



**Statement by Karin Lissakers  
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**Concerning H.R. 6066, the Extractive Industries Transparency Disclosure Act  
before the  
Committee on Financial Services  
House of Representatives**

**Washington D.C.  
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Mr. Chairman and Members of the Committee,

I welcome the opportunity to testify in support of H.R. 6066, the Extractive Industries Transparency Disclosure Act. The Revenue Watch Institute is an independent not for profit organization that promotes effective, transparent and accountable management of extractive revenues in producing countries. We are active participants in the Publish What You Pay (PWYP) campaign, a coalition of civil society groups from around the world and particularly from oil, gas and mineral exporting countries. PWYP strongly supports the legislation we are discussing today.

Information is the lifeblood of healthy markets and the lifeblood of healthy political societies. H.R. 6066 will contribute to both by enhancing and standardizing the public availability of vital information concerning the flow of payments from oil and gas extraction and mining to governments in producing countries.

Last October, this Committee heard expert testimony on the special role of extractive industries in countries receiving a significant share of government income and foreign exchange earnings from oil, gas and mineral extraction. There are at least 50 countries in that category, with more joining the list as new discoveries are being made in countries like Tanzania and Mozambique. Witnesses at October's hearing discussed the so-called "resource curse" or "paradox of plenty," – the fact that great natural resource wealth too often is associated with internal and cross-border conflict, deep-seated poverty and corruption. The phenomenon is widespread and not limited to one region or continent. Examples range from Myanmar to Turkmenistan, from the Congo DRC and Liberia to Bolivia and Peru. Scholars like Oxford University economist Paul Collier and UCLA political scientist Michael Ross have documented and analyzed the link between civil wars and natural resources. Ross notes that the number of civil wars has declined since the end of the Cold War—except in resource rich countries.

The United States is increasingly dependent on oil and other minerals imports from unstable, or potentially unstable, countries. In today's tight supply/demand situation, each time Shell has to shut in production in Nigeria because of attacks on its Niger Delta facilities, American consumers feel the effects in their pocket books. Shell's investors feel it, too. Arizona-based

Freeport McMoRan and its partners are investing nearly a billion dollars in a copper and cobalt mine in another conflict-prone country, the Democratic Republic of Congo. The risk of conflict or other forms of disruption of their investments are high. It is not that payments to foreign governments *per se* pose a risk to investors, but rather that the diversion of such payments—and the general lack of accountability and public access to payment information—in the countries where a company is drilling or mining creates a high risk of political blow-back, unrest, expropriation, shakedowns, extortion, and damage to company reputations.

Secrecy is a big part of the problem. In most countries, sub-soil minerals belong to the state—that is, they are public assets. But in too many cases, deals are cut behind closed doors between companies and the people in power, and neither the contracts nor the payments that flow from them are made public. In countries where institutions of government accountability are weak, the lack of public information makes it almost impossible for citizens to insist that the revenues are spent for their benefit.

An unintended consequence of the secrecy is that mounting public frustration and resentment over the absence of schools, teachers, clinics, clean water or decent roads is often directed at the foreign companies rather than the government, where the blame rightly belongs. Extractive companies may try to defend themselves by providing social services themselves, at least to the communities where they operate. This in turn takes the government off the hook and keeps the public focus on the companies. In the meantime, the closed-door dealings and lack of accountability invite new power figures to try to seize control of the valuable assets for their own benefit. This is not a model for successful development.

The US government and other OECD donors provide billions in economic assistance to countries that, with good contracts and proper revenue management, have the potential to finance their development. Today's commodity boom should by all rights produce a development windfall for resource-rich countries. Unfortunately, if past patterns persist, the boom is likely to bypass the majority of people living in many of those countries

Mr. Chairman, in October you asked how the Congress could encourage policies that would make sure these resources are a positive rather than a negative. I believe the EITD Act is one very important step. The US cannot dictate development policies for resource rich countries, but we can make it easier for the people in those countries to demand that their own governments spend the proceeds of minerals extraction for their benefit and not just for an elite few. Information is the key.

International lending agencies, aid donors, investors and the extractive industry majors themselves have all recognized the value of transparency of payments to governments as a means to promote better governance, stability and development in resource rich countries. For the last six years, companies like BP, Shell, Exxon Chevron, Petrobras and members of the International Council on Mining and Minerals have joined forces with investors, governments and civil society to develop a voluntary disclosure initiative, the Extractive Industries Transparency Initiative (EITI). Twenty-three countries and most of the extractive companies operating in them are implementing the provisions of EITI requiring the dual disclosure of company payments and government receipts from the extractive sector. The International Financial Institutions have adopted policies on extractive payments and revenue transparency. The World Bank's

investment arm, the IFC, requires each company participating with the IFC in an extractive project to publish its payments to the government in question, broken down by type of payment. Congress has included similar provisions in the 2008 OPIC re-authorization legislation awaiting final passage.

Even where payment disclosure is not required, some companies unilaterally have chosen to disclose their payments to governments, particularly where political or social tensions run high. Conoco-Phillips regularly reports its payments in Timor Leste, including payments to local governments. BP decided to publish its payments in Azerbaijan from the outset of its controversial BTC pipeline. When Bolivia threatened to expropriate gas properties, Petrobras went out of its way to tell investors how much it was paying in taxes to Bolivia. Mining giant Newmont publishes its government payments around the world, as does the smaller Talisman Energy. Talisman works in non-EITI countries like Algeria, Colombia, Malaysia and Vietnam. Lukoil, one of the biggest tax payers in Russia, makes a point to regularly disclose what it pays the state in taxes. The Russian government has used charges of underpayment of taxes to pressure oil and gas ventures to make concessions and yield more control to the state or state-related interests. It appears that many companies believe that payments disclosure helps build public trust and improve their standing in the countries where they operate.

The IMF Guide on Resource Revenue Transparency lists among its core good practices that “Reports on government receipts of company resource revenue payments should be made publicly available as part of the government budget and accounting process.” The Guide adds that reconciliation with companies reporting their payments “will help give assurance that revenue receipts from natural resources are fully accounted for.”

In short, the EITD Act will simply codify what has become widely accepted best practice.

Some in the industry have raised concerns about the bill. One such concern is that it will undermine EITI. My Institute and I personally have been involved with EITI since the beginning and remain fully committed to its success, as does the PWYP coalition. In considering the interaction of this legislation and EITI, it is important to note that, at the urging of industry and the US department of State, among others, the EITI includes a sunset provision. The EITI Board, on which I served for many years, agreed that the EITI secretariat should only be funded until 2010. . The multi-stakeholder board made this decision not because transparency would no longer be needed, but because it expected that by the end of the decade disclosure of company payments and government extractive revenues would have become “mainstreamed” – routine practice and a global standard. The EITD Act, which will cover 90% of major oil companies, and most of the major mining companies, including state owned companies, will be a major step toward that mainstreaming.

Another concern been expressed is that the EITD Act would force U.S. listed companies to violate their contractual obligations – specifically confidentiality clauses prohibiting the release of certain information without the written consent of the other party. Unsanctioned disclosure could even lead to termination of contracts, it is argued. We do not believe that these concerns are well founded. The Revenue Watch Institute has been working with the Columbia University School of Law on a study of confidentiality clauses in extractive contracts. The law school has access to a large data base, and researchers have reviewed the confidentiality provisions of more

than 100 major oil, gas and mining contracts. The clauses typically either explicitly exempt disclosure to stock exchanges or offer a general exemption for compliance with law. The EITD Act, if passed, certainly qualifies as law and would be a permissible exception in either case.

The researchers found only one case where unauthorized disclosure was linked to termination of a contract: the Angolan Production Sharing Agreements. Some years ago when BP wanted to voluntarily disclose its payments to that government, the Angola regime threatened to kick them out. Norway's Statoil, on the other hand, publishes its payments to the government of Angola because Norwegian law requires it. There have been no protests from the government and Statoil's contract has not been terminated

The EITD Act's disclosure rules would cover such a large percent of the industry leaders that a country would put itself at a significant competitive disadvantage in attracting EI investment if it were to terminate a PSA because a company complied with SEC regulations and US law. That country would also damage to its reputation. We have seen that even governments with a history of corruption and authoritarian rule are becoming mindful of their governance reputation. That is undoubtedly one of the motivations for the growing uptake of EITI. Even Angola, which has so far rejected EITI, has significantly increased the transparency of its petroleum sector and touts that fact internationally. Manuel Vicente, Chairman of the state oil company, Sonangol, declared recently that the company would like to list on the New York Stock Exchange.

Rather than hurt companies, we believe that the EITD Act will offer protection for those that prefer to be transparent and believe that disclosing payments builds better relations and long-term stability with their host communities. And with its wide coverage the law will help to level the playing field between companies that are already disclosing payments and participating in EITI and those that are not.

Of the top 30 internationally operating oil and gas companies, as measured by reserves, 27 would be covered by the EITD Act. The most important mining companies will also be covered. The broad coverage of the major industry players, foreign as well as US-based, means that there is little risk of compliance putting American companies at a significant competitive disadvantage. In fact, it could be just the opposite. EITI and the transparency movement have already given unprecedented scope for citizen activists in producing countries to demand more accountability from their governments. Once the EITD Act is in place and the most important international operators are compliant, governments will have a hard time defending deals with the minority of extractive companies that are not reporting their payments, including deals with domestic companies that often serve as cover for illicit transfers to influential figures.

An important aspect of the EITD Act is that it requires that companies disclose separate figures for their natural resource revenue payments within each of the following categories: host government production entitlements, profits taxes, royalties, dividends, bonuses, fees, and other substantial payments as determined by the SEC. This so-called "disaggregation" of payments mirrors the reporting required by EITI and is vital to achieving the stated objectives of the EITD Act. Aggregated reporting, which I understand has been proposed by some industry actors as a way to soften the impact of the EITD Act, would miss the mark. First, lump sum payment disclosure would make it easier for illegitimate payments to be hidden among legitimate payments—and harder for a company hoping to counter claims that it is underpaying to point to

supporting evidence; disaggregating payments allows investors greater confidence that a company's reputation cannot be unfairly (or fairly) questioned. Moreover, different payment streams are often collected by different institutions within a producing state, and this can have great significance in the effort to increase the level of accountability of the government. For instance, under a production sharing agreement, production entitlement could go directly to a state oil company while taxes go to the revenue collection agency. The position and level of accountability of these institutions within a country can vary widely making it important not to simply lump them together as a collector of state revenues.

The EITI reporting templates, the IFC, and Talisman, to cite just a few examples, all break down extractive payments by type for these reasons. A lump sum disclosure standard in the EITD Act would be a step backward rather than an advance in the global push for extractive industry transparency.

We have already seen how the Extractive Industries Transparency Initiative has emboldened citizens to begin to question their governments. Once people know how much money is coming in, they demand to know where it is going. H.R. 6066 can give citizens in many more countries around the world a powerful tool to hold their own governments to account and greatly increase the likelihood that oil, gas and mining resources will be a benefit and not a curse.