

February 27, 2020

Vanessa A. Countryman,
Secretary,
Securities and Exchange Commission
100 F Street NE, Washington, DC 20549-1090

Dear Secretary Countryman,

Comments on Proposed Rule, Disclosure of Payments by Resource Extraction Issuers, Release No. 34-87783; File No. S7-24-19

On behalf of Nigerian NGO PolicyAlert!, I write to make our recommendations regarding some of the proposed Section 1504 rule and also urge you to pass a strong version of the Dodd Frank Wall Street Reform and Consumer Protection Act Section 1504 rule. Such transparency requirements are critical to us as Nigerians to combat corruption in our government and ensure that revenue from our natural resources is used to benefit our citizens and foster the growth and development of our country. We note that rather than help achieve these goals, the draft rule that the SEC has proposed would tend only to promote further opacity and thereby aid more corruption in Nigeria's extractive industry.

Nigeria's extractive sector consists of crude petroleum and natural gas, coal mining, metal ore and quarrying and other minerals sub-activities. The contribution of the sector to Nigeria's real GDP in the third quarter of 2019 stood at 9.9%. Nigeria has proven crude oil reserves of 36.97 billion barrels and proven natural gas reserves of 5.68 trillion cubic meters. The oil and gas sector accounted for 93.8% of the country's export earnings in 2018. Also in 2018, ExxonMobil and Chevron—two United States resource extraction issuers operating in Nigeria—had a combined production volume of 230 million barrels of crude oil, making up 32.7% of Nigeria's entire crude oil production volume for that year. The monetary value of ExxonMobil's and Chevron's share of crude oil production in Nigeria in 2018 stood at USD 15.49 billion. In view of the significance of oil and gas revenues to the Nigerian economy, it is essential that citizens and civil society actors engage and effectively hold the government to account for the management of the country's natural resource revenues.

Example of resource revenue lost to corruption

On September 24, 2013, the Nigerian Senate notified the public on the commencement of an investigation into the “Needless loss of huge government revenue occasioned by questionable transactions and allocations of Oil Mining Lease (OML) with respect to OMLs 4, 26, 30, 34, 38, 40, 41, and 42”.¹

¹ The Federal Republic of Nigeria, Senate Notice Paper, Tuesday 24th September 2013, <http://placng.org/wp/wp-content/uploads/2016/05/3632.pdf>

The Senate alleged that Atlantic Energy paid the Nigerian government a “paltry” entrance fee of USD 50 million for its 55% stake in OML 30 while Heritage Oil PLC in an open and competitive bid acquired SPDC's 45% stake in the same OML 30 for USD 1.3 billion.² The Nigerian Senate avowed that the value of the oil and gas deposits of OML 30 was USD 481 billion and further expressed its worry over the ridiculously undervalued and secretive allocations of Nigeria's extractive assets which have resulted in the loss of huge revenues accruable to the government and the country's citizens. This is just one of several examples of how secrecy in extractive sector transactions aids illicit financial flows and thereby weakens the Nigerian economy. Payments to Governments' data from US-listed companies could help Nigerian civil society in our own accountability efforts. Nigeria's natural resources are precious and finite. Our country is facing many development challenges, and we simply cannot afford to receive less than a fair market rate for our natural resources.

Evidence of extractive data utilization by Nigerians

Nigeria's implementation of the Extractive Industries Transparency Initiative (EITI) in the past 15 years has contributed significantly to moving the paradigm in the extractive sector from secrecy to relative openness, including through the publication of audited data on the payments made by oil, gas and mining companies to Nigerian government entities and the government's financial receipts, and several other reports. The Nigeria Extractive Industry Transparency Initiative (NEITI) audit reports are released at best two years late, the most recent being the 2016 NEITI Oil and Gas Audit Report and the 2017 NEITI Solid Minerals Audit Report.³ The delayed timing of these important and revealing reports limits the effectiveness of multi-stakeholder engagement towards remediation of identified information gaps and poor governance of the sector; with particular implications for civil society advocacy to enable communities get full benefits from their natural resources. But that time-lag is somewhat being bridged with mandatory Payments to Governments (PtG) reports, which makes it important for US-listed companies to begin supplying this data in a way that is consistent with current international disclosure standards.

We Nigerians are already making good use of the extractive revenue data that is available to us. Access to this data, although still new, has already substantially increased our understanding of the industry in our country, the industry's relationship with government, and weaknesses in our government's management of resources. With the insights into project level payments from Payments to Governments (PtG) data published under Canadian, European Union, Norwegian and United Kingdom laws, we have been able to match disaggregated payments to Nigerian government entities with specific oil, gas and mining projects, both onshore and offshore, and to provide a clearer picture on this to affected communities and other civil society actors. This improved understanding, paired with the hard data we previously lacked access to, has enabled us to increase the effectiveness of our work in monitoring revenue flows— including at community level— and increase the persuasiveness of our advocacy with government officials and extractive companies. Furthermore, access to disaggregated Payments to Governments data has enabled us initiate a better informed debate about the use of extractive industry revenues in Nigeria. Please visit our webpage <https://policyalert.org/wetinwegain/> to see examples of our town-hall-type community meetings and site visits and the social media debates we have initiated about the lack of benefits currently flowing to Nigerian citizens and communities from oil, gas and solid minerals extraction.

² Ibid.

³ <https://eiti.org/nigeria#eiti-reports-and-other-key-documents>

Comments on proposed new Section 1504 rules

1. Aggregation of payments

For communities to effectively engage with government and play a role in ensuring accountable management of natural resource wealth, it is essential that they have specific information about the projects in their backyards. Also, seeing that extractive projects can incur substantial social and environmental costs that are often borne excessively by communities adjoining extractive assets, it is appropriate that such affected host communities also benefit significantly from the natural resources in their domain. Nigeria has a subnational revenue sharing system, but this doesn't address the problems faced by immediate host communities of extractive assets. Currently, the disaggregation of payments to government and its entities by companies mandated to report payments to foreign governments under the European Union Accountancy and Transparency Directive and equivalent UK and Norwegian laws, or the Canadian Extractive Sector Transparency Measures Act (ESTMA), has aided civil society actors such as ourselves to inform the public about the value of payments made by extractive companies and which government bodies were receiving payments for which operational projects in which locations.

There are currently ten companies that report the payments they make to Nigerian government entities under European and Canadian project-level transparency laws: Aggregate Industries UK, Chevron Canada, China National Offshore Oil Corporation (CNOOC, formerly Nexen), Eni, Equinor (formerly Statoil), LafargeHolcim, Royal Dutch Shell, Seplat, Total, and Thor Explorations Limited. None of these companies have suffered any known competitive harm or loss of business in Nigeria as a result of the European and Canadian transparency requirements. In fact, the Nigerian public and local communities are more likely to trust companies that are more transparent about their operations and payments to government entities. This in turn should lead in the long run to fewer disputes with communities that can prove so disruptive and costly to company operations.⁴

The proposed rule to permit aggregation of payments at major subnational jurisdiction level will allow for lumped-together payments for multiple projects within a subnational jurisdiction. This will regress a lot of the gains already made with project-level reporting especially as it concerns affected local host communities.

2. Exemption for smaller reporting companies or emerging growth companies

We are of the opinion that this particular exemption for smaller and growth companies could exclude a growing number of oil and gas companies operating in Nigeria from reporting obligations. There has been a recent trend of oil and gas majors divesting their onshore and shallow offshore assets to smaller companies – with US firms ExxonMobil and Chevron featuring prominently in recent news reports on divestment (ExxonMobil, for instance, has a global plan to divest USD 15 billion in assets by 2021, a bulk

⁴ See e.g. <https://nairametrics.com/2019/09/29/shutdown-of-oml-25-cost-nigeria-over-1-7-billion-nnpc/> and https://www.researchgate.net/publication/233573551_The_Economy_of_Conflict_in_the_Oil_Rich_Niger_Delta_Region_of_Nigeria

of these in Nigeria, Chad and Equatorial Guinea).⁵ This new trend has ushered in a lot more small players in the oil and gas exploration and production space. When aggregated, the exploration and production activities of small oil and gas companies form a significant percentage of the overall transactional value of E&P activities in Nigeria, and simply wishing away their materiality as this exemption proposes to do is a lost opportunity to put in place strong transparency standards. Although at present it is not known what proportion of these smaller and in some cases new oil and gas companies entering the onshore sector in Nigeria will in the near or longer term issue securities on SEC-regulated markets, smaller extractive companies can be worse governed, and a greater corruption risk, than their larger counterparts. It would therefore be a major weakness if the SEC's rule did not include them.

Also, in the course of implementing our #WetinWeGain campaign, we realized that it is important to track the environmental and social footprints of extractive activities in communities contiguous to extractive assets. Oil majors which are considered big companies and will be mandated to report payments by this proposed rule are currently acquiring more lucrative extractive assets in the deep sea and moving further offshore. Even though offshore oil and gas E&P activities affect the livelihood and environment of coastal communities closest to such operations, it is usually difficult for such communities to hold government and extractive companies to account. Hence, payment to government reporting by small companies—who own and/or operate extractive assets onshore or in shallow fields offshore—is essential for host communities to effectively demonstrate such effects and to demand equitable benefit transfer.

3. Deadline for Furnishing Payment Disclosures

We don't agree that there exists any potential competitive harm from timely Payment to Government disclosures as suggested by the proposed new Section 1504 rule. We are of the opinion that allowing resource extraction issuers to have the permissiveness to disclose payments to governments as late as 21 months after their most recent fiscal year will impede our ability to focus on current issues and develop apt future engagement plans with the government and extractive companies alike. As highlighted earlier in the letter, late publishing of payment disclosures hampers civil society capability to mobilize citizens to extract equitable natural resource benefits from the government and extractive companies. We recommend strongly that the submission deadline be not extended beyond 300 days after the end of the issuer's most recent fiscal year, which is 150 more days than the submission deadline under the Canadian Extractive Sector Transparency Measures Act (ESTMA).

As the Commission decides on the final rule, we appeal to you to take bold action to more fully align the rule with a key goal of requiring transparency which, in the words of Senator Richard Lugar, is to “help empower citizens to hold their governments to account for the decisions made by their governments in the management of valuable oil, gas, and mineral resources and revenues.”⁶

⁵ <https://www.woodmac.com/reports/upstream-oil-and-gas-brace-yourself-for-a-new-wave-of-nigerian-manda-297691>

⁶ Sen. Richard Lugar, Floor Speech on Transparency Amendment, May 2011, <https://votesmart.org/public-statement/612406/lugar-floor-speech-on-transparency-amendment#.XkKVJWj7Svs>

We therefore urge you to come up with a rule more closely in line with transparency rules already in place in the European Union, Norway, the UK and Canada as well as with the Extractive Industries Transparency Initiative (EITI). In closing, public disclosure, including of issuer identity, is critical, and the data would be useless to civil society if it were anonymized and at high levels of aggregation.

Thank you.

Yours sincerely,

For: Policy Alert

A handwritten signature in black ink, appearing to read 'Tijah Bolton-Akpan', written in a cursive style.

Tijah Bolton-Akpan
Executive Director

#WetinWeGain

C A M P A I G N

Empowering communities to use extractives data to
demand improved benefits from government
and companies



November 21, 2019

#WetinWeGain: Nigerian pidgin expression meaning “what's in it for us?” The project seeks to promote greater disclosure on oil, gas and mining transactions in Nigeria, and empower citizens with adequate and accurate information to ask the right questions and thereby benefit fully from their natural resources.

Implementing Partners

Policy Alert, Publish What You Pay (PWYP) Nigeria, Publish What You Pay (PWYP) United Kingdom, and Stakeholder Democracy Network (SDN)

Project Goal

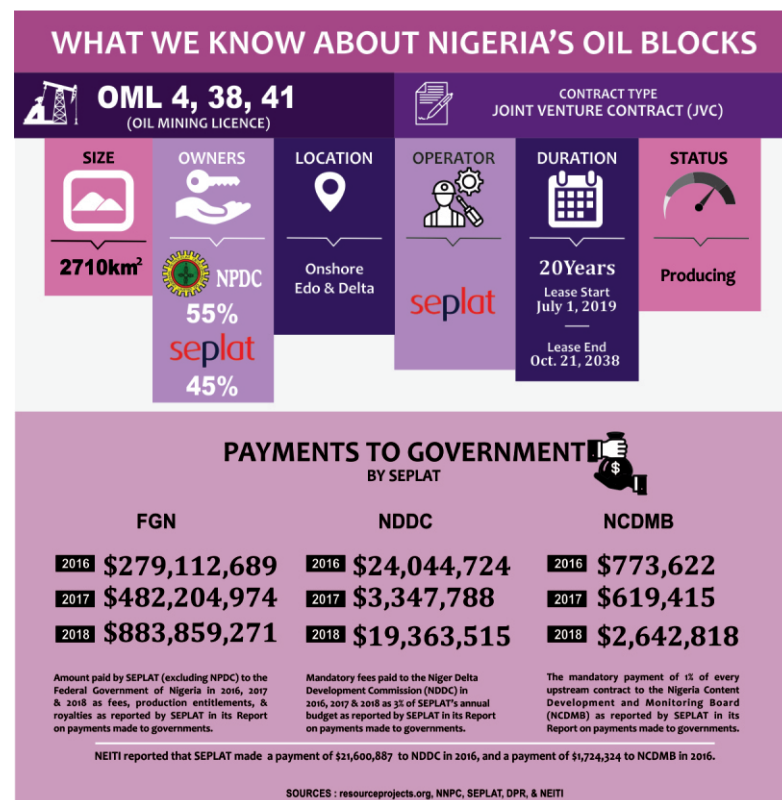
The aim is to democratize available data on the extractive industries through research, analysis, infographics, public awareness raising, community mobilization, and advocacy towards government entities and companies. Also, the goal is that Nigerian government entities improve their use of the extractive revenues they receive on behalf of communities and that companies strive harder to earn and maintain a social license to operate though being more publicly accountable to citizens.

Objectives

- ▶ To investigate, analyze and simplify data on payments to governments over a period of three (3) years for extractive projects in the Niger Delta
- ▶ To sensitize and mobilize four (4) pilot host and/or affected communities and the general public to take action in their own interest on the basis of emerging data
- ▶ To engage with state actors and extractive companies towards addressing issues that prevent citizens of the region from having greater access to information on extractive sector transactions

Activities

Infographics and awareness raising: Policy Alert has published, with inputs from PWYP UK and PWYP Nigeria (e.g. cross-checking data, fact checking and co-branding), a series of infographics online and via social media (Facebook and Twitter). The focus of our analysis of the data used to create the infographics has been on the ownership structure, contract types, location, lease duration and size of extractive assets, and payments to the Nigerian government (as taxes, royalties, production entitlements, bonuses, fees and payments for infrastructure) and its agencies by oil and gas companies. We compared what the companies reported was paid to the Nigerian government to what government says it received as published in the company annual reports and NEITI reports respectively. With the new insights into project level payments from Payments to Governments (PtG) data (www.resourceprojects.org), we have been able to match disaggregated payments with specific projects, whether onshore or offshore, to affected communities and map those communities against the payment streams that come from contiguous projects.



Letters to companies and agencies of the Nigerian government: PA, PWYP Nigeria, PWYP UK have sent joint letters to operating companies and agencies of the Nigerian government about specific issues that are unclear ranging from payments reports and other documentation (such as NEITI data), to where information is contradictory, e.g. relating to ownership of and proportionate shares in joint ventures, or why companies have not reported specific payments, or how companies have calculated certain payments such as the annual 3% Niger Delta Development Corporation (NDDC) levy. So far, we have written letters to Eni, Chevron, Seplat, South Atlantic Petroleum Limited (Sapetro), Seven Energy, Department of Petroleum Resources (DPR)

- ▶ On June 21, 2019, we wrote to Seven Energy seeking clarification on its equity shares in Oil Mining License (OML) 13 and OML 14 and its PtG disclosure for these blocks. We got a detailed response from Seven Energy on July 5, 2019 regarding the aforementioned request.
- ▶ Having discovered a disparity in what was reported as equity stake in OML 125 by Oando, Eni and DPR, we wrote a letter to Eni on July 10, 2019 to seek clarification on its equity stake in OML 125. We got a response from Eni on September 10, 2019 in OML 125.
- ▶ On July 18, 2019, we wrote to the DPR regarding the ownership of oil blocks OML 125 and OML 138. We have written two other follow-up but haven't gotten a response from the DPR till date.
- ▶ Following a discovery on the disparity in the reporting of Seplat's equity stake in OML 53 by the DPR and Seplat, we wrote Seplat on June 24, 2019, to seek clarification on Seplat's equity share in OML 53 and their corresponding payments to the Nigerian government. We received a response from Seplat in November 2019 confirming their equity stake and explaining how the company calculates and pays the Nigerian Content Development and Monitoring Board 1% levy.
- ▶ On June 17, we wrote to Sapetro seeking clarification on how the Nigerian Content Development and Monitoring Board (NCDMB) levy is calculated before being deducted at source and why no such payment was made by Sapetro to NCDMB in 2016. We written two other follow-up letters but haven't gotten any response from Sapetro till date.
- ▶ On July 17, 2019, through PWYP Canada, we wrote to Chevron requesting a full disaggregation of payments to government that it reported for aggregated projects titled "Niger Delta Concessions." We albeit got a vague response from Chevron on August 29, 2019.

These letters and their corresponding responses have thus far informed the infographics and public awareness raising and demonstrated to the companies and government that civil society is monitoring company payments and operational activities, and that companies need to be clear and accountable in their communications to citizens.

Twitter Chats

Thus far, we have conducted 6 highly engaging twitter chats with industry experts as guests.



- ▶ Are extractive revenues working for resource-rich communities in the Niger Delta?
Guest - Ken Henshaw
- ▶ Making extractives data relevant to resource-rich communities
Guest - Faith Nwadike
- ▶ Making subsidy payments with extractive revenue: How long should this continue?
Guest - Abel Akeni
- ▶ Extracting benefits from Nigeria's extractive revenues: What role for technology?
Guest - Oke Epia
- ▶ Poverty amidst plenty: Why governance matters for overcoming Nigeria's resource curse
Guest - Kolawole Banwo
- ▶ How can citizens take action on the NEITI 2016 Oil and Gas Audit Report?
Guest - Dr. Dauda Garuba

Town Hall Meetings: We have held two town hall meetings in the course of this project. The first town hall meeting was held in Esit-Eket Local Government Area of Akwa Ibom State on October 11, 2019. Esit-Eket plays host to Frontier Oil Limited, Universal Energy, and ExxonMobil. During the meeting, stakeholders narrated their sordid ordeal regarding their unfavourable living conditions. They claimed that the resources extracted from their communities by extractive companies and the attendant huge revenues that has accrued to the government



#WetinWeGain Townhall meeting in Esit Eket LGA, Akwa Ibom State

has not translated to better living conditions for their people. The second town hall meeting took place in Ibeno LGA of Akwa Ibom State on the October 30, 2019. Ibeno hosts the operational base of ExxonMobil and the largest crude oil export terminal (Qua Iboe Terminal) in Nigeria. The community members narrated similar ordeals to those enumerated by the stakeholders in the Esit Eket town hall meeting. During the meeting community members were exposed to Frontier Oil and ExxonMobil's payments to government and agencies like the NDDC and NCDMB. The community members were also admonished to take active roles in tracking funds allocated for development projects in their communities.

*As a result of revelations made at our town hall meeting in Ibeno, a philanthropic group in the USA has decided to embark on a medical outreach in Ibeno on December 28, 2019.

Related Work: On October 10, Policy Alert published a press statement on the 42 expired oil block licenses due for renewal in 2019. This statement made it to the front page of a National Daily Newspaper, The Guardian, which got the immediate attention of the DPR.

To view all the publications on the activities carried out in the course of the "Wetin We Gain" project, visit <https://policyalert.org/wetinwegain/>

ABOUT POLICY ALERT

Policy Alert (Grassroots People Empowerment Foundation) is a registered non-profit organization that works to deepen citizens' engagement with governance processes, especially at the state and local levels. We utilize cutting-edge research, policy analysis, information dissemination, capacity building, community mobilization and advocacy to promote social, economic and environmental outcomes that are people-centred, equitable and sustainable.

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