



Ali Neema
Coordinator – Iraqi Transparency Alliance for Extractive Industries

By E-Mail:

Chair Mary Jo White
Commissioner Luis Aguilar
Commissioner Daniel Gallagher
Commissioner Michael Piwowar
Commissioner Kara Stein

U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
USA

28th September 2015

Re: Dodd-Frank Section 1504 Rule

Dear Chair and Commissioners:

My name is Ali Neema and I am the Coordinator of the Iraqi Transparency Alliance for Extractive Industries (ITA EI) in Iraq. I write in support of Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, and urge you to release a strong implementing rule that requires public reporting by company and by project.

ITA EI is a coalition comprised of 83 national non-governmental organizations that seek an Iraq where citizens benefit from their natural resources, maximize the returns from their natural resources, and where natural resource wealth is used to promote the balanced development of our country. To that end, we aim to bring transparency and accountability, key components in the fight against the resource curse, to Iraq's extractives sector.

Iraq is a country rich in oil and gas, and contains over 37 kinds of minerals. It ranks 4th in oil reserves globally. Revenues from oil and gas comprise two thirds of Iraq's GDP and over 90% of its public revenues. Among the extractives companies operating in Iraq are many New York Stock Exchange-listed companies, including Chevron, ExxonMobil, and Royal

Dutch Shell. Iraq's natural resource endowment should make it one of the richest places on the planet.

The extractive industries represent 95% of Iraq's budget.¹ They are the backbone of our national economy. Yet Iraq's 2014 Human Development Index score is 120th out of 187 countries² and by all accounts, Iraq is one of the world's most corrupt countries: Transparency International has ranked Iraq as the sixth most corrupt country in the world;³ and the World Bank's composite Governance Indicator gave our country a score of 7.2/100 for "Control of Corruption".⁴

It is because of this dire corruption that we so desperately need the SEC rule to require detailed, project-level disclosure. The Natural Resource Governance Institute (NRGI)'s Resource Governance Index gives Iraq a pathetic score of 9/100 for the 'Enabling Environment', highlighting the lack of an open budget, low levels of accountability, government effectiveness and rule of law. Combined, these problems mean that a huge proportion of oil revenues are being lost, and cannot benefit the Iraqi people through the public services they deserve. Global Financial Integrity estimates that around USD 65 bn in illicit funds left Iraq between 2001 and 2010, whilst Iraq's Board of Supreme Audit claims that up to USD 40 bn may leave the country annually because of corruption. The OECD estimates that oil smuggling cost Iraq nearly USD 7 bn between 2005 and 2008 alone.⁵ These revenues could have transformed the country into one of the world's richest and we need to ensure that such staggering losses are not repeated.⁶

To explain, the system in Iraq is one where the international oil companies deposit their payments for Iraqi oil in the Development Fund for Iraq (DFI), a trust fund in the Federal Bank of New York. After 5% is deducted and paid to Kuwait in war reparations, the DFI sends the remainder of these revenues to Iraq's Ministry of Finance, which in turn creates a budget and distributes the revenues to the provinces. Three criteria determine how these revenues are distributed to each province:

1. Demographic distribution of the province
2. Areas affected by exploitation/extraction
3. Petro dollars: For every barrel of oil produced by the province, the latter receives USD 1.

The only data which is relied upon for the petro dollar calculation is that provided by the Ministry of Oil. Project-level reporting⁷ will allow Iraqis to reconcile the production volume

¹ EITI report 2012, <https://eiti.org/report/iraq/2012>

² "Iraq: HDI values and rank changes in the 2014 Human Development Report", UNDP, http://hdr.undp.org/sites/all/themes/hdr_theme/country-notes/IRQ.pdf

³ Transparency International's 2014 Corruption Perceptions Index, <http://www.transparency.org/cpi2014/results>

⁴ <http://info.worldbank.org/governance/wgi/index.aspx#countryReports>

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http://www.transparency.org/files/content/corruptionqas/374_Iraq_overview_of_corruption_and_anticorruption.pdf

⁶ Economist: ex-PM Maliki lost Iraq USD 500 bn in oil, <http://rudaw.net/english/middleeast/iraq/090520153>

⁷ We would recommend that the SEC adopts a definition of project which is in line with Article 41(4) of the EU Accounting Directive: "·project· means the operational activities that are governed by a single contract, license,

numbers from the specific projects in a province affected by the extraction with the funds received from the Ministry of Finance. Just as important, citizens most impacted by extraction – such as communities located near extraction sites – will require project-level data in order to determine whether they are receiving a fair share of services from their provincial governments. For example, a villager located near an extraction site might draw on project level data to discover that her provincial government is generating huge sums of money from a nearby project, yet providing relatively paltry services to the affected village. In such a case, project level payment information could be used to effectively lobby the provincial government for additional expenditures.

Unlike the rest of Iraq, in which service contracts are agreed to between the central government and oil companies, the Kurdistan Regional Government (KRG) has a system of production-sharing agreements (PSAs). This means that companies receive a share of the production to cover the costs of extraction, rather than the service contract system in place elsewhere in Iraq, where the government pays companies to extract the oil, all of which belongs to the Iraqi government. Arguably, PSAs give more rights to the oil companies and place more risk on the resource owners (both citizens and government), so it is even more important to be able to reconcile these payments. Project-level reporting will help us identify payments made by companies such as ExxonMobil, who have signed separate PSAs with the KRG government, and compare the payment data to figures submitted by the KRG.

Iraq has been an Extractive Industries Transparency Initiative (EITI)-compliant country since 2012. Before EITI reports were published, there was no public information on what revenues went to the Development Fund for Iraq (DFI). Now, information regarding the volumes and values of oil produced by companies is available in Iraq's EITI reports, and this information is disaggregated by field – but field-level reporting is too broad, and this information needs to be available by project, as discussed below. Despite the limited data available, civil society has already been able to use the EITI data to monitor the revenues going to the Development Fund for Iraq (DFI) and compare them to the revenues reported in the Iraqi budget, in order to establish whether or not the numbers are the same. In 2012, we drew on EITI data to identify a discrepancy in the figures amounting to more than USD 895 m – later found to be the result of time differences in recording shipments at cutoff dates by both SOMO (the State Organization for Marketing of Oil) and the buyers.⁸

Local civil society organizations (CSOs) continue to learn how to make optimal use of EITI data. Workshops have taken place to train civil society members of the EITI's multi-stakeholder group, as well as journalists and other interested stakeholders, in how to analyze EITI reports and to use this data. So far there have been 72 workshops across the country over the last two and a half years, and there are plans for additional workshops in the future.

lease, concession or similar legal agreements and form the basis for payment liabilities with a government. None the less, if multiple such agreements are substantially interconnected, this shall be considered a project; ” <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32013L0034>

⁸ See Iraq's 2012 EITI Report, Iraqi Oil Revenues 2012: Oil Export, Local Consumption and Field Development, <https://eiti.org/files/IEITI%20Final%20Report%202012%20%20English.pdf>

While EITI data is certainly an improvement upon what we had before, and while we have been successful in putting it to good use, there are some serious shortcomings that prevent civil society organizations like mine from properly monitoring the flow of money in our oil sector. First, EITI data in Iraq is reported by field, but some fields are enormous, and therefore it is difficult to break down payment information for individual projects. For example, more than \$300m in payments have been made for extraction on the Rumaila field - a super-giant oil field, covering around 700 m², with around 270 production wells in operation, producing around 1.3 m barrels per day.⁹ Though in some cases, several wells are governed by a single contract, Rumaila is clearly not a single project. Without project-level information, we cannot see the detailed roles that individual companies are playing in the region and whether Iraqi citizens are seeing the appropriate benefits from the extraction.

In addition, the EITI report has data that is disaggregated by field, but not by *company* by field. If, as is quite common, the field has more than one company operating on it, then the data provided by the EITI report does not indicate what each company is producing (value or volume). With a strong rule for Section 1504, the project-level reporting required of companies complying with Dodd Frank will allow the Iraqis to know that detail. Indeed, in 2013 the EITI recognized the need for project-level disclosure and changed the Standard to reflect that. The only detailed activity by company that is currently reported by the 2012 EITI report is for SOMO, the national oil company. SOMO reports the value of the oil it distributes to each oil company (many oil companies receive in-kind payments of oil and gas itself). Yet Iraq's EITI report does not publicize oil production data by company. Therefore there is no way to reconcile what is being produced by a company in the field and what is being distributed by SOMO to each company except through the data we hope to see arising from Dodd Frank 1504.

Also not included in the EITI reports are the payments made by companies to the KRG. No data from the KRG is currently included in the EITI reports, due to an adapted implementation clause which allows Iraq to publish its EITI reports without any data from the KRG. Though the KRG's Ministry of Natural Resources does publish figures, there is no way of reconciling these numbers, since international oil companies operating in the region do not currently publish their payments anywhere. This will change when companies, including Talisman Energy, Perenco, and Gazprom¹⁰, start to report in line with the EU Accounting and Transparency Directives and Canada's Extractive Sector Transparency Measures Act (ESTMA). Once 1504 is implemented, companies like Chevron and Hess will be added to this list.

On behalf of ITAEI and of civil society in Iraq, I would therefore strongly urge the SEC to issue a strict rule implementing 1504, at the earliest possible opportunity. We recommend that the definition of project align with the August 2012 SEC rule or the EU Accounting and Transparency Directives, and that the SEC rejects the American Petroleum Institute's reporting proposal, which, in particular by failing to identify which companies made which

⁹ <http://petroglobalnews.com/2013/10/top-ten-highest-producing-oil-fields/>

¹⁰ <http://www.iraq-businessnews.com/list-of-international-oil-companies-in-iraqi-kurdistan/>

payments, would render such obscure information useless. Iraqi civil society has already made extensive use of the data available through the EITI, and we look to you to assist us by ensuring that companies provide more complete data, which can be useful for all of Iraqi society.

Thank you very much for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ali Neema', with a stylized flourish at the end.

Ali Neema
Coordinator – Iraqi Transparency Alliance for Extractive Industries