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São Tomé and Nigeria: Inquiry finds lack of transparency and serious flaws in oil licensing round.

The International **Publish What You Pay** Coalition (PWYP)[1] and its partner organizations in São Tomé and Principe and Nigeria are extremely concerned about serious flaws revealed by a report into the 2005 bidding round for oil blocks in the Joint Development Zone (JDZ). The end result appears to be substantial revenue losses, to the detriment of the people of both São Tomé and Principe and Nigeria.[2]

An inquiry commissioned by the Attorney General's Office of São Tomé has concluded that the bidding process was 'subject to serious procedural deficiencies and political manipulation, including the award of interests to many unqualified firms or firms with inferior qualifications, technically and financially'.[3]

The report's findings specifically raise the question of whether the Nigerian government is implementing full transparency in the licensing procedures for the JDZ, as per its commitment in the Abuja Declaration signed with São Tomé in June 2004.[4] More broadly, the report's revelations sit uneasily with the Nigerian Government's promise to turn its back on corruption, and reform oil sector management.[5]

The serious irregularities exposed in the report include the following:

- The criteria for awarding licences were vague and did not reflect international best practice. This gave the Joint Development Authority (JDA) and the Joint Ministerial Council (JMC) unusually wide discretion in selecting licensees.[6] Some companies were also given the opportunity to amend their bids during the selection process, in contrast to international industry norms;
- Licenses were awarded to technically and financially unqualified companies. Bids by companies with no prior deepwater drilling experience and/or without the requisite financing were favoured over more credible bids by internationally respected operators, in some cases leading to lower signature bonuses. Due diligence was performed on the licensees only after the final awards had been determined;
- Several representatives on the JMC and the JDA, including officials from São Tomé, had conflicts of interest, holding stock in companies bidding for and receiving awards;

A significant part of the report focuses on Environmental Remediation Holding Corporation (ERHC), whose majority shareholder is a Nigerian oil company. ERHC holds a highly favourable and controversial contract with São Tomé giving it free options on the country's oil blocks. This may have deterred international oil companies from entering the bidding round. According to the report, if enforced, the ERHC contract could potentially result in $60 million in lost revenue in a country whose total annual budget is $50 million.[7]

The enquiry questions the validity of ERHC's contract and its options, and alleges that this could be the result of political pressure and payments to public officials. It recommends that ERHC's licenses and contract be frozen until all allegations of corruption have been properly investigated. It further calls on the JDZ agencies and the governments of São Tomé and Principe and Nigeria to revise the bidding guidelines to observe international best practice, including pre-qualification for competing companies and public disclosure of any conflicts of interest.

The Abuja Declaration was intended to establish a model for contract and revenue transparency in joint development zones: without such transparency, there is no guarantee that revenues from natural resources like oil will benefit all Nigeria and São Tomé's citizens. For this reason, **Publish What You Pay** fully supports the Attorney General's recommendations and calls on the São Tomé and Nigerian governments to take all appropriate measures to implement them. We also call on the US authorities to investigate further allegations that ERHC made improper payments to foreign public officials in order to obtain licenses, a practice that if confirmed would represent a clear breach of the Foreign Corrupt Practices Act (FCPA).

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[1] **Publish What You Pay** (PWYP) is an international campaign aiming to increase transparency over the payment, receipt and management of oil, gas and mining revenues in developing countries. PWYP is supported by a worldwide coalition of over 280 anti-corruption, development and human rights NGOs from over 50 countries. The coalition believes that revenue transparency is an essential condition for alleviating poverty, promoting just development, improving corporate social responsibility, and reducing corruption in many resource-rich developing countries. PWYP calls for stock market and international accounting rules to require oil, gas and mining companies to disclose their net payments to governments. See www.publishwhatyoupay.org.

[2] The Nigeria São Tomé & Principe Joint Development Zone (JDZ) is an area of overlapping maritime boundary claims that is being jointly developed by the two countries. A formal Treaty establishing the JDZ was signed by the Heads of State and subsequently ratified by their respective legislatures in February 2001. See www.nigeriasaotomejda.com.

[3] See the Office of the Attorney General of São Tomé and Principe Investigation and Review, Second Bid Round, Joint Development Zone of Nigeria and São Tomé and Principe, 2 December 2005. The full report is available in Portuguese (http://www.juristep.com/stpfile/PGR.pdf) and in English (http://www.juristep.com/ingles/STP/PGR_Report_English.pdf).

[4] The 9-point Abuja Declaration governs the operations of oil and gas industries in the Joint Development Zone. It upholds the importance of transparency and urges the application of EITI principles (see note 5) in the JDZ.

[5] Nigeria is one of the pilot countries participating in an international initiative to bring greater transparency to the extractive sector, the Extractive Industries Transparency Initiative (EITI). The EITI is a voluntary initiative launched by the UK Government in 2002. More information is available at: www.eitransparency.org

[6] The Treaty establishing the JDZ entrusts the management of the JDZ to a Joint Development Authority (JDA) that reports to a Joint Ministerial Council (JMC), made up of government representatives from both countries. See www.nigeriasaotomejda.com.

[7] São Tomé's government first entered an agreement with US-registered ERHC in 1997. Following public outrage at the agreement, which was extremely disadvantageous to São Tomé and Principe and was judged to violate industry norms, the government made several unsuccessful attempts to terminate it. ERHC was subsequently bought by Nigerian-owned Chrome. According to the report, the existing contract between São Tomé and ERHC, if enforced, will result in the potential loss of nearly $60 million in signature bonus revenue which would otherwise flow to the government of São Tomé. For more on the ERHC contract, see Appendix H of the Office of the Attorney General's report.