



global witness

How Libya's assets can be used to foster peace and drive development

The case for transparency in the oil sector and the urgent need to address systemic failings in the international banking system

For decades Libya's oil sector has been abused by the small elite surrounding Gaddafi. The control of natural resource wealth on this scale allows dictators to maintain their grip on power by paying off political cronies, rigging elections and terrorising their people. Laying the groundwork for transparency in the management of a country's natural resources is vital if this is to be prevented.

But grand corruption of the sort practised by pariah regimes is not possible without the help of international companies, banks and other professionals.

- Banks are complicit in propping up dictators by banking state funds in secret, and being willing to accept looted state funds into personal accounts.
- Oil companies are complicit in propping up dictators by failing to disclose the payments they make for the oil, which denies ordinary people a chance to hold their government to account for the money that has been received.

Opportunities:

Libya has a relatively small population of approximately six and a half million people and houses large, but finite,¹ reserves of crude oil and national gas. Libyan oil production peaked over thirty years agoⁱⁱ and so the Libyan authorities have a relatively short period in which to maximise the financial benefits from their natural resources.

If the transitional period sets a precedent of mismanagement, Libya's main source of income - 95% of the value of its exports and 80% of government revenue in 2010 – could continue to evaporate. With the immediate establishment of prudent management and financial responsibility, Libya could build the foundations for a bright future.

The need for transparency in the oil sector:

A transparently managed oil sector could prove the catalyst for much-needed growth and stability in Libya. In fact Libya has a golden opportunity to get this right. There are several key actions that must be taken now to guarantee that oil and public funds benefit the Libyan people:

- **No new oil concessions should be brokered until an elected government is in place.** Any deals at this time could raise concerns within Libya that international support for the NTC is driven by a desire for access to oil rather than for the benefit of the Libyan people. Although the NTC is likely to have to honour Qaddafi-era contracts in order to get oil revenues flowing, they should refrain from negotiating deals for the exploration of new oil fields until after elections take place. The Libya contact group should use its influence to ensure that companies in their markets do not attempt to broker deals at this time.
- **Concrete transparency provisions should be written into the transitional constitution to ensure the just exploitation of Libya's natural resources.** These should require the public disclosure of how Libya manages its oil sector and disclosure of all revenues associated with it.

- **Public finances including unfrozen assets, funds raised against frozen assets, resource trading and aid should be made open to public scrutiny.** The terms of existing oil contracts should also be disclosed and details of agreements made by the NTC with governments and companies involving sovereign funds or the exchange of cash, crude oil or 'IOUs' secured against frozen assets should be made public and open to scrutiny by Libyan civil society and NGOs. This is particularly important as the UN, EU and others start to unfreeze and return billions of dollars of Libyan assets held overseas.
- **All funds should be released through a transparent mechanism such as a strengthened Temporary Finance Mechanism** which was set-up by the NTC and the Libyan Contact Group to manage aid flows.

Addressing the systemic failings in the international banking system:

Currently banks are required to do due diligence checks to ensure they know their customer's identity. With senior foreign politicians and the source of their funds should be subject to extra checks. But banks repeatedly fail to do this: the UK regulator recently found that three quarters of banks were getting it wrong. Regulators also have a legal responsibility to make banks do adequate checks on their customers and to report suspicious transactions. Too often they are failing to do enough to force banks to meet their legal responsibilities.

What action is needed?

- **Governments should assist the NTC to track down and recover the funds that Gaddafi and his cronies looted from the state, and punish those banks that accepted this money.**
- **The US, UK and elsewhere must name the banks that hold the frozen funds for Gaddafi, Mubarak and Ali.** Governments must devise, and effectively implement, an approach which stops banks doing business with corrupt dictators. This must account for three key principles:
 1. **Banks must ensure that their senior political customers' money is not corruptly earned.** If a sufficient explanation is not given, the bank should turn down the money. Senior public officials should be able to explain how their assets were earned legitimately, especially if there is a significant difference between their official salary and their actual wealth. If they cannot explain there should be a presumption that that their funds are the proceeds of corruption. This concept of "illicit enrichment" is already recognised in international treaties such as the United Nations and the Inter American conventions against corruption.
 2. **Banks and other investment managers should disclose full details of all state assets that they manage.** In a dictatorship where one individual, or a small cabal, exercises almost complete power over the state, there is a very thin dividing line between state and personal investments. For example, it appears that the Gaddafi family has significant control over the state funds invested in the Libyan Investment Authority. These funds may look like they belong to the state but are actually under the effective personal control of a ruler who has captured the state. The citizens of countries such as Libya have a right to know where state funds are being held and what they are being spent on.
 3. **Such measures should be accompanied by national registries that list the ultimate owner or controller of companies and trusts.** Corrupt politicians hide their identity, and therefore their assets, behind complex webs of front companies and legal structures. This can make it very difficult for banks, or law enforcement, to find out who actually controls assets. A national registry of beneficial ownership and control of all companies incorporated and trusts established in that jurisdiction would be a key tool to dealing with this problem. (End of note).

i. Libya claims reserves of 43.7 billion barrels. But as with other OPEC member states, lack of transparency makes such claims unreliable. Credible estimates of "proved" and "probable" reserves suggest a more likely approximate 26 billion barrels. A significant proportion of even these reserves are unlikely to be economic to develop, which in turn means they cannot be counted on to generate income for Libya. Assuming stability and investment, Libya may be able to sustain or moderately increase its current rate of oil output during the next half of this decade, after which oil production will likely begin once again to decline. Given the looming global oil-supply crunch, and the necessity to move to other sources of energy to prevent global warming, the window of opportunity for countries like Libya to benefit from their oil supplies is limited.

ii. Libyan oil production peaked in 1970 at 3.4million barrels per day. Net exports in 2008 were 1.746 million bpd.