

Testimony of  
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September 24, 2008

Written Testimony of Arvind Ganesan Director, Business and Human Rights Program, Human Rights Watch To the Senate Committee on the Judiciary Subcommittee on Human Rights and the Law

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Mr. Chairman, Senator Coburn, and members of the Subcommittee:

Thank you for your leadership on this issue and for the opportunity to speak before you today on the important issues related to energy, human rights, and corporate responsibility.

Just as energy prices are at all time highs, putting tremendous strain on consumers, companies, and institutions, policymakers are searching for ways to wean the United States from foreign oil and to achieve energy security. But missing from the debate is a greater assessment of exactly who receives the money that so many must pay for energy. The picture is not a pretty one.

About 60 percent of US oil comes from abroad. Sadly, corruption is rife in many countries with ample oil reserves, and their governments are often undemocratic and unable or unwilling to invest in the country or their citizens' welfare.

We have seen the creeping autocracy in Russia and Venezuela that is fueled in part by governments who are emboldened and enriched by the billions they are receiving in oil revenue. On September 19, 2008, Venezuela expelled Human Rights Watch staff from the country because we released a report criticizing the government's efforts to undermine and control democratic institutions.

In other countries, money that could be used to realize citizens' rights to education and health by investing in schools and hospitals is wasted or stolen, while democratic participation in government is stifled. Energy wealth does not necessarily lead to better standards of living, increased democratic participation in government, or a better climate for human rights. Instead, economic, social, and political conditions may stagnate or even deteriorate. US companies are major investors in many of these countries and US consumers end up paying for their oil. For example:

? In Angola, Human Rights Watch documented how a government, ruled by the same party and president since 1979, could not account for approximately US\$4.2 billion between 1997 and 2002. This is equivalent to roughly 9.25 percent of the country's Gross Domestic Product (GDP) disappearing annually. By comparison, it would be as if the US government "lost" \$1.2 trillion a year for five years. At the same time, Angola had some of the lowest human development indicators in the world, ranking 161st out of 176 countries in the United Nations Development Program's (UNDP) Human Development Index (HDI). Transparency International also at the time named Angola as one of the five most corrupt countries in the world. Angola is currently ranked 162nd out of 177 countries in the HDI and is still one of the world's most corrupt countries. The main change is that the country is now the largest oil producer in sub-Saharan Africa and has billions more in revenue due to the skyrocketing price of oil. Angola is the sixth largest supplier of oil to the United States.

? Equatorial Guinea is an extremely repressive country; it is ruled by a dictator who seized power from his brutal uncle in 1979 and has ruled the country with an iron fist ever since. Because of oil the country's GDP has skyrocketed: in 1992, it was about \$150 million, but by 2007, it had increased over 12,000 percent to almost \$20 billion. Considering there are only about 500,000 people in the country, the government has the means to be a model of development in Africa and throughout the world. In fact, the country has a per capita GDP high enough to be on par with some of the most developed countries in the world. However, the State Department, International Monetary Fund (IMF), and others have repeatedly noted that the government does not spend adequate money on its own people. As of 2007, Equatorial Guinea had the largest gap between its per capita GDP and its HDI score. Life expectancy is low at 51 years, while infant mortality is high at 124 deaths per 1,000 live births. Nineteen percent of children under the age of five are moderately to severely malnourished. Only 43 percent of the population uses safe water.

Instead, the president, his family, and their associates lead lavish lifestyles at the expense of the desperately poor people of Equatorial Guinea. In 2004 the Senate Permanent Subcommittee on Investigations detailed how the Equatorial Guinean government questionably used millions of dollars with the help of Riggs Bank. Some of their lavish expenditures included two multimillion dollar homes in suburban Maryland. This investigation led to one of the largest fines against a US bank, and Riggs was subsequently bought out by PNC Bank. But perhaps the most brazen and troubling examples of corruption are repeated instances of the Equatorial Guinean president's eldest son, Teodorin Nguema Obiang, purchasing multimillion dollar houses and exotic sports cars throughout the world--on a government official's salary. Teodorin's official title is minister of forestry for Equatorial Guinea, and from that position he earns a salary of approximately \$4,000 per month. Nonetheless, Teodorin has been able to buy homes in Los Angeles, Cape Town, and perhaps also in Buenos Aires and Paris. In March and April 2004, for example, Teodorin purchased two luxury homes in Cape Town worth \$7 million. He also spent about \$1 million on luxury automobiles. In April 2006, he followed up these expenses with the purchase of a 16-acre estate with a 15,000 square foot property at the Serra Retreat in Malibu, Los Angeles, for \$35 million in cash. This same year, the government promised to spend

around \$48 million for social services infrastructure, but fell \$36 million short in their promise and only spent about \$12 million. In other words, they fell short the cost of a Malibu mansion.

Equatorial Guinea is the third largest oil producer in sub-Saharan Africa, and the US imports between 66,000 to 101,000 barrels of oil per day from the country.

## Security

Security and respect for human rights is a major issue for Human Rights Watch. In many parts of the world, oil and other natural resources are located in the midst of conflict, become flashpoints for environmental, land, or employment concerns, or are considered so important and strategic that abusive military, police, or private forces are called on to guard these operations. These are strategic commodities, and governments and companies have legitimate reasons to keep their employees and operations safe. But in too many cases, security has meant human rights abuses. For example:

? In Burma, a pipeline project in which Chevron is an investor was plagued by allegations that the military guarding the project committed widespread human rights abuses.

? We documented in 2005 how a notoriously abusive rebel group in the Democratic Republic of Congo received thousands of dollars in support from AngloGold Ashanti as it tried to develop a gold project in the country.

? Since the mid-1990s, we have regularly documented how Nigerian security forces who provide security for companies such as Shell Oil have committed abuses and reprisal attacks against local communities. For example, in 2007 we documented an instance in which members of the Nigerian Joint Task Force who were charged with guarding oil operations killed and detained local community residents who were protesting the activities of a Shell contractor.

? These abuses take place around the world. We reported how the now-defunct Enron Corporation paid police in India who subsequently committed abuses against local residents who protested the company's project. In Colombia, we have documented how companies paid the military tens of millions of dollars for security without instituting adequate human rights protections.

To help address these problems, we worked with the oil, gas, and mining industry, the US, UK, Norwegian, and Dutch governments, and other human rights organizations to develop standards on

security and human rights. Those were launched in 2000 as the Voluntary Principles on Security and Human Rights in the Extractive Industries (VPs). These principles outline the steps companies should take in conducting a risk assessment, dealing with public security forces, controlling private security, and addressing allegations of abuse. To their credit, they have become the industry standard for human rights and security, and it is the only standard that addresses this particular problem.

Nonetheless, there are shortcomings. The principles are voluntary. No company is required to uphold them, or even be part of the process. The only mechanism to compel compliance is public criticism that could emerge if a company does not follow their guidance. This, in turn, could lead to further problems such as shareholder actions, lawsuits, or other activities aimed to improve corporate behavior.

It is only in the last two years that some procedures have been put into place to make it more likely that companies who are formally part of the Voluntary Principles will comply with the standards set out therein. And we are still waiting to strengthen procedures to ensure that abusive governments who might want to join the initiative are actually going to improve the conduct of their security forces. We believe that the VPs are a valuable initiative that needs to be supported, but it also needs to demonstrate to the public that companies and governments who join are in compliance with it.

#### What the US Government Can Do to Improve Corporate Responsibility and Human Rights

There are two key areas where more can be done to address the excesses of corruption and human rights abuses that plague natural resource extraction. First is to strengthen efforts to increase transparency and combat corruption in resource-rich states. The US has supported voluntary initiatives such as the Extractive Industries Transparency Initiative (EITI), but there are several steps to promote this agenda.

? Support the Extractive Industries Transparency Disclosure Act (S.3389). This bill would require companies registered with the Securities and Exchange Commission (SEC) to publish their payments to foreign governments for oil, gas, and minerals. This would inject much-needed transparency into how much undemocratic and opaque governments earn from their natural resources and would further strengthen efforts to fight corruption and mismanagement.

? Provide more resources to the SEC and Department of Justice to aggressively investigate violations of the Foreign Corrupt Practices Act (FCPA), in order to ensure that companies do not become part of the cycle of corruption that plagues so many resource-rich countries.

? Strengthen efforts to implement the US anti-kleptocracy initiative. This initiative was first announced by President Bush in 2005. Later, the US Congress put some of these initiatives into law, such as denying visas to corrupt officials. But now, the Congress can insist that the relevant branches of government aggressively identify corrupt government officials and deny them visas to the US, and increase use of existing anti-money laundering and anti-corruption laws particularly in respect to resource-rich states and the extractive industries.

? Initiate a program to identify questionable assets, such as real estate or other assets, in the US held or obtained by corrupt means and work to freeze them and repatriate them to their rightful owners--the citizens of the countries who have seen their wealth lost.

We have seen the value of voluntary initiatives like EITI and the importance of highlighting the issue of corruption. But the crucial component is an aggressive law enforcement response. The Riggs Bank case put US business on notice that complicity in corruption is unacceptable. It also demonstrated just how important law enforcement is in exposing and curtailing corruption. On September 3, 2008, for example, the Justice Department announced a guilty plea by Albert "Jack" Stanley who paid as much as \$182 million in bribes over a decade to secure business in Nigeria while an employee for Kellogg, Brown and Root, Inc.

These actions, and a more aggressive response to corruption as outlined above, will send the message to companies and corrupt officials that their illicit activities will not be tolerated. And it will send the message to the citizens of those countries whose wealth has been squandered or stolen that the US will stand with them to help identify how much money they have, so that they can hold governments accountable and ensure that their money is invested in their future.

Companies and governments also have an important opportunity to advance the issue of security and human rights. We have seen the development of standards for the industry, but we have not seen adequate implementation. In fact, we do not really know whether companies are fully implementing the Voluntary Principles or similar policies, since there is no reporting or monitoring mechanism to verify this. As a result, some companies in some projects may do the right thing, but many other situations are opaque--until something goes wrong. Nor have we seen the State Department or other parts of the executive branch devote sufficient diplomatic efforts on the ground to ensure governments respect human rights and to insist that US companies follow high standards of corporate responsibility. Eight years after the launch of the VPs, these basic measures are not in place. However, some institutions, such as the World Bank, have put such standards into place and made them a condition of lending to companies in the extractive industries.

To remedy the problem Congress should strengthen the Voluntary Principles and make certain elements of the VPs mandatory, and provide the guidance and resources to the executive branch to fully implement these standards.

? Strengthening the Voluntary Principles will mean providing some dedicated funds to the State Department to fulfill its responsibilities under the VPs and a directive to the State Department to report back on company and government compliance to Congress in a regular and timely manner.

? Congress should mandate that the Export-Import Bank (ExIm) or Overseas Private Investment Corporation (OPIC) require extractive companies who receive funding or political risk insurance from them to show that they have effective policies and procedures to address security and human rights and give those companies the capacity to monitor compliance with those standards.

? Bilateral military assistance and training programs that involve security forces that also provide security to the extractive industries should include components to ensure that funding is contingent on respect for human rights and accountability for violations when they provide such security.

? Congress should examine how to ensure private security contractors, who may provide services to the government and also to extractive industries, follow human rights standards.

? Congress should examine what steps can be taken to ensure that extractive companies adequately follow human rights standards.

? Finally, Congress should provide adequate resources and guidance to the State Department, Department of Defense, and other relevant agencies that require them to raise human rights issues related to the provision of security with foreign governments and address the conduct of companies operating abroad.

These are modest but critical steps that Congress could initiate to enhance corporate responsibility, improve respect for human rights, and potentially reduce some risks of natural resource extraction that can ultimately contribute to price volatility that affects consumers in the US and elsewhere.

Consider Nigeria, where the theft of oil and sabotage have contributed to production cuts in the world's eighth largest oil exporter. Forty-two percent of Nigeria's oil exports come to the US, making it the fifth largest supplier to this country. For over a decade, we have documented how companies have paid local leaders for "security" which ends up funding criminal behavior; how security forces commit abuses while ostensibly providing security for companies; and how billions of dollars in oil revenue which should legally be used to fund schools and hospitals has been squandered or stolen by local government officials. Most recently we documented how political "godfathers" who have access to government

funds, including oil revenue, have sponsored and paid for criminal gangs that were used to rig votes and secure election victories for favored politicians through violence. Many of the criminal gangs operating in the Niger Delta that have threatened oil production got their start as beneficiaries of these godfathers. They have also unleashed an unprecedented wave of violence in Port Harcourt, the capital of Rivers State, Nigeria's largest oil-producing state.

The result is chaos. This is what can happen when governance and respect for human rights are ignored: people are marginalized, officials become corrupt, violence grows, and ultimately the repercussions are global for communities and consumers.

It may be difficult to solve all of the problems associated with natural resource extraction quickly, but it is possible to start addressing the dimensions of the problem related to human rights and corruption. This is the part of energy policy that has been too weak for too long. Now is a good time to start strengthening this aspect of policy to help ensure that it does not come back to bite us in the form of skyrocketing energy prices or funding for a corrupt autocrat who enriches himself at the expense of his people or pays for an abusive security force to wreak havoc on a local community.

Thank you and I look forward to your questions.