence and establishment of strong anti-corruption requirements
Post-Award Pre-Discovery Phase	
<ul style="list-style-type: none"> • Financial resources and technical expertise • Have been granted an exclusive right • Influence with international contractors 	<ul style="list-style-type: none"> • Limited approvals • Few local firms with expertise in exploration
Post-Discovery Pre-Development Approval	
<ul style="list-style-type: none"> • Financial resources and technical expertise 	<ul style="list-style-type: none"> • Strong approval authority that impacts NPV
During Production	
<ul style="list-style-type: none"> • Limited options 	<ul style="list-style-type: none"> • IOCs have “sunk” costs not yet recovered; need to produce without interruption to recover investments
New Discoveries Made in Existing Concessions	
<ul style="list-style-type: none"> • Technical knowledge and financial resources to develop • Rights under the concession 	<ul style="list-style-type: none"> • New Development Plan approvals • Represents opportunity for IOC to develop relying on existing infrastructure
Prior to Decommissioning	
<ul style="list-style-type: none"> • Walking away or selling interests avoids high costs 	<ul style="list-style-type: none"> • PSA requirements re pre-funding, right of approval of asset sales

So what? How understanding shifts in power over EI project lifecycles matters for good governance

Actual and perceived power dynamics can shape the interactions that determine how EI projects unfold, and how their benefits and costs are distributed across the various stakeholders involved. This brief has mapped out how these power dynamics evolve over the life of a project in order to shed light on different moments in which specific actors have some leverage over outcomes. These crucial insights can be an extremely valuable tool in bringing about better good governance of EI by:

- Enabling host governments and host communities to make strategic decisions to capitalize on moments when they have the most leverage, and also seek added support to attempt to offset power asymmetries when at a particular disadvantage. For example, a local community may have the most power to influence outcomes during the development stage so they may need to plan their strategy and actions to press hardest during this period. For a government, typically the best time to implement policy changes or enhance PSA

terms is just after a discovery but before the approval of the development plan, when its power relative to the IOC is greatest.

- Helping stakeholders anticipate and take advantage of opportunities for interest alignment and compromise. When the interest of two or more of the parties coincide at a certain point in the development cycle then they can become temporary allies and amplify their power to effect change without having to be permanently allied. So, for instance, the IOC may be better served by actively seeking community involvement and economic benefits some time prior to the development phase so as to avoid disruption or delay when the costs of this would be higher.
- Allowing stakeholders to avoid the negative consequences of trying to influence outcomes when they do not have the leverage, e.g. decreased level of interest in bid rounds, project delays, arbitration cases, treaty claims
- Carrying out due diligence prior to awarding mineral rights to determine capabilities and track records of potential investors; this will reduce the asymmetry of

information during all phases which is critical when information access provides leverage

- Contributing to better governance provisions in contracts and laws that help increase benefits to governments by rebalancing power in their favor:
 - minimum work obligations;
 - relinquishment provisions;
 - caution on economic stabilization clauses;
 - fiscal regimes that take into account changes in prospectivity over time (“progressive fiscal regimes”);
 - pre-funding of decommissioning;
 - anti-corruption measures;
 - community consultation requirements;
 - local content provisions that anticipate further project phases;
 - establishment of operator requirements aligned with international standards;
 - cost, safety and local content reporting requirements.

In short, thinking about the realities of power shifts across actors over the lifetime of an EI project allows for more strategic thinking about the best and worst opportunities for different actors to advance their interests and the most important times to attempt to bolster their power through strategic alliances that have aligned interests at a particular moment. While this is a first broad-brush illustration of how such mappings might work, there is room for refinement and further iterations to capture shifting power dynamics that might be relevant to another sector (e.g. mining), a particular stakeholder group or stage of the EI project lifecycle could valuably be explored.

Endnotes

- 1 Paraskova, Tsvetana. “Chevron’s Future Investment In Angola Depends On Revised Tax Terms.” OilPrice.com. February 22, 2017, <https://oilprice.com/Latest-Energy-News/World-News/Chevrons-Future-Investment-In-Angola-Depends-On-Revised-Tax-Terms.html>.
- 2 Columbia Center on Sustainable Investment and Kroll, “Reputational and Integrity Due Diligence on Investors.” (2019). <http://ccsi.columbia.edu/files/2019/11/Reputational-and-Integrity-Due-Diligence-on-Investors.pdf>
- 3 “Angola: Big Prizes for Eni, Total and Petrobras.” Petroleum Economist. July 1, 2006, <https://www.petroleum-economist.com/articles/upstream/licensing-rounds/2006/angola-big-prizes-for-eni-total-and-petrobras>.
- 4 “Kosmos Energy Signs Petroleum Agreement for West Cape Three Points Block Offshore Ghana; Company Gains First Major Contract for West African Acreage.” Business Wire. July 28, 2004, <https://www.businesswire.com/news/home/20040728005640/en/Kosmos-Energy-Signs-Petroleum-Agreement-West-Cape>.
- 5 Wells, Lou. “Do Companies Have Personalities and Why Does It Matter?” Interview by Columbia Center on Sustainable Investment. March 2019, <http://ccsi.columbia.edu/files/2018/02/Lou-Wells-Company-Personality-Interview-March-2019-CCSI.pdf>
- 6 “Esso Exploration and Production Guyana Ltd., Liza Well, PSA, 1999.” Resource Contracts. 1999, <https://resourcecontracts.org/contract/ocds-591adf-2947803650/view#/pdf>; “Esso Exploration and Production Guyana Ltd, CNOOC Nexen Petroleum Guyana Ltd, Hess Guyana Exploration Ltd, PSA, 2016.” Resource Contracts. 2016, <https://resourcecontracts.org/contract/ocds-591adf-1399550295/view#/pdf>
- 7 In time value for money economics, the money flows in the short term are those that most contribute to improving return. The shorter the payback period, the better it is for the project economic return.
- 8 Many of the IOCs were forced to clarify internally their individual long-term strategies for Angola as this point. If they refused to participate in the LNG project, they may face a more difficult time politically in obtaining new opportunities there. For example, Statoil and ExxonMobil, after initial participation, decided to withdraw from the project. ENI, after initially electing to not participate, eventually decided to purchase a share of the project and even went further to invest in regasification dedicated to LNG. (Author’s own experience)
- 9 Author’s own experience complementing the following sources: <https://www.angolalng.com/en/about-angola-lng/our-history-overview/>, <http://www.biofund.org.mz/wp-content/uploads/2018/11/F1228.Scopingreport-Nb.pdf>
- 10 Project costs cannot be consolidated across projects. This means that losses for one project cannot offset gains in another project to reduce taxable income and lower the tax liability.
- 11 When there is a tight annual cap or cost recovery limit that is low it means that a lower amount of revenue can be used to recover costs and more gross revenues is retained by the government.
- 12 “Model Contract, PSA, 2015.” Resource Contracts. 2015, <https://resourcecontracts.org/contract/ocds-591adf-8711222221/view#/search/The%20development%20plan%20shall%20include>.

Appendix: Example of Development Plan Language From a PSA

(From Kenya 2015 Model PSA)¹²

“(1)...This field development plan shall be based on sound engineering and economic principles and in accordance with best petroleum industry practice and considering the Maximum Efficient Rate of production appropriate to the commercial discovery.

(2) The Development Plan submitted by the contractor to the Cabinet Secretary shall contain details of the proposed development area, relating to the commercial discovery which shall correspond as closely as possible to the extension of the discovered accumulation in the contract area, as determined by the analysis of all relevant and available information.

(3)...The development plan shall include:

(a) A description of the proposed commercial discovery in the development area that is identified for the development and management program;

(b) Details of the following upstream petroleum operations:

(i) geologic, seismic, and geophysical exploration analysis and appraisal, including production simulation profiles;

(ii) proposed well locations and production, treatment, storage and transportation facilities to be located in the development area;

(iii) spacing, well construction, drilling process, casing and cement programs, well logs, completion methods, and production operations of the wells required for production of petroleum in the development area;

(iv) facilities for transporting petroleum from the Development Area to the Crude Oil Delivery Point and the Natural Gas Delivery Point;

(v) identification of any alternative markets and sales of all petroleum resources, especially natural gas;

(c) The initial production profiles for all petroleum reserves in the commercial discovery, including the production life, the commencement of production, and the anticipated daily rates of petroleum production;

(d) The decommissioning plan, in such detail, as the Authority requires, including in accordance with clause 17 a calculation of the quarterly accrual charges to be paid by the contractor to the decommissioning fund for individual well plugging and abandonment operations and overall field

decommissioning costs;

(e) A detailed environmental impact assessment for the commercial discovery, which identifies current and possible environmental issues and concerns and a plan for ensuring environmental compliance during the life of the field;

(f) A contractor’s proposal for ensuring the safety, health, security and welfare of persons and facilities in or about the proposed upstream petroleum operations;

(g) The contractor’s proposals for stimulating local content, including:

(i) maximizing the procurement and use of Kenyan goods and services in upstream petroleum operations to local communities;

(ii) identifying specific skills’ training programs and technical courses that shall directly translate to the employment of citizens of Kenya and shall ensure occupational health and safety requirements, fairness in gender practices, and career advancement opportunities;

(iii) coordination with stakeholders and local communities in open and timely posting of job descriptions and minimum skills’ requirements for employment to fully address local content issues and concerns;

(h) The contractor’s complete finance program for the Annual Development Work Programme and Budget;

(i) Details and copies of all contracts, agreements and arrangements for the sale of petroleum at the identified delivery point;

(j) Such other data and information as the law requires and as the Cabinet Secretary otherwise requires and is relevant to the development plan.”



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