



global witness

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February 24, 2012

By E-Mail:

Chairman Mary L. Schapiro
Commissioner Luis Aguilar
Commissioner Elisse Walter
Commissioner Troy Paredes
Commissioner Daniel Gallagher

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

**Re: Disclosure of Payments by Resource Extraction Issuers, File No. S7-42-1,
Dodd-Frank Act, Section 1504**

Dear Chairman and Commissioners,

I would like to draw your attention to the following items that further support the need for a strong interpretation of the final rules for Section 1504 of the Dodd-Frank Act.

1. **Global Witness' briefing on opaque payments made by BP to the Angolan State oil company, Sonangol.**
2. **Interviews with prominent African mining leaders, indicating positive support for a strong interpretation of Dodd-Frank 1504.**

1. BP's Opaque Payments to Angolan State oil company, Sonangol:

Please find attached a press statement and briefing document on this subject. This case illustrates the urgent need for a strong interpretation, without exemptions, of 1504. Oil companies, including Shell and BP, have tried to suggest that the way forward to achieving transparency of revenue streams is to focus on implementation of the Extractive Industry Transparency Initiative (EITI). Whilst we support that endeavour, it is also abundantly clear from Angola's unchanging position on EITI over the past decade, that the EITI is extremely unlikely to represent a positive solution for Angola any time soon. Needless to say, the same applies to many other countries.

Meanwhile, the fact that BP did not disclose payments in excess of US\$100 million to Sonangol, and further that it considers sums of this magnitude to be not material, is a major concern. This last point illustrates why determination of what constitutes materiality should not be left to the companies themselves. We would respectfully suggest that payments of US\$100 million plus are hugely material in a country like Angola, which despite the passage of nearly a decade since the end of its civil war, not to mention the influx of tens of billions of dollars of oil-derived revenue, has little to show for it. The country remains close to the bottom of the UN's Human Development Index.

We would urge you to consider the relevance of this point in the context of the new post-Gaddafi era. Here we refer to the potential consequences for companies being seen to have aided and abetted previous dictatorial regimes - through for example, being part of the effort to sustain existing levels of opacity, which could have serious negative consequence for their "licence to operate." Conversely, in this context, being seen to be fully in favour of transparency of payments to all governments is a fundamental interest for shareholders, who could end up paying the price for subsequent loss of concessions.

In the case of Angola, the companies should be ensuring the greatest possible transparency and this can only come from a strong interpretation of 1504 that allows no exemptions. This is because of the well-documented history of Sonangol, which has operated as an opaque unaccountable slush fund for Angola's kleptocratic elite. Despite BP's claim that these payments are legally required, investors need to know about these payments in order to assess the potential risks to BP in making such large payments to a highly opaque and corrupt government and for a social project whose infrastructure does not yet exist. Whilst such an arrangement might not raise eyebrows in a country like Norway, or indeed in the United States, the history of Sonangol and Angola, requires a different viewpoint.

2. Interviews with prominent African mining leaders, indicating positive support for a strong interpretation of Dodd-Frank 1504:

Oil companies have suggested that disclosure according to Dodd-Frank 1504 might breach laws in a number of countries, including Angola. They have used this to push for the inclusion of exemptions to the need to disclose in the final rules for 1504.

Reasons why exemptions are both unacceptable and that the arguments presented to justify them do not stack up, include:

- Exemptions would have the effect of gutting the intent of Dodd-Frank 1504 – there is clearly no space for exemptions included in the law as passed by the Congress. In addition, Instead of extending accountability and key data crucial for investors and citizens, exemptions would create a tyrant's charter, where dictators, such as former President Gaddafi of Libya, would hold a veto over US law.

- Extensive research by PWYP colleagues has failed to confirm the existence of any laws, regulations, or contracts that would prohibit disclosure under section 1504. This includes countries suggested by the oil industry to have such laws: Angola, Cameroon, China and Qatar).¹

Further to these points, we have included a link to a video that has interviews with prominent African mining ministers and mining company executives who state their support for a strong interpretation of Dodd-Frank 1504. The link is:

<http://www.youtube.com/watch?v=TUzI--IzLmo>

Of particular note in the context of the suggestion that Angola might prohibit disclosure is the comment of H.E. Mr Joaquim Duarte da Costa David - currently the Minister of Geology, Mines and Industry for Angola. He has previously served as head of the Angolan State oil company, Sonangol. In this interview, far from suggesting likely prohibitions in Angola, Mr David appears to endorse a strong interpretation of Dodd-Frank 1504.

The attached transcript provides the names and positions of each of the interviewees, together with their comments.

We hope you find these comments useful in your deliberations and we look forward to the issuance of a strong interpretation of 1504 in the final rules, with no exemptions.

Sincerely,



Simon Taylor
Founding Director
Global Witness

Attachments:

- Global Witness Press Statement on February 21st, 2012
- BP Angola oil payments briefing document
- Transcript of video with interviews of prominent African mining leaders

¹ See Publish What You Pay USA, Letter to the Securities and Exchange Commission, re: Disclosure of payments by resource extraction issuers, File No. S7-42-10, 20.12.11, <http://www.sec.gov/comments/s7-42-10/s74210-118.pdf>



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Global Witness Press statement:

BP makes opaque payments for Angola oil block as petro-lobby seeks weak transparency rules

21st February 2012

As oil industry lobbyists attempt to water down watershed transparency legislation in the United States and the European Union, Global Witness shows that BP has agreed to make multi-million dollar payments into obscure “social projects” controlled by the highly opaque state oil company of Angola as part of a deal to win oil exploration rights. BP is making these payments despite well-documented concerns of corruption in the oil rich but poor African country.

The revelation emerges from U.S. corporate filings by one of BP’s partner companies, Cobalt International Energy. It shows that much more transparency is needed in the management of oil revenues in countries like Angola, where corruption is a serious risk. But U.S. and EU rules that could help to create such transparency are under pressure from the oil industry, including lobby groups of which BP is a supporter.

Angola has long had a legal requirement for oil companies to make upfront revenue payments in return for oil licences, partly for social investments. But Sonangol did not publish any information on the spending of social contributions from oil companies in its 2010 accounts.

“Let’s not mince words about what’s happening here,” said Gavin Hayman, Campaigns Director of Global Witness. *“BP is planning to pay large sums of money to a state oil company with a long history of opacity, which could be spent with little public oversight in one of the poorest and most corrupt countries in the world. And at the same time, BP and other oil companies are lobbying to water down laws in the U.S and Europe which are actually meant to improve transparency for investors and citizens in countries like Angola.”*

Global Witness is putting forward a series of recommendations:

- BP and other international oil companies should stop trying to water down transparency laws in their home jurisdictions, for example by ceasing to argue for exemptions from reporting for particular countries (such as Angola).
- US and EU transparency laws should ensure that companies disclose their payments for each contract or licence that they sign in countries like Angola.

- Oil companies should insist that any payments they make in Angola should be promptly transferred to the national treasury and fully disclosed in audited government accounts.
- Angola's government should commission and publish a full independent audit report of all Sonangol's spending and business activities, including the \$35 billion discrepancy in the national accounts which was identified by the IMF. This report should identify any corruption risks and propose measures to deal with them.

For further details, contact: Diarmid O'Sullivan at dosullivan@globalwitness.org or + 44 207 492 5863 or Judith Poultney at jpoultney@globalwitness.org +44 207 492 5849

African mining leaders: Views on Dodd Frank

February 2012 Investing in African Mining Indaba

In 2010, the US Congress passed the Dodd Frank Act. Section 1504 of the Act will require all oil, gas and mining companies listed on US Stock Exchanges to report payments to foreign governments for each extractive project they operate.

The US Securities and Exchange Commission (SEC) are due to release the final rules soon. A similar law is now being considered in Europe.

African mining leaders were asked at the Indaba Mining Conference in Cape Town, South Africa, if they supported the Dodd Frank Act and the proposed European law.

This is what they said:

Dr Mamphela Ramphele, Non-Executive Chairman, Gold Fields, South Africa

“I support every move to strengthen transparency in the resources industry. Take a country like Nigeria it could be one of the wealthiest countries if it was half as transparent as Norway is for example, with its huge oil reserves, Nigeria remains impoverished particularly those communities that are marginal, remain impoverished because of this lack of transparency”

Mohamed Lamine Fofana, Minister of Mines and Geology of the Republic of Guinea

“The most important thing is that my population that the Guinean population must know what the mining sector is contributing to their welfare. We have to be transparent about that. And we must know how the government is actualising this money for what? We are accountable for that. This is the most important aspect for me”.

H.E. Mr. Joaquim Duarte da Costa David, Minister of Geology, Mines and Industry, Angola

“I agree with the new act and I think it will help everybody, companies, the shareholders, countries, the people, and provide the new rules and the incentive for proper management from the administrators.”

Musa Mohammed Sada, Minister of Mines and Steel Development, Nigeria

“Everything has to be open up for people to see. We have serious challenges of corruptions and issues of the general public being short changed, issues of people living in areas where resources are extracted and revenues are earned, but they are living below the poverty line. These are some of the concerns that we have that is why we have not conceded to even any little attempt, no matter how small, not to say what is happening”.

André Wilkins, Chief Executive Officer, African Rainbow minerals, South Africa

“We want to see foreign direct investment to Africa improving all the time. To enable foreigners to invest in Africa, they would need to provide more information more transparency.”

Warren Beach, Webber Wentzel Law Firm, South Africa

“My message to the stock exchange, to the main board, or not main board, would be that we do need a compulsory disclosure and transparency system and that all the listing requirements should as a minimum contain a disclosure and transparency rule and provision.”

Dr Mamphela Ramphele, Non-Executive Chairman, Gold Fields, South Africa

“I think it should be compulsory because look at the cross to Nigeria of Shell’s operations where the environment has been devastated, people have been left poor after years and years of oil production. I think that the SEC [Securities and Exchange Commission] should not allow itself to be lobbied by those vested interests. Today, unlike even a decade ago, there are more and more destinations of newly discovered oil and if we start in those areas, take Ghana for example, which has recently discovered oil off its shores, if that oil is mined within the context of these new tighter regulations, there will be higher values for the Ghanaians, higher value for the global economy and a cleaner environment for all of us. So I firmly believe that we should not compromise because the watering down of regulation, look what it has done to the financial services sector.”

Mohamed Lamine Fofana, Minister of Mines and Geology of the Republic of Guinea

“The amelioration of the condition of your population...the only way is to fight against corruption and the most effective way to fight corruption is to be transparent at all level: mining company level, government level and all the process.”



global witness

21st February 2011

BP makes opaque payments for Angola oil block as petro-lobby seeks weak transparency rules

As oil industry lobbyists attempt to water down watershed transparency legislation in the United States and the European Union, anti-corruption campaigners Global Witness show that BP has agreed to make multi-million dollar payments into obscure “social projects” controlled by the highly opaque state oil company of Angola as part of a deal to win oil exploration rights. BP is making these payments despite well-documented concerns of corruption in the oil rich but poor African country.

The revelation emerges from U.S. corporate filings by one of BP’s partner companies, Cobalt International Energy. It shows that much more transparency is needed in the management of oil revenues in countries like Angola, where corruption is a serious risk. But U.S. and EU rules that could help to create such transparency are under pressure from the oil industry, including lobby groups of which BP is a supporter.

Angola has long had a legal requirement for oil companies to make upfront revenue payments in return for oil licences, partly for social investments. Sonangol did not publish any information on the spending of social contributions from oil companies in its 2010 accounts.

“Let’s not mince words about what’s happening here,” said Gavin Hayman, Campaigns Director of Global Witness. *“BP is planning to pay large sums of money to a state oil company with a long history of opacity, which could be spent with little public oversight in one of the poorest and most corrupt countries in the world. And at the same time, BP and other oil companies are lobbying to water down laws in the U.S and Europe which are actually meant to improve transparency for investors and citizens in countries like Angola.”*

In January 2011, BP and other foreign oil companies took part in bidding for 11 deep water oil exploration blocks in Angola. Sonangol, which controls the allocation of oil and gas rights, awarded shares in four of these blocks to BP.¹ A corporate filing by Cobalt, a small US oil firm, reveals that Cobalt, BP and an obscure joint venture between Sonangol and private Hong Kong investors called China Sonangol agreed in December 2011 to pay US\$550 million over four years for one of these licences, Block 20.²

Both of BP’s partners in this block have been the subject of controversy.³ Chaired until September 2011 by Manuel Vicente, the former CEO of Sonangol, China Sonangol and its subsidiaries have pledged to invest billions of dollars around the world.⁴ This includes a 2009 multi- billion dollar resource-for-infrastructure deal with the then military government in Guinea, signed (by power of attorney), by Manuel Vicente.⁵ Global Witness has mapped China Sonangol’s activities across the world, and has serious concerns about the lack of transparency surrounding its operations.

In February 2011, Cobalt reported that it was the subject of inquiries by the US authorities into allegations of a connection between senior Angolan government officials and one of its Angolan partners. Cobalt has stated that it believes its activities have complied with all laws, including the Foreign Corrupt Practices Act and that it was cooperating with the enquiries.⁶

BP has not published any information yet about payments to Sonangol, but is reported to have a 20 per cent share in Block 20, implying that it would pay US\$110 million of the total.⁷ These payments are not tax payments to the Angolan treasury but represent “certain contributions for social projects such as the Sonangol Research and Technology Center”, according to Cobalt.⁸

Global Witness wrote to BP and Cobalt and asked them to explain these payments. BP responded that: “BP is making these contributions to Sonangol because it is required to under Angolan Law.” In

response to our concerns over the lack of information about the payments, BP stated that “companies have different disclosure requirements based on their size and the corresponding difference in materiality.” In other words, these payments were not reported by BP as the company did not regard them to be of enough significance. In a well-documented corrupt environment like Angola, BP’s view of materiality is interesting. Whilst \$110 million may not seem material to a company that makes billions of dollars of profit each year, Angola’s population (who continue to live in poverty) might have a different view.

We did not receive a response from Cobalt.

Although such payments are required by contract, as pointed out by BP, they are deeply concerning because:

1. Despite its oil wealth, Angola is a desperately poor country where more than two-thirds of citizens live on less than US\$1.70 a day.⁹ The country is also regarded as one of the most corrupt in the world: according to the U.S. government, top officials commonly do private business with their own ministries and prosecutions for corruption are rare because of a “culture of impunity”.¹⁰
2. Against this background of serious corruption, it is reasonable to be concerned that any large flows of funds to state agencies in Angola which are not subject to proper accounting and public scrutiny could be at risk of misappropriation.
3. There is a worrying lack of detail about where exactly the “contributions” from BP and its partners will end up, all the more so since the “Sonangol Research and Technology Centre”, does not yet appear to exist. The bulk of Sonangol’s earnings from oil, including bonuses paid by foreign oil companies, are supposed to be transferred to the Angolan finance ministry. But in practice, Sonangol retains control of much of this money.¹¹ A 2008 Norwegian study found that Sonangol manages “social bonus” payments by other companies, not the government.¹² Sonangol published no detailed information on the spending of social contributions from oil companies in its 2010 accounts.
4. Sonangol is a power unto itself within the Angolan state and spends vast sums of public money, for example on fuel subsidies and public infrastructure. The International Monetary Fund (IMF) found a US\$32 billion discrepancy in Angola’s public accounts from 2007 to 2010, most of it apparently due to Sonangol spending money without properly accounting for it. The government has pledged to investigate this gigantic gap in the public accounts and told the IMF it will phase out “quasi-fiscal” spending by the state oil company.¹³
5. Ten other oil blocks were awarded to BP or other oil companies by Sonangol at the same time as Block 20.¹⁴ If “contributions” were paid for all of them on a similar scale to those announced for Block 20, this could come to more than \$6 billion over four years. Whatever the figure, it is clear that there is a massive increase in funds going to Sonangol, just at a time when the state oil company’s spending and accounting practices are coming under increased international scrutiny.

Although BP is meeting a legal requirement in Angola by making such payments, it is reasonable to assume that the company is aware of the risks documented above, and elsewhere, that payments made to Sonangol may be misappropriated. When Global Witness put its concerns to BP, the company did not comment on the specifics but said that: “Whether Sonangol or the Angolan authorities should disclose how they are planning to use the money, is a sovereign matter.”

BP activities in Angola are happening against a backdrop of efforts by the company and other international oil companies, to water down Section 1504 of the Dodd-Frank Act which requires companies to publish what they pay to foreign governments for each project they operate around the world.¹⁵ Along with other oil companies and industry lobby groups, BP has called for the rules that implement the U.S. law to include reporting exemptions for certain countries whose laws are claimed

to forbid such disclosure.¹⁶ Other companies have argued that Angola is one such country, where oil companies should be exempted from reporting.¹⁷ The law approved by the U.S. Congress in July 2010 does not include any such exemptions.¹⁸

The American Petroleum Institute (API), an industry lobby group, has made a barely-veiled public threat to sue the U.S. government to obstruct the implementation of law. BP is a member of the API but says it was not a party to the legal threat.¹⁹ However, BP has so far declined to distance itself from the threat. Not only that, but it is understood to be one of several extractive companies which have hired a Brussels lobby firm to water down plans for a similar transparency law, currently being debated by the European Parliament and member states of the European Union.²⁰

BP denies that it is campaigning against revenue transparency regulations in the US and EU and says that it is seeking “to strengthen the regulations”. BP told Global Witness that “we have a strong interest in promoting accountability and good governance where we operate”.

Various other companies won shares in Angolan oil blocks at the same time as BP, including Statoil, Repsol, Total, Eni and ConocoPhillips.²¹ But BP’s willingness to make payments to obscure projects run by Sonangol is particularly striking because it was the company’s early efforts at transparency in Angola which helped give rise to a global movement that is leading to transparency regulations in the United States and European Union.

Global Witness started raising concerns in 1999 about the lack of transparency surrounding huge payments that BP and other oil companies were making to Sonangol to win oil licences in Angola.²² In 2001, BP pledged to publish its payments in Angola and received a letter from Sonangol warning that it would lose its licences in Angola if it did so.²³

BP’s experience made clear that oil companies might face obstacles to publishing their payments to governments voluntarily and on their own. So the Publish What You Pay civil society campaign was set up by Global Witness and other groups in 2002 in order to push for laws that would require all oil companies to publish this information in all countries.

“It’s beyond irony that BP in particular should be campaigning to weaken U.S. and E.U. transparency laws which are intended to make it easier for companies like BP to distance themselves from corruption in countries like Angola,” said Hayman. *“The international oil companies need to call off their lobbyists and fundamentally rethink this double standard whereby they claim to be in favour of transparency while working to undermine it.”*

Recommendations:

- BP and other international oil companies should stop trying to water down transparency laws in their home jurisdictions, for example by ceasing to argue for exemptions from reporting for particular countries (such as Angola).
- US and EU transparency laws should ensure that companies disclose their payments for each contract or licence that they sign in countries like Angola.
- Oil companies should insist that any payments they make in Angola should be promptly transferred to the national treasury and fully disclosed in audited government accounts.
- Angola’s government should commission and publish a full independent audit report of all Sonangol’s spending and business activities, including the \$35 billion discrepancy in the national accounts which was identified by the IMF. This report should identify any corruption risks and propose measures to deal with them.

For further details, contact: **Diarmid O’Sullivan** at dosullivan@globalwitness.org or + 44 207 492 5863 or **Judith Poultney** at jpoultney@globalwitness.org +44 207 492 5849

¹ See Bloomberg. BP, Statoil win Angolan blocks that may be similar to Brazil. 20 December 2011.

² U.S. Securities and Exchange Commission. 8-K filing by Cobalt International Energy dated 20 December 2011. Accessible at http://www.sec.gov/Archives/edgar/data/1471261/000110465911070230/a11-31892_18k.htm

³ Rigged? The Scramble for Africa's Oil, Gas and Minerals, Global Witness, January 2011

⁴ The Queensway Syndicate and African Trade, The Economist, 13th of August 2011

⁵ Republic of Guinea and CIF Singapore PTE Ltd and China Sonangol International (S) PTE Ltd: Shareholders agreement, 10th of October 2009

⁶ Cobalt International Energy, 8-K filing, March 2011

⁷ Bloomberg. BP, Statoil win Angolan blocks that may be similar to Brazil. See also BP. BP grows deepwater exploration portfolio with major win of Angolan acreage. 20 December 2011. In addition to a stake in Block 20, BP won stakes in Blocks 19, 24 and 25. BP also farmed into Block 26 by buying a stake from another foreign oil company. No mention of payments to Sonangol is made in this press release or in a statement by BP about its financial results for the fourth quarter of 2011.

⁸ Cobalt 8-K filing to the SEC. 20 December 2011.

⁹ See <http://www.usaid.gov/ao/about.html>

¹⁰ Transparency International's Corruption Perceptions Index ranks Angola 168th out of 182 countries. See <http://cpi.transparency.org/cpi2011/results/#CountryResults>. See also US State Department country human rights report on Angola for 2010.

¹¹ For a detailed account of the financial relationship between Sonangol and the Angolan government, see Global Witness/OSISA Angola. Oil revenues in Angola: much more information, not enough transparency. December 2011. Accessible at www.globalwitness.org

¹² A 2008 study by the Christian Michelsen Institute, a Norway-based think tank, found that social bonuses paid by oil companies are managed by Sonangol. See Amundsen and Wiig. Social Funds in Angola. Channels, Amounts and Impact. 2008. Accessible at <http://www.cmi.no/publications/publication/?2808=social-funds-in-angola>

¹³ International Monetary Fund. Statement at the conclusion of the IMF mission and SBA sixth review discussions with Angola. 24 January 2012. Accessible at <http://www.imf.org/external/np/sec/pr/2012/pr1221.htm>

¹⁴ See Bloomberg. BP, Statoil win Angolan blocks that may be similar to Brazil. 20 December 2011.

¹⁵ Letter from the American Petroleum Institute to the Securities and Exchange Commission. 19 January 2012. Accessible at <http://www.sec.gov/comments/s7-42-10/s74210-121.pdf>

¹⁶ Letter from BP to the Securities and Exchange Commission, 11 February 2011. Accessible at <http://www.sec.gov/comments/s7-42-10/s74210-21.pdf>

¹⁷ For example, see Letter from ExxonMobil to the Securities and Exchange Commission, 15 March 2011. Accessible at <http://www.sec.gov/comments/s7-42-10/s74210-73.pdf>

¹⁸ Given that Angola's oil contracts contain a "get-out" clause allowing for disclosure as required by regulatory agencies, it is interesting that some oil companies continue to suggest that Angolan law prohibits disclosure. Indeed, the construction of Angola's production sharing agreements provided the idea behind the launch of the Publish What You Pay (PWYP) campaign in the first place

¹⁹ Email communication between BP and a member of the Publish What You Pay civil society coalition. January 2012

²⁰ Global Witness conversations with sources in Brussels. The European Commission has proposed revisions to the European Transparency and Accounting Directives, modelled on Section 1504 of Dodd Frank, which are now being considered by the European Parliament and Council.

²¹ Bloomberg. BP, Statoil win Angolan blocks that may be similar to Brazil.

²² A Crude Awakening, Global Witness, 1999

²³ |All the Presidents' Men, Global Witness, 2002