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United States Passes Extraction Industry Transparency Law
Section in Financial Reform legislation sets new global standard for corporate transparency

Washington, D.C. -- Today, the Senate passed the Dodd-Frank Wall Street Reform and Consumer Protection Act, which includes a provision that sets new international standards for transparency in the extractive industry. Once signed into law in the coming days by President Obama, the provision will require oil, gas, and mining companies publicly disclose their payments to governments for the extraction of natural resources on an annual basis.

This legislation sets a new standard for transparency in the extractive industry while encouraging other countries to pass similar measures. Once the provision takes effect — likely beginning in 2012 — payments to governments will be publicly available to citizens in resource-rich countries, providing crucial information to hold governments accountable for the spending of this revenue.

The provision, section 1504 of the legislation, offered by Senator Leahy (D-VT), will require both US and internationally-based companies registered with the U.S. Securities and Exchange Commission (SEC) to publish what they pay to governments for the commercial development of oil, gas, and minerals. The amendment was originally introduced by Senators Richard Lugar (R-IN) and Benjamin Cardin (D-MD) in September, 2009, as the Energy Security Through Transparency Act (ESTT), and substantive provisions from the act were incorporated into the financial reform bill.

The provision covers 90% of the major internationally operating oil and gas companies. Of the 50 largest oil and gas companies by reserves (2007), eighteen are national oil companies that generally do not operate internationally. These companies are not registered with the SEC or any other exchange and their operations are usually limited to their home country, where their operations are often not subject to open market competition. In these circumstances, they do not compete with American companies. Of the remaining 32 internationally operating companies, 29 are covered by the provision. This includes Canadian, European, Russian, Chinese, Brazilian and other international companies. The three companies not covered are Gazprom (London); Petronas (Kuala Lumpur) and the Romanian National oil company (Bucharest).

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The provision covers the majority of the top 15 international oil and gas companies ranked by Fortune magazine according to total revenues. Most of these are not American-based firms. Of these 15 top companies with international operations, ranked according to their total revenues in 2007, all but three of them are listed with the SEC. Only three of these are American companies. Together, these listed companies together accounted for over \$2.2 trillion dollars in revenues and close to \$200 billion in profits. Of the ten most successful mining companies, as ranked in the 2010 Forbes Global 2000, eight are listed with the SEC. Only two of those are American companies. Together, these eight companies accounted for nearly \$270 billion in sales and \$26 billion in profits in 2007.

Publish What You Pay US (PWYP US), a coalition of over 30 groups, including EarthRights International (ERI), advocated for the provision. “This is a game changer,” said Isabel Munilla, Director of PWYP US. “This legislation sheds light on billions in payments between oil and mineral companies and governments. Citizens now have a powerful tool they can use to scrutinize the levels of public spending on economic development, environmental protection and health and human services.” This provision will ensure that taxpayers and shareholders will no longer unknowingly fund dictators or fuel conflict, and will be privy to how their investments are being spent. According to Senator Patrick Leahy (D-VT), “Transparency is good for U.S. taxpayers, it encourages more accountable government, and a better business environment for foreign investors.”

Increasing evidence demonstrates that revenues generated from the extraction industry contribute to the “resource curse” in developing economies. Instead of benefiting from the vast revenues created by extraction projects, energy and mineral-rich countries are too often plagued by instability, poverty, conflict, and corruption.

In Burma, a lack of transparency has resulted in gross human rights violations and contributed to corruption and authoritarianism, directly linked to the natural gas industry, according to ERI’s new report, [“Energy Insecurity: How Total, Chevron, and PTTEP Contribute to Human Rights Violations, Financial Secrecy, and Nuclear Proliferation in Burma \(Myanmar\).”](#) Data from a leaked IMF report indicates 70 percent of foreign exchange reserves are from gas exports and that gas-related payments from corporations, amounting to billions of dollars, contributed only one percent of total budget revenue. Had these revenues entered the state budget, they would have accounted for 57 percent of the total budget. The majority of the gas revenues are believed to be held in offshore banks (never entering Burma’s state budget), with potentially hundreds of millions corrupted away into personal account of individuals closely associated with the ruling military junta in two offshore banks in Singapore. The companies, including Chevron and Total, which profit from the Yadana gas pipeline, have refused calls to disclose payments made to the military, which, in addition to contributing to human rights abuses in the project area, may be fueling the junta’s nuclear ambitions.

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EarthRights International's Executive Director, Ka Hsaw Wa, commenting on the impact of the payment transparency provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act for Burma, stated, "Once implemented, the people of Burma will begin to know how much the junta receives from our natural wealth, and pressure will build on the authorities to spend these resources on critical needs, like health care and education." Ka Hsaw Wa continued, "No longer can the generals transfer millions dollars of Burma's money to offshore accounts and regime cronies with impunity. There is still more work to be done on many areas in Burma, but today's legislation makes it that much harder for the generals to misuse our resource wealth."

The necessity of the legislation for domestic extraction became even clearer in the wake of the Gulf oil spill, which highlighted the mismanagement and "coziness" of the Mineral Management Service (MMS) with the oil and gas industry and ultimately led to its reorganization as the new Bureau of Ocean Energy Management, Regulation, and Enforcement (BOEMRE). "This provision is a critical part of the increased transparency and corporate responsibility that we are striving to achieve in the financial industry," said Senator Cardin. "Given the catastrophic events in the Gulf of Mexico, oil companies, in particular, should well understand that secrecy fosters instability, corruption and greater risk. We now have the tools to help people in resource-rich countries hold their leaders accountable for the money made from their oil, gas and minerals."

Members of the oil and gas industry lobbied in opposition to the amendment. The American Petroleum Institute (API), a national trade association representing about 400 corporate members, including major oil and gas companies, made several misleading claims in a letter to members of the Senate. "API feels that requiring only U.S-listed extractive companies to disclose revenues creates a competitive disadvantage for these companies in the global energy marketplace," the letter claimed. Senator Lugar responded to the argument, contending in a letter to the Financial Times that the legislation would apply to foreign companies as well. In an article in The Hill, Senator Cardin called the argument a "red herring."

Critical support for the provision came from Senators Tim Johnson (D-ND), Russell Feingold (D-WI), Charles Schumer (D-NY) and Richard Durbin (D-IL). Both the Senate Banking Committee Chairman Christopher Dodd (D-CT) and the House Financial Services Committee Chairman Barney Frank (D-MA) supported the Senate amendment during conference negotiations.

About EarthRights International (ERI)

EarthRights International is a nongovernmental, nonprofit organization that combines the power of law and the power of people in defense of human rights and the environment, which we define as "earth rights." We specialize in fact-finding, legal actions against perpetrators of earth rights abuses, training grassroots and community leaders, and advocacy campaigns. Through these strategies, ERI seeks to end earth rights abuses, to provide real solutions for real people, and to promote and protect human rights and the environment in the communities where we work.

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