April 22, 2020

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

SUBJECT: Dodd-Frank 1504, File No. S7-24-19, Burkina Faso mineral sector subnational revenue sharing system: Major transparency issues and need for payment disclosures

Dear Secretary Countryman,

On behalf of Publish What You Pay coalition of Burkina Faso, I appreciate the opportunity to comment on the SEC's proposed implementing rule for Dodd-Frank Section 1504. I write to you to highlight the importance of mandatory payment disclosure information to the work of civil society and subnational governments in understanding potential local beneficiation from extractive industries projects, given our experience in Burkina Faso. Particularly critical to these disclosures is a strong, contract-specific project definition that conforms to the global norm at the heart of payment disclosures under the Extractive Industries Transparency Initiative (EITI) and in legislation in Canada, Norway, and the EU.

In 2015, Burkina Faso passed new mining legislation to replace the country's 2003 Mining Code. During the drafting of the new legislation, civil society groups successfully advocated for 1% of the monthly turnover of mining companies in production to be committed to a the Mining Fund for Local Development, to support development projects that benefit communities impacted by mining. This Fund was created by

the new mining legislation and the regulatory texts related to the Fund have already been adopted to facilitate implementation of the law. The Fund is supported by two sources of revenue: a contribution from the state of 20% of the taxes collected on the export of gold and a contribution of 1% of the monthly gross revenues from mining companies in production. Funds are then transferred to the communes and the regions for the benefit of communities.

In distributing the contributions from mining companies to the Mining Fund for Local Development associated with each mining project, 50% is automatically transferred to the municipality or municipalities that host the company's mining project. The remaining 50% is added to the state's contribution of 20% of the taxes collected on the export of gold and a contribution of 1% of the monthly gross revenues from mining companies in production, and distributed as follows:

a) The mining municipality or municipalities benefit from a first disbursement of half of the contribution of the 1% of the mining company's turnover

b) The other half of the 1% of the mining company's turnover is added to the 20% of the contribution from the revenues received by the State and is then divided across all communes and regions of the country, including the mining municipality or municipalities

that benefited from the first tranche of the 1%. This amount is further divided into two parts:

a. 50% for the mining zone, of which:
    i. 25% is allocated for the mining municipality or municipalities
    ii. 50% is allocated for the other municipalities of the region or regions, divided equally
    iii. 25% is allocated for the region or region itself, divided equally.
b. 50% for the rest of the municipalities and regions of Burkina Faso, of which:
    i. 75% is allocated for the communes, divided equally
    ii. 25% is allocated for the regions, divided equally

At the national level, there is a main account that is housed in the public treasury where money from the State and the mining companies is transferred. After dividing the revenues, each amount allocated to each jurisdiction (municipality and region) is transferred into an account for that jurisdiction. The amounts transferred serve to finance the projects that are approved in the communal and regional plans by communal and regional boards. The new Mining Code has also created other funds. There is a fund to support geological and mineral research, a fund to rehabilitate artisanal mine sites, and a fund for industrial mine closure and rehabilitation.

Burkina Faso received a score of 24 out of 100 for transparency according to the 2017 Open Budget Survey.[1] The country scored lowest on public participation (0/100) and scored 39 out of 100 on oversight by legislature.[2] In Burkina's recent Public Expenditure and Financial Accountability Assessment, the country received an A grade in regards to transparency of intergovernmental fiscal relations (transparent and rules based systems in the horizontal allocation among subnational governments of unconditional and conditional transfers from central government, both budgeted and actual allocations), which may inspire a cautious optimism about the implementation of the new local development funds. However, the country received a D+ grade in regards to effectiveness in collection of tax payments as well as a D in aggregate revenue out turn compared to original approved budget (actual domestic revenue collection compared to domestic revenue in the originally approved budget). Furthermore, the country also received a D in all areas of expenditure composition outturn. This means that the way expenditures are initially planned for in the budget by both function and economic type are not followed during the course of spending.[3] This indicates a lack of accountability in the management of public revenues since the central government does not adhere to its initial budgets.

[1] "Open Budget Survey 2017: Burkina Faso," International Budget Partnership. Available at: https://www.internationalbudget.org/wp-content/uploads/burkina-faso-open-budget-survey-2017-summary-english.pdf
[2] Ibid.
[3] "Burkina Faso 2017," Public Expenditure and Financial Accountability Assessment. Available at: https://pefa.org/assessments/summary/541

In Burkina Faso, mining revenues are collected by the Ministry of the Economy and Finance and deposited in the public treasury from which the transfers are made to other accounts after allocations. In order to ensure accountability, it is critical that all information regarding mineral valuation, royalty calculation, fiscal terms and payment receipts is publicly available. Local government officials must be able to understand the basis for royalty sharing calculations and payments so that they are able to validate the accuracy of the disbursed revenues received from the central government. Payment transparency is also essential for accurate administration since government officials such as customs officers, mines inspectors and tax administrators all across the country all play a part in enforcement and need equal access to this information.

It is important that the collection and management of mineral revenues by the central government is transparent. Otherwise, the Mineral Fund for Local Development could be utilized for other expenses that benefit the elites. This has a direct bearing on the domestic subnational revenue sharing system if all funds collected from companies are first deposited into a central minerals fund, and then transferred to the subnational funds. According to Morgandi (2008), lack of central level transparency in the upstream sector directly affects transparency at the local levels.[4] If this is the case, then strong management of the central level fund for all mineral revenues is of prime importance for the successful functioning of the subnational transfer system.

Mandatory payment disclosures and other related corporate reporting measures are very valuable and can serve to strengthen Burkina Faso's subnational resource revenue sharing system. Project-level payment disclosures provided by companies help to ensure transparent revenue management by the central government since these disclosures allow local governments and citizens to see the payments that have been made to the central government and then check the local government distribution amounts accordingly. Without these publicly available disclosures to ensure transparency and accountability at the central level, the integrity of the entire subnational mineral revenue sharing system could come into question causing repercussions all the way through the revenue chain.

These disclosures help citizens and local governments triangulate important information about project payments that is not otherwise provided by the central government. In turn, this allows for improved accountability all the way through the system because local governments can verify their revenue distribution shares against the payments made to the central government per project. Citizens can then do the same to find out the local government's revenue allocation and then push for improved local revenue governance and enhanced service delivery accordingly.

[4] Morgandi, Matteo. "Extractive industries revenues distribution at the sub-national level: The experience in seven resource-rich countries", *Revenue Watch Institute*, 2008. Available from: http://www.resourcegovernance.org/sites/default/files/RWISubnatlRevSharing_2008_0.pdf

According to a 2016 study by the Natural Resource Governance Institute (NRGI) and United Nations Development Programme (UNDP), successful operationalization and enforcement of any revenue sharing system is based upon the availability of relevant information.[5] Detailed, project-specific payment information best informs local governments and other transfer recipients and allows beneficiaries to plan for dispersals based on actual, rather than hypothetical projections. In EITI-compliant countries like Burkina Faso, citizens benefit from certain project-level payment information for mining projects, but this information is usually only available on delay: the most recent report as of March 2019 only covers the year 2017, whereas mandatory payments-to-governments regulations typically require disclosures soon after the end of the calendar year.

As of late 2019, over $19 million USD had been transferred to the Mining Fund for Local Development, but some companies were refusing to make their required contributions. Payment disclosures by mining companies can help to identify the companies that may be failing to comply with this requirement. For example, we can use existing ESTMA payments to governments reporting for IAMGOLD's Essakane gold mining project to identify the $25,440,000 in royalties IAMGOLD paid to the central government in 2018 and use that to estimate the amount that should have accrued to the Mining Fund for Local Development. Based on the 5% royalty rate for gold in Burkina, this would suggest a total turnover of over $500,000,000 for the Essakane project, meaning that the IAMGOLD Essakane contribution to the Mining Fund for Local Development should be just over $51 million from turnover, while $5 million of the royalties it pays the central government would also be transferred to the Mining Fund for Local Development. The contributions received by the Mining Fund for Local Development from IAMGOLD can then be compared with this estimate, by both civil society and local governments.

It is paramount that local governments have the information needed to ensure that the jurisdiction is receiving the revenue it is entitled to in a timely manner. If local governments have the tools necessary to independently calculate what is owed to the Mining Fund for Local Development, it can help remedy misappropriation or mismanagement at the central level. In practice, this information could also bolster public confidence that companies have made the required payments to the Mining Fund for Local Development each year as citizens and civil society can compare royalty payments, Mining Fund for Local Development payments, and other information for each project.

Because of the paramount importance of transparency to proper functioning of the subnational resource revenue sharing system in Burkina Faso, we request that the SEC issue a rule that requires public disclosures from companies on a project-basis that is tied to the contract level. That is because, as described above, the mineral revenue sharing system in Burkina is derivation-based, so jurisdictions receive payments based on the amount of production derived from that locality on a project-by-project basis. It is therefore critical that citizens see the payments made for the project in their local area so that they can then advocate for an associated share of expenditure from subnational governments. While the current SEC proposal would ostensibly allow for reporting at

[5] Bauer et al. "Natural resource revenue sharing," Natural Resource Governance Institute & United Nations Development Programme, 2016, p.62. Available at: https://resourcegovernance.org/sites/default/files/documents/nrgi_undp_resource-sharing_web_0.pdf

the national and province level in Burkina, we fear the lack of a contract-specific project definition will create confusion and obfuscation in our attempts to use the data for tracking payments in our revenue sharing system. If the payment information is aggregated and does not provide at the level of the project level, citizens will not be able to ensure they are compensated according to the payments made for the project operations in their locality.

Thank you in advance for your consideration of our comments, particularly around the importance of this rule and the need for a strong contract-specific project definition in accordance with the global standard for payments-to-governments disclosures.

If more information is needed, please contact me by email at

Cordially,

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