

U.S. Helsinki Commission
Commission Hearing on “The Link between Revenue Transparency and Human Rights”
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Introduction

First, let me thank the members of the US Helsinki Commission for their interest in this important issue and for providing Oxfam America the opportunity to testify. In addition, I would like to thank Senator Cardin for his leadership on natural resource and transparency issues.

This hearing is a timely opportunity to assess the progress made in the last decade on improving human rights and development outcomes of resource-rich countries. Oxfam America is an international humanitarian relief and development agency that has worked to address the problems of many natural resource-rich developing countries for more than 10 years. We are a member of the Oxfam International confederation that operates in more than 100 countries. Our program on extractive industries focuses on the social, environmental and financial impact of oil, gas and mining operations in a dozen countries in Latin America, Africa and South East Asia. Our work includes support to community-based groups directly impacted by these operations as well as local watchdog groups participating in the Extractive Industries Transparency Initiative (EITI) and other reform efforts at the national and international level.¹ In the US, Oxfam America’s Washington advocacy office works with companies, international financial institutions such as the World Bank, and the US government to promote policies that protect the rights of citizens in resource-rich states. Oxfam America is also a member of Publish What You Pay, a coalition of human rights, development, environmental, faith-based and anti-corruption groups that helps citizens of resource-rich developing countries hold their governments accountable for the management of revenues from the oil, gas and mining industries.²

The Problems of Resource-Rich States

The IMF has identified more than 50 countries as “resource-rich” and more than 1.5 billion people live on less than two dollars a day in those resource-rich countries.³ Many of these countries exhibit classic signs of what has been called the “resource curse”, including underdevelopment; corruption and mismanagement of financial resources; political authoritarianism and weak or absent political accountability mechanisms; conflict; and human rights violations. These issues were not a prominent part of the international development agenda for decades, but within the last 10 years international non-governmental organizations (NGOs) such as Oxfam, Human Rights Watch, Global Witness, Revenue Watch Institute, Catholic Relief Services and many other courageous groups in developing countries have called attention to the tragic irony of extreme poverty in countries with abundant natural resource wealth. These groups have identified secrecy in extractive industries as a major obstacle to reform. In

¹ EITI is a voluntary international initiative designed to increase the transparency of payments from oil, gas and mining companies to host governments around the world. EITI is governed by an international board and operates through “multi-stakeholder working groups” in EITI implementing countries. For more information on the principles, criteria, rules and membership of EITI see www.eiti.org

² www.publishwhatyoupay.org

³ The criteria used by the IMF is “ an average share of hydrocarbon and/or mineral fiscal revenues in total fiscal revenue of at least 25 percent during the period 2000-2005 or (ii) an average share of hydrocarbon and/or mineral export proceeds in total export proceeds of at least 25 percent”, IMF, *Guide on Resource Revenue Transparency* (2007) <http://www.imf.org/external/np/pp/2007/eng/051507g.pdf>

many countries, contracts between foreign firms and host governments are shielded from public view and there is little information about payments from companies to governments. In addition, governments are often not providing their citizens with accurate, timely and complete information about government budgets and expenditures. Addressing these transparency gaps has been at the heart of the international reform agenda.

Transparency Reform Efforts – Losing Sight of the Bigger Picture?

Most agree that improving transparency in the extractives sector is a necessary, but not sufficient ingredient for reforming the management and use of extractive industry revenues. Starting in 2002 after the establishment the Publish What You Pay campaign, the EITI has been seeking to increase transparency in resource-rich states. It took several years for this voluntary, multi-stakeholder process to agree on the rules for membership and implementation of EITI. These rules include the active participation of civil society groups – along with government and industry – in country-level working groups. While transparency and the efforts of EITI are an important first step, it has taken a long time to make progress and many policy makers and participants have lost sight of the bigger picture. The transparency agenda does not work without improvements in political accountability mechanisms, including basic human rights such as freedom of expression and association. As I will highlight, in some countries there is a yawning chasm between limited progress on transparency and little or no progress on human rights. EITI must not just be a technocratic exercise of publishing numbers. Otherwise, we may end up with the creation of a “Potemkin village” of good governance designed for donor consumption while underlying problems of political accountability remain unaddressed. The US government and other countries supporting EITI implementation must develop accompanying strategies and initiatives to improve the human rights situation in these resource-rich countries and to increase oversight opportunities related to government expenditures. Otherwise, “successful” implementation of EITI may have the perverse effect of masking these underlying problems.

Does EITI contribute to increasing democratic debate and improving human rights?

In 2008, the first 22 EITI “candidate” countries were given a deadline of March 9, 2010 to have their progress independently “validated”. These validation reports would serve as input into a board decision as to whether or not they are fully “compliant” with the rules of the initiative. Of those 22 countries, only two met the deadline – Azerbaijan and Liberia – while the majority of countries were granted an extension with two countries dropped from EITI (Equatorial Guinea and Sao Tome and Principe.) In some countries, it is clear that EITI has disclosed new information and provided a platform for civil society and government engagement. In Ghana, for example, the EITI process in the mining sector has raised awareness about weaknesses in gold mining royalty collection and heightened the debate on the use of oil revenues that will flow from 2011 onwards.⁴ But in Ghana, there is a vibrant civil society, active press and a generally favorable human rights environment. In Liberia, EITI reporting has raised awareness in communities and led to questions about company payments and how the government is using revenues. Liberia has also enshrined EITI practice in the Liberia EITI Act, a law that requires all government agencies and companies to comply with EITI and to disclose operating contracts.⁵

In other countries, the impact of EITI on human rights, the development of independent civil society and improvements in the use of government revenues is questionable. In some cases, EITI may help open up

⁴ Oxfam America, *Ghana’s Big Test: Oil’s Challenge to Democratic Accountability*, 2009.
<http://www.oxfamamerica.org/files/ghanas-big-test.pdf>

⁵ Liberia EITI, “Addressing the roots of Liberia’s conflict through EITI”, 2009.
<http://eiti.org/files/EITI%20Case%20Study%20-%20Liberia.pdf>

the previously taboo subject of government revenues from extractive industries, but there is clearly a limit as to how much openness will be tolerated and whether the government will allow information disclosed through EITI to be used by watchdog groups, journalists and others for accountability purposes.

In Azerbaijan, there is some evidence that civil society capacity has improved during EITI implementation but progress in EITI implementation has been set against a weak human rights record for the country.⁶ The country received EITI “compliant status” in February 2009 even though no multi-stakeholder working group had been established – a requirement under EITI – and in spite of questions regarding the accuracy and comprehensiveness of EITI payment information. Throughout 2009, the status of Azerbaijan came into question as the country did not fulfill the conditions that the Board had set for Azerbaijan in order to retain its Compliant status. Because Azerbaijan missed its 15 August 2009 deadline for fulfilling these conditions, the board was forced to review Azerbaijan’s status at two subsequent board meetings. Azerbaijan finally fulfilled these conditions in February 2010 – one year after it was initially deemed compliant – and it was at this stage that Azerbaijan’s compliant status was reconfirmed.

While Azerbaijan had, somewhat prematurely, been deemed Compliant by the EITI board, the State Department and other human rights observers noted a worsening of some human rights in the country during 2009. The State Department noted in its 2009 human rights report on Azerbaijan that government restrictions on freedom of association actually worsened during 2009 and that the government does not respect freedom of expression or the press in practice.⁷

In Equatorial Guinea, a country marked by massive oil-fuelled corruption⁸ and ruled by an authoritarian regime, the country was allowed to join EITI as a “candidate” in 2008 even though the human rights situation in the country meant that it was doubtful that the government would permit real and independent civil society engagement in the process.⁹ Free elections have never been held. Independent opposition parties face harassment, arrest and criminal prosecution. There is no independent broadcast media in the country and all but a handful of print media are state-controlled. Even the few independent media outlets that exist are not at liberty to report on corruption or otherwise criticize the country’s leaders. In this environment of repression, there are hardly any independent civil society groups to

⁶ Michael Brakke, et al, authors. *Fighting Corruption, Strengthening Governance: The Role of Civil Society in the Extractive Industries Transparency Initiative*, Woodrow Wilson School of International and Public Affairs, February 2009. <http://pwpusa.org/clientimages/39924/princetoneitifinalreport.pdf>

⁷ State Department 2009 Human Rights Report: Azerbaijan. <http://www.state.gov/g/drl/rls/hrrpt/2009/eur/136020.htm>

⁸ State Department 2009 Human Rights Report: Equatorial Guinea – “According to Human Rights Watch, Teodorin Obiang, the president's son, spent more on luxury goods during 2004-2007 than the government's 2005 budget for education; purchases included a \$35 million mansion, a \$37 million jet, and luxury cars worth at least \$2.6 million. President Obiang claimed information on oil revenues was a “state secret” and resisted calls for transparency and accountability.” <http://www.state.gov/g/drl/rls/hrrpt/2009/af/135951.htm>

⁹ State Department 2009 Human Rights Report: Equatorial Guinea – “The law restricts NGO activity, and the few existing domestic human rights NGOs focused on development issues involving social and economic rights, such as health and elder care. Although the law includes human rights among the areas in which NGOs may operate, no NGO reported publicly on the abuse of civil or political rights by the government or on official corruption... Government restrictions, including burdensome registration requirements and lack of capacity to manage and provide the public with information, continued to impede the activities and development of domestic civil society.” <http://www.state.gov/g/drl/rls/hrrpt/2009/af/135951.htm>

speak of, and even fewer who dare work on sensitive issues such as human rights or corruption.¹⁰ Civil society organizations (CSOs) are under severe restrictions – they must get approval to operate from the Ministry of the Interior, must regularly report to the Ministry and must inform the government of any outside funding. Foreign NGOs hoping to work with local groups to build their capacity have faced numerous obstacles. Equatorial Guinea was dropped from EITI on April 15 after it was not granted an extension in order to complete its validation process.

In other countries, the gulf between EITI and human rights practice has also been wide and the EITI board has not taken forceful action. Activists have been harassed, arrested, prevented from travelling abroad and had their NGOs deregistered. The government of Congo-Brazzaville arrested and charged two anti-corruption activists, including EITI board member Christian Mounzeo, in 2006, all while maintaining its “candidate” status. In Gabon in 2008, activist Marc Ona was prevented from travelling abroad and many NGOs involved in Publish What You Pay were de-registered by the government all while Gabon served on the EITI board.¹¹

During the next few months, the EITI board will have to carefully scrutinize the final validation reports submitted by participating countries, especially with regard to the free, independent, and active participation of citizen watchdog groups in the country-level EITI process. It is also essential that civil society groups are not “prisoners of process” – in other words, freedom of expression and association must be respected *both inside and outside* the formal EITI process. The EITI should not place itself in the position of negotiating commitments from governments not to harass or obstruct civil society groups while these groups participate in the narrow confines of EITI while, at the same time, the broader environment for independent action remains restrictive or even deteriorates. Respect for human rights, including freedom of expression and association, is fundamental to the reform agenda in resource-rich countries. Transparency regarding financial flows in the oil and mining industries can help increase accountability around government spending decisions only in countries where citizens, journalists, and parliamentarians can ask questions of their own governments.

While EITI is making some progress in some countries, the pace and depth of progress to date, and the fact that many resource-rich countries are outside the process, show that other complementary measures are needed. The US Congress, for example, should pass the Energy Security through Transparency Act (S. 1700) this year, to increase the disclosure of oil, gas, and mining company payment information to host governments around the world. This legislation would complement EITI and provide regular information on payments to host governments that would not be dependent on the waxing and waning of political will or the voluntary participation of countries in EITI.¹² This legislation is endorsed by a broad range of anti-poverty, human rights, environment and faith-based groups.

Conclusion and Recommendations

For the US and other international “supporting governments” of EITI and other transparency efforts, it is important to see EITI as one part of broader and more comprehensive strategies that should be developed for resource-rich states that include human rights promotion, political accountability and

¹⁰ See Human Rights Watch, *Well Oiled: Oil and Human Rights in Equatorial Guinea*, 2009. <http://www.hrw.org/node/84253>

¹¹ Adam Nossiter, “Underneath Palatial Skin, Corruption Rules Gabon”, New York Times, September 14, 2009. Veronique Mistiaen, “African rainforest activist wins international Goldman prize”, The Guardian (UK), April 20, 2009.

¹² See www.openthebooks.org for more information on the Energy Security through Transparency Act.

improvements in transparency in other areas, such as government budgets and contracts, that are not yet part of the EITI mandate. EITI by itself cannot serve as a stand in for such strategies and it would be unwise to think that EITI alone will spur significant progress on human rights, civil society development or anti-corruption efforts. To pretend otherwise would, in some cases, mean that EITI was being used as a fig leaf to cover up a lack of such strategies and a lack of progress on human rights and political accountability.

In closing, I would like to offer a number of recommendations to the USG and for the EITI process.

- The US State Department should develop concrete strategies for human rights promotion and protection in resource-rich states, with targets and benchmarks. Where EITI is being implemented, such strategies should be integrated with donor support for the EITI process.
 - The US should not limit itself to countries where EITI is being implemented. For example, in Equatorial Guinea the US should develop and implement a “road map” on human rights and anti-corruption that would include support for workspaces for civil society groups (“Democracy Centers”) and funding for civil society work on human rights, transparency and rule of law issues; exchange opportunities for Equatoguinean civil society activists; and visa denials for Equatoguinean officials credibly implicated in corruption.¹³ The road map could also set concrete benchmarks that the government would need to achieve in order to be granted future high-level diplomatic visits, for example removing barriers to civil society development; verifiable declaration of assets by government officials; and publication of national budget information.
- The US State Department’s Bureau of Democracy, Human Rights and Labor should actively engage in the global EITI process, for example through participation in EITI’s “Rapid Response” board committee focused on protection of civil society groups.
- For the first time, the 2009 State Department Annual Human Rights Reports have a section on “Official Corruption and Government Transparency”. This section should report on the ability of civil society groups to freely participate in the EITI process if the country is a participant.
- The US should increase support for efforts by civil society, journalists and others to disseminate and popularize information disclosed as a result of EITI process. Such steps – such as radio programs in local languages – are relatively inexpensive and can be powerful.
- The US Treasury should not approve international financial institution financing for extractive industry projects in countries that do not meet minimum governance threshold criteria regarding transparency, human rights and the rule of law. For example, in 2008 the World Bank’s International Finance Corporation had scheduled a board discussion of a \$500 million bauxite project in Guinea shortly before the coup in December 2008. Given the situation in the country, it was extremely unlikely that government revenues from the project would have put to good use.
- The US Congress should pass the Lugar/Cardin Energy Security through Transparency Act (S.1700).
- The EITI board should consider revising participation criteria so that candidate countries must show that there are no restrictive laws, cumbersome procedures or practices which restrict independent civil society operation.
- The EITI Board should complete, in a timely and rigorous manner, the assessment it is now conducting of the necessary conditions that need to be in place to ensure that independent civil

¹³ See EG Justice, “Transparency and Accountability in Equatorial Guinea: Policy Recommendations for the Obama Administration”, July 2009. www.egjustice.org

society can freely and meaningfully participate in the EITI process. This assessment should inform the revision of the EITI sign-up criterion for countries that are interested in becoming EITI Candidates. Prior to becoming EITI Candidates, countries should show that there are no restrictive laws, cumbersome procedures or practices which restrict independent civil society operation.

Thank you for allowing me to testify today to discuss this important subject. I look forward to answering any questions committee members may have.