



Promoting Citizen Participation in Nigerian Public Audit

CAC/IT/NO 90431

Securities and Exchange Commission
100 F Street, NE
Washington, DC 20459-1090

May 22nd, 2018

Chairman Jay Clayton
Commissioner Kara M. Stein
Commissioner Michael S. Piwowar
Commissioner Robert J. Jackson Jr.
Commissioner Hester M. Peirce

Dodd-Frank Section 1504 Rule

Dear Chair and Commissioners,

My name is Olusegun Elemo, I am the Executive Director at Paradigm Leadership Support Initiative (PLSI) in Nigeria. I am writing to express my support for a Dodd Frank Wall Street Reform and Consumer Protection Act Section 1504 rule that closely aligns with the EU Accounting and Transparency Directive and Canadian Extractive Sector Transparency Measures Act (ESTMA), including mandated public disclosure of payments by individual companies at the project-level.

PLSI is a Nigerian civil society organization that aims to promote citizen participation in the Nigerian public audit process to foster leadership accountability, good governance and development of rural communities. The Initiative's work rests on the philosophy that public accountability can prosper only with a vigilant and involved citizenry ensuring effective and efficient utilization of public resources.

Nigeria is one of Africa's oldest and largest oil and gas producers, with a production rate of over two million barrels per day in 2016. Total revenue from the oil and gas sector was \$24.8 billion in 2015, representing over 50% of total government revenue. Despite this rich natural resource endowment, Nigeria has failed to realize the potential of natural resource revenues to generate sustainable development in the country. One central reason behind this is the levels of corruption in the country. In the 2017 Transparency International Corruption Perceptions Index, Nigeria scored 28 out of 100, ranking it 148 out of 180 countries surveyed.¹ As just one example, at the time of writing, Royal Dutch Shell and Eni have been ordered to stand trial over alleged corruption in the purchase of one of the country's

¹ https://www.transparency.org/news/pressrelease/corruption_perceptions_index_2017_shows_high_corruption_burden_in_more_than

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offshore oil blocks OPL245.² In 2011, Shell and Eni paid USD 1.3 billion for the license for OPL 245, one of West Africa's largest oilfields. However, rather than benefiting Nigerian citizens, 85 percent of this payment was transferred to Malabu Oil and Gas, a company owned by former petroleum minister Dan Etete.

Given the importance of oil and gas revenues to the Nigerian economy, it is vital that citizens and oversight actors can engage and effectively hold government entities accountable for the management of the country's natural resource revenues. One of the most important oversight actors in any country is its Supreme Audit Institution (SAI), the institution responsible for externally auditing government entities in their management of public revenues.

The Office of the Auditor General for the Federation in Nigeria has historically been limited in its capacity to perform its oversight function due to difficulties in retrieving data from government entities. The Office of the Auditor General has often faced resistance from government entities, including the State-owned oil company Nigerian National Petroleum Corporation (NNPC), in the pursuit of the data required for them to fulfill their oversight functions. Payments to Governments (PtG) data can help SAIs overcome this central limitation of accessing the requisite information by offering the necessary but crucial fiscal background as to inflows from natural resources which ultimately will enable comprehensive and effective audit of receiving government entities. As a timely source of revenue information, disclosed by the companies, these reports can provide SAIs with reliable data on the amount of natural resource revenues each government entity receives. In April 2018, four oil and gas companies have already disclosed their payments to Nigerian government entities for 2017 under existing mandatory disclosure laws (Statoil, Total, Royal Dutch Shell and Seplat Petroleum) with three further companies (Eni, Chevron Canada, and CNOOC) expected to release data by the end of May 2018. All seven of these companies disclosed a PtG report for 2016, detailing \$ 6.9 billion in payments to ten Nigerian government entities. This data can enable the Office of the Auditor General to more rapidly perform its oversight responsibilities of ensuring proper and adequate accountability in the management of natural resource revenues.

The payments to governments data available from the four companies that have already disclosed for 2017 (Statoil, Total, Royal Dutch Shell and Seplat Petroleum) details \$ 6.4 billion in payments to seven Nigeria government entities (Central Bank of Nigeria; Department of Petroleum Resources; Federal Inland Revenue Service; Maritime Administration and Safety Agency; Niger Delta Development Commission; Nigerian Content Development and Monitoring Board; Nigerian National Petroleum Corporation). These PtG disclosures also detail payments made at the payment level, the largest of which is a \$ 1.4 billion production entitlement payment made to NNPC for the SPDC East project by Shell in 2017.

Payments to Governments disclosures are increasingly being utilized by oversight actors in Nigeria. Shell's 2017 Payments to Governments Report, in which Nigeria is the largest payment recipient at \$ 4.3 billion (NGN 1.5 trillion), was analyzed by at least nine media outlets including: Punch³, Vanguard⁴, This Day⁵,

² <https://www.reuters.com/article/us-eni-shell-nigeria-corruption/shell-eni-to-stand-trial-in-nigeria-bribery-case-idUSKBN1EE15W>

³ <http://punchng.com/we-paid-4-3bn-to-nigeria-in-2017-shell/>

⁴ <https://www.vanguardngr.com/2018/04/shell-paid-n1-5trn-fg-2017/>

⁵ <https://www.thisdaylive.com/index.php/2018/04/10/shell-paid-4-32bn-to-nigerian-government-in-2017-says-oil-giant/>

The Cable⁶, World Stage⁷ and Leadership⁸, Guardian Nigeria⁹, Sahara Reporters¹⁰ and Naija 247 News.¹¹ As one example of this analysis, Vanguard reported that the NGN 1.5 trillion paid by Shell to Nigerian government entities represents 15 percent of Nigeria's NGN 10.6 trillion total government revenue for 2017.¹²

The implementation of a Dodd-Frank Section 1504 rule which mandates public disclosure of payments by individual issuers at the project-level is vital to the development of a more complete picture of the natural resource revenues received by government entities in Nigeria. According to the Company Level Financial Flows in the 2015 Nigeria Extractives Industries Transparency Initiative Report¹³, it can be estimated that ExxonMobil represents around 29% of all company payments to Nigerian government entities. Comparably, the payments made by the seven companies already disclosing under mandatory disclosure laws in Europe and Canada is estimated to represent 57% of all company payments to Nigeria governments entities. If ExxonMobil, and other Dodd-Frank covered issuers which are not already reporting under similar regimes in Canada and Europe, were to begin disclosing under Dodd-Frank Section 1504, their disclosure, combined with the revenues of companies already disclosing, would account for the clear majority (87%) of natural resource revenues Nigerian government entities receive.

In closing, I urge the SEC to develop a rule for Dodd Frank 1504 that closely aligns with existing mandatory disclosure regulations in Europe and Canada, to strengthen the ability of citizens and oversight actors in resource rich countries to utilize payments to governments data as a tool to hold their government entities accountable and to deter the corruption and mismanagement which has blighted my country for so long.

Thank you for your consideration.

Sincerely,



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⁶ <http://petrobarometer.thecable.ng/2018/04/09/revealed-shell-paid-n1-5tr-nigeria-2017-highest-world/>

⁷ <https://www.worldstagegroup.com/shell-pays-4-32b-to-nigerian-government-in-2017/>

⁸ <https://leadership.ng/2018/04/10/shell-pays-4-32b-to-fg-in-2017-report/>

⁹ <https://guardian.ng/business-services/shell-pays-1-1-billion-in-royalties-corporate-taxes/>

¹⁰ <http://saharareporters.com/2018/04/10/shells-payment-nigeria-19-2017>

¹¹ <https://naija247news.com/2018/04/11/shell-paid-nigerian-govt-4-3bn-for-crude-activities-in-2017/>

¹² <https://www.vanguardngr.com/2018/04/shell-paid-n1-5trn-fg-2017/>

¹³ <https://eiti.org/sites/default/files/documents/neiti-oil-gas-report-2015-full-report-281217.pdf>