



Shale Gas: Local Democracy vs Central Government

Pascal Terrasse

Without local consultation, the French government has granted permission for the exploration of shale gas plays across the whole of France – despite the fact that the debate on the environmental consequences of shale gas production, due to the hydraulic fracturing procedure, has highlighted the risk of a catastrophe in ecological and health-related terms in the areas concerned. Pascal Terrasse, leader of Ardèche departmental council, proposes ways to ensure the voices of areas affected are heard.

For a number of months, the subject of shale gas has taken on a particular importance in public debates. It has even become the symbol of a certain hypocrisy on the part of major multinationals producing hydrocarbons and with regard to the transition that we may or may not wish to make in terms of energy policy. It has also revealed flaws in our legislative procedures and democratic deficits at the heart of our decision-making processes. This episode, which has been lurching from one dramatic turn in events to another for several months now, is unique – first, in terms of the level and duration of mobilisation among citizens, associations and local elected representatives; and second, in terms of the virulence of the debates that have taken place as part of protest events, as well as within the chambers of the National Assembly and the Senate. It is also a reflection of a failure in France’s system of governance – at several levels – as irresponsible and misguided decisions have been taken, unbeknownst to the citizens and elected representatives concerned, in an altogether non-transparent way: no preventive or ex-post checks were possible regarding the decision to grant the shale gas exploration and production licences. Finally, this sad episode represents a failure of the system that is supposed to ensure public consultation and the reporting of information to the authorities: in this case, it did nothing to warn of the potential environmental, economic and social consequences before the government took the decision to authorise shale gas exploration in March 2010.

Economic, social and environmental risks

Let us first examine the environmental, social and economic impact that the exploration and production of shale gas may have on the areas affected. In France, we have some difficulty appreciating the bigger picture concerning the consequences of shale gas production methods. However, we can learn from the experiences of other countries, especially in North America. Multiple risks have been identified: for example, the impact of the chemicals used during underground fracturing on the water table, as well as on the health of residents in the areas concerned. For example, the scientific and technical committee of the anti-shale gas movement has pointed out that the underground water courses concerned by the the licences granted in the south of France “fill and circulate in the gaps created by fissures and fractures in rocks, and are therefore very sensitive to any action that seeks to increase permeability by artificially making use of fracturing”. Furthermore, the mix of chemicals with water and sand during fracturing operations

forms a veritable “cocktail, the composition of which is poorly understood and adjusted on a case-by-case basis”. It is therefore impossible to guarantee with certainty that no harmful components will ever be used, or that such components will not one day be found in the water supplies that our fellow citizens and the agricultural sector depend upon. These risks, which are only a few examples among many, should be enough to cause us to stop and ask serious questions about the usefulness of gambling in such a way on the health of the population and on the environment that local economies often rely upon. There are also aberrations in the very principle of the exploration method used: a hydraulic fracturing operation requires a volume of water in the region of 15,000 to 20,000 cubic metres, and the production of shale gas calls for each play to be fractured every four to six months. Over the lifetime of a play, this can therefore mean a consumption of 300 million litres of water per play. At a time when droughts are on the increase, affecting agriculture (as was the case in the summer of 2011), how can we even contemplate using huge quantities of vital water resources just to find potential shale gas and oil plays?

In addition to the environmental and health-related impacts, shale gas exploration and production could have an indirect impact on the economic and social fabric of the areas concerned. In my *département*, Ardèche, in south-central France, we have made considerable efforts to develop and optimise our natural resources, such as the Chauvet Cave (a candidate for UNESCO World Heritage status), protected biotopes or the Ardèche Gorges. We have worked to promote the region and its products, via protected designations of origin (Côtes-du-Vivarais wine, Picodon cheese, etc.). In addition, we have worked to develop two economic sectors – agriculture and tourism – that depend directly on our ability to preserve our natural resources and landscapes. By deciding to grant shale gas production licences, the French state is not just threatening our environment; it is also threatening to upset the delicate balances that we, the area’s elected representatives, have for many years worked hard to preserve.

Territorial issues: opaque, centralised decision-making, with no consultation of local councillors or citizens

Besides the specific questions relating to shale gas production, the debate that this issue has generated has raised the more general problem of relations between central and local government.

In order to fully assess the territorial issues that lie behind the question of shale gas exploration and production in France, we must return to the very beginning of the saga... The story begins when local elected representatives – in particular, the mayors of the towns and villages concerned by the granting of these licences – found out about the licences, but only after they had already been approved, without any prior consultation of local elected representatives. These decisions ignored not only the wishes of citizens living in the areas affected, but also the existing development plans for these areas and the potential economic, environmental and social impacts that such decisions could have. Councillors were therefore presented with a *fait accompli*, with no legal recourse to express their point of view, and without any precise knowledge of the potential impact of these decisions.

It was, at this point, clear to see that there were considerable gaps between the various institutional tiers that make up France’s democratic system. On the one hand, there are local councillors, on the front line of disputes, who have to answer to the disgruntled residents of their municipalities, despite the fact that they played no part in making contested decisions. And on the other hand, we have central government and the nation’s MPs, who, for the most part, were unaware of – or poorly informed about – the issues at stake, and yet were the only ones to have the legitimate decision-making power to stop a machine that was out of control.

The link between local and national decision-makers, and between local policies taking account of residents’ wishes and national political decisions, was therefore re-established as a result of public demonstrations, action by associations and the mobilisation of a few MPs. Indeed, I myself

was among the first to call the government into question in January 2011 with respect to the potential economic and environmental disaster and the denial of democracy that we were risking. Several months elapsed between the granting of the exploration and production licences by Jean-Louis Borloo, then minister for ecology, energy, sustainable development and the sea, and the moment when the local representatives and citizens affected were actually made aware of the consequences of this decision. Again, considerable efforts and high levels of mobilisation were required for the government to partially revise its position. The fact that this is the case highlights a real deficiency in our decision-making system when it comes to energy and environmental policy.

There has been a failure to exercise responsibility and to make the highest state authorities answerable to the public with respect to the decisions they make. The transmission of information, particularly regarding the potential social and environmental impact of shale gas exploration and production, has failed on a number of levels: between experts and state authorities, between national and local politicians, and between the state and its citizens.

What conclusions can be drawn from these events?

One of the causes of this gap between the different institutional tiers of the French democratic system lies in the distribution of land titles, and consequently the distribution of responsibilities between central government, local councillors and landowners. Currently, the mining code grants the state “ownership” of the subsoil, and therefore the right to make decisions about the use of the resources it contains. In light of this, it is not surprising that territorial decisions can be made without consulting the inhabitants of the areas in question. It would therefore seem essential to reform the mining code so as to redistribute the responsibilities and land titles for our underground resources more effectively. Let us not forget that, as far as the management of these resources is concerned, most of the legislation in force comes directly from the French Decree of 16 August 1956, the spirit of which is very much geared towards production, and which reflects an ignorance of the environmental concerns that are so important today. This is a huge legal problem. But, at the same time, is it reasonable to expect that the elected representatives whose responsibility it is to plan and develop the “surface” of the nation and preserve its way of life should have no say in the way the resources buried under their feet are managed? Another source of division lies in the procedure in place for the technical assessment of exploration requests, before exploration and production licences are granted. Although the procedure includes a local consultation phase, this concerns only the local administration and not the local population or its elected representatives. At this stage, the investigation of licence applications is almost entirely in the hands of a very limited body of experts, which essentially corresponds to the former Corps of Mines. It is not right that a nation’s entire energy strategy should depend more on a handful of experts than on national and local representatives.

The reform of mining legislation, as proposed in the report by Jean-Paul Chanteguet,¹ is therefore a matter of some urgency: more weight must be given to preliminary studies, and the general public and elected representatives need to be more closely involved in the decisions concerning our energy strategy. It should be remembered that public participation is a principle laid down in the first article

¹ Report produced on behalf of the French Sustainable Development and Territorial Planning Commission on the proposed law (no. 3690) concerning the exploration and production of non-conventional hydrocarbons, which seeks to revoke research licences for non-conventional hydrocarbon mines and ensure greater transparency in the French mining code, available at the following address: <http://www.assemblee-nationale.fr/13/rapports/r3768.asp>.

of the Aarhus Convention,² as well as in Article 7 of the French Environmental Charter.³ Why is it, then, that this principle is so seldom applied in practice?

Moving beyond this specific case, it is also necessary to revise the way in which decisions with potentially harmful environmental and health-related consequences are made. In this regard, the new senatorial environmental commission, created when the left wing took control of the upper house in September 2011, offers prospects for considerable progress. But we need to go even further, and ensure that checks and preventive measures are systematically in place ahead of the adoption of laws relating to energy, industrial policy, etc., where the environmental impact needs to be assessed before any decision is taken. Just as the economic and social costs of laws are taken into account at the drafting stage, so we can no longer contemplate making public decisions without first taking account of their health-related and environmental aspects.

Where the impact of a decision is uncertain, as is the case here, the principle of precaution – which has been enshrined in law since 1995 and appears in the French Constitution and the French Environment Charter of 2005 (Article 5)⁴ – should be applied. This principle has already been invoked in France, for example, in judgements on the removal of mobile phone masts. However, this was not the case for shale gas exploration. Here, there is a major flaw in the decision-making process governing the strategic choices relating to energy policy.

In the shale gas saga, it is our democracy that has failed to function properly. Citizen mobilisation has enabled certain errors to be corrected, but it is deplorable that such time and energy were necessary to achieve this. The fact that this problem today remains unresolved, despite the government's latest statements announcing the revocation of certain exploration licences, shows that we still are a long way from eliminating all the weak points that this affair has uncovered.

The positions expressed by various political groups on the issue of shale gas are, to my mind, revealing: it shows their determination to bring to fruition the energy transition that is now an absolute necessity. This energy transition involves the switchover from a model that is heavily (80%) based on fossil fuels such as coal, oil and gas to a new energy mix in which non-carbon energy sources will dominate. So, instead of seeking new fossil fuels, it would be wiser to invest massively in clean energy. As a case in point, Total agreed to invest more than €37 million in order to obtain the licence for exploration in Montélimar – a sum that could have been much better spent in developing renewable energy!

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2 “In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters.”

3 “Every individual shall have the right, in accordance with the conditions and limits laid down by the law, to access information relating to the environment held by public authorities, and to participate in public decisions that have an impact on the environment.”

4 “When the occurrence of any damage, albeit unpredictable in the current state of scientific knowledge, may seriously and irreversibly harm the environment, public authorities shall, with due respect for the principle of precaution and the areas within their jurisdiction, ensure the implementation of procedures for risk assessment and the adoption of temporary measures commensurate with the risk involved in order to preclude the occurrence of such damage.”

He is today a member of the national bureau of the French Socialist Party, and part of the campaign team of François Hollande, the Socialist Party candidate for the 2012 presidential elections.

To quote this article:

Pascal Terrasse & translated by Oliver Waine, “Shale Gas: Local Democracy vs Central Government”, *Metropolitiques*, 18 January 2012. URL : <http://www.metropolitiques.eu/Shale-Gas-Local-Democracy-vs.html>.