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"Transparency of Extractive Industries: High Stakes for Resource-Rich Countries, Citizens and International Business"

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Chairman Frank, Ranking Member Bachus and Members of the Committee: Thank you for this opportunity to testify on the issue of transparency in the oil, gas and mining industries in resource-rich countries. This is an issue that directly affects U.S. interests through energy security, as well as having a strong impact on economic development in poverty-stricken nations. I speak today representing Oxfam America, an international development and humanitarian relief organization that has been addressing the impact of the extractive industries in poor communities around the world for the last 10 years. Oxfam America is also a member of the global Publish What You Pay[1] coalition of over 300 organizations which, since 2002, has sought to highlight many of the problems Prof. Karl has mentioned and to bring about policy changes to end the secrecy that surrounds the extractive industries. While some progress has been achieved, much more remains to be done, including the development of mandatory disclosure rules for the extractive industries. Oxfam America believes Congress could have a significant role to play in this regard.

If you care about the poor, you should care about extractive industry transparency. Revenues from extractive industries are a significant source of government income for more than 50 developing countries, including many where Oxfam works.[2] These countries – such as Nigeria, Angola, Chad, Mali, Ghana, Peru, Ecuador and Azerbaijan – are home to roughly to approximately 3.5 billion people, 1.5 billion of whom live on less than $2 a day.

I have conducted research in many of these countries and have seen the stark contrasts between the rich minority and the impoverished majority. In southern Chad, for example, where Exxon and partners have invested over $4 billion in an oil export project, villages surrounding the project lack electricity, even though high-voltage lines feeding the oil installations go through their farmlands. Many villagers in southern Chad have lost land to the oil project and, at the same time, have seen little in the way of new social spending by the government using oil revenues.[3]

[1] www.pwypusa.org

[2] The estimate of the number of resource-rich developing countries comes from the IMF's *Guide on Resource Revenue Transparency*, 2007, Appendix 1. Countries are considered resource rich if there is: (1) an average share of hydrocarbon and/or mineral fiscal revenues in total fiscal revenue of at least 25 percent during the period 2000–05 or (2) an average share of hydrocarbon and/or mineral export proceeds in total export proceeds of at least 25 percent during the period 2000-05.

[3] For more on the Chad-Cameroon project see, Ian Gary and Nikki Reisch, *Chad's Oil: Miracle or Mirage?*, 2005, Catholic Relief Services and Bank Information Center; The Chad-Cameroon Oil & Pipeline

When properly managed and developed with the participation of affected communities, these extractive industry revenues should serve as a basis for poverty reduction and economic growth. For example, the current oil boom in Africa's Gulf of Guinea is likely to generate over $350 billion in government revenues from 2002-2019.[4] This pales in comparison to U.S. development aid to the region of $4.2 billion in 2006.[5] Too often, though, these revenues are squandered, fuelling corruption, conflict and social divisiveness. Nigeria has received close to $500 billion in oil revenues in more than 50 years of production, but the average Nigeria still lives on less than $1 a day.[6]

These negative consequences of the "resource curse", if left unaddressed over time, affect the stability of supply and prices for the U.S. and other importing nations. For example, by 2005 the U.S. was receiving more than 18% of its oil imports from sub-Saharan Africa.[7] Instability in Nigeria or other exporters sends price shocks through the oil market and affects U.S. consumers, companies and the economy as whole.

The Importance of Extractive Industries Transparency

The best way to ensure that natural resources strengthen the economic and political compact between state and citizen is to ensure transparency. Oxfam America believes transparency is a key ingredient for systems of accountability in resource-rich states and that, without it, incipient democratic institutions are undermined. In many countries, basic facts about payments to the government and contracts between the government and foreign investors are shielded from legislators and the public. This is despite the fact that these non-renewable resources are sold by the government on behalf of the population. For example, I was recently in Cambodia where new oil discoveries have raised hopes that oil wealth will lift the country out of extreme poverty. However, there is no public information about contracts the government has signed with Chevron and other investors, nor is there any information about signature bonuses or other payments the government may have already received.

If citizens know how much their government is earning from oil, gas and mining companies, then they can demand more investment in education, health care and other social services. Of course, transparency alone will not solve all the problems of resource-rich states. Respect for human rights and democratic processes, an open and participatory budget process at the national and local levels, independent media and a vibrant civil society are all vital aspects of systems of government oversight. But easily accessible and comprehensible information on revenues and contracts is a necessary – and achievable – first step in developing systems of proper management for oil and mineral wealth.

Project: A Project Non-Completion Report, Environmental Defense, ATPDH, CED, April 2007; and the project web page at the Bank Information Center, http://www.bicusa.org/en/Project.26.aspx

[4] PFC Energy West Africa Petroleum Sector Oil Value Forecast and Distribution, December, 2003.

[5] "Development aid from OECD countries fell 5.1% in 2006" , OECD, March 2007 http://www.oecd.org/document/17/0,2340,en_2649_201185_38341265_1_1_1_1,00.html

[6] Calvert, Scott. "In Nigeria, Rich Promise Unfulfilled", *Baltimore Sun*, December 17, 2006.

[7] U.S. Energy Information Administration CITE

Even where some information is being disclosed, it is often too complex, practically inaccessible because of language and other barriers, or insufficiently detailed to be useful to the public at large. As Oxfam America's recent report on Mali's gold revenues has shown, multiple and complex revenue streams are difficult for citizens and governments themselves to monitor. Over 25 different types of taxes, royalties and other payments are collected from mining companies.[8]

In addition to the disclosure of revenue payments from companies to governments, and the disclosure of government receipts, extractive industry contracts need to be revealed to legislators and the public. Contracts contain the terms for many company payments (royaties, production sharing agreements, etc.) and thus need to be disclosed in order to allow independent verification that what has been paid is what is owed. It is standard practice that contracts in the extractive industries are shielded by confidentiality clauses. The IMF has stated that, after signing, contracts should be disclosed and that no competitive advantage is lost by companies or governments that disclose contracts.[9] The former head of the World Bank Groups Oil, Gas, Mining and Chemicals Department, Rashad Kaldany, has said that, "Countries have no justification for secrecy… All of these agreements will be made public in [the] future."[10] In resource-rich countries where contracts are kept hidden, in essence the country has a tax code which is largely secret. In addition to affecting fiscal terms and revenue generation, contracts should be disclosed because they often shape other policies such as environmental regulation, corporate social responsibility and other aspects.

The U.S. Government has come out in favor of revenue and contract disclosure in the context of World Bank financing, and is also participating in the Extractive Industries Transparency Initiative.[11] Furthermore, the U.S. Congress has stated its position in favor

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[8] *Hidden Treasure? In Search of Mali's Gold-Mining Revenues*, Oxfam America, February 2007.

[9] IMF, *Guide to Resource Revenue Transparency*, 2007, pg. 14. "In practice, however, the contract terms are likely to be widely known within the industry soon after signing. Little by way of strategic advantage thus seems to be lost through publication of contracts. Indeed, it could be argued that the obligation to publish contracts should in fact strengthen the hand of the government in negotiations, because the obligation to disclose the outcome to the legislature and the general public increases pressure on the government to negotiate a good deal."

[10] "The Curse of Oil", *The Economist*, December 20, 2005.

[11] U.S. Treasury / Executive Director Position – Board Statement at Final Discussion of Extractive Industries Review World Bank Management Response, August 3, 2004. "Transparency and Disclosure – We agree with Management's support for transparency of revenues from EI operations to governments and for disclosing EI payments to governments. However, we believe Management should set a higher standard that encompasses – but goes beyond – the Extractive Industries Transparency Initiative (EITI). This standard should include a commitment by recipient governments to budget transparency (revenues and expenditures) necessary to assess credibly whether EI-related public revenues are allocated for purposes associated with the public good. Assistance should be predicated upon the government of the country having in place, or credibly committing to establish, a functioning system for accounting for revenues and expenditures in connection with the extraction and export of natural resources originating from public lands. The government should also have in place, or credibly commit to establish, a functioning system for the independent auditing of such accounts and the widespread public dissemination of the audited results.

of revenue disclosure through provisions inserted in the FY06 and FY07 Foreign Operations Appropriations Bill regarding the U.S. position at the World Bank.[12] Congress should build on this foundation to position the U.S. as a leader in the global movement for extractive industry transparency.

The Role of the World Bank, Regional Development Banks and Export Credit Agencies

I would like to turn now to examine briefly the role of the International Financial Institutions, something I know is of particular relevance to this Committee.

For too long, the IFIs have been willing enablers of the system of secrecy. The World Bank, and other regional development banks and export credit agencies, have been instrumental in facilitating investment and directly financing extractive industries projects in the developing world and they have indicated they plan to *increase* funding in the sector. In fact, International Finance Corporation financing of extractive industries project grew 60% from FY 2005 to FY 2006 and the IFC has stated its intention to double investment in African mining projects in 2007.[13] Regional Development Banks have also become significant supporters of extractive industries projects, with the European Investment Bank financing over $1.1 billion in projects in 2006, surpassing the World Bank Group in financing of the sector. The Inter-American Development Bank has funded such controversial projects as the Camisea gas project in Peru and plans to fund PetroEcuador, the Ecuadorian state oil company.[14] Earlier this month, the African Development Bank approved $100 million for a copper-cobalt mine in the Democratic Republic of Congo – this in the midst of a review of mining contracts in the country.[15]

While these investments have been profitable for the corporate sponsors and the Multilateral Development Banks, too often these projects have had predictably regrettable outcomes for the poor. A 2004 independent review of the World Bank in the extractive industries sector – the Extractive Industries Review – concluded that the Bank should not finance projects where good governance conditions are lacking – and in many countries these basic conditions *are* lacking. In response to the review, the Bank pledged to undertake a limited set of reforms, but it has yet to complete the reform agenda, including reporting on the development impact of its investments on a project-by-project basis.

Furthermore, there should be an *ex ante* presumption of disclosure of such documents as Host Government Agreements, Concession Agreements and bidding documents, allowing for redaction of, or exceptions for, commercially proprietary information."

[12] See, for example, H.R. 3057, Sec. 585 (c), FY 06 Foreign Operations Appropriations Bill, signed into law on 11/14/2005.

[13] "IFC continues push for Africa's minerals", September 24, 2007, Bank Information Center, http://www.bicusa.org/en/Article.3507.aspx

[14] Bank Information Center, "IDB to invest US$1.5 billion in Ecuador's PetroEcuador", 14 October, 2007, http://www.bicusa.org/en/Article.3535.aspx

[15] Bank Information Center, "AfDB approves funding for controversial Tenke mine in the DRC", 4 October 2007, www.bicusa.org/en/Article.3520.aspx

One commitment made is a new International Finance Corporation policy that requires, from January 1st of this year, disclosure by private sector clients of revenue payments to host governments and, in some cases, information contained in contracts or host government agreements.[16] Since 2004, the IFC has said it has asked all clients to voluntarily commit to payment disclosure and that all clients have complied. The World Bank has also been an active supporter of the Extractive Industries Transparency Initiative (EITI) in many countries.

While this is a significant step forward, implementation of the new requirement has been spotty at best and there is very little information on what, exactly, is being required of clients or where it can be found. IFC staff have said that a survey of the period from October 2004 to December 2006 has shown that all clients have agreed with the request and that the IFC has collected, but not published, the information it has received. A study by the Bank Information Center released in August, 2007, concluded that "the World Bank Group has not implemented a comprehensive, consistent program to ensure revenue transparency in all its EI activities."[17] For projects approved since January 1, 2007, there is no publication by the IFC regarding how its new requirement is being implemented by clients. The IFC says that it will survey its clients at the end of 2007 and may publish information on its website regarding how the policy is being followed. In addition, the IFC says that violation of this requirement would constitute of violation of the investment agreement between the IFC and its corporate client.

Regarding the IFC's policy regarding disclosure of contract information, there is even less information and it is unclear whether there is an example of such information being disclosed since the adoption of the IFC's new policy. In some cases, such as the IFC's current consideration of the Peru LNG / Camisea II gas export project, IFC staff have expressly stated that they *will not* require disclosure of contract financial terms, even though these would clearly be in the public interest.

Beyond the IFC's new revenue and contract disclosure policies, the World Bank Group has yet to use all the instruments at its disposal and is missing important opportunities to promote transparency. According to the Bank Information Center study, the World Bank and IFC are "often not incorporating revenue transparency through their support for the

[16] IFC Policy on Social and Environmental Sustainability, 2006, states: "When IFC invests in extractive industry projects (oil, gas and mining projects), IFC assesses the governance risks to expected benefits from these projects. In the case of significant projects (those expected to account for ten percent or more of government revenues), risks are appropriately mitigated, and for smaller projects, the expected net benefits of projects and the risks to these from weak governance are reviewed. Where the balance of benefits and risks is not acceptable, IFC does not support such projects. IFC also promotes transparency of revenue payments from extractive industry projects to host governments. Accordingly, IFC requires that: (i) for significant new extractive industries projects, clients publicly disclose their material project payments to the host government (such as royalties, taxes, and profit sharing), and the relevant terms of key agreements that are of public concern, such as host government agreements (HGAs) and intergovernmental agreements (IGAs); and (ii) in addition, from January 1, 2007, clients of all IFC-financed extractive industry projects publicly disclose their material payments from those projects to the host government(s).

[17] Heike Mainhardt-Gibbs, "Assessment of the World Bank Group's Revenue Transparency Implementation in the Extractive Industries", Bank Information Center, August, 2007.

development of EI-related infrastructure, institutions, investment processes, or policies." In some cases, World Bank technical assistance to a government to develop extractive industries or encourage investment in the sector serves only to increase government earnings and does nothing to ensure widespread benefits from this new found wealth. (World Bank technical assistance to Equatorial Guinea in the 1990s served only to increase the government "take" but did nothing to improve transparency in a country known for corruption and opacity.)[18]

Regarding policy lending and Country Assistance Strategies (CAS), the World Bank often does not make extractive industry transparency a key benchmark for country engagement, nor does it often incorporate greater transparency in the sector as a key element of a resource-rich country CAS. Finally, the World Bank Group often narrowly defines its engagement with the sector and fails to use its leverage to bring transparency to facilities associated with a project it finances. For example, in the case of the Peru LNG project under consideration by the IFC, the IFC has concluded that the upstream gas blocks in the Peruvian Amazon are not "associated facilities" and are not subject to the revenue disclosure requirement. The same decision was made for the West Africa Gas Pipeline financed by the IFC at the end of 2004.

Despite these many weaknesses, the World Bank Group is ahead of the Regional Development Bank policies and practices, if only in relative terms. No Regional Development Bank or export credit agency has implemented a revenue transparency or contract transparency disclosure requirement, nor have these institutions been actively supporting implementation of the Extractive Industries Transparency Initiative. As such, they are using public money to actively contribute to the system of secrecy in the extractive industries.

Ensuring transparency in World Bank and other publicly-financed projects is all the more urgent given the Bank's stated intention to significantly increase its support for extractive projects in poor and unstable countries.

The Role of the IMF

The IMF has an important rule to play in its surveillance of the fiscal affairs of member states and has undertaken important research and "standard setting" exercises on this issue. The IMF, through the 2005 publication (and 2007 revision) of the *Guide on Resource Revenue Transparency,* has taken a strong public stand on the importance of transparency of revenues and contracts in managing natural resource booms. In addition, the *Guide* provides valuable practical and technical information on fiscal issues in the sector for government policy makers and civil society groups.

The good practices described in the *Guide* are viewed as voluntary by the IMF. (It is true that some resource-rich countries are more easily able to ignore the IMF and World Bank, but, at the same time, many of these countries still desire the "good housekeeping"

[18] Ian Gary and Terry Karl, *Bottom of the Barrel: Africa's Oil Boom and the Poor*, pg. 46. Catholic Relief Services, 2003.

seal of approval that these institutions can provide.) Some Article IV Reports and Staff Reports do contain valuable information on country practices and, in some cases, revenue amounts and information on fiscal terms in contracts.[19] These reports, though, are often not available in common local languages or in accessible formats.

The IMF has also not consistently highlighted extractive industry transparency issues in Article IV reports, Reports on the Observance of Standards and Codes (ROSC) and country dialogues. Even in countries that have published reports under the EITI, the IMF reports have often not analyzed the content of these reports and what the data suggest regarding revenue management in the country. At the same time, there are few examples, such as the case of debt relief conditions for Congo-Brazzaville, where the World Bank and IMF worked together to condition progress on HIPC debt relief with implementation of transparency reforms. Unfortunately, strong coordination and common positioning between the two institutions on extractive industry transparency issues is all too rare.

The Limits of the Extractive Industries Transparency Initiative

Both the World Bank and IMF have been active supporters of the international effort known as the Extractive Industries Transparency Initiative (EITI).[20] EITI is a voluntary "multi-stakeholder" initiative involving companies, home and host governments and the active and independent participation of civil society groups. Fifteen countries are officially "candidate" countries implementing this program, but no country has published externally validated reports since validation procedures were adopted a year ago. EITI may make progress in some countries where political will to tackle the problem is strong and lasting, but the initiative is weakened by its voluntary nature and will not capture many countries where problems of secrecy, corruption and mismanagement are most severe. (For example, Angola is not a part of EITI and only one OPEC country, Nigeria, is an EITI candidate.)

EITI is also undermined by the fact that contracts can stay secret; that it allows "lump sum" or "aggregated" reporting rather than individual company reporting; and that it does not require the publication of audits of company and government accounts.

In addition, governments are not currently obliged to report officially to parliament on the actual extractive industry revenues received in the year for which they are doing an EITI report. Without that information, it is impossible to conduct a reconciliation, such as the recent case in Gabon. EITI reports should be reconciled with authoritative budget information because it is through the budget that the government is accountable to parliament and its citizens.

[19] See, for example, IMF Staff Reports on Equatorial Guinea, Nigeria and Chad for examples of this practice.
[20] www.eitransparency.org

Recommendations

This Committee, and Congress as a whole, has a real opportunity to address the secrecy that is at the heart of the "resource curse".

Oxfam America believes we need to move beyond a voluntary approach to extractive industries transparency. A "cocktail" of mandatory disclosure requirements that can capture the large majority of companies and producing countries is needed. All companies and the investment community would benefit from a level playing field created by mandatory disclosure regulations. Furthermore, mandatory rules would enable companies to address the risks to reputation arising from lack of transparency and move the spotlight from companies to host governments when it comes to providing social services and making good use of revenues generated by these industries.

Oxfam America believes Congress should explore legislative vehicles to make disclosure of revenues by U.S. and other companies to host governments a mandatory aspect of disclosure.

Finally, disclosure on websites should be seen as a minimal level of disclosure. Information should be disseminated widely, in local languages and presented in a comprehensible manner. Donor agencies and governments should support programs that build the capacity of citizens, parliamentarians, journalists and civil society groups to understand and use the information to increase accountability.

World Bank, Regional Development Banks and Export Credit Agencies

- The World Bank/IFC should strengthen implementation of its revenue disclosure requirement and, at a minimum, have a central web page where payment information or links to company disclosure of information can be found. The Bank/IFC should disclose the template describing what is being required of companies and/or a sample passage from an investment agreement describing the requirement.
- The World Bank should require full contract disclosure for any extractive industries project it finances.
- The World Bank should consistently give greater attention to extractive industry transparency issues in Country Assistance Strategies and require transparency before providing technical assistance programs in the sector.
- The World Bank should ensure that, in addition to revenue disclosure, countries have systems of open and participatory budgeting at the national and sub-national level so that citizens can influence spending priorities for extractive industries revenues.
- Regional Development Banks and Export Credit Agencies should, at a minimum, requiring revenue disclosure and contract disclosure for those extractive industry projects they finance.

IMF

- The IMF should mainstream the good practices outlined in the *Guide to Resource Revenue Transparency* in all of its country dialogues and surveillance operations.
- The IMF should increase disclosure of information it receives from governments on revenues and contract terms. It should also make key documents, such as Article IV Reports, ROSCS, Staff Reports, etc., available in languages other than English (French, Spanish, Portuguese, Russian, Arabic, etc.)
- The IMF should assist governments to reconcile EITI reports, where available, with government budgets.
- IMF reports on countries that publish EITI reports, in addition to congratulating governments on the *process*, should also inform the public on what can be concluded from the reports on the state of oil revenue collection in the country, and any recommendations that would come from such an analysis. The IMF looks closely at governments' budgets and has a great deal of expertise in this area. It would be enormously helpful to the implementation of the EITI if IMF staff routinely analyzed EITI reports and compared them with budget information it routinely has in its possession, as well as other relevant information it may have.

Once again, I commend the committee for organizing this hearing and would be happy to answer any questions you may have.

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