Global Witness Written Testimony Submitted for the Record
Hearing on the Foreign Corrupt Practices Act
U.S. House of Representatives
Committee on the Judiciary
Subcommittee on Crime, Terrorism and Homeland Security

June 14, 2011

Global Witness would like to thank the Committee for the opportunity to submit written testimony in support of strong enforcement of the Foreign Corrupt Practices Act (FCPA).

Global Witness is a non-governmental organization with offices in Washington, DC and London. For 15 years, Global Witness has exposed how, rather than benefiting a country's citizens, abundant timber, diamonds, minerals, oil and other natural resources can incentivize corruption, destabilize governments, and lead to war. We were co-nominated for the 2003 Nobel Peace Prize for our work in combating the trade in conflict diamonds. Global Witness was part of the coalition that successfully campaigned for the creation of the Extractives Industries Transparency Initiative, which brings together governments, companies and civil society groups to work for greater public disclosure and independent oversight of oil, gas and mining revenues.

Global Witness has carried out numerous investigations concerning allegations of bribery and corruption on the part of companies or public officials around the world, whose findings we make public in our reports. Our work has given us a detailed understanding of the anti-corruption laws of different countries and of the practices of corporations in respect to bribery and corruption.

Harmful Impacts of Bribery

Bribery, particularly the bribery of foreign public officials, by multinational companies, is prevalent in many developing countries, including countries rich in natural resources where our work is concentrated. Bribery undermines the rule of law and the principle of fair competition and entrenches bad governance in such countries, hindering their efforts to alleviate poverty and often contributing to instability and human rights abuses.

Bribery can lead directly to human suffering and death, for example where it results in government contracts being awarded to companies that perform substandard construction work or provide substandard goods and services in the health sector. Bribery of foreign officials can help to entrench corrupt elites by providing the incentive and the means to maintain a tight grip on power, particularly in natural resource rich states where the stakes and potential rewards are higher.

Thus bribery is not a victimless crime or a regrettable but unavoidable cost of business for companies overseas. It is a morally poisonous and economically destructive crime which contributes, directly and indirectly, to poverty and human suffering.

Bribery and other corrupt practices have devastating effects on developing economies and their citizens' quality of life. The cost of corruption in Africa alone has been estimated at $148 billion a year, representing 25% of the continent's GDP.[1] Corruption undermines economic growth rates and cripples public services, as money which should be destined for reinvestment and public expenditure finds its way into private bank accounts, often abroad. It also discourages foreign investment, threatens democracy and can lead to instability.

Corruption is often thought of as endemic to Africa and other developing countries, but it is actually exacerbated by actors in developed countries. Companies actively fuel corruption in developing countries when they pay bribes. When companies fail to disclose legitimate payments to governments, they passively fuel corruption.

Curbing Bribery to Promote a Better Business Environment

Corruption is also bad for business. Bribery increases the cost of doing business. This external cost cannot be accurately budgeted for, as once a bribe is paid the cost of continuing to do business may increase over time with additional demands for bribes. Bribery undermines the rule of law. It also distorts competition and is economically inefficient. Companies compete with each other over the size of the bribe they are willing to pay, rather than the quality of their work product.

Curbing bribery would:

- create a level playing field for business as the open market, and not the bribe, would be the impetus behind sales and contracts;
- reduce the cost of doing business;
- create greater security for contracts;
- downgrade corporate risk in key markets;
- reduce operational costs, such as the cost of capital and insurance premiums; and
- lead to more politically stable and secure environments in which U.S. companies and investors can operate, and therefore help to ensure access to scarce resources.

Laws such as the Foreign Corrupt Practices Act promote more stable business environments and protect responsible companies. Some companies view the FCPA like a shield against irregular and unpredictable payments, particularly in corrupt countries, as it protects them from having to engage in corrupt or otherwise illegal activities that are suggested by government officials.

[1] African Union study on corruption in Africa prepared in 2004 see: Smith, Pieth and Jorge "The Recovery of Stolen Assets: A Fundamental Principle of the UN Convention Against Corruption", Briefing Paper, published by the U4 Anti-Corruption Resource Centre, Norway, February 2007.

Newmont Mining, the second largest oil mining company in the world, views the FCPA as a valuable business tool. Earlier this year, Chris Andersen, Director Corporate & External Affairs Africa, stated, "…Newmont's experience, particularly in Africa has been that [the] FCPA has been an enormously valuable protective device for us…and we found it to be like an insurance policy."[2]

Global Action to Tackle Bribery and Corruption

The U.S. has long led the world in addressing bribery and corruption. Since the U.S. adopted the FCPA in 1977, many international conventions including the OECD Anti-Bribery Convention (1999) and the UN Convention Against Corruption (UNCAC, 2005), ratified by the U.S. in 2006, have been enacted, directly influenced by U.S. leadership. Many countries have also passed domestic laws to combat bribery. Earlier this year, China and Russia adopted anti-bribery laws to implement these conventions.

Global momentum to tackle bribery is also evidenced by the G20 prioritizing an Agenda for Action on Combating Corruption, Promoting Market Integrity, and Supporting a Clean Business Environment. G20 member states agreed to lead by example at the Seoul Summit in November 2010, including the ratification and implementation of UNCAC and the adoption and enforcement of laws and other measures against international bribery, such as the criminalization of bribery of foreign public officials.

Strong enforcement of anti-bribery laws is critical in reducing corruption and promoting a better business operating environment for companies. The U.S. has increased its enforcement of the FCPA during the last decade - in fact, the largest number of cases and monetary penalties were levied last year. The U.S. government should continue to set an example for the rest of the world through robustly enforcing the FCPA and promoting anti-corruption efforts globally through the G20 and other mechanisms. A strong FCPA is crucial in helping to build a fair and stable operating environment for the private sector and to promote economic development and improved governance. An effectively enforced FCPA also gives the U.S. government significant credibility in its wider diplomatic and political outreach to promote democracy and good governance across the globe.

In short, for the U.S. to roll back any of its ground-breaking anti-bribery law at this critical juncture when the rest of the world is finally starting to match its standard, would be an abdication of its leadership role on this important issue.

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[2] Statement by Chris Andersen, Director Corporate & External Affairs Africa, Newmont Mining during a Panel Discussion: New and Emerging Financial Reporting Requirements and the EITI, Extractive Industries Transparency Initiative Global Conference, March 2, 2011, Paris, France. http://soundcloud.com/eiti/paris2011-en-emerging-reporting-requirements at 20:30 mins