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A COMMON APPROACH TO INVESTMENT IN NATURAL RESOURCES FOR AFRICAN COUNTRIES

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Abstract

In the past few years, Africa has been the object of interest from new emerging powers such as China, India, and Turkey besides the 'return' of its traditional partners to the continent within the context of a 'global scramble' for African resources such as oil as new discoveries are made recently. African countries themselves have been engrossed with the substantial and potential new revenue streams upon discoveries made of these resources. This paper, using China as an example, reflects upon a common approach to external foreign investment in Africa's natural resources the continent should adopt in the face of competing interest from its partners with regard to potential oil deals; levels of accountability; potential challenges, benefits of an oil deal; and the strategic documents and treaties that should guide the drafting of a deal document. Besides, the paper discusses how regional communities can be mobilized in this endeavour. Attention has been paid to the characteristics of contracts, the 'relative bargaining strength' – between the main actors in the negotiating processes prior to the signing of contracts, because as one researcher noted, it sheds new light on petroleum politics on the continent as compared to the old framework upon which contracts were arrived at.

Keywords: Africa, Oil, Natural resources, document, China, deal, petroleum, politics

Introduction

In the past few years, Africa has been the object of interest from new emerging powers such as China, India, and Turkey besides the 'return' of its traditional partners to the continent within the context of a 'global scramble' for African resources such as oil as new discoveries are made recently. African countries themselves have been engrossed with the substantial and potential new revenue streams upon discoveries made of these resources (Pedersen, 2014). The author contends that the prospect of large revenues profoundly affects a country's complete political and institutional set-up to the extent that the management of wealth increases up the political agenda as to how the benefits from these resources are to be distributed.

This paper reflects upon a common approach to investment in natural resources African countries should adopt in the face of competing interest from its partners in this deal; levels of accountability; potential challenges, benefits of an oil deal; and the strategic documents and treaties that should guide the drafting of the deal document. Besides, the paper shall discuss how regional communities can be mobilized in this endeavour. Attention shall be paid to the characteristics of contracts, the 'relative bargaining strength' – between the main actors in the negotiating processes prior to the signing of contracts, because as (Pedersen, 2014) noted it sheds new light on petroleum politics on the continent as compared to the old framework upon which contracts were arrived at.

New oil rich countries like our supposed African country that has several competitors bidding for exploration rights will have to align themselves to the new petroleum politics in the continent to prevent the resource curse of the continent alluded to in the literatures. Part of this new realities include the Extractive Industries Transparency Initiative (EITI), the Publish What You Pay (PWYP) financial transparency initiative, and the proliferation of policies aimed at enhancing local content and local participation, to mention but a few.

While these may be construed as important good governance initiatives in preventing the resource curse in an Africa setting, they do not influence negotiating processes to the same extent as do other factors more fundamental to negotiations such as geological features, market fluctuations and national politics (Pedersen, 2014). Clarke as cited in (ibid) contends that while petroleum governance are gradually changing on the continent, liberalizations, low prices, weak governments and a myriad of domestic and foreign interests, prolonged period of high oil prices on the world market characterized in the 1980s and the 1990s means contemporary negotiating processes are influenced by markets and national politics in new ways.

This paper have in mind presumably China Petroleum and Chemical Company (Sinopec) as the major global Chinese state-owned oil company that seeks to win exploration rights for a new oil block in a supposed Sub Saharan African country. Sinopec is one of the largest integrated energy and chemical companies in China whose principal operations include the exploration, production, pipeline transportation, sale of petroleum and natural gas (Corp., 2018). Its operations also involves the sale, storage and transportation of petroleum products, petro and coal chemical products, synthetic fibre, fertiliser and other chemical products as well as the import and export, including import and export agency business, petroleum, natural gas, and technologies; and research, development and application of technologies and information (ibid).

While our task as a committee composed of the President of the country in question, the President of China, the CEO of Sinopec, representatives of Global Witness, Publish What You Pay (PWYP), Extractive Industries Transparency Initiative (EITI), and ECOWAS and myself, is to reflect on a common approach to investment in natural resources African countries, members interest are divergent. Therefore, to do such a reflection, there is a need to understand the various; competing interest involved in such explorations deals besides a number of other factors such as geological features, market fluctuations, and national politics critical to this reflection, and how negotiations processes proceed based on these prudentials.

Critical Factors to competitive Oil Contracts

While negotiating the right contract is vital to a government's efforts to reap the benefits of its natural resources (Radon, 2011), its negotiations, (Mohsin Shareef Salih, 2015, p. 1) notes is a key feature of petroleum business transactions between governments and oil companies which are not a simple process of give and take but involves rather various complications. This is especially so in situations where a government that expects to gain revenue rents from these extractives is decided through a competitive bidding process (Pedersen, 2014) which is not perfect. Citing (Blitzer et al.; Hurst; Radon), (Pedersen, 2014)notes that this implies the use of judgment and trade- offs on the part of the actors amidst the usual uncertainty, information asymmetry and risks.

Because of this presumable competition for rights to this new oil exploration block and the risk and expenses involved in negotiations, which (Pedersen, 2014) illuminates includes geological features, market fluctuations, and national politics. While geological features include both risks and expenses, it is important that these risk and expenses are shared between the contracting parties as there may be scanty information regarding on the part of both parties, whether in deposits exists and how much is the production cost relative to current and future prices.

Fiscal regime, contract stability, and access to finance may contribute to political risks (ibid). While the fiscal regime involves the payment due to government from sources including oil rent payments, these payments are subject to change given time and hence may affect profitability, which subsequently, may culminate in not getting the needed funds, the author notes. This is critical to the reflection that we have of this common approach to foreign investments in Africa's natural resources. The contract document needs to reflect that guarantees are made for prudent fiscal, contract stability, and access to finance.

The market price context plays an important role in determining an investor interest although other factors too may have impact on their investment decisions such as long-term expectations and distance to markets (ibid). In reality, (Pedersen, 2014) contends that, contracts are formulated based on actors' relative bargaining strengths, swayed by the above factors just delineated. Two fundamental consideration therefore, must be reflected in the presumed contract documents taking cue from (Mohsin Shareef Salih, 2015); one reflecting the division of profits between the government and the companies, and two, the manner of paying for or recovering their individual costs to reach a reasonable and adequate balance between the interests of an oil company and host government. Considering the negative effects oil companies have on environmental standards, community livelihoods, this is too important to short sight according to Radon as cited in (Mohsin Shareef Salih, 2015).

Competing interests in this deal

In this paper, I used China as an example dealing with African countries in its bid to ensure its energy security from African countries. (Rich, 2013) citing (Zweig and Bi,; Frynas and Paulo,; Taylor,; Melber,;

Herman,; Norberg,) contends that Chinese investment in Africa is predicating on access to natural resources due to an expanding economy and a generally wealthier society (Looy, 2006). Alden too as cited in (Kinfu Adisu & etal., 2010) outlined that China's need for energy security; new market and investment opportunity in addition to symbolic diplomacy and development; and forging strategic partnerships have influence China's contemporary African policy. In this view, China interest in this deal is to secure a deal in exploration rights whose returns are consistent with their state owned company's objectives which may among other things to recover the investment costs as rapidly as possible; gain access to oil and gas reserves; and limit risk by diversifying their portfolio of exploration and production acreage (Mohsin Shareef Salih, 2015) in the presumed Sub Saharan

So, while China's interest is in securing rights to the oil block, African country's interest lies in achieving overall economic growth and sustained development from their natural resource exploitation (Rich, 2013, p. 7) that are also at appropriate levels exploration and development activity (Mohsin Shareef Salih, 2015).

Levels of accountability

Different levels of accountability can be identified in this deal and they include governments, oil companies, civil society, and communities. Oil exploration industries are a major concern in sub-Saharan Africa (SSA) while implementation, given their negative impacts regarding the threat to health of local communities and their livelihoods. Transparency (Baumuller & etal, 2011) contends is crucial for accountability mechanisms to work and for oversight bodies such as the media, parliaments and civil society to hold governments to account. Accountability requires that transparent functioning systems, institutions, and processes of integrity, law, justice, and anti-corruption mechanisms as well as political will exists and are effective. Hence the different levels of accountability involves having what (Baumuller & etal, 2011) calls a 'patchwork of initiatives' necessarily comprising local communities, national and international or global, in order to achieve good resource governance outcomes. There is therefore a need that a document that articulate common approach to natural resource exploration for Sub Saharan or the African continent as whole reflect increased cooperation and coordination to mitigate negative impacts of oil industry activity among all stakeholders. At this time, this is where I think, Extractive Industries Transparency Initiative (EITI), the Publish What You Pay (PWYP) financial transparency initiative are needed to be reflected in this common approach document to natural resource investment in Africa.

Challenges of this potential deal

Experiences has shown that the main challenges in oil-producing countries relate to the lack of political will and capacity to implement and enforce national regulations, highlighting underlying governance challenges (Baumuller & etal, 2011), and if unaddressed may lead to unequal benefits for all groups in society especially in the case of the growing Sino-African relations (Rich, 2013, p. 7). The author contends that what may separate China from other countries engaging with African countries is the explicit Chinese exportation of labour as one of the examples that may further other challenges such as security threats as was the case in Nigeria and Angola in the recent past. While the production of oil requires simply capital investment and no large numbers of labourers, African governments with abundant oil tend to focus on the wealth-generating oil sector to the neglect of other sectors (Looy, 2006); thus allowing Chinese companies to hire labour for oil projects. This is further evidence that Chinese investment favours the Chinese in Africa at the expense of diversifying African economies by refusing to hire Africans to work on infrastructure projects.

This, by no means should serve as an excuse not to have deals with China and its state-owned Sinopec Oil Company but rather points to a potential challenge that a deal with China and its state-owned Sinopec in particular is likely to face. Rich points out that while some of this importation may be due to expertise or a lack of trust in African partnerships, as a development strategy it remains short-sighted (Rich, 2013) operational reality and therefore needs to be reflected in a document that articulate a common approach to external investment in Africa' or Sub Saharan Africa's natural resources.

While investments in oil go with advantages and disadvantages, assessing these with respect to China's in Africa is not simple in that Africa's highest growth rates are, as (Kinfu Adisu & etal., 2010, p. 3) citing Hanson points out attributable to Chinese investments in bridges, dams, road transport infrastructures. Besides this, challenges to this potential deal may include trade effects on competition in the internal market for local manufacturers and competition in external markets from export-oriented industry (ibid). In such instances, the author highlights citing Alden and Tull respectively that the balance of trade favours China more than local African industries; and moreover, African producers find it difficult to compete with Chinese companies in African markets because of China's low cost production and market prices. Similarly, (Simplice, 2015) citing Kiggundu, Breslin & Taylor, Large and Askouri noted that China's investments and trade in Africa are associated with regimes characterized by substantial governance risk and human rights violations especially in connivance with corrupt elites.

1. What are the benefits of this deal?

Depending on economic credit worthiness and or political governance status, both host country where the oil block, which in this case is our presumed African or Sub Saharan country, and the investing country represented here as China in the embodiment of Sinopec may benefit from this deal. While China has the experience as (Looy, 2006) notes to diversify its oil resources and became less dependent on other oil-producing countries our presumed African country may have a reliable economic partner that does not question its domestic political situation as has happened in many Sino- Africa relations. This means a steady stream of finances for our presumed African/ Sub Saharan country besides economic infrastructural investment developments. Tull contends that increased aid, debt cancellation, and a boom in Sino-African trade and a strategic focus on oil, have proven mutually advantageous for China and African state elites often without preconditions, presenting China as an attractive alternative to conditional Western aid (Tull, 2006).

China promotes investment in Africa through concessional loans, commercial loans, and regular and preferential export buyer's credits but sometimes, these investments are mingled with foreign aid to maximize feasibility and flexibility albeit with confusion both inside and outside China, about the distinction between the two (SUN, 2014). Whether defined as aid or investments, SUN notes that Chinese loans to Africa aim to be mutually beneficial - natural resources and service contracts for China while financing and infrastructure for Africa using what is has been referred to as sometimes the "Angola Model." These financing mostly uses resource-backed financing agreements that are low cost interest to African countries to secure natural resources especially where this country lacks credit worthiness.

2. What African and external needs are being met?

Africa' needs are met by the financial in-flows and related infrastructural investment development through mainly resource-backed financial for natural resources while China's capital flows into Africa meet China's needs for natural resources in addition to creating business opportunities for Chinese service contractors and construction companies (SUN, 2014). While these arrangements may depend on the relative bargaining position, nevertheless, it does not suggest that it is ideal. Ideally, accumulation of foreign assets; domestic investment—public or private; domestic consumption—public or private; and savings or investment funds would more likely meet African needs according to researchers as cited in (AfDB, July 29, 2009).

3. What strategic documents and treaties should guide the drafting of the document?

Continental initiatives to harmonize investment regulation are heavily cluttered (Africa, Feb.2016) as each regional body including SADC, ECOWAS, COMESA and EAC has its own initiatives (ibid). In cases where such documents do not exist, certain common contractual provisional clause do exist in Common Law countries or Civil Law countries that guide together with existing national laws inter alia depending on the kind of oil or gas contractual agreement between the host country and investing companies (Mohsin Shareef Salih, 2015). These provisions are: Parties, Accounting Methods, Recovery of Cost, Taxation or Compensation, Environment, Work Program, Stabilization, Price, Termination and Outside Experts (Mohsin Shareef Salih, 2015; Radon, 2011)

4. How should, in this endeavour regional communities be mobilized?

Regional communities can be mobilized by deepening integration as an important aspect to make Africa an investment destination; and enable the fragmented markets, small market sizes, dissimilar regulatory environments to be overcome by harmonization and integration through both inter and intra-regional efforts to help avoid harmful practices such in the area of investment incentives (Africa, Feb.2016).

5. What would a draft document that articulate African perspectives look like?

Consolidated investment agreements (Africa, Feb.2016)are vital for attracting investment. While continental investment codes will assist in simplifying investments rules and regulations that create conducive environment for investments in the continent, equally important steps in this document to capital controls and liquidity are critical as African countries face big challenges when capital suddenly moves (ibid).

It is imperative that the draft document strengthens that investments benefit African countries and local economies. African countries should reap the benefits through skills transfer, technology transfer, job creation, and infrastructure development (ibid). Besides, a draft document like this should also articulate elements of an enabling environment that have the greatest potential to promote economic and social development in Africa (Africa, Feb.2016) but notwithstanding, also health and Environmental concerns of both workers, and physical and drainage landscape or other externalities (Radon, 2006).

Besides, the document need to articulate good fiscal regime, contract stability, and access to finance and the manner of paying for or recovering individual contracting costs and how are with respect to the risks and expenses likely to be influenced by geologic features, national political risk and market prudentials to be borne (Radon, 2006; Mohsin Shareef Salih, 2015; Radon, 2011).

Division of profits too are also important to be featured with respect to whether or not the oil block is located offshore, on-shore, and a host of other regulatory terms including any subcontracts or key governance and transparency issues on the part of both the host governments, oil companies and or other state parties duly involved.

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