

The Honourable Mary Jo White
Chair
Securities and Exchange Commission
100 F Street, NE
Washington, DC
20459-1090

29 January 2015

Dear Chair White,

The Open Society Institute for Southern Africa-Angola (OSISA-A) is an independent Angola-based civil society organisation that works to promote democracy, human rights, transparency and accountability in the management of extractive revenues in Angola, as well as monitoring budget expenditure.¹ We aim to prevent corruption in the extractive sector and ensure that the revenues are used to improve the living conditions of all Angolan citizens.

We thank the SEC for this opportunity to comment on the development of a reporting rule for Section 1504 of the Dodd-Frank Act. For the reasons given in this letter, we are calling on the SEC to introduce a rule that provides for project-by-project and company-by-company disclosures with no country exemptions.² Angolan government agencies already publish monthly reports of tax and profit oil receipts that arise from each contract (project-by-project), which will allow for ready comparison with company-by-company disclosure of the same project-level information to reveal any government discrepancies of income.

Angola is heavily dependent on oil revenues, which accounted for 90% of its exports and almost 80% of government income in 2011. Angola is the second biggest oil producer in sub-Saharan Africa, and our oil exports were worth US\$68 billion in 2012. We are a major supplier of oil to the United States, and US-listed companies including ExxonMobil, Chevron, Marathon, BP, Total, Cobalt, Eni, Petrobras and Vaalco are active in oil exploration and production in Angola. The country is the fourth largest diamond producer in the world, and the sector generates around US\$1 billion annually. Many of the world's largest diamond mining companies are active in Angola.³

Despite possessing vast natural resource wealth, around a third of Angola's 21 million citizens live below the poverty line. Our country ranks 149 out of 187 in the UN's 2014 Human Development Index. The under-5 mortality rate is the eighth highest in the world at 161 per 1,000 live births.

¹ www.osisa.org/angola/osisa-angola

² OSISA-A is a signatory to this letter from Angolan citizens and civil society organisations that was submitted to the SEC during the previous Section 1504 rulemaking process: www.sec.gov/comments/s7-42-10/s74210-264.pdf

³ Natural Resource Governance Institute, Resource Governance Index, Angola Country Overview: www.resourcegovernance.org/sites/default/files/country_pdfs/angolaRGI2013.pdf

Poor nutrition is implicated in one-third of child deaths, and the lifetime risk faced by women of death during pregnancy and childbirth is 1 in 39 – one of the highest rates in the world.⁴

Angola also has a long and well-documented history of large-scale corruption in the oil sector, resulting in revenues that could have been used to promote the country's development being siphoned off or wasted.⁵ Many observers including the US Senate,⁶ US State Department⁷ and the International Monetary Fund have raised concerns about corruption in Angola's extractives sector and the lack of transparency in the government's management of extractive revenues. In 2012 for example, the IMF found that US\$4.2 billion linked to Sonangol, Angola's state-owned oil company, was missing from the public accounts.⁸

Over the past fifteen years, Angolan and international civil society groups have exposed corruption and highlighted the lack of transparency in Angola's extractive industries. OSISA-A in particular has initiated public debates and held meetings with members of Parliament, as well as carrying out investigations and producing a number of publications.

As a response to calls for greater transparency from civil society and international organisations such as the IMF, the Angolan government has introduced some measures to improve transparency in the oil sector in recent years.⁹ This includes the disclosure of government receipts of certain types of revenue streams from oil extraction on a project-by-project basis, and increasingly the government is disclosing other information related to Angola's oil and diamond industries.¹⁰

However, our 2011 report *Oil Revenues In Angola*, shows that the official revenue data are incomplete and unreliable, and that there are numerous discrepancies in the revenue figures published by different government agencies.¹¹ Furthermore, contract award payments remain largely opaque in Angola, and the government has repeatedly dismissed calls to join the Extractive Industries Transparency Initiative (EITI).

⁴ Africa Progress panel report, 'Equity in Extractives', 2013

⁵ See Global Witness reports 'A Crude Awakening', 1999, and 'Time for Transparency', 2004, and Human Rights Watch 'Angola: Some Transparency, No Accountability', 2004

⁶ United States Senate, Permanent Committee on Investigations, 'Keeping Foreign Corruption out of the United States', Majority and Minority Staff Report, 2010

⁷ US Department of State, Bureau of Democracy, Human Rights and Labor, '2008 Human Rights Report: Angola', 2009

⁸ IMF Country Report No 12/103, May 2012, p39: www.imf.org/external/pubs/ft/scr/2012/cr12103.pdf; Human Rights Watch, 'Angola: IMF Should Insist on Audit', July 11, 2012

⁹ OSSIA-A and Global Witness, Oil Revenues In Angola: Much More Information but Not Enough Transparency,' 2012: www.osisa.org/sites/default/files/global_witness_oil_revenue_report.pdf

¹⁰ Natural Resource Governance Institute, Resource Governance Index, Angola Country Overview: www.resourcegovernance.org/sites/default/files/country_pdfs/angolaRGI2013.pdf

¹¹ OSSIA-A and Global Witness, Oil Revenues In Angola: Much More Information but Not Enough Transparency,' 2012: www.osisa.org/sites/default/files/global_witness_oil_revenue_report.pdf

OSISA-A relies on disclosures of financial and production data to promote transparency and accountability in Angola's extractive sector. For example our *Oil Revenues In Angola* report scrutinized oil sector data produced by the Ministry of Petroleum, annual statistical bulletins and oil export data from the Ministry of Finance, and the audited financial statements of Sonangol. Key findings, which highlight the urgent and real need for project-level and company-specific disclosure, include:

- For volumes of oil sold by Sonangol, a massive gap of US\$8.55 billion between the figures published by Sonangol and the ministries.
- A gap of US\$1.24 billion between the reports of the Finance and Petroleum ministries on oil income tax, and gaps of several hundred million dollars between the ministries' reports on production and transaction taxes paid by oil companies.
- Poor reporting of oil signature bonuses in official documents, with the media reporting that Angola earned US\$3.2 billion in signature bonuses in 2006, against Finance Ministry disclosures of just under US\$998 million in the same year.
- A discrepancy of some 87 million barrels between the oil export figures of the Petroleum and Finance Ministries.

The report prompted national and regional debate, including in the provinces of Cabinda, Luanda, Benguela and Huambo. Civil society groups wrote petitions to the Angolan President and Sonangol requesting an explanation for the discrepancies and calling for independent audits of the accounts. Soon after these criticisms were aired, the President made a number of changes in the top-level management of Sonangol.

These helpful, but only incremental changes, show the positive impact that can be achieved by disclosure. Even greater changes providing a broader impact to all of Angola, including changes beyond just the federal level, can be achieved only by project-by-project and company-by-company disclosure that will allow oversight actors to carry out more accurate analyses of revenue flows and track payments into the national accounts.

OSISA-A also made extensive use of financial disclosures including bank statements, Promissory Agreements and Escrow Notes to produce the 2013 report *Deception In High Places*, which was co-researched with *Associação Mãos Livres and Corruption Watch UK*. The report provides a detailed account of how senior Angolan officials and arms dealers corruptly gained from an Angola-Russia debt deal, resulting in a loss to the Angolan public purse of US\$750 million, and used

anonymous shell companies to launder the money. The report called on the Angolan Parliament to identify and close any gaps in legislation that allowed the corruption to occur.¹²

After disseminating the report to the Supreme Court, the Attorney General, the President's Office, the Ministry of Justice, the Ombudsman's Office and Parliament, OSISA-A held a roundtable attended by parliamentarians, political parties, academics and civil society groups to discuss enforcement and policy responses, including the introduction of strengthened anti-money laundering rules and parliamentary oversight. Subsequently, in February 2014, Parliament passed a law to improve Angola's anti-money laundering regime, which includes new measures to freeze and seize assets related to money laundering.¹³

Using Section 1504 Data

As a long standing proponent of extractive sector revenue transparency, OSISA-A fully intends to utilise the data generated by the SEC rule to hold the Angolan government to account for the management of these vital funds. The following section gives a non-exhaustive list of examples of how OSISA-A is planning to use project-level payment data.

1) Reconciling Section 1504 payment data with official project-level disclosures of revenue receipts

Both Sonangol and the Ministry of Finance publish monthly reports of tax and profit oil receipts that arise from each oil contract (project-by-project). OSISA-A will compare Section 1504 project-level payment data against official disclosures of oil revenue receipts from the corresponding oil projects. If major gaps are identified we will seek a full explanation and reconciliation from the government, for example through exposing discrepancies in the media; writing to the relevant authorities and companies; lobbying state officials, and; encouraging MPs to highlight discrepancies in Parliament.

This will be of particular importance with regards to profit oil, which is by far the most important source of oil revenue for the Angolan government. In 2008, more than 80 per cent of Angola's oil output was produced under Production Sharing Agreements (PSAs). PSAs entitle the government to an agreed share of the actual oil produced, which is termed 'profit oil'. According to the Ministry of Petroleum, profit oil accounted for over 53 per cent of the total value of Angola's state oil revenue in 2008, or roughly a quarter of total government revenues if applied to the 2009 state budget.¹⁴

¹² Associação Mãos Livres and Corruption Watch UK, 'Deception in High Places: the corrupt Angola-Russia Debt Deal', 2013

¹³ Financial Action Task Force, Improving Global AML/CFT Compliance - 27 June 2014: www.fatf-gafi.org/topics/high-riskandnon-cooperativejurisdictions/documents/fatf-compliance-june-2014.html

¹⁴ OSSIA-A and Global Witness, Oil Revenues in Angola: Much More Information but Not Enough Transparency,' 2012: www.osisa.org/sites/default/files/global_witness_oil_revenue_report.pdf

2) Using Section 1504 disclosures to advocate for improvements to official revenue reporting

As outlined above, presently the Angolan government's reporting of revenue receipts is limited and unreliable. As part of OSISA-A's ongoing advocacy programme, we will use project-level payment data to support a recommendation to the Angolan government that its reporting of oil revenue receipts should be extended to include other types of revenue streams disclosed under the SEC rule, such as bonuses, fees and dividends. This would allow Angolan citizens and civil society groups to compare both data sets and call on the government to reconcile the accounts if discrepancies are found.

Sonangol and the Ministry of Finance report completely different oil revenue receipt figures for the same projects. For example, Sonangol's reported receipts for Block 18 were US\$200 million higher than the receipts reported by the Ministry of Finance for the same block in the same year (2013). It is unacceptable for official data on a revenue stream that accounts for a very large proportion government income to feature these inconsistencies. As such, OSISA-A will compare project-level SEC disclosures with Sonangol and Ministry of Finance reports to determine which of the official Angolan data sets is the most accurate, and use this evidence to put pressure on the government to rectify the inconsistencies.

OSISA-A will also use the company- and project-level information as support for our call for other improvements to the quality of revenue reporting by the Angolan government, as recommended in our *Oil Revenues In Angola* publication. Amongst other reforms, we are pushing for the government's oil revenue disclosures to be independently audited by a specialist firm that has a right to check the underlying data from which the statistics are drawn.

3) Holding government to account for bonus payments

Bonus payments from oil companies provide a large source of income for the Angolan state. They are also highly susceptible to being corruptly diverted from government accounts.¹⁵ Despite this, reporting on bonuses by government agencies is very poor, making it impossible to trace the flow of these funds into the national budget.

Bonuses appear in various forms such as signature bonuses, exploration bonuses, first oil bonuses and commercial discovery bonuses. Bonus payments are negotiated separately in each contract and their values vary according to the type of bonus as well as the project in question. Signature bonuses, which are paid upon the signing of a contract, are the most significant. These payments are occasionally disclosed by companies through the media, but only on an irregular basis. Reports show that for some blocks, signature bonuses can reach US\$1 billion as in the case of the US-listed Chinese firm Sinopec during the 2005/06 bidding

¹⁵ The Guardian, 'Angolan oil millions paid into Jersey accounts,' November 4, 2002: www.theguardian.com/uk/2002/nov/04/world.oil

round.¹⁶ In 2011, Statoil paid a total of over US\$400 million in signature bonuses to secure oil blocks in Angola's Kwanza basin.¹⁷

As individual bonus payments can reach up to a billion dollars, and given their particular vulnerability to being corruptly diverted, OSISA-A will use Dodd-Frank 1504 data to track large payments into government accounts. For example, we will make inquiries with state agencies such as Sonangol and the Ministry of Finance on the final destination of these payments.

However, we will not be able to carry out this vital accountability function unless the data is reported separately for each contract and identifies the company that makes the payment. The US\$2 billion discrepancy in signature bonus payments uncovered in our *Oil Revenues In Angola* report (highlighted above) is deeply troubling and adds to the importance of monitoring individual bonus payments.

4) Ensuring local communities receive their entitlements from revenue-sharing agreements

OSISA-A's research found that, local communities are not receiving their full entitlements from revenue-sharing agreements.¹⁸ For example in Cabinda, a hugely oil-rich province that accounts for around half of Angola's total oil production, the Angolan government is required by law to transfer 10 per cent of the taxes generated by extraction projects in Cabinda directly to the provincial government. The revenue is earmarked for spending on local development initiatives in order to help offset some of the social and environmental costs of oil production for local communities. Similar oil revenue-sharing agreements exist in the Angolan provinces of Zaire and Bengo. These three oil producing provinces are also the most impoverished in Angola.

Disturbingly, OSISA-A's inquiries found that the Cabindan government is receiving less than 1 per cent of oil taxes generated in the province. This represents a shortfall of around US\$1 billion per annum, or an additional US\$1,400 for each of Cabinda's 688,000 citizens, many of whom live in deep poverty. There is a severe lack of transparency surrounding the revenue-sharing mechanism, and local citizens suspect the funds are being corruptly diverted.

US-listed oil companies active in Cabinda include Chevron, Total and Eni. Having access to company-by-company, project-level payment reports would assure Cabindan citizens that each company is meeting its fiscal obligations, and place the onus on the government to

¹⁶ OSISA-A and Global Witness, *Oil Revenues in Angola: Much More Information but Not Enough Transparency*, 2012: www.osisa.org/sites/default/files/global_witness_oil_revenue_report.pdf

¹⁷ Statoil, *Sustainability Report 2012*: www.statoil.com/annualreport2012/en/sustainability/ourperformance/economicperformance/pages/paymentstogovernments.aspx

¹⁸ OSISA, *'Angola's Oil Industry Operations'*, 2012: www.osisa.org/sites/default/files/angola_oil_english_final_less_photos.pdf

account for the missing revenues. Working together with community-based organisations, OSISA-A intends to use SEC payment reports as supporting evidence to hold the government to account for the effective functioning of revenue-sharing agreements.

These are just some ways in which OSISA-A intends to use company- and project-level payment data. It is reasonable to assume that there will be many more ways in which this information will be used, not only by civil society groups but also by other actors such as concerned citizens, parliamentarians, anti-corruption regulators, academics, journalists and investors.

It is important to bear in mind, however, that oversight actors would be prevented from using the data in the manner described above if it were aggregated and anonymised along the lines suggested by the American Petroleum Institute. It will only be possible to carry out these crucial accountability functions if the Section 1504 payment data is disclosed by company and by contract.

Exemptions are unnecessary and would defeat the purpose of the rule

OSISA-A is aware that some oil companies have called for a clause to be included in the Section 1504 rule that would exempt firms from reporting payments made to the Angolan government, as well as in certain other countries. These companies claim that disclosing Angolan payments would risk placing them in breach of Angolan law. However, they have not provided evidence to justify an exemptions clause. Indeed, the great weight of evidence shows that exemptions are not needed, including the following:

- Sonangol's Production Sharing Agreements provide a standard exception from confidentiality "to the extent required by any applicable Law, Decree or regulation (including, without limitation, any requirement or rule of any regulatory agency, securities commission or securities exchange on which the securities of such Party may be listed)."¹⁹ We note that all three of the Angolan contracts that have been published and are available from OpenOil's contract database include this confidentiality carve-out.²⁰
- As highlighted in this letter, the Angolan government already publishes oil revenue receipts, broken down by Production Sharing Contract (project-by-project). It is difficult to conceive therefore that companies would be at risk of being prosecuted by the Angolan government for disclosing information that is already being published by the government itself.
- It is extremely unlikely that the Angolan government would take legal action against foreign oil companies for disclosing payments, as the economic and diplomatic consequences of doing so would be far too damaging for the Angolan state.

¹⁹ Article 33.2(c): www.resourcegovernance.org/sites/default/files/Angola%20PSA%20Template.pdf

²⁰ The Angola contracts are accessible here: <http://repository.openoil.net/wiki/Downloads>

- In March 2015 the oil major Statoil, which is invested in nine oil extraction projects in Angola, is due to publish project-level payments to the Angolan government as required by the 2014 Norwegian extractives transparency law. Statoil is a strong proponent of project-level payment reporting, and is calling on jurisdictions outside of Europe to introduce “international law-based regulations of revenue disclosure, with public reporting at company level and *with no exceptions for local or national conflict of law*” (emphasis added).²¹
- The EU Accounting and Transparency Directives include no exemptions. The implementing regulations for the Directives are now in force in the UK and France and consequently, in 2016, the oil majors BP and Total will publish payments made to the Angolan government during the whole of 2015 on a project-by-project basis. Other oil companies operating in Angola that are covered by the EU Directives include Eni, Repsol Maersk and Galp. After consulting with industry during the development of the UK regulations, the UK government stated that with regards to exemptions, it had “considered these issues carefully, and discussed them with representatives in other countries. Although a number of companies raised these issues, they did not present sufficient evidence that action would be taken in other countries for criminal offences against directors or individual companies for complying with the EU Directive.”²²
- The Chinese oil major Sinopec, which listed in the US, has stated that it is prepared to disclose payments to governments as required by Dodd-Frank Section 1504 for the company’s operations in Angola.²³
- Including an exemptions clause would create an incentive for governments to introduce measures to prohibit payments disclosure, and thereby defeat the purpose of the Section 1504 rule. This would be a particular risk in countries governed by autocratic regimes, where typically payment transparency is most needed.

As there is no justification for excluding Angola from the Section 1504 reporting rule, it would be perverse to create such an exemption for a country that suffers so severely from the ‘resource curse’ – the very problem that Section 1504 is intended to remedy.

²¹ Statoil, 2013 Sustainability Report:

www.statoil.com/no/InvestorCentre/AnnualReport/AnnualReport2013/Documents/DownloadCentreFiles/01_KeyDownloads/SustainabilityReport.pdf

²² UK Department for Business, Innovation and Skills, UK implementation of the Accounting Directive – government response to consultation, August 2014, para 89:

www.gov.uk/government/uploads/system/uploads/attachment_data/file/343599/bis-14-1006-eu-accounting-directive-implementation-extractive-industries-reporting-response.pdf

²³ Global Witness submission to the SEC, December 2013, page 12: www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-22.pdf

This letter has outlined that Angola's oil sector is plagued by extreme corruption risks, and how OSISA-A intends to use payment disclosure reports to combat the problem. Payment-related corruption risks arise largely at the project and company level, and can only be addressed by having access to project- and company-level payment information. If the Section 1504 rule allows for aggregated and anonymised disclosures, it would prevent OSISA-A and others from holding the government to account and defeat the purpose of the Section 1504 legislation.

We urge the SEC to establish a rule for Section 1504 that requires project-by-project and company-by-company reporting with no country exemptions. As contracts determine the payments made to governments, and as the size of individual payments can reach up to a billion dollars, it is on the basis of contracts that companies should report.

Thank you for considering the points raised in this letter, and please do not hesitate to contact OSISA-A if you require any additional information.

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Open Society Initiative for Southern Africa-Angola