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File Number S7-42-10

We at the Human Rights Foundation of Monland (HURFOM) submit this comment out of concern that the final rules issued for Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act may be fatally weakened and implore the SEC to follow the plain meaning and intention of the U.S. Congress, and to issue the rules without delay. As a community-based organization from a resource producing community, we fear that further delay may allow companies to significantly weaken the final rules, which would undermine Section 1504's utility in protecting the rights of communities impacted by resource extraction projects, such as the communities we work with in southern Burma.

HURFOM is an ethnic Mon organization that works for the restoration of democracy, human rights, and genuine peace in Burma. Since our founding by students from the 1988 pro-democracy uprising, political activists, and community leaders, HURFOM's staff has monitored and reported on the ongoing commission of crimes against humanity by the Burmese military in ethnic Mon territory and areas throughout southern Burma, including the areas surrounding the Kanbauk to Myaing Kalay natural gas pipeline, which passes through Tenasserim Division, Mon and Karen States in southern Burma.¹ This information is shared with campaign organizations, international media, and governments working to bring democratic change to Burma. Due to our first hand experience in documenting issues of human rights abuses that are directly caused by the presence of foreign investment from international resource extraction companies in Burma, HURFOM is in a key position to comment on the value of issuing strong, clear rules implementing Section 1504.

1. No exemptions for host country laws. To allow exemptions for payments made by resource extraction issuers to governments in countries where such disclosures are prohibited or where contracts forbid disclosure would completely undermine any current and future disclosure legislation. If the SEC were to allow such exemptions, it is highly likely that every government who is afraid to be held accountable to its citizens - the very countries where transparency is most important - would quickly enact host country laws prohibiting disclosure of payments made by resource extraction issuers to its government. In fact, |

¹ See *Human Rights Foundation of Monland, File Number S7-42-10, Dodd-Frank Wall Street Reform and Consumer Protection Act Section 1504 Comment*, at 1-2 (Feb. 28, 2011), available at <http://www.sec.gov/comments/df-title-xv/specialized-disclosures/specializeddisclosures-121.pdf>; *Human Rights Foundation of Monland, File Number S7-42-10, Dodd-Frank Wall Street Reform and Consumer Protection Act Section 1504 Comment*, at 1-2 (Dec. 3, 2010), available at <http://www.sec.gov/comments/df-title-xv/specialized-disclosures/specializeddisclosures-96.pdf>; Human Rights Foundation of Monland, *Laid Waste: Human Rights along the Kanbauk to Myaing Kalay gas pipeline* (May 19, 2009), available at <http://rehmonnya.org/archives/793>.

many petroleum contracts already allow such disclosure if mandated by exchanges,² and allowing an exemption for what is clearly allowed by many contracts makes little sense and frustrates the clear intent of Section 1504.

Burma is ranked 176 out of 178 on Transparency International's 2010 Corruption Perceptions Index,³ and a prime example of a country likely to enact such host country laws prohibiting disclosures of payments made by resource extraction issuers to its government. In addition, the companies have only identified that payments made to the governments' of Qatar, Cameroon, Angola and China may be prohibited⁴, and we have good reason to question some of these claims.⁵ Furthermore, it is critical that the final rules exclude exemptions for host country laws, because it is also unlikely that corrupt countries will voluntarily join the Extractive Industries Transparency Initiative (EITI). For example, sources engaged with Burma's Energy Minister Lun Thi confirmed that he is unfamiliar with EITI and is unlikely to advance it.⁶

- 2. "Project" must be defined at the individual project level, not the country level.** It is vital for resource extraction companies to disclose payments to governments at the individual project level. This was clearly the will of Congress Section (1504(q)(2)(A)(i)), and will most benefit communities affected by resource extraction projects, such as the communities HURFOM works with in areas surrounding the Kanbawk to Myaing Kalay natural gas pipeline in southern Burma. The disclosure of individual project level payments is needed for local communities and opposition politicians to expose the financial benefits governments receive from individual resource extraction projects. Communities can then advocate that these project level payments be used as a basis for demands for programs and investments benefitting the local communities where resource extraction projects occur. Similarly, communities who have suffered human rights violations due to the presence of resource extraction projects can use these payments as base values for potential compensation by the government to victims of those human rights abuses.

The sorts of human rights violations committed along the Kanbawk to Myaing Kalay natural gas pipeline have included confiscation of over 12,000 acres of land with nominal or no compensation; 50% taxes levied on monthly income to support local Burmese Army

² Peter Rosenblum and Susan Maples, *Contracts Confidential: Ending Secret Deals in the Extractive Industries, Appendix B* (2009), available at <http://www.revenuewatch.org/files/RWI-Contracts-Confidential.pdf>.

³ Transparency International, *Corruption Perceptions Index 2010*, at 3 (Oct. 2010), available at http://www.transparency.org/policy_research/surveys_indices/cpi/2010/results (Burma is tied with Afghanistan for 176, and followed only by Somalia).

⁴ See *Royal Dutch Shell plc, File Number S7-42-10, Dodd-Frank Wall Street Reform and Consumer Protection Act Section 1504 Comment* (May 17, 2011) (Cameroon, China, Qatar), available at <http://sec.gov/comments/s7-42-10/s74210-90.pdf>; *ExxonMobil, File Number S7-42-10, Dodd-Frank Wall Street Reform and Consumer Protection Act Section 1504 Comment* (Mar. 15, 2011) (Cameroon, China, Qatar, Angola), available at <http://sec.gov/comments/s7-42-10/s74210-73.pdf>.

⁵ See *Network Fighting Hunger in Cameroon, File Number s7-42-10, Dodd-Frank Wall Street Reform and Consumer Protection Act Section 1504 Comment* (July. 11, 2011) (Cameroon), available at <http://www.sec.gov/comments/s7-42-10/s74210-96.pdf>.

⁶ EarthRights International, *The Burma-China Pipelines: Human Rights Violations, Applicable Law, and Revenue Secrecy*, at 21 (Mar. 2011), available at <http://www.earthrights.org/publication/burma-china-pipelines> (citing EarthRights International communication with confidential source from an international financial institution, 2011).

battalions; forced labor for thousands of area residents ages 12-70 for construction, repair, and maintenance projects on the natural gas pipeline which sees frequent ruptures due to poor quality construction; and arbitrary arrest, torture, rape, and summary execution by soldiers from surrounding pipeline security battalions.⁷ Project level disclosures will be a tool to advocate for increased local investment to the benefit of people currently suffering the impacts of these projects.

In addition, a number of the leading extraction companies, including Exxon and the Improved Petroleum Recovery Group of Companies already disclose project level payments for projects in Chad/Cameroon and Egypt, through consortium and individual level disclosures respectively.⁸ Thus, processes exist for such accounting systems and publicly listed multinational companies clearly have the financial capacity, expertise, and ability to install any new systems for project level reporting.

3. **Effective reporting date.** It should not take companies a whole year to comply with the Section 1504 disclosure requirements, which should only involve small adjustments to accounting and reporting systems. Therefore, we recommend that company disclosures begin in 2012 without exception.
4. **Negative impacts of further delaying the issuance of final rules.**
 - a. **Delay in development of similar transparency rules in other countries.** HURFOM views Section 1504 as ground breaking and unique legislation to support communities impacted by resource extraction projects. Due to the importance of Section 1504 it is likely that other countries who are preparing similar transparency legislation will not implement their own legislation until it can be modeled after Section 1504. In addition, Section 1504 will create an international model for resource extraction transparency legislation. Therefore delay that could allow companies to push for exemptions or definitions to weaken Section 1504 should be avoided.
 - b. **Non-disclosure of important one time payments in 2012.** If the SEC had issued final rules on the original April 15, 2011 deadline, resource extraction issuers' 2012 annual report filings (filed in 2013) could have easily been required to include payments for 2012. Payments made to the Burmese government in 2012 are significant to communities affected by resource extraction projects, even if only one-time payments, so we suggest that the SEC require companies to disclose payments made in 2012. Knowledge of these payments will allow affected communities to develop an accurate picture of the value of resources extracted from their region, and therefore increase pressure on the Burmese government for compensation and support such as increased spending on healthcare and education.

⁷ See Human Rights Foundation of Monland, *Laid Waste: Human Rights along the Kanbauk to Myaing Kalay gas pipeline* (May 19, 2009), available at <http://rehmonnya.org/archives/793>.

⁸ See Esso Exploration and Production Chad Inc., *Chad/Cameroon Development Project, Project Update, No. 28, Mid-Year Report 2010*, available at http://www.esso.com/Chad-English/PA/Files/28_allchapters.pdf; *Improved Petroleum Recovery Group of Companies, Development-Government Revenues IPR Transoil Corporation Summary of Taxes to the Egyptian Government for Calendar Year 2010*, available at http://www.iprgoc.com/images/stories/news/Summary_of_Profit_Oil_Taxes_to_the_Egyptian_Govt_2010_fin_al.pdf.

Currently, Burma spends less on healthcare and education than any other country in the region,⁹ accounting for only 1.31% and 4.57% of the budget,¹⁰ while the Burmese government, military generals and their friends receive billions of U.S. dollars from sales related to the extraction of natural resources like natural gas.

- c. Opportunity to hold Burmese government responsible for resource extraction using 2012 government budgeting session and Section 1504 payment disclosure.** In November 2010, Burma held its first elections in 20 years. Although the election involved widespread voting fraud and is widely viewed as neither free nor fair, a few opposition and ethnic minority parliamentarians were elected. These representatives have demonstrated a willingness to pressure the Burmese government about previously taboo topics.¹¹ In 2012 the new government will have the opportunity to create its first budget (the military wrote the 2011 budget before the newly elected government was convened). With knowledge that Section 1504 will lead to the disclosure of payments to the government for 2012, opposition figures, ethnic minority leaders, and communities affected by resource extraction projects could have the opportunity to preemptively pressure the Burmese government to responsibly use payments from resource extraction projects during this 2012 budgeting period, to better the lives of the citizens of Burma, and even to push for economic reform.¹²

- 5. Shareholder liability for misleading statements should be available under Section 1504.** Removing liability to shareholders for misleading statements included in Section 1504 disclosures would remove a key tool available to communities impacted by resource extraction project to actively voice concerns directly to shareholders who may rely on disclose payment information in their investment decisions. The ability to inform shareholders with information about company involvement in resource extraction projects that have negative human rights impacts on local communities in Burma is a proven means to draw attention to these abuses and to pressure a company to change its policies. The same holds true on the issue of payments. Shareholders cannot responsibly engage with or invest in companies without this extra guarantee that Section 1504 disclosures accurately represent the payments made to the Burmese government, and they should have standing to file claims against a company that violates Section 1504.

Please also see HURFOM's earlier Comments for background on human rights abuses related to the Kanbawk to Myaing Kalay natural gas pipeline in southern Burma, and suggestions to

⁹ Progress Report of the Special Rapporteur on the situation of human rights in Myanmar, Tomás Ojea Quintana, ¶98, U.N. Doc. A/HRC/16/59, Human Rights Council 16th Sess. (Mar. 7, 2011), available at <http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A-HRC-16-59.pdf> ("Myanmar is now the poorest country in the region in terms of social and economic development").

¹⁰ Htet Aung, *Military Security Trumps Human Security in Burma's Budget*, The Irrawaddy, Mar. 9, 2011, available at http://www.irrawaddy.org/article.php?art_id=20901 (citing Myanmar State Gazette, *The Expenditure of the Union Ministries and Union Level Organizations* (Mar. 8, 2011) (listing expenditures for Burma's 2011-2012 fiscal year budget)).

¹¹ Richard Horsey, "The Initial Functioning of the Myanmar Legislatures." SSRC Conflict Prevention and Peace Forum, 17 May 2011, p 3.

¹² Sean Turnell, (speaker). (May 2011). *2011 Myanmar/Burma Update* [podcast]. Australian National University.

strengthen the definitions of payment, control, commercial development, and transportation; include shareholder liability for misleading statements; require that Section 1504 disclosures are available in a simple universal format; and possibly extend Section 1054 to holders of Level I American Depositary Receipts.¹³

HURFOM hopes that the SEC will issue the new laws for Section 1504 with all due haste and with fidelity to the aim of releasing rules that maximize the transparency, specificity, and range of payments by all resource extraction issuers to the Burmese government as well as the companies, partnerships, and subsidiaries connected to the Burmese government. We appreciate your time in considering our concerns and we look forward to the publication of your final rules as soon as possible.

Sincerely,

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¹³ See *Human Rights Foundation of Monland, File Number S7-42-10, Dodd-Frank Wall Street Reform and Consumer Protection Act Section 1504 Comment* (Dec. 3, 2010), available at <http://www.sec.gov/comments/df-title-xv/specialized-disclosures/specializeddisclosures-96.pdf>; *Human Rights Foundation of Monland, File Number S7-42-10, Dodd-Frank Wall Street Reform and Consumer Protection Act Section 1504 Comment* (Feb. 28, 2011), available at <http://www.sec.gov/comments/df-title-xv/specialized-disclosures/specializeddisclosures-121.pdf>.

Cc:

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