



**global witness**

## **Tom Lantos Human Rights Commission**

### **Hearing entitled: Corruption and Human Rights: Improving Accountability**

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#### **Testimony of Stefanie Ostfeld, Acting Head of U.S. Office, Global Witness**

Good afternoon Co-Chairman McGovern and Co-Chairman Pitts. Thank you for this opportunity to appear before the Tom Lantos Human Rights Commission to discuss corruption and human rights. Global Witness participated in the Anti-Corruption Summit recently hosted by the UK and is delighted to have the opportunity to share with you our proposals for curbing corruption that we discussed at the Summit.

My name is Stefanie Ostfeld and I am the Acting Head of Global Witness' U.S. office. We are a non-governmental organization with offices in Washington, DC and London. For more than two decades, our hard-hitting reports and investigations have exposed how timber, diamonds, minerals, oil and other natural resources in some countries have incentivized corruption, destabilized governments and led to war. As a result, we believe that the only way to protect peoples' rights to land, livelihoods, and a fair share of their natural wealth is to advocate for transparency in the resources sector, sustainable and equitable resources management, and preventing the international financial system from enabling resource-related corruption.

In our work around the world, we see the same problem all the time: fledgling economies stifled and ordinary people trampled by corrupt regimes that rule with one iron fist and steal with the other. To some, corruption may appear a victimless crime, or just the way business is done, but it is a key reason why so many of the world's poorest, most oppressive countries remain that way. For a vast number of people, especially in the developing world, it manifests itself as poverty, disease, oppressive rule and, too often, war.

Corruption undermines countries' legal obligations to promote and protect human rights. Corruption of officials and politicians subverts civil and political rights, by disrupting the relationship between public officials and the tax payer, and creating incentives to suppress dissent and consolidate power, often leading to corrupt judiciaries, law enforcement and the military.

Corruption incentivizes the elites in countries to continue to impede democratization, human rights and economic inclusiveness in order to maintain their hold on power, and the vast wealth and immunity from prosecution that can go with it. Take the fragile political transition in Burma, for instance. Global Witness has estimated that jade production in 2014 alone generated the equivalent

of nearly half of the country's GDP, with the major benefits going to some of the most notorious names from the military junta era, from former dictator Than Shwe to U.S. sanctioned drug lord Wei Hsueh Kang. This provides tremendous resources to those most likely to oppose reform by Burma's new civilian-led government, posing a serious obstacle to achieving the freedoms, rule of law and full transition to democracy that the United States ardently hopes will take root there.<sup>1</sup>

And it endangers the national security objectives of the United States, as well as our troops overseas. Global Witness has documented how the Taliban made approximately four million dollars last year from the illicit mining of lapis lazuli and other semi-precious stones in just one province of Afghanistan, and may make as much as six million this year. We documented how Afghan politicians and warlords were intertwined in conflict over who would control these lucrative mines, while these same politicians and actors are alleged to have paid off the Taliban. After narcotics, mining is assessed by the United Nations as the second largest source of income to the Taliban, funding the very insurgency that the American military has fought so hard against.<sup>2</sup>

But corruption isn't something that just happens over there. Corruption on the scale that we see in our investigations could not happen without the actions of global facilitators.

Ill-gotten gains don't disappear by themselves – there is a pattern that needs to be broken. The corrupt need a bank willing to handle money without asking questions, or a lawyer to work out how to skirt laws and disguise their identity. Time and time again, our investigations highlight the same problem: sham companies which allow those who steal state funds to move it undetected through the international financial system. This is what we are trying to change.

In Nigeria, in 2011, Royal Dutch Shell and the Italian oil company Eni paid \$1.1bn for one of West Africa's largest off-shore oil fields. The payment was equivalent to 80% of Nigeria's proposed 2015 health budget, but the money didn't end up in state coffers. Instead it went to a front company owned by the former Nigerian oil minister who had granted his company rights to the oil field in 1998.

Shell and Eni have always denied they knew their payment would be going into private pockets, but evidence gathered by Global Witness and our partners shows otherwise.<sup>3</sup> Matters are now coming to a head: Eni's current and former CEO's are under investigation in Italy, while Shell's headquarters in Holland were recently raided by 50 police officers.<sup>4</sup> We need these investigations to be thorough, and to lead to prosecutions of all culpable perpetrators of this corrupt deal.

This case should put decision makers and investors on notice. The Publish What You Pay movement, which we conceived of and co-launched over twenty years ago has led to laws enacted in the U.S. and EU which will require extractive companies to declare the payments they make to foreign governments. If properly implemented, these new laws will mean that we are going to see more and

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<sup>1</sup> <https://www.globalwitness.org/en-gb/campaigns/oil-gas-and-mining/myanmarjade/> and <https://www.globalwitness.org/en-gb/reports/lords-jade/>

<sup>2</sup> [https://www.globalwitness.org/documents/18469/War\\_in\\_the\\_Treasury\\_of\\_the\\_People\\_-\\_Afghanistan\\_Lapis\\_Lazuli\\_and\\_the\\_battle\\_for\\_mineral\\_wealth\\_Low-Res.pdf](https://www.globalwitness.org/documents/18469/War_in_the_Treasury_of_the_People_-_Afghanistan_Lapis_Lazuli_and_the_battle_for_mineral_wealth_Low-Res.pdf)

<sup>3</sup> <https://www.globalwitness.org/en/campaigns/oil-gas-and-mining/shell-and-enis-misadventures-nigeria/>

<sup>4</sup> <https://www.globalwitness.org/en/press-releases/shells-headquarters-raided-and-formal-investigation-launched-over-billion-dollar-nigerian-oil-deal/>

more examples of this kind resulting in real legal, reputational and financial consequences which will hopefully relegate this behavior to the past.

We also need to make the secret companies at the heart of this deal a thing of the past. The Panama Papers have shown the world how deep a problem this is, but it isn't a new problem. We first exposed it in our 2009 report, *Undue Diligence*<sup>5</sup>, and in 2011 the World Bank found that opaque company structures were used in 70% of the grand corruption cases they studied over the last 30 years. Furthermore, contrary to the common misperception that this type of secrecy is mainly provided by sunny tax havens in the Caribbean, the U.S. is at the heart of the problem.<sup>6</sup> A 2014 study found that many U.S. states are among the easiest places in the world to set up an untraceable company – even for inquiries that sounded like a front for terrorism or that should have raised a corruption risk.<sup>7</sup>

In January, Global Witness published an undercover investigation into the role of anonymously owned companies in money laundering that aired on 60 Minutes and was covered by the New York Times.<sup>8</sup> We sent an undercover investigator into 13 New York law firms. He posed as an adviser to an unnamed African minister of mines who wanted to secretly bring suspect funds into the U.S. to buy a mansion, a yacht, and a jet. The results were shocking: 12 of the 13 lawyers provided suggestions on how to move the money using anonymous shell companies and trusts. Eleven of them suggested using American shell companies as part of the structure to hide the fictitious minister's identity.

Many of the lawyers indicated that they would have to do further checks before agreeing to take our investigator on as a "client," no money was exchanged and nobody broke the law. But what is really remarkable about our findings is how consistent the lawyer's suggestions were during the meetings with our investigator. It goes to show you that — from the Panama Papers to our investigation — it is not about the behavior of individuals, however odious. It's about what is wrong with the law, which makes it far too easy for corrupt officials and other crooks to hide behind the secrecy of anonymously owned companies.

But there is hope: the U.S. has long led the world in the fight against global corruption. We were the first country to adopt anti-bribery legislation, and we have seen leadership from both sides of the aisle with President George W. Bush and President Obama each championing measures to curb corruption.

And last month at the UK's Anti-Corruption Summit, the United States and our closest allied governments clearly acknowledged the damage done by corruption and the threat it poses. We were happy to see heads of state and senior politicians agree to strong new measures, including company ownership transparency, open contracting and better cooperation to track down and return stolen funds.

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<sup>5</sup> <https://www.globalwitness.org/en/campaigns/corruption-and-money-laundering/banks/undue-diligence/>

<sup>6</sup> Halter, E. M., Harrison, R. A., Park, J. W., Does de Willebois, E. v., & Sharman, J. (2011). *The Pupper Masters: How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It*. Washington DC: Stolen Asset Recovery Initiative- The World Bank and UNODC.

<https://star.worldbank.org/star/sites/star/files/puppetmastersv1.pdf>

<sup>7</sup> Findley, M., Nielson, D., & Sharman, J. (2014). *Global Shell Games: Experiments in Transnational Relations, Crime and Terrorism*. Cambridge: Cambridge University Press. <http://www.globalshellgames.com/>

<sup>8</sup> <https://www.globalwitness.org/shadyinc/>

There is now a lot of momentum to end anonymously-owned companies. This month, the UK will launch the first public register of the real owners of companies. By the end of 2017, all EU countries will likewise have central registries of beneficial ownership information. More and more countries are pledging to do the same. At the anti-corruption summit, Nigeria, Afghanistan, New Zealand, Jordan, Indonesia, Ireland and Georgia joined Australia, South Africa and a host of other nations moving toward this kind of transparency.

Global Witness welcomes the Administration's summit commitments to curb corruption, including its commitment to require U.S. companies to disclose beneficial ownership information. There is a strong role for Congress to play when it comes to stopping the corrupt and other criminals from hiding behind anonymous American companies and in curbing corruption more generally.

We encourage Congress to take steps to pass two bi-partisan measures:

1. ***The Incorporation Transparency and Law Enforcement Assistance Act (H.R. 4450)***, which would end hidden company ownership to prevent corrupt money from entering the U.S. It would require updated disclosures about the real people who own or control American companies to be filed at the time of incorporation and made available to law enforcement upon a summons or subpoena. This will provide law enforcement with critical information that they need to combat corruption and other types of criminal activity.
2. ***The Global Magnitsky Human Rights Accountability Act (H.R. 624)***, which would deny human rights violators and the corrupt entry to the U.S. and access to U.S. property transactions.

We also support the following:

1. ***Increase transparency in the contracting process among legal entities that receive federal funds*** through an open contracting system that includes the publication of beneficial ownership information to keep U.S. spending from contributing to or exacerbating serious human rights abuses and corruption.
2. ***Implement beneficial ownership transparency requirements for real estate, escrow agents, and luxury goods.*** The New York Times' series, "Towers of Secrecy", illustrated the ease with which it is possible to spend millions of dollars on anonymous property transactions facilitated by the real estate industry. The effects of such secrecy go far beyond merely protecting the identities of the ultimate owners of real estate. Anonymous companies allow corrupt politicians and organized crime to transfer and hide illicitly acquired funds worldwide, and fuel an abuse of power and a culture of impunity. The real estate sector is well positioned to detect schemes that use purchases of land or buildings to conceal the true source, ownership, location or control of funds generated illegally, as well as the companies involved in such transactions.
3. ***Increase resources for law enforcement cooperation to fight corruption.***
4. ***Make the transparent and responsible management of natural resources an integral part of U.S. foreign policy objectives.*** Specifically, the State Department should proactively work to improve natural resource governance in resource-rich countries by promoting transparency across the value chain, including with revenues, license allocations, contracts, and beneficial ownership. Efforts should focus on increasing the capacity of resource-rich governments to negotiate better natural resource deals and improving governance of state-

owned companies and natural resource funds. The State Department should work closely with the World Bank and other donors to provide the support and pressure needed, including through the State Department's Energy Governance and Capacity Initiative, which focuses on improving energy governance in emerging oil and gas producing countries. The U.S. should also effectively implement the U.S. Extractive Industry Transparency Initiative to lead by example and improve U.S. natural resource governance.

- 5. *Protect human rights and support civil society in holding governments to account for governance of the natural resources sector.*** In some countries, particularly countries with autocratic regimes and weak rule of law, civil society experiences serious challenges in its ability to operate freely and speak out against corruption and mismanagement of natural resources. The State Department should develop a proactive strategy for supporting and building civil society's capacity on these issues and help address the grave risks that civil society faces in resource-rich countries.

Thank you for inviting me to testify today. We look forward to working with you and your colleagues to identify ways to prevent the U.S. from enabling corruption and hold individuals and companies accountable for their actions. We are pleased the UK Anti-Corruption Summit brought us closer to transforming corruption into a mainstream issue and that Congress is continuing the momentum by hosting this important hearing.

### **About Global Witness**

Many of the world's worst environmental and human rights abuses are driven by the exploitation of natural resources and corruption in the global political and economic system. Global Witness is campaigning to end this. We carry out hard-hitting investigations, expose these abuses, and campaign for change. We are independent, not-for-profit, and work with partners around the world in our fight for justice.