global witness

Global Witness briefing

Probe into murky ExxonMobil deal shows why strong U.S. transparency rules are needed for oil companies

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A major oil deal struck by ExxonMobil with the Nigerian government is being probed by Nigeria's Economic and Financial Crimes Commission, a law enforcement agency that investigates high-level corruption.

ExxonMobil's deal highlights the need for the U.S. Securities and Exchange Commission to create strong transparency rules for U.S.-listed oil, gas and mining companies under Section 1504 of the Dodd-Frank Act, which are due for release by 27th June 2016.

The new U.S. rules will require extractive companies to disclose details of the hundreds of billions of dollars they pay to governments every year, such as taxes, royalties and licence fees, wherever they operate in the world.

To date there has been very little transparency for extractive companies' payments to governments, leaving these vast public revenues vulnerable to corruption. The U.S. rules aim to deter graft by enabling citizens to monitor payments and hold their governments and companies to account for how the money is used.

Yet Exxon, a company being investigated for allegedly misleading the public and investors about the risks of climate change,[1] has been calling on the SEC to prevent the U.S. transparency rules from shedding light on precisely the kind of deal it struck in Nigeria that is currently being investigated by anti-corruption enforcers.

ExxonMobil's Nigerian deal

It was widely reported that in 2009, Mobil Producing Nigeria (MPN), a wholly-owned subsidiary of ExxonMobil,[2] agreed to pay $600 million to the Nigerian government to renew its 40% share of three oil licences.[3] The remaining 60% was held by the state-owned Nigerian National Petroleum Corporation (NNPC).

The deal secured MPN's interest in some of Nigeria's largest oil-producing assets, which were reportedly contributing around a quarter of Nigeria's entire annual output of oil in 2012.[4]

In June 2015, the Civil Society Network Against Corruption (CSNAC), a Nigerian public interest watchdog,[5] petitioned the Nigerian Economic and Financial Crimes Commission (EFCC) to investigate the deal, claiming that the Ministry of Petroleum valued MPN's 40%

share of the licences at $2.55 billion – much higher than the $600 million that MPN apparently agreed to pay – and that an oil minister had refused to endorse the $600 million fee.[6]

CSNAC's petition also states that a Chinese company had offered to pay $4.85 billion for 30% share of the same three oil licences. The company in question is the oil giant CNOOC, China's second biggest producer of crude.[7]

Global Witness sources confirm CSNAC's petition was successful and that the EFCC is currently investigating the deal.

Valuable public assets

A letter seen by Global Witness that appears to be from a representative of CNOOC to the Nigerian government states that CNOOC offered $3.75 billion for a 40% share of the licences.[8] This is less than the figure stated in CSNAC's petition, but is still over six times the $600 million fee that was reportedly agreed by MPN. The difference is roughly equivalent to Nigeria's health and education budget combined.[9]

The letter, dated July 2015 and addressed to the Nigerian President Muhammadu Buhari, states that the government recommended a renewal fee of $2.75 billion for the licences – an even higher figure than the $2.55 billion reported by CSNAC. The letter goes on to say that the licences were renewed by MPN for $600 million "without recourse" to CNOOC's $3.75 billion bid.

Media reports also give conflicting accounts as to the value given to the licences by the Nigerian government. Some state that MPN's 40% share was valued at $2.55 billion.[10] Others state that the $2.55 billion represented the total value of the licenses – i.e. including NNPC's 60% stake – making MPN's share worth $1.02 billion.

Tough negotiations

Another document seen by Global Witness appears to be a memo of the negotiations between MPN and a committee of government officials set up to negotiate the deal.[11] The memo states that the licences were valued at $2.55 billion, but also shows that the government was willing to accept a renewal fee of $800 million as its minimum 'fall back' position. However, it is not clear whether the figures in the memo refer to the total value of the licences, or MPN's 40% share. If it is the former, it is possible that MPN *over*paid for the licences.

The memo states that MPN and the negotiating committee met three times in 2009, in March, May and September. At the March meeting, MPN "was requested to pay the sum of $2.55 billion",[12] plus fees of $1.2 billion to develop refinery and gas infrastructure.

At the May meeting, MPN stated that it considered the renewal fee should be in the millions rather than billions, and that it did not expect to be burdened with additional infrastructure commitments. In August 2009, MPN made an offer of $75 million to renew the licences via a letter to a junior oil minister, Odein Ajumogobia.

The memo notes that in view of the huge disparity between the government's demand and MPN's counter offer of $75 million, the negotiating committee met with Minister Ajumogobia on 4th September 2009 to seek guidance on how to proceed. The committee was advised to maintain the demand for $2.55 billion, but to drop the demand for refinery and gas infrastructure commitments.

According to the memo, at the final meeting held between the negotiating committee and MPN on 9th September, the company re-iterated its offer of $75 million. The committee stated this was not acceptable and that the government's demand remained at $2.55 billion.

MPN's approach to Minister Ajumogobia

According to Nigerian press reports, MPN approached Minister Ajumogobia with the aim of breaking the deadlock and after a series of meetings (with which officials it is not known), MPN's fee was revised to $600 million.[13] Global Witness has seen a letter dated November 2009 from Minister Ajumogobia to MPN which confirms that MPN's application to renew the licences was successful, and that a sum of $1.5 billion was set by the Nigerian Government as the gross amount to be paid.

Media reports state that in addition to agreeing a $600 million renewal fee, MPN pledged to build a 500 megawatt power plant in Nigeria at a cost of around $900 million to the company.[14] While it is not clear from the letter, Global Witness understands that the power plant may account for the difference between MPN's reported $600 million licence renewal fee and the $1.5 billion figure quoted in the letter.[15]

It was also reported that MPN agreed to relinquish another Nigerian oil licence it already had in its possession (OML 69) in order to secure the deal.[16]

Nigerians in the dark over how much MPN eventually paid

In 2011, around 18 months after MPN had apparently sealed the deal, the Minister of Petroleum Resources Diezani Alison-Madueke invalidated the licences, declaring them "null and void".[17]

A key reason for this, according to media reports, was because Alison-Madueke's predecessor, Rilwanu Lukman, who was senior to Ajumogobia, had refused to sign the licence renewal agreement in 2009.[18] The Nigerian newspaper *This Day* reported that Minister Lukman refused to execute the agreement as in his view the $600 million fee was well below the government's valuation, and that the deal would deprive Nigeria of the full benefits of the licences.[19]

A further reason given by Minister Alison-Madueke for cancelling the agreement was that the licences were extended prematurely, some two years before they were due to be renewed. The government was also said to have been been reluctant to sign new oil deals or renew old ones until the Petroleum Industry Bill, which was likely to increase taxes and royalties, became law.[20]

MPN challenged the government's decision to cancel the licences, stating that its rights in the leases were entirely valid and legally binding.[21] In February 2012, Minister Alison-Madueke announced that MPN had regained the licenses after months of negotiations, according to a Reuters report of the deal.[22]

According to the Reuters article, MPN declined to state how much it eventually paid for the licences. Global Witness searched Nigeria's 2012 Extractive Industries Transparency Initiative report to see if the payment was disclosed, but no such payment seems to be recorded in the document.[23]

It appears therefore that Nigerian citizens have no way of knowing what the terms of the deal were, including how much the government received for the renewal of these valuable public assets, or whether additional obligations were placed on MPN such as commitments to develop infrastructure.

Mrs Alison-Madueke arrested on graft charges

Conversely, many Nigerians are aware of allegations made in 2014 by the former governor of the central bank, Sanusi Lamido Sanusi, that $20 billion of oil receipts had gone missing from the state-owned oil company NNPC while Mrs Alison-Madueke was in office.[24]

Mrs Alison-Madueke denied the allegations. However, she was arrested in London in October 2015 as part of an investigation by the UK National Crime Agency into suspected bribery and money laundering associated with Mr Lamido Sanusi's allegations.[25]

ExxonMobil's push to prevent licence-level payments from being disclosed

At the same time ExxonMobil's deal came under investigation, and for several years prior to that, the company had been lobbying U.S. policymakers to prevent proposed transparency rules from shedding light on precisely the kind of deal it struck in Nigeria to renew the three oil licences.

In June 2016, the U.S. Securities and Exchange Commission (SEC) is due to finalize reporting rules that require U.S.-listed oil, gas and mining companies to publish the payments they make to governments, such as taxes, royalties and licence fees, wherever they operate in the world. Greater transparency will help deter corrupt oil and mining deals, and help citizens to hold governments and companies to account for the hundreds of billions of dollars in public revenues generated by the natural resource industries.

The forthcoming SEC rules, mandated by Section 1504 of the Dodd-Frank Act, are expected to require companies to publish payments separately for each extraction licence, project or concession that they have a controlling interest in. Reporting at this level of detail is crucial, as it will help deter corruption in the licencing process and enable citizens to monitor payments from individual projects, which can reach into the billions of dollars and are vulnerable to corruption.

However, ExxonMobil has been at the forefront of attempts by elements of the oil industry to prevent the SEC rules from requiring project-level reporting of payments. Instead, Exxon has been calling for a 'compilations' model of reporting that would permit companies to lump projects together for the purposes of reporting.[26] In the majority of cases, this would make it impossible to identify payments from individual projects or deals.

In addition, under the compilations model, companies would not be required to disclose their identities. This would make it impossible for users of the data to link payments to a specific company and hold it to account. Under the compilations model therefore, it is almost certain that MPN's payment for the Nigerian oil licences would not have been attributable to MPN.

ExxonMobil's response

Global Witness approached ExxonMobil with a request for comment on the Nigerian deal. ExxonMobil responded by stating that it had extensive discussions with the Nigerian Government to renew the licences, following which an agreement was reached and legally executed, and that in reaching the agreement ExxonMobil fully complied with Nigerian law. ExxonMobil also stated that its investments have generated significant income for Nigeria and promoted economic and social development in the country.

Questions raised by the deal

Although the elements discussed in this document may not in themselves demonstrate guilt of any crime or wrongdoing by any party, there is a clear public interest in the disclosure of the details of this deal. As such, Global Witness welcomes the Economic and Financial Crime Commission's investigation as the nature of the deal raises important questions, including:

- What were the final terms and conditions agreed to renew the three licenses?

- Were renewal fees and any other associated payments transferred into the Nigerian Government's Federation Account, or any other account, and if so, how much was paid? Can MPN provide evidence for this?

- Why did the former President Umaru Yar'Adua's government reject a seemingly superior counter-offer from a credible competitor in favour of what appears to be a substantially lower fee from MPN?

- How much was MPN's 40% share of the licences valued at by Umaru Yar'Adua's government?

- What is the status of the power plant that MPN reportedly agreed to build as part of the deal?

- If MPN relinquished another oil licence it already had in its possession (OML 69), was it transferred to another entity? If so to which entity, and what was the process undertaken for doing so?

- Why did Minister Lukman refuse to sign the initial agreement in 2009?

- It appears there was no open tendering process established to renew the licences. If so, why not?

- Were any payments relating to the deal disclosed in an Extractive Industries Transparency Initiative report?

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[1] *Washington Post*, 'Investigation broadens into whether Exxon Mobil misled public, investors on climate change', 31 March 2016: https://www.washingtonpost.com/news/energy-environment/wp/2016/03/31/investigation-broadens-into-whether-exxon-mobil-misled-public-investors-on-climate-change/

[2] Mobil Producing Unlimited is 100% owned by Exxon Mobil – see Exxon Mobil 2015 SEC filing, page 3: http://www.sec.gov/Archives/edgar/data/34088/000003408816000065/xomexhibit21.htm

[3] The licences in question are the Offshore Mining Licences (OMLs) 67, 68 and 70. The $600 million figure is widely cited in media reports. The following examples were accessed via Lexis News: *BBC Monitoring Africa*, 'Presidency commends 60m [sic] renewal fee for oil firm', 15 June 2010; *Daily Trust*, FG retains U.S.$600 million as renewal fees on OMLs,' 9 June 2010; *Reuters*, 'Exxon signs Nigeria oil renewals, dispute ends', 22 February 2012; *This Day*, 'Petroleum minister renews ExxonMobil licenses', 21 November 2009; *Africa Energy Intelligence*, 'Alison-Madueke's crusade', 8 June 2011; *Vanguard*, 'OML lease – no plans to probe Yar'Adua, says FG', 9 June 2010.

[4] It was widely reported in 2012 that the licenses had a combined output of 550,000 to 580,000 barrels of oil per day. The following examples were accessed via Lexis News: *Reuters*, 'Exxon signs Nigeria oil renewals, dispute ends', 22 February 2012; *IHS Global Insight*, 'ExxonMobil signs long-delayed oil licence renewals in Nigeria', 24 February 2012; *This Day*, 'Crude oil output set to hit 2.68 million BPD', 22 February 2012; *This Day*, 'FG asked to provide information on renewal of Oil Mining Leases', 5 March 2012. Various sources put Nigeria's total daily oil production for 2012 at around 2.5 million barrels. For example, US Energy Information Administration: https://www.eia.gov/beta/international/analysis.cfm?iso=NGA; Nigeria Extractive Industries Transparency Report 2012, page 32: https://eiti.org/files/2012-Oil-Gas-Audit-Report.pdf

[5] http://csnacng.org/

[6] CSNAC reported its petitioning of the EFFC on its website: http://csnacng.org/csnac-petitions-efcc-over-fraudulent-renewal-of-oil-mining-leases/. The petition was also reported in some Nigerian media outlets, including *All Round News*, 'CSNAC petitions EFCC on sales of three oil mining leases', 9 July 2015: http://allroundnews.ng/news/csnac-petitions-efcc-on-sales-of-three-oil-mining-leases

[7] *Bloomberg*, 'CNOOC tops Sinopec as China's second biggest oil producer', 29 March 2016: http://www.bloomberg.com/news/articles/2016-03-29/cnooc-overtakes-sinopec-as-china-s-second-biggest-oil-producer

[8] The letter was published by the Guardian: *Guardian*, 'ExxonMobil under investigation over lucrative Nigerian oil deal,' 24 June 2016: https://www.theguardian.com/business/2016/jun/23/exxonmobil-nigeria-oil-fields-deal-investigation

[9] For 2016, Nigeria's health budget was set at approximately $1.1 billion, and its education budget approximately $1.8 billion: http://www.nigerianmonitor.com/68567/

[10] For example, this news article states MPN's 40% share was valued at $2.55 billion: *This Day*, 'FG asked to provide information on renewal of Oil Mining Leases', 5 March 2012. Whereas this article states the total value of the licenses was $2.55 billion: *Nigerian Oil & Gas*, 'Renewed oil mining leases: in whose best interest?' 20 December 2012.

[11] The memo was published by the Guardian: *Guardian*, 'ExxonMobil under investigation over lucrative Nigerian oil deal,' 24 June 2016: https://www.theguardian.com/business/2016/jun/23/exxonmobil-nigeria-oil-fields-deal-investigation

[12] As indicated, it is not clear whether the $2.55 billion figure stated in the memo refers to the total value of the licences, or MPN's 40% share.

[13] *This Day*, 'ExxonMobil oil leases face legal hurdle', 4 May 2010; *Africa Energy Intelligence*, 'Exxon Bet on wrong horse', 20 January 2010; *Africa Energy Intelligence*, 'Alison-Madueke's crusade', 8 June 2011; *Nigerian Oil & Gas*, 'Renewed oil mining leases: in whose best interest?' 20 December 2012.

[14] *BBC Monitoring Africa*, 'Presidency commends 60m [sic] renewal fee for oil firm', 15 June 2010; *Vanguard*, 'OML lease – no plans to probe Yar'Adua, says FG', 9 June 2010; *Daily Trust*, FG retains US $600 million as renewal fees on OMLs,' 9 June 2010.

[15] *Guardian*, 'ExxonMobil under investigation over lucrative Nigerian oil deal,' 24 June 2016: https://www.theguardian.com/business/2016/jun/23/exxonmobil-nigeria-oil-fields-deal-investigation

[16] *BBC Monitoring Africa*, 'Presidency commends 60m [sic] renewal fee for oil firm', 15 June 2010; *Vanguard*, 'OML lease – no plans to probe Yar'Adua, says FG', 9 June 2010; *Daily Trust*, FG retains US $600 million as renewal fees on OMLs,' 9 June 2010.

[17] *IHS Global Insight*, 'Nigeria's petroleum minister invalidates three ExxonMobil exploration licences', May 17, 2011; *BBC Monitoring Africa*, 'Nigeria petroleum ministry revokes US oil firm's 20-year lease', 16 May 2011; *This D*ay, 'ExxonMobil asks FG to restore cancelled leases,' 17 May 2011; *Africa Energy Intelligence*, 'Alison-Madueke's crusade', 8 June 2011.

[18] *This Day*, 'Mobil's lease renewal revisited', 17 May 2010; *Africa Energy Intelligence*, 'Alison-Madueke's crusade', 8 June 2011; *This Day*, 'ExxonMobil oil leases face legal hurdle', 4 May 2010

[19] *This Day*, 'ExxonMobil's oil leases face legal hurdle', 4 May 2010: http://allafrica.com/stories/201005040213.html

[20] *Reuters*, 'Exxon signs Nigeria oil renewals, dispute ends', 22 February 2012

[21] *Reuters*, 'Exxon signs Nigeria oil renewals, dispute ends,' 22 February 2012; *This Day*, 'Petroleum ministry invalidates ExxonMobil oil leases,' 16 May 2011

[22] *Reuters*, 'Exxon signs Nigeria oil renewals, dispute ends', 22 February 2012; *IHS Global Insight*, 'ExxonMobil signs long-delayed oil licence renewals in Nigeria', 24 February 2012; *Daily Trust*, 'FG signs new oil deal with US ExxonMobil,' 23 February 2012

[23] The report is available here: https://eiti.org/files/2012-Oil-Gas-Audit-Report.pdf

[24] *Financial Times*, 'Unanswered questions on Nigeria's missing oil revenue billions', 13 May 2015: https://next.ft.com/content/e337c7a4-f4a2-11e4-8a42-00144feab7de; *Reuters*, 'Special report:

Anatomy of Nigeria's $20 billion "leak"', 6 February 2015: http://www.reuters.com/article/us-nigeria-election-banker-specialreport-idUSKBN0LA0X820150206; *Independent*, 'Diezani Alison-Madueke: Behind the 'reformer' of the Nigerian oil industry's arrest', 7 October 2015: http://www.independent.co.uk/news/world/africa/reformer-of-nigerian-oil-industry-diezani-alison-madueke-arrested-on-bribery-charges-a6685146.html; *BBC*, 'Nigerian state oil firm "withheld $25bn over five years"', 22 March 2016 http://www.bbc.co.uk/news/business-35871292

[25] *Bloomberg*, 'Nigeria's former oil minister Alison-Madueke arrested in U.K.' 5 October 2015: http://www.bloomberg.com/news/articles/2015-10-05/nigeria-s-former-oil-minister-alison-madueke-arrested-in-u-k- *Reuters*, 'Nigeria's ex-oil minister Alison-Madueke arrested in London – sources', 2 October 2015: http://uk.reuters.com/article/uk-nigeria-oil-arrest-idUKKCN0RW21820151002; *Independent*, 'Diezani Alison-Madueke: Behind the 'reformer' of the Nigerian oil industry's arrest', 7 October 2015: http://www.independent.co.uk/news/world/africa/reformer-of-nigerian-oil-industry-diezani-alison-madueke-arrested-on-bribery-charges-a6685146.html;

[26] Exxon Mobil advocates the 'compilations' model of payments reporting in several of its submissions to the SEC, including page 4 of: https://www.sec.gov/comments/s7-25-15/s72515-57.pdf, and page 8 of: https://www.sec.gov/comments/s7-25-15/s72515-33.pdf.

Exxon Mobil is a member of the American Petroleum Institute (API), which filed a lawsuit in October 2012 to overturn the Section 1504 rule. Exxon Mobil refused to dissociate from the API lawsuit when asked to by civil society organisations (letter from Exxon Mobil available on request).

According to SEC records, Exxon Mobil staff met with SEC staff in relation to the Section 1504 rule on 3 November 2015 http://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-97.pdf; 23 April 2014 http://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-38.pdf; and 11 October 2013: http://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-7.pdf.