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Publish What You Pay U.S. and Global Witness Call for the U.S. to Renew its Leadership on Landmark Extractive Industry Transparency Law on the 5th Anniversary of the Dodd-Frank Act

On the 5th Anniversary of Section 1504 of the Dodd-Frank Act, Publish What You Pay U.S. and Global Witness call on the U.S. government to renew its leadership in tackling corruption in the oil, gas and mining sector by moving forward with strong implementation of Section 1504. Obstruction by big oil has delayed the Securities and Exchange Commission (SEC) rule by over 4 years while shady deals continue to fuel mismanagement of oil, gas and mining revenues.

“Over five years ago, in championing Section 1504, Senators Cardin, Lugar and Leahy declared that the chronic mismanagement or outright corruption long-plaguing the extractive sectors of many resource-rich countries could no longer continue,” said Jana Morgan, Director of the PWYP-US coalition. “Section 1504, properly implemented, will help ensure that citizens are the ultimate beneficiaries of their countries’ natural resource wealth, rather than a handful of well-connected elites.”ⁱ

Section 1504 aims to prevent the resource-curse from taking root in resource-rich countries by shedding light on financial flows in the extractives sector. Despite the SEC’s delays, transparency has taken hold across the globe. Since Section 1504 became law, robust transparency legislation, closely mirroring Section 1504 and the SEC’s 2012 implementing rule, is now being adopted in each of the European Union’s 28 member states, Canada and Norway.

An ongoing scandal over the shady acquisition of a massive Nigerian oil block, OPL 245, by U.S.-listed oil companies highlights the urgent need for proper implementation of the law. The deal allowed a company called Malabu Oil and Gas to sell the rights to one of the most promising oil blocks off West Africa to Royal Dutch Shell and the Italian oil giant Eni for US\$1.1 billion.

Malabu was secretly owned by the former Nigerian Oil Minister Dan Etete, a convicted money launderer. Etete had awarded his own company rights to the block in 1998 during the reign of the dictator Sani Abacha. The deal was conducted through the Nigerian government, which passed the money on to Malabu. The deal was signed in April 2011 just days after the SEC was required by Congress to have finalized a rule for Dodd Frank 1504.ⁱⁱ

“The proceeds from this deal could have paid for two thirds of Nigeria’s healthcare budget but instead the money ended up in private pockets. This scandal shows precisely why the SEC needs to establish a strong rule for Section 1504. Had a working rule for 1504 been in place in April 2011, this would have shed light on a deal that was conducted without proper scrutiny, and would have likely deterred it,” said Dotun Oloko, an anti-corruption leader working with Global Witness to expose the OPL 245 scandal.

Before Section 1504 can take effect, the SEC must move forward in finalizing a rule. Following the August 2012 release of a strong implementing rule by the SEC, the American Petroleum Institute filed suit, and in 2013 a District Court judge vacated the rule on narrow grounds and returned it to the SEC for a rewrite. It has now been over two years since the District Court ruling and the SEC continues to delay producing a new rule.

Despite this delay, extractives companies have recognized the value in publically disclosing their contributions to the countries in which they operate. In its 2014 Corporate Responsibility report, Texas-based Kosmos Energy voluntarily published its payments, writing that "...this type of disclosure is beneficial to investors, civil society, and local communities and reflects evolving international expectations.ⁱⁱⁱ In 2014, Tullow Oil voluntarily published the payments it made to governments in 2012 and 2013.^{iv} In 2015, the company did so again, reporting on payments made in 2014.^v

There is growing pressure globally for a strong rule from civil society in resource-rich countries. In 2014, 544 civil society organizations from 40 countries wrote to SEC Chair Mary Jo White and called for the prompt release of a strong implementing rule for Section 1504.^{vi} And in recent months, civil society representatives from Angola, Cameroon, Democratic Republic of Congo, India, Indonesia, Sierra Leone, Uganda, and Zimbabwe have written to the SEC and laid out how they have already put available, although often-limited, payment data to good use, and why access to payment information for each project would be so valuable.^{vii}

The SEC must finish the job it started in 2012, and promptly release another robust rule to implement Section 1504.

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ⁱ Senators Cardin (D-MD) and Lugar (R-IN) were the original co-sponsors of Section 1504 as a 2009 standalone bill in the Senate - S.1700, the Energy Security Through Transparency Act. In 2010, when Dodd-Frank was opened for debate in the Senate, Senators Cardin and Lugar worked with Senator Leahy (D-VT) to include Section 1504 in the bill.

ⁱⁱ Criminal investigations into the deal are ongoing in Italy, UK and Nigeria with Eni, its CEO and former CEO under formal investigation for bribery. Both Shell and Eni's rights to the block are under threat since the Nigerian House of Representatives voted to cancel the deal in 2014. The money lost in the deal was sorely needed by Nigeria, which is currently suffering a budgetary crisis and where US\$1.1bn is equivalent to two thirds of the healthcare budget. Shell and Eni have claimed that they only paid the Nigerian Government. Eni has said in a statement that "Eni continues to deny any illegal conduct" and "Eni is cooperating with the Milan prosecutor's office, and is confident that the correctness of its actions will emerge during the course of the investigation."

ⁱⁱⁱ <http://www.kosmosenergy.com/responsibility/report/2014/>

^{iv} http://www.tulloil.com/Media/docs/default-source/3_investors/2013-annual-report/2013-tullow-annual-report-pdf.pdf?sfvrsn=6 pp.175-179.

^v http://www.tulloil.com/Media/docs/default-source/3_investors/2014-annual-report/tullow-oil-2014-annual-report-and-accounts.pdf?sfvrsn=4 pp. 169-171.

^{vi} <http://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-32.pdf>

^{vii} <http://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resource-extraction-issuers.shtml>