

February 20, 2015

By E-Mail:

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

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

Re: Dodd-Frank Section 1504 Rule

Dear Chair and Commissioners:

The Publish What You Pay Zimbabwe coalition (PWYP Zimbabwe) is a grouping of 9 civil society organisations (CSOs) that have come together to demand improved transparency and accountability in the minerals sector to ensure that the country's vast natural resources benefit the generality of Zimbabweans. We commend the SEC for its hard work developing reporting rules for Dodd-Frank 1504, and we urge the SEC to introduce a strong standard that includes a provision for companies to report payments on a project-by-project basis in line with the original 2012 rules and the EU Accounting and Transparency Directives.

The PWYP Zimbabwe coalition conducts research on mining impacts and monitors potential revenue leakages. We also engage with the media, government and Parliamentarians to constantly shine the light on opacity in the mining sector and push for reform. Our coalition focuses its advocacy efforts on mining legislation such as the proposed Diamond Revenue Bill, the Mines and Minerals Amendment Bill, and the Mineral Policy and the Constitutional reform process. It also campaigns to improve existing laws that hinder access to information and public participation such as the Access to Information and Protection of Privacy Act and the Public Order and Security Act for reform.

Zimbabwe relied on the extractive sector for over 50% of its export earnings in 2013. The country has over 40 known minerals, with some of the biggest reserves being in platinum, chrome and diamonds. We have the second largest platinum reserves in the world and our diamond reserves can potentially meet 25% of global demand. Zimbabwe also has nickel, iron ore, gold and copper among other known major minerals. The sector has been extensively liberalised and is open to foreign investors.

Despite being rich in natural resources, Zimbabwe is one of the poorest countries in the world, ranking 172 out of 187 on the UN's 2012 Human Development Index. Seventy-two percent of its people live below the poverty line, an estimated 1.7 million people are facing acute hunger, and around 400 people die of AIDS-related diseases every day.

Zimbabwe is also plagued by widespread and severe corruption, including in the extractives sector. For example, research published in 2012 by the NGO Partnership Africa Canada found that diamond revenues worth at least US\$2 billion had been diverted from public accounts and channelled into a 'parallel government' of state, military and police officials since 2008.¹

Access to more extractives sector data is needed

Currently there is very little useful data published by government or industry in Zimbabwe's extractives sector. Zimbabwe is not a member of the Extractive Industries Transparency Initiative (EITI), and the government has no plans in place to join the EITI. Extractive contracts are not disclosed, very little information about licensing processes is made public, and revenue data published by the government is limited and highly aggregated. Furthermore, mineral revenue is not clearly earmarked for expenditures.

It is, therefore, extremely difficult for civil society to monitor how mineral revenues are being managed. Dodd-Frank 1504 rules that establish public reporting of company- and project-level payment data would not only enable PWYP Zimbabwe to track the flow of revenues from US-listed companies into public accounts, it would also boost our ongoing advocacy efforts for the introduction of national policies to enhance transparency of Zimbabwe's natural resource revenues and how they are spent.

The limited data available has been used to identify possible corruption and misuse of revenues

PWYP Zimbabwe has used what limited financial disclosures are available to advocate for greater revenue transparency and government accountability. To give one example, PWYP member the Zimbabwe Environmental Law Association (ZELA) used financial information gleaned from national budget statements and audited financial accounts from a state-owned enterprise, the Zimbabwe Mining Development Corporation (ZMDC), to identify revenue leakages. ZELA also used this evidence to advocate for the adoption of revenue transparency measures in Zimbabwe.

ZELA's research found a massive discrepancy between projected diamond revenues of US\$600 million and the payments actually received by the Treasury in 2012, which totalled US\$45 million. It found that National Budget Statements showed that between 2010 and 2013, dividends and royalties received from mining operations in the Marange diamond fields totalled approximately US\$300 million. However, ZELA's investigation found that the Zimbabwe Mining Development Corporation had in fact contributed US\$300 million to the state budget in just one year (Aug. 2011 to Aug. 2012), thereby pointing to a further major discrepancy. ZELA's research clearly demonstrates that current levels of revenue transparency are inadequate and that citizens are being deprived of mineral revenues as a result.²

¹ Partnership Africa Canada (2012) 'Reap what you sow: greed and corruption in Zimbabwe's Marange diamond fields', Ottawa: Partnership Africa Canada: bit.ly/1vben3l

² Sibanda, M & Makore, G (2013) 'Tracking the trends: an assessment of diamond mining sector tax contributions to Treasury with particular reference to Marange diamond fields', Harare: Zimbabwe Environmental Law Centre: bit.ly/1nMnGqv

Securities disclosure precedents have been very useful to promote transparency in Zimbabwe

PWYP Zimbabwe has experience with researching stock exchange data. For example, we have used stock exchange reports by Canadian mining companies operating in Zimbabwe as evidence that transparency is not something new or something to be feared. Canadian companies are already required to disclose certain information by virtue of being listed on the Toronto Stock Exchange, including project-level reporting of reserves, and the terms of royalties and other payments material to the company.

While the information this regulation provides is not comprehensive or particularly detailed, it allowed us to demonstrate to policymakers in Zimbabwe that such transparency measures are viable and desirable, including for investors. PWYP Zimbabwe has used this information in advocacy with legislators to push for strong transparency and accountability provisions in the new Mines and Minerals Bill and Income Tax Bill, including a requirement for mining companies to publish the payments they make to governments, and for the government to disclose mining receipts.

Project reporting is needed in Zimbabwe

Project-level reporting in particular will help communities and civil society to weigh the costs and benefits of an individual project. We are aware that some companies are lobbying for Dodd-Frank 1504 rules that would aggregate information on payments and keep the names of companies hidden from public view. If however payments cannot be linked to a company or project it will be impossible to carry out a full assessment of their impact.

For example, we would not know the monetary amounts received by the government when it sells individual extractive licenses, which is fundamental to deterring corruption and incentivizing public officials to secure a fair return on the sale of natural resource assets.

Furthermore, some platinum mining projects in Zimbabwe have special lease agreements which are negotiated on a project-by-project basis, while others do not. These agreements have differing fiscal regimes in terms of royalties and taxes. Thus to aggregate all payments for all platinum projects together would prevent data users from identifying the varying outcomes that result from different contractual regimes. It would also prevent data users from asking questions about, and demanding accountability for, any significant variances in payments that are identified amongst platinum projects that are similar in terms of cost structure and stage of development.

Project-level reporting would bring benefits to companies as well as communities in Zimbabwe by enhancing firms' social licence to operate. For example, there are community members affected by US-listed Rio Tinto's diamond mine in Murowa Ward, which accounts for an estimated 6% of Zimbabwe's diamond exports. The Murowa community has over 500 households and receives support from Rio Tinto in the form of local development initiatives such as improved healthcare services and schools. Rio Tinto also continues to provide support to over 100 families who were relocated from Murowa in 2001 to a town 150 kilometres away in order to develop the mining project.

However, community leaders have accused Rio Tinto of reneging on its commitments to support community development programmes.³ While Rio Tinto publishes information regarding the development initiatives it supports and their performance (e.g. number of clinics built), the company does not disclose the monetary value of the Murowa project's social contributions. If the company was required to make this information public, it would provide communities with a fuller picture of Rio Tinto's social contributions, help to quell suspicions and improve community relations.

Disclosure of company payments by levels of government is also needed

It is also important that company reports allow users to identify the level of government and different kinds of state agencies that received the payment. While central government is accountable to all citizens, it is local government that directly inter-faces with local communities and has spending responsibilities in important areas such as health, education and infrastructure. Communities must be equipped full knowledge of payments made to local authorities which they can use this information to demand prioritization of certain revenue expenditure.

It is also important to identify other kinds of state agencies that receive payments. In the case of Zimbabwe, mining companies make payments directly to the Environmental Management Agency and the Rural Electrification Agency. Full transparency of these payments will enhance communities' and civil society's ability to hold these agencies to account for the critical services they are responsible for delivering, such as drought mitigation projects and promoting the use of electricity for crop irrigation.

Efforts at EITI-like initiatives have stalled, and more transparency needed

PWYP Zimbabwe played a key role in the Zimbabwe Mining Revenue Transparency Initiative (ZMRTI), a multi-stakeholder scheme similar to the EITI that was created largely as a result of our advocacy work. However, the ZMRTI stalled in 2013 at an early stage of development due to gridlock in Zimbabwe's wider political system. Nevertheless, the finalization of Dodd-Frank 1504 rules that include project-level reporting will support PWYP Zimbabwe's lobbying efforts to revive the ZMRTI and push for it to establish a domestic reporting standard that also provides for project-level disclosure.

In summary, there is currently very little financial data available publicly to assist PWYP Zimbabwe's advocacy efforts to improve the management of natural resource revenues in our country. Payment data broken down by project would enable PWYP Zimbabwe and its members to ensure a more thorough review of mining's contributions to the national treasury and to local government. This information would also show payments made by a project to various government entities that have a responsibility to deliver various social services, thereby ensuring that citizens can hold these entities to account. Project-level reporting would also allow for some comparison along projects at similar levels of maturation.

³ Chiefs threaten to boot out miner, Newsday, 8th July 2014: bit.ly/1LM7Kxx

As such, we urge the SEC to introduce reporting rules for Dodd-Frank 1504 that requires disclosure of payments at both the company- and project-level, as set out in the EU Accounting and Transparency Directives or the 2012 SEC rules.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'G. Makore', with a stylized flourish at the beginning.

Gilbert Makore

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