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Testimony for Hearing "Resource Curse or Blessing: Africa's Extractive Industries in a Time of Record Oil and Mineral Prices"

Senate Foreign Relations Committee, Subcommittee on Africa

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Thank you, Mr. Chairman and members of this esteemed Subcommittee, for the opportunity to share my views on the critical issue of Africa's extractive industries and how we can help make those resources benefit the people in Africa rather than fuel corruption and conflict.

To be succinct, we are currently very far from a situation where the majority of Africa's oil and minerals are benefiting African people. Moreover, some natural resources continue to fuel armed conflict in Africa, as our recent research on the Democratic Republic of Congo and tin and coltan has revealed. However, the two most potentially far-reaching policies that I have witnessed in ten years of working on this issue are currently under debate. If they go forward, these U.S.-led initiatives on natural resource transparency and accountability would have a very tangible impact in transforming incentives for corruption in Africa's natural resources. These initiatives would also be important for U.S. national interests in promoting stable business environments and strengthening U.S. energy security. I strongly commend you for holding this hearing today, Mr. Chairman, so we can discuss these important policy options.

1. African oil – lots in our gas tanks, but where are the revenues going?

To illustrate both the problems and the solutions, let's start right at the gas pump. I would like to trace the supply chain from the gas pump backwards through each step, highlighting exactly where the problems lie and how we can address each of those through concrete policy solutions.

Although few people realize it, more oil from Africa now goes into gasoline in the U.S. than from the Persian Gulf. According to the U.S. Energy Information Administration, 23% of U.S. oil imports currently come from Africa – more than the combined U.S. imports from the Persian Gulf, which are 18%.[1] The largest oil producing nation in Africa is now Angola, which now ranks as the seventh largest oil exporter to the U.S. – ahead of Kuwait, Russia, and Colombia *combined*.[2] So nearly one-quarter of American gasoline comes from Africa, and Angola is Africa's largest oil producing country. All told, Africa exported $249 billion in oil and minerals in 2006, nearly six times the value of international aid to the continent.[3]

Yet the enormous wealth generated from the oil and minerals has not trickled down to Africans, and in some areas these resources continue to fuel armed conflict. Global Witness field research in July and August 2008 uncovered substantial evidence of the involvement of armed groups, such as Rwandan Hutu Forces Démocratiques pour la Libération du Rwanda (FDLR), as well as units and commanders of the Congolese national army, in the exploitation and trade of minerals and metals in North and South Kivu. These economic activities are perpetuating instability in the region.

To continue with the Angolan example on oil, Angola exported an enormous $43 billion in oil last year, and its economy grew 21 percent.[4] Yet UN figures show that over two-thirds of Angolans still live on less than two dollars a day, despite skyrocketing costs in the country: rent for a modest apartment in the capital, for example, costs $1,500 a month.[5] Try affording that on $2 a day. Oil wealth has also not improved the horrific health care system in the country: Angola still has the highest infant mortality rate in the world.[6] Not surprisingly, our research and IMF figures uncovered that Angola could not account for an average of US$1.7 billion per year from 1997-2001, which is more money than the government spent on health and education during that period.[7] A lack of transparency has meant that billions of dollars cannot be accounted for, from Angola to Equatorial Guinea .

2. The Supply chain and how we can influence it

So what exactly is the supply chain for African oil coming to the U.S., and how can we influence it to help reverse the resource curse?

Step 1: Awarding of concessions

Much of the corruption associated with oil and minerals happens at the beginning of the process – right when contracts are awarded to oil companies, or the oil services companies that increasingly construct and run oil infrastructure in Africa.

As former Halliburton executive Albert Jack Stanley admitted just three weeks ago in a guilty plea to a Houston federal court, Halliburton's engineering subsidiary Kellogg, Brown, and Root paid over $180 million in bribes to the Nigerian government to win a natural gas plant contract.[8] Sadly, this is only the tip of the iceberg. Oil services company Baker Hughes plead guilty to violating the Foreign Corrupt Practices Act in Angola, Nigeria, Kazakhstan, Russia, Indonesia, and Uzbekistan; the Angolagate scandal is about to go to trial in France, in which the French government lined up the French oil company Elf to gain oil concessions in Angola and involved illegal arms shipments; the list goes on.

So transparency has to start with the award of rights to explore for oil and minerals, and with the award of contracts to build oil infrastructure. The U.S. has an exemplary record amongst major oil-consuming countries for prosecuting corrupt acts by its own companies, and of course the FCPA was ground-breaking in its time. Still, there are a couple of big unresolved FCPA cases where we are rather surprised at the lack of progress – notably the SEC investigation into the Riggs Bank affair, which I will talk about shortly.

Aside from this question of law enforcement, the U.S. should lead other donor governments to encourage resource-rich countries to ensure that oil and mining concessions are awarded in a transparent way, with independent oversight to ensure there's no corruption. U.S. companies would clearly gain from such a policy: since their technical expertise is superior to companies from many other countries, they have most to gain from licensing processes which are free from corruption.

That said, of course there is a risk that people will say that the US is simply lobbying for its own companies to get preferential access to the oil. But that's easily avoided if these reforms to licensing are presented as a global standard which should apply to all companies, including the Chinese and the Russians and the Indians, as well as the Europeans and the U.S.

So how to enact such reforms? Well, the US has influence in some countries via its aid programs. In others, the governments themselves may be supportive if they feel that transparency will enable them to get a better long-term deal for the country. There are also such initiatives as the World Bank's new project, launched earlier this year by Bank President Robert Zoellick, to provide resource-rich countries in Africa with more technical support to resource governance across the value chain. We feel that the U.S. should support that process as far as it can.

Step 2: Revenue payments for oil, gas, and minerals

The next step in the supply chain is equally critical: revenue payments by extractive industry companies to governments. When ExxonMobil or BP pays Angola for its oil, it does so in the form of taxes, royalties and signature bonuses. Oil companies typically operate under production-sharing agreements which means that they are also providing the government with a share of oil from the field: this is often a huge source of earnings for the country.

But in the majority of resource-rich countries in Africa and around the world, these payments are still kept secret. Citizens who demand for better services from their governments in Africa are often met with the response, "Well, the oil companies didn't pay us enough, they are exploiting us." These citizens have no way of verifying how much the companies do actually pay, because it is not made a matter of public record. Oil companies do not disclose the payments in their annual reports, and governments do not disclose receipt of the payments in their budget reports. And so the cycle continues – no transparency about the billions of dollars exchanged for oil and minerals, and no accountability for these revenues because no one knows how much actually exchanged hands.

The secrecy that results from this opacity is bad for American consumers and bad for Africans, and it makes it much easier for corruption to take place. Equatorial Guinea, for example – one of the top 20 oil exporting countries to the U.S. – keeps over $2 billion of its government revenues in private offshore banks, according to the IMF.[9] When it deposited $700 million of this money into Riggs Bank here in Washington, DC, the Senate Permanent Subcommittee on Investigations found dozens of irregular payments, multiple individual signatories to the accounts, and little due diligence paid to the accounts. Riggs shut down as a result in 2004, but the corruption in Equatorial Guinea continued. Two years later in 2006, the son of the President of Equatorial Guinea bought a mansion in Malibu, California worth $35 million, which includes an 8-bedroom house, a 9-hole golf course, swimming pool, and 15-acre beach-view property, despite his official salary of just over $60,000 a year as a government minister.[10]

This story is not confined to Equatorial Guinea alone. Whilst acting as an Angolan government official, arms dealer Pierre Falcone reportedly bought the most expensive home ever purchased at the time in Arizona for $10.6 million, becoming a neighbor to Chicago Bulls owner Jerry Reinsdorf in Paradise Valley.[11] The list goes on.

In order to help address the revenue payments issue, an international initiative was launched in 2002 by the British Government, the Extractive Industries Transparency Initiative (EITI). Global Witness sits on the board of EITI, strongly supports the initiative, and has made every effort to strengthen it since its launch. Last year, Congress voted to finally give the U.S. an important voice on EITI implementation by upping its contribution to the EITI Trust Fund to $3 million, thanks to efforts in the Senate by Senators Lugar and Leahy.

The reality is that EITI is an impressive effort, particularly in the way that it brings together different stakeholders: governments, companies and civil society groups. Where else would you find a representatives from ExxonMobil and Chevron sitting at the same table as civil society activists from some of the poorest countries in Africa? To buttress current efforts on EITI, the U.S. government should elevate EITI to a higher priority and do more outreach at a high diplomatic level to ensure proper implementation and integrate EITI as a requirement through AGOA and the MCC. EITI will be at a critical juncture for implementation over the next year, and so State Department engagement will be important.

But EITI is not a golden key, so to speak, mainly because it is voluntary for countries to join. As a result, the world's biggest oil producers are simply not joining. Only one of the world's top ten oil-producing countries – Norway – has committed to implement the EITI. Only one OPEC member country, Nigeria, is a member. Most of the other members are small to mid-ranking producers. These countries deserve credit for their reform efforts, but the fact is that they account for a small fraction of world oil supply. The country which gave rise to the whole oil transparency movement, Angola, is not a member of EITI and shows little appetite for joining the initiative.

The problem of transparency is urgent because a number of countries already having hit or soon hitting their peak of oil production, meaning that the windfall of oil revenues will start to diminish and eventually come to an end. For example, Gabon's production peaked over 10 years ago in 1997. So these countries don't have that much time to ensure that the revenues are really used to develop their economies for the time when they can no longer rely on oil. EITI is an excellent tool, but it is not sufficient.

3. An Historic opportunity: the EITD Act

Thankfully, today we have an historic opportunity to be a part of that solution, starting right here in Congress. Introduced in the Senate by Senator Chuck Schumer and co-sponsored by Senators Feingold, Leahy, Lieberman, Durbin, and Cantwell, and introduced in the House by Financial Services Committee Chairman Barney Frank, the Extractive Industries Transparency Disclosure Act, the EITD Act, provides exactly that opportunity. The bill, S. 3389, provides for a low-cost, high impact SEC rule change requiring the disclosure of payments to foreign governments by oil, gas, and mining companies. Under the bill, all extractive industry companies that are listed on U.S. capital markets – including foreign corporations – would publish their revenue payments to all foreign governments on a country-by-country basis through their regular annual filing reports to the SEC.

The EITD Act is critical for establishing freedom of information and a global standard for transparency in the oil sector, at a time when oil company profits are reaching record levels. It would promote U.S. interests by combating corruption and improving the stability of U.S. investments abroad through improved governance in oil-producing countries. Importantly, the bill is a powerful tool for poverty reduction, as the transparency will enable oil revenues to be managed in a more accountable manner.

The importance of this bill lies in its global coverage; with one swoop, fourteen out of the world's 15 largest oil and gas companies that are publicly traded would be covered by the bill, and 27 of the top 30 companies if the list is expanded. The overwhelming majority of these corporations are non-U.S. companies, with the bill requiring disclosure from foreign corporations including the three major Chinese oil companies, Russia's Lukoil, and Brazil's Petrobras.

World's top 15 publicly traded oil corporations covered by the bill

Petrochina (China)	Lukoil (Russia)
China Petroleum (China)	ENI (Italy)
BP (U.K.)	Repsol (Spain)
Petrobras (Brazil)	ExxonMobil (U.S.)
Royal Dutch Shell (Netherlands)	Chevron (U.S.)
Total (France)	ConocoPhillips (U.S.)
StatoilHydro (Norway)	Marathon Oil (U.S.)

U.S. companies would not be put at a competitive disadvantage to foreign corporations because of the bill. While the EITD Act would not cover all National Oil Companies (NOCs) – state-owned companies that predominately operate solely within their home countries and do not compete internationally with U.S. oil companies – the vast majority of the internationally competitive companies (including NOCs that operate internationally, such as Petrochina, Petrobras, and StatoilHydro) would have to report payments, and so a level playing field would ensue for all extractive industry companies. Back to our example of Angola, thirty out of the 33 operating oil companies in Angola would be subject to disclosure under the bill. Armed with real numbers from real oil companies, civil society groups in Angola could finally put some muscle in their fight for social services and accountability for the country's oil wealth.

Transparency is not the silver bullet to solving the resource curse, but it creates a critical underlying business environment that makes it more difficult to engage in corruption. If all payments are transparent, opaque money transfers will be harder to hide, secret bank accounts will be harder to open, and company and government finances will be more open to public scrutiny.

4. Accountability: the FCPA

If transparency creates an important enabling environment for improved resource governance, then accountability is the critical next step to make it happen. Going back to the supply chain for our gasoline, if revenues for the oil to produce the gasoline went astray, what accountability is there for those funds and the individuals, officials, and/or companies involved those transactions? For example, now that Halliburton's subsidiary has plead guilty of paying $180 million in bribes, what accountability is there for Halliburton, what accountability is there for the Nigerian officials who took the bribes, and what mechanisms are there to return the stolen monies? What about future such cases elsewhere in Africa and more globally?

For the first question, Congress created a very important first step in accountability 31 years ago with the passage of the Foreign Corrupt Practices Act (FCPA). This law, which makes it illegal for U.S. companies to pay bribes to foreign government officials, is far-reaching. The law affects American and foreign corporations alike, as Norwegian oil company Statoil and the British firm Vetco have been found guilty of making illegal payments under the law to Iran and Nigeria, respectively.

FCPA enforcement has stepped up dramatically in recent years, thanks to much more rigorous scrutiny by the U.S. Department of Justice and the SEC. The two agencies prosecuted a record 38 cases last year, more than double the number of prosecutions in 2006 (15 cases).[12] This has resulted in a high percentage of convictions, including prison sentences for several former senior executives. An overwhelming 91 percent of the individuals to resolve their charges have plead guilty or been convicted.[13] This thorough FCPA enforcement amounts to serious corporate accountability, and we welcome Congress' foresight with the FCPA, as well as the DOJ and SEC's skyrocketing efforts in applying the law. However, the FCPA investigation on Equatorial Guinea that was reported on following the Riggs Bank Senate investigation has never been followed up, and we urge the enforcement agencies to follow up this case. In addition, other countries – particularly our European allies – must follow suit and take more robust action to strengthen their corporate accountability frameworks. The OECD Anti-Bribery Convention remains very poorly enforced, particularly in the wake of the multi-million dollar BAE bribery scandal in the UK.[14] We urge Congress to work with the new Administration to work with the UK and other European countries to clean up their acts.

5. Accountability II: a critical new opportunity for Congress and the Administration through Anti-Kleptocracy policies

But what about the other key element of accountability – holding government officials to account for stolen funds? Unless these two tools work in tandem, there will still be enormous incentives for continued corruption relating to natural resources in Africa and elsewhere.

Unfortunately, accountability of government officials still needs to go further. Officials from Equatorial Guinea to Kazakhstan to Angola who have been named in prosecutions relating to the siphoning off of funds from their country's oil wealth remain in office today.

The good news is that some groundwork has been laid to begin changing this culture of impunity, and that the U.S. Congress and the Administration can be at the forefront of this global fight. The bad news is that there is a very long way to go. Last year for the first time ever, Congress passed an Anti-Kleptocracy provision in the Consolidated Appropriations Act (Section 699L), thanks to an amendment by Senator Leahy. This provision denies entry to the U.S. to all foreign government officials whom the Secretary of State believes there to be credible evidence that they were involved in corruption relating to natural resources.

This builds on President Bush's announcement of an "National Strategy to Internationalize Efforts against Kleptocracy" in August 2006, and Presidential Proclamation 7750 before that. The President stated in 2006 that:

> High-level corruption by senior government officials, or kleptocracy, is a grave and corrosive abuse of power and represents the most invidious type of public corruption. It impedes our efforts to promote freedom and democracy, end poverty, and combat international crime and terrorism. Promoting transparent, accountable governance is a critical component of our freedom agenda. Today, I am announcing a new element in my Administration's plan to fight kleptocracy … which sets forth a framework to deter, prevent, and address high-level, public corruption. It identifies critical tools to detect and prosecute corrupt officials around the world, so that the promise of economic assistance and growth reaches the people.[15]

Despite worthy efforts of some dedicated bureaus, overall enforcement of this agenda has been very limited. A small number of cases were brought under Proclamation 7750, and while some dozen cases reportedly are in the pipeline, it is our understanding that no cases for the Anti-Kleptocracy provision have been brought forward to date since the provision's passage 9 months ago. Funding and staffing constraints for the enforcement agencies are a serious consideration here. But more is at stake. According to numerous informed sources, some U.S. ambassadors are still shocked at the idea that corruption and kleptocracy should be raised with foreign governments. This was not on the U.S. foreign policy agenda for years, and these ambassadors do not understand why it should be. We would urge Congress to work with the Administration to change this culture as a matter of priority.

Congress currently has an important window of opportunity to strengthen the accountability agenda on natural resources. A new Anti-Kleptocracy provision in the draft Senate version of the State and Foreign Operations bill, Section 744, adds to the visa ban with an asset freeze on foreign officials found to be engaging in corruption.

From my many years of working on this issue, this provision, if implemented properly, has the potential to have a very wide-ranging impact on resource-related corruption in Africa and elsewhere. Leaders involved in corruption do not want to spend their money in Kinshasa or Luanda, they want to come to Fifth Avenue, put their money in U.S. or European banks, and buy luxury cars to drive up the California Coast.

For example, the President of the Republic of Congo-Brazzaville and his 50-person entourage that included several members of his family and his wife's hairdresser, spent $295,000 during a 8-night stay in New York's Waldorf-Astoria Hotel, including $13,000 in room service and bottles of Cristal champagne.[16] Interestingly, this spending spree took place exactly one month after the World Bank and IMF granted the country debt relief under the Highly Indebted Poor Countries Initiative (HIPC) for being too poor to pay off its international debts, and the hotel bill totaled more than the UK's total humanitarian aid to the Republic of Congo for the same year.[17] The Republic of Congo is another important African oil exporting country to the U.S., producing 247,000 barrels of oil per day.[18] Last year, Global Witness published documents that showed that the President's son, Denis Christel Sassou-Nguesso, paid off personal credit card bills for Louis Vuitton and Christian Dior luxury items totaling several hundred thousand dollars with funds from his own shell companies. These funds appear to have derived from the proceeds of the state oil marketing company, Cotrade, which Mr. Christel heads.[19]

In other words, if an Anti-Kleptocracy provision with a travel ban and asset freeze becomes law and is as rigorously enforced as the FCPA, it will create a serious disincentive for corruption among African and other foreign government officials. Just as we use all the financial and diplomatic tools available to us for anti-terrorism efforts, we must equally use all foreign policy instruments in the fight against corruption. I urge Congress to pass Section 744 of the Appropriations Bill and to provide additional funding to operationalize the visa ban and asset provisions to the enforcement agencies.

Furthermore, the Regional Bureaus of the State Department should thoroughly sensitize U.S. ambassadors on the Anti-Kleptocracy strategy and Appropriations provisions.

6. Conclusion

As I conclude, Mr. Chairman, let me go back to the gas pump here in the U.S. We now know that nearly a quarter of the imported oil that goes into the gasoline that goes into our cars comes from Africa, and the road that that oil travels takes us through secret financial payments, financing of ill-gotten mansions in Malibu and luxurious hotel bills in New York, bribes paid by American and foreign companies, and very little improvement in the day-to-day lives of most Africans.

In sum, we are still far from eradicating the disease known as the "resource curse" in Africa. But there is now growing attention to this issue, from your holding this hearing today and a related hearing chaired by Senator Durbin down the hall to Bob Zoellick's new initiatives at the World Bank.

But more importantly, Mr. Chairman, Congress now has two critical legislative opportunities – one on transparency and the other on accountability – to make a real impact on reducing incentives for natural resource corruption. The EITD Act and the Anti-Kleptocracy provision are the most serious pieces of legislation I have seen on this issue in over a decade. These initiatives will not only help Africans but will benefit U.S. energy security through better governance in oil-rich countries. The next time we stand at the gas pump, let us not forget where that gas comes from and what we can do to change the corruption that accompanies it. Thank you.

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[1] Energy Information Administration statistics on U.S. oil imports from 2007. Available at http://tonto.eia.doe.gov/dnav/pet/pet_move_neti_a_ep00_IMN_mbblpd_a.htm

[2] Angola produced 1.9 million barrels of crude oil per day in June 2008, ahead of Nigeria's 1.74 million. In terms of U.S. imports of crude oil, Angola totalled 636,000 barrels, while Kuwait stood at 179,000 barrels, Russia was at 228,000 barrels, and Colombia exported 177,000 barrels. "Angolan Oil Exports Expected To Rise 14% in October", *African Oil Journal,* August 25, 2008. Available at http://www.africanoiljournal.com/08-25-2008_angola.htm For U.S. oil import statistics, see U.S. Energy Information Administration, http://www.eia.doe.gov/pub/oil_gas/petroleum/data_publications/company_level_imports/current/import.html

[3] Total international aid was $43 billion. OECD Statistical Data, available at www.oecd.org

[4] OPEC Revenues Fact Sheet, U.S. Energy Information Administration, 2008. Available at http://www.eia.doe.gov/emeu/cabs/OPEC_Revenues/Factsheet.html; The IMF estimates that the Angola's GDP grew 21.130% in 2007. IMF World Economic Outlook Database. Available at www.imf.org

[5] "Angola's poor left out of oil bonanza", AFP. September 3, 2008. Available at http://afp.google.com/article/ALeqM5hA8pYy2PEMsj5tOj4lpuR7BgWVuQ

[6] This is 184 out of 1,000. CIA World Factbook, June 2007: https://www.cia.gov/library/publications/the-world-factbook/index.html

[7] That spending totalled $4.27 bn. "Time for Transparency," Global Witness, March 25, 2004: http://www.globalwitness.org/media_library_detail.php/115/en/time_for_transparency

[8] "Halliburton Ex-Official Pleads Guilty in Bribe Case", *Wall Street Journal,* September 4, 2008.

[9] In 2006, Equatorial Guinea kept $2.099 billion of its government revenues in private banks abroad, and in 2007 the IMF estimates that this figure jumped to $2.893 billion. IMF Article IV Consultation Staff report, May 2008. Available at https://www.imf.org/external/pubs/ft/scr/2008/cr08156.pdf , p. 33.

[10] Global Witness, "African Minister buys multi-million dollar California mansion", 8 November 2006, available at http://www.globalwitness.org/media_library_detail.php/468/en/african_minister_buys_multi_million_dollar_califor

[11] Ken Silverstein, "The Arms Dealer Next Door", *In These Times,* December 2001. Available at http://www.inthesetimes.com/issue/26/04/feature4.shtml

[12] Gibson, Dunn, and Crutcher LLP, "2008 Mid-Year FCPA Update". Available at http://www.gibsondunn.com/Publications/Pages/2008Mid-YearFCPAUpdate.aspx

[13] Ibid.

[14] http://www.iht.com/articles/2008/07/30/business/30bae.php

[15] "President's Statement on Kleptocracy", August 10, 2006. Available at http://www.whitehouse.gov/news/releases/2006/08/20060810.html

[16] http://www.timesonline.co.uk/tol/news/world/article729928.ece

[17] Ibid.

[18] This was in 2006. Energy Information Administration data for Congo (Brazzaville), available at http://tonto.eia.doe.gov/country/country_energy_data.cfm?fips=CF

[19] Global Witness, "Congo: Is President's son paying for designer shopping sprees with country's oil money?" Available at www.globalwitness.org