



RELUFA

RESEAU DE LUTTE CONTRE LA FAIM AU CAMEROUN NETWORK FIGHTING HUNGER IN CAMEROON

No. 0043/RDA/J06/BAPP

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July 11, 2011

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.E. Washington, D.C. 20549-5546

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

Dear Secretary Murphy,

RELUFA would like to take the opportunity to submit a second round of comments to the Securities and Exchange Commission (SEC) regarding the proposed rule on Disclosure of Payments by Resource Extraction Issuers, Release No. 34-6354.

RELUFA is a national network of Cameroonian organizations working together to fight against the root causes of poverty and hunger. The Network has been monitoring extractive industries projects in Cameroon for nearly ten years and has consistently advocated for greater transparency in the oil, gas, and mining sectors.

RELUFA first submitted comments to the Commission on March 14, 2011¹ to respond to the American Petroleum Institute's (API) assertion that publishing oil payment information is prohibited under Cameroonian law.² The API believes the Commission should provide exceptions to the proposed rule on disclosure by resource extraction issuers operating in Cameroon (and in other countries). As noted in our comment letter, we believe Cameroon's oil laws, regulations and contracts allow for the disclosure of payment information as laid out in Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

On May 17, 2011, Martin J. ten Brink of the Royal Dutch Shell company submitted a letter which responded to our comments and characterized RELUFA's submission as an "attack" on the API. Shell's submission further claims that RELUFA's comments are "legally incorrect and potentially misleading."³

RELUFA stands by the comments made in our original submission. Shell has misinterpreted the law, as revenues paid to the government can be legally disclosed under the law.

¹ See Valery Nodem, RELUFA, letter to the SEC, March 14, 2011, available at <http://www.sec.gov/comments/s7-42-10/s74210-74.pdf>

² See Kyle Isakower, and Patrick T. Mulva, American Petroleum Institute, letter to the SEC, Jan. 28, 2011 available at <http://www.sec.gov/comments/s7-42-10/s74210-10.pdf>

³ See Martin J. ten Brink, Royal Dutch Shell plc, letter to SEC, May 17, 2011 available at <http://www.sec.gov/comments/s7-42-10/s74210-90.pdf>

The main disagreement between RELUFA and the API/Shell surrounds the confidentiality provisions of the Oil Code Application Decree of 2000, articles 105-110. Shell admits in its May 17 submission that "...Article 105 does not expressly state that payment information is confidential..." Nonetheless, Shell claims that payment information is still subject to confidentiality provisions because it could be classified as "other information," which is subject to confidentiality rules. RELUFA believes that this is an overly broad interpretation of the law and inconsistent with Cameroon's legal traditions.

RELUFA solicited the expertise of Samuel Nguiffo, Doctor of International Law, to provide a legal opinion on the matter, which is provided in the Appendix. Citing Cameroon's Social Communication Law of 1990 and Cameroon's Oil Code Application Decree, Dr. Nguiffo also believes that Shell has misinterpreted what types of information can be legally disclosed under Cameroonian law. Dr. Nguiffo notes that the 1995 Model Contract, which explicitly allows for stock exchange disclosure as an exception to confidentiality, was in effect when Shell signed its contract with the Government of Cameroon. This means that if Shell's license prohibits them from disclosure, then they and the government together specifically negotiated this arrangement. Please see the Appendix for more details.

Furthermore, history has shown that the Cameroonian Government does not share Shell's interpretation of the law. Shell argues, citing Article 108 of the Cameroon Oil Code Application Decree, that third parties (including the SEC) have the obligation to keep information confidential when disclosures are made.⁴ However, Kosmos Energy, another oil company operating in Cameroon, disclosed significant amounts of information to the SEC when it filed for an IPO earlier this year. The SEC subsequently disclosed this information to the public as part of the IPO process.⁵ Kosmos has not been sanctioned by the Cameroonian government for disclosing the information contained in its IPO filings. This is due to the fact that government and financial stock exchanges in particular, are generally not considered "third parties." Practice shows that RELUFA's interpretation of the law is correct.

Finally, Cameroon is an Extractive Industries Transparency Initiative (EITI) implementing country that is "close to compliant" and has shown its commitment to transparency. Shell is an EITI Supporting Company, and can therefore attest that the standards of EITI for implementing countries do not permit the prohibitions that are described in Shell's comment letter. The EITI Rules require that countries remove any obstacles to EITI implementation, such as confidentiality clauses in government and company contracts, as well other areas in the legal and regulatory framework.⁶ As RELUFA stated in its original comments to the Commission, "[I]f oil companies truly do have a contractual [or legal] obligation to keep revenue payments confidential, the Cameroonian government would likely grant exceptions for the purpose of disclosure to stock exchanges."

Thank you very much for the opportunity to provide our comments and perspectives.

Please do not hesitate to contact me if you need additional information.

With best regards,

Jaff Napoleon Bamenjo,
Associate Coordinator, RELUFA

⁴ See Ibid P.2: "Any disclosure referred to in this Section (Titre) to a third party by the State or the Title Holder shall only be made subject to the condition that the recipients undertake to treat the information received as confidential."

⁵ See EX-10.8 of Kosmos S-1/A filing of March 3, 2011. "Ndian River Production Sharing Contract Between the Republic of Cameroon and Kosmos Energy Cameroon HC" available at http://www.sec.gov/Archives/edgar/data/1509991/000104746911001716/a2201620zex-10_8.htm

⁶ See EITI Requirement 8 at P. 22, "Where legal, regulatory or other obstacles to EITI implementation exist, it is required that the government removes these." EITI Rules – 2011 Edition, available at http://eiti.org/files/EITI_Rules_2011.pdf.

APPENDIX

DOES CAMEROONIAN LAW PROHIBIT THE PUBLICATION OF OIL REVENUES?

Nothing in Cameroonian law prevents oil companies from publishing data on revenues they pay to the state derived from oil contracts signed with the government.

At least four arguments exist in favor of the publication of revenues.

1. The Publication of Information is the Guiding Principle in Cameroon

In Cameroon, the general tendency favors the publication of information coming from public administration. The Social Communication Law of December 19, 1990 states to this effect: “Except for legal dispositions to the contrary, access to administrative documents is free”⁷ This principal includes “all dossiers, reports, studies, minutes, statements, statistics, directives, instructions, circulars, notes...”⁸ The will of the government is thus to keep to a minimum the number of documents covered by confidentiality: documents can only be confidential if expressly designated so by a law or regulation.

Cameroon’s Oil Code Application Decree States in Article 105 “The Minister responsible for hydrocarbons preserves the confidentiality of all documents, reports, surveys, plans, data, specimens and other information provided by the Title Holder in pursuance of the Code, its implementing decrees and the Petroleum Contract.” Revenues/payments are not expressly designated as confidential items in the Oil Code Application Decree and therefore fall in the domain of publicly accessible information.

Cameroon’s will to be transparent in the specific framework of the extractive industries was reaffirmed in 2005 by its voluntary adhesion to the Extractive Industries Transparency Initiative.

2. Regulation: The Oil Code Application Decree

Section 17 of the Oil Code Application Decree (Decree N° 2000/465 of June 30th, 2000) lays out the framework for the confidentiality of information exchanged between parties according to an oil contract. It is stated that the Minister responsible for hydrocarbons preserves the confidentiality of “all documents, reports, surveys, plans, data, specimens and other information...” submitted by a company under the Oil Code. Article 105(2) states that the documents cited above are covered by a confidentiality obligation based upon an oil contract. Although the Decree does not directly indicate it, one can infer that the documents being referenced are technical documents—not revenues—since article 105(1) simply repeats the same documents that are referred to as technical data in prior sections (see articles 17, 22, 24, 27, 30(2), 32, 52, 53(1) of the Decree). The confidentiality requirement for technical data is very justifiable since the data are obtained thanks to exclusive financing by a company and given to the government (the owner of the resource). The data must not be transmitted to a third party without the authorization of the entity that financed its research, and remains the holder of the permit. This information could however be given to a third party after the expiration of operations since the commercial interest would have disappeared for the party that collected it.

⁷ My translation from French. The French version states: « Sauf dispositions législatives ou réglementaires contraires, l'accès aux documents administratifs est libre »

⁸ My translation from French. The French version states « tous dossiers, rapports, études, comptes-rendus, procès-verbaux, statistiques, directives, instructions, circulaires, notes, ... »

Revenues paid to the government do not seem to be covered by the articles laying down confidentiality in the Decree of 2000.

3. Model Contracts

Cameroon's Model Oil Contracts contain exceptions to confidentiality clauses, and authorize the publication of information—after simply informing the government—when information is required by a stock exchange (article 25.3.d of Model Production Sharing Contract of 2007 Between The Republic of Cameroon and The Holder).

The Model Contract of 1995, which was in force when Shell and the Government of Cameroon signed the contract (for the Dissoni Permit), contains a similar clause in article XII.1.e. This article allows for the publication of confidential information after consulting other parties: “to the extent disclosure pursuant to the rules or requirements of any stock exchange upon which the shares of the disclosing Party or its Affiliate Companies is listed and to the extent that any party shall disclose information in an annual or periodic report to stockholders, provided that any party making public disclosure under this provision shall use its best endeavors to consult the other parties regarding the terms thereof.”

Even if information related to financial transactions between a company and the government falls under confidentiality clauses in the Application Decree, the dispositions of Cameroon's Model Contracts confirm the government's commitment to transparency as it authorizes the publication of information at the request of a stock exchange with minimal formalities.

4. Practice

The practices of other companies indeed show that the publication of payments/revenues is not prohibited by the legislation in force in Cameroon.

Kosmos, an oil company which is subject to the same laws in Cameroon, published information required by the SEC without reprimand from the Cameroonian Government. Thus the company's actions were not considered a violation of the law.

Additionally, Exxon regularly publishes information on the royalties it pays to the Cameroonian Government on its website.⁹ This is also permitted under Cameroonian Law.

Conclusion:

Cameroon's Social Communication Law, Oil Code Application Decree, Model Contracts, and practice all indicate that the publication of revenues/payments made by oil companies to the Government of Cameroon is a perfectly legal act.

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Doctor of International Law

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⁹ Though its agreement with the Cameroonian Government is based on transit revenues from the Chad-Cameroon Pipeline and is not based upon the Model Oil Contract.