

# **Reform in Oil Producing States**

**Fall 2013**

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## **Welcome**

This is a 2 hour credit seminar meeting on Thursdays from 4pm-6pm. This course is about politics, economics, democracy, development, diplomacy and the many considerations that producing states face. But it is also a *law* class and we will be reading, discussing, editing, criticizing, and creating new law (meaning laws, contracts, treaties, etc). It is not just about law reform, it is about reform and the role law plays in it; sometimes no law reform (meaning changing the law in some way-- repeal, amend, adopt a totally new law) is needed to get better outcomes: maybe more enforcement is needed; better due diligence conducted; a few more tax lawyers in the Ministry of Finance--any number of possibilities that might not be strictly thought of as "law reform" per se. In short, we will be discussing, in depth, the many aspects that come into finding, developing, and using petroleum wealth wisely as a country or state and the relationship that is at the heart of it all: the host country and the international oil companies.

## **Course Requirements**

During the first part of the course, the class will have short and focused reading assignments which will be discussed in class or group exercises to illustrate how the theoretical reading engages with the legal dimensions of the course. In the second part of the course, each student will present for about 30 minutes (approx. 20 powerpoint slides) on a topic of his or her choosing. This topic will also be the paper topic. There is only a paper for this course, no final exam.

There are several components to the second part of the course. First, students will need to provide the other seminar participants with a 2-4 page memorandum summarizing the most critical history, pressing questions, and possible solutions to law and policy issues related to petroleum for that country. Second, the student will also choose the readings for his colleagues for that seminar session. While the presentations do not have to be in powerpoint format, successful presentations typically do or they follow some other very clear organizing principle.

The "two-pager" and your readings will need to be provided to your fellow students a week in advance of your presenting day. On January 23, the day after the last day to add a class, we will hold an exciting lottery consisting of me picking the notecards from a hat to determine the date on which each person will present.

I am especially looking forward to working with all of you to research the history and analyze the current context of the country you plan to study. I would like to formally schedule a meeting with each student before they present to the class and send out the two-page briefing memorandum in advance of that class. While I suspect we will meet more than this, I want to ensure we do meet once. I will hand out an example two-pager (on a different topic) and

provide you with a list of suggestions of things to include in your papers, but I will leave final editorial discretion to you, there will not be hard “requirements” for inclusion in the papers. If students are working on the same country, you may share resources and discuss your presentations, 2-pagers, reading assignments to your classmates and papers, but all work must be your own, as is the case for all seminar work.

Attendance is required. Please let me know if you cannot make it, as far in advance as possible. Excessive absence will affect your grade significantly.

In summary, the course requirements are:

- One class presentation on your chosen topic
  - typically done with Powerpoint, though not required
  - students chooses reading materials for professor and other students
  - 2-page memorandum to be distributed to class a week advance of leading the discussion
- Law & Policy Briefing Paper
  - Approximately 25 page paper not in law review form but law and policy briefing paper (examples will be provided for those without experience in this format)
  - Thorough bibliography of sources required
- Contribution to class discussions

<b>Introductions</b>	
<b>1</b>	<p><b>Introductions, Introduction to the Course, and Myths and Facts about Oil</b></p> <p>Reading for this class: None</p> <p>Discussion: Introductions and Myths and Facts about Oil</p> <p>Reading for Next Class: Escaping the Resource Curse Introduction, p.1-15; Resource Charter (half of class) World Bank Extractive Industries Value Chain (other half)</p>
<b>2</b>	<p><b>David and Goliath? The Role of the Law and Lawyers in the Producing Nations and the Story of Timor-Leste</b></p> <p>Discussion: Reactions to the Charter and Timor Documentary</p> <p>Reading for Next Class: (1) Timor Sea Treaty and (2) Bayu Undan PSC. Questions to guide the reading will be provided in class to and will be discussed in the next class</p>

3	<p><b>David and Goliath? Timor-Leste Continued</b></p> <p>Discussion: Is the law as clear cut as the documentary makes it seem?</p> <p>Reading for Next Class: <u>Escaping the Resource Curse</u>, Sections of Ch. 2 “What is the Role of the State?:” p.23-31, 33-34 “Asymmetric Information” &amp; “Asymmetric Enforcement”, 38-45 “Responding to the Risks. (2) Half Class: Decree Law Timor-GAP –Timor Gas &amp; Oil, E.P.; other half: Law Creating Statoil or TBA. Questions to guide the reading and for discussion for the next class will be provided in class.</p>
<p><b>The Money Part I: Contracts &amp; the “Fair Deal”</b></p>	
4	<p><b>Contracts &amp; the Upstream Legal Framework: NOCs and State Participation</b></p> <p>Discussion: What is the role of the state in these business enterprises? To what extent does the Timor GAP decree law adhere or reject Stiglitz’s and the Natural Resource Charter and World Bank advice on NOCs? Can you tell from the law or venture a guess?</p> <p>Reading for Next Class: (1) <u>Escaping the Resource Curse</u>, Ch. 3 “How to Evaluate the Fiscal Terms of Oil Contracts” Review/skim 54-71 (this material was covered in International Petroleum Transactions and will not be directly discussed in class, it will be presumed basic knowledge); Read p.71-87; (2) Timor-Leste Petroleum Taxation Act &amp; Timor-Leste Exclusive Area PSC - Questions to guide the reading and for discussion for the next class will be provided in class.</p>
5	<p><b>Getting the “Fair Deal”</b></p> <p>Discussion: Analyzing the Timor-Leste fiscal package</p> <p>Read for Next Class: (1) Myers, Keith, “Selling Oil Assets in Uganda and Ghana—A Taxing Problem” (2) Oil Contracts: <u>How to Read and Understand a Petroleum Contract</u>, Ch. How Big is the Pie? p. 119-126 (3) Cross-country comparison of arbitration provisions (TBA)</p>
6	<p><b>At the Negotiating Table: Hot Issues in Contract Negotiations &amp; Disputes</b></p> <p>Discussion and Comparison: Assignment, Capital Gains, Valuation of Petroleum, Termination, Arbitration</p> <p>Read for Next Class: (1) NEITI Report, Years 1999-2004 p.7-12, 27-41 (2) Timor-Leste Exclusive Area PSC and be prepared to discuss</p>

	questions below
7	<p><b>The Never Ending Negotiation: Contract Monitoring &amp; Implementation</b></p> <p>Discussion: What enforcement challenges might there be in this PSC? Was the NEITI report valuable in thinking about the fiscal challenges? What responsibility, legal and non-legal, do companies have to rigorously comply with law? What might you do as a government to monitor and implement these contracts and laws?</p> <p>Read for Next Class: (1) TBA (2) Constitutional texts to be assigned for cross-country comparison (TBA)</p>
8	<p><b>That Small Forgotten Legal Document: Constitutions</b></p> <p>Discussion: What themes emerge? Are there trends? Similarities? Differences?</p> <p>Read for Next Class: (1) <u>Escaping the Resource Curse</u>, Ch. 7, p.173-179, 188-190; (2) “Bypassing Government: Oil Related Conditional Cash transfers” Giorgio Brosio; (3) <u>Escaping the Resource Curse</u>, Ch.11, p.286-312</p>
<b>The Money Part II: Revenue Sharing &amp; Spending</b>	
9	<p><b>Budget Basics: Saving and Spending</b></p> <p><b>Those opposed: The Alaska Dividend Model &amp; Conditional Cash Transfers Proponents</b></p> <p>Discussion: The academic debate is presented as binary alternatives—either direct distribution <i>or</i> centralized saving and spending. Is that a function of the formalistic nature of academic debate or is that an accurate reflection of the policy choices available to a state and its citizens? What factors mitigate in favor of the different approaches according to the authors? What other arguments might there be? In particular, what <i>legal</i> arguments might be made for each approach, including Constitutional and political and legal theory of the state and democracy? What do the legal mechanics of setting up a successful savings fund look like? What political and democratic considerations must be taken into account in the legal drafting of these funds?</p> <p>Read for next class: (1) The Subnational Resource Curse: Causes, Consequences and Prescriptions, p. 6-8, 11-13, 16-18, box on p.22 (2) Chop Fine: The Human Rights Impact of Local Government Corruption in Rivers State, Nigeria, p.9-15, 27-31, 53-60 photo p.69</p>

<b>10</b>	<p><b>Getting Local: Decentralization...the happy middle between national and individual approaches?</b></p> <p>Discussion: Why do countries decentralize oil revenues? What role did the law play in the readings? In-class comparison of the legal frameworks surrounding government budgeting in various countries</p> <p>Read for Next Class: (1) The false developmental promise of Corporate Social Responsibility: evidence from multinational oil companies, p.581-598 (2) Timor-Leste PSC Article 5 and Article 6 and any necessary cross-references for understanding how these provisions function particularly Annex C Accounting Procedures. The question is: are CSR type expenses cost recoverable under this PSC? Take a broad view of CSR: local content, environment, charity and economic development? Some, all? Which ones may or may not be? What evidence would you use to argue one way or the other?</p>
<b>11</b>	<p><b>...and what about Companies? Better than the State? CSR and the Social License to Operate</b></p> <p>Discussion: What are the arguments for and against CSR? What has Timor-Leste done vis-à-vis cost recovery to incentivize (or create disincentives) for certain types of what the article referred to as “CSR”? What might the political reaction be to some of the things that allowed to be cost recoverable in a producing country?</p> <p>Read for Next Class: (1) The World Bank, Reputational Concerns and the Emergence of Oil Sector Transparency as an International Norm, p.1-21 (2) Liberia EITI law, p.1-11</p>
<b>The Non-Money Issues</b>	
<b>12</b>	<p><b>The Transparency Revolution</b></p> <p>Discussion: Does it matter why the transparency movement came into being? Does this harken back to the CSR article? Are there salient differences? What other areas might be transparent? Does the particular history of the transparency movement make certain information more or less likely to be valued? What does the theory of norm creation mean for democracy? How can one tell when there is a genuine consensus when claiming consensus is so valuable in norm creation? Is transparency and anti-corruption the new human rights?</p> <p>Read for Next Class: (1) A Crude Awakening, p.1-6, 9-10 (2) Warner</p>

	Investigative Committee, Executive Summary (6pgs) (3) Draft decree law of Timor-Leste creating an Anti-Corruption Commission, p.1-14
<b>13</b>	<p><b>You Bribe My Guy: The Other Side of FCPA</b></p> <p>Discussion: Corruption as a two-way street and the tools that oil producing nations use to prevent it from happening and punish it when it occurs</p> <p>Read for Next Class: (1) NOCs and Value Creation, 1.4 Local Content, p.20-23 and Appendix 2, p.122-125 (2) Timor-Leste PSC and other country legislation and contractual provisions intended to promote local content (TBA). Look for differences and be prepared to discuss them.</p>
<b>14</b>	<p><b>The Promise of Local Content</b></p> <p>Discussion: Local content is persistently cited as one of the areas that producing states most desire in signing oil contracts and deciding to produce oil. Countries are increasingly putting local content into biddable elements for access to its resources. Successes are limited and some argue that, if not well thought through, local content can result in corruption, inefficiency, and greater dependency on non-renewable oil resources. How to tackle this challenge? The reading suggests a “comprehensive legal and fiscal framework”—did you get a sense as to what that might require in specific terms? Give up and get more money and pump it into other sectors of the economy? Be more precise with law and policy? Do any of the laws/contracts provided look promising?</p> <p>Read for Next Class: (1) Using Russia’s Associated Gas, p.2, 5-35 (2) Cross Country comparison of Natural Gas, DMO, &amp; Refinery provisions from laws and contracts (TBA)</p>
<b>15</b>	<p><b>Infrastructure and Energy</b></p> <p>Discussion: Did you get a sense of the “comprehensive legal framework” needed to promote gas use? Additional case studies presented in class, particularly on DMO &amp; Refining</p> <p>Read for Next Class: Ensuring Energy Security, p.69-82</p>
<b>16</b>	<p><b>Supply and Demand: Where There is a Producer, There is a Consumer</b></p> <p>Discussion: What would a class like this be without reading Daniel Yergin? Does “The Prize” theory of energy diplomacy affect producing</p>

	<p>countries ability to make policy? How so? What parameters and considerations does it present and how have producing countries handled it in the past and how might they do so in the future? Can the law in producing states do anything in this area? What about home states?</p> <p>Read for Next Class: TBD</p>
<b>Student Presentations</b>	
<b>19-27</b>	<p><b>Presentations</b></p> <p>Read for Last Class: TBD</p>
<b>28</b>	<p><b>Learning from the Past: What have we learned? Where do we go from here?</b></p>

### **Lawyerly Disclaimer**

The readings and discussions above may need to evolve to speak to the issues your chosen topics, to stay current on emerging issues, or to ensure understanding on arcane or murky issues. For example, the budget and economics discussions are not “typical lawyer work” but they have innumerable legal components; more time may be needed for economic theory, understanding Government budgets, accounting, and the like. Each class moves through the topics at a different pace. We will adapt the syllabus to fit this.