

**LA COALITION NATIONALE DES OSC
SUR LA GOUVERNANCE DES RESSOURCES MINERALES
DU SENEGAL**

NATIONAL CORDINATOR

February 14, 2012

Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-5546

Re: Disclosure of Payments by Resource Extraction Issuers, File No. S7-42-10

Dear Secretary Murphy:

We appreciate the opportunity to comment on the proposed rules related to the implementation of Section 1504 of the Dodd-Frank Act. Please find enclosed a statement on behalf of the National Civil Society Coalition on Mineral Resource Governance in Senegal calling for a strong and robust rule. We are a coalition that includes 20 Senegalese non-governmental organization members based in the mining regions of Dakar, Thies, Matam and Kédougou.

We are in the process of translating this letter into English, and will submit the translated version as soon as possible.

Sincerely,

Ibrahima Sory Diallo



**NATIONAL CIVIL SOCIETY COALITION ON MINERAL RESOURCE
GOVERNANCE OF SENEGAL**

THE STEERING COMMITTEE

THE NATIONAL COORDINATOR

Subject: Section 1504 of the Dodd Frank Wall Street Reform Act, File No. S7-42-10

Dear Ms. Murphy:

Senegalese civil society organizations support the rigorous implementation of the implementing rules for the Dodd-Frank Wall Street Reform Act, File No. S7-42-10

The National Civil Society Coalition on Mineral Resource Governance of Senegal welcomed with joy the Dodd Frank Wall Street Reform Act which enshrines extractive industry transparency.

Indeed, disclosure of revenues paid by mining companies to our country would allow us to better monitor their use for development purposes generally and the fight against poverty in particular.

The availability of information at the project-level is crucial in this regard. A well-designed project definition for Section 1504 is crucial. We therefore ask the Commission of the American stock market (SEC) to implement stringent rules in compliance with this definition.

The rigorous implementation by the SEC of the section 1504 provision of the Act will be a major step towards greater transparency in the extractive industries. As you finalize the implementing rule for Section 1504, we hope you will pay strong attention to the following areas:

- **Dangerous exemption clauses:** The rule should apply to every company with no exemptions granted. While some companies have said that there may be secrecy laws in countries that would prevent them from disclosing this information, we are not aware of any such legislation in Senegal. If such an exemption were included in the final rule it would create an incentive for opaque regimes to tighten their secrecy laws to be exempt, thus fundamentally undermining the objective of the legislation.
- **Project-level reporting:** Disclosure at the project level is crucial for local communities and civil society to hold local authorities and companies to account for ensuring that the full local benefits of project development are delivered.

Project reporting is particularly important for Senegal and other developing countries where the cost ring-fencing regime is poor; and where the costs of non-performing projects are often transferred to good performing projects. The implications of this practice for Government revenues are quite high.

Also, it is important for project reporting to cover the debt-equity financing data on each project at any time, to highlight projects that are more and more financed by debts instead of equity. This will ensure that we check capital flight through interest allowance on debts and thereby protect the tax base of the country.

It is crucial that the data generated is comparable between projects, companies and countries to be of real use to local civil society and investors. We therefore suggest that 'project' should be defined as *the contract, licence, lease, concession or other legal agreement which gives rise to a company's tax and revenue liabilities in each country where it operates*. In order for project-level reporting to achieve the objective of providing an insight into whether a development project is delivering adequate benefit to a community, 'project' must be defined with reference to those agreements (such as leases/licenses and other concession-level arrangements) which establish the fiscal terms of the development.

- **Payment Disclosure Threshold:** Section 1504 requires disclosure of payments which are "not de minimis". We believe a sensible threshold might be for any payment, or set of payments, amounting to more than \$15,000. To set a high payment threshold would mean that important payment streams might not be disclosed and/or future contractual arrangements would be structured to avoid disclosure.
- **An audited and accessible report:** For the reports on payments to governments to be credible it is of utmost importance that the report is audited in accordance with international auditing standards and forms an integral part of the company's Annual Financial Statement.

The US law holds great potential for increased government accountability, but it does little to address corporate accountability. The extractive industry is a sector with global earnings of billions of dollars, while tax payments in many countries where extraction is taking place are marginal compared to the huge profits. We believe that civil society, parliament and revenue authorities should be able to monitor profits from the extractive industry in our country.

Finally, we would encourage the Commission to make the final rule as strong and fair as possible. The US played a leadership role when this law passed and now has a chance to set a high bar again considering the fact that the European Commission is now considering similar legislation. We hope that you will bear in mind our perspective on exemptions, project reporting, payment thresholds, and auditing when adopting the final rule.

With this hope, please, dear Madam, receive our best regards.

IbrahimaSoryDiallo

