

*US Government Policy Options Designed to Address
the Challenges of Poorly Governed Resource-Dependent States*

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*“... We must couple our assistance abroad with an insistent call for reform,
transparency and accountability.”*

– President Obama, “Strategy to Promote Global Development and Democracy”
(2008 Campaign Fact Sheet)¹

Introduction

After decades of US government policy toward resource-rich developing countries that emphasized commercial access to resources and narrowly-defined national security priorities over the good management of resources in the service of broad-based and participatory development, the Obama Administration and Congress have an important opportunity to use new approaches to help address and prevent poor development outcomes in resource-rich states. This memo briefly outlines some priority steps that can be taken by the Obama Administration and by Congress related to transparency of information as well as human rights and community consent. Finally, the memo briefly presents the example of the coming oil boom in Ghana as test case for the Obama Administration.²

1. Transparency of Payments to Oil, Gas, and Mining Dependent Countries

The United States depends heavily on foreign nations that supply oil, gas, and other mineral resources. Many of these countries are suffering from the “resource curse” – “rich” countries with poor populations and high level of corruption, conflict, and social unrest. US consumers pay the price when instability threatens global oil markets and US foreign policy objectives are undermined by instability in resource rich countries. Concrete measures can be taken by the Obama Administration to address these problems.

US energy security is undermined by our reliance on corrupt regimes. Six of the top ten oil-exporting countries to the US rank at the bottom third of the world's list of most corrupt countries, according to Transparency International. A lack of transparency in the oil, gas, and mining sectors – including secret payments, contracts, and opaque government budgets – is a

¹ http://www.cgdev.org/doc/blog/obama_strengthen_security.pdf

² This memo draws in part on “transition memos” developed by Ian Gary and Keith Slack for Oxfam America and presented to the Obama transition team at the end of 2008.

major contributor to the problems in these countries. Corruption and conflict associated with natural resource exploitation also contributes to humanitarian emergencies, which US taxpayers end up paying for through foreign assistance programs. Natural resource revenues could be a tremendous engine for economic growth and poverty alleviation – creating new markets for US goods and services – if revenues are accounted for and spent in a transparent manner.

US executive branch agencies play a key role in supporting extractive industries in developing countries. These include the Export-Import Bank (ExIm), the Overseas Private Investment Corporation (OPIC), and the US Agency for International Development (USAID). Additionally, the US is the largest overall contributor to and a key shareholder of the World Bank, Inter-American Development Bank, African Development Bank, Asian Development Bank, and European Bank for Reconstruction and Development. These institutions finance billions of dollars of extractive industry projects every year. Unfortunately, a 2008 Senate Foreign Relations committee staff report found that US government efforts to address the resource curse have been “sporadic” and “half hearted.”³

Options

Urgent action is needed to address critical transparency and human rights issues at oil, gas and mining operations. There is an important opportunity for the US to provide global leadership on transparency of extractive industry information. These *low/no-cost steps* could also lower costs for these commodities and reduce burdens on US consumers. Listed below are a set of actions and executive orders that could be implemented by the Obama administration and Congress.

Voluntary approaches to increasing transparent and accountable management of natural resources wealth are making sluggish progress. While the Extractive Industries Transparency Initiative (EITI) has put in place a governance structure, over 20 countries face the test of validation in March 2010. EITI will be under strong pressure to “show results” and the governing board will be under pressure to bend the rules and give countries special treatment. The EITI ‘seal of approval’ may become meaningless if the validation rules are not transparently and consistently applied. Because of the voluntary nature of EITI and slow progress, additional mandatory disclosure rules are needed to make oil, gas and mining industry transparency a true global standard for all countries and companies.

In addition to continued support to EITI, there are a number of additional steps the new Administration can take to combat the resource curse and promote foreign policy objectives.

Short-term Recommendations – First 100 Days

The Obama Administration should:

- Encourage re-introduction and passage of the Extractive Industries Transparency Disclosure Act (H.R. 6606 / S.3389 in the 110th Congress).⁴ The EITD Act would require

³ “The Petroleum and Poverty Paradox”, Report to the Members of the Committee on Foreign Relations, October 16, 2008. http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_senate_committee_prints&docid=f:44727.pdf

⁴ Text of the legislation and background materials can be found at www.openthebooks.org

disclosure of payments by extractive industries companies to host governments around the world. By changing S.E.C rules, companies from the US, Europe, Asia, and elsewhere would be obliged to disclose payments, providing valuable information to citizens on the ground in resource-rich countries. The EITD Act would complement the voluntary EITI. (This step could also be accomplished through the SEC rules making process.)

- In addition to the US passage of the EITD, other financial jurisdictions in Europe and elsewhere should pass similar legislation and the Obama Administration should include this agenda in diplomatic efforts aimed at restructuring the global financial system and regulations and increasing transparency and confidence in financial markets.
- Order that the Export-Import Bank and Overseas Private Investment Corporation shall not finance any project in the oil, gas, or mining sector unless the company discloses payments and the host government agrees to implement EITI.
- Order that the Treasury Department will not support any oil, gas, or mining project being considered by the World Bank Group, the Asian Development Bank, African Development Bank, or Inter-American Development unless the company involved has agreed to disclose payments to the host government and the host government has been validated as compliant with EITI. (Currently only the World Bank requires payment disclosure as a condition of company finance.) In tight credit markets, extractive industry companies are seeking financing from public sources, including regional development banks and export credit agencies.
- Order that the USAID shall not enter into any partnership agreement with any oil, gas or mining company that does not disclose payments to host governments on a country-by-country basis. The current Global Development Alliance public-private partnership program should be reviewed to ensure that participating companies meet best practice standards on transparency, human rights, community consent and other issues.
- Increase technical assistance for governments and civil society to monitor extractive industry production and the accompanying revenues. Some of the most effective interventions can be relatively low-cost. For example, the US Treasury Office of Technical Assistance supported the establishment and functioning of the petroleum revenue oversight committee in Chad through a resident technical advisor. Well-designed and targeted interventions in the areas of governance, anti-corruption, public expenditure management and oversight, environmental management, etc., via USAID, EPA or other agencies can produce good returns on small investments.
- Ensure that future Millennium Challenge Compacts are predicated on transparency of extractive industry revenue, contracts and government budgets.

Long-term recommendations – First Term

The Obama Administration should:

- Show international leadership on extractive industry transparency by making this a high-priority inter-agency issue, with the State Department as inter-agency lead, as well as through implementation of EITI in the US. EITI implementation and reforms in the Mineral Management Service related to royalty collection for oil, gas, and mining on federal lands will demonstrate global leadership, show that the U.S. has the humility to undertake efforts to “put its own house in order” and lead to more oversight and more robust revenue collection for the US Treasury.
- Emphasize the respect of human rights, the promotion of good governance and democracy, and the transparent, fair, and accountable management of oil revenues in bilateral relationships with resource-rich states. The level of diplomatic engagement should be carefully calibrated based on progress on these issues. (For example, situations such as the president of Equatorial Guinea being received at the Secretary of State level in Washington and being called a “good friend” of the United States should be avoided.)
- Increase the ability of U.S. diplomatic missions to engage with and monitor extractive industry issues. In many cases embassies are understaffed (e.g. Chad) or do not have the security clearance to visit key sites of resource extraction (e.g. the Niger Delta).
- Order that the State Department annual human rights reports will report on levels of corruption in every resource-rich country and highlight human rights abuses targeting civil society or members of the media seeking to monitor extractive industry financial flows.
- Deny visas to government officials from foreign governments known to be involved in significant corruption in resource-rich states and increase government efforts to identify such individuals. (The Bush Administration’s “anti-kleptocracy initiative” does not appear to have been taken seriously nor had an impact on diplomatic relations or policy implementation.)
- Support increased allocation of resources to the Department of Justice to investigate violations of the Foreign Corrupt Practices Act (FCPA).

Recommendations for Congress

- Re-introduce and pass the Extractive Industry Transparency Disclosure (EITD) legislation.
- Prior to appropriating replenishments to the World Bank (IDA), the Inter-American Development Bank or other IFIs, Congress should insist on reforms in their financing of extractive industry projects, including transparency of payments and contracts.

- Increase official development assistance targeted at addressing the governance issues associated with extractive industries.

2. Human Rights Protections in Oil, Gas and Mining-Dependent Countries

Resource extraction areas have often become the site of violent conflict and human rights abuses as armed groups have sought to gain control of oil and mining installations. There is a common belief among local populations that they are not adequately sharing in the benefits of these extractive industries and are unfairly bearing the environment and social costs. This has occurred most notably in Nigeria, the source of more than 10 percent of US oil imports, where armed groups have repeatedly attacked oil installations and taken oil workers hostage. Violence and conflict around oil and mining sites has caused delays and even shut down operations. In Nigeria, such situations have directly contributed to higher oil prices paid by US consumers.

Less well-known, however, are the frequent smaller-scale conflicts that have arisen between companies and unarmed local community members as well as the harassment of civil society campaigners fighting against corruption or other extractive industry-related issues. Indigenous peoples and other affected communities whose traditional lands often overlap with extraction areas have been particularly hard hit by social and environmental damage caused by the extractive industries in places such as Peru and Ecuador. Elsewhere, civil society activists promoting transparency have faced harassment, criminal charges and jail time in countries such as Gabon and Congo-Brazzaville – merely for exercising their rights to freedom of expression as part of their anti-corruption campaigning. (Gabon has served on the EITI board while at the same time imprisoning good governance advocates and independent journalists. Last month Azerbaijan was “validated” in its participation in EITI while at the same time, according to the State Department 2008 Human Rights Report, “restrictions on freedom of assembly continued, particularly in terms of political organizing, peaceful protests, and religious activity. Restrictions and pressure on the media and restrictions on political participation worsened.”⁵ Such a failure to respect the active role of civil society groups and the tolerance of human rights violations threaten to greatly weaken the EITI in addition to negating the ability of disclosure to serve as a catalyst for increased oversight and accountability. Unfettered civil society participation at every step of the EITI process should be non-negotiable.)

Companies are beginning to realize that protecting human rights and obtaining the consent of local communities are vital measures that can help protect their global operations. While some may argue that obtaining community consent for projects amounts to a “veto” for individuals or puts local interests above the national interest, projects that do not obtain community consent are more at risk of shut downs, disinvestment, or nationalization. It is in the long-term economic interest of companies to invest up front in design projects in a way that are acceptable to local communities. In countries such as Ghana and Peru, both leading producers of gold and other minerals, community-level conflicts happen with disturbing frequency. A recent study by the

⁵ “2008 Human Rights Report: Azerbaijan”, US State Department 2008 Country Reports on Human Rights Practices, February 25, 2009.

Peruvian government found more than forty-five active community conflicts at mining operations across the country.⁶ A study released in 2008 by the Ghanaian Commission on Human Rights and Administrative Justice, a government agency, found a widespread pattern of human rights abuses by security forces protecting mining operations in the West African country. Such conflicts directly affect US interests by jeopardizing critical supplies of key minerals used by the US economy and corporations.

In addition to addressing important issues related to transparency and revenue management, urgent action is needed to address critical human rights issues at oil, gas, and mining operations. The Obama Administration and Congress can take immediate actions that would help to address these situations with “extractive industries” and protect American interests.

Short-term Recommendations – First 100 Days

The Obama Administration should:

- Order that the Export-Import Bank and Overseas Private Investment Corporation shall not finance any project in the oil, gas, or mining sector that is not in independently verified compliance with international human rights standards, including those that relate to indigenous peoples, and that is not broadly supported by local communities (reflecting “free, prior and informed consent”) as determined through independent review.
- Order that US Executive Directors at the international financial institutions shall not vote to support any oil, gas or mining project that is not in independently verified compliance with international human rights standards, including those that relate to indigenous peoples, and that is not broadly supported by local communities as determined through independent review.
- Order that the US Agency for International Development shall not enter into any partnership agreement with any oil, gas, or mining company that has not demonstrated independently verified compliance with international human rights standards and/or has not adopted a policy committing the company to obtain the consent of local communities before beginning operations.
- Support the strengthening of the Voluntary Principles on Security and Human Rights in the Extractive Industries, with a more active role for the State Department (including, but not limited to, regular reporting on company and government compliance.)

⁶ See Keith Slack, *Mining Conflicts in Peru: Condition Critical*, Oxfam America briefing paper, February 2009. http://www.oxfamamerica.org/newsandpublications/publications/briefing_papers/mining-conflicts-in-peru-condition-critical

Recommendations for Congress

- Building on a hearing held in the Senate Judiciary Committee (Subcommittee on Human Rights and the Law) last year, Congress should investigate ways to criminalize complicity of US companies in human rights abuses related to their overseas operations.⁷

3. Ghana's Oil Boom – A Real-time Challenge for the Obama Administration

The Obama Administration has an important opportunity to enact new policies and assistance programs to help ensure that the coming oil boom in Ghana does not undermine the significant progress that has been made in that country towards reducing poverty and developing democratic oversight.

During the British colonial era, Ghana was known as the “Gold Coast” for its prolific gold deposits. Now, as in many countries before it, Ghana’s recent discovery of a major offshore oil field has created a mixture of exuberance and trepidation.⁸

For Ghana, one of the most peaceful and relatively prosperous countries in West Africa, the start of oil production in late 2010 would seem to come as good news. With the peaceful transition of power from the New Patriotic Party (NPP) government to the National Democratic Congress (NDC) government in January 2009, Ghana hopes that its star will continue to shine and that oil revenues will help accelerate the country’s effort to meet the UN Millennium Development Goals by 2015. But, as so many other countries have shown, it is a difficult and tortuous journey to move from the generation of oil wealth to its proper investment. In too many other countries, oil booms have bred corruption, underdevelopment, social conflict, and environmental damage.

The onset of oil production presents Ghana with its next great test and presents the Obama Administration with an opportunity to demonstrate a new approach to dealing with an oil-rich state in the making. Ghana has an enviable record of good governance and stability and benefits from significant donor assistance and a US Millennium Challenge Compact worth \$547 million.

Despite this progress, Ghana is still a poor country of 23 million people dependent largely on primary commodity exports—cocoa, gold, timber. Almost 80 percent of Ghanaians live on less than \$2 a day. The country has made some progress on economic diversification, but oil could add to the economy’s overreliance on commodity exports subject to price swings that make development planning difficult.

Billions of dollars will flow into the government treasury, but Ghanaians are all too familiar with corruption, poor development outcomes in the country’s mining communities, and the tragedy of Nigeria’s squandered oil wealth. For the international oil industry, the 2007 “Jubilee” find—called

⁷ See “Extracting Natural Resources: Corporate Responsibility and the Rule of Law”, Hearing of the Subcommittee on Human Rights and the Rule of Law, Senate Judiciary Committee, September 24, 2008.
<http://judiciary.senate.gov/hearings/hearing.cfm?id=3572>

⁸ For more information, see Ian Gary, *Ghana’s Big Test: Oil’s Challenge to Democratic Development*, Oxfam America, Washington, February 2009.
http://www.oxfamamerica.org/newsandpublications/publications/research_reports/ghanas-big-test

one of the largest recent finds in Africa—has generated enormous interest in the country’s hydrocarbons potential. By 2011, estimates are that Ghana will be producing approximately 120,000 barrels of oil per day, along with significant quantities of gas. The IMF has predicted that government revenues from oil and gas could reach a cumulative US\$20 billion over the production period of 2012–30 for the Jubilee field alone. The World Bank’s International Finance Corporation decided in February 2009 to invest \$215 million into Kosmos Energy (US) and Tullow Oil (UK), two companies developing the Jubilee field.

Oil wealth has been shown to erode democratic accountability. Ghana’s challenge will be to ensure that the right institutions and transparent policies are in place before oil production starts. The previous NPP government launched a “homegrown” effort to tackle the challenges of the oil era, establishing technical committees composed of government staff and expatriate Ghanaians to address issues from the fiscal regime to gas utilization. The state oil company, the Ghana National Petroleum Corporation, has made some disclosures to the public, but key details remain secret, including the oil contracts as well as the development plan for the Jubilee field. While the Kufuor government put forward transparency and good governance as key principles for the sector, it sent worrying signals as well—for example, a National Forum on Oil and Gas Development was by invitation only and included just three civil society members.

While a draft policy paper and national regulatory authority bill were developed in 2008, many significant steps in building the institutional, legal, and regulatory system to govern the oil and gas sector rest with the new government. Since there will be a relatively short time frame for oil production—likely 20–30 years—it will be important to ensure that money is used wisely from the outset and that investments are sustainable once the money runs out.

The needed institutions, regulations, and transparency measures should be in place early on to avoid the corrosive and corrupting effects of oil booms seen elsewhere in Africa. Because the Jubilee field is in development, the government does need to move at deliberative speed to be able to manage this large project. At the same time, Ghana needs to be careful to *control the pace* of the development of the petroleum sector so as to not let commercial developments outstrip the capacity of the government and society as a whole to meet the myriad challenges.

In many ways, speed is not Ghana’s friend. Ghana should set its own timetable for the further development of the petroleum sector. By moving quickly, mistakes can be made that could decrease Ghana’s “take” from the sector and undermine accountable management of the resource. A few examples:

- Government will need to **sequence tasks** in developing the laws, regulations, and institutions for the sector.
- Rather than negotiating many deals at once, government can learn from experience and **negotiate better deals over time**. A common refrain is “he who drafts, wins,” and Ghana can develop improved negotiation skills over time.
- **Allowing for civic participation** takes time but will benefit the country in the long run through better policy decisions and greater ownership of these decisions. The attitude that “there is too much to do and talking to civil society takes time” is ultimately counterproductive.
- **Regulations need to be in place before the impact**. Social and environmental regulations and protections need to be in place before projects get under way rather than

after, as was the case with many gold-mining projects. Because of stabilization clauses, contracts signed now will lock in the currently deficient regulatory regime. Ghana should not want to license all of its petroleum acreage before the regulatory framework is in place.

- **Early spending could be bad spending.** If Ghana's budget and spending systems need improvement, massive early spending of oil money could prove to be wasteful spending.

Ghana's oil boom is happening in an era of increased attention to the problems of resource-rich states, and Ghana has important opportunities to learn from the positive and negative examples of others. There are steps that the government, companies, donors, and others should take to support the transparent, accountable, and efficient development of Ghana's oil wealth. For example, the government of Ghana should ensure that payments from companies to the government, as well as contracts, are in the public domain. The government should also enact a moratorium on new exploration licenses to allow Ghana's legal and regulatory framework, and institutional development process, to catch up. Companies should volunteer to disclose their payments and contracts and participate in Ghana's Extractive Industries Transparency Initiative.

How should the Obama Administration react to the onset of oil in Ghana and the threat that an oil boom poses to one of the few "success stories" in sub-Saharan Africa? Among the steps that could be taken, the Obama Administration should insist on full transparency and participation of citizens and civil society in the decisions regarding the development of the petroleum sector and oversight of natural resource wealth in exchange for technical assistance. Other steps include:

- **Encourage the Ghanaian government to extend the EITI to the oil and gas sector**
- **Coordinate and share information with other donors** to avoid duplication of effort and increase the impact of development assistance.
- **Encourage US companies invested in Ghana (such as Kosmos Energy) to be transparent in their activities in Ghana.**
- **Actively support capacity building beyond government to include Parliament and civil society organizations.**
- **Use influence in the World Bank board to ensure full revenue and contract disclosure as well as development of proper environmental impact assessments**

Conclusion – Crisis and Opportunity

As outlined above, the Obama Administration and the current Congress have an important opportunity to develop new rules and policies to redirect US foreign policy and foreign assistance towards efforts that will help address the challenges of resource-rich states. The global economic crisis as well as currently depressed commodity prices (with the notable exception of gold) provides an important window of reform – both within the global financial system and the rules that govern it as well as within the political economy of many resource-rich states.