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StatoilHydro's Libyan "corruption" scandal shows need for oil industry disclosure laws

Troubling questions remain about oil deals in Libya and Angola

A scandal over questionable oil industry payments in Libya, brought to light by the giant Norwegian company StatoilHydro, underlines the need for tougher regulations to deter companies from making undisclosed payments in return for access to oil rights.

The scandal has revealed questionable payments to consultants in Libya in the early 2000s by a company now controlled by StatoilHydro, and similar payments by Spain's Repsol YPF and France's Total. It also revealed that in Angola, StatoilHydro is in partnership with a local private oil company despite suspicions that the company's undisclosed owners may include government officials, in a country perceived to be one of the most corrupt in the world.

Opacity and secrecy have provided a cover for the deep corruption that brings poverty, bad government and human suffering to many oil-producing countries, so StatoilHydro has set a welcome example of openness in its handling of this scandal which has not been emulated so far by either Repsol or Total.

But the scandal shows that oil companies cannot necessarily be relied on to come clean about how they win access to oil reserves, even where there is a serious risk of corruption. To avoid a destructive race for the world's remaining supplies of oil and minerals, tougher regulation is needed to shine light on hidden payments and secret deals.

Questionable payments in Libya

On 1st October 2007, StatoilHydro was created from the merger between Statoil and the oil and gas arm of Norsk Hydro, another major Norwegian company. Just before the merger, evidence emerged of questionable payments by Norsk Hydro in Libya in the early 2000s.[1]

Norsk Hydro had not disclosed these payments during the merger talks, even though it knew Statoil had previously admitted paying bribes in Iran and was legally obliged to inform the United States authorities of any corruption concerns as part of a 2006 settlement of that case. Statoil only found out about the payments from a Norsk Hydro official shortly before the merger closed.

The newly-created StatoilHydro then commissioned an extensive review by two law firms of Norsk Hydro's dealings with consultants, and other corruption risks, in dozens of countries. The report of this review has been passed to Norwegian law enforcement officials and is available on StatoilHydro's website. Norsk Hydro has published a report of its own review, based on the same evidence and carried out by two different law firms, which includes more than a million documents and 76 witnesses.[2]

The two reports do not take a position on whether or not the law was broken by Norsk Hydro, whose chairman has said in a statement that: "The investigation has revealed that mistakes were made in Libya in 2000-2001 that represent a breach of Hydro's regulations. This is regrettable, and we need to learn from it."[3]

The StatoilHydro report says that Norsk Hydro paid a total of $7.43 million to a company controlled by a Libyan consultant named Abdulrazzag Khalifa Gammudi, in order to help the Norwegian company win approvals from the Libyan government. "Norsk Hydro executives believed that there was a high probability that Gammudi was an intermediary for one or more Libyan government officials," the review said.[4]

This use of consultants to deal with governments is a classic red flag for corruption because oil companies have often used such middlemen to channel bribes to government officials, as Statoil admitted doing in Iran in 2003.[5]

It is not clear that Norsk Hydro received any benefits from its payments to Gammudi. He was hired to win two new licences, which Norsk Hydro decided not to take up. Then he was hired to help sell the company's existing assets in Libya: ironically enough, Norsk Hydro had decided to leave Libya because of "corruption concerns". The company later changed its mind and decided not to sell its investments, partly because oil had been found at one of them.[6]

Norsk Hydro also contributed to regular payments by oil companies to officials of the state oil company who took part in the management of oil licences where it was an investor. These payments were made to bank accounts outside Libya and included compensation, bonuses, medical expenses and travel expenses to attend management committee meetings in Europe.[7]

In 2005, Norsk Hydro objected to these payments in respect of one of the licences. In 2006, the Libyan state oil company issued a decree which formally allowed such payments.[8]

Repsol YPF and Total in Libya

The StatoilHydro report raised questions about two other companies which operate licences in Libya's Murzuq and Mabruk oilfields on behalf of oil company consortia that included Norsk Hydro. These two companies, not named in the report, are Spain's Repsol YPF and a subsidiary of France's Total.

The StatoilHydro report found that Norsk Hydro contributed $300,000 towards a $1.5 million success fee paid to a consultant in 2000 by the Murzuq operator - that is, Repsol YPF - in return for the consultant's help in getting permission from the Libyan authorities to expand the licence area.[9]

In late 2001, Repsol proposed to pay another consultant $4.5 million for help in getting the licence extended again. This time, Norsk Hydro refused to contribute. Norsk Hydro's own report adds: "Hydro and one other partner opposed the request, citing OECD concerns, i.e. that the payments would contravene the OECD Convention against bribery of foreign officials."[10] The other partner is not identified in the report.

Repsol reportedly tried later to get these payments back. In an article on 7th October 2008, the *Financial Times* reported that: "Repsol officials said the current management became aware of the payments in 2005 and sought to recoup them in an arbitration hearing in the

UK." The paper quoted a "senior Repsol official" as saying that: "the justices, even on appeal, said the contracts were valid and Repsol was not refunded and in fact was forced to pay a further sum being sought by the consultant."[11]

Global Witness spoke to a Repsol YPF official in October 2008 about the payments described in the two reports. The official said that new management came into Repsol in 2004 and had "identified the problem". He added: "we don't know what the previous management was up to in all detail". The official said that since then, Repsol YPF had turned down requests for payments elsewhere, but he did not provide details.[12]

When Global Witness followed up this conversation with written questions, Repsol YPF replied: "Our lawyers have advised us that it would be best not to comment on this issue".[13]

The StatoilHydro report also found that Norsk Hydro paid just under $2 million to the operator of the Mabruk licence in Libya - that is, a unit of Total - knowing that this payment related to the use of "a consultant similar to Gammudi", in the words of the report.[14]

This payment by Norsk Hydro to Total was made in October 2001, more than a year after questions about "corruption concerns" had led Norsk Hydro to consider pulling out of Libya altogether.[15] The Norsk Hydro report goes further and says that: "Hydro told the operator's representative that Hydro would not pay for the operator's consultants and would only cover, as a 25 per cent partner in the Mabruk licence, legitimate costs".[16]

Global Witness sent Total a set of written questions about this payment, its use of consultants in Libya and any measures taken by the company to address the risks of corruption. The questions noted that Total appeared to have made payments to a consultant, which Norsk Hydro did not regard as a "legitimate cost".

Global Witness spoke to two Total officials who confirmed that the company had received these questions. But at the time of publishing this briefing, four weeks after the questions were sent, Total had not replied to the questions.

StatoilHydro's secretive partner in Angola

Angola is regarded as one of the most corrupt countries in the world: the 2008 Corruption Perceptions Index of Transparency International ranked it in joint 158th place out of 180 countries.[17] Global Witness has been publishing reports for nearly a decade that document the wholesale looting of state revenues in Angola and the continuing opacity of its oil sector.

Angola's government has earned many billions of dollars from oil since the end of the country's civil war six years ago, yet most of its people continue to languish in desperate poverty. Angola's people have a life expectancy of just over forty years, one of the lowest in the world.[18] Their access to clean water and sanitation is among the worst in Africa.[19] So is the child mortality rate: one out of every four children born in Angola is expected to die before the age of five from malaria, diarrhoea or other preventable diseases.[20]

In July 2005, Norsk Hydro was awarded a 20 per cent share in an oil licence in Angola, Block 4/05. The operator of the block, with a 50 per cent share, is Sonangol P& P, a unit of Angola's state oil company. The remaining 30 per cent share was split equally between two Angolan private companies, Somoil and Angola Consultancy Resources.[21] The involvement of these two companies "was not welcomed by Hydro," the Norsk Hydro report says.[22] Global Witness asked StatoilHydro why this was the case, but the company declined to comment.[23]

One of these two Angolan private companies was described by the StatoilHydro report as a "sosiedade [sic] anonima", a type of company not required under Angolan law to disclose its owners. Norsk Hydro asked this company to identify its owners but it refused.[24] The name of this company is not identified in either of the reports and StatoilHydro did not identify it in response to questions from Global Witness, but did confirm that the oil block in question is Block 4/05. This makes clear that the company is Somoil.

Somoil, whose full name is Sociedade Petrolifera Angolana, is registered in Angola as a "Sociedade Anonima de Responsabilidade Limitada (S.A.R.L.)", or "anonymous limited-liability company". This must be the "sosiedade anonima" referred to in the StatoilHydro report because the other private shareholder in the block, Angola Consultancy Resources, is not an S.A.R.L. and does disclose its shareholders.[25]

Norsk Hydro was "concerned about partnering with a company whose owners are unknown", so it took "mitigating steps" which included commissioning a due diligence investigation on the company and seeking advice from lawyers in Angola, Norway and the United States. Norsk Hydro then decided, on the basis of these "mitigating steps", to sign the contract.[26]

Corruption risks

Norsk Hydro also "attempted to incorporate certain protective provisions in the Joint Operating Agreement", the StatoilHydro review says. These provisions included "a warranty that the parties would not make corrupt payments and a requirement that any public officials with an ownership interest in one of the partners would not participate in governmental decisions affecting the venture (as already required by Angolan law)". The company also put in place a detailed plan for monitoring the partnership and its procurement activities.[27]

The implication is clear: Norsk Hydro did not know who owned Somoil and suspected that its owners might include Angolan government officials who might abuse their public positions to provide benefits to this private company and its partners. The Norwegian company also feared that one or another of its partners might make "corrupt payments".

There is no other reasonable explanation for why, having done its due diligence on Somoil, Norsk Hydro decided that these "protective provisions" were necessary. But it is not clear that these provisions were actually adopted, because the review uses the word "attempted".

Global Witness asked StatoilHydro, which has taken over Norsk Hydro's interest in the licence, to confirm whether or not there are any such provisions in its agreements with the other partners on Block 4/05. StatoilHydro replied that "Due to confidentiality provisions in our agreements, we are not in a position to answer these questions".[28] In other words, StatoilHydro will not say whether or not these protective safeguards were actually included in any of the agreements covering the block.

Even if these provisions have been included in such agreements, it is not clear how the Norwegian company can know whether or not the provisions are being upheld, if it does not know who owns Somoil. Global Witness put this point to a StatoilHydro official who said that: "when the [joint operating agreement] says this very clearly, we expect all our partners to respect that".[29]

In short, StatoilHydro will not say whether or not its agreements with its Angolan partners in the block include provisions against any corrupt payments or conflicts of interest on the part of government officials. Even if such provisions do exist, it is not clear that they rest on anything stronger than an unverifiable hope on the part of the Norwegian company that its partners will respect them.

StatoilHydro's investment in Block 4/05 is not a passive partnership. Although not itself the operator of the block, the Norwegian company "is heavily involved in operations through personnel seconded to Sonangol P&P's project organisation," according to its own website.[30] The cost of developing the block, and any oil produced from the block, will be divided up amongst the partners according to their shareholdings.[31]

So to summarise, StatoilHydro is actively helping to develop the oil block and its partners include a private company which Norsk Hydro suspected to include Angolan government officials amongst its undisclosed owners. If oil is found, then this same company will get a 15 per cent share of the proceeds, which could be hugely lucrative.

On 15th October 2008, the industry newsletter *Africa Energy Intelligence* published an article entitled "Angola. StatoilHydro is Deaf and Blind". This article asserted that:

"The question of who is behind Somoil is rather more awkward. Not that they are unknown, as StatoilHydro claims, according to the [report commissioned by Norsk Hydro]. Somoil is simply controlled by interests very close to the Angolan government and particularly, as Africa Energy Intelligence has reported on several occasions ... to oil minister Desideiro da Costa and the CEO of Sonangol, Manuel Vicente."[32]

Global Witness asked StatoilHydro to comment on this article. The company replied: "We have no further comments related to this than what follows from the investigation report".[33]

Similar allegations about the ownership of Somoil have been reported in another newsletter, African Energy, and in a series of articles dating back at least two years, by the Angolan newspaper *Semanário Angolense*.[34]

The Foundation of Eduardo dos Santos

The StatoilHydro report also found that Norsk Hydro made annual payments from 2000 into the Foundation of Eduardo dos Santos (FESA). This is a charitable body that was founded in 1996 by Angola's President Jose Eduardo dos Santos and is named after him.[35] The Norsk Hydro report puts these payments at $100,000 a year and says that they ended in 2003/2004.[36]

StatoilHydro confirmed to Global Witness that Norsk Hydro was a member of FESA but terminated its membership in 2003 and decided to support other social projects instead, such as water supply and schools projects with a Norwegian religious organisation in Angola. StatoilHydro itself does not contribute to FESA, the company said.

But StatoilHydro would not say how and why Norsk Hydro made these payments to FESA and why it stopped in 2003. It referred Global Witness back to the original report commissioned by Norsk Hydro itself, which does not address these questions.[37]

The Norsk Hydro report says: "we have not identified evidence that Hydro's payments to FESA were forwarded as improper payments to a public official".[38] Global Witness asked StatoilHydro what evidence this statement was based on, and whether the investigators who prepared the Norsk Hydro report had any access to FESA's own accounts. The company did not answer this question.

Global Witness asked StatoilHydro a total of forty questions about the investment in Block 4/05 in Angola, and about Norsk Hydro's contributions to FESA. StatoilHydro did not answer most of them on the grounds that the underlying evidence for its own report, and the report commissioned by Norsk Hydro, had been submitted to the (Norwegian) authorities and were therefore "legal information" which could not be disclosed.

Three questions related to StatoilHydro's contractual agreements for Block 4/05, rather than to the reports themselves. The company declined to answer these questions "due to confidentiality provisions in our agreements".[39]

Iraqi Kurdistan and other countries

The StatoilHydro report found that just before the invasion of Iraq in 2003, Norsk Hydro was approached by a Norwegian businessman who offered, in partnership with an unnamed "European politician", to help it win business in Iraqi Kurdistan.

Norsk Hydro told the businessman it had strict policies on incentives and transparency, which would not allow him to pay "private incentives to public officials". The company conveyed to the businessman that it would not make illegal payments, the report said.

Norsk Hydro did sign agreements with the businessman but after Statoil admitted to paying bribes in Iran, Norsk Hydro reviewed them. It terminated the agreements after the European politician refused to allow Norsk Hydro to disclose his identity and paid the businessman just over $244,000.[40] This was the minimum fee payable under the agreements and the company said that it had paid to avoid a legal dispute, according to the Norsk Hydro review.[41]

The StatoilHydro report says that investigators looked at Norsk Hydro's activities in, or related to, 31 other countries. "These efforts did not identify any transactions, agreements or payments relating to these countries that raised significant corruption concerns."[42]

Conclusion

The Norwegian authorities now need to fully investigate the information provided to them by StatoilHydro. The French and Spanish authorities should investigate the roles of Repsol YPF and Total in these matters.

StatoilHydro deserves credit for its openness in publishing the review of Norsk Hydro's operations. The reports published by StatoilHydro and by Norsk Hydro show internal debates within Norsk Hydro about the legitimacy of payments to consultants in Libya. In some cases, the company clearly refused to make such payments because of corruption concerns.

But the reports make clear that Norsk Hydro did not alert Statoil to the questionable payments in Libya during their merger talks. StatoilHydro itself has failed to explain its dealings with an oil company whose owners it does not know in Angola, a country which is perceived to be extremely corrupt, and whose people have benefited little from its oil wealth.

As for Repsol YPF and Total, they have yet to fully explain their dealings with consultants in Libya. Total appears to have made a payment to a consultant even though, as noted above, Norsk Hydro was concerned that the payment was not a "legitimate cost". It is even more troubling that Repsol YPF appears to have gone ahead with such a payment, even though Norsk Hydro explicitly refused to contribute to it because of corruption concerns.

Even once these specific and troubling questions are resolved, there is a still a broader question. The reports show that oil companies cannot necessarily be relied on, out of the public eye and of their own volition, to police their own dealings in countries where corruption is a risk.

Why voluntary disclosures aren't enough

Voluntary steps towards greater openness by oil companies should be welcomed. Like many other civil society groups working against corruption, Global Witness supports the Extractive Industries Transparency Initiative (EITI). This is a voluntary global initiative which aims to ensure that payments by oil and mining companies to the governments of countries that produce these resources are fully disclosed to the public, so that citizens can make sure the money is being managed and spent for the public good. StatoilHydro, Repsol YPF and Total have all endorsed the EITI.

But the EITI is voluntary to join and neither Angola nor Libya belong to it, nor do many of the world's other major oil-producing countries. The EITI does not require oil companies to disclose their payments to countries that are not part of the initiative. StatoilHydro is unique amongst major oil companies in choosing to do so.

Because of these limitations, the EITI alone cannot bear the burden of ensuring that citizens of oil-producing countries have the information they need to oversee their oil industries and make sure that the benefits of oil wealth are used for the good of all. So the principles of the EITI need to be backed up with effective regulation and enforcement.

The Extractive Industries Transparency Disclosure Act, which was passing through the U.S. Congress as of November 2008, would be an example of such regulation. The bill, if passed into law, would require oil and mining companies regulated in the United States to disclose their payments to countries where they operate, on a country-by-country basis.

This law would apply to 27 of the world's largest 30 oil companies, including major European and Asian companies as well as American companies, so it would be a major step forward for openness in the oil industry. By ensuring full disclosure of legitimate company payments to countries in return for access to oil reserves, the law would also remove the veil of opacity behind which corruption can shelter.

Although the global economic crisis has led to steep falls in commodity prices which had been rising sharply, the long-term trend seems likely to be ever-fiercer competition between companies for access to oil and minerals, a competition which will often be played out in autocratic and unstable countries around the world.

Without much greater openness, and a much greater say for the citizens of such countries in how their oil and mining wealth is managed, the risk is of an ugly scramble for natural resources which breeds corruption, insecurity of supply and avoidable human misery.

Global Witness, 20 November 2008

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