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Pro Bono

INFORMATION ABOUT NAMIBIA'S LAW

The Media, Informed Opinion and Free, Prior and Informed Consent

Media reports on oil exploration activities in Namibia are encountered almost daily. But we have to ask if these media reports are giving the public the full story.

Following the recent announcement by two major global oil players, that they have made significant discoveries of oil off Namibia's shores, Deputy Prime Minister and Foreign Minister Netumbo Nandi-Ndaitwah warned about the potential "resource curse". This was the first time this term has been mentioned publically in the ongoing Namibian debate about natural resource utilisation.

The term "[resource curse](#)" describes the significant negative social, economic and political impacts that are unique to countries rich in oil, gas and minerals. Many resource-rich countries have failed to cope with their new-found wealth, with the discovery of valuable natural resources leading to violent conflict, deterioration of good governance, increased corruption and ecological destruction instead of improved living standards for the nation's citizens. Furthermore, history shows that increased economic development in a specific sector (such as the mining of natural resources) may be accompanied by a decline in other sectors (such as manufacturing sector or agriculture).

The possibility of the "resource curse" is not readily mentioned by the operating oil companies, if at all. Yet, it is a common phenomenon when it comes to the mining of oil, gas and minerals all over the world.

One wonders why this potential problem has not been mentioned by the local media houses.

The importance of accurate and full information

With regard to oil exploration activities, public access to information and the requirement of public consultation is provided for in the [Environmental Management Act 7 of 2007](#) and its accompanying [regulations](#). These requirements may offer the best opportunity for persons and communities to assert their environmental rights before an oil project is initiated or developed.

The legislation sets out the activities which require an Environmental Clearance Certificate issued by the Environmental Commissioner before they can proceed.

The [procedure](#) for obtaining a clearance certificate includes a process to identify the possible negative social and environmental impacts of the proposed activity. Informing the affected parties is crucial in this process, to be sure that they understand what is proposed and what potential advantages and disadvantages may be involved. This is particularly important for communities in communal areas,

indigenous populations and marginalized communities, who may lack access to other sources of information about the proposed project.

In international circles this process is referred to as FPIC - free, prior and informed consent. The right to free, prior and informed consent from affected parties is premised on the availability of all necessary information. For the United Nations, FPIC is a “process undertaken free of coercion or manipulation, involving self-elected decision-making processes undertaken with sufficient time for effective choices to be understood and made, with the relevant information provided and in an atmosphere of good faith and trust”.

Who ideally provides the information? Relevant information must be provided by the developer, and – in line with its mandate to inform the public – the media. The role of the media is very important, since the potential developer is likely to try to present the proposed project in the best possible light, without emphasizing the possible detriments.

The principle of FPIC allows indigenous people to give or withhold their consent on what companies and the government can do on their land – but they can give informed consent only if they are provided with all the relevant information. Opinion and consent based on false or fragmentary information can hardly be free and informed.

The role of a free and independent media

So the information necessary to satisfy the FPIC principle should be provided not only by the stakeholders, but also delivered by the media. The media can play an important role by bringing up new information and putting the spotlight on different angles of the issues at stake. This makes the media a significant supporting pillar for the rule of law.

Namibia has played a key role in the development of a free press. The Windhoek Declaration for the Development of a Free, Independent and Pluralistic Press in 1991 was a great milestone in the international recognition of the importance of a free press for democratic development, and the fact that this statement was produced in Namibia is a matter of national pride, something our President mentions frequently.

But the power of a free media comes with a responsibility to fulfil its tasks ethically in a vibrant democracy. Freedom of the press militates against regulation by the state which could threaten that freedom and points to self-regulation as the better approach.

To raise the standards of Namibia’s journalism without state interference, the Media Ombudsman and the Namibian Editor’s Forum have set up a self-regulatory code. This “Code of Ethics and Conduct for Namibian Print, Broadcast and Online Media” is not supposed to be a paper tiger. It includes several sanctions – such as cautions, reprimands or orders for corrections or explanations – as well as providing for a fine of up to N\$50 000 in case of two or more violations of the Code by a media house.

Among other rules, the Code points out and regulates the distinction between editorial and news content. The Code contains a section on “Independence and conflicts of interest” which obligates the media to ensure that commercial, political, personal or other non-professional considerations do not influence or slant reporting. Media practitioners are specifically forbidden to accept a bribe, gift or any other benefit where this is intended or likely to influence coverage, and they are required to indicate clearly when an external organisation has contributed towards the costs of newsgathering. Importantly, the Code also requires that “editorial material shall be kept clearly distinct from advertising and sponsored content”.

The threat of fake news and advertorials

Especially in cases where there are ongoing public debates around major projects like mining or drilling, compliance with these rules is vitally important. Public debate must not be manipulated by a lack of distinction between journalistic information and advertisement. Advertisements presented as editorial content – sometimes called “advertorials” – are nothing but deception. And yet, when it comes to the current debate around Namibia’s natural oil resources, we have seen local media platforms present this kind of “advertorial”.

Media manipulation in favour of one of the financially-strong stakeholders not only has the potential to deform the current debates about exploitation of Namibia’s natural resources, but may also impact the resulting legal processes by interfering with the principle of free, prior and informed consent. Such manipulation also undermines the spirit of the Windhoek Declaration. A responsible, self-regulated media that adheres to its own code of conduct is crucial for a well-functioning democracy.

This article was made possible by support from Bread for the World.

Further information about the development and importance of the FPIC principle is contained in ProBono#66-Free, Prior and Informed Consent, which can be accessed on The Namibian newspaper website or the [Legal Assistance Centre website](#). The “Code of Ethics and Conduct for Namibian Print, Broadcast and Online Media” can be accessed here:

www.namibian.com.na/public/uploads/documents/5922bc565ea0f/code%20of%20ethics%20online.pdf